

RESOLUTION NO. 2017 - 46

RESOLUTION OF THE COUNCIL OF THE CITY OF COTATI (1) ORDERING AND GIVING NOTICE OF AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 7, 2017 FOR THE PURPOSE OF SUBMITTING TO COTATI VOTERS AN ORDINANCE OF THE CITY OF COTATI ADDING CHAPTER 5.30 TO THE COTATI MUNICIPAL CODE TO IMPOSE A CANNABIS BUSINESS TAX ON CERTAIN CANNABIS BUSINESSES OPERATING IN COTATI, AND AMENDING CHAPTER 5.04 TO IMPOSE A BUSINESS LICENSE TAX ON CERTAIN OTHER CANNABIS BUSINESSES OPERATING IN COTATI (2) APPROVING BALLOT LANGUAGE, (3) PERMITTING THE FILING OF BALLOT ARGUMENTS, (4) DIRECTING THE CITY ATTORNEY TO PROVIDE AN IMPARTIAL ANALYSIS AND (5) SETTING INITIAL TAX RATES FOR A THREE- YEAR TERM.

WHEREAS, the City of Cotati has responsibly and proactively managed its finances and its taxpayer dollars through transparent budget and decision-making processes and recently enacted Measure G to ensure the City’s fiscal stability by securing an additional one percent (1%) sales tax until 2023; and

WHEREAS, on November 5, 1996, the California voters enacted Proposition 215 to legalize medical use of cannabis, and in October 2015, the Governor signed into law the Medical Marijuana Regulation and Safety Act (now known as the Medical Cannabis Regulation and Safety Act or “MCRSA”), establishing a state licensing framework and authorizing local regulation of the medical cannabis industry; and

WHEREAS, on November 8, 2016, California voters enacted Proposition 64 to legalize adult recreational use of cannabis and to allow businesses that support such cannabis use to operate legally, subject to regulations imposed by state and local public entities; and

WHEREAS, the State of California Governor’s Office proposed a series of amendments to the state’s regulatory structure during the budget process, known as “SB 94”, “the Governor’s Trailer Bill,” in order to better align the requirements of MCRSA and Proposition 64, now known as the Medical and Adult Use Cannabis Regulation and Safety Act or “MAUCRSA,”

WHEREAS, the permitting and support of this industry, in association with the earlier passage of Proposition 215, and the recent enactment of MCRSA and passage of Proposition 64, has significant cost implications for the City due to the substantial costs of adopting and implementing regulations to govern this new industry, enforcing those regulations, ensuring public safety, addressing environmental concerns, and providing economic development and other related services; and

WHEREAS, the City must identify a funding source to support regulation of the industry while not adversely impacting the general fund in order to maintain consistent funding and financial stability for essential services such as police and fire protection, 911 emergency response times, streets and road maintenance, affordable housing, recreational programs and other general city services; and

WHEREAS, the City’s existing general business tax ordinance, which generally levies a limited business tax on all businesses operating in Cotati, is insufficient to generate the volume of revenue needed to pay the City’s costs of allowing the new and unique cannabis industry to operate in Cotati; and

WHEREAS, nearly fifty (50) other California jurisdictions – typically in collaboration with cannabis businesses – have enacted local measures to impose a general tax on cannabis business for the privilege of operating within the local jurisdiction; and

WHEREAS, such business taxes are imposed on cannabis businesses, and not directly on cannabis users or consumers; and

WHEREAS, adopting such a local cannabis business tax measure in the City of Cotati will benefit residents of the City by ensuring that cannabis businesses contribute reasonably and fairly to paying for the costs associated with allowing this emerging industry to operate while allowing the City to continue to maintain stable funding for essential City services and continued quality of life; and

WHEREAS, the City recognizes the volatility of the newly-legalized cannabis market and will therefore set limited initial tax rates to balance the financial needs of the City and the desire of the City to support and encourage the industry to engage in the regulated market; and

WHEREAS, such a tax measure will provide locally-controlled revenue that cannot be taken by the State; and

WHEREAS, such a tax measure will help to maintain the City’s long-term financial stability, with public oversight and annual fiscal reviews; and

WHEREAS, the City of Cotati wishes to continue its policy engagement and discussions with stakeholders and the public about how cannabis businesses operating in Cotati should be regulated, while acting quickly and decisively to address any significant financial disruptions or impact to the City’s General Fund and provision of services to Cotati citizens; and

WHEREAS, the City Council desires to consolidate the election regarding the adoption of an Ordinance authorizing the imposition of a cannabis business tax on cannabis business with the other elections to be conducted by the Sonoma County Registrar of Voters on the established election date of November 7, 2017; and

WHEREAS, it is desirable that the County Elections Department of the County of Sonoma canvass the returns of said election and that the elections be handled in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COTATI RESOLVES AS FOLLOWS:

Section 1. Pursuant to the requirements and laws of the State of California relating to general law cities, there is called and ordered to be held in the City of Cotati, California, on Tuesday, November 7, 2017, a general election.

