

**RESOLUTION NO. 22-038**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE SUBMITTING TO THE CITY VOTERS A BALLOT MEASURE TO ESTABLISH A BUSINESS TAX ON BUSINESSES WHICH SELL AND DELIVER CANNABIS AND CANNABIS PRODUCTS INCLUDING INDUSTRIAL HEMP AND HEMP PRODUCTS; ORDERING AN ELECTION, REQUESTING COUNTY ELECTIONS TO CONDUCT THE ELECTION AND REQUESTING CONSOLIDATION OF THE ELECTION WITH THE GENERAL MUNICIPAL AND STATEWIDE CONSOLIDATED ELECTION TO BE HELD ON NOVEMBER 8, 2022**

**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**, the California Industrial Hemp Farming Act, (Government Code Section 81600 et seq. and related regulations) authorize the commercial production of Industrial Hemp in California; and

**WHEREAS**, the City Council will consider enactment of a cannabis and hemp regulatory ordinance; and

**WHEREAS**, if cannabis and hemp businesses are authorized, they are likely to create demands upon City services, and the City’s current tax system does not currently impose any taxes on retail and delivery cannabis businesses, aside from generally applicable municipal taxes; and

**WHEREAS**, the City Council desires to adopt a tax ordinance in order to impose the tax upon cannabis and hemp businesses, to be known as the “Cannabis Business Tax”; and

**WHEREAS**, proceeds of the Cannabis Business Tax will be used to offset demands on City service and to augment the City’s General Fund; and

**WHEREAS**, the Cannabis Business Tax cannot be imposed without majority voter approval; and

**WHEREAS**, pursuant to Elections Code Section 10002, the governing body of the City of Pacific Grove requests the Board of Supervisors of Monterey County to permit Monterey County Elections to provide any and all services necessary for conducting an election on November 8, 2022, for purposes of placing a ballot measure before the electorate; and

**WHEREAS**, pursuant to Elections Code Section 10002, Monterey County Elections shall supply the elections official with a list of its precincts, or consolidated precincts, as applicable; and

**WHEREAS**, pursuant to Elections Code Section 10002 the City shall reimburse the county in full for the services performed upon presentation of a bill; and

**WHEREAS**, the City Clerk and County Registrar of Voters are authorized to print forms, publish notices, and provide information as may be necessary or convenient to assure the orderly conduct of the election, and they shall do all other things necessary to facilitate the holding of the election in a manner consistent with law; and

**WHEREAS**, pursuant to Elections Code Section 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections; and

**WHEREAS**, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation. The resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election;

**WHEREAS**, pursuant to Elections Code Section 10400, such election for cities and special districts may be either completely or partially consolidated; and

**WHEREAS**, except as otherwise recited in this resolution, the election shall be held and conducted as provided by the law for holding elections.

**WHEREAS**, the City Council desires to submit a Cannabis Business Tax measure to the voters of the City at a General Municipal Election to be held on Tuesday, November 8, 2022, and to be consolidated with the general municipal election and the statewide election to be held on that date.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE RESOLVES 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 that the voters adopt an ordinance (hereafter also referenced as “measure”) establishing a Cannabis Business Tax. The proposed ordinance submitted to the voters is entitled “An Ordinance of the City of Pacific Grove, California Adding Chapter 7.14 (Cannabis Business Tax) to Title 7 of the Pacific Grove Municipal Code Establishing a Tax on Cannabis and Hemp Business Activities within the City.” The full text of the ordinance is attached to this Resolution as Exhibit “A” and incorporated by reference. The full text of the proposed ordinance is not required to be printed in the Sample Ballot and Voters Pamphlet. However, the full text shall be made available to the public and to any voter at the County Elections Department and the Pacific Grove City Clerk.

**Section 3. Election.** Pursuant to Article 8 and Elections Code Sections 10400, 10401, and 10403, the City Council of the City of Pacific Grove hereby orders an election be called and consolidated with any and all elections also called to be held at the General Election for Tuesday November 8, 2022 (the “Election”) insofar as said elections are to be held in the same territory that is in part the same as the territory of the Board of Supervisors of the County of Monterey and orders, pursuant to Section 9222 of the Elections Code, that the Cannabis Business Tax Ordinance be submitted to the voters at that election.

