

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OCEANSIDE ADDING ARTICLE V TO CHAPTER 34 OF THE OCEANSIDE CITY CODE ESTABLISHING A TAX ON CANNABIS BUSINESS ACTIVITY

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 of Oceanside (“City”); and

WHEREAS, in response to changes in California law, after considerable public debate, the City Council of the City of Oceanside (“City Council”) adopted several ordinances to license and regulate commercial cannabis activity in the City; and

WHEREAS, as of the date of adoption of this Ordinance, the City Council has implemented a requirement for commercial cannabis businesses to obtain a Local License in accordance with Chapter 7, Article XIII of the Oceanside City Code and a conditional use permit pursuant to specified articles of the Oceanside Zoning Ordinance; and

WHEREAS, cannabis businesses are likely to create demands upon City services, and the City’s current tax does not impose any taxes on cannabis businesses, aside from generally applicable municipal taxes; and

WHEREAS, the City may, and does, impose license taxes on businesses in the City for general purposes, pursuant to its home-rule authority and the City Charter; and

WHEREAS, the City Council desires to submit this Cannabis Business Tax measure to the voters of the City at a General Municipal Election to be held on Tuesday, November 3, 2020 to be consolidated with any other election to be held on that date; and

WHEREAS, this Ordinance proposes a general tax on the terms presented for consideration by the voters; and

WHEREAS, these business license taxes are imposed to raise revenue for general governmental purposes and not for regulation;

NOW, THEREFORE, subject to approval by a simple-majority vote of the electorate as required by law, the People of the City of Oceanside do ordain as follows:

SECTION 1. The Oceanside City Code is hereby amended to add Chapter 34, Article V as set forth below, enacting a tax on the privilege of conducting business relating to Cannabis in the City of Oceanside.

CANNABIS BUSINESS TAX

Sections

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34.5.1 TITLE.

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

34.5.2 EFFECTIVE DATE.

This Ordinance shall take effect ten days after the certification of its approval by voters at the November 3, 2020 election, pursuant to Elections Code section 9217. The tax rates established by this Chapter shall become operative on January 1, 2021.

34.5.3 AUTHORITY AND PURPOSE.

This Ordinance is intended to achieve the following purposes, among others, and shall be interpreted to accomplish such purposes:

- 1 A. Impose a tax on the privilege of conducting the following activities within the City’s
2 jurisdiction: cultivating, transporting, dispensing, manufacturing, producing, processing,
3 preparing, storing, providing, selling, or distributing Cannabis, Cannabis Products, Industrial
4 Hemp or Industrial Hemp Products (excluding Industrial Hemp Cultivation) by commercial
5 Cannabis Businesses in the City of Oceanside, pursuant to the State Medicinal and Adult-Use
6 Cannabis Regulation and Safety Act (California Business and Professions Code sections 26000,
7 *et seq.*), as it now exists or may be amended from time-to-time, and local law, whether or not
8 conducted in compliance with such laws;
- 9 B. Impose a general tax that generates revenue that may be used for any lawful purpose of
10 the City, in the discretion of the City Council;
- 11 C. Specify the type of tax and rate to be levied and the method of collection; and
- 12 D. Comply with all requirements for imposition of a general tax.

13 This Chapter is enacted solely to raise revenue and not for regulation. It shall apply to all
14 Persons engaged in Cannabis Business in the City. The tax imposed by this Chapter is a general tax
15 under XIII C of the California Constitution.

16 This Chapter does not authorize the conduct of any business or activity in the City, but provides
17 for the taxation of such businesses or activities as they occur. Neither the imposition of such tax by the
18 City nor the payment of such tax by the taxpayer shall imply that the activity being taxed is lawful.

19 This Chapter shall apply to each Cannabis Business in the City, whether or not such business
20 has a permit or license issued pursuant to the City of Oceanside City Code and regardless of whether
21 such business would have been legal at the time this section was adopted. Nothing in this section shall
22 be interpreted to authorize or permit any business activity that would not otherwise be legal or
23 permissible under laws applicable to the activity at the time the activity is undertaken.

24 34.5.4 DEFINITIONS.

25 The following definitions shall apply to the construction of this chapter unless the context is such that
26 it is plain that a different meaning is intended:

- 27 A. “Business” shall include all activities engaged in or caused to be engaged in within the
28 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.

