

RESOLUTION NO. 2020- _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM, CALIFORNIA CALLING FOR THE PLACEMENT OF A GENERAL TAX MEASURE ON THE BALLOT FOR THE NOVEMBER 3, 2020 GENERAL MUNICIPAL ELECTION SUBMITTING TO THE QUALIFIED VOTERS A PROPOSED ORDINANCE ADDING CHAPTER 2.15 TO TITLE 2 OF THE ANAHEIM MUNICIPAL CODE ESTABLISHING A TAX ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY; REQUESTING THAT THE ORANGE COUNTY BOARD OF SUPERVISORS CONSOLIDATE THE CITY'S MUNICIPAL ELECTION WITH THE STATEWIDE GENERAL ELECTION TO TAKE PLACE ON NOVEMBER 3, 2020; SETTING RULES AND DEADLINES FOR THE FILING OF ARGUMENTS AND REBUTTAL ARGUMENTS; AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

WHEREAS, pursuant to California Government Code sections 37100.5 and 37101, the City of Anaheim has the authority to establish a local business tax upon cannabis businesses that engage in business in the City; and

WHEREAS, pursuant to Section 9222 of the California Elections Code, the City Council has authority to place propositions on the ballot to be considered at a Municipal Election; and

WHEREAS, the City Council desires to submit to the voters an ordinance establishing both (i) a maximum \$12.00 per square foot local general tax on the space utilized for cannabis cultivation, and (ii) a maximum 6% local general tax on the gross receipts generated by all other cannabis businesses, including but not limited to cannabis processing, testing, distribution, retail, sale or delivery; and

WHEREAS, the proposed cannabis tax ordinance does not repeal the existing ban on cannabis businesses; rather any such action and decision to allow cannabis businesses in Anaheim will be subject to future action by the City Council; and

WHEREAS, the proposed cannabis business tax is a general tax, the proceeds of which would be deposited into the City's general fund to pay for important City services such as police, fire and paramedic services, street operations and maintenance, library services, parks and recreation services and general municipal services to the public; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218 (California Constitution, Article XIIC), an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased

must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, the proposed ordinance would establish a general tax which is subject to Proposition 218; and

WHEREAS, pursuant to Proposition 218 (California Constitution Article XIIC, §2(b)), any local election for the approval of a general tax must generally be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, the imposition of a cannabis business tax would provide the City's General Fund with a new revenue stream that could be used to support services and programs such as such as police, fire and emergency response, parks and youth/senior services, and street repairs; and

WHEREAS, the City Council desires to request that the Orange County Board of Supervisors consent to the Orange County Registrar of Voters rendering election services to the City as may be requested by the Anaheim City Clerk, in order to conduct the November 2020 General Municipal Election, which will be consolidated with the Statewide General Election, for the measure described herein; and

WHEREAS, the City Council also desires to establish deadlines and rules for the submission of written arguments and rebuttal arguments for and against the measure in accordance with applicable California Elections Code procedures; and

WHEREAS, the specific terms relating to the cannabis business tax are set forth in the ordinance to be considered by the qualified voters, attached hereto as Exhibit "A" (the "Ordinance" or "Measure") and by this reference made an operative part hereof; and

WHEREAS, pursuant to Section 1208.1 of the Anaheim City Charter, a two-thirds (2/3) vote of the membership of the City Council is required to place the Measure on the November 3, 2020 ballot.

NOW, BE IT RESOLVED THEREFORE, THE CITY COUNCIL OF THE CITY OF ANAHEIM, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein, and by this reference are made an operative part hereof.

SECTION 2. Submission of Ballot Measure. The City Council of the City of Anaheim, pursuant to its right and authority as contained in California Proposition 218 and California Elections Code Section 9222, hereby orders the Ordinance attached hereto as Exhibit "A" to be

submitted to the qualified voters of the City of Anaheim at the General Municipal Election to be held on Tuesday, November 3, 2020. The proposed Ordinance shall be in the form attached hereto as Exhibit "A" to this Resolution and is incorporated by this reference as if fully set forth herein.

