

IN THE BOARD OF SUPERVISORS
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

Tuesday, March 6, 2018

PRESENT: Supervisors Bruce S. Gibson, Adam Hill, Lynn Compton, Debbie Arnold and
Chairperson John Peschong

ABSENT: None

RESOLUTION NO. 2018 - 48

**RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN LUIS OBISPO,
STATE OF CALIFORNIA, TO SUBMIT TO THE VOTERS OF SAN LUIS OBISPO COUNTY AN
ORDINANCE IMPOSING A COMMERCIAL CANNABIS BUSINESS TAX ON COMMERCIAL
CANNABIS BUSINESS IN UNINCORPORATED SAN LUIS OBISPO COUNTY**

The following resolution is hereby offered and read:

WHEREAS, the Board of Supervisors has introduced, read the title of, and waived further reading of a business license tax ordinance, as authorized by Revenue and Taxation Code section 7284, and will consider the passage of such ordinance at its meeting on March 6, 2018; and

WHEREAS, Article 13C, section 2(b) of the California Constitution and section 53723 of the California Government Code require that the imposition of such tax be approved by a majority of the county electorate; and

WHEREAS, pursuant to section 9140 of the California Elections Code, the Board of Supervisors may submit to the voters, without petition, a measure relating to the enactment or amendment of any ordinance; and

WHEREAS, the County of San Luis Obispo ("County") promotes a strong quality of life by providing general services to local residents to protect public health and safety, including fire and police protection, emergency response, health services, youth programs, housing, roads, and environmental protection; and

WHEREAS, on November 27, 2017, the Board of Supervisors adopted a cannabis ordinance, Ordinance Nos. 3357 and 3358, which sets forth comprehensive regulations upon

cannabis activities in the unincorporated area of San Luis Obispo County, including land use permit requirements upon non-exempt cannabis activities; and

WHEREAS, on November 27, 2017, the Board of Supervisors adopted an ordinance, Ordinance No. 3360, to allow for the issuance of county business licenses for cannabis businesses operating in the unincorporated area of San Luis Obispo County; and

WHEREAS, while fees may recover costs associated with issuing permits, inspections, and compliance monitoring, they may not be used to fund costs not attributable to a permittee, including those related to code enforcement, law enforcement, policy development, health impacts and education, and environmental cleanup; and

WHEREAS, services supporting the health and safety of the County's residents are funded through the County's General Fund; and

WHEREAS, without an additional funding source, the County will not be able to address the risks and adverse impacts of legalized cannabis in the County while also maintaining the existing general governmental services that the County funds through its General Fund; and

WHEREAS, it is necessary that a County election be held in accordance with law for the purpose of submitting to the qualified electors of the County a measure on whether to enact the Cannabis Business Tax ordinance as attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California as follows:

1. That the recitals set forth hereinabove are true, correct, valid and incorporated herein.
2. Pursuant to Elections Code Section 9140, the Board of Supervisors hereby submits to the voters, at the next general election on June 5, 2018, the proposed measure imposing a general business license tax on commercial cannabis businesses to be levied at a tax rate beginning at 4% and not to exceed 10% of gross receipts (Cannabis Business Tax).
3. The Board of Supervisors hereby orders that the election on the measure shall be consolidated with the general election to be held on that date.

4. The ballot question for the proposed measure shall be submitted for a "Yes" or "No" vote as follows:

Shall an ordinance be adopted imposing a Cannabis Business Tax of up to 10% on gross receipts of cannabis businesses operating in unincorporated areas of San Luis Obispo County, estimated to initially raise between 1.4 to 5 million dollars annually, depending on amount of gross receipts, with funds staying local for unrestricted general revenue purposes, including but not limited to public safety, health, environmental protection and addressing industry impacts, unless repealed or amended by voters? Yes _____ No _____

5. The full text of the measure is entitled "An Ordinance of the County of San Luis Obispo, State of California, Adding Chapter 3.05 to the San Luis Obispo County Code Imposing a Cannabis Business Tax on Commercial Cannabis Business" and is attached hereto as Exhibit A.
6. The County Clerk is hereby authorized, instructed, and directed to provide and furnish any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct an election.
7. The County Clerk is hereby further directed to take all necessary and appropriate actions to provide the necessary election officers, polling places, and voting precincts.
8. In accordance with the provisions of the Elections Code, the County Counsel shall prepare an impartial analysis of the measure, and the County Auditor-Controller-Treasurer-Tax Collector is directed to prepare a fiscal impact statement of the measure.
9. The Chair of the Board of Supervisors is authorized to select two members of the Board of Supervisors to prepare a written argument in favor of the measure on behalf of the Board of Supervisors, as specified in section 9162 of the California Elections Code. At the discretion of the Chair of the Board of Supervisors, the argument may

