RESOLUTION NO. 2020-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE, CALIFORNIA APPROVING BALLOT MEASURE TEXT TO BE SUBMITTED TO THE VOTERS OF THE CITY TO IMPOSE, AMEND AND MODERNIZE THE CURRENT CANNABIS BUSINESS TAX; REQUESTING THE ASSISTANCE OF THE COUNTY OF YUBA IN CONNECTION WITH THAT ELECTION; AND REQUESTING CONSOLIDATION OF THAT ELECTION WITH ANY OTHER ELECTION HELD ON THAT DATE

WHEREAS, Sections 37101 and 37100.5 of the California Government Code authorize the City to levy a license tax, for revenue purposes, upon business transacted in the City; and

WHEREAS, as a result of recent voter-approved changes to state law and new state regulations being implemented, there has been a very strong interest by cannabis businesses to open in the City; and

WHEREAS, cannabis businesses are likely to create demands upon City services, and the City's current tax does not currently impose any taxes on manufacturing, distribution, or testing lab cannabis businesses, aside from generally applicable municipal taxes;

WHEREAS, the City Council desires to amend and modernize the current cannabis tax ordinance to impose a tax on these new cannabis activities and to update current language in the ordinance in order to impose the license tax upon cannabis and hemp businesses, to be known as the "Cannabis Business Tax"; and

WHEREAS, the Cannabis Business Tax cannot be imposed, amended or modernized without voter approval if it does not include these activities in the ordinance or if it amends any language which can be interpreted to impose a new tax on any activity which was not specifically defined by such ordinance that was approved by the voters; and

WHEREAS, the City Council desires to submit an amended and modernized Cannabis Business Tax measure to the voters of the City at a General Municipal Election to be held on Tuesday, November 3, 2020, and to be consolidated with any other election to be held on that date; and

WHEREAS, the proposed amended and modernized Cannabis Business Tax is more completely described in the ordinance attached hereto as Attachment "A" and incorporated herein by reference (the "Tax Ordinance").

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARYSVILLE AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Proposal. The City Council hereby proposes the amended and modernized Cannabis Business Tax.

Section 3. Election. The City Council hereby calls for a General Election for Tuesday November 3, 2020 (the "Election") and orders, pursuant to Section 9222 of the Elections Code, that the Tax Ordinance be submitted to the voters at that election.

Section 4. Ballot Question. The question submitted by Section 3 of this Resolution shall appear on the ballot as follows:

To fund general municipal expenses such as police, fire, roads and recreation, shall the City tax cannabis or hemp businesses at annual rates not to exceed $10.00 per canopy square foot for cultivation (adjustable for inflation), 6% of gross receipts for retail cannabis businesses, and 4% for all other cannabis businesses; which is expected to generate an estimated $300,000 to $470,000 annually and will be levied until repealed by the voters or the City Council?	**YES**	
	NO	

Section 5. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority of those casting ballots on the measure.

Section 6. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Yuba County is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 7. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 8. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 9. Filing with County. The City Clerk shall file a certified copy of this Resolution with the County Clerk.

Section 10. Analysis and Argument. The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

Section 11. Effective Date. This Resolution shall be effective immediately upon adoption of both the City Council and the Voting Citizens within the City's jurisdiction.

I HEREBY CERTIFY that the foregoing resolution was and adopted by the City Council of the City of Marysville, County of Yuba, State of California, on April 21, 2020, by the following vote:

Ayes: Brad Hudson, Bill Simmons and Ricky Samayoa

Noes: Stephanie McKenzie and Bruce Buttacavoli

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City on April 21, 2020.

City of Marysville, California
By its City Council

By: _____
Ricky A. Samayoa, Mayor

By: _____
Nicole Moe, City Clerk

EXHIBIT A

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARYSVILLE, CALIFORNIA AMENDING CHAPTER 5.12 (CANNABIS BUSINESS TAX) TO TITLE 5 OF THE MARYSVILLE MUNICIPAL CODE

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

SECTION 1. CODE AMENDMENT. Chapter 5.12 is amended to Title 5 of the Marysville Municipal Code to read as follows:

