

RESOLUTION NO. 4975-2019

A RESOLUTION OF THE CITY OF BARSTOW CALLING A SPECIAL MUNICIPAL ELECTION FOR MARCH 3, 2020 TO SUBMIT A SPECIAL CANNABIS TAX MEASURE TO THE QUALIFIED ELECTORS OF THE CITY OF BARSTOW AND REQUESTING SAN BERNARDINO COUNTY TO PROVIDE SPECIFIED ELECTION SERVICES

WHEREAS, Elections Code section 9222 authorizes the City Council to submit a measure to the voters to levy a tax for special purposes to be approved or rejected by two-thirds of the qualified voters of the city voting in an election on the issue; and

WHEREAS, the City Council proposes to the City's voters an ordinance to impose a special tax on commercial cannabis activity in the City (the "Tax Ordinance"); and

WHEREAS, the revenue from the proposed special tax on commercial cannabis activity shall be used by the City as follows: fifty percent for law enforcement and fifty percent for any lawful purpose; and

WHEREAS, the Tax Ordinance imposes a gross receipts tax of up to fifteen percent (15%) annually on proceeds on commercial cannabis activity excluding cultivation, and a tax of up to thirty dollars (\$30) per square foot of cultivation space per fiscal year for commercial cannabis cultivation businesses, to be collected as set forth in the Tax Ordinance; and

WHEREAS, California Constitution, article XIII C, section 2, subdivision (d) requires a two-thirds majority of voters to approve the Tax Ordinance if it is to be effective; and

WHEREAS, the City Council desires to adopt this Resolution to call a Special Municipal Election for March 3, 2020 (the "Election") to present the Tax Ordinance to voters so they may determine whether to impose a special tax on commercial cannabis activity in the City; and

WHEREAS, on October 7, 2019, the City Council introduced an ordinance permitting and regulating certain commercial cannabis business (the "Cannabis Land Use Ordinance"), which will take effect only if the voters approve the Tax Ordinance by a two-thirds majority of voters; and

WHEREAS, the City Council desires to submit the Tax Ordinance to the electorate at the Election; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BARSTOW CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

SECTION 1. Recitals. All of the foregoing recitals are true and correct.

SECTION 2. Call for Special Municipal Election. Under Elections Code section 10201, the City Council of the City of Barstow hereby calls and notices a Special Municipal

Election to be held on March 3, 2020 in the City of Barstow for the purpose of presenting voters with a proposed special tax on cannabis businesses.

SECTION 3. Submission of Measure to Voters. Under Elections Code sections 9222 and 10201, the City Council hereby orders the following question regarding the adoption of an ordinance to be submitted to the voters at the special municipal election called for March 3, 2020:

Shall the measure imposing a cannabis special tax of up to 15% of cannabis businesses gross receipts and up to \$30 per square foot of cultivation space to raise approximately \$100,000 a year until voters decide otherwise, with fifty percent of the proceeds used for law enforcement and fifty percent for other city services, be adopted, with voter approval also approving commercial cannabis businesses as a regulated land use in the City of Barstow?	YES
	NO

This measure, adopting the Tax Ordinance, requires the approval of two-thirds of the votes cast. If two-thirds of the voters approve the Tax Ordinance, then the separate Land Use Ordinance shall become effective pursuant to City Council action.

Section 4. Ordinance. The Ordinance being submitted to the voters pursuant to Section 3 of this Resolution is Ordinance No. 961-2019 of the City of Barstow, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 3. Request to Conduct Election and Canvass Returns. The San Bernardino County Board of Supervisors is hereby requested to authorize the San Bernardino County Registrar of Voters to render services necessary for the conduct of the Special Municipal Election called by this Resolution. The ballots to be used in the election shall be in form and content as required by law.

The City Clerk is authorized and directed to work with the San Bernardino County Registrar of Voters and to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia as needed to properly and lawfully conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections. Pursuant to Elections Code section 10002, the City will reimburse San Bernardino County for the actual cost incurred in conducting the election upon receipt of a bill stating the amount due.

The notice of the time and place of holding the election is hereby given, and the City Clerk and San Bernardino County Registrar of Voters are authorized to give further notice of the election, as required by law.