SECTION 3. Ballot Measure. The City Council, pursuant to its right and authority, does hereby order that the Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the General Municipal Election to be held on Tuesday, November 3, 2020, in addition to any other matters required by law, there shall be printed substantially the following:

MEASURE ____	Yes	
CANNABIS BUSINESS TAX. Shall the City of Anaheim adopt an ordinance enacting a tax on cannabis businesses of up to \$12 per square foot of space utilized for cannabis cultivation, and up to 6% of gross receipts of all other cannabis businesses, generating approximately \$1 to \$4 million annually to be used for general City services, such as police, fire and emergency response, parks and youth/senior services, and street repair, until ended by the voters?	No	

SECTION 4. Election Procedures.

- A. The ballots to be used at the election shall be in the form and content as required bylaw.
- B. In accordance with Sections 10002 and 10403 of the California Elections Code, the Board of Supervisors of Orange County is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide Primary Election on November 3, 2020 and having the County Election Department/Registrar of Voters render full election services to the City of Anaheim as may be requested by the City Clerk of the City, the County of Orange to be reimbursed in full for such services as are performed.
- C. The full election services which the City of Anaheim requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if the Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards; the establishment or appointment of precincts,

polling places, and election officers, the preparation, printing, mailing and furnishing of vote-by-mail ballots, making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of Anaheim; and the performance of such other election services as may be requested by the City Clerk.

- D. The City Clerk is authorized, instructed and directed to procure and furnish, or cause to be procured and furnished through the County of Orange, 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.
- E. The polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to California Code Section 10242 and 14212, except as provided in Section 14401 of the Elections Code of the State of California.
- F. 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.
- G. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- H. All ballots shall be tallied at a central counting place and not at the precincts. The central counting place shall be at a County center as designated by the Registrar of Voters.
- I. The Orange County Registrar of Voters is hereby authorized to canvass the returns of the election.
- J. The City Clerk of the City of Anaheim shall receive the canvass from the County as it pertains to the election on the measure, and shall certify the results to the City Council, as required by law.

SECTION 5. Arguments and Impartial Analysis.

- A. The City Council authorizes (i) the City Council or any member(s) of the City Council, (ii) any individual voter eligible to vote on the above measure, (iii) a bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the City measure, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California

and may change or withdraw the argument until and including **June 26, 2020 by 5:00 p.m.**, after which no arguments for or against the measure may be submitted to the City Clerk. Arguments in favor of or against the measure shall each not exceed 300 words in length. Each argument shall be filed with the City Clerk, signed, and include 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. The arguments shall be accompanied by the Form of Statement To Be Filed by Author(s) of Argument.

- B. The City Clerk shall comply with all provisions of law establishing priority of arguments for printing and distribution to the voters, and shall take all necessary actions to cause the selected arguments to be printed and distributed to the voters.
- C. Pursuant to Section 9280 of the Elections Code, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure. The City Attorney shall transmit such impartial analysis to the City Clerk, who shall cause the analysis to be published in the voter information guide along with the ballot measure as provided by law. The Impartial Analysis shall be filed by **June 26, 2020 at 5:00 p.m.** The impartial analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the measure is not printed on the ballot or in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **"The above statement is an impartial analysis of Ordinance or Measure. If you desire a copy of the ordinance or measure, please call the election official's office at (714) 765-5166 and a copy will be mailed at no cost to you."**
- D. That the provisions of this Section 5 herein shall apply only to the election to be held on November 3, 2020, and shall then be repealed.

SECTION 6. Rebuttal Arguments.

- A. Pursuant to Section 9285 of the Elections Code of the State of California, when the Clerk has selected the arguments for and against the various City initiated measures which will be printed and distributed to the voters, the Clerk shall send copies of the argument in favor of the measures to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than **July 6, 2020 by 5:00 p.m.** The rebuttal arguments shall be accompanied by the Form of

Statement To Be Filed by Author(s) of Argument. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

- B. The provisions of this Section 6 herein shall apply only to the election to be held on November 3, 2020, and shall then be repealed.

SECTION 7. Placement on the Ballot. The full text of the Ordinance/Measure shall not be printed in the voter information guide, and a statement shall be printed in the ballot pursuant to Section 9223 of the Elections Code advising voters that they may obtain a copy of this Ordinance/Measure at no cost, upon request made to the City Clerk.

SECTION 8. Delivery of Resolution to County. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions. The City Council directs the City Clerk to deliver copies of this Resolution, including the Ordinance/Measure attached hereto as Exhibit "A", to the Clerk of the Board of Supervisors of Orange County and to the Registrar of Voters of Orange County.

SECTION 9. Public Examination. Pursuant to California Elections Code section 9295, this Measure will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the voter information guide. The Clerk shall post notice in the Clerk's office of the specific dates that the examination period will run.

SECTION 10. CEQA. The City Council hereby finds and determines that the ballot measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b).

SECTION 11. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

SECTION 12. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption.

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THE FOREGOING RESOLUTION is approved and adopted by the City Council of the City of Anaheim this _____ day of _____, 2020, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CITY OF ANAHEIM

BY _____
MAYOR OF THE CITY OF ANAHEIM

ATTEST:

CITY CLERK OF THE CITY OF ANAHEIM

137606

EXHIBIT A

ORDINANCE NO.

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ANAHEIM, CALIFORNIA, ADDING CHAPTER 2.15 TO TITLE 2 (TAXES) OF THE ANAHEIM MUNICIPAL CODE ESTABLISHING A TAX ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY OF ANAHEIM.

THE PEOPLE OF THE CITY OF ANAHEIM DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 2.15 is hereby added to Title 2 (Taxes) of the Anaheim Municipal Code to read as follows:

"Chapter 2.15. CANNABIS BUSINESS TAX

- 2.15.010 Short Title.
- 2.15.020 Authority and purpose.
- 2.15.030 Definitions.
- 2.15.040 Tax imposed.
- 2.15.050 City Council authorization to adjust tax rate or methodology.
- 2.15.060 Reporting and remittance of tax.
- 2.15.070 Payment – When taxes deemed delinquent.
- 2.15.080 Notice not required by the City.
- 2.15.090 Delinquent tax payments – Interest and penalties.
- 2.15.100 Refunds and credits.
- 2.15.110 Personal cultivation not taxed.
- 2.15.120 Administration of the tax.
- 2.15.130 Failure to collect and report tax – Determination of tax by City Auditor.
- 2.15.140 Tax assessment – Notice requirements.
- 2.15.150 Appeal procedure.
- 2.15.160 Payment under protest required.
- 2.15.170 Tax statement not conclusive; audit and examination of premises and records.
- 2.15.180 Tax a debt – Civil action.
- 2.15.190 Other licenses, permits, taxes, fees or charges.
- 2.15.200 Conviction for violation – Taxes not waived.
- 2.15.201 Violation deemed misdemeanor.
- 2.15.202 Remedies cumulative.
- 2.15.203 Future amendment to cited statutes.

2.15.010 SHORT TITLE.

This chapter shall be known and cited as the cannabis business tax code.

2.15.020 AUTHORITY AND PURPOSE.

.010 The purpose of this chapter 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, except for cannabis cultivation/processing, which shall be taxed based on square footage. It is not a sales and use tax, a tax upon income, or a tax upon real property, and it shall not be separately identified or otherwise specifically assessed or charged to any customer or client of a cannabis business.

.020 The cannabis business tax is a general tax enacted solely for general, governmental purposes of the City and not for specific purposes.

2.15.030 DEFINITIONS.

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

A. "Cannabis" shall mean 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" shall have the same meaning as set forth in California Business & Professions Code § 26001(f), and additionally means "marijuana" as defined by Section 11018 of the Health and Safety Code. "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" also does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

B. "Cannabis business" shall mean any business, organization or facility, regardless of form, whether operating for profit or not for profit, that cultivates, processes, stores, tests, packages, labels, distributes, transports, and/or sells, dispenses or delivers cannabis, cannabis products and/or devices for the use of cannabis or cannabis products. "Cannabis business" does not include personal medical or adult use cannabis cultivation authorized by state law. A cannabis business shall not be considered to be a religious, social or charitable organization exempt from the payment of business taxes under this chapter.

