

ORDINANCE NUMBER 1329

AN ORDINANCE OF THE PEOPLE OF THE CITY OF PERRIS, CALIFORNIA APPROVING AND IMPLEMENTING A MARIJUANA TAX OF UP TO 10 CENTS PER \$1.00 OF PROCEEDS ON MARIJUANA DISPENSARIES OPERATING IN THE CITY; AND, APPROVING AND IMPLEMENTING A MARIJUANA CULTIVATION TAX OF UP TO \$25 PER SQUARE FOOT OF SPACE UTILIZED AS CULTIVATION AREA IN THE CITY, BY ADDING CHAPTER 3.40 (MARIJUANA TAX) TO TITLE 3 (REVENUE AND FINANCE) OF THE PERRIS MUNICIPAL CODE

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

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

WHEREAS, in 2005 the California Board of Equalization began issuing seller’s permits for sales consisting only of medical marijuana; and

WHEREAS, in 2015, the California legislature enacted the Medical Marijuana Regulation and Safety Act (“MMRSA”) (AB 243, AB 266, and SB 643) to establish a framework for regulating medical marijuana; and

WHEREAS, Business & Professions Code section 19320(d) provides that local jurisdictions retain the power to assess fees and taxes, as applicable, on medical marijuana facilities that are licensed pursuant to MMRSA and the business activities of those licensees.

WHEREAS, one or more recreational marijuana ballots measures may appear on the statewide ballot in the November, 2016 general election; and

WHEREAS, while the City Council does not condone or support the use of marijuana, the City Council at the same time does not seek to forego a potential revenue source for the City from either marijuana dispensing and sales, or marijuana cultivation; and

WHEREAS, presently the City has no local tax on either medical marijuana or recreational marijuana; and

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

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

SECTION 1. CHAPTER 3.40 (MARIJUANA TAX) IS HEREBY ADDED TO TITLE 3 (REVENUE AND FINANCE) OF THE PERRIS MUNICIPAL CODE AS FOLLOWS:

“CHAPTER 3.40 MARIJUANA TAX

Section 3.40.010 - Definitions.

Section 3.40.020 - Tax.

Section 3.40.030 - Operation.

Section 3.40.040 - Returns and Remittances.

Section 3.40.050 - Failure to Pay Tax.

Section 3.40.060 - Refunds.

Section 3.40.070 - Enforcement.

Section 3.40.080 - Debts; Deficiencies; Assessments; Hearings.

Section 3.40.090 - Tax Applicable to All Marijuana.

Section 3.40.010 - Definitions.

- A. “Cultivation” has the same definition as provided for in Bus. & Prof. Code § 19300.5(l), and as may be amended, defined as “any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.”
- B. “Finance Director” shall mean the Finance Director of the City of Perris and his/her designee(s).
- C. “Marijuana” has the same definition as provided for in Bus. & Prof. Code § 19300.5(f) for the term “cannabis,” and as may be amended, defined as “all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or

resin. 'Cannabis' also means the separated resin, whether crude or purified, obtained from marijuana. 'Cannabis' also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. 'Cannabis' does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, 'cannabis' does not mean 'industrial hemp' as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code."

- D. "Medical marijuana" means marijuana used for medical purposes in accordance with the Compassionate Use Act (Health and Safety Code section 11362.5), the Medical Marijuana Program Act (Health and Safety Code sections 11362.7 et seq.), and the Medical Marijuana Regulation and Safety Act of 2015.
- E. "Medical marijuana dispensary" includes any facility or location where marijuana is made available, sold, transmitted, distributed, given or otherwise provided by or to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card (and includes the term "dispensary" as provided for in Bus. & Prof. Code § 19300.5(n), and as may be amended, defined as "a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.").
- F. "Person" means any natural person, firm, corporation, partnership, club, or any association or combination of natural persons, whether acting by themselves or through any servant, agent or employee.
- G. "Proceeds" means total revenue and/or money received through the sale of goods and/or services before any deductions or allowances (e.g., rent, cost of goods sold, taxes).
- H. "Space utilized as cultivation area" shall mean any space or ground, floor or other surface area (whether horizontal or vertical) which is used during the marijuana germination, seedling, vegetative, pre-flowering, flowering and harvesting phases, including without limitation any space used for activities such as growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing or drying marijuana or any such space used for storing any products, supplies or equipment related to any such activities, no matter where such storage may take place or such storage space may be located.
- I. "Term" means a calendar month in regards to the monthly taxation of proceeds from medical marijuana dispensaries, and means the fiscal year in regards to the annual taxation of the space utilized as cultivation area for medical marijuana cultivation.

Section 3.40.020 - Tax.

- A. **Marijuana Dispensary Tax.** Every person engaged in operating, or otherwise conducting, a medical marijuana dispensary, either pursuant to this Code or otherwise, and regardless of whether such operation has a valid medical marijuana dispensary permit pursuant to this Code, shall pay a maximum marijuana tax of 10 cents for each \$1.00 of proceeds or fractional part thereof, the rate to be set by resolution of the City Council.
- B. **Marijuana Cultivation Tax.** If medical marijuana cultivation is authorized and/or permitted by the City of Perris, then every person cultivating medical marijuana in the City shall pay an annual maximum tax of twenty-five dollars (\$25) per square foot for space utilized as cultivation area. If a cultivation tax is imposed, then the taxes imposed on cultivation area shall be adjusted annually on July 1 after the date of imposition, and then July 1 of each succeeding year based on the Consumer Price Index ("CPI") for all urban consumers in the Los Angeles-Riverside-Orange County areas as published by the United States Government Bureau of Labor Statistics; however, no adjustment shall decrease any tax imposed by this chapter, unless approved by the City Council.

Section 3.40.030 - Operation.

- A. Failure to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and assessments as the City Council may establish and the City may use any or all other enforcement remedies provided in this Code.
- B. The City Council may impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax in a timely manner, as otherwise allowed by Code or California law. No action by the Council under this Section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.
- C. The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter shall be applied or construed as authorizing the sale or cultivation of marijuana.
- D. Taxes provided for under the provisions of this chapter are not sales or use taxes and shall not be calculated or assessed as such. The taxes shall not be separately identified or otherwise specifically assessed or charged to any individual member, consumer or customer; rather, the taxes are imposed upon the medical marijuana dispensary and/or medical marijuana cultivation operation.
- E. The Finance Director shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

Section 3.40.040 - Returns and Remittances.

The Tax shall be due and payable as follows:

- A. Each person owing Tax, on or before the last business day of each term as established by the Finance Director, shall prepare a tax return to the Finance Director of the total proceeds, and the amount of Tax owed for the preceding term. At the time the Tax return is filed, the full amount of the Tax owed for the preceding term shall be remitted to the City.
- B. All tax returns shall be completed on forms provided by the Finance Director.
- C. Tax returns and payments for all outstanding taxes owed the city are immediately due the Finance Director upon cessation of business for any reason.
- D. Whenever any payment, statement, report, request or other communication received by the Finance Director is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this section for the receipt thereof, or whenever the Finance Director is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Finance Director may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on Friday, Saturday, Sunday, or a federal holiday, the due day shall be the last regular business day on which the City Hall is open to the public prior to the due date.
- E. Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified by this section.
- F. The Finance Director is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

Section 3.40.050 - Failure to Pay Tax.

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

- A. A penalty equal to twenty-five 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, 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 interest on the unpaid penalties calculated at the rate established by resolution of the City Council.
- B. Whenever a check is submitted in payment of a Tax and the check is subsequently returned

unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the Tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.

- C. The Tax due shall be that amount due and payable from the operative date of this chapter.
- D. The Finance Director may waive the first and second penalties of twenty-five percent each imposed upon any person if:
 - 1. The person provides evidence satisfactory to the Finance Director that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the city prior to applying to the Finance Director for a waiver.
 - 2. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four month period for taxation of proceeds, and only once during any five (5) year period for taxation of space utilized as cultivation area for cultivation of medical marijuana.

Section 3.40.060 - Refunds.

- A. No refund shall be made of any Tax collected pursuant to this chapter, except as provided in this Section.
- B. No refund of any Tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a medical marijuana dispensary or cultivation operations.
- 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 medical marijuana Taxes for the next term.
- D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, such amount may be refunded to the claimant who paid the Tax provided that a written claim for refund is filed with the Finance Director.
- E. The Finance Director shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the Finance Director to do so.
- F. In the event that the Tax was erroneously paid and the error is attributable to the city, the entire amount of the Tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from

the amount to be refunded to cover expenses.

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

Section 3.40.070 - Enforcement.

- A. It shall be the duty of the Finance Director to enforce each and all of the provisions of this chapter.
- B. For purposes of administration and enforcement of this chapter generally, the Finance Director, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.
- C. The Finance Director shall have the power to audit and examine all books and records of medical marijuana dispensaries as well as persons engaged in the operation of a medical marijuana business, including both state and federal income tax returns, California sales tax returns, logs, receipts, bank records, or other evidence documenting the gross receipts of the medical marijuana business or persons engaged in the operation of a medical marijuana business, for the purpose of ascertaining the amount of Tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such medical marijuana business or person, after written demand by the Finance Director, refuses to make available for audit, examination or verification such books, records, or equipment as the Finance Director requests, the Finance Director may, after full consideration of all information within the Finance Director's knowledge concerning the medical marijuana business and activities of the person so refusing, make an assessment in the manner provided in Section 3.40.080 of this chapter.
- D. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.
- E. Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring permits from the City as provided for in this chapter, shall be deemed guilty of a misdemeanor.

Section 3.40.080 - Debts; Deficiencies; Assessments; Hearings.

- A. The amount of any tax, penalties, and interest imposed by the provisions of this chapter

shall be deemed a debt to the city and any person operating a medical marijuana dispensary or cultivation operation without also making payment to the city of the taxes imposed by this chapter shall be liable in an action in the name of the city in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such medical marijuana dispensary or cultivation operation.

- B. If the Finance Director is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, the Finance Director may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in the business of medical marijuana dispensary or cultivation operation, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.
- C. Under any of the following circumstances, the Finance Director may make and give notice of an assessment of the amount of tax owed by a person under this chapter:
1. If the person has not filed any statement or return required under the provisions of this chapter.
 2. If the person has not paid any tax due under the provisions of this chapter.
 3. If the person has not, after demand by the Finance Director, filed a corrected statement or return, or furnished to the Finance Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this chapter.
 4. If the Finance Director determines that the nonpayment of any tax due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.
 5. The notice of assessment shall separately set forth the amount of any tax known by the Finance Director to be due or estimated by the Finance Director, after consideration of all information within the Finance Director's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.
 6. 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 appearing on the face of the business tax certificate issued under this Code or to such other address

as he or she shall register with the Finance Director for the purpose of receiving notices provided under this chapter; or, should the person have no business tax certificate issued and should the person have no address registered with the Finance Director for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

- D. Within ten days after the date of service of an assessment of the amount of tax owed by a person under this chapter, the person may apply in writing to the Finance Director for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Finance Director shall become final and conclusive. The procedures for such a hearing shall be conducted as required by law and as follows:
1. The City Council delegates its authority to conduct such a hearing on the assessment to an independent hearing officer. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing on the assessment in the manner set forth herein and as required by law.
 2. Within thirty days of the receipt of any such application for hearing, the Finance Director shall cause the matter to be set for hearing before an independent hearing officer, unless a later date is agreed to by the Finance Director and the person requesting the hearing.
 3. Notice of such hearing shall be given by the Finance Director to the person requesting such hearing not later than five days prior to such hearing. The hearing officer may continue the administrative hearing from time to time. At such hearing said applicant may appear and offer evidence why the assessment as made by the Finance Director should not be confirmed and fixed as the tax due. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the person who applied for a hearing on the assessment to appear shall not affect the validity of the proceedings or order issued thereon.
 4. Upon conclusion of the hearing, or no later than ten (10) days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in this chapter for giving notice of assessment, and the hearing officer shall submit its decision and the record to the City Clerk. The decision of the hearing officer shall be final and conclusive.

Section 3.40.090 - Tax Applicable to All Marijuana

In the event of state and/or federal laws and/or regulations which decriminalize, authorize or legalize marijuana for recreational and/or general use, the tax measures provided for in this chapter which apply to medical marijuana are intended to equally apply to all marijuana to the fullest extent possible consistent with such laws or regulations."

SECTION 2. EFFECTIVE DATE.

If a majority of the voters of the City of Perris voting at the General Municipal Election of November 8, 2016 vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City of Perris, and shall be considered as adopted upon the date that the vote is declared by the City Council of the City of Perris, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code section 9217.

SECTION 3. CITY COUNCIL AUTHORITY TO AMEND AND/OR REPEAL

This is a City Council sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City of Perris. However, pursuant to Section 9217 of the California Elections Code, the City Council expressly reserves the right and authority to amend or repeal the Ordinance in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

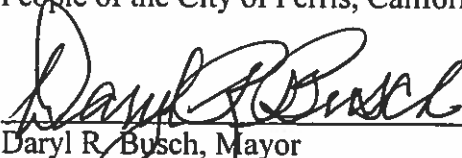
SECTION 4. SEVERABILITY.

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

SECTION 5. EXECUTION.

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

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the People of the City of Perris, California voting on the 8th day of November, 2016.



Daryl R. Busch, Mayor

ATTEST:



Nancy Salazar, City Clerk

