

TOWN COUNCIL STAFF REPORT

Subject: Approve resolutions and ordinance for cannabis tax measure

Meeting Date: February 21, 2018

Written by: Pam Kobylarz, Assistant to the Town Manager
Rob Patterson, Administrative Services/Finance Director

RECOMMENDATION:

Waive the second reading and introduce by title only the attached ordinance to add Chapter 5.42 to Title 5 to the Mammoth Lakes Municipal Code, subject to approval by the voters, and resolutions placing the measure on the ballot, directing preparation of an impartial analysis, and providing for ballot arguments.

BACKGROUND:

On November 8, 2016, the voters of California passed Proposition 64, which legalized the adult use of recreational marijuana. Beginning January 1, 2018, retail sales of recreational marijuana are legal. With the legal sales of marijuana, the State assesses a 15% excise tax. State and local sales taxes also apply. Local jurisdictions may approve an additional local tax on cannabis businesses.

The Town Council has given staff previous direction that it would like to pursue a general tax on cannabis businesses. Any revenues the Town receives from a general tax must go into the general fund and may be used for any purpose. The tax measure will be placed on the June 5, 2018 ballot.

ANALYSIS:

At its meeting of February 7, 2018, the Town Council conducted a workshop regarding cannabis business taxes and provided staff with direction regarding the tax ballot measure regarding maximum rates for various types of cannabis businesses. The Council weighed a number of options and discussed concerns related to over-taxation versus the ability to collect revenues that would help to offset costs related to cannabis legalization. The Council also expressed interest in developing a tax ballot measure that would be similar to what is being proposed by Mono County for the unincorporated areas of the County. The Town Council had consensus on the following items:

- Cultivation should be taxed on a gross receipts basis rather than by canopy square foot.
- A maximum tax rate of 4% for all non-retail cannabis businesses is appropriate.
- A maximum tax rate of 8% for retail cannabis businesses is appropriate.

- The Council did not wish to set a minimum tax rate, however they agreed a low starting rate of 1% may be appropriate.
- The Council supported limiting how much the tax could be increased each year, up to the maximum.
- The Council did not wish to freeze the tax rate for a period of time after initial implementation.

There was a discussion regarding allowing the maximum tax rate to increase based on Consumer Price Index (CPI), however, after a discussion with the Town Attorney, staff has determined that this would not be permitted if the voters elect a maximum percentage for the tax.

On February 13, 2018, Mono County Board of Supervisors met regarding the proposed tax ballot measure for the unincorporated areas of Mono County. The Board approved moving forward with the following recommendations:

- Utilize a canopy square foot based tax for cultivation businesses.
- Range of 1-4% of gross receipts for testing businesses.
- Range of 2-4% of gross receipts for distribution businesses.
- Range of 2.5-4% of gross receipts for manufacturing businesses.
- Range of 4-8% of gross receipts for retail businesses.

Staff has prepared a draft ordinance and ballot measure language based upon Council direction at its last meeting, however, Council may direct staff to make revisions to these documents prior to approval based upon the County's actions or other factors.

Timing and next steps

Today staff is requesting that the Town Council approve three resolutions related to the ballot measure and adopt an ordinance, subject to voter approval, which would allow a cannabis business tax. Following that, the Mono County Board of Supervisors will need to consolidate the election at one of their March meetings. Following that, the Town Council will need to write an argument in support of the ballot measure (if desired) and the Town Attorney will need to prepare an impartial analysis by March 20. If any arguments opposed to the ballot measure are submitted, the Council will have an opportunity to write a rebuttal argument prior to March 30.

Option 1: Seek voter approval to allow a cannabis tax by:

- A. Waving further reading and adopting the Ordinance which allows a cannabis business tax, subject to voter approval.
- B. Adopting the resolution "ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE TOWN OF A CERTAIN MEASURE RELATING TO A CANNABIS BUSINESS TAX" placing the measure on the June 5, 2018 ballot,
- C. Adopting the resolution "SETTING PRIORITIES FOR FILING (A) WRITTEN ARGUMENT(S) REGARDING A TOWN MEASURE AND

DIRECTING THE TOWN ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS” providing for an impartial analysis and arguments in favor of the measure, and

- D. Adopting the resolution “PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS FOR TOWN MEASURES SUBMITTED AT MUNICIPAL ELECTIONS” providing for rebuttal arguments.

Option 2: Take no action at this time. A measure proposing a cannabis tax could be set at a special election or postponed until the general election in 2020.

Staff recommends that the Council choose Option 1, waive the second reading and introduce by title only the attached ordinance to add Chapter 5.42 to Title 5 to the Mammoth Lakes Municipal Code, subject to approval by the voters, and resolutions placing the measure on the ballot, directing preparation of an impartial analysis, and providing for ballot arguments.

STAFFING CONSIDERATIONS:

Impacts to staff workload will be minimal. The Town has a contract in place for HdL to conduct annual audits of cannabis businesses, which will be paid for by the businesses.

FINANCIAL CONSIDERATIONS:

There are no specific financial considerations related to the placement of a tax measure on the ballot. The Town already splits the cost of the election with the County because of the Town Council election.

The passage of a cannabis tax by the voters could result in new revenue for the Town. Anticipated revenues are unknown at this time and would be dependent on the amount of the tax and gross receipts of the cannabis businesses.

ENVIRONMENTAL CONSIDERATIONS:

None.

LEGAL CONSIDERATIONS:

None.

Attachments:

- A. Draft Ordinance
- B. Resolution placing the measure on the ballot
- C. Resolution providing for rebuttal arguments

D. Resolution directing preparation of an impartial analysis and authorizing the filing of a written argument

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN OF MAMMOTH LAKES, COUNTY OF MONO,
STATE OF CALIFORNIA, ADDING CHAPTER 5.42 (CANNABIS BUSINESS TAX) TO
TITLE 5 OF THE MAMMOTH LAKES MUNICIPAL CODE**

**THE PEOPLE OF THE TOWN OF MAMMOTH LAKES DO ORDAIN AS
FOLLOWS:**

SECTION 1. CODE AMENDMENT. Title 5 of the Mammoth Lakes Municipal Code is hereby amended by adding thereto a new Chapter 5.42, to read as follows:

**CHAPTER 5.42
CANNABIS BUSINESS TAX**

Sections:

- 5.42.010 Title.
- 5.42.020 Authority and Purpose.
- 5.42.030 Intent.
- 5.42.040 Definitions.
- 5.42.050 Tax imposed.
- 5.42.060 Reporting and remittance of tax.
- 5.42.070 Payments and communications – timely remittance.
- 5.42.080 Notice not required by Town.
- 5.42.090 Payment delinquency.
- 5.42.100 Refunds and credits.
- 5.42.110 Personal cultivation not taxed.
- 5.42.120 Administration of the tax.
- 5.42.130 Appeal procedure.
- 5.42.140 Enforcement – action to collect.
- 5.42.150 Apportionment.
- 5.42.160 Constitutionality and legality.
- 5.42.170 Audit and examination of premises and records.
- 5.42.180 Other licenses, permits, taxes or charges.
- 5.42.190 Payment of tax does not authorize unlawful business.
- 5.42.200 Deficiency determinations.
- 5.42.210 Failure to report – nonpayment, fraud.
- 5.42.220 Tax assessment – notice requirements.
- 5.42.230 Tax assessment – hearing, application, and determination.
- 5.42.240 Conviction for violation – taxes not waived.
- 5.42.250 Violation deemed misdemeanor.
- 5.42.260 Severability.
- 5.42.270 Remedies cumulative.
- 5.42.280 Amendment or repeal.

5.42.010 Title.

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

5.42.020 Authority and Purpose.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon cannabis businesses that engage in business in the Town. 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.

The cannabis business tax is a general tax enacted solely for general governmental purposes of the Town and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the Town's general fund and be available for any legal municipal purpose.

5.42.030 Intent.

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

5.42.040 Definitions.

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

- A. "Business" shall include all activities engaged in or caused to be engaged in within the Town, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.
- B. "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, manufactured product, salt, derivative, mixture, tincture, 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 is not limited to medical cannabis. For purposes of this Title, "cannabis" does not include "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.

- C. “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.
- D. “Cannabis business” means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit, whether for medical or recreational use, and whether or not such business possesses a license or other authorization to operate issued by the State of California.
- E. “Cannabis business tax” means the tax due pursuant to this Chapter for engaging in cannabis business in the Town.
- F. “Commercial cannabis cultivation” means cultivation in the course of conducting a cannabis business.
- G. “Cannabis permit” means a permit issued by the Town to a person to authorize that person to operate or engage in a cannabis business.
- H. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery, but does not include personal medical cannabis cultivation for which the cultivator receives no compensation whatsoever, or cultivation for personal recreational use as authorized by Health & Safety Code Section 11362.1 et seq for which the cultivator receives no compensation whatsoever.
- 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, whether operating from a fixed location in the Town or coming into the Town from an outside location to engage in such activities. A person shall be deemed engaged in business within the Town if:

1. Such person or person’s employee maintains a fixed place of business within

the Town for the benefit or partial benefit of such person;

2. Such person or person's employee owns or leases real property within the Town for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the Town for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the Town; or
5. Such person or person's employee performs work or renders services in the Town.

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 Town.

