

Council Communication

February 2, 2016, Business Meeting

First Reading of An Ordinance Establishing a Tax on the Sale of Marijuana and Marijuana-infused products in the City of Ashland and Referring Said Tax to the Voters of Ashland in the November 8, 2016, General Election

FROM:

Dave Kanner, city administrator, dave.kanner@ashland.or.us

SUMMARY

State law allows cities and counties to charge a local sales tax of up to 3% on the sale of marijuana and marijuana infused products at OLCC-licensed retail outlets within their jurisdiction. This ordinance imposes such a tax and refers the ordinance to the voters of Ashland in the November 8, 2016, general election, as required by state law.

BACKGROUND AND POLICY IMPLICATIONS:

Oregon voters legalized the sale of recreational marijuana via ballot measure 91 in the November 2014 election. Even prior to the election, the City of Ashland had enacted an ordinance imposing a tax on the sale of recreational marijuana in the City with the hope and expectation that the tax would be grandfathered in if the measure passed, even though the measure prohibited the adoption of such taxes. However, the 2015 session of the Oregon Legislature adopted house Bill 3400 to create the statutes that enact the ballot measure. That legislation explicitly precluded a local tax such as Ashland's.

Subsequent legislation, HB 2041, allows cities and counties to impose a local sales tax on recreational marijuana in an amount not to exceed 3%, providing that such a tax is approved by local voters in a general election. The ordinance approved by the Council in the summer of 2014 authorizes such a tax and stipulates that the rate of the tax will be approved by Council resolution. The ordinance now before the Council simply amends the existing ordinance to stipulate that the tax rate will be 3%. The ordinance also removes language from our existing code regarding medical marijuana. This language is unnecessary inasmuch as the Council removed from Ordinance No. 3103 (which imposed the tax) the tax on medical marijuana that was in the original version of the ordinance.

Finally, the ordinance contains a referral clause so it does not become effective unless approved by Ashland voters in the November 2016 general election. A resolution to adopt the ballot language and effect the referral will be brought to the Council at a future meeting.

COUNCIL GOALS SUPPORTED:

N/A

FISCAL IMPLICATIONS:

It is unknown and difficult to determine how much might be raised by a 3% tax on retail marijuana



sales, since it is nearly impossible to predict what prices will be charged and what volume will be sold in Ashland. A straight-line, population-based extrapolation of Legislative Revenue Office estimates for state marijuana tax collection in FY 2018 would indicate that a 3% sales tax in Ashland could raise \$20,000 to \$30,000 annually. (The LRO also postulates that tourism could have a significant effect on marijuana revenues, which could be especially true in Ashland, with its tourism-based economy.) Again, given the large number of unknowable variables, these numbers should not be relied upon for fiscal planning purposes. We will not know how much could be raised by a marijuana tax until/unless the City starts collecting it.

STAFF RECOMMENDATION AND REQUESTED ACTION:

Staff recommends approval of the marijuana taxation ordinance.

SUGGESTED MOTION:

I move approval on first reading by title only of an ordinance establishing a tax on the sale of marijuana and marijuana-infused products in the City of Ashland and referring said tax to the voters of Ashland in the November 8, 2016 general election, and moving the ordinance to second reading.

ATTACHMENTS:

Ordinance



ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A TAX ON THE
SALE OF MARIJUANA AND MARIJUANA-INFUSED
PRODUCTS IN THE CITY OF ASHLAND AND REFERRING
SAID TAX TO THE VOTERS OF ASHLAND IN THE
NOVEMBER 8, 2016 GENERAL ELECTION

Annotated to show deletions and additions to the code sections being modified. Deletions are **bold lined through** and additions are **bold underlined**.

WHEREAS, Article 2, Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes and common law of the United States and this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

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

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Title 4 Revenue and Finance of the Ashland Municipal Code, "Tax on Sale of Marijuana and Marijuana Infused Products," is hereby amended as follows:

Section 4.38.010 Purpose

For the purposes of this Chapter, every person who sells marijuana, ~~medical marijuana~~ or marijuana-infused products under a license granted by the Oregon Liquor Control Commission for such purpose in the City of Ashland 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.

Section 4.38.020 Definitions

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

- A. "Director" means the Director of Finance for the City of Ashland or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, ~~medical marijuana~~ and marijuana-infused products that is subject to the tax imposed by this chapter.
- C. "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.

~~D. “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.~~

~~ED.~~ “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.

~~FE.~~ “Purchase or Sale” means the acquisition or furnishing for consideration by any person of marijuana within the City.

~~G. “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.~~

~~HF.~~ “Retail sale” and “retail selling” means the any transfer, of goods or services in exchange for any valuable consideration exchange, gift or barter of a marijuana item by any person to a consumer.

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

~~JH.~~ “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.

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

Section 4.38.030 Levy of Tax

A. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of retail selling marijuana and marijuana-infused products as defined in this chapter.

B. The amount of tax levied ~~shall be established by a City Council resolution~~ is as follows:

1) Three percent (3%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who purchase marijuana and marijuana-infused products from the seller.

Section 4.38.040 Deductions

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

- 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 or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

Section 4.38.050 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 insure 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 insure 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.

Section 4.38.060 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 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 subparagraphs 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 (1%) 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. Notwithstanding subsection **AMC** 4.34.020.C, all sums collected pursuant to the penalty provisions in paragraphs A and C of this section shall be distributed to the City of Ashland Central Service Fund to offset the costs of auditing and enforcement of this tax.
- G. Waiver of Penalties. Penalties and interest for certain late tax payments may be waived pursuant to AMC 2.28.045D.

Section 4.38.070 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 4.34.080. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

Section 4.38.080 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 Administrative Appeals Process in AMC 2.30.020, except that the appeal shall be filed within 30 days of the serving or mailing of the determination of tax due. The hearings officer 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 hearings officer shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

Section 4.38.090 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 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 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 15 days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the 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. 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.

SECTION 4.38.100 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 Ashland for the recovery of such amount. In lieu of filing an action for the recovery, the City of Ashland, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Ashland 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.

Section 4.38.110 Violation Infractions

- A. All violations of this chapter are punishable as set forth in AMC 1.08.020. 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. Violation of subsections 1, 2, 3, 4 and 6 shall be considered a Class I violation. Filing a false or fraudulent return shall be considered a Class C misdemeanor, subject to AMC 1.08. 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.

Section 4.38.120 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 is sold or provided; or
- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six 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).

Section 4.38.130 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 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. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Ashland 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.

Section 4.38.140 Forms and Regulations

A. 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 ~~medical~~ marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- 1) A form of report on sales and purchases to be supplied to all vendors;

- 2) The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this chapter.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance 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. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

SECTION 5. Pursuant to Resolution No. 2016-____, the Ashland City Council has referred this ordinance to the voters for approval at the general election of November 8, 2016. Accordingly this ordinance shall not be effective unless and until approved by the voters of the City of Ashland and following the official acceptance of the canvas of votes.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ____ day of _____, 2016, and duly PASSED and ADOPTED this ____ day of _____, 2016.

Barbara M. Christensen, City Recorder

SIGNED and APPROVED this ____ day of _____, 2016.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney