

Portland, Oregon
FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT
For Council Action Items

(Deliver original to City Budget Office. Retain copy.)

1. Name of Initiator Rachael Wiggins		2. Telephone No. 503-823-4142	3. Bureau/Office/Dept. Mayor's Office
4a. To be filed (hearing date): October 15, 2014	4b. Calendar (Check One) <div style="display: flex; justify-content: space-around;"> Regular <input checked="" type="checkbox"/> Consent <input type="checkbox"/> 4/5ths <input type="checkbox"/> </div>		5. Date Submitted to Commissioner's office and CBO Budget Analyst:
6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed		6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed	

1) Legislation Title:

Adding a new Portland City Code chapter to establish a tax on the sale, transfer, mixing, handling or serving of marijuana and marijuana-infused products in the City of Portland (Ordinance).

2) Purpose of the Proposed Legislation:

The purpose of this proposed legislation is to establish a tax on the sale, transfer, mixing, handling or serving of marijuana and marijuana-infused products within Portland.

3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?

- | | | | |
|--|------------------------------------|------------------------------------|--------------------------------|
| <input checked="" type="checkbox"/> City-wide/Regional | <input type="checkbox"/> Northeast | <input type="checkbox"/> Northwest | <input type="checkbox"/> North |
| <input type="checkbox"/> Central Northeast | <input type="checkbox"/> Southeast | <input type="checkbox"/> Southwest | <input type="checkbox"/> East |
| <input type="checkbox"/> Central City | | | |

FINANCIAL IMPACT

4) Revenue: Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

This new tax will raise approximately \$2.5 million to \$5.8 million in annual general fund revenues.

5) Expense: What are the costs to the City as a result of this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future year, including Operations & Maintenance (O&M) costs, if known, and estimates, if not

known. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the **level of confidence**.)

The one-time cost to the city will be \$150,000 and the ongoing costs will be \$280,000.

6) Staffing Requirements:

- **Will any positions be created, eliminated or re-classified in the current year as a result of this legislation?** *(If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)*

No.

- **Will positions be created or eliminated in future years as a result of this legislation?**

1.25 positions will need to be created in the future years.

(Complete the following section only if an amendment to the budget is proposed.)

7) Change in Appropriations *(If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate “new” in Fund Center column if new center needs to be created. Use additional space if needed.)*

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

[Proceed to Public Involvement Section — REQUIRED as of July 1, 2011]

PUBLIC INVOLVEMENT

8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:

- ☐ **YES:** Please proceed to Question #9.
☒ **NO:** Please, explain why below; and proceed to Question #10.

This ordinance came about as a recommendation to the Council during a Council work session on the current regulation of medical and the potential future regulation of recreational. This recommendation was provided to the Council by the Medical Marijuana Dispensary Task Force, which is a group comprised of city staff from a wide range of bureaus. Because it was focused on the city's regulation, the public was not involved in the recommendation process.

9) If "YES," please answer the following questions:

a) What impacts are anticipated in the community from this proposed Council item?

b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved?

c) How did public involvement shape the outcome of this Council item?

d) Who designed and implemented the public involvement related to this Council item?

e) Primary contact for more information on this public involvement process (name, title, phone, email):

10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not.

Other than the public weighing in on the proposed tax at the Council meeting, no.

Mayor Charlie Hales

APPROPRIATION UNIT HEAD (Typed name and signature)



Marijuana Tax Revenue Estimates

October 2014

Revenue Division

Bureau of Revenue and Financial Services

Office of Management and Finance

City of Portland, Oregon

Contents

Executive Summary	3
<i>Figure 1. Estimated Net Revenue from Portland's Proposed Marijuana Tax</i>	3
Ballot Measure 91 Revenue Allocation Methodology	4
Estimated Portland Revenue under Measure 91 Allocation Methodology	4
<i>Figure 2. Estimated Portland Revenue under Measure 91 Allocation Methodology</i>	5
Portland Revenue under a City Imposed Marijuana Sales Tax	5
<i>Figure 3. Portland's Proposed Marijuana Tax Revenue Estimate (10% & 5%)</i>	6
Diversion and Tax Avoidance	6
<i>Figure 4. Colorado Medical Cardholders as of July 31, 2014</i>	7
<i>Figure 5. Estimated Post-Tax Cost of Marijuana in Portland</i>	7
Estimated Costs of Regulation and Taxation	8
<i>Figure 6. Estimated Costs of Administering Marijuana Regulations and Taxation</i>	8
Conclusion.....	8
Appendix A. Recreational and Medical Marijuana Taxation as of October 6, 2014	9

Executive Summary

This document was prepared to estimate the revenue impact to the City of Portland if marijuana use and sales are legalized under Oregon Ballot Measure 91, the "Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act". It also estimates additional revenues associated with Portland imposing a 10% local tax on the sale, transfer, mixing, handling, or serving of recreational marijuana (hereafter collectively referred to as "sales tax"), and a 5% sales tax on medical marijuana.

