

RECREATIONAL CANNABIS TAX:

Greater transparency and
accountability needed

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PORTLAND
CITY AUDITOR
Audit Services



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Recreational Cannabis Tax :

Greater transparency and accountability needed

Summary Portland voters approved a tax on recreational cannabis sales in 2016. The tax was promoted as funds that would benefit and support individuals and cannabis businesses owners that were adversely affected when cannabis was illegal. Since that time, most of the taxes collected have been used for police and transportation programs. While the uses are allowed under the ballot measure, community members, cannabis businesses, or others affected by past cannabis policies have not been involved in the overall budget decisions, and the City has not reported on how it's used the tax revenues. We recommend the City improve the transparency of tax allocation decisions and results.

Recreational Cannabis Tax passed by Portland voters in 2016 Oregon voters legalized the possession and sale of recreational cannabis in November 2014 and authorized a State sales tax. Later, local jurisdictions were allowed to levy up to a 3 percent local tax on cannabis sales. In November 2016, Portland voters approved Ballot Measure 26-180 for the City to collect the 3 percent local tax.



The ballot measure specified the tax revenue should be used in three categories:

- 1. Drug and alcohol education and treatment programs,** including programs that support rehabilitation and employment readiness, and services that increase access to these programs.
- 2. Public safety investments to protect community members from unsafe drivers,** including police training about impaired drivers and enforcement, support for firefighter paramedics, street infrastructure projects that improve safety, and other initiatives to reduce the impact of drug and alcohol abuse.
- 3. Support for neighborhood small businesses, especially women-owned and minority-owned businesses,** including business incubator programs, management and job training opportunities, and providing economic opportunity and education to communities adversely affected during the era when cannabis was illegal.

The ballot measure did not define how much of the tax revenue should be allocated to each purpose. Proponents of the tax noted the three categories were intentionally broad, with no defined allocations, to meet changing community needs and future priorities. Council established expectations that community members would be involved in the tax allocation decisions, a link would exist between the source and use of the tax revenue, and spending decisions would be clear to the public.

The tax measure required an annual City Council vote on how the tax is allocated. The measure also required annual reporting to the public on the use of the tax revenue and periodic audits.

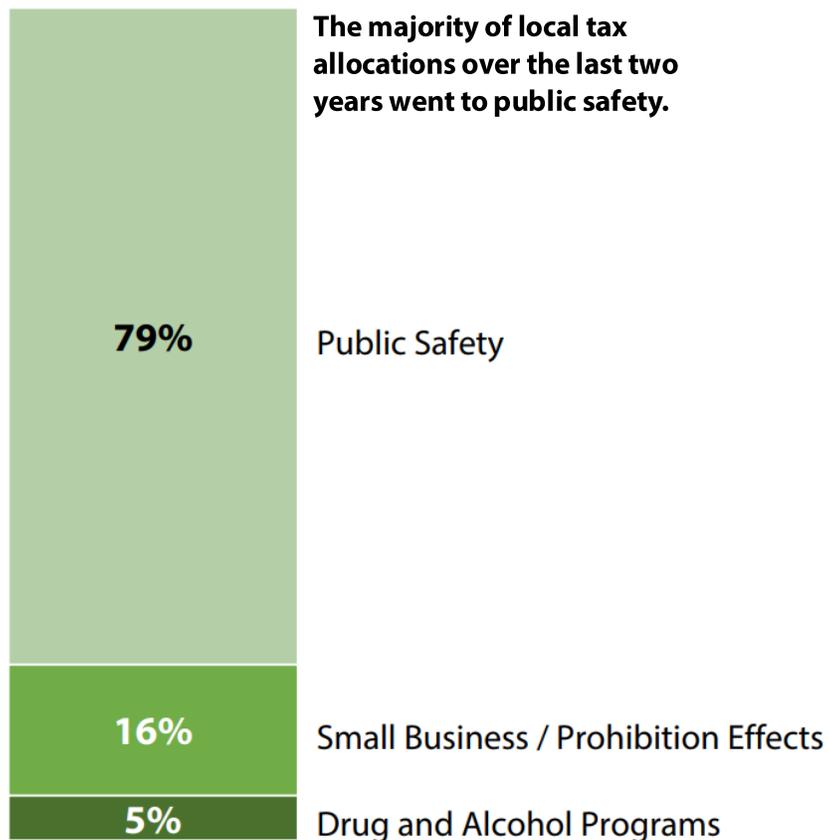
The City's recreational cannabis licensing program is managed by the Office of Community & Civic Life. The tax ballot measure directed the City Budget Office to provide independent oversight of the tax fund. City Council assigned the Bureau of Revenue and Financial Services to manage the fund. After the measure was passed, the City entered into an agreement with the Oregon Department of Revenue to collect the tax together with the State cannabis sales tax.

Audit Results

We conducted this audit to determine whether the use and administration of the recreational cannabis tax meets the intent of the ballot measure. A second audit is underway to assess the City’s regulation of the cannabis industry.

Use of the tax may not meet voters’ intent

The tax revenue allocations for the first two fiscal years of collections complied with the use restrictions outlined in the ballot measure, but most of the funds were devoted to one category. Through the City’s annual budget process, tax revenue of \$3.6 million in Fiscal Year 2018 and \$4.6 million in 2019 was allocated as follows:



The **Drug and Alcohol Treatment** category included funding for the Police Bureau's Service Coordination Team in Fiscal Year 2017-18. The team assists repeat drug and alcohol offenders to access treatment and housing services. General funds to the program were cut, so Council used \$410,000 in recreational cannabis tax funds to pay for the services. In Fiscal Year 2018-19, the team was again funded through the General Fund, and no further cannabis revenue was allocated to drug and alcohol education or treatment services.

Most of the cannabis tax revenue was allocated directly to City bureaus in the **Public Safety** category, which includes the City substituting cannabis tax money for General Fund money for the Police Bureau's traffic division. Traffic safety activities funded with cannabis funds included traffic safety enforcement personnel, officer training related to driving under the influence of intoxicants, and other traffic safety enhancement activities.

In addition to the local cannabis tax revenue, the State distributed \$4.3 million in Fiscal Year 2017-18 and \$1.5 million in 2018-19 to the City for public safety purposes. The State requires this cannabis sales tax revenue to fund local enforcement of cannabis laws. The City adds the revenue to the general fund, which is partly used to fund the Police Bureau.

The **Public Safety** category also included funding to the Bureau of Transportation for activities related to Vision Zero, which is a program to eliminate traffic related deaths and serious injuries. The funding of this program includes Vision Zero education campaign and infrastructure improvements in high-crash corridors.

For the third category, **Small business/Prohibition effects** Council provided \$500,000 of tax revenue to the Bureau of Revenue and Financial Services and Prosper Portland for a grant program in the first year, and \$700,000 to the Office of Community & Civic Life in the second year. The grants for the first year have been awarded to fund development of minority-owned cannabis businesses, workforce development, and criminal records expungement. In April 2019 the Office of Community & Civic Life started the award process for the \$700,000 allocated in second year.

City's Recreational Cannabis Total Tax Allocations for Year 1 and Year 2

Bureau	Purpose	Year 1	Year 2
Police	Intoxicants training and traffic enforcement personnel	\$500,000	\$2,149,750
Police	Service Coordination Team for access to drug/alcohol treatment	\$410,000	0
Transportation	Vision Zero safety program	\$1,590,000	\$1,770,626
Revenue and Financial Services; Prosper Portland	Grants programs	\$500,000	
Office of Community & Civic Life	Grants programs		\$700,000
Management & Finance	Operations	\$93,000	\$5,000
	Contingency	\$500,000	0
TOTAL		\$3,593,000	\$4,625,376

Note: Year 2 Service Coordination Team was funded by General Fund. A \$500,000 contingency fund was not used in FY 2018 and was carried over for program allocation in FY 2019. \$98,000 was allocated to administrative overhead for grant management in the two years.

While nearly all spending is within the three categories from the ballot title, voters may have expected that each category would receive funds annually or an explanation why they did not. The lack of annual cannabis tax funding for drug and alcohol treatment, and the limited money to address the historical effects of cannabis prohibition, may not be consistent with expectations by tax proponents focusing on the value of the tax for expanding addiction programs or to benefit those that were disadvantaged during prohibition.

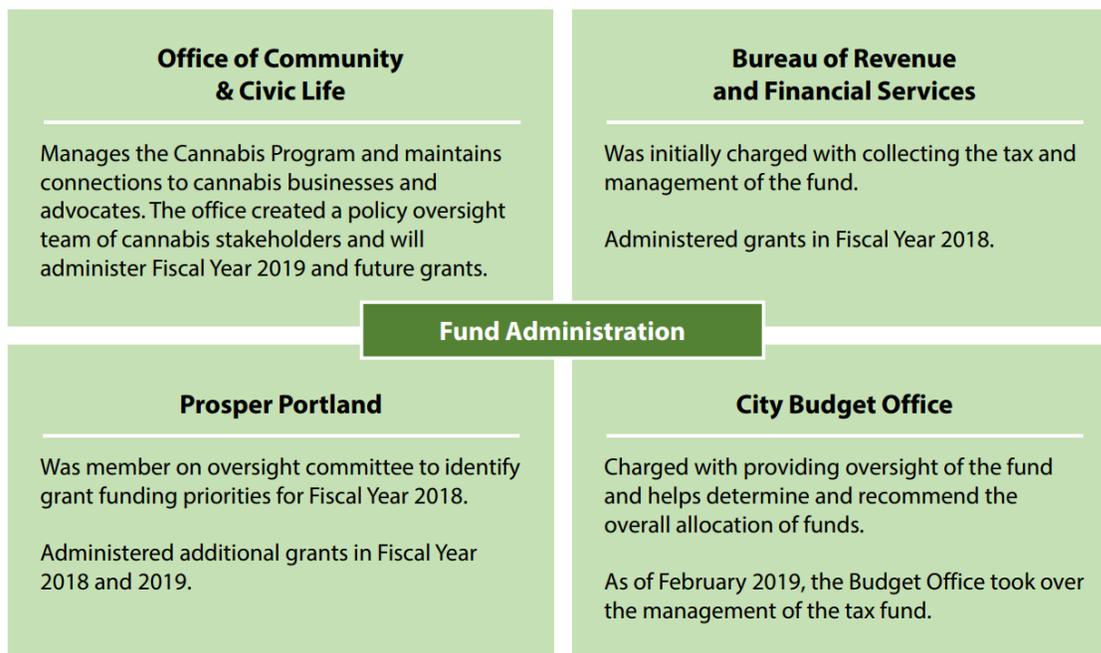
Tax allocations not transparent and accountable to the public

Tax revenue allocations were made in part to address shortages in the City's General Fund, and the decisions were made in discussions among the City Budget Office, the Mayor, and Commissioners. More than \$2 million of the tax fund has been used to backfill General Fund shortages.

The City expects the cannabis tax revenue to increase over the next few years. The City Budget Office forecasts a \$4.7 million tax revenue in the current fiscal year and is budgeting \$4.4 million for the cannabis tax fund.

It is within Council’s authority to use cannabis tax revenue to balance resources with programs and services that need to be funded. However, given the broad and flexible categories for which the funds can be used, the rationale for the budget decisions should be transparent. Voting on recreational cannabis tax allocations as part of the overall City budget, with no separate opportunity for comment or description of how the funds will be used, leaves community members with no way to influence the allocation decisions. Other government tax funds have allocation and oversight committees and include tasks such as preparing a community needs assessment and monitoring outcomes. For example, the Portland Children’s Levy has a five-member Allocation Committee to provide oversight and make funding decisions.

The absence of a clear responsible party to ensure accountability of the cannabis tax fund distributions may contribute to the lack of transparency. There is no central contact for all issues related to allocation and reporting of the Recreational Marijuana Tax Fund. Many bureaus have a role in tax allocations and fund administration:



There has also been no public reporting on the use of the funds, despite the ballot measure requirement for annual reporting. Almost all the public discussion has been around the \$500,000 in grants issued to minority-owned small businesses and for criminal record expungement; there has been no public reporting on the remaining \$7.7 million allocated to date, which represents 94 percent of total allocations. Neither the Police Bureau nor the Transportation Bureau report on the use of the tax and how it relates to cannabis legalization. The Police Bureau could not provide data on cannabis-related safety concerns, such as traffic stops for driving under the influence of cannabis. More robust reporting on the benefits achieved could inform future budget decisions and provide a rationale for the use of funds.

With neither a chance to provide input into tax allocation decisions or being informed about how the funds were spent, the public cannot determine if the voter-approved tax is meeting its intended purposes.

Grants process unclear

Prior to issuing grants, the goals of a grant program should be clearly defined, and systems and procedures should be established to ensure proper management and accountability. Changing the approach to grant-making each year will make it more difficult for interested agencies or businesses to apply, and for Council and the public to get information on the benefits that are achieved.

A portion of the tax has been allocated each year for community grants. The first year, funds were provided as a special appropriation managed by the Bureau of Revenue and Financial Services. To distribute these grants, Commissioners formed a Cannabis Tax Allocation Committee with City staff and cannabis industry stakeholders. The committee conducted a public survey of needs for the \$500,000 in grants and developed priorities for how the grants should be distributed. At the request of the Mayor's office, a portion of the grant funds was then transferred to Prosper Portland to fund technical assistance to minority-owned cannabis businesses.

The first-year the community grants were awarded to minority-owned cannabis businesses, workforce development activities, and public defender services to help individuals remove cannabis-related criminal convictions from their records. City grant agreements require grantees to report on outcomes at the end of this fiscal year. These grants had a much higher level of public input and oversight than the remainder of the tax allocations. However, the grants were not issued until the beginning of fiscal year 2018-19.

In the second year, the grant funds were provided to the Office of Community & Civic Life instead of Bureau of Revenue and Financial Services. The rationale for the change was that Civic Life is best suited to award and manage cannabis grants, since the bureau regulates cannabis. So far, the \$700,000 has not yet been awarded. In April 2019, Civic Life started the process to award these funds.

Recommendations

1. To provide transparency and accountability, and to guide and focus funding decisions, we recommend the Office of Community & Civic Life work with Council to develop a tax allocation framework that includes:
 - Tax allocation and oversight committee to provide input to Council on how tax revenue should be allocated.
 - Include cannabis tax fund allocations in budget work session discussions.
 - Report annually to oversight committees and the public on how the tax funds are being allocated. Provide rationale behind council decisions and report on outcomes.
2. To ensure an effective, timely and competitive distribution of cannabis grants, we recommend the Office of Community & Civic Life develop a grant process, which includes clarifications for how the grants will be awarded and managed, what outcomes will be achieved, and how outcomes will be reported to City Council.

**Objective,
Scope,
and
Methodology**

Our audit objective was to determine whether the use and administration of the recreational cannabis tax meets the intent of the ballot measure, and whether the allocation of the tax fund is aligned with budgeting best practices.

To accomplish our audit objective, we:

- Reviewed Oregon State law, Portland City code and administrative rules, and ballot measure related to the legalization of cannabis and the collection of cannabis sales tax.
- Reviewed best practices on government budgeting and grant administration process.
- Reviewed City's budget documents to determine how funds were allocated.
- To identify tax fund allocations and rationale, we interviewed staff at Office of Community & Civic Life, Bureau of Revenue and Financial Services, City Budget Office, and Council staff.
- To determine the use of funds, we interviewed staff at Portland Bureau of Transportation, Prosper Portland, and Portland Police Bureau.
- To determine intent for the use and administration of recreational cannabis tax, we interviewed cannabis stakeholders, reviewed media coverage and tax ballot measure testimony and discussions at June 2016 Council session.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESPONSE TO THE AUDIT