- 1 B. "Calendar year" means January 1 through December 31, of the same year.
- 2
- 3 C. "Cannabis" shall have the meaning set forth in Business and Professions Code section
- 4 26001(f) and means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or
- 5 Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude
- 6 or purified, extracted from any part of the plant; and every compound, manufacture,
- 7 salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also
- 8 means the separated resin, whether crude or purified, obtained from cannabis.
- 9 D. "Cannabis Accessory" shall have the meaning set forth in Health and Safety Code
- 10 section 11018 and means any equipment, products or materials of any kind which are
- 11 used, intended for use, or designed for use in planting, propagating, cultivating,
- 12 growing, harvesting, manufacturing, compounding, converting, producing, processing,
- 13 preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or
- 14 containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or
- 15 cannabis products into the human body.
- 16 E. "Cannabis Business" means the activity of any natural or legal Person, business, or
- 17 collective in the City relating to Cannabis, including but not limited to Nurseries,
- 18 Cultivation (excluding Industrial Hemp Cultivation), Transportation, Distribution,
- 19 Manufacture, compounding, conversion, processing, preparation, testing, storage,
- 20 packaging, Delivery and Sales (wholesale and/or retail sales) of Cannabis, Cannabis
- 21 Products, Industrial Hemp, or Industrial Hemp Products or any accessories for the use
- 22 of Cannabis, Cannabis Products, or Industrial Hemp or Industrial Hemp Products,
- 23 whether or not carried on for gain or profit, whether for medical or recreational use, and
- 24 whether or not such business is licensed by the State.
- 25 F. "Cannabis Nursery" shall have the meaning set forth in Business and Professions Code
- 26 section 26001(aj) and means a Cannabis Business that produces only clones, immature
- 27 plants, seeds, and other agricultural products used specifically for the propagation and
- 28 cultivation of cannabis.
- G. "Cannabis Product" shall have the meaning set forth in Health and Safety Code section
- 11018.1 and includes Cannabis or Industrial Hemp that has undergone a process
- whereby the plant material has been transformed into a concentrate, including, but not

1 limited to, concentrated Cannabis or Industrial Hemp, or an edible or topical product
2 containing Cannabis or Industrial Hemp or concentrated Cannabis or Industrial Hemp
3 and other ingredients.

4 H "Cannabis Business Tax" or "Business Tax," means the tax due pursuant to this Chapter
5 for engaging in a Cannabis Business in the City.

6 I. "City" means the City of Oceanside.

7 J. "City Attorney" means the City Attorney of the City of Oceanside, or designee.

8 K. "Commercial Cannabis Cultivation" means Cultivation conducted by, for, or as part of a
9 Cannabis Business. Commercial Cannabis Cultivation does not include Industrial Hemp
10 Cultivation or Cultivation for personal adult-use as authorized under the MAUCRSA,
11 for which the individual receives no compensation whatsoever.

12 L. "Cultivation" shall have the meaning set forth in Business and Professions Code section
13 26001(l) and includes any activity involving the planting, growing, harvesting, drying,
14 curing, grading, or trimming of Cannabis.

15 M. "Delivery" shall have the meaning set forth in Business and Professions Code section
16 26001(p) and includes the commercial transfer of Cannabis, Cannabis Products,
17 Industrial Hemp or Industrial Hemp Products to a customer. "Delivery" also includes
18 the use by a retailer of any technology platform.

19 N. "Distribution" shall have the meaning set forth in Business and Professions Code
20 section 260001(r) and includes the procurement, sale, and transport of Cannabis and
21 Cannabis Products between licensees. This shall include Industrial Hemp or Industrial
22 Hemp Products as determined by the state and/or City of Oceanside regulations that
23 may be adopted or amended from time to time.

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

28 P. "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

1 fixed location in the City or coming into the City from an outside location to engage in
2 such activities. A person shall be deemed engaged in business within the City if:

3 1. Such person or person's employee maintains a fixed place of business within the
4 City for the benefit or partial benefit of such person;

5 2. Such person or person's employee owns or leases real property within the City
6 for business purposes;

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

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

11 5. Such person or person's employee performs work or renders services in the City.
12

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

15 Q. "Evidence of doing business" means evidence such as, without limitation, use of signs,
16 circulars, cards or any other advertising media, including the use of internet or telephone
17 solicitation, or representation to a government agency or to the public that such person is
18 engaged in a Cannabis Business in the City.

19 R. "Gross Receipts" except as otherwise specifically provided, means, whether designated as a
20 sales price, royalty, rent, membership fee, ATM service fee, delivery fee, slotting fee, any
21 other fee, vaping room service charge, commission, dividend, or other designation, the total
22 amount (including all receipts, cash, credits, services and property of any kind or nature)
23 received or payable for sales of goods, wares or merchandise, or for the performance of any
24 act or service of any nature for which a charge is made or credit allowed (whether such
25 service, act or employment is done as part of or in connection with the sale of goods, wares,
26 merchandise or not), without any deduction therefrom on account of the cost of the property
27 sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any
28 other expense whatsoever. However, the following shall be excluded from Gross Receipts:

1. Cash discounts 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 property returned by Purchasers to the seller as a refund by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
4. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;
5. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the Tax Administrator with the names and 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 trustee;
6. Cash value of Sales, trades or transactions between departments or units of the same business located in the City of Oceanside or if authorized by the Tax Administrator in writing in accordance with section 34.5.11;
7. 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;
8. 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;
9. Retail sales of non-cannabis products, such as 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 industrial hemp) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 34.5.11 shall not be subject to the Cannabis Business Tax under this section. However, any business activities not subject to this section as a

1 result of an administrative ruling shall be subject to the appropriate business tax
2 provisions of Chapter 15 or any other Title or Chapter of this Code as determined by the
3 Tax Administrator.

