

ORDINANCE NO. ()

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING CHAPTER 35 OF THE SONOMA COUNTY CODE

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

Section I. Purpose. These amendments are adopted to achieve the following purposes, among others, and directs that the provisions herein be interpreted to accomplish these purposes:

- A. To incentivize compliance and help alleviate the tax burden for cannabis cultivators, the Board of Supervisors directed staff to amend the Cannabis Business Tax Ordinance to reduce the cultivation tax rates by 45 percent, effective July 1, 2021 and through June 30, 2023 and waive the annual Consumer Price Index (CPI) increase on cultivation tax rates for fiscal years 2021-22 and 2022-23; and
- B. To make certain administrative changes to ensure consistency with current practices of cannabis business tax collection; and
- C. At the March 7, 2017 special election, the voters of Sonoma County approved the Cannabis Business Tax ordinance (Measure A), codified in Chapter 35 of the Sonoma County Code and amended on June 13, 2017 and again on August 28, 2018; and
- D. The Cannabis Business Tax is imposed in accordance with the state Medical Cannabis Regulation and Safety Act, specifically California Business and Professions Code section 19348, the “California Control, Regulate and Tax Adult Use of Marijuana Initiative” approved by the voters in the November 2016 election, the California Revenue and Taxation Code section 7284, and other enabling legislation; and The Cannabis Business Tax Ordinance, as approved by the voters, authorizes the Board of Supervisors, at any time by ordinance, to implement a tax rate that is lower than the maximum tax approved by the voters; and
- E. The Board of Supervisors reserves its right to later restore higher tax rates up to the maximum amount approved by the voters in Measure A, and such restoration of tax rates would not constitute an increase in tax rates that would require voter approval; and
- F. The Board of Supervisors also reserves its right to change the taxation method from a square footage taxation model to a gross receipts model, which the Cannabis Business Tax Ordinance, as approved by the voters, authorizes the Board of Supervisors, at any time by ordinance, to change and staff has been directed to return to the Board with information on changing the taxation method.

Section II. Amendments. Chapter 35 of the Sonoma County Code is amended as follows (text to be added is shown in ***bold italics***, text to be deleted is shown in ~~strikethrough~~):

A. **Amendment to Definitions.** The following definition within Section 35-4 is hereby added:

- a. ***“Operator” means the individual authorized to represent the person applying for or operating pursuant to a permit authorizing any commercial cannabis activity pursuant to this chapter.***

B. **Amendments to Tax Imposed.** The following subsections are hereby amended and added to read as follows:

- a. Section 35-5(a)(1) is amended to read as follows: Every person who is engaged in commercial cannabis cultivation in the unincorporated area of the county shall pay an annual commercial cannabis business tax either: (1) at a rate of up to ten dollars (\$10.00) per square foot of outdoor cultivation area, ~~thirty-eight dollars (\$38.00) per square foot of indoor cultivation area, and~~ twenty-two dollars (\$22.00) per square foot of mixed-light cultivation area, ***and thirty-eight dollars (\$38.00) per square foot of indoor cultivation area,*** or (2) at a rate of up to ten percent (10%) of gross receipts per fiscal year. When the rate is determined on a square footage basis, on July 1 of each fiscal year succeeding the year of imposition of a square footage based tax on commercial cannabis cultivation, the amount of the tax shall be increased by the most recent change in the annual average of the Consumer Price Index ("CPI") for all urban consumers in the San-Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made. ***Notwithstanding the foregoing, for FY 21-22 and FY 22-23, the tax rate shall not be increased by any increase in the most recent CPI.*** The tax under this subsection shall not be imposed unless and until the board of supervisors, by ordinance, takes action to: (1) specify whether the tax on commercial cannabis cultivation will be imposed on a square footage or gross receipts basis, and (2) set a tax rate not to exceed the maximum rates established herein.
- b. Section 35-5(a)(4) is amended to read: Pursuant to subsection (a), the commercial cannabis business tax on commercial cannabis cultivation is to be imposed on a square footage basis, and is set at the following rates, with permit types as defined in Chapter 26 of the Sonoma County code:

