

AUG 06 2018

Resolution No. C-2018-84

By: MARK CHUBB *Deputy Clerk*
DEPUTY CLERK

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HALF MOON BAY ORDERING THE SUBMISSION OF A PROPOSED ORDINANCE TO THE QUALIFIED ELECTORS OF THE CITY AT THE GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018 ADDING CHAPTER 3.45 (CANNABIS BUSINESS TAX) TO TITLE 3 OF THE HALF MOON BAY MUNICIPAL CODE, TO TAX CANNABIS BUSINESSES, PROVIDING FOR WRITTEN ARGUMENTS REGARDING THE MEASURE, DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF THE MEASURE, AND SETTING INITIAL TAX RATES

WHEREAS, in 2015, the California Legislature approved the Medical Marijuana Regulation and Safety Act ("MRSA," Business & Professions Code § 19300 *et seq.* and related code provisions) to permit and regulate commercial medical marijuana activities starting January 1, 2018.

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("Prop. 64," Health & Safety Code § 113621.1 *et seq.*; Business & Professions Code § 26000 *et seq.*, and related code provisions), which legalized under state law nonmedical marijuana possession, cultivation, and use for persons 21 years of age or older, as specified, and set up a state licensing scheme for nonmedical marijuana businesses to begin January 1, 2018.

WHEREAS, on June 27, 2017, the State enacted the Medical and Adult-Use of Cannabis Regulatory and Safety Act ("State Cannabis Act," Business & Professions Code § 26000 *et seq.* and related code provisions), which uses the term "cannabis" as synonymous with "marijuana," and which combines MRSA and Prop. 64 into a single state licensing scheme for both medical and adult-use cannabis. Under the State Cannabis Act, the State may license commercial cannabis activities within the City of Half Moon Bay unless the City expressly prohibits those activities.

WHEREAS, since the passage of Prop. 64, the City has held a number of public meetings to explore the possibility of regulating limited commercial cannabis activities in the City of Half Moon Bay. Public speakers expressed a diversity of opinions, ranging from support for fully integrated cannabis businesses on greenhouse sites to encourage economic development and access to local medical cannabis, to opposition to any commercial cannabis activities due to concerns about impacts to youth, neighboring residents, and community character.

WHEREAS, City staff drafted a proposed ordinance to license and regulate commercial, greenhouse nursery cultivation of immature cannabis plants on existing greenhouse sites in the City's A-1 (Agricultural/Exclusive Floriculture) Zone and to update the City's ban on the establishment of other commercial cannabis activities as directed by the City Council ("proposed cannabis nursery ordinance"). This ordinance will be submitted to the voters of Half Moon Bay for consideration on November 6, 2018.

WHEREAS, the voters of Half Moon Bay will also consider three advisory measures on the November 6, 2018 ballot, asking whether the City should allow other types of commercial cannabis businesses.

WHEREAS, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a business license tax, for revenue purposes, upon business transacted in the City.

WHEREAS, the City's consultant has drafted a proposed Cannabis Business Tax Ordinance to adopt a tax upon any cannabis business operating within the City and the City Council approves the form of the this Ordinance.

WHEREAS, the proposed Cannabis Business Tax Ordinance would not authorize any commercial cannabis business to be established within the City, but would enable the City to collect taxes from (1) cannabis nurseries, should the voters approve the proposed cannabis nursery ordinance, (2) cannabis delivery businesses established in other jurisdictions that are currently delivering cannabis within the City, and (3) any other cannabis business that could potentially be allowed under future ordinances adopted through voter initiatives or by the City Council.

WHEREAS, cannabis businesses can create demands upon city services, and the City does not currently have a tax for cannabis businesses, aside from generally applicable municipal taxes.

WHEREAS, the City is authorized under California Elections Code Section 9222 to submit measures for the repeal, amendment, or enactment of any proposed ordinance to the voters of Half Moon Bay, with such ordinances to be repealed, amended, or enacted accordingly if the measure submitted receives a majority of the votes cast on it at the election.

WHEREAS, the cannabis business tax cannot be imposed without voter approval.

WHEREAS, a General election on Tuesday, November 6, 2018 has been called by Resolution No. 2018-48, adopted on June 5, 2018.

WHEREAS, the City Council wishes to submit to the voters at the general election the proposed Cannabis Business Tax Ordinance.

