

**AGENDA**  
**SPECIAL MEETING**  
**CITY OF NORTH PLAINS, CITY COUNCIL MEETING**  
North Plains City Hall  
31360 NW Commercial Street  
Wednesday, October 29, 2014 – 6:00 P.M.

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **ORDINANCES:**

**FIRST READING:**

- A. Introduction and first reading of Ordinance No. 423— An Ordinance of the City Council of the City of North Plains, Oregon, Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products in the City of North Plains and Adding a New North Plains Municipal Code Subchapter 2.30.

**SECOND READING:**

None Scheduled

5. **ADJOURNMENT:**

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North Plains City Council meetings are accessible for disabled individuals. The City will also endeavor to provide services for persons with impaired hearing or vision and other services, if requested, at least 48 hours prior to the meeting. To obtain services, please call City Hall at (503) 647-5555

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**The following City Council Meetings are scheduled to be held at the North Plains Senior Center, 31450 NW Commercial Street, North Plains, Oregon.**

**The meetings will be held on the following dates at 7:00 p.m.:**

Monday, November 3, 2014      Monday, November 17, 2014      Monday, December 1, 2014



## CITY OF NORTH PLAINS

31360 NW Commercial Street, North Plains, Oregon 97133

Date: October 29, 2014  
To: Mayor and City Council  
From: City Manager Martha DeBry  
Subject: Marijuana Tax

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**Request:** Council review and consider an ordinance for a marijuana tax.

**Fiscal Impact:** Many agencies in Oregon have adopted taxes on marijuana sold at legal dispensaries (A list of agencies is included in the packet.) The thought is that a tax enacted prior to the November election will not be subject to Proposition 91, which specifically prohibit taxes on marijuana sales.

Some agencies in Oregon has not pursued a tax. In part if approved by voters Proposition 91 will be a mandate not to tax marijuana. There are also concerns that it is unclear what taxing authority a city can exercise over marijuana which remains illegal under federal law.

A copy of the ordinance from Hillsboro has been modified for Council's consideration if it wishes to pursue a tax. Since taxes cannot be approved with an emergency ordinance, it will be necessary to schedule the second reading prior to the November 4 election. A Council meeting is scheduled for November 3. A copy of the Hillsboro staff report is also included in Council's packet for information.

**Fiscal Impact:** There is no immediate fiscal impact associated with this ordinance, as there are no marijuana dispensaries in the community. Should a dispensary be located here in the future it would be subject to the tax if adopted.

**Environmental Issues:** None

**Recommendation:** Council determine if it would like to impose a marijuana tax and Council should move to read Ordinance No. 423 by title only for the first time.

# Recreational Marijuana Taxation Comparison for Oregon Cities

| City          | Percentage | Notes                   |
|---------------|------------|-------------------------|
| Ashland       | 20%        |                         |
| Central Point | 10%        | option to change to 25% |
| Coquille      | 10%        |                         |
| Dundee        | 10%        |                         |
| Fairview      | 40%        |                         |
| Falls City    | 10%        |                         |
| Forest Grove  | 10%        |                         |
| Gresham       | TBD        |                         |
| Happy Valley  | 10%        |                         |
| Hillsboro     | 10%        |                         |
| Independence  | 10%        |                         |
| Keizer        | 10%        |                         |
| La Grande     | 25%        |                         |
| Medford       | 18%        |                         |
| Milwaukie     | 10%        |                         |
| Nehalem       | 10%        |                         |
| Newberg       | 10%        |                         |
| North Bend    | TBD        |                         |
| Oakridge      | 10%        |                         |
| Oregon City   | 10%        |                         |
| Portland      | 10%        |                         |
| Redmond       | 15%        |                         |
| Roseburg      | 10%        |                         |
| Sandy         | 20%        |                         |
| Scappoose     | 20%        |                         |
| Shady Cove    | 10%        |                         |
| Sherwood      | 10%        |                         |
| Springfield   | TBD        |                         |
| St Helens     | 20%        |                         |
| Tigard        | 10%        |                         |
| Troutdale     | 10%        |                         |
| Wilsonville   | 10%        |                         |

**Red** - Ordinance has not yet been formally adopted but is expected to.

**MEMORANDUM**

**To:** Mayor and City Council

**From:** Andrew Bartlett, Management Analyst, City Manager's Office

**Date:** September 4, 2014

**Subject:** Ordinance Establishing Tax on Marijuana and Marijuana Infused Products

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**Requested City Council Action:**

Staff requests City Council review and consideration of an ordinance which would impose a gross receipts tax on the retail sale medical marijuana and recreational marijuana (if legalized by voters in November). The ordinance proposes a gross receipts tax rate of 0% on the sale of medical marijuana and 10% on the sale of recreational marijuana.

**Background:**

In 1999, Oregon voters passed an initiative legalizing medical marijuana. The Oregon Medical Marijuana Program allows registered cardholders to legally consume marijuana for medical purposes. The law originally allowed cardholders to grow their own marijuana or obtain it from other registered growers. To make medical marijuana available to cardholders a number of medical marijuana dispensaries have opened across the state, in recent years.

To address some of the concerns about the dispensaries, the 2013 Oregon Legislature passed HB 3460 which established uniform registration and licensing procedures for the dispensaries. Additionally in 2014, the Oregon Legislature passed SB 1531 which authorized local governments to enact measures related to medical dispensaries regulating: reasonable time, place, and manner regulations.

In 2012, Washington and Colorado voters legalized the recreational use of marijuana. In Oregon, Measure 91 which allows for the legal use of marijuana will be on the November 4, 2014 ballot.

Currently, no law in Oregon prohibits a local government from taxing marijuana. There are a few cities in Oregon that have passed taxes on the sale of marijuana. The two that staff looked at and borrowed language from are Ashland and Gold Hill. The ordinance presented to Council follows Ashland's model by placing a gross receipts tax on the retail sale of marijuana. As

mentioned above, the rate of the gross receipts tax would be 0% on the sale of medical marijuana and 10% in the sale of recreational marijuana (if legalized).

It is important to note, that as stated above there is nothing in Oregon law that prohibits a City from taxing marijuana, but Measure 91 does contain language that would prohibit local governments from taxing marijuana if the measure passes. The initiative contains the following language:

**SECTION 42. State has exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.**

At this time it is not legally clear whether such a tax would be preempted by the state measure that prohibits a local government from taxing marijuana. The initiative's language can be alternatively read to mean that no local government can tax marijuana "after" the measure's effective date (so a grandfathering in) or that no local government can tax marijuana "at any time" following the effective date. Therefore, if the city does impose a tax, this issue will most likely get litigated if the state does not clarify the issue.

Because Measure 91's language could allow a local tax on marijuana to be grandfathered in staff has been asked to present Council with the option to adopt an ordinance that would establish a gross receipts tax on the sale of marijuana.

**Cost:**

Taxing the sale of marijuana (if legalized) would be a new revenue source for the City of Hillsboro. At this time it is unknown how much revenue the City could receive from a tax on the sale of marijuana products given that there are currently no retail outlets of marijuana in the City.

Additionally, there could be costs associated with the collection and auditing of the tax on marijuana products. These costs are also unknown at this time but Staff anticipates that any costs related to the collection of a tax would be covered by the tax itself.

**Recommendation:**

Due to the upcoming election which could potentially allow for the legalization of recreational marijuana, staff recommends City Council consideration of an ordinance which would impose a gross receipts tax on the retail sale of medical marijuana and recreational marijuana (if legalized by voters in November). The ordinance proposes a gross receipts tax rate of 0% on the sale of medical marijuana and 10% on the sale of recreational marijuana.



OREGON JUDICIAL DEPARTMENT  
Josephine County Court

October 16, 2014

FILED OCT 16 2014  
JOSEPHINE COUNTY COURTS  
BY \_\_\_\_\_

Mr. Ryan Kirchoff  
Attorney at Law  
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Grants Pass, OR 97526

Mr. Rob Bovett  
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Association of Oregon Counties  
1201 Court Street NE STE 300  
Salem, OR 97301

Mr. Pat Kelly  
Attorney at Law  
717 NW 5<sup>th</sup> Street  
Grants Pass, OR 97526

Mr. Sean O'Day  
Attorney at Law  
League of Oregon Cities  
1201 Court St NE STE 200  
Salem, OR 97301

Ms. Carla Scott  
Deputy Attorney General  
Oregon Dept. of Justice  
1515 SW 5<sup>th</sup> Ave  
Portland, OR 97201

RE: City of Cave Junction vs. State of Oregon; Josephine County Case No. 14CV0588

Dear Counsel:

What follows is the Court's letter opinion with respect to the reciprocal Motions for Summary Judgment pending in this case.

The benchmark case in the area of local preemption is La Grande/Astoria vs. PERB, 281 Or 137, wherein the Court wrote: "...as we have noted, local government authority may be preempted in either of two ways: 1) it may be preempted expressly, 2) or it may be preempted implicitly by virtue of the fact that it cannot operate concurrently with state or federal law".

The Court will address each type of preemption in order:

I. Express preemption

As Intervener's note in their memorandum, there are many Oregon laws that contain language of express preemption. Another example is ORS 417.045, which involves another drug, to wit:

"471.045 Liquor laws supersede and repeal inconsistent charters and ordinances. The Liquor Control Act, designed to operate uniformly throughout the state, shall be paramount and superior to and shall fully replace and supersede any and all municipal charter enactments or local ordinances inconsistent with it. Such charters and ordinances hereby are repealed."

Because of this language there has never been room for any government entity, other than the Oregon Liquor Control Commission, to regulate alcohol.

In this case, there are no such words of express preemption.

II. Implied preemption

In discussing implied preemption, all the parties base their arguments on several Oregon cases, which the Court will discuss.

In La Grande/Astoria vs. PERB, 281 Or 137, the general rule state on page 148, as follows: "It is reasonable to interpret local enactments, if possible, to be intended to function consistently with state laws, and equally reasonable to assume that the legislature does not mean to displace local civil or administrative regulations of local conditions by a statewide law unless that intention is apparent."

In Haley vs. City of Troutdale, 281 Or 203, the city enacted an ordinance requiring "double-wall" construction in certain instances, despite Oregon's building code that allowed "single-wall" construction. On page 210, the state building code contains the following preemptive-sounding language: "The state building code shall be applicable and uniform throughout this state, and in all municipalities therein, and no municipality shall enact or enforce any ordinance, rule or regulation in conflict therewith."

Despite that language, the city's code requiring double-wall construction was not preempted by the state building code. The court found the statute ambiguous as to local preemption. On page 211, they wrote "certainly that intention is not unambiguously expressed. Until it is, we conclude that local requirements compatible with compliance of the state's standards are not preempted by ORS 456.750 et seq."

In AT&T Communications vs City of Eugene, 177 Or App 379, the city attempted to impose registration and licensing fees on AT&T, despite a myriad of state regulations that limited local

municipalities power to tax such utilities. Eugene's fees were not preempted, the court wrote on page 389: "A local law will be considered preempted if it is 'incompatible' with legislative policy, that is to say, if local and state or federal law cannot operate concurrently or if the state legislature or congress intended to preempt the local enactment." It was important to the court that Eugene's home rule charter conferred all authority to the city, not specifically denied by the state or federal constitution. Notably, the empowerment clause in the Eugene and Cave Junction city charters are almost identical. Eugene's home rule charter was enacted in 1976, and the court indicated a different result would follow, as it did in Eugene Theater et al. vs. Eugene, 194 OR 603 (1952), if Eugene had still been operating as a general law municipality.

In Oregon Restaurant Association vs. City of Corvallis, 166 Or App 506, the Oregon Indoor Clean Air Act prohibited smoking in all public places except areas designated according to the rules of the Oregon Health Division. The city's ordinance went beyond that, prohibiting smoking in all enclosed public places. On page 510, the court wrote:

"...in this case there is no conflict between the City's ordinance and the state law. The Act prohibits smoking in certain locations; it does not contain the slightest hint that the legislature intended to create a positive right to smoke in all public places where it did not expressly forbid smoking. Nothing in the Act is inconsistent with a local jurisdiction's decision to impose greater limits on public smoking. Because the Act and the ordinance are not inconsistent, there is no issue of preemption."

In Thunderbird Mobile Club LLC vs. City of Wilsonville, 234 Or App 457, the conflict was between Oregon's landlord tenant law, which provided a basic framework within which a mobile home park owner could cease operation, and the city of Wilsonville's much more onerous and expensive method of ceasing operation. Again, the state law appeared preemptive in its language but the court did not consider it so. Rather, on 471, it was noted: "Within the area of civil regulation, then, a chartered city can enact substantive policies in an area also regulated by state statute unless the local regulation is 'incompatible' with state law either in the sense of being 'clearly' preempted by express state law or because both [state law and local law] cannot operate concurrently."

Therefore, the issue in this case is whether or the City of Cave Junction, a home rule municipality, has the power to prohibit medical marijuana dispensaries despite HB3460 and Senate Bill 1531. As earlier indicated, there is nothing in either law that clearly preempts local regulation. The remaining question is whether or not these laws cannot operate concurrently, if a particular home rule municipality, such as the city of Cave Junction, is allowed to prohibit medical marijuana dispensaries.

The defendant's cite the language contained within Senate Bill 1531 as expressing "a clear intent to preempt local laws that would effectively ban outright OMMA – compliant dispensaries." State's Motion, page 7, line 21.

If that is so, it is certainly tepid language when compared with that found in AT&T Communications, supra (“the public utility commission shall have authority to determine the manner, and extent of the regulation of telecommunication services within the state of Oregon”); or, Thunderbird Mobile Club, supra (“This chapter applies, to regulates, determines rights, obligations and remedies under a rental agreement wherever made, for a dwelling unit located within this state”); or Haley, supra (“The state building code shall be applicable and uniform throughout this state and in all municipalities therein and no municipalities shall enact or enforce any ordinance, rules, or regulation in conflict therewith”), all of which were found not to be preemptive of local regulation.

Even though tepid, defendant claims that the following language in SB1531 removes a municipalities’ power to prohibit a medical marijuana dispensary:

1. Cross Reference to ORS 633.738

For the reasons stated in the Intervener’s brief, the Court does not believe ORS 633.738 has any application to medical marijuana.

2. The One Year Moratorium

The Court can certainly understand the state’s argument that a one year moratorium implies that, after that period, medical marijuana dispensaries must be allowed. The question for the Court is not to discern implication which is somewhat like attempting to read tea leaves; but to determine if this provision is incompatible with an outright ban. The use of the word “may” is instructive; instead of some other verbiage such as “may only”; or “is limited to”. It leaves open the question as to whether or not the City of Cave Junction may elect not to enact a moratorium (as they’ve done); and simply ban medical marijuana dispensaries; or, in the alternative, if the city enacted a moratorium, but during that period of time thought about the issue, and more importantly observed other medical marijuana dispensaries in practice and then decided to ban dispensaries or to refuse to issue a business license. The Court does not find that incompatible with the law as it is written.

3. Regulation of Time, Place, and Manner

This section does not strongly mitigate toward a particular interpretation. Again the word “may” is used. It is compatible with a reading that if a city elects to go forward with a medical marijuana dispensary they cannot do it in a grudging manner and attempt to restrict it out of existence.

The Court understands the state's argument that the language in these new laws express the legislature's intent to: ..."provide reliable access to safe medical marijuana in a consistent manner throughout Oregon." State's Reply Brief, page 2, line 22 - 24.

However, this Court does not believe that some jurisdiction's election not to allow a medical marijuana dispensary is incompatible with that intent.

Following the state's logic, a local jurisdiction would never be able to prohibit, or even deny a business license, to a dispensary even for very legitimate reasons such as: their municipality is very small and doesn't even have a district described in ORS 475.314 (3)(a) within which to locate a dispensary; or the municipality is a bedroom community located near another city which has licensed several medical marijuana dispensaries.

Finally, the Court does not believe that the legislature's intent for widespread dispensaries, necessarily equates to greater access to medical marijuana than to traditional health care. In fact in ORS 475.300 where a legislative intent was expressed concerning medical marijuana it is stated: "...marijuana should be treated like other medicine." Other medicine, and other health care, are not found in every Oregon city and town. For example, if a resident of Fossil desires to fill a prescription, he/she must drive at least 20 miles to Condon because there is no pharmacy in Fossil. If that same person wanted to consult with a medical doctor, they would have to drive at least an additional 40 miles to Heppner; and if they were referred to a specialist, probably another 150 miles to Portland. This Court's first child was born after a 90 mile drive from our home to a hospital in the Dalles. Yet few Oregonians would say that they don't have general access to traditional pharmaceuticals, and physicians throughout Oregon. The resident of Fossil would understand that if he/she wanted immediate and quick access to traditional health care they might have to move to Portland (which no resident of Fossil would agree to).

In Zotolla vs. Three Rivers School District, Josephine County case number 12CV0045 and 11CV1240, this Court was confronted with a similar, but not the same issue. In that case, the legislature had recently enacted ORS 339.370-339.400. Well prior to its enactment, plaintiff was disciplined for conduct which the new law required to be reported to a subsequent prospective employer. The new law did not contain a retroactivity clause; but the defendant struggled mightily to imply one. This Court concluded its opinion by citing State ex rel Juv. Dept. vs Nicholls, 192 Or App 604, on page 610, wherein the Court of Appeals wrote:

"...the lack of an expressed retroactivity clause is itself important, because such clauses are commonplace and easy to draft in concept as well as practice."

The Court went on to indicate that the lack of such a clause:

"...therefore strongly suggests that the legislature either did not intend the statute to be retroactive or did not consider the matter." Page 611.

City of Cave Junction vs. State of Oregon  
Josephine County Case No. 14CV0588  
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The same is true with the issue of preemption. Because the new legislation SB1531 and HB3460, are not inconsistent with a city ban; or more likely a refusal to grant a business license; such local action is not preempted. The Oregon legislature will meet in several months. If they desire preemption, they can tell us then.

Summary judgment is granted in favor of Interveners and against plaintiff and defendants. Mr. Bovett or Mr. O'Day should draw up a consistent order. Because of the Court's ruling on this issue, the Court will not address the secondary issue as to whether or not the federal controlled substances act preempts this Oregon Legislation

Very truly yours,



Pat Wolke  
Circuit Court Judge

PW:ah

## Margaret Reh

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**From:** Martha DeBry  
**Sent:** Friday, October 17, 2014 11:20 AM  
**To:** Margaret Reh  
**Subject:** FW: ISSUE UPDATE...Circuit Court Decision in the Cave Junction Case (Medical Marijuana Dispensaries Local Control)  
**Attachments:** CaveJunction-Opinion.pdf

Kindest regards,

Martha DeBry  
City Manager  
North Plains, OR

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**From:** Bill Snyder  
**Sent:** Friday, October 17, 2014 9:55 AM  
**To:** Martha DeBry  
**Subject:** FW: ISSUE UPDATE...Circuit Court Decision in the Cave Junction Case (Medical Marijuana Dispensaries Local Control)

Martha,

This might be good for the council to know about. I find this really interesting.

William Snyder  
Chief of Police  
North Plains Police Department  
31360 NW Commercial Street  
North Plains, OR 97133  
Ph# (503) 647-5555

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**From:** Kevin Campbell [<mailto:kevin@victorygrp.com>]  
**Sent:** Thursday, October 16, 2014 6:57 PM  
**To:** 'OregonPoliceChiefs@comcast.net'  
**Subject:** ISSUE UPDATE...Circuit Court Decision in the Cave Junction Case (Medical Marijuana Dispensaries Local Control)



**oacp@news**

# Issue Briefing

**To:** All OACP Members  
**Re:** ISSUE UPDATE...Circuit Court Decision in the Cave Junction Case

## (Medical Marijuana Dispensaries...Local Control)

Earlier today, Josephine County Circuit Court Judge Pat Wolke issued a decision in the case of the City of Cave Junction v. State of Oregon. The case posed two questions with regard to the right of local governments to opt out of medical marijuana dispensaries. The two questions in the case included:

1. Does state law preempt local control; and
2. If so, does federal law preempt that.

In the decision (see attached), the court sided with the League of Oregon Cities and Associated Oregon Counties by determining that state law in this case does not preempt local control. As a result, the court didn't rule on the second question.

The State of Oregon is expected to appeal the decision...stay tuned!



### ***Kevin Campbell***

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Oregon Association Chiefs of Police  
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[kevin@victorygrp.com](mailto:kevin@victorygrp.com)

## ORDINANCE NO. 423

### AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF NORTH PLAINS AND ADDING A NEW NORTH PLAINS MUNICIPAL CODE SUBCHAPTER 2.30.

**WHEREAS**, Chapter II “Powers,” Section 5 of the North Plains 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.

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

#### **NOW, THEREFORE, THE CITY OF NORTH PLAINS ORDAINS AS FOLLOWS:**

Section 1. A new Subchapter 2.30 Marijuana and Marijuana-Infused Products Tax establishing a tax on the sale of marijuana and marijuana-infused products is hereby added to Chapter 2 “Finance” of the North Plains Municipal Code as follows:

##### **2.30.010 Purpose**

For the purposes of NPMC 2.30, every person who sells marijuana, medical marijuana or marijuana-infused products in the city is exercising a taxable privilege. The purpose of NPMC 2.30 is to impose a tax upon the retail sale of marijuana, medical marijuana and marijuana- infused products.

##### **2.30.020 Definitions**

When not clearly otherwise indicated by the context, the following words and phrases as used in NPMC 2.30 have the following meanings:

***DIRECTOR*** means the city manager or his/her designee.

***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 NPMC 2.30.

***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.

**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.

**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 and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

**PURCHASE OR SALE** means the retail acquisition or furnishing for consideration by any person of marijuana within the city and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.

**REGISTRY IDENTIFICATION CARDHOLDER** means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

**RETAIL SALE** means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.

**SELLER** means any person who is required to be licensed or has been licensed by the state to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.

**TAX** means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under NPMC 2.30.

**TAXPAYER** means any person obligated to account to the director for taxes collected or to be collected, or from whom a tax is due, under the terms of NPMC 2.30.

### **2.30.030 Levy of tax**

A. Every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in NPMC 2.30 is subject to and must pay a tax for exercising that privilege.

B. The amount of tax levied is as follows:

1. Zero percent of the gross sale amount paid to the seller of marijuana and marijuana-infused products by a person who is a registry identification cardholder.
2. Ten percent of the gross sale amount paid to the seller of marijuana and marijuana infused products by persons who are

purchasing marijuana and marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.

#### **2.30.040 Deductions**

The following deductions are allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any purchaser;
- B. Any adjustments in sales that 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.

#### **2.30.050 Seller responsible for payment of tax**

A. Every seller must, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the director, on forms provided by the city, specifying the total sales subject to NPMC 2.30 and the amount of tax collected under NPMC 2.30. 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. The director may require further information in the return relevant to payment of the tax. A return is not considered filed until it is actually received by the director.

B. At the time the return is filed, the seller must remit to the director the full amount of the tax collected. 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. The city will apply non-designated payments 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.

D. 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 will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all taxes collected pursuant to NPMC 2.30 for the city's account until the seller makes payment to the director. A separate trust bank account is not required in order to comply with this provision.

E. Every seller required to remit the tax imposed by NPMC 2.30 is

entitled to retain five percent of all taxes due to the city 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 seller and such other books or accounts as the director may require. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The director has the right to inspect all such records at all reasonable times.

#### **2.30.060 Penalties and interest**

A. Any seller who fails to remit any portion of any tax imposed by NPMC 2.30 within the time required must pay a penalty of 10 percent of the amount of the tax, in addition to the amount of the tax.

B. If any seller fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, the seller must pay a second delinquency penalty of 10 percent 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 NPMC 2.30 is due to fraud, a penalty of 25 percent of the amount of the tax will be added thereto in addition to the penalties stated in NPMC 2.30.060A and NPMC 2.30.060B.

D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by NPMC 2.30 must pay interest at the rate one percent 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 any interest as accrues under the provisions of NPMC 2.30.060, becomes a part of the tax required to be paid.

F. All sums collected pursuant to the penalty provisions in NPMC 2.30.060A and NPMC 2.30.060C will be distributed to the city's general fund.

G. Penalties for certain late tax payments may be waived or reduced pursuant to policies and processes adopted by the finance department. However, the finance department is not required to create a penalty waiver or reduction policy. If the finance department does not create a policy for waivers or reductions, no waivers or reductions are allowed.

#### **2.30.070 Failure to report and remit tax – determination of tax by director**

A. If any seller fails to make any report of the tax required by NPMC 2.30 within the time provided in NPMC 2.30, the director will proceed to obtain facts and information on which to base the estimate of tax due. As soon as the director procures such facts and information upon which to base the assessment of any tax imposed by NPMC 2.30 and payable by any seller, the director will determine and assess against such seller the tax, interest and penalties provided for by NPMC 2.30.

B. If the director makes a determination as outlined in NPMC 2.30.070A, the director must give notice to the seller of the amount assessed. The notice must be personally served on the seller or deposited in the United States mail, postage prepaid, addressed to the seller at the last known place of address.

C. The seller may appeal the determination as provided in NPMC 2.30.080. If no appeal is timely filed, the director's determination is final and the amount assessed is immediately due and payable.

### **2.30.080 Appeal**

A. Any seller aggrieved by any decision of the director with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the manager.

B. The seller must file the appeal within 30 days of the city's serving or mailing of the determination of tax due. The seller must file using forms provided by the city.

C. Upon receipt of the appeal form, the manager will schedule a hearing to occur within 20 business days. The manager will give the seller notice of the time and date for the hearing no less than seven days before the hearing date. At the hearing the manager will hear and consider any records and evidence presented bearing upon the director's determination of amount due and make findings affirming, reversing or modifying the determination. The director and the appellant may both provide written and oral testimony during the hearing. The findings of the manager are final and conclusive. The city will serve the findings upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

### **2.30.090 Refunds**

A. The city may refund to the seller any tax, interest or penalty amount under any of the following circumstances:

1. the seller has overpaid the correct amount of tax, interest or penalty; or
2. the seller has paid more than once for the correct amount owed; or
3. the city has erroneously collected or received any tax, interest or penalties.

B. The city may not issue a refund under NPMC 2.30.090 unless the seller provides to the director a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the director. The seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.

C. The director has 20 calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making

the determination, the director will notify the claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.

D. If the director determines the claim is valid, the claimant may either claim a refund or take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the city. The claimant must notify the director of the claimant's choice no later than 15 days following the date the director mailed the determination and the claimant must do so in a manner prescribed by the director.

E. If the claimant does not notify the director of the claimant's choice within the 15 day period and the claimant is still in business, the city will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business, the city will mail a refund check to claimant at the address provided in the claim form.

F. The city will not pay a refund unless the claimant establishes by written records the right to a refund and the director acknowledges the claim's validity.

**2.30.100 Actions to collect**

Any tax required to be paid by any seller under the provisions of NPMC 2.30 is a debt owed by the seller to the city. Any tax collected by a seller that has not been paid to the city is a debt owed by the seller to the city. Any person owing money to the city under the provisions of NPMC 2.30 is liable to an action brought in the name of the City of North Plains for the recovery of the amount owing. In lieu of filing an action for the recovery, the city, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the city has complied with the provisions set forth in ORS 697.105, if 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 \$50 or 50 percent of the outstanding tax, penalties and interest owing.

**2.30.110 Violation infractions**

A. All violations of NPMC 2.30 are punishable as set forth in NPMC 1.08. It is a violation of NPMC 2.30 for any seller or other person to:

- 1) Fail or refuse to comply as required herein;
- 2) Fail or refuse to furnish any return required to be made;
- 3) Fail or refuse to permit inspection of records;
- 4) Fail or refuse to furnish a supplemental return or other data required by the director;
- 5) Render a false or fraudulent return or claim; or
- 6) Fail, refuse or neglect to remit the tax to the city by the due date.

B. The remedies provided by NPMC 2.30 are not exclusive and do not prevent the city from exercising any other remedy available under the law.

C. The remedies provided by this section do not prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

### **2.30.120 Confidentiality**

Except as otherwise required by law, it is 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 NPMC 2.30. Nothing in NPMC 2.30.120 prohibits any of the following:

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 the city under NPMC 2.30; 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 when the tax exceeds \$5,000. The council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

### **2.30.130 Audit of books, records or persons**

The city 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 for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due. All books, invoices, accounts and other records must 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 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.

### **2.30.140 Forms and regulations**

A. The director is authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and to provide for:

1. A form of report on sales and purchases to be supplied to all vendors;
2. The records that sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by NPMC 2.30.

Section 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause does 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, remain valid and in full force and effect for purposes of all cases filed or commenced during the times this ordinance 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. This ordinance shall be effective from and after 30 days following its adoption by the Council and approval by the Mayor.

**INTRODUCED** on the 20<sup>th</sup> day of October, 2014, **AND ADOPTED** this 3<sup>rd</sup> day of November, 2014.

## CITY OF NORTH PLAINS, OREGON

By: \_\_\_\_\_  
David Hatcher, Mayor

ATTEST:

By: \_\_\_\_\_  
Margaret Reh, City Recorder