

RESOLUTION NO. 22-0109

A RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF A CERTAIN MEASURE RELATING TO THE TAXATION OF COMMERCIAL CANNABIS ACTIVITY AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022 AS CALLED BY RESOLUTION NO. 22-0048; AND DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

WHEREAS, the Manhattan Beach City Council adopted Resolution No. 22-0048, on May 3, 2022, calling a General Municipal Election for Tuesday, November 8, 2022, and

WHEREAS, the City Council desires to submit to the voters at the election a question relating to the imposition of a cannabis business tax on commercial cannabis activity, including a tax of between fifteen to twenty percent of gross receipts on retailers, estimated to provide between \$0 and \$960,000 in annual tax revenue if commercial cannabis activity is authorized in Manhattan Beach.

NOW, THEREFORE, THE MANHATTAN BEACH CITY COUNCIL DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following question:

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MANHATTAN BEACH AMENDING THE MANHATTAN BEACH MUNICIPAL CODE TO ADD A NEW CHAPTER 8.38 PERTAINING TO CANNABIS BUSINESS TAX REGULATIONS, AND MAKING A FINDING OF EXEMPTION FROM CEQA UNDER SECTION 15061(B)(3) OF THE CEQA GUIDELINES	YES
Shall the measure imposing a cannabis tax (15-20% gross receipts for retailers, 2% gross receipts for distributors, 2.5% gross receipts for manufacturing and unspecified businesses, 1% gross receipts for testing, and \$10/square foot for cultivation) for an estimated \$0 to \$960,000 annually, if commercial cannabis activity is authorized in Manhattan Beach, for general municipal services, until ended by voters, be adopted?	NO

SECTION 2. That the proposed complete text of the measure submitted to the voters is attached as Exhibit A.

SECTION 3. That the vote requirement for the measure to pass is a majority (50%+1) of the votes cast.

SECTION 4. 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 5. 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 6. That the City Attorney's Impartial Analysis of the ballot measure and the arguments in favor or against the ballot measure shall proceed in accordance with the following:

- A) The City Council directs the City Clerk to transmit a copy of the above referenced measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure not exceeding 500 words showing the effect of the measure on the existing law and the operation of the measure in accordance with California Elections Code Section 9280. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments.
- B) Pursuant to California Elections Code Section 9282(b), the City Council, or a member or members of the City Council authorized by that body, or an individual voter who is eligible to vote on the measure, or bona fide association of citizens, or a combination of voters and associations, may file a written argument for or against the measure. Persons filing arguments may change or withdraw their arguments until and including the date fixed by the City Clerk after which no arguments for or against the measure may be submitted to the City Clerk. Pursuant to Elections Code Section 9287, if more than one argument is submitted for or against the measure, the City Clerk shall select one argument in favor and one argument against, giving preference and priority in accordance with Section 9287.
- C) The City Council hereby adopts the provisions of Elections Code Section 9285(a) relating to rebuttal arguments.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

ADOPTED on _____, 2022.

AYES:

NOES:

ABSENT:

ABSTAIN:

STEVE NAPOLITANO
Mayor

ATTEST:

LIZA TAMURA
City Clerk

EXHIBIT "A"

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF MANHATTAN BEACH
AMENDING THE MANHATTAN BEACH MUNICIPAL CODE TO ADD A NEW
CHAPTER 8.38 PERTAINING TO CANNABIS BUSINESS TAX REGULATIONS, AND
MAKING A FINDING OF EXEMPTION FROM CEQA UNDER SECTION 15061(B)(3)
OF THE CEQA GUIDELINES**

ORDINANCE NO. ____

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF
MANHATTAN BEACH AMENDING THE MANHATTAN
BEACH MUNICIPAL CODE TO ADD A NEW CHAPTER
8.38 PERTAINING TO CANNABIS BUSINESS TAX
REGULATIONS, AND MAKING A FINDING OF
EXEMPTION FROM CEQA UNDER SECTION 15061(b)(3)
OF THE CEQA GUIDELINES**

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF MANHATTAN BEACH
DO ORDAIN AS FOLLOWS:**

SECTION 1. A new Chapter 8.38 (Cannabis Business Tax) is hereby added to Title 8 (Finance, Revenue and Taxation) of the Manhattan Beach Municipal Code to read as follows:

“Chapter 8.38 Cannabis Business Tax

8.38.010 Title.

This chapter is designated and shall be known as the cannabis business tax ordinance.

8.38.020 Authority.

The purpose of this chapter is to establish a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon cannabis businesses that engage in business in the City. The cannabis business tax is levied based upon business gross receipts and square footage of canopy space. It is not a sales and use tax, a tax upon income, or a tax upon real property.

8.38.030 Purpose.

The cannabis business tax is a general tax enacted solely for unrestricted general revenue purposes, 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.

8.38.040 Intent.

The intent of this chapter is to levy a tax on all cannabis businesses that operate in the City, regardless of whether such business would have been legally operating at the time the cannabis business tax was adopted. Nothing in this chapter 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, including, but not limited to, the conduct or continuance of any illegal business or of a legal business in an illegal manner.