WHEREAS, the City Council finds that adoption of this Resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15060(c)(3) (the activity is not a project as defined in Section 15378), and 15061(b)(3) (the activity has no potential for resulting in physical change to the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the submission of the tax ordinance to the voters does not constitute approval of a project and has no potential for resulting in physical change to the environment, directly or indirectly.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Half Moon Bay hereby resolves, declares, determines, and orders as follows:

1. That the City Council, pursuant to Elections Code Section 9222, does order submitted to the voters at the November 6, 2018 General Election the following proposed ordinance and ballot label:

Ballot Question

Shall an ordinance be adopted to tax any cannabis business operating within the City at annual rates not to exceed \$2.00 to \$10.00 per square foot for cultivation (inflation adjustable), and 6% of gross receipts for retail, 2.5% for testing, 3% for distribution, and 4% for manufacturing, levied until repealed, estimated to raise at least approximately \$64,000 annually from deliveries and potentially more if other businesses are allowed, to fund general City services and expenses?	YES
	NO

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✓ 2. That the measure submitted to the voters is attached to this Resolution as Exhibit A, which Exhibit A is hereby incorporated into this Resolution by this reference as if set forth in full in this place. The text of the measure shall be printed in the ballot materials, and copies of the measure shall be available from the City Clerk and posted on the City's web page. ✓

3. That, pursuant to Article XIII C of the California Constitution, the vote requirement for the measure to pass is a majority (50 percent + 1) of the votes cast. ✓

4. That in all particulars not recited in this resolution, the election shall be held and conducted as provided in Resolution No. 2018-48 calling the November 6, 2018 General Election.

✓ 5. That the City Council hereby requests the San Mateo County Board of Supervisors to permit the County Elections Official to render specified services to the City relating to the conduct of the election as provided for in Resolution No. 2018-47.

6. That the City Council has given notice of the time and place of holding the election and authorizes, instructs, and directs the City Clerk to give further or additional notice of the election in time, form, and manner as required by law.

7. That the primary arguments for and against the measure shall be submitted to the City Clerk by 5:00 p.m. on August 13, 2018, and shall not exceed 300 words.

8. That pursuant to a separate resolution, the City Council has provided for the filing of rebuttal arguments concerning City ballot measures. Rebuttal arguments concerning the measure shall be submitted to the City Clerk by 5:00 p.m. on August 23, 2018, and shall not exceed 250 words.

9. That all arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. No more than five signatures shall appear with any submitted argument. An organization or association submitting an argument shall submit with its argument a copy of one of the organizational documents listed in California Elections Code Section 9287(e). The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument to be provided by the City Clerk.

10. That the City Council hereby directs the City Clerk to transmit a copy of the measures to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure not exceeding 500 words showing the effect of the measure on the existing law and the operation of the measure. The analysis shall include a statement indicating that the measure was placed on the ballot by the City Council. In the event that the entire text of the measure is not printed on the ballot, nor in the voter information portion of the voter information guide, the City Attorney shall include a statement informing voters how to locate a complete copy of the measure. The City Attorney shall transmit such impartial analysis to the City Clerk. The impartial analysis shall be filed by August 13, 2018.

11. That initial cannabis business tax rates, should the proposed ballot measure pass on November 6, 2018, shall be set as follows beginning the day the Ordinance goes into effect:

- A. For every person who is engaged in commercial cannabis cultivation in the City:
 - 1. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
 - 2. Four dollars (\$4.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
 - 3. Two dollars (\$2.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
 - 4. One dollar (\$1.00) annually per square foot of canopy space for any nursery.
- B. For every person who engages in the operation of a testing laboratory: one percent (1%) of gross receipts.
- C. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): four percent (4%) of gross receipts.
- D. For every person who engages in a cannabis distribution business: two percent (2%) of gross receipts.

- E. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in Subsection (A) through (D): two and half percent (2.5%) of gross receipts.

The setting of initial tax rates shall not be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible in the City.

- 12. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.