CHAPTER 5.12

5.12.10 Title.
5.12.20 Authority and purpose.
5.12.30 Intent.
5.12.40 Definitions.
5.12.50 Tax imposed.
5.12.60 Registration, reporting, and remittance of tax.
5.12.70 Payments and communications –timely remittance.
5.12.80 Payment – when taxes deemed delinquent.
5.12.90 Notice not required by City.
5.12.100 Penalties and interest.
5.12.110 Refunds and credits.
5.12.120 Refunds and procedures.
5.12.130 Personal cultivation not taxed.
5.12.140 Administration of the tax.
5.12.150 Appeal procedure.
5.12.160 Enforcement –action to collect.
5.12.170 Apportionment.
5.12.180 Constitutionality and legality.
5.12.190 Audit and examination of premises and records.
5.12.200 Other licenses, permits, taxes or charges.
5.12.210 Payment of tax does not authorize unlawful business.
5.12.220 Deficiency determinations.
5.12.230 Failure to report – nonpayment, fraud.
5.12.240 Tax assessment –notice requirements.
5.12.250 Tax assessment – hearing, application, and determination.
5.12.260 Relief from taxes-disaster relief.
5.12.270 Conviction for violation – taxes not waived.
5.12.280 Violation deemed misdemeanor.
5.12.290 Severability.

5.12.300 Remedies cumulative.
5.12.310 Amendment or modification.

5.12.10 Title.

This ordinance shall be known as the Cannabis Business Tax Ordinance.

5.12.20 Authority and Purpose.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon cannabis businesses that engage in business in the City. The Cannabis Business Tax is levied based upon business gross receipts except for commercial cannabis or industrial hemp cultivation which shall be taxed on square footage. It is not a sales and use tax, a tax upon income, or a tax upon real property and shall not be calculated or assessed as such. The Cannabis Business Tax shall not be separately identified or otherwise specifically assessed or charged to any member, customer, patient, or caretaker. The Cannabis Business 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 section shall be placed in the City's general fund and be available for any lawful municipal purpose.

5.12.30 Intent.

The intent of this Ordinance is to levy a tax on all cannabis or industrial hemp businesses that operate in the City, regardless of whether such business would have been legal at the time this section was adopted. Nothing in this section shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

5.12.40 Definitions.

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

A. "Business" shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. "Calendar year" means January 1 through December 31, of the same year.

C. "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" shall not include

"industrial hemp," unless otherwise specified.

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

E. "Canopy" means all areas occupied by any portion of a cannabis or industrial hemp plant whether contiguous or noncontiguous on any one site. When 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.

F. "Cannabis business" means any business activity involving cannabis or industrial hemp, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, cannabis products, industrial hemp, industrial hemp products or of ancillary products and accessories, whether or not carried on for gain or profit.

G. "Cannabis business tax" or "business tax," means the tax due pursuant to this chapter for engaging in a cannabis business in the City.

H. "Commercial cannabis cultivation" means cultivation of cannabis or industrial hemp undertaken in the course of conducting a cannabis business.

I. "Commercial cannabis permit" means a permit issued by the City to a person to authorize that person to operate a cannabis business or engage in business as a cannabis business within the City.

J. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis or industrial hemp and includes, but is not limited to, the operation of a nursery.

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

L. "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 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."

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

N. "Gross Receipts," except as otherwise specifically provided, means, whether designated as a sales price, royalty, rent, membership fee, ATM service fee, delivery fee, slotting fee, any other fee, vaping room service charge, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services 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. 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. Cash value of sales, trades or transactions between departments or units of

the same business located in the City of Marysville or if authorized by the Tax Administrator in writing in accordance with section 5.12.140 (B);

6. 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;

7. 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;

8. 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 City's 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.

9. Retail sales of non-cannabis products, such as t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis or industrial hemp) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 5.12.140 shall not be subject to the cannabis business tax under this section. However, any business activities not subject to this section as a result of an administrative ruling shall be subject to the appropriate business tax provisions of Title 5, Chapter 5.04 or any other Title or Chapter of this code as determined by the Tax Administrator.

10. Payments made by the tax-reporting cannabis business (Seller) to a cannabis business (Buyer) for the difference in the original acquisition price and subsequent renegotiated or finalized selling price of products or services sold to a specific end customer. This type of transaction is referred to as a "Billback". The tax-reporting cannabis business must provide supporting documentation to substantiate the transaction in order to be eligible for an exemption.

O. "Industrial hemp" means a crop that is limited to types of the plant Cannabis sativa L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.

P. "Industrial hemp products" means any raw hemp that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Hemp product" also means hemp products as defined by Section 11018.5 of the California Health and Safety Code.

Q. "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.

R. "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, intended to be sold or sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, for a medicinal cannabis patient in California who possesses a physician's recommendation, or a cannabis card issued pursuant to Health and Safety Code Section 11362.71.

S. "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 or industrial hemp industrial hemp.

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

U. "Processing" means a cultivation site that conducts only trimming, drying, curing, grading, packaging, or labeling of cannabis, industrial hemp and nonmanufactured cannabis products.

V. "Sale" "Sell" and "to sell" means and includes any sale, exchange, or barter. It shall also mean any transaction whereby, for any consideration, title to cannabis, cannabis products, industrial hemp and/or industrial hemp products are transferred from one person to another and includes the delivery of cannabis, cannabis products, industrial hemp and/or industrial hemp products pursuant to an order placed for the purchase of the same, but does not include the return of cannabis, cannabis products, industrial hemp and/or industrial hemp products to the licensee from whom the cannabis, cannabis product, industrial hemp and/or industrial hemp product was purchased.

X. "State" means the State of California.

Y. "State license," "license," or "registration" means a state license issued pursuant to California Business & Professions Code Section 26050, and all other applicable state laws, required for operating a cannabis business.

Z. "Tax Administrator" means the City Manager of the City of Marysville or his or her designee.

AA. "Testing Laboratory" means a cannabis business that (i) offers or performs tests of cannabis, cannabis products, industrial hemp and/or industrial hemp 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 Bureau of Cannabis Control or

other state agency.

5.12.50 Tax Imposed.

A. Beginning January 1, 2021, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax. Such tax is payable regardless of whether the business has been issued a business license or commercial cannabis permit to operate lawfully in the City or is operating unlawfully. The City's acceptance of a cannabis business tax payment from a cannabis business operating illegally shall not constitute the City's approval or consent to such illegal operations.

B. The City Council may, by resolution or ordinance, increase or decrease the rate of the cannabis business tax, including the initial rate of cannabis business tax. The City Council may, by resolution or ordinance, increase or decrease the rate of the medicinal cannabis business tax, including the initial rate of the medicinal business tax, independent of other cannabis business tax activities. In addition, the City Council may, by resolution or ordinance, increase or decrease the rate of the cannabis business tax on hemp or hemp products, including the initial rate of the tax on hemp or hemp products independent of other cannabis activities. Notwithstanding the foregoing, in no event shall the City Council repeal this tax or set any adjusted rate that exceeds the maximum rates calculated pursuant to this section.

C. The maximum rate of the cannabis business tax shall be calculated as follows:

1. For every person engaged in commercial cannabis cultivation, including cultivation of industrial hemp, in the City:

   a. Through January 1, 2024, the annual maximum rate shall be:

      i. Ten dollars ($10.00) per square foot of canopy space in a facility that uses exclusively artificial lighting.

      ii. Seven dollars ($7.00) per square foot of canopy space in a facility that uses a combination of natural and supplemental lighting as defined in Section 5.12.40 Q of this chapter.

      iii. Four dollars ($4.00) per square foot of canopy space in a facility that uses no artificial lighting.

      iv. Two dollars ($2.00) per square foot of canopy space for any nursery.

b. On January 1, 2024 and on each January 1 thereafter, the maximum annual tax rates specified in subsection 5.12.50 (C) (1) (a), shall increase by the percentage increase in the Consumer Price Index ("CPI") for consumers in the Western Region 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 engaged in the operation of a testing laboratory for cannabis, cannabis products, industrial hemp and/or industrial hemp products s/he/it shall be subject to the maximum tax rate not to exceed two and one-half percent (2.5%) of gross receipts.

3. For every person engaged in retail sales of cannabis, cannabis products, industrial hemp, and/or industrial hemp products, including as a retailer (dispensary) or non-storefront retailer (retail delivery business), or microbusiness, s/he/it shall be subject to the maximum tax rate not to exceed six percent (6%) of gross receipts.

4. For every person engaged in distribution of cannabis, cannabis products, industrial hemp and/or industrial hemp products, s/he/it shall be subject to the maximum tax rate not to exceed three percent (3%) of gross receipts.

5. For every person engaged in manufacturing or processing of cannabis, cannabis products, industrial hemp and/or industrial hemp products, or any other type of cannabis business not described in Section 5.12.50 (C) (1), (2), (3), or (4) s/he/it shall be subject to the maximum tax rate not to exceed four percent (4%) of gross receipts.

D. Persons subject to the cannabis business tax shall register with the City and pay the registration fee pursuant to Section 5.12.60. They shall also be required to obtain a business license pursuant to Chapter 5.04 of this code; provided, however, that cannabis business activities subject to the cannabis business tax shall be excluded from determining the amount of any business license tax payable under Chapter 5.04.

5.12.60 Registration, reporting and remittance of tax.

A. Registration of Cannabis Business. All cannabis businesses shall be required to annually register as follows:

1. All persons engaging in business as a cannabis business, whether an existing, newly established or acquired business shall register with the Tax Administrator within thirty (30) days of commencing operation and shall annually renew such registration within 30 days of the business registration anniversary date of each year thereafter. In registering, such persons shall furnish to the Tax Administrator a sworn statement, upon a form provided by

the Tax Administrator, setting forth the following information:

i. The name of the business

ii. The names and addresses of each owner

iii. The exact nature or kind of business;

iv. The place where such business is to be carried on; and

v. Any additional information which the Tax Administrator may require.

B. An annual registration fee in accordance with the current and approved City fee schedule shall be presented with the sworn statement submitted under this section. This fee shall not be considered a tax and may be adjusted by resolution of the City Council.

C. The cannabis business tax imposed by this section shall be paid, in arrears, on a monthly basis. Each person owing a cannabis business tax each calendar month shall, no later than the last day of the month following the close of the calendar month, file with the Tax Administrator a statement ("tax statement") of the tax owed for that calendar month and the basis for calculating that tax. The Tax Administrator may require that the tax statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar month shall be due and payable on that same date that the tax statement for the calendar month is due.

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

E. The Tax Administrator may, at his or her discretion, establish alternative reporting and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure effective collection of the cannabis business tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar month, be made by a taxpayer at the beginning of that calendar month. 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 month. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

5.12.70 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

observed by the City, the due date shall be the next regular business day on which the City is open to the public.

5.12.80 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this section, the taxes required to be paid pursuant to this section shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 5.12.60 and 5.12.70.

5.12.90 Notice not required by the City.

The City may as a courtesy send a tax notice to the cannabis business which owes the City a cannabis business tax. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this section. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this section.

5.12.100 Penalties and interest.

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this section 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%) 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%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1%) 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.

5.12.110 Refunds and credits.

A. No refund shall be made of any tax collected pursuant to this section, except as provided in Section 5.12.120.

B. No refund of any tax collected pursuant to this section shall be made because of

the discontinuation, dissolution, or other termination of a business.

5.12.120 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 section, 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 or paid, whichever came first.

B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this section 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 in an amount in excess of the tax due, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid; provided that (i) a claim for refund has been timely filed with the Tax Administrator; and (ii) the refund cannot exceed, under any circumstance, the amount of tax overpaid during the twelve months preceding the last month for which the claim states the tax was overpaid.

5.12.130 Personal Cultivation Not Taxed.

The provisions of this section shall not apply to personal cannabis cultivation or personal use of cannabis, to the extent those activities are authorized in the "Medicinal and Adult Use Cannabis Regulation and Safety Act," as may be amended. This section shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and provided that the individual receives no compensation whatsoever related to that personal cultivation or use.

5.12.140 Administration of the tax.

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this section.

B. For purposes of administration and enforcement of this section generally, 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 section as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the cannabis business 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 section;

3. Receive and record all taxes remitted to the City as provided in this section;

4. Maintain records of taxpayer reports and taxes collected pursuant to this section;

5. Assess penalties and interest to taxpayers pursuant to this section;

6. Determine amounts owed under and enforce collection pursuant to this section.

5.12.150 Appeal procedure.

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this section may appeal to the City Council by filing a notice of appeal with the City Clerk within thirty (30) calendar days of the serving or mailing of the Tax Administrator's determination of the amount 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 operator at the last known place of address. The finding of the City Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this section 5.12.150 for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

5.12.160 Enforcement - action to collect.

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

5.12.170 Apportionment.

If a business subject to the 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 as he or she finds useful or necessary.

5.12.180 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 section 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 or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

5.12.190 Audit and examination of premises and records.

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City in support of his or her tax calculation, the Tax Administrator shall have the power to inspect any location where commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the tax administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this section to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

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

A. Nothing contained in this section shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any commercial cannabis permit or City license required by, under or by virtue of any provision of any other 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 under any other Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other 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 Chapters of this code.

B. The Tax Administrator may revoke or refuse to renew the license required by Chapter 5.12 of this code for any business that is delinquent in the payment of any tax due pursuant to this section or that fails to make a deposit required by the Tax Administrator pursuant to Section 5.12.60.

A commercial cannabis permit issued under the Marysville Municipal Code may be revoked, suspended or not renewed in the event that the business holding that permit has failed to (i) make a deposit required by the Tax Administrator pursuant to Section 5.12.60 or (ii) timely pay all taxes, interest and penalties owed by that business under this section.

5.12.210 Payment of tax does not authorize unlawful business.

A. The payment of a cannabis business tax required by this section, 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 laws.

B. No tax paid under the provisions of this section 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.

5.12.220 Deficiency determinations.

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this section is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a cannabis business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such cannabis business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Section 5.12.240.

5.12.230 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 section at any time:

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

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

3. If the person has not, after demand by the Tax Administrator, filed a corrected 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 the provisions of this section; or

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

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

5.12.240 Tax assessment - notice requirements.

The notice of assessment shall be served upon the person either by personal delivery, by overnight delivery by a nationally-recognized courier service, 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 section; 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 purpose of Section 5.12.240, a service by overnight delivery shall be deemed to have occurred one (1) calendar day following deposit with a courier and service by mail shall be deemed to have occurred three (3) days following deposit in the United States mail.

5.12.250 Tax assessment - hearing, application and determination.

Within thirty (30) calendar 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) calendar 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) calendar 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) calendar 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 reassess (if necessary) the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.12.240 for giving notice of assessment.

5.12.260 Relief from taxes - disaster relief.

A. If a cannabis business is unable to comply with any tax requirement imposed under this section due to a disaster, the business may notify the Tax Administrator of its inability to comply and request relief from the tax requirement. For purposes of this section, "disaster" means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes.

B. The cannabis business shall provide any information required by the Tax Administrator including, without limitation, why relief is requested, the time period for which the relief is requested, and the reason relief is needed for the specific amount of time. The cannabis business agrees to grant the Tax Administrator or his/her designee access to the location where the cannabis business has been impacted due to a disaster.

C. The Tax Administrator, in his/her sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by a disaster if such tax relief does not exceed ten thousand ($10,000) dollars. Such temporary relief may be granted for a reasonable amount of time, in the Tax Administrator's sole discretion, and the amount and duration of relief should be based upon how long it would reasonably take for the cannabis business to recover from the disaster. The Tax Administrator may require that the cannabis business follow certain conditions to receive temporary relief from the cannabis business tax requirement.

5.12.270 Conviction for 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 section or of any state law requiring the payment of all taxes.

5.12.280 Violation deemed misdemeanor.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

5.12.290 Severability.

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

5.12.300 Remedies cumulative.

All remedies and penalties prescribed by this section or which are available under any other provision of this code and any other provision of law or equity are cumulative. 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 of this section.

5.12.310 Amendment or modification.

Except as set forth in this section 5.12.310, this section may be amended or modified but not repealed by the City Council without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would expand, extend, or increase the rate of any tax levied pursuant to this section. The people of the City of Marysville affirm that the following actions shall not constitute an increase of the rate of a tax:

A. The restoration or adjustment of the rate of the tax to a rate that is no higher than that allowed by this chapter, in those circumstances where, among others, the City Council has previously acted to reduce the rate of the tax or is incrementally implementing an increase authorized by this chapter;

B. An action that interprets or clarifies (i) the methodology of applying or calculating the tax or (ii) any definition applicable to the tax, so long as the interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the provisions of this Chapter 5.12; or

C. The collection of the tax imposed by this section even if the City had, for some period of time, failed to collect the tax.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The people of the City of Marysville hereby declare that they would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. ENVIRONMENTAL COMPLIANCE. The findings establishing that this Ordinance is in compliance with the California Environmental Quality Act ("CEQA") are the same as those set forth in the City Council's Resolution No._____calling for an election on this Ordinance. The CEQA findings in Resolution No._____are incorporated herein by this reference.

SECTION 4. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of a City tax and shall take effect immediately.

This Ordinance was approved and adopted by the People of the City of Marysville at the City's November 3, 2020 statewide election.

This Ordinance was approved by Declaration of the vote by the City Council of the City of Marysville on May 5, 2020.

Ricky A. Samayoa, Mayor

ATTEST:

Nicole Moe, City Clerk