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**RESOLUTION 2016 - 22**

**A RESOLUTION APPROVING REFERRAL TO THE ELECTORS OF THE  
CITY OF LINCOLN CITY THE QUESTION OF IMPOSING A THREE PERCENT  
TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER  
WITHIN THE CITY OF LINCOLN CITY [ORDINANCE 2016-10]**

Whereas, section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

Whereas, the City of Lincoln City adopted Ordinance 2016-10, which imposes a three percent tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

Whereas, Ordinance 2016-10 is not effective unless the voters approve the ordinance at the November 8, 2016 general election; and

NOW, THEREFORE, THE CITY OF LINCOLN CITY RESOLVES AS FOLLOWS:

1. REFERRAL OF ORDINANCE. A election is hereby called for the purpose of submitting to the electors of the City of Lincoln City an Ordinance imposing a three percent tax on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the City, a copy of the Ordinance as adopted by Council is attached hereto as Exhibit 1, and incorporated herein by reference.
2. ELECTION CONDUCTED BY MAIL. The election shall be held in the City of Lincoln City on November 8, 2016, the next general election. As required by ORS 254.465, the election shall be conducted by mail by the County Clerk of Lincoln County, according to the procedures adopted by the Oregon Secretary of State.
3. DELEGATION. The City of Lincoln City authorizes the City Manager, or the City Manager's designee, the City Election's officer, and City Attorney, as appropriate, to act on behalf of the City and to take such further action as is necessary to carry out the intent and purposes set forth herein, (e.g. signing certification of Referral to Ballot) in compliance with the applicable provisions of law.
4. PREPARATION OF BALLOT TITLE. The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the City Elections

1 Officer within the times set forth by law. The City Attorney has prepared such  
2 Ballot Title (Exhibit 2) and will upon passage of this Resolution certify and timely  
3 submit such Ballot Title to the City Election's officer for publication.  
4

5 5. NOTICE OF BALLOT TITLE AND RIGHT TO APPEAL. Upon receiving the ballot title  
6 for this measure, the City Elections Officer shall publish in the next available  
7 edition of a newspaper of general circulation in the City a notice of receipt of the  
8 ballot title, including notice that an elector may file a petition for review of the  
9 ballot title.  
10

11 6. EXPLANATORY STATEMENT. The explanatory statement for the measure, which  
12 is attached hereto as Exhibit 3, and incorporated herein by reference, is hereby  
13 approved by the Council.  
14

15 7. FILING WITH COUNTY ELECTIONS OFFICE. The City Elections Officer shall deliver  
16 the Notice of Election (a/k/a Measure Election) to the County Clerk for Lincoln  
17 County for inclusion on the ballot for the November 8, 2016, election.  
18

19 8. EFFECTIVE DATE. This resolution is effective upon adoption.  
20

21 PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LINCOLN CITY,  
22 THIS 27<sup>th</sup> DAY OF JUNE 2016.  
23  
24

25   
26 DON WILLIAMS  
27 MAYOR  
28

29 ATTEST:  
30


31   
32 CATHY STEERE  
33 CITY RECORDER  
34  
35  
36

Exhibit 1

1  
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6

**Executed copy of Ordinance 2016-10 as adopted**

*Insert fully executed copy of Ordinance 2016-10 here*

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**ORDINANCE NO. 2016-10**

**AN ORDINANCE AMENDING THE LINCOLN CITY MUNICIPAL CODE (LCMC)  
TITLE 3 (REVENUE AND FINANCE), ADDING A NEW CHAPTER 3.26,  
(RECREATIONAL MARIJUANA TAXATION), IMPOSING A THREE PERCENT TAX ON  
THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING  
THE ORDINANCE TO THE VOTERS.**

*Annotated to show deletions and additions to the code sections being modified.  
Deletions are **bold lined through** and additions are **bold underlined**.*

**WHEREAS**, Chapter 2, Section 2.1 and 2.2., of the City of Lincoln City Charter provide:

**2.1 Powers of the City**

The city has all powers which the constitutions, statutes and common law of the United States and of this state expressly or impliedly grant or allow municipalities as fully as though this charter specifically enumerated each of those powers.

**2.2 Construction of Charter**

In this charter no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state Constitution; and

**WHEREAS**, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. *City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop*, 20 Or. App. 293; 531 P 2d 730, 734 (1975); *LaGrande/Astoria v. PERB*, 261 Or 137, 142 (1978), *aff'd on reh'g* 264 Or 173 (1978); and;

**WHEREAS**, Whereas, Section 34a of House Bill 3400 (2015) provides that a City Council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city; and

1  
2 **WHEREAS**, the City Council finds it in the best interest of the public to impose a tax on  
3 the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction  
4 of the City of Lincoln City; and  
5

6 **THE CITY OF LINCOLN CITY ORDAINS AS FOLLOWS:**  
7

8 **SECTION 1.** Lincoln City Municipal Code, Title 3 (*Revenue and Finance*), is hereby  
9 amended to add a new Chapter 3.26 (*Recreational Marijuana Taxation*), to read as  
10 follows:  
11

12 **SECTION 3.26.010 Purpose and Limitations.**  
13

14 **A. For the purposes of this Chapter, every person who sells Marijuana items in**  
15 **the City of Lincoln City is exercising a taxable privilege. The purpose of this**  
16 **Chapter is to impose a tax upon the retail sale of Marijuana items and not**  
17 **on the business of producing marijuana.**  
18

19 **B. Sellers (Marijuana Retailers) shall be solely responsible for obtaining all**  
20 **required approvals, permits, licenses, and authorizations from the**  
21 **responsible Federal, State and Local authorities, or other entities, necessary**  
22 **to engage in the business of selling or otherwise providing Marijuana items**  
23 **for consideration in the manner contemplated. The City of Lincoln City has**  
24 **no duty, responsibility or liability for requesting, obtaining, ensuring, or**  
25 **verifying Seller's compliance with the applicable Federal or State permit or**  
26 **approval requirements. The imposition of this tax on transactions which are**  
27 **subject to a licensing program under Oregon state law is not an approval or**  
28 **endorsement of the transaction and shall not in any way be interpreted as a**  
29 **waiver, modification, or grant of any Federal, State or Local agency permit,**  
30 **approval or authorization. Businesses operating within the City of Lincoln**  
31 **City shall comply with all applicable Federal, State and Local Laws.**  
32

33 **SECTION 3.26.020 Definitions.**  
34

35 **When not clearly otherwise indicated by the context, the following words and**  
36 **phrases as used in this chapter shall have the following meanings:**  
37

38 **A. "Cannabinoid" means any of the chemical compounds that are the active**  
39 **constituents of marijuana.**  
40

1 **B. "Cannabinoid concentrate" means a substance obtained by separating**  
2 **cannabinoids from marijuana by:**

3  
4 **(1) A mechanical extraction process;**

5 **(2) A chemical extraction process using a nonhydrocarbon-based or other**  
6 **solvent, such as water, vegetable glycerin, vegetable oils, animal fats,**  
7 **isopropyl alcohol or ethanol;**

8 **(3) A chemical extraction process using the hydrocarbon-based solvent**  
9 **carbon dioxide, provided that the process does not involve the use of high**  
10 **heat or pressure; or**

11 **(4) Any other process identified by the Oregon Liquor Control Commission,**  
12 **in consultation with the Oregon Health Authority, by rule.**

13  
14 **C. "Cannabinoid edible" means food or potable liquid into which a**  
15 **cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or**  
16 **flowers have been incorporated.**

17  
18 **D. "Cannabinoid extract" means a substance obtained by separating**  
19 **cannabinoids from marijuana by:**

20  
21 **(1) A chemical extraction process using a hydrocarbon-based solvent, such**  
22 **as butane, hexane or propane;**

23 **(2) A chemical extraction process using the hydrocarbon-based solvent**  
24 **carbon dioxide, if the process uses high heat or pressure; or**

25 **(3) Any other process identified by the Oregon Liquor Control Commission,**  
26 **in consultation with the Oregon Health Authority, by rule.**

27  
28 **E. (1) "Cannabinoid product" means a cannabinoid edible and any other**  
29 **product intended for human consumption or use, including a product**  
30 **intended to be applied to the skin or hair, that contains cannabinoids or**  
31 **dried marijuana leaves or flowers.**

