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January 17, 2018

Board of Supervisors
44 N. San Joaquin Street, Suite 627
Stockton, CA 95202

Dear Board Members:

**Public Hearing to Approve an Ordinance Adding Chapter 4 to Impose a County
Special Tax on Commercial Cannabis Businesses in the Unincorporated Area
of the County of San Joaquin as of January 1, 2019
(Said Ordinance Introduced and Waived on January 9, 2018)**

Recommendation

It is recommended that the Board of Supervisors:

- A. Approve an ordinance adding Chapter 4 to the County Code to impose a County special tax on commercial cannabis businesses in the unincorporated area of the County of San Joaquin as of January 1, 2019;
- B. Adopt a resolution calling an election for the voters of the County to consider adoption of an ordinance imposing a tax on commercial cannabis (marijuana) businesses, and consolidating that election with the statewide general election to be held on November 6, 2018; and
- C. Appoint two members of the Board of Supervisors to the Board of Supervisors ad hoc committee on commercial cannabis and authorize them to sign the argument in favor of the tax measure and any associated rebuttal argument on behalf of the Board of Supervisors.

Reason for Recommendation

On January 9, 2018, the Board of Supervisors introduced and waived reading of an ordinance imposing a tax on commercial cannabis business in the unincorporated area of San Joaquin County and a hearing was set for January 23, 2018, to consider approval.

This ordinance adds Chapter 4 to Title 3 of the San Joaquin County Code to impose a County special tax on commercial cannabis businesses in the unincorporated area of San Joaquin County as of January 1, 2019. The ordinance establishes the following tax rates for outdoor and indoor cannabis cultivation of three and one-half percent (3.5%) to eight percent (8%) of gross receipts including a Square Footage Payment of two dollars (\$2.00) per square foot of cultivation space. Beginning on July 1 of each succeeding year after adoption of the ordinance, the amount of Square Footage Payment shall be adjusted up to the equivalent to the most recent change in the Consumer Price Index (CPI) for all urban consumers for the San Francisco-Oakland-San Jose areas or by the Board of Supervisors of the County of San Joaquin; and for all other commercial cannabis businesses, including dispensaries, manufacturing, nurseries, testing, transporting, distributing, and delivery, the tax range is three and one-half percent (3.5%) to eight percent (8%) of gross receipts per fiscal year through June 30, 2019, to increase thereafter by the Board of Supervisors or by the CPI, as stated above. The tax applies to commercial medical cannabis businesses and to nonmedical cannabis or marijuana businesses. Cultivation for personal use, as further delineated in the ordinance, is exempt from the tax. The ordinance contains payment and reporting requirements and enforcement provisions and authorizes the County Treasurer-Tax Collector to administer the tax. The tax is for special governmental purposes and will go into effect only if the tax is approved by two-thirds of the voters voting on the tax at an election.

The tax is recommended as a means to address projected costs and demands on County services that cannot be recovered through permit application fees (e.g., enforcement). Revenues may only be used for Early childhood education and other programs for children and youth, such as childhood literacy, gang reduction, after-school programs and drug prevention programs; public health; public safety and cannabis enforcement. Unless directed otherwise, both the Land Use and Business Permit ordinances will be drafted so that they do not become operative until and unless the tax is passed by the voters.

To adopt the tax, the following steps are needed:

1. Approval of the tax ordinance which includes the type of tax, rate of tax, and method of collection. This information is contained in Chapter 4 (Exhibit A).
2. Adoption of a resolution by a majority vote of the Board of Supervisors, to present the tax to the voters. The resolution attached as Exhibit B, contains the proposed “ballot question” language.
3. For a special tax, approval by two-thirds of the voters at the election. The resolution attached as Exhibit B would call the election and consolidate it with the statewide general election to be held on November 6, 2018, when the tax would be considered by the voters.

The “ballot question,” is limited to 75 words and must contain certain basic information to pass legal standards. The language set forth below and attached in Exhibit B is recommended. In addition, if the County requests, the text of the tax ordinance (Chapter 4) can be printed in the Voter Guide.

SHALL THE MEASURE

Imposing a special tax on cannabis businesses, to support early childhood education, literacy, and other programs for children and youth; public health; public safety and enforcement of cannabis laws, in the unincorporated San Joaquin County at a rate of 3.5% to 8% of gross receipts (Annual Revenue Estimate: \$2.8 million) (Duration: Until repealed.)

BE ADOPTED?

If the Board adopts the resolution (Exhibit B) calling the election, additional election deadlines for arguments in favor of a tax and rebuttals to arguments against the tax will be due. For this reason, staff recommends forming an ad hoc committee of the Board of Supervisors and authorizing the committee to sign these arguments on behalf of the Board of Supervisors.

If the ordinances and resolution before the Board are approved, and the tax measure is adopted by the voters, this would represent the first phase of medical cannabis permitting in the unincorporated area of San Joaquin County.

Fiscal Impact

There is an incremental cost of placing the measure on the ballot. A ballot measure would include the following in the Sample Ballot Pamphlet:

- Measure Question and Full Text
- Impartial Analysis
- Argument in Favor / Argument Against
- Rebuttals

The estimates below are based on the November 2016 election. The Registrar of Voters has given a range based on the number of pages that may be included in the Pamphlet.

Measure Countywide

330,000 voters with 4 pages of information = \$50,000

330,000 voters with 16 pages of information = \$200,000

Action to be Taken Following Approval

The resolution and ballot language will be provided to the Registrar of Voters for inclusion in the ballot for the November 2018 General Election.

Counsel will prepare the impartial summary of the tax and will assist the ad hoc committee with the creation of supporting and rebuttal statements.

Very truly yours,



J. Mark Myles
County Counsel

JMM:kr

Attachments:

Attachment A Ordinance adding Chapter 4 - Impose special tax on commercial cannabis business for the unincorporated County of San Joaquin.

Attachment B Draft resolution calling for the election on the tax measure and consolidating it with the June 2018 statewide primary election.

c: District Attorney
Public Defender
Office of the Agricultural Commissioner
Community Development Department
Environmental Health Department
Public Health
Human Services Agency
Treasurer-Tax Collector
County Administrator
Board Clerk for Agenda 1/23/18

Reviewed by County Administrator's Office:

Reviewed by County Counsel's Office:


Melissa Eads

1/8/2018


J. Mark Myles, County Counsel

1/8/2018

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN,
STATE OF CALIFORNIA

ORDINANCE NO.

**AN ORDINANCE OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, ADDING
CHAPTER 4 TO TITLE 3 OF THE ORDINANCE CODE OF THE COUNTY OF SAN JOAQUIN
IMPOSING A CANNABIS BUSINESS TAX ON COMMERCIAL CANNABIS BUSINESSES**

The Board of Supervisors of the County of San Joaquin ordains as follows:

SECTION 1. DIVISION 4 OF TITLE 3: SPECIAL TAXES Chapter 4 is added to the San Joaquin County Code to read as follows:

CHAPTER 4 - CANNABIS BUSINESS TAX

Sections:

3-4400 Title.

3-4401 Special tax.

3-4402 Purpose of the ordinance.

3-4403 Definitions.

3-4404 Cannabis cultivation license tax and commercial cannabis business tax imposed.

3-4405 Reporting and remittance of cannabis cultivation business tax.

3-4406 Reporting and remittance of non-cultivation cannabis business tax.

3-4407 Payments and communications – timely remittance.

3-4408 Payment – when taxes deemed delinquent.

3-4409 Notice not required by the County.

3-4410 Penalties and interest.

3-4411 Refunds, credits, and procedure.

3-4412 Exemptions from the tax.

3-4413 Administration of the tax.

3-4414 Successor and assignee responsibility.

3-4415 Appeal procedures.

- 3-4416 Enforcement - action to collect taxes.
- 3-4417 Apportionment.
- 3-4418 Constitutionality and legality; Not a sales tax; Gann Limit.
- 3-4419 Audit and examination of records and equipment.
- 3-4420 Other licenses, taxes, fees, or charges.
- 3-4421 Payment of tax does not authorize unlawful business.
- 3-4422 Deficiency determinations.
- 3-4423 Failure to report, nonpayment, and fraud.
- 3-4424 Tax assessment – notice of requirements.
- 3-4425 Violation deemed misdemeanor.
- 3-4426 Severability.
- 3-4427 Remedies cumulative.
- 3-4428 Amendment or repeal.
- 3-4429 Accountability measures.
- 3-4400 Title.

This ordinance shall be entitled as the “Cannabis Business Tax.” This ordinance shall be applicable in the unincorporated territory of the County of San Joaquin, which shall be referred to herein as “County,” unless the context indicates the institution of the County government is intended rather than the geographical area.

3-4401 Special Tax.

This ordinance is being adopted as special tax pursuant to Government Code Section 50077.

3-4402 Purpose of the ordinance.

This ordinance is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a tax on the privilege of cultivating, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by commercial cannabis businesses in the unincorporated area of the County, pursuant to the state Medical Marijuana Regulation and Safety Act,

specifically California Business and Professions Code section 19348, and other applicable law as it now exists or may hereafter be promulgated;

B. To impose a tax on the privilege of cultivating, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, or distributing nonmedical marijuana and marijuana products and accessories by commercial cannabis businesses in the unincorporated area of the County pursuant to Proposition 64, known as the Adult Use of Marijuana Act, approved by the voters in November 2016, which legalized and regulates recreational cannabis in the state of California, and other applicable law as it now exists or may hereafter be promulgated;

C. To impose a tax on commercial cannabis business in accordance with the authority granted by California Revenue and Taxation Code section 7284 to impose a business license tax;

D. To specify the type of tax and rate of tax to be levied and the method of collection; and

E. To comply with all requirements for imposition of a special tax, such tax to become operative only if submitted to the electorate and approved by a two-thirds majority vote of the voters voting in an election on the issue.

3-4403 Definitions.

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

A. “Business” shall include all activities engaged in or caused to be engaged in within the unincorporated area of the County, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not lawful and 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” or “marijuana” 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 as it now exists or may hereafter be amended and is not limited to medical or lawful cannabis use.

C. “Cannabis product” means any product containing cannabis or its derivatives, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and those products described in section 11018.1 of the Health and Safety Code.

D. “Cultivation area” for indoor cultivation of cannabis, shall mean the total square footage of a building or structure on a premises in which cannabis is grown as authorized by a cannabis business license issued to a person engaging in commercial cannabis business, not deducting for unutilized square footage unless duly authorized in writing by the County. For outdoor cultivation of cannabis, “cultivation area” shall mean the sum of the area(s) of cannabis cultivation as measured around the perimeter of each discrete area of cannabis cultivation on a parcel. “Cultivation area” is the area where cannabis is grown, including but not limited to garden beds or plots, the exterior dimensions of hoop houses or green houses, and the total area of each of the pots and bags containing cannabis plants on a parcel. “Cultivation area” shall include the maximum anticipated extent of all vegetative growth of cannabis plants to be grown on a parcel. For unlawful and unpermitted cultivation, “cultivation area” shall be determined by the County applying this definition as reasonably adapted to the circumstances of the unlawful and unpermitted cultivation.

E. “Commercial cannabis business” means any commercial business activity relating to cannabis, including but not limited to cultivating, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling (at wholesale or retail), or distributing of cannabis, cannabis products and/or accessories for the use or ingestion of cannabis or cannabis products in the unincorporated area of the County, whether or not carried on for gain or profit or in compliance with law.

F. “Cannabis business tax,” “business tax,” or “commercial cannabis tax” means the tax imposed pursuant to this Chapter for engaging in commercial cannabis business in the unincorporated area of the County.

G. “Commercial cannabis cultivation” means cultivation conducted by, for, as part of a commercial cannabis business.

H. “Cannabis business license” means a license issued by the County to a person to authorize that person to operate or engage in a commercial cannabis business in the unincorporated area of the County. “Cannabis business license” includes a commercial medical and nonmedical cannabis business license issued pursuant to the San Joaquin County Code, which Code may be adopted or amended from time to time and which provides any cannabis regulation. “Cannabis business license” includes any other license the County may require to operate or engage in commercial cannabis business.

I. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

J. “Dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

K. “Distributor” or “distribution” or “distribution facility” means a person or facility involved in the procurement, sale, and/or transport of cannabis and cannabis products.

L. “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.

M. “Engaged in business” means the commencing, conducting, operating, managing or carrying on of a cannabis business including the exercise of corporate or franchise powers; whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the unincorporated area of the County or coming into the unincorporated area of the County to engage in such activities. A person shall be deemed engaged in business within the unincorporated area of the County if:

1. Such person or person’s employee maintains a fixed place of business within unincorporated area of the County for the benefit or partial benefit of such person;
2. Such person or person’s employee owns or leases real property within the unincorporated area of County for business purposes;
3. Such person or person’s employee regularly maintains a stock of tangible personal property in the unincorporated area of County for sale in the ordinary course of business;
4. Such person or person’s employee regularly solicits business within the unincorporated area of County;
5. Such person or person’s employee performs work or renders services in the unincorporated area of County; and
6. Such person or person’s employee utilizes the streets within the unincorporated area of County in connection with the operation of vehicles for business purposes in conjunction with the other activities listed here to establish a taxing nexus with the County.

The foregoing specified activities are exemplary and are not intended to limit the meaning of “engaged in business,” which is intended to have a broad and encompassing meaning to serve the purposes of this Chapter.

N. “Evidence of doing business” includes, without limitation, use of signs, circulars, cards, electronic mail, telephony, social media or any other advertising media, or representation to a government agency or to the public that such person is engaged in a cannabis business in the unincorporated area of County.

O. Reserved.

P. "Gross Receipts," except as otherwise specifically provided, means:

- i. the total amount actually received or receivable from all sales;
- ii. the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise;
- iii. discounts, rents, royalties, fees, commissions, however designated.

"Gross receipts" shall include all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts where allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
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 in which they are recovered; and,
7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded.

Q. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, whether or not that person holds a valid County business license.

R. “Nursery” means a person or facility that produces only clones, immature plants, seeds, and other agricultural products used for the planting, propagation, and cultivation of cannabis.

S. “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.

T. “Personal cultivation” means cultivation by and for an individual for their individual use under Section 11362.1 of the Health and Safety Code as it now exists or may hereafter be amended or cultivation by a qualified patient or primary caregiver in accordance with the Compassionate Use Act of 1996 (Section 11362.5 of the Health and Safety Code) as it now exists or may hereafter be amended.

