



Political Strategy, Public Policy Research

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July 8, 2018

Hon. Karen Mitchoff, Chair, 4th District
Hon. John Gioia, Vice Chair, 1st District
Hon. Candace Andersen, 2nd District
Hon. Diane Burgis, 3rd District
Hon. Federal D. Glover, 5th District

RE: Board of Supervisors Meeting July 10, 2018 Item D.4 -- Hearing to Consider Adopting Cannabis Ordinance No. 2018-22 Cannabis Business Tax

Dear Chair Mitchoff and Honorable Members of the Contra Costa County Board of Supervisors:

Jim Gonzalez and Associates (JG&A) is a political strategy firm that represents cannabis business clients throughout California.¹

Introduction

The implementation of cannabis business regulations in Contra Costa County will be contingent upon the approval of the Cannabis Business Tax Ordinance by voters in the November 6, 2018 General Election. This means that local regulations will finally begin to be implemented in Contra Costa County over two years after County voters -- by margin of 60.7% -- approved Proposition 64, the Adult Use of Marijuana Act.

¹ Our comments are confined to general public policy analysis and recommendations, and are not referenced for any particular clients.

While the prospect of the implementation of cannabis business regulations will increase opportunities for enforcement against black market operators in Contra Costa County, any delays in the fast-tracking of the review of potential permit applications would only reduce public safety, and result in continuing revenue losses from uncollected cannabis business taxes.

With these caveats in mind, we respectfully offer the following recommendation and concern regarding the cannabis business tax ordinance which is before you for your consideration.

Recommendation: The Cannabis Business Tax Ordinance Should Expressly Grant the Board of Supervisors the Power to Lower Cannabis Business Taxes Subject to a Survey

As currently drafted, Ordinance No. 2018-22, the Cannabis Business Tax Ordinance, provides that the Board of Supervisors, may, in its discretion, by ordinance adjust the rates of cannabis business taxes between bands of minimum and maximum rates. These minimum and maximum rates ranges are:

Commercial Cultivation:

Indoor: \$7.00 per square foot of canopy to \$10.00

Mixed Light: \$4.00 per square foot of canopy to \$7.00

Outdoor: \$2.00 per square foot of canopy to \$4.00

Nursery: \$1.00 per square foot of canopy to \$2.00

Distribution:

2% of gross receipts to 3%

Manufacturing:

2.5% of gross receipts to 4%

Retailers:

4% of gross receipts to 6%

Testing:

0% of gross receipts to 2.5%

Vertically integrated businesses

4% of gross receipts to 6% (vertically integrated businesses engaged in retail sales)

2.5% of gross receipts to 4% (vertically integrated businesses not engaged in retail sales).

The revenues to be generated by this tax structure have been estimated to range between \$2.7 million to \$4.4 million.²

² See: Highlights of Proposed Cannabis Business Tax, Introduction of Ordinance No. 2018-22, July 10, 2018, linked at:

The hope is that these Contra Costa County local cannabis business taxes will provide a stable revenue source which reflects best practices among local jurisdictions. The reality is that local taxation of cannabis businesses is a chaotic patchwork among the cities and counties of California.

A survey published in the Orange County Register in April 2018 revealed that just 57 of the 144 cities that have approved cannabis businesses have also adopted taxes; and that just 8 counties out of the 18 out of 58 counties that have cannabis businesses located in their jurisdictions have also adopted cannabis taxes.³

For the jurisdictions which have enacted taxes as of April 2018, these taxes ranged from 2% to 20% on retail sales; \$1.00 per square foot to \$25.00 on cultivation (Lake County charges \$1.00 per square foot for outdoor cultivation, \$2.00 for mixed light, and \$3.00 for indoor cultivation); also, some jurisdictions charge development fees in lieu of, or as placeholders for, local taxes.

The uncertainty about the impact of disparate state and local taxes on cannabis businesses, and the potential impact of these taxes on the black market, has led to bi-partisan efforts (AB 3157) to lower the state cannabis excise tax rate from 15% to 11%, and to suspend all state cultivation taxes, until June 2021.⁴

As stated in the Assembly Committee on Appropriations Bill Analysis, *"According to the author, AB 3157 will allow time for cannabis businesses and consumers to transition away from the unregulated cannabis market to the regulated market. The author argues that legal cannabis businesses face financial challenges due to increased prices and competition from black market operators not subject to taxes and the costs of complying with new state regulations."*⁵

http://64.166.146.245/docs/2018/BOS/20180710_1118/34263_HIGHLIGHTS%20OF%20PROPOSED%20CANNABIS%20TAX%20ORDINANCE_7-10-18.pdf

³ See Orange County Register, April 12, 2018, linked at: <https://www.ocregister.com/2018/04/12/cannabis-rules-how-does-your-city-make-money-on-weed/>

