

**RESOLUTION 2-2018**

**RESOLUTION OF THE BOARD OF DIRECTORS OF  
COLORADO CITY METROPOLITAN DISTRICT  
ADOPTING RULES AND REGULATIONS  
REGARDING THE COLLECTION, ADMINISTRATION AND ENFORCEMENT OF  
THE DISTRICT'S RETAIL MARIJUANA EXCISE TAX**

**WHEREAS**, Colorado City Metropolitan District ("District") is a special district and political subdivision of the State of Colorado, acting pursuant to certain powers set forth in the Colorado Special District Act, C.R.S. § 32-1-101, *et seq.*; and

**WHEREAS**, C.R.S. § 32-1-1004(10) authorizes metropolitan districts located entirely within the unincorporated area of a county to levy, collect, and enforce up to a five percent (5%) excise tax upon the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility; and

**WHEREAS**, pursuant to C.R.S. § 32-1-1004(10)(c), the Board of Directors of the District ("Board") referred to the eligible electors of the District a ballot issue that would authorize the District to impose an excise tax on sales of unprocessed retail marijuana pursuant to C.R.S. § 32-1-1004(10); and

**WHEREAS**, the eligible electors of the District voted on November 7, 2017 to authorize the District to impose said excise tax at an election held in accordance with the Uniform Election Code of 1992 and all requirements of C.R.S. § 32-1-1004(10); and

**WHEREAS**, in accordance with District Resolution No. 14-2017, the District's excise tax went into effect on January 1, 2018; and

**WHEREAS**, pursuant to C.R.S. § 32-1-1001(1)(m), the Board is authorized to "adopt, amend, and enforce bylaws and rules and regulations not in conflict with the constitution and laws of this state for carrying on the business, objects, and affairs of the board and of the special district"; and

**WHEREAS**, the Board wishes to establish rules and regulations governing the collection, administration and enforcement of the District's excise tax; and

**WHEREAS**, the District has prepared a proposed new Section Twenty of the District's Rules and Regulations, which is attached hereto as **Exhibit A**, and which addresses the collection, administration and enforcement of the District's excise tax; and

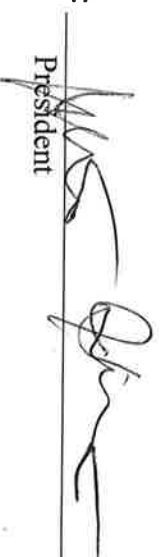
**WHEREAS**, the Board has reviewed the attached **Exhibit A** and believes that adoption of the proposed new Section Twenty is appropriate and in the best interests of the District, its residents, and its customers.

**NOW, THEREFORE, BE IT RESOLVED** by the Board that:

1. The Board hereby adopts Section Twenty of the District's Rules and Regulations, as shown on **Exhibit A** attached hereto and incorporated herein by this reference, effective immediately.
2. The Board hereby directs the District Manager to revise the Rules and Regulations to reflect this adoption.

ADOPTED this 9<sup>th</sup> day of January, 2018.

COLORADO CITY METROPOLITAN DISTRICT

By:   
President

ATTEST:

  
Secretary

## Section Twenty

**20.1. DEFINITIONS.** As used in this Section, unless the context otherwise requires, the meaning of the following terms used herein shall be as follows:

- 20.1.1. Average Market Rate:** Average Market Rate has the meaning as defined in C.R.S. § 39-28.8-101(1.5), as may be amended.
- 20.1.2. District:** District means Colorado City Metropolitan District, a Colorado special district.
- 20.1.3. Deficiency Notice:** Deficiency Notice means a notice sent from the District by certified mail to a Taxpayer notifying the Taxpayer that the Taxpayer has failed to pay a required Excise Tax payment.
- 20.1.4. Designated Agent:** Designated Agent means the employee or official of the District designated to facilitate the collection, administration and enforcement of the Excise Tax.
- 20.1.5. Excise Tax:** Excise Tax means the District-wide excise tax on the first Sale or Transfer of Unprocessed Retail Marijuana by a Retail Marijuana Cultivation Facility to a Retail Marijuana Product Manufacturing Facility, a Retail Marijuana Store, or another Retail Marijuana Cultivation Facility, as authorized by C.R.S. § 32-1-1004(10), and as described more fully in District Resolution No. 14-2017.
- 20.1.6. Final Assessment:** Final Assessment means the District's final assessment of the money owed to the District by the Taxpayer and includes the amount of unpaid Excise Tax owed, interest accrued as of the date the Final Assessment is issued, the cost of an audit, if applicable, and any penalties that may be owed in connection to the nonpayment of the Excise Tax. A Final Assessment shall clearly state that the total amount listed represents a debt owed by the Taxpayer to the District.
- 20.1.7. Local Licensing Authority:** Local Licensing Authority means the Pueblo County Liquor and Marijuana Licensing Board, as established pursuant to Chapter 5.16 of the Pueblo County Code, as amended.
- 20.1.8. Response:** Response means a Taxpayer's response to a Deficiency Notice, sent by certified mail to the Designated Agent, that contains the information required by Section 20.4.6.
- 20.1.9. Retail Marijuana:** Retail Marijuana has the meaning as defined in C.R.S. § 39-28.8-101(7), as may be amended.

**20.1.10. Retail Marijuana Cultivation Facility:** Retail Marijuana Cultivation Facility means a facility as defined in C.R.S. § 39-28.8-101(8), as may be amended, that is located within the boundaries of the District.

**20.1.11. Retail Marijuana Product Manufacturing Facility:** Retail Marijuana Product Manufacturing Facility has the meaning as defined in C.R.S. § 39-28.8-101(10), as may be amended.

**20.1.12. Retail Marijuana Store:** Retail Marijuana Store has the meaning as defined in C.R.S. § 39-28.8-101(12), as may be amended.

**20.1.13. Sale:** Sale has the meaning as defined in C.R.S. § 39-28.8-101(13), as may be amended.

**20.1.14. Taxpayer:** Taxpayer means a Retail Marijuana Cultivation Facility and includes the plural as well as the singular number.

**20.1.15. Transfer:** Transfer has the meaning as defined in C.R.S. § 39-28.8-101(14), as may be amended.

**20.1.16. Unprocessed Retail Marijuana:** Unprocessed Retail Marijuana has the meaning as defined in C.R.S. § 39-28.8-101(15), as may be amended.

**20.2. LEVYING OF EXCISE TAX:** The District levies the Excise Tax on the first Sale or Transfer of Unprocessed Retail Marijuana by a Retail Marijuana Cultivation Facility to a Retail Marijuana Product Manufacturing Facility, a Retail Marijuana Store, or another Retail Marijuana Cultivation Facility. The Excise Tax is levied at a rate of three percent (3%) for calendar year 2018; four percent (4%) for calendar year 2019; and five percent (5%) for calendar year 2020 and beyond, of the Average Market Rate on the first Sale or Transfer of Unprocessed Retail Marijuana by a Retail Marijuana Cultivation Facility to a Retail Marijuana Product Manufacturing Facility, a Retail Marijuana Store, or another Retail Marijuana Cultivation Facility.

**20.3. COLLECTION AND ADMINISTRATION:**

**20.3.1. Designated Agent:** The District Manager, or his/her designee, as designated in writing with notice to the active Taxpayers, shall serve as the District's Designated Agent to facilitate the collection, administration and enforcement of the Excise Tax. The Designated Agent shall collect monthly payments from all Taxpayers and deposit all revenue generated from those payments into an account held in the District's name.

**20.3.2. Taxpayer's Duty to Keep and Preserve Records:** The Taxpayer shall keep and preserve complete and accurate records, including returns for the Excise Tax, logs from the statewide tracking system, and returns for any county or state excise taxes on Retail Marijuana, and such other books or accounts as

may be required by C.R.S. § 39-28.8-303, as may be amended, or by the Designated Agent in order to determine the amount of the Excise Tax that the Taxpayer is obligated to pay to the District.

**20.3.3. Taxpayer's Duty to Calculate Excise Tax:** Without limiting the generality of the provisions in Section 20.3.2, the Taxpayer shall calculate and record the total amount of Unprocessed Retail Marijuana, by category and pound, at the time of the Taxpayer's first Sale or Transfer of Unprocessed Retail Marijuana from the Taxpayer to a Retail Marijuana Product Manufacturing Facility, a Retail Marijuana Store, or another Retail Marijuana Cultivation Facility. On a monthly basis, the Taxpayer shall determine the amount of Excise Tax it owes the District by applying the tax rate in effect for the calendar year of the Sale or Transfer to the Average Market Rate of said total amount of Unprocessed Retail Marijuana that the Taxpayer sold or transferred in the preceding month.

**20.3.4. Remittance:** Taxpayer shall ensure the District receives each payment no later than 5:00 p.m. on the 26<sup>th</sup> day of the month following the month for which the Excise Tax is levied. Payment for the Excise Tax must be accompanied by a return on the form provided by the Designated Agent and prepared by the Taxpayer.

**20.3.5. Remittance Questions:** If the Average Market Rate of a specific form of Unprocessed Retail Marijuana is unclear, or if the Taxpayer has other questions about the calculation of the Excise Tax, the Taxpayer shall promptly report the issue to the Designated Agent, who may in his/her discretion extend the due date of Taxpayer's payment obligation until the Designated Agent can resolve the issue.

**20.3.6. No Sales or Transfers:** If the Taxpayer does not make a first Sale or Transfer of Unprocessed Retail Marijuana during a month, the Taxpayer shall submit a return prepared by the Taxpayer on the form provided by the Designated Agent and shall indicate that no Excise Tax is due for that month. Said return must be received by the District by the remittance deadline specified in Section 20.3.4.

**20.3.7. Audits:** The District has the right to audit Taxpayers to ensure compliance with this Section. If a Taxpayer is audited, the Taxpayer shall make available all books, invoices, accounts, returns for any state taxes on Retail Marijuana, and other records, at any time during regular business hours, for examination by the Designated Agent or the Designated Agent's appointed agent. The District may conduct an audit at any time and for any reason; evidence or allegations of nonpayment or evasion of the Excise Tax is not required. If a Taxpayer refuses to allow such an audit for ten days or more, the Designated Agent may issue a report of the same to the Taxpayer and the Local Licensing Authority and seek from the Local Licensing Authority revocation or other sanctions related to the Taxpayer's Retail Marijuana Cultivation Facility license. If an audit is conducted and the District determines that additional amounts are due to the District for the Taxpayer's Excise Tax, the District shall

provide a Deficiency Notice to the Taxpayer, listing the amount due, along with any interest and penalties, as appropriate.

## **20.4. ENFORCEMENT:**

### **20.4.1.**

#### **Interest on Underpayment or Nonpayment of Excise Tax:**

Taxpayers shall ensure that the District receives the Excise Tax payment in full by the time and date set forth in Section 20.3.4. If a Taxpayer fails to do so, the Taxpayer shall pay interest on the amount of Excise Tax outstanding. The District will determine the rate of interest pursuant to C.R.S. § 39-21-110.5(2), as may be amended. Interest will begin accruing the day after the Excise Tax payment is due, and will continue accruing until payment of the Excise Tax is made in full. The interest prescribed in this Section must be paid upon notice and demand and will be assessed, collected and paid in the same manner as the Excise Tax.

### **20.4.2.**

#### **Late Fees.**

Payment of the excise tax shall be made no later than the time and date set forth in Section 20.3.4. If Taxpayer does not remit payment by the time and date set forth in Section 20.3.4, a late fee of ten percent of the unpaid Excise Tax shall be added to the amount due if the Designated Agent determines that a deficient or late payment is due to negligence or intentional disregard of the District's Rules and Regulations with knowledge thereof, but without intent to defraud. Said late fee is in addition to the interest to be imposed under Section 20.4.1.

### **20.4.3.**

#### **Penalty for Fraud.**

If the Designated Agent determines that any part of the late or deficient payment is due to fraud with the intent to evade the Excise Tax, there will be a penalty of fifty percent of the unpaid Excise Tax added to the deficient monthly assessment. The Designated Agent will provide the Taxpayer with notice of the penalty in the Deficiency Notice or at such later point if the Designated Agent determines that a fraudulent intent penalty applies.

