Ordinance No. 956

AN ORDINANCE ADDING CHAPTER 3.17 CANNABIS FACILITY TAX TO THE PHOENIX MUNICIPAL CODE, CREATING A LOCAL TAX ON THE SALE OF CANNABIS AND CANNABIS CONTAINING AND DERIVED PRODUCTS.

WHEREAS, the City desires to tax the sale of cannabis and cannabis containing and cannabis derived products within the City.

NOW THEREFOR, THE CITY COUNCIL OF THE CITY OF PHOENIX HEREBY ORDAINS AS FOLLOWS:

Section 1. The municipal code of the City of Phoenix shall be amended by adding Chapter 3.17 Cannabis Facility Tax, as proposed in Exhibit A.

Section 2. Effective Date: This ordinance shall become effective 30 days after adoption.

PASSED AND ADOPTED by the City Council and signed by me in authentication thereof on this 29th day of September, 2014.

Mayor

ATTEST:

Recorder

Exhibit A

Chapter 3.17 Cannabis Facility Tax

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Chapter 3.17 Cannabis Facility Tax

3.17.010 Purpose.

Every person engaged in the distribution of cannabis, cannabis containing or derived products, and/or engaged in the cultivation, processing, and/or production of cannabis, cannabis containing or derived products within the City of Phoenix is exercising a taxable privilege that shall be subject to a tax upon the retail or wholesale sale of cannabis, cannabis containing or derived products. The Cannabis Facility Tax and provisions herein shall not apply to transactions concerning the distribution of cannabis or cannabis containing or derived products for medical purposes only as authorized by the Oregon Medical Marijuana Program, provided such transactions occur pursuant to a valid license to do so by the State of Oregon and a registry identification card by the Oregon Health Authority.

3.17.020 Definitions

A. "Director" means the Director of Finance for the City of Phoenix or his/her designee.

B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sales of cannabis, cannabis containing or cannabis derived products that are subject to the tax imposed by this chapter.

C. "Cannabis" or "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include industrial hemp, as defined by ORS 571.300, the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

D. "Cannabis containing products" or "Cannabis derived products" means any compound, manufacture, salt, derivative, mixture, extract, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include industrial hemp, as defined by ORS 571.300, the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

E. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

F. "Purchase or Sale" means the acquisition or furnishing for consideration by any person of cannabis or cannabis containing or derived products within the City.

G. "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may

mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

H. "Retail sale" means the transfer of goods or services in exchange for any valuable consideration.

I. "Seller" means any person who is required to be licensed or has been licensed by the State of Oregon to provide cannabis and/or cannabis containing or derived products to purchasers for money, credit, property or other consideration.

J. "Tax" means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.

K. "Taxpayer" means any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

3.17.030 Tax Imposed

A. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling cannabis and cannabis containing or derived products as defined in this chapter.

B. The amount of tax levied is as follows: Ten percent (10%) of the gross sale amount paid to the seller of cannabis and/or cannabis containing or derived products.

3.17.040 Deductions.

The following deductions shall be allowed against sales received from the sales of cannabis and cannabis containing or derived products:

A. Refunds of sales actually returned to any purchaser;

B. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of cannabis and cannabis containing or derived products and does not include any adjustments for other services furnished by a seller.

3.17.050 Rules for Payment and Collection of Tax.

A. Every seller shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to insure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.

B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

C. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to insure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.

D. Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

E. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the cannabis facility and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times. If the Director finds the books and records of the seller are deficient in that they do not provide adequate support for cannabis facility tax reports filed, or the seller's accounting system is unauditable, it shall be the responsibility of the seller to improve their accounting system to the satisfaction of the Director.

F. For good cause, the Director may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the council. An seller to whom an extension is granted shall pay interest at the rate of five percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section 3.17.060.

G. If a seller is delinquent more than once a year on a quarterly payment, then the Director may require returns to ensure delinquent payments do not accumulate beyond an seller's ability to pay. The Director may also require returns and payment of the taxes for other than monthly/quarterly periods in individual cases to ensure payment or to facilitate collection by the city. If six consecutive payments are timely made, the quarterly plan may be reinstated.

3.17.060 Delinquency penalties.

A. A seller who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of ten percent of the tax due in addition to the tax.

B. A seller who has not been granted an extension of time for remittance of tax due and who fails to pay a delinquent remittance before the expiration of thirty-one days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen percent of the tax due, the amount of the tax, and the ten percent penalty first imposed.

