

ORDINANCE NUMBER 1429

AN ORDINANCE OF THE PEOPLE OF THE CITY OF PERRIS, CALIFORNIA APPROVING AND IMPLEMENTING A DISTRIBUTION FACILITY AND INDUSTRIAL BUSINESS TAX OF \$0.107 PER SQUARE FOOT FOR SPACE PRINCIPALLY UTILIZED FOR DISTRIBUTION FACILITY OR INDUSTRIAL BUSINESS PURPOSES BY ADDING CHAPTER 3.42 (DISTRIBUTION FACILITY AND INDUSTRIAL BUSINESS TAX) TO TITLE 3 OF THE PERRIS MUNICIPAL CODE

WHEREAS, over the last 15 years the number of large distribution facilities and certain industrial businesses located within the City has grown rapidly, with additional projects proposed or currently under review; and

WHEREAS, the tremendous growth and operation of such facilities has in turn increased the amount of vehicle traffic and created other impacts, and has strained the City's ability to maintain City streets and related facilities, such that the City Council finds it necessary to submit to the voters a ballot measure to establish a tax on distribution facilities and certain industrial businesses; and

WHEREAS, on June 13, 2023, the City Council adopted Resolution Number 6209, submitting this Ordinance to the voters at the Special Municipal Election to be held in the City of Perris on November 7, 2023, which, if approved, would establish an annual special business license tax on distribution facilities and certain industrial businesses in the amount of up to 10.7 cents (\$0.107) per square foot for space principally utilized for distribution facility or industrial business purpose, for the purpose of raising revenue for the construction, improvement, operation, maintenance, repair and/or restoration of Perris public streets, roadways, sidewalks, roadway lighting, storm drains, traffic signals or other public improvements ("Measure"); and

WHEREAS, the City of Perris ("City") has the authority to charge businesses a license tax for revenue under Government Code Section 37101; and

WHEREAS, pursuant to subdivision (b) of Section 2 of Article XIII C of the California Constitution and Section 53720 et. seq. of the Government Code the City Council is authorized to impose a special tax upon submission of such special tax to the voters of the City and approval by two-thirds (2/3) of the voters voting on the issue; and

WHEREAS, the administration, implementation, and enforcement of the tax contemplated by this Ordinance shall be carried out in accordance with the Perris Municipal Code.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PERRIS, CALIFORNIA, AT THE NOVEMBER 7, 2023, SPECIAL MUNICIPAL ELECTION DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Subject to the approval of two-thirds (2/3) of the voters of the City of Perris at the Special Municipal Election called by the City Council in a separate resolution,

Chapter 3.42 shall be added to Title 3 of the Perris Municipal Code to read in its entirety as follows:

“Chapter 3.42 – DISTRIBUTION FACILITY AND INDUSTRIAL BUSINESS TAX

Section 3.42.010. Purpose

This chapter is enacted to impose a business license tax upon distribution facilities and industrial businesses, as defined herein, for the purpose of raising revenue for the construction, improvement, operation, maintenance, repair and/or restoration of Perris public streets, roadways, sidewalks, roadway lighting, storm drains, traffic signals or other public improvements.

Section 3.42.020. Definitions

The following definitions apply to this chapter unless context clearly denotes otherwise:

“City manager” shall mean the City of Perris’ City Manager and his or her designee(s).

“Distribution facility” shall mean a business consisting primarily of receiving, temporarily storing, and subsequently distributing goods, wares, or merchandise of any kind to wholesalers or retailers.

“Effective date” shall mean the effective date specified in Section 3.42.080(A).

“Industrial business” shall mean a business consisting primarily of indoor or outdoor storage of large trucks or a business consisting primarily of indoor or outdoor manufacturing with large truck activity.

“Large truck” shall mean a truck, tractor, trailer, or other vehicle exceeding a maximum gross weight limit of 5 tons.

“Person” shall have the same meaning as provided in Section 1.04.010.

“Tax” shall mean the business license tax imposed by this chapter upon distribution facilities and industrial businesses.

Section 3.42.030. Tax

A. Commencing on the effective date hereof, every person conducting the business of, operating, or managing a distribution facility or industrial business shall pay an annual business license tax in the amount of up to 10.7 cents (\$0.107) per square foot for space principally utilized for distribution facility or industrial business purposes, as calculated by the city manager. Beginning on July 1, 2025, and on July 1 of each succeeding year, the business license taxes imposed herein shall be annually adjusted based upon the percentage increase in the Consumer

Price Index for All Urban Consumers (CPI – U) for the Riverside-San Bernardino-Ontario area. In the event that there is no change or there is a percentage decrease in such Consumer Price Index in any given year, then the business license tax established by this chapter shall be unchanged, unless approved by the city council.

B. The revenue generated by this tax shall be spent solely on the construction, improvement, operation, maintenance, repair and/or restoration of Perris public streets, roadways, sidewalks, roadway lighting, storm drains, traffic signals or other public improvements.

C. This tax shall expire 30 years from its effective date.

Section 3.42.040. Operation.

A. Failure or refusal to pay the taxes set forth in this chapter shall be subject to penalties, interest charges, and determinations of tax due as the city council may establish and the City may further use any or all other enforcement remedies provided for in this Code, or pursuant to applicable law.

B. The city council may by resolution impose the tax authorized by this chapter at a lower rate and may establish exemptions, incentives, deductions, or other reductions, and penalties and interest charges or determinations of tax due for failure to pay the tax in a timely manner, as otherwise allowed by this Code or California law. No action by the city council under this chapter shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this chapter.

C. The city council may adopt such rules and regulations for the efficient administration of this chapter.

Section 3.42.050. Returns and Remittances.

The tax shall be due and payable as follows:

A. This tax shall be due and payable on an annual basis by July 1 of each year after the effective date. Each person owing tax, on or before the last business day before July 1, shall prepare and submit a tax return to the city manager containing the amount of tax owed for the preceding year. At the time the tax return is filed, the full amount of the tax owed for the preceding year shall be remitted to the City.

B. All tax returns shall be completed on forms as provided by the city manager.

C. Tax payments for all outstanding taxes owed the city are immediately due upon cessation of business for any reason.

D. Whenever any payment, statement, report, request or other

communication received by the city manager is received after the time prescribed by this section for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed on or prior to the date prescribed in this section for the receipt thereof, or whenever the city manager is furnished substantial proof that the payment, statement, report, request, or other communication was in fact deposited in the United States mail on or prior to the date prescribed for receipt thereof, the city manager may regard such payment, statement, report, request, or other communication as having been timely received. If the due day falls on Friday, Saturday, Sunday, or a federal holiday, the due day shall be the last regular business day on which the City Hall is open to the public prior to the due date.

E. Unless otherwise specifically provided under other provisions of this chapter, the taxes required to be paid pursuant to this chapter shall be deemed delinquent if not paid on or before the due date specified by this section.

F. The city manager is not required to send a delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this chapter.

Section 3.42.060. Failure to Pay Tax.

Any person who fails or refuses to pay any tax required to be paid pursuant to this chapter on or before the due date shall pay penalties and interest as follows:

A. A penalty equal to 25% of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate of 10% per annum; and, an additional penalty equal to 25% of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and interest on the unpaid penalties calculated at the rate of 10% per annum. The percentages provided herein may be adjust by resolution of the city council.

B. Whenever a check is submitted in payment of a tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this chapter plus any amount allowed under state law.

C. The tax due shall be that amount due and payable from the effective date of this chapter.

D. The city manager may waive the first and second penalties of 25% each imposed upon any person if:

(1) The person provides evidence satisfactory to the city manager that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary

care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the city prior to applying to the city manager for a waiver.

(2) The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once during any 24 month period for taxation of space utilized as a distribution facility or industrial business.

Section 3.42.070. Refunds.

A. No refund shall be made of any tax collected pursuant to this chapter, except as provided in this section.

B. No refund of any tax collected pursuant to this chapter shall be made because of the discontinuation, dissolution, or other termination of a distribution facility or industrial business.

C. Any person entitled to a refund of taxes paid pursuant to this chapter may elect in writing to have such refund applied as a credit against taxes due under this chapter for the next term.

D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city under this chapter, such amount may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the city manager upon forms established by the city manager.

