

ORDINANCE NO. 2019-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA ADDING CHAPTER 5.32 “CANNABIS BUSINESS ACTIVITIES TAX ORDINANCE OF THE CITY OF SAN JUAN BAUTISTA” TO TITLE 5 “PUBLIC HEALTH, SAFETY AND WELFARE” OF THE SAN JUAN BAUTISTA MUNICIPAL CODE

Section 1. EVIDENCE

The City Council has considered all of the evidence submitted into the administrative record, which includes, but is not limited to, public comments, both written and oral, received and/or submitted at, or prior to the City Council’s consideration of this Ordinance.

Section 2. ADDING CHAPTER 5.32 “CANNABIS BUSINESS ACTIVITIES TAX ORDINANCE OF THE CITY OF SAN JUAN BAUTISTA” TO THE SAN JUAN BAUTISTA MUNICIPAL CODE

Title 5 “PUBLIC HEALTH, SAFETY AND WELFARE” of the San Juan Bautista Municipal Code shall be amended to add in its entirety as follows:

Chapter 5.32

CANNABIS BUSINESS ACTIVITIES TAX

Sections:

- 5.32.010 Title
- 5.32.020 Authority and Purpose
- 5.32.030 Intent
- 5.32.040 General Tax
- 5.32.050 Definitions
- 5.32.060 Tax Imposed
- 5.32.070 Exemptions
- 5.32.080 Tax, Penalties, Interest, and Fees as a Debt
- 5.32.90 Administration
- 5.32.100 Registration; Change of Ownership
- 5.32.110 Reporting and Remittance of Tax
- 5.32.120 Deficiency
- 5.32.130 Delinquency; Notice Not Required By City
- 5.32.140 Penalties, Fees, and Interest
- 5.32.150 Waiver of Penalties
- 5.32.160 Refunds; Credits
- 5.32.170 Notice of Assessment
- 5.32.180 Assessment Hearing
- 5.32.190 Appeal From Assessment Hearing
- 5.32.200 Enforcement
- 5.32.210 Apportionment

- 5.32.220 Constitutionality and Legality
- 5.32.230 Recordkeeping; Audit
- 5.32.240 Other Licenses, Permits, Tax, Fees, or Charges
- 5.32.250 Payment of Tax Does Not Authorize Unlawful Activities
- 5.32.260 Manner of Giving Notice
- 5.32.270 Unlawful Activities Designated; Misdemeanor
- 5.32.280 Violation; Taxes Not Waived
- 5.32.290 Severability
- 5.32.300 Remedies Cumulative
- 5.32.310 Amendment or Repeal

5.32.010- TITLE.

This article shall be known as the “Cannabis Business Activities Tax Ordinance of the City of San Juan Bautista.”

5.32.020- AUTHORITY AND PURPOSE.

- (A) This article is adopted pursuant to the MAUCRSA, specifically California Revenue and Taxation Code Section 34021.5, as may be amended, California Government Code Section 53724, California Elections Code Section 9217, and upon approval by the electorate in accordance with Section 2 of Article XIII C of the Constitution of the State of California and Government Code Section 53723.
- (B) This article is adopted to achieve the following purposes, among others, and directs that the provisions herein be interpreted in order to accomplish those purposes:
 - a. To impose a tax upon cannabis businesses for the privilege of engaging in cannabis business activities, whether medicinal or non-medicinal, in the City of San Juan Bautista.
 - b. To specify the type of tax, the rate of tax to be levied, and the method of collection.
 - c. To comply with all requirements of imposition of a general tax, such tax to become operative only if submitted to the electorate and approved by a majority vote of the voters voting in the election on the issue.

5.32.030 - INTENT.

- (A) This article is enacted solely for the purpose of raising revenue for general City purposes, and is not intended to be regulatory.
- (B) Nothing in this article is intended, nor shall be construed, to exempt cannabis businesses from compliance with all applicable provisions of the San Juan Bautista Municipal Code and all other applicable State and federal laws.
- (C) The intent of this article is to levy a tax on all cannabis businesses that operate in the City, regardless of whether such business would have been legal at the time this article was enacted. Nothing in this article shall be interpreted to authorize or permit any cannabis business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.
- (D) The Cannabis Business Activities Tax is levied based upon gross receipts and/or square footage of cannabis plant canopy, depending on the type of cannabis business activity in which a cannabis business is engaged.

- (E) The Cannabis Business Activities Tax is an excise tax, i.e., it is not a sales and use tax, a transaction and use tax, a tax upon income, a tax upon real property, or any other type of tax.

5.32.040 - GENERAL TAX.

The Cannabis Business Activities Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this article shall be placed in the City's general fund and used for unrestricted general revenue purposes.

5.32.050 - DEFINITIONS.

