

URGENCY ORDINANCE NUMBER 1437

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF PERRIS, CALIFORNIA, AMENDING
CHAPTER 3.40 (MARIJUANA TAX) OF TITLE 3 (REVENUE
AND FINANCE) OF THE PERRIS MUNICIPAL CODE**

WHEREAS, Government Code Sections 36934, 36937(b) and 36937(d) provide that any ordinance “For the immediate preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council” and/or relating to “taxes for the usual and current expenses of the city” take effect immediately upon its adoption; and

WHEREAS, in 2016, Ordinance No. 1329 was adopted by the City’s voters, approving and implementing a marijuana dispensary tax and a marijuana cultivation tax by adding Chapter 3.40 (Marijuana Tax) to Title 3 (Revenue and Finance) of the Perris Municipal Code (“PMC”), and further states that the City Council may amend thereof in any manner so long as such amendments do not result in an increase of a tax rate as provided therein; and

WHEREAS, in 2018, Ordinance No. 1359 was adopted by the City’s voters, approving and implementing a marijuana distribution tax and a marijuana manufacturing tax by amending Chapter 3.40 (Marijuana Tax) to Title 3 (Revenue and Finance) of the PMC”, and further states that the City Council may amend thereof in any manner so long as such amendments do not result in an increase of a tax rate as provided therein; and

WHEREAS, the City Council desires to amend certain sections of Chapter 3.40 (Marijuana Tax) of Title 3 (Revenue and Finance) of the PMC (“Chapter 3.40”) to clarify provisions relating to the administration of the tax contemplated by Chapter 3.40 and, therefore, this Ordinance does not increase any tax rates.

NOW, THEREFORE, the City Council of the City of Perris, California hereby ordains as follows:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference as findings of fact.

Section 2. Urgency Findings. The City Council finds that this Ordinance relates to taxes for the usual and current expenses of the City, because it relates to the administration of the tax imposed pursuant to Chapter 3.40 of Title 3 of the PMC (“Cannabis Tax”) wherein the collected revenue is used for the usual and current expenses of the City. Further, the Cannabis Tax provides approximately \$5,200,000 annually in the City’s General Fund revenues and any disruption of this revenue could have impacts on the City’s ability to provide general services to City residents, including, without limitation, services preserving the public peace, health, and safety such as police and fire services. Therefore, this Ordinance would ensure that the revenue collected from the Cannabis Tax is not disrupted.

Section 3. Section 3.40.030 (Operations) of Chapter 3.40 (Marijuana Tax) of Title 3 (Revenue and Finance) of the Perris Municipal Code is hereby amended to read (new text is identified in underline, deleted text in ~~strikethrough~~):

“Sec. 3.40.030. - Operation.

(a) Failure to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and assessments as the city council may establish and the city may use any or all other enforcement remedies provided in this Code.

(b) The city council may impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax in a timely manner, as otherwise allowed by Code or California law. No action by the council under this section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.

(c) The payment of the tax required pursuant to this chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter shall be applied or construed as authorizing the sale or cultivation of marijuana.

(d) Taxes provided for under the provisions of this chapter are not sales or use taxes and shall not be calculated or assessed as such. The taxes shall not be separately identified or otherwise specifically assessed or charged to any individual member, consumer or customer; rather, the taxes are imposed upon the medical marijuana dispensary, ~~and/or~~ medical marijuana cultivation operation, distributor, and/or commercial manufacturer.

(e) The finance director shall promulgate rules, regulations, and procedures to implement and administer this chapter to ensure the efficient and timely collection of the tax imposed by this chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.”

Section 4. Section 3.40.060 (Refunds) of Chapter 3.40 (Marijuana Tax) of Title 3 (Revenue and Finance) of the Perris Municipal Code is hereby amended to read (new text is identified in underline, deleted text in ~~strikethrough~~):

“Sec. 3.40.060. - 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 medical marijuana dispensary, ~~or~~ cultivation operations, distributor, or commercial manufacturer.

(c) Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against medical marijuana taxes for the next term.

(d) 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 chapter, such amount may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the finance director.

(e) The finance 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 therefore refuses to allow such examination of claimant's books and business records after request by the finance director to do so.

(f) 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 chapter from the amount to be refunded to cover expenses.

(g) The finance 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 chapter from the amount to be refunded to cover expenses.”

