

RESOLUTION NO. 22-0110

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 REGULATION AND 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 also desires to submit to the voters at the election a question relating to the regulation and taxation of commercial cannabis activity to (1) repeal and replace the current prohibition on commercial activity with regulations allowing one storefront cannabis retailers subject to operation and location requirements for such businesses; (2) amend the zoning code to allow commercial cannabis use as a permitted use in certain commercial zones; and (3) impose a cannabis business tax on commercial cannabis activity, including a tax of between fifteen to twenty percent of gross receipts on retailers, anticipated to provide annual tax revenue from each retail store between \$240,000 and \$320,000.

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:

<p>AN ORDINANCE OF THE PEOPLE OF THE CITY OF MANHATTAN BEACH AMENDING THE MANHATTAN BEACH MUNICIPAL CODE TO: (1) REPEAL CHAPTER 4.136, (2) ADD A NEW CHAPTER 4.136 REGARDING PERMITTED COMMERCIAL CANNABIS ACTIVITIES, (3) ADD A NEW CHAPTER 8.38 PERTAINING TO CANNABIS BUSINESS TAX REGULATIONS, (4) AMEND SECTION 10.16.020 TO MAKE COMMERCIAL CANNABIS USE A PERMITTED USE IN THE GENERAL COMMERCIAL (CG) DISTRICT, AND (5) AMEND SECTION 10.82.020 PERTAINING TO EXEMPTED CANNABIS ACTIVITIES; DECLARING A CONFLICT WITH MEASURES ___ AND ___ ON THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION; AND MAKING A FINDING OF EXEMPTION FROM CEQA UNDER SECTIONS 15061(B)(3) AND 15305 OF THE CEQA GUIDELINES</p>	<p>YES</p>
<p>Shall the measure allowing one cannabis retailer subject to operation and location restrictions, and 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 \$240,000 to \$320,000 annually for general municipal services until ended by voters, be adopted?</p>	<p>NO</p>

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. However, if provisions of this measure and any other measure(s) approved at the same November 8, 2022 election conflict, the provisions of the measure receiving the highest number of affirmative votes shall prevail.

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 is hereby directed to insert the letters of the conflicting measures into the appropriate places in this Resolution upon receiving the letter designations doe such measures from Los Angeles County.

SECTION 8. 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: (1) REPEAL CHAPTER 4.136, (2) ADD A NEW CHAPTER 4.136 REGARDING PERMITTED COMMERCIAL CANNABIS ACTIVITIES, (3) ADD A NEW CHAPTER 8.38 PERTAINING TO CANNABIS BUSINESS TAX REGULATIONS, (4) AMEND SECTION 10.16.020 TO MAKE COMMERCIAL CANNABIS USE A PERMITTED USE IN THE GENERAL COMMERCIAL (CG) DISTRICT, AND (5) AMEND SECTION 10.82.020 PERTAINING TO EXEMPTED CANNABIS ACTIVITIES; DECLARING A CONFLICT WITH MEASURES ___ AND ___ ON THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION; AND MAKING A FINDING OF EXEMPTION FROM CEQA UNDER SECTIONS 15061(B)(3) AND 15305 OF THE CEQA GUIDELINES

ORDINANCE NO. ____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MANHATTAN BEACH AMENDING THE MANHATTAN BEACH MUNICIPAL CODE TO: (1) REPEAL CHAPTER 4.136, (2) ADD A NEW CHAPTER 4.136 REGARDING PERMITTED COMMERCIAL CANNABIS ACTIVITIES, (3) ADD A NEW CHAPTER 8.38 PERTAINING TO CANNABIS BUSINESS TAX REGULATIONS, (4) AMEND SECTION 10.16.020 TO MAKE COMMERCIAL CANNABIS USE A PERMITTED USE IN THE GENERAL COMMERCIAL (CG) DISTRICT, AND (5) AMEND SECTION 10.82.020 PERTAINING TO EXEMPTED CANNABIS ACTIVITIES; DECLARING A CONFLICT WITH MEASURES ____ AND ____ ON THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION; AND MAKING A FINDING OF EXEMPTION FROM CEQA UNDER SECTIONS 15061(b)(3) AND 15305 OF THE CEQA GUIDELINES

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

SECTION 1. Intent; Conflicting Measure. It is the intent of the voters that, pursuant to California Elections Code Section 9221, this Ordinance conflicts with Measures ____ and ____ on the November 8, 2022 General Municipal Election ballot and, if the measure adopting this Ordinance receives more affirmative votes, this Ordinance shall control and Measures ____ and ____ shall have no effect.

SECTION 2. Section 10.82.020 of Chapter 10.82 (Cannabis) of Title 10 (Planning and Zoning) of the Manhattan Beach Municipal Code is amended to read as follows:

“A. Except as specifically authorized in Chapter 4.136, commercial cannabis activity is prohibited in the City. This chapter shall not operate to prohibit any commercial cannabis activity that the City is preempted from prohibiting due to any State law or regulation.

B. It is unlawful for any person to engage in commercial cannabis activity without a cannabis regulatory permit issued pursuant to Chapter 4.136 for each location where the commercial cannabis activity occurs.

