

TITLE XI: BUSINESS REGULATIONS

Chapter

110. BUSINESS LICENSES

111. RECREATIONAL MARIJUANA TAX

112. SECONDHAND PROPERTY DEALERS

CHAPTER 110: BUSINESS LICENSES

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Cross-reference:

Transient room tax, see Ch. 35

§ 110.01 PURPOSE.

This chapter is enacted, except as otherwise specified, to provide revenue for municipal purposes and to provide for the health, safety and welfare of the citizens of this city through regulation of businesses, occupations and trade.

(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.02 EXEMPTIONS.

(A) Nothing in this chapter shall be construed to apply to any person transacting and carrying on business within the city which is exempt from taxation or regulation by the city by virtue of the Constitution of the United States or this state.

(B) No person whose income is based solely on a wage or salary shall, for the purpose of this chapter, be deemed a person transacting or carrying on any business in the city, and it is the intention that all license taxes and fees will be borne by the employer.

(C) Any business paying a franchise tax or fee under any city ordinance or resolutions now existing is exempt from the requirements of this chapter.

(D) Wholesalers making deliveries or taking orders from duly licensed retail outlets within the city are exempt from this chapter.

(E) Any person 16 years or younger who operates a business on a part-time basis, which business has an annual gross income of less than \$1,500, is exempt from this chapter.

(F) Except as provided in § 110.12, nonprofit organizations are exempt from this chapter.

(G) Garage sales, as defined in this chapter, are exempt from this chapter.
(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. Agent or owner of the named business.

AUCTION. The sale, or offer to sell, by public outcry or to the highest bidder.

BUSINESS. Any profession, trade, occupation, shop and every type of calling wherein a charge is made for goods, materials or services.

FLEA MARKET. Any casual sale, display of goods for the sale or offer to sell, commonly known as a **FLEA MARKET, FARMERS MARKET, CRAFT MARKET, SWAP MEET** or any similar term, and including any auction, antique, rummage, tailgate or any other sale similar in nature, wherein all or part of the goods consist of new or used property which is advertised by any means whereby the public at large is or may be made aware of the sale and the sale is conducted within the city limits. Individual booths may operate not more than three consecutive days in any calendar week, and during the other four days merchandise for sale, booths, tents, portable awnings and tables must be removed.

GARAGE SALE. Any casual sale, display of goods for the sale or offer to sell, commonly known as a **GARAGE SALE**, and including any auction, antique, rummage, tailgate or any other sale similar in nature, wherein all or part of the goods consist of used personal property which is advertised by any means whereby the public at large is or may be made aware of the sale and the sale is conducted within the city limits.

LICENSE. The permission granted for the carrying on of a business, profession or occupation within the city limits.

LICENSEE. The business as specified and named by the applicant.

NONPROFIT ORGANIZATION. A bona fide organization with tax exempt status.

PEDDLER. A person or persons, traveling from place to place selling and delivering at the same time.

PERSON. All public and private corporations, including domestic and foreign corporations, firms, partnerships of every kind, associations, organizations, syndicates, joint ventures, societies, any other group acting as a unit, and individuals transacting and carrying on any business within the city.

REVOCATION (OF ANY BUSINESS LICENSE). Withdrawal of approval to operate a business.

SOLICITOR. One who travels from place to place, not carrying his or her goods with him or her, but taking orders for future deliveries.

SUSPENSION (OF BUSINESS LICENSE). An official order to suspend business operations pending correction or ceasing of certain conditions or practices.

TRANSIENT MERCHANT. One who occupies a temporary fixed location, sells and delivers from stock on hand and does business in much the same manner as a permanent business. (1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 498, passed 1-18-1994; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.04 LICENSE REQUIRED.

(A) A license fee is hereby imposed on any business not licensed by other ordinances of the city, and it shall be unlawful for any person to engage in the business within the city without first having obtained a license for the current year as provided under this chapter.

(B) The agent, or agents, of a nonresident proprietor engaged in any business for which a license is required by this chapter shall be liable for any failure to comply with the provisions of this chapter, or for any penalty assessed under this chapter, to the extent, and with like effect, as if the agent or agents were themselves the proprietors or owners of the business.

