



Legislation Text

File #: 19-1250, **Version:** 1

Ad Hoc Cannabis Committee, in coordination with the Chief Administrative Office, recommending the Board:

- 1) Adopt and authorize the Chair to sign Resolution **140-2019** establishing the general tax rates for the unincorporated county for voter-approved general taxes for different commercial cannabis uses; and
- 2) Provide staff direction as to which department the commercial cannabis program, medicinal use personal cannabis program, and cannabis civil enforcement program should reside. (Est. Time: 45 Min.)

FUNDING: Commercial Cannabis Taxes - General Fund.

DISCUSSION / BACKGROUND

Proposed Taxes Rates

- Outdoor cultivation - \$2 per square foot
- Mixed light cultivation - \$4 per square foot
- Indoor cultivation - \$7 per square foot
- Nurseries - 4% on gross receipts
- Manufacturing - Level 1 - 2.5% on gross receipts
- Manufacturing - Level 2 - 0.0% on gross receipts
- Retail - 4% on gross receipts
- Distributor - 2% on gross receipts
- Testing Laboratories - 0.5% on gross receipts

The cultivation, manufacturing, retail, and distribution rates were conservative estimates made by HdL. In addition, these rates fall within the median for the benchmark counties and cities or the other commercial cannabis jurisdictions in the Sacramento area. For nurseries and testing labs, HdL did not give estimated rates. The recommended rate for nurseries falls within the median of jurisdictions in the Sacramento area. The rate for testing laboratories is approximately 1.75% to 2% under the median for the benchmark counties and cities. The recommendation is being made due to different jurisdictions expressing difficulties in getting a testing laboratory to locate near them. This is a key part of the commercial cannabis process to make sure the product has been tested so the consumer knows the contents. The HdL estimated rate for distributors is a little less than the median for benchmark counties and cities (e.g. 0.25 % to 0.5%). Counties have said that it has been hard to have distributors locate in their jurisdictions.

Measure N set a range of tax rates within which the Board of Supervisors may set the rate by ordinance or resolution. This allows for flexibility and the Board of Supervisors to consider the market and funding needs for the County and make adjustments as circumstances change. Taxes will be administered by the County Treasurer-Tax Collector. Measure N established the procedures for calculation, collection, and enforcement, including imposition of liens for unpaid taxes.

If the cannabis tax is challenged or invalidated for any reason, the ordinances authorizing specific

commercial cannabis activities would automatically expire.

Future Location of the Program

The Planning and Building Department, as part of Measure N, is the lead department for the commercial cannabis process. Since the measures were passed there has been significant change within the department including new programs and leadership. Before the start of the application process, a discussion on where the commercial cannabis program, outdoor cultivation of personal cannabis program for medicinal use, and civil enforcement program reside should be discussed. The following are different options on where the program could be located with the positive and negative aspects of the selected department:

- 1) Planning and Building - Currently, as part of Measure N the Planning and Building Department is the lead department for the commercial cannabis process. The benefit of the program remaining with the Planning and Building Department is that many of the cannabis activities could be located in one department including enforcement. In addition, the Planning and Building Department are experts in the development process and coordinate with other departments in regards to the development process. The disadvantage of the program remaining in Planning and Building is that the language in the ordinance was created before the department added the Economic Development Program, improved Code Enforcement Program, Vacation Home Rental Program, housing update with RENA update and other new initiatives. In addition, the department has new leadership that has not been involved with the cannabis process.
- 2) Chief Administrative Office - The benefit of the program being located in the Chief Administrative Office is that the department coordinates activities in the County on a regular basis. In addition, the Chief Administrative Office has been coordinating the different cannabis topics for over three years. The disadvantage is that the mission of the Chief Administrative Office is to manage the County's budget and objectively administer all county programs. Increasing program responsibility may impact the ability of the Chief Administrative Office to effectively meet the fundamental functions of the office.
- 3) Agriculture/Weights and Measures - The benefit of the program being located in the Agriculture/Weights and Measures Department is the department will be working closely on the cultivation of cannabis in the County. In addition, the department will be making trips to other cannabis business types due to the weights and measures program. The disadvantage is the Agriculture/Weights and Measures Department does not coordinate operations between departments as often as Planning and Building or the Chief Administrative Office. In addition, the department does not have the staffing or expertise on many of the cannabis topics outside of cultivation.
- 4) New Department - The benefit of a new department taking over the operations of the program is that the department can focus on all the cannabis topics, which will be important due to their ever-changing nature. In addition, a new department could look to take other programs that have a community focus and coordinate with other County departments. The disadvantage is the creation of another department which could create a sense of government growing. In addition, it would take

time for the new department to get all of its administrative procedures organized.

Within 30 days staff will bring a staffing recommendation to assist in the intake and evaluation of commercial cannabis applications including but not limited to a planner position, code enforcement officer, and administrative support. These positions would not be hired until needed. The planner position will coordinate the commercial cannabis functions with the different departments involved in the process. Over the next year, the program will be evolving and staff will update the Board on workload and staffing needs for the departments involved in the process.

History of Cannabis Public Meetings in El Dorado County

On July 17, 2018, the El Dorado County Board of Supervisors placed five ballot measures on the ballot for the November 2018 election, which enabled voters to decide whether to allow different aspects of commercial cannabis and its taxation. The ballot measures named Measure N (taxation, permitting and enforcement of commercial cannabis), Measure P (commercial outdoor and mixed-light cultivation of cannabis for medicinal use), Measure Q (commercial outdoor and mixed-light cultivation of cannabis for recreational adult use), Measure R (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for medicinal use), and Measure S (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for recreational adult use) were passed by the voters.

During a presentation, in December of 2018, outlining next steps and an estimated timeline for the development of the County's Commercial Cannabis Program, the Board of Supervisors expressed interest in creating a new ad hoc committee on Commercial Cannabis. The new ad hoc committee would work on the new ordinances for commercial cannabis manufacturing, nurseries, and testing laboratories. In addition, it would work with staff on the creation of an administrative process for commercial cannabis.

As stated in a presentation to the Board of Supervisors on July 17, 2018, if any of the ballot measures passed, the County would need time and resources to develop a Commercial Cannabis Program, including all application materials, procedures, tax rates, fee rates, etc. Measure N gives the County six months to develop the necessary program. Applications must be available at the end of that six months unless the Board of Supervisors grants an extension of time to have permits available, or any other aspect of implementation based on a finding of unforeseen circumstances, changes in state or federal law, lack of sufficient funding, or other reason necessitating an extension. On June 25, 2019, the Board voted to extend the time for applications to be available to September 30, 2019.

In September 2015, the California State Legislature enacted the Medical Marijuana Regulation and Safety Act (MMRSA), which was signed into law in October 2015. MMRSA was a package of three separate bills (AB 243, AB 266, and SB 643) that established a comprehensive dual state licensing framework for the commercial cultivation, manufacture, retail, sale, transport, distribution, delivery, testing, and taxation of medical cannabis in California. The County did not conduct meetings regarding medical marijuana in 2015 due to the major statutory overhauls undertaken by the State of California, which resulted in MMRSA.

The El Dorado County Board of Supervisors created the ad hoc medical marijuana advisory

committee at its March 15, 2016 special meeting regarding medical marijuana, due to the October 2015 passage of and February 2016 amendments to MMRSA. During that special meeting, the Board of Supervisors received an overview on the current medical marijuana laws and reports from County departments, stakeholder groups and the public on how medical marijuana policy decisions could affect them. At the conclusion of the meeting, the Board of Supervisors created the ad hoc Medical Marijuana Advisory Committee to collect more information on different medical marijuana topics (e.g. cultivation, dispensaries, compliance, commercial activities, etc.).

The Medical Marijuana Advisory Committee met on nine occasions: May 2, 2016 meeting was on the structure of the future meetings; June 20, 2016 meeting was on cultivation; June 27, 2016 meeting was on niche medical marijuana businesses (e.g. dispensaries, nurseries, etc.); August 22, 2016 meeting was on compliance procedures regarding medical marijuana rules; September 19, 2016 meeting was on taxation and fees for medical marijuana; December 12, 2016 meeting was on conceptual changes to the medical marijuana enforcement procedures (e.g. moving towards a civil enforcement process); March 27, 2017 meeting was to discuss the County's administrative decisions for Proposition 64; October 12, 2017 meeting was to discuss recommendations to the Board of Supervisors on new civil enforcement process and October 23, 2017 meeting was to discuss the ad hoc committee's recommendation to the El Dorado County Board of Supervisors on medical and recreational cannabis commercial licenses.

During the time period that the El Dorado County ad hoc Medical Marijuana Advisory Committee was meeting, the California cannabis laws were changing. In June 2016, Governor Edmund G. Brown signed SB 837, which changed the name of the MMRSA to the Medical Cannabis Regulation and Safety Act (MCRSA) and made substantive changes to applicable state laws. The changes affect the various state agencies involved in regulating cannabis businesses as well as potential licensees.

On November 8, 2016, California voters passed Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), by a vote of 57.1% in favor and 43.9% against. Locally, El Dorado County voters rejected Proposition 64 by a vote 50.1% against and 49.9% in favor (these numbers include the cities of Placerville and South Lake Tahoe). Proposition 64 legalized the non-medical use of cannabis by persons 21 years of age and over and the cultivation of no more than six (6) living cannabis plants for personal use, subject to reasonable regulations adopted by local jurisdictions. AUMA also created a state regulatory and licensing framework governing the commercial cultivation, manufacture, testing, and distribution of adult use/recreational cannabis.

On June 27, 2017, Governor Brown signed into law the Legislature-approved Senate Bill 94 (SB 94). SB 94 combined elements of the MCRSA and AUMA to establish a single, streamlined regulatory and licensing structure for both medicinal and adult-use cannabis activities, since there were discrepancies between the MCRSA and AUMA. The new, consolidated provisions under SB 94 are now known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), to be governed by the California Bureau of Cannabis Control, CalCannabis Cultivation Licensing, and California Manufactured Safety Branch. MAUCRSA notably refers to medical cannabis as "medicinal cannabis" and nonmedical/recreational cannabis as "adult-use cannabis."

At its November 14, 2017 meeting, the Board of Supervisors conceptually approved the temporary ban on commercial activities for both medical and recreational (adult) cannabis, with the exception of the medical cannabis dispensaries allowed to operate under El Dorado County Section 130.14.250.

At the Board of Supervisors December 12, 2017 meeting, the Board created the first ad hoc Cannabis Advisory Committee with a goal for the ad hoc committee to study and create ballot measures for different commercial cannabis activities tied to taxation for a local election. Behind this goal was to get a better understanding of what commercial cannabis activities the public would want to allow due to how broad Proposition 64 was. The committee met publicly on nine occasions: January 31, 2018 meeting was on the structure of the future meetings and the ad hoc committee goals; March 5, 2018 meeting was on commercial outdoor cultivation; March 12, 2018 meeting was on indoor and mixed light (greenhouse) cultivation; March 19, 2018 meeting was on dispensaries, deliveries, and distribution; April 23, 2018 meeting was on microbusiness, nurseries, and laboratory testing; April 30, 2018 meeting was on manufacturing; May 7, 2018 meeting was on tax rates and funding of a commercial cannabis program; May 14, 2018 meeting was on the effects of cannabis on communities and County departments; and June 19, 2018 meeting was on the proposed commercial cannabis ballot measures.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

Treasurer-Tax Collector; County Counsel; Sheriff's Office; Planning and Building; Environmental Management; Agriculture, Weights and Measures; and Air Quality Management District.

FINANCIAL IMPACT

Financial Impact for Today's Agenda Item

For the first year of the commercial cannabis program, a minimum amount of tax revenue is being estimated at \$200,000. It will take time for most businesses to get through the County and state permitting processes, so it will be some time before more tax revenue is obtained. The estimated \$200,000 in commercial cannabis tax funds for FY 2019-20 are projected to come from retail or delivery services.

Overall Financial Impact of the Program

It is the intent of the County to recoup all costs associated with the development, implementation, and management of the Commercial Cannabis Program.

There are two revenues that could come with the initiation of a commercial cannabis program. First are the commercial cannabis program fees. These fees would be charged to the individuals that are operating permitted commercial cannabis activities in El Dorado County. The fees that are charged would go toward operating the compliance program, which would make sure that the operators were following the El Dorado County rules. The fees can only be used on staff and expenses that relate to the El Dorado County commercial cannabis regulatory program.

Second is the general tax that will be charged. This general tax revenue could be given to programs that are affected by the proliferation of illegal cannabis activities and use. For example, funds could be used for Public Health education programs to educate El Dorado County youth against the use of recreational cannabis and law enforcement for the eradication of illegal commercial cannabis cultivation that endanger our communities and environment. The eradication of illegal commercial cannabis cultivation could be an expensive task. It is estimated in Stanislaus County that it would cost \$3.1 million annually to enforce an unregulated market in their county. This cost could be more in El Dorado County with its difficult topography.

The County requested HdL Companies to do a tax revenue projection for the commercial cannabis

measures. HdL has experience in revenue projections for cities and counties in the cannabis market. In its report, HdL looked at many different variables to get a range of tax revenue that the County could receive if the commercial cannabis ballot measures were approved. In its calculation HdL had to use different scenarios due to the different situations that could happen if the ballot measures are passed (e.g. how many licenses are given, what tax rate is selected, what mix of license types are granted, etc.). With all the variables in place HdL provided an estimated tax revenue range between \$1.9 million to \$52.8 million. However, HdL's report concludes that the high end projection is unlikely to occur due to the tax rate discouraging the industry from coming to the County and discouraging growers from coming out of the black market. At this time, with the current market trends, HdL has estimated a conservative estimate of \$3.0 million to \$4.0 million.

CONTACT

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