



City of Oregon City

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Staff Report

File Number: 14-535

Agenda Date: 9/17/2014

Status: Agenda Ready

To: City Commission

Agenda #: 7c.

From: City Manager David Frasher

File Type: Ordinance

SUBJECT:

Ordinance for Introduction, No. 14-1014, an Ordinance Establishing a Tax on the Sale of Marijuana

RECOMMENDED ACTION (Motion):

The city attorney has prepared an ordinance establishing a tax on the sale of marijuana and marijuana-infused products for consideration. City staff recommends adoption of the ordinance.

BACKGROUND:

Oregon cities currently have the authority to tax the sale of marijuana and marijuana-infused products. If the City Commission desires to impose a tax on marijuana, time is limited to take action due to a potential adoption of Measure 91, providing for the control, regulation and taxation of recreational marijuana. Currently the cities of Ashland, Hillsboro, King City, Wilsonville, Milwaukie, Medford and Portland have considered taxation of marijuana. The ordinance that the Commission would consider is modeled after an ordinance considered by Ashland, Oregon. It imposes a gross receipts tax on the sale of medical marijuana, recreational marijuana (if it is legalized by Oregon voters in November) and marijuana-infused products. The ordinance imposes a lower tax rate on medical marijuana (5%) than would be imposed on recreational marijuana (10%). The ordinance applies to all state-licensed manufacturers, processors, wholesalers, and retailers of marijuana and medical marijuana, as well as all required to be licensed by the state. The ordinance allows the seller to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

Oregon voters legalized medical marijuana via initiative petition in 1999, after which medical marijuana dispensaries began operation. These dispensaries essentially served as intermediaries between marijuana growers and medical marijuana patients. While these dispensaries were legal, they were unregulated and the source of controversy in many communities. The 2013 Oregon Legislature passed HB 3460, which created a regulatory and licensing regimen for medical marijuana dispensaries. To date, there are 198 approved and 115 provisionally approved dispensaries in Oregon. Oregon City has placed a limitation on siting medical marijuana dispensaries that will be reconsidered before May, 2015.

Oregon Ballot Measure 91 has qualified for the November, 2014 ballot regarding whether or not to enact a state law "legalizing the recreational use of marijuana, based on regulation and taxation to be determined by the Oregon Liquor Control Commission." The measure is similar to a measure approved by Washington voters in 2012.

The ordinance presented for Commission consideration is a gross receipts tax on the sale of marijuana, medical marijuana and marijuana-infused products. A gross receipts tax is applied to the total gross taxable revenues of a business. It is similar to a sales tax except that it is levied on the seller rather than the purchaser. The seller is responsible for maintaining accurate records of its gross revenues from taxable goods and services and then remitting a percentage to the taxing entity. Many businesses that are subject to a gross receipts tax will show the tax on the bill of sale they present to the customer, but it is nonetheless the business that is responsible for paying it. A gross receipts tax is similar to a franchise fee, and has the administrative advantages to be easy to collect, and easy to audit.

While no provisions in current Oregon law prohibit the City from taxing marijuana, Measure 91 contains the following language:

SECTION 42. State has exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.

Because this language does not specifically repeal a local marijuana tax in effect at the time of the measure's passage, and because this language can be interpreted to read "No county or city of this state shall [after the effective date of this measure] impose any fee or tax..." it can be argued that this language does not pre-empt city taxation. Alternatively, the language can be read as "No county or city of this state shall [be allowed at any time to] impose any fee or tax..." Another provision of the Act provides:

SECTION 58. Marijuana laws supersede and repeal inconsistent charters and ordinances. Sections 3 to 70 of this Act, designed to operate uniformly throughout the state, shall be paramount and superior to and shall fully replace and supersede any and all municipal charter enactments or local ordinances inconsistent with it. Such charters and ordinances hereby are repealed.

As such, it is not at all clear whether a local marijuana tax may remain upon adoption of Measure 91 and it may be that the state may seek to challenge these collection efforts.

BUDGET IMPACT:

Amount:

FY(s): At this time, the fiscal impacts of such an ordinance are unknown since the statewide measure has not been considered by voters and the siting of medical marijuana dispensaries is unlikely to be known until 2015.

Funding Source: