

CITY OF LEADVILLE, COLORADO
Ordinance No. 10
Series of 2021

**AN ORDINANCE AMENDING TITLE 3 OF THE LEADVILLE MUNICIPAL CODE TO
ADD A NEW CHAPTER 3.28 AND A NEW CHAPTER 3.32 TO CODIFY A RETAIL
MARIJUANA EXCISE TAX APPROVED BY THE REGISTERED ELECTORS OF THE
CITY AT THE NOVEMBER 3, 2015 ELECTION AND TO CODIFY RELATED
ADMINISTRATION AND ENFORCEMENT PROCEDURES**

WHEREAS, the City Council of the City of Leadville (“City Council”) previously codified Title 3 of the Leadville Municipal Code titled “Revenue and Finance”; and

WHEREAS, Article X, Section 20 of the Colorado Constitution, known as the Taxpayer’s Bill of Rights (“TABOR”) requires voter approval in advance for any new tax; and

WHEREAS, the City Council referred Ballot Issue 2A to City voters at the November 3, 2015 election; and

WHEREAS, at said election, qualified and registered electors of the City voted to approve Ballot Issue 2A, authorizing the City to impose an excise tax of 5% of the average market rate, as determined by the Colorado Department of Revenue, when unprocessed retail marijuana is first sold or transferred by a marijuana cultivation facility, with the rate of such tax allowed to be decreased or increased without further voter approval so long as the tax rate does not exceed 10%, beginning on January 1, 2018; and

WHEREAS, the City Council desires to codify the retail marijuana excise tax by amending Title 3 of the Leadville Municipal Code to add a new Chapter 3.32; and

WHEREAS, City Council further desires to establish uniform administration and enforcement procedures for excise taxes paid directly to the city, including the retail marijuana excise tax, by adding a new Chapter 3.28 to Title 3; and

WHEREAS, City Council finds that this Ordinance in the best interest of public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CITY OF LEADVILLE, COLORADO, AS FOLLOWS:

Section 1. **Recitals.** The recitals contained above are incorporated herein by reference and are adopted as findings and determinations of the City Council.

Section 2. **Chapter 3.28 and Chapter 3.32 Added.** Title 3 of the Leadville Municipal Code is hereby amended to add a new Chapter 3.28, titled “Administration and Collection of Taxes,” and a new Chapter 3.32, titled “Retail Marijuana Excise Tax,” to read in full as follows:

Chapter 3.28 – ADMINISTRATION AND COLLECTION OF TAXES

3.28.010 – Applicability.

The provisions of this chapter shall apply to the administration, collection and enforcement of any tax remitted directly to the city unless otherwise indicated elsewhere in this code.

3.28.020 – Definitions.

Person means an individual, partnership, firm, joint enterprise, limited liability company, corporation, estate or trust, or any group or combination of individuals or entities acting as a unit, but shall not include the United States of America, the State of Colorado or any political subdivision thereof.

Tax means a voter-approved city tax that is remitted directly to the city.

Taxpayer means a person obligated to remit a tax to the city pursuant to this code.

3.28.030 – Administration.

The finance director or his or her designee is authorized to administer the provisions of this chapter. The finance director may promulgate forms and administrative policies to aid in the making of tax returns, the ascertainment, assessment and collection of a tax.

3.28.040 – Licensing, reporting, and remittance of tax.

- A. Every taxpayer shall obtain the applicable city license or licenses in accordance with title 5 of this code.
- B. Every taxpayer shall report the taxes collected by the taxpayer on forms and in the manner prescribed by the city.
- C. Taxpayers shall collect the tax and remit it to the city on a monthly basis unless a different remittance schedule is set forth for a tax elsewhere in this code.
- D. A tax must be paid on or before the twentieth day of the month for the preceding month or months as provided in this code, unless a different deadline is set forth elsewhere in this code. If the twentieth day of the month falls on a weekend or holiday, the tax must be paid by the next business day. Any tax not paid by the applicable deadline shall become delinquent.
- E. Interest, at a rate of one percent (1%) per month, shall accrue on all delinquent taxes from the day of delinquency until paid or collected.
- F. It is unlawful for any person to submit false information in connection with a report or remittance of a tax.

3.28.050 – Tax overpayments and deficiencies.

- A. An application for refund of tax monies paid in error or by mistake shall be made to the finance director by a taxpayer within three (3) years after the date of payment for which the refund is claimed. If the finance director determines that, within three (3) years of the due date, a taxpayer overpaid the tax, then the finance director shall process a refund or allow a credit against a future remittance from the same taxpayer.
- B. If at any time the finance director determines the amount of tax paid is less than the amount due, the difference, together with interest at the rate set forth in this chapter, shall be paid by the taxpayer within ten (10) days after receiving written notice and demand from the finance director. The finance director may extend that time for good cause.

3.28.060 – Records.

- A. Every taxpayer shall keep accurate and suitable records of all transactions subject to a tax, along with such other books, accounts and records as may be necessary to determine the amount of any tax liability. All records and books, inclusive of invoices or other receipts, shall be preserved for a period of three (3) years.
- B. All such records, books and accounts shall be open for examination or audit by the finance director at reasonable times. In the event the finance director cannot ascertain the correctness of a report or amount of tax due by such examination, the city may conduct further investigations and request additional information from the taxpayer, which the taxpayer shall provide to the city.
- C. All specific information gained by the city under the provisions of this chapter which is used to determine the tax due from a taxpayer shall be treated as confidential by the city. The city will not disclose such information except in accordance with a judicial order or as otherwise required by law. 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.

3.28.070 – Enforcement.

- A. A tax imposed by this code is a first and prior lien on real property and tangible personal property in which a taxpayer has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of notice of a tax lien by the city.
- B. The city shall have the right to recover all sums due to the city pursuant to the terms of this code by judgment and execution thereon in a civil action in any court of competent jurisdiction.

- C. The city may seek an injunction to restrain a person who does not comply with the requirements of this chapter from engaging in business within the city.
- D. The city may revoke or suspend a city license, issued pursuant to title 5 of this code, of a taxpayer who fails to collect a tax. Any such suspension or revocation shall follow the applicable suspension or revocation procedures set forth in title 5 of this code prior to the suspension or revocation of the taxpayer's license.
- E. Pursuant to section 31-20-101 *et seq.*, C.R.S., the city may cause any delinquent charges, fees, or taxes made or levied hereunder to be certified to the county treasurer, to be collected and paid over by the county treasurer in the same manner as real or personal property taxes, including the provisions for the creation of the lien upon the subject property.
- F. In the event that it is necessary for the city to take action for the enforcement of this chapter or any code provision imposing a specific tax, there shall be added to any fees, charges and taxes due under this chapter or other code provision imposing a tax all reasonable enforcement costs and fees incurred by the city, including any reasonable attorney fees and costs of collection.
- G. All remedies set forth in this section shall be cumulative and shall be available to the city in addition to any other remedies available by law.

3.28.080 – Violations and penalties.

Any person who violates any part of this chapter shall, upon conviction or upon a plea of guilty or no contest, be punished in accordance with chapter 1.20 of this code.

Chapter 3.32 – RETAIL MARIJUANA EXCISE TAX

3.32.010 – Short title.

This chapter shall be known and may be cited as the “Leadville Retail Marijuana Excise Tax.”

3.32.020 – Administration and enforcement.

The retail marijuana excise tax imposed pursuant to this chapter shall be administered and enforced pursuant to chapter 3.28 of this code, except as otherwise provided in this chapter.

3.32.030 – Definitions.

For the purposes of this chapter, the words and terms used shall be defined as set forth in the Colorado Marijuana Code, as the same may be amended from time to time, except as otherwise defined in this section. The following terms, words and phrases as used in this chapter have the following meanings:

Person has the same meaning as set forth in chapter 3.28 of this code.

Retail marijuana excise tax means the tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility imposed under this chapter.

3.32.040 – Imposition and rate of tax.

- A. On and after January 1, 2018, there is levied and shall be paid and collected an excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility at a rate of 5% of the average market rate of the unprocessed retail marijuana. Such average market rate shall be as determined by the Colorado Department of Revenue.
- B. The maximum tax rate that may be imposed pursuant to this chapter is 10%. The city council may, by ordinance:
 - 1. Establish another tax rate that may be imposed pursuant to this chapter that is equal to or less than the maximum 10% tax rate provided in this chapter; or
 - 2. After establishing a tax rate that is lower than 10%, increase the tax rate to be imposed pursuant to this chapter.

3.32.050 – Collection of tax.

- A. Retail marijuana cultivation facilities within the city shall collect the retail marijuana excise tax and remit such tax to the city pursuant to the requirements of chapter 3.28. The retail marijuana cultivation facility shall act as trustee for and on account of the city, and the retail marijuana cultivation facility shall be liable for the collection of the retail marijuana excise tax and its remittance to the city.
- B. It is unlawful for any retail marijuana cultivation facility to fail to collect or fail to remit the retail marijuana excise tax to the city in accordance with the applicable provisions of this code.

3.32.060 – Violations and penalties.

Any person who violates any part of this chapter shall, upon conviction or upon a plea of guilty or no contest, be punished in accordance with chapter 1.20 of this code.

Section 3. Remaining Provisions. Except as specifically amended hereby, all other provisions of the Leadville Municipal Code shall continue in full force and effect.

Section 4. Codification Amendments. The codifier of Leadville’s Municipal Code is hereby authorized to make such numerical, technical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Leadville Municipal Code.

Section 5. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate

the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 6. Repeal. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code provision heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance or code hereby repealed prior to the taking effect of this ordinance.

Section 7. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Leadville, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 8. Effective Date. This ordinance shall become effective thirty (30) days after publication following final passage.

INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED in full on first reading this 16th day November, 2021.

CITY OF LEADVILLE, COLORADO:



Greg Labbe, Mayor

ATTEST:



Diane Kiss, Deputy City Clerk

PUBLISHED in full in The Herald Democrat, a newspaper of general circulation in the City of Leadville, Colorado, on this 25th day of November, 2021.

**PASSED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED,
with any amendments, this 7th day of December, 2021.**

CITY OF LEADVILLE, COLORADO:



Greg Labbe, Mayor

ATTEST:



Diane Kiss, Deputy City Clerk

PUBLISHED BY TITLE ONLY, with any amendments, in The Herald Democrat, a newspaper of general circulation in the City of Leadville, Colorado, following final reading on this 16th day of December, 2021.