I, the undersigned, hereby certify that the foregoing Resolution was duly passed and adopted on the 31st day of July, 2018 by the City Council of Half Moon Bay by the following vote:

AYES, Councilmembers: RUDDOCK, EISEN, RARBACK, AND PENROSE
NOES, Councilmembers:
ABSENT, Councilmembers:
ABSTAIN, Councilmembers:

ATTEST:


Jessica Blair, City Clerk

APPROVED:


Deborah Penrose, Mayor

AUG 06 2018

MARK CHIRBA, Chief Elections Officer
By [REDACTED] DEPUTY CLERK

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Not to publish in Full Text

EXHIBIT A

*Full
Text
Starts*

ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY OF HALF MOON BAY, CALIFORNIA, ADDING
CHAPTER 3.45 (CANNABIS BUSINESS TAX) TO TITLE 3 OF THE HALF MOON BAY
MUNICIPAL CODE

THE PEOPLE OF THE CITY OF HALF MOON BAY DO ORDAIN AS FOLLOWS:

SECTION 1. CODE AMENDMENT. Chapter 3.45 of Title 3 of the Half Moon Bay Municipal Code to read as follows:

CHAPTER 3.45
CANNABIS BUSINESS TAX

Sections:

- 3.45.010 Title.
- 3.45.020 Authority and Purpose.
- 3.45.030 Intent.
- 3.45.040 Definitions.
- 3.45.050 Tax imposed.
- 3.45.060 Reporting and remittance of tax.
- 3.45.070 Payments and communications –timely remittance.
- 3.45.080 Payment – when taxes deemed delinquent.
- 3.45.090 Notice not required by City.
- 3.45.100 Penalties and interest.
- 3.45.110 Refunds and credits.
- 3.45.120 Refunds and procedures.
- 3.45.130 Personal cultivation not taxed.
- 3.45.140 Administration of the tax.
- 3.45.150 Appeal procedure.
- 3.45.160 Enforcement –action to collect.
- 3.45.170 Apportionment.
- 3.45.180 Constitutionality and legality.
- 3.45.190 Audit and examination of premises and records.
- 3.45.200 Other licenses, permits, taxes or charges.
- 3.45.210 Payment of tax does not authorize unlawful business.
- 3.45.220 Deficiency determinations.
- 3.45.230 Failure to report – nonpayment, fraud.
- 3.45.240 Tax assessment –notice requirements.
- 3.45.250 Tax assessment – hearing, application, and determination.
- 3.45.260 Relief from taxes-disaster relief.
- 3.45.270 Conviction for violation – taxes not waived.
- 3.45.280 Violation deemed misdemeanor.

- 3.45.290 Severability.
- 3.45.300 Remedies cumulative.
- 3.45.310 Amendment or repeal.

3.45.010 Title.

This ordinance shall be known as the Cannabis Business Tax Ordinance.

3.45.020 Authority and Purpose.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Businesses that engage in business in the City. The Cannabis Business Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be available for any lawful municipal purpose.

3.45.030 Intent.

The intent of this Ordinance is to levy a tax on all Cannabis Businesses that operate in the City, regardless of whether such business would have been legal at the time this Ordinance was adopted. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

3.45.040 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter. The singular shall include the plural and the plural shall include the singular. Any words not defined below shall have that meaning ascribed to them by the Medicinal and Adult Use Cannabis Regulation and Safety Act, or, if not defined by that Act, their ordinary meaning.

A. "Business" shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. "Cannabis" means all parts of the Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt,

derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" does not include (1) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or (2). "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code. As defined, "Cannabis" includes marijuana and both medical/medicinal cannabis and nonmedical/adult-use cannabis.

C. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

D. "Canopy" means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.

E. "Cannabis business" means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit.

F. "Cannabis business tax" or "business tax," means the tax due pursuant to this Chapter for engaging in cannabis business in the City.

G. "Commercial cannabis cultivation" means cultivation in the course of conducting a cannabis business.

H. "City cannabis license" means a license issued by the City to a person to regulate the establishment and operation of a cannabis business.

I. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery.

J. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

K. “Engaged in business as a cannabis business” means the commencing, conducting, operating, managing or carrying on of a cannabis business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in business within the City if:

1. Such person or person’s employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
2. Such person or person’s employee owns or leases real property within the City for business purposes;
3. Such person or person’s employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;
4. Such person or person’s employee regularly conducts solicitation of business within the City; or
5. Such person or person’s employee performs work or renders services in the City.

The foregoing specified activities shall not be a limitation on the meaning of “engaged in business.”