Section 2. Pursuant to Section 10403 of the California Elections Code, the Board of Supervisors of the County of Sonoma is hereby requested to consent and agree to consolidation of said election with the County-wide elections taking place on said date.

Section 3. The City Council proposes an amendment to the City’s Municipal Code, adding Chapter 5.30 to impose a cannabis business tax on certain cannabis businesses operating within the City and making corresponding modifications to Chapter 5.04, including imposing the City’s general business tax on certain other cannabis businesses.

Section 4. The City Council, pursuant to its right and authority, does hereby direct the Deputy City Clerk to attach the full text of the draft ordinance, attached hereto as Exhibit A and incorporated herein by reference, to the ballot and orders submitted to the voters at the said election the following question:

Shall an ordinance be adopted authorizing a City of Cotati cannabis business tax on cannabis cultivation businesses up to \$25 per square foot of cultivation area (annually adjusted by CPI) or 8% of gross receipts, and on cannabis manufacturing, distribution and dispensary businesses up to 8% of gross receipts, to maintain local City services and address cannabis industry impacts with all funds subject to annual audits, generating approximately \$300,000 in revenue per year until repealed?	Yes <hr/>	No <hr/>
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Section 5. The Mayor is hereby authorized to file a written argument, not to exceed three hundred (300) words, in favor of the proposed measure, on behalf of the City Council. At the Mayor’s discretion, the argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote. In the event that an argument is filed against the measure, the mayor is also authorized to file a rebuttal argument, not to exceed two hundred fifty (250) words, on behalf of the City Council. The rebuttal argument may also be signed by members of the City Council or bona fide associations or by individual voters who are eligible to vote.

Section 6. The County Elections Department is authorized to canvass the return of said election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 7. The Deputy City Clerk is hereby directed to issue instructions to the County Elections Department to take any and all steps necessary for the holding of the election.

Section 8. The Deputy City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County Elections Department of the County of Sonoma.

Section 9. The polls for the elections shall be open at 7:00 a.m. on the date of the election and shall remain open continuously from that time until 8:00 p.m. of the same day, when the polls shall be closed, except as provided in section 14401 of the California Elections Code.

Section 10. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 11. Notice of the time and place of holding the election is hereby given and the Deputy City Clerk is authorized, instructed and directed to give further and/or additional notice of the election, in time, form and manner as required by law.

Section 12. The provisions of California Elections Code section 9285 shall hereby apply.

Section 13. The Deputy City Clerk is directed to transmit a copy of this resolution to the City Attorney, who shall prepare an impartial analysis of the measure in accordance with California Elections Code Section 9280.

Section 14. The Deputy City Clerk shall certify the passage and adoption of this Resolution and file it with the City's original resolutions.

Pursuant to California Elections Code sections 1000 and 1400, and California Government Code sections 53723 and 53724, the Council hereby orders an election to be held in the City of Cotati, California, on Tuesday, the 7th day of November 2017, for the purposed of submitting to the qualified voters of the City an ordinance entitled "AN ORDINANCE OF THE CITY OF COTATI ADDING CHAPTER 5.30 TO THE COTATI MUNICIPAL CODE TO IMPOSE A CANNABIS BUSINESS TAX ON CERTAIN CANNABIS BUSINESSES OPERATING IN COTATI, AND AMENDING CHAPTER 5.04 TO IMPOSE A BUSINESS LICENSE TAX ON CERTAIN OTHER CANNABIS BUSINESSES OPERATING IN COTATI" in the form attached hereto as

Exhibit A, which is incorporated by this reference as if fully set forth herein. The full text of the provisions of the Ordinance submitted to the voters shall be available to any member of the public in the Office of the Registrar of Voters.

1. Arguments for and against the proposition may be submitted to the qualified voters of the City in accordance with Sections 9282 through 9287 of the California Elections Code. The deadline date for submitting ballot arguments for or against the proposition shall be set by the Deputy City Clerk. Proposed arguments shall not exceed three hundred (300) words and shall be submitted to the Office of the Deputy City Clerk. The deadline for submitting rebuttal arguments shall be set by the Deputy City Clerk. Proposed rebuttal arguments shall not exceed two hundred fifty (250) words and shall be submitted to the office of the Deputy City Clerk. The provisions of Section 9285(a) of the California Elections Code shall apply to the submittal of rebuttal arguments.
2. Initial cannabis business tax rates, should the proposed ballot initiative pass on November 7, 2017, shall be set as follows for a term of three (3) years beginning the day the Ordinance goes into effect:
 - a. **Cultivation Initial Rate:** two percent (2%) of gross receipts or \$5.00 per square foot of cannabis cultivation area, at the taxpayer's election, except that vertically integrated businesses, as defined in Section 5.30 of this code, must use the per square foot rate.
 - b. **Manufacturing Initial Rate:** one percent (1%) of gross receipts
 - c. **Distribution Initial Rate:** zero percent (0%)
 - d. **Retailers Initial Rate:** three percent (3%) of gross receipts. Sales to persons with a physician's recommendation or a state issued medical identification card, issued for medical purposes, shall be excluded from the calculation of gross receipts for the purpose of the cannabis business tax. Physician's recommendation means a recommendation by a physician and surgeon that a patient use cannabis provided in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. State issued medical identification card means a document issued by the State Department of Public Health that identifies a person authorized to engage in the medical use of cannabis and the person's designated primary caregiver, if any, in accordance with Section 11362.71 of the Health and Safety Code.

IT IS HEREBY CERTIFIED that the foregoing resolution was duly adopted at a regular meeting of the City Council of the City of Cotati held on the 8th day of August, 2017, by the following vote, to wit:

RESULT: ADOPTED [UNANIMOUS]

MOVER: John A. Dell'Osso, Council Member

SECONDER: John C. Moore, Council Member

AYES: Skillman, Moore, Dell'Osso, Harvey, Landman

Approved: _____

Mayor

Attest: _____

Lauren Berges, Deputy City Clerk

Approved as to form:

City Attorney

Attachments:

Attachment A - Cannabis Tax Ordinance (PDF)

ORDINANCE NO. _____

**ORDINANCE OF THE PEOPLE OF THE CITY OF COTATI ADDING
CHAPTER 5.30 TO THE COTATI MUNICIPAL CODE TO IMPOSE A
CANNABIS BUSINESS TAX ON CERTAIN CANNABIS BUSINESSES
OPERATING IN COTATI AND AMENDING CHAPTER 5.04 TO IMPOSE A
BUSINESS LICENSE TAX ON CERTAIN OTHER CANNABIS BUSINESSES
OPERATING IN COTATI**

WHEREAS, the City of Cotati has responsibly and proactively managed its finances and its taxpayer dollars through transparent budget and decision-making processes and recently enacted Measure G to ensure the City’s fiscal stability by securing an additional one percent (1%) sales tax until 2023; and

WHEREAS, on November 5, 1996, the California voters enacted Proposition 215 to legalize medical use of cannabis, and in October 2015, the Governor signed into law the Medical Marijuana Regulation and Safety Act (known as the Medical Cannabis Regulation and Safety Act or “MCRSA”), establishing a state licensing framework and authorizing local regulation of the medical cannabis industry; and

WHEREAS, on November 8, 2016, California voters enacted Proposition 64 to legalize adult recreational use of cannabis and to allow businesses that support such cannabis use to operate legally, subject to regulations imposed by state and local public entities; and

WHEREAS, the State of California Governor’s Office proposed a series of amendments to the state’s regulatory structure during the budget process, known as “SB 94”, “the Governor’s Trailer Bill,” in order to better align the requirements of MCRSA and Proposition 64, now known as the Medical and Adult Use Cannabis Regulation and Safety Act or “MAUCRSA;” and

WHEREAS, the permitting and support of this industry, in association with the earlier passage of Proposition 215, and the recent enactment of MCRSA and passage of Proposition 64, has significant cost implications for the City due to the substantial costs of adopting and implementing regulations to govern this new industry, enforcing those regulations, ensuring public safety, addressing environmental concerns, and providing economic development and other related services; and

WHEREAS, the City must identify a funding source to support regulation of the industry while not adversely impacting the general fund in order to maintain consistent funding and financial stability for essential services such as police and fire protection, 911 emergency response times, streets and road maintenance, affordable housing, recreational programs and other general city services; and

WHEREAS, the City’s existing general business tax ordinance, which generally

levies a limited business tax on all businesses operating in Cotati, is insufficient to generate the volume of revenue needed to pay the City's costs of allowing the new and unique cannabis industry to operate in Cotati; and

WHEREAS, nearly fifty (50) other California jurisdictions – typically in collaboration with cannabis businesses – have enacted local measures to impose a general tax on cannabis business for the privilege of operating within the local jurisdiction; and

WHEREAS, such business taxes are imposed on cannabis businesses, and not directly on cannabis users or consumers; and

WHEREAS, adopting such a local cannabis industry business tax measure in the City of Cotati will benefit residents of the City by ensuring that cannabis businesses contribute reasonably and fairly to paying for the costs associated with allowing this emerging industry to operate while allowing the City to continue to maintain stable funding for essential City services and continued quality of life; and

WHEREAS, the City recognizes the volatility of the newly-legalized cannabis market and will therefore set limited initial tax rates to balance the financial needs of the City and the desire of the City to support and encourage the industry to engage in the regulated market; and

WHEREAS, such a tax measure will provide locally-controlled revenue that cannot be taken by the State; and

WHEREAS, such a tax measure will help to maintain the City's long-term financial stability, with public oversight and annual fiscal reviews; and

WHEREAS, the City of Cotati wishes to continue its policy engagement and discussions with stakeholders and the public about how cannabis businesses operating in Cotati should be regulated, while acting quickly and decisively to address any significant financial disruptions or impact to the City's General Fund and provision of services to Cotati citizens.

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

Section 1: The above recitals constitute a part of the findings made by the citizens in enacting this Ordinance.

Section 2. Chapter 5.30 is hereby added to Title 5 of the Cotati Municipal Code to read as follows:

CHAPTER 5.30 CANNABIS BUSINESS TAX

5.30.010. Title. This ordinance shall be known as the Cannabis Business Tax Ordinance.

5.30.020. General Excise Tax. The cannabis business tax is enacted solely to raise revenue and not to regulate cannabis activity; regulation of that activity remains the province of the city council. The cannabis business tax is an excise tax on the privilege of engaging in cannabis business activity in the city; it is not a sales or use tax. All of the proceeds from the tax imposed by this chapter shall be placed in the city's general fund and used for general governmental purposes.

5.30.030. Purpose. This ordinance is adopted to achieve the following purposes, among others, and shall be interpreted to accomplish those purposes:

- A. To impose an excise tax on certain businesses engaged in the cannabis industry operating within the City of Cotati pursuant to MAUCRSA and the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" approved by the state's voters on November 8, 2016, and/or any other enabling legislation, or in violation of such legislation, and notwithstanding whether such state laws use the term "marijuana" or "cannabis;" and
- B. To specify the type of tax and maximum rate of tax that may be levied and the method of collection; and
- C. To comply with all requirements to impose a general excise tax, such tax to become operative only if and to the extent implemented by the city council by resolution.

5.30.040. Definitions. Terms that are not defined in this chapter shall have the meanings ascribed to them in Chapter 17.90 of the Cotati Municipal Code. The following words and phrases shall have the meanings set forth below when used in this chapter unless the context plainly requires otherwise:

- A. "Business" means professions, trades, occupations and all and every kind of calling, whether or not carried on for profit.
- B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. In addition, and without limiting the foregoing, "Cannabis" also means cannabis as defined by Section 26001 of the Business and Professions Code, as may be amended from time to time, and all other applicable state law.
- C. "Cannabis business" or "cannabis industry" means any business activity in the city relating to cannabis, including but not limited to cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (wholesale and/or retail sales) of cannabis or cannabis products, whether or not carried on for gain or profit. A cannabis business does not include any business whose only relationship to cannabis or cannabis

products is the production or sale of cannabis accessories.

- D. "Cannabis cultivation area" means the total aggregate area(s) of cannabis cultivation by a cannabis business as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, the space between plants within the cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, excluding non-production areas, as determined by the community development director or designee.
- E. "Cannabis business tax" means the tax due pursuant to this chapter for engaging in cannabis business in the city.
- F. "Cannabis concentrate" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate for purposes of this division. A cannabis concentrate is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
- G. "Cannabis product" means any product containing cannabis, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and those products described in Section 11018.1 of the California Health and Safety Code.
- H. "Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether the areas are contiguous or noncontiguous. The plant canopy need not be contained to a single parcel of land in determining the total square footage that will be subject to tax under this chapter.
- I. "City" means the city of Cotati, either the entity or its territorial limits, as the context requires.
- J. "City Council" or "council" means the city council of the city of Cotati.
- K. "Collector" means the city's administrative services director or designee.
- L. "Commercial cannabis cultivation" means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal recreational use as authorized under the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" approved by the state's voters on November 8, 2016 and as amended by MAUCRSA, for which the individual receives no compensation whatsoever.
- M. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. "Cultivation" also includes nurseries. In addition, and without limiting the foregoing, "cultivation" includes "cultivation" as defined in California Business and Professions Code section

26001 and any successor statute, as may be adopted and amended from time to time.

- N. "Retailer" means a facility where cannabis or cannabis products, are offered, either individually or in combination, for retail sale, including an establishment that engages in delivery of cannabis or cannabis products as part of a retail sale. In addition, and without limiting the foregoing, "Retailer" includes "Dispensary" as defined in Chapter 8.24 of this code and retailer as defined in Section 26070 of the Business and Professions Code including any successor ordinance or statute, as may be adopted or amended from time to time.
- O. "Distributor" means a person engaged in procuring cannabis from a cultivator, and/or procuring cannabis products from a manufacturer, for sale to a Retailer. In addition, and without limiting the foregoing, "distributor" includes "distributor" as defined in Section 26070 of the Business and Professions Code and any successor statute, as may be adopted or amended from time to time. "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between licensees.
- P. "Employee" means each and every person engaged in the operation or conduct of any cannabis 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 cannabis business for a wage, salary, commission, barter or any other form of compensation.
- Q. "Evidence of doing business" means when any person shall by use of signs, circulars, cards, telephone book, or newspapers, advertise, hold out, or represent that he is in business in the city, or when any person holds an active license or permit issued by a governmental agency indicating that he is in business in the city, and such person fails to deny by a sworn statement given to the collector that he is not conducting a business in the city, after being requested to do so by the collector, then these facts shall be considered prima facie evidence that he or she is conducting a business in the city.
- R. "Gross Receipts," means "Gross Receipts" as that term is defined in Section 5.04.010(D) of the Cotati Municipal Code.
- S. "Manufacturer" means a person who 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, or who packages or repackages cannabis or cannabis products or labels or re-labels its container. In addition, and without limiting the foregoing, "manufacturer" includes "manufacturer" as defined in California Business and Professions Code section 26001 and any successor statute, as may be adopted or amended from time to time.

