MISSION STATEMENT: TO PROVIDE A SAFE, HEALTHFUL AND SOUND ECONOMIC ENVIRONMENT, PROGRESSIVELY ENHANCING OUR QUALITY OF LIFE

COUNCIL MEETING AGENDA
CITY COUNCIL – CITY OF ONTARIO OREGON
TUESDAY, SEPTEMBER 26, 2017, 7:00 PM, MT

Pursuant to the Public Meetings Laws and Rules within the Oregon Revised Statutes, the City Council has the authority, ability, and standing to take action on any items on the Agenda, or add items to the Agenda, during the Study Session or Regular Meeting, as long as all public meeting notice requirements have been met.

1) CALL TO ORDER

Roll Call: Tessa Winebarger _____ Dan Capron _____ Marty Justus _____ Ramon Palomo _____
Betty Carter _____ Norm Crume _____ Mayor Ron Verini _____

2) PLEDGE OF ALLEGIANCE

This Agenda was posted on . Copies of the Agenda are available from the City Hall Customer Service Counter and on the city's website at www.ontariooregon.org.

3) MOTION TO ADOPT THE AGENDA

4) PUBLIC COMMENTS Citizens may address the Council; however, Council may not be able to provide an immediate answer or response. Our of respect to the Council and others in attendance, please limit your comment to three (3) minutes. Please state your name and city of residence for the record.

5) CONSENT AGENDA

6) SPECIAL ACTION

7) PRESENTATIONS

8) OLD BUSINESS

A) Ordinance #2729-2017: Sales Tax Ordinance Second Reading

B) Resolution #2017-133: A resolution adopting a supplemental budget authorizing a reimbursement for expenses incurred by Ontario businesses of up to $1,000 for updating software, hardware, or other costs related to sales tax collection.

9) NEW BUSINESS

10) PUBLIC HEARING

11) HAND-OUTS/DISCUSSION ITEMS

12) CORRESPONDENCE, COMMENTS AND EX-OFFICIO REPORTS

13) ADJOURN

The City Council may recess/adjourn to Executive Session under ORS 192.660(2) as follows: (a) Employment of Public Officers, Employees, or Agents; (b) Discipline of Public Officers, Employees, or Agents; (d) Labor Negotiations; (e) Real Property Transactions; (f) Exempt Public Records; (g) Trade Negotiations; (h) Litigation /Consult with Legal Counsel; (i) Performance Evaluation of Public Officers and Employees; (j) Trade Negotiations; and/or (l) Labor Negotiations.

AGENDA REPORT
OLD BUSINESS
September 26, 2017

TO: Mayor and City Council

FROM: Adam J. Brown, City Manager

THROUGH: Adam J. Brown, City Manager

SUBJECT: ORDINANCE #2729-2017: SALES TAX ORDINANCE SECOND READING

DATE: September 20, 2017

PROPOSED MOTION:

I MOVE THAT THE CITY COUNCIL READ, ACCEPT COMMENTS, AND ADOPT ORDINANCE #2729-2017, AN ORDINANCE ADDING CHAPTER 25 TO TITLE 3 OF THE ONTARIO CITY CODE TO ESTABLISH AND ENFORCE A 1% (ONE PERCENT) SALES TAX ON THE SALE OF RETAIL GOODS WITHIN THE CITY, AND TO CREATE EXEMPTIONS FROM THE TAX, ON SECOND READING BY TITLE ONLY.

SUMMARY:

The City has studied a local sales tax over the past year both analytically and through community feedback. The City of Ontario faces extreme cutbacks in service if revenue changes are not made. A local sales tax that brings in 79% of the revenue from outside the community has been determined to be the most responsible solution for the Ontario community.

BACKGROUND:

The city began long term forecasting analysis (LTFA) of the city's finances in August of 2016. This included an analysis of historical revenues and expenditures and five-year forecasting of the same. Choices in expenditure reductions and revenue alternatives were reviewed and narrowed.

A local sales tax was selected for further investigation. Staff performed their own analysis and also received an unbiased third party economic study to determine the market sensitivity of a sales tax imposition. The report determined that 79% of the revenue will come from non-city residents. Some degree of business will be lost from the sales tax, but the city would retain a competitive advantage over our neighboring state Idaho.

Six public forums were hosted in the city between February and June of 2017 to gather public feedback. Written feedback was received from the in person meetings. Very little feedback has been submitted online or at the official City Council meetings.

While the City of Ontario is home to only 11,500 it serves a daily/weekly traffic of closer to 60,000. The econometric study substantiated this estimate showing a net inflow of retail business to Ontario of $491.6 million.

The Council requested that a draft ordinance be created. The ordinance was created, reviewed by legal council, and presented to the City Council in July of 2017. A follow up presentation was given to the City Council on August 15, 2017. The Council requested that the unapproved draft ordinance be put online for public comment and that readings be scheduled in September on the 7th and 19th of the month.

The first reading was postponed so that further revisions could be made on the draft ordinance.

CURRENT SITUATION:

A first reading of the Sales Tax Ordinance was held on September 19, 2017. A second reading will be held on September 26, 2017 whereupon the Council may vote on the matter. The city must determine what services to cut if the measure does not pass.

A reimbursement of costs pertaining to updating of software and hardware for sales tax collection was requested by the City Council of up to $1,000. Resolution #2017-133 approving this reimbursement has been included with the draft ordinance. The reimbursement will only be given once revenues are collected.

Ontario citizens will have the right to request a referendum of the ordinance to ballot. If it is referred to ballot, it will be voted on in May of 2018. State law requires that all work cease on the approved ordinance until the ballot affirms or rejects the proposed measure. Even with Council approval, the voters will still have the opportunity to vote on the issue if they so choose.

ANALYSIS:

A. **FINANCIAL** It is estimated that the tax will generate approximately $3.7 million. The economic study provides a wide margin of revenue estimates based upon the actual elasticity.

   The revenue must first be used to maintain existing service levels which are short approximately $900,000 in the FY2018 General Fund budget. Secondly, they must be used to fill a shortage in the street fund of approximately $700,000 to keep the current service level. Additional services to be supplemented, according to the Council's priorities, are law enforcement, fire and rescue, additional street services, recreation, and parks.

Without additional revenues the city will need to cut the General Fund by $900,000 and the Street Fund by $700,000. The General Fund services will include a reduction in support services, and direct services in recreation, law enforcement, and fire and rescue.

Wait times for law enforcement will increase. Call times for fire and rescue services will most likely be longer. Recreation services may be cut entirely.

B. **TIMING** If approved, the earliest the tax should go into effect is January 1, 2018, which means the first collection would be in April.

   If the voters choose to have a referendum for the sales tax ordinance, the item will go to voters in May of 2018. All activity on the issue will cease until the matter is voted on by the public.

C. **POLICY/LEGAL** A sales tax has been implemented in two cities within Oregon and most recently across the state with the passage of House Bill 2017. The City Council must read the item twice prior to approval.

ALTERNATIVES:

The City Council can either vote on the measure themselves or refer it directly to ballot. The referendum process is built in to the law so residents can decide to vote on the ordinance if they so choose. Council and staff respect the process and are ready to proceed either way. If the voters choose the referendum process, collections will not begin until July 1, 2018 at the earliest if approved by voters in May.

RECOMMENDATION:

Staff recommends the City Council read the draft ordinance, accept comments, and approve the second reading.

ATTACHMENTS:

1. Sales Tax Ordinance Procedure
2. Sales Tax Ordinance with Corrections in Strikout
3. Sales Tax Ordinance Clean

Memorandum

To: **Adam Brown and Ontario City Council Members**

From: **Larry Sullivan, Ontario City Attorney**

Re: **Procedure for Enactment of Sales Tax Ordinance**

Date: **August 9, 2017**

As has been discussed with the Council, a sales tax may be imposed by the City of Ontario by the enactment of an ordinance by the City Council under its home rule authority. No election is required. The procedure for enacting a sales tax ordinance is essentially the same as for the enactment of any other ordinance. That procedure appears in Chapter VIII of the City Charter. That procedure includes presentation to the Council of the ordinance on two separate occasions for two readings, unless the Council passes the ordinance unanimously in a single reading and waives a second reading. Unless the ordinance is passed on an emergency basis, it will go into effect 30 days after passage.

The passage of a sales tax ordinance is probably subject to ORS 294. 160(1), which provides:

> The governing body of a city, county or other unit of local government shall provide an opportunity for interested persons to comment on the enactment of any ordinance or resolution prescribing a new fee or a fee increase or an increase in the rate or other manner in which the amount of a fee is determined or calculated.

I interpret the reference to a "fee" to include a sales tax imposed on retail sellers in the city limits.

Compliance with ORS 294.160(1) requires the City Council to take oral or written comments from interested persons but does not establish a formal procedure for giving notice of that opportunity. No advertised formal public hearing is necessary as long as the Council includes the sales tax ordinance as an agenda item during a public meeting and allows for public comments during the meeting.

Other the other hand, there is nothing improper about advertising a formal public hearing to take comments on a sales tax ordinance if the Council chose to do so.

ORDINANCE #2729-2017

AN ORDINANCE ADDING CHAPTER 25 TO TITLE 3 OF THE ONTARIO CITY CODE TO ESTABLISH AND ENFORCE A 1% (ONE PERCENT) SALES TAX ON THE SALE OF RETAIL GOODS WITHIN THE CITY, AND TO CREATE EXEMPTIONS FROM THE TAX

WHEREAS, The City of Ontario's primary source of General Fund revenue is real property taxes subject to limitations imposed by the Oregon Constitution; and

WHEREAS, The cost of providing essential services to City residents has increased significantly over the years due to a variety of factors over which the City has little or no control; and

WHEREAS, To stay within its budget, the City has been forced in many cases to gradually reduce services and to eliminate programs, such as the Aquatic Center and the municipal golf course, which enhance the quality of life of City residents; and

WHEREAS, Budget projections show that, in the 2018-2019 budget year and thereafter, the cost of providing services funded through the General Fund will require significant reductions in essential services, including in the areas of public safety, road maintenance, and recreation; and

WHEREAS, The City is a regional shopping hub for the western Treasure Valley of Idaho and Oregon; and

WHEREAS, A substantial percentage of the City's budget is used to provide services and amenities to retail shoppers, the majority of whom are nonresidents who currently contribute little or nothing to the City's tax base; and

WHEREAS, The Ontario City Council finds that the imposition of a 1% sales tax will not have a long-term negative impact on retail businesses in Ontario and will generate enough revenue for the City to maintain a reasonable level of essential services for the foreseeable future; and

WHEREAS, The Ontario City Council has thoroughly explored alternative sources of revenue and finds that there are no other sources which will provide sufficient stable revenue without imposing a substantial financial burden on City residents and businesses; and

WHEREAS, The Ontario City Council finds that it is necessary for the health, welfare and safety of the residents of the City to enact a 1% sales tax on retail sales within the City, subject to certain exemptions.

NOW THEREFORE, THE CITY OF ONTARIO ORDAINS AS FOLLOWS:

Section 1. The following Chapter 25 is hereby added to Title 3 of the Ontario City Code and is entitled "Retail Sales Tax":

3-25-1 Definitions

The following words and phrases whenever used in this chapter shall be construed as defined in this section unless from the context a different meaning is intended.

(A) "Caterer" means a person who prepares food at a business site, for compensation, for consumption on or off the business premises but within the corporate limits of the City.

(B) "City" means the City of Ontario, Oregon. When applied to a geographical area, the "City" includes any area within its municipal boundaries, including any areas annexed into the City in the future.

(C) "Combination facility" has the same meaning as defined in Oregon Administrative 333-150-0000(4)(i) which the State of Oregon Department of Agriculture licenses or inspects under Oregon Administrative Rule 333-158-0000.

(D) "Director" means the Director of Finance of the City of Ontario, or his/her designee.

(E) "Establishment" means any entity subject to or liable for any tax or payment of any tax imposed under this chapter.

(F) "Farmer" means any person who:

1. Engages in the business of growing, raising, or producing agricultural products for sale upon that person's own land or land in which the person has a present right of possession; and

2. Generates gross sales of agricultural products, or has a harvested value of agricultural products, which the person has gown, raised, or produced, of at least $10,000 for the immediate preceding tax year; or

3. A farmer whose agricultural products had an estimated valued of at least ten thousand dollars for the immediate preceding tax year, if the person did not sell or harvest an agricultural product during that year.

(G) "Food" includes all prepared food items and beverages, excluding alcoholic beverages, served in a restaurant including "takeout", "to go" or delivered orders.

(H) "Non-exempt goods" include but are not limited to the following:

1. Automobile and truck parts, accessories, and tires;
2. Vehicles not required to be registered with the Department of Motor Vehicles;
3. Furniture, home furnishings, electronics and appliances;
4. Building materials and supplies;
5. Lawn and garden equipment and supplies;
6. Food and beverages, excluding alcohol;
7. Groceries and specialty foods;
8. Health and personal care products;
9. Clothing, apparel, and shoes;

10. Jewelry, luggage, and leather goods;
11. Sporting goods, hobby goods, and musical instruments;
12. Books, periodicals, and music;
13. Flowers, office supplies, stationery items;
14. Used merchandise;
15. Prepared food and beverages,
16. Miscellaneous department store and general store items; and
17. Personal property rentals.

(I) "Operator" means the person who is proprietor of the establishment, whether in capacity of owner, lessee, sublessee, mortgagee in possession, licensee, managing agent, or any other capacity.

(J) "Person" means any individual, firm, business, entity, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(K) "Restaurant" means any establishment required to be licensed as a restaurant, mobile unit or pushcart by the State of Oregon Health Division and includes any establishment where food or beverage is prepared for consumption by the public or any establishment where the public obtains food or beverage so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments which prepare food or beverage in consumable form for service outside the premises where prepared. The term restaurant includes, but is not limited to grocery store delis, coffee shops, and caterers; it also includes establishments where such food or beverage is prepared in a combination facility. The term restaurant does not include a restaurant licensed by the State of Oregon Health Division as a limited service restaurant.

(L) "Retailer" means any person engaged or continuing in the business of sales of tangible personal property at retail.

(M) "Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

(N) "Sales tax" means a City tax on gross sales receipts of identified non-exempt goods.

(O) "Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

(P) "Tax Collector" means the City of Ontario's representative or his or her designee or agent for all purposes under this Chapter.

(Q) “Taxpayer” means any individual, firm, business, entity, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, and subject to tax under this chapter.

(R) “Unit of government” means any department or agency of the federal government, any state or any agency, office or department of a state, any city, county, district, commission, authority, entity, port or other public corporation organized and existing under statuto~~a~~ry law or under a voter-approved charter and any intergovernmental entity created under ORS 190.003 to 190.130, 190.410 or 190.480 to 190.490.

3-25-2 Tax Imposed.

(A) Sales Tax. The City hereby imposes a personal property sales tax of 1% (one percent) on all receipts from the sale of non-exempt goods by operators within the City, in addition to all other taxes, fees, and charges of every kind.

(B) Computation. In the computation of this tax any fraction of one-half cent or more shall be treated as one cent.

(C) Reduction of Rate. The council may decrease the rate of the tax to any rate below 1% (one percent) or eliminate the tax after a public hearing. Notice of the hearing shall be given by publication in a newspaper of general circulation in the City at least 10 days prior to the date of the public hearing.

3-25-3 Miscellaneous Exemptions.

The sale of the following miscellaneous goods shall be exempt from the tax imposed in Section 3-25-2:

(A) Alcoholic beverages subject to the state liquor tax.

(B) Tobacco Items subject to the state tobacco tax.

(C) Pharmaceuticals, hearing aids and corrective lenses when the buyer presents a prescription.

(D) If such sales are authorized by the City, marijuana subject to state tax.

(E) Motor vehicles required to be registered with the Department of Motor Vehicles.

(F) Goods sold by or to units of government, including the City government.

(G) Goods sold by utility and telecommunications businesses that are also subject to state and local franchise fees.

(H) Goods in which the sales occur through the internet.

(I) Fuel items subject to the state motor vehicle fuel tax.

(J) Food and beverages sold by public or private schools, colleges, and hospitals.

(K) Food and beverages sold in connection with overnight residential facilities, including but not limited to convalescent homes, nursing homes, retirement homes, and bed and breakfast establishments if the food and beverage is provided as part of the cost of sleeping accommodations.

(L) Food and beverages provided by nonprofit tax-exempt organizations to citizens over 60 years of age as a part of a recognized senior citizen nutritional program.

(M) Overnight accommodations that are subject to the City's transient occupancy tax or transient lodging tax.

(N) Goods sold in temporary restaurants, including food stands, booths, street concessions, and similar operations if operated by community based non-profit organizations or social clubs.

(O) Goods sold in vending machines.

(P) Goods sold to wholesale buyers for resale to others. A wholesale buyer must obtain from the City a wholesale buyer's exemption certificate in order to qualify for this exemption.

3-25-4 Farmer Exemption.

Before claiming the farmer exemption in this Section, farmers must apply to the City for an exemption certificate number. Schedule F from IRS tax filing forms must be used to verify the level of sales needed to qualify for the farmer exemption as provided in Section 3-25-1(F). Retail sales to farmers with valid exemption certificate numbers are exempt for the following goods, in addition to goods exempted by Section 3-25-3:

(A) Farm machinery, implements and repair parts purchased for use in conducting a farming activity. The following goods do not qualify as farm machinery or implements for the purpose of this exemption:

1. lawn tractors;
2. all-terrain vehicles;
3. aircraft;
4. recreational vehicles and equipment, including motor homes, boats and equipment used to transport recreational vehicles;
5. hand tools and hand powered tools; and
6. property with a useful life of less than one year.

(B) Livestock for breeding purposes.

(C) Livestock used in producing an agricultural product.

(D) Animal pharmaceuticals to administer to an animal raised to produce an agricultural product for sale. Animal pharmaceuticals must be approved by the United State Food and Drug Administration (FDA) or the USDA.

(E) Propane and natural gas used exclusively for one or more of the following purposes:

1. to distill mint on a farm, or
2. to heat structures used to house chickens that are sold as agricultural products.

(F) Bedding materials used to accumulate and facilitate the removal of chicken manure. The chickens must be raised by a farmer and sold as agricultural products.

(G) Poultry for the use in the production for sale of poultry or poultry products.

(H) Building materials used in constructing, repairing, decorating, or improving new or existing buildings or other structures to provide housing to agricultural employees of the farmer. Livestock nutrient management equipment and goods used to install repair, clean, alter, or improve such equipment.

(J) Anaerobic digesters, and goods that become an ingredient or component of an anaerobic digester.

(K) Chemical sprays and washes for the post-harvest treatment of fruit to prevent scald, fungus, mold, or decay.

(L) Feed, seed, fertilizer, spray materials (pesticides), and enhanced pollination agents used by farmers who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States Department of Agriculture (USDA).

(M) Tangible personal property purchased by a farmer for resale without intervening use as a consumer; for example, packing materials such as binder twine purchased by a farmer to contain agricultural products that the farmer will sell.

3-25-5 Administration and Collection of Tax.

The Finance Department of the City of Ontario is hereby authorized and empowered to administer, regulate, and collect payment of all sales taxes adopted and imposed by this ordinance. The City shall have all powers set forth in this chapter, together with those additional powers necessary and proper to carry out the provisions of this Ordinance.

3-25-6 Consent to Inspection of records.

The City of Ontario hereby consents to the inspection of such records as are necessary to qualify the City for inspection of records.

3-25-7 Operator's Duties;

Each operator shall collect the tax imposed by this chapter, to the same extent and at the same time as the amount for taxable purchases are collected from every purchaser. The amount of tax need not be separately stated.

3-25-8 Tax Permits

(A) Sales Tax Permit Required. Except as allowed under subsection (C) below for new businesses, no operator shall conduct sales subject to the City's sales tax without a sales tax permit issued by the City. The permit shall be based upon an application completed by the operator on a form provided by the City. The operator must complete a separate application for each place of business in the City in which the operator conducts sales subject to the City's sales tax.

(B) Business Registration Required. Every operator desiring to conduct business in the City of Ontario shall also have a valid business registration in accordance with Title 3, Chapter 4 of the Ontario City Code, in addition to a municipal sales tax permit.

(C) Time for Tax Permit Application. Operators engaged in business at the time this chapter becomes effective must obtain a sales tax permit not later than 20 calendar days after the effective date of this chapter. Operators starting business after this chapter is adopted must register their business and apply for a tax permit within 15 days after commencing business. The privilege of registration after the date of imposition of such tax does not relieve any person from the obligation of payment or collection of tax regardless of registration.

(D) Issuance of Tax Permit. The City shall, within 10 days after a tax permit application is submitted, issue without charge a tax permit to each applicant to collect the tax from retail buyers, together with a duplicate thereof for each additional place of business of each registrant. Permits shall be non-assignable and nontransferable and shall be surrendered immediately to the City upon the cessation of business at the location named or upon its sale or transfer.

(E) Reporting. Every operator shall, 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 this chapter and the amount of tax collected under this chapter. The operator may request or the director may establish shorter reporting periods for any operator if the operator or director deems it necessary to insure collection of the tax; and the director may require further information in the return relevant to payment of the liability. A return shall not be considered filed until it is actually received by the director.

(F) Remitting. At the time the return is filed, the full amount of the tax collected shall be remitted to the director. Payments received by the director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions which are not prejudicial to the interest of the City. A condition which is considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

(G) Order of Payments. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. The director, when in the director's discretion determines that it will be in the best interest of the City, may specify that a different order of payment credit should be followed with regard to a particular tax or factual situation. The director may establish shorter reporting periods for any operator if the director deems it necessary to insure collection of the tax and the director may require further information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment is made to the director. A separate trust bank account is not required to comply with this provision.

(H) First Tax Payment. The first payment of taxes under this Ordinance shall be due and payable together by the 30th day of April 2018, for that period beginning on January 1, 2018, and ending March 31, 2018.

3-25-9 Penalties and interest

(A) Initial 10% Penalty. Any operator who fails to remit any portion of any tax imposed by this chapter within the time required, shall pay a penalty of ten percent of the amount of the tax, in addition to the amount of the tax.

(B) Additional 10% Penalty. Any operator who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

(C) Revocation of Tax Permit. Any person who violates any provision of this Ordinance shall have his municipal tax permit and tax number revoked. The City shall send written notice of revocation of the tax permit, and number to the permit holder by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council, challenging the revocation. If no appeal is timely made, the revocation becomes final. Whenever a person subject to this Ordinance has had their tax permit and tax number evoked, the City shall not reissue the permit or issue a new permit to the person until the person places with the City a bond or other sufficient security in the amount equal to three (3) times the actual, determined, or estimated average monthly amount of tax payable by the person, pursuant to this chapter.

(D) 25% Fraud Penalty. If the director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25% percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A and B of this section.

(E) Interest On Late Payments. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of 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.

(F) Penalty as Part of Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid.

(G) Distribution to General Fund. All sums collected pursuant to the penalty provisions in paragraphs A, B, C, D and F of this section shall be distributed to the City of Ontario General Fund to offset the costs of auditing and enforcement of this tax.

(H) Lien on Property. Any amount due under this Ordinance which a person fails to report or accurately compute shall become a lien upon the property of the taxpayer on the date that the same becomes due, and the City may seek to enforce the lien and collect all taxes and interest due, together with the reasonable costs of collection, including attorney fees, in a court of competent jurisdiction.

(I) Waiver of Penalties. Penalties and interest for certain late tax payments may be waived by the City Council.

3-25-10 Failure to Collect and Report Tax

If any operator should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any operator, the director shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the last known place of address. Such operator may make an appeal of such determination as provided in section 3-25-11 (Appeal). If no appeal is filed, the director's determination is final and the amount thereby is immediately due and payable.

3-25-11 Appeal

Any operator aggrieved by any decision of the director with respect to the amount of such tax, interest and penalties, if any, may appeal within 30 days of the serving or mailing of the determination of tax due. The hearings officer shall hear and consider any records and evidence presented bearing upon the director's determination of amount due, and makes findings affirming, reversing, or modifying the determination. The findings of the hearings officer shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3-25-12 Records

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three years, all such records as may be necessary to determine the amount of such tax. The director shall have the right to inspect all records at all reasonable times.

3-25-13 Refunds

(A) Claiming a Refund. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in subsection B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the director within one year of the date of payment. The claim shall be on forms furnished by the director.

(B) Processing Refund Requests. The director shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The director shall notify the claimant in writing of the director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the director to be a valid claim, an operator may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received in a manner prescribed by the director. The operator shall notify director of claimant's choice no later than 15 days following the date director mailed the determination. In the event claimant has not notified the director of claimant's choice within the 15 day period and the operator is still in business, a credit will be granted against the tax liability for the next reporting period, if the operator is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

(C) Proof by Written Records. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the director acknowledged the validity of the claim.

3-25-14 Actions to Collect

Any tax required to be paid by any operator under the provisions of this chapter shall be deemed a debt owed by the operator to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City Of Ontario for the recovery of such amount. In lieu of filing an action for the recovery, the City of Ontario, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Ontario has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars or fifty percent of the outstanding tax, penalties and interest owning.

3-25-15 Violations

(A) Punishable Violations. All violations of this chapter are punishable in accordance with Section 1-4-1 of the City Code. It is a violation of this chapter for any operator or other person to:

1. Fail or refuses 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;
6. Fail, refuse or neglect to remit the tax to the City by the due date.

(B) Classes of Violations. Violation of subsections 1-4 and 6 above shall be considered a Class C violation under Code Section 1-4-1. Filing a false or fraudulent return shall be considered a Class A violation under Code Section 1-4-1.

(C) Remedies Nonexclusive. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

3-25-16 Confidentiality

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

1. The disclosure of the names and addresses of any person who are operating a business; or

2. The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual operator; or

3. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim or an appeal for amount due the City under this chapter.

4. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures.

5. The disclosure of records related to a business's failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds $5,000.00. The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5)

(B) Disclosure to IRS. The City Council, as provided by law or under such rules and provision as it may prescribe, may permit, notwithstanding the provisions of this Ordinance as to secrecy, the Commissioner of Internal Revenue of the United States or his delegate or the proper officer of any state imposing a tax to inspect the sales tax returns or information provided or obtained in connection therewith or may furnish to such officer or his authorized agent copies or an abstract thereof.

(C) Operator's Own Records. Nothing in this Ordinance shall prohibit an operator or authorized representative, upon proper identification, from inspecting and copying the operator's own sales tax returns and information supplied therewith.

(D) Employment Records. Nothing in this Ordinance shall require the City or its agents and representatives to publish, share or discuss a specific person or employer using information derived from Oregon Employment Department subject to ORS 657.665, or subject to the Rules and Guidelines Regarding Confidentiality of Oregon Employment Department Data.

3-25-17 Examining Books, Records, or Persons

(A) Appointment of Auditors. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by it for that purpose, any books, papers, records, or memoranda, including copies of operator's state and federal income tax return, bearing upon the matter of the operator's tax return.

(B) Effect of Audit. If any error or omission is discovered in such audits or in any other way, the City may compute and determine the amount of tax due upon the basis of facts obtained from such information within the City's possession and assert a deficiency. One or more deficiency determinations may be made for the amount due for one or more than one period. In making such determinations, the City may offset over payments against amounts due. Further determinations shall be made for the period or periods during which the person fails to make a tax return and shall be based upon any information in the City's possession.

(C) Written Notice of Deficiency. The City shall provide written notice of the City's determination and the amount of deficiency, including interest at the rate of ten percent (10%) per annum or such other rate as may be allowed by Oregon Code and as set by resolution adopted by the City Council from the date due, to the person from whom such deficiency amount is due. Such notice may be given personally or mailed to the person at the address furnished by the City in the sales tax application.

3-25-18 Severability

It is hereby declared to be the legislative intent that the provisions, and parts thereof, of this Ordinance shall be severable. Should any section, subsection, paragraph, clause or phrase of this chapter, or any particular application thereof, be declared invalid or unconstitutional for any reason by a court of competent jurisdiction, such decision shall not affect the remaining portions of the section, subsection, paragraph, clause or phrase of this chapter.

3-25-19 Effective Date

This Ordinance shall be in full force and effect 30 days following passage by the City Council.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ______ day of ____________, 2017, by the following vote:

AYES:
NAYS:
EXCUSED:
ABSENT:

APPROVED by the Mayor this _______day of _______________, 2017.

ATTEST:

_______________________________ _____________________________

Ronald Verini, Mayor Tori Barnett, MMC, City Recorder

ORDINANCE #2729-2017

AN ORDINANCE ADDING CHAPTER 25 TO TITLE 3 OF THE ONTARIO CITY CODE TO ESTABLISH AND ENFORCE A 1% (ONE PERCENT) SALES TAX ON THE SALE OF RETAIL GOODS WITHIN THE CITY, AND TO CREATE EXEMPTIONS FROM THE TAX

WHEREAS, The City of Ontario's primary source of General Fund revenue is real property taxes subject to limitations imposed by the Oregon Constitution; and

WHEREAS, The cost of providing essential services to City residents has increased significantly over the years due to a variety of factors over which the City has little or no control; and

WHEREAS, To stay within its budget, the City has been forced in many cases to gradually reduce services and to eliminate programs, such as the Aquatic Center and the municipal golf course, which enhance the quality of life of City residents; and

WHEREAS, Budget projections show that, in the 2018-2019 budget year and thereafter, the cost of providing services funded through the General Fund will require significant reductions in essential services, including in the areas of public safety, road maintenance, and recreation; and

WHEREAS, The City is a regional shopping hub for the western Treasure Valley of Idaho and Oregon; and

WHEREAS, A substantial percentage of the City's budget is used to provide services and amenities to retail shoppers, the majority of whom are nonresidents who currently contribute little or nothing to the City's tax base; and

WHEREAS, The Ontario City Council finds that the imposition of a 1% sales tax will not have a long-term negative impact on retail businesses in Ontario and will generate enough revenue for the City to maintain a reasonable level of essential services for the foreseeable future; and

WHEREAS, The Ontario City Council has thoroughly explored alternative sources of revenue and finds that there are no other sources which will provide sufficient stable revenue without imposing a substantial financial burden on City residents and businesses; and

WHEREAS, The Ontario City Council finds that it is necessary for the health, welfare and safety of the residents of the City to enact a 1% sales tax on retail sales within the City, subject to certain exemptions.

NOW THEREFORE, THE CITY OF ONTARIO ORDAINS AS FOLLOWS:

Section 1. The following Chapter 25 is hereby added to Title 3 of the Ontario City Code and is entitled "Retail Sales Tax":

3-25-1 Definitions

The following words and phrases whenever used in this chapter shall be construed as defined in this section unless from the context a different meaning is intended.

(A) "Caterer" means a person who prepares food at a business site, for compensation, for consumption on or off the business premises but within the corporate limits of the City.

(B) "City" means the City of Ontario, Oregon. When applied to a geographical area, the "City" includes any area within its municipal boundaries, including any areas annexed into the City in the future.

(C) "Combination facility" has the same meaning as defined in Oregon Administrative 333-150-0000(4)(i) which the State of Oregon Department of Agriculture licenses or inspects under Oregon Administrative Rule 333-158-0000.

(D) "Director" means the Director of Finance of the City of Ontario, or his/her designee.

(E) "Establishment" means any entity subject to or liable for any tax or payment of any tax imposed under this chapter.

(F) "Farmer" means any person who:

1. Engages in the business of growing, raising, or producing agricultural products for sale upon that person's own land or land in which the person has a present right of possession; and

2. Generates gross sales of agricultural products, or has a harvested value of agricultural products, which the person has gown, raised, or produced, of at least $10,000 for the immediate preceding tax year; or

3. A farmer whose agricultural products had an estimated valued of at least ten thousand dollars for the immediate preceding tax year, if the person did not sell or harvest an agricultural product during that year.

(G) "Food" includes all prepared food items and beverages, excluding alcoholic beverages, served in a restaurant including "takeout", "to go" or delivered orders.

(H) "Non-exempt goods" include but are not limited to the following:

1. Automobile and truck parts, accessories, and tires;
2. Vehicles not required to be registered with the Department of Motor Vehicles;
3. Furniture, home furnishings, electronics and appliances;
4. Building materials and supplies;
5. Lawn and garden equipment and supplies;
6. Food and beverages, excluding alcohol;
7. Groceries and specialty foods;
8. Health and personal care products;
9. Clothing, apparel, and shoes;

10. Jewelry, luggage, and leather goods;
11. Sporting goods, hobby goods, and musical instruments;
12. Books, periodicals, and music;
13. Flowers, office supplies, stationery items;
14. Used merchandise;
15. Prepared food and beverages,
16. Miscellaneous department store and general store items; and
17. Personal property rentals.

(I) "Operator" means the person who is proprietor of the establishment, whether in capacity of owner, lessee, sublessee, mortgagee in possession, licensee, managing agent, or any other capacity.

(J) "Person" means any individual, firm, business, entity, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

(K) "Restaurant" means any establishment required to be licensed as a restaurant, mobile unit or pushcart by the State of Oregon Health Division and includes any establishment where food or beverage is prepared for consumption by the public or any establishment where the public obtains food or beverage so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments which prepare food or beverage in consumable form for service outside the premises where prepared. The term restaurant includes, but is not limited to grocery store delis, coffee shops, and caterers; it also includes establishments where such food or beverage is prepared in a combination facility. The term restaurant does not include a restaurant licensed by the State of Oregon Health Division as a limited service restaurant.

(L) "Retailer" means any person engaged or continuing in the business of sales of tangible personal property at retail.

(M) "Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, including consignment transactions and auctions, of property for a consideration. "Sale" includes any transaction whereby the possession of such property is transferred but the seller retains the title as security for the payment of the price. "Sale" also includes the fabrication of tangible personal property for consumers who, in whole or in part, furnish either directly or indirectly the materials used in such fabrication work.

(N) "Sales tax" means a City tax on gross sales receipts of identified non-exempt goods.

(O) "Supplier" means any person who rents, leases, licenses, or makes sales of tangible personal property within the City, either directly to the consumer or customer or to wholesalers, jobbers, fabricators, manufacturers, modifiers, assemblers, repairers, or those engaged in the business of providing services which involve the use, sale, rental, lease, or license of tangible personal property.

(P) "Tax Collector" means the City of Ontario's representative or his or her designee or agent for all purposes under this Chapter.

(Q) "Taxpayer" means any individual, firm, business, entity, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, and subject to tax under this chapter.

(R) "Unit of government" means any department or agency of the federal government, any state or any agency, office or department of a state, any city, county, district, commission, authority, entity, port or other public corporation organized and existing under statutory law or under a voter-approved charter and any intergovernmental entity created under ORS 190.003 to 190.130, 190.410 or 190.480 to 190.490.

3-25-2 Tax Imposed.

(A) Sales Tax. The City hereby imposes a personal property sales tax of 1% (one percent) on all receipts from the sale of non-exempt goods by operators within the City, in addition to all other taxes, fees, and charges of every kind.

(B) Computation. In the computation of this tax any fraction of one-half cent or more shall be treated as one cent.

(C) Reduction of Rate. The council may decrease the rate of the tax to any rate below 1% (one percent) or eliminate the tax after a public hearing. Notice of the hearing shall be given by publication in a newspaper of general circulation in the City at least 10 days prior to the date of the public hearing.

3-25-3 Miscellaneous Exemptions.

The sale of the following miscellaneous goods shall be exempt from the tax imposed in Section 3-25-2:

(A) Alcoholic beverages subject to the state liquor tax.

(B) Tobacco Items subject to the state tobacco tax.

(C) Pharmaceuticals, hearing aids and corrective lenses when the buyer presents a prescription.

(D) If such sales are authorized by the City, marijuana subject to state tax.

(E) Motor vehicles required to be registered with the Department of Motor Vehicles.

(F) Goods sold by or to units of government, including the City government.

(G) Goods sold by utility and telecommunications businesses that are also subject to state and local franchise fees.

(H) Goods in which the sales occur through the internet.

(I) Fuel items subject to the state motor vehicle fuel tax.

(J) Food and beverages sold by public or private schools, colleges, and hospitals.

(K) Food and beverages sold in connection with overnight residential facilities, including but not limited to convalescent homes, nursing homes, retirement homes, and bed and breakfast establishments if the food and beverage is provided as part of the cost of sleeping accommodations.

(L) Food and beverages provided by nonprofit tax-exempt organizations to citizens over 60 years of age as a part of a recognized senior citizen nutritional program.

(M) Overnight accommodations that are subject to the City's transient occupancy tax or transient lodging tax.

(N) Goods sold in temporary restaurants, including food stands, booths, street concessions, and similar operations if operated by community based non-profit organizations or social clubs.

(O) Goods sold in vending machines.

(P) Goods sold to wholesale buyers for resale to others. A wholesale buyer must obtain from the City a wholesale buyer's exemption certificate in order to qualify for this exemption.

3-25-4 Farmer Exemption.

Before claiming the farmer exemption in this Section, farmers must apply to the City for an exemption certificate number. Schedule F from IRS tax filing forms must be used to verify the level of sales needed to qualify for the farmer exemption as provided in Section 3-25-1(F). Retail sales to farmers with valid exemption certificate numbers are exempt for the following goods, in addition to goods exempted by Section 3-25-3:

(A) Farm machinery, implements and repair parts purchased for use in conducting a farming activity. The following goods do not qualify as farm machinery or implements for the purpose of this exemption:

1. lawn tractors;
2. all-terrain vehicles;
3. aircraft;
4. recreational vehicles and equipment, including motor homes, boats and equipment used to transport recreational vehicles;
5. hand tools and hand powered tools; and
6. property with a useful life of less than one year.

(B) Livestock for breeding purposes.

(C) Livestock used in producing an agricultural product.

(D) Animal pharmaceuticals to administer to an animal raised to produce an agricultural product for sale. Animal pharmaceuticals must be approved by the United State Food and Drug Administration (FDA) or the USDA.

(E) Propane and natural gas used exclusively for one or more of the following purposes:

1. to distill mint on a farm, or
2. to heat structures used to house chickens that are sold as agricultural products.

(F) Bedding materials used to accumulate and facilitate the removal of chicken manure. The chickens must be raised by a farmer and sold as agricultural products.

(G) Poultry for the use in the production for sale of poultry or poultry products.

(H) Building materials used in constructing, repairing, decorating, or improving new or existing buildings or other structures to provide housing to agricultural employees of the farmer. Livestock nutrient management equipment and goods used to install repair, clean, alter, or improve such equipment.

(J) Anaerobic digesters, and goods that become an ingredient or component of an anaerobic digester.

(K) Chemical sprays and washes for the post-harvest treatment of fruit to prevent scald, fungus, mold, or decay.

(L) Feed, seed, fertilizer, spray materials (pesticides), and enhanced pollination agents used by farmers who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States Department of Agriculture (USDA).

(M) Tangible personal property purchased by a farmer for resale without intervening use as a consumer; for example, packing materials such as binder twine purchased by a farmer to contain agricultural products that the farmer will sell.

3-25-5 Administration and Collection of Tax.

The Finance Department of the City of Ontario is hereby authorized and empowered to administer, regulate, and collect payment of all sales taxes adopted and imposed by this ordinance. The City shall have all powers set forth in this chapter, together with those additional powers necessary and proper to carry out the provisions of this Ordinance.

3-25-6 Consent to Inspection of records.

The City of Ontario hereby consents to the inspection of such records as are necessary to qualify the City for inspection of records.

3-25-7 Operator's Duties;

Each operator shall collect the tax imposed by this chapter, to the same extent and at the same time as the amount for taxable purchases are collected from every purchaser. The amount of tax need not be separately stated.

3-25-8 Tax Permits

(A) Sales Tax Permit Required. Except as allowed under subsection (C) below for new businesses, no operator shall conduct sales subject to the City's sales tax without a sales tax permit issued by the City. The permit shall be based upon an application completed by the operator on a form provided by the City. The operator must complete a separate application for each place of business in the City in which the operator conducts sales subject to the City's sales tax.

(B) Business Registration Required. Every operator desiring to conduct business in the City of Ontario shall also have a valid business registration in accordance with Title 3, Chapter 4 of the Ontario City Code, in addition to a municipal sales tax permit.

(C) Time for Tax Permit Application. Operators engaged in business at the time this chapter becomes effective must obtain a sales tax permit not later than 20 calendar days after the effective date of this chapter. Operators starting business after this chapter is adopted must register their business and apply for a tax permit within 15 days after commencing business. The privilege of registration after the date of imposition of such tax does not relieve any person from the obligation of payment or collection of tax regardless of registration.

(D) Issuance of Tax Permit. The City shall, within 10 days after a tax permit application is submitted, issue without charge a tax permit to each applicant to collect the tax from retail buyers, together with a duplicate thereof for each additional place of business of each registrant. Permits shall be non-assignable and nontransferable and shall be surrendered immediately to the City upon the cessation of business at the location named or upon its sale or transfer.

(E) Reporting. Every operator shall, 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 this chapter and the amount of tax collected under this chapter. The operator may request or the director may establish shorter reporting periods for any operator if the operator or director deems it necessary to insure collection of the tax; and the director may require further information in the return relevant to payment of the liability. A return shall not be considered filed until it is actually received by the director.

(F) Remitting. At the time the return is filed, the full amount of the tax collected shall be remitted to the director. Payments received by the director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions which are not prejudicial to the interest of the City. A condition which is considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

(G) Order of Payments. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. The director, when in the director's discretion determines that it will be in the best interest of the City, may specify that a different order of payment credit should be followed with regard to a particular tax or factual situation. The director may establish shorter reporting periods for any operator if the director deems it necessary to insure collection of the tax and the director may require further information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the City until payment is made to the director. A separate trust bank account is not required to comply with this provision.

(H) First Tax Payment. The first payment of taxes under this Ordinance shall be due and payable together by the 30th day of April 2018, for that period beginning on January 1, 2018, and ending March 31, 2018.

3-25-9 Penalties and interest

(A) Initial 10% Penalty. Any operator who fails to remit any portion of any tax imposed by this chapter within the time required, shall pay a penalty of ten percent of the amount of the tax, in addition to the amount of the tax.

(B) Additional 10% Penalty. Any operator who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

(C) Revocation of Tax Permit. Any person who violates any provision of this Ordinance shall have his municipal tax permit and tax number revoked. The City shall send written notice of revocation of the tax permit, and number to the permit holder by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council, challenging the revocation. If no appeal is timely made, the revocation becomes final. Whenever a person subject to this Ordinance has had their tax permit and tax number evoked, the City shall not reissue the permit or issue a new permit to the person until the person places with the City a bond or other sufficient security in the amount equal to three (3) times the actual, determined, or estimated average monthly amount of tax payable by the person, pursuant to this chapter.

(D) 25% Fraud Penalty. If the director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25% percent of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A and B of this section.

(E) Interest On Late Payments. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of 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.

(F) Penalty as Part of Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid.

(G) Distribution to General Fund. All sums collected pursuant to the penalty provisions in paragraphs A, B, C, D and F of this section shall be distributed to the City of Ontario General Fund to offset the costs of auditing and enforcement of this tax.

(H) Lien on Property. Any amount due under this Ordinance which a person fails to report or accurately compute shall become a lien upon the property of the taxpayer on the date that the same becomes due, and the City may seek to enforce the lien and collect all taxes and interest due, together with the reasonable costs of collection, including attorney fees, in a court of competent jurisdiction.

(I) Waiver of Penalties. Penalties and interest for certain late tax payments may be waived by the City Council.

3-25-10 Failure to Collect and Report Tax

If any operator should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any operator, the director shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at the last known place of address. Such operator may make an appeal of such determination as provided in section 3-25-11 (Appeal). If no appeal is filed, the director's determination is final and the amount thereby is immediately due and payable.

3-25-11 Appeal

Any operator aggrieved by any decision of the director with respect to the amount of such tax, interest and penalties, if any, may appeal within 30 days of the serving or mailing of the determination of tax due. The hearings officer shall hear and consider any records and evidence presented bearing upon the director's determination of amount due, and makes findings affirming, reversing, or modifying the determination. The findings of the hearings officer shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

3-25-12 Records

It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter to keep and preserve, for a period of three years, all such records as may be necessary to determine the amount of such tax. The director shall have the right to inspect all records at all reasonable times.

3-25-13 Refunds

(A) Claiming a Refund. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City under this chapter, it may be refunded as provided in subsection B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the director within one year of the date of payment. The claim shall be on forms furnished by the director.

(B) Processing Refund Requests. The director shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The director shall notify the claimant in writing of the director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the director to be a valid claim, an operator may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received in a manner prescribed by the director. The operator shall notify director of claimant's choice no later than 15 days following the date director mailed the determination. In the event claimant has not notified the director of claimant's choice within the 15 day period and the operator is still in business, a credit will be granted against the tax liability for the next reporting period, if the operator is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

(C) Proof by Written Records. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the director acknowledged the validity of the claim.

3-25-14 Actions to Collect

Any tax required to be paid by any operator under the provisions of this chapter shall be deemed a debt owed by the operator to the City. Any such tax collected by an operator which has not been paid to the City shall be deemed a debt owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City Of Ontario for the recovery of such amount. In lieu of filing an action for the recovery, the City of Ontario, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Ontario has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars or fifty percent of the outstanding tax, penalties and interest owning.

3-25-15 Violations

(A) Punishable Violations. All violations of this chapter are punishable in accordance with Section 1-4-1 of the City Code. It is a violation of this chapter for any operator or other person to:

1. Fail or refuses 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;
6. Fail, refuse or neglect to remit the tax to the City by the due date.

(B) Classes of Violations. Violation of subsections 1-4 and 6 above shall be considered a Class C violation under Code Section 1-4-1. Filing a false or fraudulent return shall be considered a Class A violation under Code Section 1-4-1.

(C) Remedies Nonexclusive. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

3-25-16 Confidentiality

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

1. The disclosure of the names and addresses of any person who are operating a business; or

2. The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual operator; or

3. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim or an appeal for amount due the City under this chapter.

4. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures.

5. The disclosure of records related to a business's failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds $5,000.00. The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5)

(B) Disclosure to IRS. The City Council, as provided by law or under such rules and provision as it may prescribe, may permit, notwithstanding the provisions of this Ordinance as to secrecy, the Commissioner of Internal Revenue of the United States or his delegate or the proper officer of any state imposing a tax to inspect the sales tax returns or information provided or obtained in connection therewith or may furnish to such officer or his authorized agent copies or an abstract thereof.

(C) Operator's Own Records. Nothing in this Ordinance shall prohibit an operator or authorized representative, upon proper identification, from inspecting and copying the operator's own sales tax returns and information supplied therewith.

(D) Employment Records. Nothing in this Ordinance shall require the City or its agents and representatives to publish, share or discuss a specific person or employer using information derived from Oregon Employment Department subject to ORS 657.665, or subject to the Rules and Guidelines Regarding Confidentiality of Oregon Employment Department Data.

3-25-17 Examining Books, Records, or Persons

(A) Appointment of Auditors. The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by it for that purpose, any books, papers, records, or memoranda, including copies of operator's state and federal income tax return, bearing upon the matter of the operator's tax return.

(B) Effect of Audit. If any error or omission is discovered in such audits or in any other way, the City may compute and determine the amount of tax due upon the basis of facts obtained from such information within the City's possession and assert a deficiency. One or more deficiency determinations may be made for the amount due for one or more than one period. In making such determinations, the City may offset over payments against amounts due. Further determinations shall be made for the period or periods during which the person fails to make a tax return and shall be based upon any information in the City's possession.

(C) Written Notice of Deficiency. The City shall provide written notice of the City's determination and the amount of deficiency, including interest at the rate of ten percent (10%) per annum or such other rate as may be allowed by Oregon Code and as set by resolution adopted by the City Council from the date due, to the person from whom such deficiency amount is due. Such notice may be given personally or mailed to the person at the address furnished by the City in the sales tax application.

3-25-18 Severability

It is hereby declared to be the legislative intent that the provisions, and parts thereof, of this Ordinance shall be severable. Should any section, subsection, paragraph, clause or phrase of this chapter, or any particular application thereof, be declared invalid or unconstitutional for any reason by a court of competent jurisdiction, such decision shall not affect the remaining portions of the section, subsection, paragraph, clause or phrase of this chapter.

3-25-19 Effective Date

This Ordinance shall be in full force and effect 30 days following passage by the City Council.

PASSED AND ADOPTED by the Common Council of the City of Ontario this ______ day of ____________, 2017, by the following vote:

AYES:
NAYS:
EXCUSED:
ABSENT:

APPROVED by the Mayor this _______day of _______________, 2017.

ATTEST:

______________________________ ___________________________

Ronald Verini, Mayor Tori Barnett, MMC, City Recorder

AGENDA REPORT
OLD BUSINESS
September 26, 2017

TO: Mayor and City Council

FROM: Adam J. Brown, City Manager

THROUGH: Adam J. Brown, City Manager

SUBJECT: **RESOLUTION #2017-133: A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET AUTHORIZING A REIMBURSEMENT FOR EXPENSES INCURRED BY ONTARIO BUSINESSES OF UP TO $1,000 FOR UPDATING SOFTWARE, HARDWARE, OR OTHER COSTS RELATED TO SALES TAX COLLECTION.**

DATE: September 21, 2017

PROPOSED MOTION:

I MOVE THAT THE CITY COUNCIL APPROVE RESOLUTION #2017-133: A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET AUTHORIZING A REIMBURSEMENT FOR EXPENSES INCURRED BY BUSINESSES OF UP TO $1,000 FOR UPDATING SOFTWARE, HARDWARE, OR OTHER COSTS RELATED TO SALES TAX COLLECTION.

SUMMARY:

The City is considering a local retail sales tax. If approved, the council has expressed support for reimbursing businesses for costs incurred implementing the city sales tax.

BACKGROUND:

A resolution for the reimbursement of costs of up to $1,000 pertaining to the updating of software, hardware, or other expenses for sales tax collection by Ontario businesses was requested by the City Council. The City Council has conducted a first reading of the proposed retail sales tax at the September 19, 2017 meeting.

CURRENT SITUATION:

Resolution #2017-133 was drafted and previewed on September 19, 2017 which would implement the reimbursement plan. The reimbursement will only be available once revenues are collected. Ontario businesses would be able to apply for the reimbursement using a form created by the Finance Department.

If the tax is approved and moves forward to implementation, collections will begin in April 2018. Reimbursements would be available beginning in April 2018. The resolution states that the reimbursement application would need to be made before December 30, 2018.

ANALYSIS:

A. **FINANCIAL** Revenue to pay for the reimbursements will come from the first collections of sales tax and will be reimbursed as funds from the tax are available.With approximately 250 potential businesses in Ontario, the cost would be $250,000.

B. **TIMING** If approved, the earliest the tax should go into effect is January 1, 2018, which means the first collection would be in April.

   If the voters choose to have a referendum for the sales tax ordinance, the item will go to voters in May of 2018. All activity on the issue will cease until the matter is voted on by the public including the reimbursement

C. **POLICY/LEGAL** A sales tax has been implemented in two cities within Oregon and most recently across the state with the passage of House Bill 2017. The City Council must read the item twice prior to approval.

ALTERNATIVES:

Take No Action - Without action, no reimbursement costs can be budgeted and made.

Increase the Reimbursement - The reimbursement could be increased. I recommend a ceiling of $2,000 per business if the Council desires to offer a greater amount.

Decrease the Reimbursement - The Council may choose to reduce the proposed amount of $1,000.

The council could wait until 30 days after the ordinance has passed to enact the reimbursement.

RECOMMENDATION:

The City Manager recommends the City Council approve the resolution authorizing and budgeting up to $1,000 in expenses for Ontario businesses related to the collection of the city retail sales tax.

ATTACHMENTS:

1. Resolution #2017-133

RESOLUTION #2017-133

A RESOLUTION ADOPTING A SUPPLEMENTAL BUDGET AUTHORIZING A REIMBURSEMENT FOR EXPENSES INCURRED BY BUSINESSES OF UP TO $1,000 FOR UPDATING SOFTWARE, HARDWARE, OR OTHER COSTS RELATED TO SALES TAX COLLECTION

WHEREAS, The City of Ontario's primary source of General Fund revenue is real property taxes subject to limitations imposed by the Oregon Constitution; and

WHEREAS, The cost of providing essential services to city residents has increased significantly over the years due to a variety of factors over which the city has little or no control; and

WHEREAS, To continue to provide essential services the city has approved a 1% sales tax; and

WHEREAS, The City of Ontario wishes to provide relief to businesses within the City of Ontario who need financial assistance updating software, hardware, or other costs for implementing the 1% sales tax

WHEREAS, The City will provide an application, which may be submitted after sales taxes are collected by the city.

NOW THEREFORE, THE CITY OF ONTARIO RESOLVES AS FOLLOWS: Businesses needing financial assistance to update software, hardware, or other costs related to sales tax collection will be eligible for up to $1,000 in reimbursement with documentation submitted to the city.

BE IT FURTHER RESOLVED, Businesses may apply and receive reimbursements after the city begins to collect sales tax and not prior to collection and application must be made prior to December 30, 2018.

BE IT FURTHER RESOLVED, that the City budget and appropriates funds from revenues collected by taxes as follows:

Line Item	Item Description	FY 17-18 Budget	Amount of Change	Adjusted Budget
GENERAL FUND				
001-000-410100	Sales Tax Revenue	$ -	$250,000	$250,000
001-004-615900	Reimbursements	$ -	$250,000	$250,000

PASSED AND ADOPTED by the Common Council of the City of Ontario this ______ day of ____________, 2017, by the following vote:

AYES:
NAYS:
EXCUSED:
ABSENT:

APPROVED by the Mayor this _______day of _______________, 2017.

ATTEST:

_______________________________	____________________________
Ronald Verini, Mayor	Tori Barnett, MMC, City Recorder