

BALLOT MEASURE

FULL TEXT OF MEASURE

ORDINANCE NO. 2018-01

AN ORDINANCE OF THE MONTEREY COUNTY REGIONAL FIRE DISTRICT, IMPOSING A COMMERCIAL CANNABIS BUSINESS TAX ON COMMERCIAL CANNABIS BUSINESS

Summary

This ordinance will impose a Monterey County Regional Fire District (“District”) tax on commercial cannabis businesses within the District’s jurisdiction in Monterey County as of August 1, 2018. The ordinance establishes the following tax rates: for cultivation, the tax rate is \$0.18 per fiscal year per authorized square foot and to increase thereafter based on the Consumer Price Index; for nursery cultivation, the tax rate is \$0.10 per authorized square foot and to increase thereafter based on the Consumer Price Index; and for all other commercial cannabis businesses, including but not limited to, dispensaries and manufacturing, the tax rate is \$1.00 per fiscal year per authorized square foot and to increase thereafter based on the Consumer Price Index. The tax applies to commercial cannabis businesses, and under state law, to nonmedical cannabis or marijuana businesses. Personal cultivation and personal use, as further delineated in the ordinance, are exempt from the tax. The ordinance contains payment and reporting requirements and enforcement provisions and authorizes the District to administer the tax. The tax is for Fire Protection Services to include, Fire Prevention, Education, Emergency Medical Response, and Fire Protection, and will take effect only if the tax is approved by 2/3 of the voters in the District voting on the tax at an election.

75 word max as to appear on ballot

Shall Monterey County Regional Fire District impose an annual tax only on commercial cannabis businesses within its boundaries to fund impacts upon fire prevention services, and response to fires, hazardous materials, and other emergencies at the following rates: \$0.18 per square foot on cannabis cultivation; \$0.10 per square foot on cannabis nurseries; and \$1.00 per square foot on cannabis manufacturing and retailers, adjusting all rates annually based on the Consumer Price Index, potentially generating \$350,000 annually with no termination?

The Board of Directors (“Board”) of the Monterey County Regional Fire District ordains as follows:

SECTION 1: FINDINGS AND RECITALS. The Board hereby finds and declares as follows.

- A. On November 8, 2016, the voters of the State of California approved the Adult Use of Marijuana Act (“AUMA”), an initiative, legalizing the personal use of cannabis for adults 21 age and older, and creating a regulatory program for nonmedical cannabis.
- B. In June 2017, the Senate passed, and the Governor signed, Senate Bill 94, creating a unified licensing and regulatory program for medicinal and adult-use cannabis businesses, called the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA,” Bus. & Prof. Code § 26000 et seq.).
- C. The District is governed by The Fire Protection District Law of 1987 (the “Act”) Health & Safety Code §13800, et seq.). The Act, among other things, authorizes the District to adopt ordinances and to enforce rules and regulations for the administration, operation, and maintenance of District services.
- D. The District is the sole agency authorized to provide fire prevention, fire protection, and emergency response services within its territorial jurisdiction, including the enforcement of the California Fire Code, as amended and adopted by the District. The District’s Fire Code establishes rules and regulations for the protection of life and safety for residents and businesses within the Fire District boundary.
- E. On December 5, 2017, the Monterey County Board of Supervisors passed and approved County Ordinances 5292, 5294 and 5293, amending the County Code to regulate and permit commercial cannabis businesses in the County.
- F. The County began issuing licenses for commercial cannabis businesses beginning January 1, 2018.
- G. Many of the commercial cannabis businesses will be within the District’s boundaries, potentially creating a significant unmitigated financial impact.
- H. The California Constitution, Article XIII A, section 4 and Health and Safety Code sections 13910 and 13911 authorize the District to impose special taxes upon a 2/3 vote of the electorate.

SECTION 2: Adoption of District Ordinance 2018-01

The Board hereby adopts the following text that shall constitute District Ordinance 2018-01:

Ordinance 1 COMMERCIAL CANNABIS BUSINESS TAX

Sections:

- 1.1 Title.
- 1.2 Cannabis Business tax.
- 1.3 Purpose of the ordinance.
- 1.4 Definitions.
- 1.5 Tax imposed.
- 1.6 Reporting and remittance of tax.
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- 1.8 Payment – when taxes deemed delinquent.
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- 1.10 Penalties and interest
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- 1.14 Enforcement Action to collect.
- 1.15 Apportionment.
- 1.16 Constitutionality and legality.
- 1.17 Audit and examination of records and equipment.
- 1.18 Other licenses, permits, taxes or charges.
- 1.19 Payment of tax does not authorize unlawful business.
- 1.20 Deficiency determinations.
- 1.21 Failure to report – nonpayment and fraud.
- 1.22 Tax assessment –notice of requirements.
- 1.23 Severability.
- 1.24 Remedies cumulative.
- 1.25 Amendment or repeal.

