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ORDINANCE NO.7916

(Recreational Marijuana Excise and Sales Tax)

AN EMERGENCY ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE GENERAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2013, THE ISSUE OF WHETHER THE CITY OF BOULDER TAXES SHOULD BE INCREASED BY AN EXCISE TAX OF UP TO 10 PERCENT AND A SALES AND USE TAX ON RECREATIONAL MARIJUANA OF UP TO 10 PERCENT AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

- A. Section 16 of Article XVIII of the Colorado Constitution authorizes a system of state and local licensing for businesses engaged in the cultivation, testing, manufacturing and retail sale of marijuana.
- B. City Council has determined to allow recreational marijuana businesses within the city.
- C. There are indirect costs to the city of the use of marijuana that are not covered by the license and application fees paid by the marijuana businesses. Many of those costs are related to the fact that marijuana is illegal at the federal level and the state has not been able to fully fund enforcement of laws adopted at the state level, leaving enforcement of marijuana laws to the city. Further, there are not comprehensive substance abuse programs related to the legal use of marijuana.
- D. Imposing the tax contemplated by the constitutional amendment legalizing recreational marijuana would provide the resources necessary for the city to be able to pay the indirect costs, including education and programs, related to the use of marijuana.
- E. It is appropriate for voters to approve collection, retention, and expenditure of the full amount collected from the tax proposed by the ballot issue described below.

1 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY  
2 OF BOULDER, COLORADO:  
3

4 Section 1. A general municipal coordinated election will be held in the City of Boulder,  
5 County of Boulder and State of Colorado, on Tuesday, November 5, 2013, between the hours of  
6 7 a.m. and 7 p.m.

7 Section 2. At that election, there shall be submitted to the electors of the City of Boulder  
8 entitled by law to vote the issue of an excise and a sales tax on recreational marijuana.

9 Section 3. The official ballot shall contain the following ballot title, which shall also be  
10 the designation and submission clause for the issue:  
11

12 BALLOT ISSUE NO. 2A

13 **RECREATIONAL MARIJUANA TAX**

14 SHALL CITY OF BOULDER TAXES BE INCREASED BY  
15 (\$3,360,000 first full fiscal year dollar increase) ANNUALLY  
16 AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY  
17 THEREAFTER BY THE IMPOSITION OF AN EXCISE TAX  
18 OF 5 PERCENT IN 2014 AND UP TO 10 PERCENT  
19 THEREAFTER ON THE CULTIVATION FACILITY AT THE  
20 AVERAGE MARKET RATE AT THE POINT OF TRANSFER  
21 FROM THE CULTIVATION FACILITY AND AN  
22 ADDITIONAL SALES AND USE TAX OF 3.5 PERCENT IN  
23 2014 AND UP TO 10 PERCENT THEREAFTER ON  
24 RECREATIONAL MARIJUANA AS PROVIDED IN  
25 ORDINANCE NO. 7916 COMMENCING JANUARY 1, 2014  
26 WITH SUFFICIENT REVENUES FROM THE EXCISE AND  
27 SALES AND USE TAX TO BE USED FOR PUBLIC  
28 SAFETY, ENFORCEMENT AND ADMINISTRATIVE  
PURPOSES AND FOR COMPREHENSIVE SUBSTANCE  
ABUSE PROGRAMS INCLUDING WITHOUT LIMITATION  
PREVENTION, TREATMENT, EDUCATION, RESPO-  
NSIBLE USE, INTERVENTION, AND MONITORING, WITH  
AN EMPHASIS ON YOUTH, AND WITH THE REMAINDER  
USED BY THE GENERAL FUND;

AND IN CONNECTION THEREWITH,

1 SHALL THE FULL PROCEEDS OF SUCH TAXES AT  
2 SUCH RATES AND ANY EARNINGS THEREON BE  
3 COLLECTED, RETAINED, AND SPENT, AS A VOTER-  
4 APPROVED REVENUE CHANGE WITHOUT LIMITATION  
5 OR CONDITION, AND WITHOUT LIMITING THE  
6 COLLECTION, RETENTION, OR SPENDING OF ANY  
7 OTHER REVENUES OR FUNDS BY THE CITY OF  
8 BOULDER UNDER ARTICLE X SECTION 20 OF THE  
9 COLORADO CONSTITUTION OR ANY OTHER LAW?

