



Legislation Text

File #: 19-1290, **Version:** 2

HEARING - Ad Hoc Cannabis Committee, in coordination with the Chief Administrative Office, recommending the Board adopt and authorize the Chair to sign Resolution **141-2019** establishing commercial cannabis fees for the unincorporated county for the pre-application, application, monitoring, and renewal process for commercial cannabis. (Est. Time: 1 Hr.) (Cont. 8/27/19, Item 44)

FUNDING: Commercial Cannabis Fees.

DISCUSSION / BACKGROUND

Commercial Cannabis Pre-Application - As established in the most recent Pre-Application Review- both minor and major - set by resolution at the time of the application submission for the Planning and Building Department, Environmental Management Department, and Transportation Department - Currently, \$1,318 (minor) and \$4,560 (major) - existing fee

Commercial Cannabis Use Permit - As established in the most recent Conditional Use Permit - Planning Commission/Zoning Administrator, Major or - Planning Commission/Zoning Administrator, Medium or - Planning Commission/Zoning Administrator, Minor - set by resolution at the time of the application submission for the Planning and Building Department, Environmental Management Department, and Transportation Department - Currently, \$9,433 and T&M (major), \$6,554 and T&M (medium), \$3,659 and T&M (minor) - existing fee

Commercial Cannabis Annual Operating Permit (initial operating permit application) - \$7,301

Commercial Cannabis Monitoring Program - \$4,950 - yearly

Commercial Cannabis Annual Operating Permit (renewal) - \$5,000 - yearly

As part of the permitting process to start and operate a commercial cannabis business in El Dorado County, a business has the option of doing a pre-application that will allow applicants to find out the possible variables/issues in their project before starting the application process, which will take a significant amount of time for staff to complete. The application process includes a commercial cannabis use permit, which is a conditional use permit as part of the land entitlement process. In addition, at the same time, applicants will be going through the commercial cannabis annual operating permit process. This process includes a review of the cannabis activities by several County departments including Agriculture/Weights and Measures, Chief Administrative Office, County Counsel, Environmental Management, Planning and Building, and Sheriff's Office. After approval of the Commercial Cannabis Use Permit and Commercial Cannabis Annual Operating Permit, the business will enter the Commercial Cannabis Monitoring Program, which the County operates to make sure that cannabis businesses adhere to the rules in the voter-approved ballot measures. After a full year in the program, a commercial cannabis business must renew their commercial cannabis annual operating permit. At that time, the County will assess the business' performance and review changes to the business' operations.

Following the direction from the Board of Supervisors on a full cost recovery model when it comes to cannabis-related permitting and compliance, staff focused specifically on analyzing and determining cannabis permitting and compliance fees that fairly recover all costs related to cannabis permitting and compliance, from applicants for, and permittees of, cannabis businesses.

The purpose of the cannabis permitting cost analysis is to identify the cost of specific fee-related activities. The cost analysis provides a complete picture of the full cost, including approved department hourly rates. It is necessary to identify all costs, whether fee-related or not, so that there is a fair and equitable distribution of all costs across all activities, thereby ensuring a definitive relationship between the cost of the service and the fee that is charged.

Staff is also aware that this is a brand new permitting program with fees. Staff has considered a variety of options, many used by other counties. This includes studying different time models from counties that already operate programs, which includes the success of the type of fee model for both the county's and applicant's perspective.

The fees are effective 60 days after adoption under Government Code Section 66017(a). This would mean that pre-applications and applications would be available September 30. However, the new fees for Commercial Cannabis Annual Operating Permit would not be valid until 60 days after passage (e.g. if today then 60 days after September 10, 2019), so applications would not be taken before that date. For existing dispensaries, applications will be available September 30 and they will be accepted on November 12, 2019. The other applications will be accepted after the existing dispensaries.

Staff will be closely monitoring the fee structure, cost recovery and administrative processes over the next three or four years and will return to the Board with regular reports and, if needed, recommended adjustments to the fees or fee administration process. This includes as more data is obtained on the time it takes to administer the program moving forward (e.g. in the future it could take less time due to staff and businesses becoming more efficient in the process or it could take more time due to an increase in state regulation).

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.

FINANCIAL IMPACT

Financial Impact for Today's Agenda Item

The fees for the program are to cover staff time when it comes to the review of the initial applications (e.g. including site visits), monitoring program (e.g. to make sure permittees are following the rules which includes time for taking complaints) and the renewal.

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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