### **20.4.4.**

#### **Personal Penalty for Willful Failure to Pay Excise Tax:**

All officers of a corporation and all members of a partnership or limited liability company that constitutes a Taxpayer, who voluntarily or at the direction of their superiors have assumed the duties or responsibilities of paying excise taxes for the Taxpayer and who willfully fail to collect, account for, or pay over the Excise Tax or willfully attempt in any manner to evade or defeat any such tax or the payment thereof, are subject to, in addition to other penalties provided by law, a penalty of up to one hundred fifty percent of the total amount of the Excise Tax not collected, accounted for, and paid over to the District.

### **20.4.5.**

#### **Deficiency Notice:**

The Designated Agent shall send a Deficiency Notice to any Taxpayer who has failed to submit an Excise Tax payment, or has submitted an Excise Tax payment in an insufficient amount, by the time and date specified in Section 20.3.4. The Taxpayer shall arrange payment to the

satisfaction of the Designated Agent or file a Response within ten days of date on which the Deficiency Notice was mailed.

**20.4.6. Taxpayer's Response:** After a Taxpayer receives a Deficiency Notice, it must either arrange payment to the satisfaction of the Designated Agent, or file a Response. A Taxpayer will be deemed to have filed its Response in a timely manner if it mails the Response to the Designated Agent by certified mail within ten days of date on which the Deficiency Notice was mailed. The Response must include the following information: (1) The Taxpayer's reason for nonpayment of the Excise Tax; (2) if the amount is disputed, the Taxpayer's reason for disputing the amount of Excise Tax assessed; (3) if the amount is disputed, what the Taxpayer believes is a correct total of the Excise Tax due; and (4) any other information or evidence that the Taxpayer wishes the District to consider in determining the Final Assessment.

**20.4.7. Proceedings after Response Filed:** Within five days of the Taxpayer filing a timely Response, the Designated Agent shall either (1) issue a Final Assessment or (2) notify the Taxpayer that the District will require an audit or additional information from the Taxpayer before issuing a Final Assessment. If the District requests additional information and receives no further communication from the Taxpayer within ten days, the District may proceed as specified in Section 20.4.7. If the District requests additional information and receives communication from the Taxpayer within ten days, the Designated Agent shall inspect the requested information and issue a Final Assessment. The District's determination of a Final Assessment is final.

**20.4.8. Default Proceedings:** If a Taxpayer fails to respond as provided in Section 20.4.6 or Section 20.4.7, the Designated Agent shall issue a notice of default to the Taxpayer and conduct a mandatory audit at the Taxpayer's expense. After determining the amount of Excise Tax owed, the Designated Agent shall issue a Final Assessment consistent with the audit. The Final Assessment may include interest under Section 20.4.1, the costs of the audit, and penalties, if such penalties were either included in the Deficiency Notice or added as a result of the audit.

**20.4.9. Action on Debt:** If the Taxpayer refuses to pay the debt listed in the Final Assessment, the District may file a request with the Local Licensing Authority to revoke Taxpayer's license to conduct business within the District. The District also may institute an action in court seeking to recover the amount owed to District. The District may also seek to recover reasonable attorney fees and costs. Such actions may be actions in attachment or other form of action as determined by the District.

**20.4.10. Refunds:** Refunds of Excise Taxes paid under this Section Twenty may be made if approved by the Designated Agent. To qualify for a refund, the Taxpayer must file an amended Excise Tax return and request in writing a

refund on excess Excise Tax remitted within any period open under the statutes. All refunds will be processed according to the deadlines for all vendor payments. In lieu of requesting a refund, the Taxpayer may request a credit on the following month's Excise Tax Return. Supporting documentation must be attached to an amended return form. If a refund request is denied, the Taxpayer may submit a Response providing additional information and evidence to the Designated Agent by certified mail within ten days of the date that the denial was mailed. Any such Response which will be processed in accordance with Section 20.4.7 hereof. Failure to submit a Response within such timeframe will render the District's denial a final decision.

**20.4.11. Criminal Penalties:** In addition to all other penalties specified or referenced herein, Taxpayers engaging in acts specified in C.R.S. § 39-21-118(4), as may be amended, may be subject to the criminal penalties provided for in C.R.S. § 39-21-118(4), as may be amended.