



**MARIJUANA SUBCOMMITTEE AGENDA  
MARCH 3, 2016, 1:00 PM  
NEWBERG CITY HALL 414 East First Street  
Permit Center Conference Room**

- I. CALL MEETING TO ORDER**
- II. ROLL CALL**
- III. APPROVAL OF MINUTES – February 4, 2016**
- IV. RECREATIONAL MARIJUANA TAXES**
- V. PARAPHERNALIA**
- VI. FUTURE MEETING SCHEDULE**
- VII. ADJOURNMENT**

*ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the Planning Division of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than 48 business hours prior to the meeting. To request these arrangements, please contact the Planning Secretary at (503) 544-7788. For TTY services please dial 711.*



**MARIJUANA SUBCOMMITTEE MEETING**  
**February 4, 2016 1:00 pm**  
**Newberg City Hall, 414 East First St**  
**Permit Center Conference Room**

Chair Tony Rourke called the meeting to order at 1:02 p.m.

**ROLL CALL:**

Members Present:      Councilor Denise Bacon                                      Councilor Tony Rourke (Chair)  
                                 Councilor Stephen McKinney

Staff Present:            Mayor Bob Andrews,                                      Doug Rux, Community Development Director  
                                 Bobbie Morgan, Planning Secretary                      Truman Stone, City Attorney

**APPROVAL OF MINUTES:**

**MOTION: Bacon/McKinney** moved to approve the January 12, 2016, minutes. Motion carried (3 Yes/ 0 No).

**POTENTIAL DEVELOPMENT CODE REGULATIONS FOR RECREATONAL MARIJUANA WHOLESALEERS, LABORATORIES, RESEARCH CERTIFICATES AND RETAILERS:**

Community Development Director Doug Rux said the Council had adopted a resolution initiating the Development Code amendment process for recreational marijuana provisions. Retail recreational marijuana facilities were not to be located greater than 1,000 feet apart from one another. There could be a separation up to 1,000 feet, but not 1,001. There was no separation requirement between a retail recreational facility and a medical marijuana dispensary. There was a required 1,000 foot separation from schools. He discussed the definitions of laboratory, marijuana retailer, and marijuana wholesaler. Regarding regulation of place, retailers were to be no greater than 1,000 feet from another retailer. For wholesaler, they may not be located in an area zoned exclusively residential. The term exclusively was not defined. The City's residential districts allowed for a variety of uses and were not exclusively residential. A wholesale operation could operate in a residential district likely as a home occupation. However, he suggested no storage or warehousing be allowed. Retailers were not allowed in exclusively residential areas, could not be located within a 1,000 feet of public, private, or parochial school, and if a retail operation was established and then a school came in later that was within the 1,000 foot buffer, the retail operation did not have to be closed. It would be monitored and the license might or might not be revoked. If the School District owned a property, but it was not yet developed, a retail operation could go in next to the property.

Councilor McKinney asked if they needed to come up with a definition for exclusively residential. CDD Rux said there were not many cities that had exclusively residential zones and he was not sure why it was written like that.

City Attorney Truman Stone said a definition could be created in the Code that defined residential areas as exclusively residential. He did not know if that would satisfy the State's code interpretation.



CDD Rux said if one of the categories was banned, the City would not receive the State shared revenue from recreational marijuana. They could regulate where these activities would occur. He continued with his presentation by discussing the required Land Use Compatibility Statement. The City had received several of these forms from production and retail applicants, and staff told them they were waiting for Council to finalize the regulations. He explained the criteria for denial of a wholesale or retail application. They could not be located on federal property and could not be in the same physical location or address as a medical marijuana grow site, medical marijuana processing site, or medical marijuana dispensary. A retail operation could not be located where there were sales of alcohol licensed through OLCC.

CA Stone clarified people could not have a marijuana license and a liquor license for the same site.

CDD Rux discussed laboratories, which had to be registered by the Oregon Health Authority. Laboratories were for the purpose of testing marijuana products from producers, processors, wholesalers, and retailers. They would have to have a tracking system, dispose of waste per regulations, and could not give marijuana to consumers. They would be testing for pesticides and mold. They could test both medical and recreational if they were accredited to do both. Regarding research certificates, these were for qualifying public and private researchers. There was a process through OLCC to justify the research and certificates were only good for three years. They could not do testing on humans. There were no distance provisions for research or laboratories. He discussed the definition of retail sales, wholesale operation, warehouse, and storage and the Zoning Table that showed where the uses were permitted. For retail operations, there was language regarding hours of operation. They could sell to consumers between 7 am and 10 pm. Medical marijuana dispensaries were allowed to sell from 8 am to 9 pm. There was nothing specific about regulating the manner of operation. Retailers had to have a marijuana Handlers Permit. He explained the maps showing the 1,000 foot buffers around schools in the City, 1,000 foot buffers around parks in the City, and one map with both school and park buffers combined.

Chair Rourke asked the committee's opinion about retail and wholesale in residential areas.

Councilor Bacon thought wholesalers should be allowed as long as there was no warehousing.

Councilor McKinney asked what kind of shipping and receiving these types of businesses would have and how it would affect neighbors.

Chair Rourke did not think retail should be allowed in residential districts and sub-districts. For wholesale, it would be allowed as long as there was no warehousing and there was a question regarding shipping and receiving activities.

CA Stone suggested a motion be made on the retail.

**MOTION: Rourke/Bacon** moved to not allow retail as a permitted use in residential districts R1, R2, R3, R4, AR, RP, and all residential sub-districts. Motion carried (3 Yes /0 No).

Chair Rourke asked about sending and receiving product in residential areas.

Councilor Bacon did not have a problem with it.

There was discussion regarding the definition of warehousing and how long someone could hold the product.

CA Stone said other wholesale businesses were not allowed in residential zones.



Chair Rourke suggested saying no product was allowed on the premises.

CDD Rux said it would then be like a home occupation which would require a business license.

**MOTION: Rourke/Bacon** moved to allow wholesale as a permitted use in all residential categories including the sub-districts with no product allowed on the premises. Motion passed (2 Yes/ 1 No [McKinney]).

Chair Rourke thought retail should be permitted in all commercial zones.

CDD Rux referred to the zone map and explained where the commercial zones were located.

**MOTION: Rourke/Bacon** moved to allow retail as a permitted use in all commercial zones except Civic Corridor with a footnote regarding the 1,000 foot buffer from schools and parks as noted on the third map in the packet.

There was discussion regarding what was located in the CC zone.

CDD Rux explained what areas would be available if there was a 1,000 foot buffer from schools and parks.

The motion carried (3 Yes/ 0 No).

Chair Rourke asked about wholesale in commercial districts. Other wholesale uses were conditional use in C2 with a footnote that it was indoor use only.

Councilor Bacon thought they should stay consistent with other wholesale industries.

**MOTION: Rourke/Bacon** moved to allow wholesale as a conditional use in C2 only with a footnote regarding indoor use only and new footnote regarding the 1,000 foot buffer from schools and parks.

CDD Rux discussed the C2 sub-districts and how the motion did not include the sub-districts. Wholesale would only be allowed by conditional use in the general C2.

The motion carried (3 Yes/ 0 No).

**MOTION: Rourke/McKinney** moved to not allow wholesale or retail in community facilities and institutional. Motion carried (3 Yes/ 0 No).

Chair Rourke asked about retail in industrial zones. M2 allowed for second hand stores, which did not apply.

**MOTION: Bacon/Rourke** moved to not allow retail in industrial districts and sub-districts. Motion carried (3 Yes/ 0 No).

Councilor Rourke asked about wholesale in industrial zones. He thought wholesale belonged in industrial.



**MOTION: Rourke/Bacon** moved to allow wholesale as a permitted use in all industrial districts and sub-districts except Airport Industrial with a footnote regarding the 1,000 foot buffer from schools and parks. Motion carried (3 Yes/ 0 No).

**MOTION: Rourke/Bacon** moved to not allow retail or wholesale in the other sub-districts. Motion carried (3 Yes/ 0 No).

Chair Rourke thought research and laboratories made sense in industrial. CDD Rux said there were institutional uses in the City, such as the university or hospital. He explained what types of organizations could receive a research certificate.

**MOTION: Rourke/Bacon** moved to allow laboratories and research in all commercial districts and sub-districts, institutional districts, and all industrial districts and sub-districts except AI. They were not allowed in all other districts, such as residential, community facilities, and other. Motion carried (3 Yes/ 0 No).

Councilor Rourke continued with a discussion on time issues on retail. Medical marijuana dispensaries were allowed to be open from 8 am to 9 pm.

**MOTION: Rourke/Bacon** moved to change the hours of operation for retail to 8 am to 9 pm. Motion carried (3 Yes/ 0 No).

There were no additional regulations on manner.

**PARAPHERNALIA REGULATIONS:** This item was not discussed.

### **FUTURE MEETING SCHEDULE**

CDD Rux said the next subcommittee meeting would be held on March 3<sup>rd</sup> to discuss paraphernalia and taxes. Ballot titles were due in June and the Council would have to take action in April to start the process for the November election.

Councilor Bacon had emailed the Fire Chief regarding how many house fires had been caused by marijuana grow lights in Newberg. The Fire Chief said there had been none.

**ADJOURNMENT:** Chair Rourke adjourned the meeting at 2:36 p.m.

**Approved by the Marijuana Subcommittee this 3<sup>rd</sup> day of March, 2016.**

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Councilor Tony Rourke,  
Marijuana Subcommittee Chair

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Bobbie Morgan, Planning Secretary



**Community Development Department**  
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To: Marijuana Subcommittee

From: Doug Rux, Community Development Director  
Truman Stone, City Attorney

Date: March 3, 2016

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The Newberg City Council passed Ordinance No. 2014-2777 on October 6, 2014. This ordinance established a new Chapter 3.40 under Title 3 Revenue and Finance of the Newberg Municipal Code. The purpose was to establish a tax on the sale of marijuana, medical marijuana or marijuana-infused products in the city of Newberg. The tax levied is 5% on gross sales for medical marijuana and 10% on gross sales for marijuana or marijuana –infused products (see Attachment 1).

Oregon laws have also been passed on the taxation of recreational marijuana. The applicable bills include HB 3400 and HB 2041. Specific language from the two applicable legislative bills are included in the analysis in this memorandum.

At issue is if Newberg Ordinance No. 2014-2777 is grandfathered in before the enactment of any legislative bill regulating the tax on marijuana, or is the city limited to following the provisions for HB 3400 and HB 2041. HB 3400 allows a local government to establish a tax of 3% on recreational marijuana sales with passage of an ordinance and a referral to the electors of the city at the next statewide general election. If the Subcommittee identifies utilizing the State 3% tax provision a recommendation to the City Council would be necessary.

It is also important to note that in the Subcommittee’s consideration of place, time and manner regulations banning any one of the categories (producer, processor, wholesaler, retailer, and certificate) will exclude a local government from revenue sharing from the state tax imposed on marijuana sales. At this time the Subcommittee’s recommendations have been to allow the activities with regulatory limits on place, time and manner of the operations.

## **DEFINITIONS**

Definitions to consider in reviewing the taxation material include the following:

HB 2041

### **SECTION 1. As used in sections 1 to 13 of this 2015 Act:**

**(1) “Cannabinoid concentrate,” “cannabinoid edible,” “cannabinoid extract,” “cannabinoid**

product,” “consumer,” “immature marijuana plant,” “marijuana flowers,” “marijuana items,” “marijuana leaves” and “marijuana retailer” have the meanings given those terms in section 5, chapter 1, Oregon Laws 2015.

(2) “Retail sale” means any transfer, exchange, gift or barter of a marijuana item by any person to a consumer.

(3) “Retail sales price” means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

## **TAXES**

HB 3400, Section 23 establishes a tracking system for the transfer of marijuana product. A portion of this system is to ensure the collection of taxes. Specifically the law reads:

### **(Seed to Sale Tracking System)**

**SECTION 23.** (1) The Oregon Liquor Control Commission shall develop and maintain a system for tracking the transfer of marijuana items between licensed premises.

(2) The purposes of the system developed and maintained under this section include, but are not limited to:

(a) Preventing the diversion of marijuana items to criminal enterprises, gangs, cartels and other states;

(b) Preventing persons from substituting or tampering with marijuana items;

(c) Ensuring an accurate accounting of the production, processing and sale of marijuana items;

(d) Ensuring that taxes are collected for the purpose of being distributed as described in section 44, chapter 1, Oregon Laws 2015;

(e) Ensuring that laboratory testing results are accurately reported; and

(f) Ensuring compliance with the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, rules adopted under the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, and any other law of this state that charges the commission with a duty, function or power related to marijuana.

(3) The system developed and maintained under this section must be capable of tracking, at a minimum:

(a) The propagation of immature marijuana plants and the production of marijuana by a marijuana producer;

(b) The processing of marijuana by a marijuana processor;

(c) The receiving, storing and delivering of marijuana items by a marijuana wholesaler;

(d) The sale of marijuana items by a marijuana retailer to a consumer;

(e) The purchase and sale of marijuana items between licensees, as permitted by sections 3 to 70, chapter 1, Oregon Laws 2015;

(f) The transfer of marijuana items between licensed premises;

**(g) The collection of taxes imposed upon the retail sale of marijuana items under section 70 of this 2015 Act; and**

(h) Any other information that the commission determines is reasonably necessary to accomplish the duties, functions and powers of the commission under sections 3 to 70, chapter 1, Oregon Laws 2015.

HB 3400, Section 34a allows a city to establish a tax or fee for recreational marijuana retailers. A city must adopt an ordinance to impose the tax or fee and it must be referred to electors for a vote at the next statewide general election. The maximum tax or fee amount is 3%. Specifically the law reads:

**(Local Option Tax)**

**SECTION 34a. (1)(a) Except as expressly authorized by this section, the authority to impose a tax or fee on the production, processing or sale of marijuana items in this state is vested solely in the Legislative Assembly.**

**(b) Except as expressly authorized by this section, a county, city or other municipal corporation or district may not adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items in this state.**

**(2) Subject to subsection (4) of this section, the governing body of a city or county may adopt an ordinance to be referred to the electors of the city or county as described in subsection (3) of this section that imposes a tax or a fee on the sale of marijuana items that are sold in the area subject to the jurisdiction of the city or the unincorporated area subject to the jurisdiction of a county by a person that holds a license under section 22, chapter 1, Oregon Laws 2015.**

**(3) If the governing body of a city or county adopts an ordinance under this section, the governing body shall refer the measure of the ordinance to the electors of the city or county for approval at the next statewide general election.**