also be signed by members of the Board of Supervisors or citizen associations or individual voters, subject to sections 9162 and 9164 of the California Elections Code. If an argument is filed against the measure, the Chair of the Board of Supervisors is also authorized to select two members of the Board of Supervisors to prepare a written rebuttal which also may be signed by members of the Board of Supervisors or citizen associations or individual voters, subject to sections 9162 and 9164 of the California Elections Code.

10. The Board of Supervisors finds that the adoption of this Resolution and establishment of a Cannabis Business Tax is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. [CEQA] and 14 Cal. Code Reg. §§ 15000 et seq. [CEQA Guidelines]). The Cannabis Business Tax to be submitted to the voters is a general tax that may be used for any legitimate governmental purpose and is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not “a project” within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.
11. The measure shall become operative immediately upon its adoption by a majority of voters at the June 5, 2018 election.

Upon motion of Supervisor Gibson, seconded by Supervisor Hill, and on the following roll call vote, to-wit:

AYES: Supervisors Gibson, Hill, Compton, Arnold and Chairperson Peschong

NOES: None

ABSENT: None

ABSTAINING: None

The foregoing resolution is hereby adopted:

John Peschong
Chairperson of the Board of Supervisors
of the County of San Luis Obispo,
State of California

ATTEST:

Tommy Gong
County Clerk and Ex-Officio Clerk of
the Board of Supervisors, County of
San Luis Obispo, State of California

By: /s/Sandy Currens
Deputy Clerk
[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: /s/Brian J. Stack
Deputy County Counsel

Dated: February 22, 2018

<p>STATE OF CALIFORNIA) ss. COUNTY OF SAN LUIS OBISPO)</p> <p>I, TOMMY GONG, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.</p> <p>Witness, my hand and seal of said Board of Supervisors on March 7, 2018.</p> <p style="text-align: center;">TOMMY GONG, County Clerk and Ex-Officio Clerk of the Board of Supervisors</p> <p>By: <u>Sandy Currens</u> Deputy Clerk</p>
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Attachment A
ORDINANCE NO. 3361

AN ORDINANCE OF THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ADDING CHAPTER 3.05 TO THE SAN LUIS OBISPO COUNTY CODE IMPOSING A COMMERCIAL CANNABIS BUSINESS TAX ON COMMERCIAL CANNABIS BUSINESS

The Board of Supervisors of the County of San Luis Obispo ordains as follows:

SECTION 1. Chapter 3.05 is added to the San Luis Obispo County Code to read as follows:

Chapter 3.05
COMMERCIAL CANNABIS BUSINESS TAX

Sections:

- 3.05.010 Title.
- 3.05.020 General tax.
- 3.05.030 Purpose of the ordinance.
- 3.05.040 Definitions.
- 3.05.050 Tax imposed.
- 3.05.060 Reporting and remittance of tax.
- 3.05.070 Payments and communications –timely remittance.
- 3.05.080 Payment – when taxes deemed delinquent.
- 3.05.090 Notice not required by County.
- 3.05.100 Penalties and interest
- 3.05.110 Refunds and credits.
- 3.05.120 Refunds and procedures.
- 3.05.130 Exemptions from the tax.
- 3.05.140 Administration of tax.
- 3.05.150 Appeal procedure.
- 3.05.160 Enforcement –action to collect
- 3.05.170 Apportionment.
- 3.05.180 Constitutionality and legality.
- 3.05.190 Audit and examination of records and equipment.
- 3.05.200 Other licenses, permits, taxes or charges.
- 3.05.210 Payment of tax does not authorize unlawful business.
- 3.05.220 Deficiency determinations.
- 3.05.230 Failure to report – nonpayment and fraud.
- 3.05.240 Tax assessment –notice of requirements.
- 3.05.250 Tax assessment – hearing, application, and determination.
- 3.05.260 Conviction for chapter violation – taxes not waived.
- 3.05.270 Violation deemed misdemeanor –penalty.
- 3.05.280 Severability.

- 3.05.290 Remedies cumulative.
- 3.05.300 Amendment or repeal.

3.05.010 - Title.

This Chapter shall be known as the commercial cannabis business tax ordinance. This Chapter shall be applicable in the unincorporated territory of the County of San Luis Obispo, which shall be referred to herein as "County."

3.05.020 - General tax.

The commercial cannabis business tax is enacted solely for general governmental purposes for the County and not for specific purposes. All the proceeds from the tax imposed by this Chapter shall be placed in the County's general fund and can be used for general governmental purposes. The term "cannabis" or "marijuana" may be used interchangeably throughout this ordinance.

3.05.030 - Purpose of the Chapter.

This is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

- A. To impose a tax on the privilege of cultivating, manufacturing, laboratory testing, producing, processing, preparing, storing, providing, donating, selling, or distributing nonmedical cannabis and cannabis products and accessories by commercial cannabis businesses in the unincorporated area of the County pursuant to the California Medicinal and Adult-Use Cannabis Regulation and Safety Act, specifically California Revenue and Taxation Code Section 34021.5(A)(1), notwithstanding if State law uses the term "marijuana" or "cannabis";
- B. To impose a tax on lawful commercial cannabis business in accordance with the authority granted by California Revenue and Taxation Code Section 7284 to impose a business license tax;
- C. To specify the type of tax and rate of tax to be levied and the method of collection; and
- D. To comply with all requirements for imposition of a general tax, such tax to become operative only if submitted to the electorate and approved by a majority vote of the voters voting in an election on the issue.

3.05.040 - Definitions.

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

- A. "Business" shall include all activities engaged in or caused to be engaged in within the unincorporated area of the County, 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. Cannabis related businesses operating within the unincorporated area of the County are required to obtain a business license from the County and the State of

California, however, failure to obtain the required business license does not exempt a cannabis related business from the tax liability created with this ordinance.

- B. "Cannabis" or "cannabis product" means any and 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, manufactured product, salt, derivative, mixture, tincture, tea, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code.
- C. "Cannabis product" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Cannabis product" also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.
- D. "Commercial cannabis business" means any commercial business activity relating to cannabis or a cannabis product, including but not limited to cultivating, distributing, manufacturing, laboratory testing, compounding, converting, processing, preparing, storing, packaging, labeling, delivering, and selling (wholesale and/or retail sales) of cannabis, cannabis products in the unincorporated area of the County, whether or not carried on for gain or profit.
- E. "Commercial cannabis business tax," "business tax," or "commercial cannabis tax" means the tax due pursuant to this Chapter for engaging in commercial cannabis business in the unincorporated area of the County.
- F. "Commercial cannabis cultivation" means cultivation conducted by, for, as part of a commercial cannabis business.
- G. "County permit" means a permit issued by the County to a person to authorize that person to operate or engage in a commercial cannabis business. The term "County permit" includes commercial medical cannabis and nonmedical cannabis permit. The term "County permit" includes such permit as County may require to operate or engage in medical or nonmedical commercial cannabis business.
- H. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Also includes the storing, packaging, and labeling of nonmanufactured cannabis products.
- I. "Delivery" means the commercial transfer of cannabis or cannabis products from a dispensary.
- J. "Dispensary" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.
- K. "Distributor" or "distribution" or "distribution facility" means a person or facility involved in the procurement, sale, and/or transport of cannabis and cannabis products between permitted or licensed entities.

- L. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.
- M. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the unincorporated area of the County or coming into the unincorporated area of the County from an outside location to engage in such activities. A person shall be deemed engaged in business within the County if:
 - 1. Such person or person's employee maintains a fixed place of business within unincorporated area of the County for the benefit or partial benefit of such person;
 - 2. Such person or person's employee owns or leases real property within the unincorporated area of County for business purposes;
 - 3. Such person or person's employee regularly maintains a stock of tangible personal property in the unincorporated area of County for sale in the ordinary course of business;
 - 4. Such person or person's employee regularly conducts solicitation of business within the unincorporated area of County;
 - 5. Such person or person's employee performs work or renders services in the unincorporated area of County; and
 - 6. Such person or person's employee utilizes the streets within the unincorporated area of County in connection with the operation of motor vehicles for business purposes.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in 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 unincorporated area of County.
- O. "Fiscal year" means July 1 through June 30 of the following calendar year.
- P. "Gross receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, any excise tax included within the purchase price however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts where allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Sales tax required by law to be added to the purchase price and collected from the consumer or purchaser;
4. 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;
5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
6. 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;
7. Cash value of sales, trades or transactions between departments or units of the same business;
8. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
9. Transactions between a partnership and its partners;
10. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
 - a. The voting and non-voting stock of which is owned at least eighty (80) percent by such other corporation with which such transaction is had; or
 - b. Which owns at least eighty (80) percent of the voting and non-voting stock of such other corporation; or
 - c. At least eighty (80) percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.
11. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection 9. above;
12. 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 (\$1.00);

