

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING THE CITY CODE TO ADD ARTICLE XI<sup>1</sup> (CANNABIS BUSINESS TAX) TO CHAPTER 50 OF THE POMONA MUNICIPAL CODE, SUBJECT TO VOTER APPROVAL**

**WHEREAS**, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a license tax, for revenue purposes, upon business transacted in the City;

**WHEREAS**, the City Council desires to seek to impose a supplemental license tax upon cannabis businesses, to be known as the “Cannabis Business Tax”;

**WHEREAS**, the Cannabis Business Tax cannot be imposed without voter approval;

**WHEREAS**, on June 4, 2018, the City Council adopted Resolution No. 2018-60, calling a General Municipal Election, and requesting consolidation of the General Municipal Election with the Statewide General Election to be held on November 6, 2018;

**WHEREAS**, the City Council of the City of Pomona pursuant to California Elections Code Section 9222 and California Government Code Sections 53720, *et seq.* desire to place a City initiative to the voters of the City and has called a cannabis business tax measure to be placed on the November 6, 2018 general municipal election for this Ordinance to be submit to the qualified voters of the City of Pomona; and

**WHEREAS**, if the measure is approved by a majority of voters, then this Ordinance will amend the City Code to add a new Article to Chapter 50 - Taxation.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF POMONA DOES HEREBY ORDAIN AS FOLLOWS, AND IF APPROVED BY THE VOTERS OF THE CITY OF POMONA, THE PEOPLE OF THE CITY OF POMONA DO ORDAIN AS FOLLOWS:**

**SECTION 1. CITY CODE AMENDMENT.** Article XI of Chapter 50 – Cannabis Business Tax shall be added to the City Code as follows:

**ARTICLE XI  
CANNABIS BUSINESS TAX**

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<sup>1</sup> The Article number and Section numbers assigned to the proposed City Code amendments at Section 1 of this Ordinance are subject to change depending on the concurrent ballot measures that, if approved, would amend the City Code. (i.e. The Transactions and Use Tax Ordinance and related ballot measure that will be concurrently presented to the voters at the November 6, 2018 General Election.)

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**50-498 Title.**

This ordinance shall be known as the Cannabis Business Tax Ordinance.

**50-499 Authority and Purpose.**

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Businesses that engage in business in the City. The Cannabis Business Tax is levied based upon canopy square footage or business gross receipts, as described in this Article. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Article shall be placed in the City's general fund and be available for any lawful municipal purpose.

#### **50-500 Intent.**

The intent of this Ordinance is to levy a 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.

#### **50-501 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, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.

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

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 tax” or “business 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 business permit” means a permit issued by the City to a person to authorize that person to operate or engage in a cannabis business.

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. “Evidence of doing business” means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City.

M. “Calendar year” means January 1 through December 31, of the following calendar year.

N. “Gross Receipts,” except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
5. Cash value of sales, trades or transactions between departments or units of the same business;
6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the City's Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 50-511 shall not be subject to the cannabis business tax under this Article. However, any business activities not subject to this Article as a result of the administrative ruling shall be subject to the appropriate business tax provisions of Chapter 50, Article VIII or any other Chapter or Article as determined by the Tax Administrator.

O. "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 small skylights, windows or ventilation openings.

P. "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.

Q. "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.

R. "Processing" means a cultivation site that conducts only trimming, drying, curing, grading, packaging, or labeling of cannabis and nonmanufactured cannabis products.

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

T. "State" means the State of California.

U. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Section 26050 and or other applicable state laws.

V. “Tax Administrator” means the Finance Director/City Treasurer of the City of Pomona or his or her designee.

W. “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 Bureau of Cannabis Control.

#### **50-502 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 tax. Such tax is payable regardless of whether the business has been issued a permit to operate lawfully in the City or is operating unlawfully. The City’s acceptance of a cannabis business tax payment from a cannabis business operating illegally will not constitute the City’s approval or consent to such illegal operations.

B. The initial rate of the cannabis business tax shall be as follows:

1. For every person who is engaged in commercial cannabis cultivation in the City:
  - a. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
  - b. Four dollars (\$4.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
  - c. Two dollars (\$2.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
  - d. One dollar (\$1.00) annually per square foot of canopy space for any nursery.

For purposes of this subdivision (B), the square feet of canopy space for a business shall be rebuttably 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 Tax Administrator 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.

2. For every person who engages in the operation of a testing laboratory for cannabis or cannabis products shall be subject to one percent (1%) of gross receipts.
  3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales) shall be subject to four percent (4%) of gross receipts.
  4. For every person who engages in a cannabis distribution business for cannabis or cannabis products shall be subject to two percent (2%) of gross receipts.
  5. For every person who engages in cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in Section 50-502 (B) (1), (2), (3) or (4): shall be subject to two and half percent (2.5%) of gross receipts.
- C. The City Council may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate calculated pursuant to 50-502 (D) of this Section for the date on which the adjusted rate will commence.
- D. The maximum rate of the cannabis tax shall be calculated as follows:
1. For every person who is engaged in commercial cannabis cultivation in the City:
    - a. Through January 1, 2021, the maximum rate shall be:
      - i. Ten dollars (\$10.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
      - ii. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
      - iii. Four dollars (\$4.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
      - iv. Two dollars (\$2.00) annually per square foot of canopy space for any nursery.



2. For every person who engages in the operation of a testing laboratory for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed two and a half percent (2.5%) of gross receipts.
  3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) shall be subject to the maximum tax rate not to exceed six percent (6%) of gross receipts.
  4. For every person who engages in a cannabis distribution business for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed three percent (3%) of gross receipts.
  5. For every person who engages in cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section 50-502 (D) (1), (2), (3) or (4), the maximum tax rate shall not exceed four percent (4%) of gross receipts.
- E. Persons subject to the Cannabis Business Tax shall also register and pay the registration fee pursuant to Section 50-503. However, they shall be exempt from paying the general business license tax required under Chapter 50, Article VIII for any such cannabis business activity as determined by the exclusion definitions or as determined by the Tax Administrator in Section 50-511. A cannabis business not subject to the Cannabis Business Tax is subject to the general business license tax required under Chapter 50, Article VIII except as otherwise provided by in Section 50-501N or other applicable laws.
- F. **Tax Adjustment to Consumer Price Index.** All minimum license taxes and all flat fee license taxes shall be adjusted each fiscal year on July 1 in a percentage amount equal to the change in the Consumer Price Index (CPI) during the 12-month period for the Metropolitan Los Angeles-Anaheim-Riverside Area as published by the United States Bureau of Labor Statistics; however, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

**50-503 Registration, reporting and remittance of tax.**

- A. Registration of Cannabis Business. All cannabis businesses shall be required to annually register as follows:
1. All persons engaging in a cannabis business, whether an existing, newly-established or acquired business, who have not received a City Cannabis Permit shall register with the Tax Administrator within thirty (30) days of commencing operation and shall annually renew such registration within 30 days of the business registration anniversary date of each year thereafter. In registering, such persons shall furnish to the Tax Administrator a sworn

statement, upon a form provided by the Tax Administrator, setting forth the following information:

- i. The name of the business
- ii. The names and addresses of each owner
- iii. The exact nature or kind of business;
- iv. The place where such business is to be carried on; and
- v. Any further information which the Tax Administrator may require.

2. Cannabis businesses who have received a City Cannabis Permit are exempt from the registration requirement of this section.

- B. Financial information required under Subsection A will be used to calculate and enforce the tax imposed under this Article, will be exempt from disclosure under the Public Records Act pursuant to Government Code section 6254(i) or to the extent allowed by law.
- C. An annual registration fee of one hundred twelve dollars (\$112.00) shall be presented with the sworn statement submitted under this section. This fee shall not be considered a tax and may be adjusted by resolution of the City Council.
- D. The cannabis business tax imposed by this Article shall be paid, in arrears, on a monthly basis. Each person owing a cannabis business tax each calendar month shall, no later than the last day of the month following the close of the calendar month, file with the Tax Administrator a statement of the tax owed for that calendar month and the basis for calculating that tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar month shall be due and payable on that same date that the statement for the calendar month is due.
- E. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar months up to the calendar month during which cessation occurred.
- F. The Tax Administrator may, at his or her discretion, establish alternative reporting and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure effective collection of the tax. The Tax Administrator may also require that a deposit, 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 Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar month. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

**50-504            Payments and communications – timely remittance.**

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator 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 observed by the City, the due date shall be the next regular business day on which the City is open to the public.

**50-505            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 Tax Administrator on or before the due date as specified in Sections 50-503 and 50-504.

**50-506            Notice not required by the City.**

The City may as a courtesy send a tax notice to the business. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this 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.

**50.507            Penalties and interest.**

- A. Any person who fails or refuses to pay any cannabis business 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 (1.0%) 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 (1.0%) per month on the unpaid tax and on the unpaid penalties.
  - 3. Interest shall be applied at the rate of one percent (1.0%) 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 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.

**50-508 Refunds and credits.**

- A. No refund shall be made of any tax collected pursuant to this Article, except as provided in Section 50-509.
- 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.

**50-509 Refunds and procedures.**

- A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Article, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was originally due and paid.
- B. The Tax Administrator, 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 Tax Administrator to do so.
- C. In the event that the cannabis business 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 the date that the tax was paid.

**50-510 Personal Cultivation Not Taxed.**

The provisions of this Article shall not apply to personal cannabis cultivation or use as those activities are authorized 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 provided that the individual receives no compensation whatsoever related to that personal cultivation or use.

**50-511 Administration of the tax.**

- A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this Article.
- B. For purposes of administration and enforcement of this Article generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Article as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

- C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:
1. Provide to all cannabis business 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.

**50-512 Appeal procedure.**

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this Article may appeal to the City Council by filing a notice of appeal with the City Clerk within thirty (30) calendar days of the serving or mailing of the determination of tax due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Article for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

**50-513 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.

**50-514 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 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 Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

**50-515            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 Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

**50-516            Audit and examination of premises and records.**

- A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City in support of his or her tax calculation, the Tax Administrator 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 tax administrator 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 three (3) 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 Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

**50-517            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 City Cannabis permit or City License required by, under or by virtue of any provision of any other Chapter of this code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required under any other Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other Chapter of this code to any licenses, 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 Chapters of this Code.

- B. Notwithstanding subdivision A of this Section a cannabis business shall not be required to pay the license tax required by Chapter 50, Article VIII of this Code so long as all of the business activities within the City that would require payment of a license tax are activities subject to the cannabis business tax.
- C. The Tax Administrator may revoke or refuse to renew the license required by Chapter 50, Article XI 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 Tax Administrator pursuant to Section 50-503.

**50-518 Payment of tax does not authorize unlawful business.**

- A. The payment of a cannabis business 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.

**50-519 Deficiency determinations.**

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this Article is correct, or that the amount of tax is correctly computed, he or she 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 within three (3) years of the date the tax was originally due and payable. 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 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, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 50-521.

**50-520 Failure to report—nonpayment, fraud.**

- A. 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 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 Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator 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 Tax Administrator determines that the nonpayment of any business 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 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 Article and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

**50-521 Tax assessment - notice requirements.**

The notice of assessment shall be served upon the person either by personal delivery, by overnight delivery by a nationally-recognized courier service, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Article; or, 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 overnight delivery shall be deemed to have occurred one (1) calendar day following deposit with a courier and service by mail shall be deemed to have occurred three (3) days following deposit in the United States mail.

**50-522 Tax assessment - hearing, application and determination.**

Within thirty (30) 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. Within thirty (30) calendar days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) calendar days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later



than five (5) calendar days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 50-521 for giving notice of assessment.

**50-523            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 Tax Administrator of this inability to comply and request relief from the tax requirement;
  - 1.    A request for relief must clearly indicate why relief is requested, the time period for which the relief is requested, and the reason relief is needed for the specific amount of time.
- B.     The cannabis business agrees to grant the tax collector or his/her designee access to the location where the cannabis business has been impacted due to a disaster.
- C.     The Tax Administrator, in his/her sole discretion, may provide relief from the cannabis business 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 one (\$5,001) dollars or more than such relief shall only be approved by the City Council;
- D.     Temporary relief from the cannabis tax may be granted for a reasonable amount of time as determined by the Tax Administrator or the City Council, as applicable in order to allow the cannabis business time to recover from the disaster;
- E.     The Tax Administrator or City Council, as applicable may require that certain conditions be followed in order for a cannabis business to receive temporary relief from the cannabis business tax requirement;
- 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.

**50-524            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.

**50-525 Violation deemed misdemeanor.**

Any person violating any of the provisions of this Article shall be guilty of a misdemeanor.

**50-526 Severability.**

If any provision of this Article, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Article or the application of this Article to any other person or circumstance and, to that end, the provisions hereof are severable.

**50-527 Remedies cumulative.**

All remedies and penalties prescribed by this Article or which are available under any other provision of the Pomona 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.

**50-528 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 Pomona affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration or adjustment 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 or incrementally implement an increase authorized by this Article;
- 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 2. 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 may be declared invalid.

**SECTION 3. EFFECTIVE DATE AND SUBMISSION TO VOTERS.** This Ordinance relates to the levying and collecting of a Cannabis Tax as approved by the voters of the City at the November 6, 2018 General Election and in compliance with Section 2(b) of Article XIII C of the California Constitution and applicable law, and shall take effect immediately.

**SECTION 4. AMENDMENT AND TERMINATION.** The authority to levy the taxes imposed by this Ordinance shall continue indefinitely until this Ordinance is repealed. The City Council may amend this Ordinance to reduce the rate of the taxes, either permanently or for a set period of time, without a further vote of the people. The City Council shall not amend this Ordinance to increase the Cannabis Business Tax rate above what is authorized by this Ordinance, unless such amendment is submitted to and approved by the voters.

**SECTION 5. DECLARATION.** The proceeds of the taxes imposed by this Ordinance may be used for any lawful purpose of the City, as authorized by ordinance, resolution or action of the City Council or by ordinance adopted by the electorate of the City. These taxes do not meet the criteria established by Section (d) of Article XIII C of the California Constitution for special taxes, and are general taxes imposed for general government purposes.

**SECTION 6. CODIFICATION.** If a majority of the electors voting on the Cannabis Business Tax measure vote to approve the imposition of the Cannabis Business Tax, then the provisions of Section 1 of this Ordinance shall be codified in the Pomona Code at Chapter 50, but the Article number and Section numbers assigned herein are subject to change depending on the concurrent ballot measures that, if approved, would amend the City Code. (i.e. The Transactions and Use Tax Ordinance and related ballot measure that will be concurrently presented to the voters at the November 6, 2018 General Election.)

**SECTION 7.** The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published as required by law.

**PASSED, APPROVED, AND ADOPTED BY THE QUALIFIED VOTERS IN THE CITY OF POMONA AT THE NOVEMBER 6, 2018 GENERAL ELECTION.**

**ATTEST:**

**CITY OF POMONA**

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Maria M. Macias, Interim City Clerk

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Tim Sandoval, Mayor

**APPROVED AS TO FORM:**

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Arnold M. Alvarez-Glasman,  
City Attorney