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**PARK COUNTY, COLORADO  
BOARD OF COUNTY COMMISSIONERS  
Resolution No. 2015- 60**

**A RESOLUTION RELATING TO AND IMPOSING A COUNTY-WIDE  
EXCISE TAX ON THE CULTIVATION OF RETAIL MARIJUANA.**

WHEREAS, on November 6, 2012, the voters of the State of Colorado approved Amendment 64. Amendment 64 added § 16 of Article 18 to the Colorado Constitution, and legalized the possession, use, display, purchase, transport, transfer, and consumption of marijuana accessories or one ounce or less of marijuana by persons twenty-one years of age or older ("Adult Use Marijuana") within the State of Colorado (as opposed to federal law); and

WHEREAS, during the 2015 legislative session the Colorado General Assembly adopted House Bill 15-1367 which provides that each county in the state is authorized to levy, collect, and enforce a county excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility; and

WHEREAS, House Bill 15-1367 further provides that no such excise tax shall be levied until the proposal has been referred to and approved by the eligible electors of the county; and

WHEREAS, Article X, Section 20 of the Colorado Constitution allows the submission of fiscal ballot issues to the electors of local governments on the first Tuesday in odd-numbered years; and

WHEREAS, the Board of County Commissioners submitted to the registered electors of Park County, at a special election held on November 3, 2015, the question of whether Park County should levy, collect and enforce an excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility equal to five percent (5%) of the average market rate, as determined by the Colorado Department of Revenue pursuant to C.R.S. § 39-28.8-101(1) of the unprocessed marijuana with the revenues collected from such tax to be credited to the Park County General Fund (Referendum 1B); and

WHEREAS, pursuant to Colorado Constitution, Article X, Section 20(3)(b), the required election notices were mailed to all registered voters of the County; and

WHEREAS, pursuant to C.R.S. § 29-2-105 the proposal contained the required provisions concerning the amount, levying, and scope of the sales proposed sales tax; and

WHEREAS, at the November 3, 2015 election the majority of the electors voting thereon voted yes on the following ballot questions:

**BALLOT QUESTION NO. 1B**

**SHALL PARK COUNTY TAXES BE INCREASED BY \$500,000.00 ANNUALLY (FIRST FULL FISCAL YEAR INCREASE), AND BY WHATEVER AMOUNTS ARE RAISED ANNUALLY THEREAFTER, THROUGH THE ADOPTION OF AN EXCISE TAX ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY AT THE RATE OF 5% OF THE AVERAGE MARKET RATE, AS DETERMINED BY THE COLORADO DEPARTMENT OF REVENUE PURSUANT TO C.R.S. § 39-28.8-101(1) OF THE UNPROCESSED MARIJUANA, SUCH TAX TO BE IMPOSED AT THE TIME WHEN THE RETAIL MARIJUANA CULTIVATION FACILITY FIRST SELLS OR TRANSFERS UNPROCESSED RETAIL MARIJUANA FROM THE RETAIL MARIJUANA CULTIVATION FACILITY TO A RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITY, A RETAIL MARIJUANA STORE, OR ANOTHER RETAIL MARIJUANA CULTIVATION FACILITY; WITH REVENUE TO BE USED FOR THE GENERAL PURPOSES OF THE COUNTY BUT WITH ALL PROCEEDS FROM SUCH TAX GENERATED WITHIN THE BOUNDARIES OF AN INCORPORATED MUNICIPALITY TO BE TRANSFERRED TO SUCH MUNICIPALITY; AND SHALL ALL REVENUES DERIVED FROM SUCH MARIJUANA TAX 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.**

**YES \_\_\_\_\_**

**NO \_\_\_\_\_**

and

WHEREAS, the Board of County Commissioners wishes to adopt rules and regulations for the implementation and enforcement of the marijuana cultivation excise tax approved by the County's electors effective January 1, 2016.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PARK, THAT:

**1. PURPOSE.** The purpose of this Resolution is to implement and impose, to the fullest extent allowed by law, an excise tax on the on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility in Park County. For purposes of this Resolution any sale or transfer from a location in Park County shall be subject to this excise tax.

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

- A. *“Average Market Rate”* means the average price, as determined by the Colorado Department of Revenue on a biannual basis in six-month intervals, of all unprocessed retail marijuana that is sold or transferred from retail marijuana cultivation facilities in the state to retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities. An “average market rate” may be based on the purchaser or transferee of unprocessed retail marijuana or on the nature of the unprocessed retail marijuana that is sold or transferred.
- B. *“Retail Marijuana”* means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. “Retail marijuana” does not include industrial hemp, nor does it include fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- C. *“Sale”* means any exchange or barter, in any manner or by any means whatever, for consideration.
- D. *“Transfer”* means to grant, convey, hand over, assign, sell, exchange, or barter, in any manner or by any means, with or without consideration.
- E. *“Unprocessed Retail Marijuana”* means marijuana at the time of the first transfer or sale from a retail marijuana cultivation facility to a retail marijuana product manufacturing facility or a retail marijuana store.
- F. In addition to the definitions provided in this Section, other terms used in this Resolution shall have the meaning ascribed to them in Article XVIII, § 16 of the Colorado Constitution, the Colorado Retail Marijuana Code, C.R.S. § 12-43.4-101 *et seq.*, and Park County Resolution No. 13-01.

**3. LEVY OF TAX.**

- A. Beginning January 1, 2016, there is hereby levied and shall be collected and paid a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility, at a rate of five percent (5%) of the average market rate of the unprocessed retail marijuana.
- B. The tax shall be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility.

- C. The tax imposed by this Resolution shall not be levied on the sale or transfer of unprocessed marijuana by a marijuana cultivation facility to a medical marijuana center.

**4. BOOKS AND RECORDS TO BE PRESERVED.**

- A. Every retail marijuana cultivation facility shall keep at each licensed place of business complete and accurate electronic records for that place of business, including itemized invoices of all retail marijuana grown, held, shipped, or otherwise transported or sold to retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities.
- B. The records required by this Section 4 shall include the names and addresses of retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities to which unprocessed retail marijuana is sold or transferred, the inventory of all unprocessed retail marijuana on hand, and other pertinent papers and documents relating to the sale or transfer of unprocessed retail marijuana.
- C. A retail marijuana cultivation facility shall keep itemized invoices of all unprocessed marijuana transferred to retail marijuana stores owned or controlled by the owners of the retail marijuana cultivation facility.
- D. Every retail marijuana store shall keep at its place of business complete and accurate records to show from which retail marijuana cultivation facilities its retail marijuana was purchased. Such records shall be available for inspection by Park County during regular business hours.

**5. COLLECTION OF TAX.**

- A. Every retail marijuana cultivation facility shall file a return with the Park County Finance Department each month. The return shall be on forms prescribed and furnished by the Finance Director or, if permitted by the Finance Director, on the forms prescribed by the Colorado Department of Revenue for payment of the State retail marijuana excise tax levied by C.R.S. § 39-28.8-302. The return shall contain, among other things, the total amount of unprocessed retail marijuana sold or transferred during the preceding month and the tax due thereon.
- B. Every retail marijuana cultivation facility shall file a return with the Park County Finance Department by the twentieth (20<sup>th</sup>) day of the month following the month reported and with the report shall remit the amount of the tax due.
- C. The Park County Finance Department may require retail marijuana cultivation facilities to file tax returns and remit payments due pursuant to this

Resolution electronically.

- D. A retail marijuana cultivation facility shall file with the Park County Finance Department evidence of a surety bond issued by a company authorized to do business in Colorado for the benefit of Park County in an amount equal to two months of the facility's anticipated liability for the excise tax imposed by this Resolution. The amount of the facility's anticipated tax liability shall be determined by the Finance Department in consultation with the retail marijuana cultivation facility.

**6. AUDIT OF RECORDS.**

- A. For the purpose of ascertaining the correct amount of tax due pursuant to this Resolution, the Finance Director may authorize an agent to conduct an audit of a retail marijuana cultivation facility 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 County limits and be open at any time during regular business hours for examination by an authorized agent of the Finance Director. The Finance Director may require that the records be produced at the County's offices. If any retail marijuana cultivation facility 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 Park County Court.

**7. 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 the pertinent tax return for which the refund is claimed. If the Finance Director determines within three (3) years of the due date, that a retail marijuana cultivation facility has overpaid the tax levied by this Resolution he or she shall process a refund or allow a credit against a future remittance from the same retail marijuana cultivation facility. If the amount paid is less than the amount due, the difference together with interest shall be paid by the retail marijuana cultivation facility 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 Resolution, 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. .

**8. TAX INFORMATION CONFIDENTIAL.** All specific information gained under the provisions of this Resolution which is used to determine the tax due from a retail marijuana cultivation facility, whether furnished by the retail marijuana cultivation facility or obtained through audit, shall be treated by the County and its officers, employees or legal representatives as confidential. Except as directed by judicial order or as provided in this Section, no County 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 County 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 Resolution or by law, shall be guilty of a violation hereof. 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 County.

**9. ENFORCEMENT AND PENALTY**

A. It shall be unlawful for any person to fail to pay the tax imposed by this Resolution, or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Resolution. A violation of any provision of this Resolution shall constitute a misdemeanor punishable in Park County Court by a fine not to exceed One Thousand Dollars (\$1,000). Each day, or portion thereof, that any violation of this Resolution 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 retail marijuana cultivation facility and become due in the event the tax is not remitted by the twentieth (20th) day of the month as required by this Resolution, 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 retail marijuana cultivation facility fails to make a return and pay the tax imposed by the Resolution, the County may make an estimate, based upon available information of the amount of tax due and add the penalty and interest provided above. The County shall mail notice of such estimate, by certified or registered mail, to the retail marijuana cultivation facility at its address as indicated in the County records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the retail marijuana cultivation facility 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 retail marijuana cultivation facility 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 retail marijuana cultivation facility 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 Resolution. 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 retail marijuana cultivation facility 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 Resolution shall be a lien upon the goods and business fixtures of the retail marijuana cultivation facility and upon the real property and appurtenant premises at which the taxable transactions occurred. The County may foreclose such lien in accordance with law and record notices of such lien in the records of the Park County Clerk and Recorder's Office.
- G. The County 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.

**10. STATUS OF UNPAID TAX IN BANKRUPTCY AND RECEIVERSHIP.** Whenever the business or property of any retail marijuana cultivation facility subject to this Resolution 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 Resolution and for which the retail marijuana cultivation facility in any way liable under the terms of this Resolution shall be a prior and preferred lien against all the property of the retail marijuana cultivation facility, 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 retail marijuana cultivation facility, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Resolution under process or order of any court, without first ascertaining

from the Finance Director the amount of any taxes due and payable under this Resolution, 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.

**11. HEARINGS, SUBPOENAS AND WITNESS FEES.** Hearings before the Finance Director pursuant to provisions in this Resolution shall be held pursuant to written procedures established by the Finance Director. The Finance Director is empowered to issue subpoenas for the compulsory attendance of witnesses. Any subpoena issued pursuant to this Resolution may be enforced by the Park County Court. Subpoenas issued under the terms of this Resolution 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 Resolution, 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. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

**12. JUDGE COMPELS ATTENDANCE.** The Park County Court, 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.

**13. LIMITATION ON ACTIONS.**

- A. The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Resolution shall not be assessed, nor shall notice of lien be filed, 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 tax levied by this Resolution, 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.

**14. SEVERABILITY.** The several sections, sentences, clauses and provisions of this Resolution 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 Resolution.

**15. EXEMPTION FROM REVENUE LIMITATIONS.** Upon this Resolution becoming effective, the retail marijuana excise tax imposed by this Resolution 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.

Moved, seconded, and approved this \_\_\_ day of \_\_\_\_\_ 2015.

**PARK COUNTY BOARD OF COUNTY COMMISSIONERS**



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Mark Dowaliby, Chairperson

ATTEST:

  
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Park County Clerk & Recorder      CHIEF DEPUTY

