



Cannabis Tax Options

Transportation & Planning Committee

May 2, 2018



Committee Direction

Committee Direction On November Tax Measure:

- General purpose gross receipts tax
- Supply chain segments separated (cultivation, manufacturing, retail etc)
- Obtain a maximum authority from voters, but set initial rates lower than the maximum authority with Board ability to adjust rates

Current Status:

- Draft Ordinance
 - Separate Chapter to Tax Code for clarity and to align with local authority in Prop 64
 - Tax would go into effect Jan 1, 2019
 - Rates currently left blank pending further direction
- Updated revenue estimates mapped to fiscal years



Annualized Revenue Estimates

Assumptions:

- Average cultivation site annual gross receipts of \$3.4 million in first year
- Average dispensary annual gross receipts of \$15 million in first year
- Annual gross receipts growth of 7% for cultivation sites and dispensaries
- Number of cultivation sites:
 - Year 1: 4
 - Year 2: 5
 - Year 3: 6
- Number of dispensaries
 - Year 1: 2
 - Year 2: 4
 - Year 3: 5



Annualized Revenue Estimates

	Year 1	Year 2	Year 3
Number of Cultivation Sites	4	5	6
Number of Dispensaries	2	4	5
Gross Receipts Per Cultivation Site	\$ 3,400,000	\$ 3,638,000	\$ 3,892,660
Gross Receipts Per Dispensary	\$ 15,000,000	\$ 16,050,000	\$ 17,173,500
Total Gross Receipts Cultivation	\$ 13,600,000	\$ 18,190,000	\$ 23,355,960
Total Gross Receipts Dispensary	\$ 30,000,000	\$ 64,200,000	\$ 85,867,500
Scenario One - 2% Retail / 5% Cultivation			
Total Revenue	\$ 1,280,000	\$ 2,193,500	\$ 2,885,148
Scenario Two - 5% Across The Board			
Total Revenue	\$ 2,180,000	\$ 4,119,500	\$ 5,461,173
Scenario Three - 2.5% Across The Board			
Total Revenue	\$ 1,090,000	\$ 2,059,750	\$ 2,730,587
Scenario Four - 3% Retail / 5% Cultivation			
Total Revenue	\$ 1,580,000	\$ 2,835,500	\$ 3,743,823

Estimates will continue to be refined as we get more data



Revenue Estimates Mapped to Fiscal Years

	FY 18/19	FY 19/20	FY 20/21
Scenario One - 2% Retail / 5% Cultivation			
Total Revenue	\$ 640,000	\$1,736,750	\$2,539,324

Scenario Two - 5% Across The Board			
Total Revenue	\$1,090,000	\$3,149,750	\$4,790,337

Scenario Three - 2.5% Across The Board			
Total Revenue	\$ 545,000	\$1,574,875	\$2,395,168

Scenario Four - 3% Retail / 5% Cultivation			
Total Revenue	\$ 790,000	\$2,207,750	\$3,289,662

Estimates will continue to be refined as we get more data



Timeline

- General Election is November 6, 2018
- Board needs to place on the ballot at least 88 days before the election (Aug 10th)
 - 2 Ordinance readings
 - Resolution adoption with 2nd reading of ordinance
- Draft ordinance for review for May Transportation & Planning Committee
- Board retreat in May/June
- Ordinance adoption late June/early July



Follow-Up

- Feedback from Committee on draft Ordinance

- With Committee's permission, bring draft Ordinance to next Board retreat to obtain Board feedback on the following:
 - Maximum taxing authority to request from voters
 - Initial rates to levy
 - Voting requirement to change rates

- Incorporate Board feedback and draft potential ballot measure language



Discussion/Questions

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ORDINANCE NO. 2018-_____

**THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA
STATE OF CALIFORNIA**

AN ORDINANCE ADDING CHAPTER 2.36 TO THE ALAMEDA COUNTY ORDINANCE
CODE, ENACTING A CANNABIS BUSINESS TAX.

[FINDINGS TO BE INSERTED]

WHEREAS, the Board of Supervisors deems it necessary and essential to approve specific taxation rates to cannabis related businesses;

NOW, THEREFORE, the Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Chapter 2.36 (Cannabis Business Tax) is added to Title 2 (Revenue & Finance) of the Alameda County Ordinance Code as follows:

2.36.010 - Title.

This Chapter shall be known as the cannabis business tax ordinance. This Chapter shall be applicable in the unincorporated territory of the County of Alameda.

2.36.020 - General tax.

The cannabis business tax is enacted solely for general governmental purposes for the County of Alameda ("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.

2.36.030 - Purpose of the Chapter.

This Chapter 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 cannabis and cannabis products and accessories by 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);

B. To specify the type of tax and rate of tax to be levied and the method of collection; and

C. 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.

2.36.040 - Definitions.

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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.

B. "Cannabis" 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" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code. "Cannabis" includes all matter meeting the definition of cannabis under Section 26001 of the Business & Professions Code. "Cannabis" is not limited to medical cannabis.

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" includes all products meeting the definition of cannabis product under Section 11018.1 of the California Health and Safety Code. "Cannabis product" is not limited to medical cannabis products.

D. "Cannabis business" means any 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 or cannabis products in the unincorporated area of the County, whether or not carried on for gain or profit.

E. "Cannabis business tax," "business tax," or "cannabis tax" means the tax due pursuant to this Chapter for engaging in cannabis business in the unincorporated area of the County.

F. "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming, including any associated storage, of cannabis. "Cannabis cultivation" includes the operations of a Cannabis Nursery. "Cannabis cultivation" includes all activity meeting the definition of cultivation under Section 26001 of the California Business and Professions Code.

G. "County permit" means a permit issued by the County to a person to authorize that person to operate or engage in a cannabis business. The term "County permit" includes a medical cannabis business permit and a nonmedical cannabis business permit. "County permit" includes permits authorized under Chapters 6.106, 6.107, 6.108, and Title 17 of the Alameda County Ordinance Code. "County permit" does not include business licenses authorized under Chapter 3.04 of the Alameda County Ordinance Code.

H. "Delivery" means the commercial transfer of cannabis or cannabis products from a retailer to a retail customer. "Delivery" also includes the use by a retailer of a technology platform that enables retail customers to arrange for or facilitate retail sale and delivery of cannabis or cannabis

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products. "Delivery" includes all commercial transfers meeting the definition of delivery under Section 26001 of the California Business and Professions Code.

I. "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 entities licensed pursuant to Division 10 of the California Business and Professions Code (Sections 26000 et seq.).

J. "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.

K. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a 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 unincorporated area of 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."

L. "Fiscal year" means July 1 through June 30 of the calendar year.

M. "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; interest, discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, or other emoluments, 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:

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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. Any 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);

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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 County Treasurer – Tax Collector 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.

N. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container, that holds a valid County permit. "Manufacturer" includes all persons meeting the definition of a manufacturer under Section 26001 of the California Business and Professions Code.

O. "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. "Nursery" includes all persons meeting the definition of a nursery under Section 26001 of the California Business and Professions Code.

P. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, cooperative, 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.

Q. "Personal cannabis cultivation" means cultivation of not more than six (6) living cannabis plants exclusively for personal medical or nonmedical use, within a single private residence or the grounds of that private residence, without engaging in any form of cannabis business activity. "Personal cannabis cultivation" is subject to the restrictions set forth in Section 11362.2 of the California Health and Safety Code.

R. "Retailer" 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.

S. "Sell," "sale," and "to sell" include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a person to the person from whom the cannabis or cannabis product was purchased. "Sell," "sale," and "to sell" include all transactions that meet the definition of sell, sale, and to sell under Section 26001 of the California Business and Professions Code.

T. "State" means the State of California.

U. "State license," means a State license issued pursuant to California Business and Professions Code Section 26000 et seq. or other applicable State law.

V. "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:

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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.

“Testing laboratory” includes all places meeting the definition of a testing laboratory under Section 26001 of the California Business and Professions Code.

W. "Treasurer-Tax Collector" means the Treasurer-Tax Collector of the County of Alameda, his or her deputies or any other County officer charged with the administration of the provisions of this Chapter.

2.36.050 - Tax imposed.

A. There is established and imposed a cannabis business tax at rates of up to **XX percent (XX%)** of gross receipts per fiscal year as set forth in this Chapter.

B. The Board of Supervisors may, in its discretion, at any time by ordinance approved by **X/5 vote**, establish or amend a cannabis business tax rate schedule and set or amend cannabis business tax rates for any and all categories of cannabis business, up to the amount of **XX percent (XX%)** of gross receipts per fiscal year.

2.36.060 – Tax rate schedule.

Pursuant to Section 2.36.050, the Board of Supervisors establishes and imposes the following tax rate schedule:

A. Tax on cannabis cultivation business.

Every person engaged in a cannabis cultivation business in the unincorporated area of the County shall pay an annual cannabis business tax. The initial tax rate effective January 1, 2019 shall be set at **XX percent (XX%)** of the gross receipts per fiscal year.

B. Tax on cannabis retail business.

Every person engaged in a cannabis retailer business in the unincorporated area of the County shall pay an annual cannabis business tax. The initial tax rate effective January 1, 2019 shall be set at **XX percent (XX%)** of the gross receipts per fiscal year.

