

ORDINANCE NO. 1421

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY ADDING
CHAPTER 5.60, "CANNABIS BUSINESS TAX", AND ARTICLE III, "CANNABIS
BUSINESSES", TO TITLE 5, "BUSINESS TAXES, LICENSES AND REGULATIONS",
OF THE CITY OF DALY CITY MUNICIPAL CODE

WHEREAS, in 1996 the California voters approved Proposition 215, "The Compassionate Use Act," which provides that qualified patients may obtain and use marijuana for medical purposes with a physician's recommendation and will not be subject to certain criminal penalties under state law; and

WHEREAS, in 2003, the state Legislature enacted Senate Bill 420, the "Medical Marijuana Program Act," as a supplement to The Compassionate Use Act, which allows cities to adopt and enforce rules consistent with the Medical Marijuana Program Act; and

WHEREAS, on October 9, 2015, Governor Brown approved a series of bills commonly referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"), effective January 1, 2016, which established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis; and

WHEREAS, the voters of the State of California approved Proposition 64, known as the "Control, Regulate and Tax Adult Use of Marijuana Act" ("AUMA"), which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of recreational cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis; and

WHEREAS, currently the City of Daly City does not allow the cultivation, manufacture, transportation, storage, distribution, or sale of medical or recreational cannabis within its jurisdiction; and

WHEREAS, the City Council of the City of Daly City desires to impose a tax on all cannabis businesses that may operate within Daly City if future land use regulations allow for such businesses; and

WHEREAS, California Constitution Article XIII C, Section 2(b), provides that no local government may impose a general tax unless and until that tax is submitted to the electorate and approved by a majority vote.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Daly City as follows:

SECTION 1. ADDING CHAPTER 5.60, “CANNABIS BUSINESS TAX”, AND ARTICLE III, “CANNABIS BUSINESSES”, TO TITLE 5, “BUSINESS TAXES, LICENSES AND REGULATIONS”, OF THE CITY OF DALY CITY MUNICIPAL CODE. Chapter 5.60 entitled “Cannabis Business Tax” and Article III entitled “Cannabis Businesses” are hereby added to Title 5 entitled “Business Taxes, Licenses and Regulations” of the City of Daly City Municipal to read as follows:

Article III

CANNABIS BUSINESSES

Chapter 5.60

CANNABIS BUSINESS TAX

Sections:

- 5.60.01 Purpose of chapter.
- 5.60.02 Tax imposed.
- 5.60.03 Definitions.
- 5.60.04 Other licenses, permits, taxes, fees or charges.
- 5.60.05 Payment of tax does not authorize unlawful business.
- 5.60.06 Registration with tax administrator.
- 5.60.07 Payment – Location.
- 5.60.08 Amount of business tax owed.
- 5.60.09 Payment – Time limits.
- 5.60.10 Payments and communications made by mail – Proof of timely submittal.
- 5.60.11 Payment – When taxes deemed delinquent.
- 5.60.12 Notice not required by City.
- 5.60.13 Payment – Penalty for delinquency.
- 5.60.14 Waiver of penalties.
- 5.60.15 Refunds – Credits.
- 5.60.16 Refunds and procedures.

- 5.60.17 Exemptions – Application – Issuance conditions.
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- 5.60.19 Enforcement – Duties of tax administrator and police chief.
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- 5.60.21 Apportionment.
- 5.60.22 Audit and examination of records and equipment.
- 5.60.23 Tax deemed debt to City.
- 5.60.24 Lien – Recordation.
- 5.60.25 Warrant for collection of tax.
- 5.60.26 Seizure and sale.
- 5.60.27 Successor’s and assignee’s responsibility.
- 5.60.28 Deficiency determinations.
- 5.60.29 Tax assessment – authorized when – nonpayment – fraud.
- 5.60.30 Tax assessment – notice requirements.
- 5.60.31 Tax assessment – hearing – application and determination.
- 5.60.32 Tax assessment – appeal.
- 5.60.33 Conviction for chapter violation – taxes not waived.
- 5.60.34 Violation deemed misdemeanor – penalty.
- 5.60.35 Effect of state and federal reference/authorization.
- 5.60.36 Remedies cumulative.
- 5.60.37 Amendment or repeal.

5.60.01 Purpose of chapter.

This chapter shall be known as the “cannabis business tax”. The purpose of this chapter is solely to establish a tax to raise revenue for the general governmental purposes of the City pursuant to Section 37101 and 37100.5 of the California Government Code upon cannabis businesses that engage in business in the City. All of the proceeds from the tax imposed by this chapter shall be placed in the City’s general fund and used for the usual and current expenses of the City. The

cannabis business tax under the provisions of this chapter is an excise tax on the privilege of conducting business within the City and is not a sales or use tax, a tax upon income, or a tax upon real property and shall not be calculated or assessed as such. The cannabis business tax shall not be separately identified or otherwise specifically assessed or charged to any member, customer, patient, or caretaker.

5.60.02 Tax imposed.

There is established and imposed a cannabis business tax on every such business operating in the City at the rate set forth in this chapter.

5.60.03 Definitions.

The definitions set forth in this section shall govern the application and interpretation of this Chapter 5.60.

(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* L., *Cannabis indica*, and *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant, whether crude or purified; and every compound, manufacture, oil, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including food products containing cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code and Section 19300.5 of the California Business and Professions Code and is not limited to medical cannabis.

(C) “Cannabis business” means any business activity which entails the distribution, delivery, dispensing, exchanging, bartering or sale of either medical or non-medical cannabis, including but not limited to, cultivating, planting, harvesting, transporting, delivering, manufacturing, compounding, converting, processing, preparing, labeling, storing, packaging, wholesale, testing, dispensing, wholesaling and/or retail sales of cannabis, products including cannabis, and any ancillary products in the City, whether or not carried on for gain or profit and specifically excludes legal personal cultivation activities allowed under State law and City ordinances.

(D) “Cannabis business tax,” “business tax,” or “cannabis tax” means the tax due for engaging in cannabis business in the City pursuant to this chapter.

(E) “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner’s family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

(F) “Engaged in business” means the commencing, 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;

(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;

(5) Such person or person's employee performs work or renders services in the City; or

(6) Such person or person's employee utilizes the streets within the City in connection with the operation of motor vehicles for business purposes.

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

(G) "Evidence of doing business" means evidence such as, without limitation, whenever any person shall, by use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, represent that such person is engaged in cannabis business in the City.

(H) "Fraud" means any intentional deception, misrepresentation and/or intentional non-payment of taxes to the City.

(I) "Gross receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales from the cannabis business, including membership dues and fees; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, memberships, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

(1) Cash discounts allowed and taken on sales;

(2) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;

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

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

(5) Receipts 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;

(6) Cash value of sales, trades or transactions between departments or units of the same business;

(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 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.

“Gross receipts” subject to the cannabis business tax shall be that portion of gross receipts relating to business conducted within the City.

(J) “Medical Cannabis” means cannabis authorized in strict compliance with Health & Safety Code Sections 11362.5, 11362.7 et seq., as such sections may be amended from time to time.

(K) “Non-medical cannabis” means cannabis authorized in strict compliance with any state law pertaining to cannabis that is not medical cannabis.

(L) “Person” means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

(M) “Operator” shall mean any person conducting, operating, or maintaining in whole or in part as principal, agent, officer, employee or independent contractor, any cannabis business or medical marijuana business as defined in this chapter, taxable under this chapter.

(N) “Sale” means and includes any sale, exchange, or barter.

(O) “Tax administrator” or “administrator” means the Director of Finance or such other administrator designated by the City Manager to administer this chapter.

5.60.04 Other licenses, permits, taxes, fees or charges.

Nothing contained in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit 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 or under any applicable state or federal law, 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.

5.60.05 Payment of tax does not authorize unlawful business.

(A) The payment of a business tax required by this chapter, and its acceptance by the City, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any cannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such cannabis business is in violation of any law.

(B) No taxes paid under the provisions of this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the City.

