

## RESOLUTION NO. 4122

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
ESTABLISHING NOVEMBER 6, 2018, AS THE DATE FOR A MUNICIPAL ELECTION  
ON A PROPOSED BALLOT MEASURE SEEKING VOTER APPROVAL OF A  
CANNABIS BUSINESS TAX TO MAINTAIN FISCAL STABILITY AND  
PROTECT ESSENTIAL CITY FACILITIES AND SERVICES**

**WHEREAS**, pursuant to Elections Code Section 10002, the governing body of any city may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city relating to the conduct of an election; and

**WHEREAS**, the resolution of the governing body of the City shall specify the services requested; and

**WHEREAS**, on June 28, 2018, the Capitola City Council passed Resolution No. 4115 calling the General Municipal Election and requesting such services of Santa Cruz County; and

**NOW, BE IT RESOLVED AND ORDERED** that the Santa Cruz County Elections Department shall conduct the election for the following Measure to be voted on at the November 6, 2018, election:

To protect the quality of life in the City of Capitola and to fund essential City services such as sidewalks, streets, and emergency response, shall Capitola voters enact an ordinance establishing a tax of no more than 7% on cannabis businesses in the city, generating estimated revenue of up to \$310,000 annually per cannabis business, to remain in effect until changed or ended by voters, with all funds staying local?	Yes	
	No	

**BE IT FURTHER RESOLVED AND ORDERED THAT** Santa Cruz County Elections Department is requested to: [Check one of the following]

- Print the attached measure text exactly as filed or indicated on the filed document in the County Voter Information Guide for the November 6, 2018 election. Cost of printing and distribution of the measure text will be paid for by the city.
- Do NOT print the measure text in the County Voter Information Guide. Instead, send a copy to voters upon request at the cost of said city/district.

**BE IT FURTHER RESOLVED AND ORDERED** that the City Clerk of the City of Capitola is hereby ordered and directed to cause said proposed ordinance and notice of election to be published and posted in accordance with the provisions of the California State Elections Code.

**BE IT FURTHER RESOLVED AND ORDERED** that the City Clerk is hereby directed to submit to the City Attorney a certified copy of the measure pursuant to Elections Code § 9280. The City Attorney is hereby authorized and directed to prepare an impartial analysis of the ballot measure showing the

effect of the measure on the existing law and operation of the measure, said analysis to be submitted by the City Attorney to the County of Santa Cruz elections office, or other appropriate office, for printing by the date set by the County of Santa Cruz elections official for the filing of arguments for and against the measure. The impartial analysis shall not exceed five hundred (500) words in length and shall otherwise comply in all respects with the applicable provisions of the Elections Code.

**BE IT FURTHER RESOLVED AND ORDERED** that the City Clerk is hereby authorized and directed to execute any other documents and to perform all acts necessary to place the Measure on the ballot, including making alterations to the abbreviated text of the Measure in order to comply with the requirements of law and the Santa Cruz County Registrar of Voters.

**I HEREBY CERTIFY** that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 26<sup>th</sup> day of July, 2018, by the following vote:

**AYES:** Council Members Bertrand, Bottorff, Harlan and Petersen and Mayor Termini

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

  
Michael Termini, Mayor

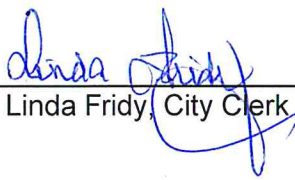
ATTEST:   
Linda Fridy, City Clerk

EXHIBIT "A"

Measure to be voted on: Cannabis Business Tax

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

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF CAPITOLA  
ADDING CHAPTER 5.07 "CANNABIS BUSINESS TAX" TO  
TITLE 5 "BUSINESS TAXES, LICENSES AND REGULATIONS"  
OF THE CITY OF CAPITOLA MUNICIPAL CODE**

THE PEOPLE OF THE CITY OF CAPITOLA, CALIFORNIA, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 5.7 entitled "Cannabis Business Tax" is hereby added to Title 5 "Business Taxes, Licenses and Regulations" of the City of Capitola Municipal Code to read as follows:

"Chapter 5.07

CANNABIS BUSINESS TAX

**5.07.010 Purpose of Chapter.**

This chapter shall be known as the "cannabis business tax" and is enacted solely to raise revenue for the general governmental purposes of the city and not for purposes of regulation or of raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the city's general fund and used for any lawful municipal purpose in the discretion of the City.

