

RESOLUTION NO. 2018-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HESPERIA, CALIFORNIA, ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A QUESTION RELATING TO ESTABLISHMENT OF A CANNABIS BUSINESS TAX AND REQUESTING THAT THE COUNTY OF SAN BERNARDINO CONSOLIDATE THE ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2018, AND CONDUCT THE ELECTION ON THE CITY'S BEHALF

WHEREAS, the City of Hesperia ("City") is a general law city located in the County of San Bernardino ("County"), State of California ("State"); and

WHEREAS, a California Statewide General Election is to be held on November 6, 2018 (hereinafter the "Statewide Election"); and

WHEREAS, a general municipal election is also to be held on November 6, 2018, for the election of municipal officers of general law cities throughout the State; and

WHEREAS, on June 19, 2018, the City's City Council ("City Council") adopted Resolution Nos. 2018-38 and 2018-39 calling a general municipal election to be held on November 6, 2018, for the election of certain members of the City Council, and requesting that said election be consolidated with the Statewide Election; and

WHEREAS, pursuant to Article XIV of Chapter 16.16 of Title 16 of the Hesperia Municipal Code ("HMC"), the City currently prohibits all commercial cannabis activities within its boundaries, with the exception of delivery of medicinal cannabis pursuant to an M-Type 9 (Non-Storefront Retailer) State license; and

WHEREAS, the City Council has prepared, and seeks to submit to the voters of the City, an ordinance that would establish taxes applicable to all commercial cannabis operations in the City, whether or not such operations are currently allowed, authorized or permitted pursuant to the HMC (the "Cannabis Business Tax Ballot Measure"); and

WHEREAS, pursuant to Elections Code Section 10400, whenever two or more elections of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

WHEREAS, pursuant to Elections Code Section 10002, the City Council may by resolution request the County Board of Supervisors to permit the County elections official to render specified services to the City relating to the conduct of an election, and said resolution shall specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002, unless other arrangements satisfactory to the County have been made, the City shall reimburse the County in full for the services performed upon presentation of a bill to the City; and

WHEREAS, the City Council desires to call an election on the Cannabis Business Tax Ballot Measure, and to consolidate said election with the general municipal election and Statewide

Election to be held on November 6, 2018, and to request the County Board of Supervisors to direct the County's designated elections official (hereinafter the "County Elections Official") to take any and all necessary steps to conduct said consolidated election within the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF HESPERIA CITY COUNCIL AS FOLLOWS:

Section 1. That the foregoing recitals are true and correct and are set forth herein by reference.

Section 2. That the City Council, pursuant to its right and authority, does order submitted to the voters at the general municipal election to be held and consolidated with the Statewide Election on Tuesday, November 6, 2018, the following question:

MEASURE ___, CANNABIS BUSINESS TAX

Shall the measure establishing a permanent tax of 1% to 6% of revenues on all commercial cannabis businesses, excepting cultivation, and a tax of up to \$15 per square foot of space used for commercial cannabis cultivation per fiscal year as may be increased annually by increases in the consumer price index, to raise approximately \$154,000 annually to be spent for unrestricted general revenue purposes, including public safety services and public works improvements, be adopted?	Yes
	No

Section 3. That the proposed complete text of the Cannabis Business Tax Ballot Measure to be submitted to the voters is attached hereto as Exhibit A, and is hereby approved and adopted and incorporated herein by this reference.

Section 4. That the City Council hereby orders an election be called on the Cannabis Business Tax Ballot Measure, and that said election be held and conducted on November 6, 2018.

Section 5. That, pursuant Elections Code Sections 10401 and 10403, the County Board of Supervisors is hereby requested to consent and agree to, and to order, the consolidation of the election on the Cannabis Business Tax Ballot Measure with the general municipal election and Statewide Election to be held on November 6, 2018, and to authorize and direct the County Elections Official to take any and all necessary steps to conduct and hold the consolidated election, and that the County Elections Official is hereby authorized and requested to do so.

Section 6. That the election, as consolidated, be held in all respects as if there were only one election, that only one form of ballot be used, and that the consolidated election be held and conducted in accordance with the provisions of law regulating the Statewide Election.

- Section 7. That, pursuant to Elections Code Section 320, the City hereby designates its City Clerk, or her designee, as the City's Elections Official for purposes of the election and its related processes.
- Section 8. That the County Board of Supervisors is hereby requested to authorize and permit the County Elections Official to canvass the returns of the election and to furnish the results of such canvassing to the City Clerk, as provided by law, and the County Elections Official is hereby authorized and requested to do so.
- Section 9. That the City Council recognizes that additional costs will be incurred by the County by reason of the consolidation requested herein, and agrees to reimburse the County for its share of the costs, upon presentation of a properly detailed invoice to the City Clerk, in accordance with Elections Code Section 10002.
- Section 10. That the polls for the election shall be opened at seven o'clock a.m. (7:00 a.m.) on the day of the election, November 6, 2018, and shall remain open continuously from said time until eight o'clock p.m. (8:00 p.m.) on the same day, when said polls shall be closed, except as provided in Section 14401 of the Elections Code.
- Section 11. That the City Council requests the County Board of Supervisors to authorize, direct and permit the County Elections Official to perform the following specified services to conduct the election: preparation, printing and mailing of sample ballots and polling place cards; establishment or appointment of precincts, polling places and election officers; furnishing of ballots, voting booths and other necessary supplies or materials for polling places; and performance of such other election services as may be requested by the City Clerk and as necessary in order to properly and lawfully conduct the election.
- Section 12. That the ballots to be used at the election shall be in form and content as required by law.
- Section 13. That the City Clerk is authorized, instructed and directed to coordinate with the County Elections Official to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.
- Section 14. That the City Council hereby requests the County Board of Supervisors to authorize and permit the County Elections Official to provide any and all services necessary for conducting the consolidated election on the Cannabis Business Tax Ballot Measure, and agrees to pay for said services.
- Section 15. That arguments in favor of and in opposition to the Cannabis Business Tax Ballot Measure and rebuttal arguments shall be permitted and accepted in accordance with Elections Code Sections 9282 and 9285(a). The deadline for submittal of direct arguments to the City Clerk shall be August 10, 2018. The deadline for rebuttal arguments to the City Clerk shall be August 20, 2018. After the expiration

of said deadlines, the City Clerk shall transmit all arguments received to the County Elections Official as soon as practicable, but in no event later than August 15, 2018 for direct arguments and August 25, 2018 for rebuttal arguments, or earlier if necessary to comply with any deadlines established by the County Elections Official.

Section 16. That in the event that more than one argument for or against the Cannabis Business Tax Ballot Measure is timely submitted, the City Clerk shall give preference and priority first, to arguments submitted by member(s) of the City Council, as authorized by this Resolution, and second, to individual voters, bona fide associations, or a combination thereof, in the order set forth at California Elections Code Section 9287.

Section 17. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City, and that pursuant to Elections Code Section 10403, the City Council hereby acknowledges that the consolidated election shall be held and conducted in the manner prescribed in Elections Code Section 10418.

Section 18. That, pursuant to Elections Code Section 9280, the City Clerk is hereby directed, immediately upon adoption of this Resolution, to transmit a copy of the Cannabis Business Tax Ballot Measure to the City Attorney, and the City Attorney shall prepare an impartial analysis of the Cannabis Business Tax Ballot Measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and the City Attorney, by the close of business on August 10, 2018, shall transmit said impartial analysis to the City Clerk for submission to the County Elections Official. The analysis shall include a statement indicating that the Cannabis Business Tax Ballot Measure was placed on the ballot by the City Council. In the event the entire text of the Cannabis Business Tax Ballot Measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: "The above statement is an impartial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the elections official's office/city clerk at (760) 947-1007 and a copy will be mailed at no cost to you."

