

#1
C.B.
118027

CITY OF SEATTLE
ORDINANCE _____

AN ORDINANCE relating to the business license tax, amending the definitions of "agricultural product" and "farmer," and amending Section 5.30.020 of the Seattle Municipal Code in connection therewith.

WHEREAS, the Seattle Municipal Code Section 5.45.090.O presently contains an exemption from the business license tax for farmers selling certain agricultural products; and

WHEREAS, the City desires that persons that grow or produce marijuana not be eligible for the exemption for farmers who sell agricultural products that they grow or produce; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subsection 5.30.020.B, which section was last amended by Ordinance 123063, is amended as follows:

SMC 5.30.020 Definitions, A -- B.

B. "Agricultural product," "farmer."

1. "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or "aquaculture" as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal that is a "private sector cultured aquatic product" as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets and does not include marijuana as defined by RCW 69.50.101(t).

2. "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such



1 products for the person's own consumption. "Farmer" does not include a person selling any
2 animal or substance obtained therefrom in connection with the person's business of operating a
3 stockyard or a slaughter or packing house. "Farmer" does not include any person in respect to the
4 business of taking, cultivating or raising timber. "Farmer" does not include any person engaged
5 in the business of growing or producing marijuana as defined by RCW 69.50.101(t).

6 Section 2. This ordinance shall take effect and be in force 30 days after its approval by
7 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
8 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

9 Passed by the City Council the ____ day of _____, 2014, and
10 signed by me in open session in authentication of its passage this
11 ____ day of _____, 2014.

12 _____
13 _____
14 President _____ of the City Council

15
16 Approved by me this ____ day of _____, 2014.

17 _____
18 _____
19 Edward B. Murray, Mayor

20
21 Filed by me this ____ day of _____, 2014.

22 _____
23 _____
24 Monica Martinez Simmons, City Clerk

25 (Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Attorney's Office	Kent Meyer 615-1960	

Legislation Title:

AN ORDINANCE relating to the business license tax, amending the definitions of "agricultural product" and "farmer," and amending Section 5.30.020 of the Seattle Municipal Code relating in connection therewith.

Summary of the Legislation:

The ordinance amends a business license tax exemption that currently applies to farmers who sell agricultural products that they have grown or produced. The amendment would make marijuana growers ineligible for the exemption and therefore subject to the business license tax.

Background:

The City's business license tax applies to all persons engaged in business in the City. SMC 5.45.050. The tax applies to manufacturers, retailers, and wholesalers. There is an exemption in SMC 5.45.090.O for farmers who sell agricultural products that they have grown or produced. This exemption could apply to some marijuana sellers. The City enacted the farmers exemption long before marijuana was legalized. The exemption typically applies to farmers selling traditional agricultural products such as fruits, vegetables, or meat and was never intended to apply to marijuana. The proposed bill will permit the City to impose its business license tax on persons who sell marijuana that they have grown.

The proposed bill amends SMC 5.30.020.B.1 so that the definition of "agricultural product" does not include marijuana. The proposed bill also amends SMC 5.30.020.B.2 so that the definition of "farmer" does not include persons engaged in the business of growing or producing marijuana. The result is that farmers who sell their own agricultural products in Seattle will still be exempt from the tax. But under the amended definitions, marijuana is not an agricultural product and persons who grow and sell marijuana are not farmers and must pay the business license tax.

 This legislation does not have any financial implications.

 X **This legislation has financial implications.**



Appropriations:

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL				

Appropriations Notes: There are no budget appropriations or budget decreases associated with this ordinance.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
TOTAL		Bus. Lic. Tax	Unknown	Unknown

Revenue/Reimbursement Notes:

This proposed bill will increase the City’s tax revenue because it will enable the City to impose its business license tax on persons who grow marijuana and sell that marijuana in the City. Without the amendment, the “farmers exemption” that is found in SMC 5.45.090.O may apply to persons who sell marijuana in the City that they have grown themselves. These sales would typically be wholesale sales by producer/processors to retailers located in Seattle.

There is too much uncertainty about the volume and price of marijuana that will be sold in Seattle to be able to estimate the increased tax revenue from the proposed ordinance. In August 2012, the Washington Office of Financial Management attempted to develop an estimate of state and local revenue from I-502, but acknowledged that “the inherent unreliability of existing data makes analysis extremely difficult. Similarly, BOTTEK, the consultant hired by the state, said in its June 2013 report that “with the information currently in hand, it is not possible to set specific bounds on the possible range of tax revenues.” In its September 2013 report, the Washington Economic and Revenue Forecast Council declined to produce a forecast of I-502 revenue due to “continued uncertainty over the rules and structure of the market.”

But the proposed amendment will result in the City receiving some tax revenues that it would not receive if the farmers exemption remained in place. The business license tax rate on wholesale and retail sales made in the City is .215 percent. So, for example, a business that sells \$1 million of marijuana at wholesale to Seattle retail stores would pay a business license tax of \$2150. A business selling \$10 million of marijuana would pay a business license tax of \$21,500. And if the total wholesale sales of marijuana producers to Seattle retailers were \$100 million, the tax revenue from those sales would be \$215,000. These numbers are for illustrative purposes only and are not forecasts or predictions.



Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL							

Position Notes: None.

Do positions sunset in the future? Not applicable
 (If yes, identify sunset date)

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL				

Spending/Cash Flow Notes: None.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**

No.

b) **What is the financial cost of not implementing the legislation?**

The cost of not implementing the legislation is the loss of business license tax revenue from persons who are eligible for the farmers exemption and who sell marijuana that they have grown. Due to the uncertainties of the market described above, we cannot accurately estimate the cost at this time.



c) Does this legislation affect any departments besides the originating department?

This legislation affects departments that receive funding from the general fund, which is where business tax revenues are deposited.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives? None.

e) Is a public hearing required for this legislation? No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation? No.

g) Does this legislation affect a piece of property? No.

h) Other Issues: None.

List attachments to the fiscal note below: None.





Seattle City Attorney

Peter S. Holmes

December 20, 2013

Honorable Nick Licata
Seattle City Council
City Hall, 2nd Floor

Dear Councilmember Licata:

I am pleased to transmit the attached proposed Council Bill amending certain provisions contained within Title 5 of the Seattle Municipal Code regarding the taxation of marijuana under the City's business and occupation tax.

Under SMC 5.45.090.O, the City exempts from its business license tax farmers who produce and sell agricultural products that they have grown. The proposed bill amends the code section that defines "agricultural product" and "farmer." The amendment will exclude marijuana from the definition of agricultural product and will exclude growers of marijuana from the definition of farmer. The effect of the proposed bill is that persons who grow or produce marijuana and sell that marijuana in the City will be subject to the City's business license tax. The rate of that tax on persons making wholesale or retail sales is .215 percent.

Without this amendment, it is likely that persons who grow marijuana and sell that marijuana in the City would be exempt from the City's business license tax. This longstanding "farmers exemption" typically applies to persons selling traditional agricultural products such as fruits, vegetables, or meat and was never intended to apply to marijuana.

One of the stated purposes of I-502 was to generate "new state and local tax revenue." But the specific taxes on marijuana created by I-502 generate revenue for the state and not for cities. The tax revenue for the cities is limited to a small share of the sales tax on retail sales and the business license tax. This proposed bill will permit the City to generate local tax revenue by taxing businesses that grow marijuana and sell that marijuana in the City. The bill would remove both medical and recreational marijuana from the exemption. Once the state resolves the medical marijuana situation and if the council desires to address the tax status of medical marijuana, we would be happy to work with you on that issue.

Please contact me if you have any questions.

Sincerely,

Peter S. Holmes
Seattle City Attorney

cc: Honorable Members of the Seattle City Council

