

RESOLUTION NO. 2022-48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH, CALIFORNIA, ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF A GENERAL TAX MEASURE FOR THE SUBMISSION TO THE QUALIFIED VOTERS OF A PROPOSED ORDINANCE ADDING CHAPTER 3.25 TO TITLE 3 OF THE HUNTINGTON BEACH MUNICIPAL CODE, ESTABLISHING A GENERAL TAX ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY OF HUNTINGTON BEACH AND AN ADVISORY MEASURE REGARDING THE REGULATION OF COMMERCIAL CANNABIS BUSINESSES AT THE GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022, AS CALLED BY RESOLUTION NO. 2022-39

WHEREAS, a General Election on Tuesday, November 8, 2022 has been called by Resolution No. 2022-39, adopted on July, 5, 2022; and

WHEREAS, the City Council desires to submit to the voters at the election additional Measures relating to the regulation and taxation of Commercial Cannabis Businesses;

WHEREAS, pursuant to California Government Code sections 37100.5 and 37101, the City of Huntington Beach has the authority to establish a local business tax upon Commercial Cannabis Businesses that engage in business in the City; and

WHEREAS, the City Council desires to submit to the voters a General Tax Measure with an Ordinance establishing both (i) a not-to-exceed rate of 6% local general tax on the Gross Receipts received by any cannabis retail business and (ii) a not-to-exceed rate of 1% local general tax on any other cannabis business, including but not limited to indoor cultivation, manufacturing, testing laboratory, and distribution; and

WHEREAS, the proposed Cannabis Business Tax is a general tax, the proceeds of which would be deposited into the City's general fund for general municipal services to the public; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218 (California Constitution, Article XIII C), an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, the proposed Ordinance would establish a general tax which is subject to Proposition 218; and

WHEREAS, pursuant to Proposition 218 (California Constitution Article XIII C, §2(b)), the general rule is that any local election for the approval of a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, pursuant to Proposition 62 and Government Code Section 53724, an Ordinance or Resolution proposing a general tax must be approved by a two-thirds vote of all members of the legislative body of the local government prior to being submitted to the voters; and

WHEREAS, the specific terms relating to the Cannabis Business Tax Measure are provided for in the Ordinance to be considered by the qualified voters, attached hereto as Exhibit A (the "Ordinance" or "Measure") and by this reference made an operative part hereof, and in accordance with all applicable laws.

NOW, THEREFORE, the City Council of the City of Huntington Beach, California, does hereby resolve, declare, determine and order as follows:

SECTION 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part

hereof.

SECTION 2. That the City Council, pursuant to its right and authority in part, as contained in California Constitution and Elections Code, does order submitted to the voters at the General Municipal Election the following Advisory question:

<p>Measure __: Advisory Measure Concerning Regulation of Commercial Cannabis Businesses</p>	<p>YES</p>
<p>“Shall the City of Huntington Beach repeal the City’s current ban on commercial cannabis businesses and allow a limited number of cannabis retailers and non-retailers to operate only in permitted areas of Huntington Beach, subject to business and land use regulations by City Council?”</p>	<p>NO</p>

SECTION 3. Submission of Ballot Measure Ordinance. The City Council of the City, pursuant to its right and authority as contained in California Propositions 218 and 62, Government Code section 53724, and Elections Code section 9222, hereby orders the Ordinance attached hereto as Exhibit A to be submitted to the qualified voters of the City at the General Municipal Election to be held on November 8, 2022. The proposed Ordinance shall be in the form attached hereto as Exhibit A to this Resolution and is incorporated by this reference as if fully set forth herein.

SECTION 4. Ballot Measure. The City Council, pursuant to its right and authority, does hereby order that the Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 4. On the ballot to be submitted to the qualified voters at the General Municipal Election to be held on November 8, 2022, in addition to any other matters required by law, there shall be printed substantially the following:

<p>Measure __: Taxation of Commercial Cannabis Businesses</p> <p>“Shall the City adopt an Ordinance that taxes cannabis businesses up to 6% of gross receipts for retailers and up to 1% of gross receipts for all other cannabis businesses if they were to be permitted in the City; which is expected to generate an estimated \$300,000 to \$600,000 annually to fund general municipal services for Huntington Beach and will be levied until repealed by the voters?”</p>	<p>YES</p>
	<p>NO</p>

SECTION 5. That the proposed Measures submitted to the voters are as follows:

“Shall the City of Huntington Beach repeal the City’s current ban on Commercial Cannabis Businesses and allow a limited number of cannabis retailers and non-retailers to operate only in permitted areas of Huntington Beach, subject to business and land use regulations by City Council?”

“Shall the City adopt an Ordinance that taxes cannabis businesses up to 6% of gross receipts for retailers and up to 1% of gross receipts for all other cannabis businesses if they were to be permitted in the City; which is expected to generate an estimated \$300,000 to \$600,000 annually to fund general municipal services for Huntington Beach and will be levied until repealed by the voters?” (Ordinance is attached as Exhibit A.)

SECTION 6. That the vote requirement for the Measures to pass is a majority (50%+1) of the votes cast.

SECTION 7. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 8. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 9. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 10. CEQA. The City Council hereby finds and determines that the ballot Measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, section 15378(b)(5). This ballot Measure is also exempt from CEQA review pursuant to Business & Professions Code 26055(h) because any subsequent Ordinance adopted by the City Council permitting cannabis businesses will require environmental review prior to any decision relating to the issuance of a permit or other authorization for the cannabis business to commence operations.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 19<sup>th</sup> day of July, 2022.

\_\_\_\_\_  
Mayor

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Attorney *w*

INITIATED AND APPROVED:

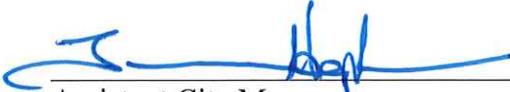
  
\_\_\_\_\_  
Assistant City Manager

EXHIBIT A

COUNCIL-SPONSORED INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO  
THE VOTERS

The City Council for the City of Huntington Beach submits the following Measure to the voters of the City for approval and enactment:

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE PEOPLE OF THE CITY OF HUNTINGTON BEACH, CALIFORNIA, ADDING CHAPTER 3.25 TO TITLE 3 OF THE HUNTINGTON BEACH MUNICIPAL CODE ESTABLISHING TAXES ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY OF HUNTINGTON BEACH

The People of the City of Huntington Beach ordain as follows:

SECTION 1. Subject to the approval of a majority of the voters of the City of Huntington Beach at the General Municipal Election so designated by the City Council in a separate Resolution placing the proposal on the ballot for such election, Chapter 3.25 is hereby added to Title 3 of the Huntington Beach Municipal Code to read as follows:

**Chapter 3.25. CANNABIS BUSINESS TAX**

3.25.010	Title
3.25.020	Authority and purpose
3.25.030	Intent
3.25.040	Definitions
3.25.050	Tax imposed
3.25.060	Reporting and remittance of tax
3.25.070	Payments and communications - timely remittance
3.25.080	Payment - when taxes deemed delinquent
3.25.090	Notice not required by City
3.25.100	Penalties and interest
3.25.110	Refunds and credits
3.25.120	Refunds and procedures
3.25.130	Personal cultivation not taxed
3.25.140	Administration of the tax
3.25.150	Appeal procedure
3.25.160	Enforcement - action to collect
3.25.170	Apportionment
3.25.180	Constitutionality and legality
3.25.190	Audit and examination of premises and records
3.25.200	Other licenses, permits, taxes, fees or charges
3.25.210	Payment of tax does not authorize unlawful business
3.25.220	Deficiency determinations
3.25.230	Failure to report - nonpayment, fraud
3.25.240	Tax assessment -notice requirements

3.25.250	Tax assessment - hearing, application, and determination
3.25.260	Relief from taxes – disaster relief
3.25.270	Conviction for violation - taxes not waived
3.25.280	Severability
3.25.290	Remedies cumulative
3.25.300	Amendment or modification

### **3.25.010 Title.**

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

### **3.25.020 Authority and Purpose.**

The purpose of this Ordinance is to adopt a general tax, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Commercial Businesses that engage in business in the City of Huntington Beach ("City"), the Cannabis Business Tax is levied based upon business Gross Receipts. The Cannabis Business Tax is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general, governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this section shall be placed in the City's General Fund and be available for any lawful municipal purpose.

