

ORDINANCE NO. 946

AN ORDINANCE OF THE PEOPLE OF THE CITY OF MORENO VALLEY, CALIFORNIA, AMENDING MORENO VALLEY MUNICIPAL CODE TO ADD CHAPTER 3.28 "COMMERCIAL CANNABIS ACTIVITY TAX" SETTING THE MAXIMUM AMOUNT OF TAX RATE AT EIGHT PERCENT (8%) AND \$15.00 PER SQUARE FOOT FOR CULTIVATION BUSINESSES FOR THE PURPOSE OF FUNDING LOCAL GENERAL MUNICIPAL SERVICES

THE PEOPLE OF THE CITY OF MORENO VALLEY ORDAIN AS FOLLOWS:

Section 1. ELECTIONS CODE SECTION 13119 STATEMENT

That the establishment of the Commercial Cannabis Activity Tax at the maximum rate from 8% of gross receipts and \$15.00 per square foot for cultivation is expected to produce an additional \$2,200,000 annually in General Fund revenue and that the tax will remain in place unless subsequently repealed by the voters.

Section 2. LOCAL USE OF PROCEEDS

That the additional revenue produced by the Commercial Cannabis Activity Tax may be used for any local general municipal purpose including, but not limited to, maintaining 9-1-1 emergency response times; maintaining robbery and burglary suppression programs; maintaining safe and clean public areas; repairing potholes, local streets and roads; and enhancing recreation and youth programs and facilities within the City of Moreno Valley.

Section 3. ANNUAL INDEPENDENT AUDITS

That the financial records, accounting practices and internal controls related to the collection, deposit and expenditure of the additional revenue produced by the Local Moreno Valley Commercial Cannabis Activity Tax rate shall be examined by means of an annual audit conducted by an independent auditor whose services shall be retained by the City through a contract for services as an independent contractor and available to the public for review.

Section 4. ESTABLISH COMMERCIAL CANNABIS ACTIVITY TAX

That Section 3.28 "Commercial Cannabis Activity Tax" be added to the Moreno Valley Municipal Code to read as follows:

## Chapter 3.28 COMMERCIAL CANNABIS ACTIVITY TAX

- 3.28.010 Short Title
- 3.28.020 Definitions
- 3.28.030 Tax Imposed
- 3.28.050 Operator's duties
- 3.28.060 Registration and Permitting
- 3.28.070 Returns and Remittances
- 3.28.080 Reporting and Remitting
- 3.28.090 Cessation of the Business
- 3.28.100 Delinquency
- 3.28.110 Fraud
- 3.28.130 Appeal
- 3.28.140 Records
- 3.28.150 Refunds
- 3.28.180 Recording certificates-lien
- 3.28.190 Priority and lien of tax
- 3.28.200 Warrant for collection of tax
- 3.28.210 Seizure and sale
- 3.28.220 Successor's liability- withholding by purchaser
- 3.28.230 Liability of purchaser-release
- 3.28.240 Responsibility for payment
- 3.28.250 Withhold notice
- 3.28.260 Violation – misdemeanor
- 3.28.270 Extension of time
- 3.28.280 Divulging of information forbidden
- 3.28.010 Short title.

The short title of this chapter shall be the "Commercial Cannabis Activity Tax."

### 3.28.020 Definitions.

Except where the context otherwise requires or with exceptions below, the definitions given in this section shall be governed by definitions set forth in Chapter 5.05 of this Code.

- (a) "Operator" means an Owner or any other person or entity that is engaged in Operation of a commercial cannabis business per definitions in Section 5.05.050 of this Code"
- (b) "Tax administrator" means the City Manager or his designated agent, whether a city employee or county officer or employee.

### 3.28.030 Tax imposed.

For the privilege of operating a Commercial Cannabis Business in the City of Moreno Valley such business shall pay a tax in the maximum amount of eight (8) percent of the gross receipts of the business and or in the case of a cannabis business engaged in cultivation, fifteen dollars (\$15.00) for every square foot of canopy cultivated. Insofar as the business owner is concerned, the tax constitutes a debt owed to the city.

#### 3.28.050 Operator's duties.

Each operator shall, on or before the last working day of the month following the close of each calendar month, file a return with the tax administrator on the forms provided by him or her, of the total monthly gross receipts and the amount of tax collected for commercial cannabis activities. Each such return shall contain a declaration under penalty of perjury, executed by the operator or his authorized agent, that to the best of the signatory's knowledge, the statements in the return are true, correct and complete. At the time the return is filed, the tax fixed at the prevailing commercial cannabis tax rate for shall be remitted to the tax administrator. The tax administrator may establish other reporting periods and may require a cash deposit or bond or a separate trust fund bank account for any permit holder if he or she deems it necessary in order to insure collection of the tax and he or she may require further information in the return. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until remittance thereof is made to the tax administrator.

#### 3.28.060 Registration and Permitting.

Every person desiring to engage in or conduct a commercial cannabis business within the city shall file with the tax administrator an application for a Commercial Cannabis Business Permit for each place of business. Every application for such a permit shall be made upon a form prescribed by the city and shall set forth the name under which the applicant transacts or intends to transact business, and be in full compliance of the provisions of Chapter 5.05 of this Code. This Permit does not relieve the operator from having such other permits which are otherwise required for the operation of a commercial cannabis business in the city, including but not limited to a Conditional Use Permit and a State issued license.

#### 3.28.070 Returns and remittances.

The tax imposed under Section 3.28.030 is:

- A. Due to the tax administrator on a monthly basis; and
- B. Becomes delinquent and subject to penalties if not received by the tax administrator on or before the last working day of the month following the close of each month.

#### 3.28.080 Reporting and remitting.

The reporting, auditing and remitting procedures and protocols shall be established through policies adopted by the Tax Administrator or Chief Financial Officer

### 3.28.090 Cessation of business.

Each operator shall notify the tax administrator, ten days prior to the sale or cessation of business for any reason and returns and remittances are due immediately upon the sale or cessation of business.

### 3.28.100 Delinquency.

Any operator who fails to remit any tax to the city or any amount of tax required to be collected and remitted to the city including amounts based on determination made by the tax administrator under Section 3.28.080, within the time required, shall pay a penalty of ten percent of the tax or amount of the tax in addition to the tax or amount of tax plus interest at the rate of one-half percent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected becomes delinquent until the date of remittance or payment. Any Operator who fails to pay any penalty imposed under this section within ten days after receipt of notice thereof shall pay interest thereon at the rate of one-half of one percent per month, or fraction thereof from the date on which the penalty becomes due and payable to the city until the date of payment.

### 3.28.110 Fraud.

If the tax administrator determines that the failure to make any remittance or payment due under this chapter is due to fraud, a penalty of one hundred (100) percent of the amount of the tax and penalties shall be added thereto in addition to the penalties stated in Section 3.24.100.

### 3.28.130 Appeal.

Any operator aggrieved by any decision of the tax administrator with respect to the amount of any tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen (15) days of serving of the assessment or determination of tax and penalties, if any, due. The city council shall fix a time and place for hearing the appeal, and the city clerk shall give notice in writing to the operator at his last known address. The findings of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

### 3.28.140 Records.

It shall be the duty of every operator liable for the collection and remittance to the city of any tax imposed by this chapter to keep and preserve, in the city, for a period of three years, records in such form as the tax administrator may require under Section 3.28.080 to determine the amount of such tax. The tax administrator shall have the right to inspect such records at all reasonable times and may subpoena the records of any operator who refuses to make them available for examination.

### 3.28.150 Refunds.

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within three years of the date of payment. The claims shall be on forms furnished by the tax administrator.

B. An operator may claim a refund or take as credit against taxes and remitted the amount overpaid, paid more than once or erroneously collected or received when it is established in a manner prescribed by the tax administrator that such tax was collected in error.

C. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records.

### 3.28.160 Revocation of permit.

Whenever any operator fails to comply with any provision of this chapter relating to commercial cannabis activity tax or any rule or regulation of the tax administrator relating to such tax, as established by Section 3.28.080 of this Chapter, the tax administrator upon hearing, after giving the operator ten days' notice in writing specifying the time and place of hearing and requiring him or her to show cause why his permit or permits should not be revoked, may suspend or revoke any one or more of the permits held by the operator. The tax administrator shall give to the operator written notice of the suspension or revocation of any of his permits. The notices herein required may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The tax administrator shall not issue a new permit after the revocation of a permit unless he or she is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the commercial cannabis activity tax and regulations of the tax administrator.

### 3.28.180 Recording certificate—lien.

If any amount required to be remitted or paid to the city under this chapter is not remitted or paid when due, the tax administrator may, within three years after the amount is due, file for record in the office of the county of Riverside recorder a certificate specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the tax administrator of the operator liable for the same and the fact that the tax administrator has complied with all provisions of this chapter in the determination of the amount required to be remitted and paid. From the time of the filing for record, the amount required to be remitted together with penalties and interest constitutes a lien upon all real property in the county owned by the operator or afterwards and before the lien expires acquired by him or her. The lien has

the force, effect and priority of a judgment lien and shall continue for ten years from the time of filing of the certificate unless sooner released or otherwise discharged.

### 3.28.190 Priority and lien of tax.

A. The amounts required to be remitted and/or paid by any operator under this chapter with penalties and interest shall be satisfied first in any of the following cases:

1. Whenever the person is insolvent;
2. Whenever the person makes a voluntary assignment of his assets;
3. Whenever the estate of the person in the hands of executors, administrators or heirs is insufficient to pay all the debts due from the deceased;
4. Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this chapter are levied upon by process law. This chapter does not give the city a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

B. The preference given to the city by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

### 3.28.200 Warrant for collection of tax.

At any time within three years after any operator is delinquent in the remittance or payment of any amount herein required to be remitted or paid or within three years after the last recording of a certificate under Section 3.28.160, the tax administrator may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the city under this chapter. The warrant shall be directed to any sheriff, marshal, or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner with the same effect as a levy of and a sale pursuant to a writ of execution. The tax administrator may pay or advance to the sheriff, marshal or constable the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The tax administrator, and not the court, shall approve the fees for publication in a newspaper.

### 3.28.210 Seizure and sale.

At any time within three years after any operator is delinquent in the remittance or payment of any amount, the tax administrator may forthwith collect the amount in the following manner. The tax administrator shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and

any costs incurred on account of the seizure and sale. Any seizure made to commercial cannabis activity taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

#### 3.28.220 Successor's liability—Withholding by purchaser.

If any operator liable for any amount under this chapter sells out his business or quits the business, his successor or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the tax administrator showing that it has been paid or a certificate stating that no amount is due.

#### 3.28.230 Liability of purchaser—Release.

If the purchaser of the business fails to withhold purchase price as required, he or she shall become personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money. Within sixty (60) days after receiving a written request from the purchaser for a certificate, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, the tax administrator shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the tax administrator of the amount that must be paid as a condition of issuing the certificate. Failure of the tax administrator to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the operator sells his business or at the time that the determination against the operator becomes final, whichever event occurs the later.

#### 3.28.240 Responsibility for payment.

Any tax required to be paid under the provisions of this chapter shall be deemed a debt owed by the operator to the city. Any such tax owed by an operator which has not been remitted to the city is a fiduciary obligation of the operator to the city and collectible in the same manner as a debt. 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 Moreno Valley for the recovery of such amount.

#### 3.28.250 Withhold notice.

If any person or operator is delinquent in the remittance or payment of the amount required to be remitted or paid by him or her or in the event a determination has been made against him or her for the remittance of tax and payment of the penalty, the city may, within three years after the tax obligation became due, give notice thereof personally or by registered mail to all persons, including the state or any political subdivision thereof, having in their possession or under their control any credits or other personal property belonging to the taxpayer. After receiving the withholding

notice, the person so notified shall make no disposition of the taxpayer's credits, other personal property or debts until the city consents to a transfer or disposition or until sixty (60) days elapse after the receipt of the notice, whichever expires earlier. All persons, upon receipt of the notice, shall advise the city immediately of all such credits, other personal property or debts in their possession, under their control or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of the bank, to be effective the notice shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. If any person so notified makes transfer or disposition of the property or debts required to be held hereunder during the effective period of the notice to withhold, he or she shall be liable to the city to the extent of the value of the release up to the amount of the indebtedness owed by the taxpayer to the city.

### 3.28.260 Violations—Misdemeanor.

A. Except for failure of an operator to pay to the tax administrator taxes owed under this chapter which is punishable as a felony pursuant to Section 424 of the Penal Code, every violation of this chapter is a misdemeanor and punishable by a fine not exceeding five hundred dollars (\$500.00) or imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

B. If such offense is not otherwise punishable as mentioned in subsection A of this section, any person willfully failing to comply with, or knowingly violating, any of the provisions of this chapter shall be guilty of a misdemeanor.

C. Any operator or other person who willfully fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the tax administrator, or who renders a false or fraudulent return or claim is guilty of a misdemeanor. Any person required to make, render, sign or verify any report or claim who willfully makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor.

### 3.28.270 Extension of time.

The tax administrator, for good cause, may extend for not to exceed one month the time for making any return or paying any amount required to be paid under this chapter. The extension may be granted at any time, provided a request therefor is filed with the tax administrator within or prior to the period for which the extension may be granted. Any person to whom an extension is granted shall pay, in addition to the tax, interest at the rate of one percent per month or fraction thereof, from the date on which the tax would have been due without the extension until the date of payment.



3.28.280 Divulging of information forbidden.

It is unlawful for any person having an administrative duty under this chapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of the records of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to knowingly permit any return or copy thereof or any abstract or particulars thereof to be seen or examined by any person. Successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the amounts of any unpaid tax or amounts of tax, penalties and interest required to be collected.

Section 5. SEVERABILITY

That should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 6. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Moreno Valley that are in conflict with the provisions of this ordinance are hereby repealed.

Section 7. CERTIFICATION

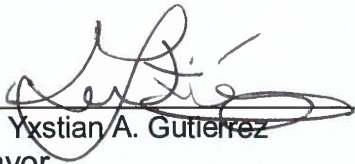
That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

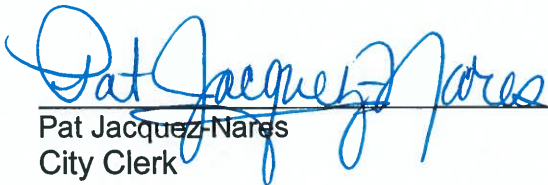
Section 8. EFFECTIVE DATE

That this ordinance shall take effect ten (10) days following the City Council's certification of the results of the November 6, 2018 election.

PASSED AND ADOPTED by the People of the City of Moreno Valley at a general municipal election held on November 6, 2018.

ATTESTED BY:

  
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Dr. Yxstian A. Gutierrez  
Mayor  
City of Moreno Valley

  
\_\_\_\_\_  
Pat Jacquez-Nares  
City Clerk