

## **ORDINANCE 706**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EXETER ADDING CHAPTER 3.25 TO TITLE 3 OF THE CITY OF EXETER CODE OF ORDINANCES ENACTING A CANNABIS BUSINESS TAX**

THE PEOPLE of the City of Exeter do ordain as follows:

Section 1. PURPOSE. The provisions of this ordinance are necessary for the safety of the public and for the preservation of city services for the residents of the City of Exeter ("City"). By adopting Resolution 2022-28, the City Council authorized placing this ordinance before the voters of the City of Exeter at an election to be held on November 8, 2022.

Section 2. CODE ADOPTION. Chapter 3.25, Sections 3.25.010 through 3.25.320, is hereby added to Title 3 of the Code of Ordinances of the City of Exeter to read in its entirety as follows:

#### **Title 3**

#### **Chapter 3.25 CANNABIS BUSINESS TAX**

##### **3.25.010 Cannabis Business Tax**

The cannabis business tax is an excise tax on the privilege of engaging in cannabis business activity in the City; it is not a sales or use tax. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and used for general governmental purposes.

##### **3.25.020 Definitions**

"Applicant" means a person who is required to file an application for a permit under this section. "Business Owner" means the owner(s) of the Cannabis Business. For publicly traded companies, owner means the chief executive officer or any person or entity with an aggregate ownership interest of 5% or more. For all other businesses other than publicly traded companies, an owner is an individual that has an aggregate ownership of interest other than a lien or encumbrance, of 20% or more in the commercial cannabis business.

"Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means cannabis or marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Cannabis Initiative, and as defined by other applicable State law.

"Cannabis business" or "cannabis industry" means any business activity in the City relating to cannabis, including but not limited to cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage,

packaging, delivery and sales (wholesale and/or retail sales) of cannabis or cannabis products, whether or not carried on for gain or profit. A cannabis business does not include any business whose only relationship to cannabis or cannabis products is the production or sale of cannabis accessories.

"Cannabis cultivation area" means the total aggregate area(s) of cannabis cultivation by a cannabis business as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, the space between plants within the cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, excluding non-production areas, as determined by the Community Development Director or his or her designee.

"Cannabis business tax" means the tax due pursuant to this Chapter for engaging in cannabis business in the City.

"Cannabis nursery" means a Person who produces Cannabis clones, immature plants, and/or seeds for wholesale distribution, used specifically for the planting, propagation, and Cultivation of Cannabis. In addition, and without limiting the foregoing, "nursery" includes "nursery" as defined in California Business and Professions Code Section 19300.5 and any successor statute, as may be adopted or amended from time to time.

"Cannabis product" means any product containing cannabis, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and those products described in Section 11018.1 of the Health and Safety Code.

"Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether the areas are contiguous or noncontiguous. The plant canopy need not be contained to a single parcel of land in determining the total square footage that will be subject to tax under this Chapter. If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

"City" means the City of Exeter, either the entity or its territorial limits, as the context requires.

"City Council" or "Council" means the City Council of the City of Exeter.

"City Permit" means any permit issued by the City to Person to authorize that Person to operate or engage in a Commercial Cannabis Business.

"Collector" means the City's Chief Financial Officer or his or her designee.

"Commercial cannabis cultivation" means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal recreational use as authorized under the "Control,

Regulate and Tax Adult Use of Marijuana Act" approved by the State's voters on November 8, 2016, for which the individual receives no compensation whatsoever.

"Commercial Cannabis Business" or "Cannabis Business" or "Cannabis Operation" means any commercial marijuana activity allowed under State Law and the implementing regulations, as State Law and the implementing regulations may be amended from time to time, and all uses permitted under any subsequently enacted State law pertaining to the same or similar uses for recreational cannabis.

"Cannabis production" means the processes associated with the processing, extraction, manufacturing, testing, distribution and transportation of medical and non-medical cannabis products.

"Commingling" means the physical aggregation of harvest batches or nonmanufactured cannabis products by a licensee.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. "Cultivation" also includes nurseries. In addition, and without limiting the foregoing, "cultivation" includes "cultivation" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted and amended from time to time.

"Delivery" means the commercial transfer of marijuana cannabis or marijuana cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

"Delivery employee" means an individual employed by a licensed dispensary who delivers medical cannabis goods from the licensed dispensary premises to a medical cannabis patient or primary caregiver at a physical address.

"Dispensary" means a facility where cannabis or cannabis products, are offered, either individually or in combination, for retail sale, including an establishment that engages in delivery of cannabis or cannabis products as part of a retail sale. In addition, and without limiting the foregoing, "dispensary" includes "dispensary" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.

"Distributor" means a person engaged in procuring cannabis from a cultivator, and/or procuring cannabis products from a manufacturer, for sale to a licensed commercial cannabis business. In addition, and without limiting the foregoing, "distributor" includes "distributor" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.

"Distribution" means the procurement, sale, and transport of cannabis or cannabis products between licensees, or the involvement in the procurement, sale, and/or transport of cannabis and cannabis products between two or more cannabis businesses.

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

"Gross Receipts," means the total amount or compensation received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, or 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, 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 there from an 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 where 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 from investments where the holder of the investment received only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a Person's own account, not derived in the ordinary course of a business;
6. 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;
7. Cash value of sales, trades or transactions between departments or units of the sale business;
8. Wherever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
9. Transactions between a partnership and its partners;

10. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
  1. The voting and non-voting stock of which is owned at least eighty percent (80%) of such other corporation with which such transaction is had; or
  2. Which owns at least eighty percent (80%) of the voting and non-voting stock of such other corporation; or
  3. At least eighty percent (80%) of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.
11. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection 9 above;
12. 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 (\$1.00);
13. 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 name and addresses of the others and amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

"Indoor cultivation" means the cultivation of cannabis within a structure using artificial light, at a rate greater than 25 watts per square foot.

"Manufacturer" means a person who conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or that packages or repackages cannabis or cannabis products or labels or re-labels its container. In addition, and without limiting the foregoing, "manufacturer" includes "manufacturer" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.

"Mixed-light cultivation" means the cultivation of cannabis using light deprivation and/or artificial lighting below a rate of 25 watts per square foot, and/or the Cultivation of cannabis using any combination of natural and supplemental artificially lighting. Greenhouses, hoop houses, hot houses and similar structures or light deprivation systems are included in this category.

"Nursery" means a person who produces cannabis clones, immature plants, and/or seeds for wholesale distribution, used specifically for the planting, propagation, and cultivation of cannabis. In addition, and without limiting the foregoing, "nursery" includes "nursery" as defined in California Business and Professions Code section 19300. 5 and any successor statute, as may be adopted or amended from time to time.

"Operator" means the Business Owner and any other person designated by the Business Owner as responsible for the day to day Cannabis business operation.

“Person means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, syndicate tribe or any other group or combination acting as a unite and includes the plural as well as the singular member.”

"Personal medical cannabis cultivation" means cultivation, by either a qualified patient who cultivates cannabis exclusively for his or her personal medical use or by a caregiver who cultivates cannabis exclusively for medical use by qualified patients and who is exempt from State licensing requirements under the State Medical Cannabis Regulation and Safety Act.

"Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous.

"Responsible Party" shall mean the Business Owner, Operator, manager(s), and any employee having significant control over the cannabis businesses operations.

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

“Square Foot” or “Square Footage” means the maximum amount of Cannabis Cultivation Area for Commercial Cannabis Cultivation authorized by a City Permit issued to a person engaging in a Commercial Cannabis Business, or by a state license in the absence of a City permit or license, not deducting for unutilized square footage, and shall be the basis for the tax base for Cultivation.

"State" means the State of California.

"State Law" means all regulations and laws pertaining to Cannabis Business in the State of California.

"State license," means a State license issued pursuant to California Business & Professions Code Sections 19300, et seq. or other applicable State law.

"Testing means a laboratory, facility, or entity in the State, that offers or performs tests of cannabis or cannabis products and that is both of the following: 1) Accredited by an accrediting body that is independent from all other persons involved in commercial marijuana cannabis activity in the State. 2) Registered with Licensed by the State Department of Public Health.

"Transport" means the transfer of cannabis or cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

“Transporter” means a person issued all required state and City permits to transport cannabis or cannabis products between permitted facilities.

### **3.25.030 Tax Authorization and Operative Date**

Beginning January 1, 2023, a cannabis business tax is hereby imposed on every person who is engaged in cannabis business in the City as prescribed herein. It is unlawful for any person to transact or carry on any cannabis business in the City without paying, in accordance with this Chapter, the cannabis industry tax imposed by this section. The intent of this Chapter is to levy a tax on all cannabis businesses that operate in the City, regardless of whether such business would have been legal at the time the ordinance codified in this chapter was adopted. Nothing in this chapter shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken, including but not limited to the City's municipal code regulations. Nothing in this chapter shall be construed as to alter the City's regulatory requirements or conditions under which a cannabis business may operate in accordance with Chapter 8.50 of Title 8 or any other regulatory requirements as set forth in the Code of Ordinances, or the land use requirements and conditions set forth in the Exeter Development Ordinance.

### **3.25.040 Tax Imposed**

#### **A. Tax on Commercial Cannabis Businesses**

1. Every Person who is engaged in a Commercial Cannabis Business in the City shall pay an annual Commercial Cannabis Business tax at a rate established by resolution of the City Council which rate shall not exceed \$25 per square foot (with a permitted annual adjustment by the applicable Consumer Price Index) of Commercial Cannabis Business area or ten percent (10%) of annual gross receipts per fiscal year. The exact amount of the tax and the methodology of calculation shall be set by the City Council by resolution but shall not exceed the maximums approved by the voters of \$25 per square foot (with a permitted annual adjustment by the Consumer Price Index), or 10% of annual gross receipts. The City Council may lower and raise the tax rate without voter approval, subject to the maximum rates approved by the voters. Tax rates for various licenses may vary in rate and methodology between license types, but shall be consistent for all Persons who hold a particular type of license.

2. The taxable square footage calculation shall be determined by including all portions of the premises where the Commercial Cannabis Business operates deducting therefrom driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the Commercial Cannabis Businesses.

3. If more than one cannabis business operates on the premises, each Person shall be responsible for paying the tax. This section shall not be construed to authorize the operation of more than one cannabis business on the premises, if otherwise prohibited by City regulation(s).

4. Persons subject to the tax imposed by this Section shall also register and pay all fees required by the City Council.

B. No further voter approval shall be required for the adoption or increase of a tax under the authority granted by this Section of this Chapter, it being the intent of the People of the City of Exeter to authorize such a tax up to and including the maximum rates set forth above whenever implemented by the City Council hereafter.

### **3.25.050 Registration of Cannabis Business**

All persons engaging in a cannabis business, whether an existing, newly established or acquired business, shall, in addition to any other requirements prescribed by this Code, register with the Collector by the later of 30 days after commencing operation or January 1, 2023, and shall annually renew such registration as required by the Collector. Each Person shall be required to submit any information as deemed necessary by the Collector.

### **3.25.060 Reporting and Remittance of Tax**

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

A. Each person subject to tax under this chapter, except a cannabis tax based on a square footage, shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax return and remit to the Collector the tax due for that quarter. At the time the return is filed, the full amount of the tax due for the prior quarter shall be remitted to the Collector. At any time, a business may apply in writing to the Collector to have these tax returns and payments made less frequently or on a different schedule. Any determination resulting from this application will be at the sole discretion of the Collector and shall be provided in writing.

B. Each person subject to a cannabis tax based upon square footage shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax return and remit to the Collector the tax due for that quarter. The tax shall be calculated in accordance with rules and regulations established by the Collector pursuant to 3.25.130. The tax return may include a request for adjustment of the tax due to crop loss or periods without cultivation, along with evidence substantiating the crop loss or fallow periods. If the cultivation begins significantly after January 1 or terminates significantly before December 31 of the calendar year, a request to prorate the tax may be submitted with clear and convincing evidence supporting the timing of the cultivation. The decision to prorate or adjust the tax will be made at the sole discretion of the Collector. At the time the return is filed, the full amount of the tax due for the prior quarter shall be remitted to the Collector. At any time, a business may apply in writing to the Collector to have these tax returns and payments made less frequently or on a different schedule. Any determination resulting from this application will be at the sole discretion of the Collector and shall be provided in writing.

C. All tax returns shall be completed on forms prescribed by the Collector.

D. Tax returns and payments for all outstanding taxes owed to the City under this Chapter are immediately due and payable to the City of Exeter upon cessation of business for any reason.



E. The Collector may, as part of administering the tax and in his or her discretion, modify the form of payment and take such other administrative actions as needed to facilitate the collection of the tax.

**3.25.070 Payments and Communications - Timely Remittance**

Whenever any payment, return, report, request or other communication is due under this Chapter, it must be received by the Collector on or before the due date. A carrier postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a City holiday, the due date shall be the next regular business day on which the City is open to the public.

**3.25.080 Payment - When Taxes Deemed Delinquent**

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the City of Exeter on or before the due date as specified in Section 3.25.060.