U. “Sale” means and includes any sale, exchange, or barter.

V. “Square Footage Payment” is defined in Section 3.4404, subdivision (B) of this Chapter.

W. “State” means the State of California, either its territory or its government, as the context requires.

X. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 26050, et seq. or other applicable state law.

Y. “Testing laboratory” means a facility, entity, or site that offers or performs testing of cannabis or cannabis products.

Z. “Transport” means the transfer of cannabis or cannabis products from one location to another, in the conduct of commercial cannabis activity.

ZA. “Tax Collector” means the Treasurer-Tax Collector of the County of San Joaquin, his or her deputies or any other County officer charged by the Board of Supervisors or the County Administrative Officer with the administration of this Chapter.

3-4404 Cannabis cultivation license tax and commercial cannabis business tax imposed.

A. There are hereby established and imposed a cannabis cultivation license tax and a cannabis business tax at the rates authorized by this Chapter.

B. Tax on commercial cannabis cultivation excluding nurseries.

Every person who cultivates commercial cannabis in the unincorporated area of the County shall pay a commercial cannabis cultivation tax in an amount established from time to time by resolution or ordinance of the Board of Supervisors. The minimum rate shall be three and one-half percent (3.5%) of gross receipts per year and maximum shall be eight percent (8%) of gross receipts per year. Until the Board of Supervisors acts to set a tax rate, the annual tax rate

effective on approval by the voters shall be three and one-half percent (3.5%) of the gross receipts per year.

1. Annually all cultivators shall pay \$2.00 per square foot of licensed cultivation space (Square Footage Payment). Half of the Square Footage Payment shall be paid upon issuance for cultivation licenses issued between January 1 and June 30, and the balance shall be due on July 1 or any subsequent date on which a cultivation license issues. After the initial year of licensure, all cultivators shall pay the Square Footage Payment annually in equal installments on January 1 and July 1.

2. Beginning on January 1 of 2020 and of each succeeding year thereafter, the Square Footage Payment shall be increased in proportion to the most recent change in the Consumer Price Index (CPI) - All Urban Consumers for the San Francisco-Oakland-San Jose area or by any lesser amount determined by resolution of the Board of Supervisors. However, no CPI adjustment shall decrease the Square Footage Payment. Notwithstanding the foregoing, the Board of Supervisors is hereby authorized to establish by resolution or ordinance any Square Footage Payment less than or equal to the inflation-adjusted maximum established by this section.

3. Any expansion of a cultivation area will require a new or amended cannabis cultivation license.

C. Cannabis business tax on all non-cultivation commercial cannabis businesses.

Every person who engages in commercial cannabis business other than cultivation alone shall pay a commercial cannabis business tax in an amount determined from time to time by resolution or ordinance of the Board of Supervisors. The minimum rate shall be three and one-half percent (3.5%) of gross receipts per year and the maximum shall be eight percent (8%) of gross receipts per year. The annual tax rate effective January 1, 2019 shall be three and one-half percent (3.5%) of the gross receipts per year and shall thereafter be as determined by the Board of Supervisors.

3-4405 Reporting and remittance of cannabis cultivation tax.

A. The commercial cannabis cultivation tax shall be due and payable as follows:

1. On or before the Square Footage Payment due date provided by section 3.4404, subdivision (B) of this Chapter, each person holding a commercial cannabis cultivation license shall submit a tax statement and remit to the Tax Collector the Square Footage Payment due.

2. On or before the last day of the month following the close of each calendar quarter each person owing a commercial cannabis cultivation tax shall prepare and submit a tax statement and remit to the Tax Collector the tax due, less any Square Footage Payments made during the preceding calendar quarter.

- B. All tax statements shall be completed on forms provided by the Tax Collector.
- C. Tax statements and payments for all outstanding taxes owed the County are immediately due to the Tax Collector upon cessation of business for any reason.
- D. The Tax Collector may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Collector deems necessary to ensure collection of the tax.
- E. The Tax Collector may, as part of administering the tax and in his or her discretion, modify the manner of payment and take such other administrative actions as needed to facilitate collection of the tax from any taxpayer or class of taxpayers.
- F. If a tax due date falls on a Saturday, Sunday or holiday, the due date is the next day County offices are open to the public.

3-4406 Reporting and remittance of non-cultivation cannabis business tax.

The non-cultivation commercial cannabis business tax imposed by this Chapter shall be due and payable in quarterly installments as follows:

- A. Each person owing a commercial cannabis business tax shall, on or before the last day of the month following the close of each fiscal year quarter, submit a tax statement and pay the tax due to the Tax Collector.
- B. All tax statements shall be completed on forms provided by the Tax Collector.
- C. Tax statements and payments for all outstanding taxes owed the County are immediately due to the Tax Collector upon cessation of business for any reason.
- D. The Tax Collector may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Collector deems necessary to ensure collection of the tax.
- E. The Tax Collector may, as part of administering the tax and in his or her discretion, modify the manner of payment and take such other administrative actions as needed to facilitate collection of the tax from any taxpayer or class of taxpayers.
- F. If a tax due date falls on a Saturday, Sunday or holiday, the due date is the next day County offices are open to the public.