### **3.25.030 Intent.**

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

### **3.25.40 Definitions.**

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

**"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.

**"Calendar year"** means January 1 through December 31 of the same year.

**"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" shall

not include "industrial hemp," unless otherwise specified.

**"Cannabis Business"** means any Business activity involving Cannabis or Cannabis Products.

**"Cannabis Business Tax" or "Business Tax,"** means the taxes due pursuant to this chapter for engaging in a Cannabis Business in the City.

**"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 Cannabis Products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medicinal Cannabis Products.

**"City"** means the City of Huntington Beach.

**"Commercial Cannabis Cultivation"** means cultivation of Cannabis undertaken in the course of conducting a Cannabis Business.

**"Commercial Cannabis Permit"** means a permit issued by the City to a person authorizing that person to operate a Cannabis Business or engage in business as a Cannabis Business within the City.

**"Cultivation"** means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of an indoor, outdoor, mixed light, or nursery. All outdoor or mixed light cultivation shall be prohibited in the City.

**"Distribution"** means business activities including the procurement, sale, and transport of Cannabis and Cannabis Products between other licensed Cannabis Businesses.

**"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.

**"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 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 business within the City if:

1. Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the City for business purposes;

3. Such person or person's employee 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 employee regularly conducts solicitation of business within the City; or
5. Such person or person's employee performs work or renders services in the City.

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

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

**"Gross Receipts,"** except as otherwise specifically provided herein, means, whether designated a sales price, royalty, rent, slotting fee, 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. Notwithstanding the foregoing, the following shall be excluded from 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 located in the City, or if authorized by the Tax Administrator in writing in accordance with section 3.25.140 (B);
6. Whenever there are included within the gross receipts amounts that 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. Such agents or trustees must provide the City's Tax Administrator with the names and the 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 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 industrial hemp) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 3.25.140 shall not be subject to the Cannabis Business tax under this section.

**"Indoor Cultivation"** means the cultivation of Cannabis inside a permanent enclosed building or structure.

**"Manufacturing"** means the production, preparation, propagation, or compounding of Cannabis or Cannabis Products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages Cannabis or Cannabis Products or labels or relabels their containers.

**"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.

**"Processing"** means a cultivation site that conducts only trimming, drying, curing, grading, packaging, or labeling of cannabis, industrial hemp and non-manufactured Cannabis Products.

**"Retail, Retailer, or Retail Facility"** means a licensed premises where Cannabis, Cannabis Products, or devices for the use of Cannabis or Cannabis Products are offered, either individually or in any combination for retail sale, including an establishment that delivers Cannabis or Cannabis Products as part of a Retail sale.

**"Sale," "sell" and "to sell"** means and includes any sale, exchange, or barter. It shall also mean any transaction whereby, for any consideration, title to Cannabis, Cannabis Products, industrial hemp and/or industrial hemp products are transferred from one person to another and includes the delivery of Cannabis, Cannabis Products, industrial hemp and/or industrial hemp products pursuant to an order placed for the purchase of the

same, but does not include the return of Cannabis, Cannabis Products, industrial hemp and/or industrial hemp products to the licensee from whom the Cannabis, Cannabis Products, industrial hemp and/or industrial hemp product was purchased.

**"State"** means the State of California.

**"State license," "license," or "registration"** means a State license issued pursuant to California Business & Professions Code Section 26050, and all other applicable State laws, required for operating a Cannabis Business.

**"Tax Administrator"** means the City Manager of the City of Huntington Beach or his or her designee.

**"Testing Laboratory"** means a Cannabis Business that (i) offers or performs tests of Cannabis, Cannabis Products, industrial hemp and/or industrial hemp 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 licensed by the California Department of Cannabis Control or other State agency required by law.

### **3.25.50 Tax Imposed.**

A. There is imposed upon each person who is engaged in business as a Cannabis Business Tax. Such tax is payable regardless of whether the business has been issued a Commercial Cannabis 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 shall not constitute the City's approval or consent to such illegal operations.

