



TO: Mayor and Councilmembers

FROM: Carmen Nichols, Deputy City Manager

SUBJECT: Cannabis Business Tax Ballot Measure

RECOMMENDATION:

- A. Consider a draft City Council sponsored Initiative Ordinance, entitled, “An Ordinance of the People of the City of Goleta, California, Adding Chapter 3.08 to Title 3 (Revenue and Finance) of the Goleta Municipal Code Establishing A Tax on Cannabis Businesses Operating Within the City of Goleta;”
- B. Direct Staff to place a Council-initiated ordinance approving and implementing a Cannabis Business Tax on the November 2018 ballot;
- C. Direct the City Clerk to forward the Council-initiated Ordinance to the City Attorney for preparation of an Impartial Analysis.

BACKGROUND:

Proposition 64 legalized recreational adult use of cannabis. The passage of Proposition 64 also provided the authority for the State as well as local government to tax commercial cannabis-related businesses. In response to Proposition 64, the California legislature adopted Senate Bill 94 in 2017, which outlines a state regulatory system for the various commercial activities associated with the legalization.

Staff is currently working on the final draft of the cannabis land use ordinance, which is expected to be presented to the Planning Commission on June 11, 2018 and the City Council on June 19, 2018. Staff is also working on the business license ordinance which will be presented concurrently or soon after the adoption of the land use ordinance.

At the May 15, 2018 City Council Meeting, staff presented a taxation methodology proposing a Cannabis Business taxation ballot measure to be submitted to the voters with the following key provisions:

1. A general use tax which will allow the City Council flexibility through budgeting discretion to use any revenue generated where it is most needed.

2. Taxation based on gross receipts (as opposed to square footage) to tax the Cannabis Business industry in proportion to revenue generated.
3. Scalable taxation rates to respond to community impacts.
4. Flexible applicability to Cannabis Business license types to allow for future City Council discretion as to licensing and allowed commercial cannabis activities.

The City Council approved tax rates to be used for the Council-initiated ballot measure. The text of the proposed ordinance is provided as Attachment 1, along with the proposed ballot language. If approved, the City Clerk will include the proposed ballot language on the corresponding resolutions that will be provided to the City Council for action on June 19, 2018 for final action. With additional direction, the City Attorney will begin preparing the Impartial Analysis to be filed with the County.

DISCUSSION:

At the meeting of May 15, 2018, City Council approved moving forward with a ballot initiative for a general use tax, rather than a special use tax, because of the budgetary flexibility of this method. The City Council's approved tax rate applied to gross receipts is as follows:

Operation	Tax on Gross Receipts
Adult Use Cannabis Retailing	5%
Medicinal-Use Cannabis Retailing	0%
Manufacturing	2%
Cultivation	4%
Distribution	1%
Testing	0%
Nurseries	1%
Maximum Tax Limit	10%
Maximum Cap for Multiple Operations	10%

The City Council was not in support of a tax rate for testing operations and retail medicinal cannabis sales, and therefore approved an initial tax rate of 0% for those operations. The City Council also established a maximum tax rate of 10%. The maximum tax rate allows City Council the flexibility of increasing or decreasing a tax rate in the future. For multiple operations, the tax is also limited to no more than 10% of gross receipts.

Following the meeting, the question was asked as to why a microbusiness tax was not included in the taxation matrix. A microbusiness is a separate license type from the State for an operator who will engage in at least three of four activities on the same premises - specifically cultivation, manufacturing, distribution and retail sales. A microbusiness operation would require the City's zoning to allow for three of the four activities to occur at the same location. The multiple operations tax cap applies to separately licensed activities and was selected to capture any individual who owns two or more businesses operating in the City, including businesses taking place at separate locations or as a vertically integrated business with a primary use and accessory use in the same location. As long as the City's regulatory ordinance requires operators to obtain a separate license

from the City for different activity types, the multiple operations tax cap will effectively include microbusiness type operations with the additional inclusion of persons who operate just two separate businesses on separate premises. Vertical integration as permitted by State regulation can be achieved through the primary and accessory uses allowed by the land use zoning ordinance. For smaller cities, sensitive to the number of commercial cannabis operations to potentially allow and considering a capped number of permits for various activities, a microbusiness license type can create challenges when determining the appropriate number of allowed dispensaries, manufacturers, distributors, or cultivators due to the unknown specific activities a potential microbusiness might engage in. In addition, the conditions needed to permit a microbusiness require significant zoning considerations. Advantages of a microbusiness include vertical integration, which is beneficial to a business owner due to the reduced overhead, including property costs as well as licensing fees charged by the State.

As a general tax, a 4/5 vote of the City Council is needed to adopt a resolution asking the voters to approve a Council-initiated ordinance to impose the Cannabis Business Tax. As the law applies today, imposition of a general use tax for general purposes would require the ballot measure to receive majority (50% plus one) approval of the local electorate that casts a ballot on this measure.

It is important to note that an initiative to create a constitutional amendment called the Tax Fairness, Transparency and Accountability Act of 2018 may be on the November 2018 ballot. This initiative would require that all taxes, regardless of whether they are general or special, to pass with 2/3 voter approval of the electorate. As of February 26, 2018, its proponents certified to the Secretary of State that they collected a quarter of the signatures necessary to place the initiative on the ballot. It is not clear yet whether they will be able to collect all required signatures. If passed, the Act would invalidate all local taxes adopted or increased in 2018 unless they meet the 2/3 vote requirement. Therefore, if the Act passes at the same time our cannabis tax passes, the cannabis tax can be applied only if 2/3 of the electorate voted for the cannabis tax. Staff will continue to monitor progress of the Act. If it appears that it will make it onto the ballot, voters will be informed of its impact to the Cannabis Business Tax Measure in the impartial analysis written by the City Attorney.

This agenda item also gives City Council an opportunity to discuss the proposed ballot language and provide any comments before the resolution is adopted. The proposed ballot language can be no more than 75 words (not including the title).

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MEASURE_____

“To improve general city services, such as police and emergency response, parks and youth/senior services, and street repair, shall the City of Goleta adopt an ordinance establishing a cannabis business tax up to a maximum of 10% of gross receipts from the sale of cannabis and related products, whether at wholesale or retail, generating approximately \$334,000-\$1,423,000 for unrestricted general revenue purposes, until ended by voters?”	YES	
	NO	

In accordance with California Elections Code 9280, the governing body can direct the city elections official to transmit a copy of the measure to the City Attorney to prepare an impartial analysis showing the effect of the measure. The impartial analysis is required to not exceed 500 words. It is recommended that the City Clerk be directed to forward a copy of the measure to the City Attorney for preparation of an impartial analysis for this measure in accordance with state law.

Potential Revenue

There is a degree of uncertainty in the industry regarding potential revenue. Considerable variation in forecasts may result from changes in important assumptions, including: the number and type of Cannabis Business licenses that are issued, the variance in wholesale prices, and the productivity/yield of individual plants, changes in other jurisdictions’ approach to cannabis businesses, and the amount sold through retailers in the City.

Based on the tax rates approved by the City Council and estimates provided the consultant which considers industry trends, the population of the City and surrounding areas, and reports from other jurisdictions, adoption of a cannabis tax is anticipated to create increased revenue:

Gross Receipts –Tax Revenue Estimates

Low end: \$334,000
Middle: \$707,000
High end: \$1,423,000

It should be noted that it may be one to three years before the licensed businesses are generating revenue at the levels assumed above. If the market becomes saturated, economics suggest that the price per pound of cannabis will drop, which would have a proportional effect on tax revenue.

GOLETA STRATEGIC PLAN:

The initiation of a ballot measure to increase the City's revenue meets goal #3 in the City's 2017-19 Strategic Plan, to Ensure Financial Stability. Specifically, pursuing this initiative enhances revenue to help ensure the financial health of the City.

FISCAL IMPACTS:

The anticipated cost to file a ballot measure for the November 2018 election is \$10,200. The amount of revenue generated for the General Fund is approximately \$334,000 - \$1,423,000 per annum according to industry trends, however, impacted by considerable variations including the number and types of issued licenses, pricing, and productivity of operators.