L. "Gross Receipts," except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

5. Cash value of sales, trades or transactions between departments or units of the same business, except that if the same business is engaged in two or more taxable activities (e.g. cultivation, manufacturing, distribution, and/or retail sales) tax shall be imposed and payable on each such activity regardless of whether sales, trades, or transactions occur between departments or units of the same business;
 6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
 7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
 8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.
 9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters or other personal tangible property which the Tax Collector has excluded in writing by issuing an administrative ruling per Section 5.42.140 shall not be subject to the cannabis business tax under this chapter. However, any retail sales not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax under Chapter 5.04 through Chapter 5.08 or any other Chapter or Title as determined by the Tax Collector.
- M. “Nursery” means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- N. “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.

- O. “Sale” means and includes any sale, exchange, or barter.
- P. “State” means the State of California.
- Q. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 19300, *et seq.* or other applicable state law.
- R. “Tax Collector” means the Finance Director of the Town of Mammoth Lakes or his or her designee.
- S. “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.
- T. “Town” means the Town of Mammoth Lakes, a municipal corporation of the state of California, in its present incorporation form or in any later reorganized, consolidated, enlarged or reincorporated form.

5.42.050 Tax imposed.

- A. Beginning July 1, 2018, or 10 days after certification of the result of the election adopting this ordinance, whichever is later, there is imposed upon each cannabis business a cannabis business tax regardless if the business has been issued a permit to operate lawfully in the Town or is operating unlawfully.
- B. The initial rate of the cannabis business tax shall be as follows:
 - 1. For every cannabis business engaged in commercial cannabis cultivation in the Town: One percent (1%) of gross receipts.
 - 2. For every cannabis business engaged in the operation of a testing laboratory: One percent (1%) of gross receipts.
 - 3. For every cannabis business engaged in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): One percent (1%) of gross receipts.
 - 4. For every cannabis business engaged in cannabis distribution: One percent (1%) of gross receipts.
 - 5. For every cannabis business engaged in cannabis manufacturing, processing, or operating as a microbusiness (non-retail), or any other type of cannabis

business not described in Section (B) (1), (2), (3) or (4): One percent (1%) of gross receipts.

- C. The Town Council may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the Town Council set any adjusted rate that exceeds the maximum rate calculated pursuant to Subdivision (D) of this Section for the date on which the adjusted rate will commence.
- D. The Town Council shall review the cannabis business tax on an annual basis as part of the budget adoption process and may, by resolution, increase the tax rates by up to 1% each year, not to exceed a maximum rate of 8% for retail sales and 4% for all other cannabis businesses.

5.42.060 Reporting and remittance of tax.

- A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a monthly basis. The tax due for each month shall be based on the gross receipts for the month.
- B. Each person owing cannabis business tax for a month shall, no later than the last day of the month following the close of the month, file with the Tax Collector a statement of the tax owed for that month and the basis for calculating that tax. The Tax Collector may require that the statement be submitted on a form prescribed by the Tax Collector. The tax for each month shall be due and payable on that same date as the statement for the month is due.
- C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all months up to the month during which cessation occurred.
- D. The Tax Collector may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Collector deems necessary to ensure collection of the tax. The Tax Collector may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Collector exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Collector may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

5.42.070 Payments and communications – timely remittance.

Taxes collected from a cannabis business which are not remitted to the Tax Collector, or postmarked, on or before the due dates provided in the ordinance codified in this chapter are delinquent. Should the due date occur on a Saturday, Sunday, or Town holiday, the return may be postmarked on the first regular working day following a Saturday/Sunday or Town holiday.

5.42.080 Notice not required by the Town.

The Town may as a courtesy send a tax notice to a cannabis business for which payment of taxes is delinquent. However, the Tax Collector 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.

5.42.090 Payment Delinquency.

- A. Original Delinquency. Any operator who fails to pay any tax or file any return imposed by this chapter within the time required shall pay, in addition to such tax and any interest such tax may accrue, an original delinquency penalty of ten dollars (\$10) or fifteen percent (15%) of the amount of the tax, whichever dollar amount is greater; provided, however, that any operator who has not been late in paying any tax imposed by this chapter or late filing any return within the preceding three (3) calendar years shall, upon application of the operator to the tax collector within fifteen (15) days after the date such tax first became due, pay an original delinquency penalty of ten dollars (\$10) or a total of one percent (1%) per day of the amount of tax due for each day such tax is delinquent, whichever dollar amount is greater, up to fifteen percent (15%). Every penalty imposed, and such interest as accrues under the provisions of this chapter, shall become part of the tax required to be paid. Interest shall accrue on all unpaid taxes until paid.
- B. Continued Delinquency. Any operator who fails to pay any delinquent tax, penalties and interest on or after the next business day of the following return period due date, shall pay an additional delinquency penalty, over and above that provided in paragraph A, of ten dollars (\$10) or fifteen percent (15%) of the amount of the tax, penalties and interest then due, whichever is greater.

5.42.100 Refunds.

- A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 5.42.120.
- 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.
- C. 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 Town under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Collector within one (1) year of the date the tax was originally due and payable.
- D. The Tax Collector, his or her designee or any other Town 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 request by the Tax Collector to do so.

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

5.42.110 Personal Cultivation Not Taxed.

The provisions of this Chapter shall not apply to personal cannabis cultivation that meets the definition of personal cultivation under State law and is consistent with the maximum number of living cannabis plants allowed per single private residence specified in Title 17 of the Town's Municipal Code and Section 11362.2 of the California Health and Safety Code. 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 for which the individual receives no compensation whatsoever related to that personal use.

5.42.120 Administration of the tax.

- A. It shall be the duty of the Tax Collector to collect the taxes, penalties, fees, and perform the duties required by this Chapter.
- B. For purposes of administration and enforcement of this Chapter generally, the Tax Collector 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 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. Provide information to any taxpayer concerning the provisions of this Chapter;
 - 3. Receive and record all taxes remitted to the Town as provided in this Chapter;
 - 4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
 - 5. Assess penalties and interest to taxpayers pursuant to this Chapter;

6. Determine amounts owed and enforce collection pursuant to this Chapter.

5.42.130 Appeal procedure.

Any taxpayer aggrieved by any decision of the Tax Collector with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the Town Council by filing a notice of appeal with the Town Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The Town Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the Town Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the Town Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

5.42.140 Enforcement - action to collect.

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

5.42.150 Apportionment.

If a business subject to the tax is operating both within and outside the Town, it is the intent of the Town 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 Town. 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 Collector may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

5.42.160 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 Collector release him or her from the obligation to pay the impermissible portion of the tax. Pursuant to Article XIII B of the California Constitution, the appropriation limit for the Town is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax imposed by this Chapter.

5.42.170 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 Town in support of his or her tax calculation, the Tax Collector shall have the power to inspect any location where commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the Tax Collector shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.
- B. It shall be the duty of every person liable for the collection and payment to the Town 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 Town, which records the Tax Collector or his/her designee shall have the right to inspect at all reasonable times.

5.42.180 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 permit or license required by, under or by virtue of any provision of any other Chapter of this code or any other ordinance or resolution of the Town, 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 Chapter of this code or any other ordinance or resolution of the Town. Any references made or contained in any other Chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Chapter of this Code.
- B. The Tax Collector may revoke or refuse to renew the Business Tax Certificate required by Chapter 5.04 of this Code for any business that is delinquent in the payment of any tax due pursuant to this Chapter or that fails to make a deposit required by the tax collector pursuant to Section 5.42.060.

5.42.190 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 Town, 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.

5.42.200 Deficiency determinations.

If the Tax Collector 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 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 shall be given to the person concerned in the same manner as notices of assessment are given under Section 5.42.240.

5.42.210 Failure to report—nonpayment, fraud.

- A. Under any of the following circumstances, the Tax Collector 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 Collector, filed a corrected statement, or furnished to the 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 Chapter; or
 - 4. If the Tax Collector determines that the nonpayment of any 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 stated in 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 Collector to be due or estimated by the Tax Collector, after consideration of all information within the Tax Collector's knowledge concerning the business and activities of the person assessed, to be due under each applicable

section 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.

5.42.220 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 Tax Collector for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the 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.

5.42.230 Tax assessment - hearing, application and determination.

Within fifteen (15) days after the date of service the person may apply in writing to the Tax Collector for a hearing on the assessment. If application for a hearing before the Town is not made within the time herein prescribed, the tax assessed by the Tax Collector shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the Tax Collector shall cause the matter to be set for hearing before him or her no later than ninety (90) days after the receipt of the application, unless a later date is agreed to by the Tax Collector and the person requesting the hearing. Notice of such hearing shall be given by the Tax Collector to the person requesting such hearing not later than five (5) days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Collector should not be confirmed and fixed as the tax due. After such hearing the Tax Collector shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.42.240 for giving notice of assessment.

5.42.240 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.

5.42.250 Violation deemed misdemeanor.

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

5.42.260 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.

5.42.270 Remedies cumulative.

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

5.42.280 Amendment or repeal.

This Chapter may be repealed or amended by the Town Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the Town of Mammoth Lakes 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 Chapter, if the Town Council has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or
- C. The collection of the tax imposed by this Chapter even if the Town 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 Town Council hereby declares that it 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. CEQA REQUIREMENTS. This Ordinance is exempt from review under the California Environmental Quality Act, because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment and because the Ordinance involves the approval of government revenues to fund existing services. It does not make any commercial activity lawful, nor commit the Town to funding any particular activity.

It is hereby certified that this Ordinance was approved and adopted by the People of the Town of Mammoth Lakes at the Town's June 5, 2018 statewide election.

John Wentworth, Mayor

ATTEST:

Town Clerk

RESOLUTION NO. 18-XX

A RESOLUTION OF TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, CALIFORNIA, ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE TOWN OF A CERTAIN MEASURE RELATING TO A CANNABIS BUSINESS TAX AT THE GENERAL ELECTION TO BE HELD ON TUESDAY, JUNE 5, 2018, AS CALLED BY RESOLUTION NO. 17-87.

WHEREAS, a General election on Tuesday, June 5, 2018 has been called by Resolution No. 17-87, adopted on December 20, 2017, and

WHEREAS, the Town Council also desires to submit to the voters at the election a question relating to a cannabis business tax;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the Town Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election the following question(s):

To fund general Town expenses such as police, recreation, and road maintenance, shall an ordinance be adopted to impose a business license tax of up to 8% for cannabis retail businesses and up to 4% for all other cannabis businesses (cultivation, manufacturing, distribution, testing), to raise an estimated \$99,550-\$261,708 per year, levied until voters change or repeal it.	YES	
	NO	

SECTION 2. That the proposed measure submitted to the voters is set forth in its entirety in Attachment A.

SECTION 3. That the vote requirement for the measure to pass is a majority (50%+1) of the votes cast.

SECTION 4. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5. That notice of the time and place of holding the election is given and the Town Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 6. That the Town Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED on February 21, 2018.

John Wentworth, Mayor

ATTEST:

JAMIE GRAY, Town Clerk

ATTACHMENT A

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN OF MAMMOTH LAKES, COUNTY OF MONO,
STATE OF CALIFORNIA, ADDING CHAPTER 5.42 (CANNABIS BUSINESS TAX) TO
TITLE 5 OF THE MAMMOTH LAKES MUNICIPAL CODE**

**THE PEOPLE OF THE TOWN OF MAMMOTH LAKES DO ORDAIN AS
FOLLOWS:**

SECTION 1. CODE AMENDMENT. Title 5 of the Mammoth Lakes Municipal Code is hereby amended by adding thereto a new Chapter 5.42, to read as follows:

**CHAPTER 5.42
CANNABIS BUSINESS TAX**

Sections:

- 5.42.010 Title.
- 5.42.020 Authority and Purpose.
- 5.42.030 Intent.
- 5.42.040 Definitions.
- 5.42.050 Tax imposed.
- 5.42.060 Reporting and remittance of tax.
- 5.42.070 Payments and communications – timely remittance.
- 5.42.080 Notice not required by Town.
- 5.42.090 Payment delinquency.
- 5.42.100 Refunds and credits.
- 5.42.110 Personal cultivation not taxed.
- 5.42.120 Administration of the tax.
- 5.42.130 Appeal procedure.
- 5.42.140 Enforcement – action to collect.
- 5.42.150 Apportionment.
- 5.42.160 Constitutionality and legality.
- 5.42.170 Audit and examination of premises and records.
- 5.42.180 Other licenses, permits, taxes or charges.
- 5.42.190 Payment of tax does not authorize unlawful business.
- 5.42.200 Deficiency determinations.
- 5.42.210 Failure to report – nonpayment, fraud.
- 5.42.220 Tax assessment – notice requirements.
- 5.42.230 Tax assessment – hearing, application, and determination.
- 5.42.240 Conviction for violation – taxes not waived.
- 5.42.250 Violation deemed misdemeanor.
- 5.42.260 Severability.
- 5.42.270 Remedies cumulative.
- 5.42.280 Amendment or repeal.

5.42.010 Title.

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

5.42.020 Authority and Purpose.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon cannabis businesses that engage in business in the Town. 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.

The cannabis business tax is a general tax enacted solely for general governmental purposes of the Town and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the Town's general fund and be available for any legal municipal purpose.

5.42.030 Intent.

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

5.42.040 Definitions.

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

- A. "Business" shall include all activities engaged in or caused to be engaged in within the Town, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.
- B. "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, manufactured product, salt, derivative, mixture, tincture, 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 is not limited to medical cannabis. For purposes of this Title, "cannabis" does not include "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.

- C. “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.
- D. “Cannabis business” means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit, whether for medical or recreational use, and whether or not such business possesses a license or other authorization to operate issued by the State of California.
- E. “Cannabis business tax” means the tax due pursuant to this Chapter for engaging in cannabis business in the Town.
- F. “Commercial cannabis cultivation” means cultivation in the course of conducting a cannabis business.
- G. “Cannabis permit” means a permit issued by the Town to a person to authorize that person to operate or engage in a cannabis business.
- H. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery, but does not include personal medical cannabis cultivation for which the cultivator receives no compensation whatsoever, or cultivation for personal recreational use as authorized by Health & Safety Code Section 11362.1 et seq for which the cultivator receives no compensation whatsoever.
- 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, whether operating from a fixed location in the Town or coming into the Town from an outside location to engage in such activities. A person shall be deemed engaged in business within the Town if:

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

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 Town.
- L. "Gross Receipts," except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from Gross Receipts:
 1. Cash discounts where allowed and taken on sales;
 2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
 3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
 4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular

course of the taxpayer's business;

5. Cash value of sales, trades or transactions between departments or units of the same business, except that if the same business is engaged in two or more taxable activities (e.g. cultivation, manufacturing, distribution, and/or retail sales) tax shall be imposed and payable on each such activity regardless of whether sales, trades, or transactions occur between departments or units of the same business;
 6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
 7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
 8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.
 9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters or other personal tangible property which the Tax Collector has excluded in writing by issuing an administrative ruling per Section 5.42.140 shall not be subject to the cannabis business tax under this chapter. However, any retail sales not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax under Chapter 5.04 through Chapter 5.08 or any other Chapter or Title as determined by the Tax Collector.
- M. “Nursery” means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- N. “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.

- O. “Sale” means and includes any sale, exchange, or barter.
- P. “State” means the State of California.
- Q. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 19300, *et seq.* or other applicable state law.
- R. “Tax Collector” means the Finance Director of the Town of Mammoth Lakes or his or her designee.
- S. “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.
- T. “Town” means the Town of Mammoth Lakes, a municipal corporation of the state of California, in its present incorporation form or in any later reorganized, consolidated, enlarged or reincorporated form.

5.42.050 Tax imposed.

- A. Beginning July 1, 2018, or 10 days after certification of the result of the election adopting this ordinance, whichever is later, there is imposed upon each cannabis business a cannabis business tax regardless if the business has been issued a permit to operate lawfully in the Town or is operating unlawfully.
- B. The initial rate of the cannabis business tax shall be as follows:
 - 1. For every cannabis business engaged in commercial cannabis cultivation in the Town: One percent (1%) of gross receipts.
 - 2. For every cannabis business engaged in the operation of a testing laboratory: One percent (1%) of gross receipts.
 - 3. For every cannabis business engaged in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): One percent (1%) of gross receipts.
 - 4. For every cannabis business engaged in cannabis distribution: One percent (1%) of gross receipts.
 - 5. For every cannabis business engaged in cannabis manufacturing, processing,

or operating as a microbusiness (non-retail), or any other type of cannabis business not described in Section (B) (1), (2), (3) or (4): One percent (1%) of gross receipts.

- C. The Town Council may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the Town Council set any adjusted rate that exceeds the maximum rate calculated pursuant to Subdivision (D) of this Section for the date on which the adjusted rate will commence.
- D. The Town Council shall review the cannabis business tax on an annual basis as part of the budget adoption process and may, by resolution, increase the tax rates by up to 1% each year, not to exceed a maximum rate of 8% for retail sales and 4% for all other cannabis businesses.

5.42.060 Reporting and remittance of tax.

- A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a monthly basis. The tax due for each month shall be based on the gross receipts for the month.
- B. Each person owing cannabis business tax for a month shall, no later than the last day of the month following the close of the month, file with the Tax Collector a statement of the tax owed for that month and the basis for calculating that tax. The Tax Collector may require that the statement be submitted on a form prescribed by the Tax Collector. The tax for each month shall be due and payable on that same date as the statement for the month is due.
- C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all months up to the month during which cessation occurred.
- D. The Tax Collector may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Collector deems necessary to ensure collection of the tax. The Tax Collector may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Collector exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Collector may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.

5.42.070 Payments and communications – timely remittance.

Taxes collected from a cannabis business which are not remitted to the Tax Collector, or postmarked, on or before the due dates provided in the ordinance codified in this chapter are delinquent. Should the due date occur on a Saturday,

Sunday, or Town holiday, the return may be postmarked on the first regular working day following a Saturday/Sunday or Town holiday.

5.42.080 Notice not required by the Town.

The Town may as a courtesy send a tax notice to a cannabis business for which payment of taxes is delinquent. However, the Tax Collector 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.

