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CANNABIS APPLICATION PACKET

TAX
ON
COMMERCIAL CANNABIS ACTIVITIES
ORD #453
NOVEMBER 2018

TAX ON COMMERCIAL CANNABIS ACTIVITIES - ARVIN

ORDINANCE NO. 453

AN ORDINANCE OF THE PEOPLE OF THE CITY OF ARVIN, CALIFORNIA APPROVING A TAX ON COMMERCIAL CANNABIS ACTIVITIES BY ADDING CHAPTER 3.19 (COMMERCIAL CANNABIS TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE ARVIN MUNICIPAL CODE

WHEREAS, pursuant to Ordinance No. 447 adopted on June 19, 2018, Chapter 17.64 (“Commercial Cannabis Activity”) was added to the Arvin Municipal Code (“AMC”); and

WHEREAS, AMC Chapter 17.64 establishes a comprehensive regulatory program applicable to commercial cannabis land uses, including businesses engaged in the cultivation, manufacture, distribution, delivery and sale of cannabis throughout the City of Arvin (the “City”); and

WHEREAS, pursuant to AMC Chapter 17.64, certain businesses may operate in the City subject to issuance of a City regulatory permit, conditional use permit, and other specified entitlements, and to compliance with the operating requirements applicable to such businesses as set forth in said Chapter 17.64; and

WHEREAS, if other cannabis business activities are permitted in the City by AMC Chapter 17.64 or a future Arvin City Council (“City Council”) ordinance, or by the voters of the City through a future ballot measure, then the City Council desires that a commercial cannabis tax be in place and imposed on all such future cannabis business activities; and

WHEREAS, pursuant to subdivision (b) of Section 2 of Article XIII C of the California Constitution and Section 53720 *et seq.* of the Government Code, the City Council is authorized to impose a general tax upon submission of such general tax to the voters of the City and approval by a majority of the voters voting on the issue, at an election consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, in 1996 the California voters approved Proposition 215, the Compassionate Use Act, codified as Health and Safety Code Section 11362.5, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

WHEREAS, in 2003 the California legislature enacted Senate Bill 420, the Medical Marijuana Program Act, codified as Health and Safety Code Section 11362.7 *et seq.*, and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purposes, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in 2015, the California legislature enacted AB 243, AB 266, and SB 643, collectively referred to as the Medical Marijuana Regulation and Safety Act, later renamed the Medical Cannabis Regulation and Safety Act (“MCRSA”), to establish a framework for regulating medical cannabis; and

WHEREAS, at the November 8, 2016 statewide general election, a statewide ballot measure to legalize, regulate and tax nonmedical cannabis, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”), was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial adult-use cannabis operations, and which legalized limited adult-use personal cannabis cultivation and use, thereby allowing for the legal cultivation, sale, manufacture, use and possession of non-medicinal cannabis under California state law; and

WHEREAS, on June 27, 2017, Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), which merged the regulatory schemes of MCRSA and AUMA; and

WHEREAS, presently the City has no local tax on cannabis commercial operations or activities; and

WHEREAS, MAUCRSA and AUMA do not preempt local taxation of cannabis businesses; and

WHEREAS, although presently the City permits only certain commercial cannabis land uses, it may in the future permit other types of commercial cannabis land uses; and

WHEREAS, while the City Council does not desire nor does it intend by this ordinance to allow any other commercial cannabis land uses in the City other than the currently allowed uses, the City Council does desire to seek voter approval for a broad cannabis tax that is applicable to both presently-allowed commercial cannabis uses and any potential commercial cannabis uses that may be allowed in the future; and

WHEREAS, the City Council desires that a tax be submitted to the voters for approval so that every commercial cannabis operation shall pay a commercial cannabis tax to the City, regardless of whether such operation has a valid permit pursuant to the AMC; and

WHEREAS, the City Council desires that revenue generated from said commercial cannabis taxes can be spent for unrestricted general revenue purposes; and

WHEREAS, the City Council further finds that tax revenue from cannabis operations can provide funds for additional City services to protect the general health and welfare of the citizens of the City.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ARVIN, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by this reference.

SECTION 2. ADDITION OF CHAPTER 3.19 (COMMERCIAL CANNABIS TAX).

Chapter 3.19 (Commercial Cannabis Tax) is hereby added to Title III (Revenue and Finance) of the Arvin Municipal Code to read in full as follows:

“CHAPTER 3.19 COMMERCIAL CANNABIS TAX

Section 3.19.010 Definitions.

Section 3.19.020 Tax.

Section 3.19.030 Operation of Tax.

Section 3.19.040 Returns and Remittances.

Section 3.19.050 Failure to Pay Tax.

Section 3.19.060 Refunds.

Section 3.19.070 Enforcement.

Section 3.19.080 Debts; Deficiencies; Determinations; Hearings.

Section 3.19.090 Unrestricted Use of Revenues.

Section 3.19.100 City Council Authority to Amend.

Section 3.19.010 Definitions.

The following definitions apply to this chapter unless the context clearly denotes otherwise. Terms not defined herein shall be given the meanings assigned thereto in Chapter 17.64 of this Code.

- A. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means

the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

- B. “Cannabis product(s)” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- C. “Cultivation” means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- D. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer at the customer’s home or other location remote from the premises of the commercial cannabis business making the delivery, and includes the use by a retailer of any technology platform. “Delivery” does not mean or include storefront sales.
- E. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between persons and/or operations.
- F. “Finance Director” shall mean the Director of Finance of the City and her/his designee, or such other officer as may be designated by the City Council to administer this chapter.
- G. “Manufacturing” means the activities conducted by a manufacturer, including the propagation, production, preparation, compounding, blending, extracting, infusing, or otherwise making or preparing a cannabis product or cannabis products.
- H. “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis or otherwise at a fixed location that packages or repackages cannabis or cannabis products or labels or re-labels its container.
- I. “Marijuana” has the same definition as provided in this chapter for the term “cannabis.”
- J. “Mixed-Light Cultivation” means the cultivation of cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using light deprivation and/or artificial lighting at a rate below or equal to twenty-five watts per square foot.
- K. “Operation” means a person that conducts, transacts, or engages in commercial activity

relating to cannabis or cannabis products (whether or not such activity is appropriately permitted or allowed at the time of enactment of this chapter or at any time thereafter under Chapter 17.64 or other provisions of this Code), including but not limited to the retail sale (including storefront sales and sales by delivery), cultivation, manufacturing, testing, and distribution of cannabis and cannabis products, and all attendant or related activities including transportation, packaging, labeling, and storage. Operation includes commercial cannabis activity or commercial cannabis operation as defined in Chapter 17.64 of this Code.

- L. "Permit" means any permit or entitlement issued pursuant to this Code pertaining to or authorizing commercial cannabis uses or activities.
- M. "Person" means any natural person, individual, firm, corporation, partnership, joint venture, limited liability company, estate, trust, business trust, receiver, syndicate, nonprofit organization, club, or any association or combination of natural persons or group, whether acting by themselves, or through any servant, agent or employee, and includes the plural as well as the singular.
- N. "Premises" means a structure or structures or portion thereof and/or any land that is owned, leased, or otherwise held under the control of an operation where commercial cannabis activity will be or is conducted.
- O. "Proceeds" means: (1) the total gross revenues and amount actually received or receivable by an operation from all sales; and (2) the total amount of compensation actually received or receivable by an operation for the performance of any act or service, whatever nature it may be, from which a charge is made or credit allowed, whether such service is done separately or as part of or in connection with the sale of materials; goods, wares or merchandise; discounts, rents royalties, fees, commissions, dividends and other amounts realized from the services. Services, for purposes of this definition, includes but is not limited to manufacturing, testing, distribution, delivery, transportation, processing, storing, labeling, and other services rendered in connection with an operation. Proceeds includes all receipts, cash, credits and property of any kind or nature without any deduction therefrom on account of the cost of property sold, the cost of materials used, labor or services costs, interest paid or payable or losses or other expenses whatsoever. Notwithstanding the foregoing, the following shall be excluded from proceeds: (1) cash discounts where allowed and taken on sales; (2) any taxes required by law to be added to the purchaser and collected from the consumer or purchaser; (3) such part of the sales price of any property returned by the purchaser to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in proceeds; and (4) such other amounts as may be determined by the Finance Director not to constitute proceeds within the meaning of this definition. The Finance Director may promulgate administrative rules or regulations interpreting or applying this definition.
- P. "Quarterly" means the four calendar quarters which fall within a calendar year, i.e. January through March, April through June, July through September, October through

December.

- Q. “Retail” means that part of an operation engaged in the retail sale of cannabis or cannabis products to a customer, whether by storefront sales or by delivery. A retailer may be a storefront or non-storefront (delivery only) retailer.
- R. “Space utilized as cultivation area” means any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the cannabis germination, seedling, vegetative, pre-flowering, flowering and/or harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, trimming, curing or drying cannabis, or any such space used for storing any plants, products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located. Space utilized as cultivation area may be non-contiguous and shall include space used to cultivate cannabis on platforms and/or stack them in multiple layers on top of each other (i.e. vertical). Space utilized as cultivation area shall be calculated in square feet and measured using clearly identifiable and/or apparent boundaries, and shall include all space within the boundaries. Each discrete area shall be separated or demarcated by an identifiable or apparent boundary, including but not limited to interior walls, shelves, greenhouse walls, nursery walls, canopy walls, hoop house walls, garden benches, hedgegrows, fencing, garden beds, garden plots, or other plot-type planting. Space utilized as cultivation area includes space which is immediately available for the activities described herein even if not being used at the time of determination. Space utilized as cultivation area shall be determined by the Finance Director during the initial Term of the operation, and at least annually thereafter, in accordance with this definition. The Finance Director may promulgate administrative rules or regulations interpreting or applying this definition.
- S. “Tax” means and refers to the commercial cannabis tax provided for in this chapter, including the commercial cannabis cultivation tax and the commercial cannabis proceeds tax described in Section 3.19.020 hereof.
- T. “Term” means such term or period of time as may be designated by the Finance Director for reporting and/or payment of tax, provided, however, that if no express term is designated by the Finance Director, Term shall mean one calendar quarter. Notwithstanding the foregoing, the Term for payment of tax may be set on a monthly, quarterly, semi-annual or annual basis by the Finance Director. Taxes may be prorated for collection to the extent the Finance Director provides for a Term other than that specified herein, and to the extent an operation commences on a date other than the first day of a given Term.
- U. “Testing Laboratory” means an operation that offers or performs tests of cannabis or cannabis products. Testing means the activity of offering or performing tests of cannabis and cannabis products.

Section 3.19.020 Tax.

A. Commercial Cannabis Cultivation Tax. Subject to annual adjustment as provided below, every operation conducting, transacting or engaging in commercial cultivation of cannabis in the City shall pay a tax at one of the following maximum rates, as applicable:

- (i) For all space utilized as cultivation area where Mixed-Light Cultivation is used – up to four dollars (\$4) per square foot;
- (ii) For all space utilized as cultivation area other than as specified in subparagraph (i) – up to six dollars (\$6) per square foot.

The tax rate pursuant to this subsection (A) is an annual tax rate. Notwithstanding the foregoing, to the extent the tax is paid and/or collected on a semi-annual, quarterly or monthly Term, the tax shall be prorated for the applicable Term. For example, for a quarterly term, the tax for the initial fiscal year pursuant to subparagraph (i) shall be one dollar (\$1) per square foot per quarter, and the tax for the initial fiscal year pursuant to subparagraph (ii) shall be one dollar and fifty cents (\$1.50) per square foot per quarter.