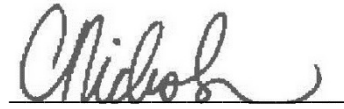
ALTERNATIVES:

The City Council may direct staff to provide additional information in preparation of a ballot measure. Alternatively, the City Council may decide to not take further action.

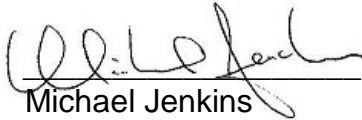
Reviewed By:

Legal Review By:

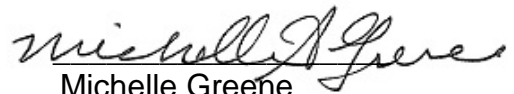
Approved By:



Carmen Nichols
Deputy City Manager



Michael Jenkins
City Attorney



Michelle Greene
City Manager

ATTACHMENTS:

1. Draft Ordinance No. _____ entitled "Ordinance No. _____ "An Ordinance of the People of the City of Goleta, California, Adding Chapter 3.08 to Title 3 (Revenue and Finance) of the Goleta Municipal Code Establishing A Tax on Cannabis Businesses Operating Within the City of Goleta"

Attachment 1

Draft Ordinance No. _____ entitled "Ordinance No. ____ "An Ordinance of the People of the City of Goleta, California, Adding Chapter 3.08 to Title 3 (Revenue and Finance) of the Goleta Municipal Code Establishing A Tax on Cannabis Businesses Operating Within the City of Goleta"

ORDINANCE NO. 18-__

MEASURE “__”

AN ORDINANCE OF THE PEOPLE OF THE CITY OF GOLETA, CALIFORNIA, ADDING CHAPTER 3.08 TO TITLE 3 (REVENUE AND FINANCE) OF THE GOLETA MUNICIPAL CODE ESTABLISHING A TAX ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY OF GOLETA.

THE PEOPLE OF THE CITY OF GOLETA, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 3.08 is hereby added to Title 3 (Revenue and Finance) of the Goleta Municipal Code and shall read as follows:

**“CHAPTER 3.08
CANNABIS BUSINESS TAX.**

3.08.010 – Definitions.

For purposes of this Chapter:

A. “Cannabis” means all parts of the plant *Cannabis sativa Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means the term as defined in California Health and Safety Code Section 11018 and is not limited to medical cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, “Cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the California Health and Safety Code.

B. “Cannabis business” means 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 and this Code. 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 cultivation" means the seeding, planting, watering, warming, cooling, growing, harvesting, drying, curing, grading or trimming of cannabis.

D. "Cannabis distribution" or "Cannabis transport" means 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.

E. "Cannabis nursery" means a cannabis business that produces only clones, immature plants, seeds and other agricultural products used specifically for cannabis cultivation.

F. "Cannabis processing/manufacturing" 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.

G. "Cannabis product" means 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 California Health and Safety Code Section 11018.1 and is not limited to medical cannabis products.

H. "Cannabis testing" means any activity involving the testing of cannabis or cannabis products by a facility that is both of the following:

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

I. "Engaged in a cannabis business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate, franchise or other business powers, whether done as owner, or by means of an officer, agent, manager, employee, or other representative, within the City, whether operating from a fixed location within the City or coming into the City from an outside location to engage in cannabis business 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;

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/manufacturing, distribution, delivery, retail, storing, exchanging, 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. "Medical cannabis retail" means any cannabis business activity involving the retail sale or dispensing to qualified patients or their qualified caregivers of cannabis, cannabis products, or devices for the use of cannabis or cannabis products, either individually or in any combination, for the ultimate consumption or use by qualified patients in accordance with California Health and Safety Code Sections 11362.7 et. seq., the California Medical Marijuana Program

Act ("MMPA"), and any other applicable State law authorizing activities related to the medical possession and use of cannabis. "Medical cannabis retail" shall include any medical cannabis delivery to a customer as part of a retail sale.

L. "Non-medical cannabis retail" means any cannabis business activity involving the retail sale or dispensing to customers of cannabis, cannabis products, or devices for the use of cannabis or cannabis products, either individually or in any combination; for any purpose other than medical cannabis retail. "Non-medical cannabis retail" shall include any non-medical cannabis delivery to a customer as part of a retail sale.

M. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit, which is conducting itself as a cannabis business.

N. "State" means the State of California.

O. "Tax Administrator" is the City's Director of Finance, or his or her designee.

3.08.020 – Purpose of Tax.

This tax is a general tax, the revenues from which may be used for unrestricted general revenue purposes of the City.

3.08.030 – Imposition of Tax.

A. Every person engaged in a cannabis business within the City of Goleta, and regardless of whether such business has a permit to operate pursuant to the Goleta Municipal Code, shall pay a cannabis business tax at the following initial rates:

1. Non-medical cannabis retail – 5% of gross receipts;
2. Medical cannabis retail – 0% of gross receipts;
3. Cannabis cultivation – 4% of gross receipts;
4. Cannabis processing/manufacturing – 2% of gross receipts;
5. Cannabis testing – 0% of gross receipts;
6. Cannabis nursery – 1% of gross receipts;
7. Cannabis distribution/transport – 1% of gross receipts.
8. Multiple Operations. In no event, shall any person conducting multiple of the above operations pay more tax than 10% of gross receipts

B. The rates set forth above may be adjusted by the City Council from time to time, by ordinance, pursuant to Section 3.08.050 below, subject to a maximum rate of ten percent (10%) of gross receipts.

C. If a cannabis business is engaged in retail sales and/or delivery of both medical and a non-medical cannabis, it shall pay the higher applicable business tax rate between the two classes, unless the cannabis business identifies to the City, by reasonable and verifiable standards, the portions of its activities that are tied to medical cannabis retail and those that are tied to non-medical cannabis retail, through the cannabis business' books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not specifically created and maintained for tax purposes. The cannabis business has the burden of proving the proper apportionment of taxes under this subsection (C).

D. If a cannabis business is engaged in both retail sales and/or delivery and cannabis cultivation, processing/manufacturing, nursery, testing or distribution, it shall pay the highest business tax rate for any class that applies to that cannabis business, unless the cannabis business identifies to the City, by reasonable and verifiable standards, the portions of its activities that are tied to cannabis retail and those that are tied to cultivation, processing/manufacturing, nursery, testing or distribution, through the cannabis business' books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not specifically created and maintained for tax purposes. The cannabis business has the burden of proving the proper apportionment of taxes under this subsection (D). No cannabis business engaged in both retail sales and/or delivery and cannabis cultivation, processing/manufacturing, nursery, testing or distribution shall pay more than the maximum 10% rate on gross receipts from its combined activities as set forth in subsection (B) above.

E. 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.

3.08.040 – Payment Obligation.

All taxpayers subject to this Chapter must pay the full tax imposed by this Chapter regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this Code, except as required by California or Federal law. Failure to pay the tax shall be subject to penalties, interest charges, and assessments as the City Council may establish and the City may use any or all other code enforcement remedies provided in this Code. No provision in this Code can lower the tax rate set forth in this Chapter or otherwise reduce the amount of taxes paid hereunder unless the provision specifically states that the reduction applies.

3.08.050 – City Council Authorization to Adjust Tax Rate and/or Methodology.

This Chapter authorizes a maximum business tax rate of ten percent (10%) for each of those classes of cannabis business identified in Section 3.08.030(A)(1) through (7) 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 XIII C (Proposition 218), voter approval is required for any amendment that would increase the ten percent (10%) maximum rate or methodology of any tax levied pursuant to this Chapter. The People of the City of Goleta affirm that the following actions shall not constitute an increase of the maximum rate or methodology of the tax requiring subsequent voter approval:

A. The upward adjustment of the tax rate applicable to any or all classes of cannabis business, provided the rate does not exceed the ten percent (10%) maximum set forth by this voter-approved Chapter;

B. The restoration of the rate of the tax to a rate that is no higher than the ten percent (10%) maximum set by this voter-approved Chapter, if the City Council has previously acted to reduce the rate of the tax;

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

D. 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

E. 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.

3.08.060 – Payment of Tax Does Not Authorize Illegal Activity.

