CERTIFICATION

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the attached Resolution No. 38-18, adopted by the City Council at its regular meeting held on June 12, 2018 is a true and correct copy of the original document.

DATED: June 13, 2018

Dana Swanson, City Clerk
RESOLUTION NO. 38-18

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY
OF A CERTAIN MEASURE, ENTITLED THE CANNABIS TAX MEASURE, AT
THE GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the City Council of the City of Morro Bay has called a General Municipal
Election to be held on Tuesday, November 6, 2018, by Resolution No. 33-18 adopted on June
12, 2018; and

WHEREAS, the City Council of the City of Morro Bay also desires to submit to the voters
at the General Municipal Election on November 6, 2018 a proposed ordinance for the taxation of
commercial cannabis operations and commercial cannabis cultivation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY,
CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS
FOLLOWS:

Section 1. That the City Council of the City of Morro Bay, pursuant to its right and
authority, hereby orders submitted to the voters at the General Municipal Election to be held on
Tuesday, November 6, 2018 the following question:

| Shall the measure, known as the CANNABIS TAX, imposing maximum tax of ten cents per $1 of proceeds of commercial cannabis operations, annual maximum tax of $25 per square foot of commercial cultivation area (CPI adjustments), no sunset clause, estimated $25,000 to $225,000 annual collections on currently allowed operations, revenue available for unrestricted general revenue purposes, be adopted? |
|-------------|---------|
| YES         | NO      |

Section 2. That the text of Ordinance No. 615 to be submitted to the voters as a proposed measure is attached as Exhibit "A" to this resolution.

Section 3. The method of tax collection and all aspects of the application and operation of any tax levied pursuant to the adoption of the ordinance known as the "Cannabis Tax" shall be as provided for in the ordinance and/or as authorized in the ordinance to be conducted and determined by the City Council, and any such tax shall become effective only upon approval of a majority of the votes cast by the voters voting upon the ballot measure.

Section 4. The ordinance shall not take effect, and no tax authorized by the ordinance shall be levied, unless and until the ordinance receives the approval of a majority of the votes cast by the voters of the City voting upon the ballot measure on the proposed ordinance at the November 6, 2018 General Municipal Election.
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Section 5. That the vote requirement for the ballot measure to pass is a majority (50% +1) of the votes cast.

Section 6. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 7. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting held on the 12th day of June, 2018.

AYES: Irons, Davis, Headding, Makowetski, McPherson
NOES: None
ABSENT: None
ABSTAIN: None

[Signature]
JAMIE L. IRONS, Mayor

ATTEST:

[Signature]
DANA SWANSON, City Clerk

APPROVED AS TO FORM:

[Signature]
JOSEPH W. PANNONE, City Attorney
ORDINANCE NO. 615

ORDINANCE OF THE PEOPLE OF THE CITY OF MORRO BAY, CALIFORNIA APPROVING A TAX ON CANNABIS COMMERCIAL ACTIVITIES BY ADDING CHAPTER 3.70 (CANNABIS TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE

WHEREAS, pursuant to subdivision (b) of Section 2 of Article XIIIIC of the California Constitution and Section 53720 et. seq. of the Government Code the city council is authorized to impose a general tax upon submission of such general tax to the voters of the City and approval by a majority of the voters voting on the issue, at an election consolidated with a regularly scheduled general election for members of the governing body of the local government; and

WHEREAS, in 1996 the California voters approved Proposition 215, the Compassionate Use Act, codified as Health and Safety Code Section 11362.5, to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of cannabis for medical purposes; and

WHEREAS, in 2003 the State of California adopted Senate Bill 420, the Medical Marijuana Program Act, codified as Health and Safety Code Section 11362.7, et seq., and as later amended, to clarify the scope of the Compassionate Use Act of 1996 relating to the possession and cultivation of cannabis for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in October 2015, the State of California adopted AB 266, AB 243, and SB 643, collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"), which established a comprehensive regulatory and licensing scheme for commercial medical cannabis operations; and

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA") was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial adult-use cannabis operations, and which also legalized limited adult-use personal cannabis use, possession, and cultivation; and

WHEREAS, on June 27, 2017 Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), which merged the regulatory regimes of MCRSA and AUMA; and

WHEREAS, Chapter 5.50 of Title 5 of the Morro Bay Municipal Code provides for a commercial cannabis regulatory program for the City, which presently authorizes applications to be accepted starting July 1, 2018 for two medical cannabis retail permits (MBMC § 5.50.120(D)) and medical cannabis distributor permits; and

WHEREAS, presently the City has no local tax on either medical cannabis commercial operations or adult-use commercial cannabis operations; and
WHEREAS, MAUCRSA and AUMA do not preempt local taxation of cannabis operations; and

WHEREAS, presently the City of Morro Bay pursuant to Chapter 5.50 of Title 5 of the Morro Bay Municipal Code permits only limited commercial cannabis operations (being two medical cannabis retail operations, (wholesale) medical cannabis distribution operations, and medical cannabis deliveries), and prohibits all other commercial cannabis operations; and

WHEREAS, while the city council does not desire nor does it intend by this ordinance to allow any other commercial cannabis uses in the City other than the currently allowed uses, the city council does desire to seek voter approval for a broad cannabis tax that is applicable to both existing allowed commercial cannabis uses and any potential commercial cannabis uses that may be allowed in the future; and

WHEREAS, the city council desires that a cannabis tax be submitted to the voters for approval so that every person engaged in conducting a commercial cannabis operation, regardless of whether such operation has a valid permit pursuant to the Morro Bay Municipal Code, shall pay a maximum cannabis tax of no more than 10% of proceeds; and, that every person commercially cultivating cannabis in the City, regardless of whether such operation has a valid permit pursuant to the Morro Bay Municipal Code, shall pay an annual maximum tax of no more than twenty-five dollars ($25) per square foot for space utilized as commercial cultivation area, and that taxes imposed on commercial cultivation area shall be adjusted annually based on the Consumer Price Index (while no such adjustment shall decrease any tax imposed, unless approved by the city council); and

WHEREAS, the city council desires that revenue generated from said cannabis taxes can be spent for unrestricted general revenue purposes; and

WHEREAS, the city council finds that tax revenue from cannabis operations can provide funds for additional City services to promote and protect the general health and welfare of the citizens of the City of Morro Bay.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF MORRO BAY, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 3.70 (CANNABIS TAX) IS HEREBY ADDED TO TITLE 3 (REVENUE AND FINANCE) OF THE MORRO BAY MUNICIPAL CODE AS FOLLOWS:

CHAPTER 3.70 CANNABIS TAX

Section 3.70.010. Definitions.

Section 3.70.020. Tax.

Section 3.70.030. Operation.

Section 3.70.040. Returns and Remittances.

Section 3.70.050. Failure to Pay Tax.
Section 3.70.060. Refunds.

Section 3.70.070. Enforcement.

Section 3.70.080. Debts; Deficiencies; Determinations; Hearings.

Section 3.70.080. City Council Authority to Amend

Section 3.70.010. Definitions.

The following definitions apply to this chapter unless the context clearly denotes otherwise.

A. “Adult use” (i.e., “recreational” or “non-medical”) refers to activity involving cannabis or cannabis products, which is restricted to adults 21 years of age and older and who do not possess a physician’s recommendation, in contrast to an activity involving medical cannabis or medical cannabis products.

B. “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. ‘Cannabis’ also means the separated resin, whether crude or purified, obtained from cannabis. ‘Cannabis’ 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.

C. “Cannabis products” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

D. “Commercial cannabis operation” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale (including retail and wholesale) of cannabis and cannabis products; except, as applicable, as set forth in Chapter 9.06 (“Personal Cultivation of Cannabis”) of this Code or as preempted by state law.

E. “Commercial cannabis operation permit” shall mean a City of Morro Bay permit issued pursuant to the procedures provided for in Chapter 5.50 of Title 5 of the Morro Bay Municipal Code and which shall allow the permit holder to operate a specific type of commercial cannabis operation in the City of Morro Bay subject to the requirements of that chapter, state law, and the specific permit.

F. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

G. “Cultivation site” means any facility or location where cannabis is planted, grown,
harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.

H. “Delivery” means the commercial transfer of cannabis or cannabis products to a customer, and includes the use of any technology platform owned and controlled by the same person making such use.

I. “Director” means the City of Morro Bay Community Development Director, and includes his/her designee(s).

J. “Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed for and/or engaged in commercial cannabis activities.

K. “Distributor” means a person engaged in distribution.

L. “Edible” means cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

M. “Extraction” means the process of obtaining cannabis concentrates from cannabis plants, including but not limited to through the use of solvents like butane, alcohol or carbon dioxide.

N. “Finance Director” means the City of Morro Bay Finance Director, and includes his/her designee(s).

O. “Location” means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.

P. “Manufacture” or “manufacturing” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product; includes the activities of a manufacturer.

Q. “Manufacturer” means a person that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container; includes the activity of manufacturing.

R. “Marijuana” has the same definition as provided for “cannabis” in this chapter.

S. “Medical” refers to activity involving medical cannabis or medical cannabis products, in contrast to an activity involving adult-use cannabis or adult-use cannabis products.

T. “Medical cannabis” or “medical cannabis product” means cannabis or a cannabis
product used in compliance with state law for medical purposes, pursuant to the Compassionate Use Act (Health and Safety Code § 11362.5), the Medical Marijuana Program Act (Health and Safety Code §§ 11362.7, et seq.), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code §§ 26000, et seq.).

U. "Operation" means a "commercial cannabis operation" as defined by this chapter.

V. "Permit" means a "commercial cannabis operation permit" as defined by this chapter.

W. "Person" means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

X. "Proceeds" means total revenue and/or money received through the sale of goods and/or services before any deductions or allowances (e.g., rent, cost of goods sold, taxes).

Y. "Retailer" means a person engaged in the retail sale or delivery of cannabis or cannabis products to a customer.

Z. "Space utilized as cultivation area" shall mean any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the cannabis germination, seeding, vegetative, pre-flowering, flowering and harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing or drying cannabis or any such space used for storing any products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located.

AA. "Term" means a calendar month in regards to the monthly taxation of proceeds from a commercial cannabis operation (or a defined set term, as determined by resolution of the city council, in regards to the taxation of proceeds from a commercial cannabis operation); and, means the fiscal year in regards to the annual taxation of the space utilized as cultivation area for cannabis.

BB. "Testing laboratory" or "testing" refers to a laboratory, facility, or entity that offers or performs tests on cannabis or cannabis products; includes the activity of laboratory testing.

Section 3.70.020. Tax.

A. Commercial Cannabis Operations Tax. Every person engaged in conducting a commercial cannabis operation, regardless of whether such operation has a valid permit pursuant to the Morro Bay Municipal Code, shall pay a maximum cannabis tax of no more than ten percent (10%) of proceeds.

B. Commercial Cannabis Cultivation Tax. Every person commercially cultivating cannabis in the City, regardless of whether such commercial operation has a valid permit pursuant
to the Morro Bay Municipal Code, shall pay an annual maximum tax of no more than twenty-five dollars ($25) per square foot for space utilized as cultivation area. Taxes imposed on commercial cultivation area shall be adjusted annually on July 1 after the date of imposition, and then July 1 of each succeeding year based on 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 adjustment shall decrease any tax imposed by this chapter, unless approved by the city council.

C. Purpose of Cannabis Taxes. The revenue generated by the commercial cannabis operations tax and the commercial cannabis cultivation tax may be spent for unrestricted general revenue purposes.

D. Intent of Cannabis Taxes. The cannabis taxes provided herein do not authorize any commercial cannabis operation or use that is not otherwise expressly allowed by Chapter 5.50 of Title 5 of the Morro Bay Municipal Code. The cannabis taxes provided herein are intended to allow the City to levy cannabis taxes on both existing commercial cannabis operations and uses, as well as provide the City with the ability to levy cannabis taxes on potential future commercial cannabis operations that later in time may be allowed in the City by local ordinance. The taxes imposed by this chapter are in addition to all other applicable taxes imposed by this Code, including, but not limited to, the business taxes imposed by Chapter 5.08 of Title 5.

Section 3.70.030. Operation.

A. Failure to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and determinations of tax due as the city council may establish and the City may use any or all other enforcement remedies provided for in this Code, or pursuant to state law.

B. The city council may impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges or determinations of tax due for failure to pay the tax in a timely manner, as otherwise allowed by Code or California law. No action by the Council under this Section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.

C. The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter shall be construed to authorize commercial cannabis operations.

D. Taxes provided for hereunder are not sales or use taxes and shall not be calculated or assessed as such. The taxes shall not be separately identified or otherwise specifically assessed or charged to any individual, consumer or customer; rather, the taxes are imposed upon the commercial cannabis operation.
E. The Finance Director shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

Section 3.70.040. Returns and Remittances.

The tax shall be due and payable as follows:

A. Each person owing tax, on or before the last business day of each term as established by the Finance Director, shall prepare a tax return to the Finance Director of the total proceeds, and the amount of tax owed for the preceding term. At the time the tax return is filed, the full amount of the tax owed for the preceding term shall be remitted to the City.

B. All tax returns shall be completed on forms provided by the Finance Director.

C. Tax returns and payments for all outstanding taxes owed the city are immediately due the Finance Director upon cessation of business for any reason.

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

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

F. The Finance Director is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

Section 3.70.050. Failure to Pay Tax.

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

A. A penalty of no more than twenty-five percent (25%) of the amount of the tax (in addition to the amount of the tax), plus interest on the unpaid tax calculated from the due date of the tax at a rate not to exceed ten percent (10%) and these penalties and rates will be
set at the maximum amounts unless established otherwise by resolution of the city council.

B. Whenever a check is submitted in payment of a tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.

C. The tax due shall be that amount due and payable from the operative date of this chapter.

D. The Finance Director may waive the penalties of twenty-five percent (25%) each imposed upon any person if:

1. The person provides evidence satisfactory to the Finance Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the city prior to applying to the Finance Director for a waiver.

2. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four month period for taxation of proceeds, and only once during any five (5) year period for taxation of space utilized as cultivation area for cultivation of cannabis.

Section 3.70.060. Refunds.

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

B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of an operation.

C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against cannabis taxes for the next term.

D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, such amount may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Finance Director.

E. The Finance Director shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the Finance Director to do so.
F. In the event that the tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

G. The Finance Director shall initiate a refund of any tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a city audit of tax receipts. In the event that the tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

Section 3.70.070. Enforcement.

A. It shall be the duty of the Finance Director to enforce each and all of the provisions of this chapter.

B. For purposes of administration and enforcement of this chapter generally, the Finance Director, with the assistance of the City Attorney, may from time to time promulgate administrative rules and regulations.

C. The Finance Director shall have the power to audit and examine all books and records of operations as well as persons engaged in the conducting of an operation, including both state and federal income tax returns, California sales tax returns, logs, receipts, bank records, or other evidence documenting the gross receipts of the operation, or persons engaged in the conduct of an operation, for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such operations or person, after written demand by the Finance Director, refuses to make available for audit, examination or verification such books, records, or equipment as the Finance Director requests, the Finance Director may, after full consideration of all information within the Finance Director’s knowledge concerning the operation and activities of the person so refusing, make a determination of tax due in the manner provided in Section 3.70.080 of this chapter.

D. 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.

E. Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact, either concerning the operation and administration of this chapter, or as provided for in this chapter, shall be deemed guilty of a misdemeanor.

Section 3.70.080. Debts; Deficiencies; Determinations; Hearings.

A. The amount of any tax, penalties, and interest imposed by the provisions of this chapter
shall be deemed a debt to the city and any person conducting an operation without also making payment to the city of the taxes imposed by this chapter 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 operation.

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

C. Under any of the following circumstances, the Finance Director may make and give notice of a determination of the amount of tax owed by a person under this chapter:

1. If the person has not filed any statement or return required under the provisions of this chapter.

2. If the person has not paid any tax due under the provisions of this chapter.

3. If the person has not, after demand by the Finance Director, filed a corrected statement or return, or furnished to the Finance Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this chapter.

4. If the Finance Director determines that the nonpayment of any tax due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.

5. The notice of determination shall separately set forth the amount of any tax known by the Finance Director to be due or estimated by the Finance Director, after consideration of all information within the Finance Director’s knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of determination.

6. The notice of determination shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business appearing on the face of the business tax certificate issued under this Code or to such other address as he or she shall register with the Finance Director for the purpose of receiving notices provided under this chapter; or, should the person have no business tax certificate issued and should the person have no address registered with the Finance Director for such purpose, then to such person’s last known
address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

D. Within ten days after the date of service of a determination of the amount of tax owed by a person under this chapter, the person may apply in writing to the Finance Director for a hearing on the determination. If application for a hearing before the City is not timely made, the tax assessed by the Finance Director shall become final. The procedures for such a hearing shall be conducted as required by law and as follows:

1. The city council delegates its authority to conduct such a hearing on the determination to an independent hearing officer. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing on the determination in the manner set forth herein and as required by law.

2. Within 30 days of the receipt of any such application for hearing, the Finance Director shall cause the matter to be set for hearing before the independent hearing officer, unless a later date is agreed to by the Finance Director and the person requesting the hearing.

3. Notice of the hearing shall be given by the Finance Director to the person requesting the hearing not later than five days prior to the date of the hearing. For good cause, the hearing officer may continue the administrative hearing from time to time. At the hearing the applicant may appear and offer evidence to show why the determination as made by the Finance Director should not be confirmed and fixed as the tax due. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the person who applied for a hearing on the determination to appear shall not affect the validity of the proceedings or order issued thereon.

4. Upon conclusion of the hearing, or no later than 10 days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in this chapter for giving notice of determination, and the hearing officer shall submit its decision and the record to the City Clerk. The decision of the hearing officer shall be final.

3.70.090. Amendment.

The city council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the city council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Section 9217 of the California Elections Code.

SECTION 2. EFFECTIVE DATE.

If a majority of the voters of the City of Morro Bay voting at the General Municipal Election of November 6, 2018 vote in favor of this Ordinance, then this Ordinance shall become a valid and
binding ordinance of the City of Morro Bay, and shall be considered as adopted upon the date that the vote is declared by the City Council of the City of Morro Bay, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code section 9217.

SECTION 3. CITY COUNCIL AUTHORITY TO AMEND

This is a city council sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City of Morro Bay. However, pursuant to Section 9217 of the California Elections Code, the city council expressly reserves the right and authority to amend the Ordinance to further the purposes and intent of the Ordinance (including but not limited to amendment for more efficient administration as determined by the city council) in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

SECTION 5. EXECUTION.

The Mayor of the City of Morro Bay is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Morro Bay by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Morro Bay, California voting on the 6th day of November, 2018.

_________________________
Mayor

ATTEST:

_________________________
City Clerk

APPROVED AS TO FORM:

_________________________
City Attorney