C. It is unlawful for any person to violate any rules, regulations and standards promulgated by the City Manager pertaining to cannabis businesses.

D. All outdoor cannabis cultivation is prohibited in the City. Indoor cannabis cultivation is prohibited except as specified in section 10.82.030(A)(4).”

SECTION 3. Chapter 4.136 (Cannabis Activities) of Title 4 (Public Welfare Morals and Conduct) of the Manhattan Beach Municipal Code is repealed in full and replaced with a new Chapter 4.136 (Cannabis Regulatory Permit) to read as follows:

“Chapter 4.136 Cannabis Regulatory Permit

4.136.010 Purpose.

It is the purpose and intent of this chapter to implement the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) to accommodate the needs of medically-ill persons in need of cannabis for medicinal purposes as recommended by their health care provider(s), and to provide access to same. It is also the purpose and intent of this chapter to provide access to adult-use cannabis for persons aged twenty-one (21) and over as authorized by the Adult Use of Marijuana Act (“AUMA” or “Proposition 64”) approved by California voters in 2016, while imposing reasonable regulations to protect the City’s residents, neighborhoods and businesses from disproportionately negative impacts. As such, it is the purpose and intent of this chapter to regulate the sale of cannabis and cannabis products in a responsible manner to protect the health, safety and welfare of the residents of the City of Manhattan Beach and to enforce rules and regulations consistent with state law.

4.136.020 Definitions.

For the purpose of this chapter, the following words and phrases shall be defined as follows:

A. “Applicant” means an owner applying for a cannabis regulatory permit pursuant to this chapter.

B. “Beach” has the same meaning as set forth in Section 12.01.020 of this Code, as the same may be amended from time to time.

C. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” 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.

D. “Cannabis business” means a retailer, microbusiness, cultivation facility, distribution facility, manufacturing facility or a testing laboratory engaged in commercial cannabis activity. “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.

E. “Cannabis goods” means cannabis, including dried flower, and cannabis products.

F. “Cannabis products” 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. “City” means the City of Manhattan Beach.

H. “City Manager” means the City Manager, or his or her designee.

I. “Convicted” or “conviction” means a plea or verdict of guilty or a conviction following a plea of nolo contendere was entered, but does not include any plea, verdict or conviction that is expunged pursuant to California law or a similar federal or state law where the expungement was granted.

J. “Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products, or engaging in any other cannabis activity that requires a state license issued by a licensing authority.

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

L. “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.

M. “Day care center” has the same meaning as set forth in California Health and Safety Code Section 1596.76, as the same may be amended from time to time.

N. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. Delivery also includes the use by a retailer of any technology platform.

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

P. “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.

Q. “Extract” means a process by which cannabinoids are separated from cannabis plant material through chemical or physical means.

R. “Infuse” or “infusion” means a process by which cannabis, cannabinoids or cannabis concentrates are directly incorporated into a product formulation to produce a cannabis product.

S. “Licensee” means a cannabis business that has obtained a State license.

T. “Licensing authority” means the California Department of Cannabis Control or any other state cannabis licensing authority.

U. “Manufacture” means to compound, blend, extract, infuse or otherwise make or prepare a cannabis product.

V. “Manufacturing facility” means a business that engages in all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging or labeling of cannabis products. Manufacturing also includes any processing, preparing, holding or storing of components and ingredients.

W. “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 act as a retailer.

X. “Owner” means any of the following:

1. A person with an aggregate ownership interest of twenty (20) percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien or encumbrance;
2. The chief executive officer of a nonprofit or other entity;
3. A member of the board of directors of a nonprofit; or
4. An individual who will be participating in the direction, control or management of the person applying for a permit.

Y. “Operations plan” means an operating plan approved by the City Manager in consultation with the Police Chief, that implements the standard requirements of this chapter along with such additional, reasonable, criteria needed to protect public health and safety as determined by the City Manager in consultation with the Police Chief, based upon the size and location of the proposed cannabis business.

Z. “Package” or “Packaging” means any container or wrapper that may be used for enclosing or containing any cannabis product. The term “package” or “packaging” does not include any shipping container or outer wrapping used solely for the transportation of cannabis products in bulk quantity to another licensee or licensed premises.

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AA. “Park” shall mean and include any City owned or operated recreational facility including, but not limited to, parks, parkettes, athletic fields, tennis courts, basketball courts or other such public recreational area, excluding the Veterans Parkway as defined in Section 12.12.010 of this Code.

BB. “Permit” means a cannabis regulatory permit issued under this chapter and any rules, regulations and standards promulgated by the City Manager.

CC. “Permittee” means any person holding a permit under this chapter.

DD. “Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, non-profit or any other group or combination acting as a unit, and the plural as well as the singular.

EE. “Police Chief” means the Chief of Police for Manhattan Beach or his or her designee.

FF. “Premises” means the designated structure or structures and land specified in the application that is owned, leased or otherwise held under the control of the applicant or permittee where the commercial cannabis activity will be or is conducted.

GG. “Religious assembly” has the same meaning as set forth in Section 10.08.040 of this Code, as the same may be amended from time to time.

