



COUNTY OF HUMBOLDT

AGENDA ITEM NO. **I3**

For the meeting of: March 27, 2018

Date: March 6, 2018

To: Board of Supervisors

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

Subject: Introduction of Ordinance Amending Sections 719-6 and 719-7 of Title VII, Division 1, Chapter 9 of the Humboldt County Code Relating to the Humboldt County Commercial Marijuana Cultivation Tax Ordinance; Adoption of Administrative Regulations Related to the Collection and Remittance of Commercial Marijuana Cultivation Taxes; Review of the Humboldt County Marijuana Ad Hoc Committee's Report Regarding the Imposition of Commercial Marijuana Cultivation Taxes

RECOMMENDATIONS:

That the Board of Supervisors:

1. Introduce the attached ordinance by title and waive the first reading;
2. Set the attached ordinance for adoption on April 3, 2018, or at least one (1) week away from the date of the Board of Supervisors meeting at which the attached ordinance was first introduced;
3. Direct the Clerk of the Board of Supervisors to publish the pre-adoption summary of the attached ordinance and to post a certified copy of the full text of the ordinance in the office of the Clerk of the Board of Supervisors at least five (5) days prior to the Board of Supervisors meeting at which the ordinance will be adopted [Government Code Section 25124(b)(1)];
4. Direct the Clerk of the Board of Supervisors to publish, within fifteen (15) days after adoption of the attached ordinance, a post-adoption summary of the ordinance with the names of the Supervisors voting for and against the ordinance and to post in the office of the Clerk of the Board of Supervisors a certified copy of the full text of the adopted ordinance along with the names of those Supervisors voting for and against the ordinance [Government Code Section 25124(b)(1)];

Prepared by: Amy S. Nilsen

CAO Approval *E. Sheadley*

REVIEW:

Auditor _____ County Counsel *Sm* Human Resources _____ Other _____

TYPE OF ITEM:

- Consent
- Departmental
- Public Hearing
- Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

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

5. Adopt the attached administrative regulations related to the collection and remittance of commercial marijuana cultivation taxes; and
6. Receive the Humboldt County Marijuana Ad Hoc Committee's report regarding the imposition of commercial marijuana cultivation taxes and take appropriate action as necessary.

SOURCE OF FUNDING:

General Fund

DISCUSSION:

The Humboldt County Commercial Marijuana Cultivation Tax Ordinance is set forth in Title VII, Division 1, Chapter 9 of the Humboldt County Code. The Humboldt County Marijuana Ad Hoc Committee, which is comprised of Supervisors Fennell and Sundberg, has been working with staff from the County Administrative Office, the Planning and Building Department, the County Counsel's Office and the Treasurer-Tax Collector's Office to propose amendments to the current cultivation tax ordinance. Based on these meetings, it is recommended that your Board amend the commercial marijuana cultivation tax ordinance in order to bring clarity, transparency and leniency to the processes pertaining to the imposition of commercial marijuana cultivation taxes in Humboldt County.

The attached ordinance will amend Section 719-6 – "Collection and Remittance" of the Humboldt County Code to include additional clarification on the tax collection process. The attached ordinance will also amend Section 719-7 – "Penalties" of the Humboldt County Code to include reduced penalties for nonpayment of commercial marijuana cultivation taxes which are substantially similar to the penalties imposed for nonpayment of property taxes. In addition, the amended version of Section 719-7 will authorize the Humboldt County Treasurer-Tax Collector to waive or cancel any penalties, costs or other charges resulting from nonpayment of commercial marijuana cultivation taxes where the failure to make a timely payment was due to circumstances beyond the tax payer's control.

Section 719-10 – "Administration" of the Humboldt County Code states that "[t]he 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 the Humboldt County Commercial Marijuana Cultivation Ordinance. Pursuant to Section 719-10, staff from the above-referenced county departments and offices has been meeting to establish a more clear and efficient process for collecting commercial marijuana cultivation taxes. Based on these meetings, staff has developed the attached administrative regulations which provide clarification on the manner in which commercial marijuana cultivation taxes will be collected by the Humboldt County Treasurer-Tax Collector's Office.

The Marijuana Ad Hoc committee has also met to discuss options to alleviate the concerns raised by certain commercial marijuana cultivation permit holders regarding the collection of commercial marijuana cultivation taxes. The options that were discussed include:

- Allow permit holders to reduce the square footage of their permitted cultivation area when declared prior to the year in which cultivation will be reduced. Administratively this can be accomplished through an amendment to the Commercial Cannabis Land Use Ordinance (CCLUO). Should your Board choose this option, staff from the Planning and Building Department will need Board direction to amend the CCLUO.
- Allow permit holders to receive a refund of the commercial marijuana cultivation taxes paid for the 2017 calendar year, if specific criteria developed by the Humboldt County Planning and Building Department are met. The Planning and Building Department has authorized refunds for 2017

interim permits for cultivators who demonstrated they did not cultivate in the 2017 calendar year and submitted the interim permit by mistake. Should your Board choose to issue refunds of another nature, staff will need specific direction on which permit types would be eligible to receive commercial marijuana cultivation tax refunds for the 2017 calendar year.

- Amend the Commercial Marijuana Cultivation Tax Ordinance to reduce and collect penalties in a substantially similar form as nonpayment of property taxes. This Ad Hoc committee recommendation is before your Board today.

FINANCIAL IMPACT:

The recommended actions currently before your Board will not have a significant financial impact on the county. Should your Board provide additional direction to staff on amending the CCLUO or issuing tax refunds this will have a financial impact on the county. This financial impact to the General Fund cannot be quantified at this time without specific direction from your Board. However, the county can expect to benefit from the continued collection of commercial marijuana cultivation taxes.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Your Board may choose not to adopt the attached ordinance amending the Humboldt County Commercial Marijuana Cultivation Tax Ordinance or adopt the attached administrative regulations related to the collection and remittance of commercial marijuana cultivation taxes. This alternative is not recommended as there is a need to provide clarification regarding the collection of commercial marijuana cultivation taxes and lower the penalties associated with the nonpayment of such taxes.

ATTACHMENTS:

1. Proposed Ordinance Amending Sections 719-6 and 719-7 of Title VII, Division 1, Chapter 9 of the Humboldt County Code Relating to the Humboldt County Commercial Marijuana Cultivation Tax Ordinance
2. Pre-Adoption Summary of the Proposed Ordinance
3. Post-Adoption Summary of the Proposed Ordinance
4. Administrative Regulations Related to the Collection and Remittance of Commercial Marijuana Cultivation Taxes

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF HUMBOLDT AMENDING SECTIONS 719-6 AND 719-7 OF TITLE VII,
DIVISION 1, CHAPTER 9 OF THE HUMBOLDT COUNTY CODE RELATING TO
THE HUMBOLDT COUNTY COMMERCIAL MARIJUANA CULTIVATION TAX
ORDINANCE**

The Board of Supervisors of the County of Humboldt hereby ordains as follows:

SECTION 1. Sections 719-6 and 719-7 of Chapter 9 of Division 1 of Title VII of the Humboldt County Code are amended as shown on the attached pages.

SECTION 2. This ordinance shall take effect and be in force thirty (30) days from the date of its passage. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2018.

AYES: Supervisors--
NOES: Supervisors--
ABSENT: Supervisors—

Chair of the Board of Supervisors of the
County of Humboldt, State of California

(SEAL)

ATTEST:

Kathy Hayes, Clerk of the Board of Supervisors
County of Humboldt

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. 2567, § 1, 12/13/2016)

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. 2567, § 1, 12/13/2016)

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. 2567, § 1, 12/13/2016)

(b) "Commercial marijuana cultivation permit" shall mean any zoning clearance certificate, special permit or conditional use permit issued by the Humboldt County Planning and Building Department pursuant to Title III of this Code, which authorizes commercial marijuana cultivation to take place on the particular property listed therein. (Ord. 2575, § 1, 06/06/2017)

(c) "Cultivation area" shall mean the cultivation area stated on the commercial marijuana cultivation permit issued by the Humboldt County Planning and Building Department. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(d) "Indoor" shall mean indoor cultivation of marijuana which involves the exclusive use of artificial lighting. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(e) "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. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(f) "Outdoor" shall mean outdoor cultivation of marijuana which does not involve the use of artificial lighting of any kind. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(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. 2567, § 1, 12/13/2016)

(h) "Property owner" shall mean any 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 who owns property within the unincorporated area of Humboldt County. (Ord. 2575, § 1, 06/06/2017)

719-4. IMPOSITION OF TAX.

In addition to any requirements imposed by Title III of this Code, each property owner whose property is subject to a commercial marijuana cultivation permit 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 regardless of whether or not marijuana is actually grown on such property. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

719-5. ANNUAL ADJUSTMENT.

(a) 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. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(b) On or before July 1, 2017, and on or before July 1st of each succeeding year, the County Administrative Officer or designee thereof shall supply to the Humboldt County Planning and Building Director or designee thereof, in a formal communication, the Consumer Price Index (CPI) for all urban consumers as published by the United States Government Bureau of Labor Statistics for computation of the tax imposed by this Chapter. (Ord. 2575, § 1, 06/06/2017)

719-6. COLLECTION AND REMITTANCE.

(a) The tax imposed by this Chapter shall be collected by the Humboldt County Treasurer-Tax Collector ~~biannually~~ in the same or similar manner as other taxes fixed and collected by the County of Humboldt to capture the calendar year taxes required by this Chapter as directed by the Humboldt County Planning and Building Department. For purposes of this Chapter, taxes shall be owed for each and every year in which a commercial marijuana cultivation permit is issued by the Humboldt County Planning and Building Department. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017; Ord. ____, § __, __ /__ /2018)

(b) The Humboldt County Planning and Building Department shall submit to the Humboldt County Treasurer-Tax Collector's Office sufficient information, in order for tax invoices (bills) to be sent out to all property owners whose properties are subject to a commercial marijuana cultivation permit. (Ord. 2575, § 1, 06/06/2017)

719-7. PENALTIES.

(a) Any property owner 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 10~~ 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. All taxes and penalties remaining unpaid through December 31st each year will accrue interest at the rate of 1.5% per month, for a total of 18% per year, beginning January 1st and will continue to accrue until redeemed. A cost recovery fee will also be added each time a notice regarding over-due payments is mailed.~~ 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. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017; Ord. ____, § __, __ / __ /2018)

(b) The Humboldt County Treasurer-Tax Collector is hereby authorized to waive or cancel any penalties, costs or other charges resulting from nonpayment of the tax required by this Chapter where the failure to make a timely payment was due to circumstances beyond the tax payer's control. (Ord. ____, § __, __ / __ /2018)

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. 2567, § 1, 12/13/2016)

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 of 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. 2567, § 1, 12/13/2016)

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. 2567, § 1, 12/13/2016)

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. 2567, § 1, 12/13/2016)

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 property owner whose property is subject to a permit authorizing the commercial cultivation of marijuana for such purposes in accordance with the applicable provisions of this Code and all other applicable state and federal laws and regulations. (Ord. 2567, § 1, 12/13/2016; Ord. 2575, § 1, 06/06/2017)

(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. 2567, § 1, 12/13/2016)

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. 2567, § 1, 12/13/2016)

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. 2567, § 1, 12/13/2016)

719-15. OPERATIVE DATE.

This Chapter shall become operative on January 1, 2017. (Ord. 2567, § 1, 12/13/2016)

SUMMARY FOR PUBLICATION PRIOR TO ADOPTION OF ORDINANCE

(The summary shall be published and a certified copy of the full text of the proposed ordinance shall be posted in the office of the Clerk of the Board of Supervisors at least five (5) days prior to the Board of Supervisors meeting at which the proposed ordinance is to be adopted.)

SUMMARY

On _____, 2018, at its regularly scheduled Board meeting, the Humboldt County Board of Supervisors will consider for adoption a proposed ordinance amending Sections 719-6 and 719-7 of Title VII, Division 1 of the Humboldt County Code relating to the Commercial Marijuana Cultivation Tax.

The text of the proposed ordinance is available from the Clerk of the Board, Room 111, 825 Fifth Street, Eureka, CA.

SUMMARY FOR PUBLICATION AFTER ADOPTION OF ORDINANCE

(The summary shall be published within fifteen (15) days after the adoption of the ordinance.)

SUMMARY

On _____, 2018, the Humboldt County Board of Supervisors adopted Ordinance No. _____ amending Sections 719-6 and 719-7 of Title VII, Division 1 of the Humboldt County Code relating to the Commercial Marijuana Cultivation Tax.

A copy of the ordinance is posted in the office of the Clerk of the Board of Supervisors.

The votes were:

AYES:

NOES:

ABSENT:

Regulation #	Title	Effective Date:
	Humboldt County	
	Commercial Marijuana Cultivation Tax Administrative Regulations	Revised:

SECTION I: PURPOSE

The purpose of the administrative regulations contained herein is to implement the provisions of Title VII, Division 1, Chapter 9 – “Commercial Marijuana Cultivation Tax” of the Humboldt County Code which relates to the Humboldt County Commercial Marijuana Cultivation Tax Ordinance.

SECTION II: ENABLING ORDINANCE

The establishment of these regulations is authorized by Section 719-10 – “Administration” of the Humboldt County Code in order to implement the provisions of the Commercial Marijuana Cultivation Tax authorized by Chapter 9 of the Humboldt County Code.

SECTION III: DEFINITIONS

The terms defined in Section 719-3 – “Definitions” of the Humboldt County Code shall have the same meaning in these administrative regulations.

SECTION IV: METHOD AND PROCEDURE FOR COLLECTION AND REMITTANCE

The Humboldt County Planning and Building Department shall submit to the Humboldt County Treasurer-Tax Collector’s Office all of the following information, in order for tax bills to be sent out to all property owners whose properties are subject a commercial marijuana cultivation permit:

1. Name of property owner;
2. Assessor’s Parcel Number of the property subject to a commercial marijuana cultivation permit;
3. Commercial marijuana cultivation permit number;
4. Mailing address of the property subject to a commercial marijuana cultivation permit;
5. Total square footage of the permitted cultivation area; and
6. Calculation of the applicable commercial marijuana cultivation tax, including Consumer Price Index (CPI) increases, based on permitted cultivation area and type of cultivation method utilized.

Commercial marijuana cultivation tax bills shall be mailed to all property owners according to the information provided by the Humboldt County Planning and Building Department. It is the property owner’s responsibility and obligation to ensure that any and all applicable commercial marijuana cultivation taxes are paid regardless of whether the tax bill pertaining thereto is sent to them, their agents, employees or lessees, and that failure to receive a commercial marijuana cultivation tax bill in no way relieves the property owner of that responsibility and obligation, nor does it give the Humboldt County Treasurer-Tax Collector’s Office reason to cancel any penalties that may be imposed.

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Commercial marijuana cultivation taxes are payable at the Humboldt County Treasurer-Tax Collector's Office, 825 Fifth Street, Room 125, Eureka, California 95501. Payments received after 5:00 p.m. Pacific Standard Time shall be considered received the next day.

Payment of commercial marijuana cultivation taxes may be made in legal tender of the United States, by cash, negotiable check or money order made payable to the order of the Humboldt County Treasurer-Tax Collector's Office. Checks or money orders returned by the bank for any reason will incur a processing cost. Partial payments will not be accepted by the Humboldt County Treasurer-Tax Collector's Office.

Payments of commercial marijuana cultivation taxes should not be postdated. Payments are regularly processed through an automated remittance processor and will not be held. When a check is provided as payment, the County will be authorized to either use information from such check to make a one-time electronic funds transfer from the appropriate account or to process the payment as a check transaction. When information from a check is used to make an electronic funds transfer, funds may be withdrawn from the appropriate account as soon as the same day on which the payment is received by the Humboldt County Treasurer-Tax Collector's Office, and the tax payer will not receive the check back from the financial institution.

The Humboldt County Treasurer-Tax Collector's Office cannot change the amount of commercial marijuana cultivation taxes imposed on a property owner. If there is a disagreement with the amount of taxes set forth on a commercial marijuana cultivation tax bill the Humboldt County Planning and Building Department should be contacted.