**(4) An ordinance adopted under this section may not impose a tax or fee in excess of 3 percent.**

HB 3400, Section 70 authorizes the state to tax a recreational marijuana producer. Specifically the law reads:

**SECTION 70.** Section 33, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 33. (1) A tax is imposed upon the privilege of engaging in business as a marijuana producer at the rate of:**

- (a) \$35 per ounce on all marijuana flowers;**
- (b) \$10 per ounce on all marijuana leaves; and**
- (c) \$5 per immature marijuana plant.**

**(2) The rates of tax imposed by this section upon marijuana flowers and marijuana leaves apply proportionately to quantities of less than one ounce.**

**(3) The tax imposed by this section [shall] must be measured by the quantities of marijuana flowers, marijuana leaves[,] and immature marijuana plants produced and sold by any marijuana producer. The taxes specified in this section [shall] must be levied and assessed to the marijuana producer at the time of the first sale of the marijuana flowers, marijuana leaves[,] and immature marijuana plants by the marijuana producer.**

**(4) For reporting periods beginning on or after July 1, 2017, the rates of tax under subsection (1) of this section [shall] must be adjusted for each biennium according to the cost-of-living adjustment for the calendar year. The Oregon Liquor Control Commission shall recompute the**



rates for each biennium by adding to each rate in subsection (1) of this section the product obtained by multiplying the rate by a factor that is equal to 0.25 multiplied by the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31, 2015. (5) The commission shall regularly review the rates of tax under subsection (1) of this section and make recommendations to the Legislative Assembly regarding appropriate adjustments to the rates that will further the purposes of:

- (a) Maximizing net revenue;
- (b) Minimizing the illegal marijuana industry under [*Oregon law*] **the laws of this state**; and
- (c) Discouraging the use of marijuana by minors under 21 years of age.

HB 3400, Section 71 requires the state privilege tax to be paid to the Oregon Liquor Control Commission. Specifically the law reads:

**SECTION 71.** Section 34, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 34.** (1) The privilege tax imposed by section 33, **chapter 1, Oregon Laws 2015**, [*of this Act shall*] **must** be paid to the Oregon Liquor Control Commission. The taxes covering the periods for which statements are required to be rendered by section 35, **chapter 1, Oregon Laws 2015**, [*of this Act shall*] **must** be paid before the time for filing such statements expires. If not so paid, a penalty of 10 percent and interest at the rate of one percent a month or fraction of a month [*shall*] **must** be added and collected. The commission may refund any tax payment imposed upon or paid in error by any licensee.

(2) The commission may waive any interest or penalty assessed to a marijuana producer subject to the tax imposed under section 33, **chapter 1, Oregon Laws 2015**, [*of this Act*] if the commission, in its discretion, determines that the marijuana producer has made a good faith attempt to comply with the requirements of sections 31 to 44, **chapter 1, Oregon Laws 2015** [*of this Act*].

(3) Except in the case of fraud, the commission may not assess any interest or penalty on any tax due under section 33, **chapter 1, Oregon Laws 2015**, [*of this Act*] following the expiration of 36 months from the date on which was filed the statement required under section 35, **chapter 1, Oregon Laws 2015**, [*of this Act*] reporting the quantities of marijuana flowers, marijuana leaves[,] and immature marijuana plants upon which the tax is due.

(4) A marijuana producer may appeal a tax imposed under section 33, **chapter 1, Oregon Laws 2015**, [*of this Act*] in the manner of a contested case under ORS chapter 183.

HB 3400, Section 73 provides that the Oregon Liquor Control Commission to estimate the required tax on a producer if the producer fails, neglects or refuses to file the required statement. Specifically the law reads:

**SECTION 73.** Section 36, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 36.** If any marijuana producer fails, neglects or refuses to file a statement required by section 35, **chapter 1, Oregon Laws 2015**, [*of this Act*] or files a false statement, the Oregon Liquor Control Commission shall estimate the quantities of marijuana flowers, marijuana leaves[,] and immature marijuana plants sold by the marijuana producer and assess the privilege taxes

[*thereon*] **on the estimated quantities.** The marijuana producer [*shall*] **must** be estopped from complaining of the quantities so estimated.

HB 2041, Section 2 establishes a state tax on the sale of recreational marijuana at 17%. Specifically the law reads:

### Taxes

**SECTION 2. (1) A tax is hereby imposed upon the retail sale of marijuana items in this state. The tax imposed by this section is a direct tax on the consumer, for which payment upon retail sale is required to achieve convenience and facility in the collection and administration of the tax. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs.**

**(2) The tax imposed under this section shall be imposed at the rate of:**

**(a) 17 percent of the retail sales price of marijuana leaves;**

**(b) 17 percent of the retail sales price of marijuana flowers;**

**(c) 17 percent of the retail sales price of immature marijuana plants;**

**(d) 17 percent of the retail sales price of a cannabinoid edible;**

**(e) 17 percent of the retail sales price of a cannabinoid concentrate;**

**(f) 17 percent of the retail sales price of a cannabinoid extract;**

**(g) 17 percent of the retail sales price of a cannabinoid product that is intended to be used by applying the cannabinoid product to the skin or hair; and**

**(h) 17 percent of the retail sales price of cannabinoid products other than those described in paragraph (g) of this subsection.**

**(3) If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal to the next higher whole cent.**

**(4) The amount of the tax shall be separately stated on an invoice, receipt or other similar document that the marijuana retailer provides to the consumer, or shall be otherwise disclosed to the consumer.**

**(5) A person may not knowingly sell, purchase, install, transfer or possess software programs or other electronic devices intended to hide or to remove records of retail sales of marijuana items or to falsify records of retail sales of marijuana items.**

HB 2041, Section 3 establishes that the collection of the tax for a retailer is at the point of sale. The law specifically reads:

**SECTION 3. (1) Except as otherwise provided in sections 1 to 13 of this 2015 Act, the tax imposed upon the consumer under section 2 of this 2015 Act shall be collected at the point of sale and remitted by each marijuana retailer that engages in the retail sale of marijuana items. The tax is considered a tax upon the marijuana retailer that is required to collect the tax, and the marijuana retailer is considered a taxpayer.**

**(2) The marijuana retailer shall submit a return to the Department of Revenue on or before the last day of January, April, July and October of each year for the previous calendar quarter.**

- (3) The marijuana retailer shall pay the tax to the department in the form and manner prescribed by the department, but not later than with each quarterly return, without regard to extensions under subsection (5) of this section.
- (4) Marijuana retailers shall file the returns required under this section regardless of whether any tax is owed.
- (5) The department for good cause may extend the time for making any return under this section. The extension may be granted at any time if a written request is filed with the department during or prior to the period for which the extension may be granted. The department may not grant an extension of more than 30 days.
- (6) Interest shall be added at the rate established under ORS 305.220 for each month, or fraction of a month, from the time the return was originally required to be filed to the time of payment.
- (7) Except as provided in subsections (8) and (9) of this section, the period prescribed for the department to allow or make a refund of any overpayment of tax paid under sections 1 to 13 of this 2015 Act shall be as provided in ORS 314.415.
- (8)(a) The department shall first apply any overpayment of tax to any marijuana tax that is then owed.
- (b) If after any offset against any delinquent amount the overpayment of tax remains greater than \$1,000, the entire refund shall be applied as a credit against the next subsequent calendar quarter as an estimated payment.
- (9) The department may not make a refund of, or credit, any overpayment of tax under sections 1 to 13 of this 2015 Act that was credited to the account of a marijuana retailer under subsection (8)(b) of this section if the return for that tax period is not filed within three years after the due date of that return.