**5.07.020 Tax Imposed.**

There is established and imposed a cannabis business tax at the rate set forth in this chapter.

**5.07.030 Definitions.**

The definitions set forth in this section shall govern the application and interpretation of this chapter.

- A. "Business" shall include all activities engaged in or caused to be engaged in within the city, including any commercial or industrial enterprise, trade, profession, occupation, vocation, services, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.
- B. "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission or room and board.
- C. "Engaged in business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the city or coming into the city from an outside location to engage in such activities. A person shall be deemed engaged in business within the city if:
  - 1. Such person or person's employee maintains a fixed place of business within the city for the benefit or partial benefit of such person;

2. Such person or person's employee owns or leases real property within the city for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the city for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the city;
5. Such person or person's employee performs work or renders services in the city on a regular and continuous basis involving more than five working days per year;
6. Such person or person's employee utilizes the streets within the city in connection with the operation of motor vehicles for business purposes.

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

- D. "Evidence of doing business" means whenever any person shall, by use of signs, circulars, cards or any other advertising media, including the use of Internet or telephone solicitation, represent that such person is engaged in cannabis business in the city then these facts may be used as evidence that such person is engaged in business in the city.
- E. "Gross receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a 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; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:
  1. Cash discounts allowed and taken on sales;
  2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
  3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
  4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
  5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
  6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
  7. Cash value of sales, trades or transactions between departments or units of the same business;

8. 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;
  9. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.
  10. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such pipes, pipe screen, vape pen batteries (without cannabis) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 5.07.190 shall not be subject to the cannabis business tax under this chapter. However, any retail sales not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax under Chapter 5.04 or any other Chapter or Title as determined by the Tax Administrator.
- F. "Gross receipts" subject to the business tax shall be that portion of gross receipts relating to business conducted within the city.
- G. "Cannabis" means all parts of the plant *Cannabis sativa* Linneaus, *Cannabis indica*, or *Cannabis ruderalis*, as defined under the California Medical Marijuana Regulation and Safety Act at Health and Safety Code Section 19300.5(f), as may be amended.
- H. "Cannabis business" or "marijuana business" means any business activity related to or concerning cannabis which entails the production, distribution, delivery, dispensing, exchanging, bartering or sale of either medical or nonmedical cannabis, including but not limited to cultivating, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of cannabis and any ancillary products in the city, whether or not carried on for gain or profit.
- I. "Cannabis business tax", "business tax" or "cannabis tax" means the tax due for engaging in cannabis business in the city.
- J. "Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.
- K. "Operator" shall mean any person conducting, operating, or maintaining in whole or in part as principal, agent, officer, employee or independent contractor any cannabis business or medical marijuana business as defined in this chapter, taxable under this chapter.
- L. "Sale" means and includes any sale, exchange, or barter.
- M. "Tax administrator" or "administrator" means the finance director or such other administrator designated by the city manager to administer this chapter.

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

Nothing contained in this chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit 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.

**5.07.050 Payment, of tax does not authorize unlawful business.**

- A. The payment of a business tax required by this chapter, and its acceptance by the city, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any cannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such cannabis business is in violation of any law.
- B. No tax paid under the provisions of this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the city.

**5.07.060 Payment – location.**

The tax imposed under this chapter shall be paid to the administrator in lawful money of the United States at the offices of the finance director in Capitola, California. “Lawful money” shall mean any coin, currency or negotiable instrument, exchangeable for said coin or currency, which the United States Congress has declared to be a national legal tender.

**“5.07.070 Amount of business tax owed.**

- A. Every person engaged in cannabis business in the city shall pay a business tax at a rate of up to seven percent of gross receipts.
- B. Notwithstanding the maximum tax rate of seven percent of gross receipts imposed under subsection (A), the city council may, in its discretion, at any time by ordinance, implement a lower tax rate for all cannabis businesses or establish differing tax rates for different categories of cannabis businesses, as defined in such ordinance, subject to the maximum rate of seven percent of gross receipts. The city council may, by ordinance, also increase any such tax rate from time to time, not to exceed the maximum tax rate of seven percent of gross receipts established under subsection (A).
- C. Subject to modification by ordinance adopted by the City Council pursuant to subsection (B), the initial cannabis business tax rate is set at seven percent of gross receipts. Commencing on the operative date of this chapter, every person engaged in cannabis business in the city shall pay a cannabis business tax at the rate of seven percent of gross receipts.

**5.07.080 Payment – time limits.**

The business tax imposed by this chapter shall be due and payable as follows:

- A. Each person owing a tax under this chapter shall, on or before the tenth day of each calendar month, prepare a tax statement to the administrator of the total gross receipts and the amount of tax owed for the preceding calendar month. At the time the tax statement is filed, the full amount of the tax owed for the preceding calendar month shall be remitted to the administrator. If the 10<sup>th</sup> falls on a weekend or Holiday observed by the City, the due date will be the next business day.
- B. All tax statements shall be completed on forms provided by the administrator.
- C. Tax statements and payments for all outstanding taxes owed the city are immediately due to the administrator upon cessation of business for any reason.

**5.07.090 Payments and communications made by mail – proof of timely submittal.**

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date falls on Saturday, Sunday or a holiday, the due date shall be the next regular business day on which the City Hall building at 420 Capitola Avenue, Capitola is open to the public.

**5.07.100 Payment – when taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified in Section 5.07.080.

**5.07.110 Notice not required by city.**

The administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter 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.

**5.07.120 Payment – penalty for delinquency.**

- A. Any person who fails or refuses to pay any business tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:
1. A penalty equal to ten percent of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax; and
  2. An additional penalty equal to ten percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and on the unpaid penalties.
  3. In addition to the penalties imposed, any person who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of tax, exclusive of penalties, from the last day of the month following the monthly period for which the amount or any portion thereof should have been paid until the date of payment.
  4. Only payments for the full amount due shall be accepted unless an alternate payment agreement is reached with the administrator.
- B. Whenever a check is submitted in payment of a business 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 tax amount due plus the return check fee; penalties and interest as provided for in this section; and any amount allowed under state law.
- C. The business tax due shall be that amount due and payable from the first date on which the person was engaged in cannabis business in the city, together with applicable penalties and interest calculated in accordance with subsection (A).

**5.07.130 Waiver of penalties**

The administrator may waive the first and second penalties imposed upon any person if:

- A. The person provides evidence satisfactory to the administrator that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of

ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the city prior to applying to the administrator for a waiver.

- B. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax.
- C. A request for relief from the first and second penalties must be filed within thirty days of the date the remittance was due to the city, but no later than ten days of the city's notice, if sent, to the operator of the amount past due.

#### **5.07.140 Refunds – credits.**

- A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 5.07.150.
- B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution or other termination of a business.
- C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against such person's business taxes for the next calendar month.

#### **5.07.150 Refunds and procedures.**

- A. Whenever the amount of any business 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, it may be refunded to the claimant who paid the tax; provided, that a written claim for refund is filed with the administrator within one year of the date the tax was originally due and payable.
- B. The administrator or the administrator's authorized agent shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the administrator to do so.
- C. In the event that the business 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 an amount from the refund reasonably calculated to cover expenses in verifying the error.

#### **5.07.160 Exemptions – application – issuance conditions.**

Any person desiring to claim exemption from the payment of the tax set forth in this chapter shall make application upon forms prescribed by the administrator and shall furnish such information and make such affidavits as may be required by the administrator.

#### **5.07.170 Exemptions – general.**

Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the state of California or preemptive federal or state law.

#### **5.07.180 Enforcement – Duties of tax administrator and police chief.**

It shall be the duty of the administrator to enforce each and all of the provisions of this chapter, and the police chief shall render such assistance in the enforcement of this chapter as may from time to time be required by the administrator.



**5.07.190 Rules and regulations.**

For purposes of apportionment as may be required by law and for purposes of administration and enforcement of this chapter generally, the administrator, with the concurrence of the city attorney, may from time to time promulgate administrative rules and regulations.

