

ORDINANCE 2010-02

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO ADOPTING CHAPTER 3.19 OF THE FRUITA MUNICIPAL CODE IMPOSING A MEDICAL MARIJUANA TAX, SETTING FORTH PURPOSES AND DEFINITIONS, ESTABLISHING ENFORCEMENT AND ADMINISTRATIVE PROCEDURES, AND PROVIDING FOR AN EFFECTIVE DATE OF SAID TAX

WHEREAS, the City of Fruita, Colorado is a home rule municipality organized and existing pursuant to the authority conferred in Article XX of the Colorado Constitution; and

WHEREAS, the power of a home rule municipality to levy taxes and raise revenue stems from a grant of the people by constitutional provision; and

WHEREAS, the right of a home rule municipality to enact taxes applicable to local matters, unless expressly prohibited by the Colorado Constitution, has long been recognized by the Colorado courts; and

WHEREAS, the Fruita City Council finds and determines that the imposition of a medical marijuana tax on the sale and purchase of medical marijuana and medical marijuana paraphernalia as set forth herein, is reasonable and necessary to raise additional revenues for the City of Fruita because the establishment of medical marijuana dispensaries and the enforcement of applicable regulations and requirements concerning medical marijuana dispensaries as set forth in the Fruita Municipal Code will require the use of additional City staff and law enforcement resources.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1: Chapter 3.19, entitled "Fruita Medical Marijuana Tax" is hereby added to the Fruita Municipal Code to read as follows:

3.18.010 PURPOSE. For the purposes of this Chapter, every person who purchases medical marijuana or medical marijuana paraphernalia in the City of Fruita is exercising a taxable privilege. The purpose of this Chapter is to impose a tax which will be collected by every medical marijuana and medical marijuana paraphernalia vendor from persons purchasing medical marijuana and medical marijuana paraphernalia in the City of Fruita.

3.18.020 DEFINITIONS. When not clearly otherwise indicated by the context, the following words and phrases as used in this Chapter shall have the following meanings:

- A. *Gross Taxable Sales* shall mean the total amount received in money, credits, property, or other consideration from sales and purchases of medical marijuana

and medical marijuana paraphernalia that is subject to the tax imposed by this Chapter.

- B. *Medical marijuana* shall mean the seeds, leaves, buds and flowers of the plant (genus) cannabis and any mixture, product or preparation thereof, which are appropriate for medical use as provided in Section 14 of Article XVIII of the Colorado Constitution, but excludes the plant's stalk, stems and roots.
- C. *Paraphernalia* means all equipment, products and materials of any kind which are used, intended for use, or designed for the administration of medical marijuana to persons including the devices set forth in Section 9.08.060 of the Fruita Municipal Code.
- D. *Person* means an individual, partnership, firm, joint enterprise, corporation, estate or trust, or any group or combination acting as a unit, including the United State of America, the State of Colorado and any political subdivision thereof.
- E. *Purchase or Sale* means the acquisition or furnishing for consideration by any person of medical marijuana and paraphernalia within the City.
- F. *Purchaser* means any person to whom the taxable service of providing medical marijuana and/or paraphernalia has been rendered.
- G. *Tax* means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this Chapter.
- H. *Taxpayer* shall mean 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.
- I. *Vendor* means a person making sales of or furnishing medical marijuana and/or paraphernalia to a purchaser in the City.

3.18.030 LEVY OF TAX.

- A. There is hereby levied and shall be collected and paid a tax by every person exercising the taxable privilege of purchasing medical marijuana and medical marijuana paraphernalia as defined in this Chapter.
- B. The amount of the tax levied hereby is five percent (5%) of the gross taxable sale amount paid or charged for purchasing said medical marijuana and medical marijuana paraphernalia.
- C. Any person providing medical marijuana and/or medical marijuana paraphernalia within the City of Fruita shall collect a tax from all those to whom medical

marijuana and paraphernalia is provided amounting to five percent (5%) of the total revenue received by such vendor from the sale or purchase of such items. Such tax shall be in addition to any other tax or levy for providing such items.

3.18.040 DEDUCTIONS. The following deductions shall be allowed against sales received by the vendor providing medical marijuana and/or medical marijuana paraphernalia:

- 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 medical marijuana and paraphernalia and does not include any adjustments for other services furnished by a vendor.
- C. Taxes paid on the amount of gross sales which are represented by accounts which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State may be credited upon a subsequent payment of the tax herein provided; but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amount so collected.

3.18.050 COLLECTION OF TAX.

- A. Every vendor making sales to a purchaser in the City, which are taxable under the provisions of this Chapter, at the time of making such sales, is required to collect the tax imposed by this Chapter from the purchaser.
- B. The tax to be collected shall be stated and charged separately from the sale price on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued or employed by the vendor, provided that when added such tax shall constitute a part of such purchase price or charge and shall be a debt from the purchaser to the vendor until paid and shall be recoverable at law in the same manner as other debts. The tax shall be paid by the purchaser to the vendor, as trustee for and on account of the City, and the vendor shall be liable for collection therefor and on account of the City.
- C. It shall be unlawful for the person providing medical marijuana or medical marijuana paraphernalia to assume or absorb the payment of the tax provided for in this Chapter.

3.18.060 VENDOR RESPONSIBLE FOR PAYMENT OF TAX.

- A. *Amount.* Every vendor shall add the tax imposed by this Chapter to the purchase price or charge of all medical marijuana and medical marijuana paraphernalia sold within the City; provided that the vendor shall be liable and responsible to

the City for the payment on a monthly basis of an amount equal to five percent (5%) of all its gross taxable sales, and any collection in excess of the percentage, less the vendors' collection fee. Vendors collecting and remitting the tax can, if such vendor is in compliance with the provisions of this Chapter, deduct three and one-third percent (3 1/3%) of the amount remitted as a collection fee.

- B. *Returns.* Every vendor shall, before the twentieth day of June, 2010, and before the twentieth day of each month thereafter, make a return to the Finance Director for the preceding calendar month commencing with the first (1st) day of May, 2010 and remit to the Finance Director, simultaneously therewith the total amount due the City as provided in this Chapter. The monthly returns of the vendor as required hereunder shall be made in such manner and upon such forms as the Finance Director may prescribe.
- C. *Accounting Practice.* If the accounting methods regularly employed by the vendor in the transaction of business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose unnecessary hardship, the Finance Director may, upon request of the vendor, accept returns at such intervals as will, in the Director's opinion, better suit the convenience of the vendor and will not jeopardize the collection of the tax; provided, however, the Director may by rule permit a vendor whose monthly tax collected is less than sixty dollars (\$60.00) to make returns and pay taxes at intervals not greater than three (3) months.
- D. *Duty to Keep Books and Records.* It shall be duty of every vendor to keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Finance Director in order to determine the amount of the tax for the collection or payment of which the vendor is liable under this Chapter. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records and the same shall be open for examination by the Finance Director.

3.18.070 AUDIT OF RECORDS.

- A. For the purpose of ascertaining the correct amount of medical marijuana tax due from any person engaged in business in the City, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, accounts and records of such person.
- B. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by an authorized agent of the Finance Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Finance Director may issue a subpoena to require that the taxpayer or their representative attend a hearing or produce any such books, accounts and records for examination. Such subpoena shall be enforced by the Fruita

Municipal Court.

3.18.080 TAX OVERPAYMENTS AND DEFICIENCIES.

- A. An application for refund of tax moneys paid in error or by mistake shall be made within three (3) years after the date of purchase of medical marijuana or medical marijuana paraphernalia for which the refund is claimed. If the Finance Director determines within three (3) years of the due date, that a vendor overpaid the medical marijuana tax, he shall process a refund or allow a credit against a future remittance from the same taxpayer. If the amount paid is less than the amount due, the difference together with interest shall be paid by the vendor within then (10) days after receiving written notice and demand from the Finance Director. The Finance Director may extend that time for good cause.
- B. If any part of the deficiency is due to negligence or intentional disregard of this Chapter, or any regulations promulgated thereunder, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest, from the person required to file the return. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency and in such case, the whole amount of the unpaid tax, including the additions, shall become due and payable ten (10) days after written notice and demand by the Finance Director.

3.18.090 COLLECTION AND REFUND OF DISPUTED TAX.

- A. Should a dispute arise between the purchaser and vendor as to whether or not the sale of medical marijuana or paraphernalia is exempt from taxation under this Chapter, the vendor shall collect and the purchaser shall pay such tax, and the vendor shall thereupon issue to the purchaser an invoice or sales receipt showing the date, price, and amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the Finance Director for a refund of such taxes, and it shall be the duty of the Finance Director to determine the question of exemption, subject to review by a court of competent jurisdiction.
- B. Applications for a refund must be made within sixty (60) days after the purchase of the medical marijuana or paraphernalia on which the exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and the statement of the claim of exemption as set forth in subsection (A) of this Section. The burden of proof that sales of medical marijuana or medical marijuana paraphernalia on which tax refunds are claimed, are exempt from taxation under this Chapter, shall be upon the one making such claim by a preponderance of the evidence.

