

# Council Communication

## August 19, 2014, Business Meeting

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### **A resolution of the City Council establishing tax rates for the sale of marijuana, medical marijuana and marijuana-infused products in the City of Ashland**

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**FROM:**

Dave Kanner, city administrator, dave.kanner@ashland.or.us

**SUMMARY**

The Council has adopted an ordinance imposing a gross receipts tax on state-licensed businesses selling medical marijuana, recreational marijuana (if legalized) and marijuana-infused products. The ordinance stipulates that the Council shall establish the tax rate by resolution. This resolution proposes a rate of 5% for medical marijuana 10% for recreational marijuana.

**BACKGROUND AND POLICY IMPLICATIONS**

Oregon voters legalized medical marijuana via initiative petition in 1999 and the 2013 Legislative session adopted HB 3460, which created a regulatory and licensing regimen for medical marijuana dispensaries. Pursuant to that law, the Oregon Health Authority began licensing dispensaries in early 2014, and as of July 22<sup>nd</sup>, there were 158 licensed dispensaries in Oregon and another 49 that were provisionally approved. It is unknown how many of those licensees have actually opened for business.

In addition, Oregonians will vote in November on a measure that would legalize the sale of recreational marijuana in Oregon. This measure is similar to a measure approved by Washington voters in 2012.

There is nothing in current Oregon law that prohibits a local government from taxing marijuana. Earlier this year, Gold Hill became the first city in Oregon to tax medical marijuana, imposing a 5% gross receipts tax that became effective June 10, 2014. That tax generated about \$1,700 for the city in its first three weeks. At its August 5, 2014, meeting, the Council adopted an ordinance imposing a tax on sales of medical marijuana and recreational marijuana (including marijuana-infused products) on state-licensed dispensaries and retail outlets in Ashland. The ordinance stipulates that the Council shall establish the tax rate by resolution.

The resolution before the Council establishes tax rates per the ordinance. It proposes a rate of 5% for medical marijuana 10% for recreational marijuana. The 10% tax rate for recreational marijuana is fairly easy to justify. If legalized, recreational marijuana will be a discretionary, luxury item, not unlike liquor, which is heavily taxed via an OLCC mark-up to retailers. That mark-up is one of Oregon's largest general fund revenue sources and shared revenues from OLCC are a significant general fund resource for cities and counties.

A lower tax rate is proposed for medical marijuana in recognition of the fact that the marijuana is purchased for therapeutic rather than recreational purposes. While it is true that sales tax states

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generally exempt prescription medication from sales tax, it is *not* true that prescription medication is not taxed. Prescription medications are in fact heavily taxed by the federal government via layers of fees imposed by the Food and Drug Administration, corporate income taxes on drug manufacturers and a new tax on brand-name prescription drugs that is part of the funding package for the Affordable Care Act. All of these taxes and fees are ultimately passed through to consumers, just as gross receipts and sales taxes are. In addition, the large majority of sales tax states do tax non-prescription medication, and marijuana is not a prescription drug.

Although the tax rates in this resolution would be effective immediately upon passage, the City's ability to levy the tax would not be effective until the effective date of the ordinance; September 4, 2014.

**FISCAL IMPLICATIONS**

It is unknown how much revenue these taxes could generate. Gold Hill's early experience would indicate that its 5% tax on medical marijuana projects out to about \$29,500 per year for that city. It could be assumed that in Ashland, with its larger population and potential to host more dispensaries and retail outlets, tax revenues would be several times that amount.

**STAFF RECOMMENDATION AND REQUESTED ACTION**

Staff recommends approval of this resolution establishing tax rates for the sale of marijuana, medical marijuana and marijuana-infused products in the City of Ashland.

**SUGGESTED MOTION**

I move approval of a resolution of the City Council establishing tax rates for the sale of marijuana, medical marijuana and marijuana-infused products in the City of Ashland.

**ATTACHMENTS**

Resolution

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**RESOLUTION NO. 2014-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL ESTABLISHING TAX RATES  
FOR THE SALE OF MARIJUANA, MEDICAL MARIJUANA AND  
MARIJUANA-INFUSED PRODUCTS IN THE CITY OF ASHLAND**

**RECITALS:**

- A. The Ashland City Council on August 5, 2014 adopted Ordinance No. 3103, establishing a tax on marijuana and marijuana infused products in the City of Ashland, which shall be codified as Chapter 4.38 of the Ashland Municipal Code.
- B. Per Section 4.38.030 of the AMC, the Council shall by resolution establish a tax rate for the sale of such products.

**THE CITY OF ASHLAND RESOLVES AS FOLLOWS:**

SECTION 1. Pursuant to Section 4.38.030 of the Ashland Municipal Code, the City Council of the City of Ashland establishes a tax rate of five percent (5%) of the gross sale amount paid to the seller by a registry identification cardholder, as defined in to Section 4.38.020.G of the Ashland Municipal Code.

SECTION 2. Pursuant to Section 4.38.030 of the Ashland Municipal Code, the City Council of the City of Ashland establishes a tax rate of ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not purchasing marijuana under the Oregon Medical Marijuana Program.

This resolution was duly PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, and takes effect upon signing by the Mayor.

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Barbara Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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John Stromberg, Mayor

Reviewed as to form:

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David H. Lohman, City Attorney