



MEMORANDUM CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

FROM: Sherilyn Lombos, City Manager

DATE: September 22, 2014

SUBJECT: Work Session for September 22, 2014

6:30 p.m. (20 min) – Tax on Marijuana and Marijuana-Infused Products. On tonight's Council agenda there is an ordinance establishing a tax on marijuana and marijuana-infused products. Since this specific topic has not had Council discussion, it is on the work session agenda for Council discussion.

6:50 p.m. (10 min) – Council Meeting Agenda Review, Communications & Roundtable. Council will review the agenda for the September 22nd City Council meeting and brief the Council on issues of mutual interest.



MEMORANDUM

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos

FROM: Sherilyn Lombos, City Manager
Sean Brady, City Attorney

DATE: 09/22/2014

SUBJECT: An Ordinance Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products

ISSUE BEFORE THE COUNCIL:

Should the City of Tualatin establish a tax on the sale of marijuana and marijuana-infused products?

EXECUTIVE SUMMARY:

Oregon voters legalized medical marijuana via initiative petition in 1999, after which medical marijuana dispensaries began operation. These dispensaries essentially served as intermediaries between marijuana growers and medical marijuana patients. While these dispensaries were legal, they were unregulated and the source of controversy in many communities. The 2013 the Oregon Legislature passed HB 3460, which created a regulatory and licensing regimen for medical marijuana dispensaries. To date, there are 198 approved and 115 provisionally approved dispensaries in Oregon. Tualatin has placed a limitation on siting medical marijuana dispensaries that will be reconsidered before May, 2015.

Oregon Ballot Measure 91 has qualified for the November, 2014 ballot regarding whether or not to enact a state law "legalizing the recreational use of marijuana, based on regulation and taxation to be determined by the Oregon Liquor Control Commission." The measure is similar to a measure approved by Washington voters in 2012.

The ordinance presented for Council consideration is a gross receipts tax on the sale of marijuana, medical marijuana and marijuana-infused products. In addition, the ordinance proposes an annual tax on any establishment that allows consumption of marijuana or marijuana infused products.

A gross receipts tax is applied to the total gross taxable revenues of a business. It is similar to a sales tax except that it is levied on the seller rather than the purchaser. The seller is responsible for maintaining accurate records of its gross revenues from taxable goods and services and then remitting a percentage to the taxing entity. Many businesses that are subject to a gross receipts tax will show the tax on the bill of sale they present to the customer, but it is nonetheless the

business that is responsible for paying it. A gross receipts tax is similar to a franchise fee, and has the administrative advantages to be easy to collect, and easy to audit.

The ordinance presented does not tax growers and processors for several reasons. First, under Oregon law, growers and grow sites must register with the state, but their locations and identities are confidential. This could lead to difficulties in identifying those subject to a tax. Next, staff has no experience with administering a value added tax, which is essentially what this would be, and is reluctant to even attempt to create the administrative structure for such a tax. Third, we have no models that we could adapt in order to create a value added tax. The State of Washington's new marijuana law provides for a 25% excise tax at each transaction point (producer to processor, processor to retailer and retailer to consumer; thus a value added tax), but at this time, Washington has not adopted and published rules and procedures for administering the tax. Finally, all taxes – regardless of where they are assessed in the supply chain – are ultimately passed on to the consumer. Therefore, the gross receipts of a business would reflect all of the costs incurred along the supply chain and a gross receipts tax would capture tax revenue from each of those elements. How to disperse that tax liability within the supply chain would be left to the growers, processors and retailers, rather than to the City.

While no provisions in current Oregon law prohibit the City from taxing marijuana, Measure 91 contains the following language:

SECTION 42. State has exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.

Because this language does not specifically repeal a local marijuana tax in effect at the time of the measure's passage, and because this language can be interpreted to read "No county or city of this state shall [after the effective date of this measure] impose any fee or tax..." it can be argued that this language does not pre-empt city taxation. Alternatively, the language can be read as "No county or city of this state shall [be allowed at any time to] impose any fee or tax..." As such, absent adjudication in a state court, there is no guarantee that a local tax imposed prior to passage of this initiative would survive beyond the effective date of the initiative, unless this language is modified by the Legislature.

FINANCIAL IMPLICATIONS:

At this time, the fiscal impacts of this ordinance are unknown; it would be very difficult to estimate the local fiscal impacts of taxation since the statewide measure has not been considered by voters and the siting of medical marijuana dispensaries is unlikely to be known until 2015.

RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance establishing a tax on the sale of marijuana and marijuana-infused products.

Attachments: Ordinance on Marijuana Tax

ORDINANCE NO. 1376-14

AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF TUALATIN; AND ESTABLISHING NEW TUALATIN MUNICIPAL CODE CHAPTER 13-01

WHEREAS, the City of Tualatin is an Oregon home-rule municipal corporation having the authority and under the terms of its Charter to exercise all powers and authority that the constitutions, statutes, and common law of the United States and of the State of Oregon expressly or impliedly grant or allow as fully as though each such power were specifically enumerated therein; and

WHEREAS, except as otherwise provided, all powers of the City are vested in the City Council; and

WHEREAS, the City Council wishes to exercise the power to tax the sale or transfer of marijuana, medical marijuana, and marijuana-infused products within the City.

NOW THEREFORE, THE CITY OF TUALATIN ORDAINS AS FOLLOWS:

Section 1. Tualatin Municipal Code Chapter 13-01 is created to read as follows:

13-01-010 Purpose. Every person who sells marijuana, medical marijuana, or marijuana-infused products in the City of Tualatin is exercising a taxable privilege. The purpose of this Chapter is to impose a tax upon the sale of marijuana, medical marijuana, and marijuana-infused products.

13-01-015 Definitions. Unless the context clearly provides otherwise, the following words and phrases used in this Chapter have the following meanings:

(1) "City Manager" means the City Manager of the City of Tualatin or the City Manager's designee.

(2) "Gross Sales" means the total amount received in money, credits, property, or other consideration from sales of marijuana that is subject to the tax imposed by this Chapter.

(3) "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, and includes medical marijuana and marijuana-infused products. 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.

(4) "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.

(5) "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.

(6) "Purchase or Sale" means the acquisition or furnishing for consideration of marijuana by any person within the City.

(7) "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.

(8) "Retail sale" means the transfer of goods or services in exchange for any valuable consideration.

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

(10) "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.

(11) "Taxpayer" means any person obligated to account to the Finance City Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this Chapter.

13-01-020 Tax Imposed. A tax is hereby levied and must be paid by every seller exercising the taxable privilege of selling marijuana.

13-01-030 Amount and Payment; Deductions.

(1) In addition to any fees or taxes otherwise provided by law, every seller engaged in the sale of marijuana must pay a tax as follows:

(a) Five percent (5%) of the gross sales amount paid to the seller by a registry identification cardholder; and

(b) Ten percent (10%) of the gross sale amount paid to the seller of marijuana by individuals who are not registry identification cardholders purchasing marijuana under the Oregon Medical Marijuana Program; and

(2) In addition to any fees or taxes otherwise provided by law, including those provided in subsection (1) of this section, every seller engaged in and carrying on the business of operating any establishment where marijuana is consumed must pay an annual tax of \$500.

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

(a) Refunds of sales actually returned to any purchaser; and

(b) Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana and does not include any adjustments for other services furnished by a seller.

13-01-040 Seller Responsible for Payment of Tax.

(1) Every seller must obtain a business license from the City of Tualatin pursuant to Tualatin Municipal Code Chapter 09-01. The seller must indicate on the business license application whether the seller is licensed by or registered with the State of Oregon to provide marijuana to purchasers for money, credit, property, or other consideration.

(2) Every seller must, 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 City Manager 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 City Manager, may establish shorter reporting periods for any seller if the seller or City Manager deems it necessary in order to ensure collection of the tax and the City Manager 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 City Manager.

(3) At the time the return is filed, the full amount of the tax collected must be remitted to the City.

(4) Payments will 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 City Manager, in the City Manager'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 City Manager may order such a change. The City Manager may establish shorter reporting periods for any seller if the City Manager deems it necessary in order to ensure collection of the tax. The City Manager 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.

(5) All taxes collected by sellers pursuant to this Chapter will be held in trust for the account of the City until payment is made to the City Manager. A separate trust bank account is not required in order to comply with this provision.

(6) Every seller required to remit the tax imposed in this Chapter is entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

(7) Every seller must keep and preserve in an accounting format established by the City Manager records of all sales made by the dispensary and such other books or accounts as may be required by the City Manager. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The City Manager has the right to inspect all such records at all reasonable times.

13-01-050 Penalties and Interest.

(1) Any seller who fails to remit any portion of any tax imposed by this Chapter within the time required must pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.

(2) If the City Manager 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 will be added in addition to the penalties imposed.

(3) In addition to the penalties imposed, any seller who fails to remit any tax imposed by this Chapter must pay interest at the rate of one percent (1%), or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(4) Every penalty imposed, and such interest as accrues under the provisions of this section, is part of the tax required to be paid.

(5) The City Manager is authorized to waive any penalties or interest as determined to be reasonable in the sole discretion of the City Manager.

(6) All sums collected pursuant to the penalty provisions in this section will be distributed to the City of Tualatin General Fund to offset the costs of auditing and enforcement of this tax.

13-01-060 Failure to Report and Remit Tax -Determination of Tax by City

Manager. If any seller should fail to make, within the time provided in this Chapter, any report of the tax required by this Chapter, the City Manager will 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 City Manager procures 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 City Manager will 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 City Manager will 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 13-01-070. If no appeal is filed, the City Manager's determination is final and the amount thereby is immediately due and payable upon service of notice.

13-01-070 Appeal.

(1) Any seller aggrieved by any decision of the City Manager with respect to the amount of such tax, interest or penalties, if any, may appeal the City Manager's decision by filing a written request for review with the City Manager within 30 days of the serving or mailing of the determination of tax due. The request for review must be in writing and set forth in detail the facts supporting the request.

(2) The City Manager will hear and consider any relevant records and evidence, including that presented by the seller, bearing upon the City Manager's determination of the amount due, and make findings affirming, reversing or modifying the determination. The findings will be final and conclusive, and will be served upon the seller personally or by depositing it in the United States mail, postage prepaid, addressed to the appellant at the last known place of address.

(3) Appeal of a final decision of the City Manager shall be by writ of review to the Circuit Court of Washington County, Oregon, as provided in ORS 34.010-34.100, and not otherwise. If no appeal is filed, the City Manager's determination is final and the amount thereby is immediately due and payable upon service of notice.

13-01-080 Refunds.

(1) 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 (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 City Manager within one year of the date of payment. The claim must be on forms furnished by the City Manager.

(2) The City Manager has 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 City Manager will notify the claimant in writing of the City Manager's determination. Such notice must be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the City Manager to be a valid claim, in a manner prescribed by the City Manager 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 must notify City Manager of claimant's choice no later than 15 days following the date City Manager mailed the determination. In the event claimant has not notified the City Manager 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.

(3) 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 years after the date on which the overpayment was made to the City.

(4) No refund will be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the City Manager acknowledged the validity of the claim.

13-01-090 Actions to Collect. Any tax required to be paid by any seller under the provisions of this Chapter is 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 be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this Chapter is liable for an action brought in the name of the City of Tualatin for the recovery of such amount. In lieu of filing an action for the recovery, the City of Tualatin, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Tualatin 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.

13-01-100 Violations.

(1) It is a violation of this Chapter for any seller or other person to:

(a) Fail or refuse to comply as required herein;

(b) Fail or refuse to furnish any return required to be made;

- (c) Fail or refuse to permit inspection of records;
- (d) Fail or refuse to furnish a supplemental return or other data required by the City Manager;
- (e) Render a false or fraudulent return or claim; or
- (f) Fail, refuse or neglect to remit the tax to the city by the due date.

(2) A person who violates this Chapter commits a civil infraction and is subject to a fine of up to \$500. Each violation, and each day that a violation continues, constitutes a separate civil infraction.

(3) The civil infraction procedures in TMC 7-1 apply to the prosecution of any violation of this Chapter.

(4) The remedies provided by this section are not exclusive and do not prevent the City from exercising any other remedy available under the law, nor do the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

13-01-110 Confidentiality. Except as otherwise required by law, it is unlawful for the City or its officers, employees, or agents, 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 prohibits:

(1) The disclosure of the names and addresses of any person operating a licensed establishment from which marijuana or marijuana infused products are sold or provided; or

(2) The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or

(3) Presentation of evidence to a court, or other tribunal, having jurisdiction in the prosecution of any civil or criminal claim by the City, or an appeal from the City, for amount due the City under this Chapter; or

(4) The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

(5) 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 \$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).

13-010-120 Audit of Books, Records, or Persons.

(1) 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 must be made available within the City limits and be open at any time during regular business hours for examination by the City Manager or an authorized agent of the City Manager.

(2) If the examinations or investigations disclose that any reports of sellers filed with the City Manager pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the City Manager 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.

(3) The seller must reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the seller paid ninety-five percent (95%) 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 will be subject to interest at the rate of one percent (1%) per month, or the portion thereof, from the date the original tax payment was due.

(4) If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the City may immediately seek a subpoena from the Tualatin 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.

(5) Every seller must keep a record in such form as may be prescribed by the City of all sales of marijuana. The records must, at all times during the business hours of the day, be subject to inspection by the City or authorized officers or agents of the City Manager.

(6) Every seller must maintain and keep, for a period of three (3) years, or until all taxes associated with the sales have been paid, whichever is longer, all records of marijuana sold.

13-01-130 Administration. The City Manager is authorized to prescribe administrative rules, policies, and to implement the requirements of this Chapter, 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; and

(2) The records which sellers providing marijuana are to keep concerning the tax imposed by this chapter.

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

Adopted by the City Council this ____ Day of _____, 2014.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder