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Sorrento Valley Investment Group And
David Seyranian

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

TORREY HOLISTICS, INC., a California corporation; and

Petitioner and Plaintiff,
v.

CITY OF SAN DIEGO, a municipal corporation; CITY OF SAN DIEGO PLANNING COMMISSION; and DOES 1 through 10, inclusive;

Respondents and Defendants.

SORRENTO VALLEY INVESTMENT GROUP, a California partnership, and DAVID SEYRANIAN, an individual;

Real Parties-in-Interest

CASE NO. 24CU029405C

REAL PARTY IN INTEREST SORRENTO VALLEY INVESTMENT GROUP AND DAVID SEYRANIAN'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PETITIONER TORREY HOLISTICS, INC.'S MOTION FOR A PRELIMINARY INJUNCTION

Judge: Hon. Michael Smyth
Dept: C-67
Date: March 21, 2025
Time: 9:00 a.m.

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Real parties in interest Sorrento Valley Investment Group ("SVIG") and David Seyranian respectfully submit this Request for Judicial Notice in Support of Opposition to petitioner Torrey Holistics, Inc.'s ("Petitioner") motion for a preliminary injunction ("Opposition").

I. REQUEST FOR JUDICIAL NOTICE

In support of its Opposition, real party in interest SVIG requests the Court take judicial notice of the following documents and records pursuant to Evidence Code sections 451 through 453, which are attached hereto:

A. Attached hereto as Exhibit A is a true and correct copy of San Diego Municipal Code section 112.0501. Pursuant to Evidence Code section 452(b), the Court may take judicial notice of "Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." SVIG respectfully requests that the Court take judicial notice of this document.

B. Attached hereto as Exhibit B is a true and correct copy of San Diego Municipal Code section 141.0501. Pursuant to Evidence Code section 452(b), the Court may take judicial notice of "Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." SVIG respectfully requests that the Court take judicial notice of this document.

C. Attached hereto as Exhibit C is a true and correct copy of San Diego Municipal Code section 42.1501. Pursuant to Evidence Code section 452(b), the Court may take judicial notice of "Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." SVIG respectfully requests that the Court take judicial notice of this document.

D. Attached hereto as Exhibit D is a true and correct copy of San Diego Municipal Code section 126.0301. Pursuant to Evidence Code section 452(b), the Court may take judicial notice of "Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." SVIG respectfully requests that the Court take judicial notice of this document.

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E. Attached hereto as Exhibit E is a true and correct copy of San Diego Municipal Code section 34.0112. Pursuant to Evidence Code section 452(b), the Court may take judicial notice of "Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States." SVIG respectfully requests that the Court take judicial notice of this document.

Dated: March 10, 2025

Respectfully Submitted,

AUSTIN LEGAL GROUP, APC

By: Tamara Leetham Rozmus

Gina M. Austin/Tamara Leetham Rozmus
Attorneys for Real Parties In Interest
Sorrento Valley Investment Group and David Seyranian

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Exhibit A

Article 2: Required Steps in Processing

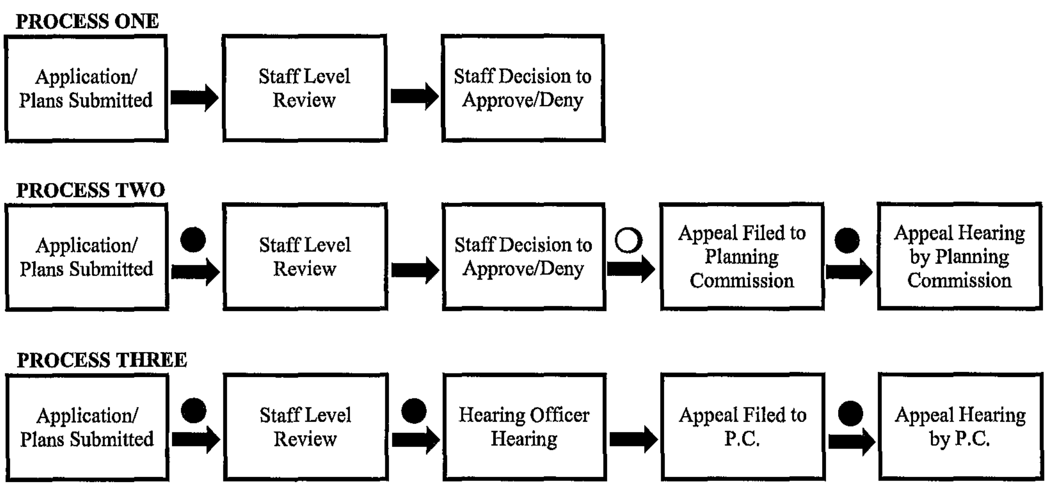
Division 5: Decision Process

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§ 112.0501 Overview of Decision Process

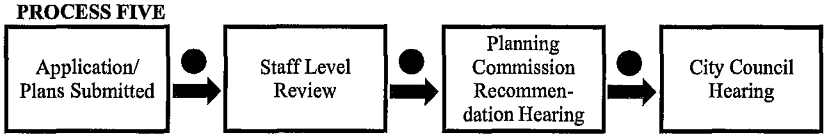
Application for permits, maps, or other matters shall be acted upon in accordance with one of the five decision processes established in this division and depicted on Diagram 112-05A, except that applications for *capital improvement program projects* shall be acted upon in accordance with Chapter 11, Article 2, Division 6 and Sections 112.0505 and 112.0506. The subject matter of the *development* application determines the process that shall be followed for each application. The provisions of Chapter 12 that pertain to each permit, map, or other matter describe the decision process in more detail. Diagram 112-05A is provided for convenience of reference only and does not define, describe, or limit the scope, meaning, or intent of any provision of the Land Development Code. This diagram describes the City of San Diego's processes only and does not describe other decision processes that may be required by other agencies, such as the State Coastal Commission.

Diagram 112-05A
Decision Processes with Notices



PROCESS FOUR

PROCESS FIVE



Key

● Public Notice to all Property Owners, Tenants, Community Planning Groups within 300 Feet of the *development*, and Anyone Requesting Notice

○ Public Notice to Applicant, Community Planning Groups within 300 Feet, and Anyone Requesting Notice

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000; amended 6-19-2000 by O-18814 N.S.)
(Amended 11-28-2005 by O-19444; effective 2-9-2006.)
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)
(Amended 10-22-2013 by O-20309 N.S.; effective 12-12-2013.)
(Amended 3-7-2023 by O-21618 N.S.; effective 5-6-2023.)

[**Editors Note:** Amendments as adopted by O-21618 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.
Click the link to view the Strikeout Ordinance highlighting changes to prior language http://docs.sandiego.gov/municode_strikeout_ord/O-21618-SO.pdf]

§112.0502 Process One

An application for a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held, and a Process One decision may not be appealed except as otherwise set forth in Section 141.0418.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 8-7-2015 by O-20555 N.S.; effective 9-6-2015.)

§112.0503 Process Two

An application for a permit or other matter acted upon in accordance with Process Two may be initially approved, conditionally approved, or denied by a staff person designated by the City Manager pursuant to Section 111.0205. A public hearing will not be held. An appeal hearing is available upon written request in accordance with Section 112.0504. A Process Two decision shall be made in the following manner:

(a) Notice. The designated staff person shall mail a Notice of Future Decision to the persons identified in Section 112.0302(b). Persons who wish to receive notice of the approval or denial of the application may request this information from the staff person. The request must be received no later than 10 *business days* after the date on which the Notice of Future Decision is mailed.

(b) Decision Process. The designated staff person may approve, conditionally approve, or deny the application without a public hearing. The decision shall be made no less than 11 *business days* after the date on which the Notice of Future Decision is mailed to allow for sufficient time for public comment.

Notification of the decision shall be given to the *applicant* and to those persons who request notification in accordance with this section, no later than 2 *business days* after the *decision date.*

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)
(Amended 10-12-2022 by O-21546 N.S.; effective 11-11-2022.)