3-4407 Payments and communications – timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be remitted to the Tax Collector on or before the due date. A postmark will be accepted as timely received. If the due date falls on Saturday, Sunday or a County holiday, the due date shall be the next regular business day on which County offices are open to the public.

3-4408 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided by this Chapter, the taxes due under this Chapter shall be delinquent if not remitted to the Tax Collector on or before the due date as specified in this Chapter.

3-4409 Notice not required by the County.

The Tax Collector is not required to send a delinquency or other notice or bill to any person subject to this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under this Chapter.

3-4410 Penalties and interest.

A. Any person who fails or refuses to pay any tax due under this Chapter when due shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the unpaid tax, in addition to that tax, plus interest on the unpaid tax calculated from the due date until paid at the rate of one and one-half percent (1.5%) per month; and
2. If the tax remains unpaid for more than 30 days after the due date, an additional penalty of ten percent (10%) of the unpaid tax, plus interest at the rate of one and one-half percent (1.5%) per month on the unpaid tax.
3. Interest on the unpaid tax at the rate of one and one-half percent (1.5%) per month from the first day of the month for the full month until the balance is paid.

B. Whenever a check or electronic payment is submitted in payment of a tax under this Chapter and the payment is subsequently reversed or returned unpaid by the bank for any reason, the taxpayer will be liable for the tax due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under law.

3-4411 Refunds, credits, and procedure.

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

B. Any tax, penalty or interest under this Chapter that has been overpaid, paid more than once, or erroneously collected or received by the County may be refunded to the person who paid it provided that a written claim for refund is filed with the Tax Collector within one (1) year of the later of (i) the date the tax was originally due and payable and (ii) the date it was paid.

3-4412 Exemptions from the tax.

A. Under the “California Control, Regulate and Tax Adult Use of Marijuana Initiative” the provisions of this Chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever. The Tax Collector may implement this exemption to conform to such exemption for personal use as may be provided by state law as it now exists or may hereafter be amended.

3-4413 Administration of the tax.

A. It shall be the duty of the Tax Collector to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. The Tax Collector may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement. He or she shall give notice of those regulations as required for ordinances of the Board of Supervisors and such regulations shall take effect upon such notice unless otherwise provided by a particular regulation.

C. The Tax Collector may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all commercial cannabis business taxpayers forms for the reporting of the tax;
2. Give notice of tax rates and amounts established by the Board of Supervisors in accordance with this Chapter;
3. Provide information to any taxpayer concerning the provisions of this Chapter;
4. Receive and record all taxes remitted to the County as provided in this Chapter;
5. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
6. Assess penalties and interest to taxpayers pursuant to this Chapter;
7. Determine amounts owed and enforce collection pursuant to this Chapter; and,
8. Take such other reasonable steps as he or she deems necessary and appropriate to the enforcement of this Chapter.

D. Consistency with business license tax rules.

The Board of Supervisors and People of the County of San Joaquin intend this chapter to be enforced consistently with Title 7 of this Code and any rule or regulation promulgated under that

division except as expressly provided to the contrary in this Chapter.

3-4414 Successor and assignee responsibility.

A. If any person, while liable for any amount under this Chapter, sells, assigns or otherwise transfers half or more of a taxed commercial cannabis business, whether voluntarily or involuntarily; the person's successor, assignee or other transferee, or other person or entity obtaining ownership or control of the commercial cannabis business ("transferee") shall pay that amount when due. A transferee shall notify the Tax Collector of a transfer 30 days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business is made less than 30 days before the date of transfer, on the first day County offices are open for business after the agreement is made.

B. A transferee shall be deemed to have satisfied an unpaid liability under this Chapter if the transferee complies with the requirements of California Revenue and Taxation Code Section 7283.5 and this section by withholding from the purchase price, for the benefit of the County, an amount sufficient to cover the liability, or by otherwise paying the liability and obtaining from the Tax Collector a "Tax Clearance Certificate" showing that all outstanding liability has been paid through the date of transfer.

C. Within 90 days of receiving a written request from a Transferee, the Tax Collector may issue a "Tax Clearance Certificate" stating either the amount due as to the business under this Chapter, or stating that there is no liability due for the business through a stated date. The Tax Collector may also request financial records from the transferor to audit the amount due under this Chapter. The Tax Collector shall issue a tax clearance certificate within 30 days of completing the audit, stating any amount owed, unless he or she determines the records provided for audit are insufficient to determine whether taxes, fees, penalties and/or interest are due and in what amounts. If so, the Tax Collector may rely on available information to estimate any amount due and shall issue a tax clearance certificate stating that amount. A written application for an appeal hearing on the amount assessed on a tax clearance certificate must be made within fifteen (15) days after the Tax Collector serves or mails the certificate. The appeal provision of section 3-4415 of this Chapter shall apply. If a timely application for a hearing is not made, the tax clearance certificate shall serve as conclusive evidence of the liability under this chapter associated with the business through the date stated on the certificate.

3-4415 Appeal procedures.

Within fifteen (15) days after paying taxes, fees or penalties, any person may apply in writing to the Tax Collector's Office for a redetermination of the amount assessed. Within fifteen (15) days of notice of the revocation of a license under this Chapter, the licensee may make a written request for an appeal of that decision. The appellant shall submit a completed return with the request for redetermination and justify the remedy sought. If application for a redetermination is not timely, the tax and penalties and/or revocation of license, as determined by the Tax Collector

shall become final and conclusive as to the County but subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

At the appeal hearing, the appellant shall have the right to testify, to be represented by counsel, to present witnesses on his or her own behalf, to cross-examine all other witnesses and to present oral and written documents and evidence on the issues. The Tax Collector or designee shall determine the appeal. His or her written determination shall be provided to the appellant at such address as may be specified in the written request for an appeal or otherwise available to the Tax Collector by certified mail within twenty-one (21) days of the appeal hearing. The decision shall be final as to the County but subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

3-4416 Enforcement - action to collect taxes.

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

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the County under this Chapter is not paid when due, the Tax Collector may, within three (3) years after the amount is due, record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the individual or business as it appears on the records of Tax Collector. The lien shall also specify that the Tax Collector has complied with all provisions of this Chapter in the determination of the amount due. From the time of the filing for record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the County owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged.

C. At any time within three (3) years after any individual or business is delinquent in the payment of any amount herein required to be paid, or within three (3) years after the last recording of a certificate of lien under Subsection B of this Section, the Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this Chapter. The warrant shall be directed to the Sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

The Tax Collector may pay or advance to the Sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution.

D. At any time within three (3) years after recording a lien against any individual or business, if the lien is not discharged and released in full, the Tax Collector may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale.

Assets or property of the business subject to seizure and sale subject to this Chapter shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.

3-4417 Apportionment.

If a business subject to the tax is operating both within and outside the unincorporated area of the County, it is the intent of the County to apply the taxes imposed under this Chapter so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the County. The Tax Collector may promulgate administrative procedures for apportionment in accordance with applicable law.

3-4418 Constitutionality and legality; Not a sales tax; Gann Limit.

A. This tax is intended to be applied consistently with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied so as to cause an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California, or a violation of any other provision of applicable law.

B. The taxes provided for under this Chapter are excises on the privilege of doing business in the unincorporated area of the County and legally incident on those engaged in such business. It is not a sales or use tax and shall not be calculated or assessed as such. Nevertheless, at the option of the taxpayer, the tax may be separately identified on invoices, receipts and other evidences of transactions.

C. Pursuant to California Constitution, article XIII B, the appropriation limit for the County is increased to the maximum extent over the maximum period of time allowed under law to allow expenditure of the revenues generated by the taxes and fee imposed by this Chapter.

3-4419 Audit and examination of records and equipment.

A. The Tax Collector may audit or direct that an audit and examination of the books and records of persons engaged in cannabis businesses in the unincorporated area of the County, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis businesses, and, where necessary,

all equipment, of any person engaged in cannabis businesses in the unincorporated area of the County, for the purpose of ascertaining the amount of tax, if any, required to be paid under this Chapter, and for the purpose of verifying any statement filed pursuant to this Chapter. The Tax Collector may collect a fee adopted by the Board of Supervisors of the County of San Joaquin to pay for the cost of examination and audit should a taxpayer provide books and records in a form insufficient to allow the Tax Collector to make a determination of tax due.

B. It shall be the duty of every person liable for the collection and payment to the County of any tax imposed by this Chapter 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, she or it may have been obliged to pay, which records the Tax Collector or his/her designee shall have the right to inspect at all reasonable times. Such records shall be maintained in confidence as to all persons other than those engaged in the audit and in the enforcement of this Chapter as provided by such law as Government Code section 6254, subdivision (i).

3-4420 Other licenses, taxes, fees, or charges.

Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license required by, under or by virtue of any provision of any other title or chapter of this Code or any other ordinance or resolution of the County, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this Code or any other ordinance or resolution of the County. Any references made or contained in any other title or chapter of this Code to any licenses, license taxes, fees, or charges, or to any schedule of license fees with respect to a commercial cannabis business, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this Code.

3-4421 Payment of tax does not authorize unlawful business.

A. The payment of a tax imposed by this Chapter, and its acceptance by the County, shall not entitle any person to carry on any commercial 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 Chapter 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.

3-4422 Deficiency determinations.

If the Tax Collector is not satisfied that any statement filed under this Chapter 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 any information that may come into his or her possession within three (3) years of the date the

tax was 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 before 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 3-4424.

3-4423 Failure to report, nonpayment, and fraud.

