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**ORDINANCE NO. MC-1501**

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF SAN BERNARDINO, CALIFORNIA, CITY OF SAN BERNARDINO, CALIFORNIA ADDING CHAPTER 5.18 (CANNABIS BUSINESS TAX) TO TITLE 5 OF THE SAN BERNARDINO MUNICIPAL CODE**

**THE PEOPLE OF THE CITY OF SAN BERNARDINO DO ORDAIN AS FOLLOWS:**

**SECTION 1. ADOPTION**

Chapter 18, entitled “Cannabis Business Tax”, of Title 5 “Business Registration and Regulations” of the San Bernardino Municipal Code is adopted as follows:

**CHAPTER 5.18  
CANNABIS BUSINESS TAX**

**Sections:**

- 5.18.010 Title.**
- 5.18.020 Authority and Purpose.**
- 5.18.030 Intent.**
- 5.18.040 Definitions.**
- 5.18.050 Tax imposed.**
- 5.18.060 Reporting and remittance of tax.**
- 5.18.070 Payments and communications –timely remittance.**
- 5.18.080 Payment – when taxes deemed delinquent.**
- 5.18.090 Notice not required by City.**
- 5.18.100 Penalties and interest.**
- 5.18.110 Refunds and credits.**
- 5.18.120 Refunds and procedures.**
- 5.18.130 Personal cultivation not taxed.**
- 5.18.140 Administration of the tax.**
- 5.18.150 Appeal procedure.**
- 5.18.160 Enforcement –action to collect.**
- 5.18.170 Apportionment.**
- 5.18.180 Constitutionality and legality.**
- 5.18.190 Audit and examination of premises and records.**
- 5.18.200 Other licenses, permits, taxes or charges.**
- 5.18.210 Payment of tax does not authorize unlawful business.**
- 5.18.220 Deficiency determinations.**
- 5.18.230 Failure to report – nonpayment, fraud.**
- 5.18.240 Tax assessment –notice requirements.**
- 5.18.250 Tax assessment – hearing, application, and determination.**
- 5.18.260 Relief from taxes-disaster relief.**
- 5.18.270 Conviction for violation – taxes not waived.**

- 1       **5.18.280**   **Violation deemed misdemeanor.**
- 2       **5.18.290**   **Severability.**
- 3       **5.18.300**   **Remedies cumulative.**
- 4       **5.18.310**   **Amendment or repeal.**

5.18.010           **Title.**

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

5.18.020           **Authority and Purpose.**

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Businesses that engage in business in the City. The Cannabis Business Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and be available for any legal municipal purpose.

5.18.030           **Intent.**

The intent of this Ordinance is to levy a tax on all Cannabis Businesses that operate in the City, regardless of whether such business would have been legal at the time this Ordinance was adopted. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

5.18.040           **Definitions.**

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

A.       “Business” shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B.       “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.

1 C. "Cannabis product" means raw cannabis that has undergone a process whereby  
2 the raw agricultural product has been transformed into a concentrate, an edible product, or a  
3 topical product. "Cannabis product" also means marijuana products as defined by Section  
4 11018.1 of the California Health and Safety Code and is not limited to medical cannabis

5 D. "Canopy" means all areas occupied by any portion of a cannabis plant whether  
6 contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes  
7 (as when plants are placed on shelving above other plants) each plane shall be counted as a  
8 separate canopy area.

9 E. "Cannabis business" means any business activity involving cannabis, including  
10 but not limited to cultivating, transporting, distributing, manufacturing, compounding,  
11 converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing  
12 and wholesaling of cannabis, of cannabis products or of ancillary products and accessories,  
13 whether or not carried on for gain or profit.

14 F. "Cannabis business tax" or "business tax," means the tax due pursuant to this  
15 Chapter for engaging in cannabis business in the City.

16 G. "Commercial cannabis cultivation" means cultivation in the course of  
17 conducting a cannabis business.

18 H. "City permit" means a permit issued by the City to a person to authorize that  
19 person to operate or engage in a cannabis business.

20 I. "Cultivation" means any activity involving the planting, growing, harvesting,  
21 drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the  
22 operation of a nursery.

23 J. "Employee" means each and every person engaged in the operation or conduct  
24 of any business, whether as owner, member of the owner's family, partner, associate, agent,  
25 manager or solicitor, and each and every other person employed or working in such business  
26 for a wage, salary, commission, barter or any other form of compensation.

