

RESOLUTION NO. 16-18

A RESOLUTION OF THE CITY OF OREGON CITY REFERRING TO THE VOTERS OF OREGON CITY A MEASURE TO ESTABLISH A THREE PERCENT TAX ON RECREATIONAL MARIJUANA SALES

WHEREAS, the citizens of Oregon approved Measure 91 in November, 2014, legalizing the sale and consumption of marijuana, and allowing local governments limited time place and manner regulatory authority over licensed premises that grow, produce, sell, and transfer marijuana and marijuana items; and

WHEREAS, prior to the voters' passage of Measure 91 , the Oregon City Commission approved an ordinance adopting Oregon City Municipal Code Chapter 3.06 establishing a tax on local sales of recreational marijuana; and

WHEREAS, the 2015 Oregon Legislature enacted HB 3400, revising the authority given to local governments over dispensaries selling or transferring marijuana and marijuana items, and enacted SB 460, allowing medical marijuana dispensaries registered with the Oregon Health Authority to sell limited amounts of retail marijuana and immature plants to adults over the age of 21, beginning Oct 1, 2015 and continuing until December 31, 2016 with a 25 percent tax on the sale of recreational marijuana at medical dispensaries until December 31, 2016; and

WHEREAS, the 2015 Oregon Legislature set the tax base for at 17 percent for the sales of recreational marijuana beginning January 1, 2017; and

WHEREAS, Measure 91 provided distribution of only one tenth of state tax revenues after costs to cities for enforcement of the measure; and

WHEREAS, the 2015 Oregon Legislature required local jurisdictions to seek voter approval for any local tax of up to three percent on recreational sales at a general election; and

WHEREAS, the Oregon City Commission has decided to refer a measure to the voters at the November 8, 2016 election, which if approved would amend the Oregon City Municipal Code to establish a three percent tax on the sale of recreational marijuana.

NOW THEREFORE, THE CITY OF OREGON CITY RESOLVES AS FOLLOWS:

Section 1 – Referral.

The Oregon City Commission hereby submits an ordinance, attached to this resolution as Exhibit A, entitled: " A Measure Amending the Oregon City Municipal Code, Title 3 – Revenue and Finance, by Ordinance to Provide for a Tax on Recreational Marijuana Sales " to the legal voters of the City of Oregon City, Oregon for adoption or rejection at the election in the City of Oregon City, Clackamas County, County to be held on November 8, 2016, and directs the City Elections Officer to take all steps necessary to place this measure on the ballot; and

Section 2 – Ballot Title.

The City Commission adopts the following ballot title to describe the measure to be placed before the voters at the November 8, 2016 regular City election. The City Manager is directed to file the following ballot title with the City Recorder:

Measure No. _____:

CAPTION: Imposes city tax on sale of recreational marijuana.

QUESTION: Shall City of Oregon City impose a three percent tax on the sale of recreational marijuana?

SUMMARY: Under state law, the city commission may refer to the voters of Oregon City an ordinance imposing a tax or fee on the sale of recreational marijuana items in the city by a licensed marijuana retailer. Approval of this measure would impose a three percent tax on the sale of marijuana items in the city by a licensed marijuana retailer. The tax would be collected at the point of sale and remitted by the marijuana retailer.

Under state law, a city that adopts an ordinance that prohibits the establishment of marijuana businesses in that city may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. This measure would become operative only if the measure proposing to prohibit the establishment of any of those marijuana entities does not pass by a majority of votes.

Section 3 – Explanatory Statement. The City Commission authorizes and directs the City Manager to take all steps necessary to submit an explanatory statement to the Clackamas County Clerk for placement in the voters’ pamphlet for the November 8, 2016, general election.

Approved and adopted at a regular meeting of the City Commission held on the 6th day of July 2016.



DAN HOLLADAY, Mayor

Attested to this 6th day of July 2016:


Kattie Riggs, City Recorder

Approved as to legal sufficiency:


City Attorney

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A MEASURE AMENDING THE OREGON CITY MUNICIPAL CODE, TITLE 3 – REVENUE AND FINANCE, BY ORDINANCE TO PROVIDE FOR A TAX ON RECREATIONAL MARIJUANA SALES

BE IT ENACTED BY THE PEOPLE OF THE CITY OF OREGON CITY, OREGON

The City of Oregon City Ordains as Follows:

Section 1. Title 3, Revenue and Finance, Chapter 6, Marijuana And Marijuana-Infused Products Tax, of the Oregon City Municipal Code is hereby amended by the following changes, with additions shown in underlined text and deletions shown in ~~strikethrough~~ text:

Chapter 3.06 – TAX ON RECREATIONAL MARIJUANA SALES AND ~~MARIJUANA-INFUSED PRODUCTS TAX~~

3.06.010 - Purpose.

For the purposes of this chapter, every person who sells recreational marijuana or recreational marijuana-infused products, ~~medical marijuana or marijuana-infused products~~ in the city is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the sale of recreational marijuana, ~~medical marijuana~~ and marijuana-infused products in the city.

3.06.020 - Definitions.

When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter have the following meanings:

"Director" means the finance director or the director's designee, and includes any Person or entity with whom the City contracts to administer and enforce the Marijuana Tax program or a portion thereof.

"Consumer" means a person who purchases, acquires, owns, holds or uses marijuana other than for the purpose of resale. ~~"Gross taxable sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.~~

"Manufacturer" means any person engaged in the manufacture, planting, cultivation, growing, or harvesting of marijuana.

"Marijuana" means ~~all parts of the plant of the Cannabis family Cannabaceae,~~ any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family

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Cannabaceae. "Marijuana" includes cannabinoid products, cannabinoid concentrates and cannabinoid extracts as those terms are defined in ORS 475B.015. Marijuana does not include industrial hemp, as defined in ORS 571.300. Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Oregon Medical Marijuana Program" means those functions within the office of the Oregon Health Authority that administers the provisions of ORS 475B.400 to 475B.525 ~~475.300 through 475.346~~, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

"Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the state and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

"Processor" means any person engaged in the processing, compounding, conversion or packaging of marijuana into marijuana products or marijuana extracts.

"Retail sales price" means the price paid for marijuana, excluding tax, to a Seller by or on behalf of a Consumer of marijuana. ~~"Purchase or sale" means the retail acquisition or furnishing for consideration by any person of marijuana within the city and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.~~

~~"Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.~~

"Retail sale" means any transfer, exchange, gift, or barter of marijuana by a seller to a consumer. ~~the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.~~

"Seller" means any person who is required to obtain a business license as required by Section 5.04.060 and/or who is required to be licensed or has been licensed by the state as a manufacturer, processor, wholesaler, or is engaged in retail sales of marijuana or marijuana-infused products for money, credit, property or other consideration.

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"Tax" means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.

"Taxpayer" means any person obligated to account to the director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

"Wholesaler" means any person engaged in the transfer of goods or services between a manufacturer or processor and for retail sale.

3.06.030 - Levy of tax.

A. Every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter is subject to and must pay a tax for exercising that privilege.

B. The amount of tax levied is three percent of the retail sales price paid to the seller in a retail sale of marijuana to any consumer, as follows:

- ~~1. Five percent of the gross sale amount paid to the seller of marijuana and marijuana-infused products by a person who is a registry identification cardholder.~~
- ~~2. Ten percent of the gross sale amount paid to the seller of marijuana and marijuana-infused products by persons who are purchasing marijuana and marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.~~

3.06.035 – Exemption of medical marijuana cardholders from marijuana tax.

A. As used in this section, "designated primary caregiver," "registry identification card" and "registry identification cardholder" have the meanings given those terms in ORS 4758.410.

B. Notwithstanding Section 3.06.030:

1. A tax is not imposed upon the retail sale of marijuana in the city by a seller to a registry identification card holder or to a designated primary caregiver who is purchasing marijuana for a registry identification cardholder; and
2. A seller may not collect the tax imposed under Section 6.07.030 from a consumer if, at the time at which the retail sale of the marijuana occurs, the consumer provides proof to the seller that the consumer:
 - a. Holds a valid registry identification card under ORS 4758.415; or
 - b. Holds a valid identification card under ORS 4758.415 (5)(b) and is purchasing the marijuana for a registry identification cardholder.

3.06.040 - Deductions.

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The following deductions are allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any consumer purchaser;
- B. Any adjustments in sales that amount to a refund to a consumer purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

3.06.050 - Seller responsible for payment of tax.

A. Every seller must, on or before the last day of the month following the end of each calendar quarter (i.e., in the months of April, July, October and January) make a return to the director, on forms provided by the city, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the director may establish shorter reporting periods for any seller if the seller or director deems it necessary in order to ensure collection of the tax. The director may require further information in the return relevant to payment of the tax. A return is not considered filed until it is actually received by the director.

B. At the time the return is filed, the seller must remit to the director the full amount of the tax collected. Payments received by the director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the city. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

C. The city will apply non-designated payments in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax.

D. If the director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the city in a particular tax or factual situation, the director may order such a change. The director may establish shorter reporting periods for any seller if the director deems it necessary in order to ensure collection of the tax. The director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all taxes collected pursuant to this chapter for the city's account until the seller makes payment to the director. A separate trust bank account is not required in order to comply with this provision.

E. Every seller required to remit the tax imposed by this chapter is entitled to retain five percent of all taxes due to the city to defray the costs of bookkeeping and remittance.

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F. Every seller must keep and preserve in an accounting format established by the director records of all sales made by the seller and such other books or accounts as the director may require. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The director has the right to inspect all such records at all reasonable times.

3.06.060 - Penalties and interest.

A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required must pay a penalty of ten percent of the amount of the tax, in addition to the amount of the tax.

B. If any seller fails to remit any delinquent remittance on or before a period of sixty days following the date on which the remittance first became delinquent, the seller must pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

C. If the director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent of the amount of the tax will be added thereto in addition to the penalties stated in subsections A and B of this section.

D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter must pay interest at the rate one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. In addition, failure to pay the tax or fraud in that payment may be grounds for revocation of a business license as required by Section 5.04.060.

F. Every penalty imposed, and any interest as accrues under the provisions of this section, becomes a part of the tax required to be paid.

G. All sums collected pursuant to the penalty provisions in subsections A and C of this section will be distributed to the city's general fund.

H. Penalties for certain late tax payments may be waived or reduced pursuant to policies and processes adopted by the finance department. However, the finance department is not required to create a penalty waiver or reduction policy. If the finance department does not create a policy for waivers or reductions, no waivers or reductions are allowed.

3.06.070 - Failure to report and remit tax—Determination of tax by director.

A. If any seller fails to make any report of the tax required by this chapter within the time provided in this chapter, the director will proceed to obtain facts and information on which to base the estimate of tax due. As soon as the director procures such facts and

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information upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the director will determine and assess against such seller the tax, interest and penalties provided for by this chapter.

B. If the director makes a determination as outlined in subsection A of this section, the director must give notice to the seller of the amount assessed. The notice must be personally served on the seller or deposited in the United States mail, postage prepaid, addressed to the seller at the last known place of address.

C. The seller may appeal the determination as provided in Section 3.06.080. If no appeal is timely filed, the director's determination is final and the amount assessed is immediately due and payable.

3.06.080 - Appeal.

A. Any seller aggrieved by any decision of the director with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the city manager.

B. The seller must file the appeal within thirty days of the city's serving or mailing of the determination of tax due. The seller must file using forms provided by the city.

C. Upon receipt of the appeal form, the city manager will schedule a hearing to occur within twenty business days. The manager will give the seller notice of the time and date for the hearing no less than seven days before the hearing date. At the hearing the city manager will hear and consider any records and evidence presented bearing upon the director's determination of amount due and make findings affirming, reversing or modifying the determination. The director and the appellant may both provide written and oral testimony during the hearing. The findings of the city manager are final and conclusive. The city will serve the findings upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

D. Review of the final order of the city manager by any aggrieved party, including the city, shall be solely and exclusively by writ of review to the circuit court of Clackamas County, Oregon, as provided in ORS 34.010 through 34.100.

3.06.090 - Refunds.

A. The city may refund to the seller any tax, interest or penalty amount under any of the following circumstances:

1. The seller has overpaid the correct amount of tax, interest or penalty; or
2. The seller has paid more than once for the correct amount owed; or
3. The city has erroneously collected or received any tax, interest or penalties.

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B. The city may not issue a refund under this section unless the seller provides to the director a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the director. The seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.

C. The director has twenty calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making the determination, the director will notify the claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.

D. If the director determines the claim is valid, the claimant may either claim a refund or take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the city. The claimant must notify the director of the claimant's choice no later than fifteen days following the date the director mailed the determination and the claimant must do so in a manner prescribed by the director.

E. If the claimant does not notify the director of the claimant's choice within the fifteen-day period and the claimant is still in business, the city will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business, the city will mail a refund check to claimant at the address provided in the claim form.

F. The city will not pay a refund unless the claimant establishes by written records the right to a refund and the director acknowledges the claim's validity.

3.06.100 - Actions to collect.

Any tax required to be paid by any seller under the provisions of this chapter is a debt owed by the seller to the city. Any tax collected by a seller that has not been paid to the city is a debt owed by the seller to the city. Any person owing money to the city under the provisions of this chapter is liable to an action brought in the name of the city of Oregon City for the recovery of the amount owing. In lieu of filing an action for the recovery, the city, when taxes due are more than thirty days delinquent, may submit any outstanding tax to a collection agency. So long as the city has complied with the provisions set forth in ORS 697.105, if the city turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars or fifty percent of the outstanding tax, penalties and interest owing.

3.06.110 - Violation infractions.

A. All violations of this chapter are punishable as set forth in Chapter 1.08. It is a violation of this chapter for any seller or other person to:

1. Fail or refuse to comply as required herein;
2. Fail or refuse to furnish any return required to be made;

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3. Fail or refuse to permit inspection of records;
4. Fail or refuse to furnish a supplemental return or other data required by the director;
5. Render a false or fraudulent return or claim; or
6. Fail, refuse or neglect to remit the tax to the city by the due date.

B. The remedies provided by this chapter are not exclusive and do not prevent the city from exercising any other remedy available under the law.

C. The remedies provided by this section do not prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

3.06.120 - Confidentiality.

Except as otherwise required by law, it is unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the city under the terms of this chapter. Nothing in this section prohibits any of the following:

A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or

B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or

C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the director or an appeal from the director for amount due the city under this chapter; or

D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

E. The disclosure of records related to a business's failure to report and remit the tax when the report or tax is in arrears for over six months or when the tax exceeds five thousand dollars. The council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

3.06.130 - Audit of books, records or persons.

The city may examine or may cause to be examined by an agent or representative designated by the city for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due. All books, invoices, accounts and other records must be made available within the city limits and be open at any time during regular business hours for examination by the director or an authorized agent of the

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director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the director may immediately seek a subpoena from the municipal court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

3.06.140 - Forms and regulations.

A. The director is authorized to enter into contracts or agreements relating to the administration of Chapter 3.06, including intergovernmental agreements with the State of Oregon as provided in ORS 305.620, and to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and to provide for:

1. A form of report on sales and purchases to be supplied to all vendors;
2. The records that sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by this chapter.

3.06.150 – Effective Date.

This Chapter will be in full force and effect upon approval by the voters in the November 8, 2016 election. The tax levied in Section 3.06.030 shall be imposed beginning on and after January 1, 2017. The Director is authorized to collect amounts receivable under this Chapter for taxes, interest and penalties.

Section 2. If any part of this Ordinance or any tax levied under this Ordinance against any person is found unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity will affect only that part or tax, and will not otherwise affect or impair the remaining portions of this Ordinance, which shall remain in full force and effect.

Section 3. This Ordinance and the Code amendments shall be in full force and effect upon enactment by voters of Oregon City at the election called for November 8, 2016.