

Agenda Item: ID#18-0750 (4-D)

Date: 6/14/18

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FRESNO CITY CLERK

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID#18-0750 (4-D)

Contents of Supplement: REVISED Ordinance (Exhibit A)
(This document was distributed during the Council Meeting)

Item(s)

HEARING to consider submission of a Cannabis Business License Tax to the voters of the City of Fresno.

(1) *** RESOLUTION - Calling a general municipal election to be held on November 6, 2018; approving ballot measure text to be submitted to the voters of the City of Fresno imposing a Cannabis Business License Tax; requesting the assistance of the County of Fresno in connection with that election; and requesting consolidation of that election with any other election held on that date. (Subject to Mayor's veto)

Sponsors: City Councilmember Olivier, City Councilmember Baines III and City Councilmember Caprioglio

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA
ADDING ARTICLE 14 TO CHAPTER 7 OF THE FRESNO
MUNICIPAL CODE, RELATING TO A CANNABIS BUSINESS
LICENSE TAX

THE PEOPLE OF THE CITY OF FRESNO DO ORDAIN AS FOLLOWS:

SECTION 1. Article 14 of Chapter 7 of the Fresno Municipal Code is added to read as follows:

ARTICLE 14

CANNABIS BUSINESS LICENSE TAX

Sections:

7-1401	Title.
7-1402	Authority and Purpose.
7-1403	Limitations on Use of Tax Revenues.
7-1404	Community Benefit Commission.
7-1405	Intent.
7-1406	Definitions.
7-1407	Administration of the Tax.
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7-1409	Personal Cultivation Not Taxed.
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7-1411	Payments and Communications –Timely Remittance.
7-1412	Payment – When Taxes Deemed Delinquent.
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7-1414	Penalties and Interest.
7-1415	Refunds and Procedures.
7-1416	Deficiency Determinations.
7-1417	Redeterminations.
7-1418	Enforcement – Action to Collect.
7-1419	Apportionment.
7-1420	Constitutionality and Legality.
7-1421	Audit and Examination of Premises and Records.
7-1422	Other Licenses, Permits, Taxes, Fees or Charges.
7-1423	Payment of Tax Does Not Authorize Unlawful Business.
7-1424	Failure to Report, Nonpayment, Fraud.

7-1425	Tax Assessment – Notice Requirements.
7-1426	Relief from Taxes – Disaster Relief.
7-1427	Conviction for Violation – Taxes Not Waived.
7-1428	Violation Deemed Misdemeanor.
7-1429	Severability.
7-1430	Remedies Cumulative.
7-1431	Amendment or Repeal.
7-1432	Annual Report.

SECTION 7-1401. Title. This ordinance shall be known as the Cannabis Business License Tax Ordinance.

SECTION 7-1402. Authority and Purpose. The purpose of this Ordinance is to adopt a Cannabis Business License 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 License Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property.

SECTION 7-1403. Limitations on Use of Tax Revenues. This ordinance enacts a Cannabis Business License Tax at the maximum rates set forth in Section 7-1408. The revenues from the Cannabis Business License Tax shall be deposited and used as follows: (1) ninety percent (90%) shall be deposited in the City's General Fund and may be spent for unrestricted general revenue purposes; and (2) ten percent (10%) shall be deposited into a Community Benefit Fund and shall be used to meet the goals of said Community Benefit Fund, which shall be established by Council through a resolution. The aforementioned is intended as a specific and legally binding and enforceable limitation on how the proceeds of the business license tax imposed by this ordinance may be spent. The revenues collected as result of this tax shall not be used for any purpose not specifically identified in this ordinance.

SECTION 7-1404. Community Benefit Commission. A new Community Benefit Commission consisting of nine (9) members is hereby created, to be comprised of two appointees of the Mayor and one appointment from each Council District (to be nominated by each respective Council Member). The purpose of the Commission shall be to recommend allocation of the revenues received into the Community Benefit Fund pursuant to the goals set forth by Council. The City Council shall have the authority to further define the role and powers of the Commission by resolution as necessary and appropriate from time to time.

SECTION 7-1405. Intent. The intent of this Ordinance is to levy a cannabis business license tax on all Cannabis Businesses that operate in the City, regardless of whether such business would have been legal at the time this Ordinance was adopted. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

SECTION 7-1406. Definitions. The following words and phrases shall have the meanings set forth below when used in this Article:

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

(b) "Cannabis" means all parts of the Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every

compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It also means the separated resin, whether crude or purified, obtained from cannabis. It 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, the sterilized seed of the plant which is incapable of germination, or "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

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

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

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

(f) "Cannabis Business License Tax" means the tax due pursuant to this Article for engaging in Cannabis Business in the City.

(g) "Commercial cannabis cultivation" means cultivation in the course of conducting a Cannabis Business.

(h) "City permit" means a commercial cannabis business permit issued by the City to a person to authorize that person to operate or engage in a commercial cannabis activity pursuant to Chapter 9, Articles 33 and 34, as may be amended.

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

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

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

1. Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the City for business purposes;

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

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

5. Such person or person's employee performs work or renders services in the City.

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

(l) "Gross receipts" shall include the total of amounts actually received from sales and the total of amounts actually received for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares, or merchandise. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account 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 expense whatsoever. Excluded from "gross receipts" shall be the following:

1. Cash discounts allowed and taken on sales.
2. Any tax collected from the consumer or purchaser and which is separately stated at time of sale.

3. Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit.

4. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the Director with the names and addresses of the others and the amounts paid to them.

5. Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded.

6. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters or other personal tangible property which the Controller has excluded in writing by issuing an administrative ruling per Section 7-1407 shall not be subject to the cannabis business license tax under this Article. However, any retail sales not subject to this Article as a result of the administrative ruling shall be subject to the appropriate business tax or fee under Chapter 7, Article 12 or any other law as determined by the Controller.

(m) "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via skylights, windows or ventilation openings.

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

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

(p) "Sale" means and includes any sale, exchange, or barter.

(q) "State" means the State of California.

(r) "State license," "license," or "registration" means a state license issued pursuant to California Business & Professions Code Sections 26000, *et seq.* or other applicable state law.

(s) "Controller" means the Controller of the City of Fresno or his or her designee.

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

SECTION 7-1407. Administration of the Tax.

(a) It shall be the duty of the Controller to collect the taxes, penalties, interest, and fees provided for herein, and perform the duties

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

(b) Each applicant for a license shall properly fill in an application in such form as the Controller may prescribe.

(c) A cannabis business license tax certificate, in such form as the Controller may prescribe, shall be issued on payment of the tax prescribed in this Article and shall be in full force and effect until:

- (1) Licensee fails to make payments as required by this Code;
- (2) Revoked by the Controller;
- (3) Business changes address;
- (4) Business is discontinued;
- (5) Business ownership changes.

(d) The Controller may take such administrative actions as needed to administer the tax, including but not limited to:

- (1) Provide to all Cannabis Business License Taxpayers forms for the reporting of the tax;
- (2) Provide information to any taxpayer concerning the provisions of this Article;
- (3) Receive and record all taxes remitted to the City as provided in this Article;

- (4) Maintain records of taxpayer reports and taxes collected pursuant to this Article;
- (5) Assess penalties and interest to taxpayers pursuant to this Article;
- (6) Determine amounts owed and enforce collection pursuant to this Article.

SECTION 7-1408. Tax Imposed.

(a) Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a Cannabis Business a Cannabis Business License Tax regardless of if the business has been issued a permit to operate lawfully in the City or is operating unlawfully.

(b) The maximum rate shall be as follows:

- (1) Cultivation. For every person who is engaged in commercial cannabis cultivation in the City, twelve dollars (\$12.00) annually per square foot of canopy space.

For purposes of this Article, the square feet of canopy space for a business is presumed to be the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the State license type. Should a City permit be issued to a business which cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy

square footage which is authorized by the City commercial cannabis permit but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Controller is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

All cultivation rates shall be subject to an escalator at follows: On July 1, 2021 and on each July 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between July of the calendar year prior to such increase and July of the calendar year of the increase in the Consumer Price Index ("CPI") for all urban consumers in the Fresno County area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

(2) Retailer, Testing Laboratory, Distribution, and Manufacturing. For every person who engages in the operation of the retail sales of cannabis as a retailer, the operation of a cannabis testing laboratory, a cannabis distribution business, or cannabis manufacturing, the maximum tax rate shall not exceed ten percent (10%) of gross receipts.