Section 5. Section 3.40.080 (Debts; deficiencies; assessments; hearings) of Chapter 3.40 (Marijuana Tax) of Title 3 (Revenue and Finance) of the Perris Municipal Code is hereby amended to read (new text is identified in underline, deleted text in ~~strikethrough~~):

“Sec. 3.40.080. - Debts; deficiencies; assessments; hearings.

(a) The amount of any tax, penalties, and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person operating a medical marijuana dispensary, ~~or~~ cultivation operation, distributor, or commercial manufacturer without also making payment to the city of the taxes imposed by this chapter 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 medical marijuana dispensary, ~~or~~ cultivation operation, distributor, or commercial manufacturer.

(b) If the finance director is not satisfied that any statement filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, the finance director 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 the business of medical marijuana dispensary, ~~or~~ cultivation operation, distributor, or commercial manufacturer, 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.

(c) Under any of the following circumstances, the finance director may make and give notice of an assessment of the amount of tax owed by a person under this chapter:

(1) If the person has not filed any statement or return required under the provisions of this chapter.

(2) If the person has not paid any tax due under the provisions of this chapter.

(3) If the person has not, after demand by the finance director, filed a corrected statement or return, or furnished to the finance 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 chapter.

(4) If the finance director determines that the nonpayment of any tax due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter.

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

(6) 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 this Code or to such other address as he or she shall register with the finance director for the purpose of receiving notices provided under this chapter; or, should the person have no business tax certificate issued and should the person have no address registered with the finance 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.

(d) Within ten days after the date of service of an assessment of the amount of tax owed by a person under this chapter, the person may apply in writing to the finance 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 finance director shall become final and conclusive. The procedures for such a hearing shall be conducted as required by law and as follows:

(1) The city council delegates its authority to conduct such a hearing on the assessment to an independent hearing officer. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing on the assessment in the manner set forth herein and as required by law.

(2) Within 30 days of the receipt of any such application for hearing, the finance director shall cause the matter to be set for hearing before an independent hearing officer, unless a later date is agreed to by the finance director and the person requesting the hearing.

(3) Notice of such hearing shall be given by the finance director to the person requesting such hearing not later than five days prior to such hearing. The hearing officer may continue the administrative hearing from time to time. At such hearing said applicant may appear and offer evidence why the assessment as made by the finance director should not be confirmed and fixed as the tax due. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the person who applied for a hearing on the assessment to appear shall not affect the validity of the proceedings or order issued thereon.

(4) Upon conclusion of the hearing, or no later than ten days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in this chapter for giving notice of assessment, and the hearing officer shall submit its decision and the record to the city clerk. The decision of the hearing officer shall be final and conclusive.”

Section 6. CEQA. The City Council finds that this Ordinance is not subject to the CEQA pursuant to both the exemption provided by Sections 15060(c)(3) and 15061(b)(3) of the CEQA Guidelines. This Ordinance is not a project under CEQA because it relates to general policy and procedure making for the purposes of administration of the tax contemplated by Chapter 3.40. Further, it can be seen with a certainty that this Ordinance has no significant effect upon the environment, because it merely relates to the manner in which the City collects the tax contemplated by Chapter 3.40.

Section 7. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the application of any other section, subsection, sentence, clause, phrase, or portion of this Ordinance, and to this end the invalid or unconstitutional section, subsection, sentence, clause, phrase of this ordinance are declared to be severable. The Perris City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

Section 8. Adoption; Effective Date. This Ordinance shall take effect immediately, pursuant to the authority conferred upon the City Council by Government Code Section 36937, upon its adoption by a vote of the City Council as if, and to the same extent that, such ordinance had been adopted pursuant to each of the individual sections set forth hereinabove.

Section 9. Certification. The City Clerk shall certify to the adoption of this Ordinance, and shall cause the same to be posted and codified in the manner required by law.

ADOPTED, SIGNED and APPROVED this 14th day of November, 2023.

Michael M. Vargas, Mayor

ATTEST:

Nancy Salazar, City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF PERRIS)

I, Nancy Salazar, CITY CLERK OF THE CITY OF PERRIS, DO HEREBY CERTIFY that the foregoing Urgency Ordinance Number 1437 was duly adopted by the City Council of the City of Perris at a regular meeting of said Council on the 14th day of November, 2023, and that it was so adopted by the following vote:

AYES: RABB, ROGERS, CORONA, VARGAS
NOES: NONE
ABSENT: NAVA
ABSTAIN: NONE

City Clerk, Nancy Salazar