

RESOLUTION NO. 1462

A RESOLUTION CALLING AN ELECTION ON NOVEMBER 8, 2016, TO REFER TO THE VOTERS OF THE CITY OF MT. ANGEL, OREGON, A TAX ON RETAIL SALES OF RECREATIONAL MARIJUANA IN THE CITY OF MT. ANGEL AND ADOPTING A BALLOT TITLE AND EXPLANATORY STATEMENT

WHEREAS, Section 4 of the City of Mt. Angel Charter of 2014 provides:

POWERS OF THE CITY. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers; and

WHEREAS, ORS 475B.345 allows the City of Mt. Angel to impose a local tax of up to 3% on retail sales of recreational marijuana items within the City if the local tax is approved by the voters of the City at general election; and

WHEREAS, the Mt. Angel City Council desires to impose a tax of up to 3% on the sale of recreational marijuana items by marijuana retailers in the City;

NOW, THEREFORE, THE CITY OF MT. ANGEL RESOLVES AS FOLLOWS:

Section 1. A city election is called for the purpose of submitting to the qualified electors of the City of Mt. Angel an ordinance imposing a city tax of up to three percent (3%) on sales of marijuana items by licensed recreational marijuana retailers within the City of Mt. Angel, a copy of which is attached to this Resolution as Exhibit A and incorporated into this Resolution by reference.

Section 2. The ballot title for this measure shall be as follows:

CAPTION: City tax on recreational marijuana retailers' sale of marijuana items

QUESTION: Shall Mt. Angel impose a tax on sales of marijuana items by recreational marijuana retailers in the city?

SUMMARY: If adopted by the voters, this measure would impose a city tax on sales of marijuana items (including marijuana, marijuana products, and marijuana extracts) by recreational marijuana retailers licensed by the Oregon Liquor Control Commission and located within the City of Mt. Angel. The City Council would have the authority to set the amount of the tax, but under no circumstances would the tax exceed three percent of the retail sales price of a marijuana item. The tax would be collected from consumers and remitted to the City by recreational marijuana retailers. The city tax would be imposed in addition to any state taxes on the sale of marijuana items. The city tax would not be imposed on medical marijuana sales.

This measure will not take effect if the measure on the ballot that proposes to ban medical and recreational marijuana facilities from the City of Mt. Angel is approved.

Section 3. The City Council orders this City election to be held in the City of Mt. Angel, Oregon, concurrently with the general election, on the 8th day of November, 2016, in accordance with the provisions of Chapter 254 of the Oregon Revised Statutes. The ballots shall be counted and tabulated and the results certified as provided by law.

Section 4. The election shall be conducted by Marion County. The County Clerk for Marion County is hereby instructed to prepare ballots and to take other actions necessary to conduct the election.

Section 5. If a majority of the legal voters of the City voting on this measure approve this measure, the ordinance attached as Exhibit A to this Resolution shall take effect on January 1, 2017. Notwithstanding the foregoing, if the measure referred to the voters of the City of Mt. Angel by Resolution No. 1451 is approved, the ordinance attached as Exhibit A to this Resolution shall not take effect.

Section 6. The explanatory statement for this measure attached as Exhibit B to this Resolution is hereby approved by the Council.

Section 7. This Resolution, including the proposed ballot title and explanatory statement, shall be delivered to the City Recorder on the calendar day following the date of its adoption.

Section 8. The City Recorder shall give notice of this measure as required by law and take such other actions and otherwise proceed with the election as provided by law and so as to carry out the purposes of this Resolution.

Section 9. This Resolution shall become effective immediately upon its adoption.

Passed by the City Council this 1st day of August, 2016, by the following vote:

AYES: 4

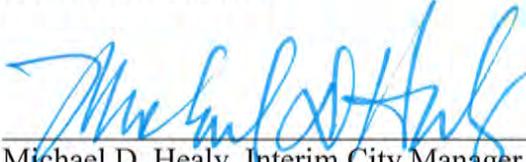
NAYS: 2

APPROVED BY THE MAYOR this 1st day of August, 2016.



Andrew Otte, Mayor

ATTESTED BY:



Michael D. Healy, Interim City Manager

Exhibit A
ORDINANCE NO. ____

WHEREAS, Section 4 of the City of Mt. Angel Charter of 2014 provides:

POWERS OF THE CITY. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers; and

WHEREAS, ORS 475B.345 allows the City of Mt. Angel to impose a local tax of up to 3% on retail sales of recreational marijuana items within the City if the local tax is approved by the voters of the City at a general election; and

WHEREAS, the City of Mt. Angel desires to impose a tax on the sale of recreational marijuana items by marijuana retailers in the City;

NOW THEREFORE, THE CITY OF MT. ANGEL ORDAINS AS FOLLOWS:

SECTION 1. DEFINITIONS.

The following words and phrases as used in this Ordinance shall have the following meanings:

- A. "City" means the City of Mt. Angel.
- B. "Tax Administrator" means the City Manager of the City of Mt. Angel, the City Manager's designee, and/or another individual or entity designated by the City to collect the tax on behalf of the City.
- C. "Consumer" means a person who purchases, acquires, owns, holds or uses marijuana items other than for the purpose of resale.
- D. "Marijuana item" means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts as defined in ORS 475B.015.
- E. "Marijuana retailer" means a person licensed under ORS 475B.110 who sells marijuana items to a consumer in the State of Oregon.
- F. "Person" means individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.
- G. "Retail sale price" means the total consideration paid to a marijuana retailer for a marijuana item by or on behalf of a consumer, excluding any tax.

SECTION 2. TAX IMPOSED.

The City of Mt. Angel hereby imposes a tax on each marijuana item sold to a consumer within the City of Mt. Angel by a marijuana retailer. The Mt. Angel City Council shall set the tax rate by resolution; however, the tax rate adopted by the City Council shall not exceed three percent (3%) of the retail sale price for each marijuana item sold. The tax constitutes a debt owed by the consumer to the City and shall be extinguished only by payment to the marijuana retailer or to the City.

SECTION 3. COLLECTION.

The consumer shall pay the tax to the marijuana retailer at the time of the purchase or sale of the marijuana item. Every marijuana retailer shall collect the tax from the consumer at the time of the sale of a marijuana item. The tax collected by the marijuana retailer shall be held in trust by the marijuana retailer for payment to the City. The marijuana retailer shall remit the tax to the Tax Administrator. The Tax Administrator is authorized to exercise all supervisory and administrative powers with regard to the administration, collection and enforcement of the tax authorized by this Ordinance.

SECTION 4. ACCOUNTING AND RECORDS.

- A. Every marijuana retailer must keep and preserve, in a generally accepted accounting format used for reporting revenue and taxes due on business activity, detailed records of all sales made and all taxes collected. Every marijuana retailer must keep and preserve such records for a period of six (6) years. The Tax Administrator shall have the right to inspect all such records at reasonable times.
- B. For purposes of determining the accuracy of any tax return or for the purpose of an estimate of taxes due, the Tax Administrator may examine any books, papers, records, or memoranda bearing upon the marijuana retailer's tax returns, including copies of the marijuana retailer's state and federal income tax returns and copies of the marijuana retailer's state marijuana tax returns. All books, invoices and other records shall be made available within the City for examination by the Tax Administrator during regular business hours.

SECTION 5. PENALTIES AND INTEREST

A. Any marijuana retailer who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this Ordinance prior to delinquency shall pay a penalty of ten percent of the amount of the tax due in addition to the amount of the tax.

B. Any marijuana retailer who has not been granted an extension of time for remittance of tax due, and who fails to pay any delinquent remittance on or before a period of thirty days following the date on which the remittance first becomes delinquent shall pay a second delinquency penalty of fifteen percent of the amount of the tax due plus the amount of the tax and the ten percent penalty first imposed.

C. 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 of this Ordinance, a penalty of twenty-five percent of the amount of the tax shall be added the amount of the remittance due, in addition to the penalties stated in subsections 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 Ordinance shall pay interest at the rate of one-half of one percent 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 becomes delinquent, until paid.

E. Every penalty imposed and any interest that accrues under the provisions of this Ordinance shall be merged with, and become a part of, the tax required to be paid.

SECTION 6. APPEAL

A. Any person aggrieved by any decision of the Tax Administrator may appeal to the City Manager by filing a notice of appeal with the Tax Administrator within ten days of the date the notice of the decision is served or mailed. The Tax Administrator shall fix a time and place for hearing the appeal and shall give the appellant ten days' written notice of the time and place of the hearing.

B. Any person aggrieved by any decision of the City Manager under subsection A of this Section may appeal to the Council by filing a notice of appeal with the Tax Administrator within ten days of the date the City Manager's decision is served or mailed. The Tax Administrator shall transmit the notice, together with the file of the appealed matter, to the Council, who shall fix a time and place for hearing the appeal. The Council shall give the appellant not less than ten days written notice of the time and place of hearing the appeal.

SECTION 7. REFUND.

Whenever the amount of any tax imposed under this Ordinance has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within three years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the Tax Administrator approves the claim, the excess amount collected or paid may be refunded to, or may be credited on any amounts then due and payable from, the marijuana retailer from whom it was collected or by whom it was paid, and the balance may be refunded to the marijuana retailer or the marijuana retailer's administrators, executors or assignees.

SECTION 8. SEVERABILITY.

Any provision of this Ordinance which proves to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Ordinance, and the remaining provisions of this Ordinance shall remain in full force and effect.

SECTION 9. CODIFICATION.

If this Ordinance becomes effective as provided by Section 10 below, the City Recorder is hereby authorized and directed to codify Sections 1 through 8 of this ordinance in an appropriate Title of the Mt. Angel Municipal Code and to change the word "Ordinance" to "Chapter" as appropriate when codified.

SECTION 10. EFFECTIVE DATE.

If approved by a majority of the voters of the City of Mt. Angel at the statewide general election held on Tuesday, November 8, 2016, this ordinance shall take effect on January 1, 2017. Notwithstanding the foregoing, if the measure referred to the voters of the City of Mt. Angel by Resolution No. 1451 is approved, this ordinance shall not take effect.

Exhibit B
Explanatory Statement

If this measure is approved by the voters of the City of Mt. Angel, the City will impose a tax on sales of marijuana items (including marijuana flowers, marijuana concentrates, marijuana edibles and marijuana extracts) by recreational marijuana retailers licensed by the Oregon Liquor Control Commission (OLCC) and located within the City of Mt. Angel. If this measure is approved, the City Council will have the authority to set the amount of the city tax, but the city tax may not exceed three percent of the retail sales price of a marijuana item.

The city tax would be collected from consumers by the recreational marijuana retailer at the point of sale. The recreational marijuana retailer would then remit the tax to the City.

The City would be able to use the revenues generated by this tax for any city purpose.

If approved, this city tax would be imposed in addition to any state marijuana taxes. This city tax would not be imposed on medical marijuana sales.

Oregon law prohibits cities that ban marijuana facilities from collecting city marijuana taxes. Therefore, if the measure on the ballot that proposes to ban medical and recreational marijuana facilities within the City of Mt. Angel is approved, this ballot measure will not take effect and the city tax will not be collected - even if the city tax is also approved by the voters.