10 FOR THE MEASURE \_\_\_\_ AGAINST THE MEASURE \_\_\_\_

11 Section 4. If a majority of all the votes cast at the election on the measure submitted are  
12 for the measure, the measure shall be deemed to have passed, and the City Council authorized to  
13 make amendments to the Boulder Revised Code as provided below, effective January 1, 2014,  
14 and City Council may adopt amendments to these provisions and adopt other amendments to the  
15 Boulder Revised Code to implement these excise and sales and use taxes as may be necessary to  
16 implement the intent and purpose of this ordinance.

17 Section 5. If approved by the voters, effective January 1, 2014, the Boulder Revised  
18 Code is amended as follows:

19 Chapter 3-14 Recreational Marijuana Taxes

20 3-14-1 Legislative Intent.

21 The City Council intends that an additional excise tax be imposed on the first sale  
22 or transfer of recreational marijuana by a retail cultivation facility within the city  
23 and an additional sales tax imposed on every retail sale of recreational marijuana  
24 or recreational marijuana-infused product. The purpose of this tax is to increase  
25 the revenue base for the city to provide municipal improvements and services  
26 related to the introduction of a new marijuana industry to the city. Revenues from  
27 the tax shall be deposited in the general fund and shall be available to pay for the  
28 general expenses of government. However, although the City Council recognizes  
that it cannot bind future City Councils, it nonetheless declares its intention that  
sufficient revenues generated by this tax be appropriated by future City Councils  
for public safety, enforcement and administrative purposes and for  
comprehensive substance abuse programs including without limitation prevention,  
treatment, education, responsible use, intervention and monitoring, with an  
emphasis on youth with the remainder used to fund other governmental expenses

1 including police, fire, libraries transportation and general government. Each  
2 council shall decide what constitutes sufficient funds. As used here, "sufficient"  
3 shall mean an amount determined by council to balance the revenue received with  
4 the established need in the community for programs to address the subjects  
5 identified above.

#### 6 3-14-2 Imposition and Rate of Tax.

- 7 (a) Excise Tax. There is levied and shall be paid and collected an excise tax  
8 of five percent on the average market rate of unprocessed recreational  
9 marijuana that is sold or transferred from a recreational marijuana  
10 cultivation facility.
- 11 (b) Sales and Use Tax. There is hereby levied and there shall be collected and  
12 paid a sales and use tax, in addition to the sales and use tax levied in  
13 Chapter 3-2, "Sales and Use Tax," B.R.C. 1981, of 3.5 percent on the full  
14 purchase price paid or charged for tangible personal property and taxable  
15 services purchased or sold at retail by every recreational marijuana  
16 business exercising a taxable privilege in the city by the sale or use of such  
17 property or services. The sales tax is levied on all sales of tangible  
18 personal property or taxable services, except those specifically exempted  
19 and is collected by the vendor and remitted to the city. The use tax is  
20 levied upon the privilege of using in the city, personally or as part of  
21 rendering a service, tangible personal property or taxable services upon  
22 which a municipal sales and use tax has not been paid and is paid by either  
23 the recreational marijuana business in the city or the consumer.

#### 24 3-14-3 Vendor Liable for Tax.

- 25 (a) Excise Tax. Each recreational marijuana cultivation facility shall pay the  
26 tax imposed in Section 3-14-2(a) on every sale or transfer of recreational  
27 marijuana from the cultivation facility.
- 28 (b) Sales and Use Tax. Each recreational marijuana center shall pay the tax  
imposed in Section 3-14-2(b) on every sale or transfer of recreational  
marijuana or a recreational marijuana product from the recreational  
marijuana center.
- (c) The burden of proving that any transaction is not subject to the tax  
imposed by this Chapter is upon the person upon whom the duty to collect  
the tax is imposed.

