

Council Communication

August 5, 2014, Business Meeting

An Ordinance Establishing a Tax on the Sale of Marijuana and Marijuana-infused Products in the City of Ashland

FROM:

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

SUMMARY

This is second reading of an ordinance imposing a tax on the retail sale of marijuana in Ashland. The ordinance imposes 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. As presented at first reading, the ordinance imposed a lower tax rate on medical marijuana (5%) than that imposed on recreational marijuana (10%). The Council requested that the ordinance be amended to state that the tax rate would be adopted by Council resolution and could be “up to” those amounts. The ordinance applies to all state-licensed retailers of marijuana and medical marijuana, as well as all those who are 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.

BACKGROUND AND POLICY IMPLICATIONS

Oregon voters legalized medical marijuana via initiative petition in 1999. Shortly thereafter, medical marijuana dispensaries began opening around the state. These dispensaries essentially served as a middle-man for marijuana growers and medical marijuana patients. While these dispensaries were at least arguably 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. There are two provisionally approved dispensaries in Ashland, although neither has yet opened for business. (“Provisionally approved” means the applicant has met all of the licensure requirements, but the Oregon Medical Marijuana Program has not yet approved the dispensary’s security system.)

In addition, an initiative petition has been submitted to the Secretary of State for a ballot measure that would legalize the sale of recreational marijuana in Oregon. This measure is likely to appear on the November ballot and 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 and, at its May 19, 2014, study session, the Council directed staff to create an ordinance for doing so. Council asked that the ordinance look at taxing both ends of the supply chain and also asked for an economic analysis of a tax on medical and/or recreational marijuana. That analysis is discussed in an attached memo.

The ordinance presented for Council 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. Ashland's food & beverage tax is a gross receipts tax. A gross receipts tax has the administrative advantages of ease of collection and ease of auditing.

Staff declined to present a taxation scenario in which growers and processors are also taxed for a number of reasons. First, under Oregon law, growers and grow sites must register with the state, but their locations and identities are confidential. We would have no way of identifying them in order to apply a tax. Next, staff has no experience with administering a value added tax, which is essentially what this would be, and is reluctant to even attempt to create the administrative structure for such a tax. Third, we have no models that we could adapt in order to create a value added tax. The State of Washington's new marijuana law provides for a 25% excise tax at each transaction point (producer to processor, processor to retailer and retailer to consumer; thus a value added tax), but at the time this ordinance was written, Washington had not adopted and published rules and procedures for administering the tax¹. Finally, all taxes – regardless of where they are assessed in the supply chain – are ultimately passed on to the consumer. Therefore, the gross receipts of a business would reflect all of the costs incurred along the supply chain and a gross receipts tax would capture tax revenue from each of those elements. How to disperse that tax liability within the supply chain would be left to the growers, processors and retailers, rather than to the City.

As stated above, there is nothing in current Oregon law that prohibits the City from taxing marijuana, but it should be noted that [the marijuana initiative likely to be considered](#) by the voters in November 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 would not pre-empt this taxation ordinance if it is adopted by the Council. 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..." As such, absent adjudication in a state court, there is no guarantee that a local tax imposed prior to passage of this initiative would survive beyond the effective date of the initiative, unless this language is modified by the Legislature.

This ordinance contains the following elements:

- Section 4.38.010 – Purpose. This states the purpose of the ordinance

¹ The City of Boulder, Colorado, licenses growers within its city limits and imposes an excise tax based on the weight of material sold. The licensure requirement gives Boulder the enforcement mechanism necessary to apply the tax, since those growers who do not comply lose their license. Ashland has no legal means by which to license growers.

- Section 4.38.020 – Definitions. Definitions are added to the municipal code for “Marijuana,” and “Seller.” Other definitions in this section already exist elsewhere in the code.
- Section 4.38.030 – Levy of Tax. This section imposes a 5% gross receipts tax on the sale of medical marijuana and a 10% gross receipts tax on the sale of recreational marijuana. The tax also applies to marijuana-infused products.
- Section 4.38.040 – Deductions. Allows sellers to deduct certain expenses from their gross receipts for purposes of calculating taxable revenues.
- Section 4.38.050 – Seller Responsible for Payment of Tax. Establishes seller responsibility and deadlines for remitting the tax to the City. Allows the seller to retain 5% of total tax to cover the cost of administration and remittance.
- Section 4.38.060 – Penalties and Interest. Establishes late payment penalties and penalties for fraud.
- Section 4.38.070 – Failure to Report and Remit Tax. Gives the Finance Director the authority to determine that a seller is delinquent and to give notice.
- Section 4.38.080 – Appeal. Gives a seller the right to appeal the determination of the Finance Director.
- Section 4.38.090 – Refunds. Allows a seller to submit evidence of overpayment and to request a refund.
- Section 4.38.100 – Action to Collect. Makes anyone who owes the City money under this ordinance liable to an action brought by the City for recovery of amounts owed.
- Section 4.38.110 – Violation Infractions. This section makes violations of this ordinance punishable as set forth in other existing AMC provisions.
- Section 4.38.120 – Confidentiality. City agrees to treat information provided to it by sellers as confidential to the extent permitted by law.
- Section 4.38.130 – Audit of Books, Records or Persons. Gives the City the right to audit a seller’s records and requires a seller to make all books, invoices, accounts and other records available to the City.
- Section 4.38.140 – Forms and Regulations. Allows the Finance Director to prescribe the forms on which returns are made and other reports are supplied.

