

186857

ORDINANCE NO.

Establish a tax on the sale, transfer, mixing, handling or serving of recreational marijuana and recreational marijuana-infused products in the City (Ordinance; add Code Chapter 6.07)

The City of Portland Ordains:

Section 1. Council finds:

1. The City has incurred and will continue to incur substantial costs related to the legalization of medical marijuana and likely incur additional ongoing expenses if and when recreational marijuana becomes legalized in Oregon.
2. The City is an Oregon home-rule municipal corporation having the authority under the terms of its Charter to exercise all powers and authority that the constitutions, statutes, and common law of the United States and of the State of Oregon expressly or impliedly grant or allow as fully as though each such power were specifically enumerated therein.
3. The City desires to tax the sale, transfer, mixing, handling or serving of recreational marijuana and marijuana-infused products within the City. The tax is imposed to raise general revenues and to offset increased costs to the City of police enforcement and other City services.
4. The City's estimated costs to administer this new tax will be significantly less than the tax proceeds expected from this new tax. The Revenue Division of the Bureau of Revenue and Financial Services estimates that this new tax will raise \$1.7 million to \$4 million in annual general fund revenues. The Revenue Division also estimates that to collect the tax, ongoing costs will be \$280,000 and one-time costs will be \$150,000.

NOW, THEREFORE, the Council directs:

a. A new chapter, 6.07 Marijuana and Marijuana-Infused Products Tax, establishing a tax on the sale, transfer, mixing, handling or serving of recreational marijuana and recreational marijuana-infused products is hereby added to Title 6 "Special Taxes" of the Portland City Code as follows:

6.07.010 Purpose

For the purposes of PCC 6.07, every person who sells, transfers, mixes, handles or serves recreational marijuana, or recreational marijuana-infused products in the City is exercising a taxable privilege. The purpose of PCC 6.07 is to impose a tax upon the sale, transfer, mixing, handling or serving of recreational marijuana and recreational marijuana-infused products.

6.07.020 Definitions

When not clearly otherwise indicated by the context, the following words and phrases as used in PCC 6.07 have the following meanings:

- A. "Director" means the director of the Revenue Division of the Bureau of Revenue and Financial Services or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sale, transfer, mixing, handling or serving of recreational marijuana and recreational marijuana-infused products that is subject to the tax imposed by PCC 6.07.
- 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. "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.
- E. "Person" means a 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.
- F. "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.
- G. "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.
- H. "Seller" means any person who is required to be licensed or has been licensed by the state to provide, mix, handle, or serve marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.
- I. "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 PCC 6.07.
- J. "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 PCC 6.07.

6.07.030 Levy of tax

A. Every Seller exercising the taxable privilege of selling, mixing, handling or serving recreational marijuana and recreational marijuana-infused products as defined in PCC 6.07 is subject to and must pay a tax for exercising that privilege.

B. The amount of tax levied is as follows:

Ten percent (10%) of the gross sale amount paid to the Seller of recreational marijuana and recreational marijuana- infused products by persons who are purchasing recreational marijuana and recreational marijuana-infused products. This tax would not apply to sales made under the provisions of the Oregon Medical Marijuana Program.

6.07.040 Deductions

The following deductions are allowed against sales received by the Seller providing marijuana:

- 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 and does not include any adjustments for other services furnished by a Seller.

6.07.050 Seller responsible for payment of tax

- A. 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 Revenue Division, specifying the total sales subject to PCC 6.07 and the amount of tax collected under PCC 6.07. 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 the payment of the tax. A return is not considered filed until it is actually received by the director.
- B. At the time the return is filed, the Seller must remit to the Director the full amount of the tax collected. 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. 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.
- D. 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 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 PCC 6.07 on the City's behalf until the Seller makes payment to the Director. A separate trust bank account is not required in order to comply with this provision, unless the Director determines one necessary to ensure collection of the tax.
- E. 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 after the tax was due or paid, whichever is later, all such books, invoices and

other records. The Director has the right to inspect all such records at all reasonable times.

6.07.060 Penalties and interest

- A. Any Seller who fails to remit any portion of any tax imposed by PCC 6.07 within the time required must pay a penalty of 15 percent of the entire amount of the tax, in addition to the amount of the tax.
- B. If any Seller fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent, the Seller must pay a second delinquency penalty of 15 percent of the entire 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 PCC 6.07 is due to fraud, a penalty of 25 percent of the entire amount of the tax will be added thereto in addition to the penalties stated in PCC 6.07.060A and PCC 6.07.060B.
- D. In addition to the penalties imposed, any Seller who fails to remit any tax imposed by PCC 6.07 must pay compound interest at the rate of one percent per month or fraction thereof on the amount of the tax, inclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed, and any interest that accrues under the provisions of PCC 6.07.060, becomes a part of the tax required to be paid.
- F. All sums collected, including penalty and interest, will be distributed to the City's general fund.
- G. 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.

