

RESOLUTION NO. 5370-18

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY CALLING AN ELECTION TO BE HELD ON NOVEMBER 6, 2018, FOR VOTER CONSIDERATION OF A CANNABIS BUSINESS LICENSE TAX FOR THE CONTINUED MAINTENANCE OF ESSENTIAL CITY SERVICES; ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION; REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA TO CONSOLIDATE THE GENERAL MUNICIPAL ELECTION WITH THE GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2018, REQUESTING CERTAIN SERVICES OF THE REGISTRAR OF VOTERS OF ALAMEDA COUNTY WITH RESPECT TO THE CONSOLIDATED GENERAL MUNICIPAL ELECTION; AND PROVIDING FOR SUBMITTAL OF BALLOT ARGUMENTS AND REBUTTALS AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS

WHEREAS, on November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Cannabis Act (AUMA), which legalized the possession, use, and cultivation of non-medical cannabis for those who are 21 years of age or older and established a state system to regulate commercial cannabis activity; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which repealed the Medical Cannabis Regulation and Safety Act (MCRSA), incorporated certain licensing provisions from MCRSA, and created a single regulatory scheme for both medical and non-medical cannabis; and

WHEREAS, subject to certain exceptions, MAUCRSA generally establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of cannabis, including cannabis products, and to tax the commercial growth and retail sale of cannabis; and

WHEREAS, on November 14, 2017, the City Council adopted Ordinance No. 845-17 adding Chapter 5.44 to the Union City Municipal Code to permit certain commercial cannabis businesses within the boundaries of Union City, and create a local application process for the issuance of operator permits for those uses; and

WHEREAS, the City Council desires to place before the voters a ballot measure to enact an ordinance allowing the City Council to implement an excise tax on cannabis businesses within the City; and

WHEREAS, revenues from a cannabis business tax would be for general revenue purposes and would go into the City's general fund and could be used for any legitimate government purpose; and

WHEREAS, the City Council desires that an ordinance be submitted to the voters as a ballot measure for consideration at a Consolidated General Municipal Election on November 6, 2018, in accordance with the provisions of this resolution; and

WHEREAS, the City Council recognizes the need to authorize the expenditure of revenues for the purpose of reimbursing the County for including an ordinance in the consolidated General Election for November 6, 2018; and

WHEREAS, on June 12, 2018, the City Council adopted Resolution No. 5344-18 by which, among other things, the City called and ordered a General Municipal Election to be held on Tuesday, November 6, 2018, for the purpose of electing three members of the City Council; and by which the City requested the Board of Supervisors of the County of Alameda (the “Board of Supervisors”) to consolidate that General Municipal Election with the General Election on November 6, 2018, and by which the City requested the Board of Supervisors to issue instructions to the Registrar of Voters of the County of Alameda (the “Registrar of Voters”) to provide specified services to the City including any and all steps necessary for the holding of the consolidated election; and by which the City Council authorized reimbursing Alameda County based on Alameda County's established consolidation rate; and

WHEREAS, California Elections Code sections 9281 through 9287 establish procedures for filing arguments in favor of a ballot measure, and filing rebuttal arguments, including a procedure by which members of the City Council may be authorized by the City Council to submit ballot arguments; and

WHEREAS, California Elections Code Section 9280 authorizes the filing of an impartial analysis regarding ballot measures proposed by cities; and

WHEREAS, Article XIIC, section 2(b) of the California Constitution requires that any general tax for unrestricted general revenue purposes, such as a business license tax, must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, a substantial portion of the City’s General Fund is used for public safety purposes (police and fire protection services) and the City Council has determined that a cannabis business tax is an effective way of offsetting the impact of commercial cannabis on the City’s public safety services, including police, fire, and code enforcement; and

WHEREAS, the City of Union City is dedicated to protecting the public safety, health and quality of life of Union City residents; and

WHEREAS, the Measure will help maintain and enhance essential city services such as 911 dispatch, neighborhood police patrols, emergency response times, after-school programs for children and teens, and keep Union City fire stations open full time; and

WHEREAS, the Measure will ensure cannabis businesses pay their fair share to help protect the quality of life of Union City residents, including health and safety; and

WHEREAS, only cannabis businesses will pay the cannabis business tax; and

WHEREAS, the Measure requires strict accountability including independent audits and yearly reports to the community to ensure funds are spent as promised; and

WHEREAS, after receiving information at its July 24, 2018 City Council meeting, and after subsequently receiving testimony from the public, the City Council determined that the public interest would be well served by asking the voters of Union City to authorize a cannabis business tax; and

WHEREAS, Article XIIC, section 2(b) also requires that an election by the voters to approve a general tax must be consolidated with an election for City Councilmembers; and

WHEREAS, the November 6, 2018 election includes an election of members of the City Council; and

WHEREAS, as a general tax, a cannabis business license tax in the City must be approved by a majority vote to impose the following rates: an initial rate of one percent (1%) of gross receipts and up to two and a half percent (2.5%) of gross receipts for testing; an initial rate of two percent (2%) of gross receipts and up to three percent (3%) of gross receipts for distribution; an initial rate of four percent (4%) of gross receipts and up to five percent (5%) of gross receipts for manufacturing; and an initial rate of four percent (4%) of gross receipts and up to six percent (6%) of gross receipts for retail; an initial rate ranging from two dollars (\$2) per square foot and eight dollars (\$8) per square foot of commercial cannabis cultivation canopy space and up to a range of four dollars (\$4) per square foot and twelve dollars (\$12) per square foot of commercial cannabis cultivation canopy space; and

WHEREAS, pursuant to Government Code section 53724 and Election Code section 9222, the City Council desires to submit the Measure to the voters of Union City; and

WHEREAS, after considering the foregoing information, the City Council believes that the proposed adoption of a cannabis business tax should be authorized by the voters of Union City in the amount described herein; and

WHEREAS, based on all of the information presented at the July 24, 2018 meeting of the City Council, both written and oral, including the staff reports, minutes, and other relevant materials, the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378, subdivisions (2) and (4) of subdivision (b), this tax does not constitute a project under CEQA and therefore review under CEQA is not required.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Union City that:

SECTION 1. The foregoing recitals are true and correct and are hereby incorporated by reference.

SECTION 2. Pursuant to California Elections Code Section 9222, the City Council hereby calls an election at which it shall submit to the qualified voters of the City of Union City a measure that, if approved by a majority vote, would impose a cannabis business tax setting forth rates based on a percentage of gross receipts and based on square footage with maximum rates for each type of permitted cannabis business in the City. This measure shall be designated by letter by the Union City County Registrar of Voters. Pursuant to California Elections Code Section 10400 et seq., the election for this measure shall be consolidated with the established statewide election to be conducted on November 6, 2018.

SECTION 3. The City Council does hereby submit for adoption by the qualified voters of the City of Union City at the General Municipal Election of November 6, 2018, the following question:

To maintain/enhance essential city services including 911 dispatch/neighborhood police patrols/emergency response times; after-school programs for children/teens; keeping fire stations open full time;	YES	
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<p>and other essential services shall a measure be adopted establishing a Union City cannabis business tax at a maximum rate of \$12.00 per square foot for cultivation and 6% of gross receipts for others, until ended by voters, providing \$1,400,000 annually, requiring oversight and no money for Sacramento?</p>	<p>NO</p>	
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SECTION 4. The full text of the proposed measure to be submitted to the voters is attached as Exhibit A (the "Measure") hereto and shall be made available to the public upon request. If a simple majority of the qualified voters voting on the Measure vote in favor therefor, the Measure shall be deemed adopted upon the City Council's declaration of the results of the election and effective ten (10) days thereafter. The City Council hereby approves the proposed ordinance, the form thereof, and its submission to the voters of Union City at the November 6, 2018 election.

SECTION 5. The Board of Supervisors of Alameda County is hereby requested to consent and agree to the consolidation of the General Municipal Election described in this Resolution with the General Election on Tuesday, November 6, 2018, and to issue instructions to the Alameda County Registrar of Voters to take any and all steps necessary for the holding of the Consolidated General Municipal Election. This request is made pursuant to California Elections Code section 10403, and the City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Section 10418.

SECTION 6. The Board of Supervisors of Alameda County is hereby requested to permit the Alameda County Registrar of Voters to provide such services as may be necessary to properly and lawfully hold and conduct a Consolidated General Municipal Election in the City on November 6, 2018, pursuant to this Resolution, including but not restricted to the providing and printing of ballots and polling place cards, election supplies, voting booths, flags, registration lists and any other materials and services required to lawfully conduct the election. The City recognizes that additional costs will be incurred by the County by reason of this Consolidated General Municipal Election, and the City agrees to reimburse the County based on the County's established rates. This request is made pursuant to California Elections Code section 10002.

SECTION 7. Unless otherwise specified in this Resolution, the General Municipal Election shall be held and conducted as provided in Resolution No. 5344-18, and as provided by law for holding municipal elections.

SECTION 8. (a) In accordance with Elections Code sections 9282 and 9283, arguments submitted for or against the Measure shall not exceed 300 words in length, and shall be printed upon the same sheet of paper and mailed to each voter with the sample ballot for the election and may be signed by not more than five (5) persons.

(b) In accordance with Elections Code section 9282, the following headings, as appropriate, shall precede the arguments' wording, but shall not be counted in the 300 word maximum: "Argument Against Measure _____" or "Argument For Measure _____" (the blank spaces being filled only with the letter or number, if any, designating the Measure).

(c) In accordance with Elections Code section 9283, printed arguments submitted to voters in accordance with section 9282 of the Elections Code shall be filed with the City Clerk, accompanied by the printed name(s) and signature(s) of the author(s) submitting it or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers. Arguments are due in the office of the City

Clerk prior to 11:00 a.m. on August 7, 2018.

(d) The City Council hereby authorizes Mayor Dutra-Vernaci to prepare and file a ballot argument in favor of the ballot measure set forth in this Resolution, which may be signed by members of the City Council, representatives of bona fide associations of citizens, and individual voters eligible to vote on the Measure. Members of the City Council who sign the ballot argument may use their titles.

SECTION 9. (a) Pursuant to Elections Code section 9285, when the City Clerk has selected the arguments for and against the Measure, that will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the Measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument that it seeks to rebut.

(b) Rebuttal arguments shall not exceed 250 words and may be signed by more than five persons. However, only the first five persons to sign will be printed with the ballot measure. The persons that sign the rebuttal arguments may be different persons than the persons that signed the direct arguments.

(c) The last day for submittal of rebuttal arguments for or against the Measure shall be by 11:00 a.m. on August 17, 2018.

(d) The City Council hereby authorizes Mayor Dutra-Vernaci to prepare and file a rebuttal argument in favor of the ballot measure set forth in this Resolution, which may be signed by members of the City Council, representatives of bona fide associations of citizens, and individual voters eligible to vote on the Measure. Members of the City Council who sign the rebuttal argument may use their titles. In accordance with Elections Code section 9287, any council members authorized by the City Council to do so may sign the rebuttal argument for the Measure.

SECTION 10. In accordance with Elections Code section 9280, the City Attorney is directed to file with the City Clerk, by 11:00 a.m. on August 7, 2018, an impartial analysis of the Measure, not to exceed 500 words, showing the effect of the Measure on the existing law and the operation of the Measure.

SECTION 11. (a) The City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors of Alameda County and the Alameda County Elections Department. The City Clerk is hereby authorized and directed to take all steps necessary to place the Measure on the ballot and to cause a synopsis of the Measure attached as Exhibit A to be published once in a newspaper of general circulation in accordance with California Elections Code section 12111 and California Government Code section 6061. A copy of the Measure shall be made available to any voter upon request. The City Clerk is authorized and directed to give further additional notice of the Measure in the time, form, and manner required by law.

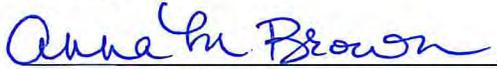
(b) In all particulars not recited in this Resolution, and except as provided for in Elections Code sections 10403 and 10418, the election shall be held and conducted as provided by law for holding municipal elections.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Union City at a regular meeting held on the 24th day of July, 2018 by the following vote:

AYES: Councilmembers Duncan, Gacoscos, Vice Mayor Ellis, Mayor Dutra-Vernaci
NOES: Councilmember Singh
ABSENT: None
ABSTAIN: None


CAROL DUTRA-VERNACI
Mayor

ATTEST:


ANNA M. BROWN
City Clerk

APPROVED AS TO FORM:


KRISTOPHER J. KOKOTAYLO
City Attorney

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF UNION CITY ADDING CHAPTER 3.24
(CANNABIS BUSINESS TAX) TO THE UNION CITY MUNICIPAL CODE**

WHEREAS, on November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Cannabis Act (AUMA), which legalized the possession, use, and cultivation of non-medical cannabis for those who are 21 years of age or older and established a state system to regulate commercial cannabis activity; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which repealed the Medical Cannabis Regulation and Safety Act (MCRSA), incorporated certain licensing provisions from MCRSA, and created a single regulatory scheme for both medical and non-medical cannabis; and

WHEREAS, subject to certain exceptions, MAUCRSA generally establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of cannabis, including cannabis products, and to tax the commercial growth and retail sale of cannabis; and

WHEREAS, the City Council desires to impose a cannabis business license tax for the privilege of operating within the City; and

WHEREAS, revenues from a cannabis business tax would be for unrestricted general revenue purposes and go into the City's general fund and could be used for any legitimate government purpose; and

WHEREAS, a substantial portion of the City's General Fund is used for public safety purposes (police and fire protection services) and the City Council has determined that a cannabis business tax is an effective way of offsetting the impact of commercial cannabis on the City's public safety services, including police, fire, and code enforcement; and

WHEREAS, Article XIIC, section 2(b) of the California Constitution requires that any general tax for unrestricted general revenue purposes, such as a business license tax, must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, the tax imposed by this Ordinance is an excise tax on the privilege of conducting business within the City and will only become effective if approved by a majority of the City's voters at the November 6, 2018 election; and

WHEREAS, based on all of the information presented at the July 24, 2018 meeting of the City Council, both written and oral, including the staff reports, minutes, and other relevant materials, the City Council finds that under CEQA Guidelines 15060(c)(2) and 15378,

subdivisions (2) and (4) of subdivision (b), this tax does not constitute a project under CEQA and therefore review under CEQA, review is not required.

THE PEOPLE OF THE CITY OF UNION CITY DO ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Amendment of Municipal Code. Chapter 3.24 “Cannabis Business Tax” is hereby added to the Union City Municipal Code as follows:

**CHAPTER 3.24
CANNABIS BUSINESS TAX**

Sections:

- 3.24.010 Short title.
- 3.24.020 General excise tax.
- 3.24.030 Purpose.
- 3.24.040 Definitions.
- 3.24.050 Tax imposed.
- 3.24.060 Reporting and remittance of tax.
- 3.24.070 Payments and communications –timely remittance.
- 3.24.080 Payment – when taxes deemed delinquent.
- 3.24.090 Notice not required by the City.
- 3.24.100 Penalties and interest.
- 3.24.110 Refunds and credits.
- 3.24.120 Refunds and procedures.
- 3.24.130 Administration of the tax.
- 3.24.140 Apportionment.
- 3.24.150 Construction.
- 3.24.160 Audit and examination of records and equipment.
- 3.24.170 Other licenses, permits, taxes, fees or charges.
- 3.24.180 Payment of tax does not authorize unlawful business.
- 3.24.190 Deficiency determinations.
- 3.24.200 Failure to report – nonpayment, fraud.
- 3.24.210 Tax assessment –notice requirements.
- 3.24.220 Tax assessment – hearing, application, and determination.
- 3.24.230 Appeal procedure.
- 3.24.240 Conviction for violation – taxes not waived.
- 3.24.250 Violation deemed misdemeanor.
- 3.24.260 Actions to collect.
- 3.24.270 Remedies cumulative.
- 3.24.280 Annual audit.
- 3.24.290 Amendment or repeal.

3.24.010 Short title.

This chapter shall be known as the “Cannabis Business Tax Ordinance.”

3.24.020 General excise tax.

The cannabis business tax is enacted solely to raise revenue and not to regulate cannabis activity; regulation of that activity remains the province of the City Council. 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.

3.24.030 Purpose.

The ordinance codified in this chapter is adopted to achieve the following purposes, among others, and shall be interpreted to accomplish those purposes:

- A. To impose an excise tax on certain businesses engaged in the cannabis industry operating within the City of Union City pursuant to MAUCRSA and the “California Control, Regulate and Tax Adult Use of Marijuana Initiative” approved by the state’s voters on November 8, 2016, and/or any other enabling legislation, or in violation of such legislation, and notwithstanding whether such state laws use the term “marijuana” or “cannabis”;
- B. To specify the type of tax and maximum rate of tax that may be levied and the method of collection;
- C. To comply with all requirements to impose a general excise tax.