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

II. “Sensitive use” means the beach, the County of Los Angeles Public Library—Manhattan Beach Library, a school, a day care center, a youth center, a religious assembly, or park.

JJ. “School” has the same meaning as set forth in Section 11362.768 of the California Health and Safety Code, as the same may be amended from time to time.

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

LL. “Storefront retailer” means a retailer that has a physical location (premises), including an address where commercial cannabis activities are conducted, and that sells cannabis goods to customers at its premises.

MM. “Testing laboratory” 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.

NN. “Transport” means the transfer of cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized by MAUCRSA. Transport can only be performed by licensed distributors and does not include deliveries of cannabis or cannabis products.

OO. “Youth center” has the same meaning as set forth in California Health and Safety Code Section 11353.1, as the same may be amended from time to time.

4.136.030 Commercial cannabis activity prohibited unless expressly authorized.

A. Except as specifically authorized in this chapter, commercial cannabis activity is prohibited in the City. This chapter shall not operate to prohibit any commercial cannabis activity that the City is preempted from prohibiting due to any State law or regulation.

B. It is unlawful for any person to engage in commercial cannabis activity without a cannabis regulatory permit for each location where the commercial cannabis activity occurs.

C. Unless otherwise provided by this chapter, it is unlawful for any person to engage in commercial cannabis activity from other than a fixed location within the City's jurisdiction for which a valid cannabis regulatory permit has been obtained and remains in effect.

D. It is unlawful for any person to cause, permit, aid, abet or conceal a violation of any provision of this chapter.

4.136.040 Permitted commercial cannabis activity.

A. Subject to applicable State law and this chapter, commercial cannabis activity is permitted only when approved by the City in accordance with this chapter and any rules, regulations and standards promulgated by the City Manager.

B. The following commercial cannabis activity may be allowed pursuant to a permit:

1. Storefront Retailer.
2. (Reserved.)

C. There shall be no delivery of cannabis from any location within the City, except as required by state law.

4.136.050 Permit required.

To engage in commercial cannabis activity allowed by this chapter, a person must obtain an annual cannabis regulatory permit issued pursuant to this chapter and must operate the

business in compliance with any rules, regulations and standards promulgated by the City Manager. The commercial cannabis business must also have:

- A. A valid City business license to conduct such business or activity; and
- B. A valid state license authorizing such business or activity in the City.

4.136.060 Limitations on number of commercial cannabis businesses.

A. Location of retailers. Retailers shall be permitted uses in the General Commercial (CG) district pursuant to Section 10.16.020, subject to the further limitations of this chapter and any rules, regulations and standards promulgated by the City.

B. Limitation on number of retailers. The maximum number of retailers within the City shall be one (1). The method and manner by which the retailer shall be selected to operate in the City shall be established by resolution of the City Council.

4.136.070 Limitations on City's liability.

A. To the fullest extent permitted by law, the City does not assume any liability whatsoever, with respect to approving a permit pursuant to this Code or the operation of a cannabis business approved pursuant to this Code.

B. As a condition to issuance of a cannabis regulatory permit, the permittee shall execute an indemnification agreement, in a form approved by the City Attorney, that indemnifies the City from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of the cannabis regulatory permit, the City's decision to approve the operation of the cannabis business or activity, the process used by the City in making its decision, or the alleged violation of any federal, state or local laws by the cannabis business or any of its officers, employees or agents.

4.136.080 Location criteria.

A. Cannabis businesses may only be located in zoning districts set forth in 4.136.060(A).

B. No cannabis business shall be established on any portion of a lot located:

1. Within a 1,000-foot radius of the beach, the County of Los Angeles Public Library—Manhattan Beach Library, a school, a day care center, a youth center, a religious assembly, park, or another cannabis business; or

2. Within a 850-foot radius of a day care center.

The distance specified in this subsection shall be measured by the horizontal distance measured in a straight line from the property line of where the cannabis business is to be located to the closest property line of the lot on which the sensitive use or another cannabis business is located without regard to intervening structures.

4.136.090 Promulgation of regulations and standards; operations plan requirement.

The City Manager is authorized to establish any rules, regulations and standards governing the permitting and operation of cannabis businesses. A cannabis business shall submit to the City an Operations Plan, with all information required by the City, and shall not commence operations unless such Plan is approved by the City Manager.

4.136.100 Security measures.

A cannabis business shall comply with the security regulations required by the State of California for cannabis businesses by California Code of Regulations Title 4, Sections 15042 through 15047.2, as amended from time to time, which are attached hereto as Exhibit A and incorporated herein by this reference. The City Manager is authorized to establish additional security rules, regulations and standards for cannabis businesses.

4.136.110 Employee background check required.

A. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), every person listed as an owner, manager, supervisor, employee, contract employee or agent who otherwise works in a cannabis business must submit fingerprints and any other information deemed necessary by the Police Chief, or his or her designee, for a background check by the Police Chief.

B. Before the date of hire of any employee or within thirty (30) calendar days of issuance of a commercial cannabis business permit, whichever is later, the permittee shall identify each prospective employee and submit for each: the name, address, telephone number, title, primary responsibility(ies) and a valid government-issued form of identification, together with any other related information requested by the Police Chief for the purpose of conducting mandatory background checks.