C. "Cannabis product" shall mean 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 cannabis products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medicinal cannabis products.

D. "Cannabis business tax," "business tax" or "tax" shall mean the tax due pursuant to this chapter for engaging in a cannabis business in the City.

- E. "City Auditor" shall mean the Audit Manager of the City.
- F. "Commercial cannabis permit" shall mean a regulatory permit issued by the City to a person to authorize that person to operate or engage in a cannabis business within the City.
- G. "Cultivation" shall mean 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.
- H. "Distribution" shall mean any activity involving the commercial procurement, sale, transfer and/or transport of cannabis and cannabis products from one cannabis business to another cannabis business for purposes authorized pursuant to state law.
- I. "Engaged in a cannabis business" shall mean 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. By way of example, a person shall be deemed "engaged in cannabis business" within the City if such person or the person's officer, agent, manager, employee, or other representative acting on behalf of such person:
1. Maintains a fixed place of cannabis business within the City;
 2. Owns, leases or otherwise has the legal right to occupy real property within the City for cannabis business purposes;
 3. Regularly maintains a stock of tangible personal property within the City in the ordinary course of cannabis business; and
 4. Performs work or renders cannabis business services to other cannabis businesses or to retail cannabis customers located within the City.
- J. "Gross receipts" means, except as otherwise provided in this chapter, the total amount of monetary consideration actually received or receivable by a cannabis business for performance of any act or service in providing, at wholesale or retail, cannabis and/or cannabis products, for which a charge is made or credit allowed including, but not limited to: membership dues, the value of monetary and in-kind contributions, payments, reimbursement of fees for cultivation, processing, distribution, delivery, retail, storing, exchanging, processing, delivering, making available, or transmitting of cannabis or cannabis products, any payments made, and anything else of value obtained by a cannabis business. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind without deduction of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Gross receipts shall not include the following:
1. Cash discounts where allowed and taken on sales;

2. Sales or other applicable state or local tax required by law to be added to the purchase price of cannabis or cannabis products and collected from the purchaser;

3. Such part of the sales 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; or

4. Whenever there are included within gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectable in a subsequent year, those amounts may be excluded from gross receipts in the year they prove to be uncollectable, provided, however, if all or any portion of such amounts excluded as uncollectable are subsequently collected they shall be included in gross receipt for the period when they are recovered.

K. "Nursery" shall mean a cannabis business that produces only clones, immature plants, seeds and other agricultural products used specifically for cannabis cultivation.

L. "Person" shall have the meaning set forth in Section 1.01.240 of this code.

M. "Processing" shall mean any activity involving the holding, storing, sorting, preparation, labeling and packaging of raw cannabis for retail sale; or involving the production, preparation, propagation, labeling, packaging or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis.

N. "Sale," "sell," and "to sell" shall mean and include any sale, exchange or barter. It shall also mean any transaction whereby, for any consideration, title to cannabis or cannabis products are transferred from one person to another and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same, but does not include the return of cannabis or cannabis products to the person from whom the cannabis or cannabis product was purchased.

O. "Space utilized in connection with cannabis cultivation" means any space or ground, floor or other surface area, whether horizontal or vertical (i.e., "stacking") which is used for either a cannabis nursery and/or cultivation, or any combination of those activities, as well as for sorting or storing of any cannabis, products, supplies or equipment related to any such activities, no matter where the storage occurs or the storage space is located.

P. "State" shall mean the State of California.

Q. "Tax Administrator" shall mean the City Manager of the City of Anaheim or his or her designee.

R. "Testing" shall mean any activity involving the testing of cannabis or cannabis products by a facility that is both (i) accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state, and (ii) registered with the Bureau of Cannabis Control or other state agency.

2.15.040 TAX IMPOSED.

.010 A cannabis business tax is hereby imposed upon each person engaged in a cannabis business in the City. This tax is payable regardless of whether the business has been issued a business license or commercial cannabis permit to operate lawfully in the City. The City's acceptance of a cannabis business tax payment from a cannabis business operating illegally shall not constitute the City's approval of or consent to any illegal operations.