13. 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.
- Q. "Manufacturer" means a person that conducts the processing, production, preparation, propagation, or compounding of cannabis products either directly or indirectly or by extraction and/or infusion and chemical synthesis methods, at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container, that holds a valid County permit. Cannabis manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.
- R. "Nursery" means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- S. "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.
- T. "Personal cannabis cultivation" means cultivation of up to six (6) plants or fewer of cannabis exclusively for his or her personal medical or nonmedical use but who does not provide, donate, sell, or distribute cannabis to any other person.
- U. "Sale" means and includes any sale, exchange, or barter.
- V. "State" means the State of California.
- W. "State license," "license," or "registration" means a State license issued pursuant to California Business and Professions Code Section 26000 et seq. or other applicable State law.
- X. "Testing laboratory" means a facility, entity, or site in the State that offers or performs testing 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 the cannabis industry in the State; and
 2. Registered with the California State Department of Public Health.
- Y. "Auditor-Controller-Treasurer-Tax Collector" means the Auditor-Controller-Treasurer-Tax Collector of the County of San Luis Obispo, his or her deputies or any other County officer charged with the administration of the provisions of this Chapter. If the consolidated offices are ever separated or becomes an appointed position then the Treasurer-Tax Collector or Finance Director will be charged with the administration of the provisions of this Chapter.

3.05.050 - Tax imposed.

- A. There is established and imposed a cannabis business tax at the rates set forth in this Chapter.

B. Tax on commercial cannabis businesses by Gross Receipts

1. Every person who is engaged in a commercial cannabis business as defined in this chapter in the unincorporated area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective July 1, 2018 through June 30, 2020 shall be set at four percent (4%) of the gross receipts per fiscal year.

2. Beginning on July 1, 2020, such tax rate shall automatically increase each fiscal year in 2 percent increments (2%), not to exceed the maximum tax rate of ten percent (10%) per fiscal year on gross receipts, unless the Board of Supervisors, by a 3/5ths vote, approves maintaining the current tax rate for the upcoming fiscal year. By a separate 3/5ths vote, the Board of Supervisors may decrease the tax rate for the upcoming fiscal year, as long as the rate stays within the above-listed range.

3. The Board of Supervisors may, in its discretion, at any time by ordinance, exempt or except certain categories of cannabis businesses from the commercial cannabis business tax or establish differing tax rates for different categories of cannabis businesses, subject to the maximum rate of 10 percent of gross receipts under subsection B.2 of this section.

4. Notwithstanding subsections B.1 and B.2 above, unless amended by the Board of Supervisors pursuant to subsection B.3. of this section, testing laboratories, as defined in 3.05.040 (x), are not obligated to pay a commercial cannabis business tax established by this ordinance.

C. Revenue from the commercial cannabis business tax can be spent for unrestricted general revenue purposes.

3.05.060 - Reporting and remittance of tax.

The commercial cannabis business tax imposed by this Chapter shall be imposed on a fiscal year basis and shall be due and payable in quarterly installments as follows:

- A. Each person owing a commercial cannabis business tax shall, on or before the last day of the month following the close of each fiscal year quarter, prepare and submit a tax statement on the form prescribed by the Auditor-Controller-Treasurer-Tax Collector and remit to the Auditor-Controller-Treasurer-Tax Collector the tax due. The tax due shall be no less than the quarterly installment due, but the taxpayer may at any time pay the tax due for the entire fiscal year. Each business shall pay on or before the last day of the month following the close of each calendar quarter.
- B. All tax statements shall be completed on forms prescribed by the Auditor-Controller-Treasurer-Tax Collector.
- C. Tax statements and payments for all outstanding taxes owed the County are immediately due to the Auditor-Controller-Treasurer-Tax Collector upon cessation of business for any reason.

- D. The Auditor-Controller-Treasurer-Tax Collector may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Auditor-Controller-Treasurer-Tax Collector deems necessary to insure collection of the tax.
- E. The Auditor-Controller-Treasurer-Tax Collection may, as part of administering the tax and in his or her discretion, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.

3.05.070 - Payments and communications—Timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Auditor-Controller-Treasurer-Tax Collector on or before the final due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the County is open to the public.