27 K. "Engaged in business as a cannabis business" means the commencing,  
28 conducting, operating, managing or carrying on of a cannabis business, whether done as  
owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating  
from a fixed location in the City or coming into the City from an outside location to engage in  
such activities. A person shall be deemed engaged in business within the City if:

1. Such person or person's employee maintains a fixed place of business  
within the City for the benefit or partial benefit of such person;

2. Such person or person's employee owns or leases real property within  
the City for business purposes;

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3. Such person or person’s employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;

4. Such person or person’s employee regularly conducts solicitation of business within the City; or

5. Such person or person’s employee performs work or renders services in the City.

The foregoing specified activities shall not be a limitation on the meaning of “engaged in business.”

L. “Evidence of doing business” means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City.

M. “Calendar year” means the twelve consecutive month period from the first day of January through the last day of the following December, inclusive.

N. “Gross Receipts,” except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from the definition of Gross Receipts:

1. Cash discounts where allowed and taken on sales;

2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

5. Cash value of sales, trades or transactions between departments or units of the same business;

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6. 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;

7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the City's finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 5.18.140 shall not be subject to the cannabis business tax under this chapter. However, any business activities not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax provisions of Chapter 5.04 or any other Chapter or Title as determined by the Tax Administrator.

O. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

P. "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

Q. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

R. "Sale" means and includes any sale, exchange, or barter.

S. "State" means the State of California.

1 T. "State license," "license," or "registration" means a state license issued  
2 pursuant to California Business & Professions Code Sections 26050, *et seq.* or other  
3 applicable state law.

4 U. "Tax Administrator" means the Finance Director of the City of San Bernardino  
5 or his or her designee.

6 V. "Testing Laboratory" means a cannabis business that (i) offers or performs  
7 tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no  
8 products, excepting only testing supplies and materials, (iv) is accredited by an accrediting  
9 body that is independent from all other persons involved in the cannabis industry in the state  
10 and (v) is registered with the Bureau of Cannabis Control.

11 **5.18.050 Tax imposed.**

12 A. Beginning January 1, 2019, there is imposed upon each person who is engaged  
13 in business as a cannabis business a cannabis business tax. Such tax is payable  
14 regardless of whether the business has been issued a cannabis business license  
15 or permit to operate lawfully in the City or is operating unlawfully. The City's  
16 acceptance of a cannabis business tax payment from a cannabis business  
17 operating illegally will not constitute the City's approval or consent to such  
18 illegal operations.

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

- 20 1. For every person who is engaged in commercial cannabis cultivation in the  
21 City:
  - 22 a. Seven dollars (\$7.00) annually per square foot of canopy space in a  
23 facility that uses exclusively artificial lighting.
  - 24 b. Four dollars (\$4.00) annually per square foot of canopy space in a  
25 facility that uses a combination of natural and supplemental artificial  
26 lighting.
  - 27 c. Two dollars (\$2.00) annually per square foot of canopy space in a  
28 facility that uses no artificial lighting.
  - d. One dollar (\$1.00) annually per square foot of canopy space for any  
nursery.

For purposes of this subdivision (B), the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. Should a City permit be issued to a business which cultivates only for certain months of the year, the City shall prorate the tax as

1 to sufficiently reflect the period in which cultivation is occurring at the business. In no case  
2 shall canopy square footage which is authorized by the City commercial cannabis permit but  
3 not utilized for cultivation be deducted for the purpose of determining the tax for cultivation,  
4 unless the Tax Administrator is informed in writing and authorizes such reduction for the  
5 purpose of relief from the tax prior to the period for which the space will not be used, that  
6 such space will not be used.

- 7 2. For every person who engages in the operation of a testing laboratory: one  
8 percent (1%) of gross receipts.
- 9 3. For every person who engages in the retail sales of cannabis as a retailer  
10 (dispensary) or non-store front retailer (delivery) or microbusiness (retail  
11 sales): four percent (4%) of gross receipts.
- 12 4. For every person who engages in a cannabis distribution business: two  
13 percent (2%) of gross receipts.
- 14 5. For every person who engages in a cannabis manufacturing, processing, or  
15 microbusiness (non-retail), or any other type of cannabis business not  
16 described in Section (B) (1), (2), (3) or (4): two and half percent (2.5%) of  
17 gross receipts. However, cultivation for a microbusiness shall be taxed at  
18 the rate established in 5.18.050(B)(1)(a).