L. “Evidence of doing business” means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City.

M. “Calendar year” means January 1 through December 31 of the following calendar year.

N. “Gross Receipts,” except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from the definition of Gross Receipts:

1. Cash discounts where allowed and taken on sales;

2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
 3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
 4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
 5. Cash value of sales, trades or transactions between departments or units of the same business;
 6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
 7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
 8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the City's Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.
 9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 3.45.140 shall not be subject to the cannabis business tax under this chapter. However, any business activities not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax provisions of Chapter 3.40 or any other Chapter or Title as determined by the Tax Administrator.
- O. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist

for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

P. “Nursery” means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

Q. “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

R. “Sale” means and includes any sale, exchange, or barter.

S. “State” means the State of California.

T. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 26050, *et seq.* or other applicable state law.

U. “Tax Administrator” means the City Manager of the City of Half Moon Bay or his or her designee.

V. “Testing Laboratory” means a cannabis business that (i) offers or performs tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the Bureau of Cannabis Control.

3.45.050 Tax imposed.

- A. Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax. Such tax is payable regardless of whether the business has been issued a business license, a City cannabis license, or is operating unlawfully. The City’s acceptance of a cannabis business tax payment from a cannabis business operating illegally will not constitute the City’s approval or consent to such illegal operations.
- B. The City Council may, by resolution or ordinance, and without voter approval, set and adjust the rate of the cannabis business tax. However, in no event may the City Council set any rate that exceeds the maximum rate calculated pursuant to Subdivision (C) of this Section for the date on which the rate will commence.
- C. The maximum rate shall be calculated as follows:

1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Through January 1, 2021, the maximum rate shall be:
 - i. Ten dollars (\$10.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
 - ii. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
 - iii. Four dollars (\$4.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
 - iv. Two dollars (\$2.00) annually per square foot of canopy space for any nursery.
 - b. On January 1, 2022 and on each January 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-Hayward area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.
2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed two and a half percent (2.5%) of gross receipts.
3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) the maximum tax rate shall not exceed six percent (6%) of gross receipts.
4. For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed three percent (3%) of gross receipts.
5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not

described in Section (C) (1), (2), (3) or (4), the maximum tax rate shall not exceed four percent (4%) of gross receipts.

- D. For purposes of taxing commercial cannabis cultivation, the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy specified in the City cannabis license, or, in the absence of a City license, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. Should a City license be issued to a business which cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy square footage which is specified in a City license or state law but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Tax Administrator is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

3.45.060 Reporting and remittance of tax.

- A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business's canopy space during the quarter and the rate shall be twenty-five percent (25%) of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.
- B. Each person owing cannabis business tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the Tax Administrator a statement of the tax owed for that calendar quarter and the basis for calculating that tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on that same date that the statement for the calendar quarter is due.
- C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.
- D. The Tax Administrator may, at his or her discretion, establish shorter reporting and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may

require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

- E. For purposes of this section, the square feet of canopy space for a business shall be rebuttably presumed to be no less than the maximum square footage of canopy specified in the business's City cannabis license, or, in the absence of a City license, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is specified in the City cannabis license or state law but not utilized for cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used, and authorizes such reduction for the purpose of relief from the tax.

3.45.070 Payments and communications – timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday observed by the City, the due date shall be the next regular business day on which the City is open to the public.

3.45.080 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 3.45.060 and 3.45.070.

3.45.090 Notice not required by the City.

The City may as a courtesy send a tax notice to the business. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

3.45.100 Penalties and interest.

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month.

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one percent (1.0%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.

3.45.110 Refunds and credits.

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 3.45.120.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

3.45.120 Refunds and procedures.

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was originally paid.

B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.

C. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid within one (1) year from the date that the tax was paid.

3.45.130 Personal Cultivation Not Taxed.

The provisions of this Chapter shall not apply to personal cannabis cultivation or use as those activities are authorized in the "Medicinal and Adult Use Cannabis Regulation and Safety Act," Health and Safety Code sections 11362.1 through 11362.3 (and as those sections may be

amended from time to time), provided that the individual receives no compensation whatsoever related to that personal cultivation or use.

3.45.140 Administration of the tax.

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this Chapter;
3. Receive and record all taxes remitted to the City as provided in this Chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
5. Assess penalties and interest to taxpayers pursuant to this Chapter;
6. Determine amounts owed and enforce collection pursuant to this Chapter.