6.07.070 Failure to report and remit tax – determination of tax by director

- A. If any Seller fails to make any report of the tax required by PCC 6.07 within the time provided in PCC 6.07, 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 PCC 6.07 and payable by any Seller, the Director will determine and assess against such Seller the tax, interest and penalties provided for by PCC 6.07.
- B. If the Director makes a determination as outlined in PCC 6.07.070A, 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.
- C. The Seller may appeal the determination as provided in PCC 6.07.080. If no appeal is timely filed, the Director's determination is final and the amount assessed is immediately due and payable.

6.07.080 Appeal

- A. Any Seller aggrieved by any decision of the Director with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the Business License Appeals Board as created under PCC 7.02.295.

B. 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.

C. Upon receipt of the appeal form, the City will schedule a hearing to occur within 90 calendar days. The City 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 Business License Appeals Board will hear and consider any records and evidence presented bearing upon the Director's determination of amount 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 Business License Appeal Board 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.

6.07.090. Credits/Refunds

A. The City may credit to the Seller any tax, interest or penalty amount under any of the following circumstances:

1. The Seller has overpaid the correct amount of tax, interest or penalty; or
2. The Seller has paid more than once for the correct amount owed; or
3. The City has erroneously collected or received any tax, interest or penalties.

B. The City may not issue a credit under PCC 6.07.090 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 director. The Seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a credit.

C. The Director has 30 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.

D. If the Director determines the claim is valid, the claimant may 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.

E. In cases where there is no future filing to claim the credit or other circumstances where a credit amount should be refunded, the claimant may petition the director to have the credit amount refunded to the claimant.

F. 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.

G. The Director may, upon request of the claimant or the Revenue Division, extend the deadlines to file a refund/credit claim or review a refund/credit claim by up to 60 additional days for good cause.

6.07.100 Actions to collect

Any tax required to be paid by any Seller under the provisions of PCC 6.07 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 PCC 6.07 is liable to an action brought in the name of the City of Portland 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.

6.07.110 Violation infractions

A. All violations of PCC 6.07 are also subject to civil penalties of up to \$2,000 per occurrence. It is a violation of PCC 6.07 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 PCC 6.07 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.

6.07.120 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 PCC 6.07. Nothing in PCC 6.07.120 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 Seller'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 Director or an appeal from the Director for amounts due the city under PCC 6.07; or

D. The disclosure of information to a collection agency in order to collect any delinquent tax amount; 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 Council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

F. The Revenue Division may also disclose and give access to information described in PCC 6.07.120 to:

1. The City Attorney, his or her assistants and employees, or other legal representatives of the City, to the extent the Revenue Division deems disclosure or access necessary for the performance of the duties of advising or representing the Revenue Division, including but not limited to instituting legal actions on unpaid accounts.

2. Other employees, agents and officials of the City, to the extent the Revenue Division deems disclosure or access necessary for such employees, agents or officials to:

- a. Aid in any legal collection effort on unpaid accounts,
- b. Perform their duties under contracts or agreements between the Revenue Division and any other department, bureau, agency or subdivision of the City relating to the administration of PCC 6.07, or
- c. Aid in determining whether a Revenue Division account is in compliance with all city, state and federal laws or policies.

6.07.130 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 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 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.

6.07.140 Forms and regulations

A. The Director is authorized to prescribe forms and promulgate rules, policies 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 Sellers;
2. The records that Sellers providing, mixing, serving, or handling marijuana and marijuana-infused products must keep concerning the tax imposed by PCC 6.07.

6.07.150 Invalidity

If any section, clause, phrase, sentence or part of this Chapter shall for any reason be adjudged unconstitutional, invalid or unenforceable, it shall only void that part, clause, phrase or section so declared and the remainder shall remain in full force and effect.

Passed by the Council: OCT 22 2014

Mayor Charlie Hales

Prepared by: Scott Karter

Date Prepared: 10/09/2014

LaVonne Griffin-Valade

Auditor of the City of Portland

By



Deputy

Agenda No. **ORDINANCE 186857**

Title

~~Adding a new Portland City Code chapter to~~ establish a tax on the sale, transfer, mixing, handling or serving of recreational marijuana and recreational marijuana-infused products in the City of Portland (Ordinance); add Code Chapter 6.07

<p>INTRODUCED BY Commissioner/Auditor: Mayor Charlie Hales</p>	<p>CLERK USE: DATE FILED <u>OCT 09 2014</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales <i>TAA</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p>	<p style="text-align: right;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p>
<p>BUREAU APPROVAL</p> <p>Bureau: Mayor's Office</p>	<p>ACTION TAKEN:</p> <p>OCT 15 2014 PASSED TO SECOND READING OCT 22 2014 9:30 A.M.</p>
<p>Prepared by: Rachael Wiggins Date Prepared: 10/9/2014</p>	
<p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances <i>-Tom</i></p>	
<p>City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan <i>[Signature]</i></p>	
<p>Council Meeting Date October 15, 2014</p>	

AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time:</p> <p>Total amount of time needed: (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input checked="" type="checkbox"/> <i>1 of 2</i></p> <p>Total amount of time needed: 15 min (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Saltzman	✓	
4. Novick	✓	
Hales	_____	_____