Section 19. That the County Elections Official is requested to [Check one of the following]:
☐ Print the attached measure text exactly as filed or indicated on the filed document in the Voter Information Guide for the November 6, 2018 election. Cost of printing and distribution of the measure text will be paid for by the City.
☐ Not to print the measure text in the Voter Information Guide, but send a copy to voters upon request at the cost of the City. The contact number to be printed in the Voter Information Guide is (760) 947-1007 (Elec. Code §§ 9160, 9312, 9280).

Section 20. That the City Clerk is hereby directed to file a certified copy of this Resolution with the County Board of Supervisors, and a certified copy with the County Elections Official.

- Section 21. That notice of time and place of holding the consolidated election on the Cannabis Business Tax Ballot Measure is hereby given, and the City Clerk is authorized, instructed and directed to give such further or additional notice of the election, in time, form and manner as required by law.
- Section 22. The adoption of this Resolution is exempt from the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.* ("CEQA") and 14 Cal. Code Reg. §§ 15000 *et seq.* ("CEQA Guidelines"). The calling and noticing of a general municipal election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines Section 15378. The Cannabis Business Tax Ballot Measure submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines Section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.
- Section 23. That the City Clerk and City Manager are hereby authorized to take all actions as necessary to effectuate the purposes of this resolution and the election.
- Section 24. That City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

ADOPTED AND APPROVED this 17 day of July, 2018.

William J. Holland, Mayor

ATTEST:

Melinda Sayre
City Clerk

ORDINANCE NO. 2018-08

AN ORDINANCE OF THE PEOPLE OF THE CITY OF HESPERIA, CALIFORNIA APPROVING A TAX ON CANNABIS COMMERCIAL ACTIVITIES AND BUSINESSES BY ADDING CHAPTER 3.18 (CANNABIS BUSINESS TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE HESPERIA MUNICIPAL CODE

WHEREAS, pursuant to subdivision (b) of Section 2 of Article XIII C of the California Constitution and Section 53720 *et seq.* of the Government Code, the City Council ("City Council") of the City of Hesperia ("City") is authorized to impose a general tax upon submission of such general tax to the voters of the City and approval by a majority of the voters voting on the issue, at an election consolidated with a regularly scheduled general election for members of the City Council; and

WHEREAS, in 1996 the California voters approved Proposition 215, the Compassionate Use Act, codified as Health and Safety Code Section 11362.5, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

WHEREAS, in 2003 the State of California adopted Senate Bill 420, the Medical Marijuana Program Act, codified as Health and Safety Code Section 11362.7, *et seq.*, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purposes, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"), which established a comprehensive regulatory and licensing scheme for commercial medical cannabis operations; and

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA") was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial adult-use cannabis operations, and which also legalized limited adult-use personal cannabis use, possession, and cultivation; and

WHEREAS, on June 27, 2017, Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), which merged the regulatory regimes of MCRSA and AUMA; and

WHEREAS, Chapter 5.50 of Title 5 (Business Licenses and Regulations) and Title 16 (Development Code) of the Hesperia Municipal Code provide for a commercial cannabis regulatory program for the City, which establishes certain limitations on personal cannabis cultivation and prohibits commercial cannabis activities with the sole exception of medical cannabis delivery operations under state license classification M-9 (Non-Storefront), which

businesses may operate in the City subject to issuance of a City regulatory permit and compliance with the operating requirements applicable to such business set forth in said Chapter 5.50 and Title 16; and

WHEREAS, presently the City has no local tax on cannabis commercial operations; and

WHEREAS, MAUCRSA and AUMA do not preempt local taxation of cannabis operations; and

WHEREAS, although presently the City of Hesperia permits only limited commercial cannabis land uses in the form of medical cannabis retail delivery operations, it may in the future permit other types of commercial cannabis uses; and

WHEREAS, while the City Council does not desire nor does it intend by this ordinance to allow any other commercial cannabis uses in the City other than the currently allowed uses, the city council does desire to seek voter approval for a broad cannabis tax that is applicable to both existing allowed commercial cannabis uses and any potential commercial cannabis uses that may be allowed in the future; and

WHEREAS, the City Council desires that a cannabis tax be submitted to the voters for approval so that every person engaged in conducting a commercial cannabis operation shall pay a cannabis business tax, regardless of whether such operation has a valid permit pursuant to the Hesperia Municipal Code; and

WHEREAS, the City Council desires that revenue generated from said cannabis taxes can be spent for unrestricted general revenue purposes; and

WHEREAS, the City Council finds that tax revenue from commercial cannabis operations can provide funds for additional City services to promote and protect the general health and welfare of the citizens of the City.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF HESPERIA, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are true and correct, and are incorporated herein by reference.

SECTION 2. ADDITION OF CHAPTER 3.18 (CANNABIS BUSINESS TAX). Chapter 3.18 (Cannabis Business Tax) is hereby added to Title 3 (Revenue and Finance) of the Hesperia Municipal Code to read as follows:

“CHAPTER 3.18 CANNABIS BUSINESS TAX

Section 3.18.010. Definitions.

Section 3.18.020. Tax.

Section 3.18.030. Operation of Tax.

Section 3.18.040. Returns and Remittances.

Section 3.18.050. Failure to Pay Tax.

Section 3.18.060. Refunds and Claims.

Section 3.18.070. Enforcement.

Section 3.18.080. Debts; Deficiencies; Determinations; Hearings.

Section 3.18.090. City Council Authority to Amend.

Section 3.18.010. Definitions.

The following definitions apply to this chapter unless the context clearly denotes otherwise. Terms not defined herein shall be given the definitions set forth in Business and Professions Code Section 26001.

- A. "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' does not include 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. Cannabis includes medicinal cannabis. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by the Food and Agricultural Code § 81000 or the Health and Safety Code § 11018.5.
- B. "Cannabis products" 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. Cannabis products include medicinal cannabis products.
- C. "City" means the City of Hesperia.
- D. "Commercial cannabis activity" or "commercial cannabis operation" includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery or sale of cannabis or a cannabis product, except as set forth in Section 16.16.455 ("Personal Cultivation of Cannabis") of this Code or as preempted by state law.
- E. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

- F. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer, and includes the use of any technology platform owned and controlled by the same person making such use.
- G. "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between entities licensed for and/or engaged in commercial cannabis activities.
- H. "Distributor" means a person engaged in distribution.
- I. "Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food as defined by the Health and Safety Code § 109935 or a drug as defined by the Health and Safety Code § 109925.
- J. "Finance Director" means the City's Finance Director, and includes his/her designee(s).
- K. "Location" means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.
- L. "Manufacture" or "manufacturing" means to compound, blend, extract, infuse, extract or otherwise make or prepare a cannabis product, including manufactured cannabis.
- M. "Manufactured cannabis" 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.
- N. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis, cannabis or cannabis products, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.
- O. "Marijuana" has the same definition as provided for "cannabis" in this chapter.
- P. "Operation" means a "commercial cannabis operation" as defined by this chapter.
- Q. "Permit," or "local permit" means an official document granted by the City that specifically authorizes a person to conduct commercial cannabis activity in the City.
- R. "Person" means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, cooperative, collective or any other group or combination acting as a unit.
- S. "Proceeds" means total amount of gross revenue actually received or receivable by a commercial cannabis operation from all sales of goods of any kind, including but not

limited to cannabis and cannabis products; the total amount of compensation actually received or receivable for the performance of any act or service whatever nature it may be, including but not limited to commercial cannabis activity, from which a charge is made or credit allowed, whether such service is done singly and/or as part of or in connection with the sale of materials; goods, wares or merchandise; discounts, rents royalties, fees, commissions, dividends or other gains. Proceeds includes all receipts, cash, credits and property of any kind or nature, consideration of any nature, without any deduction therefrom on account of the cost of property sold, the cost of materials used, labor or services costs, interest paid or payable or losses or other expenses or deduction whatsoever. Excluded from Proceeds are any taxes required by law to be added to the purchase and collected from the consumer or purchaser, such part of the sales price of any property returned by the purchaser to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in Proceeds. Proceeds may also exclude such other amounts that may be permitted by the Finance Director as not being included in Proceeds pursuant to administrative rulings or instructions provided by the Finance Director. "Proceeds" is intended to include all gross revenue of the commercial operation whether for commercial cannabis activities or other activities (e.g., revenue from sales of other goods at the location).

- T. "Retailer" means a person engaged in the retail sale or delivery of cannabis or cannabis products to a customer. A retailer may be a storefront or non-storefront retailer.
- U. "Space utilized as cultivation area" shall mean any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the cannabis germination, seedling, vegetative, pre-flowering, flowering and/or harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, trimming, curing or drying cannabis or any such space available for or used for storing any products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located. Space used as cultivation area shall include space used to cultivate cannabis plants on platforms and stack them in multiple layers on top of each other (i.e., vertical cultivation). Space utilized as cultivation area shall be calculated in square feet and measured using clearly identifiable and/or apparent boundaries, including all of the space within the boundaries. Such space may be noncontiguous but each unique area included in the total calculation shall be separated by an identifiable and/or apparent boundary, including but not limited to, interior walls, shelves, and greenhouse walls, nursery wall or canopy walls, hoop house walls, garden benches, hedgerows, fencing, garden beds, or garden plots. Space used as cultivation area includes space which is immediately available for the activities described herein even if not being used at the time of determination. The Building Official or the Principal Planner of the City or his/her designee shall determine the Space utilized as cultivation area during the initial Term of the operation, and at least annually thereafter.
- V. "Tax" means the commercial cannabis tax and commercial cannabis cultivation tax imposed by this chapter.
- W. "Term" means such term or period of time as may be designated by the Finance Director for reporting or payment of tax, provided, however, that if no such term is designated,

Term shall mean a calendar month (meaning that the annual tax shall be divided by 12 for the appropriate fiscal year). Notwithstanding the foregoing, the Term for payment of tax may be set on a monthly, quarterly, semi-annual or annual basis by the Finance Director. Taxes may be prorated to the extent the Finance Director provides for a term other than that specified above, to the extent a commercial cannabis operation commences on a date other than the first date of a Term, upon cessation of the business, or for other appropriate reasons.

- X. "Testing laboratory" refers to a laboratory, facility, or entity that offers or performs tests on cannabis or cannabis products; "Testing" includes the activity of laboratory testing of cannabis and cannabis products.

Section 3.18.020. Tax.

- A. Commercial Cannabis Tax (non-cultivation). Every person conducting a commercial cannabis operation other than cultivation in the City, regardless of whether such operation has a valid permit pursuant to this Code, shall pay, on a per-Term basis, a commercial cannabis tax (non-cultivation) of not less than one percent (1%) and not more than six percent (6%) of the proceeds of the commercial cannabis operation.
- B. Commercial Cannabis Cultivation Tax. Every person conducting a commercial cannabis operation involving cultivation in the City, regardless of whether such operation has a valid permit pursuant to this Code, shall pay a maximum commercial cannabis cultivation tax of no more than fifteen dollars (\$15) per square foot per fiscal year (July 1 to June 30) for space utilized as cultivation area. Taxes imposed on space utilized as cultivation area shall be adjusted annually on July 1 of each year, commencing July 1, 2020, after the date of imposition based on changes in the Consumer Price Index ("CPI") for all urban consumers in the Riverside-San Bernardino-Ontario areas (or similar index) as published by the United States Government Bureau of Labor Statistics for the prior calendar year; provided, however, no adjustment shall decrease any maximum tax imposed by this chapter.
- C. Purpose of Tax. The revenue generated by the commercial cannabis tax and the commercial cannabis cultivation tax may be spent for unrestricted general revenue purposes.
- D. Intent of Tax. The taxes provided for in this chapter do not authorize any commercial cannabis operation or use that is not otherwise expressly allowed by this Code. The taxes provided for in this chapter are intended to both allow the City to levy the taxes on commercial cannabis operations and uses that are authorized or allowed in the City as of the date of enactment of this chapter and to provide the City with the ability to levy the taxes on potential future commercial cannabis operations and uses that may after enactment of this chapter be allowed in the City by local ordinance or initiative. The taxes imposed by this chapter are in addition to all other applicable taxes imposed by this Code, including, but not limited to, the sales and use tax imposed by Chapter 3.16 of Title 3 and the business license fees imposed by Chapter 5.04 of Title 5.
- E. Automatic Maximum Rates. The tax rates of the commercial cannabis tax (non-cultivation) and the commercial cannabis cultivation tax shall automatically be set at the

maximum rates specified in this chapter each July 1 unless established otherwise at a lower rate by resolution or ordinance of the City Council.

