

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MOUNTAIN VIEW ADDING
CHAPTER 43 TO THE MOUNTAIN VIEW CITY CODE REGARDING CANNABIS
BUSINESS TAX

THE PEOPLE OF THE CITY OF MOUNTAIN VIEW DO HEREBY ORDAIN AS
FOLLOWS:

Section 1. Chapter 43 is hereby added to the Mountain View City Code, to read as follows:

“CHAPTER 43

CANNABIS BUSINESS TAX ORDINANCE

SEC. 43.1. Title.

This chapter shall be known, cited and referred to as the “Cannabis Business Tax.”

SEC. 43.2. Purpose.

The Cannabis Business Tax is a general tax enacted solely for unrestricted general revenue purposes, and not for specific purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the city’s general fund and be available for any legal municipal purpose.

SEC. 43.3. Definitions.

The following definitions shall apply to this chapter:

a. **“Cannabis”** means all parts of the plant *Cannabis sativa Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds of such plants. “Cannabis” also means cannabis as defined by Business and Professions Code Sec. 26001, subdivision (f), Health and Safety Code Sec. 11018 and by other state law. For purposes of this chapter, “cannabis” and “marijuana” will be used interchangeably.

b. **“Cannabis accessory”** is any device intended to aid in the use of Cannabis or Cannabis products which does not itself consist in all or part of cannabis or cannabis products and includes “cannabis products” as defined in Health and Safety Code Sec. 11018.2 and by other state law.

c. **“Cannabis business”** means the activity of any natural or legal person, business or collective in the city relating to cannabis, including, but not limited to, cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (including both wholesale and retail sales) of cannabis, cannabis products, or any accessories for the use of cannabis or cannabis products, whether or not carried on for gain or profit, whether for medical or recreational use, and whether or not such business is licensed by the state. A cannabis business does not include any business the only relationship of which to cannabis or cannabis products is the production or sale of cannabis accessories.

d. **“Cannabis product”** means any product containing cannabis or its derivatives, including, but not limited to, flowers, buds, oils, tinctures, concentrates,

extractions, edibles and products described in Sec. 11018.1 of the Health and Safety Code.

e. **“Delivery”** means the transfer for any form of compensation of cannabis or cannabis products to a customer or caregiver at a location that is not a dispensary.

f. **“Dispensary”** means a place at which cannabis, cannabis products or accessories for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that engages in delivery.

g. **“Distributor”** means a person engaged in procuring cannabis and/or cannabis products for sale to a dispensary or other point of retail sale. **“Distribution”** means engaging in that conduct and a **“distribution facility”** is any real estate, whether or not improved, used in such conduct.

h. **“Gross receipts,”** except as otherwise provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature, for which a charge is made or credit allowed, including barter or trade, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends and gains realized from trading in stocks or bonds, however designated. **“Gross receipts”** shall include all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever.

i. **“Manufacturer”** means a person who engages in the production, preparation, propagation or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

j. **“Person”** means, without limitation, any natural individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, receiver, syndicate or other group or combination acting as a unit and includes the plural as well as the singular number.

k. **“Tax administrator”** means the finance and administrative services director of the City of the Mountain View or successor position or his or her designee.

SEC. 43.4. Cannabis business tax.

a. There is hereby imposed on every cannabis business operating in the city an annual maximum cannabis business tax of nine percent (9%) of the gross receipts.

b. The city council may, by resolution, in its discretion, implement tax rates lower than the maximum rates established in subsection a. of this section for all persons engaged in a cannabis business in the city. The city council may, by resolution, also decrease or increase any such tax rate from time to time, provided that the tax rate shall not, at any time, exceed the maximum tax rates established in subsection a. of this section. The city council may also establish different tax rates for cannabis based on whether it is sold for medical or recreational use.

SEC. 43.5. Payment obligation.

The cannabis business tax shall apply to all persons engaged in cannabis businesses subject to a tax under this chapter who shall pay that tax regardless of any rebate, exemption, incentive or other reduction set forth elsewhere in this code, except as required by state or federal law. Failure to pay such a tax shall be subject to penalties, interest charges and assessments as provided in this chapter and the city may use any or all other code enforcement remedies available at law or in equity to enforce this chapter. No provision of this code shall be interpreted to reduce a tax rate established under this chapter or otherwise reduce the taxes paid hereunder unless the provision specifically expresses that reduction.

SEC. 43.6. Tax payment does not authorize activity.

The cannabis business tax is enacted solely for the stated purposes and not for regulation. The payment of a tax imposed under this chapter shall not be construed to authorize the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter authorizes or implies the lawfulness of any activity connected with the distribution or possession of cannabis unless otherwise authorized and allowed in strict and full conformance with this code. Nothing in this chapter shall be applied or construed as authorizing the sale of cannabis.

