

BEFORE THE MALHEUR COUNTY COURT

ORDINANCE NO. # 229

An Ordinance:)
Relating to a tax imposed on the sale of marijuana)
items that are sold in the unincorporated areas)
of Malheur County by a marijuana retailer that)
holds a license issued under ORS 475C.097;)
and referring the ordinance to the voters for approval)

This ordinance came before the Malheur County Court for readings on July 27, 2022 and August 10, 2022.

Findings:

WHEREAS, in 2015 the Malheur County Court adopted Ordinance No. 210 (which was included in Malheur County Code Title 3 Chapter 14 entitled Prohibited Activities Related to Marijuana) prohibiting marijuana processing sites, medical marijuana dispensaries, marijuana producers, marijuana processors, marijuana wholesalers and marijuana retailers in the area subject to the jurisdiction of Malheur County, which includes all unincorporated areas of Malheur County (excludes city limits of Ontario, Vale, Nyssa, Jordan Valley and Adrian); and

WHEREAS, a measure, initiated by petition and signatures, may be on the ballot at a future date to repeal Malheur County Court Ordinance Number 210 in order to allow marijuana businesses to operate in Malheur County; as currently there are 2 such petitions circulating in Malheur County and

WHEREAS, ORS 475C.453 provides, in part, that a governing body of a county may adopt an ordinance to be referred to the voters that imposes a tax on the sale of marijuana items sold in the unincorporated area subject to the jurisdiction of the county by a person that holds a license under ORS 479C.097 (marijuana retailer); and

WHEREAS, this Ordinance to impose a tax on the sale of marijuana items can only be referred to the voters at a statewide general election (which is every two years); when in contrast a petition to repeal Ordinance 210 prohibiting activities related to marijuana may qualify and be referred to the voters at any Oregon election date; and

WHEREAS, ORS 475C.453 limits the tax referenced above to 3%; and

WHEREAS, the purpose of this ordinance is to establish a 3% tax pursuant to ORS 475C.453 on the retail sale of marijuana items (i.e. marijuana flowers, marijuana leaves, immature marijuana plants, any cannabinoid product, including but not limited to: edibles, concentrates, extracts, and cannabinoid products intended to be applied to the skin or hair), in the unincorporated area of Malheur County, in the event and when Ordinance No. 210 is ever repealed and marijuana retail businesses are allowed to operate in Malheur County.

THE PEOPLE OF MALHEUR COUNTY, OREGON ORDAIN as follows:

If Malheur County Ordinance 210 is ever repealed, Title 3, Chapter 14, of the Malheur County Code (MCC) is amended by adding the following sections:

3% TAX ON THE PRODUCTION, PROCESSING OR SALE OF MARIJUANA ITEMS IN MALHEUR COUNTY:

SECTION 1. DEFINITIONS

- A. Unless otherwise specified herein, the words and phrases in this Ordinance shall have the meaning provided in ORS Chapter 475C, as amended.
- B. Other definitions include:
 - 1. “Business Day” means Monday through Friday, but excludes any day that the Malheur County offices and departments are closed to the public.
 - 2. “Tax Office” means the office of the Malheur County Treasurer and Tax Collector.
 - 3. “Tax Collector” means the Malheur County Treasurer and Malheur County Tax Collector.
 - 4. “Marijuana Retailer” in addition to its definition in ORS 475C, includes owners, officers, employees and members of the marijuana retailer.
 - 5. “Tax” means the tax imposed by this Ordinance, unless described otherwise.

SECTION 2. TAX IMPOSED

- A. Tax Imposed: As described in ORS 475C.453, Malheur County hereby imposes a tax of 3 percent (3%) on the retail sale price of marijuana sold items by a licensed marijuana retailer in the unincorporated area of the county. Marijuana items include, but are not limited to: marijuana flowers, marijuana leaves, immature marijuana plants, any cannabinoid product, including but not limited to: edibles, concentrates, extracts, and cannabinoid products intended to be applied to the skin or hair.
- B. The tax shall be collected at the point of sale. The marijuana retailer shall collect the tax from the consumer when the retail sale of the marijuana item occurs.
- C. If the tax imposed does not equal an amount calculable to a whole cent, the tax shall be equal to the next higher whole cent.
- D. The amount of the tax shall be separately stated from the sale price and any other tax on an invoice, receipt or similar document that the marijuana retailer provides to the consumer, or shall be otherwise disclosed to the consumer.

SECTION 3. COLLECTION OF TAX AND PAYMENT TO COUNTY

- A. Registration Required
 - 1. A marijuana retailer that sells marijuana items shall register with Malheur County by completing a form (Malheur County Marijuana Tax Registration – sample attached) with the Malheur County Tax/Treasurer Office. The form is due on or before the date that the Oregon Marijuana Tax Registration Form is due to the State of Oregon or within 30 days of the issuance of a final occupancy permit, whichever is sooner.
 - 2. Transfer of the marijuana retailer license to another marijuana retailer shall require a new registration.
 - 3. The marijuana retailer shall immediately notify the Tax Office of the closure of its business and shall submit documentation of the closure along with the final quarterly return and any taxes collected.
- B. Collection of Tax. A marijuana retailer that sells marijuana items shall collect the tax from the consumer at the point of sale and shall remit payment to the County as provided herein. 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.

- C. Payment to County. The marijuana retailer shall pay the tax to the County as follows:
1. The marijuana retailer shall submit a quarterly tax return form (Malheur County Marijuana Quarterly Tax Return – sample form attached) to the Tax Office on or before the last business day of January, April, July, and October of each year for the previous calendar quarter, regardless of whether any taxes are owed.
 2. The tax imposed by this Ordinance shall be remitted with the quarterly return in the amount indicated on the form.
 3. The return shall be on the form prescribed by the Tax Office.
 4. A copy of the corresponding State of Oregon quarterly tax return and monthly voucher shall accompany each County tax return.
 5. All tax payments shall be delivered to the Malheur County Courthouse, Tax Office, 251 B. Street West (#14 if mailed, and room 110 if hand-delivered), Vale, Oregon 97918.
 6. Tax remittance in cash shall be arranged by appointment at least two business days in advance.
 7. Overpayments will be applied to tax due in the subsequent quarter as an overpayment carried forward.
 8. If a taxpayer account has any prior quarter unpaid tax, interest and/or penalties, tax remittance received are applied in the following order:
 - a. Oldest prior quarter unpaid tax until all prior period unpaid tax is paid.
 - b. Oldest interest charge until all interest due is paid.
 - c. Oldest penalties until all assessed penalties have been paid.
 - e. Current quarter tax liability.
 9. Quarterly tax returns may be amended as follows:
 - a. Amended County returns shall be submitted using the form established by the Tax Office;
 - b. A copy of the corresponding amended state quarterly tax return shall be submitted with the amended County return;

- c. Tax due with an amended return is subject to interest as described in Section 5 below, and shall be paid at the time the amended return is submitted; and
- d. Overpayments of tax from an amended return shall be treated as described in Paragraph 7 above.

SECTION 4. ENFORCEMENT

- A. Every person who collects the tax shall hold the tax collector in trust for Malheur County and for the payment thereof to the Tax Office in the manner and at the time provided in this Ordinance.
- B. At any time a retailer fails to collect taxes imposed by this Ordinance or remit any amount collected, the County may enforce collection, as follows:
 - 1. Issue of Notice of Liability. The Tax Office may issue a notice of liability to a marijuana retailer that fails to remit payment in full by the date payment is due under this Ordinance.
 - a. The notice may be served on any owner, officer, employee or member of the marijuana retailer within three (3) years from the payment due date.
 - b. Notice may be served personally or by first class mail to the address under which the retailer is registered by the Oregon Liquor Control Commission. If mailed, notice is considered served on the date mailed.
 - c. Within 30 days from the date of service of the notice of liability, the marijuana retailer shall pay the tax due plus penalties and interest, or appeal the notice of liability.
 - 2. Appeal of Notice of Liability. A marijuana retailer that objects to the liability may appeal a notice of liability in the following manner:
 - a. The marijuana retailer shall submit a written notice of appeal, which must be received by the Tax Office not later than 30 days following the date of service of the notice of liability; and
 - b. The notice of appeal shall include the following information:

- i. Name and address of the person submitting the appeal;
 - ii. Basis for the appeal;
 - iii. Whether the marijuana retailer has appealed its State of Oregon marijuana sales tax to the Oregon Department of Revenue or to the Oregon Tax Court; and
 - iv. Any evidence in support of the appeal.
 - c. The notice of appeal shall be accompanied by the full amount of taxes plus penalties and interest identified in the Notice of Liability. If the marijuana retailer prevails on appeal, the County will return all funds submitted with the written objection.
 - d. If the marijuana retailer has appealed its state marijuana tax with the Oregon Department of Revenue or the Oregon Tax Court, the appeal of the County marijuana sales tax will be automatically stayed until final disposition of the state appeal.
3. Hearing on Appeal. The County Court will hold a hearing to consider the appeal. Notice of the hearing will be sent to the appellant at least two (2) weeks prior to the hearing. Following the hearing, the Court will decide whether to grant or deny the appeal. The Court's decision is not final until it is put in writing and mailed to appellant. Review of the Court's decision shall be as provided in ORS 34.010 through 34.100 in the Circuit Court of the State of Oregon for Malheur County, located in Vale, Oregon.
4. Failure to Pay:
- a. If the County does not receive payment or a written notice of appeal within 30 days of service of the notice of liability, the notice of liability becomes final.
 - b. Failure to pay before the notice of liability becomes final is a violation of this Ordinance and subject to penalties and interest as provided herein. In addition, this Ordinance is enforceable as provided by, and violators hereof are subject to, the Malheur County Code. The fine for violation of this Ordinance shall be \$5,000.
 - c. Each day the tax is not paid shall constitute a separate violation
 - d. The County is authorized to collect the taxes owed by any administrative or judicial action or proceeding authorized by law.
 - e. The Malheur County Tax Collector or any other enforcement officer of the Malheur County Code shall have authority to issue citations under this Ordinance.

- f. More than one owner, officer or employee of a corporation may be held jointly and severally liable for payment of taxes.

SECTION 5. INTEREST

Late payments of tax, including incomplete payments, are subject to interest at a rate of one percent (1%) per month (daily interest rate 0.0003288 calculated on a 365 day basis). Interest begins accruing on the quarterly unpaid balance starting from the first day it is overdue.

SECTION 6. RECORDS KEPT AND AVAILABLE FOR INSPECTION

- A. A marijuana retailer shall keep receipts, invoices and other pertinent records related to the retail sales of marijuana items in the form required by the State of Oregon Department of Revenue and this Ordinance and for the period of time required by ORS 475C.692.
- B. The Tax Office 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 Tax Office deems necessary to carry out the provisions of this Ordinance.

SECTION 7. USE OF FUNDS

All tax moneys received by the Tax Office shall be deposited in the unrestricted General Fund. The County shall pay expenses for the administration and enforcement of this Ordinance out of moneys received from the tax. After the payment of administrative and enforcement expenses and refunds or credits arising from erroneous overpayments, the balance of the moneys generated from the local marijuana tax will be an unrestricted revenue source to the County general fund.

SECTION 8. AMENDMENTS

Unless required to go before the voters by law, amendments to this Ordinance may be made by ordinance adopted by the Malheur County Court.

SECTION 9. REFER TO VOTERS AND EFFECTVE DATE

This ordinance shall be referred to the electors of Malheur County at the next statewide general election on Tuesday November 8, 2022. This Ordinance shall become effective 30 days after the day on which it is approved by a majority of voters of Malheur County. This ordinance will be implemented commencing the date when Malheur County Ordinance 210 is repealed.

DATED this 10th day of August 2022.

MALHEUR COUNTY COURT:

Dan P. Joyce, Malheur County Judge

Don Hodge, County Commissioner

Ron Jacobs, County Commissioner

ATTEST TO:

Kim Ross