§112.0504 Process Two Appeal Hearing

(a) The Planning Commission shall hear appeals of Process Two decisions subject to the following requirements, unless otherwise specified in the Land Development Code.

(1) Persons Who Can Appeal. The following persons may request an appeal hearing after the designated staff person's decision:

(A) An *applicant*; or

(B) Any other person who files an application for a Process Two appeal hearing in accordance with Section 112.0504(a)(2).

(2) Request for a Process Two Appeal Hearing.

(A) A Process Two decision may be appealed by filing an application for a Process Two appeal hearing with the City Manager no later than 10 *business days* after the *decision date.*

(B) Pursuant to the *Subdivision Map Act*, an *applicant* may file an appeal of a decision to deny its application for an Extension of Time for a map waiver or *tentative map* no later than 15 calendar days after the *decision date.*

(3) Grounds for Appeal. A Process Two decision may be appealed on any of the following grounds:

(A) Factual Error. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate;

(B) New Information. New information is available to the *applicant* or the *interested person* that was not available through reasonable efforts or due diligence at the time of the decision;

(C) *Findings* Not Supported. The decision maker's stated *findings* to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker; or

(D) Conflicts. The decision to approve, conditionally approve, or deny the permit is in conflict with a *land use plan*, a City Council policy, or the Municipal Code.

(4) The appellant(s) may withdraw an appeal at any time prior to the commencement of the appeal hearing before the Planning Commission. The withdrawal of the appeal must be filed in writing with the City Manager. If all appellants withdraw their appeals, no appeal hearing shall be conducted. The withdrawal of the appeal does not entitle the appellant(s) to any refund of appeal-related costs or fees incurred as of the date of the withdrawal.

(5) Scheduling an Appeal Hearing. Within 30 calendar days after the date on which an application for the appeal hearing is filed with the City Manager, the City Manager shall assign a date for an appeal hearing before the Planning Commission. The appeal hearing shall be held no later than 60 calendar days after the date on which the application for an appeal is filed, unless there are more than 60 calendar days until the next regularly scheduled Planning Commission meeting, in which case the appeal hearing shall be held at the first regularly scheduled meeting after the 60 calendar days have passed. Failure to hold the hearing within the 60 calendar days shall not limit the Planning Commission's authority to consider the appeal. The appeal hearing shall be noticed in accordance with Section 112.0308.

(6) Power to Act on the Decision at Appeal Hearing. At the conclusion of the appeal hearing, the Planning Commission may affirm, reverse, or modify the staff decision.

(b) Exception. Where the Land Development Code specifies that the City Council is the appeal body for a Process Two decision Sections 112.0504(a)(5) and 112.0504(a)(6) shall not apply. Instead, the scheduling of the appeal hearing and the power to act on the decision at the appeal hearing shall be in accordance with Sections 112.0508(d) and 112.0508(e).

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)
(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)
(Amended 10-25-2017 by O-20863 N.S.; effective 11-24-2017; O-20863 was readopted on 3-19-2019.)
(Amended 3-22-2018 by O-20917 N.S.; effective 4-21-2018.)

Exhibit B

Article 1: Separately Regulated Use Regulations

Division 5: Retail Sales Use Category--Separately Regulated Uses
(Added 12-9-1997 by O-18451 N.S.)

§141.0501 Agriculture-Related Supplies and Equipment

Agricultural-related supplies and equipment may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(a) The location, number, and intensity of other nonagricultural establishments located in the vicinity will be evaluated to determine the appropriate size and intensity of the proposed establishment.

(b) The proximity and capacity of *freeways*, primary arterials, and major *streets* will be evaluated to determine the appropriate size and intensity of the proposed establishment.

(c) Off-street parking shall be sufficient to serve the facility and limit adverse impacts to adjacent or nearby property.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§141.0502 Alcoholic Beverage Outlets

Any establishment for which a Type 20 Beer and Wine License or a Type 21 General Liquor License has been obtained from, or for which an application has been submitted to, the California Department of Beverage Control for permission to sell alcoholic beverages for off-site consumption shall be regulated as an alcoholic beverage outlet subject to this section.

Alcoholic beverage outlets are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the regulations in Section 141.0502(b). Proposals for alcoholic beverage outlets that do not comply with the regulations in Section 141.0502(b) may be permitted with a Conditional Use Permit decided in accordance with Process Three subject to the regulations in Section 141.0502(c).

(a) Exemptions. The following alcoholic beverage outlets and areas are exempt from the provisions of this section:

§§141.0504 Cannabis Outlets

Cannabis outlets that are consistent with the requirements for retailer or dispensary license requirements in the California Business and Professions Code may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones). No more than four *cannabis outlets* are permitted in each City Council District except that any permitted *cannabis outlet* that changes City Council District as a result of redistricting may remain at its originally permitted location for the duration of its permit, regardless of the number of permitted *cannabis outlets* within the new City Council District boundary, and subject to continued compliance with this section. *Cannabis outlets* are subject to the following regulations.

(a) *Cannabis outlets* shall maintain the following minimum separation:

(1) 1,000 feet from resource and population-based city parks, other *cannabis outlets*, *churches*, child care centers, *playgrounds*, libraries owned and operated by the City of San Diego, *minor-oriented facilities*, residential care facilities, and schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance shall be measured between the *property lines*, in accordance with Section 113.0225.

(2) 100 feet from the *property line* of a residentially zoned *lot* or *premises*. The distance shall be measured horizontally in a straight line between the two closest points of the *property lines* without regard to topography or *structures* that would interfere with a straight-line measurement.

(b) Lighting shall be provided to illuminate the interior, facade, and the immediate surrounding area of the *cannabis outlet*, including any *accessory uses*, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented to deflect light away from adjacent properties.

(c) Security shall be provided at the *cannabis outlet* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premises* during business hours. The security guard shall only be engaged in activities related to providing security for the facility, except on an incidental basis.

(d) Primary *signs* shall be posted on the outside of the *cannabis outlet* and shall only contain the name of the business, which shall contain only alphabetic characters, and shall be limited to two colors. Secondary *signs advertising cannabis*, window *signs* and any display visible from the *public right-of-way* are not permitted.

(e) The name and emergency contact phone number of the designated responsible managing operator shall be posted in a location visible from outside the *cannabis outlet* in character size at least two inches in height.

(f) The *cannabis outlet* shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.

(g) The use of vending machines which allow access to *cannabis* and *cannabis* products except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to *cannabis* and *cannabis* products without a human intermediary.

(h) A permit shall be obtained as required pursuant to Chapter 4, Article 2, Division 15.

(i) A Conditional Use Permit for a *cannabis outlet* shall expire no later than five years from the date of issuance.

(j) Deliveries shall be permitted as an *accessory use* only from *cannabis outlets* with a valid Conditional Use Permit unless otherwise allowed pursuant to state law.

(k) The *cannabis outlet*, adjacent public sidewalks, and areas under the control of the *cannabis outlet*, shall be maintained free of litter and graffiti at all times.

(l) The *cannabis outlet* shall provide daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours.

(m) Consultations by medical professionals shall not be a permitted *accessory use* at a *cannabis outlet.*

(n) A Conditional Use Permit for a *cannabis outlet* or medical marijuana consumer cooperative as defined in O-20356 converting to a *cannabis outlet*, may be amended in accordance with a Process Two decision as described in Section 112.0503, subject to this Section 141.0504(n).

    (1) The separation requirements in Section 141.0504(a) shall not be considered in making the findings required for amendments processed in accordance with Section 141.0504(n).

(2) A change in zoning or change in Council District as a result of redistricting after the approval date of the current Conditional Use Permit shall not be considered in making the findings required for amendments processed in accordance with Section 141.0504(n).

(3) The *cannabis outlet* or medical marijuana consumer cooperative shall be subject to Section 141.0504(a) if expanded beyond the *premises* identified in the current Conditional Use Permit.

(4) A Conditional Use Permit for a *cannabis outlet* or medical marijuana consumer cooperative may be amended one or more times as follows:

(A) An application for an amendment may include a request to extend the expiration date for a period not to exceed five years.

(B) An amendment application to extend the expiration date of a Conditional Use Permit must be submitted and *deemed complete* prior to the Conditional Use Permit expiration date. The Conditional Use Permit shall automatically be extended until a decision on the amendment request is final, and all available administrative appeals of the project decision have been exhausted. This automatic extension does not apply to *development permit* applications that are closed in accordance with Section 126.0115.

("Marijuana Outlets" added 2-22-2017 by O-20793 N.S.; effective 4-12-2017. Former Section 141.0504 "Plant Nurseries" renumbered to Section 141.0505.)
(Retitled from "Marijuana Outlets" to "Cannabis Outlets" and amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)
(Amended 7-30-2020 by O-21221 N.S.; effective 8-29-2020.)
(Amended 12-14-2022 by O-21591 N.S.; effective 2-2-2023.)

[**Editors Note:** Amendments as adopted by O-21591 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.
Click the link to view the Strikeout Ordinance highlighting changes to prior language http://docs.sandiego.gov/municode_strikeout_ord/O-21591-SO.pdf]

Exhibit C

Article 2: Health Regulated Businesses and Activities

Division 15: Cannabis Outlets, Cannabis Production Facilities, and Transportation of Cannabis

("Medical Marijuana Consumer Cooperatives" added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Retitled from "Medical Marijuana Consumer Cooperatives" to "Marijuana Outlets" on 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
("Retitled from "Marijuana Outlets" to "Marijuana Outlets, Marijuana Production Facilities, and Transportation of Marijuana" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)
(Retitled from "Marijuana Outlets, Marijuana Production Facilities, and Transportation of Marijuana" to "Cannabis Outlets, Cannabis Production Facilities, and Transportation of Cannabis" on 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

§42.1501 Purpose and Intent

It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing but strictly regulating the retail sale of *cannabis* at *cannabis outlets*, and the raising, harvesting, processing, wholesaling, distributing, storing, and producing of *cannabis* and *cannabis* products at *cannabis production facilities* in accordance with state law. It is further the intent of this Division to ensure that *cannabis* is not diverted for illegal purposes, and to limit its use to those persons authorized under state law. Nothing in this Division is intended to authorize the cultivation, sale, distribution, possession of *cannabis*, or other transaction, in violation of state law.

It is not the intent of this Division to supersede or conflict with state law, but to implement the Compassionate Use Act (California Health and Safety Code section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code sections 11362.7-11362.83), the Medicinal and Adult-Use Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)
(Amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

§42.1502 Definitions

For the purpose of this Division, the following definitions shall apply and appear in italicized letters:

Cannabis has the same meaning as in California Business and Professions Code section 26001.

Cannabis outlet means a retail establishment operating with a Conditional Use Permit in accordance with section 141.0504, where *cannabis*, *cannabis* products, and *cannabis* accessories, as defined in California Health and Safety Code sections 11018, 11018.1, and 11018.2, respectively, are sold to the public in accordance with dispensary or retailer licensing requirements contained in the California Business and Professions Code sections governing *cannabis* and medical *cannabis*. A *cannabis outlet* shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

Cannabis production facility means individual or combined uses, operating with a Conditional Use Permit in accordance with section 141.1004, engaged in the agricultural raising, harvesting, and processing of *cannabis*; wholesale distribution and storage of *cannabis* and *cannabis* products; and production of goods from *cannabis* and *cannabis* products consistent with the requirements of State of California Statutes and the California Departments of Food and Agriculture, Consumer Affairs, and Public Health regulations.

Primary caregiver has the same meaning as in San Diego Municipal Code section 42.1302.

Qualified patient has the same meaning as in San Diego Municipal Code section 42.1302.

Responsible person has the same meaning as in San Diego Municipal Code section 11.0210, and includes a corporate director or officer, manager or member-manager, partner, trustee, or sole proprietor of an entity or trust operating or owning a *cannabis outlet* or a *cannabis production facility*, and persons responsible for the operation, management, direction, or policy of a *cannabis outlet* or a *cannabis production facility*.

State identification card means the card issued to a *qualified patient* or *primary caregiver* in accordance with California Health and Safety Code sections 11362.71-11362.76.

Violent felony means the same as it does in California Penal Code section 667.5(c) as may be amended from time to time.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)
(Amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

§42.1504 Cannabis Outlets and Cannabis Production Facilities–Permit Required

(a) It is unlawful for any person to operate any *cannabis outlet* without a *Cannabis Outlet* Permit or a *cannabis production facility* without a *Cannabis Production Facility* Permit issued pursuant to this Division.

(b) *Cannabis outlets* and *cannabis production facilities* shall designate one officer or manager to act as a responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *cannabis outlet* or a *cannabis production facility*.

(c) The issuance of a *Cannabis Outlet* Permit or *Cannabis Production Facility* Permit pursuant to this Division does not relieve any person from the obligation to obtain any other permit, license, certificate, or other similar approval that may be required by the City, the County of San Diego, or state or federal law.

(d) A permit applicant must obtain a Conditional Use Permit as required by sections 141.0504 and 141.1004 prior to obtaining a permit under this Division.

(e) Applications for *Cannabis Outlet* Permits and *Cannabis Production Facility* Permits shall be filed with the City Manager.

(f) The City Manager shall act upon the application within thirty calendar days, except that notice of an incomplete application shall be given within five business days.

(g) *Cannabis Outlet* Permits and *Cannabis Production Facility* Permits issued pursuant to this Division shall be valid for one year from the date of issuance.

(h) An application for a *Cannabis Outlet* Permit or a *Cannabis Production Facility* Permit shall be denied if the applicant has had any permit issued pursuant to this Division revoked by the City Manager within the twelve months preceding the date of application.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Retitled from "Cooperatives–Permit Required" to "Outlets–Permit Required" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Permit Required" to "Marijuana Outlets and Marijuana Production Facilities–Permit Required" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)
(Retitled from "Marijuana Outlets and Marijuana Production Facilities–Permit Required" to "Cannabis Outlets and Cannabis Production Facilities–Permit Required" and amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

§42.1505 Exemptions

(a) This Division does not apply to the cultivation of *cannabis* by a *qualified patient* at that patient's home, so long as the qualified patient is only growing the *cannabis* for his or her own personal medical needs in a manner consistent with state law.

(b) This Division does not apply to the cultivation of six or fewer *cannabis* plants within a private residence or an accessory structure to that residence that is fully enclosed and secure. For the purposes of this section, a private residence means a house, apartment unit, mobile home, or other similar dwelling.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

§42.1506 Cannabis Outlets and Cannabis Production Facilities–Cost Recovery Fees

Notwithstanding any other provision of this Code, the City may recover its costs in the form of a permit fee for the costs of permitting and regulating *cannabis outlets* and *cannabis production facilities*.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Retitled from "Cooperatives–Cost Recovery Fees" to "Outlets–Cost Recovery Fees" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Cost Recovery Fees" to "Marijuana Outlets and Marijuana Production Facilities–Cost Recovery Fees" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)
(Retitled from "Marijuana Outlets and Marijuana Production Facilities–Cost Recovery Fees" to "Cannabis Outlets and Cannabis Production Facilities–Cost Recovery Fees" and amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

§42.1507 Cannabis Outlets and Cannabis Production Facilities–Background Checks and Reporting Convictions

(a) Prior to acting as a *responsible person* in a *cannabis outlet* or a *cannabis production facility*, all persons shall undergo fingerprinting. The fingerprints shall be provided to and kept on file with the City.

(b) The City shall conduct a background check of all *responsible persons*. Any person who has been convicted of a *violent felony* or a crime of moral turpitude within the past seven years cannot act as a *responsible person* for a *cannabis outlet* or a *cannabis production facility*.

A conviction is complete upon entry of judgment upon a finding of guilty, or upon entry of a plea of guilty, or upon entry of a plea of nolo contendere or "no contest," regardless of the pendency of any appeal, or expungement pursuant to California Penal Code sections 1203.4, 1203.4a, or 1203.41.

(c) It is unlawful for any *responsible person* to act as a *responsible person* for a *cannabis outlet* or a *cannabis production facility* if he or she fails to provide their fingerprints to the City.

(d) The cost of the fingerprinting and attendant background check shall be borne by the *responsible person*.

(e) A *responsible person* who is convicted of a *violent felony* or crime of moral turpitude shall report the conviction to the City Manager within 48 hours.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Retitled from "Cooperatives–Background Checks" to "Outlets– Background Checks" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Background Checks" to "Marijuana Outlets and Marijuana Production Facilities–Background Checks and Reporting Convictions" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)
(Retitled from "Marijuana Outlets and Marijuana Production Facilities–Background Checks and Reporting Convictions" to "Cannabis Outlets and Cannabis Production Facilities–Background Checks and Reporting Convictions" and amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

§42.1508 Cannabis Outlets and Cannabis Production Facilities–Operational Requirements

(a) The *responsible person* for a *cannabis outlet* and a *cannabis production facility* shall maintain and provide, upon request by the City, a current list of all *responsible persons*.

(b) Age Limitations

(1) No person under the age of 21 is allowed at or in any *cannabis outlet* or *cannabis production facility* unless the person is a *qualified patient* or *state identification card* holder, and if under the age of 18, is accompanied by a parent, legal guardian, or a *primary caregiver* who is over the age of 18.

(2) No person under the age of 21 may be employed by or act as a *responsible person* on behalf of a *cannabis outlet* or a *cannabis production facility*.

(Retitled from "Cooperatives–Verification and Documentation" to "Cooperatives–Operational Requirements" and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Retitled from "Cooperatives–Operational Requirements" to "Outlets–Operational Requirements" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Operational Requirements" to "Marijuana Outlets and Marijuana Production Facilities–Operational Requirements" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

(Retitled from "Marijuana Outlets and Marijuana Production Facilities–Operational Requirements" to "Cannabis Outlets and Cannabis Production Facilities–Operational Requirements" and amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

§42.1509 Cannabis Outlets and Cannabis Production Facilities–Regulatory Actions on Permit

(a) In addition to any penalties and remedies provided by law, and any other bases for regulatory action provided by law, a *Cannabis Outlet* Permit and a *Cannabis Production Facility* Permit are subject to regulatory actions for the following reasons:

(1) non-compliance with this Division or any condition of this permit;

(2) conviction of any crime which would have been grounds for denial of the permit;

(3) failure to take corrective action after timely written notice of a violation;

(4) failure to supervise the business, resulting in a pattern of violations of the San Diego Municipal Code or other provisions of law by the *responsible persons* or patrons, or both. A revocation based on the act or omission of a patron may be based on a determination that a *responsible person* caused or condoned the act or omission, or failed to take reasonable corrective action after a timely written notice of violation; or

(5) violation of any state or local law or regulation pertaining to the business.

(b) Regulatory action includes the following:

(1) Issuance of a verbal warning;

(2) Issuance of a written warning;

(3) Issuance of a notice of violation;

(4) Placing conditions upon the permit which are reasonably related to any violation. Unless otherwise stated as part of the condition, all such conditions expire when the permit expires, excluding any time stayed during an appeal;

(5) Suspension of the *Cannabis Outlet* Permit or the *Cannabis Production Facility* Permit; or

(6) Revocation of the *Cannabis Outlet* Permit or the *Cannabis Production Facility* Permit.

(c) Written notice of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) shall be provided to the individual identified as the responsible managing officer pursuant to section 42.1504(b).

(d) A request for an appeal hearing of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) may be made by the responsible managing officer.

(e) The request for an appeal hearing must be made in writing to the City Manager within ten calendar days of the receipt of the notice of regulatory action.

(f) Upon receiving the request for a hearing, the City Manager shall set hearing not more than thirty calendar days from the date of the receipt of the request, unless a later date is agreed to by the City and the responsible managing officer in writing.

(g) The City Manager shall notify the responsible managing officer of the date, time, and place of the hearing by means of registered or certified mail, or hand delivery.

(h) The hearing shall be conducted by a hearing officer provided by the City Manager.

(i) The hearing officer may affirm, deny, or modify the regulatory action, and shall furnish the reason for the decision to the responsible managing officer in writing within thirty calendar days of the conclusion of the hearing.

(j) The regulatory action shall be suspended while an appeal is pending, or until the time for filing such an appeal has expired, except for regulatory action taken when the City Manager determines there is a need to take immediate action to protect the public from injury or harm or when the *Cannabis Outlet* Permit or the *Cannabis Production Facility* Permit was based on material misrepresentations in the application and the permit would not have been issued but for the material misrepresentations.

(Retitled from "Cooperatives–Not-for-Profit" to "Cooperatives-Regulatory Actions on Permit" and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
("Retitled from "Cooperatives–Regulatory Actions on Permit" to "Outlets–Regulatory Actions on Permit" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
("Retitled from "Outlets–Regulatory Actions on Permit" to "Marijuana Outlets and Marijuana Production Facilities–Regulatory Actions on Permit" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)
(Retitled from "Marijuana Outlets and Marijuana Production Facilities–Regulatory Actions on Permit" to Cannabis Outlets and Cannabis Production Facilities–Regulatory Actions on Permit" and amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

§42.1510 Transportation

The transportation of *cannabis* and *cannabis* products between facilities licensed by the State of California pursuant to Business and Professions Code, Division 10, is permitted.

("Transportation" added 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)
(Amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)

Exhibit D

Article 6: Development Permits

Division 3: Conditional Use Permit Procedures

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§126.0301 Purpose of the Conditional Use Permit Procedures

The purpose of these procedures is to establish a review process for the *development* of uses that may be desirable under appropriate circumstances, but are not permitted by right in the applicable zone. The intent of these procedures is to review these uses on a case-by-case basis to determine whether and under what conditions the use may be approved at a given site. Further, the intent is that each use be developed so as to fully protect the public health, safety, and welfare of the community. To provide this protection, conditions may be applied to address potential adverse effects associated with the proposed use.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§126.0302 General Rules for a Conditional Use Permit Regarding Conditions, Adjustments to Regulations, and Combination of Uses

(a) In granting a Conditional Use Permit, the decision maker may impose reasonable conditions as deemed necessary and desirable to protect the public health, safety, and welfare including making any applicable use regulations or regulations of the zone more restrictive, unless otherwise provided.

(b) All existing and proposed uses on the site shall be identified in the permit, including existing or new uses permitted by right in the applicable zone, any uses subject to a use permit, and those proposed uses that require the Conditional Use Permit.

(c) The privileges and conditions of a Conditional Use Permit are a covenant that runs with the land and, in addition to binding the permittee, bind each successor in interest.

(d) The decision maker may assign an expiration date to the permit.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§126.0303 When a Conditional Use Permit Is Required

An application for the following types of uses in certain zones may require a Conditional Use Permit. To determine whether a Conditional Use Permit is required in a particular zone, refer to the applicable Use Regulations Table in Chapter 13. The decision process is described in Section 126.0304.

(a) Conditional Use Permits Decided by a Process Two

Battery energy storage facilities (under circumstances described in Section 141.0422)

Cannabis outlet (under circumstances described in Section 141.0504)

Cannabis production facilities (under circumstances described in Section 141.1004)

(b) Conditional Use Permits Decided by Process Three

Agricultural equipment repair shops
Agriculture-related supplies and equipment sales
Alcoholic beverage outlets (under circumstances described in Section 141.0502)
Assembly and entertainment uses, including places of religious assembly (under circumstances described in Section 141.0602)
Automobile service stations
Battery energy storage facilities (under circumstances described in Section 141.0422)
Cannabis outlets
Cannabis production facilities
Child Care Centers
Commercial stables
Continuing care retirement communities
Educational facilities
Employee housing
Energy generation and distribution stations
Equestrian show and exhibition facilities
Fraternities, sororities, and student dormitories
Historical buildings used for purposes not otherwise allowed in the zone
Impound storage yards
Major transmission, relay, or communication switching station
Museums

Newspaper publishing plants
Outdoor storage and display of new, unregistered motor vehicles as a *primary use*
Parking facilities as a *primary use*
Plant nurseries
Private clubs, lodges, and fraternal organizations
Processing and packaging of plant products and animal by-products grown off-premises
Recycling facilities (under circumstances described in Section 141.0620)
Residential care facilities for 7 to 12 persons
Swap meets and other large outdoor retail facilities
Wireless communication facilities (under circumstances described in Section 141.0420)

(c) Conditional Use Permits Decided by Process Four

Battery energy storage facilities (under circumstances described in Section 141.0422)
Botanical gardens and arboretums
Camping parks
Cemeteries, mausoleums, and crematories
Correctional placement centers
Exhibit halls and convention centers
Golf courses, driving ranges, and pitch and putt courses
Hazardous waste research facilities
Homeless facilities
Hospitals, intermediate care facilities, and nursing facilities
Interpretive centers
Junk yards
Marine-related uses in the Coastal Overlay Zone
Mining and extractive industries
Nightclubs and bars over 5,000 square feet in size
Privately operated recreational facilities over 40,000 square feet in size
Residential care facilities for 13 or more persons
Social service institutions
Theaters that are outdoor or over 5,000 square feet in size
Wireless communication facilities (under circumstances described in Section 141.0420)
Wrecking and dismantling of motor vehicles

(d) Conditional Use Permits Decided by Process Five

Airports
Amusements parks
Fairgrounds
Hazardous waste treatment facilities
Helicopter landing facilities
Sports arenas and stadiums
Transitional Housing for 7 or more persons
Very heavy industrial uses
Zoological parks

(Amended 8-10-2004 by O-19308 N.S.; effective 4-11-2007.)
(Amended 11-13-08 by O-19803 N.S; effective 12-13-2008.)
(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)
(Amended 3-25-2014 by O-20356 N.S.; effective 4-24-2014.)
(Amended 4-5-2016 by O-20634 N.S.; effective 5-5-2016.)
(Amended 8-4-2016 by O-20704 N.S.; effective 8-27-2016.)
(Amended 2-22-2017 by O-20793 N.S.; effective 4-12-2017.)
(Amended 9-15-2017 by O-20857 N.S.; effective 10-15-2017.)
(Amended 10-17-2017 by O-20859 N.S.; effective 11-16-2017.)
(Amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)
(Amended 7-30-2020 by O-21221 N.S.; effective 8-29-2020.)
(Amended 4-14-2021 by O-21305 N.S.; effective 5-29-2021.)
(Amended 3-7-2023 by O-21618 N.S.; effective 5-6-2023.)

[**Editors Note:** Amendments as adopted by O-21618 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.
Click the link to view the Strikeout Ordinance highlighting changes to prior language http://docs.sandiego.gov/municode_strikeout_ord/O-21618-SO.pdf]

§126.0304 Decision Processes for a Conditional Use Permit

(a) Process Three

A decision on an application for a Conditional Use Permit for the uses listed in Section 126.0303(a) shall be made in accordance with Process Three. The decision may be appealed to the Planning Commission in accordance with Section 112.0506.

(b) Process Four

A decision on an application for a Conditional Use Permit for the uses listed in Section 126.0303(b) shall be made in accordance with Process Four.

(c) Process Five

A decision on an application for a Conditional use Permit for the uses listed in Section 126.0303(c) shall be made in accordance with Process Five.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§126.0305 Findings for Conditional Use Permit Approval

An application for a Conditional Use Permit may be approved or conditionally approved only if the decision maker makes the following *findings:*

(a) The proposed *development* will not adversely affect the applicable *land use plan;*

(b) The proposed *development* will not be detrimental to the public health, safety, and welfare;

(c) The proposed *development* will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code; and

(d) The proposed use is appropriate at the proposed location.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

§126.0306 Violations of a Conditional Use Permit

It is unlawful for any person to maintain, use, or develop any *premises* without a Conditional Use Permit if such a permit is required for that use or *development* or to maintain, use, or develop any *premises* contrary to the requirements or conditions of an existing Conditional Use Permit, except as provided in Sections 126.0112 or 126.0113. Violation of any provision of this Division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this Division shall be treated as strict liability offenses regardless of intent.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 1-8-2020 by O-21161 N.S.; effective 2-9-2020.)

Exhibit E

Article 4: Cannabis Business Tax

("Cannabis Business Tax" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

Division 1: Cannabis Business Tax

("Cannabis Business Tax" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0101 Title and Purpose

(a) Title. This Article shall be known as the Cannabis Business Tax Ordinance of the City of San Diego.

(b) Purpose and Intent. It is the purpose and intent of the People of the City of San Diego that there be a tax imposed on non-medical cannabis businesses in the City and that such tax is enacted solely to raise revenue for the general governmental purposes of the City and not for purposes of regulation or raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this Article shall be placed in the City's general fund and used for general governmental purposes.

("Title and Purpose" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0102 Tax imposed

There is established and imposed a Cannabis Business Tax at the rate set forth in this Article.

("Tax imposed" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0103 Definitions

Except where the context otherwise requires, the definitions given in this section shall govern the application and interpretation of this Article. Each word or phrase defined in this Division appears in the text of this Division in italicized letters.

"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; and every compound, manufacture, oil, salt, derivative, mixture, or preparation of the plant, its seeds or resin.

"*Cannabis Business*" means any activity which entails the distribution, delivery, dispensing, exchanging, bartering or sale of non-medical *Cannabis*, including but not limited to, transporting, manufacturing, cultivating, compounding, converting, processing, preparing, storing, packaging, wholesale, or retail sales of *Cannabis* and any ancillary products in the City, whether or not carried on for gain or profit. Medical marijuana activities authorized under Health and Safety Code section 11362.765, as it may be amended from time to time, are not *Cannabis Businesses* under this Article.

"Cannabis Business Tax" means the tax due for engaging in *Cannabis Business* in the City.

"*Cannabis production facility*" has the same meaning as in San Diego Municipal Code section 42.1502.

"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.

"*Engaged in Cannabis 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 *Cannabis Business* within the City if:

(1) Such *person* or *person's* employee maintains a fixed place of location for *Cannabis Business* purposes, in whole or in part, 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 *Cannabis 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 such *Cannabis Business*;

(4) Such *person* or *person's* employee regularly conducts solicitation of *Cannabis Business* within the City, which may be demonstrated by the use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation; or

(5) Such *person* or *person's* employee uses the streets within the City in connection with the operation of motor vehicles, or other methods of transportation, for *Cannabis Business* purposes.

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

"*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 *operator* in the regular course of the *operator's* business;

(7) Cash value of sales, trades or transactions between departments or units of the same business;

(8) Transactions between a partnership and its partners;

(9) 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 80 percent by such other corporation with which such transaction is had; or

(B) Which owns at least 80 percent of the voting and non-voting stock of such other corporation; or

(C) At least 80 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.

(10) 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 section 34.0103(f);

(11) 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; and

(12) 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 *Tax Administrator* with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, ppercentages, or other payments retained by the agent or trustees.

"*Gross Receipts"* subject to the business tax shall be that portion of *gross receipts* relating to *Cannabis Business* conducted within the City.

"*Officer*" means any natural individual serving as an *officer* of a corporation, a member of a partnership, a member or manager of a limit liability company, or in a similar executive capacity in any other legal entity, who is under a duty to perform on behalf of the corporation, partnership, limited liability company or other legal entity.

"*Operator*" means any person engaged in *Cannabis Business* as the owner of such *Cannabis Business*, whether such ownership is partial or full. Where an *Operator* is a corporation, partnership, limited liability company or other legal entity, the acts and omissions of the *Operator* shall be deemed to be the acts and omissions of its *Officers*. Independent contractors engaged in *Cannabis Business* are *Operators* for the purposes of this Article.

"*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.

"Sale" means and includes any *sale*, exchange, or barter.

"Tax Administrator" or "*administrator"* means the City Treasurer or such other *administrator* designated by the Mayor to administer this Article.

("Definitions" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)
(Amended 1-8-2020 by O-21163 N.S.; effective 2-9-2020.)
(Amended 3-9-2022 by O-21441 N.S.; effective 4-8-2022.)

§34.0104 Business Tax Certificate Required

(a) It is unlawful for any *Operator* to engage in any *Cannabis Business* in the City without first having obtained a business tax certificate from the City. Any *person* who fails to obtain the business tax certificate required by this Article shall be guilty of a misdemeanor. *Operators* exclusively engaged in *Cannabis Business* taxed under this Article shall be exempt from the provisions of Chapter 3, Article 1 of this Code.

(b) The issuance of a business tax certificate shall not entitle any *person* to engage in any *Cannabis Business* without first complying with the requirements of this Code and all other applicable laws.

(c) It is unlawful to use or refer to a business tax certificate issued under this Article in any advertisement, or to present or represent such certificate as a license or permit required by other provisions of this Code or the laws of the State of California or the County of San Diego.

(d) Any *person* claiming the activities of such *person* are not subject to the tax imposed by this Article shall, upon the request of the *Tax Administrator*, furnish appropriate evidence, to the satisfaction of the *Tax Administrator*, that such *person* is not subject to the tax.

("Business Tax Certificate Required" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0105 Application – Form and Contents

(a) Every *person* required to have a business tax certificate under the provisions of this Article shall make application for the same, or for renewal of the same, to the *Tax Administrator*. The application shall be a written statement upon a form or forms provided by the *Tax Administrator* and shall be signed by the applicant under penalty of perjury. The application shall set forth such information as may be required and as may be reasonably necessary to enable the *Tax Administrator* to administer the provisions of this Article, including a representation by the applicant that any state or local licenses or permits required to engage in a *Cannabis Business* have been obtained. Failure to provide information required by the *Tax Administrator* shall authorize the *Tax Administrator* to not issue a business tax certificate to the applicant.

(b) The information or data obtained from an examination or audit, or from any statement required hereunder, shall be used for official City purposes only, and shall not be provided to any *person* for any other purpose except as provided in this section, or as otherwise required by law.

(c) Nothing in this section shall prohibit the *Tax Administrator* from furnishing to any citizen upon request the name under which the business is conducted, the address and type of business and the name of the owner of the business, including the names of partners, if a partnership, and the names of *officers*, if a corporation.

(d) Any *person* who willfully makes, provides, or signs any false or untrue statement which is filed or furnished pursuant to this section is guilty of a misdemeanor.

("Application – Form and Contents" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0106 Transferability

Business tax certificates issued under this Article are nontransferable.

("Transferability" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0107 Branch Establishments

Separate business tax certificates must be obtained for each branch establishment or business location.

("Branch Establishments" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0108 Posting and Keeping Certificates

Except as otherwise specifically provided in this Article, business tax certificates must be kept and posted in the following manner:

(a) Any *person* engaging in *Cannabis Business* at a fixed location shall keep the certificate posted in a conspicuous place upon the premises where such *Cannabis Business* is conducted.

(b) Any *person* engaging in *Cannabis Business* in the City of San Diego, but not operating from a location, shall keep a copy of the business tax certificate or original business tax certificate upon his or her *person* at all times while engaging in the business.

(c) Any *person* engaging in *Cannabis Business* taxed under this Article shall exhibit a valid business tax certificate upon request of the *Tax Administrator* or any peace officer.

("Posting and Keeping Certificates" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0109 Other Licenses, Permits, Taxes, Fees or Charges

(a) Nothing contained in this Article 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 chapter or article 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 chapter or article of this Code or any other ordinance or resolution of the City.

(b) Persons may not lawfully engage in *Cannabis Business* to be taxed by this Article without first obtaining any permit, certificate, license or other evidence of permission to engage in *Cannabis Business* required by the City and any license required to engage in *Cannabis Business* by the State of California.

("Other Licenses, Permits, Taxes, Fees or Charges" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0110 Payment of Tax Does Not Authorize Unlawful Business

(a) The payment of a *Cannabis Business Tax* required by this Article, 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.

(b) No *Cannabis Business Tax* paid under the provisions of this Article 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.

("Payment of Tax Does Not Authorize Unlawful Business" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0111 Payment - Location

The tax imposed under this Article shall be paid to the City Treasurer in the lawful currency of the United States, at the Offices of the City Treasurer in San Diego, California, or at another location as permitted or required by the City Treasurer. Lawful currency 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.
("Payment – Location" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0112 Amount of Business Tax Owed

(a) Every *Operator* engaged in *Cannabis Business* in the City shall pay a *Cannabis Business Tax* at a rate of up to 15 percent of *Gross Receipts*. Commencing on December 12, 2016, the *Cannabis Business Tax* rate shall be five percent of *Gross Receipts*.

(b) Notwithstanding the maximum tax rate of 15 percent of *Gross Receipts* imposed under subsection 34.0112(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 15 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 15 percent of *Gross Receipts* established under subsection 34.0112(a).

(c) Commencing on July 1, 2019, except as set forth in subsection 34.0112(d), the *Cannabis Business Tax* rate shall be set at eight percent of *Gross Receipts* unless the City Council, by ordinance, takes action to set a different tax rate, not to exceed 15 percent of *Gross Receipts*.

(d) Commencing on May 1, 2022, the *Cannabis Business Tax* rate for a *Cannabis production facility* shall be set at two percent of *Gross Receipts* unless the City Council, by ordinance, takes action to set a different tax rate, not to exceed 15 percent of *Gross Receipts*.

("Amount of Business Tax Owed" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)
(Amended 3-9-2022 by O-21441 N.S.; effective 4-8-2022.)

34.0113 Remitting and Reporting

The *Cannabis Business Tax* imposed by this Article shall be due and payable as follows:

(a) Each *Operator* shall remit monthly the full amount of the tax owed from the previous month with the appropriate approved return form available from the *Tax Administrator*.

(b) Returns and taxes remitted monthly by an *Operator* and actually received by the *Tax Administrator* on or before the last day of the following month shall be deemed timely filed and remitted; otherwise, the taxes are delinquent and subject to the penalties imposed by section 34.0114.

(c) Each *Operator* shall submit, on or before the last day of the following month, a return on the appropriate approved forms to the *Tax Administrator* of the total *Gross Receipts* and the balance of the tax due. At the time the return is filed, the full amount of the balance of the tax due shall be remitted to the *Tax Administrator*.

(d) Returns filed and taxes remitted by mail or courier service shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the City Treasurer, has sufficient postage, and bears a United State postmark, postage meter imprint, or courier pick up date, prior to midnight on the last day for reporting and remitting without penalty. If the envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely.

(e) To the extent allowed by law, all returns and payments submitted by each *Operator* shall be treated as confidential by the City Treasurer and shall not be released except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the State of California, the County of San Diego, or the City of San Diego for official use only.

(f) The same basis of accounting used by an *Operator* for keeping books and records shall be used for reporting and remitting.

(g) If returns and taxes are due on a Saturday, Sunday, or a recognized City holiday, the due day shall be the next regular business day on which the Office of the City Treasurer is open to the public.

("Remitting and Reporting" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0114 Delinquency; Penalties

(a) Unless otherwise specifically provided under other provisions of this Article, the *Cannabis Business Tax* required to be paid pursuant to this Article shall be deemed delinquent if not paid on or before the due date specified in section 34.0113.

(b) Any person who fails or refuses to pay any tax required to be paid pursuant to this Article on or before the due date shall pay penalties and interest as follows:

(1) A penalty equal to 25 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 25 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) Interest at the rate of one and one-half percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the last day of the month following the month period for which the amount of any portion thereof should have been paid until the date of payment.

(4) *Operators* must remit all taxes, interest and penalties owed unless an alternate payment agreement is reached with the *Tax Administrator*.

(c) Whenever a check is submitted for payment of the taxes due and the check is returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the *Operator* will be liable for the tax amount due plus the returned check fee; penalties and interest as provided for in this section, and any amount allowed under state law.

(d) The *Cannabis Business Tax* due shall be that amount due and payable from the first date on which a person was engaged in *Cannabis Business* in the City, together with applicable penalties and interest calculated in accordance with subsection 34.0114(a).

("Delinquency; Penalties" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0115 Notice Not Required by City

The *Tax Administrator* is not required to send a delinquency or other notice or bill to any *person* subject to the provisions of this Article and failure to send such notice or bill shall not affect the validity of any tax, interest, or penalty due under the provisions of this Article.

("Notice Not Required by City" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0116 Failure to Report Tax; Jeopardy Determination

(a) If any *Operator* fails or refuses to report or remit any *Cannabis Business Tax* due under this Article or if such *Operator* maintains records which are inadequate to show the amount of the tax due, the *Tax Administrator* shall forthwith assess the tax, interest and penalties provided for by this Article against the *Operator*.

(b) When an *Operator* fails or refuses to make or file a timely return or remittance of taxes, or when the *Tax Administrator*, or duly authorized employee makes a determination, after having applied necessary and accepted auditing procedures, or by estimation if no records are available, that an *Operator* is or will be unable to remit any taxes due at the prescribed time, the *Tax Administrator* may make a written jeopardy determination which shall be issued to the *Operator* to require the *Operator* to thereafter furnish additional information or provide adequate security as necessary to ensure the remittance of taxes on a daily or weekly basis. The *Operator* shall thereafter report and remit all taxes due under the terms and conditions prescribed by the *Tax Administrator*. The *Tax Administrator* shall cancel the requirements imposed under the jeopardy determination once timely accounting and remittance procedures have been established and the *Operator* is meeting all obligations imposed by law for the remittance of taxes.

(c) The *Tax Administrator* shall deliver notice of the assessment or the jeopardy determination to the *Operator* or deposit it in the United States mail, postage prepaid, addressed to the *Operator* at the last known place of business.

("Failure to Report Tax; Jeopardy Determination" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0117 Administrative Remedies and Appeals

(a) An *Operator* may within 14 calendar days after the serving or mailing of a notice of assessment or jeopardy determination make application in writing to the *Tax Administrator* for a hearing on the amount assessed pursuant to section 34.0116. If timely application for a hearing is not made, the tax, interest and penalties determined by the *Tax Administrator* shall become final and conclusive and immediately due and payable. If such application is made, the *Tax Administrator* shall give not less than five calendar days written notice in the manner prescribed herein to the appellant of the time and place for a hearing before a board consisting of the *Tax Administrator*, the City Comptroller and the Director of Financial Management or the duly appointed deputy of each. At the hearing, the *Operator* may appear and offer evidence why the specified tax, interest, and penalties should not be so fixed. The board shall consider all evidence produced and shall determine the proper tax, interest, and penalties to be remitted. After the hearing, the *Tax Administrator* shall give written notice to the appellant in the manner prescribed herein of the determination and the amount of such tax, interest, and penalties. If the amount remaining in dispute thereafter does not exceed $5,000.00, the decision of the hearing board shall be final and conclusive and shall constitute the exhaustion of the appellant's administrative remedies. Any amount found to be due shall be payable within 14 calendar days of the serving or mailing of the determination of the tax due unless a further appeal is filed with the Chief Operating Officer as provided in this section within that 14-day period for any amount in excess of $5,000.00.

(b) When an appeal from the hearing board for remaining taxes and penalties exceeding $5,000.00 is filed, the Chief Operating Officer, or designee, shall cause the appeal to be assigned to a hearing officer, who shall schedule a hearing to be heard within a reasonable time. The hearing officer shall be appointed by the Chief Operating Officer, shall be a member of the California Bar and shall not be a City employee. The hearing officer shall be compensated by the City of San Diego for the time spent deciding the appeal.

(c) The appellant and the Chief Operating Officer, or designee, shall each have the right to appear in *person* and be represented by legal counsel, to receive notice, to present evidence, to call and cross-examine witnesses under oath and to present argument. The hearing officer shall have the power to compel attendance of witnesses and documents by subpoena in accordance with the California Civil Code. The formal rules of evidence shall not apply and any relevant evidence that is the sort of evidence upon which responsible *persons* are accustomed to rely in the conduct of serious business affairs shall be admissible. Hearsay evidence may be considered by the hearing officer, but no findings may be based solely on hearsay evidence unless supported or corroborated by other relevant and competent evidence. The formal exceptions to the hearsay rule shall apply.

(d) The hearing officer is authorized to rule upon issues of law or fact and to determine the amount of the tax, interest or penalty in accordance with this Article. The hearing officer shall not have any jurisdiction to waive, mitigate or suspend the collection of any tax, interest or penalty found to be duly imposed.

(e) The decision of the hearing officer shall be issued in writing no later than fourteen calendar days after the conclusion of the hearing. The decision shall be the final administrative remedy of the appellant and shall be binding upon the City. Any amounts due shall be immediately payable to the City Treasurer.

(f) The City may promulgate supplementary rules and procedures for the conduct of the hearing, the forms of notice and proceedings and the preparation and submission of the record.

("Administrative Remedies and Appeals" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0118 Refunds

(a) Whenever the amount of any *Cannabis Business Tax* or penalty under this Article has been overpaid, paid more than once, or has been erroneously or illegally received by the City, the overpayment may be refunded provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the *Tax Administrator* within three years of the date of payment. The claim shall be on forms available from the *Tax Administrator*.

(b) An *Operator* who has remitted an amount in excess of the amount required to be paid may receive a credit to the extent of the excess. If the excess is discovered as a result of an audit by the City, no claim need be filed by the *Operator*. Such credit, if approved by the *Tax Administrator*, shall be applied to any deficiency found or any further tax payments due under the rules prescribed by the *Tax Administrator*.

(c) No refund shall be paid under the provisions of this section unless the claimant establishes his right to such refund by written records sufficient to show entitlement thereto.

("Refunds" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0119 Exemptions - General

Except as may be otherwise specifically provided in this Article, 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.

("Exemptions – General" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0120 Enforcement

(a) It shall be the duty of the *Tax Administrator* to enforce each and all of the provisions of this Article. The Chief of Police and other City officials shall render such assistance in the enforcement of this Article as may from time to time be required by the *Tax Administrator*.

(b) The *Tax Administrator* in the exercise of the duties imposed by this Article, and acting through deputies or other duly authorized City employees, may examine all places of business in the City to ascertain whether or not the provisions of this Article have been complied with.

(c) The *Tax Administrator*, deputies and duly authorized City employees shall have the power to examine all necessary books and records of any *person* doing business in the City to determine whether that business is required to be taxed by the terms of this Article, or for the purpose of ascertaining the amount of any tax required to be paid. The *Tax Administrator* and all deputies and duly authorized City employees shall have the power and authority to enter, free of charge, at any reasonable time any place of business and to demand the exhibition of a business tax certificate. Unless exempted by the provisions of this Code, any *person* having any such business tax certificate therefore issued in his or her possession or under his or her control, or who is required to have such business tax certificate, and who fails to exhibit the same on demand shall be guilty of a misdemeanor and be further subject to the penalty provided for by section 34.0114 of this Code.

("Enforcement" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0121 Officer Liability

Any *Officer* who willfully fails to accurately report or remit any *Cannabis Business Tax* due under this Article, or who willfully attempts in any manner to evade or defeat any tax due shall, in addition to other penalties provided by law, be liable for a penalty in the amount of the tax not paid or evaded, to be assessed and collected in the same manner as such taxes are assessed and collected.

("Officer Liability" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0122 Rules and Regulations

For purposes of apportionment as may be required by law and for purposes of administration and enforcement of this Article generally, the *Tax Administrator*, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.

("Rules and Regulations" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0123 Apportionment

(a) None of the tax provided for by this Article shall be applied so as to occasion an undue burden upon interstate commerce or violate 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 imposed under this Article is believed by a taxpayer to place an undue burden upon interstate commerce or violate such constitutional clauses, the taxpayer may apply to the *Tax 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 *Tax Administrator* may deem necessary in order to determine the extent, if any, of such undue burden or violation. The *Tax 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 *Tax 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 Article.

(d) Should the *Tax Administrator* determine that the *gross receipt* measure of tax to be the proper basis, the *Tax Administrator* may require the taxpayer to submit a sworn statement of the *Gross Receipts* and pay the amount of tax as determined by the *Tax Administrator*.

("Apportionment" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0124 Audit and Examination of Records

It shall be the duty of every *person* liable for the payment to the City of any *Cannabis Business Tax* imposed by this Article to keep and preserve, for a period of three years, all business records as may be necessary to determine the amount of such tax for which the *Operator* is liable. The *Tax Administrator* and authorized deputies or agents in the exercise of duties imposed by this Article shall have the right to inspect such records at all reasonable times and to apply auditing procedures necessary to determine the amount of tax due to the City. It shall be unlawful to refuse to allow or to permit such audit to be conducted after a lawful demand therefor by the *Tax Administrator*, or the City Auditor when so requested by the *Tax Administrator*.

("Audit and Examination of Records" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0125 Tax Deemed Debt to City

The amount of any tax, penalties and interest imposed by this Article shall be deemed a debt to the City. Any *person* engaging in any *Cannabis Business* without first having procured a business tax certificate 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 Article. Upon the concurrence of the City Attorney and the Chief Financial Officer, the *Tax Administrator* is authorized to compromise the collection of the amount owed or establish a schedule of payment for any tax due, including penalties and interest, or to discontinue the collection of any claim if it appears that further proceedings would not be advantageous to the City.

("Tax Deemed Debt to City" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0126 Actions to Collect Taxes and Enforce Liens

(a) Upon exhaustion of administrative remedies and appeals to determine the amount of any tax liability under section 34.0117, the *Tax Administrator* may record a Certificate of Lien against real property to collect unpaid taxes, interest, and penalties with any county recorder in the State of California, and such lien shall attach to all property owned or thereafter acquired by any person owing any such *Cannabis Business Tax* to the City. The Certificate of Lien shall specify the amount of the tax, and penalties and interest due, the name and address of the person(s) liable for the same, and a statement that the *Tax Administrator* has complied with all provisions of this Article in the determination of the amount required to be paid. Such liens shall be recorded in accordance with applicable law in the jurisdiction in which the property is located.

(b) At any time within three years after any *person* owing tax to the City under this Article is delinquent in the payment of any amount herein required to be paid, or within ten years after the last recording or filing of a Certificate of Lien under section 34.0126(a), the *Tax 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 Article. The warrant shall be directed to any sheriff or marshal 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 and a *sale* pursuant to a writ of execution.

(c) At any time within three years from the date the *Cannabis Business Tax* became delinquent or a Certificate of Lien was recorded under section 34.0126(b), the *Tax Administrator* may seize any property, real or personal, subject to the lien of the tax and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and *sale*. Any seizure made to collect the *Cannabis Business Tax* due shall be only of property of the *Operator* not exempt from execution under the provisions of the Code of Civil Procedure.

("Actions to Collect Taxes and Enforce Liens" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0127 Successor and Assignee Responsibility

(a) If any *Operator*, while liable for any amount under this Article, sells, assigns or otherwise transfers the business, whether voluntarily or involuntarily, the *Operator's* successor, assignee 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.

(b) The successor *Operator*, assignee, purchaser, transferee, or other *person* or entity seeking to obtain ownership or control of the business shall notify the *Tax Administrator* of the date of transfer at least 30 calendar days prior to the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than 30 calendar days prior to the date of transfer, notice shall be provided immediately.

(c) The successor *Operator*, assignee, 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 complies with the requirements of California Revenue and Taxation Code section 7283.5 by withholding from the purchase price an amount sufficient to cover the tax liability, or by otherwise paying the tax liability until the *Tax Administrator* provides a "Tax Clearance Certificate" showing that it has been paid and stating that no amount is due through the date of transfer.

(d) The *Tax Administrator*, within 90 calendar days of receiving a written request from a successor *Operator*, assignee, purchaser, transferee, or other *person* or entity who obtains or attempts to obtain ownership or control of a *Cannabis Business*, may request financial records from the current or former owner or *Operator* to conduct an audit of the tax that may be due and owing. If the City determines that the records provided for an audit are insufficient, the *Tax Administrator* may rely on the facts and information available to estimate any tax liability associated with the *Cannabis Business*. Within 30 calendar days of completing the audit, the *Tax Administrator* shall issue a "Tax Clearance Certificate" if it finds no tax, penalties, or interest is due, or mail a notice stating the amount of the tax, penalty, and interest 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 calendar days after the serving or mailing of the certificate. The hearing provision of section 34.0117 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.

("Successor and Assignee Responsibility" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0128 Violations and Criminal Proceedings

(a) Any *Operator* who willfully: 1) fails to file or cause to be filed any return required by this Article; 2) files or causes to be filed a false return; 3) fails or refuses to remit or cause to be remitted any tax required to be paid; or 4) refuses to allow an audit to be conducted, is guilty of a misdemeanor.

(b) The commencement of criminal proceedings shall neither preclude nor abate administrative or civil actions to collect taxes due under this Article.

(c) Violations under this section are continuing violations and each day the violation continues constitutes a separate misdemeanor.

(d) Any *Operator* violating any of the other mandatory provisions of this Article shall be guilty of a misdemeanor.

(e) Notwithstanding section 12.0102 of this Code, violation under this Article shall be punishable as misdemeanors by a fine of not more than one thousand dollars or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment.

("Violations and Criminal Proceedings" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0129 Remedies Cumulative

All remedies and penalties prescribed by this Article or which are available under any other provision of law or equity, including but not limited to the False Claims Act (California Government Code section 12650-12656) and the Unfair Practices Act (California Business and Professions Code section 17070-17101), 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 Article.

("Remedies Cumulative" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0130 Effect of State and Federal Reference/Authorization

(a) Unless specifically provided otherwise, any reference to a state or federal statute in this Article 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 Article is expanded as a result of changes in state or federal law, no amendment or modification of this Article 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 Article.

("Effect of State and Federal Reference/Authorization" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0131 Severability

Should any provision of this Article, 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 Article or the application of this Article to any other *person* or circumstance and, to that end, the provisions hereof are severable.

("Severability" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)

§34.0132 Amendment or Repeal

Chapter 3, Article 4 of the San Diego Municipal Code may be repealed or amended by the City without a vote of the people. However, as required by Article XIIIC of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Article. The people of the City of San Diego 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 15 percent tax rate set by this Article, if the City has previously acted to reduce the rate of the tax;

(b) The City's adoption of an ordinance, as authorized by section 34.0112, to raise the tax rate provided the tax rate is not raised to a rate higher than 15 percent.

(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 Article;

(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 Article); or

(e) The collection of the tax imposed by this Article, even if the City had, for some period of time, failed to collect the tax.

(f) This ordinance shall be null and void and of no effect if Proposition 64, Marijuana Legalization Initiative Statute, is not approved by voters at the November 8, 2016 statewide General Election.

("Amendment or Repeal" added 8-3-2016 by O-20712 N.S.; effective 12-12-2016.)