(c) The City Council may, by resolution or ordinance, set and adjust the rate of the Cannabis Business License Tax. However, in no event may the City Council set any rate that exceeds the maximum rate calculated pursuant to

Subdivision B of this Section for the date on which the adjusted rate will commence.

SECTION 7-1409. Personal Cultivation Not Taxed. The provisions of this Article shall not apply to personal cannabis cultivation as defined in the Medicinal and Adult Use Cannabis Regulation and Safety Act. This Article shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

SECTION 7-1410. Reporting and Remittance of Tax. All sellers, consumers and holders of City of Fresno Cannabis Business Licenses shall keep complete records of all business transactions, including sales, receipts, purchases and other expenditures, and shall retain all such records for examination by the City of Fresno's Finance Department. Such records shall be maintained for a period of at least five years.

(a) The Cannabis Business License Tax imposed by this Article shall be reported and payable on a monthly basis, and subject to arrears.

(1) For commercial cannabis cultivation, the tax due for each calendar month shall be based on the square footage of the business's canopy space during the month and the rate shall be 25% of the applicable annual rate.

(2) For all other Cannabis Business activities, the tax due for each calendar month shall be based on the gross receipts for the month reported and payable on a monthly basis.

(b) Each person owing Cannabis Business License Tax for a calendar month shall, no later than the last day of the month following the close of the calendar month, file with the Controller a statement of the tax owed for that calendar

month and the basis for calculating that tax. The Controller may require that the statement be submitted on a form prescribed by the Controller. The tax for each calendar month shall be due and payable on that same date as the statement for the calendar month is due.

(c) Upon cessation of a Cannabis Business, tax statements and payments shall be immediately due for all calendar month up to the calendar month during which cessation occurred.

(d) The Controller may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Controller deems necessary to ensure collection of the tax. The Controller may also require that a deposit, to be applied against the taxes for a calendar month, be made by a taxpayer at the beginning of that calendar month. In no event shall the deposit required by the Controller exceed the tax amount he or she projects will be owed by the taxpayer for the calendar month. The Controller may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

SECTION 7-1411. Payments and Communications – Timely Remittance. Whenever any payment, statement, report, request or other communication is due, it must be received by the Controller on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the City is open to the public.

SECTION 7-1412. Payment - When Taxes Deemed Delinquent. Unless otherwise specifically provided under other provisions of this Article, the taxes required to be paid pursuant to this Article shall be deemed delinquent if not received by the Controller on or before the due date as specified in Sections 7-1410 and 7-1411.

SECTION 7-1413. Notice Not Required by the City. The City may as a courtesy send a tax notice to the Cannabis Business. However, the Controller is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Article. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Article.

SECTION 7-1414. Penalties and Interest.

(a) Any person who fails or refuses to pay any Cannabis Business License Tax required to be paid pursuant to this Article on or before the due date shall pay penalties and interest as follows:

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

(2) If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one percent (1%) per month on the unpaid tax and on the unpaid penalties.

(3) Interest shall be applied at the rate of one percent (1%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

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

SECTION 7-1415. Refunds and Procedures.

(a) No refund shall be made of any tax collected pursuant to this Article, except as provided in Section 7-1415.

(b) No refund of any tax collected pursuant to this Article shall be made because of the discontinuation, dissolution, or other termination of a business.

(1) Whenever a Cannabis Business License Tax has been paid to the City under a mistake of law or a mistake of fact as described in subsections (2) and (3) of Section 7-906, the tax shall be refunded when a demand for refund has been made on a form prescribed by the Controller. No refund shall be approved after three years from the date of receipt by the City of the money to be refunded.

(2) Interest shall be paid on the amount of any overpayment of taxes at the rate of three-quarters of one per cent (0.75%) per month, or fraction thereof, from the date of receipt by the City of the money to be refunded, but no refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited. The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Controller that a claim may be filed or the date upon which the claim is approved by the Controller, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the license fee or amount against which the credit is applied.

(3) If the Controller determines that any overpayment has been made intentionally or by reason of carelessness, he shall not allow any interest thereon.

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

(d) In the event that the Cannabis Business License Tax was erroneously paid, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid up to one (1) year from when the error was identified.

SECTION 7-1416. Deficiency Determinations.