32 **(2) "Cannabinoid product" does not include:**

33 **(A) Usable marijuana by itself;**

34 **(B) A cannabinoid concentrate by itself;**

35 **(C) A cannabinoid extract by itself; or**

36 **(D) Industrial hemp, as defined in ORS 571.300.**

37

38

- 1 **F. "Consumer" means a person who purchases, acquires, owns, holds, or uses**  
2 **marijuana items. Sales from suppliers to Marijuana Retailers for the**  
3 **purpose of resale do not make the Marijuana Retailer a consumer.**  
4
- 5 **G. "Director" means the Finance Director for the City of Lincoln City or his/her**  
6 **designee.**  
7
- 8 **H. "Gross Taxable Sales" means the total amount received in money, credits,**  
9 **property or other consideration from retail sales of marijuana items subject**  
10 **to the tax imposed by this chapter. The Gross Taxable Sale is the retail sale**  
11 **price paid for marijuana items, excluding tax, to a Marijuana Retailer by or**  
12 **on behalf of a consumer of the marijuana items.**  
13
- 14 **I. Marijuana" means the plant Cannabis family Cannabaceae, any part of the**  
15 **plant Cannabis family Cannabaceae and the seeds of the plant Cannabis**  
16 **family Cannabaceae. "Marijuana" does not include industrial hemp, as**  
17 **defined in ORS 571.300.**  
18
- 19 **J. "Marijuana items" has the meaning given that term in Oregon Laws 2015,**  
20 **chapter 614, section 1; specifically "Marijuana Items" includes one or more**  
21 **of the following items: marijuana, a cannabinoid product, a cannabinoid**  
22 **concentrate or a cannabinoid extract.**  
23
- 24 **K. "Marijuana Retailer" (also referred to as "Seller") means a person who sells**  
25 **marijuana items to a consumer.**  
26
- 27 **L. "Oregon Medical Marijuana Program" means the office within the Oregon**  
28 **Health Authority that administers the provisions of ORS 475.300 through**  
29 **475.346, the Oregon Medical Marijuana Act, and all policies and procedures**  
30 **pertaining thereto.**  
31
- 32 **M. "Person" means natural person, joint venture, joint stock company,**  
33 **partnership, association, club, company, corporation, business, trust,**  
34 **organization, or any group or combination acting as a unit, including the**  
35 **United States of America, the State of Oregon and any political subdivision**  
36 **thereof, or the manager, lessee, agent, servant, officer or employee of any**  
37 **of them.**  
38
- 39 **N. "Purchase or Sale" means the retail acquisition or furnishing for**  
40 **consideration by any person, of marijuana items within the City and does**

1 not include the (wholesale) acquisition or furnishing of marijuana by a  
2 grower or processor to a licensed Seller.

3  
4 **O. "Registry identification cardholder" means a person who has been**  
5 **diagnosed by an attending physician with a debilitating medical condition**  
6 **and for whom the use of medical marijuana may mitigate the symptoms or**  
7 **effects of the person's debilitating medical condition, and who has been**  
8 **issued a registry identification card by the Oregon Health Authority.**

9  
10 **P. "Retail sale" means the transfer of goods or services in exchange for any**  
11 **valuable consideration and does not include the transfer or exchange of**  
12 **goods or services between a grower or processor and a Seller.**

13  
14 **Q. "Seller" (also referred to as "Marijuana Retailer"), means any person who is**  
15 **required to be licensed or has been licensed by the State of Oregon to sell,**  
16 **or otherwise provide marijuana items to purchasers for money, credit,**  
17 **property or other consideration within the City.**

18  
19 **R. "Tax" means either the tax payable by the Seller or the aggregate amount**  
20 **of taxes due from a Seller during the period for which the Seller is required**  
21 **to report collections under this chapter.**

22  
23 **K. "Taxpayer" means any person (Seller or Marijuana Retailer) obligated to**  
24 **account to the Director for taxes collected or to be collected, or from whom**  
25 **a tax is due, under the terms of this chapter.**

26  
27 **SECTION 3.26.030 Levy of Tax.**

28  
29 **A. Every Seller/Marijuana Retailer exercising the taxable privilege of selling**  
30 **Marijuana items, as defined herein, is subject to and must pay a Tax for**  
31 **exercising that privilege.**

32  
33 **B. The amount of Tax levied is as follows:**

- 34  
35 **1) Three (3%) percent of the Gross Taxable Sale amount paid to the Seller**  
36 **of Marijuana items by persons who are purchasing Marijuana items but**  
37 **are not doing so under the provisions of the Oregon Medical Marijuana**  
38 **Program.**

39 **SECTION 3.26.040 Deductions.**



1 The following deductions shall be allowed against sales received by the Seller  
2 providing marijuana:

3  
4 A. Documented refunds of sales where funds are actually returned to any  
5 purchaser;

6  
7 B. Documented adjustments in sales which amount to a refund to a purchaser,  
8 providing such adjustment pertains to the actual sale of marijuana items  
9 and does not include any adjustments for other services furnished by a  
10 Seller.

11  
12 SECTION 3.26.050 Seller (Marijuana Retailer) Responsible For Payment Of Tax.

13  
14 A. Every Seller shall, on or before the fifteenth (15<sup>th</sup>) day of the month  
15 following the end of each calendar quarter (in the months of April, July,  
16 October and January) make a return to the Director, on forms provided by  
17 the City, specifying the total sales subject to this chapter and the amount of  
18 tax collected under this chapter. The Seller may request or the Director may  
19 establish shorter reporting periods for any Seller if the Seller or Director  
20 deems it necessary in order to insure collection of the tax. The Director may  
21 require further information in the return relevant to payment of the tax. A  
22 return shall not be considered filed until it is actually received by the  
23 Director.

24  
25 B. At the time the return is filed, the full amount of the tax collected shall be  
26 remitted to the Director. Payments received by the Director for application  
27 against existing liabilities will be credited toward the period designated by  
28 the taxpayer under conditions not prejudicial to the interest of the City. A  
29 condition considered prejudicial is the imminent expiration of the statute of  
30 limitations for a period or periods.

31  
32 C. Non-designated payments shall be applied in the order of the oldest liability  
33 first, with the payment credited first toward any accrued penalty, then to  
34 interest, then to the underlying tax until the payment is exhausted.  
35 Crediting of a payment toward a specific reporting period will be first  
36 applied against any accrued penalty, then to interest, then to the underlying  
37 tax.

38  
39 D. If the Director, in his or her sole discretion, determines an alternative order  
40 of payment application would be in the best interest of the City in a

1 particular tax or factual situation, the Director may order such a change. The  
2 Director may establish shorter reporting periods for any Seller if the  
3 Director deems it necessary in order to insure collection of the tax. The  
4 Director also may require additional information in the return relevant to  
5 payment of the liability. When a shorter return period is required, penalties  
6 and interest shall be computed according to the shorter return period.  
7 Returns and payments are due immediately upon cessation of business for  
8 any reason. All taxes collected by Sellers pursuant to this chapter shall be  
9 held in trust for the account of the City until payment is made to the  
10 Director. A separate trust bank account is not required in order to comply  
11 with this provision.

12  
13 **E. Every Seller required to remit the tax imposed in this chapter shall be**  
14 **entitled to retain five percent (5%) of all taxes collected and due to the City**  
15 **to defray the costs of bookkeeping and remittance.**

16  
17 **F. Every Seller must keep and preserve in an accounting format established by**  
18 **the Director, records of all sales made by the Seller and such other books or**  
19 **accounts as may be required by the Director. Every Seller must keep and**  
20 **preserve for a period of three (3) years all such books, invoices and other**  
21 **records. The Director shall have the right to inspect all such records at all**  
22 **reasonable times.**

23  
24 **SECTION 3.26.060 Nonexclusive Penalties And Interest.**

25  
26 **A. Any Seller who fails to remit any portion of any tax imposed by this chapter**  
27 **within the time required shall pay a penalty of ten percent (10%) of the**  
28 **amount of the tax, in addition to the amount of the tax.**

29  
30 **B. Any Seller who fails to remit any delinquent remittance on or before a**  
31 **period of thirty (30) days following the date on which the remittance first**  
32 **became delinquent shall pay a second delinquency penalty of fifteen**  
33 **percent (15%) of the amount of the tax in addition to the amount of the tax**  
34 **and the penalty first imposed.**

35  
36 **C. If the Director determines the non-payment of any remittance due under**  
37 **this chapter is due to fraud, a penalty of twenty-five percent (25%) of the**  
38 **amount of the tax shall be added thereto in addition to the penalties stated**  
39 **in subparagraphs A and B of this section.**  
40

1 D. In addition to the penalties imposed, any Seller who fails to remit any tax  
2 imposed by this chapter shall pay interest at the rate of one and one-half  
3 percent (1.5%) per month or fraction thereof on the amount of the tax,  
4 exclusive of penalties, from the date on which the remittance first became  
5 delinquent until paid.