E. The city manager shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the city manager to do so.

F. In the event that the tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

G. The city manager shall initiate a refund of any tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a city audit of tax receipts. In the event that the tax was erroneously paid and the error is attributable to the city, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the city shall retain the amount set forth in this chapter from the amount to be refunded to cover expenses.

Section 3.42.080. Effective and Expiration Date.

A. Effective Date. This chapter levying the tax described herein shall be effective ten (10) days after the date on which the city council has declared that the voters of the city have approved this chapter by a vote of no fewer than a two-thirds majority of the votes cast by the electors voting on the tax measure at the special municipal election held on Tuesday, November 7, 2023.

B. Expiration Date. This chapter levying the tax described herein shall expire thirty (30) years after the Effective Date.

Section 3.42.090 Administration; Enforcement; Violation.

A. The city manager shall enforce and administer each and all provisions of this chapter.

B. The city manager may adopt such rules and regulations for the efficient administration and enforcement of this chapter.

C. The city manager shall have the power to audit and examine all books and records of the person conducting the business of, operating, or managing a distribution facility or industrial business for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions of this chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this chapter. If such person, after written demand by the city manager, refuses to make available for audit, examination or verification such books, records, or equipment as the city manager requests, the city manager may, after full consideration of all information within the city manager's knowledge concerning the business and activities of the person so refusing, make an assessment in the manner provided in section 3.42.100 of this chapter.

D. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this chapter or of any state law requiring the payment of all taxes.

E. Any person violating any of the provisions of this chapter or any regulation or rule passed in accordance herewith, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact, either concerning the operation and administration of this chapter, or as provided for in this chapter, shall be deemed guilty of a misdemeanor.

F. Any violation of the provisions of this chapter, at the discretion of the city prosecutor, is punishable as a misdemeanor or an infraction pursuant to Chapter 1.16 of the Perris City Code; and, any violation of the provisions of this chapter is subject to administrative citation, at the discretion of the city, pursuant to Chapter 1.18 of the Perris City Code.

G. The remedies described in this chapter are not mutually exclusive. Pursuit of any one remedy shall not preclude city from availing itself of any or all available administrative, civil, or criminal remedies, at law or equity.

Section 3.42.100 Debts; Deficiencies; Assessments; Hearings.

A. The amount of any tax, penalties, and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any person operating a medical distribution facility or industrial business without also making payment to the city of the taxes imposed by this chapter shall be liable in an action in the name of the city in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such distribution facility or industrial business .

B. If the city manager is not satisfied that any form filed as required under the provisions of this chapter is correct, or that the amount of tax is correctly computed, the city manager may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in a form required to be filed under the provisions of this chapter or upon the basis of any information in his or her possession or that may come into his or her possession. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in the business of distribution facility or industrial business, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due.

C. Under any of the following circumstances, the city manager may make and give notice of an assessment of the amount of tax owed by a person under this chapter:

(1) If the person has not filed any form required under the provisions of this chapter.

(2) If the person has not paid any tax due under the provisions of this chapter.

(3) If the person has not, after demand by the city manager, filed a corrected form required by this chapter, or furnished to the city manager adequate substantiation of the information contained in the form required by this chapter already filed, or paid any additional amount of tax due under the provisions of this chapter.

(4) If the city manager determines that the nonpayment of any tax due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this chapter. The city council may adopt a resolution changing the percentages herein.

(5) The notice of assessment shall separately set forth the amount of any tax known by the city manager to be due or estimated by the city manager, after consideration of all information within the city manager's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

(6) The notice of assessment shall be served upon the person either by handing it to him or her personally, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business appearing on the face of the business tax certificate issued under this Code or to such other address as he or she shall register with the city manager for the purpose of receiving notices provided under this chapter; or, should the person have no business tax certificate issued and should the person have no address registered with the city manager for such purpose, then to such person's last known address. For the purposes of this section, a service by mail is complete at the time of deposit in the United States mail.

D. Within ten days after the date of service of an assessment of the amount of tax owed by a person under this chapter, the person may apply in writing to the city manager for a hearing on the assessment. If application for a hearing before the city is not made within the time herein prescribed, the tax assessed by the city manager shall become final and conclusive. The procedures for such a hearing shall be conducted as required by law and as follows:

(1) The city council delegates its authority to conduct such a hearing on the assessment to an independent hearing officer. The compensation of the hearing officer shall not depend on any particular outcome of the appeal. The hearing officer shall have full authority and duty to preside over the hearing on the assessment in the manner set forth herein and as required by law.