.020 Every person engaged in a cannabis business within the City shall pay a cannabis business tax at the following rates:

.0201 Up to a maximum of twelve dollars (\$12.00) per square foot of space utilized in connection with cannabis cultivation, subject to adjustment by the City Council pursuant to section 2.15.050; and

.0202 Up to a maximum of six percent (6%) of gross receipts or fractional part thereof, generated by any other cannabis business (including but not limited to cannabis processing, testing, distribution, retail, sale or delivery), subject to adjustment by the City Council pursuant to section 2.15.050.

.030 No cannabis business shall be deemed to be exempt from the payment of the taxes identified above by any other provision of this code, unless expressly exempted under this chapter.

2.15.050 CITY COUNCIL AUTHORIZATION TO ADJUST TAX RATE OR METHODOLOGY.

This chapter authorizes the maximum business tax rate as identified in section 2.15.040 above. The City Council may, by ordinance, upwardly or downwardly adjust the rate of the tax imposed by this chapter and may otherwise repeal or amend this chapter without a vote of the People. However, as required by California Constitution Article XIIC (Proposition 218), voter approval is required for any amendment that would increase the maximum rate or methodology of any tax levied pursuant to this chapter. The People of the City of Anaheim affirm that the following actions shall not constitute an increase of the maximum rate or methodology of the tax requiring subsequent voter approval:

.010 The upward adjustment of the tax rate applicable to any or all classes of cannabis business, provided the rate does not exceed the maximum rate set forth by this voter-approved chapter;

.020 The restoration of the tax to a rate that is no higher than the maximum set by this voter-approved chapter, if the City Council has previously acted to reduce the rate of the tax;

.030 An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, provided the interpretation or clarification (even if

contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;

.040 The establishment of a class of person or service that is exempt or excepted from the tax or the discontinuation of any such exemption or exception; and

.050 Resuming collection of the tax imposed by this chapter, even if the City had, for some period of time, either suspended collection of the tax or otherwise failed to collect the tax, in whole or in part.

2.15.060 REPORTING AND REMITTANCE OF TAX.

.010 Each person subject to a cannabis business tax shall, on or before the close of City business on the last City business day of each month (hereinafter “due date”), file a statement with the Tax Administrator, on a form approved by the Tax Administrator ("tax statement"), of the tax owed for the immediately preceding calendar month and the basis for calculating that tax. The tax for each calendar month (minus any authorized credits) shall be due and payable on the same date that the tax statement for the calendar month is due.

.020 Taxes are paid only upon receipt of both the tax payment and the tax statement. Failure of the taxpayer to submit and the Tax Administrator to receive both the tax statement and the tax payment on or before the due date constitutes non-payment.

.030 Tax statements filed with the City pursuant to this chapter, and information contained therein regarding amounts of gross receipts, adjustments, credits, over collections, tax, penalty and interest, shall be and remain confidential; provided, however, that this section shall not apply to any disclosures made in connection with any hearing, appeal, or any civil action or proceeding relating to the determination or recovery of the tax, or any prosecution of any person for violation of any provision of this chapter or any criminal or civil proceeding pertaining to the tax. This section shall not prohibit, nor be construed to prohibit, disclosure of statistical or cumulative information derived from tax statements when the information disclosed does not identify or relate to any particular taxpayer. This section shall also not prohibit, nor be construed to prohibit, any disclosure of tax statements or information contained therein if disclosure is compelled by an order of court or other judicial process.

.040 Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar months up to and including the calendar month during which cessation occurred.

2.15.070 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 specified in section 2.15.060.

2.15.080 NOTICE NOT REQUIRED BY THE CITY.

The City may, as a courtesy, send a tax notice to the cannabis business which owes the City a cannabis business tax. 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.

2.15.090 DELINQUENT TAX PAYMENTS—INTEREST AND PENALTIES.

.010 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:

.0101 Interest equal to one and one-half percent (1.5%) of the unpaid tax per month, calculated from the first day immediately following the due date to the date of payment. Interest may not be waived.

