

ORDINANCE NO. 2020-028

AN ORDINANCE OF THE PEOPLE OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, AMENDING DIVISION 4, "REVENUE AND FINANCE," OF THE SAN BUENAVENTURA MUNICIPAL CODE BY ADDING CHAPTER 4.170, "CANNABIS BUSINESS TAX," TO THE SAN BUENAVENTURA MUNICIPAL CODE

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF SAN BUENAVENTURA AS FOLLOWS:

SECTION 1. CODE ADDITION. Division 4, "Revenue and Finance," of the San Buenaventura Municipal Code is hereby amended by the addition of Chapter 4.170, "Cannabis Business Tax," to read as follows:

**"Chapter 4.170
CANNABIS BUSINESS TAX**

Sections:

- 4.170.010. Title.**
- 4.170.020. Authority and Purpose.**
- 4.170.030. Limitations on Expenditures for Revenue Raised by Tax.**
- 4.170.040. Intent.**
- 4.170.050. Definitions.**
- 4.170.060. Tax Imposed.**
- 4.170.070. Reporting and Remittance of Tax.**
- 4.170.080. Payments and Communications –Timely Remittance.**
- 4.170.090. Payment – When Taxes Deemed Delinquent.**
- 4.170.100. Notice not Required by City.**
- 4.170.110. Penalties and Interest.**
- 4.170.120. Refunds and Credits.**
- 4.170.130. Refunds and Procedures.**
- 4.170.140. Personal Cultivation not Taxed.**
- 4.170.150. Administration of the Tax.**

- 4.170.160. Appeal Procedure.**
- 4.170.170. Enforcement – Action to Collect.**
- 4.170.180. Apportionment.**
- 4.170.190. Constitutionality and Legality.**
- 4.170.200. Audit and Examination of Premises and Records.**
- 4.170.210. Other Licenses, Permits, Taxes or Charges.**
- 4.170.220. Payment of Tax does not Authorize Unlawful Business.**
- 4.170.230. Deficiency Determinations.**
- 4.170.240. Failure to Report – Nonpayment, Fraud.**
- 4.170.250. Tax Assessment – Notice Requirements.**
- 4.170.260. Tax Assessment – Hearing, Application, and Determination.**
- 4.170.270. Conviction for Violation – Taxes not Waived.**
- 4.170.280. Violation Deemed Misdemeanor.**
- 4.170.290. Remedies Cumulative.**
- 4.170.300. Amendment or Repeal.**
- 4.170.310. Automatic Sunset and Revocation of City Permits.**

4.170.010. Title.

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

4.170.020. Authority and Purpose.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37100.5 and 37101 of the California Government Code, upon Cannabis Businesses that Engage in a Cannabis Business in the City. The Cannabis Business Tax is levied based upon Cannabis Business' gross receipts and square footage of plant

Canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property.

4.170.030. Limitations on Expenditures for Revenue Raised by Tax.

The Cannabis Business Tax, and specifically each type or rate of tax set forth in Section 4.170.060, including tax rates per square foot of cannabis or hemp canopy space; for testing laboratories; for cannabis or hemp retailers, delivery services or microbusinesses; for cannabis or hemp distribution businesses (not to consumers); for cannabis or hemp manufacturing, processing, or microbusinesses (non-retail); and for any other types of cannabis or hemp businesses, are general taxes enacted solely for unrestricted general revenue purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's General Fund and be available for any legal municipal purpose in accordance with this Section. This standalone Section of the Cannabis Business Tax Ordinance is a true and impartial statement of facts explicitly and affirmatively identifying each tax and the specific limitation on how the revenue therefrom can be spent. This Section, as part of the San Buenaventura Municipal Code, is legally binding and enforceable.

4.170.040. Intent.

The intent of this Ordinance is to levy a tax on all Cannabis Businesses that operate in the City, regardless of whether such Business would have been legal at the time this Ordinance was adopted. Nothing in this

Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

4.170.050. 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 City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.
- B. Calendar Year means January 1 through December 31 of any year.
- C. Cannabis means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. Cannabis also means the separated resin, whether crude or purified, obtained from cannabis. Cannabis also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.

