ORDINANCE NO. 3438

AN ORDINANCE ADDING CHAPTER 9.15 TO THE ROSEBURG MUNICIPAL CODE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF ROSEBURG

WHEREAS, the City of Roseburg is an Oregon home-rule municipal corporation with a City Charter that grants it 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 though each such powers were specifically enumerated; and

WHEREAS, that authority and power includes the authority to impose a tax on the sale of marijuana and marijuana-infused products sold within the City; and

WHEREAS, the City desires to tax the sale or transfer of marijuana and marijuana-infused products within the City;

NOW THEREFORE THE ROSEBURG CITY COUNCIL ORDAINS AS FOLLOWS:

SECTION 1. Chapter 9.15 entitled "Marijuana Tax" is hereby added to Title 9 of the Roseburg Municipal Code to read and provide as follows:

MARIJUANA TAX

9.15.005 Purpose
9.15.010 Definitions
9.15.020 Levy of Tax
9.15.030 Deductions
9.15.040 Seller Responsible for Payment of Tax
9.15.050 Penalties and Interest
9.15.060 Failure to Report and Remit Tax—Determination of Tax by Director
9.15.070 Appeals
9.15.080 Refunds
9.15.090 Actions to Collect
9.15.100 Violation Infractions
9.15.110 Confidentiality
9.15.120 Audit of Books, Records or Persons
9.15.130 Forms and Regulations

9.15.005 PURPOSE. For the purposes of this Chapter, every person who sells marijuana or marijuana-infused products in the City of Roseburg is exercising a taxable privilege. The purpose of this Chapter is to impose a tax upon the retail sales of marijuana and marijuana-infused products.

9.15.010 DEFINITIONS. When not clearly otherwise indicated by the context, the following words and phrases as used in this Chapter shall have the following meanings:

"Director" means the Finance Director for the City of Roseburg or his/her designee.

"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.

"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 therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Oregon Medical Marijuana Program, OMMP" 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.

"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.

"Purchase or Sale" means the acquisition or furnishing of marijuana for consideration by any person within the City.

"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 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.

"Retail sale" means the transfer of goods or services in exchange for any valuable consideration.

"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.

"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.

"Taxpayer" means any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this Chapter.

9.15.020 LEVY OF TAX. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this Chapter. The amount of tax levied is as follows:

A. Zero percent (0%) of the gross sale amount paid by a registry identification cardholder to a licensed medical marijuana dispensary under Chapter 9.14. The intent of this Subsection is to levy no tax on sales of marijuana under the OMMP if such sales are done in full compliance with state and local law.

B. Ten percent (10%) of any and all gross sale amounts paid to the seller of marijuana and marijuana-infused products by persons who are purchasing marijuana and marijuana-infused products but are not doing so under the above Subsection A.

9.15.030 DEDUCTIONS. The following deductions shall be allowed against sales received by the seller providing marijuana:

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 marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

9.15.040 SELLER RESPONSIBLE FOR PAYMENT OF TAX.

A. 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 Director, on forms provided by the City, specifying the total sales subject to this Chapter and the amount of tax collected under this Chapter. 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 insure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.

B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. 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. Non-designated 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 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 may establish shorter reporting periods for any seller if the Director deems it necessary in order to insure collection of the tax. 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 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 Director. A separate trust bank account is not required in order to comply with this provision.

D. 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.

E. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.

9.15.050 PENALTIES AND INTEREST.

A. Any seller who fails to remit any portion of any tax imposed by this Chapter 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.

B. Any seller who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent (10%) of the 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 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 Subsections A and B of this Section.

D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this Chapter 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.

E. 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.

F. All sums collected pursuant to the penalty provisions in Subsection 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.

9.15.060 FAILURE TO REPORT AND REMIT TAX – DETERMINATION OF TAX BY DIRECTOR. If any seller should fail to make, within the time provided in this Chapter, any report of the tax required by this Chapter, the Director 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 Director 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 Director 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 Director 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 9.15.070. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

9.15.070 APPEALS. Any seller aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Manager in accordance with the same procedures as set forth in Section 9.100.050 of this Code. Any amount found to be due shall be immediately due and payable upon the service of notice.

9.15.080 REFUNDS.

A. 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 Chapter, it may be refunded as provided in the following Subsection B of this Section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.

B. The Director shall have 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 Director shall notify the claimant in writing of the Director'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 Director to be a valid claim, in a manner prescribed by the Director 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 Director of claimant's choice no later than 15 days following the date Director mailed the determination. In the event claimant has not

notified the Director of claimant's choice within the 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 on the claim form.

C. 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 Director acknowledged the validity of the claim.

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

9.15.100 VIOLATIONS.

A. In addition to the penalties provided in Section 9.15.050, a violation of this Chapter is an offense punishable by fine as well as imprisonment as set forth in Section 1.06.010 of this Code. It is a violation of this Chapter 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 this Chapter are not exclusive and do not prevent the City from exercising any other remedy available under the law.

C. The remedies provided by this Chapter do not prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under State law or City ordinance.

9.15.110 CONFIDENTIALITY. Except as otherwise required by law, it shall be 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 shall prohibit:

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 a 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 any 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 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).

9.15.120 AUDIT OF BOOKS, RECORDS OR PERSONS. 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 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 Roseburg Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts or records for examination.

9.15.130 FORMS AND REGULATIONS. The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said marijuana tax and in particular and without limiting the general language of this Chapter, to provide for:

A. A form of report on sales and purchases to be supplied to all vendors; and

B. The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this Chapter.

SECTION 2. 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 3. Savings. Notwithstanding any amendment or 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.

ADOPTED BY THE ROSEBURG CITY COUNCIL ON THIS 27TH DAY OF OCTOBER, 2014.

APPROVED BY THE MAYOR ON THIS 27TH DAY OF OCTOBER, 2014.

Larry Rich

LARRY RICH, MAYOR

ATTEST:

Sheila R. Cox

SHEILA R. COX, CITY RECORDER