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18 Humboldt Voters' Association, John Roe, and Jane Roe

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF HUMBOLDT

HUMMAP, HUMBOLDT CANNABIS  
TAXPAYERS' ASSOCIATION, ,  
HUMBOLDT VOTERS' ASSOCIATION,  
JOHN ROE, AND JANE ROE

Petitioner and Plaintiff,

v.

HUMBOLDT COUNTY, and DOES 1-10,  
INCLUSIVE,

Respondent and Defendant

Case No.

**CV 180425**

**PETITION FOR WRIT FOR MANDATE**

**and**

**COMPLAINT FOR INJUNCTIVE,  
DECLARATORY RELIEF, AND  
DISGORGEMENT OF UNLAWFUL TAXES  
PAID**

1 Petitioners and Plaintiffs Humboldt Cannabis Taxpayers Association, HUMMAP,  
2 Humboldt Voters' Association, John Doe and Jane Doe bring this action by and through their  
3 undersigned counsel as follows and alleges as follows:

4 **NATURE OF ACTION**

5  
6 1. Plaintiff seeks a Writ of Mandate, and Injunctive and Declaratory relief pursuant to *Code*  
7 *of Civil Procedure* § 1085 and § 562(a) against the County of Humboldt for violations of the  
8 Humboldt County Code Title VII - Finance, Revenue & Taxation Division 1 Revenue and  
9 Taxation Chapter 9 Commercial Marijuana Cultivation Tax (Measure S), Government Code §  
10 53723, Proposition 218 and Article XIII C § 2(b) of the California Constitution.

11 **PARTIES**

12  
13 2. HUMMAP is an unincorporated association among whose members are property owners,  
14 cannabis permit holders, and voters who reside in Humboldt. To protect the confidentiality and  
15 vindicate the rights of the members of the Association, the Association appointed Robert  
16 Sutherland as Officer.

17  
18 3. Humboldt Cannabis Taxpayers Association ("HCTA") is an unincorporated association  
19 of property owners who reside in Humboldt County who were assessed taxes and paid taxes  
20 under the amended version of Measure S. To protect the confidentiality and to vindicate the  
21 rights of the members of the Association the Association appointed attorney Eugene Denson as  
22 Officer. The parties fear the County will retaliate against them if they disclose their identities.

23  
24 4. Humboldt Voters' Association is an unincorporated association of voters residing in  
25 Humboldt County who voted for or against Measure S. To protect the confidentiality and to  
26 vindicate the rights of the members of the Association the Association appointed attorney  
27 Eugene Denson as Officer.  
28

1 5. Plaintiff John Roe resides, and resided at all relevant times in Humboldt County and was  
2 assessed and did pay tax as a property owner under Measure S as amended. Plaintiff John Roe  
3 brings this action under a pseudonym to prevent the County of Humboldt from retaliating against  
4 him.

5 6. Plaintiff Jane Roe resides, and resided at all relevant times in Humboldt County and was  
6 assessed and did pay tax as a property owner under Measure S as amended. Plaintiff Jane Roe  
7 brings this action under a pseudonym to prevent the County of Humboldt from retaliating against  
8 her.  
9

10 7. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as Does 1  
11 through 10, inclusive, and therefore sues these defendants by such fictitious names and will amend  
12 this complaint to allege their true names and capacities when ascertained.  
13

14 8. Defendant Humboldt County is a County established by the laws of California and  
15 governed by a five member Board of Supervisors which has no separate identity than the County.

16 **GENERAL ALLEGATIONS**

17 **A) The Board of Supervisors Broadened the Scope of Tax to Property Owners**

18 9. On November 8, 2017,<sup>1</sup> the voters of Humboldt County approved Measure S which  
19 provided in § 719-4:  
20

21 In addition to any requirements imposed by Title III of this Code, each **person** engaged  
22 in legally authorized commercial marijuana cultivation within the unincorporated area of  
23 Humboldt County shall pay an annual tax of \$1 per square foot of outdoor cultivation  
24 area, \$2 per square foot of mixed-light cultivation area or \$3 per square foot of indoor  
cultivation area regardless of whether or not marijuana is actually grown on such  
property.

25 [Emphasis Added]  
26

27 10. On June 6, 2017, the Humboldt County Board of Supervisors amended Measure S § 719-4  
28

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<sup>1</sup> Measure S as passed by the voters attached as Exhibit "1" and as amended as Exhibit "2".

as incorporated into the County Code as follows:

In addition to any requirements imposed by Title III of this Code, each **property owner** whose property is subject to a commercial marijuana cultivation permit shall pay an annual tax of \$1 per square foot of outdoor cultivation area, \$2 per square foot of mixed-light cultivation area or \$3 per square foot of indoor cultivation area regardless of whether or not marijuana is actually grown on such property.

