

RESOLUTION NO. 18-094

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES  
SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY AT THE GENERAL  
ELECTION TO BE HELD ON NOVEMBER 6, 2018, A MEASURE RELATING TO A TAX  
ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY OF EL PASO DE ROBLES

WHEREAS, on November 8, 2016 the voters of the State of California approved Proposition 64, the Adult Use of Marijuana Act legalizing the recreational use of cannabis; and

WHEREAS, Proposition 64 created excise taxes on cultivation of cannabis at a rate of \$9.25 per ounce for flower and \$2.75 per ounce for leaves, with exceptions for certain medical cannabis sales and cultivation; and the other on retail sales at a rate of 15% of the retail price; and

WHEREAS, California State taxes will be adjusted for inflation starting in 2020; and

WHEREAS, the City Council has approved Ordinance 1036 allowing for limited commercial cannabis related land-uses including delivery of medicinal cannabis and non-medicinal adult-use cannabis within the City; and

WHEREAS, the City intends to review its cannabis regulations more comprehensively in the near future; and

WHEREAS, Proposition 64 authorizes local governments to levy their own taxes on cannabis; and

WHEREAS, the City Council desires to levy a tax on cannabis-related activities; and

WHEREAS, pursuant to Article XIIC, Section 2(b) of the California Constitution and California Government Code Section 53723, no local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote of the qualified electors voting in the election; and

WHEREAS, the People of the City ("People") have the authority under Article XIIC, Section 2 of the California Constitution to approve general tax proposals such as a tax on Cannabis manufacturing, distribution, retail, transportation, and other related activities within the City; and

WHEREAS, Pursuant to Article XIIC of the California Constitution and California Government Code Section 53721, the City's Cannabis Tax is a general tax such that an election to approve any increase in such tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government except in cases of emergency declared by a unanimous vote of the governing body; and

WHEREAS, the City Council of the City of El Paso de Robles intends for the proposed Cannabis Tax to be deposited in the City's General Fund as a general tax; and

WHEREAS, the City Council of the City of El Paso de Robles desires and intends to have the qualified voters of the City vote upon the question of whether to adopt an ordinance, a copy of which is attached hereto as Exhibit "A" and is incorporated herein by reference.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. The City Council finds that all of the forgoing recitals are true and correct and are hereby incorporated and adopted as findings and determinations by the City Council as if fully set forth herein.

Section 2. Pursuant to the requirements of the laws of the State of California, there is hereby called and ordered to be held in the City of El Paso de Robles, California, on Tuesday, November 6, 2018, a General Municipal Election for the purpose of submitting to the qualified voters of the City of El Paso de Robles the question of levying a City Cannabis Tax, a general tax, which election shall be consolidated with the statewide election to be held on the same day.

Section 3. The Board of Supervisors of San Luis Obispo County is requested to order the consolidation of the General Municipal Election in the City of El Paso de Robles to be held on November 6, 2018 with the statewide election to be held on the same date, and the City hereby consents to such consolidation.

Section 4. The City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following question:

<b><u>MEASURE # : APPROVING A CANNABIS TAX OF THE CITY OF EL PASO DE ROBLES</u></b>	Yes
To improve basic city services, such as police and emergency response, parks and youth/senior services, and street repair, shall the City of Paso Robles adopt an ordinance enacting a tax on cannabis-related activities in the amount of up to \$20 per square foot for cultivation/processing; up to 10% of gross receipts for transportation; up to 15% of gross receipts for manufacturing, testing, and distribution; and up to 10% of gross receipts for dispensaries, generating approximately \$15,000 annually initially for unrestricted general purposes, until ended by voters?	No

Section 5. That the text of the Ordinance to be submitted to the voters is attached to this Resolution as Exhibit "A" and incorporated herein by this reference ("Ordinance").

Section 6. That pursuant to Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the Ordinance to the City Attorney to prepare an impartial analysis of the Ordinance which shall not exceed 500 words in length.

Section 7. That pursuant to Elections Code Section 9282, the City Council may file a written argument in favor of the Ordinance in accordance with Article 4, Chapter 3, Division 9 of the Elections Code and may change the argument as allowed by law.

