

ORDINANCE NO. 6433

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING X

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

Section I. Purpose. These amendments are adopted to achieve the following purposes, among others, and directs that the provisions herein be interpreted to accomplish these purposes:

A. The Board of Supervisors directed staff to amend the Cannabis Business Tax Ordinance to establish new tax rates for cannabis cultivation, effective July 1, 2023; and

B. To make certain administrative changes to ensure consistency with current practices of cannabis business tax collection and add efficiencies to the appeals process; and

C. At the March 7, 2017 special election, the voters of Sonoma County approved the Cannabis Business Tax ordinance (Measure A), codified in Chapter 35 of the Sonoma County Code and amended on June 13, 2017, August 28, 2018, and April 19, 2022; and

D. The Cannabis Business Tax is imposed in accordance with the state Medical Cannabis Regulation and Safety Act, specifically California Business and Professions Code section 19348, the "California Control, Regulate and Tax Adult Use of Marijuana Initiative" approved by the voters in the November 2016 election, the California Revenue and Taxation Code section 7284, and other enabling legislation; and The Cannabis Business Tax Ordinance, as approved by the voters, authorizes the Board of Supervisors, at any time by ordinance, to implement a tax rate that is lower than the maximum tax approved by the voters.

Section II. Amendments. Chapter 35 of the Sonoma County Code is amended as follows (text to be added is shown in *bold italics*, text to be deleted is shown in ~~strikethrough~~):

A. **Amendment to Definitions.** The following section is hereby amended to read as follows:

- a. Section 35-4, first paragraph, is amended to read as follows: Terms that are not defined in this chapter shall have the meanings ascribed to them in Section ~~26-02-14004-020~~ (Definitions) of Chapter 26 of the Sonoma County code. The following words and phrases shall have the meanings set forth below when used in this chapter:
- b. The following definitions within Section 35-4 are hereby amended:
 - i. "Indoor" means indoor cultivation of cannabis within any type of structure using exclusively ~~aeritica~~ *artificial* lighting.

- ii. "Personal cannabis cultivation" means cultivation within the residency, plant number, and/or square footage limitations provided in Chapter 26-88-258 exclusively for noncommercial *use*.
- iii. "Treasurer-tax collector" means the treasurer-tax collector of the county of Sonoma, his or her deputies or any other county officer charged with the administration of the provisions of this chapter.

B. Amendments to Tax Imposed. The following subsections are hereby amended and deleted to read as follows:

- a. Section 35-5(a)(1) is amended to read as follows: Every person who is engaged in commercial cannabis cultivation in the unincorporated area of the county shall pay an annual commercial cannabis business tax either: (1) at a rate of up to ten dollars (\$10.00) per square foot of outdoor cultivation area, twenty-two dollars (\$22.00) per square foot of mixed-light cultivation area, and thirty-eight dollars (\$38.00) per square foot of indoor cultivation area, or (2) at a rate of up to ten percent (10%) of gross receipts per fiscal year. When the rate is determined on a square footage basis, on July 1 of each fiscal year succeeding the year of imposition of a square footage based tax on commercial cannabis cultivation, the amount of the tax shall be increased by the most recent change in the annual average of the Consumer Price Index ("CPI") for all urban consumers in the San-Francisco-Oakland-San Jose areas as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made. ~~Notwithstanding the foregoing, for FY 21-22 and FY 22-23, the tax rate shall not be increased by any increase in the most recent CPI.~~ The tax under this subsection shall not be imposed unless and until the board of supervisors, by ordinance, takes action to: (1) specify whether the tax on commercial cannabis cultivation will be imposed on a square footage or gross receipts basis, and (2) set a tax rate not to exceed the maximum rates established herein.
- b. Section 35-5(a)(4) is amended to read as follows: Pursuant to subsection (a), the commercial cannabis business tax on commercial cannabis cultivation is to be imposed on a square footage basis, and is set at the following rates, with permit types as defined in Chapter 26 of the Sonoma County code:

<i>Permit Type</i>	<i>Rate Per Square Foot</i>
<i>Outdoor</i>	<i>\$0.75</i>
<i>Mixed-Light</i>	<i>\$3.00</i>
<i>Indoor</i>	<i>\$12.50</i>

Permit Type	Rate Per Square Foot
Outdoor	
-1C: Cottage	\$1.00
1: Specialty	\$1.50
2: Small	\$2.00
3: Medium	\$2.00
Mixed Light	
-1C: Cottage	\$2.25
1B: Specialty	\$4.50
2B: Small	\$6.50
3B: Medium	\$6.50
Indoor	
-1C: Cottage	\$3.75
1A: Specialty	\$7.50
2A: Small	\$11.25
3A: Medium	\$11.25

- c. Section 35-5(a)(7) is hereby deleted: Notwithstanding subsection 35-5(a)(4), and pursuant to subsection 35-5(a)(3), the board of supervisors is implementing a lower tax rate for all persons engaged in commercial cannabis cultivation in the unincorporated area of the county for fiscal years 2021-22 and 2022-23 only. The cultivation tax rates are hereby reduced by forty-five percent (45%) as follows:

Permit Type	Rate Per Square Foot
Outdoor	
-1C: Cottage	\$0.62
1: Specialty	\$0.93
2: Small	\$1.24
3: Medium	\$1.24
Mixed Light	
-1C: Cottage	\$1.39
1B: Specialty	\$2.78
2B: Small	\$4.02
3B: Medium	\$4.02
Indoor	
-1C: Cottage	\$2.32
1A: Specialty	\$4.64
2A: Small	\$6.96
3A: Medium	\$6.96

C. **Amendments to Reporting and Remittance of Tax.** The following subsections are hereby amended:

- a. Section 35-6(b) is amended to read as follows: If the commercial cannabis business tax is owed on commercial cannabis cultivation, and the Board has specified that the square footage basis shall apply, the square footage tax due shall be paid based on the square footage of cultivation authorized by the county permit. *Alternatively, a cultivation area (cannabis canopy) verification form may be submitted to the treasurer-tax collector that verifies a square footage cultivation amount different than that authorized by the county permit, and the tax due shall be based on that verified square footage amount.* ~~The tax statement may include a request for adjustment of the tax due to square footage authorized but not utilized for cultivation, and/or crop loss, along with evidence substantiating the square footage utilized and/or crop loss. It shall be the responsibility of the operator to timely request a cannabis canopy verification from the Department of Agriculture, Weights & Measures (AWM) prior to harvest and to provide evidence substantiating the change in square footage due to square footage utilized and/or crop loss. The decision to verify the square footage of cultivation as an amount different than that authorized by the county permit shall be made at the sole discretion of AWM. The decision to prorate or adjust the tax will be made at the sole discretion of the county and such verification shall be final and conclusive.~~ A fee may be adopted by the board of supervisors and collected by ~~the agency having jurisdiction~~ *AWM to pay for the cost of a cultivation area verification to adjust the verified square footage.* ~~or the treasurer-tax collector to pay for the cost of investigating, verifying, and opining on such request for adjustment of the tax.~~
- b. Section 35-6(c) is amended to read as follows: All tax statements shall be completed on forms prescribed by the treasurer-tax collector. ~~The tax statement may include a request for adjustment of the tax due to square footage authorized but not utilized for cultivation, and/or crop loss, along with evidence substantiating the square footage utilized and/or crop loss. The substantiating evidence must include a cultivation area (canopy) verification performed by the department of agriculture/weights and measures. The cultivation area (canopy) verification shall be requested by the operator and performed prior to the harvest, and must be provided to the treasurer-tax collector to confirm an adjustment on a tax statement. Any decision to prorate or adjust the tax will be made at the sole discretion of the county. A fee may be adopted by the board of supervisors and collected by the agency having jurisdiction or the treasurer-tax collector to pay for the cost of investigating, verifying, and opining on such request for adjustment of the tax.~~
- c. Section 35-6(f) is amended to read as follows: ~~The Treasurer-Tax Collector~~ *or* may, as part of administering the tax and in his or her

discretion, modify the form of payment and take such other administrative actions as needed to facilitate collection of the tax.

D. Amendments to Tax Assessment – Hearing, Application, and Determination.

The following section is hereby amended:

- a. Section 35-27. Tax assessment—~~Hearing~~**Review**, application, and determination. Within ten (10) business days after the date of service of the notice of assessment, the person may apply in writing to the treasurer-tax collector for a ~~hearing~~**review** on the assessment. If application for a ~~hearing before the county~~**review of the assessment** is not made within the time herein prescribed, the tax assessed by the treasurer-tax collector shall become final and conclusive. *At the time of such request for a review on the assessment, or at a date agreed upon by the person and the treasurer-tax collector, the person may submit any written evidence or argument and supporting documentation as to why the tax, including any penalties and interest, as assessed should not be confirmed and fixed as the tax due. All written evidence and arguments shall be signed under penalty of perjury.* Within ~~thirtyfourty-five (3045)~~ **thirty-five (35)** business days of the receipt of any ~~such application for hearing~~**the written evidence or argument**, the treasurer-tax collector shall **review the proffered evidence and cause the matter to be set for hearing before him or her not later than thirty-five (35) business days after the receipt of the application, unless a later date is agreed to by the treasurer tax collector and the person requesting the hearing.** Notice of such hearing shall be given by the treasurer-tax collector to the person requesting such hearing not later than five (5) business days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the treasurer tax collector should not be confirmed and fixed as the tax due. After such hearing the treasurer tax collector shall determine **either confirm the amount of tax due or** and reassess the proper tax to be charged. **The treasurer-tax collector** and shall give written notice to the person **of the determination** in the manner prescribed in Section 35-26 for giving notice of assessment. The amount determined to be due shall be payable within thirty (30) calendar days of written notice unless it is appealed to the board of supervisors.

E. Amendments to Appeal hearing—Appointment of referee. The following section is hereby amended:

- a. Section 35-30. Appeal hearing—Appointment of ~~referee~~**Hearing Officer**. The board of supervisors may appoint a ~~referee~~**the County Hearing Officer to hear the appeal as** take testimony at the hearing provided for in Section 35-28 of this chapter, and to report his findings and recommendations to the board **which shall be governed by the Sonoma County Rules and Procedures for Administrative Hearings.** ~~Neither the~~

~~treasurer tax collector nor any officer or employee in the office of the treasurer tax collector may be appointed referee.~~

F. Amendments to Appeal hearing—Compensation of referee. The following section is hereby deleted:

- a. ~~Sec. 35-31. Appeal hearing—Compensation of referee. If the board of supervisors appoints a county officer or county employee to act as referee, he shall serve as such without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.~~

G. Amendments to Appeal hearing—Conduct. The following section is hereby amended:

- a. Section 35-32~~1~~. Appeal hearing—Conduct. At the time set for the hearing, ~~or at the date to which the hearing may be continued by the board of supervisors or referee,~~ the board of supervisors or **refereeHearing Officer** shall hear the appellant and any other competent witnesses and decide whether the determination of the treasurer-tax collector was correct or not, and if not what tax, fees, interest or penalties, if any, are due to the county from the appellant. The board *of supervisors* or ~~referee~~**Hearing Officer** may place any witnesses, including the appellant, under oath. The board of supervisors or ~~referee~~**Hearing Officer** may impose reasonable time limits on each party's presentation.

H. Amendments to Appeal hearing—Final determination. The following section is hereby amended:

- a. Sec. 35-33~~2~~. Appeal hearing—Final determination. The board of supervisors *or Hearing Officer* shall determine from the evidence ~~or from a report of the referee,~~ what tax, fees, interest or penalties, if any, are due to the county from the appellant. The decision shall be final and conclusive *and in writing*. The treasurer tax-collector shall serve a copy of the decision upon the appellant as provided in Section 35-26. Any amount shall be immediately due and payable upon the service of the said notice.

I. Amendments to Conviction for chapter violation—Taxes not waived. The following section is hereby amended:

- a. Sec. 35-34~~3~~. Conviction for chapter violation—Taxes not waived. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

J. **Amendments to Violation deemed misdemeanor.** The following section is hereby amended:

- a. Section 35-354. Violation deemed misdemeanor. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punishable therefore as provided by Chapter 1, Section 7 of the Sonoma County Code.

Section III. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section IV. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced on the 16th day of May, 2023, and finally passed and adopted this 23rd day of May, 2023, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Gorin: Aye Rabbitt: No Gore: Aye Hopkins: Aye Coursey: Aye

Ayes: 4 Noes: 1 Absent: 0 Abstain: 0

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

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Chair, Board of Supervisors
County of Sonoma

ATTEST

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M. Cristina Rivera,
Clerk of the Board of Supervisors