

ORDINANCE NO. ____

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF MERCED, CALIFORNIA,
ADDING CHAPTER 3.52 TO THE CITY OF MERCED MUNICIPAL CODE,
APPROVING AND IMPLEMENTING A COMMERCIAL CANNABIS BUSINESS TAX**

THE PEOPLE OF CITY OF MERCED ORDAIN:

SECTION 1. Special Tax.

The Commercial Cannabis Business Tax is enacted solely to raise revenue for specific governmental purposes for the City of Merced and not for purposes of regulation. All of the proceeds from the tax imposed by this Ordinance shall be used exclusively to fund local police and fire protection services and parks and recreation services and cannot be spent for any other purpose.

SECTION 2. Purpose.

To impose a tax on the privilege of cultivating, manufacturing, processing, storing, laboratory testing, labeling, packaging, transporting, distributing, delivering, or sale of adult-use or medicinal cannabis or adult-use or medicinal cannabis products by commercial cannabis businesses in the City of Merced. Only commercial cannabis businesses are liable for the tax. It is not a sales tax or other tax levied upon recreational cannabis users or medical marijuana patients, nor is it a tax on real property. These revenues will remain locally-controlled and are not subject to seizure by the State. All revenues are required to be spent in the City of Merced for local police and fire services and parks and recreation services.

SECTION 3. A new City of Merced Municipal Code Chapter 3.52 is hereby adopted to read:

COMMERCIAL CANNABIS BUSINESS TAX

- 3.52.100 Imposition of Tax.
- 3.52.200 Definitions.
- 3.52.300 Payment Obligation.
- 3.52.400 Remittance.
- 3.52.500 Payment of Tax Does Not Authorize Unlawful Business or Activity.
- 3.52.600 Modification, Repeal or Amendment.
- 3.52.700 Use of Tax Proceeds
- 3.52.800 Administration.

3.52.100 Imposition of Tax.

A. Tax on Commercial Cannabis Cultivation:

1. Every person engaged in commercial cannabis cultivation in the city limits of the City of Merced shall pay an annual commercial cannabis business tax of up to the greater of (i) \$25.00 per square foot of canopy area or (ii) 10% of gross receipts. The canopy area shall be the greater of (i) the maximum canopy square footage authorized by the State license issued to the commercial cannabis business or (ii) the actual canopy area of the business.

In no case shall the canopy square footage not utilized under a permit be deducted for the purpose of determining the tax.

2. Notwithstanding the maximum tax rate established by this chapter, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis cultivation within the City of Merced city limits for different categories of commercial cannabis cultivation subject to the maximum rate established in subsection (A)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (A)(1).
3. Subject to modification by the City Council as set forth in this subsection (A), the initial rate of the annual commercial cannabis business tax for each person engaged in commercial cannabis cultivation shall, for each such business, be the greater of (i) \$7.00 per square foot of cultivation area or (ii) 4% of gross receipts.

B. Tax on Commercial Cannabis Nurseries:

1. Every person operating a commercial cannabis nursery in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of up to \$4.00 per square foot of nursery area. The nursery area shall include all areas of the commercial business that contain cannabis plants in the immature stage as defined by the State.
2. Notwithstanding the maximum tax rate established by this chapter, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis nurseries within the City of Merced city limits subject to the maximum rate established in subsection (B)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (B)(1).
3. Subject to modification by the City Council as set forth in this subsection (B), the initial rate of the annual commercial cannabis business tax for each person operating a commercial cannabis nursery shall be \$0.50 per square foot of nursery area

C. Tax on Commercial Cannabis Manufacturing:

1. Every person engaged in commercial cannabis manufacturing in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of up to \$25.00 per square foot of manufacturing area.
2. Notwithstanding the maximum tax rate established by this chapter, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis manufacturing within the City of Merced city limits subject to the maximum rate established in subsection (C)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (C)(1).

3. Subject to modification by the City Council as set forth in this subsection (C) the initial rate of the annual commercial cannabis business tax for each person engaged in commercial cannabis manufacturing shall be \$7.00 per square foot of manufacturing area.

D. Tax on Commercial Cannabis Distribution:

1. Every person engaged in commercial cannabis distribution in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of up to the greater of (i) \$5.00 per square foot of building or (ii) 10% of gross receipts.
2. Notwithstanding the maximum tax rate established by this chapter, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis distribution within the City of Merced city limits subject to the maximum rate established in subsection (D)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (D)(1).
3. Subject to modification by the City Council as set forth in this subsection (D) the initial rate of the annual commercial cannabis business tax for each person engaged in commercial cannabis distribution shall, for each such businesses, be the greater of (i) \$1.00 per square foot of distribution area annually or (ii) 2% of gross receipts. .

E. Tax on Commercial Cannabis Retailing:

1. Every person engaged in commercial cannabis retailing in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of up to 10% on gross receipts for adult-use retail and a rate of up to 7% on gross receipts for medicinal retail.
2. Notwithstanding the maximum tax rate established by this chapter, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis retailing within the City of Merced city limits subject to the maximum rate established in subsection (E)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (E)(1).
3. Subject to modification by the City Council as set forth in this subsection (E) the initial rate of the annual commercial cannabis business tax for each person engaged in commercial cannabis retailing shall be 4% of gross receipts for medicinal retail and 7% of gross receipts for adult-use retail.

F. Tax on Commercial Cannabis Testing:

1. Every person engaged in commercial cannabis testing in the city limits of the City of Merced shall pay an annual commercial cannabis business tax at a rate of up to \$1.00 per square foot of building area.

2. Notwithstanding the maximum tax rate established by this chapter, the City Council may at its discretion, at any time by resolution, implement a lower tax rate for all persons engaged in commercial cannabis testing within the City of Merced city limits subject to the maximum rate established in subsection (F)(1). The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate established in subsection (F)(1).
3. Subject to modification by the City Council as set forth in this subsection (F) the initial rate of the annual commercial cannabis business tax for each person engaged in commercial cannabis testing shall be \$0.25 per square foot of building area.

3.52.200 Definitions.

For the purposes of this Chapter.

A. "Business tax" or "Commercial Cannabis Business Tax" means the tax due pursuant to this Chapter for engaging in lawful commercial cannabis business in the City of Merced.

B. "Cannabis" means all parts of the 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 marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean industrial hemp as that term is defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code.

C. "Canopy Area" means all premises that contains mature plants at any point in time; including all of the space within the boundaries. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

D. "Commercial Cannabis Business" means any commercial business activity relating to cannabis, including but not limited to cultivating, manufacturing, processing, storing, laboratory testing, labeling, packaging, transporting, distributing, delivering, or sale of cannabis, medicinal cannabis or a cannabis or medicinal cannabis product, except as related Business and Professions Code Section 19319, and as they may be amended or Health and Safety Code Sections 11362.1 through 11362.45 and as they may be amended.

E. "Commercial Cannabis Cultivation" means any activity, other than a Cannabis Nursery as defined in subsection H, involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for non-personal use.

F. "Commercial Cannabis Distribution" means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the Medical and Adult Use

of Cannabis Regulation and Safety Act and any subsequent State of California legislation regarding the same.

G. "Commercial Cannabis Manufacturing" means any aspect of the cannabis extraction and infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products. Cannabis manufacturing also includes any processing, preparing, holding, or storing of components and ingredients. Cannabis Manufacturing does not include Cannabis Distribution or Cultivation.

H. "Commercial Cannabis Nursery" means a facility that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis for non-personal use.

I. "Commercial Cannabis Retailing " means business, other than a business all of whose sales constitute Cannabis Distribution, where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination for sale, including an establishment that delivers cannabis or cannabis products as part of a sale.

1. "Adult-Use Cannabis Retailing" means any Commercial Cannabis Retailing that does not qualify as Medicinal Cannabis Retailing, such as sales intended for adults 21 years of age and over and who do not possess a physician's recommendation.
2. "Medicinal Cannabis Retailing" means the sale of cannabis or cannabis products that are intended for cannabis patients who possess a physician's recommendation for the use of cannabis.

J. "Commercial Cannabis Testing" means a facility, entity, or site that offers or performs tests of cannabis or cannabis products, and that is accredited as operating to ISO standard 17025 by an accrediting body, and registered with the State Department of Public Health.

K. "Cultivation area" means all portions of the premises deducting therefrom driveways, sidewalks, landscaping, manufacturing area, nursery area, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the commercial cannabis business (such as a janitorial closet).

L. "Gross receipts" means the total amount actually received or receivable from all cannabis sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit is allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares, or merchandise; and discounts, rents, royalties, fees, commissions, dividends, and gains realized. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of the material used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.

M. "Manufacturing area" means the entire premises utilized for production, preparation, propagation, storage or compounding of manufactured cannabis or cannabis products, directly or indirectly, by extraction methods deducting for non-production portions of the premises, such as space used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the commercial cannabis business (such as a janitorial closet).

N. "Nursery area" means the entire premises utilized for production of clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis deducting for non-production portions of the premises, such as space used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the commercial cannabis business (such as a janitorial closet).

O. "Person" includes any 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, and the plural as well as the singular.

3.52.300 Payment Obligation.

Except to the extent such tax is prohibited under state or federal law, any entity subject to this chapter must pay the tax rate set pursuant to this chapter. Failure to pay the taxes required by this Section within thirty (30) days after the due date shall be subject to the following penalties:

- A. A penalty in the sum equal to twenty-five percent (25%) of the total amount due; and
- B. If the tax remains unpaid, an additional penalty equal to ten percent (10%) shall be added on the first day of each calendar month following the month of the imposition of the twenty-five percent (25%) penalty if the tax remains unpaid.

3.52.400 Remittance.

The taxes imposed by this chapter are annual taxes payable in quarterly installments. The tax year for purposes of this chapter runs from January 1 through December 31 of each calendar year. No later than the last day of the month following the end of each calendar quarter (for example, no later than April 30 for the quarter running from January 1 through March 31), each taxpayer shall remit to the quarterly installment.

Where a tax is based on a flat rate per square foot area, the quarterly installment shall be no less than the amount calculated by multiplying the relevant square footage by one-quarter of the relevant annual tax rate. This tax shall not be prorated for square footage only used or permitted for a portion of the quarter, or for a business that was in operation during only a portion of the quarter.

Where a tax is based on a percentage of gross receipts, the quarterly installment shall be no less than the amount calculated by applying the relevant tax rate to the paid based on the actual gross receipts for the quarter.

Where a tax is based on a combination of flat rate per square foot of area and percentage of gross receipts, the quarterly installment shall be no less than the greater of the amounts set forth in the prior two paragraphs.

No later than January 31 of each year, each taxpayer shall file with the city their final tax statement with respect to all commercial cannabis business activities during the prior calendar year. If the total of all installment payments made for the tax year is less than the final annual tax due, the difference shall be remitted to the city along with the tax statement. If the total of all installment payments exceeds the final annual tax due, then the excess payment shall be applied as a credit against the subsequent year's installment payments.

Any quarterly installment or final tax payment that is not timely made shall be subject to the penalties set forth in Section 3.52.300.

The taxes imposed by this chapter shall be remitted directly to the City quarterly as set forth in this Chapter. Each business shall pay on or before the last day of the month following the close of each calendar quarter, the minimum amount due if square footage versus gross receipts is applicable, and at the end of the fiscal year, any amount owed greater than the amount paid is due and shall be paid on or before the last day of the month following the close of the calendar year. All other gross receipts or square footage tax is due and payable at the end of each quarter. Nothing in this Chapter shall be interpreted to excuse any person from any obligation under any other provision of the municipal code; including, but not limited to, provisions of the code relating to business licensing and business license taxes.

3.52.500 Payment of Tax Does Not Authorize Unlawful Business or Activity.

The payment of any commercial cannabis business tax required under the provisions of this Chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal matter. Nothing in this section implies or authorizes that any activity connected with the distribution or possession of cannabis is legal unless authorized by California and Federal Law. Nothing in this section shall be applied or construed as authorizing the sale of cannabis.

3.52.600 Modification, Repeal or Amendment.

The voters expressly authorize the City Council to amend, modify, change, revise, or appeal any provision in this Chapter as the City Council deems in the best interest of the City without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment to Section 3.52.100 that would increase the rate of any Tax levied pursuant to this Chapter above the maximum rates established by this Chapter or to change the services funded by the tax.

The City Council may impose any tax authorized by this Chapter at a lower rate and may establish exemptions, or other reductions as otherwise permitted under state and federal law. No action by the Council under this Section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax rates specified in this Chapter.

3.52.700 Use of Tax Proceeds

Proceeds of the tax shall be deposited in a special fund and available only for expenditures on local police and fire protection services and parks and recreation services, and not for any other purpose.

3.52.700 Administration.

A. The City Manager or the City Manager's designee shall promulgate rules, regulations, and procedures to implement and administer this Chapter to ensure the efficient and timely collection of the tax imposed by this Chapter.

B. The City shall engage an annual audit of all proceeds raised by this measure. Such audit may be combined with any other independent audit engaged by the City.

C. The City shall cause a report to be filed annually as required by Government Code section 50075.3

D. An independent Citizens' Oversight Committee shall be formed to review the revenues and expenditures generated and spent. Said Committee shall consist of six (6) members, one (1) from each of the six City Council Districts, plus 1 at-large member from any area of the City, as long as all members are City residents. Nominees shall be appointed by the City Council. Elected officials at any level of government and employees of the City are ineligible to serve as members of the Committee. Members so appointed shall serve without compensation for a term of four (4) years.

The Committee shall meet quarterly but not less than once per year to review the revenues and expenditures generated and spent under this Chapter, and provide its findings to the City Council at least once a year prior to budget adoption. Unless modified by City Council Resolution, the Committee shall not have any function, power, or authority other than those expressly provided herein. In no event shall a failure of the City Council or the Citizens' Oversight Committee to take an action required by this Section 5.52.700(E) invalidate any tax collected under this Chapter; however, any court of competent jurisdiction may issue an order to the City compelling the City to comply with this Section.

SECTION 4. This Ordinance shall become effective upon adoption by two-thirds majority of the voters casting votes at the special election on June 5, 2018.

SECTION 5. The City Clerk shall publish this ordinance as required by applicable law. Upon approval by the voters, the City Clerk shall certify the passage of this ordinance by the voters, and cause the ordinance to be codified in the City of Merced Municipal Code.

PASSED, APPROVED, AND ADOPTED BY THE PEOPLE OF THE CITY OF MERCED AT THE SPECIAL MUNICIPAL ELECTION HELD THE ____ DAY OF _____ 2018, by the following vote tally:

YES:

NOES:

OTHER:

APPROVED:

Mayor

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM

Kelly Finner 2/14/18
City Attorney