The payment of the tax required pursuant to this Chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this Chapter implies or authorizes that any activity connected with the distribution or possession of cannabis is legal unless otherwise authorized and allowed in strict and full conformance to the provisions of State law and this Code.

3.08.070 – Cannabis Business Tax Is Not a Sales Tax.

The tax provided for under the provisions of this Chapter is not a Sales,

Transactions or Use Tax and shall not be calculated or assessed as such. The tax established under this Chapter shall not be separately identified or otherwise specifically assessed or charged to any customer or client of a cannabis business.

3.08.080 – Amendments and Administration.

A. This Chapter was submitted to the voters for approval. Any amendment to this Chapter to increase the tax above the maximum rate expressly provided in Section 3.08.030(B) shall not become effective until such amendment is approved by the voters. The voters expressly authorize the City Council to amend, modify, change, or revise any other provision of this Chapter as the City Council deems in the best interest of the City, as set forth in Section 3.08.050.

B. The Tax Administrator shall promulgate rules, regulations and procedures to implement and administer this Chapter to ensure the efficient and timely collection of the tax imposed by this Chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

C. Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased to the maximum extent over the maximum period of time allowed under law consistent with the revenues generated by the tax established by this Chapter.

3.08.090 – Returns and Remittances.

The Tax shall be due and payable as follows:

A. The tax established by this Chapter shall be collected quarterly. Each person owing tax shall prepare and file a tax return to the Tax Administrator setting out the total amount of tax owed for the preceding calendar quarter during which the tax was in effect. The return shall be filed not later than thirty (30) calendar days following the last day of the preceding each calendar quarter. At the time the tax return is filed, the full amount of the tax owed for the preceding calendar quarter shall be remitted to the Tax Administrator.

B. All tax returns shall be completed on forms provided by the Tax Administrator.

C. Tax returns and payments for all outstanding taxes owed the City are immediately due to the Tax Administrator upon cessation of business for any reason.

D. Whenever any payment, statement, report, request or other communication received by the Tax Administrator is received after the time prescribed by this Section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this

Section for the receipt thereof, or whenever the Tax Administrator is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Tax Administrator may regard such payment, statement, report, request, or other communication as having been timely received. If the due date falls on Friday, Saturday, Sunday, or a holiday, the due date shall be the next regular business day on which the City Hall is open to the public.

E. 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 paid on or before the due date specified in Subsection (A) of this Section.

F. 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 and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

3.08.100 – Failure to Pay Tax.

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

1. A penalty equal to twenty-five percent (25%) 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 a rate established by resolution of the City Council; and

2. An additional penalty equal to twenty-five percent (25%) of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and interest on the unpaid penalties calculated at the rate established by resolution of the City Council.

B. Whenever a check is submitted in payment of a tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this Section plus any amount allowed under State law.

C. The tax due shall be that amount due and payable from January 1, 2019 or the first date on which the cannabis business first engaged in business in the City, whichever date occurred last, together with applicable penalties and interest calculated in accordance with Subsection (A) of this Section.

D. The Tax Administrator may waive the first and second penalties of twenty-five percent (25%) each imposed upon any person if:

1. The person provides evidence satisfactory to the Tax Administrator that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent tax and accrued interest owed the City prior to applying to the Tax Administrator for a waiver.

2. The waiver provisions specified in this Subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four (24) month period.

3.08.110 – Refunds.

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

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

C. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this Chapter, such amount may be refunded to the person who paid the tax provided that a written claim for refund is timely filed with the City, pursuant to this Code. The period for filing a claim for refund shall be one (1) year from the time the tax was paid or erroneously or illegally collected; 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 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 right to a refund. Where the amount of any individual refund claim is in excess of the amount set by ordinance or resolution of the City Council relating to the settlement of general liability claims against the City by the City Manager, City Council approval shall be required.

D. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon.

E. The Tax Administrator shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the

claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.

F. Any person entitled to a refund of taxes paid pursuant to this Chapter may elect in writing to have such refund applied as a credit against a cannabis business's taxes for the next calendar quarter.