3.24.040 Definitions.

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

- A. “Business” means professions, trades, occupations and all and every kind of calling, whether or not carried on for profit.
- 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. In addition, and without limiting the foregoing, “cannabis” also means “cannabis” as defined by Section 26001 of the California Business and Professions Code and Section 11018 of the California Health and Safety Code, as may be amended from time to time, and all other applicable state law.
- C. “Cannabis business” means any business activity in the City relating to cannabis, including but not limited to cultivation (including nurseries), transportation, distribution, manufacturing, 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.

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

E. “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 California Health and Safety Code, as may be amended from time to time.

F. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether the areas are contiguous or noncontiguous. When cannabis plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area. 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.

G. “City” means the City of Union City, either the entity or its territorial limits, as the context requires.

H. “City Council” means the City Council of the City of Union City.

I. “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 “California Control, Regulate and Tax Adult Use of Marijuana Initiative” approved by the state’s voters on November 8, 2016, and as amended by MAUCRSA, for which the individual receives no compensation whatsoever.

J. “City permit” means a permit issued by the City to a person to authorize that person to operate or engage in a cannabis business.

K. “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 26001, as may be amended from time to time.

L. “Distributor” means a person engaged in procuring cannabis from a cultivator, and/or procuring cannabis products from a manufacturer, for sale to a retailer. In addition, and without limiting the foregoing, “distributor” includes “distributor” as defined in Section 26070 of the Business and Professions Code, as may be amended from time to time. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between persons with a State license.

M. “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.

N. “Engaged in business as a cannabis business” means the commencing, conducting, operating, managing or carrying on of a cannabis business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in business as a cannabis business within the City if:

1. Such person or person’s employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
2. Such person or person’s employee owns or leases real property within the City for business purposes;
3. Such person or person’s employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;
4. Such person or person’s employee regularly conducts solicitation of business within the City; or
5. Such person or person’s employee performs work or renders services in the City.

The foregoing specified activities shall not be a limitation on the meaning of “engaged in business as a cannabis business.”

O. “Gross Receipts,” except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. “Gross receipts” shall also include the estimated value of cannabis products which are transferred between cultivation, manufacturing, distribution, or retail operations, using a valuation methodology which may be developed in the sole discretion of the Tax Administrator, for the purposes of estimating gross receipts when there is no recorded sale for purposes of the cannabis business tax. However, the following shall be excluded from gross receipts:

1. Cash discounts where allowed and taken on sales;

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

3. 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;

4. 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;

5. 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;

6. 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;

7. 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.

8. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling shall not be subject to the cannabis business tax under this chapter. However, any retail sales not subject to this chapter as a result of the administrative ruling shall be subject to the appropriate business tax under any other chapter or title as determined by the Tax Administrator.

P. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

Q. "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 who 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 26001, as may be amended from time to time.

R. “Nursery” means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products 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 26001, as may be amended from time to time.

S. “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.

T. “Retailer” 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, “retailer” includes “retailer” as defined in Section 26070 of the Business and Professions Code including, as may be amended from time to time.

U. “Sale” means the transfer, in any manner or by any means whatsoever, of title to real or personal property for a consideration; the serving, supplying, or furnishing for a consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The definitions in this subsection shall be deemed to include any transaction which is or which, in effect, results in a sale within the contemplation of law.

V. “State” means the State of California.

W. “State license” means a state license issued pursuant to California Business and Professions Code Section 26000 et seq. or other applicable state law.

X. “Tax Administrator” means the Finance Director of the City of Union City or other designee of the City Manager.

Y. “Testing Laboratory” means a cannabis business that (i) offers or performs tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the State Department of Public Health. In addition, and without limiting the foregoing, “testing laboratory” also includes “testing laboratory” as defined under Section 26001 of the Business and Professions Code, as may be amended from time to time.

3.24.050 Tax imposed.

A. A cannabis business tax is hereby imposed on every person who is engaged in cannabis business in the City as prescribed herein, from and after the effective date of this ordinance. 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 business tax imposed by this section.

B. The initial rate of the cannabis business tax shall be as follows:

1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Eight dollars (\$8.00) annually per square foot of canopy space that uses exclusively artificial lighting.
 - b. Six dollars (\$6.00) annually per square foot of canopy space that uses a combination of natural and supplemental artificial lighting.
 - c. Four dollars (\$4.00) annually per square foot of canopy space that uses no artificial lighting.
 - d. Two dollars (\$2.00) annually per square foot of canopy space for any nursery.
2. For every person who engages in cannabis business as a testing laboratory: one percent (1%) of gross receipts.
3. For every person who engages in cannabis business as a retailer: Four percent (4%) of gross receipts.
4. For every person who engages in cannabis business as a distributor: two percent (2%) of gross receipts.
5. For every person who engages in cannabis business as a manufacturer or any other type of cannabis business not described in subsections (B) (1), (2), (3) or (4) of this section: Four percent (4%) of gross receipts.

C. The City Council may, by resolution, in its discretion, increase or decrease the rate of the cannabis business tax for all persons engaged in a cannabis business in the City in commercial cannabis cultivation or as a manufacturer, distributor, retailer or other type of cannabis business or establish differing tax rates for different categories of cannabis businesses. For example, and without limitation, the City Council may set different rates for cannabis businesses serving medical or adult recreational use, or for different types of manufacturers, distributors or retailers. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate for any type of cannabis business established in subsection (D) of this section for the date on which the adjusted rate will commence. No further voter approval shall be required for any adjustment of a tax rate under the authority granted by this section, it being the intent of the people of the City to authorize such a tax up to and including the maximum rates pursuant to subsection (D) of this section whenever implemented by the City Council hereafter.

D. The maximum rate shall be calculated as follows:

1. For every person who is engaged in commercial cannabis cultivation in the City:

a. Through June 30, 2021, the maximum rate shall be:

i. Twelve dollars (\$12.00) annually per square foot of canopy space that uses exclusively artificial lighting.

ii. Ten dollars (\$10.00) annually per square foot of canopy space that uses a combination of natural and supplemental artificial lighting.

iii. Eight dollars (\$8.00) annually per square foot of canopy space that uses no artificial lighting.

iv. Four dollars (\$4.00) annually per square foot of canopy space for any nursery.

b. On July 1, 2021 and annually thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-San Jose area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

2. For every person who engages in cannabis business as a testing laboratory, the maximum tax rate shall not exceed two and a half percent (2.5%) of gross receipts.

3. For every person who engages in cannabis business as a retailer, the maximum tax rate shall not exceed six percent (6%) of gross receipts.

4. For every person who engages in cannabis business as a distributor, the maximum tax rate shall not exceed three percent (3%) of gross receipts.

5. For every person who engages in cannabis business as a cannabis manufacturer or any other type of cannabis business not described in subsections (D) (1), (2), (3) or (4) of this section, the maximum tax rate shall not exceed five percent (5%) of gross receipts.

E. A person engaged in multiple cannabis business activities shall pay the tax applicable to each cannabis business activity regardless of whether or not the cannabis business activity involves a transaction with another person. For example, and without limitation, a person

engaged in a cannabis business as both a manufacturer and retailer shall first pay the tax applicable for persons engaged in cannabis business as a manufacturer, and then second pay the tax applicable for persons engaged in cannabis business as a retailer.

3.24.060 Reporting and remittance of tax.

A. The cannabis business tax imposed by this chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business's canopy space during the quarter and the rate shall be 25% of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.

B. Each person owing cannabis business tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the Tax Administrator a statement of the tax owed for that calendar quarter and the basis for calculating that tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on that same date as the statement for the calendar quarter is due.

C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.

D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

E. For purposes of this section, the square feet of canopy space for a cannabis business engaged in commercial cannabis cultivation shall be presumed to be no less than the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. The tax shall be calculated in accordance with rules established by the Tax Administrator pursuant to this chapter. Any decision to prorate or adjust the tax will be made at the sole discretion of the Tax Administrator. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used.

3.24.070 Payments and communications – timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be

accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the City is open to the public.

3.24.080 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 Tax Administrator on or before the due date as specified in Sections 3.24.060 and 3.24.070.

3.24.090 Notice not required by the City.

The City 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.

3.24.100 Penalties and interest.

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

1. A penalty equal to ten percent (10%) 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 percent (1.0%) per month.

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 percent (1.0%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1.0%) 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 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.

3.24.110 Refunds and credits.

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 3.24.120.

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

3.24.120 Refunds and procedures.

A. Whenever the amount of any 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 Tax Administrator within one (1) year of the date the tax was originally due and payable.

B. The Tax Administrator, his or her designee 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 Tax Administrator to do so.

C. In the event that the 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.

3.24.130 Administration of the tax.

A. For purposes of administration and enforcement of this chapter, the Tax Administrator may from time to time promulgate such administrative interpretations, 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.

B. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this chapter;
3. Receive and record all taxes remitted to the City as provided in this chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this chapter;
5. Assess penalties and interest to taxpayers pursuant to this chapter;
6. Determine amounts owed and enforce collection pursuant to this chapter.

3.24.140 Apportionment.

If a business subject to the cannabis business tax is operating both within and outside the City, it is the intent of the City to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment.

3.24.150 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.

3.24.160 Audit and examination of records and equipment.

A. The Tax Administrator 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 Tax Administrator, refuses to make available for audit, examination or verification such books, records or equipment as the Tax Administrator requests, the Tax Administrator may, after full consideration of all information within 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, following the procedures set forth in Sections 3.24.210 and 3.24.220, except that calculation of any penalties and interest for unreported or misreported gross receipts shall be in accordance with Section 3.24.100 and appeals shall be in accordance with Section 3.24.230.

B. The cannabis business being audited shall be liable for the cost of the audit and all reasonable City administrative expenses related to the audit.

C. 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 three 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 Tax Administrator shall have the right to inspect at all reasonable times.

3.24.170 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 this Code unless otherwise expressly provided.

3.24.180 Payment of tax does not authorize unlawful business.

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

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

3.24.190 Deficiency determinations.

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, 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, 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 of deficiency shall be given to the person concerned in the same manner as notices of assessment are given under Section 3.24.210.

3.24.200 Failure to report—nonpayment, fraud.

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

1. If the person has not filed a complete statement or return required under this chapter;
2. If the person has not timely paid any tax, fee, interest and/or penalties due under this chapter;
3. If the person has not, after demand by the Tax Administrator, filed a corrected return or statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under this chapter.

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

3.24.210 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 Tax Administrator for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the

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

3.24.220 Tax assessment - hearing, application and determination.

Within thirty (30) days after the date of service of the notice of assessment, the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five (5) days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and, if applicable, reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 3.24.210 for giving notice of assessment.

3.24.230 Appeal procedure.

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, fee, interest and penalties, if any, due under this chapter may appeal to the City Manager by filing a written appeal with the City within fifteen calendar days of the mailing of the decision or determination. The City shall schedule the appeal and give fifteen (15) 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 Manager shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this chapter.

3.24.240 Conviction for 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.

3.24.250 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 Section 1.16.010. 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.

3.24.260 Actions to collect.

The amount of any tax, fee, penalty and/or interest imposed pursuant to this chapter shall be deemed a debt owed to the City. An action may be commenced in the name of the City in any court of competent jurisdiction, for the amount of any delinquent tax, fees, penalties and interest thereon.

3.24.270 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.

3.24.280 Annual audit.

Each year, as part of audit of the City's financial statements, the City's independent auditors shall complete a report reviewing the collection, management, and expenditure of revenue from the tax levied by this chapter.

3.24.290 Amendment or repeal.

As required by Article XIIC of the California Constitution, any amendment that increases the maximum rates of tax beyond the levels authorized in Section 3.24.050 shall not take effect unless approved by a vote of the people. The City Council may, by resolution, implement a tax under this chapter in any amount or at any rate that does not exceed the maximum rates set forth in Section 3.24.050.

SECTION 3. Amendment. The City Council of the City of Union City is hereby authorized to amend Chapter 3.24 of the Union City Municipal Code as adopted by this Ordinance in any manner that does not increase the tax rates above the maximum rates set forth in Section 3.24.050, or that otherwise constitutes a tax increase for which voter approval is required by Article XIIC of the California Constitution.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. If this ordinance is approved by a majority of the voters voting on the issue at the November 6, 2018 election, pursuant to Elections Code Section 9217, this ordinance shall become effective ten (10) days after the Council declares the results of the election.

APPROVED by the following vote of the People of the City of Union City on November 6, 2018:

YESES:

NOES:

ADOPTED by Declaration of the November 6, 2018 election results by the City Council of the City of Union City at a regular meeting held on _____, 2018, by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS

APPROVED:

Carol Dutra-Vernaci, Mayor

ATTEST:

Anna Brown, City Clerk
2990534.1

APPROVED AS TO FORM:

Kristopher J. Kokotaylo, City Attorney