

CITY OF SISTERS

ORDINANCE NO. 454

AN ORDINANCE ADDING CODE SECTION 3.08 TO THE SISTERS MUNICIPAL CODE BY ADDING A MARIJUANA AND MARIJUANA-INFUSED PRODUCT TAX.

WHEREAS, the City of Sisters has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant to allow the City; and

WHEREAS, the City desires to adopt an ordinance to tax the sale and/or transfer of marijuana and marijuana-infused products within the City.

WHEREAS, the City believes that this tax will benefit the City of Sisters and its residents.

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

SECTION ONE: The City of Sisters hereby amends the Sisters City Code by adding Section 3.08 as follows:

MARIJUANA AND MARIJUANA-INFUSED PRODUCT TAX

3.08.010 Purpose. For the purposes of code sections 3.08.010 through 3.08.075, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Sisters is exercising a taxable privilege. The purpose of this code section is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

3.08.015 Definitions. When not clearly otherwise indicated by the context, the following words and phrases, as used in code section 3.08.010 through 3.08.075, shall have the following meanings:

1. "City Manager" means the City Manager for the City of Sisters or his/her designee.
2. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sales of marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
3. "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be

amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

4. “Oregon Medical Marijuana Program” means the office within the Oregon Health authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

5. “Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

6. “Purchase or Sale” means the acquisition or furnishing for consideration by any person of marijuana within the City, excluding purchase through the Oregon Medical Marijuana Program.

7. “Purchaser” means any person who acquires marijuana from a seller for any valuable consideration.

8. “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.

9. “Retail sale” means the transfer of goods or services in exchange for any valuable consideration.

10. “Seller” means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.

11. “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.

12. “Taxpayer” means any person obligated to account to the City Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

3.08.020 Levy of Tax.

1. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling recreational marijuana and marijuana-infused products as defined in this chapter.
2. The amount of tax levied is as follows:
 - a. Fifteen percent (15%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not purchasing marijuana under the Oregon Medical Marijuana Program.
 - b. The purchaser shall pay the tax to the seller at the time of the purchase or sale of marijuana.

3.08.025 Deductions. The following deductions shall be allowed against sales received by the seller providing marijuana:

1. Refunds of sales actually returned to any purchaser;
2. Any adjustments in sales which 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.

3.08.030 Seller Responsible for Payment of Tax.

1. The taxes collected by the seller are due and payable to the City Manager on a calendar basis on the 20th day of the month for the preceding month and are delinquent on the last day of the month in which they are due. The seller shall make a return to the City Manager, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The City Manager 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 City Manager.
2. At the time the return is filed, the full amount of the tax collected shall be remitted to the City Manager. Payments received by the City Manager 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. 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 City Manager, 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 City Manager may order such a change. The City Manager also may require additional information in the return relevant to payment of the liability. 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 City Manager. A separate trust bank account is not required in order to comply with this provision.

4. For good cause, the City Manager may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the City Council. A seller to whom an extension is granted shall pay interest at the rate of one percent (1%) per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in this code section.
5. 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.
6. Every seller must keep and preserve in an accounting format established by the City Manager records of all sales made and such other books or accounts as may be required by the City Manager. Every seller must keep and preserve for a period of three (3) years and six (6) months all such books, invoices and other records. The City Manager shall have the right to inspect all such records at all reasonable times.

3.08.035 Penalties and Interest.

1. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax.
2. Any seller who fails to remit any delinquent remittance on or before a period of 31 days following the date on which the remittance first became delinquent, 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.
3. If the City Manager determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 2 of this section.

4. 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.
5. 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.
6. An operator who fails to remit the tax within the required time may petition the City Manager for waiver and refund of the penalty or a portion of it. The City Manager may, if good cause is shown, direct a refund of the penalty or a portion of it.

3.08.040 Failure to Report and Remit Tax – Determination of Tax by City Manager. If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the City Manager 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 City Manager 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 City Manager 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 City Manager 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 appeal such determination as provided in this code section. If no appeal is filed, the City Manager's determination is final and the amount thereby is immediately due and payable.

3.08.045 Appeal.

1. Any seller aggrieved by any decision of the City Manager with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal with the City Manager within fifteen (15) days of mailing of the notice of a decision. The City Manager shall fix a time and place for hearing the appeal, as prescribed by the City Council, and shall give the appellant fifteen (15) days written notice of the time and place of the hearing before the City Council. The appellant shall provide a written statement to the city of the basis for the appeal, the general facts the appellant intends to present, and the appellant's argument. The statement must be received by the city at least 7 days before the hearing.
2. The appellant shall pay a nonrefundable appeal fee to facilitate the appeal. Appeal Fees shall be set at \$250 for each decision appealed, and may be adjusted by Resolution of the City Council.

3. The parties shall be entitled to appear personally and by counsel and to present such facts, evidence and arguments as may tend to support the respective positions on appeal.
4. The action of the City Manager shall be stayed pending the outcome of an appeal properly filed pursuant to this section.
5. Failure to strictly comply with the applicable appeal requirements shall constitute jurisdictional defects resulting in the summary dismissal of the appeal.
6. The findings of the City Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3.08.050 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 as provided in subparagraph 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 City Manager within three (3) years of the date of payment. The claim shall be on forms furnished by the City Manager.

1. Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded if a verified claim in writing, stating the specific reason for the claim, is filed with the City Manager within three years from the date of payment. The claim shall be made on forms provided by the City Manager. If the claim is approved by the City Manager, the excess amount may be refunded or may be credited on any amounts then due and payable by the operator, and the balance may be refunded to the operator, or the operator's administrators, executors or assigns.
2. 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 City Manager acknowledged the validity of the claim.

3.08.055 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. Within three years after the tax becomes payable or within three years after a determination becomes final, the City may bring an action in the name of the City in the courts of this state, another state or the United States to collect the amount delinquent and penalties and interest. 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 (as hereafter amended), in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

3.08.060 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:

1. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
2. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
3. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the City Manager or an appeal from the City Manager for amount due the City under this chapter; or
4. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
5. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds 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).

3.08.065 Audit of Books, Records or Persons.

1. It shall be the duty of every seller liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three (3) years and six (6) months all records, books, reports, income tax reports and other matters required by this chapter as may be necessary to determine the amount of such tax as the seller may have been liable for the collection of and payment to the City, which records the City Manager shall have the right to inspect at all reasonable times as set forth below. Every operator shall maintain records of marijuana purchase and sales, accounting books and records of income. Sellers must, at a minimum, include a cash receipt and deposit journal, and a cash disbursements journal/check register for

all authorized deductions. These records and books shall reconcile to the tax reports and be auditable. They shall also reconcile to the seller's income tax reports. If the City Manager finds the books and records of the seller are deficient in that they do not provide adequate support for tax reports filed, or the seller's accounting system is not auditable, it shall be the responsibility of the seller to improve its accounting system to the satisfaction of the City Manager.

2. 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 City Manager or an authorized agent of the City Manager. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the City Manager may immediately seek a subpoena to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

3.08.070 Penalties.

1. It is unlawful for any seller or any other person so required to fail or refuse to furnish any return required to be made, or fail or refuse to furnish the supplementary return or other data required by the City Manager or to enter a false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this chapter.
2. Violation of any provision of this chapter of this code shall be punishable by a Class A civil infraction. Every day in which the violation is caused or permitted to exist constitutes a separate infraction, and the punishment therefore shall be in addition to any other penalty, interest, sum or charge imposed by this code or this chapter. Delinquent taxes and fees, penalty and interest imposed by this chapter and this code may be collected in a civil action.
3. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

3.08.075 Forms and Regulations. The City Manager 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 medical marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

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

SECTION TWO: 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 THREE: SAVINGS. Notwithstanding any amendment/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 the Ordinance 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.

Adopted by the City Council and approved by the Mayor this 23rd day of October 2014.



Mayor

ATTEST:



City Recorder