6  
7 E. Every penalty imposed, and such interest as accrues under the provisions of  
8 this section, shall become a part of the tax required to be paid.

9  
10 F. Taxes collected pursuant to his Chapter shall be segregated into a distinct  
11 account. All sums collected pursuant to the penalty provisions in  
12 paragraphs A through C of this section may be distributed to a separate  
13 City of Lincoln City Fund to offset the costs of auditing and enforcement of  
14 this tax.

15  
16 G. Waiver of Penalties. Penalties for certain late tax payments may not be  
17 waived except pursuant to administrative waiver provisions adopted as part  
18 of LCMC Title 3.

19  
20 H. The Administrative Remedies in this Section are nonexclusive and do not  
21 prohibit or otherwise limit other authorized enforcement methods available  
22 under the Code.

23  
24 **SECTION 3.26.070 Failure To Report and Remit Tax – Determination of Tax by**  
25 **Director.**

26  
27 If any Seller should fail to make, within the time provided in this chapter, any  
28 report of the tax required by this chapter, the Director shall proceed in such  
29 manner as deemed best to obtain facts and information on which to base the  
30 estimate of tax due. As soon as the Director shall procure such facts and  
31 information as is able to be obtained, upon which to base the assessment of  
32 any tax imposed by this chapter and payable by any Seller, the Director shall  
33 proceed to determine and assess against such Seller the tax, interest and  
34 penalties provided for by this chapter. In case such determination is made, the  
35 Director shall give a notice of the amount so assessed by having it served  
36 personally or by depositing it in the United States mail, postage prepaid,  
37 addressed to the Seller at the last known place of address. Such Seller may  
38 make an appeal of such determination as provided in section 3.26.080. If no  
39 appeal is filed, the Director's determination is final and the amount thereby is  
40 immediately due and payable.

1     **SECTION 3.26.080 Appeal.**  
2

3     **Any Seller aggrieved by any decision of the Director with respect to the amount**  
4     **of such tax, interest and penalties, if any, may only appeal pursuant to the**  
5     **Uniform Administrative Appeals Ordinance in LCMC 1.26, except that the**  
6     **appeal shall be filed within twenty (20) days of the serving or mailing of the**  
7     **determination of tax due. All appeal requirements are jurisdictional and shall**  
8     **be strictly observed. The hearings officer shall hear and consider any records**  
9     **and evidence presented bearing upon the Director's determination of amount**  
10    **due, and make findings affirming, reversing or modifying the determination.**  
11    **The findings of the hearings officer shall be final and conclusive and shall be**  
12    **served upon the appellant in the manner prescribed above for service of notice**  
13    **of hearing. Any amount found to be due shall be immediately due and payable**  
14    **upon the service of notice.**

15  
16    **SECTION 3.26.090. Refunds.**  
17

18    **A. Whenever the amount of any tax, interest or penalty has been overpaid or**  
19    **paid more than once, or has been erroneously collected or received by the**  
20    **City under this chapter, it may be refunded as provided in subparagraph B**  
21    **of this section, provided a claim in writing, stating under penalty of perjury**  
22    **the specific grounds upon which the claim is founded, is filed with the**  
23    **Director within one year of the date of payment. The claim shall be on forms**  
24    **furnished by the Director.**

25  
26    **B. The Director shall have 20 working days from the date of receipt of a claim**  
27    **to review the claim and make a determination in writing as to the validity of**  
28    **the claim. The Director shall notify the claimant in writing of the Director's**  
29    **determination. Such notice shall be mailed to the address provided by**  
30    **claimant on the claim form. In the event a claim is determined by the**  
31    **Director to be a valid claim, in a manner prescribed by the Director a Seller**  
32    **may claim a refund, or take as credit against taxes collected and remitted,**  
33    **the amount overpaid, paid more than once or erroneously collected or**  
34    **received. The Seller shall notify Director of claimant's choice no later than**  
35    **15 working days following the date Director mailed the determination. In**  
36    **the event claimant has not notified the Director of claimant's choice within**  
37    **the 15 day period above, and the Seller is still in business, a credit will be**  
38    **granted against the tax liability for the next reporting period. If the Seller is**  
39    **no longer in business, a refund check will be mailed to claimant at the**  
40    **address provided in the claim form.**

1 C. No refund shall be paid under the provisions of this section unless the  
2 claimant established the right by written records showing entitlement to  
3 such refund and the Director acknowledged the validity of the claim.  
4

5 SECTION 3.26.100 Actions to Collect.  
6

7 Any tax required to be paid by any Seller under the provisions of this chapter  
8 shall be deemed a debt owed by the Seller to the City. Any such tax collected  
9 by a Seller which has not been paid to the City shall be deemed a debt owed by  
10 the Seller to the City. Any person owing money to the City under the provisions  
11 of this chapter shall be liable to an action brought in the name of the City of  
12 Lincoln City for the recovery of the amount owing. In lieu of filing an action  
13 for the recovery, the City of Lincoln City, when taxes due are more than 30 days  
14 delinquent, may submit any outstanding tax to a collection agency. So long as  
15 the City of Lincoln City has complied with the provisions set forth in ORS  
16 697.105, in the event the City turns over a delinquent tax account to a  
17 collection agency, the City may add to the amount owing an amount equal to  
18 the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or  
19 fifty percent (50%) of the outstanding tax, penalties and interest owing.  
20

21  
22 SECTION 3.26.110 Criminal and Civil Penalties for Code Violations.  
23

24 A. A violation of any provision of this Chapter is punishable as set forth in  
25 LCMC 1.16. Without limitation, it is a violation of this chapter for any Seller  
26 or other person to:  
27

- 28 1) Fail or refuse to comply as required herein;
- 29 2) Fail or refuse to furnish any return required to be made;
- 30 3) Fail or refuse to permit inspection of records;
- 31 4) Fail or refuse to furnish a supplemental return or other data required by  
32 the Director;
- 33 5) Render a false or fraudulent return or claim; or
- 34 6) Fail, refuse or neglect to remit the tax to the city by the due date.  
35

36 B. Violation of subsections 1, 2, 3, 4 and 6 shall be considered a Class A  
37 violation. Filing a false or fraudulent return shall be considered a Class B  
38 misdemeanor crime. The remedies provided by this section are not  
39 exclusive and shall not prevent the City from exercising any other remedy  
40 available under the law, nor shall the provisions of this ordinance prohibit

1 or restrict the City or other appropriate prosecutor from pursuing criminal  
2 charges under state law or City ordinance.

3  
4 **C. The penalties in this Ordinance are cumulative; imposition of administrative**  
5 **penalties and interest shall not prohibit any other alternative remedies set**  
6 **forth in this code or the laws of the state of Oregon, including but not**  
7 **limited to the criminal prosecution, civil citation or abatement of nuisances.**  
8

9 **SECTION 3.26.120 Confidentiality.**

10  
11 **Except as otherwise required by law, it shall be unlawful for the City, any**  
12 **officer, employee or agent to divulge, release or make known in any manner**  
13 **any financial information submitted or disclosed to the City under the terms of**  
14 **this chapter. Nothing in this section shall prohibit:**

15  
16 **A. The disclosure of the names and addresses of any person who is operating a**  
17 **licensed establishment from which marijuana items are sold or provided; or**  
18

19 **B. The disclosure of general statistics in a form which would not reveal an**  
20 **individual Seller's financial information; or**  
21

22 **C. The disclosure of information to City, State, and Federal personnel for**  
23 **purposes of civil and criminal law enforcement as well as the presentation of**  
24 **evidence to the federal, state or municipal court or any other administrative**  
25 **agency or hearing officer having jurisdiction in the prosecution of any claim**  
26 **by the City, the State, or Federal authorities or from an appeal from the**  
27 **Director for amount due the City under this chapter; or**  
28

29 **D. The disclosure of information when such disclosure of conditionally exempt**  
30 **information is ordered under public records law procedures; or**  
31

32 **E. The disclosure of records related to a business' failure to report and remit**  
33 **the tax when the report or tax is in arrears for over three months or the tax**  
34 **exceeds five thousand dollars (\$5,000). The City Council expressly finds and**  
35 **determines that the public interest in disclosure of such records clearly**  
36 **outweighs the interest in confidentiality under ORS 192.501(5).**  
37

38 **SECTION 3.26.130 Inspection of Records. Administrative Warrant or**  
39 **Subpoena.**  
40

1 The City may examine or may cause to be examined by an agent or  
2 representative designated by the City for that purpose, any books, papers,  
3 records, or memoranda, including copies of Seller's state and federal income  
4 tax returns, bearing upon the matter of the Seller's tax return for the purpose  
5 of tax collection, including verification and calculation of estimate, as well as  
6 for all related law enforcement purposes. All books, invoices, accounts and  
7 other records shall be made available within the City limits and be open at any  
8 time during regular business hours for examination by the Director or an  
9 authorized agent of the Director. If any taxpayer refuses to voluntarily furnish  
10 any of the foregoing information when requested, the Director may seek a  
11 administrative warrant or subpoena from the Lincoln City Municipal Court or  
12 Lincoln County Circuit Court to compel inspection of records or require the  
13 taxpayer or a representative of the taxpayer attend a hearing or produce any  
14 such books, accounts and records for examination. After warrants or  
15 subpoenas for records are executed, the failure to submit to examination of  
16 records (provided a minimum of ten days written notice of examination was  
17 provided) is an offense against the City and is punishable as provided in  
18 Chapter 1.16.

19  
20 **SECTION 3.26.140 Forms And Regulations.**

21  
22 **A. The Director is authorized to prescribe forms and promulgate rules and**  
23 **regulations to aid in the making of returns, the ascertainment, assessment**  
24 **and collection of said marijuana tax, in particular, and without limiting the**  
25 **general language of this chapter, to provide for:**

26  
27 **1) A form of report on sales and purchases to be supplied to all vendors;**

28  
29 **2) The records which Sellers providing marijuana items are to keep**  
30 **concerning the tax imposed by this chapter.**

31  
32 **SECTION 2. Findings Adopted.**

33  
34 The findings contained in the Whereas Clauses of this Ordinance as well as the  
35 competent substantial evidence in the whole record of this legislative proceeding are  
36 incorporated into this section by reference as if fully set forth herein, and are adopted in  
37 support of this legislative action.

38  
39 **SECTION 3. Severability.**

1 The sections, subsections, paragraphs and clauses of this ordinance are severable. The  
2 invalidity of one section, subsection, paragraph, or clause shall not affect the validity of  
3 the remaining sections, subsections, paragraphs and clauses.  
4

5 **SECTION 4. Savings.**  
6

7 Notwithstanding the amendment to this Title, all City ordinances in existence at the time  
8 of the amendment remain valid and in full force and effect for purposes of all criminal,  
9 civil or administrative code enforcement cases or applications filed or commenced  
10 during the time said ordinances were operative. Nothing in this Ordinance affects the  
11 validity of prosecutions commenced and continued under the laws in effect at the time  
12 the matters were originally filed.  
13

14 **SECTION 5. Ordinance Effective Date.**  
15

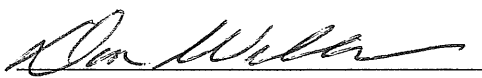
16 Pursuant to the Oregon Constitution, this Ordinance takes effect after the date of its  
17 adoption and 30 days after the day on which it is enacted or approved by a majority of  
18 the votes cast thereon in the November 2016 election.  
19

20 **SECTION 6. Codification.**  
21

22 Provisions of this Ordinance shall be incorporated in the City of Lincoln City Municipal  
23 Code and the word "ordinance" may be changed to "code", "article", "section", "chapter"  
24 or another word, and the sections of this Ordinance may be renumbered, or re-lettered,  
25 provided any Whereas clauses and boilerplate provisions (i.e. Sections 2-6) need not be  
26 codified and the City Recorder is authorized to correct any cross-references and any  
27 typographical errors.  
28

29 The foregoing ordinance was distinctly read by title only in accordance with Chapter IX,  
30 Section 9.2 of the City of Lincoln City Charter on the 9th day of May, 2016 (First  
31 Reading) and on the 27th day of June, 2016 (Second Reading).  
32

33 PASSED AND ADOPTED by the City Council of the City of Lincoln City this 27th day  
34 of June, 2016.  
35

36  
37 


38 DON WILLIAMS, MAYOR

39 ATTEST:  
40



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CATHY STEERE, CITY RECORDER

APPROVED AS TO FORM:  
  
RICHARD APPICELLO, CITY ATTORNEY

1 Exhibit 2

2  
3 BALLOT TITLE

4 A caption which reasonably identifies the subject of the measure  
5 *10 word limit under ORS 250.035(1)(a)*

6  
7 Imposes 3% tax on marijuana retailer's sale of marijuana items

8  
9 QUESTION

10 A question which plainly phrases the chief purpose of the measure so that an affirmative  
11 response to the question corresponds to an affirmative vote on the measure  
12 *20 word limit under ORS 250.035(1)(b)*

13  
14 Shall Lincoln City impose a 3% tax on the sale of recreational marijuana items by a  
15 marijuana retailer?

16  
17 SUMMARY

18 A concise and impartial statement summarizing the measure and its major effect  
19 *175 word limit under ORS 250.035(1)(c)*

20  
21 Under state law, a city council may adopt an ordinance to be referred to the voters of  
22 the city imposing up to a 3% tax on the sale of marijuana items in the city by a licensed  
23 marijuana retailer. Approval of this measure would impose a 3% tax on the sale of  
24 marijuana items in the city by a licensed marijuana retailer. The tax would be collected  
25 at the point of sale and remitted by the marijuana retailer to the City. The referred  
26 Ordinance 2015-10, establishes a tax collection administrative framework consistent  
27 with other City taxes, including the City's previously adopted marijuana tax which has  
28 now been repealed after changes in state law placed its enforcement in question.  
29

1 Exhibit 3

2  
3 EXPLANATORY STATEMENT

4 An impartial, simple and understandable statement explaining the measure and its  
5 effect for use in the county voters' pamphlet  
6 *500 word limit under ORS 251.345 and OAR 165-022-0040(3)*  
7

8 Approval of this measure would impose a 3% tax on the sale of marijuana items by a  
9 marijuana retailer within the City of Lincoln City. If approved, the revenues from this tax  
10 are estimated to be approximately \$\_\_\_\_\_ per month. There are no restrictions on  
11 how the city may use the revenues generated by this tax.  
12

13 Under Measure 91, adopted by Oregon voters in November 2014 and amended by the  
14 Legislature in 2015, the Oregon Liquor Control Commission must license the retail sale  
15 of recreational marijuana. The 2015 Legislation expressly provided for a city to adopt an  
16 ordinance imposing up to a 3% tax on the sale of marijuana items (which include  
17 marijuana concentrates, extracts, edibles, and other products intended for human  
18 consumption and use) by retail licensees in the city. Councils are required to refer such  
19 ordinances to the voters at a statewide general election.  
20

21 The City of Lincoln adopted Ordinance 2016-10 imposing a three percent tax on the sale  
22 of marijuana items by a retail licensee in the city. The Council, as required by state law,  
23 has referred this tax measure to the voters. The ordinance tracks the City's standard  
24 administrative tax collection framework as is in use for other taxes collected by the City.  
25 For example, the Ordinance includes Sections which define Ordinance Purposes, sets  
26 forth Definitions, Imposes or Levies the Tax, allows for Deductions, Imposes tax  
27 Collection duties on the Seller (Marijuana Retailer), Provides for Administrative Penalties  
28 and Interest, Provides for Penalties and processes for Failure to Report or Remit Taxes  
29 collected; Provides for Appeal, Collection, Refund, Confidentiality as well as Criminal and  
30 Civil Penalties, Inspection and adoption of standard forms. The Ordinance tracks  
31 previously adopted Ordinance 2014-27, which also imposed a marijuana tax. That tax  
32 Ordinance has now been repealed, and was not enforced due to changes in state law  
33 following its November 3, 2014, adoption. This Ordinance (2016-10), referred to the  
34 voters is expressly authorized by state law, and accordingly is not subject to the same  
35 challenges as the previously adopted 2014 Ordinance.