A. Under any of the following circumstances, the Tax Collector may make and give notice of an assessment of the tax owed by a person under this Chapter at any time:

1. If the person has not filed a complete statement required under this Chapter;
2. If the person has not paid the tax due under this Chapter;
3. If the person has not, after demand by the Tax Collector, filed a corrected statement, or furnished to the Tax Collector adequate substantiation of the information contained in a statement filed, or paid any additional amount of tax due under this Chapter; or
4. If the Tax Collector determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth any tax the Tax Collector knows to be due or estimates to be due after consideration of all information in his or her possession concerning the business and activities of the person assessed, and shall include the amount of any penalties or interest accrued to the date of the notice.

3-4424 Tax assessment - notice requirements.

A notice of assessment shall be served by personal delivery, or by deposit in the United States mail, postage prepaid, 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 Collector for the purpose of receiving notices under this Chapter; or, should the person have no address registered with the Tax Collector for such purpose, then to such person's last known address. Service by mail is complete upon deposit in the United States mail.

3-4425 Violation deemed misdemeanor.

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and the Tax Collector shall suspend or revoke his, her or its cannabis cultivation license and/or commercial cannabis business permit.

3-4426 Severability.

If any provision of this Chapter, 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 Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

3-4427 Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under Chapter 1 of the County Code and any other provision of law or equity are cumulative. The use of one or more remedies by the County shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

3-4428 Amendment or repeal.

The Board of Supervisors of the County of San Joaquin is authorized to repeal this Chapter 3-4400 without a vote of the people. The Board of Supervisors of the County of San Joaquin is further authorized to amend this Chapter 3-4400 in any manner that does not increase the tax rate above the maximum rate specified for each category of business or otherwise so as to constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution. The people of the County of San Joaquin affirm that the following actions shall not constitute such an increase:

- A. The restoration of the rate of the tax to a rate that is no higher than that authorized by this Chapter, if the Board of Supervisors of the County of San Joaquin has previously reduced the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or
- C. The collection of the tax imposed by this Chapter, even if the County had, for some period of time, failed to collect the tax.

3-4429 Accountability measures.

A. Special Fund; Use of Proceeds. The proceeds of the tax imposed by this Chapter shall be placed in a special fund and shall be dedicated and used only for:

- i. Early childhood education and other programs for children and youth, such as childhood literacy, gang reduction, after-school programs and drug prevention programs; and
- ii. Public health, public safety, and cannabis enforcement.

B. Allocation of proceeds: The proceeds of the tax shall be allocated to early childhood education and other programs for children and youth, such as childhood literacy, gang reduction, after-school programs and drug prevention programs in the following manner: the first year allocation shall equal thirty percent (30%) of the proceeds, the allocation shall be increased annually in five percent (5%) increments until reaching fifty percent (50%) in the fifth and succeeding years of the tax. The balance of the proceeds in each year shall be used for public health, public safety and cannabis enforcement as appropriated by the County budget.

C. Audit. An independent auditor shall annually review the revenues received under the Special Tax and disbursements of the proceeds of the Special Tax to ensure accountability and the proper disbursement of the proceeds of the Special Tax. The Audit shall be filed with the Clerk of the Board not later than January following the close of the each fiscal year in which the tax is levied and made available for public review via the County website.

D. Special Tax Oversight Committee. A Special Tax Oversight Committee comprised of no more than 15 individuals with expertise in early childhood education, child care and childhood literacy, programs for children and youth, including gang reduction, after-school and drug prevention programs, public health, finance and/or accounting and public safety shall be established and appointed by the Board of Supervisors. This committee shall develop community strategic goals, review performance outcomes, the Annual Review Report and Audit, and make recommendations to the Board of Supervisors at regular Board meetings to ensure compliance with this Chapter. No member of the oversight committee shall be a direct recipient of these special tax revenues.

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 Board of Supervisors and the People of the County of San Joaquin hereby declare that it or they would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The Board of Supervisors and the People of the County of San Joaquin hereby find that this ordinance is not subject to the California Environmental Quality Act (Public Resources Code section 21000 et seq.; "CEQA") pursuant to CEQA Guidelines (14 Cal. Code Regs. section 15000 et seq.) section 15378(b)(4), as the ordinance is a government funding mechanism that does not involve any commitment to any specific project which may result in a potentially significant impact on the environment, and section 15061(b)(3), as it can be seen with certainty that there no possibility that the activity authorized by the ordinance may have a significant effect on the environment.

SECTION 4. MAJORITY APPROVAL; EFFECTIVE DATE. This ordinance shall be effective only if approved by voting on the tax at an election and after the vote is declared by the Board of

Supervisors of the County of San Joaquin. If approved by the voters, this ordinance shall become effective and operative on January 1, 2019.