15 C. The City Council may, by resolution or ordinance, adjust the rate of the  
16 cannabis business tax. However, in no event may the City Council set any  
17 adjusted rate that exceeds the maximum rate calculated pursuant to Subdivision  
18 (D) of this Section for the date on which the adjusted rate will commence.

18 D. The maximum rate shall be calculated as follows:

- 19 1. For every person who is engaged in commercial cannabis cultivation in the  
20 City:
  - 21 a. Through January 1, 2021, the maximum rate shall be:
    - 22 i. Ten dollars (\$10.00) annually per square foot of canopy space in  
23 a facility that uses exclusively artificial lighting.
    - 24 ii. Seven dollars (\$7.00) annually per square foot of canopy space  
25 in a facility that uses a combination of natural and supplemental  
26 artificial lighting.
    - 27 iii. Four dollars (\$4.00) annually per square foot of canopy space in  
28 a facility that uses no artificial lighting.
    - iv. Two dollars (\$2.00) annually per square foot of canopy space

1 for any nursery.

2 b. On January 1, 2022 and on each January 1 thereafter, the maximum  
3 annual tax rate per square foot of each type of canopy space shall  
4 increase by the percentage change between January of the calendar year  
5 prior to such increase and January of the calendar year of the increase  
6 in the Consumer Price Index ("CPI") for all urban consumers in the  
7 Riverside-San Bernardino-Ontario area as published by the United  
8 States Government Bureau of Labor Statistics. However, no CPI  
9 adjustment resulting in a decrease of any tax imposed by this subsection  
10 shall be made.

11 2. For every person who engages in the operation of a testing laboratory, the  
12 maximum tax rate shall not exceed two and a half percent (2.5%) of gross  
13 receipts.

14 3. For every person who engages in the retail sales of cannabis as a retailer  
15 (dispensary) or non-store front retailer (delivery business), or  
16 microbusiness (retail sales activity) the maximum tax rate shall not exceed  
17 six percent (6%) of gross receipts.

18 4. For every person who engages in a cannabis distribution business, the  
19 maximum tax rate shall not exceed three percent (3%) of gross receipts.

20 5. For every person who engages in a cannabis manufacturing, processing, or  
21 microbusiness (non-retail activity) or any other type of cannabis business  
22 not described in Section (D) (1), (2), (3) or (4), the maximum tax rate shall  
23 not exceed four percent (4%) of gross receipts. However, the maximum tax  
24 rate for cultivation for a microbusiness shall be the rate established in  
25 5.18.050(D)(1)(a)(i), as may be increased from time to time by the  
26 provisions of 5.18.050(D)(1)(b).

27 **5.18.060 Reporting and remittance of tax.**

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

B. Each person owing cannabis business tax for a calendar quarter shall, no later  
than the last day of the month following the close of the calendar quarter, file  
with the Tax Administrator a statement of the tax owed for that calendar  
quarter and the basis for calculating that tax. The Tax Administrator may  
require that the statement be submitted on a form prescribed by the Tax



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Administrator. The tax for each calendar quarter shall be due and payable on that same date that the statement for the calendar quarter is due.

C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.

D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

E. For purposes of this section, the square feet of canopy space for a business shall be rebuttably presumed to be no less than the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used.

**5.18.070 Payments and communications – timely remittance.**

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday observed by the City, the due date shall be the next regular business day on which the City is open to the public.

**5.18.080 Payment - when taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 5.18.060 and 5.18.070.

**5.18.090 Notice not required by the City.**

The City may as a courtesy send a tax notice to the business. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person

1 subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the  
2 validity of any tax or penalty due under the provisions of this Chapter.

3 **5.18.100 Penalties and interest.**

4 A. Any person who fails or refuses to pay any cannabis business tax required to be  
5 paid pursuant to this Chapter on or before the due date shall pay penalties and interest as  
6 follows:

7 1. A penalty equal to ten percent (10%) of the amount of the tax, in  
8 addition to the amount of the tax, plus interest on the unpaid tax calculated from the  
9 due date of the tax at the rate of one percent (1.0%) per month.

10 2. If the tax remains unpaid for a period exceeding one calendar month  
11 beyond the due date, an additional penalty equal to twenty-five percent (25%) of the  
12 amount of the tax, plus interest at the rate of one percent (1.0%) per month on the  
13 unpaid tax and on the unpaid penalties.

14 3. Interest shall be applied at the rate of one percent (1.0%) per month on  
15 the first day of the month for the full month and will continue to accrue monthly on the  
16 tax and penalty until the balance is paid in full.

17 B. Whenever a check or electronic payment is submitted in payment of a cannabis  
18 business tax and the payment is subsequently returned unpaid by the bank for any reason, the  
19 taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided  
20 for in this Section, and any other amount allowed under state law.

21 **5.18.110 Refunds and credits.**

22 A. No refund shall be made of any tax collected pursuant to this Chapter, except  
23 as provided in Section 5.18.120.

24 B. No refund of any tax collected pursuant to this Chapter shall be made because  
25 of the discontinuation, dissolution, or other termination of a business.

26 **5.18.120 Refunds and procedures.**

27 A. Whenever the amount of any cannabis business tax, penalty or interest has  
28 been overpaid, paid more than once, or has been erroneously collected or received by the City  
under this Chapter, it may be refunded to the claimant who paid the tax provided that a written  
claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was  
originally due and payable.

B. The Tax Administrator, his or her designee or any other City officer charged  
with the administration of this Chapter shall have the right to examine and audit all the books  
and business records of the claimant in order to determine the eligibility of the claimant to the  
claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such

1 examination of claimant's books and business records after request by the Tax Administrator  
2 to do so.

3 C. In the event that the cannabis business tax was erroneously paid, and the error  
4 is attributable to the City, the City shall refund the amount of tax erroneously paid up to one  
5 (1) year from the date that the tax was paid.

6 **5.18.130 Personal Cultivation Not Taxed.**

7 The provisions of this Chapter shall not apply to personal cannabis cultivation as  
8 defined in the "Medicinal and Adult Use Cannabis Regulation and Safety Act." This Chapter  
9 shall not apply to personal use of cannabis that is specifically exempted from City and state  
10 licensing requirements, that meets the definition of personal use or equivalent terminology  
11 under state law, and for which the individual receives no compensation whatsoever related to  
12 that personal use.

13 **5.18.140 Administration of the tax.**

14 A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees,  
15 and perform the duties required by this Chapter.

16 B. For purposes of administration and enforcement of this Chapter generally, the  
17 Tax Administrator may from time to time promulgate such administrative interpretations,  
18 rules, and procedures consistent with the purpose, intent, and express terms of this Chapter as  
19 he or she deems necessary to implement or clarify such provisions or aid in enforcement.

20 C. The Tax Administrator may take such administrative actions as needed to  
21 administer the tax, including but not limited to:

- 22 1. Provide to all cannabis business taxpayers forms for the reporting of the  
23 tax;
- 24 2. Provide information to any taxpayer concerning the provisions of this  
25 Chapter;
- 26 3. Receive and record all taxes remitted to the City as provided in this  
27 Chapter;
- 28 4. Maintain records of taxpayer reports and taxes collected pursuant to  
this Chapter;
5. Assess penalties and interest to taxpayers pursuant to this Chapter;
6. Determine amounts owed and enforce collection pursuant to this  
Chapter.

1 **5.18.150 Appeal procedure.**

2 Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the  
3 amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the  
4 City Council by filing a notice of appeal with the City Clerk within thirty (30) calendar days  
5 of the serving or mailing of the determination of tax due. The City Clerk, or his or her  
6 designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her  
7 designee, shall give notice in writing to such operator at the last known place of address. The  
8 finding of the City Council shall be final and conclusive and shall be served upon the  
9 appellant in the manner prescribed by this Chapter for service of notice of hearing. Any  
10 amount found to be due shall be immediately due and payable upon the service of the notice.

8 **5.18.160 Enforcement - action to collect.**

9 Any taxes, penalties and/or fees required to be paid under the provisions of this  
10 Chapter shall be deemed a debt owed to the City. Any person owing money to the City under  
11 the provisions of this Chapter shall be liable in an action brought in the name of the City for  
12 the recovery of such debt. The provisions of this Section shall not be deemed a limitation  
13 upon the right of the City to bring any other action including criminal, civil and equitable  
14 actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or  
15 the failure to comply with any of the provisions of this Chapter.

14 **5.18.170 Apportionment.**

15 If a business subject to the tax is operating both within and outside the City, it is the  
16 intent of the City to apply the cannabis business tax so that the measure of the tax fairly  
17 reflects the proportion of the taxed activity actually carried on in the City. To the extent  
18 federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer  
19 may indicate said apportionment on his or her tax return. The Tax Administrator may  
20 promulgate administrative procedures for apportionment as he or she finds useful or  
21 necessary.

20 **5.18.180 Constitutionality and legality.**

21 This tax is intended to be applied in a manner consistent with the United States and  
22 California Constitutions and state law. None of the tax provided for by this Chapter shall be  
23 applied in a manner that causes an undue burden upon interstate commerce, a violation of the  
24 equal protection or due process clauses of the Constitutions of the United States or the State of  
25 California or a violation of any other provision of the California Constitution or state law. If a  
26 person believes that the tax, as applied to him or her, is impermissible under applicable law,  
27 he or she may request that the Tax Administrator release him or her from the obligation to pay  
28 the impermissible portion of the tax.

26 **5.18.190 Audit and examination of premises and records.**

27 A. For the purpose of ascertaining the amount of cannabis business tax owed or  
28 verifying any representations made by any taxpayer to the City in support of his or her tax

1 calculation, the Tax Administrator shall have the power to inspect any location where  
2 commercial cannabis cultivation occurs and to audit and examine all books and records  
3 (including, but not limited to bookkeeping records, state and federal income tax returns, and  
4 other records relating to the gross receipts of the business) of persons engaged in cannabis  
5 businesses. In conducting such investigation, the Tax Administrator shall have the power to  
6 inspect any equipment, such as computers or point of sale machines, that may contain such  
7 records.

8 B. It shall be the duty of every person liable for the collection and payment to the  
9 City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3)  
10 years, all records as may be necessary to determine the amount of such tax as he or she may  
11 have been liable for the collection of and payment to the City, which records the Tax  
12 Administrator or his/her designee shall have the right to inspect at all reasonable times.

13 **5.18.200 Other licenses, permits, taxes, fees or charges.**

14 A. Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of,  
15 replace or in any way affect any requirements for any City permit, permit or  
16 license required by, under or by virtue of any provision of any other Chapter of  
17 this Code or any other ordinance or resolution of the City, nor be deemed to repeal,  
18 amend, be in lieu of, replace or in any way affect any tax, fee or other charge  
19 imposed, assessed or required by, under or by virtue of any other Chapter of this  
20 Code or any other ordinance or resolution of the City. Any references made or  
21 contained in any other Chapter of this Code to any licenses, license taxes, fees, or  
22 charges, or to any schedule of license fees, shall be deemed to refer to the licenses,  
23 license taxes, fees or charges, or schedule of license fees, provided for in the other  
24 Chapter of this Code.

25 B. Notwithstanding subdivision A of this Section a cannabis business shall not be  
26 required to pay the license fee required by Chapter 5.04 of Title 5 of this Code so  
27 long as all of business's activities within the City that would require payment of a  
28 license fee are activities subject to the cannabis business tax.

29 C. The Tax Administrator may revoke or refuse to renew the license required by  
30 Chapter 5.04 of this Code for any business that is delinquent in the payment of any  
31 tax due pursuant to this Chapter or that fails to make a deposit required by the Tax  
32 Administrator pursuant to Section 5.18.060.

33 **5.18.210 Payment of tax does not authorize unlawful business.**

34 A. The payment of a cannabis business tax required by this Chapter, and its  
35 acceptance by the City, shall not entitle any person to carry on any cannabis business unless  
36 the person has complied with all of the requirements of this Code and all other applicable state  
37 laws.

1 B. No tax paid under the provisions of this Chapter shall be construed as  
2 authorizing the conduct or continuance of any illegal or unlawful business, or any business in  
3 violation of any local or state law.

3 **5.18.220 Deficiency determinations.**

4 If the Tax Administrator is not satisfied that any statement filed as required under the  
5 provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she  
6 may compute and determine the amount to be paid and make a deficiency determination upon  
7 the basis of the facts contained in the statement or upon the basis of any information in his or  
8 her possession or that may come into his or her possession within three (3) years of the date  
9 the tax was originally due and payable. One or more deficiency determinations of the amount  
10 of tax due for a period or periods may be made. When a person discontinues engaging in a  
11 business, a deficiency determination may be made at any time within three (3) years thereafter  
12 as to any liability arising from engaging in such business whether or not a deficiency  
13 determination is issued prior to the date the tax would otherwise be due. Whenever a  
14 deficiency determination is made, a notice shall be given to the person concerned in the same  
15 manner as notices of assessment are given under Section 5.18.240.

12 **5.18.230 Failure to report—nonpayment, fraud.**

13 A. Under any of the following circumstances, the Tax Administrator may make  
14 and give notice of an assessment of the amount of tax owed by a person under this Chapter at  
15 any time:

16 1. If the person has not filed a complete statement required under the  
17 provisions of this Chapter;

18 2. If the person has not paid the tax due under the provisions of this  
19 Chapter;

20 3. If the person has not, after demand by the Tax Administrator, filed a  
21 corrected statement, or furnished to the Tax Administrator adequate substantiation of  
22 the information contained in a statement already filed, or paid any additional amount  
23 of tax due under the provisions of this Chapter; or

24 4. If the Tax Administrator determines that the nonpayment of any  
25 business tax due under this Chapter is due to fraud, a penalty of twenty-five percent  
26 (25%) of the amount of the tax shall be added thereto in addition to penalties and  
27 interest otherwise stated in this Chapter and any other penalties allowed by law.

28 B. The notice of assessment shall separately set forth the amount of any tax  
known by the Tax Administrator to be due or estimated by the Tax Administrator, after  
consideration of all information within the Tax Administrator's knowledge concerning the  
business and activities of the person assessed, to be due under each applicable section of this  
Chapter, and shall include the amount of any penalties or interest accrued on each amount to  
the date of the notice of assessment.

1 **5.18.240 Tax assessment - notice requirements.**

2 The notice of assessment shall be served upon the person either by personal delivery,  
3 by overnight delivery by a nationally-recognized courier service, or by a deposit of the notice  
4 in the United States mail, postage prepaid thereon, addressed to the person at the address of  
5 the location of the business or to such other address as he or she shall register with the Tax  
6 Administrator for the purpose of receiving notices provided under this Chapter; or, should the  
7 person have no address registered with the Tax Administrator for such purpose, then to such  
8 person's last known address. For the purposes of this Section, a service by overnight delivery  
9 shall be deemed to have occurred one (1) calendar day following deposit with a courier and  
10 service by mail shall be deemed to have occurred three (3) days following deposit in the  
11 United States mail.

12 **5.18.250 Tax assessment - hearing, application and determination.**

13 Within thirty (30) calendar days after the date of service the person may apply in  
14 writing to the Tax Administrator for a hearing on the assessment. If application for a hearing  
15 before the City is not made within the time herein prescribed, the tax assessed by the Tax  
16 Administrator shall become final and conclusive. Within thirty (30) calendar days of the  
17 receipt of any such application for hearing, the Tax Administrator shall cause the matter to be  
18 set for hearing before him or her no later than thirty (30) calendar days after the receipt of the  
19 application, unless a later date is agreed to by the Tax Administrator and the person requesting  
20 the hearing. Notice of such hearing shall be given by the Tax Administrator to the person  
21 requesting such hearing not later than five (5) calendar days prior to such hearing. At such  
22 hearing said applicant may appear and offer evidence why the assessment as made by the Tax  
23 Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax  
24 Administrator shall determine and reassess the proper tax to be charged and shall give written  
25 notice to the person in the manner prescribed in Section 5.18.240 for giving notice of  
26 assessment.

27 **5.18.260 Relief from taxes -disaster relief.**

28 A. If a business is unable to comply with any tax requirement due to a disaster, the  
business may notify the Tax Administrator of this inability to comply and request relief from  
the tax requirement. A request for relief must clearly indicate why relief is requested, the time  
period for which the relief is requested, and the reason relief is needed for the specific amount  
of time.

B. To obtain relief, the cannabis business must agree to grant the Tax Administrator or  
his/her designee access to the location where the cannabis business has been impacted due to a  
disaster.

C. The Tax Administrator, in his/her sole discretion, may provide relief from the cannabis  
business tax requirement for businesses whose operations have been impacted by a disaster of  
such tax liability does not exceed five thousand (\$5,000) dollars. If such tax liability is five  
thousand one (\$5,001) dollars or more than such relief shall only be approved by the City  
Council.

1 D. Temporary relief from the cannabis tax may be granted for a reasonable amount of  
2 time as determined by the Tax Administrator or the City Council, as applicable in order to  
3 allow the cannabis business time to recover from the disaster.

