



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-11

For the meeting of: August 9, 2016

Date: July 20, 2016

To: Board of Supervisors

From: Amy S. Nilsen, County Administrative Officer *AN*

Subject: Resolution Placing the Commercial Marijuana Cultivation Tax Ordinance on the November 2016 Ballot

RECOMMENDATION(S):

That the Board of Supervisors:

1. Adopt the attached Resolution Placing the Commercial Marijuana Cultivation Tax Ordinance on the November 2016 Ballot for Voter Approval (Attachment 1).

SOURCE OF FUNDING: General Fund

DISCUSSION:

This matter concerns placement of a commercial marijuana cultivation tax ordinance on the November 8, 2016, countywide ballot for voter approval.

On June 21, your Board received a presentation on the results of polling that had been done (pursuant to prior Board direction) on a commercial marijuana cultivation excise tax measure. On June 28, your Board set an excise tax rate structure and voted to direct staff to return on July 19 with ordinance language to

Prepared by Amy S. Nilsen CAO Approval *Cheryl Dillingham*

REVIEW: Auditor \_\_\_\_\_ County Counsel *Sm* Human Resources \_\_\_\_\_ Other \_\_\_\_\_

TYPE OF ITEM:  
 Consent  
 Departmental  
 Public Hearing  
 Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:

Board Order No. I-1; M-1; I-2

Meeting of: 6/21/2016; 6/28/2016; 7/19/2016

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**  
Upon motion of Supervisor *Fennell* Seconded by Supervisor *Sundberg*  
Ayes *Sundberg, Fennell, Lovelace, Bohn, Bass*  
Nays \_\_\_\_\_  
Abstain \_\_\_\_\_  
Absent \_\_\_\_\_

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *Aug. 9, 2016*  
By: *Kathy Hayes*  
Kathy Hayes, Clerk of the Board

place a general-purpose local revenue measure on the ballot for November 2016. Your Board has since approved the ordinance.

Your Board is required to adopt a resolution which actually places this matter onto the ballot. The attached resolution effectuates this final necessary action.

In addition, your Board approved the Commercial Marijuana Cultivation Tax Ordinance during the July 19 meeting with additional language in section 719-3 to include clarification that the definition of "cultivation area" is referring to the permitted area. This language has been included in the ordinance as shown in Attachment 2.

FINANCIAL IMPACT:

There is minimal financial impact to the recommended action. Costs for publication are included within existing budget appropriations.

If the tax measure is approved, staff estimates that approximately \$7.3 million will be generated. This estimate is based on 400 cultivation permits issued by the Planning and Building Department.

OTHER AGENCY INVOLVEMENT: None.

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

ATTACHMENTS:

1. Resolution
2. Commercial Marijuana Cultivation Tax Ordinance

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**

Certified copy of portion of proceedings, Meeting of August 9, 2016

RESOLUTION NO. 16-89

**RESOLUTION PLACING THE HUMBOLDT COUNTY COMMERCIAL MARIJUANA CULTIVATION TAX ORDINANCE ON THE NOVEMBER 2016 BALLOT FOR VOTER APPROVAL**

**WHEREAS**, on October 9, 2015, the Governor of California signed into law the Medical Marijuana Regulation and Safety Act (Senate Bill 643, Assembly Bill 266, and Assembly Bill 243), known as the MMRSA, which provides regulatory guidance for medical marijuana within the State of California; and

**WHEREAS**, on January 26, 2016, the Humboldt County Board of Supervisors adopted the Commercial Medical Marijuana Land Use Ordinance, Ordinance No. 2544, which provides for the location and permitting of commercial cultivation, processing, manufacturing and distribution of marijuana for medical use in the Coastal and Non-Coastal zoning districts within Humboldt County; and

**WHEREAS**, California Business and Professions Code Section 19348(c) allows counties to impose a tax, pursuant to existing law, on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling or distributing medical marijuana or medical marijuana products; and

**WHEREAS**, California Revenue and Taxation Code Section 7284 allows the board of supervisors of any county to impose a license tax upon each and every kind of lawful business transacted in the unincorporated areas of the county; and

**WHEREAS**, revenues collected on any tax imposed pursuant to California Revenue and Taxation Code Section 7284 may be reserved for specific or general local purposes as determined by the board of supervisors of the county imposing the tax; and

**WHEREAS**, the County of Humboldt is dedicated to protecting the environment from the negative impacts associated with illegal marijuana farms, including, without limitation, the diversion and pollution of sensitive water sources, through the enforcement of local and state laws and regulations that require commercial marijuana cultivators to protect natural resources and water quality in rivers, creeks and streams; and

**WHEREAS**, additional revenue will allow the County to maintain local rural ambulance services, and continue to safely protect the lives of Humboldt County residents; and

**WHEREAS**, additional County resources are needed to fight drug-related crimes, eliminate methamphetamine labs and provide drug prevention and rehabilitation services in Humboldt County; and

**WHEREAS**, additional funding sources will help the County restore and maintain protective and counseling services for the victims of child abuse and other related crimes which have been severely reduced in recent years; and

**WHEREAS**, additional funding will allow the County to provide children and their families with needed access to mental health services and thereby help maintain healthy family relationships in Humboldt County; and

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**

Certified copy of portion of proceedings, Meeting of August 9, 2016

RESOLUTION NO. 16-89

**WHEREAS**, on July 19, 2016, the Humboldt County Board of Supervisors approved the "Humboldt County Commercial Marijuana Cultivation Tax Ordinance," Humboldt County Ordinance No. \_\_\_\_\_, which imposes an annual tax of \$1 per square foot of outdoor cultivation area, \$2 per square foot of mixed-light cultivation area and \$3 per square foot of indoor cultivation area for general purposes in accordance with Business and Professions Code Section 19348(c) and Revenue and Taxation Code Section 7284; and

**WHEREAS**, the Commercial Marijuana Cultivation Tax Ordinance imposes a general tax, and the revenues generated thereby will be placed in the County's discretionary General Fund for various County purposes, including, without limitation, the essential services and protections set forth herein; and

**WHEREAS**, the Commercial Marijuana Cultivation Tax Ordinance will ensure that commercial marijuana cultivators contribute to the County's efforts to protect natural resources and provide essential services to the residents of Humboldt County; and

**WHEREAS**, the Commercial Marijuana Cultivation Tax Ordinance will greatly benefit the people of Humboldt County by generating revenue of approximately \$7.3 million per average year; and

**WHEREAS**, the Commercial Marijuana Cultivation Tax Ordinance will provide the County of Humboldt with a guaranteed, locally controlled, revenue source that cannot be taken by the State of California; and

**WHEREAS**, the Humboldt County Board of Supervisors wishes to place the Commercial Marijuana Cultivation Tax Ordinance on the November 8, 2016 ballot for majority voter approval pursuant to California Business and Professions Code Section 19348(c), California Revenue and Taxation Code Section 7284 and California Government Code Section 53723; and

**WHEREAS**, upon approval by a majority of Humboldt County voters, the Commercial Marijuana Cultivation Tax Ordinance will become operative on January 1, 2017.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. That all of the above recitations are true and correct; and
2. That the Commercial Marijuana Cultivation Tax Ordinance is a general tax not raised for a specific purpose, in which the revenues generated thereby will be placed in the County's discretionary General Fund for general purposes, thereby requiring a majority vote of the Humboldt County voters participating in the November 8, 2016 election; and
3. That the Commercial Marijuana Cultivation Tax Ordinance shall only apply to commercial marijuana cultivation operations located within the unincorporated territory of Humboldt County; and
4. That the Commercial Marijuana Cultivation Tax will be collected and administered by the County of Humboldt; and
5. That the Commercial Marijuana Cultivation Tax Ordinance sets a local excise tax rate structure of \$1 per square foot for outdoor cultivation area, \$2 per square foot of mixed-light cultivation area and \$3 per square foot of indoor cultivation area, as directed by the Humboldt County Board of Supervisors on June 28, 2016; and

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA**  
Certified copy of portion of proceedings, Meeting of August 9, 2016

RESOLUTION NO. 16-89

6. That the net proceeds of the Commercial Marijuana Cultivation Tax will be used by the County for various County purposes, including, without limitation, the services and protections set forth herein, which will benefit the residents of Humboldt County; and
7. That the full text of the Commercial Marijuana Cultivation Tax Ordinance is found in Humboldt County Ordinance No. \_\_\_\_\_; and
8. That the Humboldt County Board of Supervisors hereby directs staff to take any and all actions necessary to place the Commercial Marijuana Cultivation Tax Ordinance on the ballot for the November 8, 2016 election for majority voter approval, as summarized in the ballot measure statement attached hereto as Exhibit A, and to place the full text of Humboldt County Ordinance No. \_\_\_\_\_ in the corresponding ballot pamphlet; and
9. Upon approval by a majority of Humboldt County voters participating in the November 8, 2016 election, the Commercial Marijuana Cultivation Tax Ordinance will be operative on January 1, 2017.
10. This resolution shall be effective immediately.

Dated: August 9, 2016

  
MARK LOVELACE, Chair  
Humboldt County Board of Supervisors

Adopted on motion by Supervisor Fennell, seconded by Supervisor Sundberg, and the following vote:

AYES:	Supervisors	Sundberg, Fennell, Lovelace, Bohn, Bass
NAYS:	Supervisors	--
ABSENT:	Supervisors	--
ABSTAIN:	Supervisors	--

STATE OF CALIFORNIA    )  
County of Humboldt     )

I, KATHY HAYES, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be an original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.

  
By ANA HARTWELL  
Deputy Clerk of the Board of Supervisors of the  
County of Humboldt, State of California

Exhibit A

<b>MEASURE ____, Humboldt County Commercial Marijuana Cultivation Measure.</b> To maintain and improve essential services, including public safety, job creation; crime investigation/prosecution; environmental cleanup/restoration; children/family mental health; drug rehabilitation; other County services, shall Humboldt County establish a \$1 - \$3 per square foot, based upon type of grow, annual commercial marijuana cultivation tax generating approximately \$7.3 million annually until ended by voters, with all revenue for the County, none for the State, annual audits, and public review?	YES	
	NO	

**Chapter 8 - Transactions and Use Tax to be Administered by the State Board of Equalization**

- § 718-1. Title.
- § 718-2. Operative Date.
- § 718-3. Purpose.
- § 718-4. Contract with State.
- § 718-5. Transactions Tax Rate.
- § 718-6. Place of Sale.
- § 718-7. Use Tax Rate.
- § 718-8. Adoption of Provisions of State Law.
- § 718-9. Limitations on Adoption of State Law and Collection of Use Taxes.
- § 718-10. Permit Not Required.
- § 718-11. Exemptions and Exclusions.
- § 718-12. Amendments.
- § 718-13. Enjoining Collection Forbidden.
- § 718-14. Severability.
- § 718-15. Effective Date.
- § 718-16. Termination Date.
- § 718-17. Advisory Committee.
- § 718-18. Compliance with the California Environmental Quality Control Act (CEQA).

**Chapter 9 - Commercial Marijuana Cultivation Tax**

- § 719-1. Title.
- § 719-2. Purpose and Intent.
- § 719-3. Definitions.
- § 719-4. Imposition of Tax.
- § 719-5. Annual Adjustment.
- § 719-6. Collection and Remittance.
- § 719-7. Penalties.
- § 719-8. Additional Penalties.
- § 719-9. Modification, Repeal or Amendment.
- § 719-10. Administration.
- § 719-11. Record Inspection.
- § 719-12. Application of Provisions.
- § 719-13. Severability.
- § 719-14. Compliance with the California Environmental Quality Act.
- § 719-15. Operative date.

TITLE VII - FINANCE, REVENUE AND TAXATION

DIVISION 1

REVENUE AND TAXATION

CHAPTER 9

COMMERCIAL MARIJUANA CULTIVATION TAX

719-1. TITLE.

This Chapter shall be known as the Humboldt County Commercial Marijuana Cultivation Tax Ordinance. (Ord. , \$ , / /2016)

719-2. PURPOSE AND INTENT.

This Chapter is enacted solely for the purpose of raising revenue for general County purposes, and is not intended to be regulatory. Nothing in this Chapter is intended, nor shall be construed, to exempt commercial marijuana cultivation from compliance with all applicable provisions of this Code, including, without limitation, the requirements set forth in Title III, and all other applicable state and federal laws and regulations. (Ord. , \$ , / /2016)

719-3. DEFINITIONS.

(a) "Commercial marijuana cultivation" shall mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of marijuana or cannabis, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered or sold in accordance with the applicable provisions of this Code and all other applicable state and federal laws and regulations. (Ord. , \$ , / /2016)

(b) "Cultivation area" shall mean the sum of the permitted area(s) of marijuana cultivation as measured around the perimeter of each discrete area of marijuana cultivation on a single premises, as defined herein. Area of marijuana cultivation is the physical space where marijuana is grown and includes, without limitation, garden beds or plots, the exterior dimensions of hoop houses or green houses, and the total area of each of the pots and bags containing marijuana plants on the premises. (Ord. , \$ , / /2016)

(c) "Indoor" shall mean indoor cultivation of marijuana which involves the exclusive use of artificial lighting. (Ord. , \$ , / /2016)

(d) "Mixed-light" shall mean cultivation of marijuana which involves the use of a combination of natural and supplemental artificial lighting at a maximum threshold as set forth in Section 314-55.4.11, et seq. of this Code, or as to be determined by the Department of Food and Agriculture, whichever is less. (Ord. , \$ , / /2016)

(e) "Outdoor" shall mean outdoor cultivation of marijuana which does not involve the use of artificial lighting of any kind. (Ord. , \$ , / /2016)



(f) "Person" shall mean an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate or any other group or combination acting as a unit and includes the plural as well as the singular number. (Ord. , \$ , / /2016)

(g) "Premises" shall mean a legal parcel compliant with the Subdivision Map Act, or a leasehold interest in agricultural land for agricultural purposes of outdoor, mixed-light, or indoor cultivation or processing of marijuana, or a leased or owned space in an industrial or commercial building for purposes of indoor cultivation, processing, manufacture or distribution of marijuana. (Ord. , \$ , / /2016)

**719-4. IMPOSITION OF TAX.**

In addition to any requirements imposed by Title III of this Code, each person engaged in legally authorized commercial marijuana cultivation within the unincorporated area of Humboldt County shall pay an annual tax of \$1 per square foot of outdoor cultivation area, \$2 per square foot of mixed-light cultivation area or \$3 per square foot of indoor cultivation area. (Ord. , \$ , / /2016)

**719-5. ANNUAL ADJUSTMENT.**

The tax imposed by this Chapter shall be adjusted on July 1, 2017, and July 1st of each succeeding year based on the Consumer Price Index (CPI) for all urban consumers in the as published by the United States Government Bureau of Labor Statistics; however, no adjustment shall decrease the tax imposed by this Chapter, unless approved by the Humboldt County Board of Supervisors. (Ord. , \$ , / /2016)

**719-6. COLLECTION AND REMITTANCE.**

The tax imposed by this Chapter shall be collected by the Humboldt County Treasurer-Tax Collector biennially in the same manner as other taxes fixed and collected by the County of Humboldt. For purposes of this Chapter, taxes shall begin to accrue on the date on which a person becomes engaged in legally authorized commercial marijuana cultivation in accordance with the applicable provisions of this Code and all other applicable state and federal laws and regulations. (Ord. , \$ , / /2016)

**719-7. PENALTIES.**

Any person that fails to pay the tax required by this Chapter within 30 days after the due date shall pay, in addition to the tax, a penalty for nonpayment in a sum equal to 25 percent of the total amount due. An additional 10 percent penalty shall be added on the first day of each month following the month of the imposition of the initial 25 percent penalty if the tax remains unpaid - up to a maximum of 100 percent of the tax payable on the due date. Receipt of the tax payment by the Humboldt County Treasurer-Tax Collector's Office shall govern the determination of whether the tax is delinquent. Postmarks will not be accepted as adequate proof of a timely payment. (Ord. , \$ , / /2016)

**719-8. ADDITIONAL PENALTIES.**

Any violation of this Chapter shall constitute a public nuisance and shall be subject to any and all administrative, civil, or criminal remedies available to the County, including those set forth in Title III, Division 5, Chapter 1 of this Code. (Ord. , \$ , / /2016)

**719-9.            MODIFICATION, REPEAL OR AMENDMENT.**

The Humboldt County Board of Supervisors may repeal this Chapter, or amend it in a manner which does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein, without further voter approval. If the Board of Supervisors repeals any provision this Chapter, it may subsequently reenact it without voter approval, as long as the reenacted provision does not result in an increase in the amount of the tax or broaden the scope of the tax imposed herein. (Ord.            , §            , / /2016)

**719-10.           ADMINISTRATION.**

The Humboldt County Administrative Officer or designee thereof, upon the approval of the Humboldt County Board of Supervisors, may promulgate regulations to implement and administer the provisions of this Chapter. (Ord.            , §            , / /2016)

**719-11.           RECORD INSPECTION.**

Whenever it is necessary to examine any books or records, including tax returns, of any entity subject to the provisions of this Chapter, to ascertain the amount of any tax due pursuant to this Chapter, the County shall have the power and authority to examine such necessary books and records at any reasonable time including, without limitation, during normal business hours. Such records shall be maintained for no less than seven (7) years. (Ord.            , §            , / /2016)

**719-12.           APPLICATION OF PROVISIONS.**

(a) In the event that the commercial cultivation of marijuana for casual and/or recreational use is legalized or decriminalized in the State of California, the provisions of this Chapter shall apply, without subsequent voter approval, to each person cultivating marijuana for such purposes in accordance with the applicable provisions of this Code and all other applicable state and federal laws and regulations. (Ord.            , §            , / /2016)

(b) No payment of any tax required under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this Chapter implies or authorizes that any activity connected with the cultivation, possession or provision of marijuana is legal unless otherwise authorized and allowed by the State of California and permitted by the County. (Ord.            , §            , / /2016)

**719-13.           SEVERABILITY.**

If any provision of this Chapter, or the application thereof, is held invalid, such invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provisions or application and to this end, the provisions or application of this Chapter are severable. (Ord.            , §            , / /2016)

**719-14. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

The purpose of this Chapter is to establish a government funding mechanism for general County purposes and the County is not committing to a specific course of action with respect to the tax revenue generated hereunder, and therefore, this Chapter is not a "project" subject to the requirements of the California Environmental Quality Act ("CEQA") as defined in Section 15378, subdivision (b), of the CEQA Guidelines. (Ord. , § , /2016)

**719-15. OPERATIVE DATE.**

This Chapter shall become operative on January 1, 2017. (Ord. , § , /2016)