

EXHIBIT A TO CITY OF WEED RESOLUTION NO. 02-2018

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF WEED
IMPOSING A GENERAL TAX ON
CANNABIS BUSINESS ACTIVITY IN THE CITY

THE CITY COUNCIL OF THE CITY OF WEED DO ORDAIN AS FOLLOWS:

Section 1. Code Amendment. The City of Weed Municipal Code is hereby amended to adopt Chapter 5.10, entitled Cannabis Business Taxes to read in its entirety as follows:

Chapter 5.10
CANNABIS BUSINESS TAXES

Sections:

- 5.10.010 Purpose.
- 5.10.020 Definitions.
- 5.10.030 Gross receipts tax.
- 5.10.040 Cultivation tax.
- 5.10.045 Registration of commercial cannabis businesses.
- 5.10.050 Payment obligation.
- 5.10.060 City council authorization to adjust rates.
- 5.10.070 Tax payment does not authorize activity.
- 5.10.080 Cannabis tax is not a sales tax.
- 5.10.090 Amendments and administration.
- 5.10.100 Returns and remittances
- 5.10.110 Failure to pay timely.
- 5.10.120 Refunds.
- 5.10.125 Enforcement.
- 5.10.130 Consistency with business tax rules.
- 5.10.135 Successor and assignee responsibility.

5.10.010 Purpose. The purpose of this ordinance is to impose a general tax of up to ten percent (10%) of gross receipts on any cannabis business conducted in the City of Weed and a cannabis cultivation tax of up to \$10 to \$26 per square foot of canopy whether or not a taxed cannabis business has a permit under chapter 5.04 of this code.

5.10.020 Definitions. For the purposes of this chapter, the following definitions shall apply unless the context demonstrates another meaning was intended:

A. "Business tax" or "commercial cannabis business tax" means the tax due pursuant to this chapter for engaging in lawful commercial cannabis business in the city.

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 and as defined in Business and Professions Code 19300.5(f). For purposes of this section, the terms "cannabis" and "marijuana" have the same meaning.

C. "Canopy" means the designated area(s) at a licensed premise that will contain mature plants at any time. If mature plants are cultivated using a shelving system, the surface area of each level shall be included when calculating canopy area. Canopy area shall be expressed in square feet and measured using clearly identifiable boundaries of all areas that will contain mature plants at any time, including the entire area with those boundaries. Canopy may be noncontiguous, but each noncontiguous area shall be defined by an identifiable boundary such as an interior wall or by 10 or more feet of open space.

D. "City manager" is the officer defined by section 2.12.010 of this Code and any other office, employee or agent of the city to whom he or she delegates responsibilities under this chapter.

E. "Commercial cannabis business" means any commercial business activity relating to cannabis, including but not limited to cultivating, manufacturing, processing, storing, laboratory testing, labeling, packaging, transporting, distributing, delivering, or sale of cannabis, medical cannabis or a cannabis or medical cannabis product.

F. "Commercial cannabis cultivation" means the commercial planting, growing, harvesting, drying, processing, or storage of one or more cannabis plants or any part thereof.

G. "Commercial cannabis manufacturing" means the commercial production, preparation, propagation, or compounding of manufactured cannabis or cannabis products, directly or indirectly.

H. "Cultivation area" means the total aggregate area(s) of cannabis cultivation on one or more parcels in the city by a cannabis business as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, space between plants within a cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, as determined by the city manager.

I. "Cultivator" means any person engaged in cultivation.

J. "Gross receipts" means the total amount actually received or receivable from all cannabis sales; 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 is 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; discounts, rents, royalties, fees, commissions, dividends, and gains realized. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of the material used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.

K. "Manufacturing area" means the entire premises utilized for production, preparation, propagation, storage or compounding of manufactured cannabis or cannabis products, directly or indirectly, not deducting for unutilized portions of the premises.

L. "Mixed-light cultivation" means using a combination of natural and supplemental artificial lighting at a maximum threshold in a permanent facility in compliance with the state building code as determined by the state licensing authority.

M. "Nursery" means a person, facility or activity that transfers for any form of consideration cannabis clones, immature plants, and/or seeds for planting, propagation, and/or cultivation of cannabis.