**5.07.200 Apportionment.**

- A. None of the tax provided for by this chapter shall be applied so as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitutions of the United States or the state of California.
- B. If any case where a business tax is believed by a taxpayer to place an undue burden upon interstate commerce or be violative of such constitutional clauses, the taxpayer may apply to the administrator for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then taxpayer shall be conclusively deemed to have waived any adjustment for that year and all prior years.
- C. The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the administrator may deem necessary in order to determine the extent, if any, of such undue burden or violation. The administrator shall then conduct an investigation, and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the administrator shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.
- D. Should the administrator determine that the gross receipt measure of tax to be the proper basis, the administrator may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the administrator.

**5.07.210 Audit and Examination of Records and Equipment.**

- A. The administrator shall have the power to audit and examine all books and records of persons engaged in cannabis business 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 business tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such person, after written demand by the administrator, refuses to make available for audit, examination or verification such books, records or equipment as the administrator requests, the administrator may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment in the manner provided in Sections 5.07.250 through 5.07.270 of any taxes estimated to be due.
- 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 four 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 administrator shall have the right to inspect at all reasonable times.

**5.07.220 Tax deemed debt to city.**

The amount of any tax, penalties and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person carrying on any cannabis business without first having paid such tax 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 business and for attorneys' fees in the enforcement of this chapter.

**5.07.230 Lien – recordation.**

If any amount required to be paid to the city under the ordinance codified in this chapter is not paid when due, the administrator, upon expiration of the second delinquency period referenced in Section 5.07.120(A)(2), may, within four years after the amount is due, record in the office(s) of the county recorder(s) of any county in the state of California a certificate specifying the amount of tax, penalties and interest due, the name and address of the operator liable for the same and the fact that the administrator has complied with all provisions of this chapter in the determination of the amount required to be paid. From the time of the recording, the amount required to be paid together with penalties and interest shall constitute a lien upon any and all real property in any county owned by the operator or thereafter acquired by the operator. The lien shall have the force, effect and priority of a judgment lien and shall continue for ten years from the time of filing of the certificate unless sooner released or otherwise discharged.

**5.07.240 Warrant for collection of tax.**

At any time within four years after any operator is delinquent in the payment of any amount herein required to be paid off after the last recording of a certificate of lien under Section 5.07.230, the administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the city under this chapter. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The administrator may pay or advance to the sheriff, marshal or constable the same fees, commissions and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution.

**5.07.250 Seizure and sale.**

At any time within four years after any operator is delinquent in the payment of any amount, the administrator may forthwith collect the amount in the following manner: The administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall be only of property of the operator not exempt from execution under the provisions of the California Code of Civil Procedure.

**5.07.260 Successor's and assignee's responsibility.**

If any operator, while liable for any amount under this chapter, sells, assigns or otherwise transfers the business, whether voluntarily or involuntarily, the operator's subsequent successor, assign or

other transferee, or other person or entity obtaining ownership or control of the business, shall satisfy any tax liability owed to the city associated with the business. 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 tax liability, which includes interest and penalties.

The successor operator, assign, purchaser, transferee, or other person or entity seeking to obtain ownership or control of the business shall notify the administrator of the date of transfer at least thirty days prior to the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than thirty days prior to the date of transfer, notice shall be provided immediately.

The successor operator, assign, purchaser, transferee, or other person or entity who obtains ownership or control of the business shall be deemed to have complied with the requirement of this section to satisfy the unpaid tax liability if that person or entity has requested and received a "tax clearance certificate" from the administrator showing that it has been paid and stating that no amount is due through the date of transfer. The issuance of such a tax clearance certificate shall be in accordance with the procedures set forth in California Revenue and Taxation Code Section 7283.5 as applicable to transient occupancy taxes.

The administrator, within ninety days of receiving a written request from a successor operator, assign, purchaser, transferee, or other person or entity who obtains or attempts to obtain ownership or control of the business, may issue a "tax clearance certificate" stating either the amount of tax liability due and owing for the property, or stating that there is no tax liability due and owing for the property. The administrator may also request financial records from the current or former owner or operator to conduct an audit of the tax that may be due and owing. After completing the audit within ninety days after the date that the records were made available, the administrator may issue a tax clearance certificate within thirty days of completing the audit, stating the amount of the tax liability owed, if any. If the city determines that the records provided for an audit are insufficient, the administrator may rely on the facts and information available to estimate any tax liability associated with the property. The administrator may issue a tax clearance certificate stating the amount of the tax liability, if any, based on such facts and information available. A written application for a hearing on the amount assessed on the tax clearance certificate must be made within ten days after the serving or mailing of the certificate. The hearing provision of Section 5.07.300 shall apply. If an application for a hearing is not made within the time prescribed, the tax clearance certificate shall serve as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.

#### **5.07.270 Deficiency determinations.**

If the administrator is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.

Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 5.07.280 through 5.07.300.

**5.07.280 Tax assessment – authorized when – nonpayment – fraud.**

- A. Under any of the following circumstances, the administrator may make and give notice of an assessment of the amount of tax owed by a person under this chapter at any time:
1. If the person has not filed any statement required under the provisions of this chapter;
  2. If the person has not paid any tax due under the provisions of this chapter;
  3. If the person has not, after demand by the administrator, filed a corrected statement, or furnished to the administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter;
  4. If the administrator determines that the nonpayment of any business tax due under this chapter is due to fraud, a penalty of forty percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.
- B. The notice of assessment shall separately set forth the amount of any tax known by the administrator to be due or estimated by the administrator, after consideration of all information within the administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

**5.07.290 Tax assessment – notice requirements.**

The notice of assessment shall be served upon the person either by handing it to him or her personally, 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 administrator for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the administrator 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.

**5.07.300 Tax assessment – hearing – application and determination.**

Within ten days after the date of service the person may apply in writing to the administrator for a hearing on the assessment. If application for a hearing before the city is not made within the time herein prescribed, the tax assessed by the administrator shall become final and conclusive. Within thirty days of the receipt of any such application for hearing, the administrator shall cause the matter to be set for hearing before him or her not later than thirty-five days after the receipt of the application, unless a later date is agreed to by the administrator and the person requesting the hearing. Notice of such hearing shall be given by the administrator to the person requesting such hearing not later than five days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the administrator should not be confirmed and fixed as the tax due. After such hearing the administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.07.290 for giving notice of assessment. The amount determined to be due shall be payable after fifteen days.

**5.07.310 Conviction for chapter violation – taxes not waived.**

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

**5.07.320 Violation deemed misdemeanor - penalty.**

Any person violating any of the provisions of this chapter, or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

**5.07.330 Severability.**

Should any provision of this chapter, or its application to any person or circumstance, be 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.

**5.07.340 Effect of state and federal reference/authorization.**

- A. Unless specifically provided otherwise, any reference to a state or federal statute in this chapter shall mean such statute as it may be amended from time to time; provided, that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a state or federal agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute, or interpretation thereof, shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute, or new interpretation thereof, shall be applicable to the maximum possible extent.
- B. To the extent that the city's authorization to collect or impose any tax imposed under this chapter is expanded as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.

**5.07.350 Remedies cumulative.**

All remedies and penalties prescribed by this chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

**5.07.360 Amendment or repeal.**

This chapter of the Capitola Municipal Code may be repealed or amended by the city council without a vote of the people. However, as required by Chapter XIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied

pursuant to this chapter. The people of the city of Capitola affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than the maximum tax rate set by this chapter, if the city council has previously acted to reduce the rate of the tax;
- B. The city council's adoption of an ordinance, as authorized by Section 5.07.070(A), to raise the tax rate provided the tax rate is not raised to a rate higher than the maximum tax rate set by this chapter.
- C. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;
- D. The establishment of a class of persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); or
- E. The collection of the tax imposed by this chapter, even if the city had, for some period of time, failed to collect the tax.

**Section 2. Severability.** If any section, subsection, clause or phrase of this Ordinance is for any reason declared invalid, such declaration shall not affect the validity of the remaining portion or sections of the Ordinance. The people of the City of Capitola hereby declare that they would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid,

**Section 3. Effective Date.** This ordinance shall be in full force and effect upon certification of its passage after approval by the voters, provided, however, that the tax approved hereby shall be imposed and fully in effect on and after January 1, 2019.