

**ORDINANCE NO. 787**

**AN ORDINANCE OF THE PEOPLE OF CATHEDRAL CITY, CALIFORNIA, AMENDING CHAPTER 3.48 OF THE CATHEDRAL CITY MUNICIPAL CODE MODIFYING THE EXISTING MEDICAL CANNABIS BUSINESS TAX TO IMPOSE THE TAX ON ALL CANNABIS BUSINESSES (MEDICAL AND NON-MEDICAL) AND TO PROVIDE DIFFERENT TAX CALCULATIONS FOR CULTIVATING, MANUFACTURING AND DISPENSING CANNABIS**

**THE PEOPLE OF THE CITY OF CATHEDRAL CITY ORDAIN:**

**SECTION 1.** Chapter 3.48 of the Cathedral City Municipal Code is amended in its entirety to read as follows:

**"CHAPTER 3.48 CANNABIS TAX**

- 3.48.005 Purpose and intent.
- 3.48.010 Imposition of tax.
- 3.48.020 Definitions.
- 3.48.030 Payment obligation.
- 3.48.040 City council authorization to adjust rates.
- 3.48.050 Payment of tax does not authorize activity.
- 3.48.060 Cannabis tax is not a sales tax.
- 3.48.070 Amendments and administration.
- 3.48.080 Returns and remittances.
- 3.48.090 Failure to pay tax.
- 3.48.100 Refunds.
- 3.48.110 Enforcement.
- 3.48.120 Debts—Deficiencies—Assessments.

3.48.005 Purpose and intent.

This chapter shall be known as the "Cannabis Tax" and is enacted as a business license tax pursuant to Government Code section 37101 solely to raise revenue for the general governmental purposes of the city and not for purposes of regulation or raising revenues for regulatory purposes. All of the proceeds from the tax imposed by this chapter shall be placed in the city's general fund and used for the usual current expenses of the city.

This chapter is intended to impose a tax on lawful cannabis businesses operating in the city, consistent with the city's authority in Government Code section 37101. Cannabis businesses operating under California's medical marijuana laws (Health and Safety Code sections 11362.7 – 11362.83; Business and Professions Code section 19300 - 19360) are subject to the tax imposed by this chapter. At such time as

recreational or other non-medical use or consumption of cannabis is legalized or decriminalized in California, this tax shall apply to cannabis businesses engaged in commercial cannabis activity for non-medical uses.

#### 3.48.010 Imposition of tax.

Every cannabis business operating in the city, regardless of whether such cannabis business has a license pursuant to Chapter 5.88 of this code or a permit pursuant to Chapter 9.108 of this code, shall pay a cannabis tax in the following amounts:

A. Fifteen cents for each one dollar of gross receipts or fractional part thereof received by a dispensary or by any other cannabis business for activities other than cannabis cultivation or manufacturing.

B. Twenty-five dollars for each square foot or fractional part thereof of cannabis cultivation space.

C. One dollar for each gram of cannabis concentrate produced or manufactured.

D. One dollar for each unit of cannabis-infused product other than cannabis concentrate produced or manufactured and packaged or intended for individual sale.

Beginning July 1, 2017 and each July 1 thereafter, the amounts in paragraphs B, C, and D of this section shall be automatically adjusted based on the average percentage change in the Consumer Price Index for "all urban consumers" in the Los Angeles-Anaheim-Riverside area for the calendar year which ends in the previous fiscal year.

#### 3.48.020 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 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.

B. "Cannabis business" means any person engaged in commercial cannabis activity, including cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of cannabis or a product containing cannabis.

C. "Cannabis concentrate" means cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. Types of cannabis concentrate include, but are not limited to, hash, butane hash oil, CO2 oil, kief, dry sift, Rick Simpson oil, and rosin.

D. "Cannabis cultivation space" means the gross square footage of any building, facility or site where cannabis cultivation and related activities occur. Cannabis cultivation space includes, without limitation, areas used for growing, planting, seeding, germinating, lighting, warming, cooling, aerating, fertilizing, watering, irrigating, tipping, pinching, cropping, curing or drying cannabis, and areas used for storing products, supplies or equipment related to any such activities. Cannabis cultivation space does not include any part of a building, facility or site where cannabis cultivation and related activities occurs that is used for cannabis business activities that are separately taxed under this chapter.

E. "Cannabis-infused product" means a product infused with cannabis that is intended for use or consumption other than by smoking, including but not limited to edible products, oils, waxes, ointments, salves, tinctures, capsules, suppositories, dermal patches, cartridges or other product containing cannabis concentrate or usable cannabis that has been processed so that the dried leaves and flowers are integrated into other material.

F. "Dispensary" means a facility where cannabis, cannabis concentrate, cannabis extracts, and cannabis-infused products, or devices for the use of cannabis, cannabis concentrate, cannabis extracts, and cannabis-infused products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

G. "Gross receipts" except as otherwise specifically provided, means the total amount actually received or receivable from all sales; membership dues; reimbursements; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of cannabis and cannabis products; the monetary value of in-kind contributions; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross

receipts" shall be 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, except that the following shall be excluded there from: (1) cash discounts allowed and taken on sales; (2) credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts; (3) any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser; (4) such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts; (5) receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities, provided such items are directly derived exclusively from the investment of capital and not from the sale of property other than financial instruments, or from the provision of services, to any person; (6) receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the cannabis business in the regular course of the cannabis business' business; (7) whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered; (8) receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar; (9) amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

H. "Person" means 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.

#### 3.48.030 Payment obligation.

All cannabis businesses 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 enacted pursuant to Section 3.48.040 of this code or 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 compliance remedies provided in the Charter and this

code. No provision in this code can lower the tax rate set forth in this section or otherwise reduce the amount of taxes paid hereunder unless the provision specifically states that the reduction applies.

#### 3.48.040 City council authorization to adjust rates.

The city council may impose the tax authorized by this chapter at a lower rate and, notwithstanding Section 3.48.030 of this code, 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 the code and California law. No action by the city 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.

#### 3.48.050 Payment of tax does not authorize 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 shall be applied or construed as authorizing the sale of cannabis by any illegal or unlawful business, or any business in violation of any ordinance of the city.

#### 3.48.060 Cannabis tax is not a sales tax.

The cannabis tax provided for under the provisions of this chapter is not a sales or use tax and shall not be calculated or assessed as such. The cannabis tax shall not be separately identified or otherwise specifically assessed or charged to any purchaser.

#### 3.48.070 Amendments and administration.

A. Any amendment to Section 3.48.010 to increase the tax above the rate expressly provided in such section 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.

B. The city manager or the city manager's designee may 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 review the cannabis taxes imposed by this chapter and publish a report detailing the total amount of revenue raised from the cannabis tax.

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 cannabis tax.

#### 3.48.080 Returns and remittances.

The tax shall be due and payable as follows:

A. All cannabis businesses subject to this chapter shall, on or before the last day of the month following the close of each calendar month, or such different reporting period as may be established by the city manager or the city manager's designee, file a tax return with the city manager or the city manager's designee on forms provided by the city manager or the city manager's designee, of the amount of tax owed for the preceding calendar month.

B. The return shall be filed whether or not taxes are owed during the month.

C. Each such return shall contain a declaration under penalty of perjury, executed by the cannabis business or authorized agent, that to the best of the signatory's knowledge, the statements in the return are true, correct and complete.

D. At the time the return is filed, the full amount of the tax owed for the preceding calendar month shall be remitted to the city manager or the city manager's designee.

E. Returns and accrued tax payments are due immediately upon cessation of business for any reason.

F. Returns and taxes not received by the city manager or the city manager's designee on or before the due date as provided in this section are delinquent and subject to the penalties imposed under Section 3.48.090.

G. Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the city manager or the city manager's designee, has sufficient postage, and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting and remitting without penalty. If the envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely.

H. The city manager or the city manager's designee 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.

#### 3.48.090 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 of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the city council; and

2. An additional penalty equal to twenty-five percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and 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 cannabis business 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, 2014 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 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 business 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 to the same person or entity during any twenty-four month period.

#### 3.48.100 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. 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 the cannabis business' taxes for the next calendar month.

D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or improperly collected or received by the city under this chapter, the overpayment may be refunded as provided in subsections (E) and (F), provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the city manager or the city manager's designee within three years of the date of payment. The claim shall be on forms available from the city manager or the city manager's designee.

E. The city manager or the city manager's designee 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 city manager or the city manager's designee to do so.

F. The city manager or the city manager's designee shall initiate a refund of any tax that 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 resolution from the amount to

be refunded to cover expenses.

#### 3.48.110 Enforcement.

A. It shall be the duty of the city manager to enforce each and all of the provisions of this chapter. The chief of police shall render such assistance in the enforcement of this chapter as may from time to time be required by the city manager.

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 a cannabis business, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of 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 3.48.090.

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 this chapter or any rules promulgated pursuant to this chapter, or knowingly or intentionally misrepresenting to any officer or employee of the city any material fact in procuring a certificate or document from the city shall be guilty of an infraction violation and upon conviction thereof shall be punishable by a fine not more than five hundred dollars, in addition to any other penalties or fees imposed pursuant to this chapter.

#### 3.48.120 Debts—Deficiencies—Assessments.

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 first having procured a business license pursuant to Chapter 3.28, local license pursuant to Chapter 5.88, and conditional use permit pursuant to Chapter 9.108 of this code 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. Any and all alleged deficiencies identified by the city manager shall be addressed in accordance with Section 3.26.150 of this code; except that the city manager may engage in any of the privileges or assume any of the duties delegated to the tax administrator.

3.48.130 Exemptions.

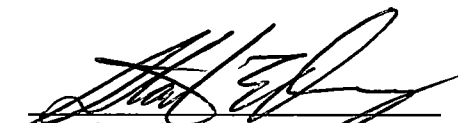
The tax imposed in Section 3.48.010(A) of this chapter shall not apply to any nonprofit organization that is exempted from taxes by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, or to any minister, clergyman, Christian Science practitioner, rabbi, or priest of any religious organization that has been granted an exemption from federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code or a successor to that section.”

**SECTION 2.** The adoption of this ordinance is not a “project” subject to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). CEQA Guideline 15378(b)(4) provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment are not projects subject to the requirements of CEQA.

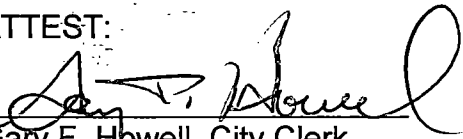
**SECTION 3.** If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

**SECTION 4.** This ordinance shall be submitted to the voters at the general election to be held on November 8, 2016. In accordance with Elections Code section 9217, this ordinance shall not become operative unless and until a majority of the voters approve this ordinance, in which case this ordinance shall go into effect ten (10) days after the date on which the election results are declared by the City Council.


PASSED, APPROVED, AND ADOPTED BY THE PEOPLE OF THE CITY OF CATHEDRAL CITY AT THE REGULAR MUNICIPAL ELECTION HELD ON THE 8<sup>TH</sup> DAY OF NOVEMBER, 2016.

  
Stanley E. Henry, Mayor

ATTEST:

  
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Gary F. Howell, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Eric S. Vail, City Attorney