- F. Authority to Levy Tax at Lower than Maximum Authorized Rate. The City Council may, at any time, by resolution or ordinance and without voter approval, levy the tax at any rate lower than the maximum rate authorized by this chapter; provided, however: (i) the maximum tax rate permitted to be levied without further voter approval shall be and remain the maximum tax rate set forth in this chapter; and (ii) the commercial cannabis tax (non-cultivation) shall not be levied at a rate lower than one percent (1%).
- G. Future Exemptions, Exceptions, Penalties and Interest Permitted. The City Council may establish exemptions, incentives, or other reductions, and penalties and interest charges or determinations of tax due for failure to pay the tax in a timely manner, as otherwise allowed by this Code or California law. No action by the City Council under this section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and thereby restoring the maximum tax specified in this chapter.

Section 3.18.030. Operation of Tax.

- A. Failure to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and determinations of tax due as set forth in this chapter and as the City Council may establish, and the City may use any or all other enforcement remedies provided for in this Code, or pursuant to state law.
- B. The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter shall be construed to authorize commercial cannabis operations.
- C. Taxes provided for hereunder are not sales or use taxes and shall not be calculated or assessed as such. The taxes shall not be separately identified or otherwise specifically assessed or charged to any individual, consumer or customer; rather, the taxes are imposed upon the commercial cannabis operation.
- D. The Finance Director shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

Section 3.18.040. Returns and Remittances.

The tax shall be due and payable as follows:

- A. Each person owing tax, within 45 days (or such other period as may be established by the Finance Director) after the conclusion of each Term, shall prepare and submit a tax return to the Finance Director. The tax return shall include all information necessary to determine the amount of tax owed for the subject Term, including the proceeds of the commercial cannabis operation (for all operations other than cultivation) and the total square footage of space utilized as cultivation area, for cultivation operations. At the time

the tax return is filed, the full amount of the tax owed for the preceding term shall be remitted to the City. Where the Term is set on an annual basis, the Finance Director may require prorated payments or estimated tax payments on more frequent intervals during the Term, as such intervals may be established by the Finance Director.

- B. All tax returns shall be completed on forms provided by the Finance Director.
- C. Tax returns and payments for all outstanding taxes owed the City are immediately due to the Finance Director upon cessation of business of a commercial cannabis operation for any reason or upon sale of a commercial cannabis operation.
- D. Whenever any payment, statement, report, request or other communication received by the Finance Director is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this section for the receipt thereof, or whenever the Finance Director is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Finance Director may regard such payment, statement, report, request, or other communication as having been timely received. If the due date falls on a date the City Hall is closed, or on a Saturday, Sunday, or federal holiday, the due date shall be the next regular business day on which the City Hall is open to the public following the due date.
- E. Unless otherwise specified in this chapter, taxes shall be deemed delinquent if not paid on or before the due date pursuant to this section.
- F. The Finance Director is not required to send a delinquency or other notice or bill to any person subject to payment of tax pursuant to this chapter, and failure to send such notice or bill shall not affect the validity of any tax or penalty due under this chapter.

Section 3.18.050. Failure to Pay Tax.

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

- A. A penalty of no more than twenty-five percent (25%) of the amount of tax remaining unpaid (in addition to the amount of unpaid tax), plus interest on the unpaid tax calculated from the due date of the tax at a rate not to exceed twelve percent (12%) per year (or one percent (1%) per month), and these penalties and interest rates will automatically be set at the maximum amounts unless established otherwise as a lower amount by resolution of the City Council.
- B. Whenever a check is submitted in payment of a tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this section, as well as any other amount allowed under state law.
- C. The tax due shall be that amount due and payable from the operative date of this

chapter.