(2) Within 30 days of the receipt of any such application for hearing, the city manager shall cause the matter to be set for hearing before an independent hearing officer, unless a later date is agreed to by the city manager and the person requesting the hearing.

(3) Notice of such hearing shall be given by the city manager to the person requesting such hearing not later than five days prior to such hearing. The hearing officer may continue the administrative hearing from time to time. At such hearing said applicant may appear and offer evidence why the assessment as made by the city manager should not be confirmed and fixed as the tax due. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the person who applied for a hearing on the assessment to appear shall not affect the validity

of the proceedings or order issued thereon.

(4) Upon conclusion of the hearing, or no later than ten days after the conclusion of the hearing, the hearing officer shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in this chapter for giving notice of assessment, and the hearing officer shall submit its decision and the record to the city clerk. The decision of the hearing officer shall be final and conclusive.

Section 3.42.110. Accountability Provisions.

A. The city manager shall create a special fund account pursuant to Government Code Section 50075.1 into which the proceeds of this tax shall be deposited.

B. The city manager shall cause an annual report to be filed pursuant to Government Code Section 50075.3.

C. The city's independent auditors shall complete a report reviewing the collection, management and expenditure of revenue from the tax levied by this chapter. The independent auditor's report shall include an accounting of the revenues received and expenditures made from the special fund accounts annually to the city council and made available for public review. The city council shall, as part of the city's regular budget process, annually review, direct and adopt an expenditure plan for the special funds collected under this chapter, applying the proceeds of the tax consistent with the requirements of this chapter. In no event shall the city council have authority to direct a use of tax proceeds that is inconsistent with the purposes expressed in this chapter. This report may be combined with the annual report required pursuant to Section 3.42.110(B).

Section 3.42.120. Council Authority to Amend.

The city council has the right and authority to amend this chapter, to further its purposes and intent (including but not limited to amendment for more efficient administration as determined by the city council), in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution, pursuant to Section 9217 of the California Elections Code.”

Section 2. Purpose. The purpose of this tax on distribution facilities and industrial businesses is to raise revenue the proceeds of which will be used solely for the construction, improvement, operation, maintenance, repair and/or restoration of Perris public streets, roadways, sidewalks, roadway lighting, storm drains, traffic signals or other public improvements.

Section 3. Administration, Implementation, and Enforcement. The tax contemplated by this Ordinance shall be administered, implemented, and enforced in accordance

with the Perris Municipal Code, as it may be amended from time to time.

Section 4. Effective Date. If two-thirds (2/3) of the voters of the City of Perris voting at the Special Municipal Election of November 7, 2023 vote in favor of this Ordinance, then this Ordinance shall become a valid and binding ordinance of the City of Perris, and shall be considered as adopted upon the date that the vote is declared by the City Council, and this Ordinance shall go into effect ten (10) days after that date, pursuant to Election Code Section 9217.

Section 5. City Council Authority To Amend and/or Repeal. This is a City Council sponsored initiative Ordinance which otherwise would only be subject to amendment by the voters of the City of Perris. However, pursuant to Section 9217 of the California Elections Code, the City Council expressly reserves the right and authority to amend or repeal the Ordinance in any manner that does not increase a tax rate, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.

Section 6. Appropriations Limit. Pursuant to Article XIIB of the California Constitution, the appropriations limit for the City of Perris is increased to the maximum extent over the maximum period of time allowed under the law consistent with the revenues generated by this tax.

Section 7. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The People hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

Section 8. CEQA. This measure to be submitted to the voters adopts a special tax to fund any lawful purpose of the City. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. Therefore, under CEQA Guidelines section 15060, review under CEQA is not required.

Section 9. Execution. The Mayor of the City of Perris is hereby authorized and ordered to attest to the adoption of the Ordinance by the voters of the City of Perris by signing where indicated below.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by a 2/3 vote of the People of the City of Perris, California voting on the 7th day of November, 2023.

Mayor, Michael Vargas

ATTEST:

City Clerk, Nancy Salazar