G. In the event that the tax was erroneously paid and the error is attributable to the City, the amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in this Chapter from the amount to be refunded to cover expenses.

H. 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.

3.08.120 – Enforcement.

A. It shall be the duty of the Tax Administrator to enforce each and all of the provisions of this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.

C. The Tax Administrator shall have the power to audit and examine all books and records of cannabis businesses as well as persons engaged in the operation of cannabis businesses, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of or the transaction prices charged by a cannabis business or persons engaged in the operation of a cannabis business, for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions of this Chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this Chapter. If such cannabis business or person, after written demand by the Tax Administrator, refuses to make available for audit, examination or verification such books, records, or equipment as the Tax Administrator requests, the Tax Administrator may, after full consideration of all information within the Tax Administrator's knowledge concerning the cannabis business and its business and activities of the person so refusing, make an assessment in the manner provided in Section 3.08.130.

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

E. 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 the a cannabis business certificate or permit from the City shall be deemed guilty of a misdemeanor.

3.08.130 – Debts, Deficiencies and Assessments.

A. The amount of any tax, penalties, and interest imposed by the provisions of this Chapter shall be deemed a debt to the City and any person operating a cannabis business without having paid any applicable tax, penalties, and interest shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such cannabis business.

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

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

1. If the person has not filed any statement or return required under the provisions of this Chapter;
2. If the person has not paid any tax due under the provisions of this Chapter;
3. If the person has not, after demand by the Tax Administrator, filed a corrected statement or return, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this Chapter;

4. If the Tax Administrator determines that the nonpayment of any tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter.

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

D. The notice of assessment shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the cannabis business appearing on the face of the business license issued under this Code, or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the person have no business license issued and should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

E. Within ten (10) calendar days after the date of service the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive.

F. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be held within thirty (30) calendar days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

G. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final

assessment to the person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.08.140 of this Chapter.

H. Unless appealed, payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) calendar day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be at the rates set forth herein, along with interest at the rate as set forth by resolution of the City Council, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Section shall commence from the date of delinquency as provided in this subsection.

3.08.140 - Appeals.

A. The provisions of this section apply to any deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b).]

B. If any person is aggrieved by any deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within ten (10) calendar days of the date of the deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the person.

C. If the person requests an appeal, the City Clerk shall cause the matter to be set for hearing, which shall be held within thirty (30) calendar days after receipt of the written request for appeal. Notice of the time and place of the appeal hearing shall be mailed by the City Clerk to such person at least ten (10) calendar days prior to the hearing, and, if the City Manager desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

D. At the time fixed for the hearing, the City Manager shall hear all relevant testimony and evidence, *de novo*, including that of any other interested parties. At the discretion of the City Manager, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the City Manager shall issue a final decision confirming, modifying or rejecting the Tax Administrator's deficiency determination, and shall mail a copy of such final decision to the person owing the tax. The City Manager's decision shall be final and subject only to judicial review shall be pursuant to California Code of Civil

Procedure Section 1094.6. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) calendar day following the date of receipt of the City Manager's decision.

3.08.150 – No Injunction/Writ of Mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

3.08.160 – Future Amendment to Cited Statute.

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 to a statute herein shall not include any subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such 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. Effective Date. Pursuant to California Constitution Article XIII C §(2)(b) and California Elections Code §9217, if a majority of the qualified voters voting in the election on Measure "____" vote in favor of the adoption of such Measure, this ordinance shall be deemed valid and binding and shall be considered as adopted upon the date that the vote is declared by the City Council, and shall go into effect ten (10) days after that date.

SECTION 3. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The People of the City of Goleta hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 4. Certification/Summary. Following the City Clerk's certification that the citizens of Goleta have approved this Ordinance, the Mayor shall sign this Ordinance and the City Clerk shall cause the same to be entered in the book of original ordinances of said City; and shall cause the same, or a summary thereof, to be published as required by law.

PASSED, APPROVED and ADOPTED by the People of the City of Goleta this 6th day of November, 2018.

Mayor

ATTEST:

Deborah S. Lopez, City Clerk

APPROVED AS TO FORM:

Michael Jenkins, City Attorney