(a) If the Controller is not satisfied with the return or returns of Cannabis Business License Taxes, or the amount of the taxes paid to the city by any person, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or that may come into his possession. One or more deficiency determinations may be made of the amount due for one or more than one period. The amount of each deficiency determination is immediately due and payable. Each determination shall become final and delinquent one calendar

month after notice thereof as herein provided:

(b) In making a determination, the Controller shall offset overpayments previously made, if any, together with interest on the overpayments, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in Section 7-1414 and Section 7-1415.

(c) The Controller shall give written notice of a deficiency determination to each person against whom a determination is made. The notice may be served personally, electronically, or by mail. In case of service by mail of any notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(d) Except in the case of fraud, intent to evade this chapter or authorized rules and regulations, or failure to make a return, every deficiency determination shall be made and notice thereof served within three years after the last day of the month following the close of the cannabis business license tax period for which the amount is determined or within three (3) years after the return is filed, whichever period expires the later.

(e) If any person fails or refuses to make, within the time provided in this Article, any return and payment of said tax or any portion thereof required by this Article or makes a fraudulent return or otherwise willfully attempts to evade this Article, the Controller shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the taxes due. As soon as the Controller procures facts and information upon which to base the assessment of any tax imposed by this chapter, he shall determine and assess

against such person the taxes, interest and penalties provided for by this chapter. When such a determination is made, the Controller shall give written notice of the amount so assessed. Such determination and notice shall be made and mailed within three years after discovery by the Controller of any fraud, intent to evade or failure to file return. The amount of each deficiency determination is immediately due and payable. Any determination shall become final and delinquent one calendar month after notice thereof as herein provided.

(f) If the Controller believes that the collection of any cannabis business license taxes will be jeopardized by delay, or if any determination will be jeopardized by delay, he shall thereupon make a determination of the taxes due. The amount determined is immediately due and payable. If the amount specified in the determination is not paid within ten days after service of notice thereof upon the person against whom the determination is made, the amount becomes final and delinquent, and the delinquency penalty or penalties and the interest provided in Section 7-1011 shall attach to the amount of the taxes, unless a petition for redetermination is filed within the ten days.

SECTION 7-1417. Redeterminations.

(a) Any person directly interested may request a redetermination within one calendar month after service of notice thereof. If a request for redetermination is not filed within the applicable period, the determination becomes final and delinquent at the expiration of the period.

(b) If a request for redetermination is made within the applicable period, the Controller shall reconsider the determination, and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him

ten days' notice of the time and place of the hearing. The Controller may continue the hearing from time to time as may be necessary.

(c) The Controller may decrease or increase the amount of the determination before it becomes final but the amount may be increased only if a claim for the increase is asserted by the Controller at or before the hearing.

(d) The decision of the Controller upon a petition for redetermination becomes final and delinquent fifteen days after service upon the petitioner of notice thereof.

(e) No request for redetermination shall be effective for any purpose unless at or before the time of request thereof the amount found due in the original determination is paid, or a bond or other security satisfactory to the Controller is filed with him guaranteeing payment of any amount finally determined to be due.

SECTION 7-1418. Enforcement - Action to Collect. Any taxes, penalties and/or fees required to be paid under the provisions of this Article shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this Article shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Article or the failure to comply with any of the provisions of this Article.

SECTION 7-1419. Apportionment. If a business subject to the tax is operating both within and outside the City, it is the intent of the City to apply the Cannabis Business License Tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law requires that any tax due

from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Controller may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

SECTION 7-1420. Constitutionality and Legality. This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Article shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Controller release him or her from the obligation to pay the impermissible portion of the tax.

SECTION 7-1421. Audit and Examination of Premises and Records.

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

(b) It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Article to keep and preserve, for a

period of at least five (5) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Controller or his/her designee shall have the right to inspect at all reasonable times.

SECTION 7-1422. Other Licenses, Permits, Taxes, Fees or Charges.

(a) Nothing contained in this Article shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other Article 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 by, under or by virtue of any other Article of this code or any other ordinance or resolution of the City. Any references made or contained in any other Article of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Article of this Code.

(b) Notwithstanding subdivision (A) of this Section a Cannabis Business shall not be required to pay the license fee required by Article 12 of Chapter 7 of this Code so long as all of the business's activities within the City that would require payment of a license fee are activities subject to the Cannabis Business License Tax.