[Emphasis Added]

11. Measure S provided:

The Humboldt County Board of Supervisors may repeal this Chapter, or amend it in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein, without further voter approval. If the Board of Supervisors repeals any provision of this Chapter, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or **broaden the scope of the tax imposed herein.**

(§ 719-9) [Emphasis Added]

12. Government Code § 53723 provides

No local government, or district, whether or not authorized to levy a property tax, may impose any general tax unless and until such general tax is submitted to the electorate of the local government, or district and approved by a majority vote of the voters voting in an election on the issue.

*California Constitution* Article XIII C § 2(b) provides:

No local government may impose, **extend**, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

[Emphasis Added]

13. *Cal. Const.*, Article. XIII D, §§ 3, 6 (Proposition 218) requires a two-thirds voter approval for taxes on a "parcel of property or upon any person as an incident of property ownership except outside the context of assessments specifically authorized. Here, the property owners' and the

1 parcels' taxes under Measure S were increased from zero to the square-foot tax the voters  
2 approved on cultivators. Measure S did not pass by a two-thirds voter approval.

3 14. County Counsel's "impartial analysis of the measure" provided:

4  
5 Measure S was placed on the ballot by vote of the Humboldt County Board of  
6 Supervisors on July 19, 2016, as authorized by California Business and Professions Code  
section 19348 and Revenue and Taxation Code section 7284.

7 California Business and Professions Code § 19348 provides:

8 (a)(1) A county may impose a tax on the privilege of cultivating, dispensing, producing,  
9 processing, preparing, storing, providing, donating, selling, or distributing medical  
10 cannabis or medical cannabis products **by a licensee operating pursuant to this**  
11 **chapter.** (4) The tax authorized by this section may be imposed upon any or all of the  
12 activities set forth in paragraph (1), as specified in the ordinance, regardless of whether  
13 the activity is undertaken individually, collectively, or cooperatively, and regardless of  
whether the activity is for compensation or gratuitous, as determined by the board of  
supervisors. (b) **A tax imposed pursuant to this section shall be subject to applicable  
voter approval requirements imposed by law.**

14 [Emphasis Added]

15 15. Revenue and Taxation Code section 7284 provides:

16 (a) The board of supervisors of any county may license, for revenue and regulation, and  
17 fix the license tax upon, every kind of lawful business transacted in the unincorporated  
18 area of the county, including shows, exhibitions, and games. The board may provide for  
collection of the license tax by suit or otherwise.

19 (b) Any board which imposes a license tax pursuant to subdivision (a) upon a business  
20 operating both within and outside the board's taxing jurisdiction shall levy the tax so that  
21 the measure of tax fairly reflects that proportion of the taxed activity actually carried on  
within the taxing jurisdiction.

22 16. Neither of these sections relied upon by the County authorizes the taxing of property  
23 owners.

24 17. The Humboldt County Board of Supervisors violated Measure S, Government Code §  
25 53723, Proposition 218 and Article XIII C § 2(b) of the California Constitution in extending the  
26 scope of the tax to property owners. The voters decided to tax cultivators not property owners.  
27  
28

1           **B) The Board of Supervisors Broadened the Scope of the Tax from Cultivation Area**  
2 **to Permitted Area**

3 18. Measure S (719-3b) as approved by the voters read:

4 "Cultivation area" shall mean the sum of the area(s) of marijuana cultivation as measured  
5 around the perimeter of each discrete area of marijuana cultivation on a single premises,  
6 as defined herein. Area of marijuana cultivation is the physical space where marijuana is  
7 grown and includes, without limitation, garden beds or plots, the exterior dimensions of  
8 hoop houses or green houses, and the total area of each of the pots and bags containing  
9 marijuana plants on the premises.

10 19. The Supervisors amended 719-3(b) to read: "'Cultivation area' shall mean the cultivation  
11 area stated on the commercial marijuana cultivation permit issued by the Humboldt County  
12 Planning and Building Department."

13 20. Measure S (719-4) as approved by the voters read:

14 In addition to any requirements imposed by Title III of this Code, each person engaged in  
15 legally authorized commercial marijuana cultivation within the unincorporated area of  
16 Humboldt County shall pay an annual tax of \$1 per square foot of outdoor cultivation  
17 area, \$2 per square foot of mixed-light cultivation area or \$3 per square foot of indoor  
18 cultivation area.

19 The Supervisors amended 719-4 to read

20 In addition to any requirements imposed by Title III of this Code, each property owner  
21 whose property is subject to a commercial marijuana cultivation shall pay an annual tax  
22 of \$1 per square foot of outdoor cultivation area, \$2 per square foot of mixed-light  
23 cultivation area or \$3 per square foot of indoor cultivation area regardless of **whether or**  
24 **not marijuana is actually grown on such property.**

25 [Emphasis Added]

26 21. The "cultivation area stated on the commercial marijuana cultivation permit" is the  
27 maximum amount of cultivation a permit holder may undertake. While the version of Measure S  
28 the voters approved required a tax on cannabis actually cultivated, Measure S as amended by the  
Supervisors imposes a tax on the capacity to cultivate cannabis. This new tax incentivizes a  
grower to maximize their cannabis grow in order to afford the cultivation tax. The Supervisor's

1 amendment created a larger tax base by incorporating all permitted areas, whether cultivated or  
2 not, and changed the pro-rated basis expressed in 719-6 which began taxation “on the date”  
3 cultivation began, to “each and every in which a commercial marijuana cultivation permit is  
4 issued.” The Supervisor’s amendment increased the amount of the tax being levied on non-  
5 cultivation property owners from zero to the full annualized tax on the permitted area of their  
6 property.  
7

8 **C) The Supervisors Extended the Scope and Amount of the Measure S Tax**

9 22. Measure S (719-6) as approved by the voters read in pertinent part:

10 For purposes of this Chapter, taxes shall begin to accrue on the date on which a person  
11 becomes engaged in legally authorized commercial marijuana cultivation in accordance  
12 with the applicable provisions of this Code and all other applicable state and federal laws  
and regulations.

13 23. Measure S (719-6) as amended by the Supervisors reads in pertinent part:

14 For purposes of this Chapter, taxes shall be owed for each and every year in which a  
15 commercial marijuana cultivation permit is issued by the Humboldt County Planning and  
16 Building Department.

17 24. The amendment improperly extends the scope and amount of the tax from the time a  
18 person “becomes in engaged in legally authorized commercial marijuana cultivation” to “every  
19 year in which a commercial marijuana cultivation permit is issued.” The tax as amended is  
20 broadened to encompass the entire year the permit is issued, as opposed to time legal cultivation  
21 actual started. As amended the triggering event is the existence of a permit, while the voters  
22 approved cultivation as the tax triggering event.  
23

24 **D) The Supervisors Amended the Tax to be Collected More Often than Voter’s**  
25 **Approved**

26 25. Measure S as approved by the voters provided the taxes would be collected “biennially”  
27 or once every two years. On June 6, 2017, the Supervisors amended the tax to be collected  
28

1 “biannually” or twice a year; and on April 3, 2018, the Supervisors amended the tax to be  
2 collected “in the same manner as other taxes fixed and collected by the County of Humboldt,” or  
3 twice a year. §§ 719-6, 719-7

4 26. The amendment improperly extends the scope of the tax and expands the tax by forcing  
5 the taxpayer to relinquish ownership of funds every six months as opposed to every two years,  
6 and depriving the tax payer of the gains which would be received through inflation as measured  
7 by the Consumer Price Index (“CPI”). Measure S as amended is an improper tax on the time  
8 value of money.  
9

10 **E) The Supervisors Amended Measure S to Tax Permit Holders Not Complying with**  
11 **Federal Law**  
12

13 27. Measure S as approved by the voters provided taxes would accrue:

14 [O]n the date on which a person becomes engaged in legally authorized marijuana  
15 cultivation in accordance with the applicable provisions of this Code and all other  
16 applicable State and Federal laws and regulations.

17 §719-6(a)

18 28. Measure S was amended by the Supervisors to read:

19 For purposes of this chapter, taxes shall be owed for each and every year in which a  
20 commercial marijuana permit is issued by the Humboldt County Planning and Building  
21 Department.

22 §719-6(a) revised.

23 29. The scope of the ordinance was vastly expanded by this amendment without voter  
24 approval. Federal prohibition remains in effect and no research permits have been issued by the  
25 Federal government for cannabis cultivation in Humboldt County. All permit holders are still  
26 violating the Schedule 1 prohibition on cannabis cultivation. The Supervisors improperly  
27 expanded the scope of the tax with this amendment without voter approval.  
28



**CAUSE OF ACTION**  
**FIRST CAUSE OF ACTION**  
**WRIT OF MANDATE**  
**(AGAINST ALL RESPONDENTS)**

30. All prior allegations are incorporated herein.

31. There is a clear, present and ministerial duty on the part of Respondent to Comply with Humboldt County Code Title VII - Finance, Revenue & Taxation Division 1 Revenue and Taxation Chapter 9 § 719-9, Government Code § 53723, Article XIII C § 2(b) and XIII D of the California Constitution to not, impose, extend, increase, or broaden the scope of the tax imposed until submitting the issue to the electorate and obtaining voter approval.

32. Petitioners have a clear, present and beneficial right to the performance of these duties.

33. Petitioners do not have an adequate remedy at law.

34. Petitioners are entitled to a Writ of Mandate pursuant to Code of Civil Procedure §§ 1085 and 1060, and a refund of illegal taxes paid, as specified more fully below.

**SECOND CAUSE OF ACTION**  
**DECLARATORY RELIEF C.C.P §§ 1085, 1060**  
**(Against All Defendants)**

35. Plaintiff refers to and incorporates by reference all preceding paragraphs as though fully set forth at length herein.

36. An actual, present, and substantial controversy exists between Plaintiffs and Defendant. Plaintiff contends that Defendant have exceeded their authority under and violate Humboldt County Code § 719-9, Government Code § 53723, Article XIII C § 2(b) and XIII D of the California Constitution to not, impose, extend, increase, or broaden the scope of the tax without first submitting the issue to the electorate and receiving approval as required by Government Code § 53723, Article XIII C § 2(b) and XIII D of the California Constitution.

