

## MEASURE I

### ORDINANCE OF THE VOTERS OF THE CITY OF WILLITS, STATE OF CALIFORNIA, ADDING CHAPTER 5-10 TO THE WILLITS MUNICIPAL CODE, AND AMENDING CHAPTER 5-04 OF THE WILLITS MUNICIPAL CODE TO IMPOSE A CANNABIS INDUSTRY TAX ON CANNABIS BUSINESSES OPERATING IN WILLITS

THE PEOPLE OF THE CITY OF WILLITS DO ENACT AS FOLLOWS:

**Section 1.** Chapter 5-10 is hereby added to the Willits Municipal Code to read as follows:

#### “CHAPTER 5-10 CANNABIS INDUSTRY TAX

**5-10.010. Title.** This ordinance shall be known as the Cannabis Industry Tax Ordinance.

**5-10.020. General Excise Tax.** The cannabis industry tax is enacted solely to raise revenue pursuant to Sections 37101 and 37100.5 of the California Government Code and not to regulate cannabis activity; regulation of that activity remains the province of the City Council. The cannabis industry tax is an excise tax on the privilege of engaging in cannabis business activity in the City; it is not a sales or use tax. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and used for general governmental purposes.

**5-10.030. Purpose and Intent.** This ordinance is adopted to achieve the following purposes, among others, and shall be interpreted to accomplish those purposes:

- A. To impose an excise tax on businesses engaged in the cannabis industry operating within the City of Willits pursuant to the state Medical Cannabis Regulation and Safety Act (specifically California Business and Professions Code section 19320), the “California Control, Regulate and Tax Adult Use of Marijuana Initiative” approved by the state's voters on November 8, 2016, and/or any other enabling legislation, or in violation of such legislation, and notwithstanding whether such state laws use the term “marijuana” or “cannabis;” and
- B. To specify the type of tax and maximum rate of tax that may be levied and the method of collection; and
- C. To comply with all requirements to impose a general excise tax, such tax to become operative only if and to the extent implemented by the City Council by resolution.
- D. The intent of this Ordinance is to levy a tax on all Cannabis Businesses that operate in the City, regardless of whether such business would have been legal 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 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.

**5-10.040. Definitions.** The following words and phrases shall have the meanings set forth below when used in this Chapter unless the context plainly requires otherwise:

- A. “Business” means “Business” as that term is defined in Section 5-04.010 of the Willits City Code.
- B. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Marijuana Initiative, and as defined by other applicable state law.
- C. “Cannabis business” or “cannabis industry” means any business activity in the City relating to cannabis, including, but not limited to, cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (wholesale and/or retail sales) of cannabis or cannabis products, whether or not carried on for gain or profit. A cannabis business does not include any business whose only relationship to cannabis or cannabis products is the production or sale of cannabis accessories.
- D. “Cannabis cultivation area” means the total aggregate area(s) of cannabis cultivation by a cannabis business as measured around the outermost perimeter of each separate and discrete area of cannabis cultivation at the dripline of the canopy expected at maturity and includes, but is not limited to, the space between plants within the cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where cannabis plants are grown, excluding non-production areas, as determined by the Planning Director or his or her designee.
- E. “Cannabis industry tax” means the tax due pursuant to this Chapter for engaging in cannabis business in the City.
- F. “Cannabis product” means any product containing cannabis, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and those products described in Section 11018.1 of the Health and Safety Code.
- G. “Canopy” means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether the areas are contiguous or noncontiguous. The plant canopy need not be contained to a single parcel of land in determining the total square footage that will be subject to tax under this Chapter.
- H. “City” means the City of Willits, either the entity or its territorial limits, as the context requires.
- I. “City Council” or “Council” means the City Council of the City of Willits.
- J. “Finance Director” means the City's finance director or his or her designee.
- K. “Commercial cannabis cultivation” means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal use as authorized under the “California Control, Regulate and Tax Adult Use of Marijuana Initiative” approved by the state's voters on November 8, 2016, for which the individual receives no compensation whatsoever.
- L. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. “Cultivation” also includes nurseries. In addition, and without limiting the foregoing, “cultivation” includes “cultivation” as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted and amended from time to time.