C. If the Director determines that nonpayment of a remittance is due to fraud or intent to evade the tax, a penalty of twenty-five percent (25%) of the tax shall be added to the penalties stated in subsections (A) and (B) of this section.

D. In addition to the penalties imposed by this section, a seller who fails to remit the required tax shall pay interest at the rate of one-half percent per month, without proration for portions of a month, on the tax due, exclusive of penalties from the date of which the tax first became delinquent until paid.

E. A seller who fails to remit the tax within the required time shall pay the penalties and interest herein stated; however, a seller may petition the council for waiver and refund of the penalty or a portion of it. The council may, at its own discretion, if good cause is shown, direct a refund of the penalty and/or interest, or a portion(s) thereof.

3.17.070 Deficiency determinations.

A. If the Director determines that a return is incorrect, that required reports or returns have not been filed, or that an seller has otherwise failed to comply with the terms of this code, the Director may compute and determine the amount required to be paid on the basis of any information within the Director's possession or that may come into his or her possession.

B. Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable ten days after service of notice, after which the determined amount shall be delinquent. Penalties on deficiencies shall be applied as provided in Section 3.17.060.

C. In making a determination, the Director may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section 3.17.060.

3.17.080 Redemption petition.

A determination becomes payable immediately on receipt of notice and becomes final within fifteen days after the Director has given notice. However, the seller may petition for redemption and refund by filing a petition before the determination becomes final.

3.17.090 Fraud—Refusal to collect—Evasion.

A. If a seller fails or makes a fraudulent return or otherwise wilfully attempts to evade the tax payment, the Director shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the Director shall give notice of the total amount due.

B. Determination and notice shall be made and mailed within two years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt of notice and becomes final fifteen days after the Director has given notice.

C. The seller may petition for redemption and refund if the petition is filed before the determination has been made or within two years after the return is filed, whichever is later.

3.17.100 Notice of determination.
A. The Director shall give the seller a written notice of the determination. If notice is mailed it shall be addressed to the seller at the address that appears on the records of the Director, and service is complete when the notice is deposited in the post office.

B. Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within two years after the last day of the month following the close of the quarterly period for which the determination has been made or within two years after the return is filed, whichever is later.

3.17.110 Seller delay.
If the Director believes that collection of the tax will be jeopardized by delay, or if a determination will be jeopardized by delay, the Director shall determine the tax to be collected, and state the exigency on the determination. The determined amount is due and payable immediately upon service of notice. After payment has been made, the seller may petition for redemption and refund of the determination if the petition is filed not later than fifteen days from the date of service of notice by the Director.

3.17.120 Redetermination.
A. A seller against whom a determination is made under Section 3.17.070, or a person directly interested, may petition for a redetermination, redemption and refund within the time required in Section 3.17. If a petition for redetermination and refund is not filed within the time required, the determination is final on expiration of the allowable time.

B. If a petition for redetermination and refund is filed within the allowable period, the Director shall reconsider the determination and, if the seller requested a hearing in the petition, shall grant the hearing and give the seller fifteen days' notice of the time and place of the hearing. The Director may continue the hearing if necessary.

C. The Director may increase or decrease the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.

D. The decision of the Director on a petition for redemption becomes final fifteen days after service of notice on the petitioner unless appeal of the decision is filed with the council within fifteen days after notice is served.

E. A petition for redetermination, redemption or refund or other appeal is not effective for any purpose unless the seller has first paid in full the amount determined to be due by the decision appealed.

3.17.130 Security for collection of tax.

A. The Director may require an seller to deposit security in the form of cash, bond, or other security. The amount of security shall be fixed by the Director and shall be not greater than twice the seller's estimated average quarterly liability for the period for which the seller files returns or five thousand dollars, whichever amount is less.

B. Within two years after the tax becomes payable or within two (2) years after a determination becomes final, the Director may bring an action in the name of the city in the courts of the state of Oregon, another state, or the United States to collect the amount delinquent and penalties and interest.

3.17.140 Liens.

A. The tax imposed by this chapter together with the interest and penalties herein provided and any filing fees paid to the county clerk of Jackson County, Oregon, and advertising costs that may be incurred when the tax becomes delinquent as set forth in this chapter shall be and, until paid, remain a lien from the date of its recording with the county clerk of Jackson County, Oregon. The lien shall be superior to all subsequent recorded liens on all tangible personal property used in the real and personal property of an seller within the city and may be foreclosed on and sold as may be necessary to discharge said lien, if the lien has been recorded with the county clerk of Jackson County, Oregon. Notice of lien may be issued by the finance director whenever the seller is in default in the payment of said tax, interest and penalty and shall be recorded with the county clerk of Jackson County, Oregon and a copy sent to the delinquent seller. The personal property subject to such lien may be foreclosed on and sold as provided by law.

B. Any lien as shown on the records of the proper county official shall, upon the payment of all taxes, penalties, and interest thereon, be released by the Director when the full amount determined to be due has been paid to the city and the seller or person making such payment shall receive a receipt therefor stating that the full amount of taxes, penalties, and interest thereon have been paid and that the lien is thereby released and the record of lien is satisfied.

3.17.150 Refunds by city to seller.

When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the Director, it may be refunded if a written verified claim stating the specific reason for the claim is filed within two years from the date of payment. The claim shall be submitted on forms provided by the Director. If the claim is approved, the excess amount may be refunded to the seller or it may be credited to an amount payable by the seller and any balance refunded.

3.17.160 Examination of records.

During normal business hours and after notifying the seller, the Director, or their authorized representative, may examine books, papers, and accounting records related to cannabis sales to verify the accuracy of a return or, if no return is made, to determine the amount to be paid.

3.17.170 Confidentiality.
The Director or a person having an administrative or clerical duty under the provisions of this chapter shall not make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of a person required to file a return or pay the tax or a person visited or examined in the discharge of official duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

A. Disclosure to or examination of records and equipment by a city official, employee or agent for collecting taxes for the purpose of administering or enforcing the provisions or collecting the taxes imposed by this chapter;

B. Disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected, or interest and penalties. However, the city attorney shall approve each disclosure, and the Director may refuse to make a disclosure referred to in its subsection when, in the Director's opinion, the public interest would suffer;

C. Disclosure of names and addresses of persons making returns;

D. Disclosure of general statistics regarding taxes collected or business done in the city.

3.17.180 Disposition and use of cannabis facility tax.
Of all revenues received by the city from the tax, fifty percent shall be deposited by the Director into the general fund of the city and may be used as the city deems necessary; fifty percent of the revenues shall be deposited into a fund to be used for law enforcement and policing activities. Expenditures of all revenue received shall be subject to the provisions of the Oregon Local Budget Law.

3.17.190 Appeals to the city council.
A person aggrieved by a decision of the Director may appeal to the city council by filing a notice of appeal with the Director within fifteen days of service or mailing of the notice of a decision. The Director shall fix a time and place for hearing and the appeal, as prescribed by the city council and shall give the appellant fifteen days' written notice of the time and place of the hearing before the city council. At such hearing, the council may take any action it deems necessary regarding the matters before it at the hearing, and action on the appeal shall be by resolution passed by a majority of the council members present at the meeting where the appeal is considered.

3.17.200 Severability.
If any section, subsection, paragraph, sentence, clause, or phrase of this chapter, or any part thereof, is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The legislative body declares that it would have passed such section, subsection, subdivision, paragraph, sentence, clause or

phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

3.17.210 Enforcement—Violations.

It is unlawful for any seller or any other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish the supplementary return or other data required by the Director or to enter a false or fraudulent report, with intent to defeat or evade the determinations of any amount due required by this chapter.

3.17.220 Civil and criminal remedies.

A. The city may seek civil and criminal remedies for violation of any provision of this chapter.

B. The tax constitutes a debt owed by the seller to the city, and the debt is extinguished only when the tax is remitted by the seller to the city. Breaches of duty and remedies shall include, but not be limited to, all of those available under the law to a principal in a fiduciary relationship.

C. Violation of any provision of this chapter shall be an infraction. Every day in which the violation is caused or permitted to exist constitutes a separate infraction. The infraction penalties are in addition to any other penalty, interest, sum or charge imposed by this code. Delinquent taxes and fees, penalty and interest imposed by this chapter, except the infraction penalty, may be collected in a civil action. When all or any part of the ordinance codified in this chapter is repealed, this chapter or the provision or provisions repealed remain in force for purpose of collecting delinquent taxes or imposing penalties for nonpayment of taxes due and owing and for the purpose of authorizing the accusation, prosecution, conviction and punishment of any person who violated this chapter or its provision or provisions.