(c) The Controller may revoke or refuse to renew the license required by Article 12 of Chapter 7 of this Code for any business that is delinquent in the payment of any tax due pursuant to this Article or that fails to make a deposit

required by the Controller pursuant to Section 7-1410.

SECTION 7-1423. Payment of Tax Does Not Authorize Unlawful Business.

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

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

SECTION 7-1424. Failure to Report, Nonpayment, Fraud.

(a) Under any of the following circumstances, the Controller may make and give notice of an assessment of the amount of tax owed by a person under this Article at any time:

(1) If the person has not filed a complete statement required under the provisions of this Article;

(2) If the person has not paid the tax due under the provisions of this Article;

(3) If the person has not, after demand by the Controller, filed a corrected statement, or furnished to the Controller adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Article; or

(4) If the Controller determines that the nonpayment of any Cannabis Business License Tax due under this Article 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 Article and any other penalties allowed by law.

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

SECTION 7-1425. Tax Assessment – Notice Requirements. The notice of assessment shall be served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Controller for the purpose of receiving notices provided under this Article; or, should the person have no address registered with the Controller 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.

SECTION 7-1426. Relief from Taxes – Disaster Relief.

(a) If a business is unable to comply with any tax requirement due to a disaster, the business may notify the Controller of this inability to comply and request relief from the tax requirement;

(b) The Controller, in his or her sole discretion, may provide relief from the cannabis business license tax requirement for businesses whose operations have been impacted by a disaster of such tax liability does not exceed five thousand (\$5,000) dollars. If such tax liability is five thousand dollars and one cent

(\$5,000.01) dollars or more, then such relief shall only be approved by the City Manager;

(c) Temporary relief from the Cannabis Business License Tax may be relieved for a reasonable amount of time as determined by the Controller or City Manager in order to allow the Cannabis Business time to recover from the disaster;

(d) The Controller or City Manager may require that certain conditions be followed in order for a Cannabis Business to receive temporary relief from the Cannabis Business License Tax requirement;

(e) A Cannabis Business shall not be subject to an enforcement action for a violation of a Cannabis Business requirement in which the licensee has received temporary relief from the Controller or City Manager;

(f) For purposes of this section, "disaster" means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes.

(1) The Cannabis Business must notify the Controller in writing a request for temporary relief from imposition of the tax requirement pursuant to subsection (a) of this section if such disaster clearly indicates why relief is requested from, the time period for which the relief is requested, and the reasons relief is needed for the specified amount of time;

(2) The Cannabis Business agrees to grant the Controller access to the location where the Cannabis Business has been impacted due to a disaster.

SECTION 7-1427. Conviction for Violation – Taxes Not Waived. The conviction and punishment of any person for failure to pay the required tax shall not excuse or

exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Article or of any state law requiring the payment of all taxes.

SECTION 7-1428. Violation Deemed Misdemeanor. Any person violating any of the provisions of this Article shall be guilty of a misdemeanor.

SECTION 7-1429. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 7-1430. Remedies Cumulative. All remedies and penalties prescribed by this Article or which are available under any other provision of the Fresno Municipal Code and any other provision of law or equity are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Article.

SECTION 7-1431. Amendment or Repeal. This Article may be repealed or amended by the City Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Article. The people of the City of Fresno affirm that the following actions shall not constitute an increase of the rate of a tax:

- (a) The restoration of the rate of the tax to a rate that is no higher than that set by this Article, if the City Council has acted to reduce the rate of the tax;

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

(c) The collection of the tax imposed by this Article even if the City had, for some period of time, failed to collect the tax.

SECTION 7-1432. Annual Report. The Controller shall file a report with the City Council no later than July 1, 2019, and at least once a year thereafter. The annual report shall contain both of the following:

(a) The amount of funds collected and expended.

(b) The status of any project required or authorized to be funded as identified in Sections 7-1402 and 7-1403.

SECTION 2. This Ordinance was approved and adopted by the People of the City of Fresno at the City's November 6, 2018 statewide election.

SECTION 3. This ordinance shall take effect 10 days after the election result is certified as provided by Elections Code but the taxes imposed by this ordinance shall take effect only when and to the extent implemented by resolution of the City Council.

SECTION 4. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published, in full or in summary form, according to law.