- D. The Finance Director may waive the penalties of up to twenty-five percent (25%) each imposed upon any person if:
1. The person provides evidence satisfactory to the Finance Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent tax and accrued interest owed the City prior to applying to the Finance Director for a waiver.
 2. The waiver provisions specified in this subsection shall not apply to interest accrued on delinquent tax, and a waiver shall be granted no more than once during any twenty-four month period for any given payor of commercial cannabis tax (non-cultivation), and no more than once during any five (5) year period for any given payor of commercial cannabis cultivation tax.

Section 3.18.060. Refunds and Claims.

- A. No refund or claim shall be made of any tax collected pursuant to this chapter, except as provided in this section.
- B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of an operation.
- C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against cannabis business taxes for the next term.
- D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, such amount may be refunded to the claimant who paid the tax, provided that a written claim for refund is filed with the Finance Director if the claim is equal to or less than \$5,000 and the City Council if the claim is more than \$5,000. Refund claims must be filed as set forth above within one year of the subject tax payment pursuant to Government Code Section 911.2. Each person requesting a refund or making a claim shall file the claim as provided herein. The submission of a written claim, which shall be acted upon by the Finance Director if less than or equal to \$5,000 or the City Council if more than \$5,000, shall be a prerequisite to suit thereon. (See Section 935 of the California Government Code). The Finance Director, or the City Council where the claim is in excess of \$5,000, shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the City Council fails or refuses to act on a refund claim within the time prescribed by Government Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. The Finance Director or City Clerk or other officer charged with such duty shall give notice of the action in a form that substantially complies with that set forth in Government Code Section 913. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of

a class or group of taxpayers unless each member of the class has submitted a written claim as provided by this Section 3.18.060.

- E. The Finance Director shall have the right and authority 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 therefor refuses to allow such examination of claimant's books and business records after request by the Finance Director to do so. The authorization herein shall extend to any agent hired by the City to audit the books, including an independent auditor.
- F. In the event that the tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.
- G. The Finance Director shall initiate a refund of any tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is revealed by a City audit of tax receipts. In the event that the tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

Section 3.18.070. Enforcement.

- A. It shall be the duty of the Finance Director to enforce each and all of the provisions of this chapter.
- B. For purposes of administration and enforcement of this chapter generally, the Finance Director, with the assistance of the City Attorney, may from time to time promulgate administrative rules and regulations.
- C. The Finance Director shall have the power to audit and examine all books and records of operations as well as persons engaged in the conducting of an operation, including both state and federal income tax returns, California sales tax returns, logs, receipts, bank records, or other evidence documenting the proceeds of the operation and/or space utilized as cultivation area, or persons engaged in the conduct of an operation, for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this chapter. If such operation or person, after written demand by the Finance Director, refuses to make available for audit, examination or verification such books, records, or equipment as the Finance Director requests, the Finance Director may, after full consideration of all information within the Finance Director's knowledge concerning the operation and activities of the person so refusing, make a determination of tax due in the manner provided in Section 3.18.080.
- D. The Finance Director shall have the power to enter upon the premises upon reasonable notice to the commercial cannabis operation at least once per Term for the purposes of determining space utilized as cultivation area, to review items requested in subsection C of this section or as otherwise needed for enforcement of this chapter.

- E. 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.
- F. Any person violating any provision of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact, either concerning the operation and administration of this chapter, or as provided for in this chapter, shall be deemed guilty of a misdemeanor. Notwithstanding the foregoing, the City Attorney/Prosecutor, in his or her discretion, may elect to charge and prosecute any violation as an infraction in lieu of a misdemeanor or to not charge and prosecute at all.

Section 3.18.080. Debts; Deficiencies; Determinations; Hearings.

- A. The amount of any tax, penalties, and interest imposed by this chapter shall be deemed a debt to the City, and any person conducting an operation without also making payment to the City of the taxes, penalties and interest imposed by this chapter shall be liable in an action in the name of the City in any court of competent jurisdiction for the full amount of the tax, and penalties and interest owed by such operation.
- B. If the Finance Director is not satisfied that any statement filed as required by this chapter is correct, or that the amount of tax is correctly computed, the Finance Director 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. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person ceases or discontinues an operation, a deficiency determination may be made at any time within three 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.
- C. Under any of the following circumstances, the Finance Director may make and give notice of a determination of the amount of tax owed by a person under this chapter:
 - 1. If the person has not filed any statement or return required by this chapter.
 - 2. If the person has not paid any tax due under the provisions of this chapter.
 - 3. If the person has not, after demand by the Finance Director, filed a corrected statement or return, or furnished to the Finance Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under this chapter.
 - 4. If the Finance Director determines that the nonpayment of any 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.

5. The notice of determination shall separately set forth the amount of any tax known or estimated by the Finance Director, after consideration of all information within his or her knowledge concerning the business and activities of the person assessed, to be due under this chapter, and such notice shall include the amount of any penalties or interest accrued on each amount to the date of the notice of determination.
 6. The notice of determination shall be served upon the person either by handing it to him or her personally, 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 appearing on the face of the business tax certificate issued under this Code or to such other address as such person shall register with the Finance Director for the purpose of receiving notices provided under this chapter; or, should the person have no business tax certificate issued and should the person have no address registered with the Finance Director for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.
- D. Within ten days after the date of service of a notice of determination of the amount of tax owed by a person under this chapter, or other determination of the Finance Director pursuant to subsection (5), the person may apply in writing to the Finance Director for a hearing on the determination. If application for a hearing before the City is not timely made, the tax assessed by the Finance Director shall become final. The procedures for such a hearing shall be conducted as required by law and as follows:
1. The City Council delegates its authority to conduct such a hearing on the determination to an independent hearing officer. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing on the determination in the manner set forth herein and as required by law.
 2. Within 30 days of the receipt of any such application for hearing, the Finance Director shall cause the matter to be set for hearing before the independent hearing officer, unless a later date is agreed to by the Finance Director and the person requesting the hearing.
 3. Notice of the hearing shall be given by the Finance Director to the person requesting the hearing not later than five days prior to the date of the hearing. For good cause, the hearing officer may continue the administrative hearing from time to time. At the hearing, the applicant may appear and offer evidence to show why the determination of the Finance Director should not be confirmed and fixed as the tax due or the other determination of the Finance Director pursuant to subsection (5). In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the person who applied for a hearing on the determination to appear shall not affect the validity of the proceedings or order issued thereon.
 4. Upon conclusion of the hearing, or no later than 10 days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged or make such other determination as provided in subsection (5) and shall

give written notice to the person in the manner prescribed in this chapter for giving notice of determination, and the hearing officer shall submit its decision and the record to the City Clerk. The decision of the hearing officer shall be final.

5. The provisions of this section apply to any decision, deficiency determination, assessment, or other decision or ruling of the Finance Director, except decisions made pursuant to Section 3.18.060 (Refunds and Claims). Any person aggrieved by any decision subject to this section shall comply with the hearing procedure of this section. Pursuant to Government Code Section 935(b), compliance with this section shall be a prerequisite to a suit thereon. To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

3.18.090. City Council Authority to Amend.

The City Council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the City Council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Elections Code Section 9217.

SECTION 3. EFFECTIVE DATE.

If a majority of the voters of the City voting at the General Municipal Election of November 6, 2018 vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City, and shall be considered as adopted upon the date that the vote is declared by the City Council, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Elections Code Section 9217.

SECTION 4. CITY COUNCIL AUTHORITY TO AMEND

This is a City Council-sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City. However, pursuant to Elections Code Section 9217, the City Council shall have and retain the right and authority to amend the Ordinance to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the City Council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

SECTION 5. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 6. EXECUTION.

01071.0001/483909.7

The Mayor of the City of Hesperia is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Hesperia by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Hesperia, California voting on the 6th day of November, 2018.

William J. Holland, Mayor

ATTEST:

Melinda Sayre, City Clerk

APPROVED AS TO FORM:

Eric Dunn, City Attorney