Section 8. That pursuant to Elections Code Section 9287, if more than one argument for or more than one argument against the Ordinance is submitted to the City Clerk within the time prescribed by law, he or she shall select one of the arguments in favor and one of the arguments against the Ordinance for printing and distribution to the voters, giving preference in such selection in the following order:

1. The City Council, or a member or members of the City Council authorized by the City Council.
2. Bona fide associations of citizens.
3. Individual voters who are eligible to vote on the Ordinance.

Section 9. That pursuant to Elections Code Section 9285, when the City Clerk has selected the arguments for and against the Ordinance which will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the Ordinance to the author or authors of the argument against, and copies of the argument against the Ordinance to the author or authors of the argument in favor. The author or authors may submit a rebuttal argument to the direct argument not exceeding 250 words. Rebuttal arguments shall be printed in the same manner as the direct arguments and shall immediately follow the direct argument which it seeks to rebut. All previous resolutions providing for the filing of rebuttal arguments for City measures are repealed, and this Section shall only apply to the election on the Ordinance to be held on November 6, 2018.

Section 10. In accordance with Section 10002 of the Elections Code, the Board of Supervisors of San Luis Obispo County is hereby requested to consent to the Registrar of Voters rendering election services to the City as may be requested by the City Clerk of said City, the County of San Luis Obispo to be reimbursed in full for such services as are performed. The Board of Supervisors of San Luis Obispo County is also requested to consent and agree to the consolidation of the General Election with any other election occurring on November 6, 2018, and the City hereby consents to any such consolidation.

Section 11. The election services which the City requests of the Registrar of Voters, or such other official as may be appropriate to perform, and which such officer is hereby authorized and directed to perform if the said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards, the establishment or appointment of precincts, polling places, and election officers, opening and closing of polling places, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places, the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk, and the performance of such other election services as may be requested by said City Clerk.

Section 12. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to California Elections Code Section 10242 and Section 14212, except as provided in California Elections Code Section 14401 or any other provision of law.

Section 13. All persons qualified to vote at municipal elections in the City on the day of the election herein provided for shall be qualified to vote on the Ordinance hereby submitted at the General Municipal Election.

Section 14. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding general municipal elections in the City.

Section 15. Notice of the time and place of holding the General Municipal Election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 16. The City Clerk shall receive the canvass as it pertains to the General Municipal Election, and shall certify the results to this City Council, as required by law.

Section 17. If any section, subsection, sentence, clause, phrase or provision of this Resolution or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other provision or applications, and to this end the provisions of this Resolution are declared to be severable. The City Council hereby declares that it would have passed this Resolution and each section, subsection, sentence,

clause, phrase or provision thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or provisions thereof be declared invalid or unconstitutional.

Section 18. Pursuant to California Elections Code Section 9295, this Resolution and the attached Ordinance will be available for public examination for no fewer than ten (10) calendar days prior to being submitted for printing in the sample ballot. The examination period will end on the day that is seventy-five (75) days prior to the date set for the election.

Section 19. This Resolution shall take effect immediately upon its adoption by a two-thirds vote of all of the members of the City Council.

Section 20. The City Clerk of the City of El Paso de Robles is hereby directed to certify to the passage and adoption of this Resolution and to file a certified copy of this Resolution with the Board of Supervisors of San Luis Obispo County and the Registrar of Voters of San Luis Obispo County at least eighty-eight (88) days before the date of the election.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of El Paso de Robles, California, at its regular meeting held on the 20th day of June, 2018, by the following vote:

AYES: Gregory, Hamon, Strong, Reed, Martin  
NOES:  
ABSENT:  
ABSTAIN:

  
Steven W. Martin, Mayor

Attest:

  
Kristen L. Buxkemper, Deputy City Clerk

EXHIBIT A

ORDINANCE NO. XXXX

AN ORDINANCE OF THE PEOPLE OF THE CITY OF EL PASO DE ROBLES, CALIFORNIA, ADDING CHAPTER 3.22 TO TITLE 3 (REVENUE AND FINANCE) OF THE EL PASO DE ROBLES MUNICIPAL CODE ESTABLISHING A TAX ON CANNABIS BUSINESSES OPERATING WITHIN THE CITY OF EL PASO DE ROBLES

THE PEOPLE OF THE CITY OF EL PASO DE ROBLES, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Addition to El Paso de Robles Municipal Code. Chapter 3.22 is hereby added to Title 3 (Revenue and Finance) of the El Paso de Robles Municipal Code and shall read as follows:

“Chapter 3.22 CANNABIS BUSINESS TAX.

3.22.010 Imposition of Tax.

A. Every person engaged in operating or otherwise conducting a cannabis business within the City of El Paso de Robles, regardless of whether such business has a license or permit pursuant to Chapters 5.04, 21.33 or any other provision of this Code, shall pay the following cannabis business tax:

1. Up to a maximum of twenty dollars (\$20) per square foot of space utilized in connection with the cultivation of cannabis, subject to adjustment by the City Council pursuant to Section 3.22.050.

2. Up to a maximum of ten (10) cents for each one dollar (\$1) of gross receipts, or a fractional part thereof, for cannabis delivery businesses and retailers, subject to adjustment by the City Council pursuant to Section 3.22.050.

3. Up to a maximum of fifteen (15) cents for each one dollar (\$1) of gross receipts, or a fractional part thereof, for cannabis manufacturing, testing, and distribution businesses, subject to adjustment by the City Council pursuant to Section 3.22.050.

4. Up to a maximum of ten (10) cents for each one dollar (\$1) of gross receipts, or a fractional part thereof, for cannabis retailers, subject to adjustment by the City Council pursuant to Section 3.22.050.

B. No cannabis business shall be deemed to be exempt from the payment of the taxes identified above by any other provision of this Code, unless expressly exempted under this Chapter.

3.22.020 Purpose of Tax.

The purpose of this tax is to raise revenue to fund unrestricted general revenue purposes.

3.22.030 Definitions.

A. “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" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.

B. "Cannabis business" means any business, organization or facility, regardless of form, whether operating for profit or not for profit, that cultivates, possesses, manufactures, distributes, processes, stores, laboratory tests, packages, labels, delivers, and/or sells cannabis and/or cannabis products. "Cannabis business" does not include personal medical or adult use cannabis cultivation authorized by State law and this Code. A cannabis business shall not be considered to be a religious, social or charitable organization exempt from the payment of business taxes under this Chapter.

C. "Cannabis cultivation" means the seeding, planting, watering, warming, cooling, growing, harvesting, drying, curing, grading or trimming of cannabis.

D. "Cannabis distribution" or "Cannabis transport" means any activity involving the commercial procurement, sale, transfer and/or transport of cannabis and cannabis products from one cannabis business to another cannabis business for purposes authorized pursuant to state law.

E. "Cannabis nursery" means a cannabis business that produces only clones, immature plants, seeds and other agricultural products used specifically for cannabis cultivation.

F. "Cannabis processing" shall mean any activity involving the holding, storing, sorting, preparation, labeling and packaging of raw cannabis for retail sale; or involving the production, preparation, propagation, labeling, packaging or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis.

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

H. "Cannabis testing" means any activity involving the testing of cannabis or cannabis products by a facility that is both of the following:

1. Accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state; and
2. Registered with the California State Department of Public Health.

I. "City" means the City of El Paso de Robles.

J. "Engaged in a cannabis business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate, franchise or other business powers, whether done as owner, or by means of an officer, agent, manager, employee, or other representative, within the City, whether operating from a fixed location within the City or coming into the City from an outside location to engage in cannabis business activities. By way of example, a

person shall be deemed “engaged in cannabis business” within the City if such person or the person’s officer, agent, manager, employee, or other representative acting on behalf of such person:

1. maintains a fixed place of cannabis business within the City;
2. owns, leases or otherwise has the legal right to occupy real property within the City for cannabis business purposes;
3. regularly maintains a stock of tangible personal property within the City in the ordinary course of cannabis business;
4. performs work or renders cannabis business services to other cannabis businesses or to retail cannabis customers located within the City.

K. “Gross receipts” means the total amount of monetary consideration actually received or receivable by a cannabis business for performance of any act or service in providing, at wholesale or retail, cannabis and/or cannabis products, for which a charge is made or credit allowed including, but not limited to: membership dues, the value of monetary and in-kind contributions, payments, reimbursement of fees for cultivation, manufacturing, distribution, dispensing, storing, exchanging, processing, delivering, making available, or transmitting of cannabis or cannabis products, any payments made, and anything else of value obtained by a cannabis business. Included in “gross receipts” shall be all receipts, cash, credit, and property of any kind without deduction 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. “Gross receipts” shall not include the following:

1. Cash discounts where allowed and taken on sales;
2. Sales or other applicable state or local tax required by law to be added to the purchase price of cannabis or cannabis products and collected from the purchaser;
3. Such part of the sales 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; or
4. Whenever there are included within gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectable in a subsequent year, those amounts may be excluded from gross receipts in the year they prove to be uncollectable, provided, however, if all or any portion of such amounts excluded as uncollectable are subsequently collected they shall be included in gross receipt for the period when they are recovered.

L. “Person” means any 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, and the plural as well as the singular.

M. “Space utilized in connection with the cultivation of cannabis” means any space or ground, floor, or other surface area (whether horizontal or vertical) that is used for cannabis germination, seeding, vegetation, pre-flowering, flowering, and harvesting; including without limitation activities such as growing, planting, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing, or drying cannabis, as well as storing any products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located.

N. “State” means the State of California.

O. “Tax Administrator” is the City’s Director of Administrative Services, or his or her designee.

3.22.040 Payment Obligation.

All taxpayers subject to this Chapter must pay the full tax imposed by this Chapter regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this Code, except as required by California or Federal law. Failure to pay the tax shall be subject to penalties, interest charges, and assessments as the City Council may establish and the City may use any or all other code enforcement remedies provided in this Code. No provision in this Code can lower the tax rate set forth in this Chapter or otherwise reduce the amount of taxes paid hereunder unless the provision specifically states that a reduction applies.

#### 3.22.050 City Council Authorization to Adjust Tax Rate and/or Methodology.

The City Council may impose the tax authorized by this Chapter at a lower rate and may otherwise repeal or amend this Chapter without a vote of the People. However, as required by California Constitution Article XIIC (Proposition 218), voter approval is required for any amendment that would increase the maximum rate or methodology of any tax levied pursuant to this Chapter. The people of the City of El Paso de Robles affirm that the following actions shall not constitute an increase of the maximum rate or methodology of the tax requiring subsequent voter approval:

A. The restoration of the rate of the tax to a rate this is no higher than the maximum set by this voter-approved Chapter, if the City Council has previously acted to reduce the rate of the tax;

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

C. The establishment of a class of person or service that is exempt or excepted from the tax or discontinuation of such exemption or exception; and

D. Resuming collection of the tax imposed by this Chapter, even if the City has, for some period of time, either suspended collection of the tax or otherwise failed to collect the tax, in whole or in part.

#### 3.22.060 Payment of Tax Does Not Authorize Illegal Activity.

The payment of the tax required pursuant to this Chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this Chapter implies or authorizes that any activity connected with the distribution or possession of cannabis is legal unless otherwise authorized and allowed in strict and full conformance to the provisions of this Code, including without limitation the provisions of Chapters 5.04 or 21.33.

#### 3.22.070 Cannabis Business Tax Is Not a Sales Tax.

The tax provided for under the provisions of this Chapter is not a Sales, Transactions or Use Tax and shall not be calculated or assessed as such. The tax established under this Chapter shall not be separately identified or otherwise specifically assessed or charged to any client of a cannabis business.

#### 3.22.080 Amendments and Administration.

A. This Chapter was submitted to the voters for approval. Any amendment to this Chapter to increase the tax above the maximum rate expressly provided in Section 3.22.010 shall not become effective until such amendment is approved by the voters. The voters expressly authorize the City



Council to amend, modify, change, or revise any other provision of this Chapter as the City Council deems in the best interest of the City, as set forth in Section 3.22.050.