**3.25.090 Notice Not Required by City**

The City of Exeter is not required to send a delinquency or other notice or bill to any person subject to this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty or interest due under this Chapter.

**3.25.100 Waivers of Penalties**

The Collector may waive the penalties imposed upon any person if:

A. The person provides evidence satisfactory to the 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 cannabis industry tax and accrued interest owed the City before applying to the Collector for a waiver.

B. The waiver provisions specified in this subsection shall be granted only once during any twenty-four (24) month period.

**3.25.110 Refunds**

A. Whenever the amount of any Commercial Cannabis Business Tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Collector within one (1) year of the date the tax was originally due and payable. Prior to seeking judicial relief with respect to a dispute regarding the amount of any tax, penalty, or interest collected or received by the city under this Chapter, an aggrieved taxpayer, fee payer, or any other person must comply with the provisions of Chapter 1.18 of this code.

B. The Collector, his or her deputies, or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Collector to do so. The Collector may collect a fee adopted by the City Council to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the Collector to make a determination on the claim for refund.

C. In the event that the Commercial Cannabis Business Tax was erroneously paid and the error is attributable to the City, the City shall refund the amount of tax erroneously paid up to one (1) year from when the error was identified.

### **3.25.120 Exemptions from the Tax**

A. The provisions of this Chapter shall not apply to Personal Cannabis Cultivation.

B. The provisions of this Chapter shall not apply to Personal use of Cannabis that is specifically exempted from state licensing requirements, that meets the definition of Personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that Personal use.

### **3.25.130 Administration of the Tax**

A. It shall be the duty of the Collector to collect the taxes, penalties and/or fees, and perform the duties required by this Chapter.

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

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

1. Provide to all Commercial Cannabis Business taxpayers forms for the reporting of the tax;
2. Increase tax rates in accordance with this Chapter;
3. Provide information to any taxpayer concerning the provisions of this Chapter;
4. Receive and record all taxes remitted to the City as provided in this Chapter;
5. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
6. Assess penalties and interest to taxpayers pursuant to this Chapter;
7. Determine amounts owed and enforce collection pursuant to this Chapter; and
8. Adopt rules and regulations no inconsistent with the provisions of this Chapter as may be necessary or desirable to aid in the implementation and enforcement of the provisions of this Chapter.

### **3.25.140 Enforcement**

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

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the County under this Chapter is not paid when due, the Collector may, within three (3) years after the amount is due, record a certificate of lien specifying the amount of taxes, fees and penalties due, and the name and address of the Person as it appears on the records of the Collector. The lien shall also specify that the Collector has complied with all provisions of this Chapter in the determination of the amount required to be paid. From the time of the filing of the record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the County owned by the Person, or subsequently acquired by the Person before the lien expires. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the filing of the certificate unless sooner released or otherwise discharged. A fee may be adopted by the City Council and collected by the Collector to pay for the cost of recording and administering the lien.

C. At any time within three (3) years after any Person is delinquent in the payment of any amount herein required to be paid or within three (3) years after the last recording of a certificate of lien under Subsection B of this Section, the Collector 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 the Chief of Police 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 and sale pursuant to a writ of execution. The Collector may pay or advance to the Chief of Police, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution. The Collector may approve the fees for publication in the newspaper.

D. At any time within three (3) years after recording a lien against any Person, if the lien is not discharged and released in full, the Collector may forthwith seize any asset or property, real or Personal (including but not limited to, bank account), of the Person and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the Person subject to seizure and sale subject to this Chapter shall not include any assets or property which is exempt from execution under the provisions of the California Code of Civil Procedure.

### **3.25.150 Apportionment**

If a cannabis business subject to a cannabis industry tax is operating both within and outside the City, it is the intent of the City to apply the cannabis industry tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on within the City.

### **3.25.160 Construction**

This tax is intended to be applied in a manner consistent with the~ United States and California Constitutions, State and local law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution, State or local law.

### **3.25.170 Audit and Examination of Records and Equipment**

A. The Collector shall have the power to audit and examine all books and records of any person engaged in cannabis business in the City, including both State and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis business, and, where necessary, all equipment of any person engaged in cannabis business in the City, for the purpose of ascertaining the amount of cannabis business tax, if any, required to be paid under this Chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this Chapter. If such person, after written demand by the Collector, refuses to make available for audit, examination or verification such books, records or equipment as the Collector requests, the Collector may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment against the cannabis business of the taxes estimated to be due under this Chapter.