Permit Type	Rate Per Square Foot
Outdoor	

1C: Cottage	\$1.00
1: Specialty	\$1.50
2: Small	\$2.00
3: Medium	\$2.00
Mixed Light	
1C: Cottage	\$2.25
1B: Specialty	\$4.50
2B: Small	\$6.50
3B: Medium	\$6.50
Indoor	
1C: Cottage	\$3.75
1A: Specialty	\$7.50
2A: Small	\$11.25
3A: Medium	\$11.25
Mixed Light	
1C: Cottage	\$2.25
1B: Specialty	\$4.50
2B: Small	\$6.50
3B: Medium	\$6.50

c. Section 35-5(a)(7) is added to read as follows: ***Section 35-5(a)(7) – Notwithstanding Subsection 35-5(a)(4), and pursuant to subsection 35-5(a)(3), the Board of Supervisors is implementing a lower tax rate for all persons engaged in commercial cannabis cultivation in the unincorporated area of the County for Fiscal Years 2021-22 and 2022-23 only. The cultivation tax rates are hereby reduced by 45% as follows:***

<i>Permit Type</i>	<i>Rate Per Square Foot</i>
<i>Outdoor</i>	
<i>1C: Cottage</i>	<i>\$0.62</i>
<i>1: Specialty</i>	<i>\$0.93</i>
<i>2: Small</i>	<i>\$1.24</i>
<i>3: Medium</i>	<i>\$1.24</i>
<i>Mixed Light</i>	
<i>1C: Cottage</i>	<i>\$1.39</i>
<i>1B: Specialty</i>	<i>\$2.78</i>
<i>2B: Small</i>	<i>\$4.02</i>
<i>3B: Medium</i>	<i>\$4.02</i>
<i>Indoor</i>	
<i>1C: Cottage</i>	<i>\$2.32</i>
<i>1A: Specialty</i>	<i>\$4.64</i>
<i>2A: Small</i>	<i>\$6.96</i>
<i>3A: Medium</i>	<i>\$6.96</i>

C. **Amendments to Reporting and Remittance of Tax.** The following subsections are hereby amended:

- a. Section 35-6 - The commercial cannabis business tax imposed by this Chapter shall be imposed on a fiscal year basis and shall be due and payable in ~~quarterly~~ installments as follows:
- b. Section 35-6(c) - ***All tax statements shall be completed on forms prescribed by the Treasurer-Tax Collector.*** The tax statement may include a request for adjustment of the tax due to square footage authorized but not utilized for cultivation, and/or crop loss, along with evidence substantiating the square footage utilized and/or crop loss. The substantiating evidence must include a cultivation ***area (canopy)*** verification performed by the Department of Agriculture/Weights & Measures. ~~The cultivation verification may be performed and provided within a reasonable period after submission of the tax statement requesting adjustment.~~ ***The cultivation area (canopy) verification shall be requested by the Operator and performed prior to the harvest, and must be provided to the Treasurer-Tax Collector to confirm an adjustment on a tax statement.*** Any decision to prorate or adjust the tax will be made at the sole discretion of the County. A fee may be adopted by the Board of Supervisors and collected by the agency having jurisdiction or the Treasurer-Tax Collector to pay for the cost of investigating, verifying, and opining on such request for adjustment of the tax.

D. Amendments to Payments and Communications – Timely Remittance. The following section is hereby amended:

- a. Section 35-8 - Whenever any payment, statement, report, request or other communication is due, it must be received by the Treasurer-Tax Collector on or before the final due date. ~~A postmark will not be accepted as timely remittance.~~ If the due date falls on Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the County is open to the public.

E. Amendments to Waiver of Penalties. The following section and subsections are hereby amended and subsection 35-12(b) is deleted as follows:

- a. Section 35-12 - Waiver of Penalties ***and Interest.*** The Treasurer-Tax Collector may waive ***interest accrued, and*** the first and second penalties of ten percent each imposed upon any person if:
- b. ~~Section 35-12(a)~~ – The person provides evidence satisfactory to the Treasurer-Tax Collector 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 county prior to applying to the Treasurer-Tax Collector for a waiver. ***A waiver may be granted only once during any twenty-four-month period.***

- c. ~~Section 35-12(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.~~

F. Amendments to Audit and Examination of Records and Equipment. The following subsection is hereby amended:

- a. Section 35-20(a) - The treasurer-tax collector, ***and his or her designees and agents***, shall have the power to audit and examine all books and records of persons engaged in cannabis businesses, including both state and federal income tax returns, California sales tax returns, bank statements, or other evidence documenting the gross receipts of persons engaged in cannabis businesses, and, where necessary, all equipment, of any person engaged in cannabis businesses in the county, for the purpose of ascertaining the amount of commercial cannabis tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this chapter. If such person, after written demand by the treasurer-tax collector, refuses to make available for audit, examination or verification such books, records or equipment as the administrator requests, the treasurer-tax collector may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment in the manner provided in Sections 35-25 and 35-26 of any taxes estimated to be due. The treasurer-tax collector may collect a fee adopted by the board of supervisors to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the treasurer-tax collector to make a determination of tax due.

G. Amendments to Tax Assessment – Notice Requirements. The following section is hereby amended:

- a. Section 35-26 - ***Notice of*** Tax Assessment – Notice Requirements. The notice of ***tax*** assessment, ***if necessary per Section 25***, shall be served upon the person by personal delivery, ***or*** electronic mail addressed to the person at the electronic mail address he or she shall register with the Treasurer-Tax Collector for the purpose of receiving notices provided under this Chapter, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Treasurer-Tax Collector for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Treasurer-Tax Collector for such purpose, then to such person's last known address or electronic mail address. For the purposes of this Section, a service by mail is complete at the time of deposit in the United States

mail. For purposes of this Section, a service by electronic mail is complete at the time of transmission of the electronic mail.

H. Amendments to Tax Assessment – Hearing, Application, and Determination.

The following section is hereby amended:

- a. Section 35-27 - Within ten (10) business days after the date of service *of the Notice of Assessment*, the person may apply in writing to the Treasurer- Tax Collector for a hearing on the assessment. If application for a hearing before the County is not made within the time herein prescribed, the tax assessed by the Treasurer- Tax Collector shall become final and conclusive. Within thirty (30) business days of the receipt of any such application for hearing, the Treasurer-Tax Collector shall cause the matter to be set for hearing before him or her not later than thirty-five (35) business days after the receipt of the application, unless a later date is agreed to by the Treasurer-Tax Collector and the person requesting the hearing. Notice of such hearing shall be given by the Treasurer-Tax Collector to the person requesting such hearing not later than five (5) business days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Treasurer-Tax Collector should not be confirmed and fixed as the tax due. After such hearing the Treasurer-Tax Collector shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 26 for giving notice of assessment. The amount determined to be due shall be payable ~~after~~ *within* thirty (30) calendar days of written notice unless it is appealed to the Board of Supervisors.

I. Amendments to Appeal from Treasurer-Tax Collector Determination - Filing. The following section is hereby amended:

- a. Section 35-28 - Any taxpayer aggrieved by any decision of the Treasurer-Tax Collector with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the Board of Supervisors by filing a ~~notice of request for~~ *notice of appeal* ~~with the Clerk of the Board of Supervisors~~ *in writing* within ten (10) business days of the serving or mailing by the Treasurer-Tax Collector of the determination of tax due.

J. Amendments to Appeal Hearing – Notice. The following section is hereby amended:

- a. Section 35-29 - Upon the filing of a notice of appeal, the ~~Clerk~~ *Treasurer-Tax Collector* shall fix a time and place for hearing such appeal, and ~~the Clerk~~ shall give notice in writing to such taxpayer in the manner prescribed in Section 26.

K. Amendments to Appeal Hearing- Final Determination. The following section is hereby amended:

- a. Section 35-33 - The Board of Supervisors shall determine from the evidence or from a report of the referee, what tax, fees, interest or penalties, if any, are due to the county from the appellant. The decision shall be final and conclusive. The ~~Clerk of the Board~~ **Treasurer Tax-Collector** shall serve a copy of the decision upon the appellant as provided in Section 26. Any amount shall be immediately due and payable upon the service of the said notice.

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

Section IV. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. The reductions to the tax rate governed by Section 35-5 of the Sonoma County Code shall be retroactive to July 1, 2021. A fair and adequate summary of this ordinance published at least five days prior to its adoption, and an additional summary shall be published once before the expiration of fifteen (15) days after passage, with the names of the Supervisors voting for or against the same, in The Press Democrat, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced on the 5th day of April, 2022, and finally passed and adopted this 19th day of April, 2022, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Gorin: Rabbitt: Coursey: Hopkins: Gore:

Ayes: Noes: Absent: Abstain:

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Sheryl Bratton,

Clerk of the Board of Supervisors