- (A) "Cannabis" means all parts of the plant *Cannabis Sativa* Linnaeus, *Cannabis Indica*, or *Cannabis Ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.
- (B) "Cannabis business," means any person engaged in any cannabis business activity, as those terms are defined in this article.
- (C) "Cannabis business activity" or "cannabis business operation" shall have the meaning set forth in California Business and Professions Code Section 26001, subdivision (k). Cannabis business activity does not include personal cultivation as defined by Health and Safety Code Section 11362.2, as may be amended.
- (D) "Cannabis Business Activities Tax" means the tax due under this article for engaging in cannabis business activities in the City.
- (E) "Cannabis products" shall have the same meaning set forth in Revenue and Taxation Code Section 34010, subdivision (g).
- (F) "Canopy," "canopy area," "plant canopy," "plants canopy area," or "cultivation area" means the cumulative total square footage of all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or non-contiguous, including the space between plants within the canopy area, on any one site as calculated by the City Manager, or their designee, but does not include aisles or other open areas outside the canopy area. The canopy includes, but is not limited to, the area occupied by cannabis plant seeds, seedlings, immature plants, mature plants, or any cannabis plant, or part thereof, in any stage of processing, including harvesting, drying, curing, trimming, etc.
- (G) "City" means the City of San Juan Bautista.
- (H) "Cultivation" means any activity involving the propagation, planting, growing, harvesting, or processing, as defined in this article, of one or more cannabis plants, or any part thereof, in any location, indoor or outdoor, including from within a fully enclosed and secure building or structure.

- (I) "Cultivator" means a person engaged in the cultivation of cannabis.
- (J) "Delivery" shall have the same meaning set forth in California Business and Professions Code Section 26001, subdivision (p).
- (K) "Distributor" means a person engaged in the distribution of cannabis and/or cannabis products between cannabis businesses.
- (L) "Distribution" means the procurement, sale, and transport of cannabis and cannabis products.
- (M) "Engaged in [cannabis business activities]" means the 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 City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in cannabis business activities 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;
 - (5) Such person or person's employee performs work or renders services in the City; and
 - (6) Such person or person's employee utilizes the streets within the City 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 [cannabis business activities]."
- (N) "Gross Receipts" shall have the same meaning as set forth in California Revenue and Taxation Code Section 6012.
- (O) "Manufacture" means 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.
- (P) "Manufacturer" means a person engaged in the manufacture of cannabis and/or cannabis products.
- (Q) "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code Section 26000 et seq.
- (R) "Microbusiness" shall have the meaning set forth in the California Business and Professions Code Section 26070, subdivision (a)(3)(A).
- (S) "Non-medicinal cannabis" means cannabis used for adult-use, recreational, or non-medicinal purposes.
- (T) "Nursery" means a cannabis business that engaged only in the production of cannabis clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- (U) "Person" means an individual, firm, partnership, joint venture, association,

corporation, cooperative, company, collective, organization, business, and/or entity.

- (V) "Process" or "processing" means all cannabis business activities associated with drying, curing, grading, trimming, storing, packaging, and labeling of raw cannabis, or any part thereof, for transport.
- (W) "Propagate" or "propagation" means to cultivate immature plants from cannabis plant cuttings or seeds.
- (X) "Retail sale," "sell," and "to sell" include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a cannabis permittee to the cannabis permittee from whom the cannabis or cannabis product was purchased.
- (Y) "Retailer" means a person engaged in the retail or sale of cannabis and/or cannabis products.
- (Z) "Testing laboratory" or "laboratory" means a laboratory, facility, or entity in California that offers or performs tests of cannabis or cannabis products and that is accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (AA) "Transport" or "transportation" means the transfer of cannabis from the licensed cannabis business site of one MAUCRSA licensee to the licensed cannabis business site of another MAUCRSA licensee for the purposes of conducting cannabis business activities as authorized pursuant to California Business and Professions Code Section 26000 et seq. Cannabis may only be transported inside of a commercial vehicle or trailer and may not be visible or identifiable from outside of the commercial vehicle or trailer. Transportation by means of aircraft, watercraft, drones, rail, human powered vehicles, and unmanned vehicles is prohibited. The County shall not prevent the carriage of cannabis or cannabis products on public roads by a MAUCRSA licensee acting in compliance with State law to transport cannabis or cannabis products from the licensed cannabis business site of one MAUCRSA licensee to the licensed cannabis business site of another MAUCRSA licensee.
- (BB) "Transporter" means a person engaged in the transportation of cannabis and/or cannabis products between cannabis businesses.

5.32.06 - TAX IMPOSED.

- (A) There is established and imposed a Cannabis Business Activities Tax at the rates set forth in this article.
- (B) Each person engaged in any cannabis business activity in the City, regardless if the cannabis business has been issued a permit to operate lawfully in the City or is operating unlawfully, shall pay an annual Cannabis Business Activities Tax. Said tax shall be imposed upon any and all cannabis business activities, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous.
- (C) Tax on Cultivation Type Cannabis Business Activities.

1. Every person who is engaged in cultivation type cannabis business activities in the City shall pay an annual Cannabis Business Activities Tax, which shall be determined on a square footage basis, i.e., the “canopy” as that term is defined herein.
2. The minimum and maximum rates of the Cannabis Business Activities Tax for cultivation type cannabis business activities shall be as follows:

Cannabis Business Activity Type:		
Cultivation	Minimum	Maximum
Nursery	\$3.00	\$12.00
Outdoor (specialty cottage)	\$3.00	\$12.00
Outdoor (specialty)	\$3.00	\$12.00
Outdoor (small)	\$3.00	\$12.00
Outdoor (medium)	\$3.00	\$12.00
Outdoor (large)	\$3.00	\$12.00
Indoor (specialty cottage)	\$3.00	\$12.00
Indoor (specialty)	\$3.00	\$12.00
Indoor (small)	\$3.00	\$12.00
Indoor (medium)	\$3.00	\$12.00
Indoor (large)	\$3.00	\$12.00
Mixed-Light (specialty cottage)	\$3.00	\$12.00
Mixed-Light (specialty)	\$3.00	\$12.00
Mixed-Light (small)	\$3.00	\$12.00
Mixed Light (medium)	\$3.00	\$12.00
Mixed-Light (large)	\$3.00	\$12.00

3. Beginning on July 1, 2020, and on July 1 of each succeeding fiscal year thereafter, the Cannabis Business Activities Tax imposed by this Subdivision shall increase by the most recent change in the annual average of the Consumer Price Index (“CPI”) for all urban consumers in the San-Francisco-Oakland-San-Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subdivision shall be made.
4. The City Council may, in its discretion, at any time by resolution or ordinance, set the initial rate and/or adjust the tax rate for all persons engaged in any cannabis business activity in the City, or establish differing tax rates for different categories of cannabis businesses, including medicinal or non-medicinal cannabis businesses, subject to the minimum and maximum rates established in Subdivisions (C)(2) and (C)(3) above.

(D) Tax on Distribution Type Cannabis Business Activities.

1. Every person who is engaged in distribution type cannabis business activities in the City shall pay an annual Cannabis Business Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Cannabis Business Activities Tax for distribution type cannabis business activities shall be as follows:

Cannabis Business Activity Type: Distribution	Minimum	Maximum
Distributor	2%	8%
Distributor (Transportation-Only)	0.5%	8%

3. The City Council may, in its discretion, at any time by resolution or ordinance, set the initial rate and/or adjust the tax rate for all persons engaged in any cannabis business activity in the City, or establish differing tax rates for different categories of cannabis businesses, including medicinal or non-medicinal cannabis businesses, subject to the minimum and maximum rates established in Subdivision (D)(2) above.

(E) Tax on Manufacturing Type Cannabis Business Activities.

1. Every person who is engaged in manufacturing type cannabis business activities in the City shall pay an annual Cannabis Business Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Cannabis Business Activities Tax for manufacturing type cannabis business activities shall be as follows:

Cannabis Business Activity Type: Manufacturing	Minimum	Maximum
Manufacturing (Level 1)	2%	8%
Manufacturing (Level 2)	2%	8%

3. The City Council may, in its discretion, at any time by resolution or ordinance, set the initial rate and/or adjust the tax rate for all persons engaged in any cannabis business activity in the City, or establish differing tax rates for different categories of cannabis businesses, including medicinal or non-medicinal cannabis businesses, subject to the minimum and maximum rates established in Subdivision (E)(2) above.

(F) Tax on Microbusiness Type Cannabis Business Activities.

1. Every person who is engaged in microbusiness type cannabis business activities in the City, which shall be determined on a gross receipts per fiscal year basis.

2. The minimum and maximum rates of the Cannabis Business Activities Tax for microbusiness type cannabis business activities shall be as follows:

Cannabis Business Activity Type: Microbusiness	Minimum	Maximum
Microbusiness (Retailer)	2%	8%
Microbusiness (Non-Retailer)	2%	8%

3. The City Council may, in its discretion, at any time by resolution or ordinance, set the initial rate and/or adjust the tax rate for all persons engaged in any cannabis business activity in the City, or establish differing tax rates for different categories of cannabis businesses, including medicinal or non-medicinal cannabis businesses, subject to the minimum and maximum rates established in Subdivision (F)(2) above.

(G) Tax on Retailer Type Cannabis Business Activities.

