



CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No. 124-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON TO COLLECT THE CITY'S LOCAL TAX ON SALES OF MARIJUANA ITEMS AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT.

WHEREAS, the State passed House Bill 3400 (codified at ORS 475B.345) which provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a 3% tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city; and

WHEREAS, The Council adopted Ordinance No. 2127, an ordinance establishing a three percent tax on the sale of recreational marijuana items by a marijuana retailer in the City of Milwaukie; and Resolution No. 95- 2016; a resolution of the City Council of the City of Milwaukie, Oregon, approving referral to the electors of the City of Milwaukie at the November 8, 2016 general election, the question of whether to establish a three percent tax on the sale of recreational marijuana items by a marijuana retailer in the City of Milwaukie; and

WHEREAS, Electors passed Measure 3-495 approving the three percent tax on the sale of recreational marijuana items by marijuana retailers in the City of Milwaukie in the November 8, 2016 general election; and

WHEREAS, this agreement will save the City significant staff time and expense that would otherwise be required to administer the tax provisions within city operations.

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1: That the City Council of the City of Milwaukie agrees to the terms the attached Marijuana Tax Collection Agreement.

Section 2: The city manager is authorized to sign the agreement on behalf of the City of Milwaukie.

Introduced and adopted by the City Council on 12/20/16.

This resolution is effective on 12/20/16.



Mark Gamba, Mayor

APPROVED AS TO FORM:
Jordan Ramis PC



City Attorney

ATTEST:



Scott S. Stauffer, City Recorder

MARIJUANA TAX COLLECTION AGREEMENT

This Marijuana Tax Collection Agreement (“Agreement”) is entered into between the State of Oregon, acting by and through its Department of Revenue (the “Department”) and the City of Milwaukie (“City”), under the authority of ORS 305.620.

In consideration of the conditions and promises hereinafter contained, it is mutually agreed by the parties that the Department shall supervise and administer, according to the terms and conditions set forth in this Agreement, the Local Tax on sales of marijuana items by Marijuana Retailers authorized under ORS 475B.345 and approved by the voters of City.

(1) Definitions. As used in this Agreement the following terms have the meanings ascribed to them:

(a) “Confidential Information” means the information on Local Tax returns administered pursuant to ORS 305.620, any information in the reports required under Sections 8 and 9 of this Agreement from which information about a particular Local Taxpayer is discernable from the report due to a small number of Local Taxpayers in City or similar factors, and any other information exchanged between the Department and City related to this Agreement, that is confidential under ORS 314.835.

(b) “Fees” means collectively the Administrative Services Fee, the Business Fee and the Core Systems Replacement Fee described in Section 5 of this Agreement.

(c) “Local Government” means a city or county that has entered into a form of this agreement with the Department under the authority of ORS 305.620 for the Department to collect Local Taxes authorized under ORS 475B.345.

(d) “Local Tax” or “Local Taxes” means the Marijuana Tax imposed by City, together with any additional interest or penalties provided for by statute or the Department’s rules; it does not include any additional penalties or fees that City may assess against its Local Taxpayers.

(e) “Local Taxpayer” means a licensed Marijuana Retailer located in the taxing jurisdiction of City.

(f) “Marijuana Retailer” has the meaning given in ORS 475B.015.

(g) “Marijuana Tax” means the tax imposed on sales of marijuana items by Marijuana Retailers pursuant to ORS 475B.345.

(h) “Marijuana Taxpayer” means a licensed Marijuana Retailer that is subject to the Marijuana Tax imposed by a Local Government.

(i) “Ordinance” means the ordinance adopted by the governing body of City and approved by the voters of City on 11/8/2016, a copy of which is attached hereto as Exhibit B and by this reference incorporated herein.

(2) General Administration. The Department shall be responsible for all aspects of Local Tax administration, including, but not limited to, adopting administrative rules; auditing

returns; assessing deficiencies and collecting the Local Tax and penalties and interest under applicable statutes, including but not limited to ORS 305.265, ORS 305.220, and ORS 314.400; making refunds; holding conferences with Local Taxpayers; handling appeals to the Oregon Tax Court; issuing warrants for the collection of unpaid taxes; determining the minimum amount of Local Tax economically collectible; and taking any other action necessary to administer and collect the Local Taxes. The Department has adopted rules addressing the requirements for paying taxes with currency and other matters related to the taxation of marijuana under ORS chapter 475B. City understands and agrees that such rules will be applied to Local Taxpayers.

(3) Level of Service. In performing its duties, the Department may in its sole discretion determine what action shall be taken to enforce provisions of the law and to collect the Local Tax. In exercising its discretion, the Department shall provide a level of services that are comparable to the level of services it provides in the administration of the State of Oregon marijuana tax laws and the collection of such taxes owed to the State of Oregon. If the Department deems it necessary to vary substantially from this standard, the Department shall first notify City of the need and obtain City's consent. The Department shall provide all forms necessary for implementation of the Local Tax, including forms for Marijuana Tax returns, exemptions and refunds.

(4) Transfer of Taxes to City. Beginning at the end of the first full quarter after execution of this Agreement, the Department shall remit to City the amount of Local Taxes collected in the preceding quarter less amounts withheld to pay the Department's Fees and other costs as described in this Agreement within 60 days of the return due date for the quarter. The Department shall notify City if, because of inability to move funds electronically or otherwise through the banking system, a force majeure event described in Section 26 of this Agreement or other exigent circumstance, the Department is unable to transfer the Local Tax collected to City as provided in this Section. In that event, the Department shall provide an estimate, if possible, of when it expects to be able to transfer the Local Taxes collected to City. The Department may enter into an agreement with another state government agency to fulfill the requirements of this Section 4, provided that said government agency can comply with the requirements of this section.

(5) Costs. In order to recover its costs to collect and transfer the Local Tax as provided in this Agreement the Department shall be paid the following three fees:

(a) "Administrative Services Fee": Pays for the establishment and maintenance of financial systems needed to administer and distribute Local Taxes. The fee shall be calculated annually as a percentage of the equivalent of 60 hours of work conducted for the Department of Revenue by the Department of Administrative Services, divided among the Local Governments in proportion to the number of Marijuana Taxpayers in each Local Government.