.0102 A penalty of ten percent (10%) for each month, or portion thereof, that the payment is overdue, added from the first day immediately following the due date; provided, however, that the amount of such penalty shall not exceed fifty percent of the tax. Penalties may not be waived.

.020 In the event of payment of the tax and non-payment of interest and/or penalties, interest at the rate set forth in section 2.15.090.010.0101 shall accrue upon the amount of the unpaid interest and penalties until the date of payment.

.030 In the event the tax becomes final under Section 2.15.150, interest and penalties at the rate set forth in section 2.15.090.010 shall accrue upon the amount of unpaid tax from the due date until the date of payment of the full amount of tax.

.040 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 chapter, and any other amount allowed under state law.

2.15.100 REFUNDS AND CREDITS.

.010 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 or credited to the taxpayer that paid the tax (“claimant”), provided that a written claim for refund is filed with the Tax Administrator. The period for filing a claim for refund shall be one (1) year from the date the tax was paid; provided, however, that in no event shall the period to file such claim expire prior to the shortest period allowable for filing a tax refund claim under Government Code Section 911.2. Such claim must clearly establish the claimant’s right to the refund by written records showing entitlement thereto, and must clearly set forth the facts and legal theories under which the claimant believes he or she has a right to a refund.

.020 The Tax Administrator, City Auditor, or any other City officer charged with the administration of this chapter shall have the right to examine and audit the books and business records of the claimant in order to determine the claimant's entitlement to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow examination of the claimant's books and business records upon request of the City.

.030 The Tax Administrator shall initiate a refund of any tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of tax revenues.

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

2.15.110 PERSONAL CULTIVATION NOT TAXED.

The provisions of this chapter shall not apply to personal cannabis cultivation or personal use of cannabis, to the extent those activities are authorized in the "Medicinal and Adult Use Cannabis Regulation and Safety Act." This chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements and meets the definition of personal use or equivalent terminology under state law, provided that the individual receives no compensation whatsoever related to that personal cultivation or use.

2.15.120 ADMINISTRATION OF THE TAX.

.010 It shall be the duty of the Tax Administrator to perform the duties required by this chapter, except those duties reserved or delegated to the City Auditor.

.020 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.

.030 The Tax Administrator may take such administrative actions as needed to administer the cannabis business tax, including but not limited to providing forms for the reporting of the tax, providing information to any taxpayer concerning the provisions of this chapter, and maintaining records of taxpayer reports and taxes collected pursuant to this chapter.

2.15.130 FAILURE TO COLLECT AND REPORT TAX – DETERMINATION OF TAX BY CITY AUDITOR.

.010 If any person subject to a cannabis business tax under this chapter shall fail or refuse to submit, within the time required, any report or remittance of the tax, the City Auditor shall proceed in such manner as the City Auditor deems best to obtain facts and information on which to base an estimate of the tax, and shall thereupon proceed to determine and assess the tax against the person owing the tax.

.020 The notice of assessment provided by the City Auditor shall separately set forth the amount of any tax known by the City Auditor to be due or estimated by the City Auditor, after consideration of all information within the City Auditor's knowledge concerning the business and activities of the person assessed, to be due under each applicable provision 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.

2.15.140 TAX ASSESSMENT – NOTICE REQUIREMENTS.

A notice of assessment shall be served 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 subject to the assessment at the address of the cannabis business or such other address as the person has designated for receipt of notices. For the purpose of this Section 2.15.140, 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.

2.15.150 APPEAL PROCEDURE.

.010 Any taxpayer who contests the amount of the tax assessed by the City Auditor pursuant to this chapter may appeal that decision by submitting an Application for Hearing to the Tax Administrator within ten (10) days after service or mailing of the notice of assessment. The Application for Hearing shall specify the basis of the appeal and the amount of tax contested. The Tax Administrator may request additional information pertaining to the appeal, which information must be submitted prior to scheduling a hearing on the appeal. If Application for Hearing is not made within the time prescribed, the tax assessed shall be final and immediately due and payable.

