

ORDINANCE NO. 2156

INT RODUCED BY : DIAZ, DOUGLAS, ELLIOT, FORD, FRANK, GUARDIOLA, HUSEMAN,
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AN ORDINANCE AMENDING ARTICLE X OF CHAPTER 20 OF THE COMMERCE CITY REVISED MUNICIPAL CODE TO IMPOSE A VOTER-APPROVED EXCISE TAX ON THE WHOLESALE TRANSFER OF MARIJUANA AND MARIJUANA PRODUCTS TO SUPPORT PUBLIC SAFETY AND MODIFYING THE DEFINITIONS AND ADMINISTRATIVE PROVISIONS CONTAINED THEREIN.

WHEREAS, Section 14 and 16 of Article XVII of the Colorado Constitution authorizes a system of state and local licensing for businesses engaged in the cultivation, testing, manufacturing, and sale of medical and retail marijuana;

WHEREAS, the City Council of the City of Commerce City authorized the licensing and operation of marijuana businesses within the City by enacting Ordinance 2050;

WHEREAS, Section 6(g) of Article XX of the Colorado Constitution authorizes Colorado home rule municipalities to levy and collect taxes as provided by Chapter XIII of the Commerce City Charter;

WHEREAS, by Ordinance 1875 enacted in accordance with the approval of voters on November 1, 2011, the City Council established a seven percent (7%) tax on the sale of marijuana and marijuana products and provided definitions within that ordinance;

WHEREAS, marijuana transactions in the City are subject to the City's existing four and one-half percent (4.5%) sales and use tax and seven percent (7%) marijuana sales tax;

WHEREAS, there are direct and indirect costs to the City for the administration, regulation, and enforcement of marijuana businesses and their effects that are not covered by the licensing and application fees paid by the marijuana businesses;

WHEREAS, on November 7, 2017, the electors of the City approved a ballot issue authorizing an additional five percent (5%) excise tax on the wholesale transfer of marijuana and marijuana products from or to a marijuana business in the City, including transfers by the same business between licenses, assessed on the average market rate of unprocessed marijuana not for retail sale (for marijuana) and on the greater of the price paid by the purchaser or the cash value of marijuana products (for marijuana products);

WHEREAS, the approved ballot issue authorizes the rate of such excise tax to increase or decrease by ordinance approved by the City Council without further voter approval but not to a rate of more than ten percent (10%);

WHEREAS, the approved ballot issue directed that the revenues of such excise tax, plus interest earned thereon, be collected, retained, and spent for purposes of public safety;

WHEREAS, at this time, the City Council desires to limit the excise tax to the first transfer of marijuana and marijuana products within the City without taxing subsequent transfers of the same marijuana or marijuana products in a new form;

WHEREAS, pursuant to the vote of the electors of the City of Commerce City, this City

Council desires to adopt an ordinance regarding the imposition and collection of the five percent (5%) excise tax on first wholesale transfers of marijuana and marijuana products; and

WHEREAS, the City Council of the City of Commerce City desires to modify the definitions and administrative provisions established by Ordinance 1875 to clarify the application of marijuana taxes and to incorporate the amendments made by this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. This ordinance and the taxes imposed herein are found to be supported and authorized by law and in the best interests of and necessary for the protection of the health, safety, and welfare of the public.

SECTION 2. Article X of Chapter 20 of the Commerce City Revised Municipal Code, entitled “Additional Sales Tax on the Gross Taxable Amount Paid or Charged for Purchasing or Acquiring Marijuana, Marijuana Paraphernalia, Marijuana Infused Products, and Synthetic Marijuana Products” is amended to be entitled and to read as follows:

ARTICLE X. ADDITIONAL TAXES ON THE PURCHASE OR SALE OF MARIJUANA AND MARIJUANA PRODUCTS

Sec. 20-250. Purpose.

The purpose of this article is to impose, in addition to the city’s existing 4.5% sales and use tax: (a) a sales tax on the sale of marijuana and marijuana products in the City of Commerce City; and (b) an excise tax on the first wholesale sale or transfer of marijuana and marijuana products to or from a marijuana business located in the City of Commerce City.

Sec. 20-251. Definitions.

Unless the context clearly indicates otherwise, the following words and phrases as used in this article shall have the following meaning:

- (a) *Average market rate* means the rate determined and published from time to time by the Colorado Department of Revenue pursuant to C.R.S. § 39-28.8-101(1.5).
- (b) *Gross taxable amount* means the total amount received in money, credit, property or other consideration valued in money paid or charged for purchasing or acquiring marijuana or marijuana products.
- (c) *Marijuana* means all parts of the plant of the genus *cannabis* (whether growing or not), the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate.
- (d) *Marijuana business* shall have the meaning assigned to that term by Section 8-2101 of this code.
- (e) *Marijuana paraphernalia* means devices, contrivances, instruments, and paraphernalia for smoking, inhaling or otherwise consuming or using marijuana or

marijuana products, including without limitation rolling papers, tools, pipes, water pipes, and vaporizers.

- (f) *Marijuana products* mean any and all products that are comprised of, or include as an ingredient, marijuana or marijuana derivatives including without limitation edibles, ointments, tinctures, synthetic marijuana products, and marijuana paraphernalia.
- (g) *Person* means any individual, firm, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.
- (h) *Price* means the aggregate value of money or other things, measured in currency, paid or delivered or promised to be paid or delivered for the purchase or sale of marijuana and marijuana products. Price includes the amount of money received or due in cash and credits, property at fair market value taken in exchange, any consideration or exchange, and the total price charged.
- (i) *Purchase or sale* means the acquisition, transfer, barter, or exchange for any consideration by any person and any other conveyance, exchange, barter, or transfer between affiliated businesses or licenses owned by the same business with or without consideration.
- (j) *Return* means any form prescribed by the city manager for computing and reporting tax liabilities for the purchase or sale of marijuana or marijuana products under this article.
- (k) *Tax* means any tax imposed by this article.
- (l) *Vendor* means the person or entity that sells or provides marijuana or marijuana products.
- (m) *Wholesale* means a purchase or sale for resale or for the purpose of cultivating, manufacturing or processing marijuana or marijuana products.

Sec. 20-252. Tax levy.

- (a) On or after the first day of February 2012, there is levied a sales tax of seven percent (7%), in addition to the existing four and one-half percent (4.5%) sales and use tax and all other existing and future taxes, on the gross taxable amount paid or charged for the purchase of marijuana and marijuana products in the city.
- (b) On or after the first day of June 2018, in addition to all other existing and future taxes, there is levied an excise tax on the wholesale purchase or sale of marijuana (including transfers not for consideration between affiliated businesses) from or to a marijuana business in the city, provided such marijuana has not been previously subject to the tax imposed by this subsection and is used, stored, distributed, or consumed within the city even if physically obtained outside the city. The rate of the tax shall be five percent (5%) of the average market rate of unprocessed retail marijuana as determined under state law. The excise tax imposed by this subsection shall not include marijuana products.
- (c) On or after the first day of June 2018, in addition to all other existing and future taxes, there is levied an excise tax on the wholesale purchase or sale of marijuana

products (including transfers not for consideration between affiliated businesses) from or to a marijuana business in the city, provided such marijuana products have not been previously subject to the tax imposed by this subsection or the tax on marijuana imposed by subsection (b) and are used, stored, distributed, or consumed within the city even if physically obtained outside the city. The rate of the tax shall be 5% of the greater of the price paid by the purchaser or the cash value of such marijuana products as reasonably determined by the Director of Finance. The excise tax imposed by this subsection shall not include marijuana paraphernalia.

Sec. 20-253. Account established — use of tax.

- (a) There is hereby created an account known as the “Marijuana Tax Account” for the deposit of funds collected pursuant to the tax imposed by this article and to be used according to this section.
- (b) All revenues derived from the imposition and assessment of the tax imposed pursuant to this article plus all interest and penalties paid on funds collected pursuant to this Article plus all interest earned on the Marijuana Tax Account shall be placed in the Marijuana Tax Account and used by the city for promotion of public safety. No part of such revenue and accrued interest shall be allocated for any purposes other than for the purposes herein provided.
- (c) All other revenues collected as a result of the levy and assessment of any other tax, including the existing four and one-half percent (4.5%) sales tax, are excluded from inclusion in the Marijuana Tax Account.

Sec. 20-254. License required for the business of selling, cultivating, or processing marijuana and marijuana products.

It shall be unlawful for any person to engage in the business of selling, cultivating, producing, or processing marijuana or marijuana products without first having obtained a Commerce City Retailer and Consumer License as required by Section 20-6-18 of the Commerce City Sales and Use Tax Code which license shall be issued and granted by the city upon an application form provided by the city and shall be in force and effect until revoked. The Retailer and Consumer License required by Section 20-6-18 of the Commerce City Sales and Use Tax Code is in addition to any other license or authorization that may be required by the city for the conduct of a business involving the sale, cultivation, acquisition, or processing of marijuana or marijuana products.

Sec. 20-255. Payment of tax; returns.

Every vendor of marijuana or marijuana products shall be liable and responsible for collection and payment of the taxes imposed pursuant to this article. The vendor shall add the taxes as a separate and distinct item on the sales invoice or record of transfer document and such taxes shall be held in trust as set forth in Section 20-15-2 of the Commerce City Sales and Use Tax Code and shall be a debt from the person who purchases or receives the marijuana or marijuana products. When a marijuana business within the city purchases or sells marijuana or marijuana products and the taxes required under section 252(b-c) of this article have not been collected by the vendor at the time of the transaction, the marijuana business receiving the marijuana or marijuana products shall be responsible for paying the taxes directly to the city. All taxes imposed by this article shall be recoverable at law in the same manner as other debts. On or

before the twentieth day of the month following any purchase or sale of marijuana and marijuana products subject to any tax imposed by this article, the vendor shall prepare and file a tax return on such form as prescribed by the Director of Finance for such preceding taxable calendar month and at the same time pay to the Director the taxes imposed by this article for such preceding calendar month.

Sec. 20-256. Administration and collection of tax.

The tax imposed pursuant to this article shall be subject to collection by the city and administered in the same manner and pursuant to Article V of Chapter 20 of this Code including without limitation such provisions relating to administration, audit, subpoenas, confidentiality, assessments, preservation of records, penalties and interest, refunds, hearings, appeals, enforcement, compromise, limitations, and trust status.

Sec. 20-257. Violations and penalties.

- (a) It shall be a violation of this article for any vendor to refuse to make any return required by this article, or to make any false or fraudulent return, or any false statement in any such return, or to fail or refuse to make payment to the director of finance of any taxes collected or due the city pursuant to this article or in any manner to evade the collection and payment of the tax required by this article, or any part thereof, or for any person or purchaser to fail or refuse to pay such tax or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax imposed by this article.
- (b) Any person, corporation, partnership or association who shall violate any of the provisions of this article shall be guilty of a violation thereof and shall be punished by a fine not to exceed one thousand dollars (\$1,000) or imprisonment not to exceed six (6) months, or both such fine and imprisonment, and if any such person is an employee or officer of the city, such violation shall be grounds for dismissal from his office or employment.
- (c) Each and every twenty-four (24) hours continuation of any violation shall constitute a distinct and separate offense.

Sec. 20-258. Exemption for Payment of Other Tax.

The sale, use, storage, distribution or consumption in the city of marijuana and marijuana products, and upon the purchase or sale of which there has been legally imposed, collected and remitted to the city or another municipal corporation: (1) a sales tax at a rate equal to or greater than the sales tax of the city applicable to such marijuana and marijuana products or (2) a wholesale excise tax at a rate equal to or greater than the wholesale excise tax of the city applicable to such marijuana or marijuana products, is exempt from the levy of such city tax, as applicable, to the extent of the applicable tax legally imposed, collected and remitted to the city or other municipal corporation. If the rate of sales tax or wholesale excise tax paid to the city or such other municipal corporation is less than that of the city, the net difference between the tax due to the city and the tax computed at the rate of such other retail sales or wholesale excise tax shall be computed and shall be paid to the Director of Finance. This exemption shall not apply if a tax paid to another municipal corporation was not legally due under the laws of such municipal corporation, or if the laws of such other municipal corporation are not compatible or are not reciprocal with those of the city as to the specific taxation and exemption as applied to the transaction in question.

SECTION 3. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect, impair, or invalidate the remaining portions of this ordinance.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS
5th DAY OF MARCH, 2018.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS
2nd DAY OF APRIL, 2018.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, MMC, City Clerk