(C) A person engaged in business in more than one location, or in more than one business licensed under this chapter, shall make a separate application and pay a separate license fee for each business or location, except as otherwise provided in this chapter.

(D) A person representing himself or herself, or exhibiting any sign or advertisement that he or she is engaged in a business within the city on which a license fee is levied by this chapter, shall be deemed

to be actually engaged in the business and shall be liable for the payment of the license fee and subject to the penalties for failure to comply with the requirements of this chapter.

(E) The city may require proof of bonding or state registration. An applicant shall possess any county or state license required or shall be awaiting final approval by the county or state, if city approval is a prerequisite, before a city license will be issued.

(F) The City Council reserves the right to waive or reduce the fee for nonprofit organizations having tax exempt status.

(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013) Penalty, see § 110.99

§ 110.05 APPLICATION.

(A) Application for a new business license, or for renewal of an existing business license shall be made to the City Recorder upon forms furnished by the city. Each application shall state:

- (1) The name of the proposed business;
- (2) A description of the trade, shop, business, profession, occupation or calling to be carried on;
- (3) The name and address of the applicant;
- (4) The address at which the business will be conducted, or the address of its city office;
- (5) The amount of the license fee tendered with application and the basis for its calculation;
- (6) The signature of the applicant or agent making the application;
- (7) The date of application;
- (8) Evidence of satisfaction of state registration, bonding or insurance if required, including registration number and expiration date; and
- (9) The year for which application is made.

(B) The City Recorder may require the applicant to supply any additional information necessary to determine under § 110.08 the applicant's qualifications for the license.

(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.06 LICENSE FEES.

All business license fees shall be determined by resolution of the City Council. (1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.07 TRANSFERS AND RELOCATIONS; TERMS OF LICENSE.

(A) *Transfer of license.* Transfers of ownership shall require the new owner to submit a business license application and fee to the City Recorder to be processed as though the business is new, even if the name of the business does not change.

(B) *Relocation of an existing business.* In the event a business relocates, the licensee shall reapply to the City Recorder to transfer the business license. The City Recorder may issue the license upon finding that the new location meets the requirements of this chapter.

(C) *License term.* A business license issued under this chapter shall be valid from the date of issuance until the following January 1. (1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.08 APPROVAL, DENIAL, REVOCATION OR SUSPENSION OF LICENSE.

(A) *Approval of application.*

(1) The City Council shall issue a decision on an application for a new business license within 30 days of the submission of a complete application and the required fee, upon a finding that the applicant has met all requirements of federal, state and county law, and this chapter.

(2) The City Recorder shall issue a license renewal upon finding that the applicant has met all requirements of federal, state and county law, and this chapter.

(3) If an application for a new license is approved, the City Recorder shall notify the applicant in writing. The notice shall state any conditions or limitations placed on the license as a condition of maintaining the license which the City Council deems necessary to protect the public health, safety or welfare which are required by federal, state or county law, or this chapter.

(B) *Denial, revocation or suspension of license.* The City Council may deny, suspend or revoke a business license upon finding that:

(1) The licensee fails to meet the requirements of or is doing business in violation of federal, state or county law or requirements of this chapter;

(2) The applicant has provided false or misleading material information, or has omitted disclosure of a material fact on the application, related materials or license;

(3) The applicant's past or present violation of law or ordinance presents a reasonable doubt about his or her ability to perform the licensed activity without endangering property or the public health or safety;

(4) The information supplied for the review does not indicate that the applicant has the special knowledge or skill required to perform the licensed activity; and

(5) The licensed activity or device would endanger property or the public health or safety.

(C) *Notice.* The City Recorder shall provide written notice to the applicant or licensee of a denial, suspension or revocation. The notice shall state the reason for the action taken and shall inform the applicant of the right to appeal under § 110.09. The notice shall be given at least 15 days before the revocation becomes effective. If the violation ends within the 15 days, the City Recorder may discontinue the revocation proceedings.

(D) *Reapplication.* A person whose application for a business license has been denied or whose license has been revoked may, after 90 days from the date of denial or revocation, apply for a license upon payment of the application fee and submission of an application form and related documents.

(E) *Disqualification.* A person whose application for any business license has been denied or whose license has been revoked for a total of two times within one year, or who has a total of four denials or revocations, shall be disqualified from applying for a license for a period of two years from the date of the revocation or denial.

(F) *Summary suspension.* Upon determining that a licensed activity or device presents an immediate danger to person or property, the City Recorder may summarily suspend the license for the activity or device. The suspension takes effect immediately upon notice of the suspension being received by the licensee, or being delivered to the licensee's business address as stated on the licensee's application for the license being suspended. This notice shall state the reason for the suspension and inform the licensee of the provisions for appeal under § 110.09. Within ten days of a summary suspension, the City Council shall review the pertinent facts which resulted in the suspension and shall determine whether the facts deem it necessary to continue the suspension in order to protect the health, safety and welfare of the citizens of this city, or to otherwise ensure that the requirements of this chapter are complied with. The City Council may continue a suspension as long as the reason for the suspension exists or until a determination on appeal regarding the suspension is made under § 110.09.

(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.09 APPEAL.

In the event an applicant for a license under this chapter is denied the license, or in the event a license is suspended or revoked, the applicant or license holder shall have the right of appeal. The written notice of appeal to the City Council shall be filed with the City Recorder within 15 days after the denial of license or license suspension or revocation. The City Council shall hear and make a determination in regards to the appeal at its next regular meeting immediately following the filing of the notice of appeal. The decision of the City Council on the appeal shall be final and conclusive.

(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.10 DISCLAIMERS, EXCEPTIONS, GENERAL REQUIREMENTS.

(A) *Disclaimers and exceptions.* The levy or collection of a license fee upon any business shall not be construed to be a license or permit by the city to the person engaged therein, in the event the business shall be unlawful, illegal or prohibited by the laws of this state or the United States, or ordinances of the city.

(1) Nothing herein contained shall be taken or construed to vesting any right in any license as a contract obligation on the part of the city. Business license fees, as set by Council resolution, may be increased or decreased, and other or additional taxes or fees may be levied, increased or decreased at any time by the City Council. No person having paid the fee required, and having made application for a business license, shall be entitled to any refund.

(2) None of the fees, bonds or insurance requirements provided for in this chapter or the rules adopted under this chapter shall be required if the applicant is a municipality.

(B) *General license requirements.* In addition to any other requirement of this chapter, each licensee shall:

(1) Conform to all federal, state and local laws and regulations, the provisions of this chapter and any rules adopted hereunder;

(2) Notify the city within ten days of any change in material information contained in the application, related materials or license; and

(3) Display a business license upon request to any person with whom he or she is dealing as part of the licensed activity or to an officer or employee of the city.

(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.11 SPECIFIC REQUIREMENTS.

(A) *Second-hand goods.* A business dealing in the purchase or trade of second-hand goods, such as but not limited to precious metals and jewelry, guns or electronic equipment, shall keep a record of the sales for inspection by the Chief of Police. This record shall include the name of the seller, the name of the buyer, the date of sale, a description of the merchandise sold, any serial numbers or distinguishing marks on the goods being traded, as well as other information that would enable return of stolen goods.

(B) *Merchant police, security services and similar businesses.* Each individual shall agree to a complete background check by the Chief of Police to determine the qualifications and reliability of the individual for the proposed business. The city may require a bond and any insurance as may be deemed proper. The license shall be issued only upon the Police Chief's approval of each person involved, which approval to be based on the complete background check.

(C) *Peddlers, solicitors.* The applicant must supply the names, addresses, dates of birth and any other pertinent information regarding each individual intending to take part in the solicitation. Each individual shall agree to a complete background check by the Chief of Police to determine the qualifications and reliability of the individual. The city may require a bond and any insurance as may be deemed proper. The license shall be issued only upon the Police Chief's approval of each person involved, which approval to be based on the complete background check.

(D) *Nonprofit organizations.*

(1) A nonprofit organization which will conduct any type of business within the city on a continuous basis throughout the year shall make application to the City Recorder upon suitable forms, furnished by the city, for the license to carry on the business for the current year. Upon submission of the applicant and payment of the fee, the City Recorder shall submit the application to the City Council at its next regular meeting. After once obtaining approval by the Council, subsequent annual renewals of the nonprofit organization business license may be approved by the City Recorder. After once issued, the licensed business is subject to all the provisions of this chapter.