1. Every person who is engaged in retailer type cannabis business activities in the City shall pay an annual Cannabis Business Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Cannabis Business Activities Tax for retailer type cannabis business activities shall be as follows:

Cannabis Business Activity Type: Retailer	Minimum	Maximum
Retailer (Delivery-Only)	3%	10%
Retailer	3%	10%

3. The City Council may, in its discretion, at any time by resolution or ordinance, set the initial rate and/or adjust the tax rate for all persons engaged in any cannabis business activity in the City, or establish differing tax rates for different categories of cannabis businesses, including medicinal or non-medicinal cannabis businesses, subject to the minimum and maximum rates established in Subdivision (G)(2) above.

(H) Tax on Testing Laboratory Type Cannabis Business Activities.

1. Every person who is engaged in testing laboratory type cannabis business activities in the City shall pay an annual Cannabis Business Activities Tax, which shall be determined on a gross receipts per fiscal year basis.
2. The minimum and maximum rates of the Cannabis Business Activities Tax for testing laboratory type cannabis business activities shall be as follows:

Cannabis Business Activity Type: Testing Laboratory	Minimum	Maximum
Testing Laboratory	1%	5%

3. The City Council may, in its discretion, at any time by resolution or ordinance, set the initial rate and/or adjust the tax rate for all persons engaged in any cannabis business activity in the City establish differing tax rates for different categories of cannabis businesses, including medicinal or non-medicinal cannabis businesses, subject to the minimum and maximum rates established in Subdivision (H)(2) above.
- (I) Notwithstanding the foregoing, the City Council, in its discretion, at any time by ordinance, exempt or except certain categories of cannabis business activities from the Cannabis Business Activities Tax.

5.32.070 - EXEMPTIONS.

- (A) The provisions of this article shall not apply to personal cannabis cultivation, as defined by Health and Safety Code Section 11362.2, as may be amended.
- (B) The provisions of this article shall not apply to personal use of cannabis that is expressly exempted from state licensing requirements, and for which the individual receives no compensation whatsoever related to that personal use, including, personal non-medicinal use, as defined by Health and Safety Code Section 11362.1, as may be amended, or personal medicinal use, as defined by Health and Safety Code Section 11362.7 et seq., as may be amended.

5.32.080 - TAX, PENALTIES, INTEREST, AND FEES AS A DEBT.

- (A) The amount of any tax imposed by this article shall be deemed a debt owed to the City.
- (B) Any penalties, interest and/or fees required to be paid under the provisions of this article shall also be deemed a debt owed to the City.
- (C) Any person owing any tax, penalties, interest and/or fees shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax imposed by this article or the failure to comply with any of the provisions hereof.

5.32.090 - ADMINISTRATION.

- (A) It shall be the duty of the City Manager, or his or her designee, to collect the taxes, penalties, fees, and perform the duties required by this article.
- (B) For purposes of administration and enforcement of this article generally, the City Manager may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and express terms of this article as they deem necessary to implement or clarify such provisions or aid in enforcement.
- (C) The City Manager may take such administrative actions as needed to administer the tax, including but not limited to;
 1. Provide to all cannabis business activities taxpayers forms for the reporting of the tax;
 2. Provide information to any taxpayer concerning the provisions of this article;

3. Receive and record all taxes remitted to the City as provided in this article;
4. Maintain records of taxpayer reports and taxes collected pursuant to this article;
5. Assess penalties and interest to taxpayers pursuant to this article; or waive such penalties and interest when there is demonstrated evidence of extenuating circumstances that were clearly beyond the control of the taxpayer; and
6. Determine amounts owed and enforce collection pursuant to this article.

5.32.100 - REGISTRATION; CHANGE OF OWNERSHIP.

- (A) In order that the City will have an accurate record of persons liable for paying the Cannabis Business Activities Tax hereunder, prior to commencing cannabis business activities, each person engaged in any cannabis business activity shall register such cannabis business with the City Manager, submitting any information deemed necessary by the City Manager, including, but not limited to, the type(s) of cannabis business activities in which said person is engaged.
- (B) In the event that there is a change in ownership of any cannabis business:
 1. The new owner is required to submit an updated registration form to the City Manager.
 2. The new owner is subject to an audit by the City Manager or his or her designee.
 3. Unless otherwise provided by law, it is the joint and several liability of both the seller and buyer to remit any tax due up until the date of sale; otherwise, a Certificate of Delinquent Cannabis Business Activities Tax Lien may be filed against both the seller and/or buyer in an amount determined by the City Manager.

5.32.110 - REPORTING AND REMITTANCE OF TAX.

- (A) The Cannabis Business Activities Tax imposed by this article shall be imposed on a fiscal year basis and shall be due and payable in quarterly installments as follows:
 1. If the Cannabis Business Activities Tax is owed on cultivation type cannabis business activities, the tax due shall be based on the square footage of the cannabis business' canopy as determined by the City Manager and the quarterly rate shall be twenty-five percent (25%) of the applicable annual rate. The tax will not be prorated or adjusted for any canopy area authorized by the City Manager which was not utilized for cultivation. However, if the cultivation begins in the middle of a fiscal year, the City Manager shall prorate, in monthly increments, the amount due for the fiscal year.
 2. If the Cannabis Business Activities Tax is owed on cannabis business activities other than cultivation type cannabis business activities, the tax due shall be based on the gross receipts for the quarter.
- (B) The tax for each fiscal quarter shall be due and payable on that same date as the statement for the fiscal quarter is due. The tax due shall be no less than the quarterly installment due, but the taxpayer may at any time pay the entire amount due for the given fiscal year.