SECTION 4. Implementation. The City Clerk is directed to file with the San Bernardino County Board of Supervisors certified copies of this Resolution, with a copy to the San Bernardino County Registrar of Voters, under Elections Code section 10403. The City Clerk is further authorized and directed to perform all other acts necessary or required by law to implement this Resolution and related to the election.

SECTION 5. Impartial Analysis. The City Clerk shall transmit a copy of the Measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within ten (10) days of the adoption of this Resolution.

SECTION 6. Ballot Arguments. Any and all members of the City Council are hereby authorized to prepare a written argument in favor of the measure on behalf of the City Council, not to exceed 300 words, as specified in section 9282 of the California Elections Code.

Arguments against the Measure may not exceed 300 words and must be submitted to the City Clerk in compliance with sections 9282 and 9283 of the California Elections Code by the deadline established by the City Clerk.

SECTION 7. Rebuttal Arguments. Under Elections Code Section 9285, when the elections official has selected the arguments for and against the measure, not exceeding 300 words each, which will be printed and distributed to the voters, the elections official shall send a copy of an argument in favor of the proposition to the authors of the selected argument against the measure and a copy of an argument against the measure to the authors of the selected argument in favor of the measure immediately upon receiving the arguments.

The author or a majority of the authors of an argument relating to a City measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument. A rebuttal argument may not be signed by more than five authors. The rebuttal arguments shall be filed with the City Clerk, signed, with the printed name(s) and signatures(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to Be Filed by Author of Argument, available upon request from the City Clerk. Rebuttal arguments shall be

printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

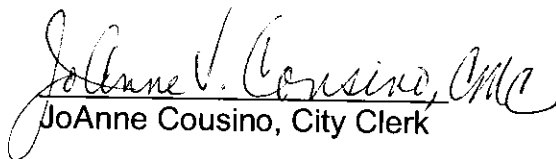
SECTION 8. Environmental Determination. The City Council determines this Resolution is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. The calling and noticing of a Special Municipal Election is not a project within the meaning of CEQA Guidelines section 15378, subsection (b)(3).

SECTION 9. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED and ADOPTED this 7th day of October 2019 by the following vote:


Julie Hackbarth-McIntyre, Mayor

ATTEST:


JoAnne Cousino, City Clerk

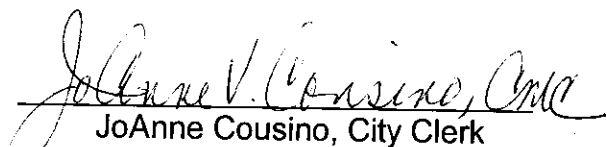
I, JoAnne Cousino, City Clerk of the City of Barstow, do hereby certify that the foregoing resolution is the actual resolution duly and regularly adopted by the City Council at a regular meeting on the 7th day of October, 2019, by the following vote to wit:

AYES: COUNCILMEMBERS NOBLE, SILVA, HARPOLE, MAYOR PRO TEM HERNANDEZ AND MAYOR HACKBARTH-MCINTYRE

NOES: NONE

ABSTAIN: NONE

ABSENT: NONE


JoAnne Cousino, City Clerk

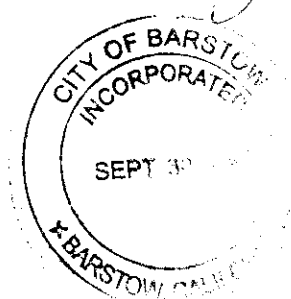


EXHIBIT "A"

An Ordinance of the City of Barstow Adding Chapter 3.34 to Title 3 of the Barstow
Municipal Code to Establish a Tax on Cannabis Business Activity

[see attached behind this page]

ORDINANCE NO. 961-2019

AN ORDINANCE OF THE CITY OF BARSTOW ADDING CHAPTER 3.33 TO TITLE 3 OF THE BARSTOW MUNICIPAL CODE TO ESTABLISH A TAX ON CANNABIS BUSINESS ACTIVITY

WHEREAS, California voters approved Proposition 215 (Health and Safety Code Section 11362.5), entitled the Compassionate Use Act (CUA), in 1996, which exempts patients and their primary caregivers from criminal prosecution or sanctions under H&S Code Sections 11357 and 11358 for qualified use and cultivation of medical cannabis; and

WHEREAS, the California Legislature passed Senate Bill 420 (H&S Code Sections 11362.7 et seq.) in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical cannabis identification cards for qualified patients, set limits on the amount of cannabis any individual could possess, and provided an exemption from state criminal liability for persons "who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes"; and

WHEREAS, in November 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA");

WHEREAS, among other effects, the AUMA established a state licensing and regulatory system for commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of recreational marijuana and marijuana products;

WHEREAS, on June 27, 2017, the Governor signed the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), consolidating the AUMA with previous state law regarding commercial medical marijuana activities to create one state licensing system for commercial activities related to medical and recreational marijuana;

WHEREAS, both the AUMA and MAUCRSA authorize the City to further regulate or completely prohibit the establishment or operation of commercial marijuana activities within its limits, even such activities that may be licensed under state law;

WHEREAS, the City's power to regulate or completely prohibit commercial marijuana activities under the AUMA and MAUCRSA is consistent with the California Supreme Court's decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729;

WHEREAS, in response to changes in California law, after considerable public debate and evaluation of the pros and cons of allowing commercial cannabis business activity in the City, the City decided to submit the decision to license, and regulate commercial cannabis activity in the City to the Barstow electorate; and

WHEREAS, the City implemented this decision by drafting and approving a comprehensive licensing and regulatory system for commercial, including retail recreational and microbusiness cannabis activity pursuant to the terms of Ordinance No. 961-2019, adopted by voters of the City of Barstow on March 3, 2020 and codified as Barstow Municipal Code Chapter 19.27 ("Cannabis Licensing Ordinance"); and

WHEREAS, the City has no local tax on cannabis commercial operations; and

WHEREAS, AUMA and MAUCRSA do not preempt local taxation of cannabis operations; and

WHEREAS, the legal effectiveness of the Cannabis Licensing Ordinance is made expressly contingent upon the approval by the voters of the City of Barstow of adoption of a business license tax on commercial cannabis business activity; and

WHEREAS, this ordinance proposes such a tax on the terms presented for consideration by the voters;

WHEREAS; the City Council desires that revenue generated from said cannabis taxes can be spent for public safety purposes; and

WHEREAS, this cannabis tax is imposed to raise revenue and not for regulation; and

NOW, THEREFORE, the People of the City of Barstow do ordain as follows:

SECTION 1. The Barstow Municipal Code is hereby amended to add Chapter 3.33 to Title 3, as set forth below, enacting a tax on the privilege of conducting business relating to cannabis in the City of Barstow.

Chapter 3.33.00

CANNABIS BUSINESS TAX

Sections

- 3.33.010 Title.
- 3.33.020 Effective Date.
- 3.33.030 Purpose.
- 3.33.040 Definitions.
- 3.33.050 Cannabis Business Tax.
- 3.33.060 Registration of Cannabis Businesses.
- 3.33.070 Payment Obligation.
- 3.33.080 Tax Payment Does Not Authorize Activity.
- 3.33.090 Cannabis Tax is Not a Sales Tax.

- 3.33.100 Amendments, Rate Adjustments, and Administration.
- 3.33.110 Returns and Remittances.
- 3.33.120 Failure to Pay Timely.
- 3.33.130 Refunds.
- 3.33.140 Enforcement.
- 3.33.150 Consistency with Business Tax Rules.
- 3.33.160 Successor and Assignee Responsibility.
- 3.33.170 Debts, Deficiencies, and Assessments.
- 3.33.180 Apportionment.

3.33.010 TITLE.

This ordinance shall be known as the "Cannabis Business Tax Ordinance."

3.33.020 EFFECTIVE DATE.

This ordinance shall take effect immediately after the certification of its approval by two thirds of the City's voters at the March 3, 2020 Special Municipal Election, pursuant to California Constitution, Article XIII C, section 2, subdivision (d).

