



## Legislation Text

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**File #:** 19-1186, **Version:** 2

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Ad Hoc Cannabis Committee, in coordination with the Chief Administrative Office, recommending the Board approve the **Final Passage** (Second Reading) of Ordinance **5107** pertaining to Section 130.14.280 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled "Taxation of Commercial Cannabis Activities" renumbered in Chapter 22 of Title 3, with amendments. (Cont. 8/27/19, Item 46)

### **DISCUSSION / BACKGROUND**

On August 27, 2019, the Board approved the Introducton of Ordinance 5107 item 46 (Legistar 19-1186). The Board continued this matter to September 10, 2019, for Final Passage of Ordinance 5107.

Ad hoc Cannabis Committee recommending the Board of Supervisors adopts proposed amendments to the commercial cannabis tax ordinance (Measure N). The proposed amendments, as identified on the red-line versions of the ordinance, include the following:

- Recodifies the taxation ordinance within the Revenue and Finance section of County Code as Chapter 3.22.
- For manufacturing, tax rates can be set based on the type of manufacturing. The proposed amendments link the levels of the taxes to the manufacturing types as identified by the State Department of Health's Manufactured Cannabis Safety Branch.
- Incorporates State's language to determine sale prices in "non-arm's length transactions," such as the sale between a distributor, manufacturer, or retailer that are affiliated or under common-ownership.
- Annual gross receipts for such transactions shall be based on the product's fair market value if it were sold in an arm's length transaction. An "arm's length transaction" means a sale entered into in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction.
- Clarifies that the illegal status of cannabis at the federal level does not preclude the Treasurer-Tax Collector from issuing a County Business License.
- Clarifies that the Treasurer-Tax Collector can require monthly payments.

### Further 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; Air Quality Management District; and District Attorney.

## **CEQA COMPLIANCE**

The proposed amendments are exempt under the “common sense” exemption from the California Environmental Quality Act (“CEQA”) in Guidelines section 15061(b)(3) (Title 14, Chapter 3 of the California Code of Regulations), which exempts from CEQA projects for which it “can be seen with

certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The ordinance does not authorize any commercial cannabis use, but simply establishes a general tax for independently authorized commercial cannabis uses. Moreover, Business and Professions Code section 26055(h) also provides a categorical CEQA exemption for the adoption of an ordinance by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in a commercial cannabis activity and the ordinances independently authorizing commercial cannabis uses come within that statutory exemption.

## **FINANCIAL IMPACT**

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, in HdL's report, it did not think that the high end projection would ever 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 thinks that a more conservative estimate is in between \$3.0 million and \$4.0 million.

## **CONTACT**

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