

ORDINANCE NO. 885

AN ORDINANCE OF THE CITY OF MADRAS IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER; AND REFERRING ORDINANCE.

WHEREAS, Section 34a, Chapter 614, Oregon Laws 2015 (HB 3400) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent (3%) tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city; and

WHEREAS, the Madras City Council desires to impose a three percent (3%) tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the City of Madras.

NOW, THEREFORE, the City of Madras ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Short Title; Purpose. This Ordinance No. 885 may be referred to as the "Marijuana Taxing Ordinance" and will be cited and referred to herein as this "Ordinance." The purpose of this Ordinance is to impose a tax on the retail sale of marijuana items.
3. Definitions. For purposes of this Ordinance, the following terms and phrases have the meanings assigned to them below:

"City" means the City of Madras, an Oregon municipal corporation.

"Council" means the Madras City Council.

"Gross taxable sale(s)" means the total amount received in money, credits, property, and/or other consideration from sales of marijuana items.

"Marijuana item(s)" has the meaning assigned to such term under Section 5, Chapter 1, Oregon Laws 2015 (Measure 91), as amended by Section 1, Chapter 614, Oregon Laws 2015 (HB 3400).

"Marijuana retailer(s)" or "seller(s)" means a person who sells marijuana items to a consumer in this state and who holds a license under Section 22, Chapter 1, Oregon Laws 2015 (Measure 91).

"Person(s)" means any natural person, joint venture, partnership, association, club, company, limited liability company, limited liability partnership, corporation, business, trust, organization, any other entity, and/or any group or combination acting as a unit.

"Tax(es)" 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 Ordinance.

"Tax administrator" means city's then appointed city administrator or his or her designee.

4. Tax Imposed. To the fullest extent permitted under Section 34a, Chapter 614, Oregon Laws 2015 (HB 3400), there is hereby levied and will be paid a tax by every marijuana retailer exercising the taxable privilege of selling marijuana items. The amount of tax will be three percent (3%) of the gross taxable sales of the marijuana retailer in the area subject to city's jurisdiction. The seller will collect the tax at the point of sale of a marijuana item. Subject to applicable law, the tax rate may be adjusted from time to time by council resolution.

5. Deductions. The following deductions will be allowed against sales received by the seller: (a) refunds of sales actually returned to any purchaser; and (b) any adjustments in sales that amount to a refund to a purchaser, provided such adjustment pertains to the actual sale of marijuana items and does not include any adjustments for other services furnished by a seller.

6. Payment of Tax.

6.1 Tax Returns. Every seller will, on or before the last day of the month immediately following the end of each calendar quarter (April, July, October, and January), complete and file a marijuana tax return with the tax administrator on forms provided by city. The forms will specify, among other things requested by city, the total gross taxable sales and the amount of tax collected under this Ordinance. The tax administrator may establish shorter reporting periods for any seller if the tax administrator deems it necessary in order to ensure timely and proper collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. The tax administrator may require that the seller provide additional information in the subject tax return relevant to payment of the tax.

6.2 Filing of Tax Returns. A tax return will not be considered filed until it is actually received by the tax administrator. The person required to file the return will deliver the applicable tax to the tax administrator at the office of the tax administrator, either by personal delivery or by mail. If the return is mailed, the postmark will be considered the date of delivery for determining delinquencies.

6.3 Payment of Tax. At the time the tax return is filed, the full amount of the tax collected will be remitted to the tax administrator. Payments received by the tax administrator for application against existing liabilities will be credited toward the period designated by the seller under conditions that are not prejudicial to city's interest. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods. Non-designated payments will 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 tax administrator determines that an alternative order of payment application would be in city's best interest in a particular tax or factual situation, the tax administrator may order such a change. All taxes collected by sellers pursuant to this Ordinance will be held in trust for the account of city until payment is made to the tax administrator. A separate trust bank account is not required in order to comply with this provision.

6.4 Administrative Fee. Every seller required to remit the tax imposed under this Ordinance is permitted to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

6.5 Record Retention. Every seller must keep and preserve in an accounting format established by the tax administrator records of all sales made by the seller and such other books or accounts as may be required by the tax administrator. Every seller must keep and preserve for a period of three years all such books, invoices, and other records. The tax administrator will have the right to inspect all such records at all reasonable times upon request of the tax administrator.