5.10.030 Gross receipts tax. A. There is hereby imposed on every commercial cannabis business in the city an annual cannabis industry tax at a rate established from time to time by resolution of the city council that shall not exceed ten percent (10%) of annual gross receipts. The tax imposed under this section shall be due and payable as provided in section 5.10.100. As noted in section 5.10.040, cultivators shall pay a cultivation tax in lieu of this gross receipts tax.

B. The city council may, in its discretion, implement by resolution a tax rate lower than the maximum rate established in subsection (A) of this section for all persons engaged in a commercial

cannabis business in the city, or establish differing tax rates for different categories of commercial cannabis business, including for medical versus adult recreational use. The city council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, exceed the maximum tax rate established in subsection (A) of this section.

C. Commercial cannabis businesses subject to the tax imposed by subsections (A) and (B) of this section shall also register and pay the registration fee described in section 5.10.45, but shall be exempt from paying the general business license tax imposed by chapter 5.04 of this code. Any cannabis business not subject to the tax imposed by subsections (A) and (B) of this section is subject to the general business license tax imposed by Title 5 of this code except as otherwise provided by this Code or other applicable law.

5.10.040 Cultivation tax. A. Any cannabis business engaged in the cultivation of cannabis shall pay (i) the cultivation tax imposed by this section instead of the tax imposed by section 5.10.030 on its cultivation activity and (ii) the tax imposed by section 5.10.030 on its other cannabis business activity. The activity of nurseries as defined in section 5.10.020 is subject to the tax imposed by section 5.10.030 rather than the tax imposed by this section.

B. There is hereby imposed on every cannabis business engaged in commercial cannabis cultivation in the city, an annual tax in an amount established from time to time by resolution of the city council which does not exceed ten dollars (\$10.00) per square foot of outdoor cultivation area, eighteen dollars (\$18.00) per square foot of mixed-light cultivation area, and twenty-six dollars (\$26.00) per square foot of indoor cultivation area. The maximum square foot tax shall be adjusted annually (and rounded to the nearest cent) each January 1 based on a consumer price index designated by the city council. The tax shall be due and payable in installments as provided in section 5.10.100.

C. The city council may by resolution, in its discretion, implement a tax rate lower than the maximum rates set forth in subsection (B) of this section for all businesses engaged in commercial cannabis cultivation in the city or establish tax rates for categories of commercial cannabis cultivation. For example, and without limitation, the city council may set different tax rates for cannabis cultivation for medical or adult recreational use, or for indoor rather than outdoor or mixed-light cultivation. The city council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, exceed the maximum established in subsection (A) of this section.

D. Businesses liable for the tax imposed by this chapter shall also register and pay the registration fee described in section 5.10.45, but shall be exempt from the general business license fees required under chapter 5.04 of this code. Any business not subject to the tax imposed by this section 5.10.040 is subject to the business license taxes required under Title 5 of this code except as otherwise provided by this code or other applicable law.

5.10.045 Registration of commercial cannabis businesses. A. All persons engaging in a commercial cannabis business, whether an existing, newly established or acquired business, shall register with the city manager's office within 30 days of commencing operation and shall annually renew such registration on or before the anniversary of the initial registration for that business. Registrants shall furnish to the city manager a sworn statement, upon a form provided by the city manager, setting forth:

1. Every name under which the business engages in commercial cannabis activity in the city;
2. The names and addresses of every owner of the business;
3. The nature or kind of all business activity to be conducted;
4. The place or places where such business is to be conducted, whether or not in the city; and

5. Any further information which the city manager may require.

B. Registrants shall pay an annual registration fee in an amount established from time to time by resolution of the city council to recover the city's costs to implement the taxes imposed under this chapter, the registration requirement of this section, and the other provisions of this chapter. As a regulatory fee, such fee shall be limited to the city's reasonable regulatory costs.

C. The registration and registration fee shall be collected and enforced in accordance with Title 5, Chapter 5.04 of this code ("Business Licenses").

5.10.050 Payment obligation. All commercial cannabis businesses subject to a tax under this this chapter shall pay that tax regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this code, except as required by state or federal law. Failure to pay such a tax within 30 days after the due date shall be subject to penalties, interest charges, and assessments as provided in this chapter and the city may use any or all other code enforcement remedies available at law or in equity. No provision of this code shall be interpreted to reduce a tax rate established under this chapter or otherwise reduce the taxes paid hereunder unless the provision specifically expresses that reduction.

