



Board Report

File #: 21-578, Version: 2

Adopt an ordinance amending Chapter 7.100 of the Monterey County Code to set a tax rate for outdoor commercial cannabis cultivation.

RECOMMENDATIONS:

It is recommended that the Board of Supervisors:

Adopt an ordinance amending Chapter 7.100 of the Monterey County Code to set a tax rate for outdoor commercial cannabis cultivation.

SUMMARY/DISCUSSION:

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 ("TTC"). The following is a retrospective of Board of Supervisors action as it relates to the cannabis business tax rates.

In Fiscal Year ("FY") 2016-17, Ordinance Number 5274 was adopted which imposed a County general tax 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 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 foot 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 July 2018, the taxes adopted in Measure Y were modified with Ordinance Number 5305 to substantially reduce cultivation tax rates and penalties beginning in FY 2018-19 and establish specific tax rates for other commercial cannabis activities. Relevant here, the indoor cultivation rate was reduced to \$8.00 per square foot, and for mixed light cultivation it was reduced to \$5.00 per square foot.

In June 2019, the Board of Supervisors adopted Ordinance Numbers 5311 and 5312 to add Chapters 20.69 and 21.69 to the Monterey County Code to create a five-year pilot program for outdoor commercial cannabis cultivation in certain unincorporated areas of the County.

In October 2019, the Board of Supervisors directed staff to return with an ordinance amending Chapter 7.100 to set a tax rate of \$2.50 per square foot for outdoor cannabis cultivation, with an escalator of \$0.25 per fiscal year. (Attachment A).

In April 2020, the Board of Supervisors adopted Ordinance No. 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.

In May 2021, the Board of Supervisors adopted Ordinance Number 5335 to suspend the FY 2021-2022 automatic increases of the County's commercial cannabis business tax rates and resume the automatic increases in FY 2023 effective on July 1, 2022. The Board also adopted Ordinance Numbers 5336 and 5337 which amended Chapters 20.69 and 21.69 of the Monterey County Code to extend the outdoor cultivation pilot program and made other modifications to increase participation.

Staff has been waiting to move forward with the amendment to Chapter 7.100 to set an outdoor cultivation tax rate due to other priorities, and a lack of participation in the outdoor cannabis pilot program.

The ordinance setting the outdoor grow tax rate was introduced to the Board of Supervisors on June 22, 2021.

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

OTHER AGENCY INVOLVEMENT:

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

FINANCING:

At this time, it is premature to project an estimated impact on commercial cannabis revenue as there are no approved applicants for the outdoor grow pilot program.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The Monterey County commercial cannabis tax revenue collection addresses each of the Strategic Initiative Policy Areas:

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

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Approved by: Nick Chiulos, Assistant County Administrative Officer

Attachments:

- A. Board Order and Resolution Item 19-356
- B. Draft ordinance (redline version)
- C. Draft ordinance (signed clean version)