1 37. Plaintiff contends that Defendant will continue its illegal actions in the future. Plaintiff  
2 alternatively contends that Defendants have violated and will continue to violate California  
3 Constitution, article XIII C, § 2, subdivision (b). Defendant contends that they have complied,  
4 and will continue to comply with said County code and constitutional limitations and  
5 requirements.  
6

7 38. Plaintiff is entitled to a judicial declaration declaring the parties' respective right and  
8 obligations pursuant to Code of Civil Procedure §§ 1085, 1060 and that Defendant refund past  
9 taxes collected in violation of law.

10  
11 **THIRD CAUSE OF ACTION**  
12 **INJUNCTION PURSUANT TO C.C.P. § 526a**  
**(Against All Defendants)**

13 39. Plaintiff refers to and incorporates by reference all preceding paragraphs as though fully  
14 set forth at length herein.

15 40. Plaintiff is entitled to and seeks an injunction pursuant to Code of Civil Procedure  
16 section 526a enjoining Defendants from imposing the tax pursuant to Measure S which was  
17 improperly imposed, extended increased, and/or broadened without voter approval. Plaintiff is  
18 entitled to an order Defendant refund past taxes collected in violation of law.  
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner/Plaintiff prays for relief and judgment against the County of  
22 Humboldt, as follows:

- 23 1. For a writ of mandate directing the County to cease taxes on property owners under  
24 Measure S as amended;  
25  
26 2. For a declaratory judgment declaring that the County has violated and are violating  
27 Humboldt County Code section 719-9, or alternatively, California Constitution, article XII  
28

1 C, § 2, subdivision (b) with respect to the imposition taxes on property owners;

2 3. For a preliminary and permanent injunction enjoining the County from imposing the  
3 taxes under Measure S as amended;

4 4. An Order the County refund past taxes collected in violation of the law;

5 5. Disgorgement of past taxes collected in violation of the law;

6 6. Reduction in the property tax the State allocates pursuant to Government Code § 53727;

7 7. An award of attorneys' fees and costs, including those recoverable pursuant to California  
8 Code of Civil Procedure § 1021.5 and/or other applicable method of awarding attorney's fees and  
9 costs; and  
10

11 8. For any such further relief as may be permitted by law and/or that the Court deem  
12 equitable, just and proper.  
13

14  
15 Dated: May 13, 2018

LAW OFFICE OF EUGENE DENSON

16  
17  
18 By 

Eugene Cowan Denson, attorney for Petitioners and  
Plaintiffs HUMMAP, Humboldt Cannabis Tax Payers  
Association, Humboldt Voters' Association, John Roe,  
and Jane Roe

19  
20  
21  
22 Dated: May 13, 2018

Fletcher Law Offices

23  
24 By 

Frederic Fletcher, attorney for Petitioners and  
Plaintiffs HUMMAP, Humboldt Cannabis Tax Payers  
Association, Humboldt Voters' Association, John Roe,  
and Jane Roe

**VERIFICATION**

I, Eugene Cowan Denson, declare: I am the Officer of Petitioners and Plaintiff the Humboldt Cannabis Tax Payers Association, and Humboldt Voters' Association parties to this action. I was appointed Officer and serve as Officer to protect the members including John Roe and Jane Roe from retaliation by the County of Humboldt. I have read the foregoing Verified Petition for Writ o Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. When indicated, the matters stated therein are true based on my knowledge, and are otherwise stated o information and belief, and as to those matters I believe them to be true. I certify, upon penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this verification was executed on the date shown below in the County of Humboldt, California.

Dated: 14

13 May 18

Eugene Cowan Denson  
Eugene Cowan Denson

EXHIBIT "1"

**FULL TEXT FOR MEASURE S  
COMMERCIAL MARIJUANA CULTIVATION TAX ORDINANCE**

**719-1. TITLE.**

This Chapter shall be known as the Humboldt County Commercial Marijuana Cultivation Tax Ordinance. (Ord. , § , /2016)

**719-2. PURPOSE AND INTENT.**

This Chapter is enacted solely for the purpose of raising revenue for general County purposes, and is not intended to be regulatory. Nothing in this Chapter is intended, nor shall be construed, to exempt commercial marijuana cultivation from compliance with all applicable provisions of this Code, including, without limitation, the requirements set forth in Title III, and all other applicable state and federal laws and regulations. (Ord. , § , /2016)

**719-3. DEFINITIONS.**

(a) "Commercial marijuana cultivation" shall mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of marijuana or cannabis, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered or sold in accordance with the applicable provisions of this Code and all other applicable state and federal laws and regulations. (Ord. , § , /2016)