1.1 Title.

This ordinance shall be known as the Monterey County Regional Fire District Commercial Cannabis Business Tax Ordinance. This ordinance shall be applicable in the Monterey County Regional Fire District, which shall be referred to herein as "District."

1.2 Special tax.

The Commercial Cannabis Business Tax is enacted

All of the proceeds from the tax imposed by this Ordinance shall be used for Fire District purposes as defined and set forth by The Fire Protection District Law of 1987 (Health & Safety Code §13800, et seq.). Health and Safety Code section 13801 sets forth:

The Legislature finds and declares that the local provision of fire protection services, rescue services, emergency medical services, hazardous material emergency response services, ambulance services, and other services relating to the protection of lives and property is critical to the public peace, health, and safety of the state. Among the ways that local communities have provided for those services has been the creation of fire protection districts. Local control over the types, levels, and availability of these services is a long-standing tradition in California which the Legislature intends to retain. Recognizing that the state's communities have diverse needs and resources, it is the intent of the Legislature in enacting this part to provide a broad statutory authority for local officials. The Legislature encourages local communities and their officials to adapt the powers and procedures in this part to meet their own circumstances and responsibilities.

The California Constitution, Article XIII A, section 4 and Health and Safety Code sections 13910 and 13911 authorize the District to impose special taxes upon a 2/3 vote of the electorate.

1.3 Purpose of the ordinance.

This ordinance is adopted for the following purposes, among others, and directs that the provisions hereof be interpreted to accomplish those purposes:

A. To impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical and recreational cannabis or medical and recreational cannabis products by commercial cannabis businesses in the District area of the County, pursuant to the state Adult Use of Marijuana Act, and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Bus. & Prof. Code § 26000 et seq.);

- B. To impose a tax on the privilege of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, or selling, nonmedical marijuana and marijuana products and accessories by commercial cannabis businesses in the District area of the County as approved by the voters in the November 2016 election, including nonmedical marijuana activity in the State of California.
- C. To impose a tax on lawful commercial cannabis business consistent with the fire and life safety component of the state licensing agreement in accordance with the authority granted by the Health and Safety Code sections 13910 and 13911 to impose a special tax;
- D. To specify the type of tax and rate of tax to be levied and the method of collection; and
- E. To comply with all requirements for imposition of a special tax, such tax to become operative only if submitted to the electorate and approved by a 2/3 majority vote of the voters voting in an election on the issue.

1.4 Definitions.

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

- A. "Business" shall include all activities engaged in or caused to be engaged in within the District, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.
- B. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code and is not limited to medical cannabis.
- C. "Cannabis product" means raw 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 marijuana products as defined by Section 11018.1 of the Health and Safety Code and is not limited to medical cannabis products.
- D. "Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site. The plant canopy does not need to be continuous on any premise in determining the total square footage which will be subject to tax.

E. "Commercial cannabis business" means any commercial business activity relating to cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, and selling (wholesale and/or retail sales) of cannabis and any ancillary products and accessories in the District, whether or not carried on for gain or profit.

F. "Commercial cannabis business tax," "business tax," or "commercial cannabis tax" means the tax due pursuant to this ordinance for engaging in commercial cannabis business in the District.

G. "Commercial cannabis cultivation" means cultivation conducted by, for, and as part of a commercial cannabis business.

H. "County permit" means a permit issued by the County to a person to authorize that person to operate or engage in a commercial cannabis business. The term "County permit" includes a commercial medical and recreational cannabis permit issued. The Monterey County Regional Fire District's Fire Code establishes rules and regulations for the protection of life and safety for residents and businesses within the District boundary.

I. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

J. "Delivery" means the commercial transfer of cannabis or cannabis products from a dispensary.

K. "Dispensary" means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

L. "Distributor" or "distribution" or "distribution facility" means a person or facility involved in the procurement, sale, and/or transport of cannabis and cannabis products between permitted or licensed entities.

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

N. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the District area of the County or coming into the District area

of the County from an outside location to engage in such activities. A person shall be deemed engaged in business within the District if:

1. Such person or person's employee maintains a fixed place of business within the District for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the District business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the District for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the District;
5. Such person or person's employee performs work or renders services in the District; and
6. Such person or person's employee utilizes the streets within the District in connection with the operation of motor vehicles for business purposes.

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

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

P. "Fiscal year" means July 1 through June 30 of the following calendar year.

Q. "Gross Receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, 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 on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts 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 receives 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 same business;
8. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
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:
 - a. The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or
 - b. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or
 - c. At least eighty percent of the voting and non-voting 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 Subordinance 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;

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 names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

R. "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container, that holds a valid County permit.

S. "Nursery" means a person that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

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

U. "Personal medical cannabis cultivation" means cultivation by a qualified patient who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person. "Personal medical cannabis cultivation" also includes cultivation by a primary caregiver who cultivates one hundred (100) square feet total canopy area or less of cannabis exclusively for the personal medical purposes of no more than five (5) specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Section 11362.765(c) of the California Health and Safety Code, as it may be amended.