- D. Cannabis Product means raw Cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. Cannabis Product also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.
- E. Canopy means all areas occupied by any portion of a Cannabis or Hemp plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate Canopy area.
- F. Cannabis Business means any Business activity involving Cannabis or Hemp, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing, and wholesaling of Cannabis or Hemp, of Cannabis Products or of ancillary products and accessories, whether or not carried on for gain or profit.
- G. Cannabis Business Tax or Tax means the tax due pursuant to this Chapter for Engaging in Cannabis Business in the City.
- H. Commercial Cannabis Cultivation

means Cultivation in the course of conducting a Cannabis Business.

- I. City Permit means a permit issued by the City to a person to authorize that person to operate or engage in a Cannabis Business.
- J. CPI means the Consumer Price Index for all urban consumers in the Los Angeles-Long Beach-Anaheim area as published by the United States Government Bureau of Labor Statistics.
- K. Cultivation means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis or Hemp and includes, but is not limited to, the operation of a nursery.
- 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 Cannabis Business means the commencing, conducting, operating, managing, or carrying on of a Cannabis Business, whether done as owner, or by means of an officer, agent, manager, Employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such

activities. A Person shall be deemed Engaged in Cannabis Business within the City if:

1. Such Person or Person's officer, agent, manager, Employee, or otherwise maintains a fixed place of business within the City for the benefit or partial benefit of such Person;
2. Such Person or Person's officer, agent, manager, Employee, or otherwise owns or leases real property within the City for Business purposes;
3. Such Person or Person's officer, agent, manager, Employee, or otherwise regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of Business;
4. Such Person or Person's officer, agent, manager, Employee, or otherwise regularly conducts solicitation of Business within the City; or,
5. Such Person or Person's officer, agent, manager, Employee, or otherwise performs work or renders services in the City.

The foregoing specified activities shall not be a limitation on the meaning of Engaged in Cannabis Business.

N. Gross Receipts, except as otherwise

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

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in Gross Receipts;
4. Receipts derived from the occasional sale of used, obsolete,

or surplus trade fixtures, machinery, or other equipment used by the taxpayer in the regular course of the taxpayer's Business;

5. Cash value of sales, trades, or transactions between departments or units of the same Business;
6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
8. Amounts collected for others where the Business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Tax Administrator with the names and the addresses of the

individuals on whose behalf the Business is collecting and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by or paid to the agent or trustees.

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property, which the Tax Administrator has excluded, in writing, by issuing an administrative ruling per 4.170.140, shall not be subject to the Cannabis Business Tax under this Chapter. However, any Business activities not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax provisions of Chapter 4.155 or any other Chapter or Division as determined by the Tax Administrator.

- O. Hemp means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

- P. Lighting means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.
- Q. Nursery means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and Cultivation of Cannabis or Hemp.
- R. 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.
- S. Sale means and includes any sale, exchange, or barter.
- T. State means the State of California.
- U. State License means a state license issued pursuant to California Business & Professions Code Sections 26050, *et seq.* or other applicable state law.
- V. Tax Administrator means the City's Business Tax Officer or other City

official designated in writing by the City Manager.

- W. Testing Laboratory means a Cannabis Business that (i) offers or performs tests of Cannabis, Hemp or Cannabis Products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other Persons involved in the Cannabis industry in the State and (v) is registered with the State Department of Public Health.

4.170.060. Tax Imposed.

- A. Beginning January 1, 2021, a Cannabis Tax is imposed upon each Person who is Engaged in a Cannabis Business. Such Tax is payable regardless of whether the Business has been issued a City Permit to operate lawfully in the City or is operating unlawfully. The City's acceptance of a Cannabis Business Tax payment from a Cannabis Business operating illegally will not constitute the City's approval or consent to such illegal operations.
- B. The initial rate of the Cannabis Business Tax shall be as follows:
 - 1. For every Person who is engaged in Commercial Cannabis or Hemp Cultivation in the City:
 - a. Seven dollars (\$7.00) annually per square foot of

Canopy space in a facility that uses exclusively artificial Lighting.

- b. Four dollars (\$4.00) annually per square foot of Canopy space in a facility that uses a combination of natural and supplemental artificial Lighting.
- c. Two dollars (\$2.00) annually per square foot of Canopy space in a facility that uses no artificial Lighting.
- d. One dollar (\$1.00) annually per square foot of Canopy space for any Nursery.