.020 If Application for Hearing is timely made, a Hearing Officer shall be appointed by the Tax Administrator in conformance with the provisions of section 2.15.150.040 within fifteen days of the receipt thereof, to conduct a hearing within sixty days of the date of appointment of the Hearing Officer on and limited to the issues set forth in the Application for Hearing. The Hearing Officer shall give not less than fifteen days' written notice to the party requesting the hearing (the "appellant") to show cause at a time and place set forth in the notice why the amount assessed should not be fixed for such tax. At the hearing, the appellant may appear and offer evidence why the tax assessed should not be so fixed. A rebuttable presumption shall exist at the hearing that the amount of tax assessed is correct and the burden of proof shall be upon the appellant to establish otherwise.

.030 Within thirty days after the conclusion of the hearing, the Hearing Officer shall determine the proper amount of the tax and shall thereafter give written notice to the appellant and the Tax Administrator of that determination. The amount determined by the Hearing Officer shall be due and payable fifteen days from the date of service of said written notice. If the evidence to be considered is extensive, or for other reasonable cause

or purpose, the Hearing Officer may utilize one additional thirty (30) day period for preparing his or her determination, after informing the parties of his or her intention to do so.

.040 For matters involving an amount in controversy of Fifty Thousand Dollars (\$50,000) or less, the Tax Administrator shall appoint an Employee Hearing Officer, or subject to agreement of the parties, the City Hearing Officer, as these terms are defined in section 1.12.110.010 of this code. For matters involving an amount in controversy in excess of Fifty Thousand Dollars (\$50,000), the matter shall be referred to the City Hearing Officer.

.050 Notwithstanding the provisions of Section 1.12.110 of this code, the decision of the Hearing Officer shall be final and conclusive and shall be the final administrative procedure available to the appellant or to the City. Any time limits provided in this section may be waived by the mutual agreement of the parties.

2.15.160 PAYMENT UNDER PROTEST REQUIRED.

.010 Any person tendering payment of a cannabis business tax, or any portion thereof, shall for all purposes thereafter be precluded and barred from appealing, contesting or otherwise challenging the validity of such tax pursuant to any procedure available in this chapter or any other legal remedy, unless the payment is made under written protest. This section does not apply to or preclude a person from requesting a refund or credit of taxes that have been overpaid or erroneously collected pursuant to section 2.15.100.

.020 Written protest shall be made only by the following methods:

.0201 A written notation set forth on the check, money order or negotiable instrument by which payment is tendered, that the payment is made under protest; or,

.0202 A written notice that the payment is made under protest delivered to the Tax Administrator at the time of payment of the Tax.

2.15.170 TAX STATEMENT NOT CONCLUSIVE; AUDIT AND EXAMINATION OF PREMISES AND RECORDS.

.010 No tax statement submitted pursuant to this chapter shall be conclusive as to the matters set forth therein, nor shall the filing of a tax statement preclude the City from collecting by appropriate action such sum as is actually due and payable. Each tax statement and each of the items therein shall be subject to audit and verification by the City Auditor, or authorized agents of the City.

.020 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/her/its tax calculation, the Tax Administrator and/or City Auditor 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, bank statements, 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 this examination/investigation, the Tax Administrator or City Auditor shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

.030 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 four (4) years, all records as may be necessary to determine the amount of the tax that he/she/it may owe to the City, which records the Tax Administrator or City Auditor shall have the right to inspect at all reasonable times. Each cannabis business operator shall permit an examination of its books and records at a location within Anaheim. In the event the books and records cannot be made available within Anaheim, the cannabis business operator shall reimburse the City for the cost of all transportation, lodging, meals, portal-to-portal travel time, and other incidental costs reasonably incurred by the City in conducting the audit.

.040 Confidential or proprietary information furnished to or secured by the City from a cannabis business operator pursuant to this section, or contained in any audit report or findings made pursuant to this section, shall be confidential. This section shall not prohibit, or be construed to prohibit, disclosures made in connection with any hearing, appeal, or any civil action or proceeding relating to the determination or recovery of the tax, any criminal or civil proceeding pertaining to the tax, or any disclosure of information which is compelled by a court order or other judicial process.

2.15.180 TAX A DEBT – CIVIL ACTION.

.010 Any taxes, penalties and/or interest required to be paid under the provisions of this chapter shall be deemed a debt owed to the City. Any person owing taxes, interest or penalties 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 the debt. The provisions of this chapter 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.

.020 If any tax is not paid when due, the Tax Administrator may record in the Office(s) of County Recorder(s) of such counties as the Tax Administrator may determine, a certificate which specifies the amount of tax due and the name and address of the person owing the tax. The certificate shall include a statement that the Tax Administrator has complied with all legal requirements in the determination of the tax owed and a legal description of the real property of the owner. Upon recording of the certificate, the tax constitutes a lien upon all real property owned or thereafter acquired

by the person owing the tax. The lien has the force, effect and priority of a judgement lien.

.030 At any time after the recording of a certificate of lien under section 2.15.180.020, the Tax Administrator may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of the tax. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution.

.040 In lieu of issuing a warrant pursuant to section 2.15.180.030, after an assessment is issued or a certificate of lien is recorded, the Tax Administrator may collect the delinquent amount by seizing or causing to be seized any property, real or personal, of the person owing the tax and selling non-cash or nonnegotiable property at public auction to pay the tax due and any costs of the seizure and sale. Any seizure made shall only be of property not exempt from execution under the provisions of the Code of Civil Procedure.

2.15.190 OTHER LICENSES, PERMITS, TAXES, FEES OR CHARGES.

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 commercial cannabis permit or City license required by, under or by virtue of 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, taxes, fees, or charges shall be deemed to refer to the licenses, taxes, fees, charges, or schedule of fees or charges provided for in other chapters of this code.

2.15.200 CONVICTION FOR VIOLATION – TAXES NOT WAIVED.

The conviction and punishment of any person for failure to pay a required cannabis business tax shall not excuse or exempt that person from any civil action for the tax debt owed at the time of the 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 taxes.

2.15.201 VIOLATION DEEMED MISDEMEANOR.

Any person violating any of the provisions 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 in procuring a cannabis business certificate or permit from the City shall be guilty of a misdemeanor.

2.15.202 REMEDIES CUMULATIVE.

All remedies and penalties prescribed by this chapter or which are available under any other provision of this code or 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.

2.15.203 FUTURE AMENDMENT TO CITED STATUTES.

Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time; provided that such reference shall not include any subsequent amendment to a statute, or to any subsequent change of interpretation thereto by a state or federal agency or court of law, to the extent that the amendment or change of interpretation would require voter approval under California law, or to the extent that the change would result in a tax decrease. Only to the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable. For any application or situation that would not require voter approval or would not result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent. To the extent that the City's authorization to collect or impose any tax imposed under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization, up to the full amount of the tax imposed under this chapter."

SECTION 2. Pursuant to Article XIII B of the California Constitution, the appropriation limit for the City of Anaheim will be increased by the maximum projected aggregate collection authorized by the levy of this general tax, as indicated in Section 1, in each of the years covered by this Ordinance plus the amount, if any, by which the appropriation limit is decreased by law as a result of the levy of the general tax set forth in this Ordinance.

SECTION 3. If any portion of this Ordinance is declared invalid by a court of law or other legal body with applicable authority, the invalidity shall not affect or prohibit the force and effect of any other provision or application of the Ordinance that is not deemed invalid. The voters of the City hereby declare that they would have circulated for qualification and/or voted for the adoption of this Section, and each portion thereof, regardless of the fact that any portion of the initiative may be subsequently deemed invalid.

SECTION 4. Pursuant to California Constitution Article XIII C §(2)(b) and California Elections Code §9217, this Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Anaheim voting at the General Municipal Election to be held on November 3, 2020, and shall take effect ten (10) days after the City Council has certified the results of the General Municipal Election by resolution.

SECTION 5. The Mayor is hereby authorized to attest to the adoption of this Ordinance by the People voting thereon on November 3, 2020, by signing where indicated below.

PASSED, APPROVED and ADOPTED this 3rd day of November, 2020.

CITY OF ANAHEIM

By: _____
MAYOR OF THE CITY OF ANAHEIM

ATTEST:

CITY CLERK OF THE CITY OF ANAHEIM