(b) "Cultivation area" shall mean the sum of the permitted area(s) of marijuana cultivation as measured around the perimeter of each discrete area of marijuana cultivation on a single premises, as defined herein. Area of marijuana cultivation is the physical space where marijuana is grown and includes, without limitation, garden beds or plots, the exterior dimensions of hoop houses or green houses, and the total area of each of the pots and bags containing marijuana plants on the premises. (Ord. , § , /2016)

(c) "Indoor" shall mean indoor cultivation of marijuana which involves the exclusive use of artificial lighting. (Ord. , § , /2016)

(d) "Mixed-light" shall mean cultivation of marijuana which involves the use of a combination of natural and supplemental artificial lighting at a maximum threshold as set forth in Section 314-55.4.11, et seq. of this Code, or as to be determined by the Department of Food and Agriculture, whichever is less. (Ord. , § , /2016)

(e) "Outdoor" shall mean outdoor cultivation of marijuana which does not involve the use of artificial lighting of any kind. (Ord. , § , /2016)

(f) "Person" shall mean an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit and includes the plural as well as the singular number. (Ord. , § , /2016)

(g) "Premises" shall mean a legal parcel compliant with the Subdivision Map Act, or a leasehold interest in agricultural land for agricultural purposes of outdoor, mixed-light, or indoor cultivation or processing of marijuana, or a leased or owned space in an industrial or commercial building for purposes of indoor cultivation, processing, manufacture or distribution of marijuana. (Ord. , § , /2016)

**719-4. IMPOSITION OF TAX.**

In addition to any requirements imposed by Title III of this Code, each person engaged in legally authorized commercial marijuana cultivation within the unincorporated area of Humboldt County shall pay an annual tax of \$1 per square foot of outdoor cultivation area, \$2 per square foot of mixed-light cultivation area or \$3 per square foot of indoor cultivation area. (Ord. , § , /2016)

**719-5. ANNUAL ADJUSTMENT.**

The tax imposed by this Chapter shall be adjusted on July 1, 2017, and July 1st of each succeeding year based on the Consumer Price Index (CPI) for all urban consumers in the as published by the United States Government Bureau of Labor Statistics; however, no adjustment shall decrease the tax imposed by this Chapter, unless approved by the Humboldt County Board of Supervisors. (Ord. , § , /2016)

**719-6. COLLECTION AND REMITTANCE.**

The tax imposed by this Chapter shall be collected by the Humboldt

County Treasurer-Tax Collector biennially in the same manner as other taxes fixed and collected by the County of Humboldt. For purposes of this Chapter, taxes shall begin to accrue on the date on which a person becomes engaged in legally authorized commercial marijuana cultivation in accordance with the applicable provisions of this Code and all other applicable state and federal laws and regulations. (Ord. , § , /2016)

**719-7. PENALTIES.**

Any person that fails to pay the tax required by this Chapter within 30 days after the due date shall pay, in addition to the tax, a penalty for nonpayment in a sum equal to 25 percent of the total amount due. An additional 10 percent penalty shall be added on the first day of each month following the month of the imposition of the initial 25 percent penalty if the tax remains unpaid - up to a maximum of 100 percent of the tax payable on the due date. Receipt of the tax payment by the Humboldt County Treasurer-Tax Collector's Office shall govern the determination of whether the tax is delinquent. Postmarks will not be accepted as adequate proof of a timely payment. (Ord. , § , /2016)

**719-8. ADDITIONAL PENALTIES.**

Any violation of this Chapter shall constitute a public nuisance and shall be subject to any and all administrative, civil, or criminal remedies available to the County, including those set forth in Title III, Division 5, Chapter 1 of this Code. (Ord. , § , /2016)

**719-9. MODIFICATION, REPEAL OR AMENDMENT.**

The Humboldt County Board of Supervisors may repeal this Chapter, or amend it in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein, without further voter approval. If the Board of Supervisors repeals any provision this Chapter, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein. (Ord. , § , /2016)

**719-10. ADMINISTRATION.**

The Humboldt County Administrative Officer or designee thereof, upon the approval of the Humboldt County Board of Supervisors, may promulgate regulations to implement and administer the provisions of this Chapter. (Ord. , § , /2016)

**719-11. RECORD INSPECTION.**

Whenever it is necessary to examine any books or records, including tax returns, of any entity subject to the provisions of this Chapter, to ascertain the amount of any tax due pursuant to this Chapter, the County shall have the power and authority to examine such necessary books and records at any reasonable time including, without limitation, during normal business hours. Such records shall be maintained for no less than seven (7) years. (Ord. , § , /2016)

**719-12. APPLICATION OF PROVISIONS.**

(a) In the event that the commercial cultivation of marijuana for casual and/or recreational use is legalized or decriminalized in the State of California, the provisions of this Chapter shall apply, without subsequent voter approval, to each person cultivating marijuana for such purposes in accordance with the applicable provisions of this Code and all other applicable state and federal laws and regulations. (Ord. , § , /2016)

(b) No payment of any tax required under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this Chapter implies or authorizes that any activity connected with the cultivation, possession or provision of marijuana is legal unless otherwise authorized and allowed by the State of California and permitted by the County. (Ord. , § , /2016)

**719-13. SEVERABILITY.**

If any provision of this Chapter, or the application thereof, is held invalid, such invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provisions or application and to this end, the provisions or application of this Chapter are severable. (Ord. , § , /2016)

**719-14. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

The purpose of this Chapter is to establish a government funding mechanism for general County purposes and the County is not committing to a specific course of action with respect to the tax revenue generated hereunder, and therefore, this Chapter is not a "project" subject to the requirements of the California Environmental Quality Act ("CEQA") as defined in Section 15378, subdivision (b), of the CEQA Guidelines. (Ord. , § . /2016)

**719-15. OPERATIVE DATE.**

This Chapter shall become operative on January 1, 2017. (Ord. , § . /2016)

**IMPARTIAL ANALYSIS OF MEASURE S  
HUMBOLDT COUNTY COMMERCIAL MARIJUANA  
CULTIVATION TAX**

Measure S was placed on the ballot by vote of the Humboldt County Board of Supervisors on July 19, 2016, as authorized by California Business and Professions Code section 19348 and Revenue and Taxation Code section 7284. If approved by the electorate by majority vote in accordance with California Constitution Article XIII C, Section 2 (b) and Government Code section 53723, the Board of Supervisors will enact an ordinance adding Chapter 9 to Title VII, Division 1 of the Humboldt County Code to impose a general tax on the cultivation of commercial marijuana or cannabis within the unincorporated area of the County of Humboldt. The tax would be applicable to the commercial cultivation of medical cannabis as authorized by the California Medical Cannabis Regulation and Safety Act and Title III, Division 1, Chapters 3 and 4 of the Humboldt County Code, and to the commercial cultivation of marijuana for casual or recreational use in the event that is legalized or decriminalized in the State of California and permitted by the County Code.

The initial maximum annual rate is one dollar per square foot of cultivation area for outdoor cultivation, two dollars per square foot of cultivation area for mixed light cultivation and three dollars per square foot of cultivation area for indoor cultivation. Cultivation area and cultivation types are as defined in the proposed ordinance. The tax rate shall be adjusted annually by the Consumer Price Index. Revenue from the tax will be deposited in the County General Fund. The tax will remain in effect until repealed.

The cultivation tax will be collected annually in two installments by the Humboldt County Treasurer-Tax Collector. The tax will begin to accrue on the date the cultivator becomes engaged in legally authorized commercial marijuana cultivation in accordance with the Humboldt County Code. Failure to pay the tax within 30 days of the date due will incur penalties of 25 percent of the total amount due, plus an additional 10 percent for each month the tax remains unpaid, up to a maximum penalty of 100 percent of the tax payable on the due date. Violation of the cultivation tax ordinance shall also constitute a public nuisance, subject to all administrative, civil, or criminal remedies available to the County.

The cultivation tax may be repealed or amended by the Board of Supervisors in a manner that does not result in an increase in the amount of the tax or broaden the scope of the tax without voter approval. In the event that the tax is repealed, it may be reenacted without voter approval, unless repealed by the electorate.

/s/ Jeffrey S. Blanck, County Counsel

## ARGUMENT IN FAVOR OF MEASURE S

Did you know Sacramento politicians have taken over \$300,000,000 from Humboldt County over the past 24 years? **YES on S** keeps OUR money LOCAL!

Illegal marijuana farms are destroying our local environment by diverting and drying up sensitive waterways and risking our health with toxic pesticides. **YES on S** ensures marijuana growers pay their fair share to protect our public safety, health and our County's wildlife, natural resources and beauty by allowing Humboldt County to regulate marijuana growers as other cities, counties and states have already done. All revenue generated will benefit OUR region's services.

Hard drugs and narcotics like meth and heroin continue to be a growing problem in our County. **YES on S** fights drug-related crimes, helps eliminate meth labs, and provides drug prevention and rehabilitation services.

**YES on S** enforces laws that require marijuana growers to protect natural areas and water quality

**YES on S** provides services for victims of child abuse

**YES on S** maintains rural ambulance services

**YES on S** provides mental health services for children and families

**YES on S** fights environmentally damaging marijuana farms

**YES on S** provides communications services for medical and first responders

By law, **YES on S** requires every dime be used for our local services—not taken for Sacramento agendas. Measure S generates locally-controlled funding for essential services like road repair, maintaining parks, trails and sheriff's patrols and rural fire protection that all residents benefit from!

**YES on S** includes strong fiscal accountability, with annual financial audits and public review—ensuring funds are spent responsibly.

Protect our public safety, health and environment! Join a unanimous County Board of Supervisors, children's advocates, marijuana farmers, and public safety leaders in voting **YES on S**.

Factual information: [humboldt.gov.org](http://humboldt.gov.org)

/s/ William F. Honsal, Undersheriff

/s/ Michael T. Downey, Sheriff

/s/ Mary Ann Hansen, Children's Advocate

/s/ Reverend Tim Doty, Addiction Treatment Advocate

## REBUTTAL TO THE ARGUMENT IN FAVOR OF MEASURE S

**NO on S**: Illegal marijuana farms are **NOT** taxed at all and Measure S in no way assures that this "general tax" will be used to prevent black market grows from diverting and drying up sensitive waterways and risking out health with toxic pesticides.

**NO on S**: It does not enforce laws that require marijuana growers to protect natural areas and water quality.

**NO on S**: It does not provide services for victims of child abuse.

**NO on S**: It does not maintain rural ambulance services

**NO on S**: It does not provide mental health services for children and families

**NO on S**: It does not fight environmentally damaging marijuana farms

**NO on S**: It does not provide communication services for medical and first responders

**NO on S**: It can be spent on general services, including raises, retirement funding, etc. WHO REALLY BENEFITS MOST FROM THESE?

**NO on S**: There is no taxpayer oversight committee proposed to oversee how the money from this measure is spent.

**NO on S**: Many marijuana farmers who are willing to comply with preferred practices do not want to be penalized or taxed out of existence.

**NO on S**: Do you trust the Board of Supervisors to spend this on children, rather than other uses? Ask public safety leaders if they trust them. It is far from "unanimously supported by children's advocates, marijuana farmers and public safety leaders" as stated. In fact, the opposite may be true.

**NO on S**

/s/ Kent Sawatzky, Concerned Citizen



EXHIBIT "2"

**TITLE VII - FINANCE, REVENUE AND TAXATION**

**DIVISION 1**

**REVENUE AND TAXATION**

**CHAPTER 9**

**COMMERCIAL MARIJUANA CULTIVATION TAX**

**719-1. TITLE.**

This Chapter shall be known as the Humboldt County Commercial Marijuana Cultivation Tax Ordinance. (Ord. 2567, § 1, 12/13/2016)

**719-2. PURPOSE AND INTENT.**

This Chapter is enacted solely for the purpose of raising revenue for general County purposes, and is not intended to be regulatory. Nothing in this Chapter is intended, nor shall be construed, to exempt commercial marijuana cultivation from compliance with all applicable provisions of this Code, including, without limitation, the requirements set forth in Title III, and all other applicable state and federal laws and regulations. (Ord. 2567, § 1, 12/13/2016)

**719-3. DEFINITIONS.**

(a) "Commercial marijuana cultivation" shall mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of marijuana or cannabis, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered or sold in accordance with the applicable provisions of this Code and all other applicable state and federal laws and regulations. (Ord. 2567, § 1, 12/13/2016)

(b) "Commercial marijuana cultivation permit" shall mean any zoning clearance certificate, special permit or conditional use permit issued by the Humboldt County Planning and Building Department pursuant to Title III of this Code, which authorizes commercial marijuana cultivation to take place on the particular property listed therein. (Ord. 2575, § 1, 06/06/2017)

(c) "Cultivation area" shall mean the cultivation area stated on the commercial marijuana cultivation permit issued by the Humboldt County Planning and Building Department. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(d) "Indoor" shall mean indoor cultivation of marijuana which involves the exclusive use of artificial lighting. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(e) "Mixed-light" shall mean cultivation of marijuana which involves the use of a combination of natural and supplemental artificial lighting at a maximum threshold as set forth in Section 314-55.4.11, et seq. of this Code, or as to be determined by the Department of Food and Agriculture, whichever is less. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(f) "Outdoor" shall mean outdoor cultivation of marijuana which does not involve the use of artificial lighting of any kind. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(g) "Premises" shall mean a legal parcel compliant with the Subdivision Map Act, or a leasehold interest in agricultural land for agricultural purposes of outdoor, mixed-light, or indoor cultivation or processing of marijuana, or a leased or owned space in an industrial or commercial building for purposes of indoor cultivation, processing, manufacture or distribution of marijuana. (Ord. 2567, § 1, 12/13/2016)

(h) "Property owner" shall mean any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit who owns property within the unincorporated area of Humboldt County. (Ord. 2575, § 1, 06/06/2017)

#### **719-4. IMPOSITION OF TAX.**

In addition to any requirements imposed by Title III of this Code, each property owner whose property is subject to a commercial marijuana cultivation permit shall pay an annual tax of \$1 per square foot of outdoor cultivation area, \$2 per square foot of mixed-light cultivation area or \$3 per square foot of indoor cultivation area regardless of whether or not marijuana is actually grown on such property. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

#### **719-5. ANNUAL ADJUSTMENT.**

(a) The tax imposed by this Chapter shall be adjusted on July 1, 2017, and July 1st of each succeeding year based on the Consumer Price Index (CPI) for all urban consumers in the as published by the United States Government Bureau of Labor Statistics; however, no adjustment shall decrease the tax imposed by this Chapter, unless approved by the Humboldt County Board of Supervisors. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(b) On or before July 1, 2017, and on or before July 1<sup>st</sup> of each succeeding year, the County Administrative Officer or designee thereof shall supply to the Humboldt County Planning and Building Director or designee thereof, in a formal communication, the Consumer Price Index (CPI) for all urban consumers as published by the United States Government Bureau of Labor Statistics for computation of the tax imposed by this Chapter. (Ord. 2575, § 1, 06/06/2017)

#### **719-6. COLLECTION AND REMITTANCE.**

(a) The tax imposed by this Chapter shall be collected by the Humboldt County Treasurer-Tax Collector in the same or similar manner as other taxes fixed and collected by the County of Humboldt to capture the calendar year taxes required by this Chapter as directed by the Humboldt County Planning and Building Department. For purposes of this Chapter, taxes shall be owed for each and every year in which a commercial marijuana cultivation permit is issued by the Humboldt County Planning and Building Department. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017; Ord. 2597, § 1, 04/03/2018)

(b) The Humboldt County Planning and Building Department shall submit to the Humboldt County Treasurer-Tax Collector's Office sufficient information, in order for tax invoices (bills) to be sent out to all property owners whose properties are subject to a commercial marijuana cultivation permit. (Ord. 2575, § 1, 06/06/2017)

**719-7. PENALTIES.**

(a) Any property owner that fails to pay the tax required by this Chapter within 30 days after the due date shall pay, in addition to the tax, a penalty for nonpayment in a sum equal to 10 percent of the total amount due. All taxes and penalties remaining unpaid through December 31<sup>st</sup> each year will accrue interest at the rate of 1.5% per month, for a total of 18% per year, beginning January 1<sup>st</sup> and will continue to accrue until redeemed. A cost recovery fee will also be added each time a notice regarding over-due payments is mailed. Receipt of the tax payment by the Humboldt County Treasurer-Tax Collector's Office shall govern the determination of whether the tax is delinquent. Postmarks will not be accepted as adequate proof of a timely payment. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017; Ord. 2597, § 1, 04/03/2018)

(b) The Humboldt County Treasurer-Tax Collector is hereby authorized to waive or cancel any penalties, costs or other charges resulting from nonpayment of the tax required by this Chapter where the failure to make a timely payment was due to circumstances beyond the tax payer's control. (Ord. 2597, § 1, 04/03/2018)

**719-8. ADDITIONAL PENALTIES.**

Any violation of this Chapter shall constitute a public nuisance and shall be subject to any and all administrative, civil, or criminal remedies available to the County, including those set forth in Title III, Division 5, Chapter 1 of this Code. (Ord. 2567, § 1, 12/13/2016)

**719-9. MODIFICATION, REPEAL OR AMENDMENT.**

The Humboldt County Board of Supervisors may repeal this Chapter, or amend it in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein, without further voter approval. If the Board of Supervisors repeals any provision of this Chapter, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein. (Ord. 2567, § 1, 12/13/2016)

**719-10. ADMINISTRATION.**

The Humboldt County Administrative Officer or designee thereof, upon the approval of the Humboldt County Board of Supervisors, may promulgate regulations to implement and administer the provisions of this Chapter. (Ord. 2567, § 1, 12/13/2016)

**719-11. RECORD INSPECTION.**

Whenever it is necessary to examine any books or records, including tax returns, of any entity subject to the provisions of this Chapter, to ascertain the amount of any tax due pursuant to this Chapter, the County shall have the power and authority to examine such necessary books and records at any reasonable time including, without limitation, during normal business hours. Such records shall be maintained for no less than seven (7) years. (Ord. 2567, § 1, 12/13/2016)

**719-12. APPLICATION OF PROVISIONS.**

(a) In the event that the commercial cultivation of marijuana for casual and/or recreational use is legalized or decriminalized in the State of California, the provisions of this Chapter shall apply, without subsequent voter approval, to each property owner whose property is subject to a permit authorizing the commercial cultivation of marijuana for such purposes in accordance with the applicable provisions of this Code and all other applicable state and federal laws and regulations. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(b) No payment of any tax required under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this Chapter implies or authorizes that any activity connected with the cultivation, possession or provision of marijuana is legal unless otherwise authorized and allowed by the State of California and permitted by the County. (Ord. 2567, § 1, 12/13/2016)

**719-13. SEVERABILITY.**

If any provision of this Chapter, or the application thereof, is held invalid, such invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provisions or application and to this end, the provisions or application of this Chapter are severable. (Ord. 2567, § 1, 12/13/2016)

**719-14. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

The purpose of this Chapter is to establish a government funding mechanism for general County purposes and the County is not committing to a specific course of action with respect to the tax revenue generated hereunder, and therefore, this Chapter is not a "project" subject to the requirements of the California Environmental Quality Act ("CEQA") as defined in Section 15378, subdivision (b), of the CEQA Guidelines. (Ord. 2567, § 1, 12/13/2016)

**719-15. OPERATIVE DATE.**

This Chapter shall become operative on January 1, 2017. (Ord. 2567, § 1, 12/13/2016)