- C. Upon receipt of such application, the Finance Director shall examine the same within fourteen (14) days and shall give notice to the applicant by an order in writing of the decision thereon.
- D. A refund shall be made, or credit allowed, for the tax paid under dispute by any purchaser who has an exemption as set forth in the Chapter. Such refund shall be made by the Finance Director after compliance with the conditions of this Section.
- E. An aggrieved applicant may, within ten (10) days after such decision is mailed to him, petition the Finance Director for a hearing on the claim in the manner provided in this Chapter.

3.18.100 TAX INFORMATION CONFIDENTIAL. All specific information gained under the provisions of this Chapter which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the City and its officers, employees or legal representatives as confidential. Except as directed by judicial order or as provided in this Section, no City officer, employee, or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information as is directly involved in the action or proceeding. Any City officer or employee or any member of the office of, or officer, or employee of the Finance Director who shall divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in the Chapter or by law, shall be guilty of a violation hereof.

- A. The Finance Director may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that said jurisdiction enters into an agreement with the City to grant reciprocal privileges to the City.
- B. Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or its duly authorized representative a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee, or legal representative of the City.

3.18.110 FORMS AND REGULATIONS

- A. The Finance Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said medical marijuana tax and in particular and without limiting the general language of this Chapter, to provide for:
 - 1. A form of report on sales and purchases to be supplied to all vendors;

2. The records which vendors providing medical marijuana and paraphernalia are to keep concerning the tax imposed by this Chapter.

3.18.120 ENFORCEMENT AND PENALTY

- A. It shall be unlawful for any person to intentionally, knowingly, or recklessly fail to pay the tax imposed by this Chapter, or for any vendor to fail to collect such tax and remit it to the City or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Chapter. A violation of any provision of this Chapter shall constitute a Class A municipal offense as set forth in the General Penalty Provisions of Chapter 1.28 of this Code. Each day, or portion thereof, that any violation of this Chapter shall continue shall constitute a separate offense.
- B. A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the twentieth (20th) day of the month as required by this Chapter, or such other date as prescribed by the Finance Director, and one percent (1%) interest shall accrue each month on the unpaid balance. The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed.
- C. If any vendor fails to make a return and pay the tax imposed by the Chapter, the City may make an estimate, based upon available information of the amount of tax due and add the penalty and interest provided above. The City shall mail notice of such estimate, by certified or registered mail, to the vendor at his address as indicated in the City records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Finance Director ten (10) days from the date of service of the notice or the date of mailing by certified or registered mail; provided, however, that within the ten (10) day period such delinquent taxpayer may petition the Finance Director for a revision or modification of such assessment and shall, within such ten (10) day period, furnish the Finance Director the documents, facts and figures showing the correct amount of such taxes due.
- D. Such petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally, and shall be given by the taxpayer under oath and under penalty of perjury.
- E. Thereupon, the Finance Director may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Chapter. Such assessment shall be considered the final order of the Finance Director, and may be reviewed under the Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Finance Director of such intention within ten (10) days after receipt of the final order of

assessment.

- F. The tax imposed by this Chapter shall be a lien upon the goods and business fixtures of the vendor and upon the real property and appurtenant premises at which the taxable transactions occurred. The City may foreclose such lien in accordance with law and record notices of such lien in the records of the Mesa County Clerk and Recorder's Office.
- G. The City may also certify the amount of any delinquent taxes as a delinquent charge upon the property at which the taxable transaction occurred to the County Treasurer for collection in the same manner as delinquent general ad valorem taxes are collected pursuant to Section 31-20-105, C.R.S.

3.18.130 STATUS OF UNPAID TAX IN BANKRUPTCY AND RECEIVERSHIP.

Whenever the business or property of any taxpayer subject to this Chapter shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all taxes, penalties and interest imposed by this Chapter and for which the taxpayer is in any way liable under the terms of this Chapter shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, other than the goods and stock in trade of such taxpayer, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Chapter under process or order of any court, without first ascertaining from the Finance Director the amount of any taxes due and payable under this Chapter, and if there shall be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any moneys to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided.

3.18.140 TRUST STATUS OF TAX IN POSSESSION OF VENDOR. All sums of money paid by the purchaser to the vendor as taxes imposed by this Chapter shall be and remain public money, the property of the City, in the hands of such vendor, and the vendor shall hold the same in trust for the sole use and benefit of the City until paid to the Finance Director as herein provided, and for failure so to pay to the Finance Director, such vendor shall be punished for a violation hereof.

3.18.150 HEARINGS, SUBPOENAS AND WITNESS FEES. Hearings before the Finance Director pursuant to provisions in this Chapter shall be held pursuant to Chapter 2.60, Rules Governing Administrative Proceedings, of this Code. Any subpoena issued pursuant to this Chapter may be enforced by the Fruita Municipal Court pursuant to Section 13-10-112(2), C.R.S. Subpoenas issued under the terms of this Chapter may be served by any person of full age. The fees of witnesses for attendance at a hearing shall be the same as the fees of witnesses before the District Court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Finance Director, such fees shall be paid in the same manner as other expenses under the terms of this Chapter, and when

a witness is subpoenaed at the instance of any party to any such proceeding, the Finance Director may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Finance Director, at his discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

3.18.160 JUDGE COMPELS ATTENDANCE. The Fruita Municipal Judge, upon the application of the Finance Director, may compel the attendance of witnesses, the production of books, papers, records of memoranda, and the giving of testimony before the Finance Director or any duly authorized deputies, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court.

3.18.170 DEPOSITIONS. The Finance Director or any party in an investigation or hearing before the Finance Director may cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

3.18.180 TAX LIEN/ENFORCEMENT.

- A. The tax imposed by this Chapter, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the City and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Finance Director whenever the taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by any police officer or any duly authorized employee of the City. The property so seized (except for medical marijuana) may be sold by the agency seizing the same or by the Finance Director at public auction after ten (10) days have passed after an advertisement in a newspaper published in the City.
- B. The Finance Director or the Sheriff of Mesa County shall forthwith levy upon sufficient amounts of the property of the taxpayer, and the property so levied upon shall be sold in all respects, with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The Sheriff shall be entitled to such fees in executing such warrant as are allowed by law for similar services.
- C. The tax imposed by this Chapter shall be, and remain, a first and prior lien superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred.

3.18.190 RECOVERY OF UNPAID TAX.

- A. The Finance Director may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the City from the taxpayer.
- B. In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Finance Director may recover at law the amount of such taxes, penalties, costs, the reasonable value of an attorney's time or the reasonable attorney's fees, including legal assistant's fees, charged, plus interest, in any municipal, county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due) having jurisdiction of the amount sought to be collected.
- C. The return of the taxpayer or the assessment made by the Finance Director shall be prima facie proof of the amount due.
- D. Such actions may be actions in attachment, and writs of attachment may be issued to the police or sheriff, as the case may be, and in any such proceeding no bond shall be required of the Finance Director, nor shall any police officer or sheriff require of the Finance Director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Finance Director may prosecute appeals in such cases without the necessity of providing bond therefor.
- E. It shall be the duty of the City Attorney, when requested by the Finance Director, to commence action for the recovery of taxes due under this Chapter and this remedy shall be in addition to all other existing remedies, or remedies provided in this Chapter.

3.18.210 LIMITATION ON ACTIONS.

- A. The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Chapter shall not be assessed, nor shall notice of lien be filed, or distraint warrant be issued, or suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such three (3) year period, notice of lien with respect to which has been filed prior to the expiration of such period.
- B. In case of a false or fraudulent return with intent to evade the medical marijuana tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time.
- C. Before the expiration of such period of limitation, the taxpayer and the Finance Director may agree in writing to an extension thereof, and the period so agreed

on may be extended by subsequent agreements in writing.

3.18.220 SEVERABILITY. The several sections, sentences, clauses and provisions of this Chapter are intended to be severable; if any such section, sentence, clause or provision is declared unconstitutional, invalid or unenforceable by the valid judgment of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not effect the remaining portions of this Chapter.

3.18.230 EXEMPTION FROM REVENUE LIMITATIONS. Upon this Chapter becoming effective, the medical marijuana tax imposed by this Chapter and the revenues derived therefrom shall be collected and spent as a voter approved revenue change, notwithstanding any revenue or expenditure limitations contained in Article X, Section 20, of the Colorado Constitution.

Section 2: This Chapter and Ordinance shall not become effective unless a majority of electors voting in the City's regular municipal election, to be held on April 6, 2010, approve the medical marijuana tax provided for in this Ordinance. If so approved, this Ordinance shall become effective at 12:01 a.m. on May 1, 2010.

PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL THIS ____ DAY OF _____, 2010.

City of Fruita

Mayor

ATTEST:

City Clerk