4 10. Any business which sells industrial hemp and/or hemp products or offers services or
5 activities related to industrial hemp or hemp products and /or which is not required to
6 obtain a cannabis or industrial hemp permit or license from the City or the State for the
7 purpose of manufacturing, processing, packaging, transporting, distributing, testing or
8 selling of industrial hemp either wholesale or retail shall be exempt from the cannabis
9 tax provided that such business does not generate more than fifty percent (50%) of their
10 total gross receipts in the reporting period from the business from industrial hemp
11 activities. However, the exemption may be amended by the City Council by resolution or
12 ordinance pursuant to Section 34.5.5 (B) to increase or decrease the percentage of the
13 business's hemp and/or hemp products gross receipts reporting from zero to one hundred
14 percent. To the extent the gross receipts from the hemp activities do not meet the
15 relevant percentage to be included, this exclusion shall reduce the gross receipts to zero.
16 The business shall still be subject to appropriate business tax provisions of other
17 Chapters of the Oceanside City Code.

18 S. "Industrial Hemp" means a crop that is limited to types of the plant *Cannabis sativa* L.
19 having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in
20 the dried flowering tops, whether growing or not; the seeds of the plant; the resin
21 extracted from any part of the plant; and every compound, manufacture, salt, derivative,
22 mixture, or preparation of the plant, its seeds or resin produced therefrom.

23 T. "Industrial Hemp Products" means any raw hemp that has undergone a process whereby
24 the raw agricultural product has been transformed into a concentrate, an edible product,
25 or a topical product. "Hemp Product" also means hemp products as defined by Section
26 11018.5 of the California Health and Safety Code.

27 U. "Lighting" means a source of light that is primarily used for promoting the biological
28 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

1 openings.

- 2 V. "Manufacture" shall have the meaning set forth in Business and Professions Code
3 section 26001(ag) and means to compound, blend, extract, infuse, or otherwise make or
4 prepare a Cannabis Product.
- 5 W. "Medicinal Cannabis" or "Medicinal Cannabis Product" means cannabis or a cannabis
6 product, intended to be sold or sold for use pursuant to the Compassionate Use Act of
7 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code,
8 for a medicinal cannabis patient in California who possesses a physician's
9 recommendation, or a cannabis card issued pursuant to Health and Safety Code Section
10 11362.71.
- 11 X. "Operation" shall have the meaning set forth in Business and Professions Code section
12 26001(ak) and includes any act for which licensure is required under state law, or any
13 commercial transfer of Cannabis or Cannabis Products.
- 14 Y. "Person" means an individual, firm, partnership, joint venture, association, corporation,
15 limited liability company, estate, trust, business trust, receiver, syndicate, or any other
16 group or combination acting as a unit, whether organized as a non-profit or for-profit
17 entity and includes the plural as well as the singular number.
- 18 Z. "Processing" means a cultivation site that conducts only trimming, drying, curing,
19 grading, packaging, or labeling of cannabis, industrial hemp and nonmanufactured
20 cannabis or hemp products.
- 21 AA. "Purchaser" means the customer who is engaged in a transaction with a Person subject
22 to licensure under state law for purposes of obtaining Cannabis or Cannabis Products.
- 23 BB. "Sale" and "Sell" shall have the meaning set forth in Business and Professions Code
24 section 26001(as) and includes any transaction whereby, for any consideration, title to
25 cannabis, cannabis products, industrial hemp or industrial hemp products is transferred
26 from one person to another, and includes the delivery of cannabis, industrial hemp or
27 cannabis or industrial hemp products pursuant to an order placed for the purchase of the
28 same and soliciting or receiving an order for the same, but does not include the return of
cannabis, hemp or cannabis or industrial hemp products by a licensee to the licensee
from whom the cannabis, hemp or cannabis or industrial hemp products was purchased.
- CC. "State" shall mean the State of California.

1 DD. "State License," "License," or "Registration" means a state license issued pursuant to
2 California Business & Professions Code Section 26050, and all other applicable state
3 laws, required for operating a cannabis business or regulations which may be adopted
4 from time to time.

5 EE. "Tax Administrator" means the City Manager or his/her designee.

6 FF. "Testing Laboratory" means a cannabis business that (i) offers or performs tests of
7 cannabis, cannabis products, industrial hemp and/or industrial hemp products (ii) offers
8 no service other than such tests, (iii) sells no products, excepting only testing supplies
9 and materials, (iv) is accredited by an accrediting body that is independent from all
10 other persons involved in the cannabis industry in the state and (v) is registered with the
11 Bureau of Cannabis Control or other state agency.

12 34.5.5 CANNABIS BUSINESS TAX.

13 A. There is hereby imposed on every Cannabis Business in the City, excluding
14 Commercial Cannabis Cultivation and Testing Laboratories, an annual tax at a rate to be
15 established pursuant to Section 34.5.5.B, by ordinance or resolution of the City Council. The
16 tax for all Cannabis Businesses, excluding Commercial Cannabis Cultivation businesses and
17 Testing Laboratories, shall be imposed with respect to the Gross Receipts of such businesses
18 and shall be a minimum tax rate of no less than two percent (2%) and up to a maximum tax rate
19 of six percent (6%). The tax imposed under this Section shall be due and payable as provided in
20 Section 34.5.12. The tax upon Commercial Cannabis Cultivation businesses, shall be imposed
21 as provided in Section 34.5.6. Testing Laboratories shall be exempt from the cannabis business
22 tax.

23 B. The City Council may, by resolution or ordinance, increase or decrease the rate of the
24 cannabis business tax provided for in this Section. Notwithstanding the foregoing, in no event
25 shall the City Council repeal this ordinance or set any adjusted rate that is higher than the
26 maximum rate calculated pursuant to this Section with voter approval.

27 C. Cannabis Businesses subject to the tax imposed by subsections 34.5.5.A and 34.5.5.B
28 shall register and pay the registration fee described in Section 34.5.7, and shall comply with
Oceanside City Code Chapter 15, except that they shall be exempt from paying the general

1 business tax imposed by Chapter 15, Section 15.6 unless otherwise specified. Any Cannabis
2 Business not subject to the tax imposed by subsections 34.5.5.A. and 34.5.5.B. of this Section
3 or Section 34.5.6 is subject to the general business tax imposed by Chapter 15, except as
4 otherwise provided by this Code, including Section 34.5.6, or other applicable law.

5
6 34.5.6 CANNABIS CULTIVATION TAX.

7
8 A. There is hereby imposed on every Cannabis Business engaged in Commercial Cannabis
9 Cultivation in the City, an annual tax in an amount established pursuant to Section 34.5.6 C, by
10 ordinance or resolution of the City Council. The tax for all Commercial Cannabis Cultivation
11 Businesses shall be imposed with respect to the Gross Receipts of such businesses and shall be
12 up to a maximum tax rate of three and one half percent (3.5%). The tax imposed by this Section
13 shall be due and payable in installments as provided in Section 34.5.12.

14 B. Every Commercial Cannabis business shall pay: (i) the Cultivation tax imposed in
15 Section 34.5.6, instead of the tax imposed by Section 34.5.5 on its Cultivation activity and (ii)
16 the tax imposed by Section 34.5.5 on any and all of its other Cannabis Business activities. The
17 activity of Cannabis Nurseries as defined in Section 34.5.4, above, is subject to the tax imposed
18 by Section 34.5.5 rather than the tax imposed by this Section.

19 C. The City Council may, by resolution or ordinance, increase or decrease the rate of the
20 Cannabis Business Tax provided for in this Section. Notwithstanding the foregoing, in no event
21 shall the City Council repeal this ordinance or set any adjusted rate that is higher than the
22 maximum tax rates calculated pursuant to this Section without voter approval.

23
24 D. Cannabis Businesses engaged in Cultivation and subject to the tax imposed by this
25 Chapter shall register and pay the registration fee described in Section 34.5.7, and shall comply
26 with Oceanside City Code Chapter 15, except that they shall be exempt from paying the general
27 business tax imposed by Chapter 15, Section 15.6. Any Cannabis Business engaged in
28 Cultivation not subject to the tax imposed by Sections 34.5.6.A, and 34.5.6.B, is subject to the
general business tax imposed by Chapter 15, except as otherwise provided by this Code.

1 34.5.7 REGISTRATION OF CANNABIS BUSINESSES.

2 A. All Persons engaging in a Cannabis Business, whether an existing, newly-established or
3 acquired business, shall register with the Financial Services Department no later the thirty (30)
4 days prior to commencing Operation and shall annually renew such registration no less
5 frequently than one calendar year after the date of the most recent registration. In registering,
6 such Persons shall furnish to the Financial Services Department a sworn statement, upon a form
7 provided by the City, setting forth the following information:

- 8
- 9 1. The name of the Cannabis Business;
 - 10 2. The names and addresses of each Owner;
 - 11 3. The nature or kind of all business activity to be conducted;
 - 12 4. The place or places where such Cannabis Business is to be carried on; and
 - 13 5. Any further information which the Tax Administrator or designee may require.

