

1 **PROPOSED ENGROSSED ORDINANCE BILL NO. 5-16**

2 AN ORDINANCE IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA
3 ITEMS BY A MARIJUANA RETAILER; CREATING NEW PROVISIONS; AND
4 REFERRING ORDINANCE

5 *The City of Salem ordains as follows:*

6 **Section 1.** Section 34a of House Bill 3400 (2015) provides that a city council may adopt an
7 ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of
8 marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

9 **Section 2.** The City Council wants to impose a three percent tax on the sale of marijuana items
10 by a marijuana retailer in the area subject to the jurisdiction of the city;

11 **Section 3.** SRC Chapter 32 is repealed and replaced as follows:

12 **32.001. Purpose.** For the purposes of this Chapter, every person who sells marijuana items in the
13 City of Salem is exercising a taxable privilege. The purpose of this Chapter is to impose a tax
14 upon the retail sale of marijuana items consistent with section 34a of House Bill 3400 (2015).

15 **32.005. Definitions.** Except as the context otherwise specifically requires, as used in this
16 Chapter, the following mean:

17 (a) Director means the City Manager, or the City Manager's designee.

18 (b) Gross taxable sales means the total amount received in money, credits, property, or
19 other consideration from sale of marijuana items that is subject to the tax imposed by
20 this Chapter.

21 (c) Marijuana Item has the meaning given that term in Oregon Laws 2015, chapter 6014,
22 section 1.

23 (d) Medical Marijuana means marijuana that is sold or transferred pursuant to the Oregon
24 Medical Marijuana Act.

25 (e) Marijuana Retailer means a person who sells marijuana items to a consumer in this
26 state.

27 (f) Oregon Medical Marijuana Act means the legislation codified at ORS 475.300
28 through 475.346, as it may be amended from time to time, and any administrative
29 rules promulgated thereto.

- 1 (g) Person means any natural person, partnership, corporation, Limited Liability
2 Company, government entity, association, or other entity in law or fact.
- 3 (h) Purchase or Sale means the acquisition or furnishing for consideration by any person
4 of marijuana items within the City.
- 5 (i) Registry identification cardholder means a person who has been diagnosed by an
6 attending physician with a debilitating medical condition and for whom the use of
7 medical marijuana may mitigate the symptoms or effects of the person’s debilitating
8 medical condition, and who has been issued a registry identification card by the
9 Oregon Health Authority.
- 10 (j) Retail Sale means the transfer of goods or services in exchange for any valuable
11 consideration, and does not include the transfer or exchange of goods or services
12 between a grower or processor and a seller of marijuana items.
- 13 (k) Retail Sale Price means the price paid for a marijuana item, excluding tax, to a
14 marijuana retailer by or on behalf of a consumer of the marijuana item.
- 15 (l) Seller means any person who is required to be licensed or has been licensed by the
16 State of Oregon to provide marijuana items to purchasers for money, credit, property,
17 or other consideration.
- 18 (m) Tax means either the tax payable by the seller or the aggregate amount of taxes due
19 from a seller during the period for which the seller is required to report collections
20 under this Chapter.
- 21 (n) Taxpayer means any person obligated to account to the Director for taxes collected
22 or to be collected, or from whom a tax is due, under the terms of this Chapter.

23 **32.010. Levy of Tax.**

- 24 (a) As described in section 34a of House Bill 3400 (2015), the City of Salem hereby
25 imposes a tax of three percent (3%) on the retail sale price of marijuana items by a
26 marijuana retailer in the area subject to the jurisdiction of the city.
- 27 (b) The sale of medical marijuana shall be exempt from the tax imposed by this Chapter.
- 28 (c) The tax shall be collected at the point of sale of a marijuana item by a marijuana
29 retailer at the time at which the retail sale occurs and remitted by each marijuana
30 retailer that engages in the retail sale of marijuana items as set forth in this Chapter.

1 **32.015. Deductions.** The following deductions shall be allowed against sales received by the
2 seller providing marijuana items:

3 (a) Refunds of taxable sales actually returned to any purchaser;

4 (b) Any adjustments in sales which amount to a refund to a purchaser, providing such
5 adjustment pertains to the actual sale of marijuana items and does not include any
6 adjustments for other services furnished by a seller.

7 **32.020. Seller Responsible for Payment of Tax.**

8 (a) Every seller shall, on or before the last day of the month following the end of each
9 calendar quarter (April 30, July 31, October 31, and January 31), make a return to the
10 Director, on forms provided by the City, specifying the total sales subject to this
11 Chapter and the amount of tax due under this Chapter. When the due date falls on a
12 Saturday, a Sunday, or any legal holiday, the report may be filed on the next business
13 day without penalty. A return shall not be considered filed until it is actually received
14 by the Director.

15 (b) At the time the return is filed, the full amount of the tax due shall be remitted to the
16 Director. Payments received by the Director for application against existing liabilities
17 will be credited toward the period designated by the taxpayer under conditions that
18 are not prejudicial to the interest of the city. A condition considered prejudicial is the
19 imminent expiration of the statute of limitations for a period or periods.

20 (c) Non-designated payments shall be applied in the order of the oldest liability first, with
21 the payment credited first toward any accrued penalty, then to interest, then to the
22 underlying tax. If the Director, in the Director's sole discretion, determines that an
23 alternative order of payment application would be in the best interest of the City in a
24 particular tax or factual situation, the Director may order such a change.

25 (d) Returns and payments are due 30 days after a business is sold, ownership is
26 transferred, or upon cessation of business for any reason.

27 (e) All taxes collected by sellers pursuant to this Chapter shall be held in trust for the
28 account of the City until payment is made to the Director. A separate trust bank
29 account is not required in order to comply with this provision.
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1 (f) Every seller must keep and preserve, in a generally-accepted accounting format used
2 for reporting revenue and taxes due on business activity, detailed records of all sales
3 made. Every seller must keep and preserve for a period of six (6) years all such
4 books, invoices, and other records. The Director shall have the right to inspect all
5 such records at all reasonable times.

6 **32.025. Penalties and Interest.**

7 (a) Any seller who fails to remit any portion of any tax imposed by this Chapter within
8 the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in
9 addition to the amount of the tax.

10 (b) Any seller who fails to remit any delinquent remittance on or before a period of 60
11 days following the date on which the remittance first became delinquent, shall pay a
12 second delinquency penalty of ten percent (10%) of the amount of the tax, in addition
13 to the amount of the tax and the penalty first imposed.

14 (c) If the Director determines that the nonpayment of any remittance due under this
15 Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the
16 tax shall be added hereto, in addition to the penalties stated in subsections (a) and (b)
17 of this section.

18 (d) In addition to the penalties imposed, any seller who fails to remit any tax imposed by
19 this Chapter shall pay interest at the rate of nine percent (9%) per month or fraction
20 thereof on the amount of the tax, exclusive of penalties, from the date on which the
21 remittance first became due.

22 (e) Every penalty imposed, and such interest as accrues under the provisions of this
23 section, shall become a part of the tax required to be paid.

24 (f) Notwithstanding SRC 32.020(c), all sums collected pursuant to the penalty provisions
25 in subsection (a), (b), or (c), or the interest provision in subsection (d) of this section
26 shall be distributed to the City of Salem General Fund to offset the costs of auditing
27 and enforcement of this tax.

28 (g) Waiver of Penalties. A seller may petition the Director for waiver and refund of the
29 penalty or any portion thereof. The petition must be in writing and submitted to the
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1 Director within 90 days of the remittance due date. The Director shall make a
2 determination within 30 days of receiving the petition.

3 **32.030. Failure to Report and Remit Tax – Determination of Tax by Director.** If any seller
4 should fail to make, within the time provided in this Chapter, any report of the tax required by
5 this Chapter, the Director shall proceed in such manner as deemed best to obtain facts and
6 information on which to base the estimate of tax due. As soon as the Director procures such facts
7 and information as is able to be obtained, the Director shall determine and assess against such
8 seller the tax, interest, and penalties provided for by this Chapter. The Director shall give a
9 notice of the amount so assessed by having it served personally or by depositing it in the United
10 States certified mail, postage prepaid, addressed to the seller at the last known place of address.
11 The seller may appeal the Director’s determination as provided in SRC 32.035. If no appeal is
12 filed, the Director’s determination is final and the amount thereby is immediately due and
13 payable.

14 **32.035. Appeal.** A seller aggrieved by a decision of the Director with respect to the amount of
15 any tax or penalty may file a written appeal pursuant to the process set forth in SRC 20J.240
16 through SRC 20J.410, except that the appeal shall be filed within 30 days of the serving or
17 mailing of the Director’s decision. The hearings officer shall hear and consider any records and
18 evidence presented bearing upon the Director’s determination, and make findings affirming,
19 reversing, or modifying the determination. The findings of the hearings officer shall be final and
20 conclusive, and shall be served upon the appellant in the manner prescribed above for service of
21 notice of hearing. Any amount found to be due shall be immediately due and payable upon the
22 service of notice.

23 **32.040. Refunds.**

- 24 (a) Whenever the amount of any tax, interest, or penalty has been overpaid or paid more
25 than once, or has been erroneously collected or received by the City under this
26 Chapter, it may be refunded as provided in subsection (b) of this section, provided a
27 claim in writing, stating under penalty of perjury the specific grounds upon which the
28 claim is founded, is filed with the Director within one year of the date of payment.
29 The claim shall be on forms furnished by the Director.
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1 (b) The Director shall have 30 days from the date of receipt of a claim to make a written
2 determination as to its validity. The Director shall notify the claimant in writing of the
3 Director's determination. Such notice shall be mailed to the address provided by
4 claimant on the claim form. If the Director determines a claim is valid, a credit will be
5 granted against the seller's tax liability for the next reporting period. If the claimant is
6 no longer in business, a refund check will be mailed to the claimant at the address
7 provided in the claim form.

8 (c) No tax credit or refund shall be paid under the provisions of this section unless the
9 claimant established the right by written records showing entitlement to such refund
10 and the Director acknowledged the validity of the claim.

11 **32.045. Actions to Collect.** Any tax required to be paid by any seller under the provisions of this
12 Chapter shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller
13 which has not been paid to the City shall be deemed a debt owed by the seller to the City. When
14 taxes due are more than 30 days delinquent, the City shall submit any outstanding tax to a
15 collection agency. If the City complies with the provisions set forth in ORS 697.105, it may add
16 to the amount owing an amount equal to the collection agency fees.

17 **32.050. Violation.**

18 (a) It is a violation of this Chapter for any seller or other person to:

- 19 (1) Fail or refuse to comply as required herein;
- 20 (2) Fail or refuse to furnish any return required to be made;
- 21 (3) Fail or refuse to permit inspection of records;
- 22 (4) Fail or refuse to furnish a supplemental return or other data required by the
23 Director;
- 24 (5) Fail, refuse, or neglect to remit the tax to the City by the due date; or
- 25 (6) Render a false or fraudulent return or claim.

26 (b) Violation of subsections (1), (2), (3), (4), or (5) shall be considered an infraction.

27 Violation of subsection (6) shall be considered a misdemeanor.

28 (c) The remedies provided by this section are not exclusive and shall not prevent the City
29 from exercising any other remedy available under the law, nor shall the provisions of
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1 this ordinance prohibit or restrict the City or other appropriate authority from
2 pursuing criminal charges under state law or City ordinance.

3 **32.055. Confidentiality.** Except as otherwise required by law, it shall be unlawful for the City,
4 any officer, employee, or agent to divulge, release, or make known in any manner any financial
5 information submitted or disclosed to the City under the terms of this Chapter. Nothing in this
6 section shall prohibit:

- 7 (a) The disclosure of the names and addresses of any person who is operating a licensed
8 establishment from which marijuana items are sold or provided;
- 9 (b) The disclosure of general statistics in a form which would not reveal an individual
10 seller's financial information;
- 11 (c) The presentation of evidence to a court, or other tribunal having jurisdiction in the
12 prosecution of any criminal or civil claim, by the Director or an appeal from the
13 Director for the amount due the City under this Chapter;
- 14 (d) The disclosure of information when such disclosure is ordered by a court of
15 competent jurisdiction;
- 16 (e) The disclosure of information to law enforcement authorities when investigating a
17 crime;
- 18 (f) The disclosure of records related to a seller's failure to report and remit the tax when
19 the report or tax is in arrears for over six months or the tax exceeds five thousand
20 dollars (\$5,000). The City Council expressly finds and determines that the public
21 interest in disclosure of such records clearly outweighs the interest in confidentiality
22 under ORS 192.501(5).

23 **32.060. Audit of Books, Records, or Persons.** The City, for the purpose of determining the
24 correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may
25 cause to be examined by an agent or representative designated by the City for that purpose, any
26 books, papers, records, or memoranda, including copies of the seller's state and federal income
27 tax returns, bearing upon the matter of the seller's tax return. All books, invoices, accounts, and
28 other records shall be made available within the City limits and be open at any time during
29 regular business hours for examination by the Director or an authorized agent of the Director. If
30 any seller refuses to voluntarily furnish any of the foregoing information when requested, the

1 Director may immediately seek a subpoena from the Salem Municipal Court to require that the
2 seller or a representative of the seller attend a hearing or produce any such books, accounts, and
3 records for examination.

4 **32.065. Forms and Regulations.** The Director is hereby authorized to prescribe forms and
5 promulgate rules and regulations to aid in the making of returns and the ascertainment,
6 assessment, and collection of the tax imposed by this Chapter. In particular, and without limiting
7 the general language of this section, the Director shall provide for

8 (a) A form of report on sales and purchases to be supplied to all sellers, and;

9 (b) The records which sellers providing marijuana items are to keep concerning the tax
10 imposed by this Chapter.

11 **32.070. Disposition of Marijuana Tax Revenue.** All funds derived from the collection of the
12 tax on the sale of marijuana items shall be credited to the general fund. Marijuana tax revenue
13 shall first be expended in paying for the costs to administer and enforce this Chapter. All
14 remaining proceeds from the marijuana tax after all administrative and enforcement costs have
15 been paid shall be allocated to the Police Department.

16 **Section 4. Codification.** In preparing this ordinance for publication and distribution, the City
17 Recorder shall not alter the sense, meaning, effect or substance of this ordinance, but within such
18 limitations, may:

19 (a) Renumber sections and parts of sections of the ordinance;

20 (b) Rearrange sections;

21 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;

22 (d) Delete references to repealed sections;

23 (e) Substitute the proper subsection, section or chapter, or other division numbers;

24 (f) Change capitalization and spelling for the purpose of uniformity;

25 (g) Add headings for purposes of grouping like sections together for ease of reference;
26 and

27 (h) Correct manifest clerical, grammatical or typographical errors.

28 **Section 5. Severability.** Each section of this ordinance, and any part thereof, is severable, and
29 if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of
30 this ordinance shall remain in full force and effect.

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Section 6. Referral. This ordinance shall be referred to the electors of the City of Salem at the next statewide general election on Tuesday, November 8, 2016.

PASSED by the City Council this _____ day of _____, 2016.

ATTEST:

City Recorder

Approved by City Attorney: _____

Checked by: D.Atchison