

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON
ORDINANCE 14-O-739

IN THE MATTER OF ORDINANCE 14-O-739, AN ORDINANCE ADDING CHAPTER 3.20, TAX ON SALE OF MARIJUANA AND MARIJUANA INFUSED PRODUCTS, TO BROOKINGS MUNICIPAL CODE TITLE 3, REVENUE AND FINANCE.

Sections:

- Section 1. Ordinance identified.
- Section 2. Adds Chapter 3.20

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance adds Chapter 3.20, Tax on Sale of Marijuana and Marijuana Infused Products to Brookings Municipal Code Title 3, Revenue and Finance.

Section 2. Adds Chapter 3.20: Chapter 3.20 is added to read as follows:

Chapter 3.20
Tax on Sale of Marijuana and Marijuana Infused Products

3.20.010 Purpose

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

3.20.020 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 Finance and Human Resource Services Director for the City of Brookings or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from the sale 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 genus Cannabis as defined under Oregon Revised Statute (ORS) 475.005 (16).
- 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.
- E. "Person" means a 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.

- F. "Purchase or Sale" means the retail acquisition or furnishing for consideration of marijuana by any person within the City and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.
- 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.
- H. "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.
- I. "Seller" means 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.
- J. "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.
- K. "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 this chapter.

3.20.030 Levy of Tax

- A. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling marijuana as defined herein.
- B. The amount of tax levied shall be established by City Council resolution, at amounts not to exceed five (5) percent for medical marijuana, and fifteen (15) percent for recreational marijuana.

3.20.040 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 and does not include any adjustments for other services furnished by a seller.

3.20.050 Seller Responsible for Payment of Tax

The seller is responsible for reporting and paying all taxes due as follows:

- A. Every seller shall file a return on forms provided by the City.
- B. The due date for filing a return with the City is the fifteenth day of each month for the preceding month. A return shall not be considered filed until it is actually received by the Director.
- C. Returns and the full amount of tax collected shall be remitted to the Director by the due date and shall specify the total sales subject to this chapter, the amount of tax collected under this chapter, and other relevant information as specified on the form.
- D. A payment is delinquent on the last day of the month in which the payment is due.
- E. 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.

- F. 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.
- G. 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/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.
- H. 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.
- I. Returns and payments are due immediately upon cessation of business for any reason.
- J. 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.
- K. Every seller must keep and preserve for a period of three (3) years, in an accounting format established by the Director, records of all sales made by the dispensary, to include books, accounts, invoices and other such records as may be required by the Director. Seller shall make all such records available to the Director for inspection at all reasonable times.

3.20.060 Penalties and Interest

- A. Original Delinquency. Any seller who fails to remit any portion of any tax imposed by this chapter prior to delinquency shall pay in addition to the amount of the tax, a penalty of ten percent (10%) of the amount of the tax.
- B. Continued Delinquency. On or before a period of 30 days following the date on which the remittance first became delinquent, any seller who fails to remit any delinquent remittance shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- C. Fraud. 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 subsections A and B of this section.
- D. Interest. Any seller who fails to remit any tax imposed by this chapter shall pay, in addition to any penalties imposed, interest at the rate of one percent (1%) per month, or fraction thereof, on the amount of tax owed, exclusive of penalties and without proration for portions of a month, from the date on which the remittance first became delinquent until paid.
- E. Penalties merged with tax. 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. Petition for Waiver. Any seller who fails to remit any portion of any tax imposed by this chapter prior to delinquency shall pay the penalties as provided herein; however, the seller may petition the Brookings City Council for waiver and refund of the penalty or any portion thereof and the Brookings

City Council may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

3.20.070 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. The Director shall, upon determining the estimate of tax due from the seller, assess said tax against the seller to include any interest and penalties provided for under this chapter. When such determination is made, the Director shall give notice of the amount so assessed by having it served personally, or by depositing it in the United States mail, postage prepaid, and 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 3.20.080 of this chapter. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

3.20.080 Appeal

- A. Any person aggrieved by the decision of the Director may make written request for an informal hearing with the City Manager in the following manner:
 - 1. Written notice shall be provided to the City Manager any time within 15 days of the date upon which the Director provided written notice of determination to the aggrieved person.
 - 2. The City Manager shall, upon receipt of the written request for hearing, schedule an informal hearing to be held at City Hall within 15 days of receipt of the request, at which hearing the person aggrieved shall be given the opportunity to present evidence to support his/her position.
 - 3. The City Manager shall take evidence from the Director as to the reasonableness, fairness, and validity of the determination, and shall render his decision within 24 hours after closing the hearing and shall notify the complainant of his decision.
- B. Any person aggrieved by the decision of the City Manager may appeal to the City Council by filing notice of appeal with the City Recorder in the following manner:
 - 1. The aggrieved shall provide written notice to the City Recorder within 20 days of the serving or the mailing of the notice of the decision given by the City Manager.
 - 2. The City Council shall give the appellant not less than 20 days written notice of the time and place of hearing of said appeal.
 - 3. Action by the City Council on appeals shall be final, and shall be decided by a majority of the members of the City Council present at the meeting where such appeal is considered.

3.20.090 Refunds

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 based upon the following provisions:

- A. A written claim, stating under penalty of perjury the specific grounds upon which the claim is founded, must be filed with the Director within one year of the date of payment. The claim shall be made 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 claim's validity. Notice of the Director's determination shall

be provided to claimant in writing. Such notice shall be mailed to the address provided by claimant on the claim form.

- C. In the event a claim is determined by the Director to be valid, a seller may, in a manner prescribed by the Director, may collect the amount of such claim as a refund or as credit against taxes collect. The seller shall notify the Director of claimant's choice no later than 15 days following the date the Director mailed the determination. In the event the 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.
- D. No refund shall be paid under the provisions of this section unless the claimant has established the right by written records showing entitlement to such refund and the Director has acknowledged the validity of such claim.

3.20.100 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 Brookings for the recovery of such amount. In lieu of filing an action for the recovery, the City may, when taxes due are more than 30 days delinquent, submit any outstanding tax to a collection agency. 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 fee, so long as the fee does not to exceed the limits as set by state statute and the City complies with the provisions set forth in ORS 697.105.

3.20.110 Violations.

It is unlawful for any seller or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other pertinent information required by the Director, or to render a false or fraudulent return. No person required to make, render, sign or verify any report shall make any false or fraudulent report with intent to defeat or evade the determination of any amount due as required by this chapter.

3.20.120 General penalty.

Violations will be fined as provided under BMC Chapter 1.05, General Penalty.

3.20.130 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 the failure of a seller 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).

3.20.140 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 Brookings 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.

3.20.150 Forms and Regulations

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

- A. A form of report on sales and purchases to be supplied to all vendors; and
- B. The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this chapter.

First Reading: October 27, 2014 Passage: October 27, 2014
 Second Reading: October 27, 2014 Effective Date: November 26, 2014

Signed by me in authentication of its passage this 29th, day of October, 2014

ATTEST:

Ron Hedenskog
 Mayor Ron Hedenskog

Joyce Heffington
 City Recorder Joyce Heffington