

the Director 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 properly determine the amount of the tax to be paid by the applicant under Chapter 4.76, together with such other information as is required by the Director to enable the Director to administer the provisions of this Chapter.

4.66.240 Payment - Location

The tax imposed under this Chapter shall be paid to the Director in lawful money of the United States, at City Hall, San José, California. Lawful money 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.

4.66.250 Amount of Businesses Tax Owed

In addition to the business tax imposed under Chapter 4.76 of this Code and the requirements set forth therein, every person engaged in marijuana business in the City shall pay a business tax at the rate of **up to three percent (3%) of gross receipts**.

4.66.260 Payment - Time Limits

The business tax imposed by this Chapter shall be due and payable as follows:

- A. Each person owing a tax under this Chapter shall, on or before the last day of each calendar month, prepare a tax return to the Director of the total gross receipts and the amount of tax owed for the preceding calendar month. At the time the tax return is filed, the full amount of the tax owed for the preceding calendar month shall be remitted to the Director.

- C. The business tax due shall be that amount due and payable from the first date on which the person was engaged in marijuana business in the City, together with applicable penalties and interest calculated in accordance with Subsection A above, **or from the first operative date of this Chapter.**

4.66.310 Waiver of Penalties

The Director may waive the first and second penalties of twenty-five percent (25%) each imposed upon any person if:

- A. The person provides evidence satisfactory to the 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 Director for a waiver.
- B. The waiver provisions specified in this Subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four (24) month period.

4.66.320 Refunds - Credits

- A. No refund shall be made of any tax collected pursuant to this Chapter except as provided in Section 4.66.330.
- B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution or other termination of a business.

- B. For any person not having a fixed place of business within the City of San José who comes into the City for the purpose of transacting business and who is not exempt as provided in Subsection A. of this Section, the business tax payable by such person may be apportioned by the Director in accordance with Section 4.66.520.

Part 4

Administration and Enforcement

4.66.500 Enforcement - Duties of Director and Chief of Police

It shall be the duty of the Director to enforce each and all of the provisions of this Chapter, and the Chief of Police shall render such assistance in the enforcement of this Chapter as may from time to time be required by the Director.

~~4.66.510 Rules and Regulations~~

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

4.66.520 Apportionment

- A. None of the tax provided for by this Chapter shall be applied so as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitutions of the United States or the State of California.

of persons engaged in marijuana business, ~~and, where necessary, all equipment, of any person engaged in marijuana business in the City, for the purpose of ascertaining the amount of business tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this Chapter.~~ If such person, after written demand by the Director, refuses to make available for audit, examination or verification such books, records or equipment as the Director requests, the Director may, after full consideration of all information within his or her knowledge concerning the marijuana business and activities of the person so refusing, make an assessment in the manner provided in Sections 4.66.560 through 4.66.580 of any taxes estimated to be due.

4.66.540 Tax Deemed Debt to City

The amount of any tax, penalties and interest imposed by the provisions of this Chapter shall be deemed a debt to the City and any person carrying on any marijuana 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.

~~4.66.550 Deficiency Determinations~~

~~If the 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, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from~~

~~engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 4.66.560 through 4.66.580.~~

4.66.560 Tax Assessment - Authorized When - Nonpayment - Fraud

- A. Under any of the following circumstances, the Director may make and give notice of an assessment 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 Director, filed a corrected statement or return, or furnished to the 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 Director determines that the nonpayment of any business 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.
- B. The notice of assessment shall separately set forth the amount of any tax known by the Director to be due or estimated by the Director, after consideration of all information within the Director's knowledge concerning the business and

and fixed as the tax due. After such hearing the Director shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 4.66.570 for giving notice of assessment.

4.66.590 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.

~~**4.66.600 Violation Deemed Misdemeanor - Penalty**~~

~~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 in procuring the business tax certificate provided for in Chapter 4.76 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment.~~

4.66.610 Operative Date

The operative date of this Chapter shall be March 1, 2011.

4.66.620 Severability

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or

otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

4.66.630 Effect of State ~~and Federal~~ Reference/Authorization

Unless specifically provided otherwise, any reference to a State ~~or federal~~ statute in this Chapter shall mean such statute as it may be amended from time to time, provided that such reference to a statute herein shall not include any amendment thereto, or to any change of interpretation thereto by a State ~~or federal~~ agency or court of law with the duty to interpret such law, to the extent that such amendment or change of interpretation would, under California law, require voter approval of such amendment or interpretation, or to the extent that such change would result in a tax decrease. To the extent voter approval would otherwise be required or a tax decrease would result, the prior version of the statute (or interpretation) shall remain applicable; for any application or situation that would not require voter approval or result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent.

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

4.66.640 Subject to Annual City Audits

Pursuant to Section 1215 of the City's Charter, as may be amended, the revenues from the tax imposed by this Chapter shall be subject to the annual audit performed by the