The tax pursuant to this subsection (A) shall be based on a fiscal year (July 1 to June 30) and shall be adjusted annually on July 1 of each year, commencing July 1, 2020, based on the Consumer Price Index (“CPI”) for all urban consumers in the Los Angeles-Long Beach-Anaheim areas as published by the United States Government Bureau of Labor Statistics, (based on the prior calendar year increase).

B. Commercial Cannabis Proceeds Tax. Every operation conducting, transacting or engaging in commercial cannabis activity(ies) in the City other than cultivation pursuant to subsection (A), including but not limited to retail sale (including storefront sales and sales by delivery), distribution, manufacturing, or testing, shall pay a tax at one of the following maximum rates, as applicable:

- (i) For testing – up to two percent (2%) of Proceeds.
- (ii) For manufacturing, up to the following tiered rate, based on a quarterly term:
 - a. Six percent (6%) of Proceeds up to and including \$625,000;
 - b. Three point seven five percent (3.75%) of Proceeds over \$625,000 and up to and including \$2,500,000;
 - c. Two point eight percent (2.8%) of Proceeds over \$2,500,000.
- (iii) For distribution – up to two percent (2%) of Proceeds.
- (iv) For retail sales – up to three point seven five percent (3.75%) of Proceeds.
- (v) For all operations subject to this subsection (B) other than as specified in

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subparagraphs (i) - (iv) – up to four percent (4%) of Proceeds.

The tax rates pursuant to this subsection (B) are quarterly tax rates. To the extent of any adjustment of Term from a quarterly term, said rates shall adjust to reflect the same percentage over the new term (e.g., for testing, up to 2% per year for an annual term). The rate specified in subparagraph (ii) shall be adjusted to multiply the Proceeds dollar amount thresholds to reflect any adjustment from a quarterly term, while the percentage rates shall remain the same (for example, for an annual Term, multiply the dollar amounts by 4, or divide them by 3 for a monthly Term). Adjustments pursuant to this subsection (B) shall not constitute an increased tax or change in methodology for purposes of Article XIII C of the California Constitution.

- C. Operations which engage in commercial cannabis activities specified in both subsection (A) and subsection (B) shall pay all applicable taxes for each such activity under both subsections.

Section 3.19.030 Operation of Tax.

- A. Each person, upon or prior to commencing an operation in the City, shall notify the Finance Director of the commencement of the operation.
- B. Failure to pay the tax shall be subject to penalties, interest charges, and determinations of tax due as set forth in this chapter, or as the City Council may establish, and the City may use any or all other enforcement remedies provided for in this Code, or pursuant to state law.
- C. The City Council, by resolution or ordinance, may impose the tax at a lower rate than the maximum authorized by this chapter, and may establish such tax exemptions, exceptions incentives, or other reductions, and may charge such penalties and interest or make determinations of tax due for failure to pay the tax in a timely manner, as allowed by this Code or California law. No action by the Council under this section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and thereby restoring the maximum tax rates specified in this chapter. No adjustment shall decrease any maximum tax rate authorized to be imposed by this chapter. The tax shall automatically be set at the maximum rates specified in this chapter upon enactment hereof and shall continue at said rate, unless and until a different rate is set or imposed by the City Council.
- D. The City Council, by Ordinance or resolution, may exempt a commercial cannabis operation from the tax for a period of time by a development agreement approved pursuant to Government Code Sections 65864- 65869.5 or similar provision.
- E. Payment or collection of the tax shall not be construed as authorizing the conduct or continuance of any illegal business under federal, state or local

law, or of a legal business in an illegal manner. Nothing in this chapter shall be construed to authorize an operation.

F. The tax provided for in this chapter is not a sales or use tax and shall not be calculated or assessed as such. The tax shall not be separately identified or otherwise specifically assessed or charged to any individual member, consumer or customer; rather, the tax is imposed upon the operation.

G. The Finance Director shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

Section 3.19.040 Returns and Remittances.

The tax shall be due and payable as follows:

- A. Each operation owing tax, within forty-five (45) days of the last business day of each Term (as established by the Finance Director), shall prepare and submit a tax return to the Finance Director pertaining to the preceding Term (i.e. the Term concluding 45 days prior, which is the subject of the tax return). The tax return shall include all information necessary to determine the Proceeds (for the commercial cannabis proceeds tax), the total space utilized as cultivation area (specifically identifying the location of all such areas) and total square footage of the operation (for the commercial cannabis proceeds tax), and the amount of tax due for the preceding Term. At the time the tax return is filed, the full amount of the tax owed for the preceding Term shall be remitted to the City. Where the Term is set on an annual basis, the Finance Director may require prorated payments or estimated tax payments on more frequent intervals during the Term, as such intervals may be established by the Finance Director and instructions provided to an operation.
- B. All tax returns shall be completed on forms provided by the Finance Director.
- C. Tax returns and payments for all outstanding tax owed to the City are immediately due to the Finance Director upon cessation of an operation for any reason and upon the sale of the operation.
- D. Whenever any payment, statement, report, request or other communication received by the Finance Director is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this section for the receipt thereof, or whenever the Finance Director is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Finance Director may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on a date that City Hall is closed, or on a Saturday, Sunday, or federal

holiday, the due date shall be the next business day on which the City Hall is open to the following the due date.

- E. Unless otherwise specified in other provisions of this chapter, the tax shall be deemed delinquent if not paid on or before the due date specified by this section.
- F. The Finance Director is not required to send a delinquency or other notice or bill to any person or operation subject to payment of tax, and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

Section 3.19.050 Failure to Pay Tax.

Any operation which fails or refuses to pay any tax on or before the due date shall incur and pay penalties and interest, in addition to the principal amount of unpaid tax, as follows:

- A. A penalty, not to exceed twenty-five percent (25%) of the amount of the unpaid tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate of not more than twelve percent (12%) per year or one percent (1%) per month. Such penalties and interest may be set or imposed at a lower rate by resolution of the City Council, and such action shall not affect the authority of the City Council to thereafter adjust or restore the rates up to the maximum rates set forth herein without voter approval. Penalties and interest shall automatically be set at the maximum rates allowed herein unless and until otherwise set or imposed by the City Council.
- B. Whenever a check is submitted in payment of tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the unpaid tax amount plus penalties and interest as provided for in this section plus any amount allowed under state law.
- C. The tax obligation shall commence on, and shall be calculated from, the operative date of this chapter, for operations existing as of the operative date of this chapter, or the date of commencement of the operation, for operations commencing after the operative date of this chapter.
- D. The Finance Director may waive all or some of the penalties and/or interest imposed upon any operation if:
 - 1. The operation provides evidence satisfactory to the Finance Director that failure to pay timely was due to circumstances beyond the control of the operation and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the operation paid the delinquent tax and accrued interest owed the City prior to applying to the Finance Director for a waiver.
 - 2. The waiver provisions specified in this subsection shall be granted no more than once during any twenty-four (24) month period unless some other time is permitted by the

City Council.

Section 3.19.060 Refunds.

- A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this section.
- B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of an operation.
- C. Any operation entitled to a refund of tax paid pursuant to this chapter may elect in writing to have such refund applied as a credit against such operation's tax for the next term.
- D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, such amount may be refunded to the claimant who paid the tax, provided that a written claim for refund is filed with the City Clerk and Finance Director. Refund claims must be filed as set forth above within one year of the subject tax payment pursuant to Government Code Section 911.2. Each person or operation requesting a refund or making a claim shall file the claim as provided herein. The submission of a written claim, which shall be acted upon by the City Council, shall be a prerequisite to suit thereon. (See Section 935 of the California Government Code). The City Council shall act upon the refund claim within the time period set forth in Government Code Section 912.4. If the City Council fails or refuses to act on a refund claim within the time prescribed by Government Section 912.4, the claim shall be deemed to have been rejected by the City Council on the last day of the period within which the City Council was required to act upon the claim as provided in Government Code Section 912.4. The Finance Director or City Clerk or other officer charged with such duty shall give notice of the action in a form that substantially complies with that set forth in Government Code Section 913. To the extent allowed by law, nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim as provided by this section.
- E. The Finance Director shall have the right and authority 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 therefor refuses to allow such examination of claimant's books and business records after request by the Finance Director to do so.
- F. In the event that the tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall deduct and retain the amount set forth in this chapter from the amount to be refunded to cover expenses.
- G. The Finance Director shall initiate a refund of any tax which has been overpaid or

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erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of tax receipts. In the event that the tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

Section 3.19.070 Enforcement.

- A. It shall be the duty of the Finance Director to enforce this chapter.
- B. For purposes of administration and enforcement of this chapter generally, the Finance Director, with the assistance of the City Attorney, may from time to time promulgate administrative rules and regulations.
- C. The Finance Director shall have the power to audit and examine all books and records of any person or operation relating to the Proceeds of an operation or the square footage or space utilized as cultivation area of the operation, including state and federal income tax returns, California sales tax returns, logs, receipts, bank records, or other documentation, for the purpose of ascertaining the amount of tax, if any, required to be paid pursuant to this chapter and/or verifying any statement or representation made by any person or operation in a tax return or otherwise pursuant to this chapter. If such person or operation, after written demand by the Finance Director, refuses to make available for audit, examination or verification any book or record specified in this subsection, the Finance Director may, after full consideration of all information within the Finance Director's knowledge concerning the operation and activities of the person or operation so refusing, make a determination of tax due in the manner provided in Section 3.19.080.
- D. The Finance Director shall have the power to enter upon the premises of an operation, upon reasonable notice to the operation, for the purpose of determining space utilized as cultivation area, to review items requested in subsection (C) or as otherwise needed for enforcement of this chapter.
- E. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt any person or operation from any civil action for recovery of any unpaid taxes, penalties or interest owed by such person or operation. No civil action shall prevent a criminal prosecution for violation of any provision of this chapter or state law requiring the payment of all taxes.
- F. Any person or operation violating any provision of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact, either concerning the operation and administration of this chapter, or in procuring permits from the City as provided for in this chapter, shall be deemed guilty of a misdemeanor. Notwithstanding the foregoing, the city prosecutor, in his or her discretion, may elect to charge and prosecute any violation as an infraction in lieu of a misdemeanor or not to charge and prosecute at all.

Section 3.19.080 Debts; Deficiencies; Determinations; Hearings.

- A. The amount of any tax, penalties, and interest pursuant to this chapter shall be deemed a debt to the City, and any person or operation that fails to make payment to the City of any required tax, penalty or interest pursuant to this chapter shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such operation.
- B. If the Finance Director is not satisfied that any statement filed pursuant to this chapter is correct, or that the amount of tax is correctly computed, the Finance Director 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. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When an operation ceases, a deficiency determination may be made at any time within three years thereafter as to any liability arising from such operation, whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.
- C. Under any of the following circumstances, the Finance Director may make and give notice of a determination of the amount of tax owed pursuant to this chapter:
 1. If the operation has not filed any statement or return required under this chapter.
 2. If the operation has not paid any tax due under this chapter.
 3. If the operation has not, after demand by the Finance Director, filed a corrected statement or return, or furnished to the Finance Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due.
 4. If the Finance Director determines that the nonpayment of any 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 the penalties and interest otherwise provided for in this chapter.
 5. The notice of determination shall separately set forth the amount of any tax known by the Finance Director to be due, or estimated to be due by the Finance Director, after consideration of all information within the Finance Director's knowledge concerning the business and activities of the operation assessed, 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 determination.
 6. The notice of determination shall be served upon the operation either by personal service upon the operation's agent for service of process or other responsible person

known to the City or designated by the operation, or by depositing the notice in the United States mail, postage prepaid, addressed to the operation at the address appearing on the face of the business tax certificate issued under this Code or to such other address as the operation shall register with the Finance Director for the purpose of receiving notices provided under this chapter; or, should the operation have no business tax certificate issued and no address registered with the Finance Director for such purpose, then to such operation's last known address. For purposes of this section, service by mail is complete at the time of deposit in the mail.

- D. Within ten (10) days after the date of service of a determination of the amount of tax owed by an operation or any other determination by the Finance Director as specified in subsection (D)(5) of this section, the operation may apply in writing to the Finance Director for a hearing on the determination. If application for a hearing before the City is not timely made, the tax assessed by the Finance Director shall become final. The procedures for conducting such a hearing shall be as required by law and as follows:
1. The hearing shall be conducted by an independent hearing officer appointed by the Finance Director. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing in the manner set forth herein and as required by law.
 2. Within thirty (30) days of the receipt of any application for a hearing pursuant to this section, the Finance Director shall cause the matter to be set for hearing before the independent hearing officer, unless a later date is agreed to by the Finance Director and the applicant.
 3. Notice of the hearing shall be given by the Finance Director to the applicant not later than five (5) days prior to the date of the hearing. For good cause, the hearing officer may continue the administrative hearing from time to time. At the hearing, the applicant may appear and offer evidence to show why the determination as made by the Finance Director should not be confirmed and fixed as the tax due, or to show why such other determination of the Finance Director pursuant to subsection (D)(5) should not be confirmed. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the applicant to appear shall not affect the validity of the proceedings or order issued thereon.
 4. Upon conclusion of the hearing, or no later than ten (10) days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged or make such other determination as provided in subsection (D)(5), and shall give written notice to the applicant in the manner prescribed in this chapter for giving notice of determination, and the hearing officer shall submit its decision and the record to the City Clerk. The decision of the hearing officer shall be final.
 5. The provisions of this section apply to any decision, deficiency determination, assessment, or other decision or ruling of the Finance Director, except decisions

made pursuant to Section 3.19.060. Any person or operation aggrieved by any decision subject to this section shall comply with the hearing procedure of this section. Pursuant to Government Code Section 935(b), compliance with this section shall be a prerequisite to a suit thereon. To the extent allowed by law, nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

Section 3.19.090 Unrestricted Use of Revenues.

Revenues from the cannabis tax shall be expended by the City for unrestricted general revenue purposes.

Section 3.19.100. City Council Authority to Amend.

The City Council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the City Council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Elections Code Section 9217.

Section 3.19.100. Oversight Committee.

The city council shall establish an oversight committee comprised of city residents to assist the City through advisory review of the expenditures of revenues from the cannabis tax.”

SECTION 3. EFFECTIVE DATE.

If a majority of the voters of the City of Arvin voting at the General Municipal Election of November 6, 2018 vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City of Arvin, and shall be considered as adopted upon the date that the vote is declared by the City Council of the City of Arvin, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code section 9217.

SECTION 4. CITY COUNCIL AUTHORITY TO AMEND

Pursuant to Section 9217 of the California Elections Code, the City Council expressly reserves, retains, has, and is granted the right and authority to amend the provisions of this Ordinance to further the purposes and intent of the Ordinance (including but not limited to amendment for more efficient administration as determined by the City Council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

SECTION 5. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 6. EXECUTION.

The Mayor of the City of Arvin is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Arvin by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Arvin, California voting on the 06th day of November, 2018.

Jose Gurrola, Mayor
City of Arvin

Attest:

Cecilia Vela, CMC, City Clerk
City of Arvin