CHAPTER 3 - BUSINESS REGULATIONS

3.1 Enacting Ordinance. Unless otherwise indicated in a section, Chapter 3 of Dayton Code is enacted by Dayton City Ordinance #484 adopted 10/03/94, and effective 11/03/94; and revised by Ordinance #505, adopted and effective 5/04/98.

3.2 Definitions. As they are used in Chapter 3 of Dayton Code, the following terms are defined:

(1) **"Amusement device"** means any mechanical, electronic, mechanical-electronic or non-mechanical mechanism which is designed for the amusement of the player or operator and is complete in itself having as its purpose the production or creation of a game of chance.

(2) **Bingo or Lotto"** means a game played with cards bearing lines of numbers, in which the player covers or uncovers a number selected from a container or other means, and which is won by a player who is present during the game and who first uncovers the selected numbers in a designated combination, sequence or pattern. *(Added by Ordinance #505, 5/4/98 – Effective 5/4/98)*

(3) **"Business"** means any enterprise in which more than one consumer pays currency or exchanges personal property for information, goods or services, excluding garage sales and enterprises conducted by individuals under 18 years of age. For the purpose of this chapter of Dayton Code, associated enterprises are a single business entity only if the single business entity files one federal income tax return for income of all the associated enterprises. For the purpose of this chapter of Dayton Code, the term "consumer" means an individual who intends to acquire information, goods or services for household use and does not include a merchant who deals in information, goods, or services of the kind or otherwise by occupation purports to have knowledge or skill peculiar to the information, goods, or services involved in the transaction. *(Renumbered ORD 505 – Effective 5/4/98)*

(4) **A business is "conducted within the City"** whenever an owner or agent of the entity or individual conducting the business is physically within the city limits for the purpose of advertising or conducting business. *(Renumbered ORD 505 – Effective 5/4/98)*

(5) **"Charitable, fraternal or religious organization"** means any person that is organized and existing for charitable, benevolent, eleemosynary, humane, patriotic, religious, philanthropic, recreational, social, educational, civic, fraternal, or other non-profit purposes and is exempt from payment of federal income taxes because of its charitable, fraternal or religious purposes. *(Added by Ordinance #505, 5/4/98 – Effective 5/4/98)*

(6) **"Gambling"** means that a person stakes or risks something of value upon the outcome of a game of chance or a future contingent event not under the influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. Gambling **does not** include the following: *(Amended ORD 505– Effective 5/4/98)*

(a) Bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to, contracts of indemnity or guaranty and life, health, or accident insurance.

(b) Social games if conducted pursuant to a valid license issued in accordance with Section 3.6 of this Code or otherwise qualifies as a social game as defined by Section 3.2(12) of this Code.

(c) Bingo, lotto, lotteries or raffles operated by an organization which has complied with

State laws and has been licensed by the Department of Justice, pursuant to Chapter 167 of the Oregon Revised Statutes.

(d) Wagers placed at any event licensed by the Oregon Racing Commission, pursuant to Chapter 462 of the Oregon Revised Statutes.

(e) Video lottery or other games operated by the Oregon Lottery Commission, or under the authority of the Oregon Lottery Commission.

(7) **"Game of chance"** means any contest, game, gaming scheme or gaming mechanism or other amusement device in which the outcome depends in a material degree upon an element of chance as opposed to an element of knowledge, expertise, physical ability or other skill of the user. A social game is not a game of chance. *(Renumbered ORD 505 – Effective 5/4/98)*

(8) **"Game of skill"** means any contest, game, gaming scheme or gaming mechanism in which the outcome depends upon an element of knowledge, expertise, physical ability or other skill of the user which may affect the outcome in a material way, not withstanding that chance may also be a factor. Video games, billiards, pool and snooker are examples of games of skill. Carnival games are not games of skill. *(Renumbered ORD 505 – Effective 5/4/98)*

(9) **"Garage Sale"** means a display to the public, for no longer than 96 hours at a time, of items, outside or inside a structure, for the purpose of selling the item(s). When an enterprise meeting this definition is conducted at the same location more than four times in any 12-month period, it shall be considered a retail enterprise, subject to zoning ordinances. *(Renumbered ORD 505 – Effective 5/4/98)*

(10) **"Lottery"** means a game in which the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and the winning chances are to be determined by a drawing or some other method; and the holders of the winning chances are to receive something of value. *(Amended ORD 505 – Effective 5/4/98)*

(11) **"Raffle"** means a lottery operated by a charitable, fraternal or religious organization wherein the players pay something of value for chances, represented by numbers or combinations thereof or by some other medium, one or more of which chances are to be designated the winning ones or determined by a drawing and the player holding the winning chance is to receive something of value. *(Amended ORD 505 – Effective 5/4/98)*

(12) **"Social game"** means:

(a) a game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the social game; and

(b) a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game. Definitions of terms used to define social game are the same definitions of terms found in ORS chapter 167. *(Renumbered ORD 505 – Effective 5/4/98)*

(13) **"Something of Value"** means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein. *(Added ORD 505 – Effective 5/4/98)*

3.3 Business Registration. No individual or entity may conduct business within the City without registering annually with the City Recorder. Business registrations expire on December 31st of each year and must be renewed annually. *(Amended ORD 615- Effective 11/06/13)*

3.3.1 Procedure for Registration. An individual, or an agent of an entity, intending to conduct business shall first submit a completed Business Registration Form and annual fee to the City Recorder, either in person during regular business hours at City Hall or by mail.

3.3.2 Interpretation. Registration pursuant to Dayton Code section 3.3 does not mean that the City authorizes any business activity or that any legal requirements have been met, other than registration pursuant to this section.

3.3.3 Violation. A violation of any provision of section 3.3 of Dayton Code shall be a Class B violation. *(Amended ORD 505 – Effective 5/4/98)*

3.4 Gambling Prohibited. It is unlawful for any person to participate or engage in any gambling activity as a player, or for any person to frequent or remain at any place where gambling is being conducted. *(Added ORD 505 – Effective 5/4/98)*

3.4.1 Violation. A violation of any provision of section 3.4 of Dayton Code shall be a Class A violation.

3.5 *(License for Game of Skill-Repealed ORD 591, passed 11/2/09 and adopted 12/2/09)*

3.6 Social Games.

3.6.1 Social Game License. No person or entity shall operate or allow a social game in an area under his, her or its control that is open to the public, unless a current Social Game License, issued by the City Council is prominently displayed. Social Game Licenses expire on December 31st each year, and must be renewed annually to be current. Any individual operating or allowing an unlicensed social game in an area under his or her control that is open to the public shall be guilty of a Class A violation. *(Amended ORD 505 – Effective 5/4/98)*

3.6.2 Application for Social Game License. The initial application for a social game license and the associated non-refundable investigation fee must be submitted to the City Recorder at least 30 days prior to the date council will conduct the hearing to determine initial eligibility for the license. The initial application shall include the following items, and any additional information needed for clerical purposes: *(Amended ORD 615- Effective 11/06/13)*

(a) Complete names, addresses, dates of birth and social security numbers of all individuals with any financial interests in the business or enterprise that will be operating or allowing the social game on its premises;

(b) Detailed description of all business enterprises conducted by the entity or individual who will be operating or allowing the social game on his or her premises;

(c) Complete history of criminal convictions of all individuals with financial interests in the business or enterprise that will be operating or allowing the social game on its premises;

(d) Fingerprints and photographs of all individuals with financial interest in the business or enterprise that will be operating or allowing the social game on its premises;

(e) Consent, signed by all individuals with financial interests in the business or enterprise that will be operating or allowing the social game on its premises, authorizing city staff to confirm all information contained in the application and authorizing third parties to release confidential information to city staff; and

(f) Exact location where social game will be conducted.

3.6.3 Eligibility. City Council shall find that the applicant is eligible to be licensed or receive a renewal of his or her license, upon payment of the annual Social Game License fee, unless following hearing on the matter City Council finds one or more of the following situations:

(a) An individual with a financial interest in the business, that will be operating or allowing the social game on its premises, has been convicted of a federal, state or local gambling or gaming violation or crime, within the last ten years;

(b) False or misleading information was supplied on the application; or information requested was omitted from the application;

(c) Any premises under the control of the business that will be operating or allowing the social game on its premises has been the site of more than one intentional physical injury to an individual within the past five years; or

(d) An individual with a financial interest in the business that will be operating or allowing the social game on its premises, has been convicted of a federal, state or local violation or crime pertaining to alcohol, or has been found in noncompliance with an Oregon Liquor Control Commission administrative rule, within the last five years.

3.6.4 License Fee. An annual Social Game License fee shall be required according to the City's Fee Schedule. The annual fee may be prorated when first issued, if issued for a remaining portion of a year. *(Amended ORD 615- Effective 11/06/13)*

3.6.5 Revocation of License. City Council may conduct a hearing at any time during the year, following a 30-day notice to a Social Game Licensee, to determine if any of the situations defined in section 3.6.3 or 3.6.6 exists. If City Council finds that such a situation exists, it shall revoke the license. No portion of the annual license fee shall be refunded when a Social Game License is revoked.

3.6.6 Social Game Regulations. No person shall operate a social game in which any of the following situations occur:

(a) A bet is greater than $2.00, a three-raise limit has been exceeded, or there has been a back-up bet;

(b) A door leading into a room in which a social game is being conducted has been locked or a police officer has been hindered in his or her attempt to inspect the premises;

(c) An individual or an agent of an individual with a financial interest in the business or entity, that operates or allows the social game on its premises, participates in a social game; procures a player for a social game; backs, farms out, assigns or sublets a social game;

(d) A social game can be seen from the street;

(e) A person under the age of 21 years is present in a room where a social game is being conducted;

(f) A charge is collected from a player for the privilege of participating in a social game;

(g) A participant in a social game is charged a price for a consumer good, regularly offered by the business or entity operating or allowing the social game on its premises, that is different from the price charged to non-participants;

(h) An individual or entity extends credit to a participant in a social game for the purpose of betting; or

(I) An individual participating in the game of 21 (Black Jack) is denied the right to deal.

Any individual operating a social game, in which any of the situations defined in this section occurs, shall be guilty of a Class A violation. *(Amended ORD 505 – Effective 5/4/98)*

3.7 Marijuana Tax. *(Added ORD 621- Effective 11/05/14)*

3.7.1 Purpose. For the purpose of this chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Dayton is exercising a taxable privilege. The purpose of this section is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

3.7.2 Definitions. When not clearly otherwise indicated by the context, the following words and phrases are used in this section have the following meanings:

1) **"Director"** means the City Recorder for the City of Dayton or his/her designee.

2) **"Gross Taxable Sales"** means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.

3) **"Manager"** means the City Manager of the City of Dayton.

4) **"Marijuana"** means all parts of the plan of the Cannabis family Moracea, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statues as then currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stocks. Oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil. Or cake, or the sterilized seed of the plan which is incapable of germination.

5) **"Oregon Medical Marijuana Program"** means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.364, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

6) **"Marijuana-infused Products"** means any product with marijuana in it.

7) **"Person"** means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

8) **"Purchase or Sale"** means the retail acquisition or furnishing for consideration by any person of marijuana within the City and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.

9) **"Registry identification cardholder"** means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating

medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

10) **"Retail sale"** means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.

11) **"Seller"** means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.

12) **"Tax"** means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.

13) **"Taxpayer"** means any person obligated to account to the Director for any tax liability, taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

3.7.3 Levy of Tax.

(a) Every seller exercising the taxable privilege of selling marijuana or marijuana-infused products as defined in this chapter is subject to and must pay a tax for exercising that privilege.

(b) The amount of tax levied is as follows:

(1) Zero percent of the gross taxable sale amount paid to the seller of marijuana and marijuana-infused products by a person who is a registry identification cardholder.

(2) Ten percent of the gross taxable sale amount paid to the seller of marijuana and marijuana infused products by persons who are purchasing marijuana and marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.

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

(a) Refunds of sales actually returned to any purchaser;

(b) Any adjustments in sales that amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana, medical marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

3.7.5 Seller Responsible for Payment of Tax.

(a) Every seller must, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to ensure collection of the tax. Alternative reporting periods must be documented and signed by the seller and the Director. The Director may require further information in the return relevant to payment of the tax.

A return is not considered filed until it is actually received by the Director.

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

(c) The City will apply non-designated payments in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax.

(d) If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to ensure collection of the tax. Alternative reporting periods must be documented and signed by the seller and the Director. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all taxes collected pursuant to this chapter for the City's account until the seller makes payment to the Director. A separate trust bank account is not required in order to comply with this provision.

(e) Every seller required to remit the tax imposed by this chapter is entitled to retain five percent of all taxes due to the City to defray the costs of bookkeeping and remittance as long as the return and payment are filed by the due date.

(f) Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the seller and such other books or accounts as the Director may require. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The Director has the right to inspect all such records during any and all hours of operation.

3.7.6 Penalties and Interest.

(a) Any seller who fails to remit any portion of any tax imposed by this chapter within the time required must pay a penalty of 10 percent of the amount of the tax, in addition to the amount of the tax.

(b) If any seller fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, the seller must pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

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

(d) In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter must pay interest at the rate one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(e) Every penalty imposed, and any interest as accrues under the provisions of this section, becomes a part of the tax required to be paid.

(f) All sums collected pursuant to the penalty provisions in paragraphs A and C of this section will be distributed to the City's General Fund.

(g) Waiver of Penalties. Penalties for certain late tax payments may be waived or reduced pursuant to policies and processes adopted by the Finance Department. However, the Finance Department is not required to create a penalty waiver or reduction policy. If the Finance Department does not create a policy for waivers or reductions, no waivers or reductions are allowed.

3.7.7 Failure to Report and Remit Tax –Determination of Tax by Director.

(a) If any seller fails to make any report of the tax required by this chapter within the time provided in this chapter, the Director will proceed to obtain facts and information on which to base the estimate of tax due. The Director may be assisted by a law enforcement officer in procuring such facts and information. As soon as the Director procures such facts and information upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director will determine and assess against such seller the tax, interest, and penalties provided for by this chapter.

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

(c) The seller may appeal the determination as provided in section 3.7.8. If no appeal is timely filed, the Director's determination is final and the tax, penalties, and interest assessed is immediately due and payable.

3.7.8 Appeal.

(a) Any seller aggrieved by any decision of the Director with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the City Manager or his or her designee.

(b) The seller must file the appeal within 30 calendar days of the City's serving or mailing of the determination of tax due. The seller must file using forms provided by the City.

(c) Upon receipt of the appeal form, the City Manager will schedule a hearing to occur within 30 calendar days. The Manager will give the seller notice of the time and date for the hearing no less than seven days before the hearing date. At the hearing the City Manager or his or her designee will hear and consider any records and evidence presented bearing upon the Director's determination of amount due and make findings affirming, reversing or modifying the determination. The City Recorder (or his or her designee) and the appellant may both provide written and oral testimony during the hearing. The findings of the City Manager or his or her designee are final and conclusive. The City will serve the findings upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

3.7.9 Refunds.

(a) The City may refund to the seller any tax, interest or penalty amount under any of the following circumstances:

(1) The seller has overpaid the correct amount of tax, interest or penalty; or

(2) The City has erroneously collected or received any tax, interest or penalties.

(b) The City may not issue a refund under this subsection unless the seller provides to the Director a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the Director. The seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.

(c) The Director has 20 calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making the determination, the Director will notify the claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.

(d) If the Director determines the claim is valid, the claimant may either claim a refund or take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the City. The claimant must notify the Director of the claimant's choice no later than 20 days following the date the Director mailed the determination and the claimant must do so in a manner prescribed by the Director.

(e) If the claimant does not notify the Director of claimant's choice within the 20 day period and the claimant is still in business, the City will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business, the City will mail a refund check to claimant at the address provided in the claim form.

(f) The City will not pay a refund unless the claimant establishes by written records the right to a refund and the Director acknowledges the claim's validity.

3.7.10 Actions to Collect. Any tax required to be paid by any seller under the provisions of this chapter is a debt owed by the seller to the City. Any tax collected by a seller that has not been paid to the City is a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter is liable to an action brought in the name of the City of Dayton for the recovery of the amount owing. In lieu of filing an action for the recovery, the City, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the City has complied with the provisions set forth in ORS 697.105, if the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of $50.00 or 50 percent of the outstanding tax, penalties and interest owing.

3.7.11 Violation Infractions.

(a) All violations of this chapter are punishable according to the City's Fee Schedule. It is a violation of this chapter for any seller or other person to:

(1) Fail or refuse to comply as required herein;

(2) Fail or refuse to furnish any return required to be made;

(3) Fail or refuse to permit inspection of records;

(4) Fail or refuse to furnish a supplemental return or other data required by the Director;

(5) Render a false or fraudulent return or claim; or

(6) Fail, refuse or neglect to remit the tax to the city by the due date.

(b) The remedies provided by this section are not exclusive and do not prevent the City from exercising any other remedy available under the law.

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

3.7.12 Confidentiality. Except as otherwise required by law, it is unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section prohibits any of the following:

(a) The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or

(b) The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or

(c) Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or

(d) The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or

(e) The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or when the tax exceeds $5,000. The City Council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

3.7.13 Audit of Books, Records or Persons. The City may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due. All books, invoices, accounts and other records must be kept on premises and be made available and open at any time during regular business hours for examination by the Director or an authorized agent of the Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Dayton Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination. The City and any of its agents or representatives may be assisted by law enforcement officers in examining books, accounts and other pertinent records.

3.7.14 Forms and Regulations.

(a) The Director is authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and to provide for:

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

(2) The records that sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by this chapter.

3.8 TRANSIENT LODGING TAX *(Added ORD 631- Effective 01/07/16)*

3.8.1 Title. This section is known as the transient room tax ordinance of the City of Dayton.

3.8.2 Definitions. Except where the context otherwise requires, the following terms are defined as follows:

1) "**Accrual Accounting**" means rent is due to operator from a transient on hotel records when the rent is earned, whether or not it is paid.

2) "**Cash Accounting**" means the operator does not enter the rent due from a transient on hotel records until the rent is paid.

3) "**Hotel**" means any structure, or any portion of any structure occupied or intended or designed for transient occupancy for thirty days or less for dwelling, lodging, or sleeping purposes. It includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, public or private club, and also means space in mobile home or trailer parks (including recreational vehicle, tent trailer and tent camping parks), or similar structures or space or portions thereof so occupied, for occupancy less than for 30-days.

4) "**Occupancy**" means the use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a hotel, or space in a mobile home or trailer park, or portion thereof.

5) "**Operator**" means the proprietor of the hotel in any capacity. Where the operator performs as a managing agent other than an employee, the managing agent is an operator for the purposes of this section and has the same duties and liabilities as the principal. Compliance with the provisions of this section by either the principal or the managing agent is compliance by both.

6) "**Person**" means any individual, corporation, partnership, joint venture, association, social club, fraternal organization, public or private dormitory, joint stock company, corporation, estate, oration, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

7) "**Rent**" means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property or other consideration valued in money without any deduction. It does not include charges to a condominium unit owner for cleaning or maintenance of such unit or personal use or occupancy by such owner.

8) "**Rent Package Plan**" means the consideration charged for both food and rent where a single rate is charged for both. The amount applicable to rent for determination of the transient room tax under this section is the same as the charge for rent when food is not a part of the package plan. The amount for rent is the amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package and the charge for rent when the space is rented separately and not part of a package plan.

9) "**Tax**" means the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which collections are required to be reported.

10) "**Transient**" means any individual who occupies or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel is not included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any individual so occupying space in a hotel is a transient until the 30-day period expires unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this section may be considered. A person who pays for lodging on a monthly basis is not a transient.

3.8.3 Tax Imposed

(a) Effective April 1, 2016, each transient must pay a tax of eight percent of the rent charged by the operator for the privilege of occupancy in any hotel. For a recreational vehicle, tent trailer and tent camping with self-pay slots, the tax is increased and assessed to the closest twenty-five-cent interval. The tax is a debt owed by the transient to the city and is extinguished only by payment by the operator to the city

(b) Each transient must pay the tax to the operator of the hotel at the time the rent is collected if the operator keeps records on the cash accounting basis, and when earned if the operator keeps records on the accrual accounting basis. If rent is paid in installments, the transient must pay a proportionate share of the tax to the operator with each installment. Rent paid or charged for occupancy excludes the sale of any goods, services and commodities.

(c) The City will dedicate net revenue from the transient room tax per the provisions of ORS 320.350(6).

3.8.4 Collection of tax by Operator

(a) Every operator renting rooms or space for lodging or sleeping purposes in this City not exempted under this section must collect a tax from the occupant. The tax collected or accrued by the operator is a debt owed by the operator to the city.

(b) In cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid.

(c) The City Manager has authority to enforce this section and may delegate authority to adopt rules and regulations consistent with this section to aid in enforcement.

(d) The operator is permitted to deduct and keep five percent of the amount of taxes actually collected to compensate the operator for administrative expenses in collecting the taxes.

3.8.5 Operators' Duties

(a) Each operator must collect the tax imposed by this section at the same time as the rent is collected from each transient.
(b) The amount of tax must be separately stated in operators' records and receipts.

(c) No operator may advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that the tax will not be added to the rent, or that, when added, any part will be refunded except as provided by this section.

3.8.6 Exemptions. The tax imposed by this section does not apply to:

(a) Any occupant for more than 30 successive calendar days with respect to any rent imposed for the period commencing after the first 30 days of such successive occupancy.

(b) Any person who rents a private home, vacation cabin, or like facility from any owner who rents out such facilities for less than 30 days per calendar year.

(c) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent home or similar facility.

3.8.7 Registration of Operator

(a) Every person who is an operator of a hotel in this City must register with the City Manager on a form provided by the City. Operators engaged in business at the time this section takes effect must register no later than 30 calendar days after this section takes effect. Operators starting business after this section takes effect must register within 15 calendar days after commencing business.

(b) Delay in registration does not relieve any person from the obligation of payment or collection of the tax. The registration must state the name under which the operator conducts business, the business location and other information as the City Manager may require. The operator must sign the registration. Within 10 days of registration, the City Manager will issue a certificate of authority to each registrant to collect the tax. Certificates are not assignable or transferable and must be surrendered to the City Manager upon the cessation of business at the location named or upon its sale or transfer of the business. Each certificate will state the place of business to which it is applicable and must be prominently displayed to be seen and recognized by all occupants and persons seeking occupancy. Each certificate will state:

1) The name of the operator;

2) The address of the hotel;

3) The date the City issued the certificate; and

4) This Transient Occupancy Registration Certificate signifies that the operator named has fulfilled the requirements of the Transient Lodging Tax Ordinance of the city by registration with the City Manager to collect the transient lodging taxes imposed by the city and remitting them to the City Manager. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without compliance with all local applicable laws."

3.8.8 Due date--Returns and Payments

(a) The transient must pay the tax imposed by this section to the operator at the time rent is paid. All taxes collected by any operator are due and payable to the City Manager on a quarterly basis on or before the last day of the month following the end of each calendar quarter, reporting the amount of the tax due during the quarter. Taxes due are delinquent on the last day of the month in which they are due. For example, for the calendar quarter of January, February, and March, Transient Lodging Taxes are due by April 30th.

(b) On or before the last day of the month following each quarter of collection, each operator must file with the City Manager a return for the preceding quarter's tax collections. The operator must file the return in such form as prescribed by the City Manager.

(c) Returns must state the amount of tax collected or otherwise due for the related period. The City Manager may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of such amounts, and the amount of the rents exempt, if any.

(d) The City Manager may extend, for a period not to exceed one month, the time for making any return or payment of tax for good cause. The City Manager may not grant any further extensions unless authorized by City Council.

(e) The operator must deliver the return, together with the tax amount due, to the city manager either by personal delivery or by mail. If the operator files by mail, the postmark will be considered the date of filing for determining delinquencies.

3.8.9 Penalties and Interest

3.8.9.1 **Original Delinquency**. Any operator that has not been granted an extension of time for remittance of tax due and fails to remit any tax imposed by this section prior to delinquency must pay a penalty equal to 10 percent of the tax amount due in addition to the tax amount.

3.8.9.2 **Continued Delinquency**. Any operator that has not been granted an extension of time for remittance of tax due and which fails to pay any delinquent remittance within 30 days following the date the remittance first became delinquent, must pay a second delinquency penalty of 15 percent of the tax amount due in addition to the tax amount due and the 10 percent penalty first imposed.

3.8.9.3 **Fraud.** If the City Manager determines that the nonpayment of the any remittance or tax due under this section is due to fraud or an intent to evade this section's provisions, the City Manager will impose a penalty of 25 percent of the tax amount due in addition to the penalties imposed under subsections (a) and (b).

3.8.9.4 **Interest**. In addition to penalties imposed, any operator that fails to remit any tax imposed by this section must pay interest on delinquent taxes at the rate of one percent per month on the amount of the tax due from the date on which the remittance first became delinquent until paid. Penalties that are owed are not included for the purpose of calculating interest. Interest may be on a fraction of a month if the delinquency is for less than 30 days.

3.8.9.5 **Penalties Merged with Tax**. Every penalty imposed and all accrued interest will be merged with and become a part of the tax required to be paid.

3.8.9.6 **Petition for Waiver**. Any operator that fails to remit the tax within the time stated must pay the penalties. However, the operator may petition the City Manager for waiver and refund of the penalty or any portion thereof and the City Manager may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof.

3.8.10 Deficiency Determination

(a) If the City Manager determines that returns are incorrect, the manager may compute and determine the amount required to be paid upon the basis of the facts contained in

the return or returns, or upon the basis of any information submitted to the City or any additional information obtained by the City Manager.

(b) One or more deficiency determinations may be made of the amount due for one or more than one period, and the amount determined is due and payable immediately upon service of notice that the amount determined is delinquent. Penalties on deficiencies are applied under Section 3.8.080.

3.8.11 Overpayment and Deficiency

3.8.11.1 **Adjustments.** In making a determination the city manager may offset tax overpayments, if any, previously made or against penalties and interest on underpayments. Interest on underpayments will be computed under Section 3.8.9.

3.8.11.2 **Notice of Deficiency.** The City Manager will give to the operator a written notice of deficiency determination. The notice may be served personally or by mail. If by mail, the notice will be addressed to the operator at the address in city records. For service by mail of any notice required by this section, notice is served by mailing by certified mail, postage prepaid, return receipt requested.

3.8.11.3 **Expiration Period.** Except in the case of fraud or intent to evade this section or adopted rules, the City must make every deficiency determination and mail the appropriate notice within three years after the last day of the month following the close of the monthly period for which the amount became due, or within three years after the return is filed, whichever period expires later.

3.8.11.4 P**ayable Upon Receipt**. Any deficiency determination becomes due and payable immediately upon receipt of notice and becomes final within 20 days after the City Manager gives notice. However, the operator may petition for refund if the petition is filed before the determination becomes final.

3.8.12 Failure to Collect Tax. Fraud, Refusal to Collect, Evasion. If any operator fails or refuses to collect the tax or to make any report or tax remittance required by this section, or makes a fraudulent return or otherwise willfully attempts to evade this section, the city manager may take any action deemed best to obtain the facts and information on which to base an estimate of the tax due. As soon as the city manager determines tax is due from any operator who has failed or refused to collect, report and remit the tax, the city manager will determine and assess against the operator the tax, interest and penalties provided in this section. The City Manager will give a notice of the amount assessed. Any determination by the city manager becomes due and payable upon receipt of notice and becomes final within 20 days after the notice. The operator may petition the City Manager for refund if the petition is filed before the determination becomes final.

3.8.13 Redeterminations

(a) Any person against whom a determination is made may petition for a redetermination and refund within the time required in Section 3.8.11. If a petition for redetermination and refund is not filed within the time required in Section 3.8.11, the determination becomes final at the expiration of the allowable time.

(b) If a petition for redetermination and refund is filed within the allowable period, the City Manager will reconsider the determination by an oral hearing and the City Manager will give 20 days' notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as may be necessary.

(c) The City Manager may decrease or increase the amount of the determination because of the hearing and if an increase is determined, the operator must pay that increase within three days after the hearing.

(d) The written decision of the City Manager upon a petition for redetermination or refund becomes final 20 days after service upon the petitioner of notice by the city, unless appeal of the operator files the order or decision with the City Council within 20 days of the service of the notice. No petition for determination or refund or appeal is effective for any purpose unless the operator has first complied with all payment requirements.

3.8.14 Security for Collection of Tax

(a) The City Manager may require an operator to deposit with the city such security in the form of cash, bond or other security as the manager may determine is sufficient to protect the city's interests. In no event may the amount of the security be greater than twice the operator's estimated average monthly liability determined in such a manner, as the City Recorder deems proper, or $5,000, whichever amount is less. The City Manager may increase or decrease the amount of security subject to these limitations.

(b) The City Attorney may bring any legal action in the name of the City to collect the amount delinquent together with penalties and interest.

3.8.15 Lien

(a) The tax imposed by this section together with the interest and penalties and any direct collection costs which may be incurred after delinquency become and remain a lien until paid from the date of its recording. After the lien is recorded, notice of the lien may be issued by the City Recorder whenever:

1) The operator is in default in the payment of the tax, interest and penalty, and

2) A copy is sent to the delinquent operator.

(b) The personal property subject to such lien seized by the city may be sold at public auction.

3.8.16 Refunds

3.8.16.1 **Refunds by the City to the Operator.** Whenever the amount of any tax, penalty or interest is paid more than once or has been erroneously collected or received by the City Manager, the City Manager may refund it. The operator must file a verified claim in writing with the City Manager stating the specific reason for the claim, and the operator must do so no later than three years from the date of payment. The operator must make the claim on forms provided by the City Manager. If the City Manager approves the claim, the city manager may either refund the excess amount collected or paid, or provide a credit on any amount then due and payable by the operator, and the City Manager may refund the balance to the operator.

3.8.16.2 **Refunds by City to Transient**. Whenever an operator has collected a tax required by this section, and the operator has deposited that tax with the City Manager, and the City Manager later determines that the amount was erroneously collected or received by the City Manager, the City Manager may refund the incorrect amount to the transient. The operator must file a verified claim in writing with the City Manager stating the specific reason for the claim no later than three years from the date of payment.

3.8.17 Administration

(a) Disposition and Use of Transient Room Tax Funds. All proceeds derived by the city from the transient room tax funds will deposited in the General Fund of the city.

(b) Records Required from Operators. Every operator must keep guest records of room sales and accounting books and records of the room sales. The operator must retain all records for at least three years.

(c) Examination of Records; Investigations. The city manager, or any person authorized in writing by the city manager, may examine, during normal business hours, the books, papers and accounting records relating to room sales of any operator liable for the tax, and may investigate the business to verify the accuracy of any return made, or if no return is made to ascertain and determine the amount required to be paid.

3.8.18 Confidentiality

3.8.18.1 Confidential Character of Information Obtained. No person enforcing the provisions of this section may disclose the business affairs, operations or information obtained by an investigation of records and equipment of any person required to obtain a Transient Occupancy Registration Certificate or pay a transient occupancy tax, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth in any statement or application, or to permit any statement or application, or other document for enforcement of this section.

3.8.18.2 Section 3.8.18.1 does not prevent:

1) The disclosure to, or the examination of records and equipment by another city official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this section or collecting taxes imposed,

2) The disclosure, after the filing of a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees and guarantors, or information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest and penalties,

3) The disclosure of the names and addresses of any person to whom Transient Occupancy Registration certificates have been issued; and

4) The disclosure of general statistics regarding taxes collected in the city

3.8.18.3 The City Manager may refuse to make any disclosure referred to in this subsection when the public interest would suffer thereby.

3.8.19 Appeals to the City Council. Any person aggrieved by any decision of the City Manager may appeal to the City Council by filing notice of appeal with the city recorder within 20 days of the serving or the mailing of the notice of the decision. The Council will give the appellant not less than 20 days' written notice of the time and place of a hearing on the appealed matter. Action by the Council on appeals is final.

3.8.20 Violations

(a) It is unlawful for any operator or other person to fail or refuse to:

1) Register as required under this section;

2) File any return required to be made; or

3) File a supplemental return or other data required by the City Manager or to make a false or fraudulent return.

(b) No person required to make, render, sign or verify any report may make any false or fraudulent report, with intent to defeat or evade the determination of any amount due or required by this section.

(c) Violation of this section is a Class A Violation under the Dayton Municipal Code.

3.9 TEMPORARY CLOSURE OF STREETS AND WAYS FOR SPECIAL EVENT *(Added ORD 637, Effective 01/05/17)*

3.9.1 Purpose. These regulations are designed to allow for the orderly and safe closure of streets and other public ways under the City's jurisdiction, minimize potential adverse impacts on transportation-dependent activities and ensure appropriate access is maintained for the needs of public works, public safety and emergency vehicle response.

3.9.2 Definitions. When not clearly otherwise indicated by the context, the following words and phrases used in this section have the following meanings:

(1) "Adverse impacts" includes impacts to city residents, real property, traffic management and flow and the environment resulting from an event or seasonal event.

(2) "Applicant" means the person who has filed a written application for a permit on behalf of themselves, an organization or group.

(3) "City manager" or "manager" means the Dayton city manager or designee. Designee implies a code enforcement officer or on-duty police officers who may revoke the permit based on observations at the time of the event. In this case, the police officer will confer with his/her immediate supervisor prior to revoking the permit.

(4) "City" means the city of Dayton, Oregon.

(5) Event. See "Temporary event" or "Seasonal event."

(6) "Permit" is an actual form signed by the appropriate parties showing approval of the event as defined in the street closure permit application.

(7) "Permittee" means the person granted a permit pursuant to this section 3.9.

(8) "Person" means an individual, firm, partnership, corporation, association, or other entity.

(9) "Plan" is a drawing detailing the closure and must include (at a minimum) streets to be closed, alternative streets to be used by vehicles and pedestrians to allow unrestricted access, fire hydrant locations, impacted residents along with addresses, visitor parking plan, and any other information relevant to the street closure request.

(10) "Reimbursable costs" means those costs and expenses incurred by the city associated with the granting of a permit including, without limitation, the following:

(a) Utility services provided for the event or seasonal event including all costs of installation, maintenance, connection, and removal;

(b) Repair, maintenance and removal of facilities in the event of a failure of the applicant to comply with the permit;

(c) Repair of streets, alleys, sidewalks, parks, and other public property resulting from the event;

(d) Garbage cleanup and disposal resulting from the fault of permittee to clean up the area after the event;

(e) Other direct and indirect costs associated with issuance of the street closure permit.

(11) "Seasonal event" is a periodic event occurring on an ongoing seasonal basis such as farmers' markets, holiday craft fairs, and the like.

(12) "Temporary event" is an event lasting for a limited time of not more than 12 hours in any one day nor exceeding seven consecutive days and not occurring more than two times within any 365-day period.

(13) "Street closure" means the permitted traffic and/or parking restriction on an affected street, way, alley, or other public way.

(14) "Street closure permit" or "permit" means written approval entitling permittee to a street closure.

3.9.3 Authority and Administration.

(a) The city manager is authorized to review applications for street closures and approve, approve with conditions, or deny applications consistent with this section 3.9.

(b) The manager may adopt and utilize procedures and forms necessary to implement this section 3.9.

(c) All other permits or orders required by law for activities conducted in conjunction with or as part of an event must be applied for and obtained separately from any street closure permit.

3.9.4 Exemptions. This section 3.9 does not apply to any street or right-of-way closure initiated by the city or a public utility for a special event or in order to repair public or public utility infrastructure, construct public or public utility infrastructure or limit access as a result of an event or situation necessitating the presence of public safety or emergency personnel and/or vehicles.

3.9.5 Street Closure Permit Application Requirements.

(a) Applicants wishing to temporarily close or otherwise limit access to a public street, road, pathway or the like within the city for an event shall apply for and obtain a permit. An applicant shall file with the city manager an application on a form approved by the manager and submitted not less than 30 days prior to the date of the requested closure. Failure to meet the 30-day limitation is sufficient to deny issuance of the permit and is not appealable to the city council.

(b) Applications submitted more than 30 days prior to the date of the requested closure are eligible for appeal rights described in this Code under Section 3.9.11

3.9.6 Application Process and Approval Criteria.

(a) Upon receipt of a completed application, the city manager may forward a copy thereof to the fire chief, police, community development and public works departments for their review and comment as the manager deems necessary. Those departments shall, within five working days, complete said review and thereupon offer recommendations as to the application's approval, approval with conditions, or denial. The manager may, in addition, seek comment from neighbors of the proposed event and require submission of additional information by applicant as the manager deems necessary.

(b) The manager may approve, approve with conditions, or deny the street closure application consistent with the standards set out in subsection (c) of this section.

(c) The following criteria must be met by applicant:

(1) All temporary structures and other artifices erected for the event shall be removed at the end of the event, leaving the site in the same general condition as it was prior to the placement of the structure(s) or artifice. All structures or artifices shall meet applicable Oregon Building and Fire Code regulations. No obstruction shall be erected or maintained within a 15-foot radius of any fire hydrant within the area of the event.

(2) Provision for adequate vehicle and pedestrian access and circulation shall be shown on a plan which shall then be reviewed and approved by the city. The plan will show how the access requirements of the Americans with Disabilities Act (ADA) are to be met.

(3) Street closures where the processing and/or sale of goods, services, and other commodities take place shall be conducted and maintain business hours not disruptive to use of adjacent or nearby residential properties. "Block parties" and/or similar social gatherings are not to be commenced prior to 8:00 a.m. nor after 10:30 p.m.

(4) Advertising of any kind in the public right of way or the sidewalk permit area is prohibited other than in accordance with the sign code in section 7.2.111.07 of the Dayton Municipal Code.

3.9.7 Permit Fees and Deposits. Fees shall be set by resolution of the city council and the manager may, in addition, require payment of deposits prior to the issuance of any permit.

3.9.8 Indemnification and Insurance Requirements. An applicant shall, prior to the receipt of a permit, execute an agreement in a form approved of by the city manager and city attorney to indemnify, defend and hold harmless the city against all claims of injury or damage to persons or property, whether public or private, arising as a result of a temporary event. In addition, an applicant shall produce evidence of general liability and property damage insurance for the event in an amount of not less than $1,000,000 covering the event's sponsor and naming the city, and the city's officers, agents and employees as additional insured. The insurance is to cover any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the event or street closure. A certificate of insurance evidencing these requirements including an endorsement naming the city, the city's officers, agents and employees as an additional insured must be presented to the city along with the permit application. Failure to provide evidence of insurance may result in delay or denial of an application. This requirement may be reduced or waived by the city manager after consultation with the city attorney.

3.9.9 Permit Denial.

(a) The manager may deny a street closure permit if:

(1) Permit has been granted for another event at or near the same place and at or near the same time;

(2) The event will occupy road(s) not under the sole jurisdiction of the city or will violate local, state or federal law;

(3) A street closure may disrupt the orderly flow of vehicular and other traffic and no reasonable alternative means of addressing the disruption is, in the opinion of the manager, available;

(4) Applicant fails to provide assurances satisfactory to the city manager that they will be able to provide for protection of participants, maintenance of public order, crowd security and/or emergency vehicle access;

(5) Applicant makes a false statement of material facts on an application;

(6) Applicant fails to provide proof that they have obtained all applicable license(s) or permit(s) required for conduct of the event or activities associated therewith;

(7) Applicant has had a street closure permit revoked within the preceding 18 months or has failed to pay outstanding reimbursable costs to the city for prior event(s);

(8) Applicant is unable to obtain indemnification and insurance consistent with section 3.9.8.

3.9.10 Permit Revocation.

(a) The city manager may revoke a permit if:

(1) The applicant fails to comply with the terms of any condition(s) imposed on the permit including any applicable no parking/barricade requirements, the street closure is in violation of any provision of the Dayton Municipal Code, creates a hazardous condition, or any other applicable law;

(2) The permit holder made a false statement of material fact on an application;

(3) An unforeseen circumstance occurs prior to or during the event that diminishes the safety and security of the proposed event. This could include, but is not limited to, inclement weather such as a snowstorm, flood, or windstorm, natural hazard, or a fire, public safety, public works or other event.

3.9.11 Appeal to City Council. Except as provided in the Code under section 3.8.5(a), a decision of the city manager made concerning the application, denial or revocation of a street closure permit may be appealed to the city council. An applicant may appeal by filing with the city recorder a written statement of appeal within five working days of the date of the decision or action being appealed. The city recorder shall schedule a hearing before the city council no later than the second regular session following the filing and shall notify the applicant of the date and time for the hearing. The council may take such action(s) as it deems appropriate concerning the appeal, consistent with the limitations imposed by this section 3.8 for issuance of street closure permits.

3.10 SIDEWALK VENDORS AND CAFES *(Added ORD 637, Effective 01/05/17)*

3.10.1 Definitions. When not clearly otherwise indicated by the context, the following words and phrases used in this section have the following meanings:

(1) "Permit Operating Area" is the area approved for conducting business under a sidewalk vendor permit.

(2) "Sidewalk Café" is a duly licensed restaurant or café under state and local law, which obtains a sidewalk vendor permit to conduct business on the sidewalk as an extension of the regular service area directly from the building to the adjacent sidewalk.

(3) "Mobile Device" is a food cart or other device from which food, drink or other goods are prepared and/or served, or transactions are carried out.

3.10.2 General Provisions.

(a) It is unlawful for a person to conduct business on a public sidewalk or street except as provided in this section 3.10.

(b) No person may conduct business on a public sidewalk or street without first obtaining a sidewalk vendor permit from the City.

3.10.3 Miscellaneous Appurtenances.

(a) The manager or city council may approve the installation of certain appurtenances on sidewalks such as planters, solid waste containers, benches, drinking fountains and bicycle racks within the permit operating area.

(b) No advertising is allowed on the appurtenances under this Section 3.10, except the acknowledgement of donors of same, which may be displayed on a plastic or metal plaque not to exceed 160 square inches in size.

(c) In the event an appurtenance under this Section 3.10 is deemed by the manager to be in violation of the Code:

(1) The appurtenance deemed to be a violation will be removed by the city 10 days after providing written notice to the owner or person in charge; or

(2) If the appurtenance is deemed by the manager to be an immediate danger to the life, health, property or safety of the public, the manager may remove the appurtenance immediately and bill the owner for the cost of removal and storage.

3.10.4 Sidewalk Cafes.

(a) A duly licensed restaurant or café under state and local law may obtain a sidewalk vendor permit to conduct business as a sidewalk café subject to the following conditions:

(1) The permit operating area must be placed directly in front of the associated establishment and may not extend beyond the building walls as to be in front of another establishment;

(2) The permit operating area may not be placed in front of an entrance and must leave unobstructed pedestrian travel space equal to the width of the doorway from the doorway to the curb line;

(3) Tables to be used by standing customers may be placed only in the 30-inch

space most adjacent to the exterior wall of the building housing the primary restaurant or café;

(4) Only food and beverages prepared and offered for sale in the primary establishment may be served in the permit operating area and are under the same controls and conditions of service as in the primary establishment;

(5) No vending machines are allowed in a permit operating area;

(6) Table umbrellas are allowed with a minimum height of seven feet above sidewalk level in a permit operating area;

(7) Dirty dishes and all debris must be promptly removed from a permit operating area;

(8) Solid waste containers must be provided in the permit operating area for the placement of solid waste by customers; and

(9) Equipment in the permit operating area must be attended at all times.

3.10.5 Application for Permit.

(a) Application for a sidewalk vendor permit must be made on a form provided by the manager, with a separate application for business location and include, but not be limited to:

(1) The names and addresses of the owner and all operators;

(2) Copies of all necessary licenses and permits required by state or local authorities;

(3) Identification of the type of business conduct;

(4) The means to be used in conducting the business, including, but not limited to, a description of any mobile device to be used;

(5) The specific location proposed;

(6) A certificate of insurance that:

(i) Names the city, its officers and agents, as coinsured and co-indemnified for any damage to property or injury to persons which may result from the activity carried on under the sidewalk vendor permit;

(ii) Insures the permittee, property owners and the city from all claims which may arise from operation under the sidewalk vendor permit or in conjunction with it;

(iii) Provides coverage of not less than $200,000 for bodily injury for each person, $500,000 for each occurrence and not less than $50,000 for property damage per occurrence or a combined single limit coverage of $500,000; and

(iv) May not be terminated or canceled without 30 days written notice to the city and so specifies;

(7) If seeking the use of appurtenances under section 3.10.3, photographs or detailed scale drawings showing the design and precise location proposed for such appurtenances;

(8) If seeking to operate a sidewalk café under section 3.10.4:

(i) Photographs or detailed scaled drawings of the proposed permit operating area and the portion of the restaurant or café connecting to same, showing the intended placement of barriers, chairs, tables and other appurtenances; and

(ii) Written permission of both the owner or person in charge of the property and the owner or person in charge of the establishment in front of which the permit operating area extends beyond that portion of the building operated as the primary restaurant or café, if any;

(9) A nonrefundable fee, as set by council resolution to cover the cost of investigation and processing, must accompany applications for initial and renewal of sidewalk vendor permits; and

(10) Obtain approval after inspection by the manager to determine if the mobile device is in conformance with the provisions of the fire code and county food handlers permit provisions.

3.10.6 Conditions of Operation.

(a) Only such business conduct as approved under the sidewalk vendor permit may occur.

(b) A sidewalk vendor may not lead to or cause congestion or blocking of pedestrian traffic contrary to the limitations established in this section 3.10.

(c) A sidewalk vendor may not cause or allow loud or undue noise by vocalizing or through sound amplification in a manner that violates section 2.8 of the Dayton Municipal Code regarding noise.

(d) A sidewalk vendor may not cause or allow an offensive odor as a result of the vendor's business conduct.

(e) If a sidewalk vendor is selling edible items they must be immediately consumable.

(f) If a sidewalk vendor is selling non-edible items, they must be easily carried by pedestrians and be pre-manufactured, prepackaged, or previously handmade.

(g) A sidewalk vendor must provide a solid waste container for use by customers.

(h) Temporary canopies, umbrellas and other transparent enclosures, if any, may not present an unsightly appearance or hazard to passing pedestrians or exceed eight feet above sidewalk level.

(i) Mobile devices may not conduct business outside of approved areas or in any manner that impedes disability access in the public right of way.

(j) The owner or operator of a mobile device is deemed an operator of a business under section 3.3 of the Code.

(k) The owner or operator of a mobile device may not:

(1) Make or receive payment for oral or written consent required for the issuance or continued operation of a sidewalk vendor permit;

(2) Refuse to obey a lawful order of a peace officer to remove a mobile device entirely or relocate it to a different location within the permit area to avoid congestion or obstruction of the sidewalk;

(3) Allow it to be left unattended on the sidewalk;

(4) Place any cord, pipe, or other such object on or above the sidewalk;

(5) Conduct business in such fashion or location as to hinder the use and access of curbside parking; or

(6) Operate except between 9 a.m. and 10 p.m.

3.10.7 Allowed Areas.

(a) Mobile devices and sidewalk cafés are only allowed on sidewalks within the following areas of the central business overlay zone:

1. 4th Street between Ferry Street and Main Street, and only where fifteen (15) foot sidewalks have been developed.

2. Ferry Street between 5th Street and 3rd Street, and only where fifteen (15) foot sidewalks have been developed.

(b) The areas not considered sidewalks under this section 3.10 are:

1. Alley areas;

2. Private parking lots open to the public; and

3. Driveways, whether private or open to the public.

3.10.8 Permit Issuance.

(a) Review and issuance. The manager will review an application for a sidewalk vendor permit and may issue a permit after all the conditions under section 3.10.5 are met and upon finding that use of the permit operating area is compatible with the public use of the sidewalk area and the proposed business conduct is deemed to be in the best interest of the public. In making this determination, the manager will consider any pertinent information, whether submitted by the applicant or obtained by the manager independently.

(b) Denial and appeal. If the application for sidewalk vendor permit is denied because the proposed location is determined by the manager to be unsuitable, the applicant may file a written appeal with the city within 15 days of notice of denial. The council will then set, notice, and conduct a hearing on the appeal of applicant.

3.10.9 Permits.

Sidewalk vendor permits:

(a) Will name the applicant and the conditions under which the sidewalk vendor permit is granted;

(b) Must be plainly displayed in a weatherproof container on the mobile device or at the sidewalk café;

(c) Expire one year from issuance;

(d) Are not transferable in any manner;

(e) Are valid only when used within the permit operating area designated on the sidewalk vendor permit and such permit operating area may not exceed 24 square feet of sidewalk including the area of the mobile device, the operator, the required solid waste container and any approved appurtenances;

(f) Are valid for one mobile device; and

(g) May be suspended for up to five days when the council authorizes a special event and provides a written notice to the permittee by either personal delivery or by mail via first class United States Postal Service at least five days prior.

3.10.10 Nonprofit Corporations.

(a) Local nonprofit corporations may, upon approval of the application made to the city on a form approved by the manager that includes written consent from the adjacent property and business owners or operators, conduct bake sales, rummage sales and other similar fundraising activities for a duration not to exceed three days, no more frequently than once per calendar quarter and only between 9 a.m. and 9 p.m.

(b) The application must be accompanied by a fee, as set by council resolution, and a certificate of insurance conforming to section 3.9.5(a)(6).

3.10.11 Violations.

(a) A violation of the provisions of this section 3.10 is a Class C violation according to the City's Fee Schedule, and will subject the sidewalk vendor permittee to removal of the mobile device or closure of the sidewalk café.

(b) The manager is authorized to cause the removed mobile device or sidewalk café contents to be stored until the owner pays the removal and storage charges.

(c) Failure of the owner to pay the removal and storage charges or file a written appeal within 30 days of the date of removal will constitute a waiver of rights to the property and it shall become the property of the city to be disposed of as the council deems proper.

(d) Appeals will be heard by the council.

3.11 FOOD TRUCKS AND PUSH CARTS *(Added ORD 640, Effective 11/02/17)*

3.11.1 Definitions. When not clearly otherwise indicated by the context, the following words and phrases used in this section have the following meanings:

(1) "Food Truck" means the sale of food and/or non-alcoholic beverages from a mobile unit, which is used for the purpose of preparing, processing or converting food for immediate consumption as a drive-in or walk-up service. Examples include trailers designed to prepare and serve food, or trucks or vans of sufficient size to properly prepare food with a service window from which to serve food. This definition does not include outdoor barbecue grills, street vendors, or push carts. Exceptions include:

(a) Residential lemonade stands and similar short-term sales.

(b) Food or beverage services associated with private parties on private property where the general public is not invited.

(2) "Push Cart" means the sale of food and/or non-alcoholic beverages from a cart pushed or moved by hand, dolly or other manual method, which is used for the purpose of transporting, preparing, processing or converting food for immediate consumption as a walk-up service.

3.11.2 General Provisions.

(a) Prior to any use or operation of a food truck or push cart in the City of Dayton whether on private property or within the public right-of-way, the operator is required to obtain the appropriate Mobile Food Unit License through the Yamhill County Health and Human Services Department and hold a current and valid Food Handlers Permit. All regulations per ORS Chapter 624 and OAR Chapter 333 shall apply. All regulations in the Mobile Food Unit Operation Guide developed by the Oregon Department of Human Services, which is available through the Yamhill County Health and Human Services Department shall apply. The Mobile Food Unit License must be displayed at all times, and written permission from the property owner must be available on site.

(b) Prior to any use or operation of a food truck or push cart in the City of Dayton, the owner or operator of the food truck or push cart must register their business with the City of Dayton per Section 3.3 of the Dayton Municipal Code and provide all required documentation per paragraph (a) above.

(c) The use or operation of a push cart, in a manner other than defined and allowed in section 3.10 of the Dayton Municipal Code regarding mobile devices, is restricted to the Public (P) zone and only in conjunction with special events where the operator of the push cart has received permission from the person or entity in charge of the special event.

(d) The temporary use or operation of a food truck on private property for fourteen (14) days or fewer in a calendar year that is directed toward a specific event(s) shall only be subject to the General Provisions in this section 3.11.2 of the Dayton Municipal Code as long as the food truck operator has permission from the property owner, and the food truck is fully contained (i.e.: trucks that provide their own water, power, and waste disposal). This temporary use of food trucks shall only be allowed in the Commercial (C), Commercial Residential (CR), Industrial (I), and Public (P) zones.

(e) Trash and recycle receptacles shall be provided on site, and must be emptied and maintained. Trash and recycle receptacles shall be provided at a rate of at least one receptacle for every food truck. Where the food truck operator proposes to provide an outdoor seating area a minimum of at least one twenty-gallon trash receptacle and one twenty-gallon recycle receptacle shall be provided in the common seating area.

3.11.3 Food Trucks in the Public Right-of-Way. The provisions of this section apply to food trucks used in the preparation and/or sales of food and beverage items to the general public in the public right-of-way during a special or public event.

(a) Food trucks are allowed under the provisions in this section in the public right-of-way in or contiguous to the Commercial (C), Commercial Residential (CR), Industrial (I), and Public (P) zoning districts. The City Manager will establish an application and review process for this purpose. The person in charge of the event must complete the application and receive permission prior to the event for any food trucks to be placed in the public right-of-way during the event. No seating may be provided by food trucks

operating in the public right-of-way.

(b) An application for approval for the placement and operation of food truck(s) in the City of Dayton public right-of-way must include the following:

(1) A completed application form and application fee.

(2) The application requires the signature of the person in charge of the event. If any food truck is planned to be in the adjacent public right-of-way directly in front of a business, the application also requires the signature of the business owner confirming they've been notified and concur with the food truck placement.

(3) Site plan drawn to scale.

(4) Proximity to bathroom and plan for hand-washing facilities.

(5) Disposal plan for wastewater and gray water.

(6) Written verification that the food truck has been permitted, inspected and meets applicable County health regulations.

(7) Any additional information that may be required by the city manager to properly evaluate the proposed site plan. The city manager may waive any of the requirements above where determined that the information is unnecessary to properly evaluate the proposal.

3.11.3.1 Permit Terms and Conditions. Permits for food trucks for special events shall terminate at the end of the event or event series.

(a) The permit issued shall be specific to an event or event series, and the permit is not transferable to other events. The permittee will be responsible for compliance with all conditions of approval.

(b) The permit is specifically limited to the area approved, and will include a site plan indicating the area approved for the operation of the food truck.

(c) A Class I-IV mobile food unit license issued by the Yamhill County Department of Health must be displayed on the unit at all times so it can be read from the outside. The registration must be current and valid.

(d) All food trucks are subject to all applicable city, county, and state codes and regulations.

3.11.4 Food Trucks not in the Public Right-of-Way. The provisions of this section apply to food trucks used in the preparation and/or sales of food and beverage items to the general public on property not in the public right-of-way. A food truck that is situated on one lot for more than fourteen (14) days in any calendar year must be approved following the procedures identified in this section 3.11.4 of the Dayton Municipal Code.

(a) The following limitations and standards shall apply:

1. Food trucks shall not provide drive-through facilities and are not allowed to provide internal floor space to customers.

2. Food Trucks shall not exceed twenty-six (26) feet in length, not including the trailer hitch, or be greater than two hundred sixty (260) square feet.

3. All food trucks shall be placed on a paved surface such as but not limited to concrete, asphalt pavers, or gravel. If new paved surface is added to a site to accommodate a cart, the parking area shall comply with applicable parking design standards contained in Chapter 7 of the Dayton Municipal Code.

4. All seating areas shall be located on the subject property at least ten (10) feet from a food truck.

5. Ingress and egress shall be safe and adequate when combined with the other uses of the property and will comply with the provisions of Section 7.2.303.

6. Food trucks shall provide adequate vision clearance as required by Section 7.2.308.08.

7. Trucks shall not occupy parking needed to meet minimum vehicle and bicycle parking requirements, and shall not occupy pedestrian walkways or required landscape areas. Blocking automobile access to parking spaces shall be considered occupying the spaces.

8. Trucks shall be located at least three feet from the public right-of-way or back of sidewalk, whichever provides the greater distance from the public right-of-way.

9. Trucks shall remain at least ten (10) feet away from other food trucks, buildings and parking stalls.

10. Trucks shall not be located within twenty-five (25) feet of an active driveway entrance as measured in all directions from where the driveway enters the site at the edge of the street right-of-way. Trucks shall not occupy fire lanes or drive aisles necessary for vehicular circulation or fire/emergency vehicle access. Customer service windows shall be located at least five feet from an active drive aisle used by cars. Each truck shall provide an awning for shelter to customers with a minimum clearance of seven feet between the ground and the awning.

(b) Operation and Maintenance.

1. Trucks shall limit the visual effect of accessory items not used by customers, including but not limited to tanks, barrels, etc. by screening with a site-obscured fence or landscaping, or containing them within a storage shed not to exceed one hundred (100) square feet.

2. The exterior surfaces of all trucks shall be clean and free from dents, rust, peeling paint, and deterioration, and windows shall not be cracked or broken.

3. The exterior surface of all food trucks proposed to be located in the Central Business Overlay (CBO) zone shall be a color that is consistent with historic buildings in downtown Dayton.

4. Trucks shall not have missing siding, skirting or roofing.

5. Structures used to provide shelter to customers shall only be tents, canopies and similar membrane structures. Other structures for customer shelter are not allowed. This does not preclude the use of awnings attached to and supported by a mobile unit or umbrellas designed for café or picnic tables. All canopies, tents and other membrane structures erected on food truck sites shall comply with building code anchoring and engineering standards and fire code standards. Tents and canopies shall not have tears, mold, or broken or non-functioning supports and shall be securely anchored.

6. Unenclosed areas intended to be occupied by customers, such as areas near food truck service windows and customer seating, shall be illuminated when trucks are in operation during hours of darkness.

7. No source of outdoor lighting shall be visible at the property line adjacent to residential uses at three feet above ground level.

8. Outdoor lighting fixtures shall be oriented and/or shielded so as not to create glare on abutting properties.

9. Food trucks are exempt from land use district density, floor area ratio and Central Business Overlay design guidelines and standards. Accessory items to the food truck that are not for customer use, such as barrels, tanks or containers shall be screened to substantially limit the views of such items from the street.

10. Signage shall comply with sign code regulations per the Dayton Municipal Code. Each truck is permitted one A-Frame sign.

(c) Fire and Safety.

1. Trucks shall not have components or attachments in disrepair in a manner that causes an unsafe condition.

2. Uses shall not create tripping hazards in pedestrian or vehicular areas with items such as cords, cables and pipes.

3. If external electric service is necessary, an underground electric service outlet providing electricity to the unit may be used. The outlet must have a ground fault interrupter and meet all applicable city, state and federal codes. The extension cord from the outlet to the mobile food unit must not be longer than ten (10) feet and must meet all city, state and federal codes.

4. Trucks shall meet fire code requirements regarding distances from other structures or combustible materials.

5. Any cooking device within a food truck that creates grease-laden vapors shall provide an approved hood and extinguishing system, or be the type with a self-closing lid as approved by the fire marshal. Appropriate fire extinguishers are required.

6. Propane tanks shall be stored and handled properly and be located at least ten (10) feet from combustible vegetation and trash receptacles and twenty (20) feet from a potential ignition source. Propane tanks shall remain outdoors and be secured from falling.

(d) Health and Sanitation.

1. Trash and recycle receptacles shall be provided on site, and must be emptied and maintained. Trash and recycle receptacles shall be provided at a rate of one receptacle for every food truck. Where the food truck operator proposes to provide an outdoor seating area a minimum of one twenty-gallon trash receptacle and one twenty-gallon recycle receptacle shall be provided in the common seating area.

2. Restrooms with hand washing facilities shall be provided for employees and customers. The restroom can be on-site or within one-quarter mile or a five-minute walk (such as at a neighboring business) and must be available during the truck's hours of operation. If the restroom is not on-site, the food truck operator shall submit written permission from an adjacent business or property owner where the facility is located.

3. Wastewater and gray water shall be disposed of properly without harm to the environment or city infrastructure. An approved disposal plan shall detail storage and removal methods.

4. Food trucks that are fully contained; i.e., trucks that provide their own water, power, and waste disposal, are permitted with no additional utility considerations beyond the permitting process and site plan approval described herein. Food trucks that require a water source, power source, or waste disposal location are permitted only where the city manager has approved site plans that show safe access and location of the aforementioned provisions. Such provisions shall be subject to all applicable building permits and system development charge requirements.

3.11.4.1 Revocation or Suspension of Permit.

(a) A food truck permit shall be subject to revocation by the city if the application is found to include false information.

(b) A food truck permit shall be suspended if the food truck is closed for more than ninety (90) days without providing advance written notice to the city manager.