



Item No. 10(A)

**REPORT TO THE CITY COUNCIL**

**DATE:** JULY 14, 2020

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** OCTAVIO HURTADO, CITY ENGINEER

**RE:** CONSIDERATION OF RIVERVIEW GARDENS LANDSCAPE MAINTENANCE DISTRICT ANNUAL ASSESSMENT FOR FISCAL YEAR 2020-21

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**RECOMMENDATION:**

It is recommended the City Council open the Public Hearing to accept public testimony regarding the levy and collection of assessments for the Riverview Gardens Landscape Maintenance District, close of the public hearing, and adopt **Resolution No. 2020-4770**, approving the report and ordering the levy and collection of assessments for the Riverview Gardens Landscape Maintenance District pursuant to provisions of the Landscaping and Lighting Act of 1972 of the Streets and Highways Code of the State of California.

**BACKGROUND:**

The Riverview Gardens Landscape Maintenance District was formed in 1998 for the purpose of providing maintenance services to landscaping and appurtenant improvements for the Riverview Gardens development and assessing those properties which benefit from this service. Each year the City Council must, by law, order the preparation of an Engineer's Report describing the existing and proposed maintenance services and conduct a public hearing to establish and order the amount of assessment for the next fiscal year.

At the time the District was formed, the engineer included an annual assessment adjustment equal to the April Consumer Price Index for the San Francisco-Oakland-Hayward areas ("CPI"). Each year since the District was formed, a new maximum assessment was established by applying the April CPI to the Maximum Assessment for the prior year. The City may assess the District parcels any

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amount up to the established Maximum Assessment for that year but may not exceed that amount. Included in the Engineer's Report is a table showing the Maximum Assessment and the Actual Assessment for each year since the District was formed.

**DISCUSSION:**

The Resolutions provide notice to the members of the District and citizens of the City of King of the City's intent to again levy and collect assessment fees for the previously formed landscaping and lighting district. In addition, the Resolutions establish that the City Council: (1) finds that the public interest and convenience requires, and (2) declares its intention, to order the levy of and to collect assessments against the assessable lots and parcels of property within an existing assessment district designated "Landscaping and Lighting Maintenance District "Riverview Gardens Landscape Maintenance District" ("District") pursuant to the provisions of the Act, for the fiscal year commencing July 1, 2020 and ending June 30, 2021, to pay for the costs and expenses of the improvements described in the Resolution. In addition, the Resolution will establish the purpose of the Landscaping and Lighting District No. 2, which is for the operation and maintenance of street lighting, public landscaping, and all related appurtenances located within public right-of-way, dedicated easements, or dedicated public properties of the tracts and public lands in the City of King. Lastly, it establishes the scope of improvements which will be provided within the District.

Staff solicited proposals to prepare the Engineer's Report. Harris and Associates was selected, who is a leading firm in performing this type of work. A copy of the Engineer's Report is attached.

**COST ANALYSIS:**

The District was established to fund the ongoing maintenance and servicing of the improvement. The properties within the District are assessed annually through the Monterey County tax roll. The cost to maintain the improvements for Fiscal Year 2020-21 has been estimated at \$18,062. This includes contract services for the maintenance and servicing of the improvements, utilities, engineering and administrative costs, Monterey County charges, and reserve collections. Each of the 45 parcels in the District benefits equally from the improvements. As a result, each parcel is assessed the same amount. For Fiscal Year 2020-21, that amount is \$401.38. If the assessments are not charged to the properties within the District, the costs to maintain the improvements will have to be funded in some other way.

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**ENVIRONMENTAL REVIEW:**

The resolution is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in physical change in the environment, directly or indirectly. Most of the terms and scope of city discretion are guided by existing State and Federal law. The resolution declares the City's intent to levy and collect assessment fees. The resolution does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Alternatively, the resolution is exempt from CEQA because the City Council's adoption of the resolution is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)).

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

1. Approve staff's recommendations;
2. Modify and approve the cost of the Assessment, which would require the City to subsidize the maintenance if the cost is reduced;
3. Direct staff to eliminate the assessment and maintenance work; or
4. Provide other direction to staff.

**Exhibits:**

1. Resolution No. 2020-4770
2. Engineer's Report

Submitted by: \_\_\_\_\_

  
Octavio Hurtado, City Engineer

Approved by: \_\_\_\_\_

  
Steven Adams, City Manager

**RESOLUTION NO. 2020-4773****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KING AMENDING AND/OR APPROVING THE ANNUAL ASSESSMENT REPORT AND ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE RIVERVIEW GARDENS LANDSCAPE MAINTENANCE DISTRICT FOR FISCAL YEAR 2020/21**

**WHEREAS**, the City Council of the City of King has, by previous Resolutions, initiated proceedings and declared its intention to levy and collect annual assessments in a special maintenance district created pursuant to the terms of the “Landscaping and Lighting Act of 1972”, being Division 15, Part 2 of the Streets and Highways Code of the State of California (the “1972 Act”). Said special maintenance district is known and designated as Riverview Gardens Landscape Maintenance District, (the “District”);

**WHEREAS**, at this time all notice and Public Hearing requirements as required by the 1972 Act and Proposition 218 have been met relating to the levy of the annual assessments; and,

**WHEREAS**, the City Council has received and reviewed the Engineer’s Report (the “Report”) and is now satisfied with the assessments, diagram and all other matters as contained in the Report as it is now submitted for final consideration and approval; and,

**WHEREAS**, the assessments are in compliance with all laws pertaining to the levy of the District assessments; said assessments are levied without regard to property valuation **and are in compliance with the provisions of Proposition 218 as the District was approved by a 100% vote of the property owners at the time of formation**; and,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KING AS FOLLOWS:**

**RECITALS**

- Section 1. The above recitals are all true and correct.
- Section 2. This City Council hereby finds and determines that the procedures for the consideration of the levy of the annual assessments have been undertaken in accordance with the 1972 Act and Proposition 218. The proposed assessments for Fiscal Year 2020/21 are not proposed to be increased beyond what was previously authorized at the time of formation of the District.

**DETERMINATION AND CONFIRMATION**

- Section 3. The final assessments and diagram for the proceedings, as contained in the Report, are hereby approved and confirmed.

Based upon the Report and the testimony and other evidence presented at the Public Hearing, the City Council hereby makes the following determinations regarding the proposed assessments:

- a. The proportionate special benefit derived by each assessed parcel has been determined in relationship to the entirety of the cost of the operations, maintenance and servicing of the improvements.
- b. The assessments do not exceed the reasonable cost of the proportional special benefit conferred on each parcel.
- c. Only special benefits have been assessed.

The assessments for the District contained in the Report for Fiscal Year 2020/21 are hereby confirmed and levied upon the assessable lots or parcels within the District in the amounts set forth in the Report.

#### **ORDERING OF MAINTENANCE**

- Section 4. The public interest and convenience requires and this legislative body does hereby order the maintenance work to be performed as said maintenance work is set forth in the Report and as previously declared and set forth in the Resolution of Intention.

#### **FILING WITH SECRETARY**

- Section 5. The above referenced Report shall be filed in the Office of the City Clerk and shall remain open for public inspection.

#### **ENTRY UPON THE ASSESSMENT ROLL**

- Section 6. The County Auditor shall enter onto the County Assessment roll, opposite each lot or parcel of land, the amount assessed thereupon, as shown in the Report.

#### **COLLECTION AND PAYMENT**

- Section 7. The assessments shall be collected at the same time and in the same manner as County taxes are collected and all laws providing for the collection and enforcement of County Taxes shall apply to the collection and enforcement of the assessments.

#### **FISCAL YEAR**

- Section 8. The assessments as above authorized and levied for these proceedings will provide revenue and relate to the fiscal year commencing July 1, 2020 and ending June 30, 2021.

This resolution was passed and adopted this 14<sup>th</sup> day of July, 2020 by the following vote:

**AYES:**

**NAYS:**

**ABSENT:**

**ABSTAIN:**

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Mike Lebarre, Mayor

**ATTEST:**

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Steven Adams, City Clerk

**APPROVED AS TO FORM:**

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Roy Santos, City Attorney



**Harris & Associates**

**CITY OF KING  
FINAL ENGINEER'S REPORT  
FISCAL YEAR 2020-21  
RIVERVIEW GARDENS LANDSCAPE  
MAINTENANCE DISTRICT**

**July 2020**

*PREPARED BY*

*Harris & Associates*

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# STATEMENT OF ASSESSMENT ENGINEER

**AGENCY:** CITY OF KING

**PROJECT:** RIVERVIEW GARDENS LANDSCAPE MAINTENANCE DISTRICT

**TO:** THE CITY COUNCIL  
CITY OF KING  
STATE OF CALIFORNIA

## ENGINEER'S REPORT FOR FISCAL YEAR 2020-21

The preparation of this Annual Engineer's Report ("Report") is in conformance with the obligation of the City Council for the Riverview Gardens Landscape Maintenance District of the City of King to provide landscaping services for each lot or parcel of land in the district in proportion to the estimated benefit to be received by each such lot or parcel of land for Fiscal Year 2020-21.

Pursuant to the Landscaping and Lighting Act of 1972 (Part 2 Division 15 of the Streets and Highways Code of the State of California, commencing with Section 22500) ("Act"), Article XIII D, Section 4(a) of the State of California Constitution, and in accordance with the City of King's Resolution being adopted by the City Council for the:

### **RIVERVIEW GARDENS LANDSCAPE MAINTENANCE DISTRICT**

(Hereinafter referred to as the "District"),

I, K. Dennis Klingelhofer, authorized representative of the District, the duly appointed Assessment Engineer submit the following Report which consists of the following four (4) parts and Appendices:

#### **PART 1**

**Description of Improvements:** This part provides a general description of improvements proposed to be maintained in the District. Plans and specifications for the improvements are on file with the City and are hereby made a part of this Report by reference.

#### **PART 2**

**Estimate of Cost:** This part contains the cost estimate of the proposed maintenance including incidental costs and expenses for Fiscal Year 2020-21.

#### **PART 3**

**District Diagram:** This part incorporates a Diagram of the District showing the external boundaries of the District. The lines and dimensions of each lot or parcel within the District are those lines and dimensions shown on the maps of the Monterey County Assessor for the year in which this Report was prepared and are incorporated by reference herein and made part of this Report. The District Diagram is filed under separate cover with the office of the City Clerk.

**PART 4**

**Method of Apportionment of the Assessments:** This part describes the method of apportionment of assessments, based upon parcel classification of land within the District in proportion to the estimated special benefits to be received. The costs and expenses of the District have been assessed upon the parcels of land within the boundaries of District pursuant to the initial methodology established Resolution No. 3757 approved on the 19<sup>th</sup> day of May, 1998.

**Appendices**

- Appendix A – Assessment Roll
- Appendix B – District Diagram

In conclusion, it is my opinion that the costs and expenses of the District have been assessed to the lots and parcels within the boundaries of the District in proportion to the estimated benefits to be received by each lot or parcel from the services provided.

DATED this 23<sup>rd</sup> day of June, 2020

 **Harris & Associates**



K. Dennis Klingelhofer, P.E., Assessment Engineer  
R.C.E. No. 50255  
Engineer of Work

## **PART 1 – PLANS AND SPECIFICATIONS**

The District was formed for the purpose of ensuring the ongoing operation, maintenance and servicing of certain landscape improvements within the boundaries of the District. Said improvements are detailed below under “Improvements and Services Provided”.

The Riverview Gardens Landscape Maintenance District is within the boundaries of the City and is located south of Willow Street, east of San Antonio Drive, and generally north of King City high school.