#### 3-14-4 Taxes Collected are Held in Trust.

All sums of money paid by a person as the additional excise or sales and use tax  
on recreational marijuana tax imposed by this Chapter are public monies that are  
the property of the city. The person required to collect and remit the additional  
recreational marijuana excise or sales and use tax shall hold such monies in trust  
for the sole use and benefit of the city until paying them to the city manager.

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2 3-14-5 Definition.

3 As used in this Chapter, "average market rate" means the amount determined by  
4 the State of Colorado pursuant to § 39-28.8-101(1) C.R.S. or such alternate  
5 amount as may be determined by the city manager as the average price of  
6 unprocessed recreational marijuana that is sold or transferred from a cultivation  
7 facility to a retail marijuana center or manufacturer.

8 3-14-6 Licensing and Reporting Procedure.

- 9 (a) Every person with a duty to collect the excise or the sales and use tax  
10 imposed by this Chapter shall obtain the license required by Section 3-2-  
11 11, "Sales and Use Tax License," B.R.C., 1981 to collect the tax and shall  
12 report such taxes collected on forms prescribed by the city manager and  
13 remit such taxes to the city on or before the twentieth day of the month for  
14 the preceding month or months under report.
- 15 (b) Each recreational business is required to obtain a license pursuant to  
16 Section 3-2-11 "Sales and Use Tax License," B.R.C., 1981. Such license  
17 is valid so long as:
- 18 (1) the business remains in continuous operation, and
  - 19 (2) the sales and use tax license is not canceled by the licensee or  
20 revoked by the city, and
  - 21 (3) so long as the business holds a valid recreational marijuana  
22 business license from the city.
- 23 (c) Whenever a business entity that is required to be licensed under this  
24 Chapter is sold, purchased, or transferred, so that the ownership interest of  
25 the purchaser or seller changes in any respect, the purchaser shall obtain a  
26 new sales tax license.
- 27 (d) The sales tax license may be revoked as provided in Section 3-2-13,  
28 "Revocation of License," B.R.C. 1981.

3-14-7 Maintenance and Preservation of Tax Returns, Reports, and Records.

- (a) The city manager may require any person to make such return, render such  
statement, or keep and furnish such records as the manager may deem  
sufficient and reasonable to demonstrate whether or not the person is  
liable under this Chapter for payment or collection of the tax imposed  
hereby.
- (b) Any person required to make a return or file a report under this Chapter  
shall preserve those reports as provided in Section 3-2-18, "Taxpayer Duty  
to Keep Records, Provide Information and File Returns," B.R.C. 1981.
- (c) The city manager shall maintain all reports and returns of taxes required  
under the Chapter as provided in Section 3-2-20, "Preservation of Tax  
Returns and Reports," B.R.C. 1981.

1  
2 3-14-8 Interest and Penalties for Failure to File Tax Return or Pay Tax.

- 3 (a) Penalties for failure of a person to collect the additional recreational  
4 marijuana excise or sales and use tax or to make a return and remit the  
5 correct amount of tax required by this Chapter and procedures for  
6 enforcing such penalties are as prescribed in Section 3-2-22, "Penalties for  
7 Failure to File Tax Return or Pay Tax (Applies to Entire Title)," B.R.C.  
8 1981.
- 9 (b) Interest on overpayments and refunds is as prescribed in Section 3-2-24,  
"No Interest on Overpayments and Refunds (Applies to Entire Title),"  
B.R.C. 1981.

9 3-14-9 Refunds.

10 Refunds of taxes paid under this Chapter are as prescribed in Section 3-2-23,  
11 "Refunds (Applies to Entire Title)," B.R.C. 1981.

12 3-14-10 Enforcement of Tax Liability.

- 13 (a) The additional recreational marijuana excise and sales and use tax  
14 imposed by this Chapter, together with all interest and penalties pertaining  
15 thereto, is a first and prior lien on tangible personal property in which the  
16 person responsible to collect and remit the tax has an ownership interest,  
subject only to valid mortgages or other liens of record at the time of and  
prior to the recording of a notice of lien, as provided in Subsection 3-2-  
27(c), "Tax Constitutes Lien," B.R.C. 1981.
- 17 (b) The provisions of Sections 3-2-27, "Tax Constitutes Lien," 3-2-29, "Sale of  
18 Business Subject to Lien," 3-2-30, "Certificate of Discharge of Lien," 3-2-  
19 31, "Jeopardy Assessment," 3-2-32, "Enforcing the Collection of Taxes  
20 Due (Applies to Entire Title)," 3-2-33, "Recovery of Unpaid Tax by  
21 Action at Law," 3-2-34, "City May be a Party Defendant," 3-2-35,  
22 "Injunctive Relief," 3-2-36, "Obligations of Fiduciaries and Others," 3-2-  
37, "Violations of Tax Chapter," and 3-2-38, "Limitations," B.R.C. 1981,  
govern the authority of the city manager to collect the taxes, penalties and  
interest imposed by this Chapter.

23 3-14-11 Duties and Powers of City Manager.

24 The city manager is authorized to administer the provisions of this Chapter and  
25 has all other duties and powers prescribed in Section 3-2-17, "Duties and Powers  
of City Manager," B.R.C. 1981.

26 3-14-12 City Employee Conflicts of Interest Prohibited.

27 No deputy, agent, clerk or other officer or employee of the city engaged in any  
28 activity governed by this Chapter shall engage in the business or profession of tax  
accounting or accept employment with or without compensation from any person  
holding a sales tax license from the city for the purpose, directly or indirectly, of  
preparing tax returns or reports required by the city, the State of Colorado, its

1 political subdivisions, any other state or the United States, or accept any  
2 employment for the purpose of advising, preparing materials or data or auditing  
3 books or records to be used in an effort to defeat or cancel any tax or part thereof  
4 that has been assessed by the city, the State of Colorado, its political subdivisions,  
5 any other state, its political subdivisions or the United States.

6 3-14-13 Prohibited Acts.

7 It is unlawful for any recreational marijuana business to sell or transfer retail  
8 marijuana without the sales tax license required by Section 3-2-11, "Sales and  
9 Use Tax License," B.R.C. 1981, and the recreational marijuana business license  
10 required by Chapter 6-14, "Medical Marijuana," B.R.C. 1981, and any other  
11 license required by law, or to willfully make any false or fraudulent return or false  
12 statement on any return, or to willfully evade the payment of the tax, or any part  
13 thereof, as imposed by this Chapter.

14 Section 6. The election shall be conducted under the provisions of the Colorado  
15 Constitution, the Charter and ordinances of the City, the Boulder Revised Code, 1981, and this  
16 ordinance, and all contrary provisions of the statutes of the State of Colorado are hereby  
17 superseded.

18 Section 7. The officers of the City are authorized to take all action necessary or  
19 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
20 conduct the election for the City.

21 Section 8. If any section, paragraph, clause, or provision of this ordinance shall for any  
22 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
23 provisions of this ordinance. The tax established by this measure is intended to be authorized  
24 under any lawful means of taxation, including license taxation pursuant to city of Boulder  
25 Charter Section 122.

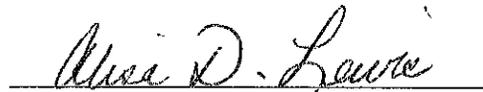
26 Section 9. This ordinance is necessary to protect the public health, safety and welfare of  
27 the residents of the City, and covers matters of local concern.  
28



1 READ ON THIRD READING, AMENDED, PASSED, ADOPTED AS AN  
2 EMERGENCY MEASURE BY TWO-THIRDS COUNCILMEMBERS PRESENT, AND  
3  
4 ORDERED PUBLISHED BY TITLE ONLY this 20<sup>th</sup> day of August 2013.

5   
6 Mayor

7 Attest:

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9   
10 City Clerk