8.38.050 Definitions.

DRAFT

The following words and phrases shall have the meanings set forth below when used in this Cannabis Business Tax 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. “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” 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 that is incapable of germination. For the purpose of this chapter, “cannabis” does not include “industrial hemp” as defined by California Health and Safety Code Section 11018.5, as the same may be amended from time to time.

C. “Cannabis business” means a retailer, microbusiness, cultivation facility, distribution facility, manufacturing facility, or a testing laboratory. “Cannabis business” also means any business activity involving cannabis, including, but not limited to, cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit.

D. “Cannabis business tax” or “business tax” means the tax due pursuant to this chapter for engaging in cannabis business in the City.

E. “Cannabis cultivation” means cultivation in the course of conducting a cannabis business.

F. “Cannabis product” means cannabis that has undergone a process whereby the plant material has been transferred into a concentrate including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis or other ingredient.

G. “Canopy space” means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When cannabis 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.

H. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

I. “Cultivation facility” means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.

J. “Distribution” means the procurement, sale and transport of cannabis and cannabis products between retailers, cultivation facilities, manufacturing facilities, and testing laboratories.

K. “Distribution facility” means a business that transports cannabis goods between retailers, cultivation facilities, manufacturing facilities, and testing laboratories, arranges for testing of cannabis goods, and conducts quality assurance review of cannabis goods to ensure compliance with all packaging and labeling requirements.

L. “Employee” means each and every person engaged in the operation or conduct of any business, whether as an 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 business as a cannabis business” means the commencing, conducting, operating, managing or carrying on of a cannabis business, whether done as an 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 as a cannabis business.”

N. “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.

O. “Fiscal year” means July 1 through June 30 of the following calendar year.

P. “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 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 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 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 (\$1);
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 finance department 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; and
9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters or other personal tangible property that the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 8.38.150 shall not be subject to the cannabis business tax under this chapter. However, any retail sales not subject to this chapter as a result of the administrative ruling shall be subject to the appropriate business tax under Chapter 3.40 or any other chapter or title as determined by the Tax Administrator.

Q. “Manufacturing” means all aspects of the extraction process, infusion process, and packaging and labeling processes, including processing, preparing, holding, and storing of cannabis products. Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.

R. “Microbusiness” means a business that engages in the cultivation of cannabis on an area less than ten thousand (10,000) square feet and acts as a licensed distribution facility, and Level 1 manufacturer (State license Type 6). A microbusiness shall not be permitted to act as a retailer.

S. “Permit” means any permit that authorizes a person to operate or engage in any cannabis business in the City.

T. “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.

U. “Retailer” means a cannabis business that engages in the retail sale or delivery of cannabis and cannabis products to customers.

V. “Sale” means and includes any sale, exchange, or barter.

W. “State” means the State of California.

X. “State license” means a license issued by the California Department of Cannabis Control or any other State licensing authority for cannabis businesses.

Y. “Tax Administrator” means the Manhattan Beach City Manager, or his or her designee(s).

Z. “Testing laboratory” means a means a laboratory, facility, or entity in the City that offers or performs tests of cannabis or cannabis products and that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state; and
2. Licensed by the California Department of Cannabis Control.

8.38.060 Tax imposed and modifications to tax.

A. There is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax regardless if the business has been issued a permit to operate lawfully in the City or is operating unlawfully.

B. The rate of the cannabis business tax shall be as follows:

1. For every person who is engaged in cannabis cultivation in the City: ten dollars (\$10) per square foot of canopy space. For purposes of this subsection (B)(1), the square feet of canopy space shall be rebuttably presumed to be the maximum square footage of the area allowed by a permit authorizing cannabis cultivation. Should a permit be issued to a business that cultivates cannabis 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 square footage that is authorized by the permit 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. For every person who engages in the operation of a testing laboratory: one (1) percent of gross receipts.

2. For every person who engages in the retail sales of cannabis: fifteen (15) to twenty (20) percent of gross receipts. The City Council may, at any time by ordinance, modify the cannabis business tax rate for retail sales of cannabis within the permissible range of fifteen (15) percent and twenty (20) percent.

3. For every person who engages in cannabis distribution: two (2) percent of gross receipts.

4. For every person who engages in cannabis manufacturing, processing, or any other type of cannabis business not described in subsection (B)(1), (2), (3) or (4): two and a half (2.5) percent of gross receipts.

5. Microbusinesses shall have a tax imposed on each aspect of their business. For example, a microbusiness shall be charged two and a half (2.5) percent of gross receipts for the manufacturing component of the business, two (2) percent of gross receipts for the distribution component of the business, and ten dollars (\$10) per square feet of canopy space, unless the aspects of the business are so merged that a separate tax rate cannot be determined, in which case they will be charged the higher rate. The business must be able to demonstrate by reasonable and verifiable standards, the portions of activities tied to each aspect of the business, through its books and records kept in the regular course of business, and in accordance with generally accepted accounting principles, and not specifically created and maintained for tax purposes, in order to be charged the lower tax rate.

8.38.070 Reporting and remittance of tax.

A. The cannabis business tax imposed by this chapter shall be paid, in arrears, on a quarterly basis. For cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the cultivation facility's canopy space during the quarter and the rate shall be twenty-five (25) percent of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.

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 as 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 taxpayer 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 taxpayer 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 taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

8.38.080 Payments and communications—Timely remittance.

Whenever any 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, the due date shall be the next regular business day on which the City is open to the public.

8.38.090 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 8.38.070 and 8.38.080.

8.38.100 Notice not required by the City.

The Tax Administrator may as a courtesy send a tax notice to the 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.

8.38.110 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 (10) percent 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 (1) percent per month.

2. If the tax remains unpaid for a period exceeding one (1) calendar month beyond the due date, an additional penalty equal to twenty-five (25) percent of the amount of the tax, plus interest at the rate of one (1) percent per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one (1) percent 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.

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 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.

8.38.120 Refunds and credits.

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 8.38.130.

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.

8.38.130 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 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 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 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.

8.38.140 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 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.

8.38.150 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 to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer 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 taxpayer reports and taxes collected pursuant to this chapter;
5. Assess penalties and interest to taxpayers pursuant to this chapter; and
6. Determine amounts owed and enforce collection pursuant to this chapter.

8.38.160 Appeals 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 chapter may appeal to the City Manager by filing a notice of appeal with the City Clerk within thirty (30) days of the serving or mailing of the determination of tax 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 Manager shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

8.38.170 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.

8.38.180 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 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.

8.38.190 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 United States or California Constitutions 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.

8.38.200 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 taxpayer to the City in support of his or her tax calculation, the Tax Administrator shall have the power to inspect any location where a cannabis business is operating in the City 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 or her designee shall have the right to inspect at all reasonable times.

C. The cannabis business shall pay the actual costs of City's audit each year. The cannabis business shall deposit five thousand dollars (\$5,000) by January 15 of each calendar year to pay for the cost of the yearly audit. If the cost of the audit exceeds five thousand dollars (\$5,000), the cannabis business shall be responsible for paying any amount in excess of the deposit. If the cost of the audit is less than five thousand dollars (\$5,000), the cannabis business shall be refunded the difference.

8.38.210 Other licenses, permits, taxes, fees or charges.

A. 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 chapters of this Code.

B. The Tax Administrator may revoke or refuse to renew the business registration required by Title 6 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 8.38.070.

8.38.220 Payment of tax does not authorize unlawful business.

A. The payment of a cannabis business tax required by this chapter and/or 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 applicable 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 and/or any business in violation of applicable laws.

8.38.230 Deficiency determination.

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 business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such 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 8.38.250.

8.38.240 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 person under this chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this chapter;
2. If the person has not paid the tax due under the provisions of this chapter;
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 chapter; or
4. If the Tax Administrator determines that the nonpayment of any business tax due under this chapter is due to fraud, a penalty of twenty-five (25) percent 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.

8.38.250 Tax assessment—Notice requirements.

The notice of assessment shall be served upon the person either by personal delivery, 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 chapter; 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 purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

8.38.260 Tax assessment—Hearing, application and determination.

Within thirty (30) days after the date of service, 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 tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) 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) 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) 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 the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 8.38.250 for giving notice of assessment.

8.38.270 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.

8.38.280 Violation deemed a misdemeanor.

Any person violating any of the provisions of this chapter is deemed guilty of a misdemeanor.

8.38.290 Severability.

If any provision of this chapter, 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 chapter or the application of this chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

8.38.300 Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of the Manhattan Beach Municipal 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.”

SECTION 2. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The voters hereby declare that they would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. Neither the adoption of this Ordinance nor the repeal of any other Ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

SECTION 4. Subsequent Amendment. The City Council may not repeal this Ordinance. Pursuant to California Elections Code Section 9217, the City Council may amend any provision of this Ordinance by majority vote, with the exception of:

A. Any reduction of the cannabis business tax for retailers below fifteen (15) percent of gross receipts, unless required by state law.

B. Any increase of the cannabis business tax for retailers above twenty (20) percent of gross receipts, unless required by state law.

SECTION 5. Tax Restoration and Adjustments. The people of the City of Manhattan 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 no higher than that allowed by this Ordinance, in those circumstances where, among others, the City Council has previously acted to reduce the rate of the tax or is incrementally implementing an increase authorized by this Ordinance;

B. An action that interprets or clarifies (i) the methodology of applying or calculating the 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 Ordinance; or

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

SECTION 6. Effective Date. Pursuant to Elections Code Section 9217, the Measure shall be in full force and effect upon the tenth day following certification by the City Council of the election returns indicating passage of the Measure by a majority of the voters casting votes on the Measure.

SECTION 7. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published in accordance with the law.

SECTION 8. Notification. The City Attorney shall send a copy of this Ordinance to the Bureau of Cannabis Control immediately following its effective date.

SECTION 9. CEQA Exemption. The City Council's action to place this Ordinance on the ballot and the voters' adoption of this Ordinance are exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment. Furthermore, this Ordinance is not subject to the CEQA pursuant to the CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of the Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

DRAFT

ADOPTED by the voters at the General Municipal Election held November 8, 2022 by the following vote:

Mayor

ATTEST:

Liza Tamura, City Clerk