7. Penalties; Interest.

7.1 Penalties – Late Payment. Any seller who fails to remit any portion of the tax imposed by this Ordinance within the time required will pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax due. Any seller who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent will pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due in addition to the amount of the tax due and the aforementioned ten percent (10%) penalty. When a shorter return period is required under Section 6.1, penalties and interest under this Section 7 will be computed according to the shorter return period.

7.2 Penalties – Fraud or Evade. If the tax administrator determines that the nonpayment of any remittance due under this Ordinance is due to fraud or intent to evade the provisions hereof, a penalty of twenty-five percent (25%) of the amount of the tax due will be added thereto in addition to the penalties provided under Section 7.1.

7.3 Interest. In addition to the penalties imposed under this Ordinance, any seller who fails to timely remit any tax imposed under this Ordinance will pay interest at the rate of one percent (1.0%) per month or fraction thereof, without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid in full. Penalties and interest imposed under the provisions of this Section 7 will become part of the tax required to be paid pursuant to this Ordinance.

7.4 Waiver of Penalties. Any seller who fails to remit the tax levied under this Ordinance within the time stated in this Ordinance will pay the penalties and interest stated in this Ordinance; provided, however, the seller may petition for wavier or refund of any penalty or portion thereof. If the total penalty due does not exceed \$10,000.00, any petition for waiver or refund of penalties will be directed to and determined by the tax administrator. If the total penalty due exceeds \$10,000.00, any petition for waiver or refund of penalties will be directed to and determined by the council. Upon receipt of a petition for wavier or refund of penalties as set forth herein, the tax administrator or council may, if a good and sufficient reason is shown, waive or direct a refund of the penalty or any portion thereof.

8. Failure to Report and Remit Tax – Tax Administrator. If any seller fails to make, within the time provided under this Ordinance, any report of the tax imposed under this Ordinance, the tax administrator will proceed in such manner as deemed best to obtain facts and information on which to base an estimate of the tax due. As soon as the tax administrator procures such facts and information as he or she is able to obtain to assist in estimating the tax due and payable by the seller, the tax administrator will proceed to determine and assess against such seller the tax, interest, and penalties provided under this Ordinance. In case such determination is made, the tax administrator will 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 9. If no appeal is timely filed, the tax administrator's determination is final and the amount thereby is immediately due and payable.

9. Appeal. Any seller aggrieved by any decision of the tax administrator with respect to the amount of tax, interest, and/or penalties due under Section 8 may appeal to the council by filing a written notice of appeal with the tax administrator within thirty (30) days of the serving or mailing of the tax administrator's determination of the tax due. The tax administrator will transmit the notice of appeal together with the file of the appealed matter to the council after which the council will fix a time and place for hearing the appeal. The council will give the appellant not less than ten (10) days' prior written notice of the time and place of hearing of the appealed matter.

10. Refunds.

10.1 Claim of Refund. Whenever the amount of any tax, interest, and/or penalty has been overpaid or paid more than once, or has been erroneously collected or received by city under this Ordinance, it may be refunded as provided in Section 10.2, provided a claim in writing, stating under penalty of perjury, identifies the specific grounds upon which the claim is founded and is filed with the tax administrator within one year of the date of payment. The claim will be made on forms furnished by the tax administrator. No refund will be paid under the provisions of this Section 10 unless the claimant established the right by written records showing entitlement to such refund and the tax administrator acknowledged the validity of the claim.

10.2 Refund Processing. The tax administrator will have thirty (30) days from the date of receipt of a claim of refund to review the claim and make a determination in writing as to the validity of the claim. The tax administrator will notify the claimant in writing of the tax administrator's determination. Such notice will be mailed to the address provided by the claimant on the claim form. If the tax administrator determines the claim is valid, the claimant may, in a manner prescribed by the tax administrator, 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 claimant will notify the tax administrator of the claimant's choice no later than fifteen (15) days following the date the tax administrator mailed the determination. If the claimant has not notified the tax administrator of the claimant's choice within the aforementioned 15-day period and the claimant is still in business, a credit will be granted against the tax liability for the immediately following reporting period. If the claimant is no longer in business, a refund check will be mailed to the claimant at the address provided in the claim form.

11. Collection Actions. Any tax required to be paid by any seller under the provisions of this Ordinance will be deemed a debt owed by the seller to city. Any such tax collected by a seller that has not been paid to city will be deemed a debt owed by the seller to city. City may bring an action in its name to recover amounts owing under the provisions of this Ordinance and/or pursue any other rights and remedies available at law or in equity. In lieu of commencing legal action, city, when taxes due are more than thirty (30) days' delinquent, may submit any outstanding tax to a collection agency. So long as city has complied with the provisions set forth in ORS 697.105, as amended, if city turns over a delinquent tax account to a collection agency, it may add to the amount owing the collection agency

fees, not to exceed the greater of \$50.00 or fifty percent (50%) of the outstanding tax, penalties, and interest owing. In addition to any penalties and interest provided under this Ordinance, city may recover from the seller any and all legal and administrative fees and expenses incurred by city to enforce this Ordinance and/or to collect any unpaid taxes, penalties, and/or interest.

12. Violations; Infractions. It is a violation of this Ordinance for any seller or other person to engage in any of the following: (a) fail or refuse to comply with this Ordinance as required herein; (b) fail or refuse to furnish any tax return required to be made under this Ordinance; (c) fail or refuse to permit inspection of records; (d) fail or refuse to furnish a supplemental tax return or other data required by the tax administrator; (e) render a false or fraudulent tax return or claim; and/or (f) fail, refuse, and/or neglect to remit the tax to city by the due date. Violation of subsections (a), (b), (c), (d), and/or (f) of this Section 12 will be considered a Class C violation subject to a \$500.00 fine as specified in ORS 153.018. Filing a false or fraudulent return will be considered a Class C misdemeanor subject to a prison term of no more than thirty (30) days and/or a \$1,250.00 fine as specified in ORS 161.615 and ORS 161.635. The remedies provided in this Section 12 are not exclusive and will not prevent city from exercising any other remedies available under law or in equity, nor will the provisions of this Ordinance prohibit or restrict city or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance. All available remedies are cumulative and may be exercised singularly or concurrently. Each day in which a violation is caused or permitted to exist constitutes a separate offense. Each violation of this Ordinance will constitute a separate offense.

13. Confidentiality. Subject to and except as otherwise provided under applicable law, no city officer or employee will divulge, release, and/or make known in any manner any confidential financial information submitted or disclosed to city under the terms of this Ordinance; provided, however, nothing in this Section 13 will prohibit disclosure under the following circumstances: (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 that would not reveal an individual seller's financial information; (c) the disclosure of financial information in connection with city's enforcement of this Ordinance and/or the presentation of evidence to the court or other tribunal having jurisdiction in the prosecution of any criminal or civil claims by the tax administrator or an appeal from the tax administrator for amount due city under this Ordinance; and/or (d) the disclosure of records related to a business's failure to report and remit the tax imposed under this Ordinance. The 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), as amended.

14. Audits. The tax administrator, or any person authorized in writing by the tax administrator, may examine, during regular business hours, the books, papers, and accounting records relating to the matter of the seller's tax return after notification to the seller liable for the tax and may investigate the business of the seller in order to verify the accuracy of any return made or, if no return is made by the seller, to ascertain and determine the amount required to be paid. Seller will reimburse city for reasonable costs of an examination pursuant to this Section 14 if such examination discloses that the seller has paid ninety-five (95%) or less of the tax owing for the applicable period of examination.

15. Forms; Regulations. The tax administrator is hereby authorized to prescribe forms and promulgate rules and regulations to (a) aid in the making of returns, and (b) ascertain, assess, and collect the tax. Without otherwise limiting the generality of the immediately preceding sentence, the

tax administrator may prescribe a form of report for sales and purchases and promulgate rules and regulations concerning the identification of records that sellers of marijuana items must keep concerning the tax imposed under this Ordinance.

16. Referral. This Ordinance will be referred by council resolution to city's electors at the next statewide general election held on Tuesday, November 8, 2016.

17. When Ordinance Can Take Effect. This Ordinance will take effect (and the tax will be levied and imposed) upon passage only if city's voters reject (i.e., do not approve) the prohibition (ban) of recreational marijuana producers, processors, wholesalers, and retailers at the next statewide general election held on Tuesday, November 8, 2016.

18. Interpretation; Severability; Corrections. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. The provisions of this Ordinance are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected at any time by order of the council to cure editorial and/or clerical errors.

Passed by the Council and signed by the Mayor on January 12, 2016.

[Ordinance Not Yet in Effect, Effective Date will Depend on November 8, 2016 General Election.]