- M. "Dispensary" means a facility where cannabis or cannabis products are offered, either individually or in combination, for retail sale, including an establishment that engages in delivery of cannabis or cannabis products as part of a retail sale.
- N. "Distributor" means a person engaged in procuring cannabis from a cultivator, and/or procuring cannabis products from a manufacturer, for sale to a dispensary. In addition, and without limiting the foregoing, "distributor" includes "distributor" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time. "Distribution" means engaging in such conduct and a "distribution facility" is any real estate, whether or not improved, used in such conduct.
- O. "Employee" means each and every person engaged in the operation or conduct of any cannabis 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 cannabis business for a wage, salary, commission, barter or any other form of compensation.
- P. "Gross Receipts" means "Gross Receipts," as that term is defined in Section 5-04.010 of the Willits Municipal Code. However, the following shall be excluded from the definition of 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;
  6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;
  7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
  8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the City's Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.
  9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property which the Finance Director has excluded in writing by issuing an administrative ruling per Section 5-10.160 shall not be subject to the cannabis business tax under this chapter. However, any business activities not subject to this Article as a result of the administrative ruling shall be subject to the appropriate business tax as determined by the Finance Director.
- Q. "Manufacturer" means a person who conducts the production, preparation, propagation, or compounding of 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 that packages or repackages cannabis or cannabis products or labels or re-labels its container. In addition, and without limiting the foregoing, "manufacturer" includes "manufacturer" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.
- R. "Nursery" means a person who produces cannabis clones, immature plants, and/or seeds for wholesale distribution, used specifically for the planting, propagation, and cultivation of cannabis. In addition, and without limiting the foregoing, "nursery" includes "nursery" as defined in California Business and Professions Code section 19300.5 and any successor statute, as may be adopted or amended from time to time.
- S. "Person" means "Person" as that term is defined in Section 5-04.010 of the Willits Municipal Code.
- T. "Personal medical cannabis cultivation" means cultivation, by either a qualified patient who cultivates cannabis exclusively for his or her personal medical use or by a caregiver who cultivates cannabis exclusively for medical use by qualified patients and who is exempt from State licensing requirements under the state Medical Cannabis Regulation and Safety Act.
- U. "Sale" means "Sale" as that term is defined in Section 5-04.010 of the Willits City Code.
- V. "State" means the State of California.
- W. "State license" means a state license issued pursuant to California Business & Professions Code Sections 19300, et seq. or other applicable state law.

#### 5-10.050. Tax Imposed.

- A. Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax. Such tax is payable regardless of whether the business has been issued a cannabis business license or permit to operate lawfully in the City or is operating unlawfully. The City's acceptance of a cannabis business tax payment from a cannabis business operating illegally will not constitute the City's approval or consent to such illegal operations.
- B. The City Council may by resolution, in its discretion, implement a tax rate lower than the maximum rates set forth in Subsection F for all persons engaged in commercial cannabis activities. The City Council may also establish differing tax rates for different methods of cannabis cultivation or for different categories of use for commercial cannabis cultivation. For example, and without limitation, in the event commercial cultivation or sales for adult recreational use should hereafter become approved and permitted within the City, the City Council may set a different tax rate for businesses engaged in such recreational use than for businesses engaged in similar activities for medical use. Tax rates shall be set for a minimum of a two (2) year term.

C. Persons subject to the tax imposed by this Section shall also register and pay the registration fee described in Section 5-10.060 of this Chapter, but shall be exempt from paying the general business tax required under Sections 5-04 of the Willits Municipal Code for any such cannabis business. A cannabis business not subject to the cannabis industry tax imposed by this Chapter is subject to the general business tax required under Sections 5-04 of the Willits Municipal Code except as otherwise provided by Chapter 5-04 of this Code or other applicable law.