5.60.06 Registration with tax administrator.

(A) Each operator of any cannabis business operating in the City shall register the business with the tax administrator and obtain from him or her a cannabis business tax license prior to the commencement of any business operations, which shall be at all times posted in a conspicuous place on the premises.

(B) The license shall, among other things, state the following:

- (1) The name of the business;
- (2) The address of the business;
- (3) The date upon which the license shall expire.

5.60.07 Payment – location.

The tax imposed under this chapter shall be paid to the administrator in lawful money of the United States at the offices of the Director of Finance in Daly City, California. “Lawful money” shall mean any coin, currency or negotiable instrument, exchangeable for said coin or currency, which the United States Congress or State of California has declared to be a national legal tender. The City may impose a fee for processing the negotiable instrument.

5.60.08 Amount of business tax owed.

(A) Every person engaged in cannabis business in the City shall pay, for the privilege of operating a cannabis business in the City, a business tax at a rate of up to ten percent (10%) of gross receipts. The tax under this chapter shall not be imposed on cannabis businesses unless and until the City Council, by resolution, takes action to set a tax rate not to exceed ten percent (10%) of gross receipts.

(B) Notwithstanding the maximum tax rate of ten percent (10%) of gross receipts established under subsection (A), the City Council may, in its discretion, at any time by resolution, implement a lower tax rate for all cannabis businesses or establish differing tax rates for different categories of cannabis businesses, as defined in such resolution, subject to the maximum rate of ten (10%) percent of gross receipts. The City Council may, by resolution, also increase any such tax rate from time to time, not to exceed the maximum tax rate of ten percent (10%) of gross receipts established under subsection (A).

(C) In establishing different tax rates for different categories of cannabis businesses pursuant to subsection (B), the City Council may enact a rate using a basis other than gross receipts. By way of example only and without imposing any limitation on the basis of the tax rate for a category of cannabis business, the rate may be based upon the square footage of the building used by or number of employees of a cannabis business. If the City Council establishes a tax rate for a cannabis business on a basis other than gross receipts, in no event shall that tax paid by a cannabis business in that category exceed ten percent (10%) of the business's gross receipts.

5.60.09 Payment – time limits.

The business tax imposed by this chapter shall be due and payable as follows:

(A) Each person owing a tax under this chapter shall, on or before the fifteenth (15th) day of the close of the calendar month in which the tax is due, or at the close of any reporting period which may be established by the tax administrator, prepare a tax statement to the administrator of the total gross receipts and the amount of tax owed for the preceding calendar month. At the time the tax statement is filed, the full amount of the tax owed for the preceding calendar month shall be remitted to the administrator. A tax statement is due following each calendar month, even if there are no taxes due.

(B) All tax statements shall be completed on forms provided by the administrator.

(C) Tax statements and payments for all outstanding taxes owed to the City are immediately due to the administrator upon cessation of business for any reason.

(D) The administrator may establish longer reporting periods for any and all licensees if the administrator deems it necessary in order to insure the orderly collection of the tax and the administrator may require further information in the tax statement.

5.60.10 Payments and communications made by mail – proof of timely submittal.

Whenever any payment, statement, report, request or other communication received by

the administrator is received after the time prescribed by this chapter for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this chapter for the receipt thereof, or whenever the administrator is furnished substantial proof that the payment, statement, report, request or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the administrator may regard such payment, statement, report, request or other communication as having been timely received. If the due date falls on Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the City Hall building at 333 90th Street, Daly City, CA 94015 is open. Any payment or correspondence sent via electronic communication will be deemed received upon receipt by the City.

5.60.11 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 paid on or before the due date specified in Section 5.60.09.

5.60.12 Notice not required by City.

The administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter, and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

5.60.13 Payment – penalty for delinquency.

(A) Any person who fails or refuses to pay any business tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

(1) A penalty equal to twenty-five percent (25%) of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax; and

(2) An additional penalty equal to twenty-five percent (25%) of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and on the unpaid penalties.

(3) In addition to the penalties imposed, any person who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent (1.5%) per month or fraction thereof on the amount of tax, exclusive of penalties, from the last day of the month following the monthly period for which the amount or any portion thereof should have been paid until the date of payment.