(2) Approval of a business license for a nonprofit organization required in division (D)(1) of this section is subject to the following additional conditions:

(a) The business license is only for activities conducted by members; and

(b) Nonprofit organizations are requested to obtain any and all county, state and federal permits for the business to be conducted.

(E) *Outside activities.* In the event a licensed business contracts to sponsor an outside activity, i.e., rodeo, circus, carnival and the like, a regular city business license must be obtained for that specific activity and the usual business license fee must be paid.

(F) *Garage sales.* No person shall conduct a garage sale exceeding five days' duration, nor participate in more than three garage sales in any one calendar year, nor permit more than three garage

sales to be conducted on any one property under his or her control in any one calendar year. The foregoing requirements shall not be in effect for the one day every year declared by the City Council to be “Trader Day.”

(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 498, passed 1-18-1994; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

§ 110.12 VIOLATIONS.

(A) *Inspection and right of entry.* Whenever they shall have cause to suspect a violation of any provisions of this chapter, or when necessary to investigate an application for or revocation of a license under any of the procedures prescribed in this chapter, officials responsible for enforcement or administration of this chapter, or their duly authorized representatives, may enter on any site, or into any structure, for the purpose of investigation, providing they do so in a reasonable manner. No secured building shall be entered without the consent of the owner or occupant unless under authority of a lawful warrant.

(B) *Abatement.* Any business which is established, operated, moved, altered, enlarged or maintained contrary to the licensing requirements shall be, and is hereby declared to be, unlawful and a public nuisance, and may be abated as one.

(C) *Legal proceedings by City Attorney.* In addition to the enforcement provisions of this chapter, upon request by the City Council, the City Attorney may institute any additional proceedings, including but not limited to seeking injunctive relief to enforce the provisions of this chapter.

(D) *Flea markets, farmers markets, craft markets, swap meets and similar uses.* Any person convicted of violating any of the provisions of this chapter relating to flea markets and the like shall be punished by a fine of no less than \$50 for any one offense, each day constituting a separate offense, nor may the fine for any one offense be more than \$250.

(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 498, passed 1-18-1994; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013) Penalty, see § 110.99

§ 110.99 PENALTY.

Any person convicted of violating any of the provisions of this chapter shall be punished by a fine not to exceed \$250 for any one offense, each day constituting a separate offense.

(1993 Code, Comp. No. 6-4) (Ord. 406, passed 9-21-1987; Ord. 594, passed 1-5-2004; Ord. 659, passed 10-21-2013)

CHAPTER 111: RECREATIONAL MARIJUANA TAX

Section

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§ 111.01 PURPOSE.

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

(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 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. The City Manager for the city or his/her designee.

GROSS TAXABLE SALE(S). 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 terms under O.R.S. Chapter 475B.

MARIJUANA RETAILER(S) or SELLER(S). A person who sells marijuana items to a consumer in this state and who holds a license under O.R.S. 475B.015(23).

PERSON. 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. The acquisition or furnishing of marijuana items for consideration by any person within the city.

TAX. 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. 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.
(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 111.03 TAX IMPOSED.

To the fullest extent permitted under O.R.S. 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 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.
(Ord. 20-689, passed 8-3-2020)

§ 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; 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.

(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 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 ensure 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 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 years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.
(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 111.06 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 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 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 25% of the amount of the tax shall be added thereto in addition to the penalties stated in divisions (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 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 divisions (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 division requires the city to reduce or waive penalties. (Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 111.07 FAILURE TO REPORT AND REMIT TAX; DETERMINATION OF TAX BY CITY 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 § 111.08. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable. (Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 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.

(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 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 division (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.

(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 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 O.R.S. 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.

(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 111.11 VIOLATION INFRACTIONS.

(A) In addition to the penalties provided in § 111.06, a violation of this chapter is an offense punishable by fine as well as imprisonment as set forth in 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.

(Ord. 20-689, passed 8-3-2020)

§ 111.12 CONFIDENTIALITY.