14 B. Registrants shall pay an annual registration fee in an amount established from time to
15 time by resolution of the City Council to recover the City's costs to implement the taxes
16 imposed under this Chapter, the registration requirement of this Section, and the other
17 provisions of this Chapter. As a regulatory fee, such fee shall be limited to the City's reasonable
18 regulatory costs.

19 34.5.8 PAYMENT OBLIGATION.

20 All taxpayers subject to a tax under this Chapter shall pay that tax regardless of any rebate, exemption,
21 incentive, or other reduction set forth elsewhere in this Code, except as required by state or federal
22 law. Failure to pay such a tax shall be subject to penalties, interest charges, and assessments as
23 provided in this Chapter and the City may use any and all other enforcement remedies available at law
24 or in equity. No provision of this Code shall be interpreted to reduce a tax rate established under this
25 Chapter or otherwise reduce the taxes paid hereunder unless the provision specifically expresses that
26 reduction.

27
28 34.5.9 TAX PAYMENT DOES NOT AUTHORIZE ACTIVITY.

1 The payment of a tax imposed under this Chapter shall not be construed to authorize the conduct or
2 continuance of any illegal business or of a legal business in an illegal manner.

3 34.5.10 CANNABIS TAX IS NOT A SALES, INCOME OR PROPERTY TAX.
4

5 The taxes provided for under this Chapter are excises on the privilege of doing business in the City
6 regardless of whether such business would have been legal at the time this Section was adopted. They
7 are not sales or use taxes, taxes upon real property, or tax upon income and shall not be calculated or
8 assessed as such. Nevertheless, at the option of the taxpayer, the tax may be separately identified on
9 invoices, receipts and other evidence of transactions.

10 34.5.11 AMENDMENTS, RATE ADJUSTMENTS, AND ADMINISTRATION.

11 A. Any amendment to this Chapter to increase the taxes above the maximum tax rates
12 provided by this Chapter requires further voter approval. The voters authorize the City Council
13 to adopt an ordinance or resolution to set the taxes at or below the applicable maximum tax
14 rates and at or above the minimum tax rates established in this Chapter. The voters authorize
15 the City Council to establish exemptions, incentives, or other reductions, and penalties and
16 interest charges or assessments for failure to pay the tax when due, as otherwise allowed by the
17 City Charter, the City Code, and state law. No action by the City Council under this Section
18 shall prevent it from later adjusting the tax or removing any exemption, incentive, or reduction,
19 and restoring the maximum tax authorized by this Chapter and provided that the City Council's
20 action does not otherwise constitute a tax "increase" within the meaning of Government Code
21 section 53750, subdivision (h).

22 B. The Tax Administrator, in consultation with the City Attorney, may adopt
23 administrative policies to promulgate rules, regulations, and procedures to implement and
24 administer this Chapter to ensure the efficient and timely collection of the taxes imposed by this
25 Chapter, such policies shall be: (i) effective upon the date specified in the policy; (ii) signed by
26 the Tax Administrator and City Attorney; and (iii) posted on the City website by the City Clerk
27 prior to implementation.

28 C. The Tax Administrator shall annually audit the Cannabis taxes imposed by this Chapter
to verify that tax revenues have been properly collected and expended in accordance with the
law.

1 34.5.12 RETURNS AND REMITTANCES.

2 The taxes imposed by this Chapter shall be due and payable as follows:

- 3 A. The cannabis business tax imposed by this Section shall be paid, in arrears, on a
4 monthly basis. Each person owing a cannabis business tax each calendar month shall, no
5 later than the last day of the month following the close of the calendar month, file with
6 the Tax Administrator a statement (“tax statement”) of the tax owed for that calendar
7 month and the basis for calculating that tax. The Tax Administrator may require that the
8 tax statement be submitted on a form prescribed by the Tax Administrator. The tax for
9 each calendar month shall be due and payable on that same date that the tax statement
10 for the calendar month is due.
- 11 B. All tax returns shall be completed on forms provided by the Financial Services
12 Department.
- 13 C. Tax returns and payments for all outstanding taxes, fees, penalties and interest owed to
14 the City are immediately due upon cessation of business for any reason.
- 15 D. Whenever any payment, statement, report, request or other communication is due, it
16 must be received by the Financial Service Department on or before the final due date. A
17 postmark will not be accepted as timely remittance. If the due date would fall on a
18 Saturday, Sunday or a holiday observed by the City, the due date shall be the next
19 regular business day on which the City is open to the public.
- 20 E. Unless otherwise specifically provided by this Chapter, the taxes imposed by this
21 Chapter shall be deemed delinquent if not paid on or before the due date specified in
22 subsection 34.5.12.A and 34.5.12.C.
- 23 F. The Financial Services Department may, but need not, send a delinquency or other
24 notice or bill to any Person subject to a tax or fee imposed by this Chapter and failure to
25 send such notice or bill shall not affect the validity of any tax, fee, interest or penalty
26 due under this chapter.

26 34.5.13 FAILURE TO PAY TIMELY.

- 27 A. Any Person who fails or refuses to pay any tax or fee imposed by this Chapter when due
28 shall pay penalties and interest as follows:

- 1 1. A penalty equal to 10 percent of the tax or fee, in addition to the amount of the tax;
- 2 2. An additional penalty equal to 25 percent of the amount of the tax or fee if unpaid
- 3 for more than a month beyond the due date; and
- 4 3. Interest charges on the amount of any and all unpaid taxes, fees, or penalties at the
- 5 rate of one percent interest per month from the date due until paid. Interest shall be
- 6 applied at the rate of one percent per month on the first day of the month for the full
- 7 month and will continue to accrue monthly on the tax and penalty until the balance
- 8 is paid in full.

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

13 C. The Tax Administrator may waive some or all of the penalties imposed by this Section
14 as to any Person if:

- 15 1. The Person provides evidence satisfactory to the Tax Administrator that failure to
16 pay timely was due to circumstances beyond the control of the Person and occurred
17 notwithstanding the exercise of ordinary care and the absence of willful neglect, and
18 the Person paid the delinquent tax or fee and accrued interest owed the City upon
19 applying for a waiver.
- 20 2. A waiver authorized by this subsection shall not apply to tax, fee or interest and may
21 be granted to a taxpayer only once during any 24-month period.

22 34.5.14 REFUNDS.

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

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

27 C. Any Person entitled to a refund of sums paid under this Chapter may elect to have such
28 refund applied as a credit against future obligations under this Chapter.

1 D. Whenever any tax, fee, penalty, or interest under this chapter has been overpaid, paid
2 more than once, or has been erroneously or illegally collected or received by the City, such
3 amount shall be refunded to the Person who over paid the tax upon a timely written claim for
4 refund filed with the Tax Administrator

5 E. The Tax Administrator may examine and audit all the books and business records of the
6 claimant to determine eligibility to the claimed refund. No claim for refund shall be allowed if
7 the claimant refuses to allow such examination of the claimant's books and business records.

8 F. A sum erroneously paid under this Chapter due to an error of the City shall be refunded
9 to the claimant in full upon a timely claim under applicable provisions of the Government
10 Code. If an error is attributable to the claimant, the City may retain an amount established by
11 ordinance or resolution of the City Council from time-to-time in an amount sufficient to
12 recover the City's cost to process the claim and refund the balance.

13 G. The Tax Administrator shall initiate a refund of any sum overpaid or erroneously
14 collected under this Chapter whenever the overpayment or erroneous collection is disclosed by
15 a City audit for the period of time for which a timely claim might then be filed.

16 34.5.15 ENFORCEMENT.

17 A. The Tax Administrator shall enforce this Chapter.

18 B. The Tax Administrator may audit and examine all business locations, books and records
19 of Cannabis Businesses, including both state and federal income tax returns, California sales
20 tax returns, California excise tax returns, or other evidence documenting the Gross Receipts of
21 a Cannabis Business to ascertain any tax due under this Chapter and to verify any returns or
22 other information any Person submits to the City under this Chapter. If a Cannabis Business,
23 after written demand by the Tax Administrator, refuses to make available for audit,
24 examination or verification such locations, books, and records as the Tax Administrator
25 requests, the Tax Administrator may, after full consideration of all such information as is
26 available make an assessment of the tax or fee due and demand payment from the tax or fee-
27 payer, together with any penalties and interest due for late payment. In the event that a dispute
28 between a cannabis cultivator and the Tax Administrator arises relative to the value of
cultivated product, fair market value shall be based on current values identified by Cannabis
Benchmarks® or a similar pricing service as determined by the Tax Administrator.

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

7 D. Any Person violating any of the provisions of this Chapter or any regulation or rule
8 adopted pursuant to it, or knowingly or intentionally misrepresenting any material fact to the
9 City in procuring a certificate or document from the City under this Chapter, or shall be guilty
10 of a misdemeanor unless the City Attorney, in his or her discretion, elects to prosecute it as an
11 infraction in the interests of justice.