- T. "Nursery" means a person who produces cannabis clones, immature plants, and/or seeds for wholesale distribution, used specifically for the planting, propagation, and cultivation of cannabis. In addition, and without limiting the foregoing, "nursery" includes "nursery" as defined in California Business and Professions Code section 26001 and any successor statute, as may be adopted or amended from time to time.
- U. "Person" means "Person" as that term is defined in Section 5.04.010(B) of the city of Cotati Municipal Code.
- V. "Personal medical cannabis cultivation" means cultivation, by either a qualified patient who cultivates cannabis exclusively for his or her personal medical use or by a caregiver who cultivates cannabis exclusively for medical use by qualified patients and who is exempt from State licensing requirements under MAUCRSA .
- W. "Sale" means the transfer, in any manner or by any means whatsoever, of title to real or personal property for a consideration; the serving, supplying, or furnishing for a consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The definitions in this subsection shall be deemed to include any transaction which is or which, in effect, results in a sale within the contemplation of law.
- X. "State" means the State of California.
- Y. "State license" means a state license issued pursuant to California Business & Professions Code Sections 26000 et seq. or other applicable state law.
- Z. "Vertically Integrated Business," means a cannabis business with a Type 12 license or any cannabis business holding two or more license types that internally transfers products between cultivation, manufacturing, distribution, or retail operations without a recorded sale to determine gross receipts for purposes of the cannabis business tax.

5.30.050. Tax Authorized. A cannabis business tax is hereby imposed on every person who is engaged in cannabis business in the city as prescribed herein, from and after the effective date of a city council resolution implementing the tax. It is unlawful for any person to transact or carry on any cannabis business in the city without paying, in accordance with this chapter, the cannabis business tax imposed by this section.

A. Tax on Commercial Cannabis Cultivation

There is hereby imposed on every person engaged in commercial cannabis cultivation in the city, an annual tax at a rate established by resolution of the city council which rate shall not exceed either \$25 per

square foot of cannabis cultivation area or eight percent (8%) of annual gross receipts. The maximum square foot tax shall be adjusted annually each January 1st based on the year-over-year percentage change in Bureau of Labor Statistics San Francisco/Oakland/San Jose Consumer Price Index – All Urban Consumers (CPI-U) October to October comparison, or if such index is discontinued, a comparable successor consumer price index as determined by the city council. The tax imposed under this Subsection (A)(1) shall be due and payable in quarterly installments as provided in Section 5.30.070 of this chapter. The tax imposed under this Subsection (A)(1) shall not be implemented unless and until the city council acts by resolution to do so.

1. The city council may by resolution, in its discretion, implement a tax rate lower than the maximum rates set forth in Subsection (A)(1) for all persons engaged in commercial cannabis cultivation in the City or establish differing tax rates for different categories of commercial cannabis cultivation. For example, and without limitation, the city council may set different tax rates for cannabis cultivation for medical or adult recreational use, or for indoor rather than outdoor or mixed light cultivation. The city council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, exceed the maximum tax rates established in Subsection (A)(1). An affirmative vote of at least four (4) members of the city council is required for any tax increase resulting in a tax rate of over five percent (5%). Tax rates shall be set for a minimum of a two (2) year term.
2. Persons subject to the tax imposed by Subsections (A)(1) and (A)(2) shall also register and pay the registration fee described in Section 5.30.060 of this chapter, but shall be exempt from paying the general business tax required under Chapter 5.04 of the Municipal Code for any such cannabis business. A cannabis business not subject to the cannabis business tax imposed by this chapter shall be subject to the general business tax required under Chapter 5.04 of the Cotati Municipal Code except as otherwise provided by Chapter 5.04 or other applicable law.

B. Tax on Cannabis Manufacturers, Distributors, and Retailers

1. There is hereby imposed on every person engaged in a cannabis business in the city as a manufacturer, distributor or a retailer an annual tax at a rate established by resolution of the city council which rate shall not exceed eight percent (8%) of annual gross receipts. The tax imposed under this Subsection (B)(1) shall be due and payable in quarterly installments as provided in Section 5.30.070 of this chapter. The tax imposed under this Subsection (B)(1) shall not be implemented unless and until the city council acts by resolution to do so.

2. The city council may by resolution, in its discretion, implement a tax rate lower than the maximum rate established in Subsection (B)(1) for all persons engaged in a cannabis business in the city as a manufacturer, distributor or a retailer, or establish differing tax rates for different categories of cannabis business. For example, and without limitation, the city council may set different rates for businesses serving medical or adult recreational use, or for different types of manufacturers, distributors or retailers. The city council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, exceed the maximum tax rate established in Subsection (B)(1). An affirmative vote of at least four (4) members of the city council is required for any tax increase resulting in a tax rate of over 5%. Tax rates shall be set for a minimum of a two (2) year term.
 3. Persons subject to the tax imposed by Subsections (B)(1) and (B)(2) shall also register and pay the registration fee described in Section 5.30.060 of this chapter, but shall be exempt from paying the general business tax required under Chapter 5.04 of the Cotati Municipal Code for any such cannabis business. A cannabis business not subject to the cannabis business tax imposed by this chapter shall be subject to the general business tax required under Chapter 5.04 of the Cotati Municipal Code except as otherwise provided by Chapter 5.04 of the Cotati Municipal Code or other applicable law.
- C. No further voter approval shall be required for the adoption or increase of a tax under the authority granted by this Section 5.30.050 of this chapter, it being the intent of the People of the City of Cotati to authorize such a tax up to and including the maximum rates set forth above whenever implemented by the city council hereafter.