HB 2041, Section 4 establish tax payment to the Department of Revenue and enforcement procedures. Specifically the law reads:

**SECTION 4. (1) Every person who collects any amount under section 3 of this 2015 Act shall hold the same in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner and at the time provided in section 3 of this 2015 Act. (2) At any time a marijuana retailer fails to remit any amount collected, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. The warrant shall be issued, recorded and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.**

(3)(a) In the case of a marijuana retailer that is assessed pursuant to the provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer, employee or member of the marijuana retailer within three years from the time of assessment. Within 30 days from the date the notice of liability is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the liability and, if desired, request a conference. A conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

**(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.**

**(c) If the department does not receive payment or written objection to the notice of liability within 30 days after the notice of liability was mailed, the notice of liability becomes final. In that event, the officer, employee or member may appeal the notice of liability to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.**

**(4)(a) In the case of a failure to file a return on the due date, governed by the provisions of ORS 305.265 (10) and 314.400, the department, in addition to any action described in the provisions of ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee or member any time within three years after the assessment. The time of assessment against the officer, employee or member is 30 days after the date the notice of determination and assessment is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment and, if desired, request a conference. A conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.**

**(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal in the manner provided for an appeal from a notice of assessment.**

**(c) If the department does not receive payment or written objection to the notice of determination and assessment within 30 days after the notice of determination and assessment was mailed, the notice of determination and assessment becomes final. In that event, the officer, employee or member may appeal the notice of determination and assessment to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.**

**(5)(a) More than one officer or employee of a corporation may be held jointly and severally liable for payment of taxes.**

**(b) Notwithstanding the confidentiality provisions of section 10 of this 2015 Act, if more than one officer or employee of a corporation may be held jointly and severally liable for payment of taxes, the department may require any or all of the officers, members or employees who may be held liable to appear before the department for a joint determination of liability. The department shall notify each officer, member or employee of the time and place set for the determination of liability.**

**(c) Each person notified of a joint determination under this subsection shall appear and present such information as is necessary to establish that person's liability or nonliability for payment of taxes to the department. If a person who was notified fails to appear, the**

department shall make its determination on the basis of all the information and evidence presented. The department's determination is binding on all persons notified and required to appear under this subsection.

(d)(A) If an appeal is taken to the Oregon Tax Court pursuant to section 10 of this 2015 Act by any person determined to be liable for unpaid taxes under this subsection, each person required to appear before the department under this subsection shall be impleaded by the plaintiff. The department may implead any officer, employee or member who may be held jointly and severally liable for the payment of taxes. Each person impleaded under this paragraph shall be made a party to the action before the tax court and shall make available to the tax court the information that was presented before the department, as well as other information that may be presented to the court.

(B) The court may determine that one or more persons impleaded under this paragraph are liable for unpaid taxes without regard to any earlier determination by the department that an impleaded person was not liable for unpaid taxes.

(C) If a person required to appear before the court under this subsection fails or refuses to appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court, the court shall make its determination on the basis of all the evidence introduced. Notwithstanding section 10 of this 2015 Act, the evidence constitutes a public record and shall be available to the parties and the court. The determination of the tax court is binding on all persons made parties to the action under this subsection.

(e) This section may not be construed to preclude a determination by the department or the Oregon Tax Court that more than one officer, employee or member are jointly and severally liable for unpaid taxes.

HB 2041, Section 5 requires that a recreational marijuana retailer retain records for 5 years for the retail sales. Specifically the law reads:

**SECTION 5. (1) A marijuana retailer shall keep receipts, invoices and other pertinent records related to retail sales of marijuana items in the form required by the Department of Revenue. Each record shall be preserved for five years from the time to which the record relates, or for as long as the marijuana retailer retains the marijuana items to which the record relates, whichever is later. During the retention period and at any time prior to the destruction of records, the department may give written notice to the marijuana retailer not to destroy records described in the notice without written permission of the department. Notwithstanding any other provision of law, the department shall preserve reports and returns filed with the department for at least five years.**

**(2) The department or its authorized representative, upon oral or written demand, may make examinations of the books, papers, records and equipment of persons making retail sales of marijuana items and any other investigations as the department deems necessary to carry out the provisions of sections 1 to 13 of this 2015 Act.**

HB 2041, Section 6 allows the Oregon Department of Revenue, by order or subpoena, records. Specifically the law reads:

**SECTION 6. (1) The Department of Revenue has authority, by order or subpoena to be served with the same force and effect and in the same manner as a subpoena is served in a**

civil action in the circuit court, or the Oregon Tax Court, to require the production at any time and place the department designates of any books, papers, accounts or other information necessary to carry out sections 1 to 13 of this 2015 Act. The department may require the attendance of any person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to the person.

(2) If a person fails to comply with a subpoena or order of the department or to produce or permit the examination or inspection of any books, papers, records and equipment pertinent to an investigation or inquiry under sections 1 to 13 of this 2015 Act, or to testify to any matter regarding which the person is lawfully interrogated, the department may apply to the Oregon Tax Court or to the circuit court of the county in which the person resides or where the person is for an order to the person to attend and testify, or otherwise to comply with the demand or request of the department. The department shall apply to the court by ex parte motion, upon which the court shall make an order requiring the person against whom the motion is directed to comply with the request or demand of the department within 10 days after the service of the order, or within the additional time granted by the court, or to justify the failure within that time. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service is required to confer jurisdiction upon the court. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section is in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state.

HB 2041, Section 7 allows disclosure of certain information by the Department of Revenue and Oregon Liquor Control Commission. Specifically the law reads:

**SECTION 7.** (1) Notwithstanding the confidentiality provisions of section 10 of this 2015 Act, the Department of Revenue may disclose information received under sections 1 to 13 and 19 of this 2015 Act to the Oregon Liquor Control Commission to carry out the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, and sections 1 to 13 of this 2015 Act.

(2) The commission may disclose information obtained pursuant to sections 3 to 70, chapter 1, Oregon Laws 2015, and sections 1 to 13 of this 2015 Act to the department for the purpose of carrying out the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, and sections 1 to 13 of this 2015 Act.

(3) Except as otherwise provided in sections 3 to 70, chapter 1, Oregon Laws 2015, and sections 1 to 13 of this 2015 Act, a person aggrieved by an act or determination of the department or its authorized agent under sections 1 to 13 and 19 of this 2015 Act may appeal, within 90 days after the act or determination, to the Oregon Tax Court in the manner provided in ORS 305.404 to 305.560. These appeal rights are the exclusive remedy available to determine the person's liability for the tax imposed under sections 1 to 13 of this 2015 Act.

HB 2041, Section 8 authorizes the Department of Revenue to enforce provisions of HB 2014 on collection of taxes and requires an agreement between OLCC and DOR. Specifically the law reads:

**SECTION 8.** (1) The Department of Revenue shall administer and enforce sections 1 to

13 of this 2015 Act. The department is authorized to establish rules and procedures for the implementation and enforcement of sections 1 to 13 of this 2015 Act that are consistent with sections 1 to 13 of this 2015 Act and that the department considers necessary and appropriate to administer and enforce sections 1 to 13 of this 2015 Act.

(2) The Oregon Liquor Control Commission shall enter into an agreement with the department for the purpose of administering and enforcing those provisions of sections 1 to 13 of this 2015 Act, and rules or procedures established for the purpose of implementing and enforcing sections 1 to 13 of this 2015 Act, that the commission and the department determine are necessary for the effective and efficient administration, implementation and enforcement of sections 1 to 13 of this 2015 Act.

HB 2041, Section 9 establishes requirements if a tax imposed by a retailer on a sale that is not taxable to be returned to the consumer. Specifically the law reads:

**SECTION 9. (1)(a) When an amount represented by a marijuana retailer at retail to a consumer as constituting the tax imposed under sections 1 to 13 of this 2015 Act is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the consumer to the marijuana retailer, the excess tax paid shall be returned by the marijuana retailer to the consumer upon written notification by the Department of Revenue or the consumer.**

(b) The written notification must contain information necessary to determine the validity of the consumer's claim.

(2) If the marijuana retailer does not return the excess tax within 60 days after mailing of the written notification required under subsection (1) of this section, the consumer may appeal to the department for a refund of the amount of the excess tax, in the manner and within the time allowed under rules adopted by the department.

(3) If excess tax is returned to the consumer by the department, the department may issue a notice of deficiency for the excess tax to the marijuana retailer in the manner provided under ORS 305.265.

HB 2041, Section 10 establishes the requirements for audit and returns. Specifically the laws reads:

**SECTION 10. Except as otherwise provided in sections 1 to 13 of this 2015 Act or where the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitation, determination of and notices of deficiencies, assessments, collections, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality of returns and the penalties relative thereto, and the procedures relating thereto, apply to the determinations of taxes, penalties and interest under sections 1 to 13 of this 2015 Act.**

HB 2041, Section 11 allows the Department of Revenue to pay expenses and fees collected from the marijuana tax. Specifically the law reads:

**SECTION 11. (1) All moneys received by the Department of Revenue under sections 1 to**

**13 and 21a of this 2015 Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. The department may pay expenses for the administration and enforcement of sections 1 to 13 and 21a of this 2015 Act out of moneys received from the tax imposed under section 2 of this 2015 Act. Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account.**

**(2) After the payment of administrative and enforcement expenses and refunds or credits arising from erroneous overpayments, the department shall credit the balance of the moneys received by the department under this section to the Oregon Marijuana Account established under section 44, chapter 1, Oregon Laws 2015.**

**NOTE: Section 12 was deleted by amendment. Subsequent sections were not renumbered.**

HB 2041, Section 13 allows retailers to retain two percent of the collected 17% tax. Specifically the law reads:

**SECTION 13. For the purpose of compensating marijuana retailers for expenses incurred in collecting the tax imposed under section 2 of this 2015 Act, each marijuana retailer is permitted to deduct and retain two percent of the amount of taxes that are collected by the marijuana retailer from all retail sales of marijuana items conducted by the marijuana retailer.**

HB 2041, Section 13 identifies the distribution of collected taxes. 10% of the collected taxes go to cities to assist local law enforcement. There are two methodologies. One before July 1, 2017 based on population. After July 1, 2017 the distribution is based on producers, processors and wholesalers based on licenses issued in the city and for retailers based on licenses issued in the city. Section 14 also states that if any combination of producers, processors, wholesalers, retailers or certificates are banned a city cannot share in the tax distribution. Specifically the law reads:

## OTHER AMENDMENTS

**SECTION 14.** Section 44, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 44.** (1) There is established the Oregon Marijuana Account, separate and distinct from the General Fund.

**(2) The account shall consist of moneys transferred to the account under section 11 of this 2015 Act.**

**[(2)] (3) [At the end of each month, the Oregon Liquor Control Commission] Subject to subsection (4) of this section, the Department of Revenue shall certify the amount of moneys available for distribution in the Oregon Marijuana Account and[, after withholding such moneys as it may deem necessary to carry out its obligations under sections 3 to 70 of this Act, shall within 35 days of the month for which a distribution is made] distribute the moneys as follows:**

**(a) Forty percent [shall] must be transferred to the Common School Fund;**

**(b) Twenty percent [shall] must be transferred to the Mental Health Alcoholism and Drug Services Account established under ORS 430.380;**

**(c) Fifteen percent [shall] must be transferred to the State Police Account established under**



ORS 181.175;

(d) To assist local law enforcement in performing its duties under *[this Act, ten percent shall]* **sections 3 to 70, chapter 1, Oregon Laws 2015, 10 percent must** be transferred to the cities of *[the]* **this** state in the following shares:

(A) For all distributions made from the Oregon Marijuana Account before July 1, 2017, in such shares as the population of each city bears to the population of the cities of *[the]* **this** state, as determined by *[the State Board of Higher Education]* **Portland State University** last preceding such apportionment, under ORS 190.510 to 190.610; and

(B) For all distributions made from the Oregon Marijuana Account on or after July 1, 2017:

(i) Fifty percent of *[such ten]* **the 10 percent [shall] must** be transferred in such shares as the number of licenses issued by the commission under sections 19 to 21, **chapter 1, Oregon Laws 2015, [of this Act]** during the calendar year preceding the date of the distribution for premises located in each city bears to the number of such licenses issued by the commission during such calendar year for all premises in *[the]* **this** state; and

(ii) Fifty percent of *[such ten]* **the 10 percent [shall] must** be transferred in such shares as the number of licenses issued by the commission under section 22, **chapter 1, Oregon Laws 2015, [of this Act]** during the calendar year preceding the date of the distribution for premises located in each city bears to the number of such licenses issued by the commission during such calendar year for all premises in *[the]* **this** state;

(e) To assist local law enforcement in performing its duties under *[this Act, ten percent shall]* **sections 3 to 70, chapter 1, Oregon Laws 2015, 10 percent must** be transferred to counties in the following shares:

(A) For all distributions made from the Oregon Marijuana Account before July 1, 2017, in such shares as their respective populations bear to the total population of *[the]* **this** state, as estimated from time to time by *[the State Board of Higher Education]* **Portland State University**; and

(B) For all distributions made from the Oregon Marijuana Account on or after July 1, 2017:

(i) Fifty percent of *[such ten]* **the 10 percent [shall] must** be transferred in such shares as the number of licenses issued by the commission under sections 19 to 21, **chapter 1, Oregon Laws 2015, [of this Act]** during the calendar year preceding the date of the distribution for premises located in each county bears to the number of such licenses issued by the commission during such calendar year for all premises in *[the]* **this** state; and

(ii) Fifty percent of *[such ten]* **the 10 percent [shall] must** be transferred in such shares as the number of licenses issued by the commission under section 22, **chapter 1, Oregon Laws 2015, [of this Act]** during the calendar year preceding the date of the distribution for premises located in each county bears to the number of such licenses issued by the commission during such calendar year for all premises in *[the]* **this** state; and

(f) Five percent *[shall] must* be transferred to the Oregon Health Authority to be used for the establishment, operation[,] and maintenance of alcohol and drug abuse prevention, early intervention and treatment services.

**(4) A city or county that adopts ordinances prohibiting the establishment of a premises for which a license is issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, or prohibiting the establishment of an entity for which registration is required under ORS 475.300 to 475.346, is not eligible to receive distributions under this section.**

*[(3)]* **(5)** It is the intent of *[this section]* **the Legislative Assembly** that the moneys distributed from the Oregon Marijuana Account to the *[distributees]* **persons listed** in subsection *[(2)]* **(3)** of

this section are in addition to, **and not in lieu of**, any other [*available*] moneys **available** to such [*distributees and do not supplant moneys available from any other source*] **persons**.

HB 2041, Sections 21 and 22 allows for early sales of recreational marijuana from medical marijuana dispensaries. City Council passed Ordinance No. 2015-2787 banning the early sales, thus no taxes per the State provisions has occurred. Specifically the law reads:

### **EARLY START**

**SECTION 21a.** (1) For purposes of this section:

(a) "Limited marijuana retail product" has the meaning given that term in section 2, chapter, Oregon Laws 2015 (Enrolled Senate Bill 460).

(b) "Medical marijuana dispensary" means an entity registered with the Oregon Health Authority under ORS 475.314.

(2) On and after January 4, 2016, if a medical marijuana dispensary elects to make sales as described in section 2, chapter , Oregon Laws 2015 (Enrolled Senate Bill 460), the medical marijuana dispensary must collect the tax imposed under section 2 of this 2015 Act in the same manner that a marijuana retailer that holds a license under section 22, chapter 1, Oregon Laws 2015, collects the tax imposed under section 2 of this 2015 Act, except that the tax imposed under this section shall be imposed at the rate of 25 percent of the retail sales price of the limited marijuana retail product.

(3) A medical marijuana dispensary that collects taxes as required by this section is subject to the provisions of sections 1 to 13 of this 2015 Act, except that the tax imposed under this section shall be imposed at the rate described in subsection (2) of this section.

### **MISCELLANEOUS**

**SECTION 22.** Sections 1 to 13 of this 2015 Act and the amendments to ORS 305.140, 305.895 and 305.992 and section 44, chapter 1, Oregon Laws 2015, by sections 14 to 17 of this 2015 Act apply to retail sales of marijuana items occurring on or after January 1, 2016.

SB 460 has additional provisions for the early sale of recreational marijuana from medical marijuana dispensaries. City Council passed Ordinance No. 2015-2787 banning the early sales. Specifically the law reads:

**SECTION 1.** Section 2 of this 2015 Act is added to and made a part of ORS 475.300 to 475.346.

**SECTION 2.** (1) As used in this section:

(a) "Limited marijuana retail product" means:

(A) The seeds of marijuana;

(B) The dried leaves and flowers of marijuana; and

(C) A marijuana plant that is not flowering.

(b) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant

**Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.**  
**(c) "Medical marijuana dispensary" means an entity registered with the Oregon Health Authority under ORS 475.314.**

**(2) Notwithstanding any other provision of law, on and after October 1, 2015, a medical marijuana dispensary may sell limited marijuana retail product to a person who is 21 years of age or older if:**

**(a) The person presents proof of age to the medical marijuana dispensary before entering into the medical marijuana dispensary;**

**(b) The medical marijuana dispensary verifies that the person is 21 years of age or older at the time of the sale;**

**(c) The medical marijuana dispensary sells no more than one-quarter ounce of limited marijuana retail product to the person per day if the person is purchasing the dried leaves and flowers of marijuana; and**

**(d) The medical marijuana dispensary sells no more than four units of limited marijuana retail product to the person if the person is purchasing a marijuana plant that is not flowering.**

**(3) A city or county may adopt ordinances prohibiting the sale of limited marijuana retail product as described in this section in the area subject to the jurisdiction of the city or the unincorporated area subject to the jurisdiction of the county.**

**(4) The authority shall adopt rules to implement this section, including rules that:**

**(a) Are necessary to ensure the public health and safety; and**

**(b) Ensure that a medical marijuana dispensary complies with this section.**

**(5) The authority may prohibit a medical marijuana dispensary from selling limited marijuana retail product as described in this section if the medical marijuana dispensary violates this section.**

**SECTION 3. Section 2 of this 2015 Act is repealed on December 31, 2016.**

**SECTION 4. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.**

Attachments: 1. Ordinance No. 2014-2777



## ORDINANCE NO. 2014-2777

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### AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF NEWBERG

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#### RECITALS:

1. **WHEREAS**, Chapter II, Section 5 of the Newberg City Charter provides: **POWERS**. The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.
2. **WHEREAS**, the city desires to tax the sale or transfer of marijuana and marijuana-infused products within the city.

#### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. **SECTION 1.** Title 3 Revenue and Finance of the Newberg Municipal Code hereby adds a new Chapter 3.40, establishing a tax on the sale of marijuana and marijuana-infused products, as follows:

##### **SECTION 3.40.010 Purpose.**

For the purposes of this chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the city of Newberg is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

##### **SECTION 3.40.020 Definitions.**

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

- A. "Director" means the Director of Finance for the city of Newberg or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
- 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 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.

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

G. "Purchaser" means any person who acquires marijuana from a seller for any valuable consideration.

H. "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.

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

J. "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.

K. "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.

L. "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.

**SECTION 3.40.030 Levy of Tax.**

A. 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.

B. The amount of tax levied is as follows:

- 1) Five percent (5%) of the gross sale amount paid to the seller by a registry identification cardholder.
- 2) Ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not purchasing marijuana under the Oregon Medical Marijuana Program.

C. The purchaser shall pay the tax to the seller at the time of the purchase or sale of marijuana.

**SECTION 3.40.040 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.

**SECTION 3.40.050 Seller Responsible For Payment Of Tax.**

A. Every seller shall, on or before the fifteenth (15<sup>th</sup>) 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 ensure 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. The quarters are:

First quarter: January, February, March

Second quarter: April, May, June

Third quarter: July, August, September

Fourth quarter: October, November, December

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 ensure 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. For good cause, the Director may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the City Council. A seller to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section 3.30.060.

E. 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.

F. 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.

**SECTION 3.40.060 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.

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 fifteen percent (15%) 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 subparagraphs 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. A seller who fails to remit the tax within the required time may petition the City Manager for waiver and refund of the penalty or a portion of it. The manager may, if good cause is shown, direct a refund of the penalty or a portion of it. Any such hearing will be conducted under the procedures described in section 3.30.080.

**SECTION 3.40.070 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 when a 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 appeal such determination as provided in section 3.30.080. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

**SECTION 3.40.080 Appeal and Redetermination.**

- A. Any person against whom a determination is made under NMC 3.40.070 or any person directly interested in the determination may petition for a redetermination, within 15 days after service of the notice described in NMC 3.40.070. If no petition is filed, the determination shall become final at the expiration of the allowable time.
- B. If a petition for redetermination is filed within the allowable time period, the City Manager shall reconsider the determination, and, if the person has so requested in the person's petition, shall grant the person an oral hearing and shall give the person 10 days' notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as necessary.
- C. The City Manager may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, the increase shall be payable immediately after the hearing.
- D. The order or decision of the City Manager upon a petition for redetermination shall become final 10 days after service upon the petitioner of notice, unless appeal of such order or decision is filed with the city council within 10 days after service of such notice. An appeal fee of \$250 shall be paid at the time the notice of appeal to the city council is filed.
- E. No petition for redetermination or appeal therefrom shall be effective for any purpose unless the seller first deposits with the city the amount of tax determined to be owing pursuant to NMC 3.40.070. Refunds, if any, will be processed under NMC 3.40.090.

**SECTION 3.40.090. 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 subparagraph 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 the 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 in 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.

**SECTION 3.40.100 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. Within three years after the tax becomes payable or within three years after a determination becomes final, the city may bring an action in the name of the city in the courts of this state, another state or the United States to collect the amount delinquent and penalties and interest. 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 (as hereafter amended), 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.

**SECTION 3.40.110 Penalties.**

- A. It is unlawful for any seller or any other person so required to fail or refuse to furnish any return required to be made, or fail or refuse to furnish the supplementary return or other data required by the Director or to enter a false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this chapter.
- B. Violation of any provision of this chapter of this code shall constitute a Class 1 civil infraction and be enforced under the provisions of NMC Chapter 2.30. Every day in which the violation is caused or permitted to exist constitutes a separate infraction, and the punishment therefor shall be in addition to any other penalty, interest, sum or charge imposed by this code or this chapter. Delinquent taxes and fees, penalty and interest imposed by this chapter and this code may be collected in a civil action.
- C. The remedies provided by this section are not exclusive and shall not prevent the city from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

**SECTION 3.40.120 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 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 amount due to 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).

**SECTION 3.40.130 Audit of Books, Records or Persons.**

- A. It shall be the duty of every seller liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years and six months, all records, books, reports, income tax reports and other matters required by this chapter as may be necessary to determine the amount of such tax as the seller may have been liable for the collection of and payment to the city, which records the Director shall have the right to inspect at all reasonable times as set forth below. Every operator shall maintain records of marijuana purchase and sales, accounting books and records of income. Sellers must, at a minimum, include a cash receipt and deposit journal, and a cash disbursements journal/check register for all authorized deductions. These records and books shall reconcile to the tax reports and be auditable. They shall also reconcile to the seller's income tax reports. If the Director finds the books and records of the seller are deficient in that they do not provide adequate support for tax reports filed, or the seller's accounting system is not auditable, it shall be the responsibility of the seller to improve its accounting system to the satisfaction of the Director.
- B. 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 Newberg Municipal 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.

**SECTION 3.40.140 Forms And Regulations.**

A. 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 medical marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- 1) A form of report on sales and purchases to be supplied to all vendors;
- 2) 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/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.

**SECTION 4. Codification.** Provisions of this Ordinance shall be incorporated in the city code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the city recorder is authorized to correct any cross-references and any typographical errors.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: November 5, 2014.


**ADOPTED** by the City Council of the City of Newberg, Oregon, this 6th day of October, 2014, by the following votes:

**AYE: 5**

**NAY: 2**

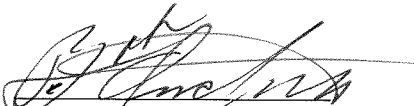
**ABSENT:**

**ABSTAIN: 1**



Sue Ryan, Interim City Recorder

**ATTEST** by the Mayor this 9th day of October, 2014.

  
Bob Andrews, Mayor

**Chapter 9.10**

**DRUG OFFENSES**

Sections:

Article I. General Provisions

- 9.10.010 Possession of less than one avoirdupois ounce of marijuana.
- 9.10.020 Exemption.

Article II. Sale of Drug Paraphernalia

- 9.10.030 Definitions.
- 9.10.040 Factors to be considered.
- 9.10.050 Offenses and penalties.
- 9.10.060 Nuisance.
- 9.10.070 Infraction procedure.

Article III. Penalty

- 9.10.080 Penalty.

**Article I. General Provisions**

**9.10.010 Possession of less than one avoirdupois ounce of marijuana.**

A person commits the offense of possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae (marijuana), if the person knowingly and unlawfully possesses less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae (marijuana). [Ord. 2424, 11-6-95; Ord. 1703, 8-20-73. Code 2001 § 131.01.]

**Penalty:** See NMC 9.10.080.

**9.10.020 Exemption.**

The provisions of this chapter relating to marijuana offenses shall not apply when exempted by ORS 475.300 through 475.340. [Code 2001 § 131.02.]

**Article II. Sale of Drug Paraphernalia**

**9.10.030 Definitions.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

**“Controlled substance”** means a drug or its immediate precursor classified in Schedules I through V under the Federal Controlled Substances Act, 21 USC 811 through 812, as modified under ORS 475.035.

**“Deliver”** or **“delivery”** means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.

**“Drug paraphernalia”** means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Act of Oregon (ORS 475.005 through 475.285 and 475.991 through 475.995). It includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
4. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

8. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

9. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

11. Hypodermic syringes, needles and other objects used or intended for use in storing or concealing controlled substances;

12. Objects used, intended for use, or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body; such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips: meaning objects used to hold burning materials, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

f. Chamber pipes;

g. Carburetor pipes;

h. Electric pipes;

i. Air-driven pipes;

j. Chillums;

k. Bongs;

l. Ice pipes or chillers.

“**Marijuana**” means all parts of the plant *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. 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. [Ord. 2115, 4-4-83. Code 2001 § 131.15.]

#### **9.10.040 Factors to be considered.**

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

A. Statements by an owner or by anyone in control of the object concerning its use;

B. Prior convictions, if any, of an owner, or of anyone in control of the object, under any municipal, state, or federal law relating to any controlled substance;

C. The proximity of the object in time and space to a direct violation of this article or the Uniform Controlled Substances Act of Oregon;

D. The proximity of the object to controlled substances;

E. The existence of any residue of controlled substances on the object;

F. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom the owner knows intend to use the object to facilitate a violation of municipal or state law; the innocence of an owner, or of anyone in control of the object, as to a violation of this law or state law shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;

G. Instructions, oral or written, provided with the object concerning its use;

H. Descriptive materials accompanying the object which explain or depict its use;

I. National and local advertising concerning its use;

J. The manner in which the object is displayed for sale;

K. Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

L. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

M. The existence and scope of legitimate uses for the object in the community;

N. Expert testimony concerning its use. [Ord. 2115, 4-4-83. Code 2001 § 131.16.]

**Cross-reference:** See Chapter 475 of Title 37 ORS, pertaining to paraphernalia.

**9.10.050 Offenses and penalties.**

A. Possession of Drug Paraphernalia. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

B. Manufacture or Delivery of Drug Paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.

C. Delivery of Drug Paraphernalia to a Minor. Any person 18 years of age or older who violates subsection (B) of this section by delivering drug paraphernalia to a person under 18 years of age who is at least three years that person's junior is guilty of a misdemeanor offense. [Ord. 2420, 11-7-95; Ord. 2115, 4-4-83. Code 2001 § 131.17.]

**Penalty:** See NMC 9.10.080.

**9.10.060 Nuisance.**

A. Drug paraphernalia are public nuisances. Any peace officer shall summarily seize any such paraphernalia and shall deliver it to the chief of police, who shall hold it subject to the order of the municipal court.

B. Whenever it appears to the court that drug paraphernalia has been possessed in violation of this article, the court shall order the chief of police to destroy the paraphernalia. [Ord. 2115, 4-4-83. Code 2001 § 131.18.]

**9.10.070 Infraction procedure.**

Violation of NMC 9.10.050(A) and (B) is an infraction. Citations shall be issued and court procedures followed that are in accordance with ORS 153.110 through 153.280. [Ord. 2115, 4-4-83. Code 2001 § 131.19.]

**Article III. Penalty**

**9.10.080 Penalty.**

A. The penalty for the conviction of NMC 9.10.010 shall be punishable by a fine of not less than \$500.00 and not more than \$1,000; provided, that if the unlawful possession occurs in a public place as defined in ORS 161.015, that is, within 1,000 feet of the real property comprising a public or private elementary, vocational or secondary school attended primarily by minors, the offense shall be a misdemeanor offense and upon conviction the defendant may be imprisoned for not more than 30 days, and/or fined not more than \$1,000, or both.

B. Fine or Imprisonment.

1. Any person who violates NMC 9.10.050(A) and (B) is guilty of an infraction and upon conviction may be fined not more than \$500.00.

2. Any person who violates NMC 9.10.050(C) upon conviction may be imprisoned for not more than one year, fined not more than \$2,500, or both. [Ord. 2424, 11-6-95; Ord. 2420, 11-7-95; Ord. 2115, 4-4-83; Ord. 1703, 8-20-73. Code 2001 § 131.99.]

**Chapter 9.15**

**OFFENSES AGAINST GOVERNMENTAL  
ADMINISTRATION**

Sections:

- 9.15.010 Unsworn falsification.
- 9.15.020 Obstructing governmental administration.
- 9.15.030 Tampering with public records.
- 9.15.040 Impersonation.
- 9.15.050 False reports.
- 9.15.060 Resisting or obstructing an officer.
- 9.15.070 Escape.
- 9.15.080 Police and fire communications.
- 9.15.090 Deliveries to prisoners.

**9.15.010 Unsworn falsification.**

No person shall knowingly make any false written statement to a public servant in connection with an application for any benefit. [Ord. 1703, 8-20-73. Code 2001 § 132.01.]

**Penalty:** See NMC 9.05.120.

**9.15.020 Obstructing governmental administration.**

A. No person shall intentionally obstruct, impair or hinder the administration of law or other governmental function by means of intimidation, force or physical interference or obstacle.

B. This section shall not apply to the obstruction of unlawful governmental action or interference with the making of an arrest. [Ord. 1703, 8-20-73. Code 2001 § 132.02.]

**Penalty:** See NMC 9.05.120.

**9.15.030 Tampering with public records.**

No person shall, without lawful authority, knowingly destroy, mutilate, conceal, remove, make a false entry in or falsely alter any public record. [Ord. 1703, 8-20-73. Code 2001 § 132.03.]

**Penalty:** See NMC 9.05.120.

**9.15.040 Impersonation.**

No person shall, with intent to obtain a benefit or to injure or defraud another, falsely impersonate a

public servant and do an act in such assumed character. [Ord. 1703, 8-20-73. Code 2001 § 132.04.]

**Penalty:** See NMC 9.05.120.

**9.15.050 False reports.**

A. No person shall knowingly initiate a false alarm or report which is transmitted to a fire department or law enforcement agency or other organization that deals with emergencies involving danger to life or property.

B. No person shall knowingly make or file with the police department or with the city attorney or a police officer engaged in official duties a false, misleading or unfounded statement or report concerning the violation or alleged violation of a city ordinance or the commission or alleged commission of a crime. [Ord. 1703, 8-20-73. Code 2001 § 132.05.]

**Penalty:** See NMC 9.05.120.

**9.15.060 Resisting or obstructing an officer.**

A. No person shall resist any peace officer acting in the performance of the peace officer's duties; or by any means whatsoever hinder, delay or obstruct any such officer acting in the performance of the officer's duties.

B. As used in this section, "resist" refers to the ordinary meaning of the term.

C. It is no defense to a prosecution under this section that a peace officer lacked legal authority to make an arrest; provided, the peace officer was acting under the color of the peace officer's official authority.

D. It is a defense to prosecution under this section that the interference alleged consisted of speech only. [Ord. 1703, 8-20-73. Code 2001 § 132.06.]

**Penalty:** See NMC 9.05.120.

**9.15.070 Escape.**

A. No person shall:

1. Knowingly escape or attempt to escape from official detention.

2. Knowingly cause, aid, assist, abet or facilitate an escape from official detention.

B. As used in this section:

"Escape" means an unlawful departure.

## 2013 ORS § 475.525<sup>1</sup>

### Sale of drug paraphernalia prohibited

- definition of drug paraphernalia
- exceptions

- (1) It is unlawful for any person to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to unlawfully plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance as defined by ORS 475.005 (Definitions for ORS 475.005 to 475.285 and 475.752 to 475.980).
- (2) For the purposes of this section, drug paraphernalia means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of ORS 475.752 (Prohibited acts generally) to 475.980 (Affirmative defense to ORS 475.969, 475.971, 475.975 (1) and 475.976 (1)). Drug paraphernalia includes, but is not limited to:
  - (a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
  - (b) Kits marketed for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
  - (c) Isomerization devices marketed for use or designed for use in increasing the potency of any species of plant which is a controlled substance;
  - (d) Testing equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
  - (e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;
  - (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;
  - (g) Separation gins and sifters marketed for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
  - (h) Containers and other objects marketed for use or designed for use in storing or concealing controlled substances; **and**
  - (i) Objects marketed for use or designed specifically for use in ingesting, inhaling or



otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

- (A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens or hashish heads;
  - (B) Water pipes;
  - (C) Carburetion tubes and devices;
  - (D) Smoking and carburetion masks;
  - (E) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand, such as a marijuana cigarette;
  - (F) Miniature cocaine spoons and cocaine vials;
  - (G) Chamber pipes;
  - (H) Carburetor pipes;
  - (I) Electric pipes;
  - (J) Air-driven pipes;
  - (K) Chillums;
  - (L) Bonges;
  - (M) Ice pipes or chillers; **and**
  - (N) Lighting equipment specifically designed for the growing of controlled substances.
- (3) Drug paraphernalia does not include hypodermic syringes or needles.
- (4) In determining whether an object is drug paraphernalia, a trier of fact should consider, in addition to all other relevant factors, the following:
- (a) Instructions, oral or written, provided with the object concerning its use;
  - (b) Descriptive materials accompanying the object which explain or depict its use;
  - (c) National and local advertising concerning its use;
  - (d) The manner in which the object is displayed for sale;
  - (e) The existence and scope of legitimate uses for the object in the community; **and**
  - (f) Any expert testimony which may be introduced concerning its use.
- (5) The provisions of ORS 475.525 (Sale of drug paraphernalia prohibited) to 475.565 (Civil penalty for violation of ORS 475.525) do not apply to persons registered under the provisions of ORS 475.125 (Registration requirements) or to persons specified as exempt from registration under the provisions of that statute. [1989 c.1077 §1; 1995 c.440 §10]

...

Selling or delivering drug paraphernalia is civil violation, not crime. Jackson County v. Roark, 124 Or App 505, 863 P2d 491 (1993), Sup Ct review denied

Chapter 475

## Law Review Citations

51 OLR 561 (1972); 69 OLR 171 (1990)

## Related Statutes<sup>3</sup>

- 162.135  
Definitions for ORS 162.135 to 162.205
- 475.535  
Action to enforce ORS 475.525 to 475.565
- 475.555  
Seizure of drug paraphernalia
- 475.565  
Civil penalty for violation of ORS 475.525

<sup>1</sup> Legislative Counsel Committee, *CHAPTER 475—Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors*, [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ors475.-html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors475.-html) (2013) (last accessed Apr. 27, 2014).

<sup>2</sup> Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2013, Chapter 475*, [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ano475.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ano475.html) (2013) (last accessed Apr. 27, 2014).

<sup>3</sup> OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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