- (C) Each person owing a Cannabis Business Activities Tax shall, on or before the last day of the month following the close of each fiscal year quarter:
 - 1. File with the City Manager a statement of the tax owed for that fiscal quarter and the basis for calculating that tax. The City Manager may require that the statement be submitted on a form prescribed by the City Manager.
 - 2. Remit to the City Manager the tax due.
- (D) The City Manager may, in his/her discretion, establish shorter report and payment periods for any taxpayer as the City Manager deems necessary to ensure collection of the Cannabis Business Activities Tax.
- (E) The City Manager may, in his/her discretion as part of administering the Cannabis Business Activities Tax, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.
- (F) Upon cessation of a cannabis business for any reason, tax statements and payments for all outstanding taxes owed to the City shall be immediately due to the City. Tax statements and remittances will be deemed timely made if actually received by the City Manager within thirty (30) calendar days following cessation of the cannabis business activity; otherwise the taxes shall be deemed delinquent and subject to penalties hereunder.
- (G) Any person required to remit taxes in excess of one-hundred thousand dollars (\$100,000.00) in any given fiscal year shall be required to make remittances on a monthly basis in the succeeding fiscal year. Said remittances shall be due on or before the last day of the month following the last day of the preceding month.
- (H) The correctness of any tax return filed pursuant to this article shall be subject to audit and verification by the City Manager, or designee, who is authorized and empowered to inspect and audit the books and records of any cannabis business. No cannabis business shall refuse or fail to allow the City Manager, or designee, to inspect and audit such books and records, or shall refuse or fail to provide such additional information as requested by the City Manager, or designee.
- (I) For the purposes of this Section, "on or before" shall be interpreted as: (1) hand delivery; or (2) postal delivery of a properly stamped and addressed envelope containing the return and full amount of the tax to the United States Postal Service. Delivery to the Postal Service must be verified by cancellation by the Postal Service showing a postmark date no later than midnight on the date the tax is due. If the due date of the tax falls on a United States Post Office closure date, the tax due date shall be the next business day (excluding federal holidays). Private postal meter strips and dates shall not be considered evidence of delivery to the United States Postal Service.
- (J) Whenever any payment, statement, report, request or other communication is due, it must be received by the City Manager on or before the final due date. In accordance with Subdivision (I) of this Section, a postmark may 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 City is open to the public.

5.32.120 - DEFICIENCY.

- (A) If the City Manager is not satisfied that any return filed as required under the provisions of this article is correct, or that the amount of tax is correctly computed,

he/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/her possession or that may come into his/her possession within three (3) calendar years of the date the tax was originally due and payable.

- (B) One or more deficiency determinations of the amount of tax due for a period or periods may be made.
- (C) When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) calendar years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is/was issued prior to the date the tax would otherwise be due, or issued after the discontinuation of the business.
- (D) Whenever a deficiency determination is made, a notice shall be given to the person concerned in accordance with Section 5.32.260.

5.32.130 - DELINQUENCY; NOTICE NOT REQUIRED BY CITY.

- (A) Unless otherwise specifically provided under other provisions of this article, the taxes required to be paid pursuant to this article shall be deemed delinquent if not received by the City Manager on or before the due date as specified in Section 5.32.110.
- (B) The City Manager is not required to send a delinquency or other notice or bill to any person subject to the provisions of this article. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this article.

5.32.140 - PENALTIES, FEES, AND INTEREST.

- (A) The Cannabis Business Activities Tax shall be that amount due and payable from the first day in which the person was engaged in cannabis business activities in the City, together with all applicable penalties, fees, and interest calculated in accordance with this Section.
- (B) Any person who fails or refuses to pay any Cannabis Business Activities Tax required to be paid pursuant to this article on or before the due date shall pay penalties, fees, and interest as follows:
 - 1. **Initial Delinquency.** A penalty equal to twelve and a half percent (12.5%) of the amount of the tax, in addition to the amount of the tax.
 - 2. **Continuing Delinquency.** If the tax remains unpaid for a period exceeding thirty (30) calendar days beyond the date on which the remittance first became delinquent, an additional penalty equal to twelve and a half percent (12.5%) of the amount of the tax, shall be imposed.
 - 3. **Bank Fees.** Whenever a check or electronic payment is submitted in payment of a Cannabis Business Activities 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 bank fees, penalties and interest as provided for in this Section, and any other amount allowed under State law.