B. The Tax Administrator designee shall promulgate rules, regulations and procedures to implement and administer this Chapter to ensure the efficient and timely collection of the tax imposed by this Chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

C. The Tax Administrator shall annually audit the taxes imposed by this Chapter to verify that tax revenues have been properly expended in accordance with the law.

D. Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased to the maximum extent over the maximum period of time allowed under law consistent with the revenues generated by the tax established by this Chapter.

#### 3.22.090 Returns and Remittances.

The tax shall be due and payable as follows:

A. The tax established by this Chapter shall be collected quarterly. Each person owing tax shall prepare and file a tax return to the Tax Administrator setting out the total amount of tax owed for the preceding quarter during which the tax was in effect. The return shall be filed not later than thirty (30) calendar days following the last day of the preceding calendar quarter. At the time the tax return is filed, the full amount of the tax owed for the preceding calendar month shall be remitted to the Tax Administrator.

B. All tax returns shall be completed on forms provided by the Tax Administrator.

C. Tax returns and payments for all outstanding taxes owed to the City are immediately due to the City Manager upon cessation of business for any reason.

D. Whenever any payment, statement, report, request, or other communication received by the Tax Administrator is received after the time prescribed by this Section 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 Section for the receipt thereof, or whenever the Tax 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 Tax Administrator may regard such payment, statement, report, request, or other communication as having been timely received. If the due date falls on a Friday, Saturday, Sunday, or holiday, the due date shall be the next regular business day on which City Hall is open to the public.

E. 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 Subsection A of this Section.

F. The Tax 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.

#### 3.22.100 Failure to Pay Tax.

A. Any person who fails or refuses to pay any 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 full amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the City Council; 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 interest on the unpaid penalties calculated at a rate established by resolution of the City Council.

B. Whenever a check is submitted in payment of a 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 plus due penalties and interest as provided for in this Section plus any amount allowed under State law.

C. The tax due shall be that amount due and payable from January 1, 2019 or the first date on which the cannabis business first operated in the City, whichever date occurred last, together with applicable penalties and interest calculated in accordance with Subsection A of this Section.

D. The Tax Administrator may waive the first and second penalties of twenty-five percent (25%) each imposed upon any person if:

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

2. 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.

### 3.22.110 Refunds.

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

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

C. Whenever the amount of any 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, such amount may be refunded to the person who paid the tax provided that a written claim for refund is timely filed with the City Manager, pursuant to this Code. The period for filing a claim for refund shall be one (1) year from the time the tax was paid or erroneously or illegally collected; provided, however, that in no event shall the period to file such a claim expire prior to the shortest period allowable for filing a tax refund claim under Government Code Section 911.2. Such a claim must clearly establish claimant's right to the refund by written records showing entitlement thereto, and must clearly set forth the facts and legal theories under which the claimant believes he or she has a right to a refund. Where the amount of any individual refund claim is in excess of the amount set by ordinance or resolution of the City Council relating to the settlement of general liability claims against the City by the City Manager, City Council approval shall be required.

D. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon.

E. The Tax Administrator shall have the right to examine and audit all of 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 Tax Administrator to do so.

F. 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 a cannabis business's taxes for the next calendar month.

G. In the event that a tax was erroneously paid and the error is attributable to the City, the amount of tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in this Chapter from the amount to be refunded to cover expenses.

H. The Tax Administrator shall initiate a refund of any tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by the City audit of tax revenues.

#### 3.22.120 Enforcement.

A. It shall be the duty of the Tax Administrator to enforce each and all of the provisions of this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.

C. The Tax Administrator shall have the power to audit and examine all books and records of cannabis businesses as well as persons engaged in the operation of cannabis businesses, including both state and federal income tax returns, California sales tax returns or other evidence documenting the gross receipts of or the transaction prices charged by a cannabis business or persons engaged in the operation of a cannabis business, for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions of this Chapter, 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 cannabis business or person, after written demand by the Tax Administrator, refuses to make available for audit examination or verification such books, records, or equipment as the Tax Administrator requests, the Tax Administrator may, after full consideration of all information within the Tax Administrator's knowledge concerning the cannabis business and activities of the person so refusing, make an assessment in the manner provided in Section 3.22.130.

D. 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.

E. Any person violating any of the provisions of this Chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or

employee of the City any material fact in procuring the certificate or permit from the City shall be deemed guilty of a misdemeanor.

3.22.130 Debts; Deficiencies; and Assessments.

A. 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 operating a cannabis business without having paid any applicable tax, penalties, and interest shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such cannabis business.

B. If the Tax 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, the Tax Administrator 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. 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 cannabis business, a deficiency determination may be made at any time within three (3) 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, notice shall be given to the person concerned in the same manner as notices of assessment are given under Subsections C, D, and E of this Section.

C. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this Chapter.

1. If the person has not filed any statement or return 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 City Manager, filed a corrected statement or return, or furnished to the City Manager adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this Chapter;

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

5. 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.

D. 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 cannabis business appearing on the face of the business license issued under Chapter 5.04 of this Code, or to such other address as he or she has registered with the Tax Administrator for the purpose of receiving notices provided under this Chapter or Chapter 5.04; or, should the person have no business license issued and should the person have no

address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this section, service by mail is complete at the time of deposit in the United States mail.

E. Within ten (10) days after the date of service of the notice of assessment, the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the Tax Administrator is not made within the time herein prescribed, the tax assessment by the Tax Administrator shall become final and conclusive.

F. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be held within thirty (30) calendar days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

G. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to the person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section 3.22.140 of this Chapter.

H. Unless appealed, payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) calendar day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be at the rates set forth herein, along with interest at the rate as set forth by resolution of the City Council, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the City seeking payment of a tax assessed under this Section shall commence from the date of delinquency as provided in this subsection.

### 3.22.140 Appeals.

A. The provisions of this section apply to any deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b).]

B. If any person is aggrieved by any deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the City Manager by filing a notice of appeal with the City Clerk within ten (10) calendar days of the date of the deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the person.

C. If the person requests an appeal, the City Clerk shall cause the matter to be set for hearing, which shall be held within thirty (30) calendar days after receipt of the written request for appeal. Notice of the time and place of the appeal hearing shall be mailed by the City Clerk to such person at least ten (10) calendar days prior to the hearing, and, if the City Manager desires said person to produce specific records at such hearing, such notice may designate the records requested to be

produced. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

D. At the time fixed for the hearing, the City Manager shall hear all relevant testimony and evidence, *de novo*, including that of any other interested parties. At the discretion of the City Manager, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the City Manager shall issue a final decision confirming, modifying or rejecting the Tax Administrator's deficiency determination, and shall mail a copy of such final decision to the person owing the tax. The City Manager's decision shall be final and subject only to judicial review pursuant to California Code of Civil Procedure Section 1094.6. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) calendar day following the date of receipt of the City Manager's decision.

#### 3.22.150 No Injunction/Writ of Mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

#### 3.22.160 Future Amendment to Cited Statute.

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 subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease. For any application or situation that would not require voter approval or would not result in a tax decrease, provisions of the amended statute (or new interpretation) shall apply to the maximum possible extent. To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded or limited 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."

SECTION 2. Effective Date. Pursuant to the California Constitution Article XIIC(2)(b) and California Elections Code 9217, if a majority of the qualified voters voting in the election on Measure "\_\_\_" vote in favor of the adoption of such measure, this ordinance shall be deemed valid and binding and shall be considered adopted upon the date that the vote is declared by the City Council, and shall go into effect ten (10) days after that date.

SECTION 3. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The People of the City of El Paso de Robles hereby declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 4. Certification/Summary. Following the City Clerk's certification that the citizens of El Paso de Robles have approved this Ordinance, the Mayor shall sign this Ordinance and the City Clerk shall cause

the same to be entered in the book or original ordinance of said City; and shall cause the same, or a summary thereof, to be published as required by law.

PASSED, APPROVED, and ADOPTED by the People of the City of El Paso de Robles this 6<sup>th</sup> day of November, 2018.

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Steve W. Martin  
Mayor

ATTEST:

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Kristen L. Buxkemper  
Deputy City Clerk