5.10.060 City council authorization to adjust rates. The city council may impose a tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax when due, as otherwise allowed by law. No action by the city council under this section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax authorized by this chapter provided only that the maximum taxes stated in section 5.10.030, subsection (A) and 5.10.040, subsection (B) may not be increased without voter approval.

5.10.070 Tax payment does not authorize activity. The payment of a tax imposed under this chapter shall not be construed to authorize the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter authorizes or implies the lawfulness of any activity connected with the distribution or possession of cannabis unless otherwise authorized and allowed in strict and full conformance with this code. Nothing in this chapter shall be applied or construed as authorizing the sale of cannabis.

5.10.080 Cannabis tax is not a sales tax. The taxes provided for under this chapter are excises on the privilege of doing business in the city 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 a taxpayer, the tax may be separately identified on invoices, receipts, and other evidences of transactions.

5.10.090 Amendments and administration. A. Voters approved this chapter. Any amendment to this chapter to increase the tax above the maximum rates provided requires further voter approval. The voters authorize the city council to set the tax at or below that maximum or otherwise to amend, modify, change, or revise any provision of this chapter as the city council deems in the best interest of the city.

B. The city manager, in consultation with the city attorney, may promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the taxes and fee imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the taxes as provided. Notice of such regulations shall be given as required for ordinances of the city council and such regulations shall be immediately effective when such notice is given unless a different effective date is provided by a regulation.

C. The city manager shall annually audit the taxes imposed by this chapter to verify that tax revenues have been properly collected and expended in accordance with the law.

D. Pursuant to California Constitution, article XIII B, the appropriation limit for the city is increased to the maximum extent over the maximum period of time allowed under law consistent with the revenues generated by the taxes and fee imposed by this chapter.

5.10.100 Returns and remittances. The tax shall be due and payable as follows:

A. Each commercial cannabis business owing tax shall provide a tax return to the city manager on or before the last business day of each month stating the tax owed and the basis of its calculation for the preceding month. The taxpayer shall remit the tax owed to the city manager when the return is due whether or not a return is filed as required.

B. All tax returns shall be completed on forms provided by the city manager.

C. Tax returns and payments for all outstanding taxes, fees, penalties and interest owed the city are immediately due upon cessation of business for any reason.

D. Whenever any payment, statement, report, request or other communication is received by the city manager after the time prescribed by this section for its receipt, but is in an envelope postmarked on or before the date prescribed by this section for its receipt, the city manager shall regard such payment, statement, report, request, or other communication as timely. If the due date falls on Friday, Saturday, Sunday, or a holiday, the due date shall be the last earlier business day on which city hall is open to the public.

E. Unless otherwise specifically provided by this chapter, the taxes imposed by this chapter shall be deemed delinquent if not paid on or before the due date specified in subsection (A) of this section.

F. The city manager need not send a delinquency or other notice or bill to any person subject to a tax or fee imposed by this chapter and failure to send such notice or bill shall not affect the validity of any tax, fee, interest or penalty due under this chapter.

5.10.110 Failure to pay timely. A. Any person who fails or refuses to pay any tax or fee imposed by this chapter when due shall pay penalties and interest as follows:

1. A penalty equal to 25 percent of the tax or fee; and
2. An additional penalty equal to 25 percent of the amount of the tax or fee if unpaid for a more than a month beyond the due date; and
3. Unpaid tax, fee, penalties shall bear 1 percent interest per month from the date due until paid.

B. If a check is submitted in payment of a tax or fee and is returned unpaid by the bank upon which drawn, and the check is not redeemed before the due date, the taxpayer will be liable for the tax or fee due plus penalties and interest as provided for in this section plus any amount allowed under law for the returned check.

C. The tax due shall be that amount due and payable from the later of (i) the effective date of this chapter or (ii) the first date on which the commercial cannabis business first operated in the City.

D. The city manager may waive some or all of the penalties imposed by this section as to any person if:

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

2. A waiver authorized by this subsection shall not apply to tax, fee or interest and may be granted only once during any 24-month period.

5.10.120 Refunds. A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this section.

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

C. Any person entitled to a refund of sums paid under this chapter may elect to have such refund applied as a credit against future obligations under this chapter.

D. Whenever any tax, fee, penalty, or interest under this chapter has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city, such amount shall be refunded to the person who paid the tax upon a timely written claim for refund filed with the city manager.

The city manager may examine and audit all the books and business records of the claimant to determine eligibility to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of the claimant's books and business records.

A sum erroneously paid under this chapter due to an error of the city shall be refunded to the claimant in full upon a timely claim. If an error is attributable to the claimant, the city may retain an amount established by resolution of the city council from time to time in an amount sufficient to recover the city's cost to process the claim and refund the balance.

The city manager shall initiate a refund of any sum overpaid or erroneously collected under this chapter whenever the overpayment or erroneous collection is disclosed by a city audit for the period of time unprotected by the duty to file a timely claim under the Government Claims Act.

5.10.125 Enforcement. The city manager shall enforce this chapter. The city manager may audit and examine all business locations, books and records of commercial cannabis businesses, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of a commercial cannabis business to ascertain any tax due under this chapter and to verify any returns or other information any person submits to the city under this chapter. If a commercial cannabis business, after written demand by the city manager, refuses to make available for audit, examination or verification such locations, books, and records as the city manager requests, the city manager may, after full consideration of all such information as is available make an assessment of tax or fee due and demand payment from the tax- or fee-payer, together with any penalties and interest due for late payment.

The conviction and punishment of any person for failure to pay a sum required under this chapter shall not excuse or exempt such person from any civil action for the debt. No civil action shall prevent a criminal prosecution for any violation of this chapter or of any state law requiring the payment of all taxes. No election of remedies shall apply to the enforcement of this chapter or any other provision of this code and the City may pursue one or more remedies in its discretion provided only that no double recovery shall be permitted.

Remedies.

Any person violating any of the provisions of this chapter or any regulation or rule adopted pursuant to it, or knowingly or intentionally misrepresenting any material fact to the city in procuring a certificate or document from the city under this chapter or chapters 5.04 or 18.60 shall be deemed guilty of a misdemeanor unless the city attorney, in his or her discretion, elects to prosecute it as an infraction.

No election of remedies shall apply and the city attorney and/or city manager may enforce this chapter by any manner authorized by this code or other applicable law.

5.10.130 Consistency with business tax rules. The people of the city this chapter to be enforced consistently with Title 5.04 of this code and any rule or regulation promulgated under that title except as expressly provided to the contrary in this chapter.

5.10.135 Successor and assignee responsibility. If any person, while liable for any amount under this chapter, sells, assigns or otherwise transfers half or more of a 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 business ("transferee") shall satisfy pay that amount when due. A transferee shall notify the city manager of a transfer 30 days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the commercial cannabis business is made less than 30 days before the date of transfer, on the first day city hall is open for business after the transfer.

A transferee shall be deemed to have satisfied an unpaid liability 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 city, an amount sufficient to cover the liability, or by otherwise paying the liability and obtaining from the city manager a "Tax Clearance Certificate" showing that all outstanding liability has been paid through the date of transfer.

Within 90 days of receiving a written request from a transferee, the city manager 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 city manager may also request financial records from the transferor to audit the amount due under this chapter. The city manager shall issue a tax clearance certificate within 30 days of completing the audit, stating any amount owed, unless the city manager 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 city manager 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 10 days after the city manager serves or mails the certificate. 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.

Section 2. AMENDMENT. This ordinance may be repealed or amended by the City Council without a vote of the people except as follows: as required by Article XIII C of the California Constitution, any amendment that increases the amount or rate of tax beyond the levels authorized by this Ordinance may not take effect unless approved by a vote of the people. The City Council may impose the tax in any amount or rate which does not exceed the rate approved by the voters of the City.

SECTION 3. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The people hereby declare that they would have adopted this ordinance and each portion thereof regardless of the fact that an invalid portion or portions may have been present in the ordinance.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). This measure to be submitted to the voters adopts a general tax to fund any legitimate purpose of the City. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. Therefore, under CEQA Guidelines section 15060, review under CEQA is not required.

SECTION 5. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the city's commercial cannabis business tax and shall take effect 10 days after the certification of its approval by the majority of the voters voting at the special municipal election to be held on June 5, 2018 pursuant to Elections Code section 9217.

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

It is hereby certified that this ordinance was duly adopted by the voters at the June 5, 2018 Special Election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the City Council held on _____ by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ken Palfini, Mayor

ATTEST:

DEBORAH SALVESTRIN, CITY CLERK

By: _____
Sandra Duchi, Deputy City Clerk