The District is comprised of the residential development known as Riverview Gardens and includes forty five (45) developed single family residential parcels.

The plans and specifications for the improvements, showing the general nature, location, and the extent of the improvements, are on file with the City and are incorporated herein by reference.

### **IMPROVEMENTS AND SERVICES PROVIDED**

The following are the specific improvements which are maintained and serviced within the District:

- Landscape maintenance along the Willow Street frontage, including ground cover, shrubs, trees and irrigation system. Landscaping total approximately 12,275 square feet.
- Masonry wall maintenance, including graffiti abatement at the entrance to the tract. Masonry wall is 300 linear feet by 6 feet high.
- Utilities including water and electricity for landscaping.

Maintenance includes all necessary repair, service, and replacement of improvements, including the masonry wall, water and electrical energy to run the irrigation system, fertilizer, weeding, debris removal, etc.

## PART 2 – ESTIMATE OF COST

The estimated budget for the annual maintenance and servicing of the improvements and the proportionate share of administration costs of the District have been prepared based on the estimated and recent historical costs of the District. The 2020-21 District budget is shown below.

### ESTIMATE OF COST

<b>DIRECT COSTS</b>	
Utility – Water and Electricity	\$2,300.00
Contract Services – Landscape Maintenance (12,275 sf @0.49/sf) (ex: tree & shrub maintenance and replacement, sprinkler repairs, etc.)	6,000.00
Masonry Wall – Maintenance and Graffiti Abatement	180.00
Professional Services – Public Works (inspection & oversight)	<u>500.00</u>
<b>Direct Costs Sub-Total</b>	<b>\$8,980.00</b>
<b>ADMINISTRATIVE COSTS</b>	
Professional Services – Engineer's Report	\$4,500.00
City Administration Fee	898.00
County Administration Fee (\$15 per parcel)	675.00
Rounding Adjustment (to make an even penny for tax roll purposes)	<u>0.00</u>
<b>Administrative Costs Sub-Total</b>	<b>\$6,073.00</b>
<b>SUBTOTAL DIRECT AND ADMINISTRATIVE COSTS</b>	<b>\$15,053.00</b>
Operating Reserve Collection/(Reduction)	\$3,009.10
Capital Reserve Collection/(Reduction)	<u>0.00</u>
<b>TOTAL BALANCE TO ASSESSMENT</b>	<b>\$18,062.10</b>
Total Assessable Parcels/Units	45
<b>ASSESSMENT PER PARCEL/UNIT</b>	<b>\$401.38</b>

The 1972 Act requires that a special fund be set-up for the revenues and expenditures of the District. Funds raised by assessment shall be used only for the purpose as stated herein. A contribution to the District by the City may be made to reduce assessments or to fund costs which are greater than revenue from the assessments, as the City Council deems appropriate. Any balance or deficit remaining on July 1 must be carried over to the next fiscal year. Estimated beginning and ending fund balances for Fiscal Year 2020-21 are shown in the following table.

Section 22569 (a) of the 1972 Act allows the District assessments to "...include a reserve (Operating Reserve) which shall not exceed the estimated costs of maintenance and servicing to December 10 of the fiscal year, or whenever the city expects to receive its apportionment of special assessments and tax collections from the county, whichever is later."

## DISTRICT FUND BALANCES

<b>OPERATING RESERVE FUND</b>	
Estimated Reserve Fund Beginning Balance as of July 1, 2020	(\$6,273.00)
Operating Reserve Collection/(Reduction) – Fiscal Year 2020-21	<u>3,009.10</u>
<b>Estimated Reserve Fund Balance Ending June 30, 2021</b>	<b>(\$3,263.90)</b>

<b>CAPITAL RESERVE FUND</b>	
Estimated Reserve Fund Beginning Balance as of July 1, 2020	\$0.00
Operating Reserve Collection/(Reduction) – Fiscal Year 2020-21	<u>0.00</u>
<b>Estimated Reserve Fund Balance Ending June 30, 2021</b>	<b>\$0.00</b>

Operating Reserve collections will continue until such time as the fund balance reaches approximately 50% of the annual budget. This is necessary to fund the District costs for the first 6 months of the fiscal year. After the Operating Reserve has been fully funded (50% of annual costs), any future collections will be to maintain the proper level of funding.

Capital Reserve collection is intended for the eventual replacement of the masonry wall at the entrance of the development. Masonry walls typically have an expected useful life of approximately 30 years. The wall was installed in 1998, leaving approximately seven years of useful life, as of Fiscal Year 2020-21. The allowable District assessment is insufficient for Capital Reserve collections at this time, but future budgets may include amounts to contribute to the replacement of the masonry wall.

## DESCRIPTION OF COST ESTIMATE ITEMS

- **Utility – Water & Electricity:** The costs to provide water and electrical utilities for the landscaping improvements within the District.
- **Contract Services – Landscape Maintenance:** The contracting costs associated with performing the landscape maintenance duties associated with the improvements within the District. In Fiscal Year 2020-21 the City plans on hiring a landscape contractor to perform these services. Annual costs may be adjusted to reflect the actual contract costs.
- **Masonry Wall:** Costs associated with the maintenance of the masonry wall, including graffiti removal, painting and repairs. This cost is currently equal to \$0.10/sf, but may be adjusted as necessary to cover actual costs.
- **Professional Services Special – Public Works:** Costs associated with individuals within the Public Works Department who contribute time to inspection of the improvements, and oversight of the work performed by the landscape contractor.
- **Professional Services – Engineer:** The contracting costs associated with hiring a consultant for the preparation of an engineer's report, resolutions, assessment roll and budget.
- **City Administration Fee:** Costs associated with individual City Staff and Management (City Clerk, City Council, City Manager, Finance Director, City Engineer, etc.) who contribute time to the annual administration and oversight of the District, and totals 10% of Direct Costs. This may include but is not limited to, preparation for and attendance of meetings, legal counsel, printing, preparation and posting of public notices, mailing, budgeting, etc.
- **County Administration Fee –** The County costs related to placement of the annual assessment charges onto the tax roll and the generation of annual tax bills related thereto. This charge is \$15.00 for each parcel submitted for inclusion on the tax roll.
- **Contingency –** This item includes costs related to the unplanned repair or replacement of any of the improvements, including the irrigation system.
- **Operating Reserve Collection/(Contribution):** This item shows any collections which adds to the Operating Reserve Fund balance, or contributions made from the Operating Reserve Fund, to offset the annual budget.
- **Capital Reserve Collection/(Contribution):** This item shows collections for replacement costs related to the masonry wall, irrigation system and trees. These items have a finite life span and will require replacement in the future. There may also be need for unplanned replacement, due to accident or natural disaster.
- **Estimated Reserve Fund Balances:** These items show the estimated Operating and Capital Reserve Fund amounts at the beginning and end of the fiscal year. The estimated ending balance reflects any collections or reductions from the estimated beginning balance.

## **PART 3 – ASSESSMENT DIAGRAM**

A diagram showing the exterior boundaries of the District and the lines and dimensions of each lot or parcel of land within the District has been submitted to the office of the City Clerk of the City, and is hereby made a part hereof by reference.

A copy of the assessment diagram for the District is included in Appendix B of the Report.

## PART 4 – METHOD OF APPORTIONMENT

### General

Estimated costs for Fiscal Year 2020-21 for the construction, operation, servicing and maintenance of the landscaping facilities described in Part A are shown in the following table.

Street and Highways Code Section 22573 requires that maintenance assessments be levied according to benefit rather than according to assessed value. This section states:

**“The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements.”**

— Streets and Highways Code Section 22573

The 1972 Act permits the designation of areas of benefit within any individual assessment district if "by reason of variations in the nature, location, and extent of the improvements, the various areas will received different degrees of benefit from the improvements." (Sec. 22574). Thus, the 1972 Act requires the levy of a true "assessment" rather than a "special tax."

In November 1996, the voters of California adopted Proposition 218, which has been codified as Articles XIIC and XIID of the California Constitution. Proposition 218 imposed a number of substantive and procedural requirements on taxes, assessments, and property-related fees imposed by local governments in California.

The method of apportionment described in this Report, and confirmed by the City Council, utilizes commonly accepted engineering practices which have been established pursuant to the 1972 Act and the California Constitution for the allocation of special benefit assessments. The calculation of assessments is based upon the parcel type and the services and improvements provided to equitably apportion the costs based on the special benefit received by each lot or parcel. The special benefit received by each lot or parcel is over and above any general benefit conferred upon said lots or parcels or to the public at large.

### SPECIAL BENEFIT

The improvements and associated costs have been allocated to the assessable properties within the District based upon the special benefit received by those properties. The improvements for which the properties are assessed have been identified as necessary, were installed and are being maintained as part of the development plans specifically for each tract. As such, the improvements and continuing maintenance and servicing of those improvements are strictly the obligation of the properties within the District.

### General Benefit

Although the improvements may be visible to passersby or to the public at large, the improvements were installed as a requirement of the development of the tract and are for the sole benefit of those properties. It has been determined therefore, any access or use by properties or individuals outside the District is completely incidental and the costs of operating, maintaining and servicing said improvements therefore provides no measurable benefit to outside properties or individuals.

### **Definition of Special Benefit**

The method of apportionment described in this Report is based on the premise that each assessable parcel or unit receives distinct and special benefits from the improvements and services provided, including the visual desirability provided by well-maintained landscaping. In accordance with Article XIII D, Section 4 of the California Constitution:

**“Special benefit means a particular and distinct benefit over and above general benefits conferred on real property located in the District or the public at large”**

The special benefits associated with local landscaping improvements are specifically:

- Enhanced desirability of properties due to proximity and accessibility of the improvements.
- Improved aesthetic appeal provided by a positive representation of the development, neighborhood and the community.
- Reduced vandalism and other criminal activity.
- Enhanced environmental quality provided by adequate green space and other landscaping which helps moderate temperatures, reduce noise pollution and control dust and debris.

### **ASSESSMENT RANGE FORMULA**

It is generally recognized that most budgetary items will be impacted by inflation in future years. In accordance with the California Constitution, Section 53739 (b)(1), assessments ***“may be adjusted for inflation pursuant to a clearly defined formula...”*** A formula for an inflationary adjustment is therefore included as part of the maximum assessment for this District and was approved by the property owner(s) at the time of formation. The formula, as described below, allows for annual adjustments to the budget and the assessments.

To impose a new assessment or increased assessment in excess of the Maximum Assessment Rate for the current fiscal year, as provided by the following Assessment Range Formula, the City must comply with the provisions of the California Constitution, Article XIII D, Section 4c that requires a public hearing and certain protest procedures including mailed notice of the public hearing and property owner protest balloting. Property owners must approve the proposed new or increased assessment via a property owner protest balloting process before any such new or increased assessment can be imposed. A protest occurs when, at the public hearing, the returned assessment ballots opposed to the new or increased assessment outweigh the returned ballots in favor of the new or increased assessment, weighting those assessment ballots by the financial obligation of each parcel.

The definition of new or increased assessments includes any assessment which, 1) did not previously exist or, 2) exceeds a previously approved assessment amount or assessment range formula. Any assessment range formula must have been previously adopted by the agency and approved by the property owners.

## ASSESSMENT METHODOLOGY

The benefit formula used to determine the financial obligation for each parcel is based on the improvements benefitting the parcels, as well as the use, or type, of each parcel that benefits from said improvements. One of the more common approaches to fairly distributing District costs to the benefitting parcels in maintenance districts such as this utilizes a methodology referred to as the "Per Parcel" method of apportionment. This method, as confirmed by the City Council at the time the District was formed, identifies the fact that all the parcels in the District, each being single family residential, benefit equally from the improvements provided by the District.

The initial maximum assessment for this District was established at the time of formation and was assessed for the first time during the 1998-99 fiscal year. That initial maximum assessment was \$221.72 per parcel. This initial maximum assessment has been adjusted each subsequent fiscal year by the following Assessment Range Formula:

- The Maximum Assessment Rate allowed each fiscal year (the "Adjusted Maximum Assessment Rate") shall be based on the initial maximum assessment established in Fiscal Year 1998-99, adjusted annually by the Bureau of Labor Statistics, Consumer Price Index for the month of April, All Urban Consumers, ("CPI") for the San Francisco/Oakland/Hayward area. Should the Bureau of Labor Statistics revise or discontinue the preparation of such index, the City reserves the right to use such revised index or a comparable system to determine fluctuations in the annual cost of living.
- Each fiscal year, the CPI shall be applied to the Maximum Assessment Rate established the previous fiscal year to calculate the appropriate Adjusted Maximum Assessment Rate for the current fiscal year.
- If the proposed annual assessment rate (levy per parcel) for the any year is less than or equal to the Adjusted Maximum Assessment Rate established for that fiscal year then the proposed annual assessment is not considered an increased assessment.

Beginning in the second fiscal year after the formation of the District (1999-00) and each fiscal year since, the Maximum Assessment Rate has been recalculated and a new Maximum Assessment Rate has been established for each fiscal year using the Assessment Range Formula described above. Based on the April CPI, shown in the table below, the Maximum Assessment Rate for the upcoming fiscal year (2020-21) shall be **\$401.38**. The Adjusted Maximum Assessment Rate has been calculated independent of the annual budget and proposed assessment rate for the given fiscal year. As stated above, if the proposed annual assessment for any fiscal year does not exceed the Adjusted Maximum Assessment Rate for that year, it is not considered to be an increased assessment under the terms of Proposition 218 or the Brown Act.

The table on the following page shows the annual April CPI increase, the Adjusted Maximum Assessment and the Actual Annual Assessment each year since the formation of the District:



Fiscal Year	April CPI %	CPI Calculation	Adjusted Max. Assessment	Actual Assessment
1998-99	N/A	N/A	\$221.72	\$221.72
1999-00	4.60%	1.046000000	\$231.92	\$221.72
2000-01	3.80%	1.038000000	\$240.73	\$213.60
2001-02	5.80%	1.058000000	\$254.69	\$229.92
2002-03	2.10%	1.021000000	\$260.04	\$229.92
2003-04	2.20%	1.022000000	\$265.76	\$114.96
2004-05	0.50%	1.005000000	\$267.09	\$114.96
2005-06	2.10%	1.021000000	\$272.70	\$114.96
2006-07	3.20%	1.032000000	\$281.43	\$114.96
2007-08	3.30%	1.033000000	\$290.72	\$114.96
2008-09	2.90%	1.029000000	\$299.15	\$114.96
2009-10	0.80%	1.008000000	\$301.54	\$25.00
2010-11	1.70%	1.017000000	\$306.67	\$25.00
2011-12	2.80%	1.028000000	\$315.25	\$25.00
2012-13	2.10%	1.021000000	\$321.87	\$0.00
2013-14	2.40%	1.024000000	\$329.60	\$0.00
2014-15	2.80%	1.028000000	\$338.83	\$0.00
2015-16	2.40%	1.024000000	\$346.96	\$0.00
2016-17	2.70%	1.027000000	\$356.33	\$0.00
2017-18	3.80%	1.038000000	\$369.87	\$0.00
2018-19	3.20%	1.032000000	\$381.70	\$0.00
2019-20	4.00%	1.040000000	\$396.97	\$213.60
2020-21	1.11%	1.011102405	\$401.38	\$401.38

*\*April CPI was not available at the time this Report was preliminarily approved by the City Council. 3% was used as an estimate. The actual April CPI and the appropriate change to the Adjusted Maximum Assessment has been updated for the Public Hearing.*

The City assessed the parcels in the District for the first time in seven years, in Fiscal Year 2019-20, due to the fact that there were no improvements being maintained. The improvements have now been installed and the City has been maintaining and servicing the improvements. The City plans to hire a landscape contractor to perform the maintenance duties in Fiscal Year 2020-21. Annual maintenance costs will be adjusted as necessary to reflect the contract costs.

## APPENDIX A – ASSESSMENT ROLL

Parcel Identification for each lot or parcel within the District shall be based on available parcel maps and other property data from the Monterey County Assessor's office as they existed at the time this Report was prepared and adopted by the City Council.

A listing of parcels assessed within the District for Fiscal Year 2020-21, along with the corresponding assessment amounts, is included on the following page. If any parcel submitted for collection is identified by the County Auditor/Controller to be an invalid parcel number for the current fiscal year, a corrected parcel number and/or new parcel numbers will be identified and resubmitted to the County Auditor/Controller. The assessment amount to be levied and collected for the resubmitted parcel(s) shall be based on the method of apportionment and assessment rate approved in this Report. Therefore, if a single parcel has changed to multiple parcels, the assessment amounts applied to each of the new parcels shall be recalculated and applied according to the approved method of apportionment and assessment rate rather than a proportionate share of the original assessment.

Non-assessable lots or parcels include areas of public streets and other roadways (typically not assigned an APN by the County); dedicated public easements, open space areas and rights-of-way, including public greenbelts and parkways; utility rights-of-way; common areas; landlocked parcels; small parcels vacated by the County, bifurcated lots and any other property that cannot be developed or has specific development restrictions. These types of parcels are considered to receive little or no benefit from the improvements and are therefore, exempted from assessment.

APN	Units	2020-21 Maximum Assessment Rate	2020-21 Proposed Assessment Rate	2020-21 Proposed Assessment
026-072-001	1.00	\$401.38	\$401.38	\$401.38
026-072-002	1.00	\$401.38	\$401.38	\$401.38
026-072-003	1.00	\$401.38	\$401.38	\$401.38
026-072-004	1.00	\$401.38	\$401.38	\$401.38
026-072-005	1.00	\$401.38	\$401.38	\$401.38
026-072-006	1.00	\$401.38	\$401.38	\$401.38
026-072-007	1.00	\$401.38	\$401.38	\$401.38
026-072-008	1.00	\$401.38	\$401.38	\$401.38
026-072-009	1.00	\$401.38	\$401.38	\$401.38
026-072-010	1.00	\$401.38	\$401.38	\$401.38
026-072-011	1.00	\$401.38	\$401.38	\$401.38
026-072-012	1.00	\$401.38	\$401.38	\$401.38
026-072-013	1.00	\$401.38	\$401.38	\$401.38
026-072-014	1.00	\$401.38	\$401.38	\$401.38
026-072-015	1.00	\$401.38	\$401.38	\$401.38
026-072-016	1.00	\$401.38	\$401.38	\$401.38
026-072-017	1.00	\$401.38	\$401.38	\$401.38
026-072-018	1.00	\$401.38	\$401.38	\$401.38
026-072-019	1.00	\$401.38	\$401.38	\$401.38
026-072-020	1.00	\$401.38	\$401.38	\$401.38
026-072-021	1.00	\$401.38	\$401.38	\$401.38
026-072-022	1.00	\$401.38	\$401.38	\$401.38
026-072-023	1.00	\$401.38	\$401.38	\$401.38
026-072-024	1.00	\$401.38	\$401.38	\$401.38
026-072-025	1.00	\$401.38	\$401.38	\$401.38
026-072-026	1.00	\$401.38	\$401.38	\$401.38
026-072-027	1.00	\$401.38	\$401.38	\$401.38
026-072-028	1.00	\$401.38	\$401.38	\$401.38
026-072-029	1.00	\$401.38	\$401.38	\$401.38
026-072-030	1.00	\$401.38	\$401.38	\$401.38
026-072-031	1.00	\$401.38	\$401.38	\$401.38
026-072-032	1.00	\$401.38	\$401.38	\$401.38
026-072-033	1.00	\$401.38	\$401.38	\$401.38
026-072-034	1.00	\$401.38	\$401.38	\$401.38
026-072-035	1.00	\$401.38	\$401.38	\$401.38
026-072-036	1.00	\$401.38	\$401.38	\$401.38
026-072-037	1.00	\$401.38	\$401.38	\$401.38
026-072-038	1.00	\$401.38	\$401.38	\$401.38

<b>APN</b>	<b>Units</b>	<b>2020-21 Maximum Assessment Rate</b>	<b>2020-21 Proposed Assessment Rate</b>	<b>2020-21 Proposed Assessment</b>
026-072-039	1.00	\$401.38	\$401.38	\$401.38
026-072-040	1.00	\$401.38	\$401.38	\$401.38
026-072-041	1.00	\$401.38	\$401.38	\$401.38
026-072-042	1.00	\$401.38	\$401.38	\$401.38
026-072-043	1.00	\$401.38	\$401.38	\$401.38
026-072-044	1.00	\$401.38	\$401.38	\$401.38
026-072-045	1.00	\$401.38	\$401.38	\$401.38
026-072-046	0.00	\$401.38	\$401.38	\$0.00
026-072-047	0.00	\$401.38	\$401.38	\$0.00
026-072-048	0.00	\$401.38	\$401.38	\$0.00
<b>TOTALS:</b>	<b>45.00</b>			<b>\$18,062.10</b>





Item No. 11 (A)

**REPORT TO THE CITY COUNCIL**

**DATE: JULY 14, 2020**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: STEVEN ADAMS, CITY MANAGER**

**RE: CONSIDERATION OF RESOLUTION PLACING ON THE NOVEMBER 3, 2020 ELECTION BALLOT AN ORDINANCE AMENDING CHAPTER 5.14 OF THE CITY OF KING MUNICIPAL CODE TO ADD A COMMERCIAL CANNABIS TAX ON THE RETAIL SALE OF CANNABIS AND INDUSTRIAL HEMP AND CANNABIS AND INDUSTRIAL HEMP PRODUCTS AND ON DISTRIBUTION OF CANNABIS AND CANNABIS PRODUCTS**

**RECOMMENDATION:**

It is recommended the City Council adopt a Resolution placing on the ballot of the election to be held on November 3, 2020 an Ordinance to amend Chapter 5.14 of the City of King Municipal Code to add a commercial cannabis tax on retail sale of cannabis and industrial hemp and cannabis and industrial hemp products and on distribution of cannabis and cannabis products.

**BACKGROUND:**

At the November 26, 2019 meeting, staff presented a number of recommended changes to cannabis tax rates. Some were approved at that time. Others require approval by the voters. The City's current tax rate for cultivation is \$9.75 per square foot. Nurseries are \$5 per square foot for the first 5,000 square feet and \$2.50 per square foot above that. Manufacturing and testing businesses are charged a flat annual fee of \$31,170.

At the February 25, 2020 meeting, the City Council adopted an Ordinance to allow cannabis storefront retail dispensaries. Staff recommended placing a measure on the November 3<sup>rd</sup> ballot to modify the existing cannabis tax ordinance to establish a tax on cannabis retail dispensary businesses and incorporate other tax rate changes. At the May 12, 2020 meeting, staff

## **CITY COUNCIL**

### **CONSIDERATION OF RESOLUTION PLACING ON THE NOVEMBER 3, 2020 ELECTION BALLOT AN ORDINANCE AMENDING CHAPTER 5.14 OF THE CITY OF KING MUNICIPAL CODE TO ADD A COMMERCIAL CANNABIS TAX ON THE RETAIL SALE OF CANNABIS AND INDUSTRIAL HEMP AND CANNABIS AND INDUSTRIAL HEMP PRODUCTS AND ON DISTRIBUTION OF CANNABIS AND CANNABIS PRODUCTS**

**JULY 14, 2020**

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presented options for the cannabis tax measure and received direction from the City Council.

Based on that direction, staff drafted a proposed measure for the November 3, 2020 ballot for consideration, which was presented to the City Council at the June 23, 2020 meeting for review and direction. One change was discussed and approved. After legal review and subsequent edits, the final Resolution and Ordinance are now being submitted for consideration.

#### **DISCUSSION:**

The ballot measure includes the following changes to the City's cannabis tax ordinance:

- Creates a 5% tax on gross receipts from the sale of cannabis and cannabis products for any cannabis storefront or non-storefront retail dispensary business.
- Creates a 5% tax on gross receipts from the retail sale of industrial hemp and industrial hemp products sold from any cannabis storefront or non-storefront retail dispensary business, as well as any other business that derives at least 50% of its revenue from the sale of industrial hemp or industrial hemp products.
- Creates a 2% tax on gross receipts from distribution of cannabis or cannabis products generated from businesses outside the City of King.
- Modifies payment of taxes from manufacturing and testing businesses to a quarterly rather than annual basis to be consistent with the tax on cultivation and nurseries.
- Updates language in the existing cannabis tax ordinance to address changes in statute and case law that have occurred since the original ordinance was approved by the voters.
- Provides a procedure for the City Manager to approve requests for reductions in cannabis cultivation taxes if a business is unable to utilize the fully permitted canopy area for a period of time due to an extreme event

**CITY COUNCIL**

**CONSIDERATION OF RESOLUTION PLACING ON THE NOVEMBER 3, 2020 ELECTION BALLOT AN ORDINANCE AMENDING CHAPTER 5.14 OF THE CITY OF KING MUNICIPAL CODE TO ADD A COMMERCIAL CANNABIS TAX ON THE RETAIL SALE OF CANNABIS AND INDUSTRIAL HEMP AND CANNABIS AND INDUSTRIAL HEMP PRODUCTS AND ON DISTRIBUTION OF CANNABIS AND CANNABIS PRODUCTS**

**JULY 14, 2020**

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outside the control of the business owner, such as flooding, fire, earthquake, utility outage, etc., which can be appealed to the City Council.

The proposed question to be placed on the ballot is as follows:

*Shall the measure amending the City of King commercial cannabis tax to include a new tax of up to 5% of gross receipts on the retail sale of cannabis and cannabis products, including industrial hemp and hemp products, and up to 2% of gross receipts on the distribution of cannabis and cannabis products generated from outside King City, which is projected to generate approximately \$150,000 annually, and will be in effect until terminated by the voters, be adopted?*

The ballot measure will require a simple majority vote for approval. The last day to file the measure is August 7<sup>th</sup>. Since the next regularly scheduled Council meeting is August 11<sup>th</sup>, this is the last Council meeting available to approve the Resolution and Ordinance unless a special meeting is called. A ballot argument has also been drafted and will be presented to City Council under a separate agenda item. The City Council is being requested to adopt the Resolution, which will place the proposed ordinance on the ballot for voter consideration. Adoption of the actual ordinance is done by the voters.

**COST ANALYSIS:**

The total cost of drafting the measure, placing it on the ballot, and providing public education is projected to be about \$10,000.

**ENVIRONMENTAL REVIEW:**

This matter is not a "project" for the purposes of the California Environmental Quality Act (CEQA) as it does not have the potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. No further action is required under CEQA for City Council action.

**ALTERNATIVES:**

The following alternatives are provided for City Council consideration:

1. Adopt the Resolution;

**CITY COUNCIL  
CONSIDERATION OF RESOLUTION PLACING ON THE NOVEMBER 3, 2020  
ELECTION BALLOT AN ORDINANCE AMENDING CHAPTER 5.14 OF THE  
CITY OF KING MUNICIPAL CODE TO ADD A COMMERCIAL CANNABIS TAX  
ON THE RETAIL SALE OF CANNABIS AND INDUSTRIAL HEMP AND  
CANNABIS AND INDUSTRIAL HEMP PRODUCTS AND ON DISTRIBUTION  
OF CANNABIS AND CANNABIS PRODUCTS  
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2. Make changes to the Resolution and/or Ordinance and adopt the Resolution;
3. Schedule a special meeting prior to August 7, 2020 to provide more time to consider the Resolution;
4. Do not approve placing the measure on the ballot; or
5. Provide staff other direction.

Prepared and Approved by:

  
\_\_\_\_\_  
Steven Adams, City Manager

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KING, CALIFORNIA, SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION HELD ON TUESDAY, NOVEMBER 3, 2020, AN ORDINANCE AMENDING AND RESTATING CHAPTER 5.14 OF THE KING CITY CODE TO IMPOSE TAXES ON BUSINESSES WHICH SELL AND/OR DISTRIBUTE CANNABIS AND CANNABIS PRODUCTS, INCLUDING INDUSTRIAL HEMP AND HEMP PRODUCTS, AND TO CLARIFY AND AMEND CERTAIN ITEMS IN THE MUNICIPAL CODE.**

**WHEREAS**, Pursuant to Article XI, Section 7, of the California Constitution, the City of King ("City") may adopt and enforce resolutions, ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

**WHEREAS**, the City Council of the City of King ("City") previously submitted to the voters a measure introducing a cannabis tax on certain businesses ("Cannabis Tax") in the City, which tax is now codified as Chapter 5.14 of the King City Municipal Code; and; and

**WHEREAS**, commercial cannabis business is regulated in the City pursuant to Chapter 17.03 of the King Municipal Code; and

**WHEREAS**, the California Industrial Hemp Farming Act, constituting Government Code Section 81600 et. seq. and regulations associated therewith, effective in 2017, authorized the commercial production of Industrial Hemp in California; and

**WHEREAS**, the cultivation and manufacturing of industrial hemp is regulated under the Chapter 17.04 of the King Municipal Code; and

**WHEREAS**, the City Council now desires to call an election to approve an ordinance to amend and restate Chapter 5.14 of the King Municipal Code to (a) enact a new Cannabis Tax on retailers and distributors in the City, (b) clean up and update provisions and interpretations of the Municipal Code related to the Cannabis Tax and (c) enact new taxes on retail sales of industrial hemp activities (the "Ordinance"); and

**WHEREAS**, the City Council has passed Resolution No. 2020-4767 on June 9, 2020, calling a general municipal election for the purpose of electing three (3) members of the City Council, and requesting that the general municipal election be consolidated with the Statewide general election to be held on Tuesday, November 3, 2020, and requesting that the Board of Supervisors of the County of Monterey direct the Registrar of Voters/ Election Department to take any and all necessary steps to conduct the consolidated election; and under the provisions of the laws relating to cities in the State

of California, a General Municipal Election shall be held on November 3, 2020, for the election of municipal officers; and

**WHEREAS**, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation; and

**WHEREAS**, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

**WHEREAS**, various district, county, state, federal and other political subdivision elections may be or have been called to be held on November 3, 2020; and

**WHEREAS**, the City Council also desires to consolidate the election on the Ordinance ballot measure with the Statewide general election to be held on November 3, 2020.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KING DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:**

Section 1. That the Recitals hereto are true and correct and incorporated herein by this reference.

Section 2. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election to be held and consolidated with the Statewide general election on Tuesday, November 3, 2020, the following question:

Shall the measure amending the City of King commercial cannabis tax to include a new tax of up to 5% of gross receipts on the retail sale of cannabis and cannabis products, including industrial hemp and hemp products, and up to 2% of gross receipts on the distribution of cannabis and cannabis products generated from outside King City, which is projected to generate approximately \$150,000 annually, and will be in effect until terminated by the voters, be adopted?	<b>YES</b>
	<b>NO</b>

Section 3. That the proposed complete text of the Ordinance submitted to the voters is attached hereto as Exhibit A and is hereby approved and adopted and by this reference incorporated herein.

Section 4. That the Board of Supervisors of the County of Monterey is hereby requested to consent and agree to the consolidation of the election on the ballot measure and the City's general municipal elections for councilmembers with the Statewide general election to be held on November 3, 2020, and to direct the Monterey County Registrar of Voters/Election Official to take any and all necessary steps to conduct the consolidated election.

Section 5. That the Election Department of the County of Monterey and Board of Supervisors/Registrar of Voters is authorized to canvass the returns of the election, The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 6. That the City recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for its share of the costs.

Section 7. That the City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election in accordance with the Elections Code and the laws of the state of California.

Section 8. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and Election Department of the County of Monterey.

Section 9. That the deadline for filing arguments on the ballot measure with the City Clerk of the City shall be the close of business on August 13, 2020. That in accordance with the requirements of Division 9, Chapter 3, Article 4 of the California Elections Code, all written arguments for or against the foregoing measure: (1) shall not exceed three hundred (300) words in length; (2) shall be filed with the City's elections official; (3) shall be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of the principal officers who is the author of the argument; and (4) shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. All written arguments may be changed or withdrawn until and including the date fixed by the City's elections official, being the close of business on August 13, 2020, after which time no arguments for or against the foregoing measure may be submitted to the elections official. Pursuant to Elections Code 9285, the City Council is authorized file a written argument.

That in the event that more than one argument for or against the foregoing measure is timely submitted, the City's elections official shall give preference and priority first, to arguments submitted by member(s) of the City Council, as authorized by this Resolution, and second, to individual voters, bona fide associations, or a combination thereof, in the order set forth at California Elections Code § 9287.

Section 10. That the deadline for filing of rebuttal arguments on the ballot measure with the City Clerk shall be at the close of business August 20, 2020. Rebuttals shall not exceed 250 words in length. The rebuttal arguments shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Section 11. 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 12. That, pursuant to Elections Code Section 9280, the City Clerk is hereby directed to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk by the close of business on August 13, 2020. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: "The above statement is an impartial analysis of Ordinance or Measure \_\_\_\_\_. If you desire a copy of the ordinance or measure, please call the elections official's office/city clerk at (831) 386-5971 and a copy will be mailed at no cost to you."

Section 13. That City Council of King hereby orders an election be called and consolidated with any and all elections also called to be held on November 3, 2020 insofar as said elections are to be held in the same territory or in territory that is in part the same as the territory of the requests the Board of Supervisors of the County of Monterey to order such consolidation under Elections Code Section 10401 and 10403.

Section 14. That the City Council hereby requests the Board of Supervisors to permit the Monterey County Elections Department to provide any and all services necessary for conducting the election and agrees to pay for said services.

Section 15. That the Monterey County Elections Department shall conduct the election for the measure delineated in Section 2 to be voted on at the election on November 3, 2020.

Section 16. The Elections Departments of Monterey County is hereby requested not to print the attached full measure text of Exhibit A hereto in the Voter Guide, but send a copy to voters upon request at the cost of the City. The contact number to be printed in the Voter Guide is (831) 386-5971 (EC §§ 9160, 9312, 9280).

In addition, the full text will be available at the following web site address: <http://www.kingcity.com>.

Section 17. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority of those casting ballots on the measure.

Section 18. The adoption of this Resolution is exempt from the California Environmental Quality Act, Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines"). The calling and noticing of a General Municipal Election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines Section 15378. The tax submitted to the voters is a general tax that can be used for any governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines Section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

Section 19. That the City Clerk and City Manager are hereby authorized to take all actions as necessary to effectuate the purposes of this resolution and the election.

Section 20. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

**I HEREBY CERTIFY** that the foregoing resolution was passed and adopted by the City Council of the City of King at a regular meeting thereof held on the \_\_\_ day of \_\_\_, 2020 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**ATTEST**

\_\_\_\_\_  
**STEVEN ADAMS**, City Clerk

**CITY OF KING**

By: \_\_\_\_\_  
**MIKE LEBARRE**, Mayor

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
**ROY C. SANTOS**, City Attorney  
Aleshire & Wynder, LLP

I, \_\_\_\_\_, City Clerk of the City of King, California, DO  
HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution  
passed and adopted by the City Council of the City of King on the date and by the vote  
indicated herein.

**Exhibit A to Resolution No. \_\_\_\_**

(Full Text of Ordinance Amendment)

EXHIBIT A

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF KING CITY, CALIFORNIA AMENDING CHAPTER 5.14 (CANNABIS BUSINESS TAX) TO TITLE 5 OF THE KING CITY MUNICIPAL CODE

THE PEOPLE OF THE CITY OF KING CITY DO ORDAIN AS FOLLOWS;

SECTION 1. CODE AMENDMENT. Chapter 5.14 is amended to Title 5 of the King City Municipal Code to read as follows:

Chapter 5.14

Commercial Cannabis Tax

- 5.14.010 Authority and purpose.
- 5.14.020 Tax imposed.
- 5.14.030 Definitions.
- 5.14.040 Other licenses, permits, taxes, fees or charges.
- 5.14.050 Payment of tax does not authorize unlawful business.
- 5.14.060 Payment - Location.
- 5.14.070 Amount of cannabis tax owed.
- 5.14.080 Payment - Time limits.
- 5.14.090 Payments and communications made by mail - Proof of timely submittal.
- 5.14.100 Payment- When taxes deemed delinquent.
- 5.14.110 Notice not required by city.
- 5.14.120 Payment- Penalty for delinquency.
- 5.14.130 Waiver of penalties.
- 5.14.140 Refunds- Credits.
- 5.14.150 Refunds and procedures.
- 5.14.160 Exemptions -Application - Issuance conditions.
- 5.14.170 Exemptions - General.
- 5.14.180 Exemptions - Occasional transactions.
- 5.14.190 Personal cultivation not taxed.
- 5.14.200 Enforcement - Duties of tax administrator and Police Department.
- 5.14.210 Rules and regulations.
- 5.14.220 Apportionment.

- 5.14.230 Audit and examination of records and equipment.
- 5.14.240 Tax deemed debt to city.
- 5.14.250 Deficiency determinations.
- 5.14.260 Tax assessment - Authorized when - Nonpayment - Fraud.
- 5.14.270 Tax assessment - Notice requirements.
- 5.14.280 Tax assessment - Hearing -Application and determination.
- 5.14.290 Conviction for chapter violation - Taxes not waived.
- 5.14.300 Violation deemed misdemeanor - Penalty.
- 5.14.310 Severability.
- 5.14.320 Effect of state and federal reference/authorization.
- 5.14.330 Remedies cumulative.
- 5.14.340 Amendment or modification .

**5.14.010 Authority and Purpose.**

This chapter shall be entitled the "Commercial Cannabis Tax" and is enacted solely to raise revenue for the general governmental purposes for the City and not for purposes of regulation or of raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the City's general fund and used for the purposes consistent with the general fund expenditures of the City. The Cannabis Tax is a tax on a Cannabis business (and not a sales tax) and shall not be separately identified by the Cannabis business on the customer, member, patient or caretaker or otherwise specifically assessed or charged to any member, customer, patient or caretaker.

**5.14.020 Tax imposed.**

There is established and imposed, a commercial cannabis tax at the rate set forth in this chapter.

**5.14.030 Definitions**

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(A) "Business" shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

(B) "Calendar year" means January 1 through December 31, of the same year.

(C) "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" shall not include "industrial hemp" unless otherwise specified.

(D) "Cannabis business" or "marijuana business" means any commercial business activity not limited to, cultivation, testing, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, distribution, wholesale, and/or retail sales of cannabis, cannabis products, industrial hemp and/or industrial hemp products and any ancillary products in the city, whether or not carried on for gain or profit.

(E) "Cannabis product" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. "Cannabis product" also means cannabis products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medicinal cannabis products.

(F) "Canopy" means all areas occupied by any portion of a cannabis plant, inclusive of all vertical planes, whether contiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area. The plant canopy does not need to be continuous on any premise in determining the total square footage which will be subject to tax.

(G) "Commercial Cannabis tax", "Business tax" or "Cannabis tax" means the tax due for any Person engaged in business in the city related to cannabis, cannabis products, industrial hemp and/or industrial hemp products, including a cannabis business, required by this Chapter.

(H) "Commercial cannabis cultivation" means cultivation of cannabis undertaken in the course of conducting a cannabis business.

(I) "Distributor" or "Distribution" or "Distribution Facility" shall mean a person or facility licensed by the State to engage in the business of purchasing cannabis from a licensed cultivator, or cannabis products from a licensed manufacturer, for sale to a licensed retailer (dispensary).

(J) "Employee" means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

(K) "Engaged in business" or "engaged in the business" or "engaged in a business" means the commencing, conducting, operating, managing or carrying on of a cannabis business and the exercise of corporate or franchise powers or other powers, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person shall be deemed engaged in business within the City if:

(1) Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;

(2) Such person or person's employee owns or leases real property within the City for business purposes;

(3) Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;

(4) Such person or person's employee regularly conducts solicitation of business within the City;

(5) Such person or person's employee performs work, sells products or renders services in the City; or

(6) Such person or person's employee utilizes the streets within the City in connection with the operation of motor vehicles for business purposes.

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

(L) "Evidence of doing business" means whenever any person shall, by use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or represents to a government agency or to the public that such person is engaged in the business of a Cannabis business in the City, then these facts may be used as evidence that such person is engaged in business in the City.

(M) "Gross Receipts" except as otherwise specifically provided, means whether designated as a sales price, royalty, rent, membership fee, ATM service fee, delivery fee, slotting fee, any other fee, vaping room service charge, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise, or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or

employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from Gross Receipts:

(1) Cash discounts allowed and taken on sales;

(2) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

(3) Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

(4) Cash value of sales, trades or transactions between departments or units of the same business located in the City of King authorized by the Tax Administrator in writing or in accordance with section 5.14.210;

(5) Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the period when they are recovered;

(6) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;

(7) Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

(8) Retail sales of items that are not cannabis, industrial hemp, cannabis products or industrial hemp products, such as t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis or industrial hemp) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 5.14.210 shall not be subject to the

cannabis business tax under this section. However, any business activities not subject to this section as a result of an administrative ruling shall be subject to the appropriate business tax provisions of Title 5, Chapter 5.12 or any other Title or Chapter of this code as determined by the Tax Administrator.

(9) Payments made by the tax-reporting cannabis business (Seller) to a cannabis business (Buyer) for the difference in the original acquisition price and subsequent renegotiated or finalized selling price of products or services sold to a specific end customer. This type of transaction is referred to as a "Billback". The tax-reporting cannabis business must provide supporting documentation acceptable to the Tax Administrator to substantiate the transaction in order to be eligible for an exemption.

(10) Any business which sells industrial hemp and/or industrial hemp products or offers services or activities related to industrial hemp and/or industrial hemp products and/or which is not required to obtain a cannabis or industrial hemp permit or license from the City or the State for the purpose of cultivating, growing, drying, curing, manufacturing, processing, packaging, transporting, distributing, testing or selling of industrial hemp either wholesale or retail shall be exempt from the cannabis tax provided that such business does not generate more than 50% of their total gross revenues in the reporting period from the business from industrial hemp activities. However, the exemption may be amended by the City Council by resolution or ordinance pursuant to Section 5.14.070 (I) to increase or decrease the percentage of business from zero to 100% and shall not be considered a new, increased or extended tax under section 5.14.340 requiring a vote. To the extent the gross revenues from the hemp activities do not meet the relevant percentage to be included, this exclusion shall reduce the gross receipts to zero. The business shall still be subject to appropriate business tax provisions of other Chapters of this code and/or appropriate provisions of this Chapter.

(11) Any distributor located in the City that distributes cannabis and/or cannabis products for another cannabis business located in the City which is licensed or permitted by the City shall not be required to include such gross receipts for the purpose of paying the cannabis business tax on such gross receipts, the revenues from distribution to the other cannabis business. However, such deduction must be properly documented on the City's tax remittance form in order to claim such deduction in a manner acceptable to the Tax Administrator. This limitation may be amended or eliminated by the City Council by resolution or ordinance pursuant to Section 5.14.070 (I) and will not be considered a new, extended or increased tax requiring voter approval under 514.030.

(N) "Industrial hemp" means a crop that is limited to types of the plant *Cannabis sativa* L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; 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 produced therefrom. "Industrial hemp" also means an agricultural product, whether growing or not, that is limited to types of the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.

(O) "Industrial hemp products" also means any raw hemp and/or industrial hemp that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product or any other product containing industrial hemp. "Hemp product" also means industrial hemp or products therefrom as may be defined or described in Food and Agriculture Code 81000 et. seq and/or other applicable law.

(P) "Manufacturer" or "Manufacturing" means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis at a fixed location that packages or repackages cannabis, or cannabis products or labels or relabels its container, that holds a valid state license and that holds a valid local license or permit.

(Q) "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, intended to be sold or sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, for a medicinal cannabis patient in California who possesses a physician's recommendation, or a cannabis card issued pursuant to Health and Safety Code Section 11362.71.

(R) "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

(S) "Person" means, without limitation, any natural individual, organization, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and nonprofit), cooperative, receiver, trustee, guardian, or other representative appointed by order of any court. A person may be operated as a for profit or not for profit organization or entity or person or as otherwise permitted under the law.

(T) "Retailer" means a person, entity, business or party who sells cannabis, cannabis products, industrial hemp and/or industrial hemp products. The term "retailer" does not include the wholesale sale of cannabis, cannabis products, industrial hemp, and/or industrial hemp products, including as a distributor. A retailer may for example engage in

sale of such products by delivery and/or by storefront, as a dispensary, or as another type of store, place, or as part of a service business or otherwise.

(U) "Sale," "sell," "sells" and "to sell" means and includes any sale, exchange, or barter. It shall also mean any transaction whereby, for any consideration, title to cannabis, cannabis products, industrial hemp and/or industrial hemp products are transferred from one person to another and includes the delivery of cannabis, cannabis products, industrial hemp and/or industrial hemp products pursuant to an order placed for the purchase of the same.

(V) "Square Foot" or "Square Footage" shall mean the maximum canopy area allowed under permit classification by the local agency and/or licensed by the State and shall be the basis for the tax rate calculations for cultivation unless otherwise specified.

(W) "Tax Administrator" or "administrator" means the Finance Director or such other designated by the City Manager to administer this chapter.

(X) "Testing" or "Testing Laboratory" shall mean a facility, entity, or site in the state and within City limits, that offers or performs tests of cannabis or products and is an accredited body by the state and is independent from all other persons involved in the cannabis industry.

#### **5.14.040 Other licenses, permits, taxes, fees or charges.**

Nothing contained in this Chapter 5.14 shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license, land use entitlement or permit required by, under or by virtue of any provision of any other title or chapter of this code or any other ordinance or resolution of the city, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or chapter of this code or any other ordinance or resolution of the city. Any references made or contained in any other title or chapter of this code to any licenses, license taxes, fees or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other titles or chapters of this code.

#### **5.14.050 Payment of tax does not authorize unlawful business.**

(A) The payment of a cannabis tax required by this chapter, and its acceptance by the city, shall not entitle any person to carry on any Cannabis business unless the person has complied with all of the requirements of this code and all other applicable laws, nor to carry on any Cannabis business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such Cannabis business is in violation of any law.

(B) No cannabis tax paid under the provisions of this chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the city.

#### **5.14.060 Payment - Location.**

The cannabis tax imposed under this chapter shall be paid to the tax administrator in the King City Finance Department on or before the prescribed date during regular city business hours.

#### **5.14.070 Amount of cannabis tax owed.**

(A) Every person who is engaged in the business of Commercial cannabis cultivation in the city other than as a nursery shall pay an annual cannabis tax on cannabis. The initial tax shall be set at a rate of twenty-five dollars (\$25) per square foot of permitted or licensed canopy space for the first 5,000 square feet and then ten dollars (\$10) per square foot of canopy space for the remaining space licensed or permitted canopy space by the City or State of California for cultivation of cannabis.

(B) Every person who is engaged in the business of Commercial cannabis cultivation as a nursery in the City shall pay an annual cannabis tax on cannabis. The initial tax shall be set at five (\$5) dollars per square foot for the first five thousand (5,000) feet of canopy space and two dollars and fifty cents (\$2.50) for the remaining canopy space for the first three (3) years.

(C) For purposes of 5.14.070 subsection (A) and (B), the square feet of canopy space for a business shall be based on the maximum square footage of canopy allowed by the City permit issued to the business for commercial cannabis cultivation, or, in the absence of such permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license. All canopy square footage that is authorized by the City permit shall be included in the calculation of the cannabis tax for cultivation. No deduction will be applied to any canopy square footage that is not used for cultivation unless (a) the Tax Administrator is informed in writing that such space cannot be used for a period of at least three months due to extreme or unusual events reasonably out of control of the Person and/or cannabis business (e.g., fire, earthquakes, extended utility breakdowns caused by the utility, major pipe leakages) and not due to the negligence of such party, and (b) the Tax Administrator reviews the information submitted and any additional evidence requested and makes a determination in his or her sole discretion that such type of extreme or unusual event exists that warrants a reduction. In making the determination, the Tax Administrator may look to the concepts of force majeure, impossibility of performance of contracts and frustration of purpose. Any decision of the Tax Administrator under this subparagraph (C) with respect to extreme and unusual events to warrant a reduction in square footage may be appealed to the City Council.

(D) Every person who is engaged in the business of Manufacturing or of Testing of Cannabis or Cannabis products in the city shall pay an annual cannabis tax on cannabis and/or cannabis products. The initial annual tax shall be set at a flat rate of thirty thousand (\$30,000) dollars per facility for the first three (3) years.

(E) The cannabis tax in subsection 5.14.070(A) (B) and (D) shall constitute the maximum annual cannabis tax permitted to be charged annually with respect to the respective Person for such categories, except as stated herein. Beginning on January 1, 2020 for cannabis taxes enacted prior to the 2020 and on January 1, of each succeeding year thereafter for all applicable cannabis taxes, the amount of each maximum tax imposed by subsection 5.14.070 (A), (B), and (D) may be adjusted up to the equivalent to 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; if the City Council by resolution or ordinance increases any such tax however related to the “CPI”, provided, however that no CPI adjustment shall decrease any tax imposed by this Section. To the extent the cannabis tax is adjusted by the City Council pursuant to this CPI provision, such new tax shall constitute the maximum cannabis tax with respect to the respective Business (to be referred to herein as the “Maximum Tax”). The Maximum Tax for other categories are described below.

(F) For every person engaged in the business of retail sales of cannabis, cannabis products, industrial hemp, and/or industrial hemp products, including but not limited to as a retailer (dispensary) or non-storefront retailer (retail delivery business), or microbusiness, s/he/it shall be subject to the cannabis tax of percent (5%) of gross receipts. This cannabis tax shall be the Maximum Tax for retailers.

(G) For every person engaged in the business of distribution of cannabis and/or cannabis products, s/he/it shall be subject to the cannabis tax of two percent (2%) of gross receipts. This cannabis tax shall be the Maximum Tax for distribution.

(H) For every person engaged in any other cannabis business activity involving the retail sale of cannabis, cannabis products, industrial hemp and/or industrial hemp products not described in Section 5.14.070 (A) through (G) or exempted pursuant to 5.14.180(B), s/he/it shall be subject to a cannabis tax of five percent (5%) of gross receipts. This cannabis tax shall be the Maximum Tax for unlisted categories.

(I) The Maximum Tax is the highest tax that may be levied in each category. The City Council may, annually by resolution or ordinance, increase the cannabis tax permanently up to the allowable Maximum Tax. The City Council may in its discretion by resolution levy the Cannabis Tax in any category at rates lower than the Maximum Tax for each category or all categories of the Cannabis Tax, provided, however, such lowering of the rate shall not lower any permitted Maximum Rate in any category. The City

Council may, by resolution or ordinance, increase or decrease the rate of the medicinal cannabis business tax, including the initial rate of the cannabis tax applicable to medicinal cannabis, independent of other cannabis business tax activities. In addition, the City Council may, by resolution or ordinance, increase or decrease the rate of the cannabis business tax on industrial hemp or industrial hemp products, including the initial rate of the tax on industrial hemp or industrial hemp products independent of other cannabis activities. Notwithstanding the foregoing, in no event shall the City Council repeal this tax or set any adjusted rate that exceeds the maximum rates calculated pursuant to this section.

**5.14.080 Payment-Time limits.**

The cannabis tax imposed by this chapter shall be due and payable as follows:

(A) Each person owing a Commercial Cannabis Cultivation Tax under this chapter shall, on or before the last day of the month following the close of each calendar quarter, prepare a tax statement and remit to the tax administrator the tax due on the total square footage of canopy space subject to the tax. The square footage tax due shall be paid based on the type of cultivation permit issued by the state and/or the City and the maximum square footage so permitted or licensed or as otherwise specified in Section 5.14.070 (C). Each business shall pay on or before the last day of the month following the close of each calendar quarter in four equal installments of the annual tax due. The City may at its discretion determine other methodologies in determining the payment of such tax in order to promulgate collection of said tax in order to reduce the burden of collection which may also include the form of payment in which the city may except for such tax.

(B) Each person owing a Cannabis Tax for a Manufacturing, Testing, Retail Sale or Distribution under this chapter shall prepare and submit a tax statement to the tax administrator with the amount of tax owed. Each business shall pay on or before the last day of the month following the close of each calendar quarter in four equal installments of the annual tax due or it will be determined to be delinquent. The Tax Administrator may publish alternate dates for collection and reporting of the cannabis tax.

(C) All tax statements shall be completed on forms authorized by the tax administrator.

(D) Tax statements and payments for all outstanding taxes owed the city are immediately due to the tax administrator upon cessation of business for any reason.

(E) If requested by the Tax Administrator as a requirement of the exemption for any period, any Person engaged in the sale of industrial hemp and/or industrial hemp products and not subject to the Cannabis Tax

for a reporting period pursuant to subsection (10) of the definition of Gross Receipts shall submit a statement at the time specified by the Tax Administrator certifying that such person has not been subject to the cannabis business tax for the specified periods or period requested by the tax administrator.

**5.14.090 Payments and communications made by mail - Proof of timely submittal.**

Whenever any payment, statement, report, request or other communication is due, it must be received by the tax administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due day falls on Saturday, Sunday or a holiday observed by the City, the due day shall be the next regular business day on which the city is open to the public.

**5.14.100 Payment- When taxes deemed delinquent.**

Unless otherwise specifically provided under other provisions of this chapter, the cannabis taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid by the tax administrator on or before the due date as specified in Section 5.14.080.

**5.14.110 Notice not required by city.**

The tax administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this 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.

**5.14.120 Payment-Penalty for delinquency.**

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

(1) A penalty equal to ten percent of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the City Council; and

(2) An additional penalty equal to twenty-five percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and on the unpaid penalties, calculated at the rate established by resolution of the City Council.

(3) Interest shall be applied at the monthly rate on the first day the first day of the month for the full month, and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

(B) Whenever a check is submitted in payment of a cannabis 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 the return check fee; penalties and interest as provided for in this section; and any amount allowed under state law.

(C) The cannabis tax due shall be that amount due and payable from the first date on which the person was engaged in business as a Cannabis business in the city, together with applicable penalties and interest calculated in accordance with 5.14.120 subsection (A).

#### **5.14.130 Waiver of penalties.**

The tax administrator may waive the first and second penalties each imposed upon any person if:

(A) The person provides evidence satisfactory to the tax administrator 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 cannabis tax and accrued interest owed the city prior to applying to the tax administrator 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-month period.

#### **5.14.140 Refunds-Credits.**

(A) No refund shall be made of any tax collected pursuant to this chapter, except as provided in this Section and Section 5.14.150.

(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.

(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 such person's cannabis tax for the next tax reporting period or as authorized by the tax administrator.

#### **5.14.150 Refunds and procedures.**

(A) Whenever the amount of any cannabis 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, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the tax administrator within one year of the date the tax was originally due and payable, and the provisions of Chapter 2.50 are satisfied.

(B) The tax administrator or the tax administrator's authorized agent 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 refuses to allow such examination of claimant's books and business records after request by the tax administrator to do so. In the event that the cannabis tax was erroneously paid and the error is attributable to the city, the city shall refund the amount of tax erroneously paid up to one year from when the error was identified.

(C) No refund may be had, or tax may be challenged unless the tax has been paid.

**5.14.160 Exemptions - Application - Issuance conditions.**

Any person desiring to claim exemption from the payment of the tax set forth in this chapter shall make application upon forms prescribed by the tax administrator and shall furnish such information and make such affidavits as may be required by the tax administrator.

**5.14.170 Exemptions - General.**

Except as may be otherwise specifically provided in this chapter, the terms hereof shall not be deemed or construed to apply to any person when imposition of the tax upon that person would violate the Constitution of the United States or that of the State of California or preemptive federal or state law.

**5.14.180 Exemptions - Occasional transactions.**

(A) For any person not having a fixed place of business within the city who comes into the city for the purpose of transacting business and who is not otherwise exempt, the cannabis tax payable by such person may be apportioned by the tax administrator in accordance with Section 5.14.220.

(B) The City does not levy a cannabis tax for the cultivation, manufacture, testing or distribution of industrial hemp and/or industrial hemp products.

**5.14.190 Personal Cultivation Not Taxed.**

The provisions of this section shall not apply to personal cannabis cultivation or personal use of cannabis, to the extent those activities are authorized in the "Medicinal and Adult Use Cannabis Regulation and Safety Act," as may be amended. This section shall not apply to personal use of cannabis that is specifically exempted from state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and provided that the individual receives no compensation whatsoever related to that personal cultivation or use.

**5.14.200 Enforcement- Duties of tax administrator and police department.**

It shall be the duty of the tax administrator or his/her designee to enforce each and all of the provisions of this chapter, and the police department shall render such assistance in the enforcement of this chapter as may from time to time be required by the tax administrator.

**5.14.210 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 tax administrator, with the concurrence of the city attorney, may from time to time promulgate administrative rules and regulations.

**5.14.220 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 in violation of the equal protection and due process clauses of the Constitutions of the United States or the State of California.

(B) If any case where a cannabis tax is believed by a taxpayer to place an undue burden upon interstate commerce or be in violation of such constitutional clauses, the taxpayer may apply to the tax administrator for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then taxpayer shall be conclusively deemed to have waived any adjustment for that year and all prior years.

(C) The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the tax administrator may deem necessary in order to determine the extent, if any, of such undue burden or violation. The tax administrator shall then conduct an investigation and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the tax administrator shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.

(D) Should the tax administrator determine that the gross receipt measure of tax to be the proper basis, the tax administrator may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the tax administrator.