4. **Interest.** In addition to the penalties and/or fees amounts imposed, 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.
- (C) In addition to the foregoing amounts, if the City determines that any remittance of the Cannabis Business Activities Tax due under this article is due to fraud or fraudulent, a penalty of twenty-five percent (25%) of the amount of the tax that should have been paid shall be added thereto in addition to penalties and interest otherwise stated in this article and any other penalties allowed by law.

5.32.150 - WAIVER OF PENALTIES.

The City Manager may waive the penalties imposed upon any person under Section 5.32/140, if:

- (A) The person engaged in cannabis business activities requests a waiver of penalties by submitting a Request for Waiver to the City Manager within ten (10) calendar days after issuance of a Notice of Assessment.
- (B) The person provides evidence satisfactory to the City Manager that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent Cannabis Business Activities Tax and accrued interest owed the County prior to applying to the City Manager for a waiver.
- (C) Upon receipt of satisfactory evidence, the City Manager may waive penalties in an amount not to exceed five-thousand dollars (\$5,000.00).
- (D) If the Request for Waiver exceeds five-thousand dollars (\$5,000.00), such request shall be approved only by the City Council.
- (E) The amount determined to be owed to the City shall be due immediately. Remittances will be deemed timely made if actually received by the City Manager within ten (10) calendar days; otherwise the taxes shall be deemed delinquent and subject to penalties under Section 5.32.140.
- (F) The waiver provisions specified in this Section shall not apply to any interest accrued on the delinquent tax.
- (G) A waiver under this Section may only be granted once during any twenty-four (24) month period.

5.32.160 - REFUNDS; CREDITS.

- (A) No refund shall be made of any tax collected pursuant to this article, except as provided in this Section.
- (B) No refund of any tax collected pursuant to this article shall be made because of cessation of the cannabis business activity, discontinuation, dissolution, or other termination of the cannabis business.
- (C) Whenever the amount of any tax or penalty under this article has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this article, it may be refunded to the claimant who paid the tax; provided a written claim, stating under penalty of perjury under the laws of the State of California the specific grounds upon which the claim is founded, is filed with the City Manager within one (1) calendar year of the date of payment. The

- claim shall be on forms furnished by the City Manager.
- (D) Any person entitled to a refund of Cannabis Business Activities Taxes paid hereunder may elect, in writing, to have such refund applied as a credit against such person's taxes which will become due for the next fiscal year quarter.
 - (E) In the event that the Cannabis Business Activities Tax was erroneously paid and the error is attributable to the City, the City shall refund the amount of tax paid up to one (1) calendar year from when the error was identified, provided in no case, shall a claim for payment be made more than three years from the date of the actual payment of the tax.
 - (F) The City Manager, his or her designee or any other City officer charged with the administration of this article, 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 City Manager, his or her designee or any other City officer charged with the administration of this article, to do so.
 - (G) The City Manager may collect a fee adopted by the City Council to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the City Manager to make a determination on the claim for the refund.
 - (H) No refund of any tax collected pursuant to this article shall be made because of the discontinuation, dissolution, or other termination of a cannabis business.

5.32.170 - NOTICE OF ASSESSMENT.

- (A) Under any of the following circumstances, the City Manager may issue a Notice of Assessment of the amount of tax owed by a person under this article at any time:
 - 1. If the person has not filed a complete statement required under the provisions of this article;
 - 2. If the person has not paid the tax due under the provisions of this article;
 - 3. If the person has not, after demand by the City Manager, filed a corrected statement, or furnished to the City Manager adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this article.
- (B) The Notice of Assessment shall be served in accordance with Section 5.32.260.
- (C) The Notice of Assessment shall separately set forth the amount of any tax due. The amount due shall include the amount of any penalties or interest accrued on each amount through the date of the Notice of Assessment.
- (D) If the amount of tax due is unknown, the City Manager may estimate the amount of tax due based on consideration of all information within their knowledge concerning the business and activities of the person assessed. For purposes of estimating the amount of tax due, there shall be a rebuttable presumption that the minimum amount of tax due is the same as the maximum amount of tax due during any quarter during the previous fiscal year.

5.32.180 - ASSESSMENT HEARING.

- (A) Within ten (10) calendar days after the date of service of the Notice of Assessment,

the person may apply in writing to the City Manager for a hearing on the assessment.

