



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
M-1

For the meeting of: December 6, 2016

Date: November 14, 2016
To: Board of Supervisors
From: Amy S. Nilsen, County Administrative Officer *AN*
Subject: Commercial Marijuana Cultivation Tax Ordinance

RECOMMENDATION(S):

That the Board of Supervisors:

1. Introduce the attached ordinance by title (Attachment 1), adding Chapter 9, Division 1 of Title VII to the Humboldt County Code, and waive the first reading;
2. Set the ordinance for adoption on December 13, 2016;
3. Direct the Clerk of the Board to publish the pre-adoption summary of the ordinance (Attachment 3), and to post a certified copy of the full text of the proposed ordinance in the office of the Clerk of the Board, both publication and posting to be done at least five (5) days prior to the Board meeting at which the ordinance will be adopted. [Government Code Section 25124 (b)(1)]; and
4. Direct the Clerk of the Board, within 15 days after adoption of the ordinance, to publish a post-adoption summary of the ordinance (Attachment 4) with the names of the Supervisors voting for and against the ordinance, and to post in the office of the Clerk of the Board a certified copy of

Prepared by Amy S. Nilsen CAO Approval *[Signature]*
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; 7/19/16

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: *Dec. 6, 2016*
By: *[Signature]*
Kathy Hayes, Clerk of the Board

the full text of the adopted ordinance and amendments along with the names of those Supervisors voting for and against the ordinance [Government Code Section 25124 (b)(1)].

SOURCE OF FUNDING: General Fund

DISCUSSION:

In July, your Board placed a commercial marijuana cultivation tax on the November 2016 ballot, known as Measure S. Measure S has passed and the attached proposed ordinance sets a local excise tax rate structure 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 to be levied in the unincorporated areas of Humboldt County until ended by voters, and includes an annual consumer price index (CPI) factor. The tax will be effective January 1, 2017. The proposed ordinance before the Board today (Attachment 1) complies with previous Board direction.

FINANCIAL IMPACT:

By adopting the proposed ordinance staff estimates that approximately \$7.3 million will be generated per year when 400 commercial marijuana cultivation permits in the unincorporated areas of Humboldt County have been issued.

The recommended action supports the Board's Strategic Framework, Priorities for New Initiatives, by making proactive decisions to promote quality services through facilitating the establishment of local revenue sources to address local needs.

OTHER AGENCY INVOLVEMENT: None.

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

ATTACHMENTS:

1. Proposed Ordinance
2. Proposed County Code
3. Pre-Adoption Summary
4. Post-Adoption Summary

1. Proposed Ordinance

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF HUMBOLDT ADDING CHAPTER 9, DIVISION 1 OF TITLE
VII TO THE HUMBOLDT COUNTY CODE RELATING TO
THE IMPOSITION OF A COMMERCIAL MARIJUANA CULTIVATION TAX**

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

SECTION 1. Sections 719-1 through 719-15 of Chapter 9 of Division 1 of Title VII are hereby added as shown on the attached pages.

SECTION 2. This ordinance relates to the levying and collecting of a County commercial marijuana cultivation tax and shall have an operative date of January 1, 2017. This tax ordinance shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election held on November 8, 2016, pursuant to Business and Professions Code Section 19348(c), Revenue and Taxation Code Section 7284 and Government Code Section 53723. If this tax ordinance is approved by the voters, a summary shall be published at least five (5) days before the date set for adoption by the Humboldt County Board of Supervisors 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 _____, 2016.

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

2. Proposed County Code

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 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)

3. Pre-Adoption Summary

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 December ¹³~~8~~, 2016, at its regularly scheduled Board meeting, the Humboldt County Board of Supervisors will consider for adoption a proposed ordinance adding Sections 719-1 through 719-15 of Chapter 9 to Division 1 of Title VII of the Humboldt County Code, relating to a Commercial Marijuana Cultivation Tax. This tax ordinance shall be effective January 1, 2017, pursuant to Business and Professions Code Section 19348(c), Revenue and Taxation Code Section 7284 and Government Code Section 53723.

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

4. Post- Adoption Summary

SUMMARY FOR PUBLICATION AFTER ADOPTION OF ORDINANCE

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

SUMMARY

On December 6, 2016, the Humboldt County Board of Supervisors adopted Ordinance No. _____, adding Sections 719-1 through 719-15 of Chapter 9 to Division 1 of Title VII of the Humboldt County Code, relating to a Commercial Marijuana Cultivation Tax. This tax ordinance shall be effective January 1 ,2017, pursuant to Business and Professions Code Section 19348(c), Revenue and Taxation Code Section 7284 and Government Code Section 53723.

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

The votes were:

AYES:

NOES:

ABSENT: