

**GLADSTONE CITY COUNCIL  
WORK SESSION /ADJOURNED MEETING  
CITY HALL COUNCIL CHAMBERS  
September 23, 2014**

**WORK SESSION**

**7:30 p.m. CALL TO ORDER  
ROLL CALL  
FLAG SALUTE**

- 1. Coffee with a Councilor**

**ADJOURNED MEETING**

**BUSINESS FROM THE AUDIENCE**

Visitors: Presentations not scheduled on the Agenda are limited to five (5) minutes. Longer presentations should be submitted to the Assistant City Administrator two weeks prior to the City Council meeting.

**REGULAR AGENDA**

- 2. Ordinance 1453 - An Ordinance Establishing a Tax On The Sale of Marijuana and Marijuana-Infused Products in the City of Gladstone and Adding a New Chapter 5.65 to the Gladstone Municipal Code**

**BUSINESS FROM THE COUNCIL**

**ADJOURN**



# **WORK SESSION**



# City of Gladstone Staff Report

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Report Date:  
Meeting Date:  
To: City Council  
From: Councilor Sieckmann

## AGENDA ITEM

"Coffee With A Councilor". One on one or small group with a Counselor and/or Mayor

## History/Background

There is a concern the council has not been in touch with the general public enough. In my 13 years on the Planning Commission, I have seen numerous times people in the audience that looked as though they had something to say, but they never came to the podium to be recognized. Some of this could be from lack of public speaking experience, a feeling of intimidation from the body they are before, or concern people in the audience may not like what they say. Any number of reasons in a large formal group atmosphere could make someone hesitant to speak.

From my understanding, many people come to City Hall to express concerns on many different topics. All of these questions/concerns are fielded by our city staff. I believe some if not many of these questions/concerns could be directed to our elected officials taking some of the load off of staff

## Proposal

The proposed meetings would be on the second Monday of the month 10 – 11am and on the fourth Monday of the month 7 - 8pm. Meetings that fall on a holiday would be canceled. The meetings would be held at the library. The city would supply coffee, juice and cookies. This would be a neutral location where people could wonder around and feel comfortable. If people had children they could use the library. This is in no way meant to replace public hearings or the decision making process. It is an informal gathering to stay connected with our community.

### Pros

- It will keep the council informed of community thoughts;
- May reduce work load on staff;
- Will allow time for the community to vent to elected officials;

### Cons

- There may be individuals that may just want to complain;
- Councilors may set there and no one comes;
- Some individuals may attempt to monopolize the time;
- Maybe no one shows up;

This project could be implemented at any time. It would be best to start within 45 days of council approval. Except that could put us right into the holiday months. This project should not require any outside professional services, or equipment. This will require minimal staff time depending on the participation of the council. There is the issue of rearranging chairs before and after the meeting, making coffee and juice, purchasing and displaying cookies and cleanup after the meeting. This could all be done by the councilor, if they so choose. If it is not I would assume there to be no more than an hour total time per meeting and it would not require a high ranking staff member for these duties. This project should have legal review and possible input on any do's and don'ts, for the councilors choosing to be involved. The assumption is this would be a onetime review and minimal if required at all

## Options

City Hall was considered as a location. It is believed the library may be felt as a more mind easing location as well as options for people with children.

The Senior Center was considered but may not have things to occupy children.

Different days and time were looked at. One time per month in the evening to start would be adequate for the amount of people expected in the beginning. The issue with that is not everyone works 9 – 5 so evenings would eliminate some people. Not all local business owners live in the area and it may be more convenient for them to meet during the day. As far as the day of the week, the second and fourth Monday was chosen as councilors need to be in available for our Tuesday council meetings on those weeks, which obviously rules out Tuesdays nights. Wednesday nights are known for church activities, Cub Scouts etc. Friday is known for high school sports, unwinding from a long week and people getting out of town for the weekend. Thursdays could be an option but I prefer not. I am willing to start this project and do not expect other councilors to set 2 hours a month hoping people come. I am willing, but when I have a chance to get out of town for a weekend I leave on Thursdays. Saturdays and Sundays may work but most likely not the best.

It was considered moving the meeting around to different places in town. This could be problematic as people get confused as to the location this time. I think date time and location must stay consistent for this project to be a success

## Cost Impact

Cost of this project should be minimal. My assumptions would be a one time, less than an hour of city attorney's time for review and any do's and don'ts for the councilors that participate. Prep, setup, and teardown should be less than 2 hours per month of staff time if the councilor does not take care of it. The intended or unintended cost of this program could bring up issues that we were unaware of that need to be addressed.

## Recommended Staff Action

I request this become a work session item for discussion. My recommendation is to accept the proposal above. I have outlined in the options why those options are not preferred. This will be a new program and if anyone has ideas to make this program better it is open to discussion. Any and all of this proposal is up for discussion. This program may need to be adjusted as it moves forward and I think that can be expected. I would request if this program, any similar or variation should be approved, it be allowed to run for 6 consecutive months, making adjustments along the way as needed for improvement, so it has an opportunity for success. After 1 year this program should be evaluated for value to the community compared to the cost.

Implementation of this program should be fairly simple, schedule on the library calendar, buy juice, cookies and coffee. Advertise the program, setup the room and wait for people to show up. January 12 is the target date for the first meeting.

The benefit of this program is pretty well outlined above. It will be good for our city. No negative effect will be realized if we continue with the status quo.

Department Head

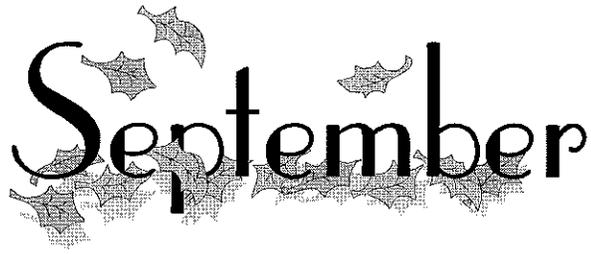
Signature *Kim Sieckmann* City councilor

Date 09-12-14

City Administrator

Signature

Date



September

**REGULAR AGENDA**



**MEMORANDUM**

TO: Honorable Mayor and Gladstone City Council  
FROM: Shane E. Abma, Office of the City Attorney  
SUBJECT: Marijuana Taxation Ordinance  
DATE: September 18, 2014

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**Ballot Measure 91 – Recreational Marijuana Legalization**

On November 4, 2014, Oregon voters will consider a ballot measure to legalize the recreational use of marijuana and allow for the retail sale of marijuana and marijuana-infused products. (Measure 91). The Measure creates statutory authority for the licensing of marijuana producers, processors, wholesalers and retailers.

**State Taxation of Marijuana if Legalized; Shared Revenue**

Measure 91, if passed, contains a provision authorizing the State to tax the “producers” of marijuana. The tax is based on the weight of the marijuana product and not on its retail value. The Measure also allows for a 10% revenue share with cities of those tax monies. Initially the revenue share will be based on city population, but after July 1, 2017, it will be based on the number of state licenses issued that are located within a city’s jurisdiction as a proportion of all state licenses issued.

**Prohibition on Local Taxation of Marijuana**

Measure 91 contains a provision that preempts local governing bodies from taxing marijuana or marijuana products:

*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.*

Measure 91 also contains a section that purports to repeal and supersede any local ordinances:

*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*

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*all municipal charter enactments or local ordinances inconsistent with it. Such charters and ordinances hereby are repealed.*

### **Legal Arguments for Allowing Local Taxation**

There is no current prohibition on a city's ability to tax marijuana. Despite the preemptive language in Measure 91, there is an argument that so long as a city had a lawful tax in effect at the time of Measure 91's passage (if it passes), that tax would be "grandfathered" in and allowed to remain. Further, it is possible that if Measure 91 passes, the legislature may either remove the prohibition on local taxation or amend the Measure to allow those cities that had lawful taxes in place prior to the Measure's passage to continue taxing marijuana.