5.42.090 Payment Delinquency.

- A. Original Delinquency. Any operator who fails to pay any tax or file any return imposed by this chapter within the time required shall pay, in addition to such tax and any interest such tax may accrue, an original delinquency penalty of ten dollars (\$10) or fifteen percent (15%) of the amount of the tax, whichever dollar amount is greater; provided, however, that any operator who has not been late in paying any tax imposed by this chapter or late filing any return within the preceding three (3) calendar years shall, upon application of the operator to the tax collector within fifteen (15) days after the date such tax first became due, pay an original delinquency penalty of ten dollars (\$10) or a total of one percent (1%) per day of the amount of tax due for each day such tax is delinquent, whichever dollar amount is greater, up to fifteen percent (15%). Every penalty imposed, and such interest as accrues under the provisions of this chapter, shall become part of the tax required to be paid. Interest shall accrue on all unpaid taxes until paid.
- B. Continued Delinquency. Any operator who fails to pay any delinquent tax, penalties and interest on or after the next business day of the following return period due date, shall pay an additional delinquency penalty, over and above that provided in paragraph A, of ten dollars (\$10) or fifteen percent (15%) of the amount of the tax, penalties and interest then due, whichever is greater.

5.42.100 Refunds.

- A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 5.42.120.
- 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.
- C. 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 Town under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Collector within one (1) year of the date the tax was originally due and payable.

- D. The Tax Collector, his or her designee or any other Town 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 request by the Tax Collector to do so.
- E. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the Town, the Town shall refund the amount of tax erroneously paid up to one (1) year from when the error was identified.

5.42.110 Personal Cultivation Not Taxed.

The provisions of this Chapter shall not apply to personal cannabis cultivation that meets the definition of personal cultivation under State law and is consistent with the maximum number of living cannabis plants allowed per single private residence specified in Title 17 of the Town's Municipal Code and Section 11362.2 of the California Health and Safety Code. 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 for which the individual receives no compensation whatsoever related to that personal use.

5.42.120 Administration of the tax.

- A. It shall be the duty of the Tax Collector to collect the taxes, penalties, fees, and perform the duties required by this Chapter.
- B. For purposes of administration and enforcement of this Chapter generally, the Tax Collector 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 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. Provide information to any taxpayer concerning the provisions of this Chapter;
 - 3. Receive and record all taxes remitted to the Town as provided in this Chapter;
 - 4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;

5. Assess penalties and interest to taxpayers pursuant to this Chapter;
6. Determine amounts owed and enforce collection pursuant to this Chapter.

5.42.130 Appeal procedure.

Any taxpayer aggrieved by any decision of the Tax Collector with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the Town Council by filing a notice of appeal with the Town Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The Town Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the Town Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the Town Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

5.42.140 Enforcement - action to collect.

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

5.42.150 Apportionment.

If a business subject to the tax is operating both within and outside the Town, it is the intent of the Town 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 Town. 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 Collector may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

5.42.160 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 Collector release him or her from the obligation to pay the impermissible portion of the tax. Pursuant to Article XIIB of the California Constitution, the appropriation limit for the Town is hereby increased to the maximum extent over the maximum

period of time allowed under law by the amount of the revenues generated by the tax imposed by this Chapter.

5.42.170 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 Town in support of his or her tax calculation, the Tax Collector shall have the power to inspect any location where commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the Tax Collector shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.
- B. It shall be the duty of every person liable for the collection and payment to the Town 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 Town, which records the Tax Collector or his/her designee shall have the right to inspect at all reasonable times.

5.42.180 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 permit or license required by, under or by virtue of any provision of any other Chapter of this code or any other ordinance or resolution of the Town, 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 Chapter of this code or any other ordinance or resolution of the Town. Any references made or contained in any other Chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Chapter of this Code.
- B. The Tax Collector may revoke or refuse to renew the Business Tax Certificate required by Chapter 5.04 of this Code for any business that is delinquent in the payment of any tax due pursuant to this Chapter or that fails to make a deposit required by the tax collector pursuant to Section 5.42.060.

5.42.190 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 Town, 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.

5.42.200 Deficiency determinations.

If the Tax Collector 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 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 shall be given to the person concerned in the same manner as notices of assessment are given under Section 5.42.240.

5.42.210 Failure to report—nonpayment, fraud.

- A. Under any of the following circumstances, the Tax Collector 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 Collector, filed a corrected statement, or furnished to the 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 Chapter; or
 - 4. If the Tax Collector determines that the nonpayment of any 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 stated in 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 Collector to be due or estimated by the Tax Collector , after

consideration of all information within the Tax Collector's knowledge concerning the business and activities of the person assessed, to be due under each applicable section 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.

5.42.220 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 Tax Collector for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the 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.

5.42.230 Tax assessment - hearing, application and determination.

Within fifteen (15) days after the date of service the person may apply in writing to the Tax Collector for a hearing on the assessment. If application for a hearing before the Town is not made within the time herein prescribed, the tax assessed by the Tax Collector shall become final and conclusive. Within thirty (30) days of the receipt of any such application for hearing, the Tax Collector shall cause the matter to be set for hearing before him or her no later than ninety (90) days after the receipt of the application, unless a later date is agreed to by the Tax Collector and the person requesting the hearing. Notice of such hearing shall be given by the Tax Collector to the person requesting such hearing not later than five (5) days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Collector should not be confirmed and fixed as the tax due. After such hearing the Tax Collector shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.42.240 for giving notice of assessment.

5.42.240 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.

5.42.250 Violation deemed misdemeanor.

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

5.42.260 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.

5.42.270 Remedies cumulative.

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

5.42.280 Amendment or repeal.

This Chapter may be repealed or amended by the Town Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the Town of Mammoth Lakes 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 Chapter, if the Town Council has acted to reduce the rate of the tax;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or
- C. The collection of the tax imposed by this Chapter even if the Town 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 Town Council hereby declares that it 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. CEQA REQUIREMENTS. This Ordinance is exempt from review under the California Environmental Quality Act, because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment and because the Ordinance involves the approval of government revenues to fund existing services. It does not make any commercial activity lawful, nor commit the Town to funding any particular activity.

It is hereby certified that this Ordinance was approved and adopted by the People of the Town of Mammoth Lakes at the Town's June 5, 2018 statewide election.

John Wentworth, Mayor

ATTEST:

Town Clerk

RESOLUTION NO. 18-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, CALIFORNIA, PROVIDING FOR THE FILING OF REBUTTAL ARGUMENTS FOR TOWN MEASURES SUBMITTED AT MUNICIPAL ELECTIONS

WHEREAS, § 9282 of the Elections Code of the State of California provides for written arguments to be filed in favor of or against Town measures not to exceed 300 words in length; and

WHEREAS, § 9285 of the Elections Code of the State of California authorizes the Town Council, by majority vote, to adopt provisions to provide for the filing of rebuttal arguments for Town measures submitted at municipal elections;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to Section 9285 of the Elections Code of the State of California, when the elections official has selected the arguments for and against the measure (not exceeding 300 words each) which will be printed and distributed to the voters, the elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments.

The author or a majority of the authors of an argument relating to a Town measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the Town Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

SECTION 2. That all previous resolutions providing for the filing of rebuttal arguments for Town measures are repealed.

SECTION 3. That the provisions of Section 1 shall apply only to the election to be held on June 5, 2018 and shall then be repealed.

SECTION 4. That the Town Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED on February 21, 2018.

John Wentworth, Mayor

ATTEST:

JAMIE GRAY, Town Clerk

RESOLUTION NO. 18-XX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, CALIFORNIA, SETTING PRIORITIES FOR FILING (A) WRITTEN ARGUMENT(S) REGARDING A TOWN MEASURE AND DIRECTING THE TOWN ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS

WHEREAS, a General Municipal Election is to be held in the Town of Mammoth Lakes, California, on June 5, 2018, at which there will be submitted to the voters the following measure:

To fund general Town expenses such as police, recreation, and road maintenance, shall an ordinance be adopted to impose a business license tax of up to 8% for cannabis retail businesses and up to 4% for all other cannabis businesses (cultivation, manufacturing, distribution, testing), to raise an estimated \$99,550-\$261,708 per year, levied until voters change or repeal it.	YES	
	NO	

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MAMMOTH LAKES, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the Town Council authorizes ALL members of the Town Council to file (a) written argument(s) in favor of Town measure(s) not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the Town Clerk after which no arguments for or against the Town measure may be submitted to the Town Clerk.

The arguments shall be filed with the Town Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement To Be Filed By Author(s) of Argument.

SECTION 2. That the Town Council directs the Town Clerk to transmit a copy of the measure to the Town Attorney, unless the organization or salaries of the office of the Town Attorney are affected.

a. The Town Attorney shall prepare an impartial analysis of the measure not exceeding 500 words showing the effect of the measure on the existing law and the operation of the measure. If the measure affects the organization or salaries of the office of the Town Attorney, the Town Clerk shall prepare the impartial analysis.

b. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city.

c. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the voter information guide, there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of Ordinance or Measure __. If you desire a copy of the ordinance or measure, please call the election official's office at (insert phone number) and a copy will be mailed at no cost to you."

d. The impartial analysis shall be filed by the date set by the Town Clerk for the filing of primary arguments.

SECTION 3. That the Town Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED on February 21, 2018.

John Wentworth, Mayor

ATTEST:

JAMIE GRAY, Town Clerk