April 30, 2019

Mary Hull Caballero
City Auditor
1221 SW 4th Ave. Suite 310
Portland, OR 97204

Dear Auditor Hull Caballero,

Thank you for the audit report “Recreational Cannabis Tax: Greater Transparency and Accountability Needed” and the opportunity to respond. As the bureau that manages the licensing and code enforcement of cannabis businesses and coordinates community and cannabis business-led policy development for the City of Portland, The Office of Community & Civic Life (Civic Life) agrees with the audit findings, and we stand ready to work with City Council to improve the transparency of cannabis tax allocations and decisions in the coming months and years.

There were many important findings in your report:

- Uses of the tax should meet voters’ intent.
- Given the broad and flexible categories for which the funds can be used, the rationale for budget decisions should be more transparent.
- The absence of a clear responsible party to ensure accountability of the cannabis tax fund distributions may contribute to the lack of transparency.
- The goals of any grant programs should be clearly defined prior to issuing grants.
- Systems and procedures should be established to ensure proper management and accountability of these funds.
- There needs to be reporting on any uses of these funds, and the outcomes from the initiatives and programs they fund.

Civic Life is excited to work with City Council to implement the report's recommendations:

1. To provide transparency and accountability, and to guide and focus funding decisions, we recommend the Office of Community & Civic Life work with Council to develop a tax allocation framework that includes:
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 - Include cannabis tax fund allocations in budget work session discussions.
 - Report annually to oversight committees and the public on how the tax funds are being allocated. Provide rationale behind council decisions and report on outcomes.
2. To ensure an effective, timely and competitive distribution of cannabis grants, we recommend the Office of Community & Civic Life develop a grant process, which includes clarifications for how the grants will be awarded and managed, what outcomes will be achieved, and how outcomes will be reported to City Council.

Civic Life has already taken steps toward the second recommendation since February 2019:

- Civic Life launched portlandoregon.gov/cannabistax
 - This includes information about the entirety of Portland's local cannabis tax.
 - It also includes information on the 2019 Cannabis Social Equity Grants.
 - This website serves as a single point of contact, with staff contact information, so that people can get answers to their questions about Portland's local cannabis tax and/or connect with a staff member who can help.
- Civic Life published a [6-page report](#) on Portland's local cannabis tax
 - Found on portlandoregon.gov/cannabistax, the report provides context about the deliberations that led to Portland's local cannabis tax, when decisions were made and by whom, and Civic Life's role with the 2019 Cannabis Social Equity Grants portion of the tax revenue. This detail and context are offered to help demystify the process for community members.
 - The report will be updated regularly to inform the public about future decisions related to Portland's local cannabis tax.

- Civic Life held a community listening session about the application process for the 2019 Cannabis Social Equity Grants prior to its release
 - We were able to immediately implement recommendations from this listening session in the 2019 Cannabis Social Equity Grants process.
 - The listening session included representatives from Metropolitan Public Defender, Latino Network, SE Works, Portland African American Leadership Forum, the Cannabis Policy Oversight Team, cannabis business representatives, Women First, Native American Youth and Family Center, Worksystems, NW Regional Re-Entry Center, Soul District Business Association, and others.
- Civic Life will hold two informational sessions about the 2019 Cannabis Social Equity Grants to allow prospective applicants to learn more about the process and ask questions of staff before applying.
- Civic Life has kept the [Cannabis Policy Oversight Team](#) (CPOT) informed about Portland’s local cannabis tax process.
 - These meetings are open to the public and have a public comment period.
 - A member of CPOT will serve on the selection committee for the 2019 Cannabis Social Equity Grants.

Thank you again for the analysis and findings in the report, and for the opportunity to share our current efforts toward transparency, accountability, and social equity in the cannabis grants process.

Sincerely,



Commissioner Chloe Eudaly
Commissioner-in-Charge



Suk Rhee, Director
Office of Community & Civic Life



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Report #521A, May 2019

Audit Team: Alexandra Fercak,
Jenny Scott

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