(4) Full payment of the tax owed is to be made to the City, except in cases where an alternate payment agreement is reached with the administrator.

(5) The penalties stated herein are cumulative and may be imposed singularly and/or in addition to other legal remedies for nonpayment available to the City.

(B) Whenever a check is submitted in payment of a business tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus the return check fee; penalties and interest as provided for in this section; and any amount allowed under state law.

(C) The cannabis business tax due shall be that amount due and payable from the first date on which the person was engaged in cannabis business in the City, together with applicable penalties and interest calculated in accordance with subsection (A).

(D) Any person whose cannabis business tax is delinquent by at least sixty calendar days may be subject to revocation of a City use permit or other City permit associated with the subject cannabis business.

5.60.14 Waiver of penalties.

The administrator may waive the first and second penalties imposed upon any person if:

(A) The person provides evidence satisfactory to the administrator that failure to pay timely was due to circumstances beyond the control of the person and occurred, notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the City prior to applying to the administrator for a waiver.

(B) The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four-month period.

(C) A request for relief from the first and second penalties must be filed in writing within thirty days of the date the remittance was due to the City, but no later than ten (10) days of the City's notice to the operator of the delinquent remittance.

5.60.15 Refunds – credits.

(A) No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 5.60.16.

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

(C) Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against such person's business taxes for the next calendar month.

5.60.16 Refunds and procedures.

(A) Whenever the amount of any business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously or illegally 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 administrator within one year of the date the tax was originally due and payable.

(B) The administrator or the administrator's authorized agent shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the administrator to do so.

(C) In the event that the business tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain an amount from the refund reasonably calculated to cover expenses in verifying the error.

5.60.17 Exemptions – application – issuance conditions.

Any person desiring to claim exemption from the payment of the tax set forth in this chapter shall make application upon forms prescribed by the administrator and shall furnish such information and make such affidavits as may be required by the administrator.

5.60.18 Exemptions – general.

Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the state of California or preemptive federal or state law.

5.60.19 Enforcement – duties of tax administrator and police chief.

It shall be the duty of the administrator to enforce each and all of the provisions of this chapter, and the police chief shall render such assistance in the enforcement of this chapter as may from time to time be required by the administrator.

5.60.20 Rules and regulations.

For purposes of apportionment as may be required by law and for purposes of administration and enforcement of this chapter generally, the administrator, with the concurrence of the City attorney, may from time to time promulgate administrative rules and regulations.

5.60.21 Apportionment.

(A) None of the tax provided for by this chapter shall be applied so as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitutions of the United States or the state of California.

(B) If any case where a business tax is believed by a taxpayer to place an undue burden upon interstate commerce or be violative of such constitutional clauses, the taxpayer may apply to the administrator for an adjustment of the tax. It shall be the taxpayer's obligation to request in

writing for an adjustment within one year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then taxpayer shall be conclusively deemed to have waived any adjustment for that year and all prior years.

(C) The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the administrator may deem necessary in order to determine the extent, if any, of such undue burden or violation. The administrator shall then conduct an investigation and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the administrator shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.

(D) Should the administrator determine that the gross receipt measure of tax to be the proper basis, the administrator may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the administrator.

5.60.22 Audit and examination of records and equipment.

(A) The administrator shall have the power to audit and examine all books and records of persons engaged in cannabis business 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 business tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such person, after written demand by the administrator, refuses to make available for audit, examination or verification such books, records or equipment as the administrator requests, the administrator 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 in the manner provided in Sections 5.60.26 through 5.60.28 of any taxes estimated to be due.

(B) It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of at least four 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 administrator shall have the right to inspect at all reasonable times.

(C) The City may recoup the costs, expenses, and fees associated with any audit, including, but not limited to, investigation costs, audit expenses, internal staff costs, administrative overhead, third-party contractor costs and fees, and attorneys' fees.

