



ORDINANCE NO. 20-689

AN ORDINANCE OF THE CITY OF WINSTON, OREGON, CITY COUNCIL, AMENDING CHAPTER 111 OF THE WINSTON MUNICIPAL CODE ESTABLISHING A TAX ON THE SALE OF MARIJUANA BY A RETAILER LICENSED BY THE OREGON LIQUOR CONTROL COMMISSION AND REGULATED UNDER ORS CHAPTER 475B AND REFERRING THE ORDINANCE TO THE VOTERS.

WHEREAS, ORS 475B.491 provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer licensed by the Oregon Liquor Control Commission and regulated under ORS Chapter 475B; and,

WHEREAS, the Winston City Council desires to impose a tax on the sale of marijuana items by recreational marijuana dispensaries in the area subject to the jurisdiction of the City.

NOW, THEREFORE, THE CITY OF WINSTON, OREGON, CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Chapter 111 of the code of the City of Winston entitled “Marijuana” is hereby amended to remove all existing sections of said Chapter and replace with the following provisions to read as follows:

RECREATIONAL MARIJUANA TAX

- 111.01 Purpose**
- 111.02 Definitions**
- 111.03 Tax Imposed**
- 111.04 Deductions**
- 111.05 Seller Responsible for Payment of Tax**
- 111.06 Penalties and Interest**
- 111.07 Failure to Report and Remit Tax—Determination of Tax by Director**
- 111.08 Appeals**
- 111.09 Refunds**
- 111.10 Actions to Collect**
- 111.11 Violation Infractions**

111.12 Confidentiality

111.13 Audit of Books, Records or Persons

111.14 Forms and Regulations

111.01 PURPOSE. For the purposes of this Chapter, every person who sells marijuana items in the City of Winston is exercising a taxable privilege. The tax shall be imposed upon the sale of marijuana items by a marijuana retailer regulated under ORS Chapter 475B; but shall not be imposed on marijuana sold by medical marijuana dispensaries registered under ORS 475B.858.

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

“Director” means the City Manager for the City of Winston or his/her designee.

“Gross Taxable Sale(s)” means the total amount received in money, credits, property and/or other consideration from sales of marijuana items.

“Marijuana Item(s)” has the meaning assigned to such term under ORS Chapter 475B.

“Marijuana Retailer(s) or Seller(s)” means a person who sells marijuana items to a consumer in this state and who holds a license under ORS 475B.015 (23).

“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.

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

“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.

“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.

111.03 TAX IMPOSED. To the fullest extent permitted under ORS 475B.491, there is hereby levied a tax which shall be paid by every marijuana retailer exercising the taxable privilege of selling marijuana items. The amount of tax levied shall be three percent (3%) of the gross sales of the marijuana retailer in the area subject to the City’s jurisdiction. The seller shall collect the tax at the point of sale of a marijuana item. Subject to applicable law, the tax rate may be adjusted from time to time by Council resolution.

111.04 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.

111.05 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.

111.06 PENALTIES AND INTEREST.

A. Any seller who fails to remit any portion of the 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 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 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 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. All sums collected pursuant to the penalty provisions in Subsection A through C of this Section will be distributed to the City's General Fund.

G. Penalties for late tax payments may be waived or reduced if approved by City Council pursuant to City Council policy. Nothing in this Subsection requires the City to reduce or waive penalties.

111.07 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 111.08. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

111.08 APPEALS. Any seller aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council. Any amount found to be due shall be immediately due and payable upon the service of notice.

111.09 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 the following 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 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 on 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.

111.10 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 for the recovery of such amount. In lieu of filing an action for the recovery, the City, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City 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 a reasonable fee to the amount owing, not to exceed the collection fee of the collection agency.

111.11 VIOLATIONS.

A. In addition to the penalties provided in Section 111.06, a violation of this Chapter is an offense punishable by fine as well as imprisonment as set forth this Code. 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. The remedies provided by this Chapter are not exclusive and do not prevent the City from exercising any other remedy available under the law.

C. The remedies provided by this Chapter do not prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under State law or City ordinance.

111.12 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 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 any 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).

111.13 AUDIT OF BOOKS, RECORDS OR PERSONS. The City, for the purpose of determining the correctness of any tax return required, or for the purpose of an estimate of taxes due pursuant to this Chapter, 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 Winston Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts or records for examination.

111.14 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 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 or 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. REFERRAL. This ordinance shall be referred to the electors of the City of Winston at the next statewide general election on November 3, 2020.

SECTION 5. WHEN ORDINANCE CAN TAKE EFFECT. This Ordinance will take effect (and the tax will commence to be levied and imposed) upon passage of the referral measure by the electors of the City of Winston at the next statewide general election held on November 3, 2020.

FIRST READING BY THE CITY OF WINSTON, OREGON, CITY COUNCIL, ON THIS 3RD DAY OF AUGUST, 2020.

SECOND READING AND ADOPTION BY THE CITY OF WINSTON, OREGON, CITY COUNCIL ON THIS 3RD DAY OF AUGUST, 2020.

APPROVED BY THE MAYOR ON THIS 3RD DAY OF AUGUST, 2020.

Richard E. Hayes, Mayor

Attest:

Mark D Bauer, City Manager/Recorder