5.30.060 Registration of Cannabis Business. All cannabis businesses shall be required to annually register as follows:

- A. All persons engaging in a cannabis business, whether an existing, newly-established or acquired business, shall register with the collector within thirty (30) days of commencing operation or by January 1, 2018, whichever is later, and shall annually renew such registration by January 1 of each year thereafter. In registering, such persons shall furnish to the collector a sworn statement, upon a form provided by the collector, setting forth the following information:
 - (1) The name of the business
 - (2) The names and addresses of each owner
 - (3) The exact nature or kind of business;
 - (4) The place where such business is to be carried on; and
 - (5) Any further information which the collector may require.
- B. Any financial information required under Subsection A will be used only to calculate and enforce the tax imposed under this chapter, will be exempt from

disclosure under the Public Records Act pursuant to California Government Code section 6254(i), and will not be used by the city for criminal enforcement except as provided in Sections 5.30.270 and 5.30.280 of this chapter.

- C. An annual registration fee of one hundred dollars (\$100) shall be presented with the sworn statement submitted under this section. This fee shall not be considered a tax and may be adjusted by resolution of the city council.
- D. Unless otherwise specifically provided by the collector in writing, the annual fee under this section shall be due and payable in advance, on the first day of January, and shall be considered delinquent if unpaid after the last day of February. The date on which the fee becomes delinquent may be extended in writing by the collector, upon good cause shown, to a date not later than March 31st.
- E. For each cannabis business subject to tax under this chapter, a separate registration and fee payment shall be required under this section for each branch or location of the business and for each separate type of cannabis business at each branch or location.
- F. Upon receipt of the registration and fee required under this Section, the collector shall issue to the cannabis business a Certificate of Registration. Such Certificate of Registration shall be non-transferrable except as otherwise provided by the collector in writing.

5.30.070. Reporting and Remittance of Tax. The cannabis business tax imposed by this chapter shall be due and payable as follows:

- A. Each person subject to tax under this chapter, except a cannabis cultivation tax based on a square footage, shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax return and remit to the collector the tax due for that quarter. At the time the return is filed, the full amount of the tax due for the prior quarter shall be remitted to the collector.
- B. Each person subject to a cannabis cultivation tax based on a square footage shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax return and remit to the collector the tax due for that quarter. The tax shall be calculated in accordance with rules and regulations established by the collector pursuant to Section 5.30.160. The tax return may include a request for adjustment of the tax due to crop loss or periods without cultivation, along with evidence substantiating the crop loss or fallow periods. If the cultivation begins sixty days or more after January 1 or terminates sixty days or more before December 31 of the calendar year, a request to prorate the tax may be submitted with evidence supporting the timing of the cultivation. The decision to prorate or adjust the tax will be made at the sole discretion of the collector. At the time the return is filed, the full amount of the tax due for the prior quarter shall be remitted to the collector.

- C. All tax returns shall be completed on forms prescribed by the collector.
- D. Tax returns and payments for all outstanding taxes owed the city under this chapter are immediately due and payable to the city of Cotati upon cessation of business for any reason.

5.30.080. Payments and Communications – Timely Remittance. Whenever any payment, return, report, request or other communication is due under this chapter, it must be received by the collector on or before the due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a city holiday, the due date shall be the next regular business day on which the city is open to the public.

5.30.090. 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 city of Cotati on or before the due date as specified in Section 5.30.070.

5.30.100. Notice Not Required By City. The city of Cotati is not required to send a delinquency or other notice or bill to any person subject to this chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty or interest due under this chapter.

5.30.110. Delinquent Registration or Taxes – Penalties and Interest. Penalties and interest shall be applied according to Section 5.04.200 of this code.

5.30.120. Waiver of Penalties. Waiver of penalties shall be applied according to Section 5.04.205 of this code.

5.30.130. Refunds. Refunds may be paid pursuant to Section 5.04.260 of this code.

5.30.140. Exemptions from the Tax.

- A. Testing Laboratories, as defined as license Type 8 under Section 26001 of the Business and Professions Code, and any successor statute, as may be adopted or amended from time to time, is exempt from the cannabis business tax, but shall be subject to the General Business Tax under Chapter 5.04 of this code.
- B. Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business that is exempt from the payment of such taxes as are herein prescribed by virtue of the Constitution or applicable statutes of the United States or of the State.
- C. Any person claiming an exemption pursuant to this Section shall file a sworn statement with the collector stating the facts upon which exemption is claimed. Unless and until the collector determines in writing that such person is exempt from tax under this chapter, such person shall be liable for the payment of the tax

imposed by this chapter.

