

**ORDINANCE NO. 748**

**AN ORDINANCE OF THE CITY OF WILSONVILLE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF WILSONVILLE AND ADDING A NEW WILSONVILLE MUNICIPAL CODE SECTION**

WHEREAS, Chapter II “Powers,” Section 4, of the City of Wilsonville (“City”) City Charter provides:

“Powers of the City. The City shall have all powers that the constitutions, statutes and common law of the United States and of this state expressly or impliedly [sic] grant or allow municipalities, as fully as though this charter specifically enumerated each of those powers.”; and

WHEREAS, the City desires to tax the sale or transfer of marijuana and marijuana-infused products within the City; and

WHEREAS, the City is aware that Ballot Measure 91 is scheduled for the November 4, 2014 general election and provides for a tax on engaging in the business of producing marijuana; and

WHEREAS, this Ordinance is scheduled to be enacted and take effect prior to November 4, 2014 and is intended to be read *in pari materia* with Ballot Measure 91, should it pass, as the Ordinance excludes any tax on engaging in the business of producing marijuana, which is the tax imposed under Ballot Measure 91;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. A new Chapter 7, Section 7.500 series, “Marijuana and Marijuana-Infused Products Tax,” establishing a tax on the sale of marijuana and marijuana-infused products is hereby added to Chapter 7 “Businesses” of the City of Wilsonville Code, as follows:

**7.500 Purpose**

For the purposes of this Section, any Seller of Marijuana, medical Marijuana, or Marijuana-infused products in the City is exercising a taxable privilege. The purpose of this Section is to impose a Tax upon the Retail Sale of Marijuana, medical Marijuana, and Marijuana-infused products and not on the business of producing Marijuana.

### **7.505 Definitions**

When not clearly otherwise indicated by the context, the following words and phrases, as used in Sections 7.500 through 7.565, have the following meanings:

- (1) Director means the City's Finance Director or his/her designee.
- (2) Gross Taxable Sales means the total amount received in money, credits, property, or other consideration from Sales of Marijuana, medical Marijuana, and Marijuana-infused products that are subject to the Tax imposed by Section 7.510.
- (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. 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 therefrom), 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, and any political subdivision thereof, or the manager, lessee, agent, servant, officer, or employee of any of them.
- (6) Purchase or Sale means the retail acquisition or furnishing for consideration by any Person of Marijuana within the City and does not include the acquisition or furnishing of Marijuana by a grower or processor to a Seller.
- (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 and does not include the transfer or exchange of goods or services between a grower or processor and a Seller.

(9) Seller means any Person who sells Marijuana or Marijuana-infused products to purchasers for money, credit, property, or other consideration within the City.

(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 Section 7.520.

(11) 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 Section 7.500 series.

### **7.510 Levy of Tax**

(1) Every Seller exercising the taxable privilege of selling Marijuana and Marijuana-infused products, as defined in Section 7.505, is subject to and must pay a Tax for exercising that privilege.

(2) The amount of Tax levied is as follows:

(a) Seven and one half (7.5%) percent of the Gross Taxable Sale amount paid to the Seller of Marijuana and Marijuana-infused products by a Person who is a Registry Identification Cardholder.

(b) Twelve (12%) percent of the Gross Taxable Sale amount paid to the Seller of Marijuana and Marijuana-infused products by Persons who are purchasing Marijuana and Marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.

(3) The City Council may, by resolution, establish a different rate for the sale of such products in the future.

### **7.515 Deductions**

The following deductions are allowed against Sales received by the Seller providing Marijuana:

(1) Documented refunds of Sales actually returned to any purchaser.

(2) Documented adjustments in Sales that amount to a refund to a purchaser, providing such adjustment pertains to the actual Sale of Marijuana or Marijuana-infused products and does not include any adjustments for other services furnished by a Seller.

### **7.520 Seller Responsible for Payment of Tax**

- (1) 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 Director, on forms provided by the City, specifying the total Sales subject to Section 7.510 and the amount of Tax collected under Section 7.510. 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. The Director 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 Director.
- (2) At the time the return is filed, the Seller must remit to the City the full amount of the Tax collected. Payments received by the City 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.
- (3) The City will apply non-designated payments 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.
- (4) 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 ensure 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 will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all Taxes collected pursuant to Section 7.510 for the City's account until the Seller makes payment to the City. A separate trust bank account is not required in order to comply with this provision.
- (5) Every Seller required to remit the Tax imposed by Section 7.510 is entitled to retain five percent of all Taxes collected and due to the City to defray the costs of bookkeeping and remittance.
- (6) Every Seller must keep and preserve, in an accounting format established by the Director, records of all Sales made by the Seller and such other books or accounts as the Director may require. Every Seller must keep and preserve for a

period of three years all such books, accounts, and other records. The Director has the right to inspect all such records at all reasonable times.

### **7.525 Penalties and Interest**

(1) Any Seller who fails to remit any portion of any Tax imposed by Section 7.510 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 any Seller fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, the Seller must 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.

(3) If the Director determines that the nonpayment of any remittance due under Section 7.510 is due to fraud, a penalty of twenty-five percent (25%) of the amount of the Tax will be added thereto, in addition to the penalties stated in Section 7.525(1) and (2).

(4) In addition to the penalties imposed, any Seller who fails to remit any Tax imposed by Section 7.510 must 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.

(5) Every penalty imposed, and any interest that accrues under the provisions of Section 7.525(4), becomes a part of the Tax required to be paid.

(6) All sums collected pursuant to the penalty provisions in Section 7.525(1), (2), and (3) will be distributed to the City's general fund.

(7) Penalties for certain late Tax payments may be waived or reduced pursuant to policies and processes adopted by the Director. However, the Director is not required to create a penalty waiver or reduction policy. If the Director does not create a policy for waivers or reductions, no waivers or reductions are allowed.

### **7.530 Failure to Report and Remit Tax**

(1) If any Seller fails to make any report of the Tax required by Section 7.510 within the time provided in Section 7.520, the Director will proceed to obtain facts and information on which to base the estimate of Tax due. As soon as the Director procures such facts and information upon which to base the assessment of any Tax imposed by Section 7.510 and payable by any Seller, the Director will determine and assess against such Seller the Tax, interest, and penalties provided for by Section 7.525.

(2) If the Director makes a determination as outlined in Section 7.530(1), the Director must give notice to the Seller of the amount assessed. The notice must be personally served on the Seller or deposited in the United States mail, postage prepaid, addressed to the Seller at the last known place of address.

(3) The Seller may appeal the determination as provided in Section 7.535. If no appeal is timely filed, the Director's determination is final and the amount assessed is immediately due and payable.

### **7.535 Appeal**

(1) Any Seller aggrieved by any decision of the Director with respect to the amount of Tax owed, along with interest and penalties, if any, may appeal the decision to the City Manager.

(2) The Seller must file the appeal within 30 days of the City's serving or mailing of the determination of Tax due. The Seller must file using forms provided by the City.

(3) Upon receipt of the appeal form, the City Manager will schedule a hearing to occur within 20 business days. The City Manager will give the Seller notice of the time and date for the hearing no less than seven days before the hearing date. At the hearing, the City Manager will hear and consider any records and evidence presented bearing upon the Director's determination of amounts due and make findings affirming, reversing, or modifying the determination. The Director and the appellant may both provide written and oral testimony during the hearing. The findings of the City Manager are final and conclusive. The City will serve the findings upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

### **7.540 Refunds**

(1) The City may refund to the Seller any Tax, interest, or penalty amount under any of the following circumstances:

- (a) The Seller has overpaid the correct amount of Tax, interest, or penalty;
- (b) The Seller has paid more than once for the correct amount owed; or
- (c) The City has erroneously collected or received any Tax, interest, or penalties.

(2) The City may not issue a refund under Section 7.540(1) unless the Seller provides to the Director a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the

City. The Seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.

(3) The Director has 20 calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making the determination, the Director will notify the claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.

(4) If the Director determines the claim is valid, the claimant may either claim a refund or take as a credit against Taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the City. The claimant must notify the Director of the claimant's choice no later than 15 days following the date the Director mailed the determination, and the claimant must do so in a manner prescribed by the Director.

(5) If the claimant does not notify the Director of the claimant's choice within the 15-day period and the claimant is still in business, the City will grant a credit against the Tax liability for the next reporting period. If the claimant is no longer in business, the City will mail a refund check to claimant at the address provided in the claim form.

(6) The City will not pay a refund unless the claimant establishes by written records the right to a refund and the Director acknowledges the claim's validity.

#### **7.545 Actions to Collect**

(1) Any Tax required to be paid by any Seller under the provisions of Section 7.510 is a debt owed by the Seller to the City. Any Tax collected by a Seller that has not been paid to the City is a debt owed by the Seller to the City. Any Person owing money to the City under the provisions of Section 7.510 is liable to an action brought in the name of the City of Wilsonville for the recovery of the amount owing. In lieu of filing an action for recovery, the City, when Taxes due are more than 30 days delinquent, may submit any outstanding Tax due to a collection agency. So long as the City has complied with the provisions set forth in ORS 697.105, if 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) or fifty percent (50%) of the outstanding Tax, penalties, and interest owing.

#### **7.550 Violation Infractions**

(1) All violations of Sections 7.510 and 7.520 are punishable as set forth in City Code Section 1.013. It is a violation of Sections 7.510 and 7.520 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 Director;
  - (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) The remedies provided by Sections 7.525, 7.545, and 7.550(1) are not exclusive and do not prevent the City from exercising any other remedy available under the law.
- (3) The remedies provided by this Section do not prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

**7.555 Confidentiality**

- (1) 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 Section 7.520. Nothing in this Section 7.555 prohibits any of the following:
- (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 the court, or other tribunal having jurisdiction, in the prosecution of any criminal or civil claim by the City or an appeal from the City for amounts due the City under Section 7.510;
  - (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 that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

### **7.560 Audit of Books, Records, or Persons**

(1) The City 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 for the purpose of determining the correctness of any Tax return, or for the purpose of an estimate of Taxes due. 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 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 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.

### **7.565 Forms and Regulations**

(1) The Director is authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment, and collection of the Marijuana Tax, and to provide for:

(a) A form of report on Sales and Purchases to be supplied to all vendors;

(b) The records that Sellers providing Marijuana and Marijuana-infused products must keep concerning the Tax imposed by Section 7.510.

2. Severability. The sections, subsections, paragraphs, and clauses of this Ordinance are severable. The invalidity of one section, subsection, paragraph, or clause does not affect the validity of the remaining sections, subsections, paragraphs, and clauses.
3. Savings. Nothing in this Ordinance affects the validity of prosecutions related to marijuana use and possession under state or federal laws, or Wilsonville Code, currently in effect.
4. The City Recorder is directed to amend Wilsonville Code Chapter 7, to add Sections 7.500 through 7.570, as approved above, and to make such format, style, and conforming changes to match the format and style of Chapter 7 of the Wilsonville Code.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 15<sup>th</sup> day of September, 2014, commencing at the hour of 7 p.m., at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon, and scheduled for second reading on September 29, 2014.

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Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the 29th day of September, 2014, by the following votes:                                      Yes: -4-                                      No: -1-

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Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this \_\_\_\_\_ day of September, 2014.

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TIM KNAPP, MAYOR

**SUMMARY OF VOTES:**

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Goddard	No
Councilor Fitzgerald	Yes
Councilor Stevens	Yes