For purposes of this subsection (B), the square feet of Canopy space for a Cannabis Business shall be rebuttably presumed to be the maximum square footage of Canopy allowed by the Cannabis Business' City Permit for Commercial Cannabis Cultivation, or, in the absence of a City Permit, the square footage shall be the maximum square footage of Canopy for Commercial Cannabis Cultivation allowed by the State License type. Should a City Permit be issued to a Cannabis Business which Cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which Cultivation is occurring at the business. In no case shall Canopy square footage which is authorized by the City Permit and/or

State License but not utilized for Cultivation be deducted for the purpose of determining the Tax for Cultivation, unless the Tax Administrator is informed in writing and authorizes such reduction for the purpose of relief from the Tax prior to the period for which the space will not be used, that such space will not be used.

2. For every Person who engages in the operation of a Testing Laboratory: one percent (1%) of Gross Receipts annually.
3. For every Person who engages in the retail sales of Cannabis or Hemp as a retailer (dispensary or other fixed-location business), delivery service (or other web-based or non-store front retailer with or without delivery), or microbusiness (retail sales): four percent (4%) of Gross Receipts annually.
4. For every Person who engages in Cannabis or Hemp distribution (not to consumers): two percent (2%) of Gross Receipts annually.
5. For every Person who engages in a Cannabis or Hemp manufacturing, processing, or microbusiness (non-retail), or any other type of Cannabis Business not described in subsections (B) (1), (2), (3) or (4): two and half percent (2.5%) of Gross Receipts annually.

- C. The City Council may, by resolution or ordinance, adjust the rate of the Cannabis Business Tax. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate calculated pursuant to subsections (D) of this Section for the date on which the adjusted rate will commence.

- D. The maximum rate shall be calculated as follows:
 - 1. For every Person who is engaged in Commercial Cannabis or Hemp Cultivation in the City:
 - a. Through January 1, 2023, the maximum rate shall be:
 - i. Ten dollars (\$10.00) annually per square foot of Canopy space in a facility that uses exclusively artificial lighting.
 - ii. Seven dollars (\$7.00) annually per square foot of Canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
 - iii. Four dollars (\$4.00) annually per square foot of Canopy space in a facility that uses no artificial lighting.
 - iv. Two dollars (\$2.00) annually per square foot of Canopy space for any Nursery.

- b. On January 1, 2024 and on each January 1 thereafter, the maximum annual tax rate per square foot of each type of Canopy space shall increase by the percentage change in the CPI between January of the prior Calendar Year and January of the Calendar Year of the increase. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.
2. For every Person who engages in the operation of a Testing Laboratory, the maximum tax rate shall not exceed two and a half percent (2.5%) of Gross Receipts annually.
3. For every Person who engages in the retail sales of Cannabis or Hemp as a retailer (dispensary or other fixed-location business), delivery service (or other web-based or non-store front retailer, with or without delivery), or microbusiness (retail sales) the maximum tax rate shall not exceed eight percent (8%) of Gross Receipts annually.
4. For every Person who engages in Cannabis or Hemp distribution (not to consumers), the maximum tax rate shall not exceed three percent (3%) of Gross Receipts annually.

5. For every Person who engages in a Cannabis or Hemp manufacturing, processing, or microbusiness (non-retail) or any other type of Cannabis Business not described in subsections (D) (1), (2), (3) or (4), the maximum tax rate shall not exceed four percent (4%) of Gross Receipts annually.

4.170.070. Reporting and remittance of tax.

- A. The Cannabis Business Tax imposed by this Chapter shall be paid, in arrears, on a quarterly basis. For Commercial Cannabis Cultivation, the Tax due for each calendar quarter shall be based on the square footage of the Cannabis Business's Canopy space during the quarter and the rate shall be twenty-five percent (25%) of the applicable annual rate. For all other Cannabis Business activities, the Tax due for each calendar quarter shall be based on the Gross Receipts for the quarter.

For purposes of this Section, the square feet of Canopy space for a Cannabis Business shall be rebuttably presumed to be no less than the maximum square footage of Canopy allowed by the Cannabis Business's City Permit for Commercial Cannabis Cultivation, or, in the absence of a City Permit, the square footage shall be the maximum square footage of Canopy for Commercial Cannabis Cultivation allowed by the State License type. In no case shall

Canopy square footage which is authorized by the City Permit or State License but not utilized for Cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used.