12 E. In addition to the penalty imposed for a failure to timely pay any tax or fee imposed by
13 this Chapter, the City may enforce the violations of this Chapter pursuant to the administrative
14 remedies ordinance, Sections 1.14 through 1.14.8 of this Code.

15 34.5.16 CONSISTENCY WITH BUSINESS TAX RULES.

16 This Chapter to be enforced consistently with Chapter 15 of this Code and any rule or regulation
17 promulgated under that Chapter except as expressly provided to the contrary in this Chapter.

18 34.5.17 SUCCESSOR AND ASSIGNEE RESPONSIBILITY.

19
20 A. If any Person, while liable for any amount under this Chapter, sells, assigns or otherwise
21 transfers half or more of a taxed Cannabis Business, whether voluntarily or involuntarily, the
22 Person's successor, assignee or other transferee, or other Person or entity obtaining ownership
23 or control of the business ("transferee") shall pay that amount when due. A transferee shall
24 notify the Director of Financial Services of a transfer thirty (30) days before the transfer date; or
25 if the agreement to sell, transfer, or otherwise dispose of the business is made less than thirty
26 (30) days before the date of transfer, on the first day the City is open for business after the
27 transfer.

28 B. 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

1 this Section by withholding from the purchase price, for the benefit of the City, an amount
2 sufficient to cover the liability, or by otherwise paying the liability and obtaining from the
3 Director of Financial Services a "Tax Clearance Certificate" showing that all outstanding
4 liability has been paid through the date of transfer.

5 C. Within ninety (90) days of receiving a written request from a transferee, the Director of
6 Financial Services may issue a "Tax Clearance Certificate" stating either the amount due as to
7 the business under this Chapter, or stating that there is no liability due for the business through
8 a stated date. The Tax Administrator may also request financial records from the transferor to
9 audit the amount due under this Chapter. The Tax Administrator shall issue a tax clearance
10 certificate within thirty (30) days of completing the audit, stating any amount owed, unless the
11 Tax Administrator determines the records provided for audit are insufficient to determine
12 whether taxes, fees, penalties and/or interest are due and in what amounts. If so, the Tax
13 Administrator may rely on available information to estimate any amount due and shall issue a
14 tax clearance certificate stating that amount. A written application for an appeal hearing on the
15 amount assessed on a tax clearance certificate must be made within 10 days after the Tax
16 Administrator serves or mails the certificate. The appeal provision of Section 1.14.4 of this
17 Code shall apply. If a timely application for a hearing is not made, the tax clearance certificate
18 shall serve as conclusive evidence of the liability under this Chapter associated with the
19 business through the date stated on the certificate.

20 34.5.18 DEBTS, DEFICIENCIES AND ASSESSMENTS.

21 A. The amount of any tax, fee, penalties, and interest imposed by this Chapter shall be
22 deemed a debt to the City and any Person operating a Cannabis Business without first having
23 procured a business license and paid all requisite business license taxes, as provided in this
24 Chapter, shall be liable in an action in the name of the City in any court of competent
25 jurisdiction for the amount due.

26 B. If no return or statement is timely filed, or if the Tax Administrator is not satisfied that
27 any return or other statement filed under this Chapter is correct, or that the amount due is
28 correctly computed, the Tax Administrator may determine that amount and make a deficiency
determination upon available information. The Tax Administrator may make one or more
deficiency determinations for a period or periods. When a Person discontinues engaging in a

1 business, the Tax Administrator may make a deficiency determination at any time within three
2 years thereafter as to any liability arising from engaging in such business whether or not a
3 deficiency determination is issued before the date the tax would otherwise be due. Whenever a
4 deficiency determination is made, a notice shall be given to the Person concerned as are notices
5 of assessment under Sections 34.5.18.C.

6 C. Under any of the following circumstances, the Tax Administrator may make and give
7 notice of an assessment of taxes, fees, penalties and interest owed under this Chapter:

- 8 1. If the Person has not filed any statement or return required by this Chapter;
- 9 2. If the Person has not paid any tax, fee, penalty or interest due under this Chapter;
- 10 3. If the Person has not, after demand by the City filed a corrected statement or
11 return, or adequate substantiation of the information contained in a statement or return
12 previously filed, or paid any additional amount due under this Chapter;
- 13 4. If the Tax Administrator determines nonpayment of any amount due under this
14 Chapter is due to fraud, a penalty of 25 percent of the amount of otherwise due shall be
15 added thereto in addition to penalties and interest otherwise stated in this chapter.
- 16 5. The notice of assessment shall separately set forth any amount the Tax
17 Administrator knows or estimates to be due under this chapter, including any penalties
18 or interest accrued to the date of the notice.
- 19 6. A notice of assessment shall be served upon the tax- or fee-payer either by
20 personal service or by a deposit in the United States mail, postage prepaid, addressed to
21 the address appearing on the Local License issued under Chapter 7, Article XIII of this
22 Code or such other address as a tax- or fee-payer may provide the Tax Administrator in
23 writing for notices under this Chapter; or, should the Person have no business tax
24 certificate issued and no address provided to the Tax Administrator for such purpose,
25 then to such Person's last known address. Service by mail is complete upon deposit in
26 the United States mail as provided in this paragraph. If no address is known, notice may
27 be given by posting at or near the location of the business.
- 28