Except as otherwise required by law, it is 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;

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

(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;

(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 when 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 O.R.S. 192.501(5).

(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 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.

(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

§ 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.

(Ord. 664, passed 10-20-2014; Ord. 20-689, passed 8-3-2020)

CHAPTER 112: SECONDHAND PROPERTY DEALERS

Section

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§ 112.01 DEFINITIONS.

For the purpose of this chapter, the following words and phrases are defined as follows:

NON-VALUABLE METALS. Limited to metals not regulated by state law, such as dental gold, unrefined metal ore, gold or silver coins, or bullion in any form.

PEACE OFFICER. A law enforcement official as defined in O.R.S. 133.005.

PERSONAL IDENTIFICATION. An identification card or document issued by a recognized governmental agency which bears the full name, signature, photograph, date of birth, and physical description of the issued person.

SECONDHAND PROPERTY. Merchandise which was previously owned by a private individual.

SECONDHAND PROPERTY DEALER. A person, or employee of any person, who operates, conducts, manages, or engages in any business which, as part or all of the business, purchases or sells secondhand property, and/or lends money on security of regulated property. Secondhand dealer, secondhand property dealer, and used merchandise dealer shall be used interchangeably.

SECONDHAND STORE. A place of business which buys and/or sells secondhand property.
(Ord. 20-686, passed 6-1-2020)

§ 112.02 PURPOSE.

(A) The intent of this chapter is to regulate the buying and selling of secondhand property by businesses located within the City of Winston. Nothing within this chapter is intended to supplant the State of Oregon's Pawnbrokers Act contained in O.R.S. Chapter 726, which relates to pawnbrokers licensed by the state to loan upon the security of secondhand property, nor the Precious Metals Act enacted within O.R.S. Chapter 646A applying to gold of eight karats or higher, silver, platinum, and palladium.

(B) Nothing in this chapter applies to charitable, non-profit organizations or to persons or businesses dealing exclusively in automobiles, farm implements and machinery, used books or audiobooks, secondhand clothing, or commercial and industrial scrap metal recycling.
(Ord. 20-686, passed 6-1-2020)

§ 112.03 PERMIT REQUIRED.

(A) No person shall engage in a secondhand property business without obtaining a secondhand dealer's permit from the city. Agents and employees who engage in the purchase of used merchandise must also obtain a permit from the city and are subject to all requirements of this chapter.

(B) The Council shall set the annual fee for a secondhand dealer's permit by resolution.

(C) Application for a used merchandise dealer's permit must be submitted on a form prescribed by the city. An application must be submitted at least 30 days prior to the date the permit is requested to be effective.

(Ord. 20-686, passed 6-1-2020) Penalty, see § 112.99

§ 112.04 BUSINESS REGISTRATION REQUIRED.

No person may operate as a secondhand property dealer within the City of Winston without first completing and filing a business registration application with the city pursuant to Chapter 110 of this code.

(Ord. 20-686, passed 6-1-2020) Penalty, see § 112.99

§ 112.05 LOCATION AND HOURS OF OPERATION.

Secondhand property dealers must operate out of an established storefront located at the address enumerated upon their business registration, conduct all sales under that business name, and maintain business hours that fall between the time(s) of 5:00 A.M. and 9:00 P.M.

(Ord. 20-686, passed 6-1-2020) Penalty, see § 112.99

§ 112.06 RECORD KEEPING REQUIREMENTS.

(A) Secondhand property dealers shall require, inspect and record the personal identification of all persons from whom they purchase secondhand property except for that purchased from and upon the premises of a privately held yard sale, estate sale, auction, or charitable event. Such records shall include the seller's full name, date of birth, address, type of personal identification used and signature. Such identification shall not be required if the customer's identity was previously recorded by the dealer from prior patronage or the customer is unequivocally known to the dealer as a personal friend or family member, provided such personal knowledge is documented in each individual transaction.

