



Monterey County

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Board Report

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REF150048 (Chapter 7.90 and 7.95) and REF160043 (Chapter 7.100 - Tax)

Public hearing to consider:

- a. Adoption of an ordinance adding Chapter 7.90 to the Monterey County Code to require an annual commercial medical cannabis permit for commercial medical cannabis activities;
- b. Adoption of an ordinance adding Chapter 7.95 to the Monterey County Code to require an annual personal medical cannabis permit for personal cultivation of one hundred square feet or less of medical marijuana exclusively for personal use;
- c. Adoption of an ordinance adding 7.100 to impose a County general tax on commercial cannabis businesses in the unincorporated area of the County of Monterey as of January 1, 2017;
- d. Adoption of a resolution calling an election for the voters in the unincorporated area of the County to consider adoption of an ordinance imposing a tax on commercial cannabis (marijuana) businesses, and consolidating that election with the statewide general election to be held on November 8, 2016; and
- e. Authorizing the members of the Board of Supervisors ad hoc committee on medical marijuana to sign the argument in favor of the tax measure and any associated rebuttal argument on behalf of the Board of Supervisors.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Staff and the Board of Supervisors ad hoc committee on medical marijuana recommends that the Board of Supervisors:

- a. Adopt an ordinance adding Chapter 7.90 to the Monterey County Code to require an annual commercial medical cannabis permit for commercial medical cannabis activities;
- b. Adopt an ordinance adding Chapter 7.95 to the Monterey County Code to require an annual personal medical cannabis permit for personal cultivation of one hundred square feet or less of medical marijuana exclusively for personal use;
- c. Adopt an ordinance adding 7.100 to impose a County general tax on commercial cannabis businesses in the unincorporated area of the County of Monterey as of January 1, 2017;
- d. Adopt a resolution calling an election for the voters in the unincorporated area of the County to consider adoption of an ordinance imposing a tax on commercial cannabis (marijuana) businesses, and consolidating that election with the statewide general election to be held on November 8, 2016; and
- e. Authorize the members of the Board of Supervisors ad hoc committee on medical marijuana to sign the argument in favor of the tax measure and any associated rebuttal argument on behalf of the Board of Supervisors.

SUMMARY:

On July 12, 2016, the Board of Supervisors adopted a Negative Declaration as well as zoning regulations for coastal and non-coastal areas regarding commercial medical cannabis business in the unincorporated areas of Monterey County. Non-zoning regulations, including Chapters 7.90 (Attachment A), 7.95 (Attachment B), and 7.100 (Attachment C) were introduced on July 12, 2016 and set for consideration of adoption on July 19, 2016. The action now before the Board includes consideration of ordinances adding Chapters 7.90, 7.95, and 7.100 establishing annual permit requirements for persons and businesses conducting cannabis (marijuana) activities and establishing a tax on all commercial cannabis businesses, medical and non-medical. Together these ordinances create regulatory and tax requirements for cannabis activities in the unincorporated areas of the County. The following is a summary of the regulations and ordinances:

Land Use and Zoning - Adopted July 12, 2016. Requires a Use Permit (Title 21 - Inland zoning or Coastal Development Permit (Title 20 - Coastal zoning) issued to allow certain medical commercial cannabis activities to occur on specific property (non-transferable). Consideration of Use Permits or Coastal Development Permits will assess potential environmental impacts, neighborhood character, services and facilities, and the general suitability of the site to support cannabis operations. These permits run with the land.

Business Permit/Tax - Considered on July 12, 2016. Three ordinances were introduced, reading was waived, and a hearing was set for July 19, 2016 to consider adoption:

Chapter 7.90 - Commercial Medical Cannabis Permits (Attachment A)

Chapter 7.95 - Personal Medical Cannabis Permits (Attachment B)

Chapter 7.100 - Tax on all commercial cannabis operations (Attachment C)

These permits run with the businesses/individuals and cannot be transferred.

Chapter 7.90 - Requires individual businesses to obtain an annual medical cannabis business permit to operate a cannabis business in the County. Commercial medical cannabis permits will only be issued to businesses proposing operations on a site permitted pursuant to a Use Permit or Coastal Development Permit and who meet the minimum qualifications outlined in the ordinances including background checks, security requirements, and have adequate operational plans. Associated with this business permit will be regular health, safety, and compliance inspections of ongoing business operations. This Business Permit follows more closely the State licensing scheme established within the Medical Marijuana Regulation and Safety Act.

Chapter 7.95 - Requires annual personal medical cannabis permits to cultivate up to 100 square feet of canopy area for a qualified patient in the unincorporated area. Personal cultivation means a patient, with a doctor's recommendation, or their designated caregiver, growing cannabis for the qualified patients' consumption only. Cannabis would not be for sale or distribution under this scenario. Personal medical

cannabis permits will be issued to qualified patients or primary caregivers who meet the criteria contained in the Chapter including minimum setbacks for outdoor cultivation, fencing or lockable entrance to the plants are provided, and associated materials will be properly stored.

Chapter 7.100 - Imposes a general business tax on all commercial cannabis operations in the unincorporated area, medical and non-medical. Pursuant to State law, the marijuana business tax would not take effect unless approved by a simple majority of the voters (required for adoption of a general tax). In addition, the tax on non-medical cultivation will only take effect if the adult use initiative, also on the November 2016 ballot, is adopted. The tax is recommended as a means to address projected costs and demands on County services that cannot be recovered through permit application fees (e.g. enforcement). Revenues may also be used for general County services including such things as law enforcement, road improvements, hospitals, libraries, parks, housing programs, and permitting and inspection services. Implementation of the new medical cannabis regulations will necessitate new staffing levels and services that will have a negative fiscal impact on the County's General fund without the taxes in place. Therefore, both the Land Use and Business Permit ordinances have been drafted so that they do not become operative until and unless the tax is passed by the voters.

Recommended tax rates include:

- Cultivation excluding nurseries: an annual tax of \$15 to \$25 per square foot of permitted canopy area.
- Nurseries: an annual tax of \$2 to \$5 per square foot of permitted canopy area.
- All other commercial cannabis business activities: an annual tax of 5% to 10% of gross receipts.

All taxes will begin at the minimum rate, and after a three year period, will automatically increase on an annual basis until the maximum rate is reached. Once the maximum rate is reached, the tax on cultivation and on nurseries, will be adjusted annually based on the consumer price index (CPI) score for the San Francisco-Oakland-San Jose area. A table illustrating the tax rate by year is attached in Exhibit D.

Cities of Salinas, Gonzales, and King City are also contemplating taxing cannabis cultivation activities (see Exhibit D comparing County to City tax proposals). These rates also take into account the potential for taxes at the State level.

Staff and the ad hoc committee have developed language for the November ballot that poses the question to the voters:

Shall the ordinance imposing a tax on commercial marijuana businesses in the unincorporated area of Monterey County up to a maximum of: \$25 per square foot on cultivation with an annual adjustment by Consumer Price Index (CPI) thereafter; \$5 per square foot on nurseries with annual CPI adjustment thereafter; and 10% of gross receipts on other marijuana business activities with no CPI, potentially generating millions of dollars annually to help fund County services, be adopted? If the Board adopts the resolution (Exhibit E), calling the election additional

elections deadlines for arguments in favor of a tax and rebuttals to arguments against the tax will be due during Board recess dates in August. For this reason, staff recommends authorizing the members of the ad hoc committee to sign these arguments on behalf of the Board of Supervisors.

DISCUSSION:

All of the ordinances contain wording regarding the “Effective Date” and “Operative Date” of the particular ordinance which tie the operative date of regulations to adoption of the tax ordinance (Chapter 7.100) and subsequent approval by the voters of Monterey County. None of the ordinances will become operative until or unless a tax measure is passed by the voters. This relationship is suggested to protect existing County services from budgetary impacts that would result from adoption and implementation of cannabis regulations without additional revenues to offset those impacts.

To adopt the tax, the following steps are needed:

- 1) Adoption of the tax ordinance which includes the type of tax, rate of tax, and method of collection. This information is contained in Chapter 7.100 (Exhibit C).
- 2) Adoption of a resolution by at least 2/3rds vote of the Board of Supervisors, which means at least 4/5ths vote with all five supervisors voting, to present the tax to the voters. The resolution attached as Exhibit E, contains the proposed “ballot question” language.
- 3) For a general tax, approval by a majority of the voters at the election. The resolution attached as Exhibit E would call the election and consolidate it with the statewide general election to be held on November 8, 2016 when the tax would be considered by the voters.

The “ballot question,” is limited to 75 words and must contain certain basic information to pass legal standards. The ad hoc committee has reviewed the “ballot question” and recommends the language set forth above and attached in Exhibit E. In addition, if the County requests, the text of the tax ordinance (Chapter 7.100) can be printed in the Voter Guide.

If the ordinances and resolution before the Board are adopted, and the tax measure is passed by voters, this would represent the first phase of medical cannabis permitting in the unincorporated area of Monterey County. As mentioned on July 12, 2016, the ad hoc committee recommends exploring the issues and options relative to outdoor cultivation and cannabis operations in additional zonings following this first phase. This would require a new and focused effort. Additionally, updated fee articles will need to be brought forward in the near future to establish the new application fees for the cannabis-related permit requirements. Staff is planning to bring the fee schedules forward in September.

An initial study analyzing the environmental effects of the draft regulations was prepared and circulated for public comment from May 20, 2016 through June 21, 2016. The Initial study found that as drafted, approval of the ordinance would have a less than significant impact on the environment and a Negative Declaration was

prepared. The Negative Declaration was adopted by the Board on July 12, 2016. Chapters 7.90, 7.95, and 7.100 were contemplated in that Negative Declaration.

OTHER AGENCY INVOLVEMENT:

The following agencies and departments have been involved in preparation of the draft ordinances:

- Resource Management Agency
- CAO's Office
- Health Department/Environmental Health Bureau
- Economic Development Department
- Sheriff's Office
- Treasure/Tax Collector
- Agricultural Commissioner's Office
- District Attorney's Office
- County Counsel's Office

FINANCING:

Funding for staff time associated with drafting these regulations is included in each Departments FY15-16 and FY 16-17 adopted Budgets. On May 5, 2016 the County entered into an agreement with Hinderliter, de Llamas & Associates (HdL) in the amount of \$64,000 to provide their subject matter expertise and technical support in developing medical marijuana regulations, associated fees, and a potential tax ballot measure. This agreement was funded out of the Economic Development Department Fund 001-1070-8221-DOE001.

Adoption and implementation of these regulations is anticipated to impact services. Based on information received from the various departments that would be involved, staffing costs for a successful implementation of this program (permit processing, enforcement, etc) has been estimated to be about \$3.5 million per year. Estimated revenue from permit fees, using the current fee schedule, is about \$650,000 per year. A total needs assessment for development of permit fees is underway. That final outcome depends on the scope of the final regulations that are adopted. Once the needs have been identified, staff will return to the Board with fee articles that address permit fees to implement the ordinance.

Some enforcement costs can be recovered through citations or litigation. However, that is typically only a fraction of the actual cost to perform all of the enforcement duties. The ad hoc committee requested staff to pursue a tax measure that could provide funding necessary to implement such a program. The ad hoc committee recommends that implementation of the ordinance be tied to successful passage and implementation of a tax measure on the November 2016 ballot to assure that the County is not impacted by this action. As written, the tax measure is estimated to bring in at least \$30 million per year.

Staff will return to the Board of Supervisors with any staffing costs that were not part of the FY 16-17 adopted department Budgets.

Prepared by: Jacqueline R. Onciano, Planning Services Manager, ext. 5193

Approved by: Carl P. Holm, RMA Director, ext. 5103

Attachments:

- Attachment A Ordinance adding Chapter 7.90-Annual Commercial Medical Cannabis Permit
- Attachment B Ordinance adding Chapter 7.95- Annual Personal Medical Cannabis Permit for Personal Cultivation/Use
- Attachment C Ordinance adding Chapter 7.100- Impose general tax on commercial cannabis business for unincorporated County of Monterey
- Attachment D Tax rate information by year and tax rate comparisons by jurisdiction
- Attachment E Draft resolution calling for the election on the tax measure and consolidating it with the November 2016 general election

cc: Front Counter Copy; Planning Commission; RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; RMA-Code Enforcement; Health Department; Economic Development; County Counsel; Sheriff; Treasure/Tax Collector; Agricultural Commissioner; District Attorney; CAO's Budget Office; CAO's office; Jacqueline R. Onciano, RMA Services Manager; Craig Spencer, Project Planner; The Open Monterey Project (Molly Erickson); LandWatch (Amy White); John H. Farrow; Janet Brennan; George Brehmer; Betty Wren; Michael Groves; Todd Bessire; Michael Bitar; Aaron Johnson; Sal Palma; Mike Linder; Jason Kallen; Aaron Newsom; Darin Woodfill; Jennifer Carrera; Ryan Booker; Jeff Scott; Isabelle Franz; Nick Curton; Paula Getzelman; Danica Flores; Lizette Valdez; Jessica McElfresh; Wil Wicke; Frank Chimienti; Joey Espinosa; Ryan Munevar; Valentia Piccinini; Jeff Atkinson; Mark Barber; Jen Linney; Melissa Duflock; Courtney Lyng; Melissa; Ken Greer; Heidi Park; Todd Winter; Ellen Komp; Ken Ekelund; Len Merino; Oren Rosenfeld; Stephen Kim; James Benton; Steven Haba; Saphirre Blackwood; Gavin Kogan; Kathleen Hoganson; The Pharmaceuticals Company; Kurt Kaufeldt; Ralph Calderon; George Omictin; Caroline Waters; Kristin Nevedal; Juls Bindi; Michael Caragio; Guy Savage; Paul Milladin; Rick Walker; Chris Chmelicek; Grace Hall; Bart Clanton; Steve Craig; Erin McKenna; Cheryl Bryant Bruce; Charles Rowley; Planning File REF150048