(b) "Business Fee": Pays for the Local Tax administration activities set forth in this Agreement. The fee shall be calculated as a percentage of the Department's Business Division annual expenses for the administration of all marijuana taxes, with the total fee increasing in direct proportion to the number of Local Taxpayers. The total amount per Local Taxpayer billed

to City under the Business Fee shall not exceed 0.05 percent of the Department's Business Division expenses for the administration of all marijuana taxes;

(c) "Core Systems Replacement fee": Charged only one time after execution of this Agreement and calculated as a flat fee per Local Taxpayer. The total Core Systems Replacement Fee shall not exceed two hundred dollars (\$200.00) per Local Taxpayer in the first full quarter following execution of this Agreement.

FOR EXAMPLE, in a hypothetical with the following assumptions:

250 Marijuana Taxpayers

50 Local Taxpayers in the City of Mainville

2 Local Taxpayers in the City of Middletown

Business Division's Marijuana Expenses: \$500,000 per year

Hourly DAS rate: \$99/hour

The fees would be calculated as follows:

Administrative Services Fee = $(\$99/\text{hour} * 60 \text{ hours}) / 250 \text{ Marijuana Taxpayer} =$
\$23.76 per Local Taxpayer per year

Business Fee = $\$500,000 \text{ in marijuana expenses per year} * 0.05\% =$ \$250 per
Local Taxpayer per year

Core Systems Replacement Fee = \$200 per Local Taxpayer, one time

City of Mainville, year 1: $(\$23.76 \text{ Administrative Services Fee} + \$250 \text{ Business Fee} + \$200 \text{ Core Systems Replacement Fee}) * 50 \text{ Local Taxpayers} =$ \$23,688 in costs

City of Mainville, subsequent years: $(\$23.76 \text{ Administrative Services Fee} + \$250 \text{ Business Fee}) * 50 \text{ Local Taxpayers} =$ \$13,688 in costs

City of Middletown, year 1: $(\$23.76 \text{ Administrative Services Fee} + \$250 \text{ Business Fee} + \$200 \text{ Core Systems Replacement Fee}) * 2 \text{ Local Taxpayers} =$ \$947.52 in costs

City of Middletown, subsequent years: $(\$23.76 \text{ Administrative Services Fee} + \$250 \text{ Business Fee}) * 2 \text{ Local Taxpayers} =$ \$547.52 in costs

(d) In addition to the Fees described above, the Department may withhold or invoice City for the Department's costs to administer extraordinary services not described in this Agreement related to the Local Tax; such extraordinary costs may include, without limitation, requests for audits from City that exceed the scope of the Department's normal audit procedures, requests for research or advice from the Department or the Oregon Department of Justice attorneys, or specially appointed counsel, regarding the Local Tax.

(e) If the Department determines that its costs cannot be covered by the maximum fees outlined in this Section 5, the Department will notify City of the amount by which the Department has determined the Fees must increase. If the Department and City do not agree upon a Fee increase and related amendment to this Agreement, then this Agreement may be terminated by either party in accordance with Section 16 of this Agreement.

(f) The Department shall not collect more in fees than its costs to administer the Local Tax, per ORS 305.620(5). It is using the above formula in the interests of producing its best estimate of costs.

(6) Withholding for Fees and Rebate. The Department shall withhold from the Local Taxes collected and each transfer to City an amount equal to four percent (4%) of the Local Taxes collected. In the first quarter of each calendar year the Department will reconcile the amounts withheld in the previous year with the total fees assessed, and provide such reconciliation in the Department's annual report described in Section 9 of this Agreement. If the amount withheld in a calendar year exceeds the amount of the Department's Fees, the Department will rebate the balance of the Local Taxes withheld to City by the end of the first quarter following the year of withholding. If the amount withheld does not cover the Department's Fees for the preceding year, the amount of the shortfall will be withheld from subsequent transfers of Local Taxes collected until the Department's Fees are fully paid, or in its discretion the Department may invoice City for the unpaid amount of the Department's Fees.

(7) Recovery of Overpayments. If the amount of Local Taxes paid to City under this Agreement, exceed the amount to which City is entitled, the Department may, after notifying City in writing, withhold from later payments due City under this Agreement, such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

(8) Department Quarterly Reports. Beginning with the first full calendar quarter after the execution of this Agreement and continuing each calendar quarter thereafter, within sixty (60) days after the due date for quarterly Local Tax returns, the Department shall provide City with a report indicating the amount of Local Taxes collected, any extraordinary costs assessed, the amount withheld under Section 6 of this Agreement and the cumulative amount of delinquent Local Taxes for each Marijuana Retailer in City's jurisdiction. The information in this report must be treated as potentially revealing Confidential Information, and shall be protected as described in Section 15. City should make all efforts to prevent Confidential Information from being released. The Department and City shall disclose any non-confidential information in a report when required to do so by law, including the Oregon Public Records Law, ORS 192.410 to 192.505.

(9) Department Annual Reports. In the first calendar quarter of each year, the Department shall make a written annual report of the preceding calendar year to City showing the total amount of Local Taxes collected, refunds paid, the expenses of administering and collecting the Local Tax, and other pertinent information. The report shall show the total amount withheld by the Department under Section 6 of this Agreement, and shall show the Department's expenses by its Fee categories. In such report, the Department shall also make recommendations

concerning changes in Local Tax Ordinances, procedures, policies, Local Tax administration and related matters, as the Department deems necessary and appropriate. The information in this report must be treated as potentially Confidential Information, and shall be protected as described in Section 15. City should make all efforts to prevent Confidential Information from being released. The Department and City shall disclose any non-confidential information in the report when required to do so by law, including the Oregon Public Records Law, ORS 192.410 to 192.505.

(10) City Reports. Within sixty (60) days of the effective date of this Agreement, City shall provide the Department with a list of Local Taxpayers in its jurisdiction and a list of zip code areas that are within its jurisdiction for purposes of imposing the Local Tax. City shall provide an updated list of Local Taxpayers to the Department each calendar quarter thereafter. City shall review all reports and reconciliations provided by the Department and promptly notify the Department of any perceived errors or omission in such reports.

(11) Records Maintenance and Access. Each party shall maintain its records relevant to this Agreement, the Local Taxes and Local Taxpayers for the period of time specified and in the manner required under the document retention and archiving requirements applicable to it that are established under ORS 192.005 to 192.170. Upon written request, each party may examine the records of the other party at a time and location that is convenient and without extra cost to the holder of the records; provided, however, any requests for records made in connection with litigation or other efforts to collect the Local Tax shall be immediately provided in the time and manner requested.

(12) Ordinance and Notification of Changes. Contemporaneous with the execution of this Agreement, City shall provide a copy of the Ordinance to Department for incorporation into this Agreement as Exhibit B. In order to insure consistency in administration of the Local Tax, each party shall notify the other of any change in the Ordinance and any state or local regulations or rulings interpreting the Local Tax or the Ordinance, any changes in rates or changes in the City's boundary at least ninety (90) days prior to the effective change, unless it is not legally possible to provide ninety (90) days' notice or both parties mutually agree to effect such changes in less than ninety (90) days. Each party shall notify the other of any change in administration of the Local Tax under this Agreement. The parties shall cooperate in amending the Ordinance or in seeking amendments to ORS 475B.345 or ORS 305.620 which they deem necessary.

(13) Information. The parties will cooperate in the exchange of information and making public announcements to facilitate effective administration of the Local Tax and maintain consistency in public announcements and information. Policy announcements, announcement of changes in the Ordinance, and all correspondence relating to public relations will be handled by City. The Department shall promptly notify City of any matter arising in the administration of the Marijuana Tax that would require any legislative change or affect City's policy, including any policy that relates to the amount of Local Tax collected. Nothing in this section shall prohibit the Department from conducting its own outreach activities to increase awareness and knowledge of local tax obligations.

(14) Limits and Conditions. To the extent limited by applicable provisions of Article XI of the Oregon Constitution or other governing law, and within the limits of the Oregon Tort Claims Act applicable respectively to the Department and City, each party shall indemnify the other for damage to life or property arising from their respective duties and obligations under this Agreement, provided neither party shall be required to indemnify the other for any such liability arising out of a party's own negligent or wrongful acts.

(15) Confidentiality.

(a) Confidential Information may be disclosed only to City as principal, by the Department as its agency, for purposes of carrying out the administration of the Local Tax imposed by City. Requests for Confidential Information shall be made by City by giving not less than ten (10) days' notice to the Department, stating the information desired, the purposes of the request, and the use to be made of such information. If the compilation of information is not feasible, the Department shall so advise City.

(b) ORS 314.840(3) requires that employees and representatives of City who receive Confidential Information must be advised in writing of the provisions of ORS 314.835 and 314.991(3), relating to the penalties for unlawful disclosure. Prior to being given access to Confidential Information, all City employees involved in the performance of this Agreement must review the DOR Secrecy Clause and sign the DOR Secrecy Laws Certificate (substantially in the form of Exhibit A, attached hereto and by this reference incorporated herein) certifying the employee understands the confidentiality laws and the penalties for violating them. Annually thereafter, (on or before a date specified by the Department), or upon request by the Department, such City employees must review and sign the latest versions of the Secrecy Clause and the Secrecy Laws Certificate. All signed Secrecy Laws Certificates must be immediately emailed to both the designated Department Authorized Representative (indicated below) and the Department's Disclosure Office (disclosure.office@oregon.gov). When the employee terminates employment with City, City will forward the certificate to the Department's Disclosure Officer indicating the employee is no longer employed by City. A listing of every person authorized to request and receive Confidential Information identified in this Agreement will be sent to the following designated representative:

John Galvin, Marijuana Tax Program Manager, marijuanatax.DOR@oregon.gov

(c) Upon request and pursuant to the instructions of DOR, City shall return or destroy all copies of Confidential Information provided by DOR to City, and City shall certify in writing the return or destruction of all such Confidential Information.

(d) The administrative rules implementing ORS 314.835 and ORS 314.840 as amended from time to time during the term of this Agreement, shall apply to this Agreement.

(16) Term. The term of this Agreement shall be from the date it is executed by all parties and until it is terminated by operation of law or by either party at its discretion upon at least ninety (90) days prior written notice. Prior to the termination date specified in written notice provided under this section or Section 17 below, City and the Department will continue to

perform their respective duties and obligations of under this Agreement. After the termination date, the Department will cease all collection and other activities under this Agreement, unless prior to the termination date the Department and City agree in writing that the Department may continue actions that are pending before the Oregon Tax Court or the Oregon Supreme Court, or are being collected after judgment or stipulation. In addition, after the termination date the Department will continue to remit to City any Local Taxes received by the Department, after deduction of the Department's actual costs, until all matters pending on the date of termination have been resolved or collected. The Department will administer the Local Tax for City for each calendar quarter commencing after this Agreement is executed; provided, however, if this Agreement is fully executed on or before the 15th day of the calendar quarter, the Department will administer the Local Tax for the quarter in which this Agreement is executed.

(17) Default and Remedies. A party shall be in default under this Agreement if it fails to perform any of its duties and obligations under this Agreement, and fails to cure such nonperformance within ninety (90) days after the other party provides written notice specifying the nature of the nonperformance. If the nonperforming party does not cure its nonperformance, or provide a satisfactory explanation to the other party of its performance under this Agreement, the other party may terminate this Agreement immediately or at a later date specified in written notice provided to the nonperforming party. In addition to termination of this Agreement, in the event of default by a nonperforming party, the other party may pursue any remedies available in law or equity, including an action for specific performance.

(18) Notices. All notices, documents, and information shall be sent as follows:

City of Milwaukie
Finance Director
10722 SE Main Street
Milwaukie, Oregon 97222

Oregon Department of Revenue
Marijuana Tax Program
PO Box 14630
Salem, OR 97309

(19) Amendments. The provisions of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

(20) Successors and Assigns. This Agreement shall be binding and inure to the benefit of the parties, their assigns, and successors.

(21) Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(22) Representations. Each party represents to the other that the making and performance of this Agreement: (a) have been duly authorized by its governing body or official, (b) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board or other administrative agency or any provision of any applicable local charter or other organizational document, and (c) do not and will not result in the

breach of, or constitute a default or require any consent under any other agreement or instrument to which the party is bound.

(23) Governing Law, Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between the Department and City regarding the enforcement or interpretation of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. The parties understand and agree that any action brought to determine the amount of Local Tax owed by a Local Taxpayer, whether brought solely by the Department or in conjunction with City shall be brought solely in the Oregon Tax Court.

(24) Nonappropriation. The obligation of each party to perform its duties under this Agreement is conditioned upon the party receiving funding, appropriations, limitation, allotment, or other expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, sections 7 or 10 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of each party.

(25) Survival. All rights and obligations of the parties under this Agreement will cease upon termination of the Agreement, other than the rights and obligations arising under Sections 14, 16 and 17, and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accruing to a party prior to termination.

(26) Force Majeure. Neither party is responsible for any failure to perform or any delay in performance of an obligation under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligation under this Agreement.

(27) Counterparts. This Agreement may be executed in counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed constitutes an original.

(28) Merger. This Agreement and any exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or presentations, oral or written, not specified herein regarding this Agreement.

Each party represents that this Agreement, when fully executed and delivered will constitute a legal, valid and binding obligation of the party in accordance with its terms, and that the person signing below is the authorized representative of the party with full power and authority to bind his/her principal to this Agreement.

Oregon Department of Revenue

Name/Title: Toni Payseno
Contracts & Procurement

Signature: [Handwritten Signature]

Date signed: 1/5/17

City: City of Milwaukie

Name/Title: Ann Ober, City Manager

Signature: [Handwritten Signature]

Date signed: 12-20-16

**APPROVED AS TO
LEGAL SUFFICIENCY**

[Handwritten Signature]
Asst. Attorney General

Date 1/4/17

EXHIBIT A

DOR

SECURITY CLAUSE

and

SECURITY LAWS CERTIFICATE

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SECRECY CLAUSE

Taxpayer information is confidential and protected by Oregon law. Only authorized persons may have access to taxpayer information, or to secure buildings where taxpayer information is handled. Oregon law requires that you sign a Secrecy Certificate before being allowed access to this confidential information or secure areas. By signing the certificate, you certify that you understand the confidentiality laws and the penalties for violating them.

This applies to everyone with access to taxpayer information, including:

- Department of Revenue employees
- Employees of other government agencies
- Vendors and contractors
- Business partners

Penalties for unauthorized disclosure of state tax information

- **Income tax***—Class C felony; up to \$125,000 fine; up to five years imprisonment; dismissal from state employment; no public office for five years. [ORS 314.991(2)]
- **Inheritance tax**—Class C felony; up to \$125,000 fine; up to five years imprisonment; dismissal from state employment; no public office for five years. [ORS 118.990(3)]
- **Industrial property tax**—Up to \$10,000 fine; up to one year imprisonment. [ORS 308.990(5)]
- **Timber tax**—Up to \$5,000 fine; dismissal from state employment. (ORS 321.686)
- **Employment Department**—May result in dismissal from state employment, or other discipline. [ORS 657.665(6)]

* These provisions also apply to transient lodging tax (ORS 320.330), cigarette tax (ORS 323.403), tobacco products tax (ORS 323.595), emergency communications tax (ORS 403.230), oil and gas production tax (ORS 324.170), hazardous substances tax (ORS 453.410), and petroleum products tax (ORS 465.124).

Penalties for unauthorized disclosure of federal tax information

- **IRC Sect. 7213**—Felony; up to \$5,000 fine; imprisonment of up to five years; cost of prosecution, damages**.
- **IRC Sect. 7213A**—Up to \$1,000 fine; imprisonment of up to one year; cost of prosecution, damages**.

** Damages may include \$1,000 per act, actual damages, punitive damages, cost of legal action, attorney fees. See Section 7431.

Instructions

Please read the following laws. They explain the types of information that are confidential. If you have questions during your employment or performance of duties, ask your supervisor or a Disclosure officer before accessing or disclosing information.

After reading this information, fill out the last page and return it to the Department of Revenue. Keep the other pages for your records.

Oregon Income Tax Laws

ORS 314.835

(1) Except as otherwise specifically provided in rules adopted under ORS 305.193 or in other law, it shall be unlawful for the Department of Revenue or any officer or employee of the department to divulge or make known in any manner the amount of income, expense, deduction, exclusion or credit or any particulars set forth or disclosed in any report or return required in the administration of ORS 310.630 to 310.706, required in the administration of any local tax pursuant to ORS 305.620, or required under a law imposing a tax upon or measured by net income. It shall be unlawful for any person or entity to whom information is disclosed or given by the department pursuant to ORS 314.840 (2) or any other provision of state law to divulge or use such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department or any of its officers or employees, or any person who has acquired information pursuant to ORS 314.840 (2) or any other provision of state law to divulge or make known the amount of income, expense, deduction, exclusion or credit or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for income tax is to be adjudicated by the court from which such process issues.

(2) As used in this section:

(a) "Officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or any former officer, employee or person, or an authorized representative of such former officer, employee or person.

(b) "Particulars" includes, but is not limited to, a taxpayer's name, address, telephone number, Social Security number, employer identification number or other taxpayer identification number and the amount of refund claimed by or granted to a taxpayer.

ORS 314.991

(2) Violation of ORS 314.835 is a Class C felony. If the offender is an officer or employee of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter.

Applicability to other tax programs

The above provisions of ORS 314, concerning the confidentiality of returns and penalties, also apply to:

150-800-033 (Rev. 2-11)

• Transient lodging tax	ORS 320.330
• Cigarette tax	ORS 323.403
• Tobacco products tax	ORS 323.595
• Emergency communications tax	ORS 403.230
• Oil and gas production tax	ORS 324.170
• Hazardous substances tax	ORS 453.410
• Petroleum products tax	ORS 465.124

Oregon Inheritance Tax Laws

ORS 118.525

(1) It shall be unlawful for the Department of Revenue or any of its officers or employees to divulge or make known in any manner any particulars disclosed in any return or supporting data required under this chapter. Except for executors or beneficiaries and their authorized representatives, it shall be unlawful for any person or entity who has acquired information pursuant to subsections (3) and (4) of this section to divulge or make known such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department, or its officers or employees, or persons described in subsections (3) and (4) of this section, to divulge or make known any particulars disclosed in any such return or supporting data except where the liability for inheritance taxes is to be adjudicated by the Oregon Tax Court. Nothing in this section shall prohibit the publication of statistics so classified as to prevent the identification of particulars in any return or supporting data covered by this section.

(2) As used in this section:

(a) "Officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or former officer, employee or person, or an authorized representative of such former officer, employee or person.

(b) "Particulars" includes, but is not limited to, a taxpayer's name, address, telephone number, Social Security number and the amount of refund claimed by or granted to a taxpayer.

ORS 118.990

(3) Violation of ORS 118.525 is a Class C felony. If the offender is an officer or employee of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter.

Oregon Property Tax Laws

ORS 308.290

(11)(a) All returns filed under the provisions of this section and ORS 308.525 and 308.810 are confidential records of the Department of Revenue or the county assessor's office in which the returns are filed or of the office to which the returns are forwarded under paragraph (b) of this subsection.

ORS 308.413

(1) Any information furnished to the county assessor or to the Department of Revenue under ORS 308.411 which is obtained upon the condition that it be kept confidential shall be confidential records of the office in which the information is kept, except as follows:

(a) All information furnished to the county assessor shall be available to the department and all information furnished to the department shall be available to the county assessor.

(b) All information furnished to the county assessor or department shall be available to any reviewing authority in any subsequent appeal.

(c) The department may publish statistics based on the information furnished if the statistics are so classified as to prevent the identification of the particular industrial plant.

(2) The Department of Revenue shall make rules governing the confidentiality of information under this section.

(3) Each officer or employee of the Department of Revenue or the office of the county assessor to whom disclosure or access of the information made confidential under subsection (1) of this section is given, prior to beginning employment or the performance of duties involving such disclosure, shall be advised in writing of the provisions of this section and ORS 308.990 (5) relating to penalties for the violation of this section, and shall as a condition of employment or performance of duties execute a certificate for the department or the assessor in a form prescribed by the department, stating in substance that the person has read this section and ORS 308.990 (5), that these sections have been explained to the person and that the person is aware of the penalties for violation of this section.

ORS 308.990

(5) Subject to ORS 153.022, any willful violation of ORS 308.413 or of any rules adopted under ORS 308.413 is punishable, upon conviction, by a fine not exceeding \$10,000, or by imprisonment in the county jail for not more than one year, or by both.

Forestland Tax Laws

ORS 321.682

(1) Except as otherwise specifically provided by law, it shall be unlawful for the Department of Revenue or any officer or employee of the department to divulge or make known in any manner the amount of the tax or any particulars set forth or disclosed in any report or return required to be filed under ORS 321.045 or 321.741 or any appraisal data collected to make determinations of specially assessed value of forestland pursuant to ORS 321.201 to 321.222. It shall be unlawful for any person or entity to whom information is disclosed or given by the department pursuant to ORS 321.684 (2) or any other provision of state law to divulge or use such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena

or judicial order shall be issued compelling the department or any of its officers or employees, or any person who has acquired information pursuant to ORS 321.684 (2) or any other provision of state law, to divulge or make known the amount of tax or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for timber tax is to be adjudicated by the court from which such process issues.

(2) As used in this section, "officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or any former officer, employee or person, or an authorized representative of such former officer, employee or person.

ORS 321.686

Violation of ORS 321.682 is subject to a fine not exceeding \$5,000 or, if committed by an officer or employee of the state, dismissal or removal from office or employment, or both fine and dismissal or removal from office or employment.

Oregon Employment Department Laws

ORS 657.665

(4) The Employment Department may: ... (i) Disclose information to the Department of Revenue for the purpose of performing its duties under ORS 293.250 or under the revenue and tax laws of this state. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Revenue in any manner that would identify an employing unit or employee except to the extent necessary to carry out the department's duties under ORS 293.250 or in auditing or reviewing any report or return required or permitted to be filed under the revenue and tax laws administered by the department. The Department of Revenue may not disclose any information received to any private collection agency or for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Revenue.

(6) Any person or any officer or employee of an entity to whom information is disclosed by the Employment Department under this section who divulges or uses the information for any purpose other than that specified in the provision of law or agreement authorizing the use or disclosure may be disqualified from performing any service under contract or disqualified from holding any appointment or employment with the state agency that engaged or employed that person, officer or employee. The Employment Department may immediately cancel or modify any information sharing agreement with an entity when a person or an officer or employee of that entity discloses confidential information, other than as specified in law or agreement.



SECRECY LAWS CERTIFICATE

Required by ORS 314.840(3), ORS 118.525(6),
ORS 308.413(3), ORS 321.684

I have read the laws prohibiting disclosure of confidential information for the tax programs below.
The laws have been explained to me.
I have been furnished with a copy of the laws.
I understand Oregon's disclosure laws and the penalties for violating them.

Income tax	ORS 314.835; ORS 314.991(2)
Inheritance tax	ORS 118.525(1); ORS 118.990(3)
Industrial property tax	ORS 308.290(11); ORS 308.413; ORS 308.990(5)
Forestland tax	ORS 321.682; ORS 321.686
Employment Department tax	ORS 657.665(4)(i) and (6)
Transient lodging tax	ORS 320.330
Cigarette tax	ORS 323.403
Tobacco products tax	ORS 323.595
Emergency communications tax	ORS 403.230
Oil and gas production tax	ORS 324.170
Hazardous substances tax	ORS 453.410
Petroleum products tax	ORS 465.124
Federal tax laws	IRC Sections 7213, 7213A, 7431

VENDORS, CONTRACTORS, BUSINESS PARTNERS

PRINT your full name		Business telephone number
Print full name of business or organization for which you are acting in an official capacity		
Address of business or organization		SSN (Collection agency employees only)
What is the nature of your business?		Duration of contract or visit
Revenue contact		Area where you'll be working
Signature X		Date

REVENUE EMPLOYEES

PRINT your full name	Date
Signature X	

AGENCY USE

In Compliance Not in Compliance

EXHIBIT B

City of Milwaukie Ordinance No. 2127

**AN ORDINANCE ESTABLISHING A THREE PERCENT TAX ON THE SALE OF
RECREATIONAL MARIJUANA ITEMS BY A MARIJUANA RETAILER IN THE CITY OF
MILWAUKIE**

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CITY OF MILWAUKIE
"Dogwood City of the West"

Ordinance No. 2127

AN ORDINANCE ESTABLISHING A THREE PERCENT TAX ON THE SALE OF RECREATIONAL MARIJUANA ITEMS BY A MARIJUANA RETAILER IN THE CITY OF MILWAUKIE.

WHEREAS, Section 34a of House Bill 3400 (2015) (codified at ORS 475B.345) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

WHEREAS, the Milwaukie City Council wishes to exercise that power to tax the sale of recreational marijuana items by a marijuana retailer in the City of Milwaukie; and

WHEREAS, this ordinance shall be referred to the electors of Milwaukie at the next statewide general election on Tuesday, November 8, 2016.

NOW, THEREFORE, THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

SECTION 1. Milwaukie Municipal Code is amended by adding a new Chapter 5.65 Recreational Marijuana Tax, as provided in Exhibit A (Chapters 5.55 and 5.65 underline/strikeout version) and Exhibit B (Chapter 5.65 clean version).

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance or any intergovernmental agreement with the State of Oregon are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Intergovernmental Cooperation. After the effective date of this Ordinance, the City may enter into an agreement whereby the State of Oregon, by and through any state department or agency, is responsible for the administration, collection, distribution or enforcement of the tax authorized under this chapter, either in full or in part, without needing to obtain voter approval.

SECTION 5. Repeal. Milwaukie Municipal Code Chapter 5.55 is hereby repealed, as shown in Exhibit A of the effective date of this ordinance.

SECTION 6. Effective Date. This ordinance shall be effective upon certification by the County Elections official that it has received voter approval at an election conducted on November 8, 2016, and further certification by the County Elections official that any measure on the ballot at the November 8, 2016 election prohibiting the establishment of marijuana entities or licenses, has not received voter approval.

Read the first time on 8/2/16, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 8/2/16.

Signed by the Mayor on 8/2/16.



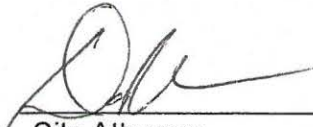
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney

Underline/Strikeout Amendments

~~CHAPTER 5.55 MARIJUANA TAX~~

~~5.55.010 PURPOSE~~

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

~~5.55.015 DEFINITIONS~~

~~As used in this chapter, unless the context requires otherwise:~~

~~"Director" means the Director of Finance for the City of Milwaukie or designee.~~

~~"Gross 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.~~

~~"Marijuana" means all parts of the plant of the Cannabis family 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 as they currently exist or may from time to time be amended. 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 the office within the Oregon Health authority that administers the provisions of ORS 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 of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.~~

~~"Purchase or sale" means the acquisition or furnishing for consideration by any person of marijuana or marijuana-infused product within the city.~~

~~"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 the transfer of goods or services in exchange for any valuable consideration.~~

~~"Seller" means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.~~

~~"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.~~

Proposed Code Amendment

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

5.55.020 TAX IMPOSED

A tax is hereby levied and shall be paid by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

5.55.025 AMOUNT AND PAYMENT, EXEMPTION, DEDUCTIONS

- A. In addition to any fees or taxes otherwise provided for by law, every seller engaged in the sale of marijuana and marijuana-infused products shall pay a tax of ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not registry identification cardholders purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program.
- B. Sale of marijuana or marijuana-infused products to individuals who are registry identification cardholders purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program are exempt from taxation under subsection A of this section.
- C. The following deductions shall be allowed against sales received by the seller providing marijuana or marijuana-infused products:
1. Refunds of sales actually returned to any purchaser;
 2. Any adjustments in sales which amount to a refund to a 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.

5.55.030 SELLER RESPONSIBLE FOR PAYMENT OF TAX

- A. Every seller shall, on or before the last day of the month following the end of each calendar quarter (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 and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. 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. Non-designated payments shall be applied 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. 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 shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.~~

- ~~D. Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.~~
- ~~E. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.~~

~~5.55.035 PENALTIES AND INTEREST~~

- ~~A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.~~
- ~~B. Any seller who fails to remit any delinquent remittance on or before a period of sixty (60) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent (10%) 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 (25%) of the amount of the tax shall 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 shall pay interest at the rate of 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. Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.~~
- ~~F. All sums collected pursuant to the penalty provisions in subsections A and C of this section shall be distributed to the City of Milwaukie general fund to offset the costs of auditing and enforcement of this tax.~~

~~5.55.040 FAILURE TO REPORT AND REMIT TAX—DETERMINATION OF TAX BY DIRECTOR~~

~~If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in Section 5.55.045. If no appeal~~

Proposed Code Amendment

is filed, the Director's determination is final and the amount thereby is immediately due and payable.

5.55.045 APPEAL

Any seller aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall 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 findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.55.050 REFUNDS

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subsection B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have twenty (20) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.
- C. Any credit for erroneous overpayment of tax made by a seller taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a seller must be so taken or filed within three (3) years after the date on which the overpayment was made to the City.
- D. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

5.55.055 ACTIONS TO COLLECT

Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event 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 (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.~~

~~5.55.060 VIOLATION~~

- ~~A. A violation of this chapter shall be punishable by a mandatory fine not to exceed two hundred dollars (\$200.00). Each violation of a separate provision of this chapter shall constitute a separate offense and each day that a violation of this chapter is committed or permitted to continue shall constitute a separate offense. A violation of this chapter shall be processed pursuant to Chapter 1.08 of this code. 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;~~
 - ~~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 section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.~~

~~5.55.065 CONFIDENTIALITY~~

~~Except as otherwise required by law, it shall be 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 shall prohibit:~~

- ~~A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana or marijuana-infused products are 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' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000.00). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).~~

~~5.55.070 AUDIT OF BOOKS, RECORDS, OR PERSONS~~

- ~~A. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, 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. All books, invoices, accounts and other records shall 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 Director.

- B. ~~If the examinations or investigations disclose that any reports of sellers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.~~
- C. ~~The seller shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the seller paid ninety seven percent (97%) or less of the tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of nine percent (9%) per year from the date the original tax payment was due.~~
- D. ~~If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Milwaukie 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.~~
- E. ~~Every seller shall keep a record in such form as may be prescribed by the Director of all sales of marijuana and marijuana infused products. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.~~
- F. ~~Every seller shall maintain and keep, for a period of three (3) years, all records of marijuana and marijuana infused products sold.~~

5.55.075 FORMS AND REGULATIONS

~~The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said marijuana tax and in particular and without limiting the general language of this chapter, to provide for:~~

- A. ~~A form of report on sales and purchases to be supplied to all vendors;~~
 - B. ~~The records which sellers providing marijuana and marijuana infused products are to keep concerning the tax imposed by this chapter.~~
-

Chapter 5.65

RECREATIONAL MARIJUANA TAX

<u>5.65.010</u>	<u>Purpose</u>
<u>5.65.015</u>	<u>Definitions</u>
<u>5.65.020</u>	<u>Tax Imposed</u>
<u>5.65.025</u>	<u>Amount, Payment, and Deductions</u>
<u>5.65.030</u>	<u>Marijuana Retailer Responsible for Payment of Tax</u>
<u>5.65.035</u>	<u>Penalties and Interest</u>
<u>5.65.040</u>	<u>Appeal</u>
<u>5.65.045</u>	<u>Refunds</u>
<u>5.65.050</u>	<u>Actions to Collect</u>
<u>5.65.055</u>	<u>Violation</u>
<u>5.65.060</u>	<u>Confidentiality</u>
<u>5.65.065</u>	<u>Audit of Books, Records, or Persons</u>
<u>5.65.070</u>	<u>Forms and Regulations</u>
<u>5.65.075</u>	<u>Intergovernmental Agreement</u>

5.65.010 Purpose

The purpose of this chapter is to impose a three percent (3%) tax upon the retail sale of recreational marijuana items by marijuana retailers in the City of Milwaukie.

5.65.015 Definitions

As used in this ordinance, unless the context requires otherwise:

“Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for purposes of resale.

“Director” means the Director of Finance for the City of Milwaukie or his or her designee.

“Retail sale price” means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

“Marijuana item” has the meaning given that term in ORS 475B.015(16).

“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 of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

“Marijuana retailer” means any person who is required to be licensed or registered or has been licensed or registered by the State of Oregon to provide marijuana items to consumers for money, credit, property or other consideration.

“Retail sale” or “Sale” means the exchange, gift or barter of a marijuana item by any person to a consumer.

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

Proposed Code Amendment

"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.

5.65.020 Tax Imposed

A tax is hereby levied and shall be paid by every marijuana retailer exercising the taxable privilege of selling marijuana items as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

5.65.025 Amount, Payment, and Deductions

In addition to any fees or taxes otherwise provided for by law, every marijuana retailer engaged in the sale of marijuana items in the City of Milwaukie shall pay a tax of three percent (3%) of the retail sale price paid to the marijuana retailer of marijuana items. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

5.65.030 Marijuana Retailer Responsible for Payment of Tax

- A. Every marijuana retailer selling recreational marijuana shall, on or before the last day of the month following the end of each calendar quarter (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 of recreational marijuana subject to this chapter and the amount of tax collected under this chapter. The marijuana retailer may request or the Director may establish shorter reporting periods for any marijuana retailer if the marijuana retailer or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director.
- C. Payments shall be applied 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. 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 marijuana retailer 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 shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by marijuana retailers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- D. Every marijuana retailer must keep and preserve in an accounting format established by the Director records of all recreational sales made by the retailer and such other books or accounts as may be required by the Director for a period of three (3) years or until all taxes associated with the sales have been paid, whichever is longer. The City shall have the right to inspect all such records at all reasonable times.

5.65.035 Penalties and Interest

- A. Any marijuana retailer who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 3 of this section.
- C. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this chapter shall pay interest at the rate of nine percent (9%) per annum or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- D. Every penalty imposed, and such interest as accrues for violation of this chapter are separate from, and in addition to, the tax imposed on the sale of marijuana items.
- E. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of Milwaukie General Fund to offset the costs of auditing and enforcement of this tax.

5.65.040 Appeal

Any marijuana retailer aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall 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 findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.65.045 Refunds

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have thirty (30) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a marijuana retailer may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The marijuana retailer shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the marijuana retailer is still in business, a credit will be granted against the tax liability for the next reporting period. If the marijuana retailer is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

Proposed Code Amendment

- C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

5.65.050 Actions to Collect

Any tax required to be paid by any marijuana retailer under the provisions of this chapter shall be deemed a debt owed by the marijuana retailer to the City. Any such tax collected by a marijuana retailer which has not been paid to the City shall be deemed a debt owed by the marijuana retailer to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event 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 fifty percent (50%) of the outstanding tax, penalties and interest owing.

5.65.055 Violation

- A. Violation of this chapter shall constitute a violation pursuant to Chapter 1.12 of this code, General Penalty. It is a violation of this chapter for any marijuana retailer 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;
 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 section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

5.65.060 Confidentiality

Except as otherwise required by law, it shall be 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 shall prohibit:

- A. The disclosure of general statistics in a form which would not reveal an individual marijuana retailer's financial information; or
- B. The disclosure of information to any state agency related to the licensing or registration of the marijuana retailer or when required to carry out any part of this chapter.
- 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' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

5.65.065 Audit of Books, Records, or Persons

- A. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, 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 marijuana retailer's state and federal income tax return, bearing upon the matter of the marijuana retailer's tax return. All books, invoices, accounts and other records shall 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 Director.
- B. If the examinations or investigations disclose that any reports of marijuana retailers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.
- C. The marijuana retailer shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the marijuana retailer underpaid by 3% or more tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate set by resolution of Council from the date the original tax payment was due.
- D. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts, and records for examination.
- E. Every marijuana retailer shall keep a record in such form as may be prescribed by the Director of all sales of marijuana items. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.
- F. Every marijuana retailer shall maintain and keep, for a period of three (3) years, all records of marijuana items sold.

5.65.070 Forms and Regulations

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment, and collection of said recreational marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- A. A form to report on sales and purchases to be supplied to all vendors;
- B. The records which marijuana retailers are to keep concerning the tax imposed by this chapter.
- C. A form to report refund claims.

5.65.075 Intergovernmental Agreement

The City Council may enter into an IGA with the State of Oregon whereby a state department or agency is responsible for the administration, collection, distribution, or enforcement of the tax authorized by this chapter, either in full or in part. The terms of that agreement shall apply in lieu of and shall supersede conflicting provisions of this chapter but shall not be construed as repealing any provision of this chapter.

Clean Amendments

Chapter 5.65

RECREATIONAL MARIJUANA TAX

- 5.65.010 Purpose**
- 5.65.015 Definitions**
- 5.65.020 Tax Imposed**
- 5.65.025 Amount, Payment, and Deductions**
- 5.65.030 Marijuana Retailer Responsible for Payment of Tax**
- 5.65.035 Penalties and Interest**
- 5.65.040 Appeal**
- 5.65.045 Refunds**
- 5.65.050 Actions to Collect**
- 5.65.055 Violation**
- 5.65.060 Confidentiality**
- 5.65.065 Audit of Books, Records, or Persons**
- 5.65.070 Forms and Regulations**
- 5.65.075 Intergovernmental Agreement**

5.65.010 Purpose

The purpose of this chapter is to impose a three percent (3%) tax upon the retail sale of recreational marijuana items by marijuana retailers in the City of Milwaukie.

