

ORDINANCE NO. 665-AC

**AN ORDINANCE OF THE CITY OF NEEDLES,
CALIFORNIA, ADDING ARTICLE IX (CANNABIS
CULTIVATION SQUARE FOOT TAX) TO CHAPTER 20, OF
THE NEEDLES MUNICIPAL CODE ESTABLISHING AN
ALTERNATIVE SQUARE FOOT TAX ON CANNABIS
CULTIVATION**

WHEREAS, on November 6, 2012, City voters passed Measure S, approving a tax on persons engaged in marijuana business in the City at a rate of up to 10% of gross receipts.

WHEREAS, on December 26, 2012, the City Council adopted Ordinance No. 549-AC, setting the rate at 10%, which has been in effect since that time.

WHEREAS, since the adoption of the Marijuana Business Tax, the legal landscape surrounding cannabis and cannabis businesses has changed significantly. The City currently regulates a variety of Cannabis Business types, including retail, cultivation, manufacturing, distribution, transportation, and testing laboratories.

WHEREAS, despite significant revenues that have been generated since the regulation of Cannabis Businesses, the City has expressed concerns that the current gross receipts tax may not be the most appropriate basis for the City's Cannabis Cultivation Facilities, which could lead either to underreporting of revenue and/or costly auditing expenses.

WHEREAS, the City commissioned a fiscal analysis of the current gross-receipts tax rates for Cultivation Facilities in order to develop a new, alternative cannabis tax for Cultivation Facilities that will yield the same level of annual tax revenue, based on square footage.

NOW THEREFORE, THE PEOPLE OF THE CITY OF NEEDLES, CALIFORNIA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 20, Article IX of City of Needles Municipal Code "Cannabis Cultivation Square Foot Tax" is hereby added to read as follows:

Article IX. Cannabis Cultivation Square Foot Tax

Section 20-50.1. Purpose. This Article is enacted solely to raise revenue for general municipal purposes. It is not a sales and use tax, a tax upon income, or a tax upon real property, and shall not be calculated or assessed as such. The tax is a general tax enacted solely for general, governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Article shall be placed in the City's general fund and be available for any lawful City purpose.

Section 20-50.2. Intent. The intent of the Article is to implement an alternative tax that the City Council may implement in place of the current percentage based "Marijuana Business Tax" on persons actively engaged in the business of Cannabis Cultivation operating in the City based on square footage. Nothing in this Article shall be interpreted to authorize or permit any business

activity that would not otherwise be legal or permissible under laws applicable to activity at the time the activity is undertaken.

Section 20-50.3. Definitions. As applicable, and except as otherwise expressly provided herein, the definitions set forth in Chapter 20, Article VIII of the Code, Sections 20-40.3 – 20.40. 14, and any amendments thereto, are hereby incorporated by reference. The following additional definitions shall apply to this Article.

- (A) “**Cannabis**” has the same definition as used elsewhere in the Code. “Cannabis” also means “Marijuana.”
- (B) “**Cannabis Business**” means any Cannabis related activity, including but not limited to, planting, possessing, cultivating, harvesting, transporting, manufacturing, compounding, converting, processing, preparing, storing, packaging, testing, labeling, distributing, delivering, wholesale, and/or retail sales of Cannabis or any Cannabis goods or product, whether or not carried on for gain or profit.
- (C) “**Cannabis Cultivation Area**” means the total aggregate area(s) of Cannabis Cultivation on one or more parcels in the City by a Cannabis Business as measured around the outmost perimeter of each separate and discreet area of Cannabis Cultivation at the dripline of the Canopy expected at maturity and includes, but is not limited to, space between plants within a cultivation area, the exterior dimensions of garden beds, garden plots, hoop houses, green houses, and each room or area where Cannabis plants are grown, as determined by the City Manager. If Cannabis plants are cultivated using a shelving, tiered, or multi-level system, the surface area of each tier, level or shelf shall be included when calculating the Canopy and Cannabis Cultivation Area.
- (D) “**Canopy**” means the designated area(s) at a licensed Cannabis Business that will contain Cannabis plants at any time. As set forth in subsection (C), if Cannabis plants are cultivated using a shelving, tiered, or multi-level system, the surface area of each tier, level or shelf shall be included when calculating the Canopy area. Canopy area shall be expressed in square feet and measured using clearly identifiable boundaries of all areas that will contain Cannabis plants at any time, including the entire area of those boundaries. Canopy may be noncontiguous, but each noncontiguous area within those boundaries shall be defined by an identifiable boundary such as an interior wall.
- (E) “**City**” shall mean the City of Needles.
- (F) “**Code**” shall mean the City of Needles Municipal Code.
- (G) “**Cultivation**” means the planting, growing, harvesting, drying, curing, grading, trimming, and/or processing of one or more Cannabis plants or any part thereof, in any location, indoor or outdoor, including within a Fully Enclosed Structure, as defined.
- (H) “**Cultivation Facility**” shall mean a non-residential fixed and stationary building where Cannabis Cultivation occurs.

Cultivation Facility does not include Personal Use Cultivation, as defined.

- (I) **“Marijuana Business Tax”** shall mean the tax on persons engaged in marijuana business in the City at a rate of up to 10% of gross receipts as provided for in Chapter 20, Article VIII of the Code, approved by the voters of the City on November 6, 2012.
- (J) **“Personal Use Cultivation”** shall mean cultivation by either:
 - (1) An individual Qualified Patient cultivating Cannabis pursuant to H&S Code section 11362.5, *et seq.*, if he/she cultivates Cannabis for his/her personal medical use and does not sell, distribute, donate, transfer, or provide Cannabis to any other person or entity; or
 - (2) A Primary Caregiver cultivating Cannabis pursuant to H&S Code section 11362.5, *et seq.*, if he/she cultivates Cannabis exclusively for the medical use of no more than five (5) specified Qualified Patients for whom he/she is the Primary Caregiver within the meaning of H&S Code section 11362.7, and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of H&S Code section 11362.765; or
 - (3) A person 21 years of age or older who, in strict accordance with the City Code, State law and/or regulations, as may be amended from time to time, possesses, plants, cultivates, harvests, dries, or processes not more than six living Cannabis plants and possess the Cannabis produced by those plants, and those living plants are planted, cultivated, harvested, dried or processed within a single private residence, or upon the grounds of a private residence within a Fully Enclosed Structure, are in a locked space, and are not visible by normal unaided vision from a public place.

Section 20-50.4. Alternative Square Foot Tax.

- (A) Maximum Monthly Tax Rate. In lieu of the payment of the Marijuana Business Tax set forth in Section 20.40.20 of the Code, the City Council may, by ordinance, impose on persons actively engaged in the business of Cannabis Cultivation in the City, a monthly tax of up to \$1.75 per square foot of Cannabis Cultivation Area or fraction thereof.

The tax shall not be applicable to Personal Use Cultivation, nor shall it apply to any Cannabis Business not actively engaged in Cannabis Cultivation.
- (B) CPI Adjustment. The tax rate specified above in Section (A) shall be adjusted annually by the percentage increase in the Consumer Price Index (“CPI”) as published by the United States Government Bureau of Labor Statistics for Consumers in the Western Consumer Price Index Area West Region Size Class B/C, but in no case more than 5% or less than 2%, starting January 1 of the first full year after such tax is implemented by the City Council as provided for herein, and on each January 1, thereafter. No CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.

- (C) Council Imposition of Tax. The Cannabis Square Foot Tax shall not be imposed on any Cultivation Facilities unless and until the City Council, by ordinance, takes action to set the rate, not to exceed the amounts in this Section.

Section 20-50.5. Suspension of Marijuana Business Tax as to Cannabis Cultivation Only. During the time this Square Foot Tax is imposed by Council approved ordinance, the enforcement of the percentage-based Marijuana Business Tax shall be suspended as to Cannabis Cultivation, only. Nothing herein prevents or otherwise suspends the enforcement of the Marijuana Business Tax as to any other Cannabis Business in the City.

Section. 20-50.6. Other Licenses, Permits, Taxes, Fees or Charges. Except as expressly suspended by this Article, nothing contained herein shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any license or permit required by, under or by virtue of any provision of any other Title or Chapter of this Code or any other ordinance or resolution of the city or of its Council, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other Title or Chapter of this Code including, but not limited to, the business tax imposed by and the requirements set forth in Chapter 20, or any other ordinance or resolution of the City or of its Council. Any references made or contained in any other Title or Chapter of this Code to any licenses, license taxes, fees or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Titles or Chapter of this Code.

Section 20-50.7. Payment of Tax Does Not Authorize Unlawful Business.

- (A) The payment of the tax required by this Article, and its acceptance by the City, shall not entitle any person to carry on a Cannabis Business unless the person has complied with all of the requirements of this Code, and all other applicable laws, nor to carry on any Cannabis Business in any building or on any premises in the event that such building or premises are situated in a zone or locality in which the conduct of such Cannabis Business is in violation of any law.
- (B) No tax paid under the provisions of this Article shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any ordinance of the City.

Section 20-50.8. Other Requirements. The requirements found in Section 20-40.19, and 20-40.21 through 20-40.32, 20-40.37 through 20-40.43 of the City Code are hereby incorporated by reference.

SECTION 2. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a “project” as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in a physical change to the environment, directly or indirectly.

SECTION 3. If any provision, section, paragraph, sentence, or word of this Ordinance is rendered or declared to be invalid or unconstitutional by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, such invalidity shall not affect the other provisions, sections, paragraphs, sentences or words of this Ordinance, and to this end the provisions of this Ordinance are severable. The voters of the City of Needles declare that they would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intend that the invalid portions should be severed and the balance of the Ordinance enforced.

SECTION 4. Chapter 20, Article IX of the Needles Municipal Code may be amended by the City Council of the City of Needles without a vote of the people. However, as required by Article XIIC of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Ordinance. The people of the City of Needles affirm that the following actions shall not constitute an increase in the rate of the tax:

- (1) The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance, if the City Council has acted to reduce the rate of or suspend collection of all or a portion of the tax;
- (2) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, as long as the interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Ordinance;
- (3) The establishment of a class of Person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Ordinance); and
- (4) The collection of the tax imposed by this Ordinance, even if the City had, for some prior period of time, failed to collect the tax.

SECTION 5. If adopted by the voters at the November 5, 2024, election, this Ordinance shall be in full force and effect ten (10) days after the vote is declared valid by the legislative body, pursuant to Elections Code section 9217 and as provided by law.

SECTION 6. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary thereof, to be published once in a newspaper of general circulation printed and published within the city of Needles, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code section 36933.

NOW, THEREFORE, BE IT ORDAINED by the People of the City of Needles, California.

Approved:

Attest:

Janet Jernigan

City Clerk Dale Jones, CMC

Approved as to form:

City Attorney John Pinkney