



# **ORDINANCE No. \_\_\_\_\_**

## **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

### **AN ORDINANCE ADDING ARTICLE 8 TO CHAPTER 5 OF THE GENERAL CODE OF THE COUNTY OF NEVADA ESTABLISHING A CANNABIS BUSINESS TAX (4/5ths AFFIRMATIVE VOTE REQUIRED)**

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA,  
ORDAINS AS FOLLOWS:

#### **SECTION I:**

Subject to voter approval and enactment of this ordinance pursuant to Elections Code section 9104 and Article XIIC of the California Constitution, Article 8 entitled "Cannabis Business Tax" is hereby added to Chapter V of the Nevada County General Code to read as shown in Exhibit A attached hereto and incorporated herein by this reference.

#### **SECTION II:**

All revenue from the taxes imposed by Article 8 of Chapter V of the Nevada County General Code, including taxes levied on any cannabis business, as defined in Nevada General Code section G-V 8.4.E, shall be spent for unrestricted general revenue purposes.

#### **SECTION III:**

The County finds that the Cannabis Business Tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose. It is not a commitment to any particular action. 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 significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such an effect, the County would undertake the required CEQA review for that particular project. Therefore, this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment) and CEQA analysis is not required.

#### **SECTION IV:**

Pursuant to Government Code sections 25123(c) and 53723, this Ordinance shall be introduced by a four-fifths vote of the Board of Supervisors and shall take effect and be in force ten (10) days after its approval by a majority of voters voting at the November 6, 2018, general statewide election and final adoption by the Board of Supervisors. Before the expiration of fifteen (15) days after its passage by the Board of Supervisors it shall be published once, with the names of the Supervisors voting for and against the same in the Union and Sierra Sun, newspapers of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by a four-fifths vote of the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the       day of \_\_\_\_\_, \_\_\_\_\_, by the following vote of said Board:

## **EXHIBIT A**

### **ARTICLE 8 CANNABIS BUSINESS TAX**

#### **G-V 8.1 Title.**

This Article shall be known as the Cannabis Business Tax. This Article shall be applicable in the unincorporated area of the County of Nevada, which shall be known as the “County”.

#### **G-V 8.2 General Tax.**

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the County and not for specific purposes. All of the proceeds from the tax imposed by this Article shall be placed in the County's general fund and be available for any legal County purpose.

#### **G-V 8.3 Purpose.**

This Ordinance is adopted to achieve the following purposes, among others, and directs that the provisions hereof be interpreted to accomplish these purposes:

A. To impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, distributing, transporting or engaging in any other commercial business activity related to medical and nonmedical cannabis or cannabis products in the unincorporated area of the County, pursuant to Business and Professions Code section 19348, Revenue & Taxation Code section 34021.5, or other enabling legislation, notwithstanding if state law uses the term "marijuana" or "cannabis"; and

B. To impose a tax on all cannabis business in accordance with the authority granted by California Revenue and Taxation Code section 7284 to impose a business license tax; and

C. To specify the type and rate of tax to be levied, the method of apportionment and the method of collection; and

D. To comply with all requirements for imposition of a general tax, such tax to become operative only if submitted to the electorate and approved by a majority vote of the voters voting in an election on the issue.

#### **G-V 8.4 Definitions.**

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

A. “Base Rate” shall mean (a) the initial cannabis business tax rate in effect as of January 1, 2019, and (b) any adjusted cannabis business tax rate in effect as of on July 1 of each calendar year.

B. “Business” shall include all activities engaged in or caused to be engaged in within the unincorporated area of the County, 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. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code and industrial hemp as defined by Section 11018.5 of the California Health and Safety Code, and is not limited to medical cannabis.

D. “Cannabis accessories” means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body. “Cannabis accessories” also means cannabis accessories as defined by Section 11018.2 of the California Health and Safety Code, and is not limited to medical cannabis accessories.

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 marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.

F. “Cannabis business” means any business activity relating to cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, possessing, processing, preparing, storing, packaging, labeling, delivering, testing, dispensing, and selling (retail or wholesale sales) of cannabis, of cannabis products or of any ancillary products and accessories, whether or not carried on for gain or profit. Cannabis business does not include any donation, for no consideration whatsoever, of medical cannabis or medical cannabis product to a compassion care patient (as defined by the Compassionate Use Act of 1996) for personal use in accordance with a Compassion Care or non-remunerative use license as contemplated by SB 829 or similar state legislation and/or any similar County permit as may be required by Nevada County Codes.

G. “Cannabis business tax”, “business tax” or “commercial cannabis tax” means the tax due pursuant to this Article for engaging in cannabis business in the unincorporated area of the County.

H. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous or noncontiguous on any one site. 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. The plant canopy does not need to be continuous on any premise in determining the total square footage.

I. “Commercial cannabis cultivation” means cultivation conducted by, for or as part of a cannabis business.

J. “County permit” means a permit issued by the County to a person or entity to authorize that person or entity to operate or engage in a cannabis business. The term “County permit” includes a commercial cannabis permit, or any other permit as the County may require to operate or engage in cannabis activity, issued pursuant to the provisions of the Nevada County General or Land Use and Development Codes, or any other provision of the Nevada County Codes which may be adopted or amended from time to time to authorize any cannabis activity.

K. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or storage of cannabis, or any combination of these activities.

L. “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.

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

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

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

N. “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 unincorporated area of the County.

O. “Fiscal year” means July 1 through June 30 of the following calendar year.

P. “Gross Receipts,” except as otherwise specifically provided, means the total amount or compensation (including all receipts, cash, credits and property of any kind or nature) actually received or receivable for the 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 or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise and any discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in “gross receipts” shall be all receipts, cash, credits and property of any kind or nature, without any deduction 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. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
7. Cash value of sales, trades or transactions between departments or units of the same business;
8. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected

they shall be included in the amount of gross receipts for the period when they are recovered;

9. 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;

10. 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 Treasurer-Tax Collector 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.

Q. “Growing cycle” means the life of cannabis plant grown from seed, clone or start to maturity, at which point the plant is harvested for flower or byproducts to dry, cure grade, trim or package for retail or wholesale.

R. “Medicinal Cannabis”, “Medical Cannabis”, “Medicinal Cannabis Product” or “Medical Cannabis Product” means cannabis or a cannabis product recommended by a licensed physician, in accordance with California Health and Safety Code sections 11362.5 through 11362.83 and intended to be sold for use pursuant to Health and Safety Code sections 11362.5, et seq, by a medicinal cannabis patient in California who possess a physician’s recommendation or intended to be donated to or used by a compassion care patient.

S. “Non-Remunerative Cultivation” or “Compassion Care Cultivation” means the cultivation of medical cannabis only by a Primary Caregiver on behalf of a Qualified Individual for no monetary compensation as contemplated by SB 829 or similar state legislation and/or any similar permit required by Nevada County Codes. Non-remunerative cultivation or compassion care cultivation activities must be permitted under applicable State law and County codes and must comply with all applicable state and local Commercial Cannabis Cultivation regulations but are not considered Cannabis Businesses for the purposes of this Article.

T. “Nursery” means a facility or part of a facility that is used primarily for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

U. “Person” means an individual, firm, partnership, joint venture, association, corporation, 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.

V. “Personal Use” means cannabis cultivated at the cultivator’s primary place of residence in accordance with all other provisions of Nevada County Codes, not for any commercial purpose and not for sale, donation, gifting, or any other purpose other than the personal use of the individual who cultivates the cannabis. Personal Use does not include non-remunerative/compassion care cultivation.

W. “Sale” means and includes any sale, exchange, trade or barter.

X. “State” means the State of California.

Y. “State license”, “license”, or “registration” means a state license issued pursuant to California Business & Professions Code sections 19300, et seq. and 26000, et seq., or other applicable state law.

Z. “Treasurer-Tax Collector” means the Treasurer-Tax Collector of the County of Nevada, his or her deputies or designees, or any other County officer charged with the administration of the provisions of this Article.