1 D. Within 10 days after service of a notice of assessment, the tax- or fee-payer may apply
2 in writing to the Tax Administrator for a hearing on the assessment. If no timely application for
3 a hearing is made, the amount assessed shall be final and conclusive. Within 30 days of the
4 receipt of an application for hearing, the Tax Administrator shall cause the matter to be set for
5 an administrative hearing using the procedures set forth in Section 1.14.4 of this Code. The Tax
6 Administrator shall give notice of such hearing to the Person requesting it not later than five
7 business days before the hearing. At such hearing, the applicant may appear and offer why the
8 assessment should not be confirmed. After such hearing, the hearing officer shall determine the
9 amount due under this Chapter and shall give written notice to the Person as prescribed in this
10 Chapter for giving notice of assessment. That decision is final as to the City, but either the City
11 or the appellant may seek judicial review as provided by California Code of Civil Procedure
12 section 1094.6.

13 34.5.19 APPORTIONMENT

14 A. No tax imposed by this Chapter shall be applied so as to occasion an undue burden
15 upon interstate commerce or violate the equal protection and due process clauses of the
16 Constitutions of the United States or the State of California or otherwise exceed the City's
17 lawful authority.

18 B. If any case where a business tax imposed under this Chapter is believed by a taxpayer to
19 place an undue burden upon interstate commerce or violate such constitutional clauses or other
20 applicable law, the taxpayer may apply to the Tax Administrator for an adjustment of the tax. It
21 shall be the taxpayer's obligation to request in writing for an adjustment within one year after
22 the date of payment of the tax. If the taxpayer does not request in writing within one year from
23 the date of payment, then the taxpayer shall be conclusively deemed to have waived any
24 adjustment for that year.

25 C. The taxpayer shall, by sworn statement and supporting testimony, show the method of
26 business and the gross revenues of business and such other information as the Tax
27 Administrator may deem necessary to determine compliance with this Chapter. The Tax
28 Administrator shall then conduct an investigation, and shall fix as the tax for the taxpayer an
amount that is reasonable, nondiscriminatory, and lawful, or if the tax has already been paid,
shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be

1 charged, the Tax Administrator shall have the power to base the tax upon a percentage of Gross
2 Receipts or any other measure which will ensure that the tax assessed shall be uniform with that
3 assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as
4 prescribed by this Chapter and permitted by applicable law.

5 D. The Tax Administrator may require the taxpayer to submit a sworn statement of the
6 Gross Receipts or other data required to calculate the tax and to pay the amount of tax as
7 determined by the Tax Administrator.

8 SECTION 2. AMENDMENT. To the extent authorized by Article XIII C of the California
9 Constitution, this ordinance may be amended or modified by the City Council without a vote of the
10 People. Voter approval is required for any amendment or modification that would repeal this
11 Ordinance or increase, within the meaning of Government Code section 53750(h), applicable tax rates
beyond the maximum rates authorized by this Ordinance.

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

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

22 SECTION 5. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of the
23 City's Cannabis Business Tax and shall not take effect until ten days after the certification of its
24 approval by the majority of the voters voting at the general municipal election to be held on November
25 3, 2020 pursuant to Elections Code section 9217. The tax rates established in this Ordinance shall be
26 operative on January 1, 2021.

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

1 INTRODUCED at a regular meeting of the City Council of the City of Oceanside, California,
2 held on the 5th day of August, 2020; and, thereafter

3 PASSED and ADOPTED at a regular meeting of the City Council of the City of Oceanside
4 California, held on the ____ day of _____, 2020, subject to majority voter approval on
5 November 3, 2020 by the following vote:

6 AYES:

7 NAYS:

8 ABSENT:

9 ABSTAIN:

10
11 MAYOR OF THE CITY OF OCEANSIDE

12 ATTEST:

13 APPROVED AS TO FORM:

14
15 _____
16 CITY CLERK

17
18 
19 _____
20 CITY ATTORNEY

21
22 AN ORDINANCE OF THE CITY OF OCEANSIDE ADDING ARTICLE V TO
23 CHAPTER 34 OF THE OCEANSIDE CITY CODE ESTABLISHING A TAX ON
24 CANNABIS BUSINESS ACTIVITY
25
26
27
28