**5.14.230 Audit and examination of records and equipment.**

(A) The tax administrator, or its designee, shall have the power to audit and examine all books and records of persons engaged in Cannabis business including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of persons engaged in Cannabis business, and, where necessary, all equipment, of any person engaged in Cannabis business in the city, for the purpose of ascertaining the amount of cannabis 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 5.14.260 through 5.14.280 of any taxes estimated to be due.

(B) It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of at least three years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the tax administrator shall have the right to inspect at all reasonable times.

**5.14.240 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 Cannabis business without first having paid such tax 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.

**5.14.250 Deficiency determinations.**

If the tax administrator 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 within three years of the date the tax was originally due and payable. 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 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 5.14.260 through 5.14.280.

**5.14.260 Tax assessment - Authorized when - Nonpayment - Fraud.**

(A) Under any of the following circumstances, the tax administrator may make and give notice of an assessment of the amount of tax owed by a person under this chapter at any time:

(1) If the person has not filed any statement 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 tax administrator, filed a corrected statement, or furnished to the administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this chapter;

(4) If the tax administrator determines that the nonpayment of any business tax due under this chapter is due to fraud, a penalty of twenty-five percent 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 tax administrator to be due or estimated by the tax administrator, after consideration of all information within the tax administrator'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 assessment.

**5.14.270 Tax assessment - Notice requirements.**

The notice of assessment 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 or to such other address as he or she shall register with the tax administrator for the purpose of receiving notices provided under this chapter; or, should the person have no address registered with the tax administrator 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.

**5.14.280 Tax assessment - Hearing - Application and determination.**

Within ten days after the date of service the person may apply in writing to the tax administrator for a hearing on the assessment. If application for a hearing before the city is not made within the time herein prescribed,

the tax assessed by the tax administrator shall become final and conclusive. Within thirty days of the receipt of any such application for hearing, the tax administrator shall cause the matter to be set for hearing before him or her not later than thirty-five days after the receipt of the application, unless a later date is agreed to by the tax administrator and the person requesting the hearing. Notice of such hearing shall be given by the tax administrator to the person requesting such hearing not later than five days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the tax administrator should not be confirmed and fixed as the tax due. After such hearing the tax administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.14.270 for giving notice of assessment.

**5.14.290 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.

**5.14.300 Violation deemed misdemeanor - Penalty.**

Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred (\$500) dollars or by imprisonment for a period of not more than six months, or by both such fine and imprisonment.

**5.14.310 Severability.**

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

**5.14.320 Effect of state and federal reference/ authorization.**

(A) 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.

(B) 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.

#### **5.14.330 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 city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

#### **5.14.340 Amendment or modification.**

Chapter 5.14 of the King City Code may be amended or modified by the City Council without a vote of the people. However, as required by Chapter XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this chapter. The people of the City of King affirm that the following actions shall not constitute an increase of the rate of a tax:

(A) The restoration of the rate of the tax to a rate that is no higher than the Maximum Tax for any Person permitted by this chapter, if the City Council has acted to reduce the rate of the tax;

(B) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this chapter;

(C) The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this chapter); or

(D) The collection of the tax imposed by this chapter, even if the city had, for some period of time, failed to collect the tax.

**SECTION 2. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining

portions of this ordinance. The people of the City of King City hereby declare that they would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

**SECTION 3. ENVIRONMENTAL COMPLIANCE.** The findings establishing that this Ordinance is in compliance with the California Environmental Quality Act ("CEQA") are the same as those set forth in the City Council's Resolution No. \_\_\_\_\_ calling for an election on this Ordinance. The CEQA findings in Resolution No. \_\_\_\_\_ are incorporated herein by this reference.

**SECTION 4. EFFECTIVE DATE.** This Ordinance relates to the levying and collecting of a City tax and shall take effect immediately.

This Ordinance was approved and adopted by the People of the City of King City at the City's November \_\_\_\_, 2020 statewide election.

This Ordinance was approved by Declaration of the vote by the City Council of the City of King City on July \_\_, 2020.

**I HEREBY CERTIFY** that the foregoing Ordinance was approved by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_ 2020, and adopted by the People of the City of King on November 3, 2020

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**ATTEST**

\_\_\_\_\_  
**STEVEN ADAMS, City Clerk**

**CITY OF KING**

By: \_\_\_\_\_  
**MIKE LEBARRE, Mayor**

I, \_\_\_\_\_, City Clerk of the City of King, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of King on the date and by the vote indicated herein.



Item No. 11(B)

**REPORT TO THE CITY COUNCIL**

**DATE: JULY 14, 2020**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: STEVEN ADAMS, CITY MANAGER**

**RE: CONSIDERATION OF RESOLUTION APPROVING THE BALLOT ARGUMENT IN FAVOR OF THE CANNABIS RETAIL SALES AND DISTRIBUTION TAX MEASURE**

**RECOMMENDATION:**

It is recommended the City Council adopt a Resolution approving the ballot argument in favor of the cannabis tax measure.

**BACKGROUND:**

At the last meeting, the City Council directed staff to proceed with the Resolution placing an Ordinance on the November 3<sup>rd</sup> ballot to amend the City's cannabis tax ordinance to include a tax on cannabis retail sales and distribution. That Resolution is also being considered for adoption at the July 14<sup>th</sup> meeting. If approved, staff recommends the City Council submit an argument in favor of the measure.

**DISCUSSION:**

Staff has drafted a ballot argument in favor of the measure for City Council consideration. Up to five names are allowed on the argument. It is recommended that all City Council names be included if there is unanimous approval.

The argument was drafted to emphasize the following key points:

- The tax measure simply adds a tax on cannabis businesses already allowed and does not have any impact on legalizing cannabis dispensaries or distribution.

**CITY COUNCIL  
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- All funds will go to the City's General Fund to be used for City services and to pay off the debt.
- While the City has made significant progress in increasing financial solvency, it continues to experience financial challenges and overall needs.
- The tax rate was determined by setting it at what is considered standard by most other jurisdictions.
- The tax is beneficial because it will help pay for services without increasing general fees and taxes on local residents.

The deadline for submittal of the argument is August 13, 2020. The next regularly scheduled Council Meeting is August 11, 2020. Therefore, there is sufficient time available if the Council would prefer to wait until the next meeting to consider approval of the argument.

**COST ANALYSIS:**

There is no additional cost to the City to submit the ballot argument.

**ENVIRONMENTAL REVIEW:**

This matter is not a "project" for the purposes of the California Environmental Quality Act (CEQA) as it does not have the potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. No further action is required under CEQA for City Council action.

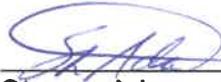
**ALTERNATIVES:**

The following alternatives are provided for City Council consideration:

1. Adopt the Resolution approving the ballot argument;
2. Adopt the Resolution approving the ballot argument, but exclude names of Council Members that do not want their names included;
3. Make other changes to the ballot argument and then adopt the Resolution
4. Request staff to work on changes and bring it back for consideration at the next meeting;
4. Do not submit an argument in favor or request other community leaders to do it; or
4. Provide staff other direction.

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Prepared and Approved by:



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Steven Adams, City Manager

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION APPROVING AN ARGUMENT IN FAVOR OF  
THE CITY OF KING BALLOT MEASURE CREATING A CANNABIS BUSINESS TAX ON  
RETAIL SALE AND DISTRIBUTION OF CANNABIS AND CANNABIS PRODUCTS**

**WHEREAS**, the City Council of the City King has adopted a Resolution placing on the November 3, 2020 election ballot an Ordinance to add a commercial cannabis tax on gross sales of the retail sale and distribution of cannabis and cannabis products; and

**WHEREAS**, the Resolution and County Elections Office sets forth criteria for submittal of ballot arguments to be included in the election materials; and

**WHEREAS**, the City Council has determined it is in the interest of the City to submit and argument in favor of the ballot measure.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the City Council of the City of King hereby approves the ballot argument attached hereto as Exhibit A.

This resolution was passed and adopted this 14<sup>th</sup> day of **July, 2020** by the following vote:

**AYES**, Council Members:

**NAYS**, Council Members:

**ABSENT**, Council Members:

**ABSTAIN**, Council Members:

**APPROVED:**

\_\_\_\_\_  
Mike LeBarre, Mayor

**ATTEST:**

\_\_\_\_\_  
Steven Adams, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Roy Santos, City Attorney

**Argument For Measure \_\_\_\_\_**

Your City Council urges you to vote YES on Measure \_\_\_\_\_. The measure will amend the local cannabis business tax approved overwhelmingly by the voters in 2016 to add a tax on the retail sale and distribution of cannabis and cannabis products. Approval of the tax measure will not legalize any products or businesses. It will simply create a tax on businesses that are already allowed to operate in King City under State and local laws.

All funds from the tax will go to the City of King General Fund to be used to improve public safety, repair streets and sidewalks, beautify our downtown and neighborhoods, fund other essential City services, and help pay off City debt. The City has been making significant progress in increasing financial solvency, but still has a long way to go to address its financial challenges, meet the needs of the community, and properly maintain its infrastructure. These challenges were further increased by the recent impacts on the City's revenues caused by the COVID-19 pandemic. This tax is part of an overall long-range plan the City has developed to improve the quality of life for our residents and establish financial stability.

The proposed amount of the taxes is set at a rate considered standard for the majority of other jurisdictions with similar businesses. The tax will enable the City to fund needed projects and services without increasing general taxes and fees impacting the majority of our residents. Therefore, Measure \_\_\_\_\_ is good for King City and the community. Please help us make our community a better place for everyone by voting YES on Measure \_\_\_\_\_!

**MIKE LEBARRE**  
Mayor

**CARLOS VICTORIA**  
Mayor Pro Tem

**ROB CULLEN**  
Council Member

**DARLENE ACOSTA**  
Council Member

**CARLOS DELEON**  
Council Member



Item No. 11(C)

**REPORT TO THE CITY COUNCIL**

**DATE: JULY 14, 2020**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: STEVEN ADAMS, CITY MANAGER**

**RE: CONSIDERATION OF COVID-19 STATUS REPORT**

**RECOMMENDATION:**

It is recommended the City Council: 1) receive the status report on City COVID-19 related activities; 2) direct staff to continue public education efforts; and 3) direct staff to continue to monitor COVID-19 hospitalizations and prepare an urgency ordinance for enforcement and citation of face covering violations at any time an increased trend of hospitalizations causes a concern that future capacity may be at risk.

**BACKGROUND:**

On March 4, 2020, the Governor of California declared a State of Emergency to make additional resources available, formalize emergency actions already underway, and help the state prepare for broader spread of the coronavirus (COVID-19). On March 13, 2020, the President declared a National State of Emergency. As a result, on March 16, 2020, the City Manager signed a Proclamation of Local Emergency in King City, which was ratified by the City Council on March 20, 2020.

On March 18<sup>th</sup>, the Monterey County Health Officer issued a Shelter in Place Order, which was reissued on April 3<sup>rd</sup> with increased restrictions. Under the Municipal Code, the County Health Officer also serves as the City's Health Officer. A similar order was issued by the Governor of California for the entire State of California on March 19<sup>th</sup>, which has been followed with a number of subsequent changes. On April 30, 2020, a subsequent Order was issued by the County Health Officer, which allows additional businesses to reopen under restrictions and established protocols.

Since then, the State has approved a variance request from the County of Monterey enabling the County to proceed to an additional stage of the "Resilience Roadmap for State Reopening", which allowed indoor restaurant dining, indoor retail sales and churches. Additional orders were issued by the

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CONSIDERATION OF COVID-19 STATUS REPORT  
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County Health Officer on May 8, 2020 and May 26, 2020 to implement the reopening process consistent with the State guidelines. Most recently, in response to the Governor's Order, a new Order was issued by the County Health Officer on July 8<sup>th</sup> that now once again prohibits operation of bars and indoor dining in restaurants.

The City has been tasked with enforcing the Orders. Therefore, at the April 14<sup>th</sup> meeting, the City Council adopted an Urgency Ordinance establishing enforcement and appeals procedures for the orders of the County Health Officer related to the COVID-19 pandemic within the City of King in order to establish an effective and clear process. At the May 12, 2020 meeting, the City Council voted to extend the enforcement and appeals procedures through June 9, 2020, at which time it expired.

Since the pandemic began, the City has been involved in implementing an extensive number of measures aimed at enforcement of the County's orders, safety of City facilities and staff, public education, business assistance, and assistance to the public in need due to the impacts of COVID-19. The City has attempted to maintain a consistent approach throughout this crisis in order to respond to both health and economic needs, as well as the diverse concerns of those in the community. This approach has been to maintain the City's focus on fulfilling the responsibilities it is assigned in the most fair and impartial manner possible; to accurately follow the directions of the County Health Officer, Governor and medical experts; and to take all proactive steps feasible to effectively manage the tasks assigned, but to limit actions to the City's authority and technical expertise.

At the June 23, 2020 meeting, the City Council requested staff to place on each agenda an ongoing status report of City COVID-19 efforts. In response, staff has prepared this report, which provides a history and summary of the impacts, status and response related to COVID-19 in King City. Staff intends to provide the same written report to the Council each meeting with new activities added to it. By doing that, anyone from the public seeking information can obtain the full overview by accessing the most recent report.

**DISCUSSION:**

COVID-19 Case Summary

As of July 8, 2020, the County of Monterey has had a total of 2,270 confirmed COVID-19 cases, 155 hospitalizations, and 17 fatalities. Of the total number of cases, 1,301 have recovered.

In the 93930 zip code, there have been a total of 187 cases, which represents 8.24% of the total in Monterey County. Of this number, 120 have recovered.

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There has been a steady increase of cases in the 93930 zip code during the past several weeks, but hospitalizations have remained low and relatively steady. Staff has been in regular contact with the Mee Memorial Hospital administration, and only a small fraction of their capacity has been impacted. Therefore, the increase is a concern because it is important to prevent the spread, but there is no need for panic at this time since the system is not at risk of being overloaded.

Completed and Ongoing City Activities

The following is a summary of the most significant measures the City has taken in response to the pandemic since it began:

- A comprehensive Pandemic Emergency Plan was immediately prepared, implemented and continues to be updated as circumstances evolve.
- The City is coordinating closely with the other South Monterey County cities, and the City's multi-agency Emergency Preparedness Committee has met via teleconference on a regular basis to coordinate a community-wide response.
- The City partnered with Mee Memorial Hospital to access N-95 masks and training for public safety personnel.
- Strict sanitation and social distancing policies have been implemented in all City operations.
- All City public events and recreation programs were cancelled.
- All park playground, restroom and picnic areas were closed and signs and temporary fencing installed.
- Technology capabilities were established to implement telecommuting practices to reduce the number of staff on site. Public Works crews were divided into separate work units to avoid potential exposure. With the reopening of City Hall, these practices have been discontinued at this time except on an as needed basis.
- New procedures were established and technology acquired to implement virtual City Council and other regular ongoing meetings.
- Notification of each of the Shelter in Place Orders issued by the County Health Officer were translated and distributed door to door to each business by the Police Department. The Police Department provided personal assistance to businesses by explaining and reviewing compliance with reopening requirements.

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- Retail business public safety best practices were drafted and delivered to each exempted business during the Shelter in Place Order prior to the State's guidance of safety requirements.
- The Police Department established a process for making determinations on which businesses met the criteria of an "essential" business in a fair and impartial manner, as well as response to other questions regarding what activities are allowed.
- The Police Department has patrolled the downtown area and responded to complaints regarding violations of the Shelter in Place Order.
- King City was the only jurisdiction in Monterey County to adopt its own enforcement, citation and appeal ordinance.
- Information was distributed to the public regarding procedures to report price gauging violations.
- Warning signs for customers were prepared and placed at the entrance of every exempted store. These have now been replaced by new professionally designed and printed signs that have been distributed to each business to display on their window.
- Instructional pedestrian signs were placed on the sidewalks in the downtown area, and handwashing stations were placed at strategic locations throughout the commercial areas. These items were removed when most businesses were allowed to reopen.
- A budget contingency plan to address the revenue impacts from COVID-19 was prepared and later adopted by the City Council.
- The Finance Department submitted an application for Federal Emergency Management Agency (FEMA) reimbursement of COVID-19 emergency response expenditures and established an expense tracking system.
- The City has distributed public education information to the public on an ongoing basis through regular Facebook posts, flyers, press releases, KRKC radio ads, and public service announcements.
- A direct mailer was distributed to every household to notify the public on the County Health Officer Order requiring face coverings.
- A new section devoted to COVID-19 information was created on the City's website and updated on a regular basis.

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- The Mayor and Mayor Pro Tem recorded a series of public service announcements in both English and Spanish, which were posted on Facebook and YouTube.
- The City coordinated a joint public service announcement of all the South Monterey County mayors.
- A special issue of the City Newsletter was dedicated entirely to information on COVID-19 and was distributed to every household and business.
- The City developed a contact list of local agricultural employers, facilitated a virtual training session with Mee Memorial Hospital provided to representatives of each employer, developed and distributed guidelines and requested best practices, and provided masks at no cost for agricultural workers.
- City staff prepared an inventory of all food and supply assistance and delivery programs, prepared and distributed informational materials to the public on the services available, coordinated with the Monterey County Food Bank to provide a new weekly food pickup program, and acquired resources to make available free pet food and diapers to the public in need on a periodic basis.
- The City partnered with the Small Business Development Center (SBDC) to offer personal assistance to business owners in applying for Federal Cares Act and other funding grants and loans, prepared and mailed multiple flyers on each of the deadlines to every King City business, and contacted businesses by phone to promote workshops held by the SBDC.
- The City Council adopted an ordinance to prohibit evictions of commercial tenants to accompany the Governor's Order restricting evictions of residential tenants.
- Restricted parking was installed upon request to assist restaurants to provide curbside service.
- A program was developed in partnership with Cal Water to freeze minimum water and wastewater accounts while businesses were closed.
- Hundreds of free Census 2020 masks were distributed by the Police Department to businesses to provide to their customers.
- Equipment was purchased and installed at City Hall to protect the health of City employees and customers in order to reopen City Hall, which include screens, signage, floor mat social distancing signs, and access barriers.

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Current City Activities

- The City has developed a new public information campaign to increase public safety compliance by promoting the importance of three basic practices; 1) wearing face coverings; 2) distancing 6 feet from other individuals; and 3) washing hands before touching one's face. Since regulations have become increasingly complex and rapidly changing, the campaign is designed to emphasize the most important basics. A public information mailer has been designed and printed, which will be distributed to all households within King City and the surrounding areas. New radio ads are airing on KRKC and frequent items are being posted on Facebook.
- The City is leading an extensive effort to help identify strategies to relocate the homeless individuals in the nearby encampment to temporary or permanent housing. A committee consisting of over 30 representatives from multiple agencies has been meeting on a regular basis. Funding has been obtained from the County Homeless Coalition and staff is pursuing other funding sources through the County and the City's allocation of various CARES funds. Information has been recorded for each individual by a team of case workers, who are now working together to identify assistance each may be eligible for based on their specific situation and needs.
- An application is being prepared for CDBG Cares funds to develop a program to provide local residents that have lost employment due to COVID-19 with assistance in paying utility bills.
- Staff is identifying options for meeting increased cleaning requirements in park restroom facilities to be prepared to open them when other areas of the parks are allowed to open.
- A process has been established on how to respond if an employee is tested positive for COVID-19, which has been communicated to all employees. Human Resources has tracked and is prepared to implement all leave benefits established by the Federal government.
- The Recreation Department is working on providing summer recreation opportunities that meet State restrictions. Limited softball practices are currently taking place. The Boxing Club has been allowed to resume, but only for training and no sparring or competition. The racquetball and tennis courts are open for singles play. The skate park is open with restrictions and the splash pads are now on. The City is coordinating with First Tee on a summer day camp program.

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- Police staff are visiting each restaurant and bar to notify them of changes in the Governor's order requiring closure of indoor service.

Future Options

The City has access to limited data on cases in the community, so it is difficult to prepare a detailed analysis. However, staff believes there are 3 most common concerns regarding the cause of the spread of COVID-19, which include: 1) individuals attending gatherings and someone at the gathering spreading it to others so a number of people are exposed at one time; and 2) youth interacting with friends, spreading it among friends, and then exposing those in their households; and 3) agricultural employees living, working or being transported in close proximity. Staff believes everything feasible is being done to seek voluntary compliance. Any additional efforts will likely require an increased level of enforcement action.

Some cities are beginning to increase enforcement of the requirement to wear face coverings by issuing citations. If the City Council wants to increase enforcement, this would be one option. As previously discussed, there are difficulties associated with the County's prosecution of violations of the Health Officer's order. Therefore, staff would recommend adopting another urgency ordinance to establish local enforcement, citation and appeal procedures of just the face covering order. This would also enable the City to classify violations as an infraction rather than a misdemeanor, which would be easier to implement and less severe. The other Health Officer's orders have become too complex and change too frequently to enforce through a local ordinance. Please note that there are substantial costs involved for legal work and publishing requirements each time an urgency ordinance is proposed and adopted.

The Police Department is actively enforcing restrictions outside the household. It is not recommended to increase enforcement of gatherings within a household, such as private parties. Monterey County allows gatherings of people from the same household and social circles (groups of 12 or less who agree to be in exclusive groups for 4 weeks). Therefore, it would put officers in a difficult situation to enter a party (likely with individuals under the influence of alcohol) and have to confirm who is eligible to participate and who would be required to leave.

The City could also establish its own restrictions on agricultural operations. However, it would be difficult to enforce since only a portion of their activities occur within the City limits.

Compliance in King City has been generally good, but still in need of improvement. Therefore, staff recommends the City continue with current public education efforts at this time. It is also recommended the City continue to focus

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efforts on the specific directions and restrictions set forth by the County Health Officer and the Governor rather than developing the City's own restrictions other than those related to enforcement. However, it would also be helpful to begin planning on next steps if the spread continues to increase. Therefore, direction from the Council on acceptable increased enforcement options is requested at this time. It is staff's recommendation that the City be prepared to enact an urgency ordinance for enforcement and citation of face covering violations at any time an increased trend of hospitalizations causes a concern that future capacity may be at risk.

**COST ANALYSIS:**

No cost impact is associated with this item since it is limited to an update of past and current activities. If a new urgency ordinance is prepared, it could result in costs from \$3,000 to \$5,000. Staff has confirmed with the Federal Emergency Management Agency (FEMA) that most of these costs are not reimbursable.

**ENVIRONMENTAL REVIEW:**

Since this is an update on ongoing activities, this matter is not a "project" for the purposes of the California Environmental Quality Act (CEQA) as it does not have the potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment. No further action is required under CEQA for City Council action.

**ALTERNATIVES:**

The following alternatives are provided for Council consideration:

1. Receive the status report and approve staff's recommendations;
2. Receive the status report and provide direction on increased enforcement actions at this time;
3. Receive direction and provide direction on other actions requested; or
4. Provide staff other direction.

Prepared and Approved by:

  
\_\_\_\_\_  
Steven Adams, City Manager