- (B) If application for a hearing is not made within the time herein prescribed, the tax, penalties, fees, and/or interest determined by the City Manager shall become final and conclusive, and shall be immediately due and payable.
- (C) If such application is made, the City Manager shall, upon receipt of such application, cause the matter to be set for hearing. The hearing shall be held not fewer than ten (10) calendar days, and not more than forty-five (45) calendar days from receipt of the written request for hearing, unless a later date is agreed to by the City Manager and the person requesting the hearing.
- (D) Notice of the hearing shall be given by the City Manager to the person requesting such hearing not fewer than five (5) business days prior to such hearing. The notice shall set the date, time and place for hearing and shall order the person requesting the hearing to show cause why such amount specified in the Notice of Assessment should not be confirmed.
- (E) The person requesting the hearing may appear and offer evidence at the hearing why the assessment as determined by the City Manager should not be confirmed and fixed as the tax, penalties, fees, and/or interest due.
- (F) After such hearing the City Manager shall determine the proper tax to be charged and shall issue, in accordance with Section 5.32.260, a Notice of Determination of Tax Due to the person requesting the hearing stating the City Manager's determination and the amount of tax, penalties, fees, and interest.
- (G) The amount determined to be due shall be payable after fifteen (15) calendar days of written notice unless it is appealed to the City Council.

5.32.190 - APPEAL FROM ASSESSMENT HEARING.

Any person aggrieved by any decision of the City Manager with respect to the amount of tax, interest, penalties and fees, if any, due under this article may appeal to the City Council by filing a Notice of Appeal with the City Clerk within fifteen (15) days of service of the Notice of Determination of Tax Due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such person at the last known address. The decision of the City Council shall be final and conclusive and shall be served upon the appellant in accordance with Section 5.32.260. Any amount found to be owed to the County shall be immediately due and payable upon the service of the decision.

5.32.200 - ENFORCEMENT.

- (A) In addition to any other remedies available under federal, state, or local law, if any amount required to be paid to the City under this article is not paid when due, the City Manager may, within three (3) calendar years after the amount is due, record a certificate of lien specifying the amount of taxes, fees, interest and penalties due, and the name and address of the individual or business as it appears on the records of City Manager. The lien shall also specify that the City Manager has complied with all provisions of this article in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties, fees and interest thereon, constitutes a lien upon all real property in the City 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) calendar years from filing of the certificate unless sooner released or otherwise discharged.

- (B) At any time within three (3) calendar years after any individual or business is delinquent in the payment of any amount required to be paid under this article or within three (3) calendar years after the last recording of a certificate of lien under Subdivision (B) of this Section, the City Manager may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the City under this article. 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 City Manager 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.
- (C) At any time within three (3) calendar years after recording a lien against any individual or business, if the lien is not discharged and released in full, the City Manager 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 article shall not include any assets or property which is exempt from execution under the provisions of Code of Civil Procedure.
- (D) Suspension or revocation of a cannabis permit. Revocation shall be subject to the procedures set forth in San Juan Bautista Municipal Code, as may be enacted in the future. The following shall constitute grounds for suspending or revoking a cannabis permit, in addition to any additional grounds identified in the San Juan Bautista Municipal Code:
 - 1. Failure to pay any cannabis business tax due under this article within thirty (30) calendar days of the due date.
 - 2. Failure to cooperate with the City Manager, or designee, as determined by City Manager, or designee, during an audit pursuant to this article.
 - 3. Underpaying any business tax due under this article in any period by fifty percent (50%) or more.
 - 4. If the City determines that the nonpayment of any Cannabis Business Activities Tax due under this article is due to fraud.

5.32.210 - APPORTIONMENT.

If a person subject to the Cannabis Business Activities Tax is operating both within and outside the City, it is the intent of the City to apply Cannabis Business Activities Tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the unincorporated area of 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 their tax return. The City Manager may promulgate administrative procedures for apportionment in accordance with state law.

5.32.220 - 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 article 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.

5.32.230 - RECORDKEEPING; AUDIT.

- (A) It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this article to keep and preserve, for a period of at least seven (7) calendar years, all records as may be necessary to determine the amount of such tax as they may have been liable for the collection of and payment to the City, which records the City Manager or their designee shall have the right to inspect at all reasonable times, including, but not limited to, records containing information related to the amount of cannabis and/or cannabis products sold and/or transferred. Said records shall be full, true, and accurate.
- (B) The City Manager shall have the power to audit and examine all books and records of persons engaged in cannabis business activities, including both State and federal income tax returns, California sales tax returns, or other evidence documenting the square footage of canopy and/or gross receipts of persons engaged in cannabis business, and, where necessary, all equipment, of any person engaged in cannabis business activities in the City, for the purpose of ascertaining the amount of Cannabis Business Activities Tax, if any, required to be paid by the provisions of this article, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this article.
- (C) Upon demand by the City Manager, each person liable for the collection and payment to the City of any tax imposed by this article shall make the records, together with any track and trace reports, shipping documents or sales invoices pertaining to such cannabis and/or cannabis products available for inspection by the City Manager at all reasonable times.
- (D) If any person refuses to make available for audit, examination, or verification such books, records or equipment as the City Manager requests, the City Manager may, after full consideration of all information within their knowledge concerning the cannabis business activities of the person so refusing, make an assessment in the manner provided in Section 5.32.170 of any taxes estimated to be due. The City Manager may collect a fee adopted by the City Council to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the City Manager to make a determination of tax due.

