

ORDINANCE NO.

AN ORDINANCE OF THE COUNTY OF MENDOCINO, STATE OF CALIFORNIA, AMENDING MENDOCINO COUNTY CODE CHAPTER 6.32 - CANNABIS BUSINESS TAX

The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

Section 1. Section 6.32.030 is hereby amended to read as follows:

6.32.030 Purpose of the ordinance.

This ordinance is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A To impose a tax on the privilege of cultivating, manufacturing, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical or nonmedical cannabis and medical or nonmedical cannabis products and accessories by commercial cannabis businesses in the unincorporated area of the County, pursuant to the state Medicinal and Adult-Use Cannabis Regulation and Safety Act, specifically California Revenue and Taxation Code section 34021.5 (which supersedes California Business and Professions Code section 19348);

B. To impose a tax on lawful commercial cannabis business in accordance with the authority granted by California Revenue and Taxation Code section 7284 to impose a business license tax;

C. To specify the type of tax and rate of tax to be levied and the method of collection; and

D. To comply with all requirements for imposition of a general tax, such tax to become operative only if submitted to the electorate and approved by a majority vote of the voters voting in an election on the issue.

Section 2. Section 6.32.040 is hereby amended to read as follows:

6.32.040 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter:

A "Business" shall include all activities engaged in or caused to be engaged in within the unincorporated area of the County, 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. "Calendar year" means January 1 through December 31 of the same year.

C. "Cannabis" means all parts of the plant *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" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.

D. "Cannabis product" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Cannabis product" also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.

E. "Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site.

F. "Commercial cannabis business" means any commercial business activity relating to cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, and selling (wholesale and/or retail sales) of cannabis and any ancillary products and accessories in the unincorporated area of the County, whether or not carried on for gain or profit.

G. "Cannabis business tax," "business tax," or "commercial cannabis tax" means the tax due pursuant to this Chapter for engaging in commercial cannabis business in the unincorporated area of the County.

H. "Commercial cannabis cultivation" means cultivation conducted by, for, or as part of a commercial cannabis business.

I. "County permit" means a permit issued by the County to a person to authorize that person to operate or engage in a commercial cannabis business. The term "County permit" includes a commercial cannabis permit issued pursuant to Chapter 10A.17 and/or any other subsequent or additional Chapter of the Mendocino County Code which may be adopted or amended from time to time which authorizes any cannabis regulatory activity.

J. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

K. "Delivery" means the commercial transfer of cannabis or cannabis products from a dispensary to a retail customer at a separate location.

L. "Dispensary" means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis or cannabis products as part of a retail sale.

M. "Distributor" or "distribution" or "distribution facility" means a person or facility involved in the procurement, sale, and/or transport of cannabis and cannabis products between permitted or licensed entities.

N. "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.

O. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the unincorporated area of the County or coming into the unincorporated area of the County from an outside location to engage in such activities. A person shall be deemed engaged in business within the County if:

1. Such person or person's employee maintains a fixed place of business within the unincorporated area of the County for the benefit or partial benefit of such person;

2. Such person or person's employee owns or leases real property within the unincorporated area of the County for business purposes;

3. Such person or person's employee regularly maintains a stock of tangible personal property in the unincorporated area of the County for sale in the ordinary course of business;

4. Such person or person's employee regularly conducts solicitation of business within the unincorporated area of the County;

5. Such person or person's employee performs work or renders services in the unincorporated area of the County; and

6. Such person or person's employee utilizes the streets within the unincorporated area of County in connection with the operation of motor vehicles for business purposes.

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

P. "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 unincorporated area of the County.

Q. "Gross Receipts," except as otherwise specifically provided, means the total amount actually received from all sales; the total amount or compensation actually received for the performance of any act or service, of whatever nature it may be, for which a charge is made, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in "gross receipts" shall be all receipts, cash, and property of any kind or nature, without any deduction there from on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

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 return of refundable deposits previously included in gross receipts;
4. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
5. 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;
6. Cash value of sales, trades or transactions between departments or units of the same business;
7. Transactions between a partnership and its partners;
8. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
 - a. The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or
 - b. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or
 - c. At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.
9. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such

transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection (9) above;

10. 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;

11. 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 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.

R. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or re-labels its container, that holds a valid County permit.

S. "Nursery" means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

T. "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.

U. "Personal cannabis cultivation" means cultivation by a person consistent with the provisions of California law and the Mendocino County Code exclusively for the persons' own use, whether for medical or nonmedical uses, where the person does not provide, donate, sell or distribute cannabis to any other person. "Personal cannabis cultivation" also includes cultivation by a primary caregiver who cultivates consistent with the provisions of California law and the Mendocino County Code exclusively for the personal medical use of a person with an identification card or a qualified patient for whom the person is the primary caregiver and who does not receive remuneration for these activities except in full compliance with California law.

V. "Processing" means to harvest, dry, cure, grade, trim, or package for transport commercial cannabis.

W. "Sale" means and includes any sale, exchange, or barter of cannabis or cannabis products.

X. "State" means the State of California.

Y. "State license," "license," or "registration" means a state license issued pursuant to California Business & Professions Code section 26000, et

seq. or other applicable state law.

Z. "Testing laboratory" means a facility, entity, or site in the state that offers or performs testing of cannabis or cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state; and
2. Registered with the California State Department of Public Health.

AA. "Transport" means the transfer of cannabis or cannabis products from the permitted business location of one permittee or licensee to the permitted business location of another permittee or licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to state law.

BB. "Transporter" means a person issued all required state and County permits to transport cannabis or cannabis products between permitted facilities.

CC. "Treasurer-Tax Collector" means the Treasurer-Tax Collector of the County of Mendocino, his or her deputies or any other County officer charged with the administration of the provisions of this Chapter.

Section 3. Section 6.32.050 is hereby amended to read as follows:

6.32.050 Tax imposed.

A There is established and imposed a cannabis business tax at the rates set forth in this Chapter. Every person who is engaged in commercial cannabis cultivation in the unincorporated area of the County shall pay an annual cannabis business tax.

B. Tax on commercial cannabis cultivation excluding nurseries.

1. Every person who cultivates commercial cannabis in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective January 1, 2017 through December 31, 2020 , shall be set at two and one half percent (2.5%) of the gross receipts per calendar year; provided, however, that cultivators shall pay not less than the following amounts:

a. Persons cultivating pursuant to a cultivation permit applied for or issued pursuant to Chapter 10A.17 that authorizes the cultivation of a maximum of two thousand five hundred (2,500) square feet of cannabis (including, but not limited to, Type C, Type C-A or Type C-B cultivation permits) shall pay a tax of no less than one thousand two hundred fifty dollars (\$1,250) per calendar year.

b. Persons cultivating pursuant to a cultivation permit

applied for or issued pursuant to Chapter 10A.17 that authorizes the cultivation of over two thousand five hundred (2,500) square feet and up to five thousand (5,000) square feet of cannabis (including, but not limited to, Type 1, Type 1A and Type 1B cultivation permits) shall pay a tax of no less than two thousand five hundred dollars (\$2,500) per calendar year.

c. Persons cultivating pursuant to a cultivation permit applied for or issued pursuant to Chapter 10A.17 that authorizes the cultivation of over five thousand (5,000) square feet of cannabis (including, but not limited to, Type 2, Type 2A and Type 2B cultivation permits) shall pay a tax of no less than five thousand dollars (\$5,000) per calendar year.

d. Persons who file a Notice of Non-Cultivation with the Department of Agriculture pursuant to Chapter 10A.17 shall not be required to pay the minimum payment amounts required by this paragraph B.1 for either (1) the calendar year in which the Notice of Non-Cultivation is filed or (2) the calendar year in which the Notice of Non-Cultivation terminates, at the election of the Person, which election shall be made at the time of the filing of the Notice of Non-Cultivation; for Persons who do not make an election, the Treasurer-Tax Collector shall select the first of the two calendar years.

e. Payment of the minimum payment amounts required by this paragraph B.1. shall be effective starting January 1, 2018.

2. As of July 1, 2020, such tax rate may be increased in two and one half percent (2.5%) increments, not to exceed the maximum tax rate of ten percent (10%) per calendar year on gross receipts. Incremental increases in the tax rate shall occur January 1 following an approval by the Board of Supervisors at a regularly scheduled meeting of the Board of Supervisors, and occur not more than once per calendar year.

C. Tax on commercial cannabis dispensaries.

1. Every person who is engaged in business as a dispensary in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective January 1, 2017 through December 31, 2020 shall be set at five percent (5%) of the gross receipts per calendar year.

2. As of July 1, 2020, such tax rate may be increased in two and one half percent (2.5%) increments, not to exceed the maximum tax rate of ten percent (10%) per calendar year on gross receipts. Incremental increases in the tax rate shall occur January 1 following an approval by the Board of Supervisors at a regularly scheduled meeting of the Board of Supervisors, and occur not more than once per calendar year.

D. Tax on all other commercial cannabis businesses.

1. Every person who is engaged in business as a distributor, delivery service manufacturer, processor, nursery, testing laboratory, and transporter in the unincorporated area of the County shall pay an annual

commercial cannabis business tax. The initial tax rate effective January 1, 2017 through December 31, 2020 , shall be set at a flat rate of two thousand five hundred dollars (\$2,500) per calendar year.

2. Beginning on July 1, 2020, and on July 1 of each succeeding year thereafter, the amount of the tax imposed the following January 1 by this paragraph D of this Section shall be adjusted up to the equivalent to the most recent change in the State Department of Industrial Relations (or successor agency) in the Consumer Price Index (CPI) for all urban consumers (California). However, no CPI adjustment resulting in a decrease of any tax imposed by this paragraph D shall be made.

Section 4. Section 6.32.060 is hereby amended to read as follows:

6.32.060 Reporting and remittance of tax.

The commercial cannabis business tax imposed by this Chapter shall be imposed on a calendar year basis and shall be due and payable in quarterly installments as follows:

A. Each person owing a commercial cannabis business tax shall, on or before the last day of the month following the close of each calendar year quarter, prepare and submit a tax statement on the form prescribed by the Treasurer-Tax Collector and remit to the Treasurer-Tax Collector by the tax due. Each business shall pay on or before the last day of the month following the close of each calendar quarter.

B. All tax statements shall be completed on forms prescribed by the Treasurer-Tax Collector.

C. Tax statements and payments for all outstanding taxes owed the County are immediately due to the Treasurer-Tax Collector upon cessation of business for any reason.

D. The Treasurer-Tax Collector may, at his or her discretion, establish shorter reporting and payment periods for any taxpayer as the Treasurer-Tax Collector deems necessary to insure collection of the tax.

E. The Treasurer-Tax Collector may, as part of administering the tax and in his or her discretion, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.

Section 5. Section 6.32.080 is hereby amended to read as follows:

6.32.080 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided for under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not remitted to the Treasurer-Tax Collector on or before the due date as specified in Sections 6.32.060 and 6.32.070.

Section 6. Section 6.32.100 is hereby amended to read as follows:

6.32.100 Penalties and interest.

A. Any person who fails or refuses to pay any commercial 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 and one-half percent (1.5%) per month; and

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 and one-half percent (1.5%) per month on the unpaid tax.

3. Interest shall be applied at the rate of one and one-half percent (1.5%) per month on the first day of the month for the full month, and will continue to accrue monthly on the unpaid tax until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a commercial 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 applicable as provided for in this Section, and any other amount allowed under state law.

Section 7. Section 6.32.130 is hereby amended to read as follows:

6.32.130 Exemptions from the tax.

The provisions of this Chapter shall not apply to personal cannabis cultivation.

Section 8. Section 6.32.160 is hereby amended to read as follows:

6.32.160 Enforcement - action to collect.

A. Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the County. Any person owing money to the County under the provisions of this Chapter shall be liable in an action brought in the name of the County for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the County 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.

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the County under this Chapter is not paid when due, the Treasurer-Tax Collector may, within three (3) years after

the amount is due record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the individual or business as it appears on the records of Treasurer-Tax Collector. The lien shall also specify that the Treasurer-Tax Collector has complied with all provisions of this Chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the County owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the date of filing of the certificate unless sooner released or otherwise discharged.

C. At any time within three (3) years after any individual or business is delinquent in the payment of any amount herein required to be paid or within three (3) years after the last recording of a certificate of lien under Subsection B of this Section, the Treasurer-Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this Chapter. The warrant shall be directed to the Sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Treasurer-Tax Collector may pay or advance to the Sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution. The Treasurer-Tax Collector shall approve the fees for publication in the newspaper of any required notice.

D. At any time within three (3) years after recording a lien against any individual or business, if the lien is not discharged and released in full, the Treasurer-Tax Collector may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the business subject to seizure and sale subject to this Chapter shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.

Section 9. Section 6.32.300 is hereby amended to read as follows:

6.32.300 Amendment or repeal.

The Board of Supervisors of the County of Mendocino is authorized to repeal this Chapter 6.32 without a vote of the people to the extent allowed by law. The Board of Supervisors of the County of Mendocino is further authorized to amend this Chapter 6.32 in any manner that does not increase the tax rate above the maximum rate specified for each category of business or in a manner that otherwise constitutes a tax increase for which voter approval is required by Article XIII C of the California Constitution. The people of the County of Mendocino affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration of the rate of the tax to a rate that is no higher

than that set by this Chapter, if the Board of Supervisors has acted to reduce the rate of the tax;

B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as the 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 County had, for some period of time, failed to collect the tax.

Section 10. Severability. If any section, subsection, provision, phrase, word or clause of this ordinance or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared invalid or unconstitutional.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of ____, 2018, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT, County Counsel

DAN HAMBURG, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy