



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

I-1

For the meeting of: June 21, 2016

Date: June 14, 2016

To: Board of Supervisors

From: Amy Nilsen, County Administrative Officer *AN*

Subject: Consider Placing a Commercial Cannabis Cultivation Excise Tax on the Ballot for the November 8, 2016 Election

RECOMMENDATION(S):

That the Board of Supervisors:

1. Receive a report and presentation from Fairbank, Maslin, Maullin, Metz & Associates regarding polling results on a potential commercial cannabis cultivation excise tax measure;
2. If your Board chooses to place a commercial cannabis cultivation excise tax measure on the ballot for the November 8, 2016 general election, direct staff to return to your Board on July 19, 2016 for introduction of an ordinance placing such a measure on the ballot; and
3. If your Board chooses to place a commercial cannabis cultivation excise tax measure on the ballot, determine a tax rate or tax structure for the measure.

SOURCE OF FUNDING: General Fund

DISCUSSION:

In September of 2015, the state legislature passed and Governor Brown signed a three-bill package of regulations for the industry that has developed around medical marijuana since the passage of Proposition 215 in 1996. These three bills, known collectively as the Medical Marijuana Regulation and Safety Act

Prepared by Sean Quincey CAO Approval *Eoshia Hayes*

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

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

PREVIOUS ACTION/REFERRAL:

Board Order No. D-5

Meeting of: 1/26/16

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT  
Upon motion of Supervisor \_\_\_\_\_ Seconded by Supervisor \_\_\_\_\_

Ayes  
Nays  
Abstain  
Absent

**SEE ACTION SUMMARY**

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

Dated: \_\_\_\_\_  
By: \_\_\_\_\_  
**Kathy Hayes, Clerk of the Board**

(MMRSA), provide substantial new roles for county governments in moving this industry out of the “gray market” status it has held for the past two decades. As the center of one of the planet’s premier cannabis-growing regions, Humboldt County has an interest in availing itself of these new regulatory roles. Specifically, Chapter 3.5 of Division 8 of the Business and Professions Code, added by MMRSA, provides authority for counties to “impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products....”

On January 26, 2016, your Board authorized the county to enter into an agreement with The Lew Edwards Group for polling and consultant services to assess the viability of a commercial cannabis cultivation excise tax measure, and assist in placing a measure if necessary. Today’s report is intended to convey to your Board the results of the polling conducted pursuant to the terms of the above-referenced agreement, and to seek your Board’s final direction on whether to proceed with placing an excise tax measure on the ballot for the November 8, 2016 general election.

Since February 11, 2016 staff has had multiple telephone conferences with the consultant and their subcontracted polling firm, Fairbank, Maslin, Maullin, Metz & Associates. The polling firm conducted a survey of likely November voters in Humboldt County on three evenings between April 24, 2016 and April 26, 2016, analyzed the results, and delivered a report to staff on May 25, 2016. The proposed ballot question reads as follows:

***Humboldt County Commercial Marijuana Cultivation Measure. To maintain and improve essential services, including:***

- *Public safety, parks and job creation;*
- *Crime investigation/prosecution;*
- *Children’s mental health services;*
- *Environmental cleanup/restoration; and*
- *Other County services,*

*Shall Humboldt County establish a graduated, annual commercial marijuana cultivation tax of \$1 to \$12 per square foot, based upon grow type and size, generating approximately \$14.1 million annually until ended by voters, all revenue for the County, none for State, with annual audits, public review?*

Based on the results of the polling, staff recommends that your Board consider placing a progressive general purpose commercial cannabis cultivation excise tax before voters in November. If the measure passes, any revenue raised is likely be used for a wide variety of services, as detailed in the ballot language. A special tax requires a two-thirds approval and demands that the tax is levied for a specific purpose. This measure would not fit in to that category.

Essentially, there are three options before your Board today:

- Place a general purpose commercial cannabis excise tax measure before voters. As discussed further below, this would apply only in the unincorporated parts of the county. Accepts staff’s recommendations regarding tax rate structure.
- Place the excise tax before voters, but with a different tax rate or structure.
- Place no excise tax measure before voters for November 2016.

The polling firm tested the first of these options – a progressive tax on the cultivation of commercial cannabis, which is designed to tax smaller grows at a lower rate than larger grows. The poll reached 400 likely voters, almost evenly split into fifths between the five supervisorial districts. Demographic characteristics of the respondents mirror the demographics of likely November voters in the county. The same firm that conducted polling for Measure Z in June 2014 was used to conduct this poll. As such, the firm used the same methods and, as before, this was a statistically valid sampling of likely voters in the community for the November election.

The results of the polling indicate the measure is potentially viable as it tested well over the required 50 percent support threshold needed to pass. Polling also indicated that voters prefer assessing a higher tax to larger grows, as well as assessing a higher tax for indoor and mixed light grows that can be harvested more frequently than outdoor grows.

Whether or not your Board chooses to place an excise tax measure before voters this November, some of the polling results are worth noting:

- County residents approve of the work being done by the county (65 percent of those polled) and by your Board (59 percent), as well as by the Sheriff’s Office (78 percent). Each of these results is within four percentage points of the polling done in 2014.
- County residents recognize the need for additional funding. As many as 79 percent of those polled indicate they understand the need, and 58 percent believe there is a “great need.” The latter is up from 41 percent in 2014.
- Impacts of crime and of hard drugs such as methamphetamine are the community’s top concerns.
- While voters wanted to see Measure Z funds spent only on public safety, this polling indicates that voters would like to see a variety of services funded, including parks, environmental cleanup and children’s mental health services.

### **Tax Rate, Permitting and Revenue Estimate – Staff Recommendation 3**

Aside from developing an ordinance to accompany the measure, determining a taxing rate is perhaps the most significant element of an excise tax. If the tax rate is too high, then it presents the risk of putting the local growing industry at a competitive disadvantage with other areas in the state, while also encouraging the industry to continue to operate illegally. If it is too low, the county will not receive the required revenue it needs for providing services to the community, including mitigating the long-term impacts from illegal marijuana cultivation.

In addition, other states like Washington have seen the ill effects of over-taxing and have moved from imposing three separate 25-percent taxes on various parts of the industry, to a flat 37 percent sales tax on all types of cannabis. When combining state and local taxes, it may be a good benchmark to ensure the rates do not exceed 35 to 37 percent to provide for the health of the industry. However, determining an appropriate rate and estimating revenue is an inexact science as there is limited data on which to base such decisions and assumptions. Using the information available, staff is proposing a progressive tax rate on cultivation, based on grow type and size. It should be noted that under the proposed rate structure cultivators would be taxed between 1.35 and 4.1 percent, based on estimated yield of various grow types<sup>1</sup>:

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<sup>1</sup> A study from BOTEK and Jonathan Caulkins, commissioned by the State of Washington, states that average indoor and outdoor yield is about 40 grams per square foot per harvest. The study also states that a cultivation facility can easily devote one-third of its operation to ancillary space like walkways, seedlings, drying and record keeping. In response, staff used 20 grams per square foot per harvest to determine estimated yields.

GROW TYPE	CULTIVATION AREA	RATE PER SQUARE FOOT
<b>Indoor</b>	0-1,000 square feet	\$2
	1,001-5,000 sq. feet	\$2 up to \$3.50
	5,001-10,000 sq. feet	\$3.50 up to \$6
<b>Outdoor</b>	0-2,500	\$1
	2,501-10,000	\$1 up to \$1.30
	10,001-22,000	\$1.30 up to \$2
	22,101 to 43,560	\$2 up to \$3
<b>Mixed Light</b>	0-2,500	\$1.50
	2,501-10,000	\$1.50 up to \$2.75
	10,001-22,000	\$2.75 up to \$4.50

Here are some factors that will affect both tax rates and revenue estimates for a local excise tax:

- **Revenue tied to permitting:** Pursuant to MMRSA, growers must first obtain a local license or permit to cultivate before pursuing a state license. In Humboldt County, the Commercial Medical Marijuana Land Use Ordinance (MMLUO) became effective on February 26, 2016, and cultivators must obtain a permit pursuant to the conditions contained therein. While the county has received more than 400 applications, very few are close to being permitted. By law, Humboldt County can impose this type of tax on a cultivator only if the cultivator has obtained the appropriate permits. It is unclear how many of these applicants will successfully make it through the permitting process, and it is even less clear how many will remain permitted years from now, but it seems likely the number of applicants will continue to grow in the near future.

For purposes of a revenue estimate, which under a new requirement imposed by AB 809 must be included in the 75-word ballot question for tax measures, staff factored in 400 permitted cultivation sites with each operating at the maximum square footage allowable in various brackets. Based on these assumptions, staff determined that an excise tax could generate approximately \$14.1 million annually. However, there are many variables included in this estimate and it will likely be several years before the county can begin to effectively plan for steady revenue produced as a result of an excise tax.

- **Taxes and fees at the state level:** In California, there are several bills making their way through the legislature regarding taxes and fees on the industry, and if any are signed in to law they will be imposed in addition to a local measure. Two of these bills include:
  - SB 987 (McGuire), which would impose a fee of 15 percent of the sales price of medical cannabis; and
  - AB 2243 (Wood), which would require distributors to pay taxes as follows:
    - \$9.25 per ounce of medical cannabis flowers
    - \$2.75 per ounce of medical cannabis leaves
    - \$1.25 per immature medical cannabis plant

In addition, the Adult Use Marijuana Act, which will allow recreational use of cannabis, will come before voters in November and, if passed, would impose a 15 percent excise tax on all marijuana sales. The State Water Resource Control Board also has fees for their required permits, as well as fees that are charged at the county level.

- **Rates of other agencies:** On May 16, 2016 the County of Mendocino received a report from HdL companies regarding medical cannabis taxation strategies. HdL proposed a tiered tax structure on cultivation as follows:

Rates

Type 1 Permit \$1-2 per sq. ft. (2 Cycles)
Type 1A Permit \$3-4 per sq. ft. (4 Cycles)
Type 2 Permit \$3-4 per sq. ft. (2 Cycles)
Type 2A Permit \$4-5 per sq. ft. (4 Cycles)
Type 3 Permit \$4-5 per sq. ft. (2 Cycles)
Type 3A Permit \$5-6 per sq. ft. (4 Cycles)

Permit Types

Type 1/1A Permits (5,000 sq. ft.)
Type 2/2A Permits (10,000 sq. ft.)
Type 3/3A Permits (22,000 sq. ft.)
Type 4 Permit (Nursery)

At this time, Mendocino County does not have a land use ordinance in place, so it is not likely to present voters with an excise tax ballot measure this year, though Mendocino will look to do so in the near future. It is worth noting that Mendocino County is one of the counties, along with Humboldt, Del Norte, Lake, Sonoma and Trinity, that crafted the Six County Policy Statement submitted to the California State Association of Counties, Rural Counties Representatives of California and all rural counties when MMRSA was being developed. At this time, it appears as though none of the counties, other than Humboldt, is pursuing a cultivation excise tax this year.

A recent survey conducted by the California State Association of Counties indicated that 10 counties are planning to impose some type of tax on medical marijuana, however, no details were provided. Several cities in California do have cultivation taxes, or have put them before voters:

City of Long Beach	\$15 to \$50/square foot (currently not active)
City of Desert Hot Springs	\$25/sq foot for first 3,000 square feet, then \$10/sq foot
City of Berkeley	\$25 per \$1,000 in gross receipts (2.5 percent)
City of Rancho Cordova	\$15,000 if over 5x5 growing space
City of Albany	\$25/sq foot
City of Sacramento	5 percent on indoor growing facilities (needed 2/3 approval and failed in June 7 election with 65.1 percent)

- **Tiered tax rates:** Polling results showed that voters are in support of taxing smaller grows at a lower rate than larger grows, as well as imposing a higher rate on grows that can be harvested more frequently. In addition, your Board recently submitted a letter in support of AB 2516 (Wood), which would create a “specialty cottage” cultivation license for certain small grows under 2,500 square feet.

In response, staff is proposing a progressive tax structure that classifies cultivation areas into three categories: indoor, outdoor and mixed light. These three categories of grows are consistent with the Humboldt County MMLUO. The lowest of these taxes is \$1 per square foot for outdoor grows up to 3,000 square feet, and the maximum rate is \$6 per square foot for a 10,000-square foot indoor grow, which is the largest allowable in Humboldt County. While the ballot question asks voters whether they approve of charging \$1 per square foot up to \$12, the proposed rates above have a maximum of \$6 per square foot. While the Board may choose to remain at \$6 per square foot, it should be noted that the polling was conducted using the \$12 per square foot rate. Accordingly, the ballot language may be revised depending on the actions of your Board. A complete breakdown of rates is included in Attachments 2 through 4.

FINANCIAL IMPACT:

Your Board previously allocated \$171,500 for the Lew Edwards Contract. In addition, your Board allocated five positions to the Planning and Building Department and one to the Agricultural Commissioner to help manage cannabis related activities. If passed, a commercial cannabis cultivation excise tax could generate approximately \$14.1 million annually for the General Fund. The tax would take effect January 1, 2017, with a schedule and mechanism for remitting payment to be detailed in an ordinance that would come before your Board on July 19, 2016. This request also meets your Board's Strategic Framework, Priorities for New Initiatives, by making a proactive decision to partner to promote quality services through facilitating the establishment of local revenue sources to address local needs.

OTHER AGENCY INVOLVEMENT: The Lew Edwards Group

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion

ATTACHMENTS:

1. Proposed Commercial Cannabis Cultivation Excise Tax Revenue Estimate



Excise Tax Rates  
Indoor Cannabis Cultivation

Attachment 2

Indoor Cultivation Area In square feet		Total Tax Pd	Total Tax/Sq Ft
to	100	\$ 200.00	\$ 2.000
to	500	\$ 1,000.00	\$ 2.000
to	1,000	\$ 2,000.00	\$ 2.000
to	2,000	\$ 5,875.00	\$ 2.938
to	3,000	\$ 9,750.00	\$ 3.250
to	4,000	\$ 13,625.00	\$ 3.406
to	5,000	\$ 17,500.00	\$ 3.500
to	6,000	\$ 26,000.00	\$ 4.333
to	7,000	\$ 34,500.00	\$ 4.929
to	8,000	\$ 43,000.00	\$ 5.375
to	9,000	\$ 51,500.00	\$ 5.722
to	10,000	\$ 60,000.00	\$ 6.000



Excise Tax Rates  
Outdoor Cannabis Cultivation

Attachment 3

Outdoor Cultivation Area In Square Feet		Total Tax Pd	Total Tax/Sq Ft
to	500	\$ 500.00	\$ 1.000
to	1,000	\$ 1,000.00	\$ 1.000
to	1,500	\$ 1,500.00	\$ 1.000
to	2,000	\$ 2,000.00	\$ 1.000
to	2,500	\$ 2,500.00	\$ 1.000
to	3,000	\$ 3,200.00	\$ 1.067
to	4,000	\$ 4,600.00	\$ 1.150
to	5,000	\$ 6,000.00	\$ 1.200
to	6,000	\$ 7,400.00	\$ 1.233
to	7,000	\$ 8,800.00	\$ 1.257
to	8,000	\$ 10,200.00	\$ 1.275
to	9,000	\$ 11,600.00	\$ 1.289
to	10,000	\$ 13,000.00	\$ 1.300
to	11,000	\$ 15,583.33	\$ 1.417
to	12,000	\$ 18,166.67	\$ 1.514
to	13,000	\$ 20,750.00	\$ 1.596
to	14,000	\$ 23,333.33	\$ 1.667
to	15,000	\$ 25,916.67	\$ 1.728
to	16,000	\$ 28,500.00	\$ 1.781
to	17,000	\$ 31,083.33	\$ 1.828
to	18,000	\$ 33,666.67	\$ 1.870
to	19,000	\$ 36,250.00	\$ 1.908
to	20,000	\$ 38,833.33	\$ 1.942
to	21,000	\$ 41,416.67	\$ 1.972
to	22,000	\$ 44,000.00	\$ 2.000
to	25,000	\$ 56,055.56	\$ 2.242
to	30,000	\$ 76,148.16	\$ 2.538
to	35,000	\$ 96,240.76	\$ 2.750
to	40,000	\$ 116,333.36	\$ 2.908
to	43,580	\$ 130,719.66	\$ 3.000

Excise Tax Rates  
Mixed Light Cannabis Cultivation

Attachment 4

Mixed Light Cultivation Area In Square Feet		Total Tax Pd	Total Tax/Sq Ft
to	500	\$ 750.00	\$ 1.50
to	1,000	\$ 1,500.00	\$ 1.50
to	1,500	\$ 2,250.00	\$ 1.50
to	2,000	\$ 3,000.00	\$ 1.50
to	2,500	\$ 3,750.00	\$ 1.50
to	3,000	\$ 5,333.33	\$ 1.78
to	4,000	\$ 8,500.00	\$ 2.13
to	5,000	\$ 11,666.67	\$ 2.33
to	6,000	\$ 14,833.33	\$ 2.47
to	7,000	\$ 18,000.00	\$ 2.57
to	8,000	\$ 21,166.67	\$ 2.65
to	9,000	\$ 24,333.33	\$ 2.70
to	10,000	\$ 27,500.00	\$ 2.75
to	11,000	\$ 33,458.33	\$ 3.04
to	12,000	\$ 39,416.67	\$ 3.28
to	13,000	\$ 45,375.00	\$ 3.49
to	14,000	\$ 51,333.34	\$ 3.67
to	15,000	\$ 57,291.67	\$ 3.82
to	16,000	\$ 63,250.00	\$ 3.95
to	17,000	\$ 69,208.34	\$ 4.07
to	18,000	\$ 75,166.67	\$ 4.18
to	19,000	\$ 81,125.00	\$ 4.27
to	20,000	\$ 87,083.34	\$ 4.35
to	21,000	\$ 93,041.67	\$ 4.43
to	22,000	\$ 99,000.01	\$ 4.50