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

To fund general municipal expenses such as police, fire, roads and recreation, and for unrestricted general fund purposes, shall an ordinance be adopted establishing a City excise tax on cannabis businesses (which includes hemp) at an annual rate not to exceed 6% of gross receipts for retail and delivery cannabis businesses, which is expected to generate an estimated \$300,000 annually and will be levied until repealed by the voters?	<b>YES</b>	
	<b>NO</b>	

**Section 5. Publication of Measure.** The City Clerk is directed to publish a synopsis of the measure at least one time not later than one week before the election in accordance with Section 12111 of the Elections Code.

**Section 6. Approval.** Under Article XIII C of the Constitution, the vote requirement for this measure to pass shall be a majority of those casting ballots on the measure (50% plus 1).

**Section 7. Consolidation.** Pursuant to Section 10400 et seq. of the Elections Code, the governing body of the City of Pacific Grove hereby orders an election be called and consolidated with any and all elections to be held, and the Board of Supervisors of Monterey County and requests to consolidate the Election with the General Municipal Election and Statewide Election to be held on November 8, 2022. The City Clerk and the County Registrar of Voters are authorized to print such forms, publish such notices, and provide such information as may be necessary or convenient to assure the orderly holding of the election,

and they shall do all other things necessary to facilitate the holding of the election in a manner harmonious and consistent with law.

**Section 8. California Environmental Quality Act.** The City Council hereby finds and determines that this resolution is exempt from the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. (“CEQA”) and 14 Cal. Code Re. Sections 15000 et seq. (“CEQA Guidelines”). The calling and noticing of an election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines 15378. The tax submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions.

As such, under CEQA Guidelines Section 15378 (b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue generated by the tax were used for a purpose that would have such an effect, the City of Pacific Grove would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guideline Section 15060 CEQA analysis is not required.

**Section 9. Canvass.** The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

**Section 10. Conduct of Election.** Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Elections Department 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 11. Filing with County.** The City Clerk shall file a certified copy of this Resolution with the County Elections Department.

**Section 12. Analysis and Argument.** Pursuant to Elections Code Section 9280, the City Attorney shall prepare an impartial analysis of the measure that shall exceed 500 word no later than 12:00 p.m. on August 18, 2022. 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. The last day to submit arguments for or against the proposed measure shall be August 18, 2022. Submittals are to be delivered to the City Clerk no later than 12:00 p.m. Rebuttal arguments shall be permitted pursuant to applicable law. The last day to submit rebuttal arguments to the City Clerk shall be August 25, 2022. Submittals are to be delivered to the City Clerk no later than 12:00 p.m.

**Section 13. Implementation.** The City Clerk and City Manager are authorized to take all actions as necessary to effectuate the purposes of this resolution and the election. The City Manager is authorized to execute all documents and to perform all other necessary acts to enter into a service agreement for the provision of election services with Monterey

County Registrar of Voters. The City Clerk and City Attorney are authorized to make any typographical, clerical, and non-substantive corrections to this resolution as may be deemed necessary by the Monterey Elections Department.

**Section 14. Declaration.** The City Council shall meet to declare the results of the election called for by this Resolution at their regular meeting following certification of election results.

**Section 15. Effective Date.** This Resolution shall be effective immediately upon adoption.

**PASSED AND ADOPTED** by the Council of the City of Pacific Grove on this 20<sup>th</sup> day of July, 2022, by the following vote:

AYES: Mayor Peake, Councilmembers Coletti, McAdams, Poduri, Smith, and Tomlinson.  
NOES: Mayor Pro Tem Amelio.  
ABSENT: None.

APPROVED:

DocuSigned by:  
*Bill Peake*

2E6F9DE48137414...  
BILL PEAKE, Mayor

ATTEST: **7/25/2022**  
DATED: \_\_\_\_\_

DocuSigned by:  
*Sandra Kandell*

7002F09F4EDE420...  
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DocuSigned by:  
*Brian Pierik*

01871FB17BD8435...  
BRIAN A. PIERIK, City Attorney

**EXHIBIT A**

**EXHIBIT A**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE,  
CALIFORNIA ADDING CHAPTER 7 (CANNABIS  
BUSINESS TAX) TO TITLE 7, OF THE PACIFIC GROVE  
MUNICIPAL CODE ESTABLISHING A TAX ON  
CANNABIS BUSINESS ACTIVITIES WITHIN THE CITY**

**THE PEOPLE OF THE CITY OF PACIFIC GROVE DO ORDAIN AS FOLLOWS:**

**SECTION 1. CODE AMENDMENT.** Chapter 7.14 is added to Title 7, of the Pacific Grove City Municipal Code to read as follows:

**CHAPTER 7.14  
CANNABIS BUSINESS TAX**

- 7.14.010 Title.
- 7.14.020 Authority and purpose.
- 7.14.030 Intent.
- 7.14.040 Definitions.
- 7.14.050 Tax imposed.
- 7.14.060 Registration, reporting, and remittance of tax.
- 7.14.070 Payments and communications –timely remittance.
- 7.14.080 Payment – when taxes deemed delinquent.
- 7.14.090 Notice not required by City.
- 7.14.100 Penalties and interest.
- 7.14.110 Refunds and credits.
- 7.14.120 Refunds and procedures.
- 7.14.130 Personal cultivation not taxed.
- 7.14.140 Administration of the tax.
- 7.14.150 Appeal procedure.
- 7.14.160 Enforcement –action to collect.
- 7.14.170 Apportionment.
- 7.14.180 Constitutionality and legality.
- 7.14.190 Audit and examination of premises and records.
- 7.14.200 Other licenses, permits, taxes or charges.
- 7.14.210 Payment of tax does not authorize unlawful business.
- 7.14.220 Deficiency determinations.
- 7.14.230 Failure to report – nonpayment, fraud.
- 7.14.240 Tax assessment –notice requirements.
- 7.14.250 Tax assessment – hearing, application, and determination.
- 7.14.260 Relief from taxes-disaster relief.
- 7.14.270 Conviction for violation – taxes not waived.
- 7.14.280 Violation deemed misdemeanor.
- 7.14.290 Severability.
- 7.14.300 Remedies cumulative.

7.14.310 Amendment or modification.

**7.14.010 Title.**

This ordinance shall be known as the Cannabis Business Tax Ordinance. This ordinance shall be applicable in the City of Pacific Grove, California which shall be referred to herein as “City.”

**7.14.020 Authority and Purpose.**

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 7284, and 7284.4 of the Revenue and Taxation Code, upon cannabis businesses that engage in business in the City. The Cannabis Business Tax is levied based upon business gross receipts. 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 chapter shall be placed in the City's general fund and be available for any lawful City purpose.

**7.14.030 Intent.**

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

**7.14.040 Definitions.**

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

- A. An "arm's length transaction" is a sale entered into in good faith and for valuable consideration at a sales price that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction.
- B. “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.
- C. “Calendar year” means January 1 through December 31, of the same year.
- D. “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.

E. “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.

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

H. “Commercial cannabis permit” means a permit, license, certificate, or other approval 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.

I. “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.

J. “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. 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 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 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.”

K. “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.

L. “Fiscal year” means July 1, through June 30, which is the period used by the City for financial reporting and budgeting.

M. “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. In the event the business is involved in a “non-arms” length transaction the gross receipts will be subject to the fair market value using a methodology approved by the Tax Administrator. However, the following shall be excluded from Gross Receipts:

1. Cash discounts were 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 Pacific Grove and if authorized by the Tax Administrator in writing in accordance with Section 7.14.140 (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;

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 Tax Administrator 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 7.14.140 shall not be subject to the cannabis business tax under this chapter. However, such transaction may be subject to Chapter 7.04 and Section 7.04.040.

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.

11. Any business which sells industrial hemp and/or hemp products or offers services or activities related to industrial hemp or hemp products and /or which is not required to obtain a cannabis or industrial hemp permit or license from the City or the State for the purpose of cultivating, growing, drying, curing, manufacturing, processing, packaging, transporting, distributing, testing or selling of industrial hemp either wholesale or retail shall be exempt from the cannabis tax provided that such business does not generate more than 50% of their total gross receipts in the reporting period from the business from industrial hemp activities. However, the exemption may be amended by the City Council by resolution or ordinance pursuant to Section 7.14.050 (B) to increase or decrease the percentage of the business’s hemp and/or hemp products gross receipts reporting from zero to one hundred percent. To the extent the gross receipts from the hemp activities do not meet the relevant percentage to be included, this exclusion shall reduce the gross receipts to zero for the sole purpose of calculating the cannabis tax.

N. “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. However, should the federal or state legislative body increase or decrease the percentage of tetrahydrocannabinol (THC) then this new limit shall be applicable to the tax unless modified by resolution or ordinance of the City Council pursuant to Section 7.14.310.

O. “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.

P. "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.

Q. A "non-arm's length transaction" is a transaction that does not meet the definition of an "arm's length transaction." In other words, the transaction is not a sale entered into in good faith and that reflects fair market value in the open market. One example of a non-arm's length transaction would be when a cultivator sells cannabis goods to a cannabis distributor at a sales price that is lower than what the same cultivator would to other cannabis distributors, or which does not reflect the fair market value in the open market.

R. "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.

S. "Retailer" means a person as defined in Section 7.14.040 (R) who sells cannabis, cannabis products, hemp and/or hemp products at their place of business or by delivery to an end user or customer for use or consumption rather than to another person or business for resale.

T. "Sale" "Sell" and "to sell" means and includes any sale, exchange, or barter either as a retailer or wholesaler by a person as defined by Section 7.14.040 (R) . 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.

U. "State" means the State of California.

V. "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.

W. "Tax Administrator" means the City Manager of the City of Pacific Grove or his/her designee(s).

#### **7.14.050 Tax Imposed.**

A. Beginning January 1, 2023, 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 person has been issued a commercial cannabis business license, permit, or certificate 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 the cannabis business tax. 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 chapter.
- C. The maximum rate of the cannabis business tax shall be calculated as follows:
  - 1. 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, the person shall be subject to the maximum tax rate not to exceed six percent (6%) of gross receipts.
- D. Persons subject to the cannabis business tax shall register with the City and if applicable pay the registration fee adopted by resolution or ordinance by the City Council.

**7.14.060 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) calendar days of commencing operation and shall annually renew such registration within 30 calendar 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 prescribed 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 chapter and may be adjusted annually by resolution or ordinance of the City Council.
- C. The cannabis business tax imposed by this chapter shall be paid, in arrears, on a monthly basis. Each person owing a cannabis business tax shall on or before the last day of the month following the close of each 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 the same date that the tax statement is due.
- D. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar months up through the calendar month during which cessation occurred.
- E. In the event that there is a change in ownership of any cannabis business:
  - a. The new owner is required to submit an updated registration form to the Tax Administrator;
  - b. The new owner is subject to an audit by the Tax Administrator; and
  - c. Unless otherwise provided by law, it is the joint and several liability of both the seller and buyer to remit any taxes, interest, penalties, and fees due up until the date of sale; otherwise, enforcement action may be taken pursuant to Section 7.14.160 of this chapter against both the seller and/or buyer in an amount to be determined by the Tax Administrator.
- F. 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.

**7.14.070 Payments and communications – timely remittance.**

Whenever any payment, statement, report, request, or other communication is due, it must be received by the Tax Administrator on or before the 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.

**7.14.080 Payment - when taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 7.14.060 and 7.14.070.

**7.14.090 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 chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

**7.14.100 Penalties and interest.**

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

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1%) 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 chapter, and any other amount allowed under state law.

C. The Tax Administrator may waive the penalties imposed upon any person under this Section 7.14.100 if:

1. The person requests a waiver of penalties by submitting a written request for waiver to the Tax Administrator no later than June 30 of the second fiscal year following the fiscal year in which the tax became delinquent; and

2. The person provides evidence satisfactory to the Tax Administrator that the failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and in the absence of willful

neglect; and the person paid the delinquent taxes, penalties, accrued interest, and fees owed prior to applying to the Tax Administrator for a waiver.

D. The waiver provisions specified in Section 7.14.100 (C) shall not apply to interest accrued on the delinquent taxes and a waiver shall be granted only once during any twenty-four month period. The Tax Administrator's decision on a request for a waiver of penalties is final and conclusive and not subject to appeal under Section 7.14.150.

**7.14.110 Refunds and credits.**

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 7.14.120.

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

**7.14.120 Refunds and procedures.**

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund signed under the penalty of perjury is filed with the Tax Administrator within one (1) year of the date the tax was originally due or paid, whichever came first. A person may only file a claim for refund if the person paid the tax. No person shall be entitled to a refund unless the person can support the claim by written records sufficient to show entitlement thereto. The Tax Administrator's decision on a claim for refund is final and conclusive and not subject to appeal under Section 7.14.150.

B. The Tax Administrator, his or her designee which may include a third party, or any other City officer charged with the administration of this chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after requested by the Tax Administrator to do so. The Tax Administrator may collect a fee adopted by resolution 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 Tax Administrator to make a determination on the claim for refund.

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.

**7.14.130 Personal Cultivation Not Taxed.**

The provisions of this chapter 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 chapter shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and provided that the individual receives no compensation whatsoever related to that personal cultivation or use.

**7.14.140 Administration of the tax.**

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

B. For purposes of administration and enforcement of this chapter 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 chapter 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 chapter;
3. Receive and record all taxes remitted to the City as provided in this chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this chapter;
5. Assess penalties and interest to taxpayers pursuant to this chapter;
6. Determine amounts owed under and enforce collection pursuant to this chapter.

**7.14.150 Appeal procedure.**

A taxpayer aggrieved by a decision of the Tax Administrator with respect to the amount of tax, interest, penalties, and fees, if any, due under this chapter may appeal only if a hearing was requested and attended pursuant to Section 7.14.250. An appeal may be made by filing a notice of appeal with the City Clerk within fifteen (15) calendar days of the serving or mailing of the Tax Administrator’s decision of the amount due. Upon receipt of a timely notice of appeal, the City Clerk, or his or her designee, shall fix a time and place for hearing such appeal with an Administrative Hearing Officer selected pursuant to PGMC Chapter 1.19.110. The appeal shall be deemed a request for hearing on an administrative citation. An appeal fee shall be paid in advance as determined by the Master Fee Schedule. The City Clerk, or his or her designee, shall give at least ten (10) calendar days’ notice of the appeal hearing in writing to such taxpayer at the last known place of address. The Administrative Hearing Officer shall render a written decision that shall be served on the taxpayer at the last known place of address. The decision of the Administrative Hearing Officer shall be final and conclusive. Any amount found to be due by the Administrative Hearing Officer shall be immediately due and payable upon the service of the decision. If no notice of appeal is filed within the time prescribed in this Section, the Tax

Administrator's decision with respect to the amount of tax, interest, penalties, and fees due is final and conclusive.

**7.14.160 Enforcement - action to collect.**

A. Any taxes, interest, penalties, and/or fees required to be paid under the provisions of this chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this chapter 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, interest, penalties, and/or fees imposed by this chapter or the failure to comply with any of the provisions of this chapter.

**7.14.170 Apportionment.**

If a person subject to the tax is operating both within the City 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.

**7.14.180 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 chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution 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.

**7.14.190 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 or his/her designees which may include a third party shall have the power to inspect any location where commercial cannabis activity occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, access to METRC data, and/or point-of-sale data, state and/or federal income tax returns, excise 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, or his/her designees which may include a third party shall have the power to inspect any equipment or software, such as computers, software systems, platforms, and databases (including METRC), and/or point of sale systems, to include any keys or access codes for access to and use of the equipment and/or software, 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 chapter 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 which may include a third party shall have the right to inspect at all reasonable times.

#### **7.14.200 Other licenses, permits, taxes, fees, or charges.**

A. Nothing contained in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any commercial cannabis permit, City license, permit, or other certificate 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, permits, certificates, taxes, fees, or charges, or to any schedule of license, permit, certificate, or fees, shall be deemed to refer to the licenses, permits or certificates, and their respective taxes, fees or charges, or schedule of fees, provided for in other Chapters of this code.

B. A commercial cannabis permit issued under the Pacific Grove 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 7.14.60 or (ii) timely pay all taxes, interest and penalties owed by that business under this chapter.

#### **7.14.210 Payment of tax does not authorize unlawful business.**

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

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

#### **7.14.220 Deficiency determinations.**

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. 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 Sections 7.14.240 and 7.14.250.

**7.14.230 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 chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this chapter;
2. If the person has not paid the tax due under the provisions of this chapter;
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 chapter; or
4. If the Tax Administrator determines that the nonpayment of any cannabis business tax due under this chapter 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 chapter 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 chapter and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment. The notice shall state that the person has thirty (30) calendar days from the date of the notice to make a written request for an informal hearing before the Tax Administrator. The notice shall also state that if the person fails to timely request an informal hearing within the time allowed, the amount determined by the Tax Administrator is final and conclusive and is immediately due and payable.

**7.14.240 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 chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purpose of Section 7.14.240, 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.

**7.14.250 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 an informal hearing on the assessment. If application for an informal hearing 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 an informal hearing, the Tax Administrator shall cause the matter to be set for an informal hearing before him or her, or his/her designee, 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 informal hearing. Notice of such informal hearing shall be given by the Tax Administrator to the person requesting such informal hearing no later than five (5) calendar days prior to such informal hearing. A hearing under this section shall be informal and need not follow any formal rules of evidence. 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 amount of tax, interest, penalties, and fees to be charged and shall give written notice of the decision to the person in the manner prescribed in Section 7.14.240 for giving notice of assessment. No appeal of a notice of assessment may be made under Section 7.14.150 unless an informal hearing is timely requested, and the person attends the hearing. If the person fails to appear at the informal hearing, the amount due determined by the Tax Administrator in the notice of assessment is final and conclusive.

#### **7.14.260 Relief from taxes – disaster relief.**

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

B. The person 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 person 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. The Tax Administrator's decision on a request for relief and the conditions that may be imposed for relief under this section are final and conclusive and not subject to appeal under Section 7.14.150.

**7.14.270 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 chapter or of any state law requiring the payment of all taxes.

**7.14.280 Violation deemed misdemeanor.**

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor. Any violation of the provisions of this chapter is unlawful and may be enforced pursuant to Chapter 1.16 PGMC.

**7.14.290 Severability.**

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

**7.14.300 Remedies cumulative.**

All remedies and penalties prescribed by this chapter, 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 chapter.

**7.14.310 Amendment or modification.**

Except as set forth in Section 7.14.310, this chapter 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 chapter beyond the maximums set forth in this chapter. The people of the City of Pacific Grove 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; or

C. The collection of the tax imposed by this chapter 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 Pacific Grove 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 City Council hereby finds and determines that this resolution or ordinance is exempt from the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. (“CEQA”) and 14 Cal. Code Re. Sections 15000 et seq. (“CEQA Guidelines”). The calling and noticing of an election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines 15378. The tax submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions.

As such, under CEQA Guidelines Section 15378 (b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue generated by the tax were used for a purpose that would have such an effect, the City of Pacific Grove would undertake the required CEQA review for that particular project. Therefore, pursuant to CEQA Guideline Section 15060 CEQA analysis is not required.

**SECTION 4. EFFECTIVE DATE.** Pursuant to the California Constitution, Article XIIC(2)(b) and California Elections Code § 9217, if a majority of the voters voting in the election on this measure vote in favor of the adoption of this measure, this ordinance shall be deemed valid and binding and shall be considered adopted upon the date that the vote is declared by the City Council and shall go into effect ten (10) days after that date.

This Ordinance was approved and adopted by the People of the City of Pacific Grove at the City’s November 8, 2022 statewide election.

This Ordinance was approved by Declaration of the vote by the City Council of Pacific Grove on \_\_\_\_\_.

\_\_\_\_\_  
BILL PEAKE, Mayor

ATTEST:  
DATED: \_\_\_\_\_

\_\_\_\_\_  
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

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BRIAN PIERIK, City Attorney

Draft