3.05.080 - 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 Auditor-Controller-Treasurer-Tax Collector on or before the due date as specified in Sections 7.100.060 and 7.100.070.

3.05.090 - Notice not required by the County.

The Auditor-Controller-Treasurer-Tax Collector 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.

3.05.100 - Penalties and interest.

- A. Any person who fails or refuses to pay any commercial 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 twenty-five (25) 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 and one-half percent per month; and
 - 2. If the tax remains unpaid for a period exceeding one 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 and one-half percent per month on the unpaid tax and on the unpaid penalties.
 - 3. Interest shall be applied at the rate of one and one-half 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 commercial 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.

3.05.110 - Refunds and credits.

- A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 7.100.120.
- 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.

3.05.120 - Refunds and procedures.

- A. Whenever the amount of any commercial cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the County 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 Auditor-Controller-Treasurer-Tax Collector within one year of the date the tax was originally due and payable.
- B. The Auditor-Controller-Treasurer-Tax Collector, his or her deputies or any other County 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 Auditor-Controller-Treasurer-Tax Collector to do so.
- C. In the event that the commercial cannabis business tax was erroneously paid and the error is attributable to the County, the County shall refund the amount of tax erroneously paid up to one year from when the error was identified.

3.05.130 - Exemptions from the tax.

- A. The provisions of this Chapter shall not apply to personal medical or nonmedical cannabis cultivation.

3.05.140 - Administration of the tax.

- A. It shall be the duty of the Auditor-Controller-Treasurer-Tax Collector 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 Auditor-Controller-Treasurer-Tax Collector may from time to time promulgate such administrative 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 Auditor-Controller-Treasurer-Tax Collector may take such administrative actions as needed to administer the tax, including but not limited to:
 - 1. Provide to all commercial cannabis business taxpayers forms for the reporting of the tax;
 - 2. Increase tax rates in accordance with this Chapter;

3. Provide information to any taxpayer concerning the provisions of this Chapter;
4. Receive and record all taxes remitted to the County as provided in this Chapter;
5. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
6. Assess penalties and interest to taxpayers pursuant to this Chapter;
7. Determine amounts owed and enforce collection pursuant to this Chapter.

3.05.150 - Appeal procedure.

Any taxpayer aggrieved by any decision of the Auditor-Controller-Treasurer-Tax Collector with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors within fifteen (15) days of the serving or mailing of the determination of tax due. The Clerk shall fix a time and place for hearing such appeal, and the Clerk shall give notice in writing to such operator at the last known place of address. The finding of the Board of Supervisors 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.

3.05.160 - Enforcement—Action to collect.

- A. Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the County. Any person owing money to the County under the provisions of this Chapter shall be liable in an action brought in the name of the County for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the County 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.
- B. In addition to any other remedies available under Federal, State, or local law, if any amount required to be paid to the County under this Chapter is not paid when due, the Auditor-Controller-Treasurer-Tax Collector may, within three years after the amount is due record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the individual or business as it appears on the records of Auditor-Controller-Treasurer-Tax Collector. The lien shall also specify that the Auditor-Controller-Treasurer-Tax Collector has complied with all provisions of this Chapter in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the County owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged.
- C. At any time within three years after any individual or business is delinquent in the payment of any amount herein required to be paid or within three years after the last recording of a certificate of lien under Subsection B of this Section, the Auditor-Controller-Treasurer-Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this Chapter. The warrant shall be directed to the Sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and

sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Auditor-Controller-Treasurer-Tax Collector may pay or advance to the Sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution. The Auditor-Controller-Treasurer-Tax Collector shall approve the fees for publication in the newspaper.

- D. At any time within three years after recording a lien against any individual or business, if the lien is not discharged and released in full, the Auditor-Controller-Treasurer-Tax Collector may forthwith seize any asset or property, real or personal (including bank account), of the operator and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the business subject to seizure and sale subject to this Chapter shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.

3.05.170 - Apportionment.

If a business subject to the tax is operating both within and outside the unincorporated County, it is the intent of the County to apply the commercial cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the County. For purposes of apportionment as may be required by law, the Auditor-Controller-Treasurer-Tax Collector may promulgate administrative procedures for apportionment in accordance with State law.

3.05.180 - 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 and due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or State law.

3.05.190 - Audit and examination of records and equipment.

- A. The Auditor-Controller-Treasurer-Tax Collector shall have the power to audit and examine all books and records of persons engaged in cannabis businesses, including both State and Federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis businesses, and, where necessary, all equipment, of any person engaged in cannabis businesses in the County, for the purpose of ascertaining the amount of commercial cannabis tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this Chapter.
- B. It shall be the duty of every person liable for the collection and payment to the County of any tax imposed by this Chapter to keep and preserve, for a period of at least three 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 County, which records the Auditor-Controller-Treasurer-Tax Collector or his/her designee shall have the right to inspect at all reasonable times.

3.05.200 - Other licenses, permits, taxes, fees or charges.

Nothing contained in this Chapter 7.100 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 title or chapter of this Code or any other ordinance or resolution of the County, 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 title or chapter of this Code or any other ordinance or resolution of the County. Any references made or contained in any other title or 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 titles or chapters of this Code.

3.05.210 - Payment of tax does not authorize unlawful business.

- A. The payment of a commercial cannabis business tax required by this Chapter, and its acceptance by the County, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable State laws.
- B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or State law.

3.05.220 - Deficiency determinations.

If the Auditor-Controller-Treasurer-Tax Collector 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 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 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 7.100.240.

3.05.230 - Failure to report—Nonpayment, fraud.

- A. Under any of the following circumstances, the Auditor-Controller-Treasurer-Tax Collector 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 Auditor-Controller-Treasurer-Tax Collector, filed a corrected statement, or furnished to the Auditor-Controller-Treasurer-Tax Collector 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 Auditor-Controller-Treasurer-Tax Collector 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 Auditor-Controller-Treasurer-Tax Collector to be due or estimated by the Auditor-Controller-Treasurer-Tax Collector, after consideration of all information within the Auditor-Controller-Treasurer-Tax Collector'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.

3.05.240 - 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 Auditor-Controller-Treasurer-Tax Collector for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Auditor-Controller-Treasurer-Tax Collector 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.

3.05.250 - Tax assessment—Hearing, application and determination.

Within ten (10) days after the date of service the person may apply in writing to the Auditor-Controller-Treasurer-Tax Collector for a hearing on the assessment. If application for a hearing before the County is not made within the time herein prescribed, the tax assessed by the Auditor-Controller-Treasurer-Tax Collector shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the Auditor-Controller-Treasurer-Tax Collector shall cause the matter to be set for hearing before him or her not later than thirty-five (35) days after the receipt of the application, unless a later date is agreed to by the Auditor-Controller-Treasurer-Tax Collector and the person requesting the hearing. Notice of such hearing shall be given by the Auditor-Controller-Treasurer-Tax Collector to the person requesting such hearing not later than five days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Auditor-Controller-Treasurer-Tax Collector should not be confirmed and fixed as the tax due. After such hearing the Auditor-Controller-Treasurer-Tax Collector shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 7.100.240 for giving notice of assessment.

3.05.260 - Conviction for Chapter 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.

3.05.270 - Violation deemed misdemeanor.

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and shall be punishable therefore as provided in Chapter 1.20 of this Code.

3.05.280 - 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.

3.05.290 - Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under Title 1 of the County Code and any other provision of law or equity are cumulative. The use of one or more remedies by the County shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

3.05.300 - Amendment or repeal.

Chapter 3.05 of the San Luis Obispo County Code may be repealed or amended by the Board of Supervisors without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the County of San Luis Obispo affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the Board of Supervisors has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or
- C. The collection of the tax imposed by this Chapter, even if the County had, for some period of time, failed to collect the tax.
- D. The establishment of a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter which is not subject to amendment by the Board of Supervisors); or
- E. The Board of Supervisors' adoption of an ordinance, as authorized by Section 3.05.050, to change or raise the tax rate(s) provided that the tax rate is not raised to a rate higher than the maximums established herein.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 6th day of March, 2018, by the following roll call vote, to wit:

AYES: Supervisors Bruce S. Gibson, Adam Hill, Lynn Compton, Debbie Arnold and Chairperson John Peschong

NOES: None

ABSENT: None

ABSTAINING: None

John Peschong
Chairperson of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

Tommy Gong
County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California
By: Sandy Currens
Deputy Clerk

[SEAL]

STATE OF CALIFORNIA) ss.
COUNTY OF SAN LUIS OBISPO)

I, **TOMMY GONG**, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.

Witness, my hand and seal of said Board of Supervisors on March 7, 2018.

TOMMY GONG,

County Clerk and Ex-Officio Clerk of the Board of Supervisors

By: Sandy Currens
Deputy Clerk