(B) Secondhand property dealers shall inspect and document all items of secondhand property purchased and keep a record of each purchase with the following identifiers, at a minimum, for each item:

- (1) The identity of the seller as required in the above division (A);
- (2) Date of purchase;
- (3) Property type;
- (4) Make and model;
- (5) Color;
- (6) Owner-applied number(s) or identifiers;
- (7) Serial number(s);
- (8) For jewelry: the weight, color, number of stones, setting and precious metal type;
- (9) For collectible coins and stamps: a description of the amount and type;
- (10) For non-valuable metals not covered by the Precious Metals Act: a description of the type, weight, and color of the metal(s);
- (11) For all items: the purchase price of the secondhand property transaction; and
- (12) The name of the representative of the secondhand property dealer who purchased the property. Photographs may serve as a basic description of the property so long as identifying numbers are documented in addition to the basic description, and records may be kept electronically rather than in writing provided the record contains all the required information.

(C) The records required in the above divisions (A) and (B) shall be created and maintained in chronological order by the date of purchase, retained upon the business premises of the secondhand property dealer for a minimum of one year from the date the property was purchased and be made available for inspection upon request by a peace officer during the operating hours of the secondhand property dealer.

(D) In the event the city utilizes an electronic secondhand property reporting system, written notice shall be given to all secondhand property dealers. Within 90 days of the date of such notice, all secondhand property dealers must maintain their secondhand property records in a digital or electronic format compatible with the system utilized by the city. Such form of documentation must comply with all requirements set forth in this section and the secondhand property dealer must submit such records electronically to the system utilized by the city within 72 hours of each individual purchase of secondhand property in addition to maintaining purchase records as described in division (C), above.

(E) Items of secondhand property which are high in volume and low in value such as secondhand clothing, used paperback books, non-valuable metals, vinyl albums, and cassette tapes may be entered into the purchase record more generally so long as the identity of the seller and volume and/or number of items are documented.

(Ord. 20-686, passed 6-1-2020) Penalty, see § 112.99

§ 112.07 RESTRICTION ON CERTAIN SALES.

(A) Secondhand property dealers are prohibited from selling any secondhand property item for a period of seven days for property valued less than \$100 and a 20-day period for property with a value of over \$100 after the purchase of such item. During such time, the secondhand property shall be maintained in the same form as purchased, kept on the business premises for potential inspection by peace officers and segregated from other merchandise for sale.

(1) Exceptions to the waiting period of seven days prior to selling the secondhand property may be made so long as the purchase record(s) as described in § 112.06 includes photographs of the secondhand property and that property has a value less than \$100.

(2) Other exceptions to this waiting period may be made under the following circumstances and items of secondhand property:

(a) Large items such as appliances, furniture, and bicycles need not be segregated during the holding period due to storage limitations which would not allow segregation to be possible.

(b) High-volume items of secondhand music such as compact discs, cassette tapes, and vinyl albums need not be subjected to a holding period so long as their purchase record contains details on the album name and artist.

(c) Secondhand property purchased from yard sales, estate sales, auctions or charitable events need not be subject to this holding period.

(B) Secondhand property dealers shall refrain from selling any secondhand property item for a period of 30 days upon specific request by a peace officer based upon reasonable suspicion that the item of secondhand property may have been stolen and/or illegally sold.
(Ord. 20-686, passed 6-1-2020) Penalty, see § 112.99

§ 112.08 PROHIBITED PURCHASES.

Secondhand property dealers may not purchase secondhand property under any of the following circumstances:

(A) The seller is clearly under the influence of intoxicants or illicit drugs;

(B) The purchaser has reason to believe the seller is not the legal owner of the secondhand property;
or

(C) The secondhand property contains any serial numbers or owner-applied identifiers which have been altered or obliterated.

(D) Any gift cards, in-store credit cards, or activated phone cards.

(E) Purchase from a person under the age of 18 years unaccompanied by a parent or guardian.
(Ord. 20-686, passed 6-1-2020) Penalty, see § 112.99

§ 112.99 PENALTIES.

Failure to comply with the requirements set forth in this chapter will subject the business registrant to the penalties set forth in §110.99. The remedies provided in this section are not exclusive and shall not prevent the city from exercising any other remedy available under law, either simultaneously or otherwise, including but not limited to seeking penalties as provided in § 10.99 of this code.
(Ord. 20-686, passed 6-1-2020)