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 five (5) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Collector shall have the right to inspect at all reasonable times.

### **3.25.180 Other Licenses, Permits, Taxes, Fees, or Charges**

Except as expressly provided in this Chapter, nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title or Chapter of this Code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or Chapter of this Code or any other ordinance or resolution of the City. Any references made or contained in any other title or Chapter of this Code to any permits, licenses, taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the

permits, licenses, taxes, fees or charges, or schedule of license fees, provided for in other titles or Chapters of the Exeter Code of Ordinances unless otherwise expressly provided.

### **3.25.190 Change of Ownership/Successor's and Assignee's Responsibility**

A. If any Person, while liable for any amount under this Chapter, sells, assigns or otherwise transfers the Commercial Cannabis Business, whether voluntarily or involuntarily, the Person's successor, assignee or other transferee, or other Person or entity obtaining ownership or control of the business ("Transferee"), shall satisfy any tax liability owed to the City associated with the business when due hereunder. Failure to do so for the benefit of the City will result in being personally liable to the City for the full amount of the unpaid tax liability, interest and penalties. The Transferee shall notify the Collector of the date of transfer at least 30 days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than 30 days before the date of transfer, notice shall be provided immediately upon the existence of the agreement. All Transferees are required to meet each and every condition outlined in this chapter and have prior written approval of the City prior to the transfer.

B. The Transferee shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability if the Transferee complied with the requirements of California Revenue and Taxation Code Section § 7283.5 by withholding from the purchase price, for the benefit of the City, an amount sufficient to cover the tax liability, or by otherwise paying the tax liability and obtaining from the Collector a "Tax Clearance Certificate" showing that all outstanding tax liability has been paid and stating that no amount is due through the date of transfer.

C. The Collector, within 90 days of receiving a written request from the Transferee, may issue a "Tax Clearance Certificate" stating either the amount of tax liability due and owing for the business, or stating that there is no tax liability due and owing for the business through a stated date. The Collector may also request financial records from the current or former owner or operator of a Commercial Cannabis Business to audit the tax that may be due and owing. The Collector shall issue a "Tax Clearance Certificate" within 30 days of completing the audit, state the amount of the tax liability owed, if any, unless the Collector determines that the records provided in connection with the audit are insufficient to determine whether taxes are due and owed or in what amount. If the Collector determines that the records are insufficient, the Collector may rely on the facts and information available to estimate any tax liability. The Collector may issue a "Tax Clearance Certificate" stating the amount of the tax liability, if any, based on such facts and information available. Unless an appeal is filed in accordance with Section 3.25.250, the "Tax Clearance Certificate" shall serve as conclusive evidence of the tax liability associated with the property through the date stated on the "Tax Clearance Certificate."

### **3.25.200 Payment of Tax Does Not Authorize Unlawful Business**

A. The payment of a tax required by this Chapter, and its acceptance by the City, shall not entitle any person to engage in any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable State or local laws.

B. No tax paid under this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any State or local laws.

### **3.25.210 Deficiency Determinations**

If the Collector is not satisfied that any tax return or other statement filed as required under this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the facts contained in the tax return or statement or any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable, or such later date as allowable by law. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter, or such later date as allowable by law, as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.

Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given in accordance with this Code.

### **3.25.220 Failure to Report-Nonpayment**

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

1. If the person has not filed a complete return or statement required under this Chapter;

2. If the person has not timely paid any tax, fee, interest and/or penalties due under of this Chapter; or

3. If the person has not, after demand by the Collector, filed a corrected return or statement, or furnished to the Collector adequate substantiation of the information contained in a return or statement filed previously.

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

### **3.25.230 Tax Assessment - Notice Requirements**

The notice of assessment shall be served upon the person liable for the tax under this Chapter either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Collector for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Collector for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

### **3.25.240 Tax Assessment – Hearing, Application, and Determination**

Within ten (10) calendar days from the date of service, the Person may apply in writing to the Collector for a hearing on the assessment. If application for a hearing before the City is not made within the time here prescribed, the tax assessed by the Collector shall become final and conclusive. Within thirty (30) business days of the receipt of any such application for hearing, the 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 Collector and the Person requesting the hearing. Notice of such hearing shall be given by the 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 Collector should not be confirmed and fixed as the tax due. After such hearing, the 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 3.25.230 for giving notice of assessment. The amount determined to be due shall be payable after thirty (30) calendar days of written notice unless it is appealed pursuant to the Appeal Procedure set forth in this Chapter.

### **3.25.250 Appeal Procedure**

Any taxpayer aggrieved by any decision of the Collector with respect to the amount of tax, fee, interest and penalties, if any, due under this Chapter may appeal to the City Administrator by filing a written appeal with the Clerk of the Exeter City Council within fifteen (15) calendar days of the mailing of the decision or determination. The Clerk shall schedule the appeal and give fifteen (15) business days' written notice to the appellant of the time and place of hearing by serving the notice personally or by depositing in the United States Post Office in the City, postage prepaid, addressed as shown on the appeal papers or, if none, such other address as is known to the City or, absent any address, by publication in a newspaper of general circulation in the City. The City Administrator or designee shall have authority to determine all questions rose on such appeal. No such determination shall conflict with any substantive provision of this Chapter. The finding of the City Administrator shall be final and conclusive as to the City, but subject to judicial review under California Code of Procedure Section 1094.5 and shall be served upon appellant in the manner prescribed by this Chapter for service of notice of tax assessment

hearing. Any amount found to be due shall be immediately due and payable upon service of the notice.

### **3.25.260 Conviction for Chapter Violation -Taxes not Waived**

The conviction and punishment of any person for failure to pay a required tax, fee, penalty and/or interest under this Chapter shall not excuse or exempt such person from any civil action for the amounts due under this Chapter. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any State law requiring the payment of all taxes.

### **3.25.270 Violation Deemed Misdemeanor**

Any person who violates any provision of this Chapter or who other than by a sworn statement, knowingly or intentionally misrepresents to any officer or employee of the City any material fact herein required to be provided is guilty of a misdemeanor punishable as provided in this Code. A person who on a sworn statement states as true a material fact that he or she knows to be false is guilty of perjury.

### **3.25.280 Suspension of Collection**

The City Council shall have authority to temporarily suspend collection of the tax imposed by this chapter by resolution unanimously approved by all members of the entire City Council. However, the authority to levy the tax imposed by this Chapter shall not expire or otherwise terminate, unless terminated by a duly enacted Ordinance which is approved at a regular meeting of, and by unanimous vote of all of the seats on, the City Council.

### **3.25.290 Severability**

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

### **3.25.300 Remedies Cumulative**

All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

### **3.25.310 Amendment or Repeal**

As provided in California Elections Code Section 9217, this Chapter may be repealed or amended by Ordinance of the Exeter City Council without a vote of the People except that, as required by Article XIIC of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter above the



maximum rates established by this Chapter. The people of the City of Exeter additionally affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of 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; or
3. The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax; or
4. 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
5. The City Council's adoption of an Ordinance, as authorized by this Chapter, to raise the tax rate provided that the rate is not increased to a rate higher than the maximums established herein.

### **3.25.320 Penalties**

Any entity that fails to pay the taxes or fees required by this chapter within fifteen ( 15) days after the due date shall pay in addition to the taxes a penalty for nonpayment in the sum equal to twenty-five percent (25%) of the total amount due. Additional penalties will be assessed in the following manner: ten percent (10%) shall be added on the first day of each calendar month following the month of the imposition of the twenty-five percent (25%) penalty if the tax remains unpaid - up to a maximum of one hundred percent (100%) of the tax payable on the due date. Receipt of the tax payment by the City shall govern the determination of whether the tax is delinquent. Postmarks will not be accepted as adequate proof of a timely payment.

Section 3. CEQA REVIEW. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15060(c)(2), 15061(b)(3) and 15378(b)(2) and (4). The City Administrator or his designee is hereby directed to ensure that a Notice of Exemption is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

Section 4. NO LIABILITY. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Exeter, or any official, employee or agent thereof.

Section 5. PENDING ACTIONS. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 6. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Exeter hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more of other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 7. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Exeter Code of Ordinances as amended by this ordinance, if any, are substantially the same as provisions in the Exeter Code of Ordinances existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 8. EFFECTIVE DATE. Pursuant to Elections Code § 9217, this ordinance shall be deemed adopted on the date when the final vote is declared by the City Council and this ordinance shall go into effect ten (10) days after that date, contingent upon approval by a majority of the voters voting on the measure in the November 8, 2022 election.

THE FOREGOING ORDINANCE was approved by the City Council of the City of Exeter, State of California, on July 12, 2022, at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Barbara Sally, Mayor

ATTEST:

Shonna Oneal, City Clerk

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By: Hilary Robello, Deputy City Clerk