

CITY OF SILVERTON
ORDINANCE
17-04

AN ORDINANCE OF THE SILVERTON CITY COUNCIL AMENDING SILVERTON MUNICIPAL CODE; TITLE 3, CHAPTER 3.15 TO ALIGN THE CHAPTER'S TERMS WITH STATE LAW AND THE CITY'S CODE, ADD NEW INTEREST AND PENALTY LANGUAGE AND DECLARING AN EMERGENCY

WHEREAS, on March 7, 2016, the Silverton City Council adopted Ordinance No. 16-06 to impose a 3% tax on the sale of marijuana items by a marijuana retailer and added chapter 3.15 to the Silverton City Code; and

WHEREAS, pursuant to ORS 475B.345, the Silverton City Council referred Ordinance No. 16-06 to the City electorate in the November 2016 statewide election; and

WHEREAS, the City electorate approved the 3% tax on the sale of marijuana items by a marijuana retailer; and

WHEREAS, the City now wishes to amend chapter 3.15 align the chapter's term with state law and the Silverton Municipal Code, incorporate new interest and penalty language and streamline the chapter.

NOW THEREFORE THE CITY OF SILVERTON ORDAINS AS FOLLOWS:

Section 1: The Silverton Municipal Code is amended as follows:

Chapter 3.15
Marijuana Tax

3.15.010 Purpose.

For the purposes of this chapter, every person who sells marijuana items in the City of Silverton is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of marijuana items.

3.15.020 Definitions.

When not ~~clearly~~ otherwise clearly indicated by the context, the following words and phrases as used in this chapter have the following meanings:

- A. ~~“Cannabinoid” means any of the chemical compounds that are the active constituents of marijuana.~~
- B. ~~“Cannabinoid product” means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers. It does not include: (1) usable marijuana by itself; (2) a cannabinoid concentrate by itself; (3) a cannabinoid extract by itself; or (4) industrial hemp.~~

~~“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.~~

~~A. “Manager” means the City Manager of the City of Silverton or their designee.~~

~~C. “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.~~

~~D. “Marijuana Facilities” means recreational Marijuana Producers, recreational Marijuana Processors, recreational marijuana retailers and recreational marijuana wholesalers.~~

~~E. “Marijuana Processor” means a facility licensed by the Oregon Liquor Control Commission or registered by the Oregon Health Authority that the process, compound or convert marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extract.~~

~~F. “Marijuana Producer” means a facility that is licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.~~

~~A. “Marijuana Products items” means cannabinoid concentrates, cannabinoid extracts, cannabinoid products or and marijuana.~~

~~B. “Marijuana retailer” means a facility licensed by the Oregon Liquor Control Commission to sell marijuana to a consumer.~~

~~G. “Marijuana Wholesaler” means a facility licensed by the Oregon Liquor Control Commission to purchase marijuana products in Oregon for resale to a person other than a consumer.~~

~~C. “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.~~

~~H. “Oregon Liquor Control Commission” the state agency responsible for regulating the sale of recreational marijuana in Oregon through the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act.~~

~~I. “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 marijuana retailer.~~

~~D. “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 marijuana retailer.~~

~~E. “Retail sale price” means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.~~

- F. "Tax" means either the tax payable by the marijuana retailer or the aggregate amount of taxes due from a marijuana retailer during the period for which the marijuana retailer is required to report collections under this chapter.
- G. "Tax administrator" means any person designated by the City Council to collect the tax and enforce this chapter.
- H. "Taxpayer" means any person obligated to account to the tax administrator Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

3.15.030 Levy of Tax.

The City of Silverton hereby imposes a tax of three percent on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.

- ~~A. Marijuana products as defined in this chapter are subject to and must pay a tax for exercising that privilege. This tax is in addition to any other taxes or fees required by the City.~~
- ~~B. The amount of tax levied is as follows:

 - ~~1. Three percent (3%) of the gross sale amount paid to the marijuana retailer of marijuana and marijuana infused products by persons who are purchasing marijuana and marijuana-infused products but are not doing so under the provisions an Oregon Liquor Control Commission license.~~~~

3.15.040 Deductions.

The following deductions are allowed against sales received by the marijuana retailer providing marijuana ~~products~~ items:

- A. Refunds of sales actually returned to any purchaser;
- B. Any 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~~ items and does not include any adjustments for other services furnished by a marijuana retailer.

3.15.050 Marijuana Retailer Responsible For Payment of Tax.

- A. Every marijuana retailer 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 tax administrator Manager, on forms provided by the tax administrator City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The marijuana retailer may request or the tax administrator Manager may establish shorter reporting periods for any marijuana retailer if the marijuana retailer or tax administrator Manager deems it necessary in order to ensure collection of the tax. The tax administrator Manager 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 tax administrator Manager.
- B. At the time the return is filed, the marijuana retailer must remit to the tax administrator Manager the full amount of the tax collected. Payments received by the tax administrator 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.

- C. The City tax administrator 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.
- D. If the tax administrator Manager, in ~~his or her~~ its 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 tax administrator Manager may order such a change. The tax administrator Manager may establish shorter reporting periods for any marijuana retailer if the tax administrator Manager deems it necessary in order to ensure collection of the tax. The tax administrator Manager 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. Marijuana retailers must hold in trust all taxes collected pursuant to this chapter for the City's account until the marijuana retailer makes payment to the tax administrator Manager. A separate trust bank account is not required in order to comply with this provision.
- E. Every marijuana retailer must keep and preserve records of all sales in an accounting format as required by Oregon Liquor Control Commission.

3.15.060 Penalties and Interest.

- A. Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return was originally required to be filed by the marijuana retailer to the time of payment.
- B. If a marijuana retailer fails to file a return with the tax administrator or pay the tax as required, a penalty shall be imposed upon the marijuana retailer in the same manner and amount provided under ORS 314.400.
- C. Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid by the marijuana retailer and remitted to the tax administrator.
- D. If at any time a marijuana retailer fails to remit any amount owed in taxes, interest or penalties, the tax administrator is authorized to enforce collection on behalf of the City of the owed amount in accordance with ORS 475B.700 to 475B.755, any agreement between the Oregon Department of Revenue and City of Silverton under ORS 305.620 and any applicable administrative rules adopted by the Oregon Department of Revenue.
- ~~—A. Any marijuana retailer who fails to remit any portion of any tax imposed by this chapter within the time required must pay a penalty of 10 percent of the amount of the tax, in addition to the amount of the tax.~~
- ~~—B. If any marijuana retailer 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 marijuana retailer must pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.~~

- ~~C. If the tax administrator Manager determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax will be added thereto in addition to the penalties stated in subparagraphs A and B of this section.~~
- ~~D. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this chapter must pay interest at the rate one percent 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 any interest accrued under the provisions of this section, becomes a part of the tax required to be paid.~~
- ~~F. All sums collected pursuant to the penalty provisions in paragraphs A through C of this section will be distributed to the City's General Fund.~~
- ~~G. Waiver of Penalties. Penalties for late tax payments may be waived or reduced if approved by City Council pursuant to City Council policy. Nothing in this subsection requires the City to reduce or waive penalties.~~

3.15.070 Failure To Report and Remit Tax – Determination of Tax by Tax Administrator Manager.

- A. If any marijuana retailer fails to make any report of the tax required by this chapter within the time provided in this chapter, the tax administrator Manager will proceed to obtain facts and information on which to base the estimate of tax due. As soon as the tax administrator Manager procures such facts and information upon which to base the assessment of any tax imposed by this chapter and payable by any marijuana retailer, the tax administrator Manager will determine and assess against such marijuana retailer the tax, interest and penalties provided for by this chapter.
- B. If the tax administrator Manager makes a determination as outlined in subsection A, the tax administrator Manager must give notice to the marijuana retailer of the amount assessed. The notice must be personally served on the marijuana retailer or deposited in the United States mail, postage prepaid, addressed to the marijuana retailer at the last known place of address.
- C. The marijuana retailer may appeal the determination as provided in section 3.15.080. If no appeal is timely filed, the tax administrator's Manager's determination is final and the amount assessed is immediately due and payable.

3.15.080 Appeal.

- A. Any marijuana retailer aggrieved by any decision of the tax administrator Manager with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the City Council.
- B. The marijuana retailer must file the written notice of appeal within 10 days of the City's serving or mailing of the determination of tax due.
- C. The Council's decision is final subject only to judicial review pursuant to ORS 34.010 *et seq.*
- D. The City will serve the findings upon the appellant in the same manner as that used to give notice for a tax determination in section 3.15.070. Any amount found to be due is immediately due and payable upon the service of notice.

3.15.090. Refunds.

- A. The ~~tax administrator~~ ~~City~~ may refund to the marijuana retailer any tax, interest or penalty amount under any of the following circumstances:
 - 1. the marijuana retailer has overpaid the correct amount of tax, interest or penalty; or
 - 2. the marijuana retailer has paid more than once for the correct amount owed; or
 - 3. the ~~tax administrator~~ ~~City~~ has erroneously collected or received any tax, interest or penalties.
- B. The ~~City~~ ~~tax administrator~~ may not issue a refund under this subsection unless the marijuana retailer provides to the ~~tax administrator~~ ~~Manager~~ a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the ~~tax administrator~~ ~~Manager~~. The marijuana retailer must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.
- C. The ~~tax administrator~~ ~~Manager~~ 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 ~~tax administrator~~ ~~Manager~~ will notify the claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.
- D. If the ~~tax administrator~~ ~~Manager~~ determines the claim is valid, the claimant may either claim a refund or take as 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 ~~tax administrator~~ ~~Manager~~ of the claimant's choice no later than 15 days following the date the ~~tax administrator~~ ~~Manager~~ mailed the determination and the claimant must do so in a manner prescribed by the ~~tax administrator~~ ~~Manager~~.
- E. If the claimant does not notify the ~~tax administrator~~ ~~Manager~~ of 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.
- F. The City will not pay a refund unless the claimant establishes by written records the right to a refund and the ~~tax administrator~~ ~~Manager~~ acknowledges the claim's validity.

3.15.100 Actions to Collect.

Any tax required to be paid by any marijuana retailer under the provisions of this chapter is a debt owed by the marijuana retailer to the City. Any tax collected by a marijuana retailer that has not been paid to the City is a debt owed by the marijuana retailer to the City. Any person owing money to the City under the provisions of this chapter is liable to an action brought in the name of the City of Silverton for the recovery of the amount owing. In lieu of filing an action for the recovery, the City, when taxes due are more than 30 days delinquent, may submit any outstanding tax 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 \$50.00 or 50 percent of the outstanding tax, penalties and interest owing.

3.15.110 Violation Infractions.

- A. In addition to the penalties provided in section 3.15.060, a violation of this chapter is punishable as set forth in Silverton Municipal Code; Title 1, General Provisions; Chapter 1.08, General Penalty. It is a violation of this chapter for any marijuana retailer 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 tax administrator Manager;
 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 section are not exclusive and do not prevent the City from exercising any other remedy available under the law.
- C. 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.

3.15.120 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 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; or
- B. The disclosure of general statistics in a form which would not reveal an individual marijuana retailer's financial information; or
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the tax administrator Manager or an appeal from the tax administrator Manager for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or 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).

3.15.130 Audit of Books, Records or Persons.

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 marijuana retailer's state and federal income tax return, bearing upon the matter of the marijuana retailer'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 tax administrator Manager or an authorized agent of the tax administrator Manager. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the tax administrator Manager may immediately seek

a subpoena from the Silverton 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.

3.15.140 Forms And Regulations.

A. The ~~tax administrator~~ **Manager** 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:

1. A form of report on sales and purchases to be supplied to all vendors;
2. The records that marijuana retailers providing marijuana ~~and marijuana-infused products~~ **items** must keep concerning the tax imposed by this chapter.

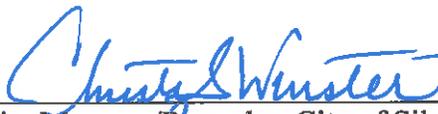
Section 2: That this ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance takes effect on its passage.

Ordinance adopted by the City Council of the City of Silverton, this 6th day of February 2017.



Mayor, City of Silverton
Rick Lewis

ATTEST



City Manager/Recorder, City of Silverton
Christy S. Wurster