C. No person shall be permitted to work at a cannabis business until they have first cleared a background check conducted through LiveScan. The LiveScan background check shall be conducted by a business in the City to the extent possible. Evidence that a prospective employee has been convicted of any the following offenses shall be grounds for denial of employment:

1. A violent or serious felony conviction, as specified in Penal Code Sections 667.5(c) or 1192.7(c);
2. A felony conviction involving fraud, deceit or embezzlement;
3. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering or giving any controlled substance to a minor; or

4. A felony conviction for drug trafficking with enhancements pursuant to Health and Safety Code Sections 11370.4 or 11379.8.

Employers who wish to hire an individual despite such conviction shall appeal to the City Manager, who shall consult with the Police Chief, and at his or her sole discretion may issue a written waiver.

D. Violation of this section shall be grounds for immediate suspension of the cannabis business permit.

4.136.120 Enforcement of permits.

A. In addition to other remedies set forth in this Code, violations of this chapter may be prosecuted as infractions or misdemeanors at the City Attorney's discretion and may be abated as public nuisances. The remedies provided in this chapter are cumulative and are in addition to any other criminal or civil remedies. Violations of this chapter include: (i) violation of the provisions of this chapter; (ii) violation of any rules, regulations and standards promulgated by the City Council or City Manager; and (iii) violation of the terms and conditions of a permit, indemnification agreement, operations plan, and, if required, development agreement.

B. Revocation of a license issued by the California Department of Cannabis Control, shall result in the revocation of the cannabis regulatory permit and immediately suspend the ability of a cannabis business to operate within the City. ”

SECTION 4. Section 10.16.020 is amended to allow commercial cannabis activity as a permitted use in the General Commercial (CG) district. Corresponding changes shall be made to the Manhattan Beach Local Coastal Program to permit such uses in the General Commercial (CG) district within the City's coastal zone.

SECTION 5. 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.

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 a cannabis regulatory permit issued by the City to a person to authorize that person to operate or engage in a cannabis business pursuant to Chapter 4.136 of this Code.

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 the cannabis regulatory permit for cannabis cultivation. Should a cannabis regulatory permit be issued to a business that cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall square footage that is authorized by the cannabis regulatory 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 the 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 cannabis regulatory permit required by Chapter 4.136 of this Code or 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 6. 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 7. 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 8. 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.
- C. The number of permitted retailers, unless required by state law.

SECTION 9. 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 10. 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 11. 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 12. Notification. The City Attorney shall send a copy of this Ordinance to the Bureau of Cannabis Control immediately following its effective date.

SECTION 13. 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. The Ordinance is also eligible for a class 5 categorical exemption for minor changes in land use limitations with an average slope of less than 20 percent that do not result in any changes in land use or density. The Ordinance is not changing any density and would permit uses that are consistent with existing uses. This Ordinance is therefore exempt from CEQA pursuant to the CEQA Guidelines Section 15305. A Notice of Exemption shall be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

SECTION 14. The City Clerk is hereby directed to insert the letters of the conflicting measures into the appropriate places in this Ordinance upon receiving the letter designations for such measures from Los Angeles County.

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

Mayor

ATTEST:

Liza Tamura, City Clerk

EXHIBIT A

STATE SECURITY REQUIREMENTS – CALIFORNIA CODE OF REGULATIONS
TITLE 4, SECTIONS 15042 THROUGH 15047.2

§ 15042. Premises Access Requirements.

- (a) For a premises that is not open to the public, the licensee shall establish and implement an identification and sign-in/sign-out procedure for all persons accessing the premises, including authorized individuals, suppliers, and visitors.
- (b) Licensees shall ensure that only employees of the licensee and other authorized individuals access the limited-access areas of the licensed premises.
- (c) For the purpose of this section, authorized individuals include outside vendors, contractors, or other individuals conducting business that requires access to the limited-access areas.
- (d) An individual who enters the limited-access area and is not employed by the licensee shall be escorted by an employee of the licensee at all times while within the limited-access area.
- (e) A licensee shall maintain a record of all authorized individuals who are not employees of the licensee who enter the limited-access areas. The record shall include the name of the individual, the company the individual works for, the reason the individual entered the limited-access area, the date, and the times the individual entered and exited the limited-access area. These records shall be made available to the Department immediately upon request.
- (f) A licensee shall not receive consideration or compensation for permitting an individual to enter the limited-access areas.

§ 15042.1. Security Plan for Licensed Manufacturers.

A licensed manufacturer shall develop and implement a written security plan. At a minimum, the security plan shall include a description of the security measures to:

- (a) Prevent access to the manufacturing premises by unauthorized persons and protect the physical safety of employees. This includes, but is not limited to:
 - (1) Establishing physical barriers to secure perimeter access and all points of entry into a manufacturing premises (such as locking primary entrances with commercial-grade, non-residential door locks, providing fencing around the grounds and driveway, and securing any secondary entrances including windows, roofs, and ventilation systems);
 - (2) Installing a security alarm system to notify and record incident(s) where physical barriers have been breached;
 - (3) Establishing an identification and sign-in/sign-out procedure for authorized personnel, individuals, suppliers, and visitors;
 - (4) Maintaining the premises such that visibility and security monitoring of the premises is possible; and
 - (5) Establishing procedures for the investigation of suspicious activities.
- (b) Deterring theft or loss of cannabis and cannabis products. This includes, but is not limited to:
 - (1) Establishing an inventory system to track cannabis and cannabis products and the personnel responsible for processing it throughout the manufacturing process;
 - (2) Limiting access of personnel within the premises to those areas necessary to complete job duties, and to those timeframes specifically scheduled for completion of job duties, including access by outside vendors, suppliers, contractors or other individuals conducting business with the licensee that requires access to the premises;

- (3) Supervising tasks or processes with high potential for diversion, including the loading and unloading of cannabis and cannabis products from transportation vehicles; and
 - (4) Providing areas in which personnel may store and access personal items that are separate from the manufacturing areas.
- (c) Securing and backing up electronic records in a manner that prevents unauthorized access and ensures that the integrity of the records is maintained.

§ 15043. Licensee Employee Badge Requirement.

All agents, officers, or other persons acting for or employed by a licensee conducting retail sales or participating in a temporary cannabis event shall display a laminated or plastic-coated identification badge issued by the licensee at all times while engaging in commercial cannabis activity. The identification badge shall, at a minimum, include the licensee's "doing business as" name and license number, the employee's first name, an employee number exclusively assigned to that employee for identification purposes, and a color photograph of the employee that clearly shows the full front of the employee's face and that is at least 1 inch in width and 1.5 inches in height.

§ 15044. Video Surveillance System.

- (a) Each licensed premises shall have a digital video surveillance system with a minimum camera resolution of 1280 x 720 pixels on the licensed premises. This requirement does not apply to a licensed premises authorized exclusively for cultivation activities or the cultivation area of a licensed microbusiness premises.
- (b) The video surveillance system shall at all times be able to effectively and clearly record images of the area under surveillance.
- (c) Each camera shall be permanently mounted and in a fixed location. Each camera shall be placed in a location that allows the camera to clearly record activity occurring within 20 feet of all points of entry and exit on the licensed premises, and allows for the clear and certain identification of any person and activities in all areas required to be filmed under subsection (d) of this section.
- (d) Areas that shall be recorded on the video surveillance system include the following:
- (1) Areas where cannabis or cannabis products are weighed, packed, stored, loaded, and unloaded for transportation, prepared, or moved within the licensed premises;
 - (2) Limited-access areas;
 - (3) Security rooms;
 - (4) Areas storing a surveillance-system storage device with at least one camera recording the access points to the secured surveillance recording area; and
 - (5) Entrances and exits to the licensed premises, which shall be recorded from both indoor and outdoor vantage points.
- (e) Licensed retailers and licensed microbusinesses authorized to engage in retail sales shall also record point-of-sale areas and areas where cannabis goods are displayed for sale on the video surveillance system. At each point-of-sale location, camera placement must allow for the recording of the facial features of any person purchasing or selling cannabis goods, or any person in the retail area, with sufficient clarity to determine identity.
- (f) Cameras shall record continuously 24 hours per day and at a minimum of 15 frames per second (FPS).

- (g) The physical media or storage device on which surveillance recordings are stored shall be secured in a manner to protect the recording from tampering or theft.
- (h) Surveillance recordings shall be kept for a minimum of 90 calendar days.
- (i) Surveillance recordings are subject to inspection by the Department and shall be kept in a manner that allows the Department to view and obtain copies of the recordings at the licensed premises immediately upon request. The licensee shall also send or otherwise provide copies of the recordings to the Department upon request within the time specified by the Department.
- (j) Recorded images shall clearly and accurately display the time and date. Time is to be measured in accordance with the standards issued by the United States National Institute of Standards and Technology. The displayed date and time shall not significantly obstruct the view of recorded images.
- (k) The video surveillance system shall be equipped with a failure notification system that provides notification to the licensee of any interruption or failure of the video surveillance system or video surveillance-system storage device.
- (l) If multiple licensed premises are contained within the same building, a single video surveillance system covering the entire building may be used by all of the licensees under the following conditions:
 - (1) All licensees shall have immediate access to the surveillance recordings to produce them pursuant to subsection (i).
 - (2) All licensees shall be held responsible and subject to discipline for any violations of the video surveillance requirements.
- (m) Notwithstanding subsection (a), a licensed distributor transport only licensee engaged in self-distribution whose premises is on the same parcel of land as their licensed cultivation premises shall not be required to comply with the provisions of this section.

§ 15045. Security Personnel.

- (a) A licensed retailer or licensed microbusiness authorized to engage in retail sales shall hire or contract for security personnel who are at least 21 years of age to provide onsite security services for the licensed retail premises during the hours of operation. All security personnel hired or contracted for by the licensee shall be licensed by the Bureau of Security and Investigative Services and shall comply with chapters 11.4 and 11.5 of division 3 of the Business and Professions Code.
- (b) Notwithstanding subsection (a), a licensed non-storefront retailer or licensed microbusiness who is not engaged in storefront retail sale is not required to hire or contract for security personnel.
- (c) If multiple licensed premises are contained within the same building, security personnel may be shared by all of the licensees to cover the entire building. However, all licensees shall be held responsible and subject to discipline for any violations of the security personnel requirements.

§ 15046. Locks.

A licensee shall ensure that all limited-access areas can be securely locked using commercial-grade, nonresidential door locks. A licensee shall also use commercial-grade, nonresidential door locks on all points of entry and exit to the licensed premises. This requirement does not apply to a licensed premises authorized exclusively for cultivation activities or the cultivation area of a licensed microbusiness premises.

§ 15047. Alarm System.

(a) A licensee shall maintain an alarm system as defined in Business and Professions Code section 7590.1(c) at the licensed premises. This requirement does not apply to a licensed premises authorized exclusively for cultivation activities or the cultivation area of a licensed microbusiness premises.

(b) A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors, and responds to the alarm system.

(c) Upon request, a licensee shall make available to the Department all information related to the alarm system, monitoring, and alarm activity.

(d) If multiple licensed premises are contained within the same building, a single alarm system covering the entire building may be used by all of the licensees under the following conditions:

(1) All licensees shall have access to and be able to provide the information under subsection (c).

(2) All licensees shall be held responsible and subject to discipline for any violations of the alarm system requirements.

§ 15047.1. Definitions.

(a) “Plant tag” means the RFID-enabled tag that is labeled with a UID number and provided by the Department or the Department's designee for attaching to a cannabis plant.

(b) “Package tag” means the RFID-enabled tag that is labeled with a UID number and provided by the Department or the Department's designee for attaching to batches of cannabis or cannabis products.

§ 15047.2. General Requirements.

(a) A licensee shall create and maintain an account within the track and trace system prior to engaging in any commercial cannabis activity.

(b) All commercial cannabis activity shall be accurately recorded in the track and trace system.

(c) A licensee is responsible for the accuracy and completeness of all data and information entered into the track and trace system. The licensee is responsible for all actions taken by the designated account manager or other account users while performing track and trace activities.

(d) A person shall not intentionally misrepresent or falsify information entered into the track and trace system.

Streamlined Measure Regulating and Taxing Commercial Cannabis

ORDINANCE NO. ____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MANHATTAN BEACH AMENDING THE MANHATTAN BEACH MUNICIPAL CODE TO: (1) REPEAL CHAPTER 4.136, (2) ADD A NEW CHAPTER 4.136 REGARDING PERMITTED COMMERCIAL CANNABIS ACTIVITIES, (3) ADD A NEW CHAPTER 8.38 PERTAINING TO CANNABIS BUSINESS TAX REGULATIONS, (4) AMEND SECTION 10.16.020 TO MAKE COMMERCIAL CANNABIS USE A PERMITTED USE IN THE GENERAL COMMERCIAL (CG) DISTRICT, AND (5) AMEND SECTION 10.82.020 PERTAINING TO EXEMPTED CANNABIS ACTIVITIES; DECLARING A CONFLICT WITH MEASURES ____ AND ____ ON THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION; AND MAKING A FINDING OF EXEMPTION FROM CEQA UNDER SECTIONS 15061(b)(3) AND 15305 OF THE CEQA GUIDELINES

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

SECTION 1. Intent; Conflicting Measure. It is the intent of the voters that, pursuant to California Elections Code Section 9221, this Ordinance conflicts with Measures ____ and ____ on the November 8, 2022 General Municipal Election ballot and, if the measure adopting this Ordinance receives more affirmative votes, this Ordinance shall control and Measures ____ and ____ shall have no effect.

SECTION 2. Section 10.82.020 of Chapter 10.82 (Cannabis) of Title 10 (Planning and Zoning) of the Manhattan Beach Municipal Code is amended to read as follows:

“A. Except as specifically authorized in Chapter 4.136, commercial cannabis activity is prohibited in the City. This chapter shall not operate to prohibit any commercial cannabis activity that the City is preempted from prohibiting due to any State law or regulation.

B. It is unlawful for any person to engage in commercial cannabis activity without a cannabis regulatory permit issued pursuant to Chapter 4.136 for each location where the commercial cannabis activity occurs.

C. It is unlawful for any person to violate any rules, regulations and standards promulgated by the City Manager pertaining to cannabis businesses.

D. All outdoor cannabis cultivation is prohibited in the City. Indoor cannabis cultivation is prohibited except as specified in section 10.82.030(A)(4).”

SECTION 3. Chapter 4.136 (Cannabis Activities) of Title 4 (Public Welfare Morals and Conduct) of the Manhattan Beach Municipal Code is repealed in full and replaced with a new Chapter 4.136 (Cannabis Regulatory Permit) to read as follows:

“Chapter 4.136 Cannabis Regulatory Permit

4.136.010 Definitions.

For the purpose of this chapter, the following words and phrases shall be defined as follows:

A. “Applicant” means an owner applying for a cannabis regulatory permit pursuant to this chapter.

B. “Beach” has the same meaning as set forth in Section 12.01.020 of this Code, as the same may be amended from time to time.

C. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” 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.

D. “Cannabis business” means a retailer, microbusiness, cultivation facility, distribution facility, manufacturing facility or a testing laboratory engaged in commercial cannabis activity. “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.

E. “Cannabis goods” means cannabis, including dried flower, and cannabis products.

F. “Cannabis products” 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. “Convicted” or “conviction” means a plea or verdict of guilty or a conviction following a plea of nolo contendere was entered, but does not include any plea, verdict or

conviction that is expunged pursuant to California law or a similar federal or state law where the expungement was granted.

H. “Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products, or engaging in any other cannabis activity that requires a state license issued by a licensing authority.

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

J. “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.

K. “Day care center” has the same meaning as set forth in California Health and Safety Code Section 1596.76, as the same may be amended from time to time.

L. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer. Delivery also includes the use by a retailer of any technology platform.

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

N. “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.

O. “Extract” means a process by which cannabinoids are separated from cannabis plant material through chemical or physical means.

P. “Infuse” or “infusion” means a process by which cannabis, cannabinoids or cannabis concentrates are directly incorporated into a product formulation to produce a cannabis product.

Q. “Licensee” means a cannabis business that has obtained a State license.

R. “Licensing authority” means the California Department of Cannabis Control or any other state cannabis licensing authority.

S. “Manufacture” means to compound, blend, extract, infuse or otherwise make or prepare a cannabis product.

T. “Manufacturing facility” means a business that engages in all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing,

packaging or labeling of cannabis products. Manufacturing also includes any processing, preparing, holding or storing of components and ingredients.

U. “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 act as a retailer.

V. “Owner” means any of the following:

1. A person with an aggregate ownership interest of twenty (20) percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien or encumbrance;
2. The chief executive officer of a nonprofit or other entity;
3. A member of the board of directors of a nonprofit; or
4. An individual who will be participating in the direction, control or management of the person applying for a permit.

W. “Operations plan” means an operating plan approved by the City Manager in consultation with the Police Chief, that implements the standard requirements of this chapter along with such additional, reasonable, criteria needed to protect public health and safety as determined by the City Manager in consultation with the Police Chief, based upon the size and location of the proposed cannabis business.

X. “Package” or “Packaging” means any container or wrapper that may be used for enclosing or containing any cannabis product. The term “package” or “packaging” does not include any shipping container or outer wrapping used solely for the transportation of cannabis products in bulk quantity to another licensee or licensed premises.

Y. “Park” shall mean and include any City owned or operated recreational facility including, but not limited to, parks, parkettes, athletic fields, tennis courts, basketball courts or other such public recreational area, excluding the Veterans Parkway as defined in Section 12.12.010 of this Code.

Z. “Permit” means a cannabis regulatory permit issued under this chapter and any rules, regulations and standards promulgated by the City Manager.

AA. “Permittee” means any person holding a permit under this chapter.

BB. “Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, non-profit or any other group or combination acting as a unit, and the plural as well as the singular.

CC. “Premises” means the designated structure or structures and land specified in the application that is owned, leased or otherwise held under the control of the applicant or permittee where the commercial cannabis activity will be or is conducted.

DD. “Religious assembly” has the same meaning as set forth in Section 10.08.040 of this Code, as the same may be amended from time to time.

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

FF. “Sensitive use” means the beach, the County of Los Angeles Public Library—Manhattan Beach Library, a school, a day care center, a youth center, a religious assembly, or park.

GG. “School” has the same meaning as set forth in Section 11362.768 of the California Health and Safety Code, as the same may be amended from time to time.

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

II. “Storefront retailer” means a retailer that has a physical location (premises), including an address where commercial cannabis activities are conducted, and that sells cannabis goods to customers at its premises.

JJ. “Testing laboratory” 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.

KK. “Transport” means the transfer of cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized by MAUCRSA. Transport can only be performed by licensed distributors and does not include deliveries of cannabis or cannabis products.

LL. “Youth center” has the same meaning as set forth in California Health and Safety Code Section 11353.1, as the same may be amended from time to time.

4.136.020 Commercial cannabis activity prohibited unless expressly authorized.

A. Except as specifically authorized in this chapter, commercial cannabis activity is prohibited in the City. This chapter shall not operate to prohibit any commercial cannabis activity that the City is preempted from prohibiting due to any State law or regulation.

B. It is unlawful for any person to engage in commercial cannabis activity without a cannabis regulatory permit for each location where the commercial cannabis activity occurs.

C. Unless otherwise provided by this chapter, it is unlawful for any person to engage in commercial cannabis activity from other than a fixed location within the City's jurisdiction for which a valid cannabis regulatory permit has been obtained and remains in effect.

D. It is unlawful for any person to cause, permit, aid, abet or conceal a violation of any provision of this chapter.

4.136.030 Permitted commercial cannabis activity.

A. Subject to applicable State law and this chapter, the only commercial cannabis activity permitted is one storefront retailer approved by the City in accordance with this chapter and any rules, regulations and standards promulgated by the City Manager.

B. There shall be no delivery of cannabis from any location within the City or any other commercial cannabis activity, except as required by state law.

4.136.040 Permit required.

To engage in commercial cannabis activity allowed by this chapter, a person must obtain an annual cannabis regulatory permit issued pursuant to this chapter and must operate the business in compliance with any rules, regulations and standards promulgated by the City Manager. The commercial cannabis business must also have:

A. A valid City business license to conduct such business or activity; and

B. A valid state license authorizing such business or activity in the City.

4.136.050 Limitations on number of commercial cannabis businesses.

A. Location of retailers. Retailers shall be permitted uses in the General Commercial (CG) district pursuant to Section 10.16.020, subject to the further limitations of this chapter and any rules, regulations and standards promulgated by the City.

B. Limitation on number of retailers. The maximum number of retailers within the City shall be one. The method and manner by which the retailer shall be selected to operate in the City shall be established by resolution of the City Council.

4.136.060 Limitations on City's liability.

A. To the fullest extent permitted by law, the City does not assume any liability whatsoever, with respect to approving a permit pursuant to this Code or the operation of a cannabis business approved pursuant to this Code.

B. As a condition to issuance of a cannabis regulatory permit, the permittee shall execute an indemnification agreement, in a form approved by the City Attorney, that indemnifies the City from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of the cannabis

regulatory permit, the City's decision to approve the operation of the cannabis business or activity, the process used by the City in making its decision, or the alleged violation of any federal, state or local laws by the cannabis business or any of its officers, employees or agents.

4.136.070 Location criteria.

A. Cannabis businesses may only be located in zoning districts set forth in 4.136.050(A).

B. No cannabis business shall be established on any portion of a lot located:

1. Within a 1,000-foot radius of the beach, the County of Los Angeles Public Library—Manhattan Beach Library, a school, a day care center, a youth center, a religious assembly, park, or another cannabis business; or

2. Within a 850-foot radius of a day care center.

The distance specified in this subsection shall be measured by the horizontal distance measured in a straight line from the property line of where the cannabis business is to be located to the closest property line of the lot on which the sensitive use or another cannabis business is located without regard to intervening structures.

4.136.080 Promulgation of regulations and standards; operations plan requirement.

The City Manager is authorized to establish any rules, regulations and standards governing the permitting and operation of cannabis businesses. Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), every person listed as an owner, manager, supervisor, employee, contract employee or agent who otherwise works in a cannabis business must submit fingerprints and any other information deemed necessary by the Police Chief, or his or her designee, for a background check by the Police Chief. A cannabis business shall submit an Operations Plan, with all information required by the City, and shall not commence operations unless such Plan is approved by the City Manager.

4.136.090 Security measures.

A cannabis business shall comply with the security regulations required by the State of California for cannabis businesses by California Code of Regulations Title 4, Sections 15042 through 15047.2, as amended from time to time. The City Manager is authorized to establish administratively additional security rules, regulations and standards for cannabis businesses.

4.136.100 Enforcement of permits.

A. In addition to other remedies set forth in this Code, violations of this chapter may be prosecuted as infractions or misdemeanors at the City Attorney's discretion and may be abated as public nuisances. The remedies provided in this chapter are cumulative and are in addition to any other criminal or civil remedies. Violations of this chapter include: (i) violation of the provisions of this chapter; (ii) violation of any rules, regulations and standards

promulgated by the City Council or City Manager; and (iii) violation of the terms and conditions of a permit, indemnification agreement, operations plan, and, if required, development agreement.

B. Revocation of a license issued by the California Department of Cannabis Control, shall result in the revocation of the cannabis regulatory permit and immediately suspend the ability of a cannabis business to operate within the City. ”

SECTION 4. Section 10.16.020 is amended to allow commercial cannabis activity as a permitted use in the General Commercial (CG) district. Corresponding changes shall be made to the Manhattan Beach Local Coastal Program to permit such uses in the General Commercial (CG) district within the City’s coastal zone.

SECTION 5. 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 a cannabis regulatory permit issued by the City to a person to authorize that person to operate or engage in a cannabis business pursuant to Chapter 4.136 of this Code.

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 the cannabis regulatory permit for cannabis cultivation. Should a cannabis regulatory permit be issued to a business that cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall square footage that is authorized by the cannabis regulatory 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 the 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 cannabis regulatory permit required by Chapter 4.136 of this Code or 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 6. 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 7. 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 8. 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.

C. The number of permitted retailers, unless required by state law.

SECTION 9. 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 10. 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 11. 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 12. Notification. The City Attorney shall send a copy of this Ordinance to the Bureau of Cannabis Control immediately following its effective date.

SECTION 13. 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. The Ordinance is also eligible for a class 5 categorical exemption for minor changes in land use limitations with an average slope of less than 20 percent that do not result in any changes in land use or density. The Ordinance is not changing any density and would permit uses that are consistent with existing uses. This Ordinance is therefore exempt from CEQA pursuant to the CEQA Guidelines Section 15305. A Notice of Exemption shall be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

SECTION 14. The City Clerk is hereby directed to insert the letters of the conflicting measures into the appropriate places in this Ordinance upon receiving the letter designations for such measures from Los Angeles County.

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

Mayor

ATTEST:

Liza Tamura, City Clerk