5.65.015 Definitions

As used in this ordinance, unless the context requires otherwise:

“Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for purposes of resale.

“Director” means the Director of Finance for the City of Milwaukie or his or her designee.

“Retail sale price” means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

“Marijuana item” has the meaning given that term in ORS 475B.015(16).

“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 of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

“Marijuana retailer” means any person who is required to be licensed or registered or has been licensed or registered by the State of Oregon to provide marijuana items to consumers for money, credit, property or other consideration.

“Retail sale” or “Sale” means the exchange, gift or barter of a marijuana item by any person to a consumer.

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

Proposed Code Amendment

"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.

5.65.020 Tax Imposed

A tax is hereby levied and shall be paid by every marijuana retailer exercising the taxable privilege of selling marijuana items as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

5.65.025 Amount, Payment, and Deductions

In addition to any fees or taxes otherwise provided for by law, every marijuana retailer engaged in the sale of marijuana items in the City of Milwaukie shall pay a tax of three percent (3%) of the retail sale price paid to the marijuana retailer of marijuana items. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

5.65.030 Marijuana Retailer Responsible for Payment of Tax

- A. Every marijuana retailer selling recreational marijuana shall, on or before the last day of the month following the end of each calendar quarter (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 of recreational marijuana subject to this chapter and the amount of tax collected under this chapter. The marijuana retailer may request or the Director may establish shorter reporting periods for any marijuana retailer if the marijuana retailer or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director.
- C. Payments shall be applied 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. 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 marijuana retailer 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 shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by marijuana retailers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- D. Every marijuana retailer must keep and preserve in an accounting format established by the Director records of all recreational sales made by the retailer and such other books or accounts as may be required by the Director for a period of three (3) years or until all taxes associated with the sales have been paid, whichever is longer. The City shall have the right to inspect all such records at all reasonable times.

5.65.035 Penalties and Interest

- A. Any marijuana retailer who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 3 of this section.
- C. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this chapter shall pay interest at the rate of nine percent (9%) per annum or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- D. Every penalty imposed, and such interest as accrues for violation of this chapter are separate from, and in addition to, the tax imposed on the sale of marijuana items.
- E. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of Milwaukie General Fund to offset the costs of auditing and enforcement of this tax.

5.65.040 Appeal

Any marijuana retailer aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall 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 findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.

5.65.045 Refunds

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have thirty (30) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a marijuana retailer may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The marijuana retailer shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the marijuana retailer is still in business, a credit will be granted against the tax liability for the next reporting period. If the marijuana retailer is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

- C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

5.65.050 Actions to Collect

Any tax required to be paid by any marijuana retailer under the provisions of this chapter shall be deemed a debt owed by the marijuana retailer to the City. Any such tax collected by a marijuana retailer which has not been paid to the City shall be deemed a debt owed by the marijuana retailer to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than thirty (30) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event 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 fifty percent (50%) of the outstanding tax, penalties and interest owing.

5.65.055 Violation

- A. Violation of this chapter shall constitute a violation pursuant to Chapter 1.12 of this code, General Penalty. It is a violation of this chapter for any marijuana retailer 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;
 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 section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

5.65.060 Confidentiality

Except as otherwise required by law, it shall be 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 shall prohibit:

- A. The disclosure of general statistics in a form which would not reveal an individual marijuana retailer's financial information; or
- B. The disclosure of information to any state agency related to the licensing or registration of the marijuana retailer or when required to carry out any part of this chapter.
- 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' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

5.65.065 Audit of Books, Records, or Persons

- A. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, 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 marijuana retailer's state and federal income tax return, bearing upon the matter of the marijuana retailer's tax return. All books, invoices, accounts and other records shall 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 Director.
- B. If the examinations or investigations disclose that any reports of marijuana retailers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.
- C. The marijuana retailer shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the marijuana retailer underpaid by 3% or more tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate set by resolution of Council from the date the original tax payment was due.
- D. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts, and records for examination.
- E. Every marijuana retailer shall keep a record in such form as may be prescribed by the Director of all sales of marijuana items. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.
- F. Every marijuana retailer shall maintain and keep, for a period of three (3) years, all records of marijuana items sold.

5.65.070 Forms and Regulations

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment, and collection of said recreational marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- A. A form to report on sales and purchases to be supplied to all vendors;
- B. The records which marijuana retailers are to keep concerning the tax imposed by this chapter.
- C. A form to report refund claims.

Proposed Code Amendment

5.65.075 Intergovernmental Agreement

The City Council may enter into an IGA with the State of Oregon whereby a state department or agency is responsible for the administration, collection, distribution, or enforcement of the tax authorized by this chapter, either in full or in part. The terms of that agreement shall apply in lieu of and shall supersede conflicting provisions of this chapter but shall not be construed as repealing any provision of this chapter.



CITY OF MILWAUKIE
"Dogwood City of the West"

Resolution No. 124-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON TO COLLECT THE CITY'S LOCAL TAX ON SALES OF MARIJUANA ITEMS AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT.

WHEREAS, the State passed House Bill 3400 (codified at ORS 475B.345) which provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a 3% tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city; and

WHEREAS, The Council adopted Ordinance No. 2127, an ordinance establishing a three percent tax on the sale of recreational marijuana items by a marijuana retailer in the City of Milwaukie; and Resolution No. 95- 2016; a resolution of the City Council of the City of Milwaukie, Oregon, approving referral to the electors of the City of Milwaukie at the November 8, 2016 general election, the question of whether to establish a three percent tax on the sale of recreational marijuana items by a marijuana retailer in the City of Milwaukie; and

WHEREAS, Electors passed Measure 3-495 approving the three percent tax on the sale of recreational marijuana items by marijuana retailers in the City of Milwaukie in the November 8, 2016 general election; and

WHEREAS, this agreement will save the City significant staff time and expense that would otherwise be required to administer the tax provisions within city operations.

NOW, THEREFORE, BE IT RESOLVED as follows:

Section 1: That the City Council of the City of Milwaukie agrees to the terms the attached Marijuana Tax Collection Agreement.

Section 2: The city manager is authorized to sign the agreement on behalf of the City of Milwaukie.


Introduced and adopted by the City Council on 12/20/16.

This resolution is effective on 12/20/16.



Mark Gamba, Mayor

APPROVED AS TO FORM:
Jordan Ramis PC



City Attorney

ATTEST:



Scott S. Stauffer, City Recorder