4 E. The Tax Administrator or City Council, as applicable, may require that certain  
5 conditions be followed in order for a cannabis business to receive temporary relief from the  
6 cannabis business tax requirement.

7 F. For purposes of this section, “disaster” means fire, flood, storm, tidal wave,  
8 earthquake, or similar public calamity, whether or not resulting from natural causes.

9 **5.18.270 Conviction for violation - taxes not waived.**

10 The conviction and punishment of any person for failure to pay the required tax shall  
11 not excuse or exempt such person from any civil action for the tax debt unpaid at the time of  
12 such conviction. No civil action shall prevent a criminal prosecution for any violation of the  
13 provisions of this Chapter or of any state law requiring the payment of all taxes.

14 **5.18.280 Violation deemed misdemeanor.**

15 Any person violating any of the provisions of this Chapter shall be guilty of a  
16 misdemeanor.

17 **5.18.290 Severability.**

18 If any provision of this Chapter, or its application to any person or circumstance, is  
19 determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise  
20 void, that determination shall have no effect on any other provision of this Chapter or the  
21 application of this Chapter to any other person or circumstance and, to that end, the provisions  
22 hereof are severable.

23 **5.18.300 Remedies cumulative.**

24 All remedies and penalties prescribed by this Chapter or which are available under any  
25 other provision of the San Bernardino Municipal Code and any other provision of law or  
26 equity are cumulative. The use of one or more remedies by the City shall not bar the use of  
27 any other remedy for the purpose of enforcing the provisions of this Chapter.

28 **5.18.310 Amendment or repeal.**

This Chapter may be repealed or amended by the City Council 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 City of San Bernardino affirm that the  
following actions shall not constitute an increase of the rate of a tax:



1 A. The restoration or adjustment of the rate of the tax to a rate that is no higher  
2 than that set by this Chapter, if the City Council has acted to reduce the rate of the tax or  
3 incrementally implement an increase authorized by this Chapter;

4 B. An action that interprets or clarifies the methodology of the tax, or any  
5 definition applicable to the tax, so long as interpretation or clarification (even if contrary to  
6 some prior interpretation or clarification) is not inconsistent with the language of this Chapter;  
7 or

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

## 10 **SECTION 2. ENVIRONMENTAL DETERMINATION**

11 The people of the City of San Bernardino find the adoption of this Ordinance is not subject to  
12 the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the  
13 activity will not result in a direct or reasonably foreseeable indirect physical change in the  
14 environment), 15060(c)(3) (the activity is not a project as defined in Section 15378 because  
15 the activity relates to organizational or administrative activities of governments that will not  
16 result in direct or indirect physical changes in the environment under Section 15378(b)(5)),  
17 and 15061(b)(3) (the activity will not have an effect on the environment) of the CEQA  
18 Guidelines, California Code of Regulations, Title 14, Chapter 3, because this resolution has no  
19 potential for resulting in physical change to the environment, directly or indirectly.

## 20 **SECTION 3. MAJORITY VOTE REQUIRED; EFFECTIVE DATE; AMENDMENTS**

21 If a majority of the voters voting on this Ordinance vote in its favor, then this Ordinance shall  
22 become a valid and binding ordinance of the City of San Bernardino. The Ordinance shall be  
23 considered as adopted upon the date that the vote is declared by the Mayor and City Council,  
24 and shall go into effect 10 days after that date. The Ordinance may only be repealed or  
25 amended by a vote of the people, except as stated in the Ordinance.

## 26 **SECTION 4. SEVERABILITY**

27 While it is the intent of people of the City of San Bernardino to adopt a comprehensive tax on  
28 commercial cannabis activities within the City of San Bernardino, if any provision of this  
Ordinance or the application thereof to any person or circumstances is held invalid, such  
invalidity shall not affect other provisions or applications of this Ordinance which can be  
given effect without the invalid provision or application, and to this end, the provisions of this  
Ordinance are severable. The people of the City of San Bernardino declare that they would  
have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

## 29 **SECTION 5. COMPETING MEASURES**

30 In the event that this measure and another measure or measures relating to the taxation of  
commercial cannabis activities in the City of San Bernardino appear on the same ballot, the  
provisions of the other measure or measures shall be deemed to be in conflict with this

1 measure. Should there be a measure or measures in conflict with this measure, the measure  
2 receiving the greater number of affirmative votes required to pass shall prevail in its entirety  
3 over the conflicting measure or measures, and the conflicting measure or measures shall be  
4 null and void.

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