B. Pursuant to State law, the City Council may, by Resolution or Ordinance, set, increase or decrease the rate of the Cannabis Business Tax, including the initial rate of Cannabis Business Tax, within the minimum and maximum prescribed range of tax rates, and establish a class of persons that is exempt or excepted from the tax or discontinue any such exemption or exception. Notwithstanding the foregoing, in no event shall the City Council repeal this tax, or set any adjusted rate that is less than the minimum rate, nor that exceeds the maximum rates calculated pursuant to this section.

C. The minimum and maximum rate of the Cannabis Business Tax shall be calculated as follows:

1. Every person engaged in Retail sales of Cannabis and/or Cannabis Products, including as a Retailer (dispensary) or non-storefront Retailer (Retail delivery business) shall be subject to up to a maximum tax rate not to exceed six percent (6%) of Gross Receipts.
2. Every person engaged in the Indoor Cultivation for Cannabis shall be subject up to a maximum tax rate not to exceed one percent (1%) of Gross Receipts.

3. Every person engaged in the operation of a Testing Laboratory for Cannabis and/or Cannabis Products shall be subject to up to a maximum tax rate not to exceed one percent (1%) of Gross Receipts.
4. Every person engaged in Distribution of Cannabis and/or Cannabis Products shall be subject to up to a maximum tax rate not to exceed one percent (1%) of Gross Receipts.
5. Every person engaged in Manufacturing or Processing of Cannabis and/or Cannabis Products, or any other type of Cannabis business not described in Section 3.25.050 (C) (1), (2), (3), or (4) shall be subject to up to a maximum tax rate not to exceed one percent (1%) of Gross Receipts.

Persons subject to the Cannabis Business Tax shall register with the City and pay any fees established by the City Council. Such fees shall not exceed the cost of providing the service and not be considered as a tax and may be adjusted from time to time to recover related costs by Resolution of the City Council.

### **3.25.60 Reporting and remittance of tax.**

- A. The Cannabis Business Tax imposed by this section shall be paid, in arrears, on a monthly basis. Each person owing a Cannabis Business Tax each calendar month shall, no later than the last day of the month following the close of the calendar month, file with the Tax Administrator a statement ("Tax Statement") of the tax owed for that calendar month and the basis for calculating that tax. The Tax Statement is required to be submitted on a form prescribed by the Tax Administrator. The Cannabis Business Tax for each calendar month shall be due and payable on that same date that the Tax Statement for the calendar month is due.
- B. Upon cessation of a Cannabis Business, Tax Statements and Cannabis tax payments shall be immediately due for all calendar months up to and including the calendar month during which cessation occurred.
- C. The Tax Administrator may, at his or her discretion, establish alternative reporting and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure efficient and effective collection of the Cannabis Business Tax, but no less frequently than quarterly. The Tax Administrator may also require that a deposit, to be applied against the Cannabis Business Taxes due for a calendar month, be made by a taxpayer at the beginning of that calendar month. In no event shall the deposit required by the Tax Administrator exceed the Cannabis Business Tax amount he or she projects will be owed, in his or her judgment, by the taxpayer for the calendar month. The Tax Administrator may require that a taxpayer make Cannabis Tax payments via a cashier's check, money order, wire transfer, or similar instrument.

### **3.25.070 Payments and communications - timely remittance.**

Whenever any Cannabis Tax payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not

be accepted as timely remittance. If the due date would fall on a Saturday, Sunday, or a holiday observed by the City, the due date shall be the last business day of the month following the close of the calendar month which the City is open to the public.

**3.25.080 Payment when taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this section, the Cannabis Business Taxes required to be paid pursuant to this section shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 3.25.060 and/or 3.25.070.

**3.25.090 Notice not required by the City.**

The City may as a courtesy send a tax notice to the Cannabis Business which owes the City a Cannabis Business Tax. 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 section. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this section.

**3.25.100 Penalties and interest.**

Any person who fails or refuses to pay any Cannabis Business Tax required to be paid pursuant to this section on or before the due date shall pay penalties and interest as follows:

A penalty equal to ten percent (10%) of the amount of the tax due, in addition to the amount of the tax due, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month.

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 on the unpaid penalties.

Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

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 taxpayer 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.

The City may revoke or refuse to renew the license required by Section 3.25.030 for any business that is delinquent in the payment of any tax due pursuant to this section or that fails to make additional fee payments required by the City.

**3.25.110 Refunds and credits.**

- A. No refund shall be made of any tax collected pursuant to this section, except as provided in Section 3.25.120.
- B. No refund of any Cannabis Business Tax collected pursuant to this section shall be made because of the discontinuation, dissolution, or other termination of a business.

**3.25.120 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 section, it may be refunded to the claimant who 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 or paid, whichever came first.
- B. The Tax Administrator, his or her designee, or any other City officer charged with the administration of this section shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.
- C. In the event that the Cannabis Business Tax was erroneously paid in an amount in excess of the tax due, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid; provided that (i) a claim for refund has been timely filed with the Tax Administrator; and (ii) the refund cannot exceed, under any circumstance, the amount of tax overpaid during the twelve months preceding the last month for which the claim states the tax was overpaid.

**3.25.130 Personal cultivation not taxed.**

The provisions of this section shall not apply to personal Cannabis cultivation or personal use of Cannabis, to the extent those activities are authorized in the State's "Medicinal and Adult Use Cannabis Regulation and Safety Act," as may be amended. This section shall not apply to personal use of Cannabis that is specifically exempted from State licensing requirements, that meets the definition of personal use or equivalent terminology under State law, and provided that the individual receives no compensation whatsoever related to that personal Cultivation or use.

**3.25.140 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 section.
- B. For purposes of administration and enforcement of this section generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules and/or procedures consistent with the purpose, intent and express terms of this section 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 Cannabis Business Tax, including but not limited to:

1. Provide to all Cannabis Business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this section;
3. Receive and record all taxes remitted to the City as provided in this section;
4. Maintain records of taxpayer reports and taxes collected pursuant to this section;
5. Assess penalties and interest to taxpayers pursuant to this section;
6. Determine amounts owed under and enforce collection pursuant to this section.

**3.25.150 Appeal procedure.**

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this section may appeal to the City Council by filing a notice of appeal with the City Clerk within thirty (30) calendar days of the serving or mailing of the Tax Administrator's determination of the amount due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this section 3.25.150 for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

**3.25.160 Enforcement - action to collect.**

Any taxes, penalties and/or fees required to be paid under the provisions of this section shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this section 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 Cannabis Business Tax, penalties and/or fees imposed by this section, or the failure to comply with any of the provisions of this section.

**3.25.170 Apportionment.**

If a business subject to the Cannabis Business 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 taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

**3.25.180      Constitutionality and legality.**

The Cannabis Business 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 section 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.

**3.30.190      Audit and examination of premises and records.**

A.     For the purpose of ascertaining the amount of Cannabis Business Tax owed or verification any representations made by any taxpayer to the City in support of his or her 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 the City. In conducting such investigation, the Tax Administrator shall have the power to inspect any equipment, such as but not limited to 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 Cannabis Business Tax imposed by this section 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.

C.     Should the Tax Administrator be required to perform an audit of the records of any Cannabis Business for failure to timely or accurately report Cannabis Business Taxes pursuant to sections 3.25.060 and/or 3.25.070, the entire cost of the audit shall be assessed against the operator.

**3.25.200      Other licenses, permits, taxes, fees or charges.**

A.     Nothing contained in this section shall be deemed to create, replace, amend, repeal or be in lieu of, or in any way affect any requirements for, any Commercial Cannabis Permit or License the City may require for any purpose. In addition, nothing contained in this section shall be deemed to create, replace, amend, repeal or be in lieu of, or in any way affect any requirements for, any tax, fee or other charge imposed, assessed or required under any other Chapter of this code or any other Ordinance or Resolution of the City.

**3.25.210      Payment of tax does not authorize unlawful business.**

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

unless the person has complied with all of the requirements of this code and all other applicable State laws.

B. No tax paid under the provisions of this section shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

### **3.25.220 Deficiency determinations.**

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this section is correct, or that the amount of Cannabis Business 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 3.25.240.

### **3.25.230 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 Cannabis Business Tax owed by a person under this section at any time:

1. If the person has not filed a complete statement required under the provisions of this section;
2. If the person has not paid the tax due under the provisions of this section;
3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, 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 section; or
4. If the Tax Administrator determines that the nonpayment of any Cannabis Business Tax due under this section 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 payable under this section 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

provision of this section and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

**3.25.240 Tax assessment - notice requirements.**

The notice of assessment shall be served upon the person 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 person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this section; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purpose of Section 3.25.240, 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.

**3.25.250 Tax assessment hearing, application and determination.**

Within thirty (30) calendar days after the date of service of the notice of assessment the person 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 Cannabis Business Tax assessed by the Tax Administrator shall become final and conclusive. 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 person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five (5) calendar days prior to such hearing. At such hearing said applicant 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 (if necessary) the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 3.25.240 for giving notice of assessment.

**3.25.260 Relief from taxes - disaster relief.**

A. If a Cannabis Business is unable to comply with any tax requirement imposed under this section due to a disaster, the business may notify the Tax Administrator of its inability to comply and request relief from the tax requirement. For purposes of this section, "disaster" means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes.

B. The Cannabis Business shall provide any information required by the Tax Administrator including, without limitation, why relief is requested, the time period for which the relief is requested, and the reason relief is needed for the specific amount of time. The Cannabis Business agrees to grant the Tax Administrator or his/her designee access to the location where the Cannabis Business has been impacted due to a disaster.

C. The Tax Administrator, in his/her sole discretion, may provide relief from the Cannabis Business Tax requirement for businesses whose operations have been impacted by a disaster if such tax relief does not exceed fifteen thousand (\$15,000) dollars. Such temporary relief may be granted for a reasonable amount of time, in the Tax Administrator's sole discretion, and the amount and duration of relief should be based upon how long it would reasonably take for the Cannabis Business to recover from the disaster. Further, the Tax Administrator may require that the Cannabis Business follow certain conditions to receive temporary relief from the Cannabis Business tax requirement.

**3.25.270 Conviction for violation - taxes not waived.**

The conviction and punishment of any person for failure to pay the required Cannabis Business 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 section or of any State law requiring the payment of all taxes. Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

**3.25.280 Severability.**

If any provision of this section, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this section or the application of this section to any other person or circumstance and, to that end, the provisions hereof are severable.

**3.25.290 Remedies cumulative.**

All remedies and penalties prescribed by this section 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 section.

**3.25.300 Amendment or modification.**

Except as set forth in this section 3.25.310, this section may be amended or modified but not repealed by the City Council without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would expand, extend, or increase the rate of any tax levied pursuant to this section. The people of the City of Huntington Beach 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 neither less nor higher than that allowed by this chapter, in those circumstances where, among others, the City Council has previously acted to reduce or increase the rate of the tax within the allowed range or is incrementally implementing an increase authorized by this chapter;
- B. An action that interprets or clarifies (i) the methodology of applying or calculating the Cannabis Business Tax or (ii) any definition applicable to the tax, so long as the interpretation or clarification (even if contrary to some prior interpretation or

clarification) is not inconsistent with the provisions of this Chapter 3.25; or

C. The collection of the tax imposed by this section even if the City had, for some period of time, failed to collect the tax.

SECTION 2. Pursuant to Article XIII B of the California Constitution, the appropriation limit for the City of Huntington Beach will be increased by the maximum projected aggregate collection authorized by the levy of this general tax, as indicated in Section 1, in each of the years covered by this Ordinance plus the amount, if any, by which the appropriation limit is decreased by law as a result of the levy of the general tax set forth in this Ordinance.

SECTION 3. If any portion of this Ordinance is declared invalid by a court of law or other legal body with applicable authority, the invalidity shall not affect or prohibit the force and effect of any other provision or application of the Ordinance that is not deemed invalid. The voters of the City hereby declare that they would have circulated for qualification and/or voted for the adoption of this Section, and each portion thereof, regardless of the fact that any portion of the initiative may be subsequently deemed invalid.

SECTION 4. Pursuant to California Constitution Article XIIC §(2)(b) and California Elections Code §9217, this Ordinance shall take effect only if approved by a majority of the eligible voters of the City of Huntington Beach voting at the General Municipal Election to be held on November 8, 2022, and shall take effect ten (10) days after the City Council has certified the results of the General Municipal Election by Resolution.

SECTION 5. This order shall take effect according to law ten days after certification of the election at which it is adopted.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Assistant City Manager