

ORDINANCE NO. _____ (N.C.S.)

**AN ORDINANCE TO ADD CHAPTER 19A TO THE SALINAS MUNICIPAL
CODE TO ESTABLISH A BUSINESS TAX ON COMMERCIAL CANNABIS
BUSINESSES OPERATING IN THE CITY OF SALINAS**

WHEREAS, the Salinas City Council adopted an ordinance to add Chapter 16B to the Salinas Municipal Code to allow for the establishment of a limited number of commercial cannabis businesses in the city of Salinas (“Commercial Cannabis Ordinance”). Among other things, the City Council’s purpose and intent in adopting the ordinance was to regulate the distribution, cultivation, and manufacturing of cannabis and cannabis-related products in a responsible manner; and

WHEREAS, the Commercial Cannabis Ordinance requires each person engaging in the operation of a commercial cannabis business to obtain a City of Salinas business license and comply with all applicable provisions and requirements of that license; and

WHEREAS, every person engaged in business activity in the City of Salinas is required to obtain a business tax certificate and to pay the City’s business tax; and

WHEREAS, commercial cannabis businesses do not currently fall within a business category established in the City’s business license tax provisions. Accordingly, the City Council of the City of Salinas desires to create Chapter 19A to establish the appropriate categories and rates for commercial cannabis businesses including a) Medical Cannabis Cultivation b) Medical Cannabis Manufacturing, c) Medical Cannabis Dispensary, d) Medical Cannabis Delivery Service, and e) “Non-Medical” cannabis businesses (whether dispensing, delivering, cultivating, or manufacturing other than medical cannabis) where permissible by state and local law; and

WHEREAS, the City of Salinas seeks to appropriately regulate commercial cannabis facilities and seeks adequate funding to provide essential public services. All revenues received from the tax will be deposited in the General Fund of the City to be expended for general purposes; and

WHEREAS, the City Council finds and determines that this Ordinance is exempt from the California Environmental Quality Act, Public Resources Code Section 21000et seq., including without limitations. Public Resources Code Section 21605, CEQA Guidelines 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

Section 1. The Salinas Municipal Code is hereby amended to add Chapter 19A which shall read as set forth below.

Chapter 19A
Cannabis Business Tax

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19A.10.010 Purpose of Chapter.

This chapter shall be entitled the "Cannabis Business Tax" and is enacted solely to raise revenue for the general governmental purposes for 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 the purposes consistent with General Fund expenditures of the City.

19A.10.020 Tax imposed.

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

19A.10.030 Definitions.

The definitions set forth in this part 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, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

(b) "Cannabis" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant, whether crude or purified; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code as enacted by Chapter 14017 of the Statutes of 1972.

(c) "Commercial Cannabis Business" or "Medical Marijuana Business" or "Non-Medical Marijuana Business" means any business or operation which engages in any commercial cannabis activity not limited to, 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 which is permitted by both State and local law.

(d) "Cannabis Business Tax", "Business tax" or "Commercial Cannabis tax" means the tax due for engaging in Commercial Cannabis business in the city.

(e) “Canopy” shall mean the diameter of a plant, a straight line passing through the center of the cannabis plant in its mature state. All plants will be measured or presumed to be in their full growth state regardless if they are “clones”, infants in the vegetative cycle, or full mature plants in the flowering stage of their life cycle. The plant canopy does not need to be continuous on any premise in determining the total square footage which will be subject to tax.

(f) “Commercial Cannabis Cultivation” means any activity involving the propagation, planting, growing, harvesting, drying, curing, grading, or trimming of cannabis or that does all or any combination of those activities.

(g) “Cultivation Facility” or “Grow Site” or “Cultivation Site” shall mean the facility where medical cannabis is propagated, planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities and shall also mean the square footage of any place or location where cannabis or any of its derivatives is cultivated, grown, harvested, packaged processed or stored.

(h) “Distributor” or “Distribution” or “Distribution Facility” shall mean a person or facility licensed by the State to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(i) “Dispensary” means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as a part of a retail sale.

(j) “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

(k) “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."

(l) "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, or represents to a government agency or to the public that such person is engaged in a Cannabis business in the City, then these facts may be used as evidence that such person is engaged in business in the City.

(m) "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 there from:

- (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; 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; 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) Transactions between a partnership and its partners;
 - (8) Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:
 - (a) The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had;
 - or;
 - (b) Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or
 - (c) At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had;
 - (9) Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection (9) above;
 - (10) 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;
 - (11) 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.
- (n) "Manufacturer" means a person that conducts the production, preparation,

propagation, or compounding of manufactured medical cannabis, or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license and that holds a valid local license or permit.

(o) "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.

(p) "Sale" means and includes any sale, exchange, or barter.

(q) "Square Foot" or "Square Footage" shall mean the sum of the gross horizontal space or area of all floors, including garages, carports, porches or similar structures, in which any cannabis or marijuana or its derivatives is cultivated, grown, harvested, packaged, processed, or stored.

(r) "Tax Administrator" or "administrator" means the Finance Director or such other designated by the City Manager to administer this chapter.

(s) "Transporter" means a person issued a state license and local license to transport medical cannabis or medical cannabis products in an amount above the threshold determined by the state permitting agency between facilities that have been issued a state license.

(t) "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purpose of conducting commercial cannabis activity authorized by the state.

19A.10.040 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. Any references made or contained in any other title or chapter of this code to any licenses, license taxes, fees or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this code.

19A.10.050 Payment of tax does not authorize unlawful business.

(a) The payment of a cannabis business tax required by this chapter, and its acceptance by the city, shall not entitle any person to carry on any commercial 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.

19A.10.060 Payment - Location.

The tax imposed under this chapter shall be paid to the administrator in the Salinas City Finance Department on or before the prescribed date during regular city business hours.

19A.10.070 Amount of cannabis business tax owed.

(a) Every person whether it is a “not for profit”, “a nonprofit” or a “Non-Profit Organization” as defined in this Section, or a for-profit entity who is engaged in a Commercial Cannabis Cultivation business in the city shall pay an annual cannabis business tax on medical marijuana and non-medical marijuana where it is permissible by both state and local law. The initial tax shall be set at a rate of fifteen dollars (\$15) per square foot of canopy space utilized in connection with cultivation of marijuana. In addition, after three (3) years the City Council may by resolution increase any such tax rate from time to time, not to exceed the maximum tax rate of twenty-five dollars (\$25) per square foot. Beginning on January 1, 2020 and on January 1, of each succeeding year thereafter, the amount of each tax imposed by this Section shall be adjusted up to the equivalent to the most recent change in the annual average of the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics; if the City Council by resolution increases any such tax however related to the “CPI”, no adjustment shall decrease any tax imposed by this Section.

(b) Every person whether it is a “not for profit”, “a nonprofit” or a Non-Profit Organization” as defined in this Section, or a for-profit entity who is engaged in business as a Dispensary, Delivery Service, or Manufacturer of Commercial Cannabis in the city shall pay an annual cannabis business tax on medical marijuana and non-medical marijuana where permissible by both state and local law. The initial tax shall be set at five percent (5%) of the gross receipts annually for the first three years. Thereafter, the City Council may by resolution increase any such tax rate from time to time, not to exceed the maximum tax rate of ten percent (10%) on gross receipts.

19A.10.080 Payment-Time limits.

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

(a) Each person owing a cannabis business tax as a Cultivation Facility under this chapter shall, on or before the last day of the month following the close of each calendar quarter, prepare and submit a tax statement to the administrator of the total square footage of canopy space subject to the tax. The square footage tax due shall be paid based on the type of cultivation permits issued by the state and/or the City. The tax will not be prorated or adjusted for reduction in the square footage utilized by the business. Each business shall pay on or before the last day of the month following the close of each quarter in four equal installments of the annual tax due. The City may at its discretion determine other methodologies in determining the payment of such tax in order to promulgate collection of said tax in order to reduce the burden of collection which may also include the form of payment in which the city may except for such tax.

(b) Each person owing a cannabis business tax as a Dispensary, Delivery Service, or Manufacturer under this chapter shall on or before the last day of the month following the close of each calendar quarter prepare and submit a tax statement to the administrator with the amount of tax owed as determined by this Chapter or as adopted by ordinance by the City Council. Payment for such tax shall be made on or before the last day of the month following the close of each quarter in four equal installments of the annual tax due. The City may at its discretion determine other methodologies in determining the payment of such tax in order to promulgate collection of said tax in order to reduce the burden of collection which may also include the form of payment in which the city may except for such tax.

(c) All tax statements shall be completed on forms authorized by the administrator.

(d) Tax statements and payments for all outstanding taxes owed the city are immediately due to the administrator upon cessation of business for any reason.

19A.10.090 Payments and communications made by mail - Proof of timely submittal.

Whenever any payment, statement, report, request or other communication received by the administrator is received after the time prescribed by this chapter for the receipt thereof, but there is an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this chapter for the receipt thereof, or whenever the administrator is furnished substantial proof that the payment, statement, report, request or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the administrator may regard such payment, statement, report, request or other communication as having been timely received. If the due day falls on Saturday, Sunday or a holiday, the due day shall be the next regular business day on which the city is open to the public.

19A.10.100 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 this Chapter.

19A.10.110 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.

19A.10.120 Payment-Penalty for delinquency.

(a) Any person who fails or refuses to pay any cannabis 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 twenty-five 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 at a rate established by resolution of the City Council; and

(2) An additional penalty equal to twenty-five 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, calculated at the rate established by resolution of the City Council.

(3) Interest shall be applied at the monthly rate on the first day the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

(b) Whenever a check is submitted in payment of a cannabis 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 cannabis 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) above.

19A.10.130 Waiver of penalties.

The administrator may waive the first and second penalties of twenty-five percent each 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 cannabis 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 and a waiver shall be granted only once during any twenty-four-month period.

19A.10.140 Refunds-Credits.

(a) No refund shall be made of any tax collected pursuant to this chapter, except as provided in Section 19A.10.150.

(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 cannabis business taxes for the next calendar quarter.

19A.10.150 Refunds and procedures.

(a) Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously 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 cannabis business tax was erroneously paid and the error is attributable to the city, the city shall refund the amount of tax erroneously paid up to one year from when the error was identified.

19A.10.160 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.

19A.10.170 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.

19A.10.180 Exemptions - Occasional transactions.

(a) The provisions of this chapter shall not apply to persons having no fixed place of business within the city who come into the city for the purpose of transacting a specific item of business at the request of a specific patient, client or customer, provided that such person does not come into the City for the purpose of transacting business on more than five days during any calendar year.

(b) For any person not having a fixed place of business within the city who comes into the city for the purpose of transacting business and who is not exempt as provided in Subsection (A) of this section, the cannabis business tax payable by such person may be apportioned by the administrator in accordance with this Chapter.

19A.10.190 Enforcement- Duties of tax administrator and police department.

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

19A.10.200 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.

19A.10.210 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 in violation 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 cannabis business tax is believed by a taxpayer to place an undue burden upon interstate commerce or be in violation 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.

19A.10.220 Audit and examination of records and equipment.

(a) The administrator, or his/her designee, 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 cannabis 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 this Chapter 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 three 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.

19A.10.230 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.

19A.10.240 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 this Chapter.

19A.10.250 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 twenty-five 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.

19A.10.260 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.

19A.10.270 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 this Chapter for giving notice of assessment.

19A.10.280 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.

19A.10.290 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.

19A.10.300 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.

19A.10.310 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) 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) 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.

19A.10.320 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.

19A.10.330 Amendment or repeal.

This Chapter may be repealed or amended by the City Council without a vote of the people. However, as required by Chapter XIII C 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 Salinas affirm that the following actions shall not constitute an increase of the rate of a tax:

- (a) The restoration of the rate of the tax to a rate that is no higher than that set by this chapter, if the City Council has acted to reduce the rate of the tax;
- (b) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;
- (c) The establishment of a class of person 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
- (d) 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. Should any provision of this Ordinance, 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 Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 3. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and after the vote is declared by the City Council. The effective date of this Ordinance shall be January 1, 2017.

Section 4. The City Council of the City of Salinas is hereby authorized to amend this Chapter of the Salinas Municipal Code as adopted by this Ordinance in any manner that does not increase the tax rate above the maximum rate specified for each category of business or otherwise constitutes a tax increase for which voter approval is required by Article XIII C of the California Constitution.

Section 5. The Clerk of the City of Salinas is hereby directed to cause the following summary of the ordinance to be published by one (1) insertion in The Salinas Californian, a newspaper of general circulation published and circulated in the City of Salinas.

APPROVED by the following vote of the voters of the City of Salinas on November 1, 2016:

ADOPTED by declaration of the vote by the City Council of the City of Salinas on _____, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney