



Legislation Details (With Board Report)

File #: ORD 21-008 **Name:** MCC Chpt. 7.100 revisions to Commercial Cannabis Tax Escalator

Type: Ordinance **Status:** General Government - Consent

File created: 5/17/2021 **In control:** Board of Supervisors

On agenda: 5/25/2021 **Final action:** 5/25/2021

Title: Adopt an ordinance amending Chapter 7.100 of the Monterey County Code to suspend the Fiscal Year 2021-2022 automatic increases on the County’s commercial cannabis business tax rates and resume the automatic increases in Fiscal Year 2022-2023 on July 1, 2022.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A Commercial Cannabis Business Tax Rates by Jurisdiction, 3. Attachment B Draft Ordinance (redline), 4. Attachment C Draft Ordinance (clean), 5. Attachment D Commercial Cannabis Business Tax Revenue by Current and Scheduled Rates, 6. (CORRECTED) Completed Board Order and Ordinance Item No. 38

Date	Ver.	Action By	Action	Result
5/25/2021	1	Board of Supervisors	adopted - county counsel	Pass

Adopt an ordinance amending Chapter 7.100 of the Monterey County Code to suspend the Fiscal Year 2021-2022 automatic increases on the County’s commercial cannabis business tax rates and resume the automatic increases in Fiscal Year 2022-2023 on July 1, 2022.

RECOMMENDATIONS:

It is recommended that the Board of Supervisors:

Adopt an ordinance amending Chapter 7.100 of the Monterey County Code to suspend the Fiscal Year 2021-2022 automatic increases on the County’s commercial cannabis business tax rates and resume the automatic increases in Fiscal Year 2022-2023 on July 1, 2022.

SUMMARY

Monterey County imposes an annual business tax on cannabis businesses pursuant to Monterey County Code Chapter 7.100 and such tax is collected by the Treasurer-Tax Collector. The Cannabis Program (“Program”) staff recently presented a report to the Board of Supervisors Cannabis Committee (“Committee”) on implications of the automatic cannabis tax escalator scheduled to take effect on July 1, 2021.

The Committee recommended to freeze the automatic cannabis tax increases for a year and directed staff to return to the Board with an amendment to Chapter 7.100. The ordinance was introduced on May 11, 2021 and is scheduled for consideration by the Board of Supervisors for adoption on May 25, 2021.

DISCUSSION:

Implications of the Tax Escalator

Staff has conducted monthly industry meetings and received comments related to the commercial cannabis tax rate escalator where the industry presented various factors to be considered to suspend the automatic increases to tax rates.

While commercial cannabis state licenses and local permits, cultivation square footage, and gross sales have all

steadily increased, Program staff acknowledges the concerns raised and continues to identify opportunities to work with operators and County leadership to support the growth and sustainability of the licensed cannabis industry.

Stabilization of the cannabis industry

In addition to the disruption caused by the COVID-19 pandemic, the commercial cannabis industry has not stabilized within Monterey County as evidenced by the following figures:

- Only 23% of cannabis land use applications have been approved.
- Only 12% of cannabis business permit applications have been approved.
- Infrastructure improvements related to the following have not been completed:
 - Life/health/safety issues and compliance with state and local building/zoning requirements.
 - Intersection improvements for the Mitigated Negative Declaration.

Operators are still learning how to develop growing cycles efficiently and effectively to be profitable and continue to learn how best to handle grow cycles during the winter season when light and temperatures greatly affect growing cycles.

Impacts of the Hop Latent Viroid

The Hop Latent Viroid (“HpLVd”) has impacted the plants of many industry operators. As explained to the Committee by industry operators, the operative word with this viroid is “latent”, meaning that it is largely asymptomatic and will not be evident until later stages of cultivation where the harvest yields and potency of Tetrahydrocannabinol (“THC”), the psychoactive component generated by cannabis plants, are both greatly impacted. The transmission of HpLVd is not fully understood, however it is suggested that it can be transmitted through the seed of an infected plant or through mechanical transmission; an example is when pruning tools are used on an infected plant and then on an uninfected plant.

Historical and Current Commercial Cannabis Tax facts to consider

In Fiscal Year (“FY”) 2016-17, Ordinance 5274 was adopted which imposed County general taxes for commercial cannabis businesses in the unincorporated area, contingent upon voter approval of Measure Y. In the November 2016 General Election, Measure Y was approved by nearly 96,000 Monterey County residents, or approximately 74% of the vote. The maximum tax rates as approved are as follows: twenty-five dollars (\$25.00) per square foot on cultivation with an annual adjustment thereafter by Consumer Price Index (“CPI”); five dollars (\$5.00) per square foot on nurseries with annual CPI adjustment thereafter; and ten (10) percent of gross receipts on manufacturing, distributing, testing, dispensing, and delivering commercial cannabis with no CPI adjustment.

The amount of square footage taxed is based on the amount of square footage allowed under the commercial cannabis business permit (“CNB”) the business obtains pursuant to Monterey County Code Chapter 7.90. Measure Y went into effect on January 1, 2017 and the TTC began collecting commercial cannabis business taxes at the following rates: \$15.00 per square of canopy of cultivation of mature plants; \$2.00 per square foot of canopy of cultivation of immature plants; and 5% of the gross receipts of dispensaries/deliveries, manufacturers, testing laboratories, distributors, and transporters.

In FY 2017-18, the taxes adopted in Measure Y were modified with Ordinance 5305 to substantially reduce cultivation tax rates and penalties beginning in FY 2018-19 and establish specific tax rates for other commercial cannabis activities.

In April 2020, the Board of Supervisors adopted Ordinance Number 5326, a COVID-19 pandemic related

urgency ordinance that directed the TTC to temporarily waive all penalties and interest on unpaid installments of the annual commercial cannabis business tax for the third quarter of FY 2019-20.

In May 2020, the Board of Supervisors adopted Ordinance Number 5330 to suspend the FY 2020-2021 automatic increases of the County’s commercial cannabis business tax rates and resume the automatic increases in FY 2022 effective on July 1, 2021. Specifically, it prescribes the following:

- Taxes on indoor and mixed light cultivation and nurseries will automatically increase by \$1.00 per square foot of canopy on July 1, 2021.
- Taxes on manufacturers and distributors will automatically increase by 1% of gross receipts on July 1, 2021.
- Tax on retail facilities will automatically increase by 0.5% of gross receipts on July 1, 2021.

Apart from cultivation, Monterey County’s tax rates for most commercial cannabis activities are average when compared to other counties. (Attachment A) As compared to other counties imposing canopy-based taxes, here is the breakdown of Monterey County rates by cultivation type: indoor cultivation is approximately \$3.00 above average; mixed light cultivation is \$2.00 above average; and nursery is \$1.00 below average.

Ordinance to suspend the Fiscal Year 2021-2022 automatic increases

The draft ordinance modifies the automatic increases to commercial cannabis tax rates. Specifically, it prescribes the following:

- Taxes on indoor and mixed light cultivation and nurseries will automatically increase by \$1.00 on July 1, 2022.
- Taxes on manufacturers and distributors will automatically increase by 1% on July 1, 2022.
- Tax on retail facilities will automatically increase by 0.5% on July 1, 2022.

A redlined and clean version of the ordinance are attached to this report as Attachment B and C.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel and Treasurer-Tax Collector’s Office were involved in the preparation of the ordinance and report. The Office of the County Counsel approved the ordinance as to form.

FINANCING:

The proposed amendments to Chapter 7.100 will impact the estimated commercial cannabis tax revenue for FY 21-22 by approximately a loss of \$6.2 million dollars. (Attachment D) The automatic escalators that were supposed to take place in FY 21-22 will not be recovered in later years.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Monterey County Cannabis Program addresses each of the Strategic Initiative Policy Areas that promote the growth of a responsible and legal Monterey County cannabis industry.

Mark a check to the related Board of Supervisors Strategic Initiatives

- X Economic Development
- X Administration
- X Health & Human Services
- X Infrastructure
- X Public Safety

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Approved by: Nicholas E. Chiulos, Assistant CAO

Attachments:

A: Commercial Cannabis Business Tax Rates by Jurisdiction

B: Draft ordinance (redline version)

C: Draft ordinance (signed clean version)

D: Commercial Cannabis Business Tax Revenue by Current and Scheduled Rates