- D. This chapter shall not be deemed or construed to require the payment of any general business tax under chapter 5.04 of this code for any cannabis business that is subject to payment of a cannabis business tax under this chapter.

5.30.150. Enforcement. It shall be the duty of the collector to enforce each and all of the provisions of this chapter, in accordance with the procedures of Section 5.04.210 of this code.

5.30.160. Rules and Regulations. The collector may adopt rules and regulations not inconsistent with the provisions of this chapter as may be necessary or desirable to aid in the implementation and enforcement of the provisions of this chapter. A copy of any such rules and regulations shall be available for public inspection in the collector's office.

5.30.170. Apportionment. If a cannabis business subject to a cannabis business tax is operating both within and outside the city, it is the intent of the city to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the city. The collector may adopt administrative procedures for apportionment pursuant to section 5.30.160 of this chapter.

5.30.180. Construction.

- A. This tax is intended to be applied in a manner consistent with the United States and California Constitutions, state and local law. None of the tax provided for by this chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution, state or local law.
- B. This chapter shall be construed and implemented consistent with the provisions of chapter 5.04 of this code except as this chapter or other law otherwise requires or the collector otherwise determines in writing as authorized under this code.

5.30.190. Audit and Examination of Records and Equipment.

- A. The collector shall have the power to audit and examine all books and records of any person engaged in cannabis business in the city, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis business, and, where necessary, all equipment of any person engaged in cannabis business in the city, for the purpose of ascertaining the amount of cannabis business tax, if any, required to be paid under this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this chapter. If such person, after written demand by the collector, refuses to make available for audit, examination or verification such books, records or equipment as the collector requests, the collector may, after full consideration of all information

within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment against the cannabis business of the taxes estimated to be due under this chapter, following the procedures set forth in chapter 3.12.090 of this code, except that calculation of any penalties and interest for unreported or misreported gross receipts shall be in accordance with Section 5.30.110 and appeals shall be in accordance with Section 5.30.260 of this chapter.

- B. The cannabis business being audited shall be liable for the cost of the audit and all reasonable City administrative expenses related to the audit.
- C. It shall be the duty of every person liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the city, which records the collector shall have the right to inspect at all reasonable times.

5.30.200. Other Licenses, Permits, Taxes, Fees, or Charges. Except as expressly provided in this chapter, 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 city, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this code or any other ordinance or resolution of the city. Any references made or contained in any other title or chapter of this code to any permits, licenses, taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the permits, licenses, taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this code unless otherwise expressly provided.

5.30.210. Successor's and Assignee's Responsibility.

- A. If any person, while liable for any amount under this chapter, sells, assigns or otherwise transfers the cannabis business, whether voluntarily or involuntarily, the person's successor, assignee or other transferee, or other person or entity obtaining ownership or control of the business ("Transferee"), shall satisfy any tax liability owed to the city associated with the business when due hereunder. Failure to do so for the benefit of the city will result in being personally liable to the city for the full amount of the unpaid tax liability, interest and penalties. The Transferee shall notify the collector of the date of transfer at least thirty (30) days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than thirty (30) days before the date of transfer, notice shall be provided immediately upon the existence of the agreement.
- B. The Transferee shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability if the Transferee complies with the requirements of California Revenue and Taxation Code Section 7283.5 by withholding from the

purchase price, for the benefit of the city, an amount sufficient to cover the tax liability, or by otherwise paying the tax liability and obtaining from the collector a "Tax Clearance Certificate" showing that all outstanding tax liability has been paid and stating that no amount is due through the date of transfer.

- C. The collector, within ninety (90) days of receiving a written request from a Transferee, may issue a "Tax Clearance Certificate" stating either the amount of tax liability due and owing for the business, or stating that there is no tax liability due and owing for the business through a stated date. The collector may also request financial records from the current or former owner or operator to audit the tax that may be due and owing. The collector shall issue a Tax Clearance Certificate within 30 days of completing the audit, stating the amount of the tax liability owed, if any, unless the collector determines that the records provided in connection with the audit are insufficient to determine whether taxes are due and owed or in what amount. If the collector determines that the records are insufficient, the collector may rely on the facts and information available to estimate any tax liability. The collector may issue a Tax Clearance Certificate stating the amount of the tax liability, if any, based on such facts and information available. Unless an appeal is filed in accordance with Section 5.30.260, the Tax Clearance Certificate shall serve as conclusive evidence of the tax liability associated with the property through the date stated on the certificate.

5.30.220. Payment of Tax Does Not Authorize Unlawful Business.

- A. The payment of a tax required by this chapter, and its acceptance by the city, shall not entitle any person to engage in any cannabis business unless the person has complied with all of the requirements of this code and all other applicable state or local laws.
- B. No tax paid under this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any state or local laws.

5.30.230. Deficiency Determinations. If the collector is not satisfied that any tax return or other statement filed as required under 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 facts contained in the tax return or statement or any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable, or such later date as allowable by law. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter, or such later date as allowable by law, 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 5.30.250.

5.30.240. Failure to Report – Nonpayment.

- A. Under any of the following circumstances and at any time, the collector may make and give notice of an assessment of the amount of tax owed by a person under this chapter:
 - 1. If the person has not filed a complete return or statement required under this chapter;
 - 2. If the person has not timely paid any tax, fee, interest and/or penalties due under of this chapter; or
 - 3. If the person has not, after demand by the collector, filed a corrected return or statement, or furnished to the collector adequate substantiation of the information contained in a return or statement filed previously.
- B. The notice of assessment shall separately set forth the amount of any tax, fee, interest and/or penalties known by the collector to be due or estimated by the collector, after consideration of all information within the collector's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter.

5.30.250. Tax Assessment – Notice Requirements. The notice of assessment shall be served upon the person liable for the tax under this chapter 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 Collector for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the 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.

5.30.260. Appeal Procedure. Any taxpayer aggrieved by any decision of the collector with respect to the amount of tax, fee, interest and penalties, if any, due under this chapter may appeal to the city manager by filing a written appeal with the deputy city clerk or city clerk of the Cotati City Council within fifteen (15) calendar days of the mailing of the decision or determination. The deputy city clerk or city clerk shall schedule the appeal and give fifteen (15) days' written notice to the appellant of the time and place of hearing by serving the notice personally or by depositing in the United States Post Office in the city, postage prepaid, addressed as shown on the appeal papers or, if none, such other address as is known to the city or, absent any address, by publication in a newspaper of general circulation in the city. The city manager shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this chapter. The deputy city clerk or city clerk shall be a separate person from the city manager.

5.30.270. Conviction for Chapter Violation – Taxes not Waived. The conviction and punishment of any person for failure to pay a required tax, fee, penalty and/or interest under this chapter shall not excuse or exempt such person from any civil action for the amounts due

under this chapter. 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.

5.30.280. Violation Deemed Misdemeanor. Any person who violates any provision of this chapter or who other than by a sworn statement, knowingly or intentionally misrepresents to any officer or employee of the city any material fact herein required to be provided is guilty of a misdemeanor punishable as provided in Section 1.20.010 of the Cotati Municipal Code. A person who on a sworn statement states as true a material fact that he or she knows to be false is guilty of perjury.

5.30.290. Actions to Collect. The amount of any tax, fee, penalty and/or interest imposed pursuant to this chapter shall be deemed a debt owed to the city. An action may be commenced in the name of the city in any court of competent jurisdiction, for the amount of any delinquent tax, fees, penalties and interest thereon.

5.30.300. Remedies Cumulative. All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

5.30.310 Amendment. As required by Article XIII C of the California Constitution, any amendment that increases the maximum rates of tax beyond the levels authorized in Section 5.30.050 above shall not take effect unless approved by a vote of the People. The city council may, by resolution, implement a tax under this chapter in any amount or at any rate that does not exceed the maximum rates set forth in Section 5.30.050.

5.30.320 Other Taxes and Fees. Except as provided herein, persons required to pay a tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any license tax, permit, charge, assessment, or fee for the privilege of doing such business required under other laws or regulations of the city, and shall remain subject to the provisions of such other laws and regulations.

Section 3. Chapter 5.04 of the Cotati Municipal Code is hereby amended as follows:

Section 5.04.010.D Definitions

5.04.010 D. “Gross receipts” means the total amount of the sale price of all sales, and the total amount charged or received for the performance of any act, service or employment of whatsoever nature it may be, for which a charge is made or credit allowed, whether or not such service, act or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, and any amount for which credit is allowed by the seller to the purchaser, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, the cost of transportation of the property prior to its purchase, or losses or other expense whatsoever. “Gross receipts” shall also include the estimated value of cannabis products which are internally transferred between cultivation, manufacturing, distribution, or retail operations, using a valuation methodology

which may be developed in the sole discretions of the collector, for the purposes of estimating gross receipts when there is no recorded sale for purposes of the cannabis business tax. Excluded from “gross receipts” shall be cash discounts allowed and taken on sales; any tax required by law to be included in or added to the purchase price, and collected from the consumer or purchaser; and such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit.

Section 5.04.250.A General License Schedule is hereby amended to add the following business type:

5.04.250 A. Cannabis testing labs,

Section 4. CEQA. The approval of this Ordinance is exempt from the California Environmental Quality Act (California 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 can be used for any legitimate governmental purpose; it is not a commitment to any particular action nor does it authorize any private activity, but merely taxes such activity as otherwise occurs. As such, under CEQA Guidelines section 15378(b)(4), neither the cannabis business tax nor the general business tax is a project within the meaning of CEQA because both create 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. If revenue from either tax is used for a purpose that would have either such effect, the City will undertake the required CEQA review for that project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required at this time.

Section 5. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The People of the City of Cotati hereby declare that they would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 6. Effective and Operative Dates. This ordinance shall take effect ten (10) days after the election result is certified as provided by Elections Code but the taxes imposed by this ordinance shall take effect only when and to the extent implemented by resolution of the city council.

Section 7. Certification; Publication. Upon approval by the voters, the Deputy City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.