If Oregon voters pass Ballot Measure 91 this November, the State of Oregon has estimated the resulting excise tax will increase annual state revenues by \$17 million to \$40 million.¹ After state administrative expenses are deducted, 10% of net revenues would be distributed to local jurisdictions. The Bureau of Revenue and Financial Services (BRFS) estimates the City of Portland's annual share of this revenue, after deducting state expenses, will be in the range of \$171,000 to \$556,000 over the next three fiscal years.

Annual Portland expenses for recreational and medical marijuana regulation and taxation are tentatively estimated at approximately \$1 million, and possibly more.

To offset city expenses and raise new revenue, BRFS recommends Portland City Council impose a tax of ten (10) percent on gross sales of recreational marijuana, and five (5) percent on gross sales of medical marijuana.² This proposed sales tax is estimated to raise:

- 10% on recreational marijuana: between \$1.7 million and \$4.0 million annually
- 5% on medical marijuana: between \$796,000 and \$1.8 million
- Total: between \$2.5 million and \$5.8 million

Table 1 illustrates that net of estimated city costs, additional unrestricted revenues should be available for deposit into the General Fund.

Figure 1. Estimated Net Revenue from Portland's Proposed Marijuana Tax

	FY 2015-2016 ³		FY 2016-2017 and Ongoing	
	Low	High	Low	High
Marijuana Tax Proceeds	\$2,493,900	\$5,849,010	\$2,493,900	\$5,849,010
Estimated City-wide Administrative Costs ⁴	\$1,125,000		\$925,000	
Net Revenue Available for Deposit into the General Fund	\$1,368,900	\$4,724,010	\$1,568,900	\$4,924,010

¹ Estimate of Financial Impact Statement, Ballot Measure 91, Oregon Secretary of State website, <http://sos.oregon.gov/elections/Documents/Fiscal-Impact-web.pdf> : accessed 9 October 2014.

² The Ballot Measure purports to preempt local taxation. BRFS and the City Attorney's Office recommend passing a local tax for a range of reasons as discussed during the City Council work session on October 7, 2014. See Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (Oregon Ballot Measure 91), Section 42, <http://oregonvotes.org/irr/2014/053text.pdf> : accessed 14 October 2014.

³ Assumes state permitting of recreational marijuana retail sales begins soon after passage of Ballot Measure 91.

⁴ Aggregated regulatory cost estimates from the Bureau of Development Services, Office of Neighborhood Involvement and Police Bureau; plus tax collection costs from the Bureau of Revenue and Financial Services, Revenue Division. See Figure 6 for additional detail.

Ballot Measure 91 Revenue Allocation Methodology

As it relates to distribution of taxes to local jurisdictions, Section 44 of Oregon Ballot Measure 91 states, in pertinent part:

- (1) After [the state] withholds such moneys as it may deem necessary...
- (2) To assist local law enforcement in performing its duties under the measure, 10 percent of the distributable revenues shall be transferred to the cities of the state. For all distributions before July 1, 2017, the distributions will be made according to population as determined by the State Board of Higher Education. For all distributions made from the Oregon Marijuana Account on or after July 1, 2017, fifty percent of the 10 percent will be made according to the number of licenses issued in each city under sections 19 to 21 of the measure as a percentage of the licenses issued in the state; section 19 is production licenses, 20 is processor licenses, 21 is wholesale licenses. The remaining fifty percent of the 10 percent will be distributed according to the number of retail licenses issued in each city as a percentage of the licenses issued in the state.⁵

Estimated Portland Revenue under Measure 91 Allocation Methodology

According to the State of Oregon's revenue estimate for Ballot Measure 91, the estimated gross annual revenues from marijuana excise taxes, when fully implemented, may range from \$17 million to \$40 million.⁶ The impact statement did not indicate how long "full implementation" is expected to take, and the matter is open to some debate.⁷ This analysis assumes the tax will be implemented in fiscal year 2015-2016 but the first full year of revenues may not occur until the following fiscal year.

The Oregon Liquor Control Commission (OLCC) estimates that start-up costs are \$300,000 in fiscal year 2015-2016, \$2.5 million in fiscal year 2016-2017, and \$1.0 million in fiscal year 2017-2018. Additionally, OLCC annual operating expenses are estimated to be \$3.2 million per year.⁸ Using these cost estimates, distributable (net) tax revenue may range from \$13.5 million to \$36.5 million in 2015-2016, \$11.3 million to \$34.3 million in 2016-2017, \$12.8 million to \$35.8 million in 2017-2018, and \$13.8 million to \$36.8 million going forward.⁹

State revenues distributed to local governments before July 1, 2017 are based on population; thereafter, they are based on the number of permits in each jurisdiction. Portland makes up 15.12 percent of Oregon's total

⁵ Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act (Oregon Ballot Measure 91), Section 44, <http://oregonvotes.org/irr/2014/053text.pdf> : accessed 9 October 2014.

⁶ Estimate of Financial Impact Statement, Ballot Measure 91, Oregon Secretary of State website, <http://sos.oregon.gov/elections/Documents/Fiscal-Impact-web.pdf> : accessed 9 October 2014.

⁷ The ballot measure is unclear as to the timing of the legalization of retail sales. The Portland City Attorney's Office has noted: Section 7(8) of the measure provides that by January 1, 2016, the OLCC shall prescribe forms and adopt titles and regulations to implement and administer the measure; Section 18(1) provides that on or before January 4, 2016, the OLCC shall begin receiving applications for licensing to produce, process and sell marijuana, and provides that the Commission shall not unreasonably delay the processing, approval, or rejection of applications, or issuance of licenses; Section 82(1) provides that Sections 3-73 become effective July 1, 2015, including the two aforementioned sections; Section 18(2) states that the OLCC may take any action before July 1, 2015 necessary to enable the Commission to exercise the duties, functions and powers conferred on the OLCC by the measure; and Section 84 provides that the Act is effective 30 days after voter approval.

⁸ Estimate of Financial Impact Statement, Ballot Measure 91, Oregon Secretary of State website, <http://sos.oregon.gov/elections/Documents/Fiscal-Impact-web.pdf> : accessed 9 October 2014.

⁹ Figures not adjusted for inflation.

population.¹⁰ Using these figures and deducting state estimated expenses, Portland's distribution from the Oregon Marijuana Account can be calculated as shown in Figure 2, line 4.

Figure 2. Estimated Portland Revenue under Measure 91 Allocation Methodology¹¹

	FY 2015-2016		FY 2016-2017		FY 2017-2018		Ongoing	
	Low	High	Low	High	Low	High	Low	High
1. Gross Revenue Projection	\$17,000,000	\$40,000,000	\$17,000,000	\$40,000,000	\$17,000,000	\$40,000,000	\$17,000,000	\$40,000,000
2. State of Oregon Estimated Expenses	\$3,500,000		\$5,700,000		\$4,200,000		\$3,200,000	
3. State of Oregon Net (Distributable) Revenue	\$13,500,000	\$36,500,000	\$11,300,000	\$34,300,000	\$12,800,000	\$35,800,000	\$13,800,000	\$36,800,000
4. City of Portland Share based on Population (line 3 x 10% x 15.12%)	\$204,120	\$551,880	\$170,856	\$518,616	\$193,536	\$541,296	\$208,656	\$556,416

Portland Revenue under a City Imposed Marijuana Sales Tax

Based upon our review of available literature, we believe the average state excise tax on recreational marijuana sold by producers may be \$28 per ounce.¹² Using this figure, the State of Oregon's projected revenue of \$17 million to \$40 million would equate to statewide annual marijuana sales of 607,000 to 1,429,000 ounces (37,938 to 89,313 pounds).¹³ Portland's estimated share of statewide recreational marijuana sales may therefore range from 92,000 to 216,000 ounces (5,750 to 13,500 pounds) annually.¹⁴ According to year-to-date figures from the Colorado Department of Revenue, 52 percent of sales of marijuana is related to medical marijuana.¹⁵ Assuming these percentages would hold true in Portland, Portland's medical marijuana sales could range from 100,000 to 234,000 ounces (6,250 to 14,625 pounds) annually. Portland's total annual sales (recreational and medical combined) may range from 192,000 to 450,000 ounces (12,000 to 28,125 pounds).

¹⁰ Population Research Center, College of Urban and Public Affairs, Portland State University website, population estimates as of July 1, 2013, <http://www.pdx.edu/prc/population-estimates-0> : accessed 9 October 2014.

¹¹ These figures assume there will be no adjustment for inflation, and that the distribution percentages before and after July 1, 2017 remain approximately the same (the number of issued licenses is correlated to population which drives local demand).

¹² Oregon Cannabis Tax Revenue Estimate, ECONorthwest report dated July 22, 2014, citing research of Dr. Seth Crawford, PhD, Oregon State University, ECONorthwest website, http://www.econw.com/media/ap_files/7-31-2014_CannabisFinalReport.pdf : accessed 9 October 2014. See also Dr. Crawford's research, *Estimating the Quasi-Underground: Oregon's Informal Marijuana Economy*, Humboldt Journal of Social Relations, Issue 36, 2014; http://www.humboldt.edu/hjsr/issues/issue%2036/10_CRAWFORD_Oregons_Informal_Marijuana_Economy.pdf : accessed 9 October 2014.

¹³ Estimates of total consumption vary widely depending upon methodology. See, for example, Market Size and Demand for Marijuana in Colorado, a report prepared for the Colorado Department of Revenue, 2014, Table 11, pg. 20, <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheadname1=Content-Disposition&blobheadname2=Content-Type&blobheadvalue1=inline%3B+filename%3D%22Market+Size+and+Demand+Study%2C+July+9%2C+2014.pdf%22&blobheadvalue2=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1252008574534&ssbinary=true> : accessed 13 October 2014. BRFS took a conservative approach beginning with the statewide forecast.

¹⁴ Portland's population is 15.12% of the total state population and we assume, perhaps conservatively, that this is the percentage of statewide sales allocable to Portland.

¹⁵ See State of Colorado Marijuana Taxes, Licenses, and Fees Transfers and Distribution, July 2014, Sales Reported in August, <https://www.colorado.gov/pacific/sites/default/files/0714%20Marijuana%20Tax,%20License,%20and%20Fees%20Report.pdf> : accessed 13 October 2014. The 52% figure was calculated by dividing Medical Marijuana sales tax on line 2 by total sales tax on line 1.

Using an estimated post-excise tax recreational marijuana price of \$205 per ounce and an estimated medical marijuana cost of \$177 per ounce,¹⁶ additional revenue from the City of Portland's proposed marijuana tax may range from \$2.5 million to \$5.8 million annually. This estimate assumes a 90% compliance rate from businesses expected to collect and remit the proposed marijuana tax. See Figure 3.

Figure 3. Portland's Proposed Marijuana Tax Revenue Estimate (10% & 5%)

	Recreational (10%)		Medical (5%)		Total	
	Low	High	Low	High	Low	High
1. Ounces of Marijuana Sold	92,000	216,000	100,000	234,000	192,000	450,000
2. Average Price Per Ounce	\$205		\$177		\$177 - \$205	
3. City of Portland Tax Proceeds	\$1,886,000	\$4,428,000	\$885,000	\$2,070,900	\$2,771,000	\$6,498,900
4. City of Portland Net Tax Proceeds Assuming 90% Compliance ¹⁷	\$1,697,400	\$3,985,200	\$796,500	\$1,863,810	\$2,493,900	\$5,849,010

Diversion and Tax Avoidance

The primary difficulty in estimating marijuana sales tax avoidance behavior is the opaque nature of the black market. It is difficult to credibly estimate market size and price elasticity of demand without reliable data. Colorado, the first state to legalize recreational sales, is in the first year of implementation and the market is considered both unstable and immature. Nevertheless, it is instructive to review the Colorado experience to glean an understanding of possible tax avoidance and diversion from recreational to medical sales driven by a differential in tax rates.

January 1, 2014 was the first day recreational marijuana could be sold to anyone 21 and over at licensed stores in Colorado.¹⁸ Colorado taxes recreational marijuana as follows:

- 2.9% general sales tax
- 10% marijuana sales tax
- 15% marijuana excise tax
- 27.9% combined rate (local jurisdictions may impose additional taxes)

In Colorado, medical marijuana is subject only to the state general sales tax of 2.9%, creating a variance of 25 percentage points in the tax rate (and presumably retail price) between recreational and medical marijuana. Did this large variance drive a change in the number of people applying for and receiving medical marijuana cards?

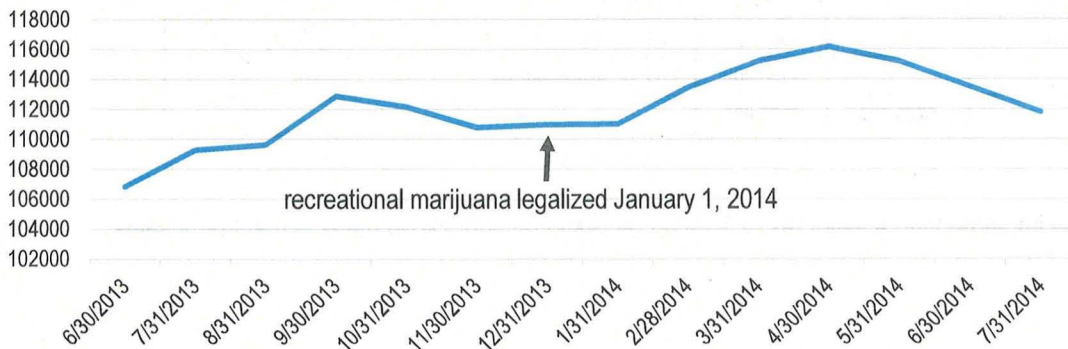
¹⁶ Dr. Seth Crawford, Oregon State University, authored a study entitled, *Estimating the Quasi-Underground: Oregon's Informal Marijuana Economy*. Dr. Crawford surveyed 72 Oregon residents 18 and older to collect information about marijuana use and purchase patterns. He found that the average marijuana user pays about \$177 per ounce of the drug on the "informal" (black) market. Using an estimated black market base cost of \$177 per ounce, recreational marijuana in Portland, after adding state excise taxes, would likely cost about \$205 per ounce. Actual costs following market maturation over the next five years or so will vary. Online medical marijuana prices in Portland are frequently observed to be advertised at \$220 per ounce. We believe \$205 per ounce is a conservative number for forecasting purposes and the actual price in the short to intermediate term may be higher.

¹⁷ We estimate compliance rates mirroring those found for "brick and mortar" business locations under the Business License Law (PCC 7.02).

¹⁸ "10 things to know about nation's first recreational marijuana shops in Colorado," CNN website, <http://www.cnn.com/2013/12/28/us/10-things-colorado-recreational-marijuana/> : accessed 9 October 2014.

In the seven months for which there is data following legalization of recreational marijuana in Colorado, the total number of patients who possessed a valid medical marijuana card rose from just over 111,000 to a high of 116,000 and then fell back to just below 112,000. It is too early to identify long term trends in the Colorado market as they relate to tax avoidance and diversion; the data is open to interpretation. See Figure 4.

Figure 4. Colorado Medical Cardholders as of July 31, 2014



Source: Data from the Colorado Department of Public Health & Environment.

To minimize diversion and tax avoidance, BRFS recommends a low overall tax rate and narrow difference between the tax rate for recreational and medical marijuana. We also recommend keeping the rates in rough parity with adjacent jurisdictions. These measures, if adopted, should help to mitigate diversion/tax avoidance from the recreational to the black and medical markets. Figure 5 estimates the cumulative impact of the state excise and local sales taxes as they relate to possible pricing (assuming retailers pass the entire burden to buyers).

Figure 5. Estimated Post-Tax Cost of Marijuana in Portland

	Recreational (10%)	Medical (5%)
Estimated Black Market Base Cost of One Ounce	\$177.00	\$177.00
Estimated Average Oregon Excise Tax	\$28.00	\$0.00
Portland Tax (10%/5%)	\$20.50	\$8.85
Total	\$225.50	\$185.85
Cumulative Increase Over Black Market	27%	5%

Estimated Costs of Regulation and Taxation

Figure 6 details tentative bureau budgets related to marijuana regulation and taxation. These estimates are subject to change as regulatory requirements are developed.

Figure 6. Estimated Costs of Administering Marijuana Regulations and Taxation

Bureau	One-Time	Ongoing	FTE and Description of Workload
BRFS/Revenue Division	\$150,000	\$280,000	1.25 FTE; tax collection and audit
Development Services/Fire		\$150,000	1.0 FTE; safety inspections
Neighborhood Involvement	\$50,000	\$345,000	2.5 FTE; notification and enforcement of regulatory function
Police Bureau		\$150,000	1.0 FTE; investigations
Total	\$200,000	\$925,000	

Conclusion

BRFS recommends implementing a sales tax of 10% on recreational and 5% on medical marijuana sales.

Appendix A. Recreational and Medical Marijuana Taxation as of October 6, 2014

Jurisdiction	Recreational	Medical
Cornelius, Oregon	10% of gross sales	0% of gross sales
Forest Grove, Oregon	10% of gross sales	0% of gross sales
Happy Valley, Oregon	10% of gross sales	0% of gross sales
Hillsboro, Oregon	10% of gross sales	0% of gross sales
Ashland, Oregon	10% of gross sales	5% of gross sales
Central Point, Oregon	10% of gross sales	5% of gross sales
Coquille, Oregon	10% of gross sales	5% of gross sales
Gearhart, Oregon	10% of gross sales	5% of gross sales
King City, Oregon	10% of gross sales	5% of gross sales
Lake Oswego, Oregon	10% of gross sales	5% of gross sales
Milwaukie, Oregon	10% of gross sales	5% of gross sales
Tigard, Oregon	10% of gross sales	5% of gross sales
West Linn, Oregon	10% of gross sales	5% of gross sales
Wilsonville, Oregon	12% of gross sales	7.5% of gross sales
Scappoose, Oregon	20% of gross sales	10% of gross sales
Seaside, Oregon	Ordinance to tax passed. No rate set.	Ordinance to tax passed. No rate set.
Tualatin, Oregon	Ordinance to tax passed. No rate set.	Ordinance to tax passed. No rate set.
Dayton, Oregon	Considering 10% of gross sales	Considering 0% of gross sales
Klamath Falls, Oregon	Considering 10% of gross sales	Considering 5% of gross sales
Nehalem, Oregon	Considering 10% of gross sales	Considering 5% of gross sales
Newberg, Oregon	Considering 10% of gross sales	Considering 5% of gross sales
Rogue River, Oregon	Considering 10% of gross sales	Considering 5% of gross sales
La Grande, Oregon	Considering 25% of gross sales	Considering 0% of gross sales
Medford, Oregon	Considering 6-18%	
Eugene, Oregon	Considering a tax. No details yet.	Considering a tax. No details yet.
Springfield, Oregon	Considering a tax. No details yet.	Considering a tax. No details yet.
St. Helens, Oregon	Considering a tax. No details yet.	Considering a tax. No details yet.
State of Washington	31.971 % of gross sales *	6.971 % of gross sales *
State of Oregon	\$5 - \$35 **	\$0
State of Colorado	27.9% of gross sales ***	2.9% of gross sales
Boulder, Colorado	12.06% to 14.12% ****	3.56% to 7.12%
Seattle, Washington	.215% of gross sales *****	.215% of gross sales ****
*	Includes 0.471% B&O tax, 6.5% retail sales and use tax and a 25% excise tax plus any local sales taxes. No excise tax is due for medical marijuana sales.	
**	Tax is imposed upon marijuana producers at the rate of \$35 per ounce on all marijuana flowers, \$10 per ounce on all marijuana leaves, \$5 per immature marijuana plant.	
***	Includes 10% state marijuana tax, 2.9% state sales tax and a 15% excise plus any local sales taxes. No state marijuana tax or excise tax is due for medical marijuana sales.	
****	Recreational cultivation facilities incur a 5% excise tax and a 7.06% use tax. Recreational retail locations incur a 7.06% use tax and a 7.06% sales tax. Medical cultivation facilities incur a 3.56% use tax. Medical retail locations incur a 3.56% use tax and a 3.56% sales tax. Sales tax is paid on the retail sales amount charged to the customer. Use tax is paid on the cost of assets and expenses of the business. Excise tax is paid on the amount calculated on the weight or number of plants multiplied by the value set. \$1,876 per pound for bud/flower, \$296 per pound for trim, \$9 per plant per immature plant.	
*****	Only liable for the Business License Tax. Tax is only due if annual taxable gross revenue is \$100,000 or more.	

**REFERRED TO COMMISSIONER OF
FINANCE AND ADMINISTRATION**

ORDINANCE NO.

Establish a tax on the sale, transfer, mixing, handling or serving of marijuana and marijuana-infused products in the City (Ordinance; add Code Chapter 6.07)

The City of Portland Ordains:

Section 1. Council finds:

1. The City has incurred and will continue to incur substantial costs related to the legalization of medical marijuana and likely incur additional ongoing expenses if and when recreational marijuana becomes legalized in Oregon.
2. The City is an Oregon home-rule municipal corporation having the authority under the terms of its Charter to exercise all powers and authority that the constitutions, statutes, and common law of the United States and of the State of Oregon expressly or impliedly grant or allow as fully as though each such power were specifically enumerated therein.
3. The City desires to tax the sale, transfer, mixing, handling or serving of marijuana and marijuana-infused products within the City. The tax is imposed to raise general revenues and to offset increased costs to the City of police enforcement and other City services.
4. The City's estimated costs to administer this new tax will be significantly less than the tax proceeds expected from this new tax. The Revenue Division of the Bureau of Revenue and Financial Services estimates that this new tax will raise \$2.5 million to \$5.8 million in annual general fund revenues. The Revenue Division also estimates that to collect the tax, ongoing costs will be \$280,000 and one-time costs will be \$150,000.

NOW, THEREFORE, the Council directs:

- a. A new chapter, 6.07 Marijuana and Marijuana-Infused Products Tax, establishing a tax on the sale, transfer, mixing, handling or serving of marijuana and marijuana-infused products is hereby added to Title 6 "Special Taxes" of the Portland City Code as follows:

6.07.010 Purpose

For the purposes of PCC 6.07, every person who sells, transfers, mixes, handles or serves marijuana, or marijuana-infused products in the City is exercising a taxable privilege. The purpose of PCC 6.07 is to impose a tax upon the sale, transfer, mixing, handling or serving of marijuana and marijuana-infused products.

6.07.020 Definitions

When not clearly otherwise indicated by the context, the following words and phrases as used in PCC 6.07 have the following meanings:

- A. "Director" means the director of the Revenue Division of the Bureau of Revenue and Financial Services or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sale, transfer, mixing, handling or serving of marijuana and marijuana-infused products that is subject to the tax imposed by PCC 6.07.
- C. "Marijuana" means all parts of the plant of the Cannabis family Moraceae, 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 Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, 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 plant which is incapable of germination.
- D. "Oregon Medical Marijuana Program" means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.
- E. "Person" means a 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 and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
- F. "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.
- G. "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.
- H. "Seller" means any person who is required to be licensed or has been licensed by the state to provide, mix, handle, or serve marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.
- I. "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 PCC 6.07.
- J. "Taxpayer" means any person obligated to account to the Director for taxes collected or to be collected, or from whom a tax is due, under the terms of PCC 6.07.

6.07.030 Levy of tax

- A. Every Seller exercising the taxable privilege of selling, mixing, handling or serving marijuana and marijuana-infused products as defined in PCC 6.07 is subject to and must pay a tax for exercising that privilege.
- B. The amount of tax levied is as follows:
 - 1. Five percent (5%) of the gross sale amount paid to the Seller of marijuana and marijuana-infused products by a person who is a registry identification cardholder.
 - 2. Ten percent (10%) of the gross 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.

6.07.040 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 or marijuana-infused products and does not include any adjustments for other services furnished by a Seller.

6.07.050 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 Revenue Division, specifying the total sales subject to PCC 6.07 and the amount of tax collected under PCC 6.07. 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. The Director may require further information in the return relevant to the 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 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 PCC 6.07 on the City's behalf until the Seller makes payment to the Director. A separate trust bank account is not required in order to comply with this provision, unless the Director determines one necessary to ensure collection of the tax.

E. 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 after the tax was due or paid, whichever is later, all such books, invoices and other records. The Director has the right to inspect all such records at all reasonable times.

6.07.060 Penalties and interest

A. Any Seller who fails to remit any portion of any tax imposed by PCC 6.07 within the time required must pay a penalty of 15 percent of the entire 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 30 days following the date on which the remittance first became delinquent, the Seller must pay a second delinquency penalty of 15 percent of the entire 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 PCC 6.07 is due to fraud, a penalty of 25 percent of the entire amount of the tax will be added thereto in addition to the penalties stated in PCC 6.07.060A and PCC 6.07.060B.

D. In addition to the penalties imposed, any Seller who fails to remit any tax imposed by PCC 6.07 must pay compound interest at the rate of one percent per month or fraction thereof on the amount of the tax, inclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Every penalty imposed, and any interest that accrues under the provisions of PCC 6.07.060, becomes a part of the tax required to be paid.

F. All sums collected, including penalty and interest, will be distributed to the City's general fund.

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

6.07.070 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 PCC 6.07 within the time provided in PCC 6.07, the Director will proceed to obtain facts and information on which to base the estimate of tax due. As soon as the Director procures such facts and information upon which to base the assessment of any tax imposed by PCC 6.07 and payable by any Seller, the Director will determine and assess against such Seller the tax, interest and penalties provided for by PCC 6.07.

B. If the Director makes a determination as outlined in PCC 6.07.070A, 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 PCC 6.07.080. If no appeal is timely filed, the Director's determination is final and the amount assessed is immediately due and payable.

6.07.080 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 Business License Appeals Board as created under PCC 7.02.295.

B. The Seller must file the appeal within 30 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 will schedule a hearing to occur within 90 calendar days. The City 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 Business License Appeals Board 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 Director and the appellant may both provide written and oral testimony during the hearing. The findings of the Business License Appeals Board 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.

6.07.090. Credits/Refunds

A. The City may credit 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 Seller has paid more than once for the correct amount owed; or
3. The City has erroneously collected or received any tax, interest or penalties.

B. The City may not issue a credit under PCC 6.07.090 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 credit.

C. The Director has 30 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 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.

E. In cases where there is no future filing to claim the credit or other circumstances where a credit amount should be refunded, the claimant may petition the director to have the credit amount refunded to the claimant.

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.

G. The Director may, upon request of the claimant or the Revenue Division, extend the deadlines to file a refund/credit claim or review a refund/credit claim by up to 60 additional days for good cause.

6.07.100 Actions to collect

Any tax required to be paid by any Seller under the provisions of PCC 6.07 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 PCC 6.07 is liable to an action brought in the name of the City of Portland 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.

6.07.110 Violation infractions

A. All violations of PCC 6.07 are also subject to civil penalties of up to \$2,000 per occurrence. It is a violation of PCC 6.07 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 PCC 6.07 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.

6.07.120 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 PCC 6.07. Nothing in PCC 6.07.120 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 amounts due the city under PCC 6.07; or

D. The disclosure of information to a collection agency in order to collect any delinquent tax amount; 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 Council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

F. The Revenue Division may also disclose and give access to information described in PCC 6.07.120 to:

1. The City Attorney, his or her assistants and employees, or other legal representatives of the City, to the extent the Revenue Division deems disclosure or access necessary for the performance of the duties of advising or representing the Revenue Division, including but not limited to instituting legal actions on unpaid accounts.
2. Other employees, agents and officials of the City, to the extent the Revenue Division deems disclosure or access necessary for such employees, agents or officials to:
 - a. Aid in any legal collection effort on unpaid accounts,

- b. Perform their duties under contracts or agreements between the Revenue Division and any other department, bureau, agency or subdivision of the City relating to the administration of PCC 6.07, or
- c. Aid in determining whether a Revenue Division account is in compliance with all city, state and federal laws or policies.

6.07.130 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 made available within the city limits and be 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 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.

6.07.140 Forms and regulations

A. The Director is authorized to prescribe forms and promulgate rules, policies 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 Sellers;
2. The records that Sellers providing, mixing, serving, or handling marijuana and marijuana-infused products must keep concerning the tax imposed by PCC 6.07.

6.07.150 Invalidity

If any section, clause, phrase, sentence or part of this Chapter shall for any reason be adjudged unconstitutional, invalid or unenforceable, it shall only void that part, clause, phrase or section so declared and the remainder shall remain in full force and effect.

Passed by the Council:

Mayor Charlie Hales

Prepared by: Scott Karter

Date Prepared: 10/09/2013

LaVonne Griffin-Valade

Auditor of the City of Portland

By

Deputy

Agenda No.
ORDINANCE
Title

~~Adding a new Portland City Code chapter to~~ establish a tax on the sale, transfer, mixing, handling or serving of marijuana and marijuana-infused products in the City of Portland (Ordinance); *add Code chapter 6.07*

<p>INTRODUCED BY Commissioner/Auditor: Mayor Charlie Hales</p> <hr/> <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales <i>TAA</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p> <hr/> <p>BUREAU APPROVAL</p> <p>Bureau: Mayor's Office</p> <hr/> <p>Prepared by: Rachael Wiggins Date Prepared: 10/9/2014</p> <hr/> <p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <hr/> <p>City Auditor Office Approval: required for Code Ordinances</p> <hr/> <p>City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan <i>KAM</i></p> <hr/> <p>Council Meeting Date October 15, 2014</p>	<p>CLERK USE: DATE FILED <u>OCT 09 2014</u></p> <hr/> <p align="center">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p align="center"><i>[Signature]</i></p> <p>By: _____ Deputy</p> <hr/> <p>ACTION TAKEN:</p> <p>OCT 15 2014 REFERRED TO COMMISSIONER OF FINANCE AND ADMINISTRATION</p>
---	---

<p align="center">AGENDA</p> <hr/> <p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time:</p> <hr/> <p>Total amount of time needed: (for presentation, testimony and discussion)</p> <hr/> <p>CONSENT <input type="checkbox"/></p> <hr/> <p>REGULAR <input checked="" type="checkbox"/> <i>2 of 2</i></p> <p>Total amount of time needed: (for presentation, testimony and discussion)</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:35%;">FOUR-FIFTHS AGENDA</th> <th colspan="3">COMMISSIONERS VOTED AS FOLLOWS:</th> </tr> <tr> <th></th> <th></th> <th>YEAS</th> <th>NAYS</th> </tr> <tr> <td>1. Fritz</td> <td>1. Fritz</td> <td></td> <td></td> </tr> <tr> <td>2. Fish</td> <td>2. Fish</td> <td></td> <td></td> </tr> <tr> <td>3. Saltzman</td> <td>3. Saltzman</td> <td></td> <td></td> </tr> <tr> <td>4. Novick</td> <td>4. Novick</td> <td></td> <td></td> </tr> <tr> <td>Hales</td> <td>Hales</td> <td></td> <td></td> </tr> </table>	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:					YEAS	NAYS	1. Fritz	1. Fritz			2. Fish	2. Fish			3. Saltzman	3. Saltzman			4. Novick	4. Novick			Hales	Hales		
FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:																												
		YEAS	NAYS																										
1. Fritz	1. Fritz																												
2. Fish	2. Fish																												
3. Saltzman	3. Saltzman																												
4. Novick	4. Novick																												
Hales	Hales																												