

ORDINANCE NO. 1101

MEASURE “II”

AN ORDINANCE OF THE PEOPLE OF THE CITY OF COACHELLA ADDING CHAPTER 4.31 TO TITLE 4 (REVENUE AND FINANCE) OF THE COACHELLA MUNICIPAL CODE ESTABLISHING A TAX ON CANNABIS/MARIJUANA BUSINESSES OPERATING WITHIN THE CITY OF COACHELLA.

THE PEOPLE OF THE CITY OF COACHELLA, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 4.31 is hereby added to Title 4 (Revenue and Finance) of the Coachella Municipal Code and shall read as follows:

**“CHAPTER 4.31
CANNABIS/MARIJUANA BUSINESS TAX.**

4.31.010 – Imposition of Tax.

A. Every person engaged in operating or otherwise conducting a cannabis business within the City of Coachella, and regardless of whether such business has a permit pursuant to Chapters 5.68, 17.85 or any other provision of this Code, shall pay the following cannabis business tax:

1. Up to a maximum of six (6) cents for each \$1.00 of gross receipts or fractional part thereof, whether at wholesale or retail, subject to adjustment by the City Council pursuant to Section 4.31.050; and
2. Up to a maximum of fifteen dollars (\$15.00) per square foot of space utilized in connection with the cultivation/manufacturing of cannabis or cannabis-infused products, subject to adjustment by the City Council pursuant to Section 4.31.050.

B. No cannabis business shall be deemed to be exempt from the payment of the taxes identified above by any other provision of this Code, unless expressly exempted under this Chapter.

4.31.020 – Purpose of Tax.

The purpose of this tax is to raise revenue to fund general government services.

4.31.030 – Definitions.

For purposes of this Chapter:

A. “Cannabis” means all parts of the plant *Cannabis Sativa Linnaeus*, *Cannabis Indica*, or *Cannabis Ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means “marijuana” as defined by Section 11018 of the Health and Safety Code.

B. A “Cannabis business” means any business, organization or facility, regardless of form, whether operating for profit or not for profit, where cannabis is planted, grown, harvested, dried, cured, graded, trimmed, stored, tested, manufactured, compounded, converted or processed into cannabis-infused products (e.g.: tinctures, oils, creams, candies and “medibles”), packaged, prepared, labeled, distributed, delivered, sold at retail or wholesale, or transported, or that does all or any combination of those activities.

C. “Gross receipts” means the total amount of monetary consideration actually received or receivable by a cannabis business for providing, at wholesale or retail, cannabis and cannabis-infused products, overhead costs, operating expenses, or related services whatsoever, including, but not limited to: membership dues, the value of monetary and in-kind contributions, payments, reimbursement of fees for cultivation, manufacturing, distribution, dispensing, storing, exchanging, processing, delivering, making available, or transmitting of cannabis or cannabis-infused products, any payments made, and anything else of value obtained by a cannabis business. Included in “gross receipts” shall be all receipts, cash, credits, and property of any kind without deduction of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.

D. “Person” means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit, which is conducting itself as a cannabis business.

E. “Space utilized in connection with the cultivation/manufacturing of cannabis or cannabis-infused products” means any space or ground, floor or other surface area (whether horizontal or vertical) which is used for either or both of the following:

1. Cannabis germination, seeding, vegetation, pre-flowering, flowering and harvesting; including without limitation activities such as growing, planting, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, topping, pinching, cropping, curing or drying cannabis, as well as 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.

2. The manufacture or processing of cannabis for wholesale or retail sale or into cannabis-infused products (e.g.: tinctures, oils and “medibles”) for wholesale or retail sale, including compounding, converting, testing, packaging, preparing, labeling, distribution or transport, or all or any combination of those activities.

4.31.040 – Payment Obligation.

All taxpayers subject to this Chapter must pay the full tax imposed by this Chapter regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this Code, except as required by California or Federal law. Failure to pay the tax shall be subject to penalties, interest charges, and assessments as the City Council may establish and the City may use any or all other code enforcement remedies provided in this Code. No provision in this Code can lower the tax rate set forth in this Chapter or otherwise reduce the amount of taxes paid hereunder unless the provision specifically states that the reduction applies.

4.31.050 – City Council Authorization to Adjust Tax Rate and/or Methodology.

The City Council may impose the tax authorized by this Chapter at a lower rate and may otherwise repeal or amend this Chapter without a vote of the People. However, as required by California Constitution Article XIIC (Proposition 218), voter approval is required for any amendment that would increase the maximum rate or methodology of any tax levied pursuant to this Chapter. The people of the City of Coachella affirm that the following actions shall not constitute an increase of the maximum rate or methodology of the tax requiring subsequent voter approval:

A. The restoration of the rate of the tax to a rate that is no higher than the maximum set by this voter-approved Chapter, if the City Council has previously 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 or service that is exempt or excepted from the tax or the discontinuation of any such exemption or exception; and

D. Resuming collection of the tax imposed by this Chapter, even if the City had, for some period of time, either suspended collection of the tax or otherwise failed to collect the tax, in whole or in part.

4.31.060 – Payment of Tax Does Not Authorize Illegal Activity.

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 implies or authorizes that any activity connected with the distribution or possession of cannabis is legal unless otherwise authorized and allowed in strict and full conformance to the provisions of this Code, including without limitation the provisions of Chapters 5.68 and 17.85.

4.31.070 – Cannabis Cultivation/Manufacturing Tax Is Not a Sales Tax.

The tax provided for under the provisions of this Chapter is not a Sales, Transactions or Use Tax and shall not be calculated or assessed as such. The tax established under this Chapter shall not be separately identified or otherwise specifically assessed or charged to any client of a cannabis business.

4.31.080 – Amendments and Administration.

A. This Chapter was submitted to the voters for approval. Any amendment to this Chapter to increase the tax above the maximum rate expressly provided in Section 4.31.010 shall not become effective until such amendment is approved by the voters. The voters expressly authorize the City Council to amend, modify, change, or revise any other provision of this Chapter as the City Council deems in the best interest of the City, as set forth in Section 4.31.050.

B. The City Manager or the City Manager’s designee 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.

C. The City Manager or the City Manager’s designee shall annually audit the taxes imposed by this Chapter to verify that tax revenues have been properly expended in accordance with the law.

D. Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased to the maximum extent over the maximum period of time allowed under law consistent with the revenues generated by the tax established by this Chapter.

4.31.090 – Returns and Remittances.

The Tax shall be due and payable as follows:

A. The tax established by this Chapter shall be collected quarterly. Each person owing tax shall prepare and file a tax return to the City Manager setting out the total amount of tax owed for the preceding calendar quarter during which the tax was in effect. The return shall be filed not later than thirty (30) calendar days following the last day of the preceding each calendar quarter. At the time the tax return is filed, the full amount of the tax owed for the preceding calendar quarter shall be remitted to the City Manager.

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

C. Tax returns and payments for all outstanding taxes owed the City are immediately due to the City Manager upon cessation of business for any reason.

D. Whenever any payment, statement, report, request or other communication received by the City Manager 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 City Manager 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 City Manager may regard such payment, statement, report, request, or other communication as having been timely received. If the due date falls on Friday, Saturday, Sunday, or a holiday, the due date shall be the next regular business day on which the City Hall is open to the public.

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 in Subsection A of this Section.

F. The City Manager 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.

4.31.100 – Failure to Pay Tax.

A. 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:

1. A penalty equal to twenty-five percent (25%) of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the City Council; and

2. An additional penalty equal to twenty-five percent (25%) 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 January 1, 2017 or the first date on which the cannabis business first operated in the City, whichever date occurred last, together with applicable penalties and interest calculated in accordance with Subsection A of this Section.

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

1. The person provides evidence satisfactory to the City Manager 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 tax and accrued interest owed the City prior to applying to the City Manager 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.

4.31.110 – 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 cannabis business.

C. 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 person who paid the tax provided that a written claim for refund is timely filed with the City Manager, pursuant to Section 4.32.010 of this Code. The period for filing a claim for refund shall be one (1) year from the time the tax was paid or erroneously or illegally collected; provided however, that in no event shall the period to file such claim expire prior to the shortest period allowable for filing a tax refund claim under Government Code Section 911.2. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto, and must clearly set forth the facts and legal theories under which the claimant believes he or she has right to a refund. Where the amount of any individual refund claim is in excess of the amount set by ordinance or resolution of the City Council relating to the settlement of general liability claims against the City by the City Manager, City Council approval shall be required.

D. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon.

E. The City Manager 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 City Manager to do so.

F. 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 a cannabis business's taxes for the next calendar quarter.

G. In the event that the tax was erroneously paid and the error is attributable to the City, the 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.

H. The City Manager 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 revenues.

4.31.120 – Enforcement.

A. It shall be the duty of the City Manager to enforce each and all of the provisions of this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the City Manager, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.

C. The City Manager shall have the power to audit and examine all books and records of cannabis businesses as well as persons engaged in the operation of cannabis businesses, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of or the transaction prices charged by a cannabis business or persons engaged in the operation of a cannabis 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 cannabis business or person, after written demand by the City Manager, refuses to make available for audit, examination or verification such books, records, or equipment as the City Manager requests, the City Manager may, after full consideration of all information within the City Manager’s knowledge concerning the cannabis business and its business and activities of the person so refusing, make an assessment in the manner provided in Section 4.31.130.

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 the a certificate or permit from the City as provided for in this Chapter or Chapters 5.68 or 17.85 of this Code shall be deemed guilty of a misdemeanor.

4.31.130 – Debts; Deficiencies; Assessments and Appeals.

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 cannabis business without having paid any applicable tax, penalties, and interest 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 cannabis business.

B. If the City Manager 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 City Manager may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a cannabis business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, notice shall be given to the person concerned in the same manner as notices of assessment are given under Subsections C, D, and E of this Section.

C. Under any of the following circumstances, the City Manager 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;

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 City Manager, filed a corrected statement or return, or furnished to the City Manager 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 City Manager determines that the nonpayment of any tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter.

5. The notice of assessment shall separately set forth the amount of any tax known by the City Manager to be due or estimated by the City Manager, after consideration of all information within the City Manager'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.

D. 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 cannabis business appearing on the face of the business license issued under Chapter 5.04 of this Code, or to such other address as he or she shall register with the City Manager for the purpose of receiving notices provided under this Chapter or Chapter 5.04; or, should the person have no business license issued and should the person have no address registered with the City Manager 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.

E. Within ten (10) days after the date of service the person may apply in writing to the City Manager 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 City Manager shall become final and conclusive. Upon receipt of any such application for hearing, the City Manager shall cause the matter to be set for hearing before a hearing officer pursuant to the provisions of Section 1.10.070 (A) through (D) of this Code. At such hearing said applicant may appear and offer evidence why the assessment as made by the City Manager should not be confirmed and fixed as the tax due. Based upon the submission of such evidence and the review of the City's files, the hearing officer shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) calendar days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure Section 1094.6. If the hearing officer fails or refuses to act on an appeal within the fourteen (14) day period, the appeal shall be deemed to have been denied by the hearing officer on the fifteen (15th) calendar day.

4.31.140 – No Injunction/Writ of Mandate.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this City or against any officer of the City to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

4.31.150 – Future Amendment to Cited Statute.

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 subsequent amendment thereto, or to any subsequent change of interpretation thereto by a state or federal agency or court of law, to the extent that such amendment or change of interpretation would require voter approval under California law, or to the extent that such change would result in a tax decrease. Only 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 would not result in a decrease of a tax, provisions of the amended statute (or new interpretation) shall be applicable to the maximum possible extent. To the extent that the City's authorization to collect or impose any tax imposed under this Chapter is expanded or limited as a result of changes in state or federal law, no amendment or modification of this Chapter shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the authorization up to the full amount of the tax imposed under this Chapter.

4.31.160 – Application of Tax to Retail Medical Cannabis and Recreational Cannabis Businesses.

A. As of the effective date of this Chapter, the Coachella Municipal Code only authorizes the operation of *wholesale medical* cannabis cultivation and manufacturing businesses

within the City. However, a Statewide initiative measure has qualified for the November 8, 2016 ballot known as the “Adult Use of Marijuana Act” (Proposition 64). If passed by California voters, this measure would legalize the personal use of cannabis/marijuana for recreational purposes, but would allow local agencies to reasonably regulate and tax activities tied to recreational cannabis/marijuana.

B. Should Proposition 64 or any similar State law authorizing recreational use of cannabis be passed, and should the Coachella Municipal Code be amended to authorize the operation of *recreational* cannabis businesses within the City, the People of Coachella expressly intend for the tax imposed herein to apply to such operations, on the same terms and conditions as set forth in this Chapter.

C. Should the Coachella Municipal Code be amended to authorize the operation of *retail medical* cannabis businesses within the City, the People of Coachella further expressly intend for the tax imposed herein to apply to such operations, on the same terms and conditions as set forth in this Chapter.

D. No provision of this Chapter shall be construed to authorize the operation of *retail medical* or of any *recreational* cannabis businesses without further amendment to the City’s Municipal Code.”

SECTION 2. Effective Date. Pursuant to California Constitution Article XIII C §(2)(b) and California Elections Code §9217, if a majority of the qualified voters voting in the election on Measure “___” vote in favor of the adoption of such measure, this ordinance shall be deemed valid and binding and shall be considered as adopted upon the date that the vote is declared by the City Council, and shall go into effect ten (10) days after that date.

SECTION 3. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The People of the City of Coachella hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 4. Certification/Summary. Following the City Clerk’s certification that the citizens of Coachella have approved this Ordinance, the Mayor shall sign this Ordinance and the City Clerk shall cause the same to be entered in the book of original ordinances of said City; and shall cause the same, or a summary thereof, to be published as required by law.

PASSED, APPROVED and ADOPTED by the People of the City of Coachella this 8th day of November, 2016.

Steven A. Hernandez
Mayor

ATTEST:

Andrea J. Carranza
Deputy City Clerk

APPROVED AS TO FORM:

Carlos Campos
City Attorney