

Council Business Meeting

December 5, 2017

Title: Ordinance Amending AMC 4.38 to Conform with the Oregon Department of Revenue Assessing and Collecting Marijuana Tax Interest and Penalties

From: Mark Welch Director of Finance
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Summary:

The proposed ordinance amends the Ashland Municipal Code Chapter 4.38 to conform with the Oregon Department of Revenue Assessing and Collecting Marijuana Tax Interest and Penalties.

Actions, Options, or Potential Motions:

I move to approve first reading, and placement on a future Council meeting agenda for second reading, of the proposed ordinance titled, “An Ordinance Amending AMC 4.38 to Conform with the Oregon Department of Revenue Assessing and Collecting Marijuana Tax, Interest and Penalties” [with the following modifications...].

Staff Recommendation:

Staff recommends approval of the proposed ordinance amending AMC 4.38.

Resource Requirements:

N/A

Policies, Plans and Goals Supported:

N/A

Background and Additional Information:

In 2016, the City of Ashland adopted, and the voters approved, the Marijuana Tax, Ordinance 3121, codified as AMC 4.38. Under ORS 305.620, the State of Oregon, by and through its Department of Revenue (DOR), has entered into an intergovernmental agreement with the City of Ashland to supervise and administer the collection of the City’s local tax, interest and penalties on sales of marijuana by marijuana retailers authorized under ORS 475B.345.

The manner by which the City of Ashland originally intended to collect interest and penalties it imposed upon marijuana retailers was modeled after its ordinance that regulates the Ashland Food and Beverage Tax without considering methods the State of Oregon would use to collect the same. The DOR requires that the City conform its ordinance to a statewide model that allows for the Department to lawfully and efficiently collect marijuana taxes, interest and penalties on behalf of the City of Ashland; and proposes the amendments to AMC 4.38.

Attachments:

Ordinance Amending AMC 4.38

ORDINANCE NO. _____

**AN ORDINANCE AMENDING AMC 4.38 TO CONFORM WITH THE
OREGON DEPARTMENT OF REVENUE ASSESSING AND
COLLECTING MARIJUANA TAX INTEREST AND PENALTIES**

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 of 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, City of Ashland law enforcement passed a Marijuana Tax ordinance, Ord 3121, 2016, which was codified as Ashland Municipal Code Chapter 4.38; and

WHEREAS, the Department of Revenue has entered into an intergovernmental agreement with the City of Ashland to collect the City's taxes and interest and penalties; and

WHEREAS, the manner by which the City of Ashland originally intended to collect interest and penalties it imposed upon marijuana retailers was modeled after its ordinance that regulates the Ashland Food and Beverage Tax without considering methods the State of Oregon would use to collect the same; and

WHEREAS, the DOR requires that the City conform its ordinance to a statewide model that allows for the Department to lawfully and efficiently collect marijuana taxes and interest and penalties on behalf of the City of Ashland.

**THEREFORE, THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS
FOLLOWS:**

SECTION 1. Section 4.38.020 is amended as follows:

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 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. "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.

E. "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.

F. "Retail sale" and "retail selling" means any transfer, exchange, gift or barter of a marijuana item by any person to a consumer and does not include the transfer or exchange of goods or services between a grower or processor and a seller. And, does not include the transfer or exchange of goods or services between a grower or processor and a seller.

G. "Seller" or "Marijuana Retailer" means any person who is required to be licensed or has been licensed by the Oregon Liquor Control Commission to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.

H. "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.

I. "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 2. Section 4.38.060 is amended as follows:

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.~~

A. Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the Oregon Department of Revenue was originally required to be filed by the marijuana retailer to the time of payment.

B. If a marijuana retailer fails to file a return with the Oregon Department of Revenue or pay the tax as required, a penalty shall be imposed upon the marijuana retailer in the same manner and amount provided under ORS 314.400.

C. Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid by the marijuana retailer and remitted to the Oregon Department of Revenue.

D. Taxes, interest and penalties transferred to Ashland by the Oregon Department of Revenue will be distributed to the City's General Fund.

E. If at any time a marijuana retailer fails to remit any amount owed in taxes, interest or penalties, the Oregon Department of Revenue is authorized to enforce collection on behalf of the City of the owed amount in accordance with ORS 475B.700 to 475B.755, any agreement between the Oregon Department of Revenue and Ashland under ORS 305.620 and any applicable administrative rules adopted by the Oregon Department of Revenue.

SECTION 3. Section 4.38.070 is deleted as follows:

~~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. Section 4.38.100 is deleted as follows:

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 5. Savings. Notwithstanding this 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 ordinances(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 6. 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 7. Codification. Provisions of this Ordinance shall be incorporated in the City Code, and the word “ordinance” may be changed to “code”, “article”, “section”, 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 5-7 need not be codified, and the City Recorder is authorized to correct any cross-references and any typographical errors.

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 _____, 2017, and duly PASSED and ADOPTED this ____ day of _____, 2017.

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ____ day of _____, 2017.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney