

RESOLUTION NO. 23476

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ESTABLISHING (1) A TEN CENT PER ONE DOLLAR TAX ON MEDICAL CANNABIS COLLECTIVES OR COOPERATIVES APPROVED BY THE CITY COUNCIL AND (2) AUDIT REQUIREMENTS TO ENSURE TIMELY AND FULL COMPLIANCE WITH THE CITY'S CANNABIS AND MARIJUANA TAX ORDINANCE.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS FINDS:

A. The voters of the City of Palm Springs approved Measure B at the November 5, 2013 general municipal election.

B. Measure B is an ordinance that added Chapter 3.35 to the Palm Springs Municipal Code (the "Ordinance"). The Ordinance, authorizes the City to impose a tax on the proceeds of cannabis and marijuana collectives as defined in the Ordinance in a maximum amount of 15 cents of every dollar of proceeds.

C. The Ordinance provides the Council with the authority to set the tax at a rate that is less than 15 cents on the dollar and to establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax in a timely manner.

D. This Resolution will set at tax rate of 10 cents on the dollar for each medical cannabis collective or cooperative that received or receives from the City Council a permit to operate as a medical cannabis collective or cooperative pursuant to Section 93.23.15, as may be amended from time to time. The City Council further affirms and establishes a tax rate of 15 cents on the dollar for each marijuana dispensary, collective, or cooperative operating the City without a lawful permit issued by the City Council pursuant to Palm Springs Municipal Code Section 93.23.15, as amended.

E. This Resolution also establishes appropriate penalties and interest charges for payment delinquencies and appropriate audit and financial review requirements to ensure timely and full payment of all taxes required under the Ordinance and this Resolution.

F. The definitions contained in the Ordinance shall pertain to words or terms used in this Resolution. For the purpose of this Resolution the term "Director" means the City Manager or the City Manager's designee; "Tax" means the Cannabis and Marijuana Tax" as established in the Ordinance and as administered under this Resolution.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS RESOLVES:

SECTION 1. The Tax on a medical cannabis collective or cooperative for which the City has issued a permit pursuant to Palm Springs Municipal Code Section 93.23.15 as amended shall be 10 cents for each dollar (or portion thereof) of the proceeds of such collective or cooperative.

SECTION 2. The Tax on each marijuana collective operating in the City and which has not been issued a permit pursuant to Palm Springs Municipal Code Section 93.23.15 as amended shall be 15 cents for each dollar (or portion thereof) of the proceeds of such collective or cooperative.

SECTION 3. The Tax shall be due and payable as follows:

A. Each person owing Tax, on or before the last day of each calendar month, shall prepare a tax return to the Director of the total proceeds and the amount of Tax owed for the preceding calendar month. At the time the Tax return is filed, the full amount of the Tax owed for the preceding calendar month shall be remitted to the Director.

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

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

SECTION 4. Whenever any payment, statement, report, request or other communication received by the Director is received after the time prescribed by this Resolution for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this Resolution for the receipt thereof, or whenever the Director is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the Director may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on Friday, Saturday, Sunday, or a holiday, the due day shall be the next regular business day on which the City hall is open to the public.

SECTION 5. Unless otherwise specifically provided under other provisions of this Resolution, the taxes required to be paid pursuant to this Resolution shall be deemed delinquent if not paid on or before the due date specified in Section 3 of this Resolution.

SECTION 6. The Director is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Resolution and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Resolution.

SECTION 7.

A. Any person who fails or refuses to pay any tax required to be paid pursuant to this Resolution 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 taxpayer will be liable for the Tax amount due plus penalties and interest as provided for in this section plus any amount allowed under state law.

C. The Tax due shall be that amount due and payable from January 1, 2014 or the first date on which the collective first operated in the City, whichever date occurred last, together with applicable penalties and interest calculated in accordance with Subsection A of this Section.

SECTION 8. The Director may waive the first and second penalties of twenty-five percent each imposed upon any person if:

A. The person provides evidence satisfactory to the Director 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 Director for a waiver.

B. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any twenty-four month period.

SECTION 9.

A. No refund shall be made of any tax collected pursuant to this Resolution, except as provided in Section 10 of this Resolution.

B. No refund of any Tax collected pursuant to this Resolution shall be made because of the discontinuation, dissolution, or other termination of a collective.

C. Any person entitled to a refund of taxes paid pursuant to this Resolution may elect in writing to have such refund applied as a credit against collective's Taxes for the next calendar month.

SECTION 10.

A. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this Resolution, it may be refunded to the claimant who paid the Tax provided that a written claim for refund is filed with the Director.

B. The Director 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 Director to do so.

C. 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.

D. The Director shall initiate a refund of any Tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of Tax 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.

SECTION 11.

A. It shall be the duty of the Director to enforce each and all of the provisions of this Resolution.

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

SECTION 12. The Director shall have the power to audit and examine all books and records of collectives as well as persons engaged in the operation of a cannabis or marijuana collective including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of collectives or persons engaged in the operation of a cannabis or marijuana collective, for the purpose of ascertaining the amount of Tax, if any, required to be paid by the provisions of this Resolution or the Ordinance, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this Resolution. If such collective or person, after written demand by the Director, refuses to make available for audit, examination or verification such books, records, or equipment as the Director requests, the Director may, after full consideration of all information within the Director's knowledge concerning the collective and its business and activities of the person so refusing, make an assessment in the manner provided in Sections 13 and 14 of this Resolution.

SECTION 13. The amount of any tax, penalties, and interest imposed by the provisions of this Resolution shall be deemed a debt to the City and any person operating a collective without first having procured a business tax license as provided in Chapter 3.52 of the Palm Springs Municipal 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 collective.

SECTION 14. If the Director is not satisfied that any statement filed as required under the provisions of this Resolution is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made 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 prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the person concerned in the same manner as notices of assessment are given under Sections 15 through 17 of this Resolution.

SECTION 15.

A. Under any of the following circumstances, the Director may make and give notice of an assessment of the amount of tax owed by a person under this Resolution:

1. If the person has not filed any statement or return required under the provisions of this Resolution;
2. If the person has not paid any tax due under the provisions of this Resolution;
3. If the person has not, after demand by the Director, filed a corrected statement or return, or furnished to the Director adequate substantiation of the information contained in a statement or return already filed, or paid any additional amount of tax due under the provisions of this Resolution;
4. If the Director determines that the nonpayment of any business tax due under this Resolution is due to fraud, a penalty of twenty-five percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Resolution.

B. The notice of assessment shall separately set forth the amount of any tax known by the Director to be due or estimated by the Director, after consideration of all information within the Director's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Resolution, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

SECTION 16. The notice of assessment shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business appearing on the face of the business tax certificate issued under Resolution 4.76 or to such other address as he or she shall register with the Director for the purpose of receiving notices provided under this Resolution; or, should the person have no business tax certificate issued and should the person have no address registered with the Director for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

SECTION 17. Within ten days after the date of service the person may apply in writing to the Director for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Director shall become final and conclusive. Within thirty days of the receipt of any such application for hearing, the Director shall cause the matter to be set for hearing before him or her not later than thirty days after the date of application, unless a later date is agreed to by the Director and the person requesting the hearing. Notice of such hearing shall be given by the Director to the person requesting such hearing not later than five

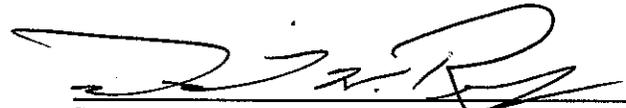
days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Director should not be confirmed and fixed as the tax due. After such hearing the Director shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 12 for giving notice of assessment.

SECTION 18. 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 Resolution or of any state law requiring the payment of all taxes.

SECTION 19. Any person violating any of the provisions of this Resolution or any regulation or rule passed in accordance herewith or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring the certificate or document from the City as provided for in the Ordinance or this Resolution shall be deemed guilty of a misdemeanor.

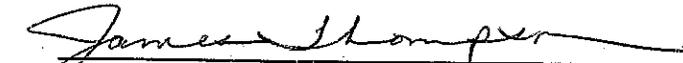
SECTION 20. The operative date of this Resolution shall be January 1, 2014.

PASSED, APPROVED AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 18TH DAY OF DECEMBER, 2013.



DAVID H. READY, CITY MANAGER

ATTEST:



JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. 23476 is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on December 18, 2013, by the following vote:

AYES: Councilmember Foat, Councilmember Lewin, Mayor Pro Tem Hutcheson,
and Mayor Pougnet.
NOES: Councilmember Mills.
ABSENT: None.
ABSTAIN: None.


JAMES THOMPSON, CITY CLERK
City of Palm Springs, California 01/20/2014