3.33.030 PURPOSE.

This ordinance is intended to achieve the following purposes, among others, and shall be interpreted to accomplish such purposes:

- A. Impose a tax on the privilege of conducting the following activities within the City's jurisdiction: cultivating, transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, donating, selling, or distributing cannabis or cannabis products by commercial cannabis businesses in the City of Barstow, pursuant to the state Medicinal and Adult-Use Cannabis Regulation and Safety Act (California Business and Professions Code sections 26000, *et seq.*), as it now exists or may be amended from time to time, and local law, whether or not conducted in compliance with such laws;
- B. Impose a special cannabis business tax that generates revenue, fifty percent of which shall be used to support law enforcement services. The City may use the remaining fifty percent of revenue generated by the cannabis business tax for any purpose.
- C. Specify the type of tax and rate of tax to be levied; and
- D. Comply with all requirements for imposition of a special tax.

This chapter is enacted solely to raise revenue and not for regulation. It is not a sales and use tax, a tax upon income, a transient occupancy tax, utility user tax, or a tax upon real property, and does not change any obligations under those taxes. It shall apply to all persons engaged in cannabis business in the City. The tax imposed by this chapter is a special tax under Articles XIII A and XIII C of the California Constitution.

This chapter does not authorize the conduct of any business or activity in the City, but provides for the taxation of such businesses or activities as they occur. Neither the imposition of such tax by the City nor the payment of such tax by the taxpayer shall imply that the activity being taxed is lawful.

This chapter shall apply to each cannabis business in the City, whether or not such business has a permit issued pursuant to the City of Barstow Municipal Code.

3.33.040 DEFINITIONS.

The following definitions shall apply to the construction of this chapter unless the context is such that it is plain that a different meaning is intended:

- A. "Adult-Use Cannabis" shall have the meaning ascribed to it in Barstow Municipal Code Chapter 19.27, as may be amended from time-to-time.
- B. "Cannabis" shall have the meaning ascribed to it in Barstow Municipal Code Chapter 19.27, as may be amended from time-to-time.
- C. "Authorized cannabis business" means only those business authorized by section 19.27.050(b) of Barstow Municipal Code.
- D. "Commercial cannabis activity" includes all cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of marijuana, marijuana accessories, or marijuana products, except the personal uses and cultivation of marijuana permitted by California Health and Safety Code sections 11362.1 and 11362.2.
- E. "City" means the City of Barstow.
- F. "City Attorney" means the City Attorney, or designee.
- G. "City Manager" means the City Manager, or designee.
- H. "Cultivation" shall have the meaning ascribed to it in Barstow Municipal Code Chapter 19.27, as may be amended from time to time.
- I. "Delivery" shall have the meaning ascribed to it in Barstow Municipal Code Chapter 19.27, as may be amended from time to time.
- J. "Dispensary" means a place at which or a business by 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.
- K. "Distribution" shall have the meaning ascribed to it in Barstow Municipal Code Chapter 5.19, as may be amended from time-to-time.

L. "Gross receipts" means the following: (1) the total amount of consideration actually received or receivable from all sales; (2) the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature, for which a charge is imposed or credit allowed, 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; (3) any and all rents, royalties, fees, commissions, or dividends received or receivable, and (4) 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 or setoff 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 the following shall be excluded therefrom:

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 property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded;
6. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the administrator with the names and 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 trustee;
7. Cash value of sales, trades or transactions between departments or units of the same business;
8. 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 solely for a person's own account, not derived in the ordinary course of business;
9. Receipts derived from the occasional sale of used, obsolete, or surplus trade fixtures, machinery, or other equipment used by the taxpayer in the regular course of the taxpayer's business;
10. 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;
11. Transactions between a partnership and its partners;
12. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall

be treated the same as between a partnership and its partner(s) as specified in Subsection 10., above; and

13. Receipts from services or sales in transaction between affiliated corporations; an affiliated corporation is defined as a corporation:
 - a. Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or
 - b. The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or
 - c. At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

As to any person engaged in the business of manufacturing or processing any goods, wares, merchandise, article or commodity at a fixed place of business within the City which does not generate gross receipts as defined herein within the City, gross receipts shall be deemed to include the total of all expenses incurred in the manufacturing or processing of such goods at the business location within the City for payroll, utilities, depreciation, and/or rent.

As to any person engaged in the business of operating an administrative headquarters at a fixed place of business within the City who does not have gross receipts as defined herein within the city, gross receipts shall be deemed to include the total gross payroll of all persons employed at such administrative headquarters.

M. "Manufacture" shall have the meaning ascribed to it in Barstow Municipal Code Chapter 5.27, as may be amended from time to time.

N. "Person" shall have the meaning ascribed to it in Barstow Municipal Code Chapter 19.27, as may be amended from time to time.

O. "Sale" and "Sell" shall have the meaning shall have the meaning ascribed to them in Barstow Municipal Code Chapter 19.27, as may be amended from time to time.

P. "State" shall mean the State of California.

3.33.050 CANNABIS BUSINESS TAX.

- A. There is hereby imposed on every cannabis business in the City, excluding cannabis cultivation, an annual tax at a rate to be established from time to time by ordinance or resolution of the City Council. The tax for all cannabis businesses, excluding cannabis cultivation businesses, shall be imposed with respect to the gross receipts of such businesses up to a maximum of fifteen percent (15%), of the business' gross receipts. The tax imposed under this section shall be due and payable as provided in section 3.33.120.

- B. Cannabis businesses subject to the tax imposed by subsections A. and B. of this section shall comply with Barstow Municipal Code chapter 19.27. Any commercial cannabis cultivation operation in the City shall pay a maximum commercial cannabis cultivation tax of no more than thirty dollars (\$30) per square foot per fiscal year (July 1 to June 30) for space utilized as cultivation area. Any other cannabis business not subject to the tax imposed by subsections A. and B. of this section is subject to the general business tax imposed by Chapter 5.08, except as otherwise provided by this Code, or other applicable law.
- C. The City Council may by resolution, in its discretion, implement a tax rate lower than the maximum rate established in subsections A. or B. of this section for all persons engaged in a cannabis business in the City, or establish differing tax rates for different categories of cannabis business. 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, be below the minimum, or above the maximum, tax rates established in subsection A. or B. of this section.

3.33.060 REGISTRATION OF CANNABIS BUSINESSES.

A. All persons engaging in a cannabis business, whether an existing, newly-established or acquired business, shall register with the City Manager's office by the later of (i) 30 days of commencing operation or (ii) by the effective date of the ordinance adding this section to the Barstow Municipal Code and shall annually renew such registration no less frequently than one calendar year after the date of the most recent registration. In registering, such persons shall furnish to the City Manager a sworn statement, upon a form provided by the City Manager, setting forth the following information:

1. The name of the business;
2. The names and addresses of each owner;
3. The nature or kind of all business activity to be conducted;
4. The place or places where such business is to be carried on; and
5. Any further information which the City Manager may require.

B. Registrants shall pay an annual registration fee in an amount established from time to time by ordinance or resolution of the City Council to recover the City's costs to implement the taxes imposed under this chapter, the registration requirement of this section, and the other provisions of this chapter. As a regulatory fee, such fee shall be limited to the City's reasonable regulatory costs.

D. The tax registration certificate required and the City License required under Chapter 19.27 of this Code may constitute a single document.

3.33.070 PAYMENT OBLIGATION.

All taxpayers subject to a tax under this this chapter 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. 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.

3.33.080 TAX PAYMENT DOES NOT AUTHORIZE ACTIVITY.

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, including without limitation chapter 19.27. Nothing in this chapter shall be applied or construed as authorizing the sale, cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sale (wholesale and/or retail sales) of cannabis, cannabis products, or any accessories for the use of recreational cannabis or cannabis products..

3.33.090 CANNABIS TAX IS NOT A SALES TAX.

The taxes provided for under this chapter are excises on the privilege of doing business in the City and legally incident on those engaged in such business. They are not sales or use taxes and shall not be calculated or assessed as such. Nevertheless, at the option of the taxpayer, the tax may be separately identified on invoices, receipts and other evidences of transactions.

3.33.100 AMENDMENTS, RATE ADJUSTMENTS, AND ADMINISTRATION.

- A. Voters approved this chapter. Any amendment to this chapter to increase the taxes above the maximum rates, or decrease them below the minimum rates, provided requires further voter approval. The voters authorize the City Council to set the taxes at or below the applicable maximums, and at or above the applicable minimums, or otherwise to amend, modify, change, or revise any provision of this chapter as the City Council deems in the best interest of the City. In addition, the City Council may establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax when due, as otherwise allowed by the City Charter, the City's Municipal Code, and California law.
- B. The City Manager, in consultation with the City Attorney, may adopt administrative policies to promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely

collection of the taxes imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the taxes as provided. Such policies shall be: (i) effective upon the date specified in the policy; (ii) signed by the City Manager and City Attorney; and be made publicly available through the City Clerk.

- C. The City Manager shall annually audit the cannabis taxes imposed by this chapter to verify that tax revenues have been properly collected and 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 taxes and fee imposed by this chapter.

3.33.110 RETURNS AND REMITTANCES.

The taxes imposed by this chapter shall be due and payable as follows:

- A. Each cannabis business owing tax under this chapter shall provide a tax return to the City Manager within thirty days following the last day of the month stating the tax owed for that month, and the basis of its calculation. The taxpayer shall remit the tax owed to the City Manager when the return is due whether or not a return is filed as required.
- B. All tax returns shall be completed on forms provided by the City Manager.
- C. 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.
- D. Whenever any payment, statement, report, request or other communication is received by the City Manager 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 City Manager shall regard such payment, statement, report, request, or other communication as timely. If the due date falls on Friday, Saturday, Sunday, or a holiday, the due date shall be the last earlier business day on which City Hall is open to the public.
- E. Unless otherwise specifically provided by this chapter, the taxes imposed by 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 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.

3.33.120 FAILURE TO PAY TIMELY.

- A. Any person who fails or refuses to pay any tax or fee imposed by this chapter when due shall pay penalties and interest as follows:
 - 1. A penalty equal to 10 percent of the tax or fee, in addition to the amount of the tax; and
 - 2. An additional penalty equal to 25 percent of the amount of the tax or fee if unpaid for more than a month beyond the due date; and
 - 3. Interest charges on the amount of any and all unpaid taxes, fees, or penalties at the rate of one percent (1%) interest per month from the date due until paid. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

- B. If a check is submitted in payment of a tax or fee and is returned unpaid by the bank upon which drawn, and the check is not redeemed before the due date, the taxpayer will be liable for the tax or fee due plus penalties and interest as provided for in this section plus any amount allowed under state law for the returned check.

- C. The tax due shall be that amount due and payable from the later of (i) the effective date of the taxes under this chapter as determined by resolution of the City Council or (ii) the first date on which the cannabis business first operated in the City.

- D. The City Manager may waive some or all of the penalties imposed by this section as to 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 or fee and accrued interest owed the City upon applying for a waiver.
 - 2. A waiver authorized by this subsection shall not apply to tax, fee or interest and may be granted only once during any 24-month period.

3.33.130 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 sums paid under this chapter may elect to have such refund applied as a credit against future obligations under this chapter.
- D. 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 a timely written claim for refund filed with the City Manager.
- E. The City Manager 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.
- F. 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 ordinance or 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.
- G. The City Manager shall initiate a refund of any sum overpaid or erroneously collected under this chapter whenever the overpayment or erroneous collection is disclosed by a City audit for the period of time unprotected by the duty to file a timely claim under the Government Claims Act.

3.33.140 ENFORCEMENT.

- A. The City Manager shall enforce this chapter.
- B. The City Manager may audit and examine all business locations, books and records of cannabis businesses, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of a cannabis business to ascertain any tax due under this chapter and to verify any returns or other information any person submits to the City under this chapter. If a cannabis business, after written demand by the City Manager, refuses to make available for audit, examination or verification such locations, books, and records as the City Manager requests, the City Manager may, after full consideration of all such information as is available make an assessment of the tax or fee due and demand payment from the tax- or fee-payer, together with any penalties and interest due for late payment.
- C. The conviction and punishment of any person for failure to pay a sum required under this chapter shall not excuse or exempt such person from any civil action for the debt. No civil action shall prevent a criminal prosecution for any violation of this chapter or of any state law requiring the payment of all taxes. No election of remedies shall apply to the enforcement of this chapter or any other provision

of this Code and the City may pursue one or more remedies in its discretion provided only that no double recovery shall be permitted.

- D. Any person violating any of the provisions of this chapter or any regulation or rule adopted pursuant to it, or knowingly or intentionally misrepresenting any material fact to the City in procuring a certificate or document from the City under this chapter, or under chapter 19.27, shall be deemed guilty of a misdemeanor unless the City Attorney, in his or her discretion, elects to prosecute it as an infraction.
- E. In addition to the penalty imposed for a failure to timely pay any tax or fee imposed by this chapter, pursuant to Section 3.33.120, the City Manager shall have the discretion to issue an administrative citation with respect to said failure, and impose an administrative fine in the amount of \$2,000 for each month that any payment of tax is overdue. Each cannabis business subject to any such administrative citation and fine shall have the opportunity to appeal same pursuant to the process set forth in Chapter 6.30 of this Code.
- F. In the event that any appeal as to an administrative citation and fine pursuant to this Section 3.33.140, or any other action in relation thereto takes place, the City shall be entitled to recover its attorneys' fees and administrative costs incurred unless the appeal in question is granted, or the cannabis business initiating any other action is the prevailing party.

3.33.150 CONSISTENCY WITH BUSINESS TAX RULES.

The People of the City of Barstow intend this chapter to be enforced consistently with Title 3, of this Code and any rule or regulation promulgated under that Title except as expressly provided to the contrary in this chapter.

3.33.160 SUCCESSOR AND ASSIGNEE RESPONSIBILITY.

- A. If any person, while liable for any amount under this chapter, sells, assigns or otherwise transfers half or more of a taxed cannabis business, whether voluntarily or involuntarily, the person's successor, assignee or other transferee, or other person or entity obtaining ownership or control of the business ("transferee") shall pay that amount when due. A transferee shall notify the City Manager of a transfer 30 days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business is made less than 30 days before the date of transfer, on the first day the City is open for business after the transfer.
- B. A transferee shall be deemed to have satisfied an unpaid liability if the transferee complies with the requirements of California Revenue and Taxation Code Section 7283.5 and this section by withholding from the purchase price, for the benefit of the City, an amount sufficient to cover the liability, or by otherwise paying the liability and obtaining from the City Manager a "Tax

Clearance Certificate" showing that all outstanding liability has been paid through the date of transfer.

- C. Within 90 days of receiving a written request from a transferee, the City Manager may issue a "Tax Clearance Certificate" stating either the amount due as to the business under this chapter, or stating that there is no liability due for the business through a stated date. The City Manager may also request financial records from the transferor to audit the amount due under this chapter. The City Manager shall issue a tax clearance certificate within 30 days of completing the audit, stating any amount owed, unless the City Manager determines the records provided for audit are insufficient to determine whether taxes, fees, penalties and/or interest are due and in what amounts. If so, the City Manager may rely on available information to estimate any amount due and shall issue a tax clearance certificate stating that amount. A written application for an appeal hearing on the amount assessed on a tax clearance certificate must be made within 10 days after the City Manager serves or mails the certificate. The appeal provision of Chapter 6.30 of this Code shall apply. If a timely application for a hearing is not made, the tax clearance certificate shall serve as conclusive evidence of the liability under this chapter associated with the business through the date stated on the certificate.

3.33.170 DEBTS, DEFICIENCIES AND ASSESSMENTS.

- A. The amount of any tax, fee, penalties, and interest imposed by this chapter shall be deemed a debt to the City and any person operating a cannabis business without first having procured a business license(s) and paid all requisite business license taxes, as provided in this Chapter and Chapter 5.19 shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount due.
- B. If no return or statement is timely filed, or if the City Manager is not satisfied that any return or other statement filed under this chapter is correct, or that the amount due is correctly computed, the City Manager may determine that amount and make a deficiency determination upon available information. The City Manager may make one or more deficiency determinations for a period or periods. When a person discontinues engaging in a business, the City Manager may make a deficiency determination at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued before the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned as are notices of assessment 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 taxes, fees, penalties and interest owed under this chapter:

1. If the person has not filed any statement or return required by this chapter;
 2. If the person has not paid any tax, fee, penalty or interest due under this Ordinance;
 3. If the person has not, after demand by the City Manager, filed a corrected statement or return, or adequate substantiation of the information contained in a statement or return previously filed, or paid any additional amount due under this chapter;
 4. If the City Manager determines nonpayment of any amount due under this chapter or Title 5 is due to fraud, a penalty of 25 percent of the amount of otherwise due shall be added thereto in addition to penalties and interest otherwise stated in this chapter.
 5. The notice of assessment shall separately set forth any amount the City Manager knows or estimates to be due under this chapter, including any penalties or interest accrued to the date of the notice.
 6. A notice of assessment shall be served upon the tax- or fee-payer either by personal service or by a deposit in the United States mail, postage prepaid, addressed to the address appearing on the City License issued under Chapter 5.19, or such other address as he or she may provide the City Manager in writing for notices under this chapter or Chapter 5.19; or, should the person have no business tax certificate issued and no address provided to the City Manager for such purpose, then to such person's last known address. Service by mail is complete upon deposit in the United States mail as provided in this paragraph.
- D. Within 10 days after service of a notice of assessment, the tax- or fee-payer may apply in writing to the City Manager for a hearing on the assessment. If no timely application for a hearing is made, the amount assessed shall be final and conclusive. Within 30 days of the receipt of an application for hearing, the City Manager shall cause the matter to be set for hearing. The City Manager shall give notice of such hearing to the person requesting it not later than five days before the hearing. At such hearing, the applicant may appear and offer evidence why the assessment should not be confirmed. After such hearing, the City Manager shall determine the amount due under this chapter and shall give written notice to the person as prescribed in this chapter for giving notice of assessment. That decision is final as to the City, but either the City or the applicant may seek judicial review as provided by California Code of Civil Procedure section 1094.5.

3.33.180 APPORTIONMENT

A. No tax imposed by this chapter shall be applied so as to occasion an undue burden upon interstate commerce or violate the equal protection and due process clauses of the Constitutions of the United States or the State of California.

B. If any case where a business tax imposed under this chapter is believed by a taxpayer to place an undue burden upon interstate commerce or violate such constitutional clauses, the taxpayer may apply to the City Manager for an adjustment of the tax. It shall be the taxpayer's obligation to request in writing for an adjustment within one year after the date of payment of the tax. If the taxpayer does not request in writing within one year from the date of payment, then the taxpayer shall be conclusively deemed to have waived any adjustment for that year and all prior years.

C. The taxpayer shall, by sworn statement and supporting testimony, show the method of business and the gross volume of business and such other information as the City Manager may deem necessary in order to determine the extent, if any, of such undue burden or violation. The City Manager shall then conduct an investigation, and shall fix as the tax for the taxpayer an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the City Manager shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter.

D. Should the City Manager determine the gross receipt measure of tax to be the proper basis, the City Manager may require the taxpayer to submit a sworn statement of the gross receipts and pay the amount of tax as determined by the City Manager.

SECTION 2. AMENDMENT. To the extent authorized by Article XIII C of the California Constitution, this ordinance may be amended by the City Council without a vote of the People. Voter approval is required for any amendment that would increase, within the meaning of Government Code section 53750(h), beyond the maximum rates, or decrease the rates below the minimum rates, authorized by this Ordinance.

SECTION 3. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The People hereby declare that they would have adopted this Ordinance and each portion thereof regardless of the fact that an invalid portion or portions may have been present in the Ordinance.

SECTION 4. CEQA. This measure to be submitted to the voters adopts a special tax to help compensate the City for the increased burden on law enforcement and public safety response due to the security issues created by commercial cannabis activity in the City. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result

in a potentially significant impact on the environment. Therefore, under CEQA Guidelines section 15060, review under CEQA is not required.

SECTION 5. EFFECTIVE DATE. This Ordinance relates to the levying and collecting of the City's cannabis tax and shall not take effect until ten days after the certification of its approval by a 2/3rd's vote of the electorate voting at the special election to be held on _____, 2020 pursuant to Elections Code section 9222.

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.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Barstow, State of California, this ___ day of _____, 2020.

Mayor

Attest:

City Clerk

I, _____, City Clerk for the City of Barstow, California and ex-officio Clerk of the City Council, do hereby certify, Under Penalty of Perjury, that the foregoing Ordinance No. 961-2019 was introduced at a regular meeting of the City Council of the City of Barstow, held on the _____ day of _____, _____, and was adopted at the regular meeting of the City Council of the City of Barstow on the _____ day of _____, _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN: