

AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA, MEDICAL MARIJUANA, AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF BEAVERTON AND CREATING NEW PROVISIONS IN THE BEAVERTON CITY CODE

WHEREAS, the City of Beaverton has broad home rule authority, as provided in Section 4 of the City of Beaverton Charter: “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.”; and

WHEREAS, the retail sale of marijuana, medical marijuana, and marijuana-infused products will have local impacts that are not yet fully understood; and

WHEREAS, the City desires to tax the sale or transfer of marijuana, medical marijuana, and marijuana-infused products within the City in order to ameliorate local impacts; and

WHEREAS, the City of Beaverton will dedicate the revenue generated from the tax to public safety, public health, and education purposes; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. The following is added to and made a part of the Beaverton City Code as Chapter 7.03.005 – 7.03.070, MARIJUANA TAX:

7.03.005. Purpose. For the purposes of this Chapter, every person who sells marijuana, medical marijuana, or marijuana-infused products in the City of Beaverton 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.

7.03.010. Definitions. Except as the context otherwise specifically requires, as used in BC 7.03.005 – 7.03.070, the following mean:

Day or days - calendar days.

Director - the Director of Finance for the City of Beaverton or the Director's designee.

Gross taxable sales - 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 has the meaning given that term in ORS 475.005.

Marijuana-infused product - a product infused with marijuana or medical marijuana that is intended for use or consumption other than by smoking, including, but not limited to, edible products, ointments, and tinctures.

Mayor – the Mayor for the City of Beaverton or the Mayor's designee, although for purposes of this Chapter the Mayor's designee shall not be the Director of Finance.

Medical marijuana - marijuana that is sold or transferred pursuant to the Oregon Medical Marijuana Act.

Oregon Medical Marijuana Act - the legislation codified at ORS 475.300 through 475.346, as it may be amended from time to time, and any administrative rules promulgated thereto.

Person - any natural person, partnership, corporation, Limited Liability Company, government entity, association, or other entity in law or fact.

Purchase or Sale - the acquisition or furnishing for consideration by any person of marijuana, medical marijuana, or marijuana-infused products within the City.

Registry identification cardholder - 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 - the transfer of goods or services in exchange for any valuable consideration.

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

Tax - 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.

7.03.015. Levy of Tax.

- A. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling marijuana, medical marijuana, or marijuana-infused products as defined in this Chapter.
- B. The amount of tax levied shall be established by a City Council resolution.
- C. The revenue generated from the tax will be used first to offset the costs of auditing and enforcement of the tax and next to public safety, public health, and education purposes.

7.03.020. Deductions. The following deductions shall be allowed against sales received by the seller providing marijuana, medical marijuana, or marijuana-infused products:

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

7.03.025. 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 (April 30, July 31, October 31, and January 31), 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 due under this Chapter. When the due date falls on a Saturday, a Sunday, or any legal holiday, the report may be filed on the next business day without penalty. 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 due 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. If the Director, in the Director's 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.
- D. Returns and payments are due 30 days after cessation of business for any reason, including, but not limited to, the sale or transfer of the business.
- E. 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.
- F. Every seller shall keep and preserve, in a generally-accepted accounting format used for reporting revenue and taxes due on business activity, detailed records of all sales made. 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.

7.03.030. 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 30 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 hereto, 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 nine percent (9%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became due.

- 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. A seller may petition the Director for waiver and refund of the penalty or any portion thereof. The petition must be in writing and submitted to the Director within 90 days of the remittance due date. The Director shall make a determination within 30 days of receiving the petition.

7.03.035. 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 procures such facts and information as is able to be obtained, the Director shall determine and assess against such seller the tax, interest, and penalties provided for by this Chapter. The Director shall give a notice of the amount so assessed by having it served according to BC 1.01.110. The seller may appeal the Director's determination as provided in BC 7.03.040. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

7.03.040. Appeal. A seller aggrieved by a decision of the Director with respect to the amount of any tax or penalty may file a written appeal to the Mayor. The appeal shall be filed within 30 days of the serving of the Director's decision. The Mayor shall meet and confer with the seller within 60 days of the serving or mailing of the appeal. The Mayor shall issue a written decision within 30 days, which shall be served upon the appellant according to BC 1.01.110. The Mayor's decision is final and any amount found to be due shall be immediately due and payable.

7.03.045. 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 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 30 days from the date of receipt of a claim to make a written determination as to its validity. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be served according to BC 1.01.110. If the Director determines a claim is valid, a credit will be granted against the seller's tax liability for the next reporting period. If the claimant is no longer in business, a refund check will be mailed to the claimant at the address provided in the claim form.
- C. No tax credit or 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.

7.03.050. 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. When taxes due are more than 60 days delinquent, the City may submit any outstanding tax to a collection agency. If the City complies with the provisions set forth in ORS 697.105, it may add to the amount owing an amount equal to the collection agency fees.

7.03.055. Violation Infractions.

- A. 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 maintain detailed records of all sales made for a period of three (3) years;
 - (4) Fail or refuse to permit inspection of records;
 - (5) Fail or refuse to furnish a supplemental return or other data required by the Director;
 - (6) Render a false or fraudulent return or claim; or
 - (7) Fail, refuse, or neglect to remit the tax to the City by the due date.

- B. Violation of subsections (1), (2), (3), (4), (5), and (7) shall be considered a Class I violation. Violation of subsection (6) shall be considered a Class C misdemeanor.
- C. 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.

7.03.060. 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 the names and addresses of any person who is operating a licensed establishment from which marijuana, medical marijuana, or marijuana-infused products are sold or provided;
- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information;
- C. The presentation of evidence to a 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 the amount due the City under this Chapter;
- D. The disclosure of information when such disclosure is ordered under the public records law;
- E. The disclosure of records related to a seller's 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).

7.03.065. Audit of Books, Records, or Persons. 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 the seller's state and federal income tax returns, 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. If any seller refuses to voluntarily furnish any of the foregoing information when requested, the Director may seek a subpoena from any court of competent jurisdiction, including the Beaverton Municipal Court, to require that the seller or a representative of the seller attend a hearing or produce any such books, accounts, and records for examination.

7.03.070. Forms and Regulations. The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns and the ascertainment, assessment, and collection of the tax imposed by this Chapter. In particular, and without limiting the general language of this section, the Director shall provide for:

- A. A form of report on sales and purchases to be supplied to all sellers;
- B. A description of the records which sellers providing marijuana, medical marijuana, or marijuana-infused products are to keep concerning the tax imposed by this Chapter.

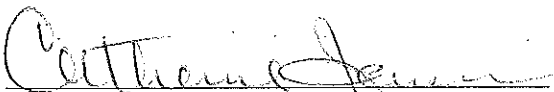
Section 2. Severability. Each section of this ordinance, and any part thereof, is severable, and if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall remain in full force and effect.

First reading this 21st day of October 2014.

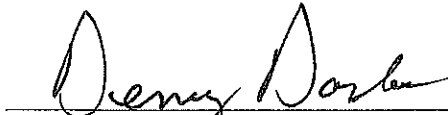
Second reading and passed by the Council this 28th day of October 2014.

Approved by the Mayor this 29th day of October 2014.

ATTEST:


CATHERINE L. JANSEN, City Recorder

APPROVED:


DENNY DOYLE, Mayor