AA. “Testing Laboratory” means a cannabis business that (i) offers or performs tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state, and (v) is registered with the State Department of Public Health.

#### **G-V 8.5 Tax imposed.**

A. Beginning January 1, 2019, there is established and imposed a cannabis business tax at the rates and methods set forth in this Article. Every person who is engaged in a cannabis business in the unincorporated area of the County shall pay a cannabis business tax in accordance with the requirements of this Article.

##### **B. Tax on Permitted Commercial Cannabis Cultivation Excluding Nurseries**

1. Every person who is engaged in commercial cannabis cultivation, excluding nurseries, in the unincorporated area of the County shall pay a cannabis business tax either:

a. At a rate of up to ten dollars (\$10.00) per square foot of commercial cannabis cultivation area per growing cycle.

b. At a rate of up to eight dollars (\$8.00) per ounce of cannabis or cannabis product sold, bartered, exchanged or otherwise transferred between a cultivator and other persons with State licenses and County permits, per fiscal year.

c. At a rate of up to ten percent (10%) of the Gross Receipts per fiscal year.

2. The initial cannabis business tax base rate effective January 1, 2019, through June 30, 2021, shall be set at 2.5% of the Gross Receipts per fiscal year; provided, however, that persons engaged in permitted commercial cannabis cultivation shall not pay less than the following amounts:

a. Persons cultivating less than or equal to two thousand five hundred (2,500) square feet of cannabis canopy shall pay a cannabis business tax of no less than twelve hundred fifty dollars (\$1250.00) per growing cycle.

b. Persons cultivating more than two thousand five hundred (2,500) square feet but less than or equal to five thousand (5,000) square feet of cannabis canopy shall pay a cannabis business tax of no less than twenty-five hundred dollars (\$2500.00) per growing cycle.

c. Persons cultivating more than five thousand (5,000) square feet of cannabis canopy shall pay a cannabis business tax of no less than five-thousand dollars (\$5000.00) per growing cycle.

##### **C. Tax on all other Cannabis Businesses Including Nurseries**



1. Every person who is engaged in all other commercial cannabis business, including but not limited to as a retailer, distributor, distribution facility, testing laboratory, transporter, manufacturing facility, nursery, dispensary or engaging in the delivery of cannabis, in the unincorporated area of the County shall pay a cannabis business tax at a rate of up to ten percent (10%) of the Gross Receipts per fiscal year.

2. The initial cannabis business tax rate effective January 1, 2019, through June 30, 2021, shall be set at 2.5% of the Gross Receipts, but no less than twenty-five hundred dollars (\$2,500.00) per fiscal year.

D. Adjustments and Increases to Tax Rates and Methodology

1. Beginning on July 1, 2021, and on July 1 of each succeeding fiscal year thereafter, the cannabis business tax rates imposed by this Section G-IV 8.5 shall be automatically increased by the annual Consumer Price Index (CPI) for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics as published for January of each calendar year. For example, a 2% CPI on the initial 2.5% tax rate under this subsection would result in an adjusted tax rate of 2.55%. However, no CPI adjustment resulting in a decrease of any tax rate imposed by this subsection shall be made.

2. As of July 1, 2021, the Board of Supervisors may, by ordinance, increase the cannabis business tax base rate in increments of up to 2% per year, not to exceed the maximum tax rates set forth in this subsection. For example, a 2% discretionary increase in the initial base rate under this subsection would result in a 4.5% base tax rate. Such increases shall be at the discretion of the Board of Supervisors. Incremental increases in the base tax rate shall not occur more than once per fiscal year, following the approval by the Board of Supervisors of such increase at a regularly scheduled meeting of the Board of Supervisors; provided, however, that if the Board of Supervisors does not increase the base tax rate for a period of three years or longer, then there shall be no limit on the percentage of discretionary increase that may be imposed by the Board of Supervisors. Said discretionary increases in the base tax rate may be made in addition to any automatic CPI increase as provided in Subsection G-IV 8.5.F., above.

3. Notwithstanding the maximum tax rates established in Subsections G-IV 8.5.B and G-IV 8.5.C, the Board of Supervisors may, in its discretion, at any time by ordinance, implement a lower tax rate for all persons engaged in commercial cannabis activity in the unincorporated area of the County or establish different tax rates for differing categories of commercial cannabis businesses, to be defined by the Board of Supervisors, subject to the maximum tax rates set forth in Subsections G-IV 8.5.B and G-IV 8.5.C. The Board of Supervisors may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rates set forth in Subsections G-IV 8.5.B and G-IV 8.5.C. Notwithstanding the methodology used for the initial cannabis business tax set forth in Subsection G-IV 8.5.B, the Board of Supervisors may, in its discretion, at any time by ordinance, implement a change in the methodology or rate structure for commercial cannabis cultivation businesses, subject to the maximum tax rates and consistent with the tax methodologies set forth in Subsection G-IV 8.5.B. The Board of Supervisors may also, in its discretion, create a tiered rate structure based

on State license or County permit type so long as the highest tier in the rate structure does not exceed the maximum tax rate, per fiscal year.

#### **G-V 8.6      Reporting and remittance of tax.**

A.      The cannabis business tax imposed by this Article shall be imposed on a fiscal year basis and shall be due and payable in quarterly installments as follows:

1.      Each person engaged in a cannabis business and subject to the cannabis business tax shall, on or before the last day of the month following the close of each quarter, prepare and submit a tax return on the form prescribed by the Treasurer-Tax Collector with the total gross receipts and the balance of the tax due, if any. The full amount of the tax due shall be remitted to the Treasurer-Tax Collector at the time the return is filed. The tax due shall be no less than the quarterly installment due, but the Treasurer-Tax Collector may permit the taxpayer to pay the tax due for the entire fiscal year. Each cannabis business shall pay on or before the last day of the month following the close of each quarter.

2.      If the cannabis business tax is owed on commercial cannabis cultivation and if the Board of Supervisors has implemented a square footage methodology for taxing cannabis cultivation, the square footage tax due shall be paid based on the square footage of cultivation authorized by the County permit. The tax statement may include a request for adjustment of the tax due to square footage authorized but not utilized for cultivation, and/or crop loss, along with evidence substantiating the square footage utilized and/or crop loss. The decision to prorate or adjust the tax will be made at the sole discretion of the County. A fee may be adopted by the Board of Supervisors and collected by the agency having jurisdiction or the Treasurer-Tax Collector to pay for the cost of investigating, verifying and opining on such request for adjustment of the tax. If the cannabis cultivation begins in the middle of the fiscal year, the Treasurer-Tax Collector shall prorate, in monthly increments, the amount due for the fiscal year.

3.      All tax statements shall be completed on forms prescribed by the Treasurer-Tax Collector.

4.      Tax statements and payments for all outstanding taxes owed the County are immediately due to the Treasurer-Tax Collector upon cessation of business for any reason.

5.      The Treasurer-Tax Collector may, at his or her discretion, establish shorter report and payment periods for any taxpayer, as the Treasurer-Tax Collector deems necessary to ensure collection of the tax.

6.      The Treasurer-Tax Collector may, as part of administering the tax and in his or her discretion, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.

#### **G-V 8.7      Registration and Business Tax Certificates.**

A.      In order that the Treasurer-Tax Collector shall have an accurate record of persons required to collect, report and remit the cannabis business tax in the unincorporated area of the County, prior to conducting business each person engaged in commercial cannabis cultivation or other cannabis business shall register such cannabis

business with the Treasurer-Tax Collector, submit any information deemed necessary by the Treasurer-Tax Collector, and obtain a business tax certificate. Separate business tax certificates may be required for each business location.

B. The issuance of a business tax certificate shall not entitle any person to engage in any cannabis business without first complying with the requirements of the Nevada County Codes and all other applicable laws.

C. Business tax certificates issued under this Article are nontransferable.

D. The Treasurer-Tax Collector may, as part of administering this Registration requirement and in his or her discretion, develop such registration forms, tax certificates, posting requirements and implementing regulations, and take such other administrative actions as needed to facilitate and ensure compliance with the registration process.