- B. Each Person owing Cannabis Business Tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the Tax Administrator a statement of the Tax owed for that calendar quarter and the basis for calculating that Tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The Tax for each calendar quarter shall be due and payable on that same date that the statement for the calendar quarter is due.
- C. Upon cessation of a Cannabis Business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.
- D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any Cannabis Business as the Tax Administrator deems necessary to ensure collection of the Tax. The Tax Administrator may also require that a deposit, to be applied against the Taxes for a calendar quarter, be made by a Cannabis

Business at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the Tax amount he or she projects will be owed by the Cannabis Business for the calendar quarter. The Tax Administrator may require that a Cannabis Business make payments via a cashier's check, money order, wire transfer, or similar instrument.

4.170.080. Payments and Communications – Timely Remittance.

Whenever any payment, statement, report, request, or other communication is due, it must be postmarked on or before the final due date. If the due date would fall on a Saturday, Sunday, a holiday observed by the City or a Friday on which the City is closed, the due date shall be the next regular business day on which the City is open to the public.

4.170.090. Payment - When Taxes Deemed Delinquent.

Unless otherwise specifically provided under other provisions of this Chapter, the Taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 4.170.070 and 4.170.080.

4.170.100. Notice Not Required by the City.

The City may, as a courtesy, send a tax notice to the Cannabis Business. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the validity of any Tax or penalty due under the provisions of this Chapter.

4.170.110. Penalties and Interest.

- A. Any Person who fails or refuses to pay any Cannabis Business Tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:
1. A penalty equal to ten percent (10%) of the amount of the Tax, in addition to the amount of the Tax, plus interest on the unpaid Tax calculated from the due date of the Tax at the rate of one percent (1.0%) per month.
 2. If the Tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the Tax, plus interest at the rate of one percent (1.0%) per month on the unpaid Tax and penalties.
 3. Interest will continue to accrue monthly on the Tax and penalties until the balance is paid in full.

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

4.170.120. Refunds and Credits.

- A. No refund shall be made of any Tax collected pursuant to this Chapter, except as provided in Section 4.170.130.
- B. No refund of any Tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

4.170.130. Refunds and Procedures.

- A. Whenever the amount of any Cannabis Business Tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the Cannabis Business that paid the Tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the Tax was originally due and payable.
- B. The Tax Administrator, his or her designee or any other City officer

charged with the administration of this Chapter shall have the right to examine and audit all the books and Business records of the Cannabis Business in order to determine whether the Cannabis Business is eligible to receive the claimed refund. No claim for refund shall be allowed if the Cannabis Business refuses to allow such examination of the Cannabis Business' books and business records after request by the Tax Administrator to do so.

- C. If the Cannabis Business Tax was erroneously paid, and the error is attributable to the City, the City shall have up to one (1) year from the date that the Tax was paid to refund the amount of Tax erroneously paid.

4.170.140. Personal Cultivation Not Taxed.

The provisions of this Chapter shall not apply to personal Cannabis Cultivation as defined in the Medicinal and Adult Use Cannabis Regulation and Safety Act. This Chapter shall not apply to personal use of Cannabis that is specifically exempted from City and 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 related to that personal use.

4.170.150. Administration of the Tax.

- A. It shall be the duty of the Tax Administrator to collect the Taxes,

penalties, fees, and perform the duties required by this Chapter.

- B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.
- C. The Tax Administrator may take such administrative actions as needed to administer the Tax, including but not limited to:
 - 1. Provide forms for the reporting of the Tax to all Cannabis Businesses;
 - 2. Provide information to any Cannabis Business concerning the provisions of this Chapter;
 - 3. Receive and record all Taxes remitted to the City as provided in this Chapter;
 - 4. Maintain records of Cannabis Business reports and Taxes collected pursuant to this Chapter;
 - 5. Assess penalties and interest to Cannabis Businesses pursuant to this Chapter; and,

6. Determine amounts owed and enforce collection pursuant to this Chapter.

4.170.160. Appeal Procedure.

- A. Within thirty (30) calendar days from the date of mailing of a decision by the Tax Administrator with respect to the amount of Tax, interest, penalties, and fees, if any, due under this Chapter, an aggrieved Cannabis Business may file a written appeal with the City Clerk setting forth the factual and legal basis for the appeal.
- B. At the time of filing the appeal the appellant shall pay the designated appeal fee, established by Resolution of the City Council.
- C. Upon receipt of the written appeal, the matter shall be set for a hearing before the City Manager, or his/her designee. The matter shall be heard de novo and the hearing shall be conducted pursuant to the procedures set forth by the City.
- D. The City Clerk shall set a time and place for the appeal hearing and shall notify the Cannabis Business, in writing, of such date and time, not later than ten working days before the date of the scheduled appeal hearing. The appeal hearing shall be conducted within 60 days of the filing of the appeal.
- E. The formal rules of evidence and procedure applicable in a court of law

shall not apply to the hearing. Either party may present witnesses or documents in support of their position.

- F. Should the Cannabis Business fail to appear at the appeal hearing, the appeal hearing shall proceed and the City's staff shall present witnesses or documents in support of its position. The City Manager shall make a determination based on the evidence presented.
- G. The City shall notify the Cannabis Business of the City Manager's decision, in writing, within ten working days of the appeal hearing. The City Manager's decision is final.

4.170.170. Enforcement – Action to Collect.

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

4.170.180. Apportionment.

If a business subject to the Tax is operating both within and outside the City, it is

the intent of the City to apply the Cannabis Business Tax so that the measure of the Tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law requires that any Tax due from any Cannabis Business be apportioned, the Cannabis Business may indicate said apportionment on its tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

4.170.190 Constitutionality and Legality.

This Tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the Tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a Person believes that the Tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the Tax.

4.170.200. Audit and Examination of Premises and Records.

- A. For the purpose of ascertaining the amount of Cannabis Business Tax owed or verifying any representations made by any Cannabis Business to the City in support of its Tax calculation, the Tax Administrator shall have the power to

inspect any location where Commercial Cannabis Cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the Gross Receipts of the business) of Persons engaged in Cannabis Businesses. In conducting such investigation, the Tax Administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

- B. It shall be the duty of every Person liable for the collection and payment to the City of any Tax imposed by this 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 or she may have been liable for the collection of and payment to the City, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

4.170.210. Other Licenses, Permits, Taxes, Fees, or Charges.

- A. A Cannabis Business shall also be required to pay the business tax required by Chapter 4.155 of this Code.
- B. 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 permit or license required by, under or by virtue of any

provision of any other Chapter of this Code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace, or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other Chapter of this Code or any other ordinance or resolution of the City. Any references made or contained in any other Chapter of this Code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Chapter of this Code.

- C. The Tax Administrator may revoke or refuse to renew the business tax certificate required by Chapter 4.155 of this Code for any business that is delinquent in the payment of any Tax due pursuant to this Chapter or that fails to make a deposit required by the Tax Administrator pursuant to Section 4.170.060. It shall be unlawful thereafter for such business to engage in the business until such time as a business tax certificate has been obtained.

4.170.220. Payment of Tax does not Authorize Unlawful Business.

- A. The payment of a Cannabis Business Tax required by this Chapter, and its acceptance by the City, shall not entitle any person to carry on any Cannabis Business unless this Code specifically

allows the particular Cannabis Business, and the Person that has paid the Cannabis Business Tax 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.

4.170.230. Deficiency Determinations.

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

given under Section 4.170.250.

4.170.240. Failure to Report - Nonpayment, Fraud.

- A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of Tax owed by a Cannabis Business under this Chapter at any time:
1. If the Cannabis Business has not filed a complete statement required under the provisions of this Chapter;
 2. If the Cannabis Business has not paid the Tax due under the provisions of this Chapter;
 3. If the Cannabis Business has not filed a corrected statement after demand by the Tax Administrator, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of Tax due under the provisions of this Chapter; or,
 4. If the Tax Administrator determines that the nonpayment of any Cannabis Business Tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the Tax shall be added thereto in addition to penalties and

interest otherwise stated in this Chapter and any other penalties allowed by law.

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

4.170.250. Tax Assessment - Notice Requirements.

The notice of assessment, as established by Section 4.170.240, shall be served upon the Cannabis Business either by personal delivery, by overnight delivery by a nationally-recognized courier service, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the Cannabis Business at the address of the location of the business or to such other address that the Cannabis Business shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the Cannabis Business have no address registered with the Tax Administrator for such purpose, then to such Cannabis Business' last known address. For the purposes of this Section, a service by overnight delivery shall be deemed to have

occurred one (1) calendar day following deposit with a courier and service by mail shall be deemed to have occurred three (3) days following deposit in the United States mail.

4.170.260. Tax Assessment - Hearing, Application and Determination.

- A. Within thirty (30) calendar days after the date of service of the notice of assessment, as established by Section 4.170.240, the Cannabis Business may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the Tax assessed by the Tax Administrator shall become final and conclusive and is not eligible for appeal under Section 4.170.160.

- B. Within thirty (30) calendar days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) calendar days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the Cannabis Business requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the Cannabis Business requesting such hearing not later than five (5) calendar days prior to such hearing. At such hearing, said Cannabis Business may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed

and fixed as the tax due. After such hearing, the Tax Administrator shall determine and reassess the proper Tax to be charged and shall give written notice to the Cannabis Business in the manner prescribed in Section 4.170.250 for giving notice of assessment. This reassessment is appealable subject to procedures set forth in Section 4.170.160.

4.170.270. Conviction for Violation - Taxes Not Waived.

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

4.170.280. Violation Deemed Misdemeanor.

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and may be punished as such according to the provisions of Chapter 1.150 of this Code.

4.170.290. Remedies Cumulative.

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

purpose of enforcing the provisions of this Chapter.

4.170.300. Amendment or Repeal.

All provisions of this Chapter may be repealed or amended by the City Council without a vote of the people except that, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of San Buenaventura affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration or adjustment of the rate of the Tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the Tax or incrementally implement an increase authorized by this Chapter;
- 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 City had, for some period of time, failed to collect the Tax.

4.170.310. Automatic Sunset and Revocation of City Permits.

Should the provisions of this Chapter be repealed by a vote of the people or should the maximum Tax authorized by this Chapter be decreased by a vote of the people, any ordinance, Chapter, or Section of this Code authorizing or allowing the operation of a Cannabis Business within the City shall immediately sunset and all City Permits shall be revoked.”

Section 2. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 3. EFFECTIVE DATE. This Ordinance shall become effective on January 2, 2021 if approved by a majority of the voters.

Section 4. PUBLICATION. The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its approval by the voters.

The foregoing Ordinance was approved by the voters of the City of San Buenaventura at a General Municipal Election held on the 3rd day of November, 2020, by the following vote tally:

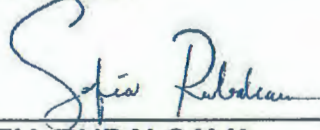
AYES: Councilmembers Nasarenko, Brown, Friedman, Weir,
Heitmann, and Deputy Mayor Rubalcava*

NOES: None

ABSENT: None

*Mayor position vacant

APPROVED:




SOFIA RUBALCAVA
Acting Mayor

ATTEST:



ANTOINETTE M. MANN, MMC, CRM
City Clerk

APPROVED AS TO FORM
Gregory G. Diaz, City Attorney

By: 

MEGAN LORENZEN
Assistant City Attorney

6/8/20

Date

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF VENTURA) SS.
CITY OF SAN BUENAVENTURA)

I, ANTOINETTE M. MANN, City Clerk of the City of San Buenaventura, DO HEREBY CERTIFY that the foregoing is a full, true, and correct copy of Ordinance No. 2020-028 that was adopted by said City Council at a regular meeting held December 14, 2020, with certifying the November 3, 2020 Election Results in which the Voters passed Measure I (Cannabis and Hemp Tax) therefore adopting this Ordinance by the following vote:

AYES: Councilmembers Nasarenko, Brown, Friedman, Weir, Heitmann and Deputy Mayor Rubalcava*


NOES: None

ABSENT: None

*Mayor position Vacant

I further certify that said Ordinance No. 2020-028 was published as required by law in the VENTURA COUNTY STAR, a newspaper of general circulation printed and published in said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Buenaventura, California.



Antoinette M. Mann, MMC, CRM
City Clerk
City of San Buenaventura, California

March 30, 2021
Date Attested