3.45.150 Appeal procedure.

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the City Council by filing a notice of appeal with the City Clerk within thirty (30) calendar days of the serving or mailing of the determination of tax due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

3.45.160 Enforcement - action to collect.

Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based

upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

3.45.170 Apportionment.

If a business subject to the tax is operating both within and outside the City, it is the intent of the City to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

3.45.180 Constitutionality and legality.

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

3.45.190 Audit and examination of premises and records.

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City in support of his or her tax calculation, the Tax Administrator shall have the power to inspect any location where commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the Tax Administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

3.45.200 Other licenses, permits, taxes, fees or charges.

A. Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any City cannabis license, permit, or other license required under any provision of any other Chapter of this Code or

any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee, or other charge imposed, assessed or required under any other Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other Chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Chapter of this Code.

- B. Notwithstanding subdivision A of this Section or Chapter 3.40 of this Code, a cannabis business shall not be required to pay the business license tax required by Chapter 3.40 of this Code so long as all of business's activities within the City that would require payment of a business license tax are activities subject to the cannabis business tax under this Chapter.
- C. The Tax Administrator may revoke or refuse to renew the license required by Chapter 3.40 of this Code for any business that is delinquent in the payment of any tax due pursuant to this Chapter or that fails to make a deposit required by the Tax Administrator pursuant to Section 3.45.060.

3.45.210 Payment of tax does not authorize unlawful business.

A. The payment of a cannabis business tax required by this Chapter, and its acceptance by the City, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.

B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

3.45.220 Deficiency determinations.

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 3.45.240.

3.45.230 Failure to report—nonpayment, fraud.

A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this Chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this Chapter;
2. If the person has not paid the tax due under the provisions of this Chapter;
3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Chapter; or
4. If the Tax Administrator determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

3.45.240 Tax assessment - notice requirements.

The notice of assessment shall be served upon the person either by personal delivery, by overnight delivery by a nationally-recognized courier service, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this Section, a service by overnight delivery shall be deemed to have occurred one (1) calendar day following deposit with a courier and service by mail shall be deemed to have occurred three (3) days following deposit in the United States mail.

3.45.250 Tax assessment - hearing, application and determination.

Within thirty (30) calendar days after the date of service the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) calendar days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) calendar days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five (5) calendar days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 3.45.240 for giving notice of assessment.

3.45.260 Relief from taxes -disaster relief.

A. If a business is unable to comply with any tax requirement due to a disaster, the business may notify the Tax Administrator of this inability to comply and request relief from the tax requirement;

1. A request for relief must clearly indicate why relief is requested, the time period for which the relief is requested, and the reason relief is needed for the specific amount of time.

B. The cannabis business agrees to grant the tax collector or his/her designee access to the location where the cannabis business has been impacted due to a disaster.

C. The Tax Administrator, in his/her sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by a disaster if such tax liability does not exceed five thousand (\$5,000) dollars. If such tax liability is five thousand one (\$5,001) dollars or more than such relief shall only be approved by the City Council;

D. Temporary relief from the cannabis tax may be granted for a reasonable amount of time as determined by the Tax Administrator or the City Council, as applicable in order to allow the cannabis business time to recover from the disaster;

E. The Tax Administrator or City Council, as applicable may require that certain conditions be followed in order for a cannabis business to receive temporary relief from the cannabis business tax requirement;

F. For purposes of this section, “disaster” means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes.

3.45.270 Conviction for violation - taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

3.45.280 Violation deemed misdemeanor.

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

3.45.290 Severability.

If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

3.45.300 Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of the Half Moon Bay Municipal Code and any other provision of law or equity are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

3.45.310 Amendment or repeal.

This Chapter may be repealed or amended by the City Council without a vote of the people to the extent allowed by law. As required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase any tax imposed pursuant to this Chapter. The people of the City of Half Moon Bay affirm that an increase of a tax imposed pursuant to this Chapter does not include (but such exclusion shall not be limited to) the following activities:

A. The restoration or adjustment of the rate of the tax to a rate that is no higher than the maximum rate set by this Chapter and approved by the voters;

B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;
or

C. The collection of the tax imposed by this Chapter even if the City had, for some period of time, failed to collect the tax.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The voters hereby declare that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Full text ends

This Ordinance was approved and adopted by the People of the City of Half Moon Bay at the City's November 6, 2018 general election.

Mayor

ATTEST:

City Clerk

1017668.2

CERTIFICATION

I hereby certify that the foregoing resolution is a true and correct copy of what is on file in the official book of resolutions in the City of Half Moon Bay.



Jessica Blair, City Clerk

August 6, 2018