5.32.240 - OTHER LICENSES, PERMITS, TAX, FEES, OR CHARGES.

- (A) The tax imposed hereunder does not limit or prohibit the levy or collection of any other license, permit or service fee, tax, fee, or charge upon, or related to, any cannabis business activity.
- (B) Nothing contained in this article 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 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 other titles or chapters of this Code.

5.32.250 - PAYMENT OF TAX DOES NOT AUTHORIZE UNLAWFUL ACTIVITIES.

- (A) The payment of a Cannabis Business Activities Tax required by this article, and which is acceptance by the City, shall not entitle any person to carry on any cannabis business activity unless that person has complied with all of the requirements of this Code and all other applicable State laws.
- (B) No tax paid under the provisions of this article 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.

5.32.260 - MANNER OF GIVING NOTICE.

- (A) Any notice required to be given hereunder by the City to any person shall be sufficiently given or served if it is 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 they shall register with the City Manager for the purpose of receiving notices provided under this article; or, should the person have no address registered with the City Manager for such purpose, then to such person's last known address. For the purposes of this article, a service by mail is complete at the time of deposit in the United States mail.
- (B) Failure of any person to receive any notice required by this article to be given shall not affect the validity of any proceedings taken thereto.

5.32.270 - UNLAWFUL ACTIVITIES DESIGNATED; MISDEMEANOR.

Any person violating any of the provision of this article shall be deemed guilty of a misdemeanor, punishable by a fine of not more than five-hundred dollars (\$500.00), or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment.

5.32.280 - VIOLATION; TAXES NOT WAIVED.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

5.32.290 - SEVERABILITY.

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

5.32.300 - REMEDIES CUMULATIVE.

All remedies and penalties prescribed by this article or which are available under any other provision of the San Juan Bautista Municipal Code and any other provision of law or equity are cumulative. The use of one or more remedies by the article shall not bar the use of any other remedy for the purpose of enforcing the provisions of this article.

5.32.310 - AMENDMENT OR REPEAL.

Chapter 5.32 of the San Juan Bautista Municipal Code may be repealed or amended by the City Council 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 maximum rate of any tax levied pursuant to this article, that would increase the maximum rate specified for each category of cannabis business activity or that otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

The following actions shall not constitute an increase of the rate of a tax:

- (A) The setting of the rate of any tax authorized hereunder to a rate that is no higher than the maximum rate set by this article, including the authorized cost of living adjustment, or the restoration of the rate of the tax to a rate that is no higher than the maximum rate set by this article, including the cost of living adjustment, if the City Council has acted to reduce the rate of the tax; or
- (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 article; or
- (C) The collection of the tax imposed by this article, even if the article had, for some period of time, failed to collect the tax; or
- (D) The establishment or discontinuation of a class of persons that is exempted or excepted from the tax hereunder.

SECTION 2. If any section, subdivision, sentence, clause, portion, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Council hereby declares that it would have passed this chapter and each section, subdivision, sentence, clause, portion, or phrase hereof, irrespective of the fact that any one or more sections, subdivisions, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional.

SECTION 3. The City Council hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) because the Cannabis Business Activities Tax is a general tax that can be used for any legitimate government purpose and therefore it is not a "project" pursuant to CEQA Guidelines Section 15378, subdivision (b)(4) and is therefore exempt.

SECTION 4. STATEMENT OF HOW THE TAX MAY BE SPENT. All revenue from the taxes imposed by Chapter 5.32 of the San Juan Bautista Municipal Code for the privilege of engaging in cannabis business activities in the City are enacted solely for general governmental purposes for the City and not for specific purposes. The revenue from these taxes shall be placed in the City's general fund and can be spent for unrestricted general revenue purposes.

SECTION 5. MAJORITY APPROVAL; EFFECTIVE DATE. This ordinance shall only be effective if approved by a majority vote of the voters voting in the election on the issue. If approved by the voters, this ordinance shall become effective upon adoption and as soon thereafter as allowed by law.

THE FOREGOING ORDINANCE was first read at a regular meeting of the San Juan Bautista City Council on the 18th day of December 2018, and adopted at a regular meeting of the San Juan Bautista City Council on the 15th day of January, 2019 by the following vote:

AYES: Edge, Freeman, Jordan


NOES: None

ABSENT: DeVries, Flores

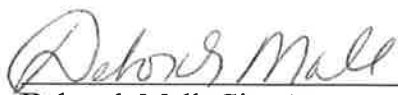
ABSTAIN: None


César E. Flores, Mayor

ATTEST:


Laura Cent, City Clerk

APPROVED AS TO FORM:


Deborah Mall, City Attorney