D. The **initial rate** beginning January 1, 2019 of the cannabis business tax shall be as follows:

1. For every person who is engaged in commercial cannabis cultivation in the City:
  - a. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
  - b. Four dollars (\$4.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
  - c. One dollar (\$1.00) annually per square foot of canopy space for any nursery.

For purposes of this ordinance, the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. Should a City permit be issued to a business that cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy square footage which is authorized by the City commercial cannabis permit but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Finance Director is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

2. For every person who engages in the operation of a testing laboratory: one percent (1%) of gross receipts.
3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): four percent (4%) of gross receipts.
4. For every person who engages in a cannabis distribution business: two percent (2%) of gross receipts.
5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in Section (D) (1), (2), (3) or (4): two and half percent (2.5%) of gross receipts.

E. The City Council may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate calculated pursuant to Subdivision (F) of this Section for the date on which the adjusted rate will commence.

F. The **maximum rate** shall be calculated as follows:

1. For every person who is engaged in commercial cannabis cultivation in the City:
  - a. Through January 1, 2021, the maximum rate shall be:
    - i. Ten dollars (\$10.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
    - ii. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
    - iii. Two dollars (\$2.00) annually per square foot of canopy space for any nursery.
  - b. On January 1, 2022 and on each January 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index ("CPI") for all urban consumers in the San Francisco-Oakland-San Jose area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.
2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed two and a half percent (2.5%) of gross receipts.
3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) the maximum tax rate shall not exceed six percent (6%) of gross receipts.
4. For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed three percent (3%) of gross receipts.
5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section (F) (1), (2), (3) or (4), the maximum tax rate shall not exceed four percent (4%) of gross receipts.

A. G. No further voter approval shall be required for the adoption or increase of a tax under the authority granted by this Section 5-10.050 of this Chapter, it being the intent of the People of the City of Willits to authorize such a tax up to and including the maximum rates set forth above whenever implemented by the City Council hereafter.

**5-10.060. Registration of Cannabis Business.** All cannabis businesses shall be required to annually register as follows:

A. All persons engaging in a cannabis business, whether an existing, newly-established or acquired business, shall register with the Finance Director within thirty (30) days of commencing operation, and shall annually renew such registration by January 1 of each year thereafter. In registering, such persons shall furnish to the Finance Director a sworn statement, upon a form provided by the Finance Director, setting forth the following information:

- (1) The name of the business;
- (2) The names and addresses of each owner;

- (3) The exact nature or kind of business;
  - (4) The place where such business is to be carried on; and
  - (5) Any further information which the Finance Director may require.
- B. Any financial information required under Subsection A will be used only to calculate and enforce the tax imposed under this Chapter, will be exempt from disclosure under the Public Records Act pursuant to Government Code section 6254(i), and will not be used by the City for criminal enforcement except as provided in Sections 5-10.270 and 5-10.280 of this Chapter.
  - C. An annual registration fee of \$100 shall be presented with the sworn statement submitted under this section. This fee shall not be considered a tax and may be adjusted by resolution of the City Council.
  - D. Unless otherwise specifically provided by the Finance Director in writing, the annual fee under this section shall be due and payable in advance, on the first day of January, and shall be considered delinquent if unpaid after the last day of February. The date on which the fee becomes delinquent may be extended in writing by the Finance Director, upon good cause shown, to a date not later than March 31<sup>st</sup>.
  - E. For failure to pay the fee under this section when due, a penalty of 15 percent (15%) shall be added to the fee.
  - F. For failure to pay the fee under this section when due, interest on the delinquent fee (exclusive of penalty) at the rate of .84 percent per month shall be added to the fee for each month or portion of a month that fee, penalty and/or interest is not paid.
  - G. For each cannabis business subject to tax under this Chapter, a separate registration and fee payment shall be required under this section for each branch or location of the business and for each separate type of cannabis business at each branch or location.
  - H. Upon receipt of the registration and fee required under this Section, the Finance Director shall issue to the cannabis business a Certificate of Registration. Such Certificate of Registration shall be non-transferrable, except as otherwise provided by the Finance Director in writing.

**5-10.070. Reporting and Remittance of Tax.** The cannabis industry tax imposed by this Chapter shall be due and payable as follows:

- A. Each person subject to tax under this Chapter, except a cannabis cultivation tax based on a square footage, shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax return and remit to the Finance Director the tax due for that quarter. At the time the return is filed, the full amount of the tax due for the prior quarter shall be remitted to the Finance Director. At any time, a business may apply in writing to the Finance Director to have these tax returns and payments made less frequently or on a different schedule. Any determination resulting from this application will be at the sole discretion of the Finance Director and shall be provided in writing.
- B. Each person subject to a cannabis cultivation tax based on a square footage shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax return and remit to the Finance Director the tax due for that quarter. The tax shall be calculated in accordance with rules and regulations established by the Finance Director pursuant to Section 5-10.160. The tax return may include a request for adjustment of the tax due to crop loss or periods without cultivation, along with evidence substantiating the crop loss or fallow periods. If the cultivation begins significantly after January 1 or terminates significantly before December 31 of the calendar year, a request to prorate the tax may be submitted with evidence supporting the timing of the cultivation. The decision to prorate or adjust the tax will be made at the sole discretion of the Finance Director. At the time the return is filed, the full amount of the tax due for the prior quarter shall be remitted to the Finance Director. At any time, a business may apply in writing to the Finance Director to have these tax returns and payments made less frequently or on a different schedule. Any determination resulting from this application will be at the sole discretion of the Finance Director and shall be provided in writing.
- C. All tax returns shall be completed on forms prescribed by the Finance Director.
- D. Tax returns and payments for all outstanding taxes owed the City under this Chapter are immediately due and payable to the City of Willits upon cessation of business for any reason.

**5-10.080. Payments and Communications – Timely Remittance.** Whenever any payment, return, report, request or other communication is due under this Chapter, it must be received by the Finance Director on or before the due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a City holiday, the due date shall be the next regular business day on which the City is open to the public.

**5-10.090. Payment – When Taxes Deemed Delinquent.** Unless otherwise specifically provided under the provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the City of Willits on or before the due date as specified in Section 5-10.070.

**5-10.100. Notice Not Required By City.** The City of Willits is not required to send a delinquency or other notice or bill to any person subject to this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty or interest due under this Chapter.

**5-10.110. Delinquent Taxes – Penalties and Interest.** Penalties and interest shall be applied according to Section 5-04.190 of the Willits Municipal Code.

**5-10.120. Waiver of Penalties.** The Finance Director may waive the penalties imposed upon any person if:

- A. The person provides evidence satisfactory to the Finance Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent cannabis industry tax and accrued interest owed the City before applying to the Finance Director for a waiver.
- B. The waiver provisions specified in this subsection shall be granted only once during any twenty-four-month period.

**5-10.130 Refunds.** Refunds may be paid pursuant to Section 5-04.210 of this Code.

**5-10.140. Exemptions From the Tax.**

- A. Nothing in this Chapter shall be deemed or construed to apply to any person transacting and carrying on any business that is exempt from the payment of such taxes as are herein prescribed by virtue of the Constitution or applicable statutes of the United States or of the State.
- B. Any person claiming an exemption pursuant to this Section shall file a sworn statement with the Finance Director stating the facts upon which exemption is claimed. Unless and until the Finance Director determines in writing that such person is exempt from tax under this Chapter, such person shall be liable for the payment of the tax imposed by this Chapter.

- C. This Chapter shall not be deemed or construed to require the payment of any general business tax under Chapter 5-04 of the Willits Municipal Code for any cannabis business that is subject to payment of a cannabis industry tax under this Chapter.
- D. The provisions of this Article shall not apply to personal cannabis cultivation as defined in the "Medicinal and Adult Use Cannabis Regulation and Safety Act". This Article shall not apply to personal use of cannabis that is specifically exempted from City and 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.

**5-10.150. Enforcement.** It shall be the duty of the Finance Director to enforce each and all of the provisions of this Chapter, in accordance with the procedures of Section 5-04.270 of this Code.

**5-10.160. Rules and Regulations.** The Finance Director may adopt rules and regulations not inconsistent with the provisions of this Chapter as may be necessary or desirable to aid in the implementation and enforcement of the provisions of this Chapter. A copy of any such rules and regulations shall be available for public inspection in the Finance Director's office. The Finance Director 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 Article;
3. Receive and record all taxes remitted to the City as provided in this Article;
4. Maintain records of taxpayer reports and taxes collected pursuant to this Article;
5. Assess penalties and interest to taxpayers pursuant to this Article;
6. Determine amounts owed and enforce collection pursuant to this Article.

**5-10.170. Apportionment.** If a cannabis business subject to a cannabis industry tax is operating both within and outside the City, it is the intent of the City to apply the cannabis industry tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. The Finance Director may adopt administrative procedures for apportionment pursuant to Section 5-10.160 of this Chapter.

**5-10.180. Construction.**

- A. This tax is intended to be applied in a manner consistent with the United States and California Constitutions, state and local 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, state or local law.
- B. This Chapter shall be construed and implemented consistent with the provisions of Chapter 5-04 of this Code except as this Chapter or other law otherwise requires or the Finance Director otherwise determines in writing as authorized under this Code.

**5-10.190. Audit and Examination of Records and Equipment.**

- A. The Finance Director shall have the power to audit and examine all books and records of any person engaged in cannabis business in the City, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in cannabis business, and, where necessary, all equipment of any person engaged in cannabis business in the City, for the purpose of ascertaining the amount of cannabis industry tax, if any, required to be paid under this Chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to this Chapter. If such person, after written demand by the Finance Director, refuses to make available for audit, examination or verification such books, records or equipment as the Finance Director requests, the Finance Director may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment against the cannabis business of the taxes estimated to be due under this Chapter, following the procedures set forth in Section 3-28.80 of the Willits Municipal Code.
- B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Finance Director shall have the right to inspect at all reasonable times.

**5-10.200. Other Licenses, Permits, Taxes, Fees or Charges.** Except as expressly provided in this Chapter, nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirement for any permit or license required by, under or by virtue of any provision of any other title or Chapter of this Code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or Chapter of this Code or any other ordinance or resolution of the City. Any references made or contained in any other title or Chapter of this Code to any permits, licenses, taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the permits, licenses, taxes, fees or charges, or schedules of license fees, provided for in other titles or Chapters of the Willits Municipal Code unless otherwise expressly provided.

**5-10.210. Successor's and Assignee's Responsibility.**

- A. If any person, while liable for any amount under this Chapter, sells, assigns or otherwise transfers the cannabis business, whether voluntarily or involuntarily, the person's successor, assignee or other transferee, or other person or entity obtaining ownership or control of the business ("Transferee"), shall satisfy any tax liability owed to the City associated with the business when due hereunder. Failure to do so for the benefit of the City will result in being personally liable to the City for the full amount of the unpaid tax liability, interest and penalties. The Transferee shall notify the Finance Director of the date of transfer at least thirty (30) days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than thirty (30) days before the date of transfer, notice shall be provided immediately upon the existence of the agreement.

- B. The Transferee shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability if the Transferee complies with the requirements of California Revenue and Taxation Code Section 7283.5 by withholding from the purchase price, for the benefit of the City, an amount sufficient to cover tax liability, or by otherwise paying the tax liability and obtaining from the Finance Director a "Tax Clearance Certificate" showing that all outstanding tax liability has been paid and stating that no amount is due through the date of transfer.
- C. The Finance Director, within ninety (90) days of receiving a written request from a Transferee, may issue a "Tax Clearance Certificate" stating either the amount of tax liability due and owing for the business, or stating that there is no tax liability due and owing for the business through a stated date. The Finance Director may also request financial records from the current or former owner or operator to audit the tax that may be due and owing. The Finance Director shall issue a Tax Clearance Certificate within thirty (30) days of completing the audit, stating the amount of tax liability owed, if any, unless the Finance Director determines that the records provided in connection with the audit are insufficient to determine whether taxes are due and owed or in what amount. If the Finance Director determines that the records are insufficient, the Finance Director may rely on the facts and information available to estimate any tax liability. The Finance Director may issue a Tax Clearance Certificate stating the amount of tax liability, if any, based on such facts and information available. Unless an appeal is filed in accordance with Section 5-10.260, the Tax Clearance Certificate shall serve as conclusive evidence of the tax liability associated with the property through the date stated on the certificate.

**5-10.220. Payment of Tax Does Not Authorize Unlawful Business.**

- A. The payment of a tax required by this Chapter, and its acceptance by the City, shall not entitle any person to engage in any cannabis business unless the person has complied with all the requirements of this Code and all other applicable state or local laws.
- B. No tax paid under this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any state or local laws.

**5-10.230. Deficiency Determinations.** If the Finance Director is not satisfied that any tax return or other statement filed as required under 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 facts contained in the tax return or statement or 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, or such later date as allowable by law. 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, or such later date as allowable by law, 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 5-10.250.

**5-10.240. Failure to Report – Nonpayment.**

- A. Under any of the following circumstances and at any time, the Finance Director may make and give notice of an assessment of the amount of tax owed by a person under this Chapter:
  1. If the person has not filed a complete return or statement required under this Chapter;
  2. If the person has not timely paid any tax, fee, interest and/or penalties due under this Chapter; or
  3. If the person has not, after demand by the Finance Director, filed a corrected return or statement, or furnished to the Finance Director adequate substantiation of the information contained in a return or statement filed previously.
- B. The notice of assessment shall separately set forth the amount of any tax, fee interest and/or penalties known by the Finance Director to be due or estimated by the Finance Director, after consideration of all information within the Finance Director's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter.

**5-10.250. Tax Assessment – Notice Requirements.** The notice of assessment shall be served upon the person liable for the tax under this Chapter 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 Finance Director for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Finance Director 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.

**5-10.260. Appeal Procedure.** Any taxpayer aggrieved by any decision of the Finance Director with respect to the amount of tax, fee, interest and penalties, if any, due under this Chapter may appeal to the City Manager by filing a written appeal with the Clerk of the Willits City Council within fifteen (15) calendar days of the mailing of the decision or determination. The Clerk shall schedule the appeal and give fifteen (15) days' written notice to the appellant of the time and place of hearing by serving the notice personally or by depositing in the United States Post Office in the City, postage prepaid, addressed as shown on the appeal papers or, if none, to such other address as is known to the City or, absent any address, by publication in a newspaper of general circulation in the City. The City Manager, or his or her designee, shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this Chapter.

**5-10.270. Conviction for Chapter Violation – Taxes Not Waived.** The conviction and punishment of any person for failure to pay a required tax, fee, penalty and/or interest under this Chapter shall not excuse or exempt such person from any civil action for the amounts due under this Chapter. 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.

**5-10.280. Violation Deemed Misdemeanor.** Any person who violates any provision of this Chapter or who other than by a sworn statement, knowingly or intentionally misrepresents to any officer or employee of the City any material fact herein required to be provided is guilty of a misdemeanor punishable as provided in section 5-04.320 of this Code and CA Government Code section 36900(a). A person who on a sworn statement states as true a material fact that he or she knows to be false is guilty of perjury.

**5-10.290. Action to Collect.** The amount of any tax, fee, penalty and/or interest imposed pursuant to this Chapter shall be deemed a debt owed to the City. An action may be commenced in the name of the City in any court of competent jurisdiction, for the amount of any delinquent tax, fees, penalties and interest thereon.

**5-10.300. 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.

**5-10.310. Remedies Cumulative.** All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

**5-10.320. Amendment or Repeal.** This Chapter may be repealed or amended by ordinance of the Willits City Council without a vote of the People except that, as required by Article XIIC of the California Constitution, any amendment that increases the maximum rates of tax beyond the levels authorized in Section 5-10.050 above shall not take effect unless approved by a vote of the People. The City Council may, by resolution, implement a tax under this Chapter in any amount or at any rate that does not exceed the maximum rates set forth in Section 5-10.050.

**Section 2. Chapter 5-04 of the Willits City Code is hereby amended as follows:**

A. The title of Chapter 5-04 is amended to read as follows: **“General Business Tax.”**

B. Section 5-04.010 entitled “Definitions” is amended by deleting and replacing the entire text of that Definitions section with the following text:

**“5-04.010 – Definitions”**

“For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section:

(A) Person. As used herein, “Person” means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, receiver, the United States, this state, any county, municipality, district, tribe or any other group or combination acting as a unit.

(B) City. As used in this chapter, “City” means the City of Willits.

(C) Business. As used in this chapter, “business” includes professions, trades, and occupations and all and every kind of calling carried on with or without the intent of making a profit.

(D) Occupied dwelling. As used in this chapter, “occupied dwelling” means any residence, abode or separate living unit within any apartment, duplex, condominium or structure inhabited, used, possessed or controlled by any person.

(E) Fixed place of business. As used in this chapter, “fixed place of business” means the premises where business is regularly transacted and where the circumstances show an intention to be an established part of the business life of the city.

(F) Gross Receipts. As used in this chapter, “gross receipts” includes the total of amounts actually received or receivable from sales and the total amounts actually received or receivable for the performance of any act or service, of whatever nature it may be, for which charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in “gross receipts” shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from “gross receipts” shall be the following:

- (1) Cash discounts 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 property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
- (4) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them;
- (5) Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded;
- (6) As to a real estate agent or broker, the sales price of real estate sold for the account of others except that portion which represents commission or other income to the agent or broker;
- (7) Receipts from the manufacture, sale, purchase or transportation of alcoholic beverages.

(G) Sale. As used in this chapter, “sale” includes the transfer, in any manner or by any means whatsoever, of title to real or personal property for a consideration; the serving, supplying, or furnishing for a consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The definitions in this subsection shall be deemed to include any transaction which is or which, in effect, results in a sale within the contemplation of law.

(H) Sworn Statement. As used in this chapter, “sworn statement” means an affidavit sworn to before a person authorized to take oaths, or a declaration or certification made under penalty of perjury in accordance with California law.

(I) Tax Certificate. As used in this chapter, “tax certificate” means the physical documentation verifying payment of tax, issued by the collector, indicating tax period covered.

(J) Cannabis Industry Tax. As used in this chapter, “cannabis industry tax” means any tax due pursuant to Chapter [5-10](#) of this Code.”

C. Section 5-04.040 entitled “Licensees requiring city permit” is amended to read:

**“5-04.03 - Effect on other ordinances and City laws.**

“(A) Except as provided in Subsection (B), persons required to pay a tax for transacting and carrying on any business under this Chapter shall not be relieved from the payment of any license tax, permit, charge, assessment, or fee for the privilege of doing such business required under other laws or regulations of the City, and shall remain subject to the provisions of such other laws and regulations.

“(B) Persons required to pay a tax pursuant to Chapter 5-10 of this Code shall also register the cannabis business pursuant to Section 5-10-060 of this Code, but shall be exempt from the general business tax required under this Chapter for any such cannabis business. The provisions of this Chapter shall not be deemed or construed to require the payment of any general business tax by any person required to pay a tax under Chapter 5-10 of this Code.”

D. Section 5.04.340 is added to read: “**5-04.340. Amendment or Repeal.** This Chapter may be amended or repealed by the City Council without a vote of the People except that, as required by Article XIII C of the California Constitution, any amendment that increases the amount or rate of tax beyond the levels authorized under Sections 5-04.220 and 5-04.230 under this Chapter may not take effect unless approved by a vote of the People.”

**Section 3. CEQA.** The approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code sections 21000 et seq., “CEQA,” and 14 Cal. Code Reg. sections 15000 et seq., “CEQA Guidelines”). The cannabis industry tax to be submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action nor does it authorize any private activity, but merely taxes such activity as otherwise occurs. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax are used for a purpose that would have either such effect, the City will undertake the required CEQA review for that project. Therefore, pursuant to CEQA Guidelines section 15060 CEQA analysis is not required at this time.

**Section 4. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The People of the City of Willits hereby declare that they would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**Section 5. Effective and Operative Dates.** This ordinance shall take effect ten (10) days after the election result is certified as provided by Elections Code, but the taxes imposed by this ordinance shall take effect only when and to the extent implemented by resolution of the City Council.

**Section 6. Certification; Publication.** Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

## CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE I

The City of Willits is in the process of expanding its regulation of cannabis businesses operating within the City limits. Currently, all businesses operating in Willits – including approved, lawful cannabis businesses – must pay a general business license tax. The Willits City Council has placed Measure I on the ballot to enact an ordinance (“the Ordinance”) to impose a cannabis-specific business tax, rather than the general business license tax, on cannabis-related businesses operating within the City limits. The Ordinance will not go into effect unless a majority of those voting on the measure vote “yes”.

If approved by the voters, the Ordinance will authorize the City Council to establish an excise tax effective January 1, 2019 on any cannabis-related businesses operating in the City, including, but not limited to, cultivation, manufacturing, distribution and dispensary businesses. As an excise tax, the tax will be paid by cannabis businesses. The proposed tax is not a sales or use tax imposed directly on cannabis users or consumers. Businesses that pay the excise tax under the Ordinance will be exempt from the City’s general business tax. The tax does not apply to the personal use of cannabis or the cultivation of cannabis for personal use as authorized under state law.

The Ordinance authorizes the City Council to set and adjust the rate of the excise tax up to the maximum tax rates established in the Ordinance. For commercial cultivation, the maximum annual tax rate is \$10 per square foot of cannabis cultivation area (adjusted annually by CPI). The other maximum tax rates set forth in the Ordinance are 6% of gross receipts for retail cannabis businesses, and 4% of gross receipts for all other cannabis businesses.

The tax rates must be set for a minimum term of two years. At its discretion, the City Council may establish longer terms if desired.

The Ordinance requires all persons engaging in a cannabis business in the City to register with the City for purposes of tax collection. The Ordinance includes procedures for tax reporting, remittance, audit, enforcement and appeal.

The tax imposed by the Ordinance is a general tax under state law. All taxes collected under the Ordinance will be placed in the City’s general fund, and may be used for any City purpose.

s/ H. James Lance  
Willits City Attorney



## **ARGUMENT IN FAVOR OF MEASURE I**

Measure I will allow the City of Willits to impose an excise tax on cannabis businesses operating within the City. Unlike other consumer sales, the commercial sale of medical cannabis does not produce any sales tax revenue for the City. Measure I therefore proposes an excise tax to ensure that the City has the resources to support and regulate the cannabis industry without impacting core City services, such as maintaining neighborhood infrastructure, public works and public safety.

Measure I is fiscally responsible, timely, and prudent. Over the past year, the City of Willits has addressed critical issues such as revitalization of Main Street and improving our aging water system, in addition to providing basic services. The City is highly dependent on sales tax revenue to fund these improvements and day-to-day operations. Unfortunately, the City has experienced loss of sales tax revenues. The Measure I excise tax is needed to protect the City's budget from costs related to the regulation of the cannabis industry and to ensure that key City services will not suffer.

Measure I was carefully crafted to find the right balance between generating the revenue needed while addressing certainty for this emerging industry, in line with other jurisdictions. Adoption of a clear legal framework will encourage cannabis businesses to join the regulated market, ensuring protection for consumers, the environment, and public health.

While the precise amount of revenue is not certain, the City's consultant HdL Companies, who assisted the City in crafting Measure I, estimates that Measure I may result in unrestricted annual revenue to the City's general fund of \$250,000 to \$400,000.

With unanimous support from the Willits City Council, we respectfully request a Yes vote on Measure I.

The Willits City Council

s/Madge Strong

By: Madge Strong, Mayor

**NO ARGUMENTS AGAINST MEASURE I WERE RECEIVED.**