#### **G-V 8.8 Payments and communications – timely remittance.**

A. Whenever any payment, statement, report, request or other communication is due, it must be received by the Treasurer-Tax Collector on or before the final due date. A postmark cancellation made by the United States Postal Service will be accepted as timely received. If the due date for the tax would fall on a Saturday, Sunday, County holiday or a United States Post Office Closure date, the due date shall be the next regular business day on which the County is open to the public.

B. For the purposes of this section, “on or before” shall be interpreted as: (1) hand delivery to, and receipt by, the Treasurer-Tax Collector, or (2) postal delivery of a properly stamped and addressed envelope containing the return and full amount of the tax to the United States Postal Service. Delivery to the Postal Service must be verified by cancellation by the Postal Service showing a postmark date no later than midnight on the date that the tax is due.

#### **G-V 8.9 Payment - when taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this Article, the taxes required to be paid pursuant to this Article shall be deemed delinquent if not received by the Treasurer-Tax Collector postmarked on or before the due date as specified in Sections G-IV 8.7 and G-IV 8.8.

#### **G-V 8.10 Notice not required by the County.**

The County may as a courtesy send a tax notice to the business. However, the Treasurer-Tax Collector is not required to send a notice of assessment, delinquency, or any other tax notice or bill to any person subject to the provisions of this Article. Failure to send any such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Article.

#### **G-V 8.11 Penalties and interest.**

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this Article 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 and one-half percent (1.5%) per month.

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to ten percent (10%) of the amount of the tax, plus interest at the rate of one and one-half percent (1.5%) per month on the unpaid tax and on the unpaid penalties.

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

B. Whenever a check or electronic payment is submitted in payment of a 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 G-IV 8.11, and any other amount allowed under state law.

C. The commercial cannabis business tax due shall be that amount due and payable from the first date on which the person was engaged in commercial cannabis business in the unincorporated area of the County, together with applicable penalties and interest calculated in accordance with Section G-IV 8.11.A, above.

D. Any person whose commercial cannabis business tax is delinquent by at least sixty (60) calendar days may be subject to revocation of the County permit associated with that cannabis business activity.

E. The Treasurer-Tax Collector is authorized to make an assessment in the manner provided for in Sections G-IV 8.25 and G-IV 8.26 of the anticipated tax liability for up to the following four (4) quarters for any person who has failed to file one or more returns or payments, or who has filed one or more delinquent returns or payments, in any twelve (12) month period, without curing the failure or delinquency within sixty (60) days of the original due date after written notice by the Treasurer-Tax Collector of the failure or delinquency. Failure to remit the anticipated tax within sixty (60) days of the notice of assessment shall be grounds for revocation of the County permit associated with the subject cannabis business or, in the case of an unpermitted cannabis business, may be grounds for denial of a permit application for said cannabis business.

#### **G-V 8.12 Waiver of Penalties.**

The Treasurer-Tax Collector may waive the first and second penalties of 10% each imposed upon any person if:

A. The person provides evidence satisfactory to the Treasurer-Tax Collector that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the County prior to applying to the Treasurer-Tax Collector for a waiver.

B. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during a twenty-four (24) month period.

**G-V 8.13     Refunds and credits.**

A.     No refund shall be made of any tax collected pursuant to this Article, except as provided in Section G-IV 8.14.

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

**G-V 8.14     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 County under this Article, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Treasurer-Tax Collector within one (1) year of the date the tax was originally due and payable. The claimant shall state, under penalty of perjury under the laws of the State of California, the specific grounds upon which the claim is founded. The claim shall be on forms furnished by the Treasurer-Tax Collector.

B.     The Treasurer-Tax Collector, the County Auditor-Controller, their respective designees or any other County officer charged with the administration of this Article shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Treasurer-Tax Collector to do so. The Treasurer-Tax Collector may collect a fee approved by the Board of Supervisors to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the Treasurer-Tax Collector to make a determination on the claim for refund.

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

**G-V 8.15     Personal Cultivation and Non-Remunerative/Compassion Care Cultivation Not Taxed.**

A.     The provisions of this Article shall not apply to personal cannabis cultivation.

B.     This Article shall not apply to personal use of cannabis that is specifically exempted from State and County licensing or permitting requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

C.     This Article shall not apply to non-remunerative/compassion care cultivation as defined in this Article.

**G-V 8.16     Administration of the tax.**

A.     It shall be the duty of the Treasurer-Tax Collector to collect the taxes, penalties, fees, and perform the duties required by this Article.

B. For purposes of administration and enforcement of this Article generally, the Treasurer-Tax Collector may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Article as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Treasurer-Tax Collector may take such administrative actions as needed to administer the tax, including but not limited to:

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

#### **G-V 8.17 Appeal procedure.**

A. Any taxpayer aggrieved by any decision of the Treasurer-Tax Collector with respect to the amount of tax, interest, penalties and fees, if any, due under this Article may appeal to the County Board of Supervisors by filing a notice of appeal with the Clerk of the Board within fifteen (15) calendar days of the serving or mailing of the notice of deficiency pursuant to Section G-IV 8.25 or notice of assessment pursuant to Section G-IV 8.27. If a timely notice of appeal is not filed, the tax, interest and penalties determined by the Treasurer-Tax Collector shall become final and conclusive.

B. The Clerk of the Board, or his or her designee, shall fix a time and place for hearing such appeal, and the Clerk of the Board, or his or her designee, shall give notice in writing to such operator at the last known place of address. The Treasurer-Tax Collector shall present the matter to the Board of Supervisors and include the evidence submitted by the taxpayer. The Treasurer-Tax Collector shall also submit proposed findings and a resolution of the appeal. At the hearing, both the Treasurer-Tax Collector and the taxpayer shall have an opportunity to explain their cases and introduce other statements and evidence. The Board of Supervisors may impose reasonable time limits on each party's presentation. The determination of the County Board of Supervisors shall be final and conclusive and the notice of decision shall be served upon the appellant in the manner prescribed by this Article for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice of decision.

#### **G-V 8.18 Enforcement - action to collect.**

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

B. In addition to any other remedies available under Federal, State, or local law, if any amount required to be paid to the County under this Article is not paid when due, the Treasurer-Tax Collector may, within three years after the amount is due, record a certificate of lien specifying the amount of taxes, fees, interest and penalties due, and the name and address of the person as it appears on the records of the Treasurer-Tax Collector. The lien shall also specify that the Treasurer-Tax Collector has complied with all provisions of this Article in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with penalties, fees and interest thereon, constitutes a lien upon all real property in the County owned by the person, or subsequently acquired by the person before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten years from filing of the certificate of lien unless sooner released or otherwise discharged. A fee may be adopted by the Board of Supervisors and collected by the Treasurer-Tax Collector to pay for the cost of recording and administering the lien.

C. At any time within three years after any person is delinquent in the payment of any amount required to be paid under this Article or within three years after the last recording of a certificate of lien under Subsection B of this Section, the Treasurer-Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this Article. The warrant shall be directed to the Sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Treasurer-Tax Collector may pay or advance to the Sheriff, the same fees, commissions and expenses for service provided by law for similar services pursuant to a writ of execution.

D. At any time within three years after recording a lien against any person, if the lien is not discharged and released in full, the Treasurer-Tax Collector may forthwith seize any asset or property, real or personal (including bank account), of the person and sell at public auction the asset or property, or a sufficient part of it to pay the amount due together with any penalties and interest imposed for the delinquency and any cost incurred on account of the seizure and sale. Assets or property of the person subject to seizure and sale subject to this Article shall not include any assets or property, which is exempt from execution under the provisions of the Code of Civil Procedure.

E. The following shall constitute grounds for terminating any County permit which authorizes cannabis business activity:

1. Failure to pay any cannabis business tax due under this Article within sixty (60) days of the due date.
2. Failure to cooperate with the Treasurer-Tax Collector, or designee, as determined by the Treasurer-Tax Collector, or his or her designee, during an audit pursuant to this Article.

3. Underpaying any business tax due under this Article in any reporting period by 50 percent more.

4. If the County determines that the nonpayment or underpayment of any cannabis business license tax due under this Article is due to fraud.

#### **G-V 8.19 Apportionment.**

If a business subject to the tax is operating both within and outside the unincorporated area of the County, it is the intent of the County 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 unincorporated area of the County. For purposes of apportionment as may be required by law, the Treasurer-Tax Collector may promulgate such administrative procedures for apportionment as he or she finds useful or necessary.

#### **G-V 8.20 Constitutionality and legality.**

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

#### **G-V 8.21 Audit and examination of premises and records.**

A. The correctness of any tax return filed pursuant to this Article shall be subject to audit and verification by the Treasurer-Tax Collector, the County Auditor-Controller or their respective designees, who are authorized and empowered to inspect and audit the books and records of any commercial cannabis business. No cannabis business shall refuse or fail to allow the Treasurer-Tax Collector, the County Auditor-Controller or their respective designees, to inspect and audit such books and records, or shall refuse or fail to provide such additional information as requested by the Treasurer-Tax Collector, the County Auditor-Controller or their respective designees.

B. The Treasurer-Tax Collector, the County Auditor-Controller or their respective designees shall have the power to inspect any location where commercial cannabis business occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, state tax returns, bank statements and other evidence documenting the gross receipts of the business) of persons engaged in cannabis businesses in the County, for the purposes of ascertaining the amount of commercial cannabis business tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or items thereof when filed by any person pursuant to this Article. In conducting such investigation, the Treasurer-Tax Collector shall have the power to inspect any equipment, such as computers or point of sale machines that may contain such records.

C. If any person engaged in a commercial cannabis business, after written demand by the Treasurer-Tax Collector, refuses to make available for audit, examination or verification such books, records or equipment as the Treasurer-Tax Collector requests, the Treasurer-Tax Collector may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment in the manner provided by Sections G-IV 8.26 and G-IV 8.27 of any taxes estimated to be due. The Treasurer-Tax Collector may collect a fee adopted by the



Board of Supervisors to pay for the cost of examination and audit should the books and records be provided in a form insufficient to allow the Treasurer-Tax Collector to make a determination of the tax due.

D. It shall be the duty of every person liable for the collection and payment to the County of any tax imposed by this Article to keep and preserve, for a period of at least four (4) 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 County, which records the Treasurer-Tax Collector, the County Auditor-Controller or their respective designees shall have the right to inspect at all reasonable times.

**G-V 8.22 Other licenses, permits, taxes, fees or charges.**

Nothing contained in this Article shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title, chapter or article of County Codes or any other ordinance or resolution of the County, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title, chapter or article of County Codes or any other ordinance or resolution of the County. Any references made or contained in any other title, chapter or article of County Codes to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles, chapters or articles of County Codes.

**G-V 8.23 Payment of tax does not authorize unlawful business.**

A. The payment of a cannabis business tax required by this Article, and its acceptance by the County, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of County Codes, including but not limited to any and all permit requirements, and all other applicable state laws.

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

**G-V 8.24 Change of Ownership.**

A. In the event that there is a change of ownership of any cannabis business, the new owner is required to submit an updated registration form to the Treasurer-Tax Collector.

B. Unless otherwise provided by law, upon the sale of any cannabis business:

1. It is the joint and several liability of both the seller and the buyer to remit any cannabis business tax owed up until the date of the sale; and

2. A Certificate of Delinquent Cannabis Business Tax Lien may be filed against both the buyer and/or the seller in an amount determined by the Treasurer-Tax Collector.

C. Following any change of ownership, the new owner is subject to an audit by the Treasurer-Tax Collector, the Auditor-Controller or their designees.

D. Any owner of a cannabis business required to collect or pay the cannabis business tax may apply for and receive, within ninety (90) days of application, a Tax Clearance Certificate, provided that all taxes, penalties and interest are paid in full for the time period specified.

#### **G-V 8.25 Deficiency determinations.**

If the Treasurer-Tax Collector is not satisfied that any statement filed as required under the provisions of this Article is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice of deficiency shall be given to the person concerned in the same manner as notices of assessment are given under Section G-IV 8.27.

#### **G-V 8.26 Failure to report—nonpayment, fraud.**

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

1. If the person has not filed a complete statement required under the provisions of this Article;
2. If the person has not paid the tax due under the provisions of this Article;
3. If the person has not, after demand by the Treasurer-Tax Collector, filed a corrected statement, or furnished to the Treasurer-Tax Collector adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Article; or
4. If the Treasurer-Tax Collector determines that the nonpayment of any business tax due under this Article 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 stated in this Article and any other penalties allowed by law.

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

#### **G-V 8.27 Tax assessment - notice requirements.**

The notice of assessment shall be served upon the person either by personal delivery, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Treasurer-Tax Collector for the purpose of receiving notices provided under this Article; or, should the person have no address registered with the Treasurer-Tax Collector for such purpose, then to such person's last known address. For the purposes of this Section, a service by mail is complete at the time of deposit in the United States mail.

**G-V 8.28 Tax assessment - hearing, application and determination.**

Within ten (10) days after the date of service of the notice of assessment, the person may apply in writing to the Treasurer-Tax Collector for a hearing on the assessment. If application for a hearing before the County is not made within the time herein prescribed, the tax assessed by the Treasurer-Tax Collector shall become final and conclusive. Upon receipt of any such application for hearing, the Treasurer-Tax Collector shall cause the matter to be set for hearing before him or her no later than forty-five (45) business days after the receipt of the application, unless a later date is agreed to by the Treasurer-Tax Collector and the person requesting the hearing. Notice of such hearing shall be given by the Treasurer-Tax Collector 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 Treasurer-Tax Collector should not be confirmed and fixed as the tax due. After such hearing the Treasurer-Tax Collector shall determine and, if applicable, reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section G-IV 8.27 for giving notice of assessment. The amount determined to be due shall be payable thirty (30) calendar days after written notice of the decision has been given unless it is appealed to the Board of Supervisors in accordance with Section G-IV 8.17.

**G-V 8.29 Conviction for violation - taxes not waived.**

The conviction and punishment of any person for failure to pay the required cannabis business 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 Article or of any state law requiring the payment of all taxes.

**G-V 8.30 Violation deemed misdemeanor.**

Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and shall be punishable therefore as provided in Section G-I 1.7 of the Nevada County General Code.

**G-V 8.31 Severability.**

If any provision of this Article, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Article or the application of this Article to any other person or circumstance and, to that end, the provisions hereof are severable. The Board of Supervisors hereby declares that it would have passed this ordinance, and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**G-V 8.32 Remedies cumulative.**

All remedies and penalties prescribed by this Article or which are available under any other provision of the Nevada County Codes and any other provision of law or equity are cumulative. The use of one or more remedies by the County shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Article.

**G-V 8.33 Amendment or repeal.**

This Article may be repealed or amended by the County Board of Supervisors without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Article above the maximum rates established by this Article. The people of the County of Nevada affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Article, if the County Board of Supervisors has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or that interprets, clarifies or adds any definition applicable to the tax, so long as interpretation, clarification or addition (even if contrary to some prior interpretation, clarification or addition) is not inconsistent with the language and purposes of this Article;
- C. The collection of the tax imposed by this Article even if the County had, for some period of time, failed to collect the tax;
- D. The Board of Supervisors adoption of an ordinance, as authorized by Section G-IV 8.5 to increase or decrease the tax rate or to modify the method for assessing and collecting the tax provided the tax rate is not increased to a rate higher than the maximums established herein and the method of assessment is consistent with the methodologies established herein.

**G-V 8.34 Effective and Operative Dates.**

This ordinance shall take effect immediately upon its approval by a majority of voters at the November 6, 2018, statewide general election and final adoption by the County Board of Supervisors. The operative date of Section G-V 8.5 shall be January 1, 2019.