SEC. 43.7. Cannabis business tax not a sales tax.

The tax imposed by this chapter is upon the privilege of conducting business within the city. It is not a sales tax or use tax.

SEC. 43.8. Returns and remittances.

The tax shall be due and payable as follows:

a. Each person owing tax under this chapter shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by the tax administrator, of the tax owed for the preceding quarter and the basis of its calculation. The person owing the tax shall remit payment of the tax to the tax administrator when the return is due, whether or not a return is filed as required.

b. Tax returns and payments for all outstanding taxes, fees, penalties and interest owed the city are immediately due upon cessation of business for any reason.

c. Whenever any payment, statement, report, request or other communication is received by the tax administrator after the time prescribed by this section for its receipt, but is in an envelope postmarked on or before the date prescribed by this section for its receipt, the tax administrator shall regard such payment, statement, report, request or other communication as timely. If the due date falls on Saturday, Sunday or a day when city offices are not open for business, the due date shall be the first business day after the due date.

d. Unless otherwise specifically provided by this chapter, the taxes imposed by this chapter shall be delinquent if not paid on or before the due date specified in subsection a. of this section.

e. The tax administrator need not send a delinquency or other notice or bill to any person subject to a tax or fee imposed by this chapter and failure to send such notice or bill shall not affect the validity of any tax, fee, interest or penalty due under this chapter.

SEC. 43.9. Refunds.

No refund shall be made of any tax collected pursuant to this chapter, except as provided in this section.

a. 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.

b. Any person entitled to a refund of sums paid under this chapter may elect to have such refund applied as a credit against future obligations under this chapter.

c. Whenever any tax, fee, penalty or interest under this chapter has been overpaid, paid more than once or has been erroneously or illegally collected or received by the city, such amount shall be refunded to the person who paid the tax upon the filing of a written claim for refund filed with the tax administrator within three (3) years of date of payment. The claim shall be made on forms furnished by the tax administrator.

d. The tax administrator may examine and audit all the books and business records of the claimant to determine eligibility to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of the claimant's books and business records.

e. A sum erroneously paid under this chapter due to an error of the city shall be refunded to the claimant in full upon a timely claim. If an error is attributable to the claimant, the city may retain an amount established by resolution of the city council from time to time in an amount sufficient to recover the city's cost to process the claim and refund the balance.

SEC. 43.10. Administration of the tax.

a. It shall be the duty of the tax administrator to collect the taxes, penalties, fees and perform the duties required by this chapter.

b. The tax administrator may, from time to time, promulgate such administrative guidelines consistent with the purpose, intent and terms of this chapter as he or she deems necessary to implement or clarify it to or aid in its enforcement. A copy of any such administrative guidelines shall be on file and available for public examination in the tax administrator's office and posted to the city's website.

c. The tax administrator may take such administrative actions as needed to administer the tax, including, but not limited to:

1. Provide information to any person(s) subject to the tax concerning this chapter;
2. Receive and record all taxes remitted to the city as provided in this chapter;
3. Maintain records of person(s) subject to the tax reports and taxes collected pursuant to this chapter;
4. Assess penalties and interest to person(s) subject to the tax pursuant to this chapter;

5. Determine amounts owed and enforce collection pursuant to this chapter; and

6. Take such other reasonable steps as he or she deems necessary and appropriate to enforce this chapter.

SEC. 43.11. Penalties and interest.

a. **Original delinquency.** Any person who is subject to the tax who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax.

b. **Continued delinquency.** Any person who is subject to the tax who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten (10) percent of the amount of the tax in addition to the amount of the tax and the ten (10) percent penalty first imposed.

c. **Fraud.** If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs a. and b. of this section.

d. **Interest.** In addition to the penalties imposed, any person engaged in a cannabis business who fails to remit any tax imposed by this chapter shall pay interest at the rate of one (1) percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

e. **Penalties merged with tax.** Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

SEC. 43.12. Failure to collect and report tax—Determination of tax by tax administrator.

If any person subject to the tax shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as he/she may deem best to obtain facts and information on which to base his/her estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he/she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any person subject to the tax who has failed or refused to make such report and remittance, she/he shall proceed to determine and assess against such person the tax, interest and penalties provided for by this chapter.

In case such determination is made, the tax administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the cannabis business so assessed at the last known place of address. Such cannabis business may, within ten (10) days after the serving or mailing of such notice, make application in writing to the tax administrator for a hearing on the amount assessed. If the application by the cannabis business for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five (5) days written notice in the manner prescribed herein to the cannabis business to show cause at a time and place fixed in said notice why said amount

specified therein should not be fixed for such tax, interest and penalties. At such hearing, the person engaged in the cannabis business may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The determination of the tax administrator shall become final unless the person subject to the tax files an appeal before the appeals hearing board within the time period specified in Sec. 43.13.

SEC. 43.13. Appeal to appeals hearing board.

a. If an applicant or licensee is dissatisfied with the written decision of the tax administrator, he or she may file an appeal to the appeals hearing board.

b. The appeal must be in writing on a form provided by the appeals hearing board and received by the appeals hearing board within fifteen (15) calendar days of the date of the tax administrator's decision.

c. The appeal hearing shall be conducted in accordance with the rules and regulations of the appeals hearing board as set forth in the administrative guidelines.

d. The written decision of the appeals hearing board shall be final when served on the appellant and shall be the final decision of the city, subject to judicial review pursuant to Code of Civil Procedure Sec. 1094.5.

SEC. 43.14. Audit.

The tax administrator shall have the right to audit records of the businesses subject to the registration fee and license tax to ensure compliance with this chapter. Cannabis businesses shall retain business records for a period of three (3) years from the end of each calendar year, and shall allow the city access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this chapter. Where a cannabis business does not maintain or retain adequate records of its gross receipts and supporting documentation or does not allow the city reasonable access to such records, the city's calculation of the cannabis tax shall be presumed to be accurate, absent clear and convincing evidence otherwise.

SEC. 43.15. Actions to collect.

Any tax required to be paid under the provisions of this chapter shall be deemed a debt owed to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the City of Mountain View for the recovery of such amount. The provisions of this section shall not be deemed a limitation upon the right of the city to bring any other action, including criminal, civil and equitable actions, based on the failure to pay the tax, penalties and/or fees imposed by this chapter or the failure to comply with this chapter.

SEC. 43.16. Apportionment.

If a cannabis business is operating both within and outside the city, it is the intent of the city to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried out in the city. To the extent federal or state law requires that any tax due from any person subject to the tax be apportioned, the person may indicate said apportionment on his or her tax return. The tax administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

SEC. 43.17. Consistency with business license tax.

The city council of the City of Mountain View intend this chapter to be enforced consistently with Chapter 36 of this code and any rule or regulation promulgated under that chapter except as expressly provided to the contrary in this chapter.

SEC. 43.18. Constitutionality and legality; Not a sales tax; Gann limit.

a. This tax is intended to be applied consistently with the United States and California Constitutions, state law and the city charter. The tax shall not be applied so as to cause an undue burden upon interstate commerce, a violation of the equal protection and due process clauses of the Constitutions of the United States or the state of California, or a violation of any other provision of applicable law.

b. The taxes imposed under this article are excises on the privilege of engaging in commercial cannabis activity in the city. It is not a sales or use tax and shall not be calculated or assessed as such. Nevertheless, at the option of a commercial cannabis business, the tax may be separately identified on invoices, receipts and other evidences of transactions.

c. Pursuant to California Constitution, Article XIII B, the appropriation limit for the city is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax.”

Section 2. Amendment. To the extent allowed under Article XIII C of the California Constitution, this Ordinance may be amended by the City without a vote of the people, except that voter approval shall be required for any amendment which:

a. Increases the tax, within the meaning of Government Code Section 53750(h), beyond the levels authorized by this chapter;

b. Substantively changes the statement of purpose in Section 43.2.

Section 3. Severability. If any section, 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 sections, sentences, clauses, phrases, or portions of this Ordinance shall nonetheless remain in full force and effect. The City Council of the City of Mountain View hereby declares it would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one (1) or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 4. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 *et seq.*, because it can be seen with certainty that there is no possibility that the enactment of this Ordinance would have a significant effect on the environment (Pub. Resources Code § 21065; CEQA Guidelines §§ 15378(b)(4), 15061(b)(3)) and because the Ordinance involves the approval of government revenues to fund existing services (Pub. Resources Code § 21080, subd. (b)(8); CEQA Guidelines § 15273(a)(4)). It does not make any commercial activity lawful nor commit the City to fund any particular activity.

Section 5. Effective Date. This Ordinance shall take effect the later of ten (10) days after the certification of its approval by the voters at the election pursuant to Elections Code Section 9217 or when a cannabis business is made a legal land use by the City Council.

Section 6. Certification; Publication. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

Section 7. Execution of Ordinance. The People of the City of Mountain View hereby authorize the Mayor and City Clerk of the City to execute this Ordinance to reflect its adoption at the November 6, 2018 election.

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