“HUMBOLDT COUNTY CANNABIS EXCISE TAX INITIATIVE”

The People of the County of Humboldt do ordain and enact as follows:

Section 1. Title

This measure shall be known and may be cited as “Humboldt County Excise Tax Initiative.”

Section 2. Statement of General Purpose

This initiative measure establishes a reasonable taxation of the agricultural activity within Humboldt County related to the planting, cultivation, harvesting, processing, storage, drying, packaging, transportation, distribution, and sale of cannabis within Humboldt County.

Section 3: Findings and Declarations

The people of Humboldt County find and declare as follows:

(a) Activities within Humboldt County associated with the planting, cultivation, harvesting, processing, storage, drying, packaging, transportation, distribution and sale of cannabis require the use of both human resources and natural resources of Humboldt County that impact he health, safety and welfare of its and the people of the State of California.

(b) Over the years the decline of the fishing and timber industries within and adjacent to Humboldt County has had an adverse impact on the economy within Humboldt County, resulting in the need for the county to obtain additional resources from other industries to enable Humboldt County to fund its operations and to provide the public services required of a county.

(c) The geography, climate, and micro-climates of Humboldt County make it an excellent location to farm cannabis. .

(d) Lawful and responsibly regulated cannabis cultivation presents a tremendous opportunity to preserve Humboldt County’s rural character and to protect agricultural timber production, open space and natural resources consistent with such regulated cannabis cultivation within reasonable and environmentally conscious limitations.

(e) The governmental policies and actions of Humboldt County should promote sustainable and commercial activities that protect the environment and preserve the rural character of the county while stimulating value- added businesses and industries that will enhance long term prosperity for the residents and fund governmental services by recognizing the compatibility of a cannabis cultivation industry within the county’s existing natural resources and taxing that industry.to fund the county’s provision of public services.

(f) A separate initiative is proposed to provide the framework for clear rules and regulations to promote voluntary compliance and to provide effective and efficient enforcement mechanisms to address necessary local and state permits for the cannabis industry as such may be permitted by California law from time to time.

Section 4. Chapter 9 is hereby added to Division 1 (Revenue and Taxation) of Title VII (Finance, Revenue and Taxation) of the Humboldt County Code relating to the Taxation of Cannabis Activity to read as follows: ( Text to be inserted into the Humboldt County Code below is indicated in ***boldface italics*** while text in standard type is existing text in the Humboldt County Code.)

***Section 719.1 Short Title***

***This chapter shall be known as the “Humboldt County Cannabis Excise Tax Ordinance.”***

***Section 719.2 Tax imposed.***

***There is imposed a cannabis tax in the manner and at the rates set forth in this chapter.***

***Section 719.2 Definitions***

***“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, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.***

***“Cannabis industry” means any one or more of the following activities: planting, cultivation, harvesting, processing, storage, drying, packaging, transportation, distribution or sale of cannabis in any form..***

***“Canopy” means the gross area included in the grow area on the property determined by measuring the perimeter of the property regardless of the size, number, or spacing of cannabis plants.***

***“Chief Administrative Officer” means the individual appointed by the Board of Supervisors of the County who is responsible for carrying out the decisions of the Board and seeing that policies and procedures of the County are implemented and executed.***

***“County” means the County of Humboldt.***

***“Grow area” means the area in which cannabis is planted and cultivated, regardless of whether or not permitted by the County or any other public agency.***

***“Individual” means a natural person as defined in California Revenue and Taxation Code Section 17005.***

***“Participant in the cannabis industry” means the individual identified in writing by those who are associated with a cannabis grow on a particular property regardless of the role of the individual with respect to the crop; in the absence of such a designated individual, it shall mean the owner of fee title to the property as shown in the last records of the County Recorder for the property***.

***“Tax” means the tax levied for the privilege of engaging in the cannabis industry, other than a tax on the value of the agricultural production, or the crop produced thereby, or the sale of the crop; the tax imposed is not a property tax or a sales tax, but a form of business tax.***

***“Tax Administrator” means the Director of the Department of Agriculture of Humboldt County.***

***Section 719.3 Constitutional, statutory, and other exemptions***

***A.. Nothing in this chapter shall be construed as imposing a tax upon any person or participant in the cannabis industry when the imposition of such tax upon such person or participant would be in violation of a federal or state statute, the Constitution of the United States, or the Constitution of the state of California.***

***B. Nothing in this chapter shall be construed as imposing a tax upon any person whose participation in the cannabis industry is demonstrably for the purpose of personal consumption or use when such person is also in compliance with all state and local laws and regulations for such participation or possession.***

***C. Any person or participant in the cannabis industry that is exempt from the tax imposed by this chapter pursuant to subsection (A) or subsection (B) of this section shall file an application with the Tax Administrator for an exemption. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption.***

***D. If the Tax Administrator denies the exemption, the decision of the Tax Administrator may be appealed pursuant to section 719.11 of this chapter. Filing an application with the Tax Administrator and exhaustion of the appeal is a prerequisite to a suit thereon.***

***Section 719.4 Cannabis Tax***

***There is hereby imposed a tax upon every participant in the cannabis industry as defined in section 719.2 of this chapter who engages in the cultivation of cannabis by continuing an existing cultivation site or by establishing a cannabis cultivation site.***

***The tax imposed by this section shall be at the following rate:***

***\* less than 600 square feet of canopy: $0;***

***\* 601 square feet to 6000 square feet of canopy at fifty cents ($.50) per square foot;***

***\* 6001 square feet or more of canopy at one dollar ($1.00) per square foot.***

***The rate shall be applied based on the entire area of canopy at its largest size at any time during the year and not as an incremental application. By way of example, a canopy of 7060 feet at any time during the year will have a tax of $7060, not a tax calculated at 600 square feet + 6000 square feet + 1000 square feet.***

***The tax shall be annual and due and payable every July 1.***

***The tax shall be collected by the Humboldt County Agricultural Commissioner as the Tax Administrator. There is a rebuttable presumption that if any step of planting, cultivating,*** ***harvesting, processing, storage, drying, packaging, transportation, distribution, or sale of cannabis occurs within the unincorporated area within the boundaries of Humboldt County that it is a product of the cannabis industry in Humboldt County and shall be subject to the tax unless an exemption in section pursuant to Section 719.3 of this chapter applies.***

***Section 719.4 Duty to collect – procedures***

***A. The Tax Administrator shall collect all taxes and penalties as provided in this ordinance and shall deposit such proceeds with the County Treasurer upon receipt.***

***B. Filing Return and Payment. Each person or participant in the cannabis industry required by this chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator, on or before the due date. The full amount of the tax collected to be collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he or she deems necessary to determine if the tax is being levied, collected and remitted in accordance with this chapter. Returns are due immediately upon cessation of participation in the cannabis industry or any reason. Pursuant to Revenue and Tax Code section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information that is exempt from the disclosure provisions of the Public Records Act (Government Code Section 6250, et. seq.) to the extent permitted by law.***

***Section 719.5 Collection penalties.***

***A. Taxes are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on the first regular working day following the weekend or legal holiday. If arrangements are made for a direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, the deposit must be made in satisfaction of the obligation and shall be considered timely if the transfer is initiated on or before the due date and the transfer settles into the County account on the following business day.***

***B. If the tax is not paid on or before the due date, the Tax Administrator shall attach a penalty for such delinquencies or deficiencies at the rate of fifteen percent (15%) of the total tax that is delinquent or deficient in its remittance, and interest shall accrue and be paid at the rate of one and one half percent (1.5%) per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.***

***C. The Tax Administrator shall have the power to impose additional penalties for non-payment of the tax if he or she determines that the payment was not p[aid or was underpaid due to fraud or gross negligence in reporting or remitting at the rate of fifteen percent (15%) of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.***

***D. For purposes of collection only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.***

***Section 719.6 Actions to collect***

***Any tax required to be paid under the provisions of this chapter shall be deemed a debt owed to the County. Any person or participant in the cannabis industry owing money to the County under the provisions of this chapter shall be liable in an action brought in the name of the County for the recovery of such amount, including penalties and interest as provided for in this chapter, along with any collection costs incurred by the County as a result of the noncompliance with this chapter, including, but not limited to, reasonable attorney’ fees. The tax required to be paid pursuant to this chapter is an unsecured priority excise tax obligation under 11.U.S.C.A. Section 507(a)(8)(C)***

***Section 719.7 Deficiency determination and assessment – Tax application errors***

***A. The Tax Administrator shall make a deficiency determination if he or she determines that any individual or participant in the cannabis industry required to remit taxes pursuant to the provisions of this chapter has failed to remit the proper amount of tax***

***B. The Tax Administrator shall mail a notice of such deficiency determination to the individual or participant in the cannabis industry allegedly owing the tax, which notice shall refer briefly to the amount of the taxes owed, the collection penalties imposed pursuant to section 719.5, plus interest at the rate of one and one-half percent (1.5%) per month, or any fraction thereof, on the amount of the tax from the date on which the tax should have been received by the County. Within fourteen (14) calendar days after the date of service of such notice, the individual or participant in the cannabis industry allegedly owing the tax may request in writing to the Tax Administrator for a hearing on the matter.***

***C. If the individual or participant in the cannabis industry allegedly owing the tax fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the County. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be scheduled within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person or entity at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said individual or participant in the cannabis industry to produce specific records at such hearing, such notice may designate the records requested to be produced.***

***D. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to the individual or participant in the cannabis industry owing the tax. The decision of the Tax Administrator may be appealed pursuant to section 719.11 of this chapter.***

***E. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. As provided in section 719.5 the penalty for delinquency shall be fifteen percent (15%) on the total amount of the assessment, along with interest at the rate of one and one-half (1.5%) percent per month, or any fraction thereof, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the County seeking payment of a tax assessed under this chapter shall commence from the date of delinquency as provided in this subsection (E).***

***F. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.***

***Section 719.8 Additional powers and duties of Tax Administrator***

***A. The Tax Administrator shall have the power and duty, to enforce each and all of the provisions of this chapter.***

***B. The Tax Administrator may adopt administrative rules and regulations consistent with provisions of this chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office. To the extent that the Tax Administrator determines that the tax imposed under this chapter shall not be collected in full for any period of time from any particular individual or participant in the cannabis industry due to occurrences of nature affecting the agricultural crop, that determination shall be considered an exercise of the Tax Administrator's discretion to settle disputes and shall not constitute a change in taxing methodology for purposes of Government Code Section 53750, nor is such determination a waiver of the County's ability to impose the tax in full. The Tax Administrator is not authorized to amend the taxing methodology for purposes of Government Code Section 53750.***

***C. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this chapter and thereby (1) adjust the schedule of payment so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this chapter; or (2) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office and are voidable by the Tax Administrator or the County at any time.***

***D. The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this chapter, of any individual or participant in the cannabis industry required to remit a tax pursuant to this chapter. The Tax Administrator shall notify said individual or participant in the cannabis industry of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to section 719.7 of this chapter for all taxes (and applicable penalties and interest) owed and not paid, as evidenced by information provided by such individual or*** ***participant in the cannabis industry to the Tax Administrator. If said individual or participant in the cannabis industry is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.***

***E. Upon receipt of a written request of a participant in the cannabis industry, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of one and one-half (1.5%) percent per month, prorated for any portion thereof.***

***F. The Tax Administrator shall determine the eligibility of any participant in the cannabis industry who asserts a right to exemption from, or a refund of, the tax imposed by this chapter.***

***G. Notwithstanding any provision in this chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon an participant in the cannabis industry required to remit for failure to pay the tax imposed by this chapter if the non-payment occurred in good faith. In determining whether the non-payment was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.***

***Section 719.9 Records***

***A. It shall be the duty of every participant in the cannabis industry required to remit to the County any tax imposed by this chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the remittance to the Tax Administrator, which records Tax Administrator shall have the right to inspect at all reasonable times.***

***B. The County, through the Board of Supervisors, may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the County on or before the due date, provided that such person shall reimburse the County for all reasonable travel expenses incurred by the County to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the County to conduct the inspection.***

***C. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of $500 on such person for each day following: 1) the initial date that the person refuses*** ***to provide such access; or, 2) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this chapter.***

***Section 719.10 Refunds***

***A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this chapter from an individual or participant in the cannabis industry, it may be refunded as provided in this section. However, if the appeals procedure set forth in section 719.11 is applicable, that procedure must first be exhausted before a refund may be had under this section.***

***B. The Tax Administrator may refund any tax that has been overpaid, paid more than once, or erroneously or illegally collected or received by the Tax Administrator under this chapter from an individual or participant in the cannabis industry, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, executor, or administrator has submitted a written claim to the Tax Administrator within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a claim on behalf of a class or group of taxpayers unless each member of the class has submitted a written claim under penalty of perjury as provided in this subsection.***