STAFF RECOMMENDATION AND REQUESTED ACTION

Staff recommends approval of second reading by title only of an Ordinance Establishing a Tax on the Sale of Marijuana and Marijuana-infused Products in the City of Ashland.

SUGGESTED MOTION

I move approval of an ordinance titled, “An Ordinance Establishing a Tax on the Sale of Marijuana and Marijuana-infused Products in the City of Ashland”

ATTACHMENTS

Ordinance establishing tax

Memo to Council: Economic Analysis

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING A TAX ON THE
SALE OF MARIJUANA AND MARIJUANA-INFUSED
PRODUCTS IN THE CITY OF ASHLAND**

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **underlined**.

WHEREAS, Article 2, Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes and common law of the United States and this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the City desires to tax the sale or transfer of marijuana and marijuana-infused products within the City.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Title 4 Revenue and Finance of the Ashland Municipal Code hereby adds a new Chapter 4.38, establishing a tax on the sale of marijuana and marijuana-infused products, as follows:

SECTION 4.38.010 Purpose.

For the purposes of this Chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Ashland is exercising a taxable privilege. The purpose of this Chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

SECTION 4.38.020 Definitions.

When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter shall have the following meanings:

- A. "Director" means the Director of Finance for the City of Ashland or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
- 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 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 of Oregon 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. "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.
- H. "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.**
- I. "Seller" means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.
- J. "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 this chapter.
- K. "Taxpayer" means any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

SECTION 4.38.030 Levy of Tax.

- A. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter.
- B. The amount of tax levied ~~is~~ **shall be established by a City Council resolution** as follows:
 - 1) ~~Up to f~~**Up to f**ive percent (5%) of the gross sale amount paid to the seller by a registry identification cardholder.
 - 2) ~~Up to t~~**Up to t**en 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.

SECTION 4.38.040 Deductions.

The following deductions shall be allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any purchaser;
- B. Any adjustments in sales which 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.

SECTION 4.38.050 Seller Responsible For Payment Of Tax.

- A. Every seller shall, 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 City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. 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 insure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
- B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. 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. Non-designated payments shall be applied 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. 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 may establish shorter reporting periods for any seller if the Director deems it necessary in order to insure collection of the tax. 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 shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.
- D. Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.
- E. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.

SECTION 4.38.060 Penalties And Interest.

- A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. Any seller who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent (10%) of the 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 this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A and B of this section.
- D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.
- F. Notwithstanding subsection 4.34.020.C, all sums collected pursuant to the penalty provisions in paragraphs A and C of this section shall be distributed to the City of Ashland Central Service Fund to offset the costs of auditing and enforcement of this tax.
- G. Waiver of Penalties. Penalties and interest for certain late tax payments may be waived pursuant to AMC 2.28.045D.

SECTION 4.38.070 Failure To Report and Remit Tax –Determination of Tax by Director.

If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in section 4.34.080. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

SECTION 4.38.080 Appeal.

Any seller aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal pursuant to the Administrative Appeals Process in AMC 2.30.020, except that the appeal shall be filed within 30 days of the serving or mailing of the determination of tax due. The hearings officer shall 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 findings of the hearings officer shall be final and conclusive, and shall be served upon the appellant in the manner

prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

SECTION 4.38.090. Refunds.

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify Director of claimant's choice no later than 15 days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the 15 day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.
- C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

SECTION 4.38.100 Actions to Collect.

Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Ashland for the recovery of such amount. In lieu of filing an action for the recovery, the City of Ashland, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Ashland has complied with the provisions set forth in ORS 697.105, in the event 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, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

SECTION 4.38.110 Violation Infractions.

- A. All violations of this chapter are punishable as set forth in AMC 1.08.020. It is a violation of this chapter 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. Violation of subsections 1, 2, 3, 4 and 6 shall be considered a Class I violation. Filing a false or fraudulent return shall be considered a Class C misdemeanor, subject to AMC 1.08. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

SECTION 4.38.120 Confidentiality.

Except as otherwise required by law, it shall be 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 this chapter. Nothing in this section shall prohibit:

- 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 amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; 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 the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

SECTION 4.38.130 Audit of Books, Records or Persons.

The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, 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. All books, invoices, accounts and other records shall 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 Ashland Municipal 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.

SECTION 4.38.140 Forms And Regulations.

- A. The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of

said medical marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- 1) A form of report on sales and purchases to be supplied to all vendors;
- 2) The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this chapter.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the ____ day of _____, 2014, and duly PASSED and ADOPTED this ____ day of _____, 2014.

Barbara M. Christensen, City Recorder

SIGNED and APPROVED this ____ day of _____, 2014.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney

Memo

DATE: June 25, 2014
TO: Mayor and City Council
FROM: Dave Kanner, city administrator
RE: Economic analysis of a marijuana tax

At its May 19, 2014, study session, the Council requested an economic analysis of a tax on marijuana in Ashland. As I and other staff began researching this, we almost immediately ran into an insurmountable hurdle. That is, there is virtually no reliable or verifiable baseline data upon which to base assumptions and projections. The state of Washington has not yet begun retail sales of marijuana and Colorado's experience with retail sales of recreational marijuana is too new to have compiled the kind of data that could be useful in this exercise. Staff did contact a number of Colorado cities that began taxing medical marijuana in 2010 and has incorporated some of that information in this analysis. However, nearly all of what's presented here is guesswork. The amount of revenue that could be generated and the number of people who might be impacted is unknowable.

To do an economic analysis such as this, we must begin with an understanding of the price of the commodity in question, the potential market demand, the different forms in which the commodity is sold and government or market pressures that can influence each of these. A discussion of each follows:

1. Price.

Medical marijuana is unregulated in terms of price. Under Oregon law, dispensaries (or a grower selling directly to a medical marijuana cardholder) are allowed only to recover the cost of the marijuana being sold. However, those costs are unregulated and as a result the price of marijuana can vary widely. According to one former dispensary owner in Ashland, the price of an ounce of medical marijuana can range from \$130 to \$420. Variations in price relate to the quality of the marijuana being sold (whether it contains leaves and stems or is more finely processed marijuana "buds"), whether it is grown indoors or outdoors, the overhead of the dispensary and the time of year during which it is sold. According to the web site "priceofweed.com," the average retail price of high quality medical marijuana in Oregon is currently \$209.65 an ounce.

However, medical marijuana users will usually purchase quantities smaller than an ounce. An OMMMP cardholder will typically purchase four grams of marijuana (one-seventh of an ounce) for roughly \$45. How long this quantity will last depends on the medical condition for which it is being purchased. For instance, a patient with stage 4 Parkinson's Disease will, according to the



former dispensary owner interviewed for this analysis, use that much marijuana in just a couple of days. Another patient with a less serious condition might use that much in two weeks. According to the Oregon Health Authority's Office of Medical Marijuana Programs (OMMP), the most common condition for which medical marijuana is prescribed is "severe pain." The second most common condition is "Persistent muscle spasms, including but not limited to those caused by multiple sclerosis." Patients may be suffering from more than one diagnosed qualifying medical condition. We could not find and are not aware of any medical marijuana user demographic profiles or data on how much money is spent by medical marijuana patients with different kinds of conditions.

What's more, many medical marijuana cardholders do not purchase marijuana per se but instead purchase oils, tinctures or marijuana-infused edibles. The variation in price for these items is even greater than the variation in price for marijuana. Again, we could not find and are not aware of any medical marijuana user demographic profiles or data on who uses which products or in what quantity or how much money is spent by different kinds of medical marijuana patients.

For purposes of this analysis, we assume that, on average, a medical marijuana patient spends \$45 per week (\$2,340 per year) for marijuana or some other marijuana derivative or marijuana-infused product. It is further assumed that these prices and purchasing patterns will carry through to a recreational marijuana market, should it be legalized. Therefore, it is assumed that a typical recreational marijuana user would also spend an average of \$2,340 per year on marijuana.

2. Market Demand

There is no way of reliably determining what the potential number of customers for either medical marijuana or recreational marijuana might be in Ashland.

According to the OMMP, there are 6,882 OMMP cardholders in Jackson County. There is no way of knowing how many of them are growing their own marijuana, how many are paying a grower directly and how many are purchasing marijuana from a dispensary. There is also no way of accurately predicting how many of them who are not currently doing so would purchase from a dispensary if one was readily available to them.

Given the efforts of other cities in the Rogue Valley to prohibit dispensaries, it can reasonably be assumed that a dispensary or dispensaries in Ashland would attract a relatively large portion of the available market. Again, however, there's no way of accurately predicting what that number would actually be. For purposes of this analysis, we assume that dispensaries in Ashland would serve a client base numbering 1,000.

As regards recreational marijuana, according to a Pew Research Center Study published in 2013, 48% of all American adults have tried marijuana and 12% had used it in the prior year. If 12% of all Jackson County residents age 21 or older are marijuana users, that would be 18,120 people. Subtracting from that number the 6,882 OMMP card holders, we can guess that there would be 11,238 potential recreational marijuana customers in Jackson County alone. Given the measures that many of our neighboring cities have gone to in order to prevent marijuana sales in their communities, it may be fair to assume that a retail recreational marijuana outlet in Ashland



would attract a significant portion of that market. Again, it's impossible to know how many of those recreational users would grow their own marijuana or continue to purchase on the black market. We also have no way of knowing if Ashland would attract "marijuana tourists" from California and Nevada. ([Marijuana tourism has boomed in Colorado](#) since that state began legal retail sales of recreational marijuana.) For purposes of this analysis, we disregard the tourism aspect and assume (perhaps too generously) that one-third of the potential customer base in Jackson County would purchase its marijuana at Ashland retail outlets, thus creating a customer base of 3,709.

3. Colorado's local government taxation experience

Little on-the-ground experience is available to inform the discussion of the economics of marijuana taxation. In Oregon, [Gold Hill began taxing medical marijuana earlier this year](#), imposing a 5% gross receipts tax on medical marijuana. That tax became effective June 2, 2014, and the city has not yet collected any revenue from the tax.

Eleven Colorado cities have ordinances in place that tax sales of medical marijuana, however, few of the eleven actually have medical marijuana dispensaries. As such, there is very little experience to be drawn upon from Colorado. Fifteen Colorado cities have adopted ordinances that tax the retail sale of recreational marijuana. Again, the majority of those cities do not have any retail marijuana outlets. There is a statewide tax on medical marijuana sales that is shared with counties. Through the second quarter of FY '14, that sales tax had generated about \$6 million or \$1.00 per capita. ([Click here](#) to link to the Colorado Department Revenue's Marijuana Tax Data page. Note that this page does not provide information about local taxes or individual cities' tax collections. [Inc. Magazine](#) and [Forbes Magazine](#) have also run recent articles on marijuana-related tax collections in Colorado, although neither magazine offers any statistics related to local sales taxes.)

The City of Boulder, CO (pop. 101,808), has collected \$335,697 in FY '14 medical marijuana sales taxes through April. Boulder began collecting taxes on the retail sale of recreational marijuana in February 2014 and through April had collected just under \$254,000. Boulder imposes a sales tax of 3.56% on medical marijuana and 7.06% on recreational marijuana.

The City of Denver, CO (pop. 634,265), collected \$1,222,405 from its 7.12% sales tax on recreational marijuana in January and February of 2014 (the only months for which statistics are available). The City collected \$1,042,099 from its 3.62% sales tax on medical marijuana during that same time period. There are 216 medical marijuana dispensary licensees and 89 recreational marijuana retail licensees, with considerable overlap between the two groups. It is unknown how many of these licensees are actually operating.

4. Potential revenues and impacts

As explained above, it is virtually impossible to reliably predict price, demand, customer counts, market elasticity, competitive pressures, governmental actions or any of the other factors that could influence this kind of analysis. However, using the assumptions described above and



further assuming a gross receipts tax of 5% on medical marijuana and 10% on recreational marijuana as proposed, we can derive the following:

	Customers	Avg. Ann'l Expense	Individual cost: Tax @ 5%	Gross Receipts	Tax due @ 5%*
Medical marijuana	1,000	\$2,340	\$117	\$2,340,000	\$111,150
			Individual cost: Tax @ 10%		Tax due @ 10%
Recreational marijuana	3,709	\$2,340	\$234	\$8,679,060	\$824,511
TOTAL NET TAX REVENUE:					\$935,661

*Tax due figures are net of seller retainage.

Again, because of the many, many variables that we cannot reliably predict, actual amounts could differ significantly from those shown in this table.