5.60.23 Tax deemed debt to City.

The amount of any tax, penalties and interest imposed by the provisions of this chapter shall be deemed a debt to the City and any person carrying on any cannabis business without first having paid such tax shall be jointly and severally liable to the City in an action in the name of the

City in any court of competent jurisdiction for the amount of the applicable tax, penalties and interest imposed on such business and for attorneys' fees in the enforcement of this chapter. The City may collect amounts owed through any legal means, such as special assessments, real property liens, personal property liens, attachments, charging orders, garnishments, Franchise Tax Board Intercepts, and seizures of business property.

5.60.24 Lien – recordation.

If any amount required to be paid to the City pursuant to this chapter is not paid when due, the administrator, upon expiration of the second delinquency period referenced in Section 5.60.13(A)(2), may, within four years after the amount is due, record in the office(s) of the county recorder(s) of any county in the state of California a certificate specifying the amount of tax, penalties and interest due, the name and address of the operator liable for the same and the fact that the administrator has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the recording, the amount required to be paid together with penalties and interest shall constitute a lien upon any and all real property in any county owned by the operator or thereafter acquired by the operator. The lien shall have the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the certificate unless sooner released or otherwise discharged.

5.60.25 Warrant for collection of tax.

At any time within four years after any operator is delinquent in the payment of any amount herein required to be paid off after the last recording of a certificate of lien under Section 5.60.24, the administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this chapter. The warrant shall be directed to any sheriff, qualified law enforcement officer, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The administrator may pay or advance to the sheriff, law enforcement officer, marshal or constable the same fees, commissions and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution.

5.60.26 Seizure and sale.

At any time within four years after any operator is delinquent in the payment of any amount, the administrator may forthwith collect the amount in the following manner: The administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall be only of property of the operator not exempt from execution under the provisions of the California Code of Civil Procedure.

5.60.27 Successor's and assignee's responsibility.

If any operator, while liable for any amount under this chapter, sells, assigns or otherwise transfers the business, whether voluntarily or involuntarily, the operator's subsequent successor, assign or other transferee, or other person or entity obtaining ownership or control of the business,

shall satisfy any tax liability owed to the City associated with the business. Failure to do so for the benefit of the City will result in the successor being personally liable to the City for the full amount of the tax liability, which includes interest and penalties.

The successor operator, assign, purchaser, transferee, or other person or entity seeking to obtain ownership or control of the business shall notify the administrator of the date of transfer at least thirty days prior to the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than thirty days prior to the date of transfer, notice shall be provided immediately.

The successor operator, assign, purchaser, transferee, or other person or entity who obtains ownership or control of the business shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability if that person or entity complies with the requirements of California Revenue and Taxation Code Section 7283.5 by withholding from the purchase price an amount sufficient to cover the tax liability, or by otherwise paying the tax liability until the administrator provides a "Tax Clearance Certificate" showing that it has been paid and stating that no amount is due through the date of transfer.

The administrator, within ninety days of receiving a written request from a successor operator, assign, purchaser, transferee, or other person or entity who obtains or attempts to obtain ownership or control of the business, 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. The administrator may also request financial records from the current or former owner or operator to conduct an audit of the tax that may be due and owing. After completing the audit within ninety days after the date that the records were made available, the administrator may issue a tax clearance certificate within thirty days of completing the audit, stating the amount of the tax liability owed, if any. If the City determines that the records provided for an audit are insufficient, the administrator may rely on the facts and information available to estimate any tax liability associated with the property. The administrator may issue a tax clearance certificate stating the amount of the tax liability, if any, based on such facts and information available. A written application for a hearing on the amount assessed on the tax clearance certificate must be made within ten (10) days after the serving or mailing of the certificate. The hearing provision of Section 5.60.31 shall apply. If an application for a hearing is not made within the time prescribed, the tax clearance certificate shall serve as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.

5.60.28 Deficiency determinations.

If the administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the

tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 5.60.29 through 5.60.31.

5.60.29 Tax assessment – authorized when – nonpayment – fraud.

(A) Under any of the following circumstances, the administrator may make and give notice of an assessment of the amount of tax owed by a person under this chapter at any time:

- (1) If the person has not filed any statement required under the provisions of this chapter;
- (2) If the person has not paid any tax due under the provisions of this chapter;
- (3) If the person has not, after demand by the administrator, filed a corrected statement, or furnished to the administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter; or
- (4) If the administrator determines that the nonpayment of any business tax due under this chapter is due to fraud, a penalty of forty percent (40%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.

(B) The notice of assessment shall separately set forth the amount of any tax known by the administrator to be due or estimated by the administrator, after consideration of all information within the 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.

5.60.30 Tax assessment – notice requirements.

The notice of assessment shall be served upon the person either by handing it to him or her personally, 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 administrator for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the administrator for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

5.60.31 Tax assessment – hearing – application and determination.

Within ten (10) days after the date of service, the person may apply in writing to the administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the administrator shall become final and conclusive. Within thirty days of the receipt of any such application for hearing, the administrator shall cause the matter to be set for hearing before him or her not later than thirty-five days after the receipt of the application, unless a later date is agreed to by the administrator and the person requesting the hearing. Notice of such hearing shall be given by the administrator to the

person requesting such hearing not later than five days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the administrator should not be confirmed and fixed as the tax due. After such hearing the administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.60.30 for giving notice of assessment. The amount determined to be due shall be payable after fifteen days unless appealed.

5.60.32 Tax assessment – appeal.

Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, penalties, or any amount determined to be owed, may appeal the determination to the City Council by filing a notice of appeal with the city clerk within fifteen days of the serving or mailing of the determination of the tax administrator of the tax, penalties, or any amount determined to be due. The notice of appeal shall set forth the factual and/or legal basis for the appeal and the relief requested in sufficient detail to enable the Council to understand the nature of the controversy and the parties concerned.

Within forty five days of receipt of the notice of appeal, the city clerk shall forward the same to the Council to (i) determine the sufficiency of the appeal and (ii) to fix a time and place for hearing such appeal. The city clerk shall give notice in writing to such operator at his or her last known place of address of the time and place for said meeting of the Council.

If, in the opinion of the Council, the facts stated in the notice of appeal do not warrant a hearing, the appeal may be dismissed forthwith, and the decision of the tax administrator shall thereupon become final.

If the Council determines that new and material evidence not previously presented to the tax administrator is available, and such evidence could not with reasonable diligence have been discovered and produced at the prior hearing before the tax administrator, the Council may order that the tax administrator rehear such matter. Written notice shall be given to the tax administrator and mailed to the operator, and to such other persons as may have appeared and addressed the tax administrator at the prior hearing in connection with such matter, at least seven (7) days before the date of the hearing, and no other notice need be given.

If the Council finds that the facts stated in the notice of appeal sufficiently warrant a hearing in the public interest, the Council shall set a time and place for the hearing and shall cause notice thereof to be given to the operator at his or her last known place of address of the time and place for said hearing, to the tax administrator, and to such other persons as may have an interest in the matter and have previously identified themselves in connection therewith.

Unless otherwise ordered and noticed, hearings shall be held as a part of the regular meeting of the Council. The hearing shall be de novo in that an independent reexamination of the matter shall be made. Where it appears that an operator was served with a notice of hearing but fails to appear either in person or by counsel, or fails to present or offer evidence, the Council may adopt the determination or approve the act of the tax administrator or it may itself decide the matter upon the record with or without taking any additional evidence. Unless a demand is made, witnesses will not be sworn. It shall not be grounds for objection that evidence is hearsay or secondary, but

the Council's decision shall be made upon substantial evidence.

Upon the hearing of the appeal, the Council may refer the matter back to the tax administrator with directions for further consideration, or the Council may reverse, affirm, or modify the determination of the action of the tax administrator, and the Council may make such decision or determination as may appear just and reasonable in light of the evidence presented, and the Council's decision shall be final and conclusive. The decision shall be entered in the minutes of the meeting as a motion. Testimony taken at hearings on appeals will not be transcribed or filed, except upon the request of a party thereto accompanied by the payment of the administrative costs and expenses of transcription.

At the close of the hearing of the appeal, the Council shall prepare written findings if, prior to adjournment, the operator requests the Council to make written findings. In such event the Council shall direct the City Attorney to draft a resolution containing the facts found to be true, which findings shall be considered and adopted by motion or resolution at a regular meeting of the Council not later than thirty (30) days next following the close of the appeal hearing. The findings shall include the reasons for the Council's ruling. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.60.33 Conviction for chapter violation – taxes not waived.