SECTION 5. BOARD AMENDMENTS. The Board of Supervisors of the County of San Joaquin is hereby authorized to amend Chapter 3-4400 of the San Joaquin County Code as adopted by this Ordinance in any manner that does not increase the tax rate above the maximum rate specified for each category of business or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

SECTION 6. CERTIFICATION; PUBLICATION. Upon approval by the voters, the Clerk of the Board shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

* * * * *

It is hereby certified that this Ordinance was duly adopted by the voters at the [date] Election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the Board of Supervisors held on [date] by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Robert V. Elliott
Chair, Board of Supervisors
County of San Joaquin
State of California

ATTEST: MIMI DUZENSKI
Clerk of the Board of Supervisors
County of San Joaquin
State of California

BY: _____

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

R E S O L U T I O N

R-

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, CALLING FOR AN ELECTION TO PRESENT TO THE VOTERS OF THE COUNTY A PROPOSED ORDINANCE ADDING A CHAPTER 4 TO THE SAN JOAQUIN COUNTY CODE ESTABLISHING CANNABIS BUSINESS LICENSE TAXES AND ORDERING CONSOLIDATION OF SAID ELECTION WITH THE CONSOLIDATED GENERAL ELECTION CALLED FOR NOVEMBER 6, 2018 (COUNTYWIDE)

WHEREAS, Revenue and Taxation Code sections 7284 and 7284.4 provide that a county may establish business licenses and a license tax, subject to any applicable voter approval requirement imposed by law; and

WHEREAS, Government Code sections 53723 and 53724 provide that a legislative body may not impose a special tax unless or until the tax is submitted to the electorate of the local government and approved by a two-thirds majority vote of the voters voting in an election on the issue; and

WHEREAS, Elections Code section 9140 authorizes the Board of Supervisors to submit to the voters, without a petition, an ordinance for the repeal, amendment or enactment of any ordinance, to be voted on at any succeeding, regular, or special election and, receiving the majority of votes cast, the ordinance shall be repealed, amended, or enacted accordingly; and

WHEREAS, through the passage of Proposition 215 in 1996, the voters of the State of California authorized the use of cannabis for medical purposes; and

WHEREAS, through the passage of Proposition 64, known as the Adult Use of Marijuana Act, approved by the voters in the November 2016, which legalized and regulates recreational cannabis in the state of California; and

WHEREAS, every person engaged in business activity in the County of San Joaquin is required to obtain a business tax certificate and to pay the County business tax; and

WHEREAS, Title 3 of the San Joaquin County Code, relating to Revenue, Taxation, and Fiscal Administration, does not currently include cannabis businesses and such businesses are not specifically placed in a classification category; and

WHEREAS, the Board of Supervisors of the County of San Joaquin desires to create a new Chapter 4, creating new business license tax rates for the following types of cannabis businesses: (a) Medical Cannabis Dispensaries, (b) Medical Cannabis Cultivation, (c) Medical Cannabis Manufacturing, (d) Medical Cannabis Testing Facilities, (e) Medical Cannabis Transportation and Distribution, and (f) "Non-Medical" Cannabis Businesses (whether dispensing, cultivation, or manufacturing or any other commercial cannabis activity other than medical cannabis), where legalized by State and Local law; and

WHEREAS, as the County of San Joaquin seeks to appropriately regulate cannabis facilities and requires adequate funding to provide essential public services, all revenues received from the taxes imposed by Chapter 4 shall be deposited in the County's Special Fund to be expended for designated purposes; and

WHEREAS, on January 9, 2018, the Board of Supervisors of the County of San Joaquin considered and approved to submit to the voters the Ordinance adding Chapter 4 establishing Cannabis Business License taxes.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the County of San Joaquin does hereby declare and order the proposed Ordinance, attached hereto as Exhibit A and incorporated herein by this reference, to be submitted to a vote of the qualified electors of the County of San Joaquin on the November 6, 2018 election, as follows:

1. There shall be included on the ballot to be marked by all San Joaquin County voters, in addition to any other matters required by law, a ballot measure in substantially the following form:

Measure ____ (County Clerk to fill in the blank).

SHALL THE MEASURE

Imposing a special tax on cannabis businesses, to support early childhood education, literacy, and other programs for children and youth; public health; public safety and enforcement of cannabis laws, in the unincorporated San Joaquin County at a rate of 3.5% to 8% of gross receipts (Annual Revenue Estimate: \$2.8 million) (Duration: Until repealed.)

BE ADOPTED?

Yes

No

A mark in the voting square after "YES" shall be counted in favor of the adoption of the proposed ordinance. A mark placed in the voting square after "NO" shall be counted against the adoption of the proposed ordinance.

2. The ballot to be used at the election shall be, both as to form and matter contained therein, such as may be required by law.
3. The Registrar of Voters is hereby authorized, instructed, and directed to provide and furnish any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct this election.
4. The Registrar of Voters shall fix and determine dates for submission of arguments for or against said proposed ordinance pursuant to the provisions of the Elections Code.
5. The Registrar of Voters is further directed to take the necessary and appropriate action to provide the election officers, polling places and voting precincts.