⁴ See AB 3157, linked at: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB3157

⁵ See Assembly Committee on Appropriations Bill Analysis, AB 3157, referencing the lead authors Assemblymember Tom Lackey (R-Palmdale) and Assemblymember Rob Bonta (D-Oakland), linked at: [file:///C:/Users/John/Downloads/201720180AB3157_Assembly%20Appropriations_%20\(1\).pdf](file:///C:/Users/John/Downloads/201720180AB3157_Assembly%20Appropriations_%20(1).pdf)

In short, there exists a confluence of uncertain and inconsistent local tax policy, an uncertainty regarding how state and local tax rates may impact the regulated legal cannabis market, and an uncertainty regarding the impact of state and local tax rates on the totally unregulated and untaxed black market.

Given this uncertainty, we recommend that the Board of Supervisors preserve its ability to reduce cannabis taxes below the minimum rates provided in the Ordinance, subject to a review of evidence supporting such action. Ordinance No. 2019-22, as currently drafted, does not explicitly provide for an option for the Board, acting upon its discretion, to lower cannabis taxes below these minimum rates.

We recommend adding the following language to the Ordinance at Article 64-16.618 (Amendment or Repeal) to preserve the Board's ability to lower cannabis taxes based below the minimum rates provided in the Ordinance, upon evidence of market conditions and a review best practices:

"Notwithstanding the provisions of Articles 64.16.404, 64.16.406, 64.16.408, 64.16.410, 64.16.412, or 64.16.414 the Board of Supervisors may, in its discretion, subject to a survey of local cannabis taxes imposed by counties, cities, or a city and county, by ordinance adjust cannabis business taxes for a specified period to rates below the minimum rates provided under Chapter 64-16 (Cannabis Business Tax). The Board of Supervisors may, in its discretion, by ordinance, readjust cannabis business taxes to the rates specified in Chapter 64-16. Such readjustments shall not constitute a tax increase required to be submitted to the voters for approval."

Although the provisions of Ordinance 2018.22 provide that the ordinance may be amended or repealed without a vote of the people, provided that such amendment does not constitute a tax increase (see 64-16.618), we respectfully suggest that language be included which specifically states that cannabis taxes may be lowered only in response to evidence provided in a survey of the impact of other local cannabis taxes. Such language would provide an evidence-based rationale for Board action, while preserving the Board's discretion to readjust the taxes to rates within the minimum to maximum bands provided in the draft.

Including the recommended language in the Ordinance would also reflect the Board's due care in ensuring that any cannabis business taxes are reasonable, fair, and accomplish the purposes intended by the taxes-- namely strong legal enforcement and suppression of the black market.

Concern: The Policy Stated in the Staff Power Point Presentation Implies that Cannabis Businesses Subject to an RFP May not be Permitted Until December 2019

The Power Point attached to Item D.4 entitled "Highlights of Proposed Cannabis Business Tax" contains a panel ("Tax Revenue Timelines for Permit Types Subject to an RFP") with an estimated time-line of December 2019 for the final issuing permits to these cannabis business.

(See: "Permit Approved by CCC Health".) Businesses subject to a request for proposal (RFP) would include storefront retail, commercial cultivation, and cannabis manufacturing.

This extremely slow projected approval cycle would mean that no retail, commercial cultivation, or cannabis manufacturing business would be permitted in unincorporated Contra Costa County until over three years after voters overwhelmingly approved Proposition 64.

While we believe that all due care must be exercised in reviewing cannabis business permit applications, we are also exasperated that there appears to be no apparent desire to move quickly to fast track the approval process so that Contra Costa County businesses -- which have been patiently waiting for local cannabis regulations -- can begin operating and start paying taxes.

This elongated permit process makes no sense, except to encourage the continuation of a black market in cannabis to the discouragement of legitimate local businesses which are well-prepared to be honest actors in the legal cannabis marketplace.

Conclusion:

We respectfully request that language be included in Ordinance 2018.22 (Cannabis Business Tax) to allow the Board, at its discretion, subject to a survey of other local cannabis taxes, to adjust cannabis business taxes to rates below the minimums provided in the Ordinance.

We respectfully request that the Board act to fast-track the approvals of cannabis business permit applications, assuming the passage of the Cannabis Business Tax Ordinance by the voters in November 2018, so that local businesses do not have to wait another entire year for their opportunities to operate legal and fully-permitted cannabis businesses in Contra Costa County.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jim Gonzalez", with a long horizontal flourish extending to the right.

Jim Gonzalez

President, JG & Associates, LLC



John A. Thiella

Attorney at Law, Counsel to the Firm

Cc: David J. Twa, County Administrator and Clerk of the Board
John Kopchik, Director, Department of Conservation and Development
Ruben Hernandez, Current Planning Principal Planner, Department of Conservation and Development
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