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

5.60.34 Violation deemed misdemeanor – penalty.

Any person violating any of the provisions of this chapter, or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

5.60.35 Effect of state and federal reference/authorization.

(A) Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time; provided, that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a state or federal agency or court of law, with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute, or interpretation thereof, shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute, or new interpretation thereof, shall be applicable to the maximum possible extent.

(B) To the extent that the City's authorization to collect or impose any tax imposed under this chapter is expanded as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

5.60.36 Remedies cumulative.

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

5.60.37 Amendment or repeal.

This chapter of the Daly City Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIII C of the California Constitution and Government Code section 53750(h), voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this chapter beyond the maximum amount of ten percent (10%) of a cannabis business's gross receipts or revise the methodology by which the tax is calculated, if the revision would result in an increased tax being levied on any cannabis business. The people of the City of Daly City affirm that the following actions shall not constitute an increase of the rate of a tax:

(A) The restoration of the rate of the tax to a rate that is no higher than the maximum ten percent (10%) tax rate set by this chapter, if the City Council has previously acted to reduce the rate of the tax;

(B) The City Council's adoption of an resolution, as authorized by Section 5.60.08(A), to raise the tax rate provided the tax rate is not raised to a rate higher than ten percent (10%) of a cannabis business's gross receipts;

(C) An action that interprets or clarifies the methodology of calculating the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;

(D) The establishment of a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); or

(E) The collection of the tax imposed by this chapter, even if the City had, for some period of time, failed to collect the tax.

SECTION 2. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby, and to this end the provisions of this ordinance are declared to be severable.

SECTION 3. CODIFICATION. Section One of this ordinance shall be codified in the City of Daly City municipal code. Sections Two, Three, Four, and Five of this ordinance shall not be codified.

SECTION 4. COMPLIANCE WITH CEQA. The action to adopt this ordinance involves the establishment of a business license tax on cannabis businesses and does not involve any commitment to any specific project which may result in a potentially significant impact on the environment and thus is not a project subject to the requirements of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) pursuant to CEQA Guidelines Section 15378 (b)(4); additionally, it can be seen with certainty that there is no possibility the adoption and implementation of this ordinance may have a significant effect on the environment, and accordingly the adoption of this ordinance is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 5. EFFECTIVE DATE. This ordinance relates to the establishment of a business license tax on cannabis businesses in the City of Daly City authorized pursuant to the provisions of Article 3.7 of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code (Sections 53720-53730), for unrestricted general revenue purposes, and submitted to the City of Daly City electorate at an election called for November 6, 2018. This ordinance may be approved by a majority vote of the City of Daly City electorate voting on the measure at the election. If this ordinance is approved by the City of Daly City electorate as outlined above, then this ordinance shall become effective ten (10) days following the date the vote is declared by the City Council in accordance with Elections Code §9217.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DALY CITY ADDING
CHAPTER 5.60, "CANNABIS BUSINESS TAX", AND ARTICLE III, "CANNABIS
BUSINESSES", TO TITLE 5, "BUSINESS TAXES, LICENSES AND REGULATIONS",
OF THE CITY OF DALY CITY MUNICIPAL CODE

IT IS HERBY CERTIFIED that the foregoing Ordinance was APPROVED by the following vote of the People of the City of Daly City on November 6, 2018:

Yes: 19,723 No: 5,525 Total: 25,248

IT IS HEREBY FURTHER CERTIFIED that the foregoing Ordinance was adopted by Declaration of the November 6, 2018 election results by the City Council of the City of Daly City at a meeting held on December 10, 2018, by the following vote

AYES: Councilmembers: Daus-Magbual, DiGiovanni,
Manalo, Sylvester, Buenaventura

NOES: Councilmembers: None

ABSENT; Councilmembers: None

K. Annette Hipona
CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

RAYMOND A. BUENAVENTURA
MAYOR OF THE CITY OF DALY CITY