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

X. "Square foot" or "square footage" means the maximum amount of area for commercial cannabis cultivation authorized by a County permit issued to a person engaging in commercial cannabis business, or by a state license in the absence of a County permit or license, not deducting for unutilized square footage, and shall be the basis for the tax base for cultivation.

Y. "State" means the State of California.

Z. "State license," "license," or "registration" means a state license issued pursuant to California Business and Professions Code Sections 26000, et seq. or other applicable state law.

AA. "Testing laboratory" means a facility, entity, or site in the state that offers or performs testing 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 the cannabis industry in the state; and

2. Registered with the California State Department of Public Health.

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

CC. "Transporter" means a person issued all required state and County permits to transport cannabis or cannabis products between permitted facilities.

1.5 Tax imposed.

A. There is established and imposed a commercial cannabis business tax at the rates set forth in this ordinance.

B. Tax on commercial cannabis cultivation except nurseries.

1. Every person who is engaged in commercial cannabis cultivation in the District Area of the County shall pay an annual commercial cannabis business tax. The initial tax rate effective August 1, 2018 for commercial cannabis is as follows: for cultivation, the tax rate is \$0.18 per fiscal year per authorized square foot and to increase thereafter based on the Consumer Price Index; for nursery cultivation, the tax rate is \$0.10 per authorized square foot and to increase thereafter based on the Consumer Price Index; and for all other commercial cannabis businesses, including but not limited to, dispensaries and manufacturing, the tax rate is \$1.00 per fiscal year per authorized square footage as determined by the fire district annual life safety inspection and to increase thereafter based on the Consumer Price Index.

The square footage shall be the maximum square footage allowed by the County permit for commercial cannabis cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage for commercial cannabis cultivation allowed by the state license type. In no case shall square footage which is authorized by the permit or license but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation.

1.6 Reporting and remittance of tax.

The commercial cannabis business tax imposed by this ordinance shall be imposed on a fiscal year basis and shall be due and payable in yearly installments as follows:

- A. Each person owing a commercial cannabis business shall, submit payment within 30 days of receiving invoice from the District.
- B. If the commercial cannabis business tax is owed on commercial cannabis cultivation, the square footage tax due shall be paid based on the square footage of cultivation authorized by the County permit. The tax will not be prorated or adjusted for any reduction in the square footage authorized but not utilized for cultivation. If the cultivation begins in the middle of a fiscal year, the District shall prorate, in monthly increments, the amount due for the fiscal year.
- C. All tax statements shall be completed on forms prescribed by the District.
- D. Tax statements and payments for all outstanding taxes owed to the District are immediately upon cessation of business for any reason.

1.7 Payments and communications – timely remittance.

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

1.8 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this ordinance, the taxes required to be paid pursuant to this ordinance shall be deemed delinquent if not received by the District on or before the due date.

1.9 Notice not required by the District.

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

1.10 Penalties and interest.

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

1. A penalty equal to twenty-five percent (25%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one and one-half percent (1.5%) per month; and

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one and one-half percent (1.5%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one and one-half percent (1.5%) per month on the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

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

1.11 Refunds and credits.

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

1.12 Refunds and procedures.

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 District under this ordinance, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the District within one (1) year of the date the tax was originally due and payable.

B. The District charged with the administration of this ordinance 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 District to do so.

C. In the event that the commercial cannabis business tax was erroneously paid, and the error is attributable to the District, the District shall refund the amount of tax erroneously paid up to one (1) year from when the error was identified.

D. The District 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 ordinance;
3. Provide information to any taxpayer concerning the provisions of this ordinance;
4. Receive and record all taxes remitted to the District as provided in this ordinance;
5. Maintain records of taxpayer reports and taxes collected pursuant to this ordinance;
6. Assess penalties and interest to taxpayers pursuant to this ordinance;
7. Determine amounts owed and enforce collection pursuant to this ordinance.

1.13 Appeal procedure.

Any taxpayer aggrieved by any decision of the District with respect to the amount of tax, interest, penalties and fees, if any, due under this Ordinance may appeal to the Board of Directors by filing a notice of appeal with the Fire Chief within fifteen days of the serving or mailing of the determination of tax due. The Fire Chief shall fix a time and place for hearing such appeal, and the Fire Chief shall give notice in writing to such tax payer at the last known place of address. The finding of the Board of Directors shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this ordinance for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

1.14 Enforcement - action to collect.

A. Any taxes, penalties and/or fees required to be paid under the provisions of this Ordinance shall be deemed a debt owed to the District. Any person owing money to the District under the provisions of this Ordinance shall be liable in an action brought in the name of the District for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the District 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 Ordinance or the failure to comply with any of the provisions of this Ordinance .

B. In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the District under this Ordinance is not paid when due, the District 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 individual or business as it appears on the records of the County Treasurer-Tax Collector. From the time of the filing for record, the amount required to be paid, together with penalties thereon, constitutes a lien upon all real property in the District owned by the individual or business, or subsequently acquired by the individual or business before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten (10) years from of filing of the certificate unless sooner released or otherwise discharged.

C. At any time within three (3) years after any individual or business 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 District may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the District under this Ordinance . The warrant shall be directed to the Sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The District may pay or advance to the Sheriff, the same fees, commissions

and expenses for service provided by law for similar services pursuant to a writ of execution. The District shall shall pay the fees for publication in the newspaper.

D. At any time within three (3) years after recording a lien against any individual or business, if the lien is not discharged and released in full, the District may forthwith seize any asset or property, real or personal (including bank account), of the operator 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 business subject to seizure and sale subject to this Ordinance shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.

1.15 Apportionment.

If a business subject to the tax is operating both within and outside the District area of the County, it is the intent of the District to apply the commercial cannabis business tax only on the portion within the District.

1.16 Constitutionality and legality.

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Ordinance shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection and 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 or state law.

1.17 Audit and examination of records and equipment.

A. The District shall have the power to audit and examine all books and records of persons engaged in cannabis businesses, including both state and federal income tax returns, California sales tax returns, or other evidence documenting cannabis businesses, and, where necessary, all equipment, of any person engaged in cannabis businesses in the District, for the purpose of ascertaining the amount of commercial cannabis tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this Ordinance .

B. It shall be the duty of every person liable for the collection and payment to the District of any tax imposed by this Ordinance to keep and preserve, for a period of at least three (3) 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 District, the District shall have the right to inspect at all reasonable times.

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

Nothing contained in this Ordinance 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 code provision, ordinance, or resolution of the District, 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 code provision, ordinance, or resolution of the District. Any references made or contained in any other District ordinance or resolution to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in that District ordinance or resolution.

1.19 Payment of tax does not authorize unlawful business.

A. The payment of a commercial cannabis business tax required by this Ordinance, and its acceptance by the District, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of the District Fire Code, the County Code, and all other applicable state and local laws.

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

1.20 Deficiency determinations.

If the District is not satisfied that any tax statement filed as required under the provisions of this Ordinance is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (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, a notice shall be given to the person concerned in the same manner as notices of assessment are given.

1.21 Failure to report--nonpayment, fraud.

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

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

2. If the person has not paid the tax due under the provisions of this Ordinance ;

3. If the person has not, after demand by the District, filed a corrected statement, or furnished to the District adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Ordinance ;
or

1.22 Tax assessment -- notice requirements.

The notice of assessment shall be served upon the person 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 District for the purpose of receiving notices provided under this Ordinance ; or, should the person have no address registered with the District 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.

1.23 Severability.

If any provision of this Ordinance , 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 Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

1.24 Amendment or repeal.

Ordinance 1.5 of this ordinance may be repealed or amended by the Board of Directors without a vote of the people to the extent allowed by law. However, as required by Article XIII

C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Ordinance . The people of the Monterey County Regional Fire District may affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance , if the Board of Directors has 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 interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance ; or
- C. The collection of the tax imposed by this Ordinance , even if the District had, for some period of time, failed to collect the tax.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Directors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. CEQA DETERMINATION. The Board of Directors of the Monterey County Regional Fire District finds and determines that this ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this ordinance is found to be a project under CEQA, it is subject to the CEQA exemptions contained in CEQA Guidelines sections 15061(b)(3), 15308, and 15321 because it can be seen with certainty to have no possibility of a significant effect on the environment in that this ordinance extends existing local regulations, constitutes actions to protect the environment, and enforces regulations. The ordinance is also statutorily exempt from CEQA as it provides a funding mechanism to meet operating expenses.

SECTION 5. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption. This ordinance shall become operative on August 1, 2018 and only if approved by 2/3 of the voters voting on the tax at an election.

SECTION 6. BOARD OF DIRECTORS AMENDMENTS. The Board of Directors of the Monterey County Regional Fire District is hereby authorized to adopt this ordinance in any manner that does not increase the tax rate above the maximum rate specified for each category of business or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

PASSED AND ADOPTED , by the following vote:

AYES:

NOES:

ABSTAIN:

ATTEST:

James Slaten, Secretary of the Board

Warren Poitras, President of the Board

APPROVED AS TO FORM: