

**CITY OF BAY CITY
ORDINANCE NO. 662**

**AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF NON-MEDICAL
MARIJUANA AND NON-MEDICAL MARIJUANA-INFUSED PRODUCTS
IN THE CITY OF BAY CITY
AND DECLARING AN EMERGENCY**

WHEREAS, Bay City is an Oregon municipal corporation having the authority and power under the terms of its Charter to exercise all the powers and authority that the constitution, statutes, and common law of the United States and this State expressly or impliedly grant or allow as fully as though each such powers were specifically enumerated therein; and

WHEREAS, except as otherwise provided, all powers of the City shall be vested in the Council; and

WHEREAS, the City Council wishes to exercise the power to tax the sale or transfer of non-medical marijuana and non-medical marijuana-infused products within the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BAY CITY DOES ORDAIN AS FOLLOWS:

SECTION 1. Purpose

For the purposes of this Ordinance, every person who sells non-medical marijuana or non-medical marijuana-infused products in the City of Bay City is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of non-medical marijuana and non-medical marijuana-infused products. All medical marijuana and medical marijuana-infused products are exempted from any tax.

SECTION 2. Definitions

As used in this ordinance, unless the context requires otherwise:

1. "City Recorder" means the City Recorder for the City of Bay City or his/her designee.
2. "Gross Sales" means the total amount received in money, credits, property or other consideration from sales of non-medical 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 non-edible 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 non-edible 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, as may be amended from time to time.
5. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, limited liability partnership or corporation, 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 Recorder, 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 or marijuana-infused product within the City.
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 or medical marijuana infused products 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.
9. "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.
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 this chapter.
11. "Taxpayer" means any person obligated to account to the City Recorder for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

SECTION 3. Tax Imposed

A tax is hereby levied and shall be paid by every seller exercising the taxable privilege of selling non-medical marijuana or non-medical marijuana-infused products as defined in this Ordinance. The City Recorder is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

SECTION 4. Amount and Payment, Deductions/Exemption of Medical Marijuana.

1. All medical marijuana and medical marijuana infused products are exempt from City taxation, if they are sold pursuant to the provisions of the Oregon Medical Marijuana Act, as may be amended from time to time.
2. In addition to any fees or taxes otherwise provided for by law, every seller engaged in the sale of non-medical marijuana and non-medical marijuana-infused products shall pay a tax to the City of Bay City as follows:
 - a. Ten percent (10%) of the gross sale amount paid to the seller of non-medical marijuana or non-medical marijuana-infused products by individuals.
3. The following deductions shall be allowed against sales received by the seller providing non-medical marijuana or non-medical marijuana-infused products:
 - 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 non-medical marijuana or non-medical marijuana-infused products and does not include any adjustments for other services furnished by a seller.

SECTION 5. Seller Responsible for Payment of Tax

1. Every seller licensed to sell non-medical marijuana, and selling non-medical marijuana product within the City, is subject to this tax. The seller will register with the City on forms prescribed by the City and will provide all applicable approvals from the State of Oregon, indicating that they have complied with all state licensing requirements
2. 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 City Recorder, on forms provided by the City, specifying the total sales subject to this ordinance and the amount of tax collected under this ordinance. The seller may submit a request for shorter reporting periods. All requests for shorter reporting periods shall be (a) submitted at times permitted by the City Recorder, and (b) approved or disapproved at the City Recorder's sole discretion. A return shall not be considered filed until it is actually received by the City Recorder.

3. At the time the return is filed, the full amount of the tax collected shall be remitted to the City.
4. 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 Recorder, 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 Recorder may order such a change. The City Recorder may establish shorter reporting periods for any seller if the City Recorder deems it necessary in order to ensure collection of the tax. The City Recorder 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 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 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 Recorder, records of all sales made by the dispensary or facility and such other books or accounts as may be required by the City Recorder for a period of three (3) years or until all taxes associated with the sales have been paid, whichever is longer. The City shall have the right to inspect all such records at all reasonable times.

SECTION 6. Penalties and Interest

1. Any seller who fails to remit any portion of any tax imposed by this ordinance 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.
2. If the City 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.
3. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this ordinance 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.
4. 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.

5. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of Bay City General Fund to offset the costs of auditing and enforcement of this tax.

SECTION 7. Failure to Report and Remit Tax – Determination of Tax by City Recorder

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 Recorder 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 Recorder 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 Recorder 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 Recorder 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 8 of this Ordinance. If no appeal is filed, the City Recorder's determination is final and the amount thereby is immediately due and payable.

SECTION 8. Appeal

Any seller aggrieved by any decision of the City Recorder with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the City Council, except that the appeal shall be filed within 30 (thirty) days of the serving or mailing of the determination of tax due. The City Council shall hear and consider any records and evidence presented bearing upon the City Recorder's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable.

SECTION 9. Refunds

1. 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 Ordinance, it may be refunded as provided in subparagraph 2 of this section. The claim shall be on forms furnished by the City.
2. The City Recorder shall have twenty (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 City Recorder shall notify the claimant in writing of the City Recorder'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 City Recorder to be a valid claim, in a manner prescribed by the City Recorder 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 City Recorder of claimant's choice no later than fifteen (15) days following the date City Recorder mailed the determination. In the event claimant has

not notified the City Recorder of claimant's choice within the fifteen (15) day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

3. Any credit for erroneous overpayment of tax made by a seller taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a seller must be so taken or filed within three (3) years after the date on which the overpayment was made to the City.
4. 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 Recorder acknowledged the validity of the claim.

SECTION 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 of Bay City for the recovery of such amount. In lieu of filing an action for the recovery, the City of Bay City, when taxes due are more than 30 (thirty) days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Bay 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 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.

SECTION 11. Violation

1. It is a violation of this Ordinance 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 City;
 - 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.

Any person willfully violating any of the provisions of this ordinance shall be guilty of a misdemeanor and may be punishable, therefore, by a fine of not more than Five Hundred Dollars (\$500.00), in addition to any out-of-pocket costs incurred by the City in determining the willful violation, including any accounting or legal fees

incurred by the City.

2. 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.

SECTION 12. Confidentiality

Except as otherwise required by law, it shall be unlawful for the City, or any City 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 non-medical marijuana or non-medical marijuana-infused products are 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 or an appeal from the City 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 (6) 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).

SECTION 13. Audit of Books, Records, or Persons

1. 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 Recorder or an authorized agent of the City Recorder.
2. If the examinations or investigations disclose that any reports of sellers filed with the City Recorder pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the City Recorder may make such changes in subsequent reports and payments, or make such refunds, as may

be necessary to correct the errors disclosed by its examinations or investigations.

3. The seller shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the seller paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of 1 percent per month, or the portion thereof, from the date the original tax payment was due.
4. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the City may immediately seek a subpoena from Tillamook County Circuit 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.
5. Every seller shall keep a record of all sales of non-medical marijuana and non-medical marijuana-infused products. The records shall, at all times during the business hours of the day, be subject to inspection by the City or authorized officers or agents of the City Recorder.
6. Every seller shall maintain and keep, for a period of three (3) years, or until all taxes associated with the sales have been paid, whichever is longer, all records of marijuana and marijuana-infused products sold.

SECTION 14. Forms and Regulations

The City Recorder is hereby authorized to prescribe forms to aid in the making of returns, the ascertainment, assessment and collection of said non-medical marijuana tax and in particular and to provide for:

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

SECTION 15. 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.

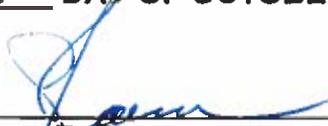
SECTION 16. Savings

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 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.

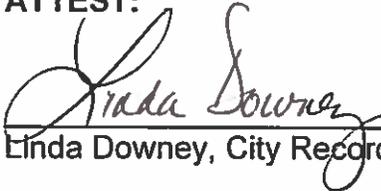
SECTION 17. Emergency. The City Council of the City of Bay City declares an emergency to exist for the imposition of tax, upon approval by the voters of this state for non-medical marijuana to be sold, and for the peace, health and safety of the City and therefore declares that this ordinance shall become immediately effective as of the date of passage.

APPROVED BY THE BAY CITY COUNCIL THIS 28th DAY OF OCTOBER, 2014
AND APPROVED BY THE MAYOR THIS 28th DAY OF OCTOBER, 2014.



Shaena E. Peterson, Mayor

ATTEST:



Linda Downey, City Recorder

First Reading: October 28, 2014

Second Reading: October 28, 2014

Adoption: October 28, 2014

Ayes: 6

Nayes: 0

Abstentions: 0