C. Tax on all other cannabis business.

Every person engaged in any category of cannabis business not specified in another provision of this tax rate schedule, in the unincorporated area of the County, shall pay an annual cannabis business tax. The initial tax rate effective January 1, 2019 shall be set at **XX percent (XX%)** of the gross receipts per fiscal year. Other categories of cannabis business include but are not limited to distributing, manufacturing, laboratory testing, compounding, converting, processing, preparing, storing, packaging, labeling, delivering, and wholesaling of cannabis and cannabis products.

2.36.070 - Reporting and remittance of tax.

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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 Treasurer-Tax Collector and remit to the Treasurer-Tax Collector the tax due. 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 Treasurer-Tax Collector.

C. Tax statements and payments for all outstanding taxes owed the County are immediately due to the Treasurer-Tax Collector upon cessation of business for any reason.

D. The Treasurer-Tax Collector may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Treasurer-Tax Collector deems necessary to insure collection of the tax.

E. The Treasurer-Tax Collector 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.

2.36.080 - Payments and communications—timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be remitted to the Treasurer-Tax Collector on or before the final due date. A communication postmarked on or before its final due date shall be evidence of 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.

2.36.090 - 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 Treasurer-Tax Collector on or before the due date as specified in Section 2.36.070.

2.36.100 - Notice not required by the County.

The 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, interest, or penalty due under the provisions of this Chapter.

2.36.110 - 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 percent (10%) of the amount of the tax; and

2. Interest at the rate of one and one-half percent (1.5%) per month on the amount of the tax and penalty. Interest shall accrue 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.

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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.

2.36.120 – Records and audit.

A. 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 Treasurer-Tax Collector or his/her designee shall have the right to inspect at all reasonable times.

B. The 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 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.

C. The Treasurer-Tax Collector shall have the authority to issue an administrative subpoena to compel a person to deliver copies of all records deemed necessary by the Tax Collector to establish compliance with this Chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business.

D. If any person subject to record-keeping and/or audit under this section unreasonably denies the Treasurer-Tax Collector access to requested records, or fails to produce the information requested in an administrative subpoena within the time specified, the Treasurer-Tax Collector may impose a penalty of five hundred dollars (\$500.00) on such person for each day following: i) the initial date that the person refuses to provide such assess; or ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this section.

2.36.130 – Claims for refund.

A. Whenever the amount of any tax, interest or penalty has been overpaid, paid more than once or erroneously or illegally collected or received by the tax collector under this chapter, it may be refunded as provided in this section. The party that paid the tax, interest, or penalty or that party's guardian, collector, or conservator must file a claim for refund as described below. No other person may file the claim on behalf of the party that paid the tax, interest, or penalty. Such person must verify the claim under penalty of perjury of the laws of the state of California. No other person, including an attorney or other representative, may sign the refund claim on behalf of the person who paid the tax or that person's guardian, executor, or administrator. The claim must set forth the facts and legal theories under which the claimant believes he or she has a right to a refund. The facts and legal theories must be sufficiently detailed so that the basis of the claim may be understood and evaluated.

B. No refund shall be paid under the provisions of this section unless the claimant established his right thereto by written records showing entitlement thereto.

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C. The Treasurer-Tax Collector shall have the right to examine, audit, and/or issue an administrative subpoena for 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 Treasurer-Tax Collector to do so.

D. The period for filing a claim for refund shall be one (1) year from the time the tax, interest, or penalty was paid; provided, however, that in no event shall the period to file such claim expire prior to shortest period allowable for filing a tax refund claim under Section 911.2 of the California Government Code or any successor provision, as amended from time to time. For purposes of this section, a claim shall be deemed to accrue on the date the tax was paid. Claims for refund shall be filed with the Clerk of the Board of Supervisors on a form prescribed by the Treasurer-Tax Collector.

E. The County may refund so much of the amount claimed as the Treasurer-Tax Collector recommends. If the Treasurer-Tax Collector does not recommend a refund of the entire amount claimed, the Clerk shall set the claim for a hearing before the hearing officer created pursuant to Chapter 2.116 of the Alameda County Administrative Code. The hearing officer may increase or decrease the amount of fees, taxes, penalties or interest consistent with the requirements of this chapter.

F. No lawsuit shall be commenced or maintained unless the person who paid the tax, interest, or penalty has filed a claim for refund pursuant to this section and pursued his or her right to a hearing as described above. Any such lawsuit must be limited to the grounds for refund set forth in the claim for refund.

G. In the event this chapter is repealed, the amounts of any refundable taxes will be borne by the County.

2.36.140 - Exemptions from the tax.

The provisions of this Chapter shall not apply to personal cannabis cultivation.

2.36.150 - 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 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 Treasurer-Tax Collector. The lien shall also specify that the 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 property in the County owned by

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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. A recorded certificate of lien for unpaid delinquent cannabis business taxes, penalties, and/or interest shall constitute a special assessment against the person and shall be collected at such time as is established by the County Auditor-Controller for inclusion in the next property tax assessment.

D. The Treasurer-Tax collector shall turn over to the County Auditor-Controller for inclusion in the next property tax assessment the total sum of unpaid delinquent business tax charges consisting of the delinquent business taxes, penalties, interest at the rate of one and one-half percent (1.5%) per month from the date of recordation of the certificate of lien, an administrative charge of fifty dollars (\$50.00) and a release of lien filing fee in an amount equal to the amount charged by the Alameda County Recorder's office.

E. Thereafter, said assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent ordinary municipal taxes. The assessment liens shall be subordinate to liens except for those of state, county and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to said special assessments.

2.36.160 - Deficiency determinations.

A. If the Treasurer-Tax Collector in the exercise of reasonable discretion 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, the Treasurer-Tax Collector may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement and upon the basis of any information in his or her possession or that may come into his or her possession. 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.

B. Based on the deficiency determination, penalties and interest pursuant to Section 2.36.110 shall be assessed upon amounts unpaid from the date the taxes would have been due.

C. Whenever a deficiency determination is made, notice shall be provided to the person concerned in the same manner as notices of assessment are given under Section 2.36.180.

2.36.170 - Failure to report—Nonpayment.

A. Under any of the following circumstances, the 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;

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3. If the person has not, after demand by the Treasurer-Tax Collector, filed a corrected statement, or furnished to the 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. As the result of an audit adjustment.

B. Based on the assessment, penalties and interest pursuant to Section 2.36.110 shall be assessed upon amounts unpaid from the date the taxes would have been due.

2.36.180 - Tax assessment—Notice requirements.

A. A notice of assessment shall separately set forth the amount of any tax known by the Treasurer-Tax Collector to be due or estimated by the Treasurer-Tax Collector, after consideration of all information within the 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. The notice shall include notice of a person's right to a hearing under Section 2.36.190.

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

2.36.190 - Tax assessment—Hearing, application and determination.

A. Within twenty (20) days after the date of service the person may apply in writing to the Treasurer-Tax Collector for a hearing on the assessment. If application for a hearing before the County is not made within twenty (20) days, the tax assessed by the Treasurer-Tax Collector shall become final and conclusive.

B. If a timely request for hearing is made, the Treasurer-Tax Collector shall cause the matter to be set for hearing and reconsideration. Notice of such hearing shall be given by the Treasurer-Tax Collector to the person requesting such hearing not later than ten days prior to such hearing.

C. At such hearing said applicant may appear and offer evidence why the assessment as made by the Treasurer-Tax Collector should not be confirmed and fixed as the tax due.

D. After such hearing the Treasurer-Tax Collector shall decide the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 2.36.180 for giving notice of assessment.

2.36.200 - 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 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

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apportionment as may be required by law, the Treasurer-Tax Collector may promulgate administrative procedures for apportionment in accordance with State law.

2.36.210 – Savings clause.

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.

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

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 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.

2.36.230 - Payment of tax does not authorize unlawful business.

A. The payment of a 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 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 applicable law.

2.36.240 - 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 applicable laws requiring the payment of all taxes.

2.36.250 - Violation deemed misdemeanor.

Any person violating any of the provisions of this Chapter or who shall knowingly provide any incomplete, false or fraudulent tax statement shall be deemed guilty of a misdemeanor.

2.36.260 - 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.

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2.36.270 - Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under 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.

2.36.280 - Amendment or repeal.

This Chapter 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 Alameda 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;

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);

E. The Board of Supervisors' adoption of an ordinance, as authorized by Section 2.36.050, 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.

2.36.290 Operative date.

This operative date for the cannabis business tax shall be January 1, 2019.

SECTION II

This Ordinance, and all the provisions thereof, shall become effective only upon affirmative passage by a majority vote of the eligible voters of this county pursuant to California Constitution Article XIII C, section 2; California Government Code section 53723; and California Elections Code section 9140.

Before the expiration of 15 days after its adoption by the Board of Supervisors, this ordinance shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on [MONTH] _____, 2018, by the following called vote:

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AYES:
NOES:
EXCUSED:

President of the Board of Supervisors
County of Alameda, State of California

ATTEST:
Clerk of the Board of Supervisors

By: _____

Approved as to form:
DONNA R. ZIEGLER, County Counsel

By: _____
Farand C. Kan
Deputy County Counsel