

ORDINANCE NO. 14-1014

AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF OREGON CITY AND ADDING A NEW OREGON CITY MUNICIPAL CODE SUBCHAPTER 3.06.

WHEREAS, Chapter II “Powers,” Section 4 of the Oregon City Charter provides:

The city shall have all powers which the constitutions, statutes, and common law of the United States and of this state expressly or impliedly grant or allow municipalities, as fully as though this charter specifically enumerated each of those powers.

WHEREAS, the City desires to tax the sale or transfer of marijuana and marijuana-infused products within the City.

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

Section 1. A new Subchapter 3.06, Marijuana and Marijuana-Infused Products Tax is hereby added to Chapter 3 “Revenue and Finance” of the Oregon City Municipal Code as follows:

3.06.010 Purpose

For the purposes of OCMC 3.06, every person who sells marijuana, medical marijuana or marijuana-infused products in the city is exercising a taxable privilege. The purpose of OCMC 3.06 is to impose a tax upon the sale of marijuana, medical marijuana and marijuana-infused products.

3.06.020 Definitions

When not clearly otherwise indicated by the context, the following words and phrases as used in OCMC 3.06 have the following meanings:

DIRECTOR means the Finance Director or the Director’s designee.

GROSS TAXABLE SALES means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by OCMC 3.06.

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

MARIJUANA means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound,

manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

OREGON MEDICAL MARIJUANA PROGRAM means those functions within the office of the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

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

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

PURCHASE OR SALE means the retail acquisition or furnishing for consideration by any person of marijuana within the city and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.

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

RETAIL SALE means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.

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

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 OCMC 3.06.

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 OCMC 3.06.

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

3.06.030 Levy of tax

A. Every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in OCMC 3.06 is subject to and must pay a tax for exercising that privilege.

B. The amount of tax levied is as follows:

1. Five percent of the gross sale amount paid to the seller of marijuana and marijuana-infused products by a person who is a registry identification cardholder.

2. Ten percent of the gross sale amount paid to the seller of marijuana and marijuana-infused products by persons who are purchasing marijuana and marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.

3.06.040 Deductions

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

A. Refunds of sales actually returned to any purchaser;

B. Any adjustments in sales that 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.

3.06.050 Seller responsible for payment of tax

A. Every seller must, on or before the last day of the month following the end of each calendar quarter (i.e., in the months of April, July, October and January) make a return to the director, on forms provided by the city, specifying the total sales subject to OCMC 3.06 and the amount of tax collected under OCMC 3.06. The seller may request or the director may establish shorter reporting periods for any seller if the seller or director deems it necessary in order to ensure collection of the tax. The director may require further information in the return relevant to payment of the tax. A return is not considered filed until it is actually received by the director.

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

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

reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax.

D. If the director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the city in a particular tax or factual situation, the director may order such a change. The director may establish shorter reporting periods for any seller if the director deems it necessary in order to ensure collection of the tax. The director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all taxes collected pursuant to OCMC 3.06 for the city's account until the seller makes payment to the director. A separate trust bank account is not required in order to comply with this provision.

E. Every seller required to remit the tax imposed by OCMC 3.06 is entitled to retain five percent of all taxes due to the city to defray the costs of bookkeeping and remittance.

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

3.06.060 Penalties and interest

A. Any seller who fails to remit any portion of any tax imposed by OCMC 3.06 within the time required must pay a penalty of 10 percent of the amount of the tax, in addition to the amount of the tax.

B. If any seller fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, the seller must pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

C. If the director determines that the nonpayment of any remittance due under OCMC 3.06 is due to fraud, a penalty of 25 percent of the amount of the tax will be added thereto in addition to the penalties stated in OCMC 3.06.060A and OCMC 3.06.060B.

D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by OCMC 3.06 must pay interest at the rate one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

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

E. Every penalty imposed, and any interest as accrues under the provisions of OCMC 3.06.060, becomes a part of the tax required to be paid.

F. All sums collected pursuant to the penalty provisions in OCMC 3.06.060A and OCMC 3.06.060C will be distributed to the city's general fund.

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

3.06.070 Failure to report and remit tax – determination of tax by director

A. If any seller fails to make any report of the tax required by OCMC 3.06 within the time provided in OCMC 3.06, the director will proceed to obtain facts and information on which to base the estimate of tax due. As soon as the director procures such facts and information upon which to base the assessment of any tax imposed by OCMC 3.06 and payable by any seller, the director will determine and assess against such seller the tax, interest and penalties provided for by OCMC 3.06.

B. If the director makes a determination as outlined in OCMC 3.06.070A, the director must give notice to the seller of the amount assessed. The notice must be personally served on the seller or deposited in the United States mail, postage prepaid, addressed to the seller at the last known place of address.

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

3.06.080 Appeal

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

B. The seller must file the appeal within 30 days of the city's serving or mailing of the determination of tax due. The seller must file using forms provided by the city.

C. Upon receipt of the appeal form, the city manager will schedule a hearing to occur within 20 business days. The manager will give the seller notice of the time and date for the hearing no less than seven days before the hearing date. At the hearing the city manager will hear and consider any records and evidence presented bearing upon the director's determination of amount due and make findings affirming, reversing or modifying the determination. The director and the appellant may both provide written and oral testimony during the hearing. The findings of the city manager are final and conclusive. The city will serve the findings upon the appellant in the manner prescribed

above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

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

3.06.090. Refunds

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

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

B. The city may not issue a refund under OCMC 3.06.090 unless the seller provides to the director a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the director. The seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.

C. The director has 20 calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making the determination, the director will notify the claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.

D. If the director determines the claim is valid, the claimant may either claim a refund or take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the city. The claimant must notify the director of the claimant's choice no later than 15 days following the date the director mailed the determination and the claimant must do so in a manner prescribed by the director.

E. If the claimant does not notify the director of the claimant's choice within the 15 day period and the claimant is still in business, the city will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business, the city will mail a refund check to claimant at the address provided in the claim form.

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

3.06.100 Actions to collect

Any tax required to be paid by any seller under the provisions of OCMC 3.06 is a debt owed by the seller to the city. Any tax collected by a seller that has not been paid to the city is a debt

owed by the seller to the city. Any person owing money to the city under the provisions of OCMC 3.06 is liable to an action brought in the name of the City of Oregon City for the recovery of the amount owing. In lieu of filing an action for the recovery, the city, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the city has complied with the provisions set forth in ORS 697.105, if the city turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of \$50 or 50 percent of the outstanding tax, penalties and interest owing.

3.06.110 Violation infractions

A. All violations of OCMC 3.06 are punishable as set forth in OCMC 1.08. It is a violation of OCMC 3.06 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 OCMC 3.06 are not exclusive and do not prevent the city from exercising any other remedy available under the law.

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

3.06.120 Confidentiality

Except as otherwise required by law, it is unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the city under the terms of OCMC 3.06. Nothing in OCMC 3.06.120 prohibits any of the following:

- A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the director or an appeal from the director for amount due the city under OCMC 3.06; 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 months or when the tax exceeds \$5,000. The council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

3.06.130 Audit of books, records or persons

The city may examine or may cause to be examined by an agent or representative designated by the city for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due. All books, invoices, accounts and other records must be made available within the city limits and be open at any time during regular business hours for examination by the director or an authorized agent of the director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the director may immediately seek a subpoena from the municipal court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

3.06.140 Forms and regulations

A. The director is authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and to provide for:

1. A form of report on sales and purchases to be supplied to all vendors;
2. The records that sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by OCMC 3.06.

Section 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause does 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, remain valid and in full force and effect for purposes of all cases filed or commenced during the times this ordinance 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. This ordinance shall be effective from and after 30 days following its adoption by the Council and approval by the Mayor.

Read for the first time at a regular meeting of the City Commission held on the ____ day of _____, 2014, and the City Commission finally enacted the foregoing ordinance this ____ day of _____, 2014.

DOUG NEELEY, Mayor

Attested to this ____ day of _____ 2014:

Approved as to legal sufficiency:

Nancy Ide, City Recorder

City Attorney