Further, section 58's wording does not track current case law and interpretation of how a state statute can preempt a local law (this is perhaps not surprising given that this is a citizen initiative and was not authored by state officials). Generally a state law does not "supersede" a city charter or local ordinance, and even when the state can lawfully preempt a local law, the state does not technically "repeal" that local law. Thus, the language regarding preemption of local laws is not as clear as it could be, and it may be subject to legal attack.

Several local governments in the metro area (and beyond) have either passed or are currently considering adopting a local marijuana tax ordinance. These include Hillsboro, Portland, Cornelius, Oregon City, Tigard, Happy Valley, Forest Grove and Ashland among others.

### **Summary of Proposed Marijuana Tax Ordinance**

The proposed ordinance is largely based on that passed by Ashland, which is itself based on a similar ordinance from Colorado. The ordinance proposes a 10% gross receipts tax on the "seller" of marijuana and marijuana-infused products, and a 0% tax on medical marijuana sales. Note that this is not a sales tax; it is a gross receipts tax on the seller.

The ordinance requires quarterly payments of the tax to the city, it provides for penalties and interest for late payments, it includes an appeals process to the City Council and generally outlines the procedures and timing for paying the tax.

### **Timing of Ordinance Passage**

In order to make the best legal argument that a local tax should be "grandfathered in," it should be effective as of November 4, 2014 (election day). Because tax measures constitutionally cannot take effect less than 30 days from adoption, this means that Gladstone must enact the ordinance no later than October 4 in order for it to be effective on November 4. Even if it becomes effective prior to November 4, there is no guarantee that a court will not find that it is preempted by Measure 91.

**ORDINANCE NO. 1453**

**AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF GLADSTONE AND ADDING A NEW CHAPTER 5.65**

**WHEREAS**, the City of Gladstone is an Oregon home-rule municipal corporation with a City Charter that grants it all the powers and authority that the constitution, statutes and common law of the United States and this State expressly or impliedly grant or allow as though each such powers were specifically enumerated; and

**WHEREAS**, that authority and power includes the authority to impose a tax on the sale of marijuana and marijuana-infused products sold within the City; and

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

**WHEREAS**, [insert any more reasons here]

**NOW, THEREFORE, THE CITY OF GLADSTONE ORDAINS AS FOLLOWS:**

**Section 1.** The City establishes a tax on the sale of marijuana and marijuana-infused products in the City of Gladstone by amending Gladstone Municipal Code to add a new Chapter 5.65, titled "Marijuana Tax," as set forth in the attached Exhibit A. The text of Exhibit A is incorporated by reference.

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

**Section 3.** This ordinance takes effect 30 days from its adoption by the Council.

Adopted by the Common Council for the City of Gladstone this \_\_\_\_ day of September, 2014.

ATTEST:

\_\_\_\_\_  
Wade Byers, Mayor

\_\_\_\_\_  
Jolene Morishita, Assistant City Administrator

**ORDINACNE 1453**  
**EXHIBIT "A"**  
**CITY OF GLADSTONE**  
**MARIJUANA TAX ORDINANCE**

**5.65.010 Purpose.**

For the purposes of this chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Gladstone 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.

**5.65.020 Definitions.**

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

“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.

“Manager” means the City Manager of the City of Gladstone.

“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.

“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.

“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.

“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.

“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.

“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.

“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.

“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.

“Taxpayer” means any person obligated to account to the City Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

#### **5.65.030 Levy of Tax.**

- A. Every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter is subject to and must pay a tax for exercising that privilege. This tax is in addition to any other taxes or fees required by the City.
- B. The amount of tax levied is as follows:
  1. Zero percent 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 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.

#### **5.65.040 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.

#### **5.65.050 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 Manager, 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 Manager may establish shorter reporting periods for any seller if the seller or Manager deems it necessary in order to ensure collection of the tax. The Manager may require further information in the return relevant to payment of the tax. A return is not considered filed until it is actually received by the Manager.
- B. At the time the return is filed, the seller must remit to the Manager the full amount of the tax collected. Payments received by the Manager 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 Manager, 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 Manager may order such a change. The Manager may establish shorter reporting periods for any seller if the Manager deems it necessary in order to ensure collection of the tax. The Manager 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 this chapter for the City's account until the seller makes payment to the Manager. A separate trust bank account is not required in order to comply with this provision.
- E. Every seller required to remit the tax imposed by this chapter is entitled to retain five percent of all taxes due to the City to defray the costs of bookkeeping and remittance.
- F. Every seller must keep and preserve in an accounting format established by the Manager records of all sales made by the seller and such other books or accounts as the Manager may require. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The Manager has the right to inspect all such records at all reasonable times.

**5.65.060 Penalties and Interest.**

- A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required must pay a penalty of 10 percent of the 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 60 days following the date on which the remittance first became delinquent, the seller must pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- C. If the Manager determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax will 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 must pay interest at the rate one percent 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 any interest as accrues under the provisions of this section, becomes a part of the tax required to be paid.
- F. All sums collected pursuant to the penalty provisions in paragraphs A through C of this section will be distributed to the City's General Fund.
- G. Waiver of Penalties. Penalties for late tax payments may be waived or reduced if approved by City Council pursuant to City Council policy. Nothing in this subsection requires the City to reduce or waive penalties.

**5.65.070 Failure To Report and Remit Tax – Determination of Tax by Manager.**

- A. If any seller fails to make any report of the tax required by this chapter within the time provided in this chapter, the Manager will proceed to obtain facts and information on which to base the estimate of tax due. As soon as the Manager procures such facts and information upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Manager will determine and assess against such seller the tax, interest and penalties provided for by this chapter.
- B. If the Manager makes a determination as outlined in subsection A, the Manager 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 section 5.65.080. If no appeal is timely filed, the Manager's determination is final and the amount assessed is immediately due and payable.

**5.65.080 Appeal.**

- A. Any seller aggrieved by any decision of the Manager with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the City Council.
- B. The seller must file the written notice of appeal within 10 days of the City's serving or mailing of the determination of tax due.
- C. The Council's decision is final subject only to judicial review pursuant to ORS 34.010 et seq.
- D. The City will serve the findings upon the appellant in the same manner as that used to give notice for a tax determination in section 5.65.070. Any amount found to be due is immediately due and payable upon the service of notice.

**5.65.090. Refunds.**

- A. The City may refund 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 refund under this subsection unless the seller provides to the Manager a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the Manager. The seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.
- C. The Manager has 20 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 Manager 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 Manager determines the claim is valid, the claimant may either claim a refund or 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. The claimant must notify the Manager of the claimant's choice no later than 15 days following the date the

Manager mailed the determination and the claimant must do so in a manner prescribed by the Manager.

- E. If the claimant does not notify the Manager of claimant's choice within the 15-day period and the claimant is still in business, the City will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business, the City will mail a refund check to claimant at the address provided in the claim form.
- F. The City will not pay a refund unless the claimant establishes by written records the right to a refund and the Manager acknowledges the claim's validity.

#### **5.65.100 Actions to Collect.**

Any tax required to be paid by any seller under the provisions of this chapter 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 this chapter is liable to an action brought in the name of the City of Gladstone 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, not to exceed the greater of \$50.00 or 50 percent of the outstanding tax, penalties and interest owing.

#### **5.65.110 Violation Infractions.**

- A. In addition to the penalties provided in section 5.65.060, a violation of this chapter is punishable as set forth in GMC Chapter 1.08. 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 Manager;
  - 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 this section 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.

#### **5.65.120 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 this chapter. Nothing in this section 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 Manager or an appeal from the Manager 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 when the tax exceeds \$5,000. The City Council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

**5.65.130 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 Manager or an authorized agent of the Manager. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Manager may immediately seek a subpoena from the Gladstone 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.

**5.65.140 Forms And Regulations.**

- A. The Manager is authorized to prescribe forms and promulgate rules 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 vendors;
  - 2. The records that sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by this chapter.