***C. The Tax Administrator, where the claim is less than five thousand dollars $5,000.00, or the Board of Supervisors where the claim is in excess of that amount, shall act upon the refund claim within forty-five (45) days of the initial receipt of the refund claim. Said decision shall be final. If the Tax Administrator/Board of Supervisors fails or refuses to act on a refund claim within the forty-five (45) day period, the claim shall be deemed to have been rejected by the Tax Administrator/Board of Supervisors on the forty-fifth (45th) day. The Tax Administrator shall give notice of the action in a form which substantially complies with that set forth in Government Code Section 913.***

***D. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the County pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946.***

***E. Notwithstanding the notice provisions of subsection (A) of this section, the Tax Administrator may, at his or her discretion, give written permission to an individual or participant in the cannabis industry who has remitted any amount of tax in excess of the amount of tax imposed by this chapter, to claim credit for such overpayment against the amount of tax which is due the County upon a subsequent return(s) to the Tax Administrator, provided that: i) such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous collection of said tax; and ii) the Tax Administrator is satisfied that the underlying basis and amount of such credit has been reasonably established.***

***F. Notwithstanding subsections (A) though (D) above, an individual or participant in the cannabis industry shall be entitled to take any overpayment as a credit against an*** ***underpayment whenever such overpayment has been received by the County within the three (3) years next preceding a deficiency determination or assessment by the Tax Administrator in connection with an audit instituted by the Tax Administrator pursuant to section 719.8. An individual or participant in the cannabis industry shall not be entitled to said credit unless it first clearly establishes to the Tax Administrator the right to the credit by written records showing entitlement thereto. Under no circumstances shall an overpayment taken as a credit against an underpayment pursuant to this subsection qualify a service supplier for a refund to which it would not otherwise be entitled under the one-year written claim requirement of this section.***

***Section 719.11 Appeals***

***A. Any person directly aggrieved by a decision of the Tax Administrator shall be required to comply with the appeals procedure set forth in this section. A "decision" of the Tax Administrator includes any decision, determination, assessment, or administrative ruling made pursuant to this chapter. This section does not apply to a decision relating to a refund pursuant to section 719.10.***

***B. The Chief Administrative Officer or his or her designee shall hear all appeals filed pursuant to this section. A written notice of appeal shall be filed with the clerk of the board of supervisors, or his or her designee, within fourteen (14) days of the decision so appealed.***

***C. Upon receipt of the notice of appeal, the clerk of the board, or his or her designee, shall schedule a hearing before a hearing officer selected by the chief executive officer, or his or her designee, within thirty (30) days from the receipt of the appeal. The appealing party shall be served with written notice of the time and place of the hearing at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent of the parties and the hearing officer.***

***D. Upon the conclusion of the hearing, the hearing officer shall consider any relevant evidence presented at the hearing and shall issue a written determination upholding, modifying or reversing the decision from which the appeal is taken. The hearing officer's determination shall be given within thirty (30) days after the conclusion of the hearing and shall state the reasons for the determination. The hearing officer's determination shall specify that the determination is final and conclusive. Any petition for judicial review shall be filed within ninety (90) days from the date of service of the hearing officer's determination.***

***Section 719.12 Severability; change in law***

***A. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portion of this chapter or any part thereof shall nonetheless remain in full force and effect. The Board of Supervisors of the County of Humboldt hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared invalid.***

***B. To the extent that the County's authorization to collect or impose any tax under this chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this chapter shall be required to conform the tax to those changes, and the tax*** ***shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this chapter.***

***Section 719.13 Independent audits***

***The County shall annually verify that the taxes owed under this chapter have been properly applied, exempted, collected, and remitted in accordance with this chapter, and properly deposited into the County general fund. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required where the cost of the verification may exceed the tax revenues to be reviewed.***

***Section 719.14 Remedies cumulative***

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

Section 5. Amendments. After the effective date, the Board of Supervisors may amend this ordinance by a simple majority vote to modify, make corrections, or conform the ordinance to reflect community needs or changes in the law. Such amendments may include, but are limited to, the rates of the tax imposed.

Section 6. Effective date. This initiative ordinance shall take effect immediately upon the earlier of adoption by the County Board of Supervisors or certification of its approval by the voters of Humboldt County at a special or general election.