

# EUGENE CITY COUNCIL

## AGENDA ITEM SUMMARY



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### Public Hearing: An Ordinance Concerning Establishment of a Tax on Marijuana and Adding Sections 3.630 through 3.646 to the Eugene Code, 1971

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Meeting Date: October 20, 2014  
Department: City Manager's Office  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 2  
Contact: Glenn Klein  
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#### **ISSUE STATEMENT**

At the November 2014 election, voters will be asked whether to pass Ballot Measure 91, the "Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act." The Eugene City Council is seeking public input on whether the council should adopt an ordinance that would impose local taxes on the sale of marijuana in the event that Measure 91 passes.

#### **BACKGROUND**

If Measure 91 passes this November, adults 21 or older will be allowed to recreationally use or grow marijuana (and make products in small amounts for non-commercial purposes). While Measure 91 is intended to regulate only recreational marijuana, the measure presents language that may impact local governments' ability to charge taxes or fees on recreational *and* medical marijuana.

Measure 91 authorizes commercial production, processing and retail subject to licensing by the Oregon Liquor Control Commission (OLCC). OLCC will begin accepting license applications on or before January 2016. Measure 91 is not intended to amend or alter the Oregon Medical Marijuana Act; regulation of medical marijuana will remain under Oregon Health Authority's (OHA) jurisdiction.

OLCC will levy a tax against producers of \$35 per ounce for flowers; \$10 per ounce for leaves; and \$5 per immature plant. The tax proceeds will be deposited into "Oregon Marijuana Account." The Marijuana Account will be separate from the State's General Fund. Tax proceeds will then be distributed as follows:

- 40 percent to Common School Fund
- 20 percent to State's Mental Health Alcoholism and Drug Services
- 15 percent to State Police
- 10 percent to cities - to assist local law enforcement in performing its duties under the Act. (Prior to 2017, the distributions will be made according to population; after 2017, the

- distributions will be based on population and number of licenses issued by OLCC.)
- 5 percent to OHA for alcohol and drug abuse prevention

There is nothing in **current** Oregon law that prohibits a local government from taxing or charging fees on marijuana. It is possible that courts will interpret Measure 91 – if voters approve it – to preempt a city or county from adopting or imposing taxes or fees on marijuana. Absent a court decision, there is no guarantee that a local tax or fee imposed prior to the passage of Measure 91 would survive beyond the effective date of the initiative. Alternatively, the Legislature may modify the language to allow taxes passed prior to the measure being grandfathered or repeal the prohibition on the local taxation of marijuana entirely.

Because the state of the law is unknown, cities throughout the state are considering whether or not to pass a local tax. Currently, Ashland, Medford, King City, Milwaukie, and Tigard have passed a local tax. The City of Springfield held a public hearing on the tax on October 13, 2014, and is scheduled to act on the Ordinance on October 20, 2014. Lane County’s marijuana tax ordinance is scheduled for a second reading and public hearing on October 21, 2014.

There are several potential tax structures. The City of Ashland imposed a gross receipts tax on the sale of medical marijuana, recreational marijuana (should it be legalized by Oregon voters in November) and marijuana-infused products. The ordinance imposes a five percent tax on medical marijuana and a 10 percent tax on recreational marijuana. Alternatively, the City may consider imposing a tax rate based on per ounce sale of flowers, leaves, and immature plants—like Measure 91’s tax structure.

The council could choose to impose no tax, impose a tax only with respect to recreational use, or impose a tax on the sale of marijuana for both recreational use and medical use. The council also could choose to impose the tax on the producer, the processor, the wholesaler and/or the retailer.

If the council chooses to adopt an ordinance, the council should act at its October 27 meeting to do so (in order to act before the November election). In order to be able to act on October 27, the council will need to give direction immediately following the public hearing on what should be taxed and how the tax should be structured.

## **COUNCIL OPTIONS**

No formal action is sought at this meeting; council action is scheduled for October 27, 2014.

However, if the council wants to pursue adoption of a tax, the council should give direction at the October 20 meeting so that a final ordinance can be prepared. Options include:

- (1) Don’t adopt any tax; adopt a tax on the sale for recreational use; or adopt a tax on the sale for both recreational and medical use.
- (2) Impose a tax on the sale to the consumer; impose a tax on the sale to the processor, wholesaler or retailer; or impose a sale on all of the above.
- (3) Establish a tax that is a percentage of the gross receipts of the seller; establish a tax similar to Measure 91’s structure (\$35 per ounce on all marijuana flowers; \$10 per ounce on all marijuana

leaves; and \$5 per immature marijuana plant); or establish a tax that is pegged to state (Measure 91) tax – for example, city tax equal to 50 percent of the rate imposed by the State.

**CITY MANAGER'S RECOMMENDATION**

The City Manager has no recommendation.

**SUGGESTED MOTION**

No motion is proposed for this work session. Staff will be available to assist councilors with crafting a motion should the council indicate a desire to proceed with adoption of an ordinance on October 27.

**ATTACHMENTS**

A. Proposed Ordinance

**FOR MORE INFORMATION**

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