



**Contra  
Costa  
County**

To: Board of Supervisors  
From: David Twa, County Administrator  
Date: July 24, 2018

Subject: RESOLUTION CALLING FOR AN ELECTION REGARDING AN ORDINANCE TO ESTABLISH A CANNABIS BUSINESS TAX

### **RECOMMENDATION(S):**

1. APPROVE Ordinance No. 2018-22, imposing a general tax on commercial cannabis activities, including commercial cannabis cultivation, cannabis distribution, cannabis manufacturing, cannabis retailers, cannabis testing laboratories, and vertically integrated cannabis businesses in the unincorporated county area.
2. ADOPT Resolution No. 2018/227, calling an election for voters to consider enacting Ordinance No. 2018-22 imposing a general tax on commercial cannabis activities in the unincorporated county area and consolidating the election on the tax measure with the statewide general election to be held on November 6, 2018.
3. AUTHORIZE Chair Karen Mitchoff and Vice Chair John Gioia to sign, on behalf of the Board of Supervisors, the attached argument in favor of the tax measure and any subsequent rebuttal argument.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY  
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD  
COMMITTEE

Action of Board On: **07/24/2018** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

#### **VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: July 24, 2018

David Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Julie DiMaggio Enea  
(925) 335-1077

By: June McHuen, Deputy

## RECOMMENDATION(S): (CONT'D)

### FISCAL IMPACT:

There is no fiscal impact associated with today's recommendation. Implementation of cannabis regulatory and taxation programs will have associated new costs and revenues that cannot be accurately predicted. The amount of tax revenue that might be generated is uncertain because the number of permitted businesses, the size of each cultivation and the amount of gross receipts generated by each business is largely unknown. Gross receipts alone may vary based on variables such as crop yields and wholesale prices. Estimating the size of an illegal market is difficult, as is estimating how consumers will switch to the legal market when it is available. Staff estimates there are potential annual general fund revenues and County costs in the \$1.7 to \$4.4 million range.

### BACKGROUND:

On July 10, 2018, the Board of Supervisors introduced Ordinance No. 2018-22 - Cannabis Business Tax, reviewed publicly the key provisions of the ordinance, and fixed July 24, 2018 for approval of the ordinance and of a resolution calling an election for voters to consider enacting Ordinance No. 2018-22 imposing a general tax on commercial cannabis activities and consolidating the election on the tax measure with the statewide general election to be held on November 6, 2018.

Attached is Resolution No. 2018/227, calling for an election, to be consolidated with the November 6 Statewide general election, to submit to the voters Ordinance No. 2018-22: Cannabis Business Tax (attached). Members of a Governing Body, members on behalf of a Bona fide Association, and any voter eligible to vote on the measure can submit an argument signed by up to five people. Only one Argument In Favor and one Argument Against can be published. Arguments are limited to 300 words. Attached is a suggested argument in favor of the Cannabis Business Tax Ordinance.

The County Elections Office has fixed the schedule below for the submittal of initiatives for the November 6, 2018 Statewide general election. Adoption of Resolution No. 2018/227 and approval of the proposed ballot argument today will facilitate the timely submittal of the measure with the Elections Office.

August 10 <i>E-88</i>	Last day to place a Measure on the ballot
August 22 <i>E-76</i>	Deadline for Primary Arguments
August 27, <i>E-71</i>	Deadline for Rebuttal Arguments
September 6 <i>E-61</i>	Last day to file Writ of Mandate

### **Summary of Prior Board Actions on Commercial Cannabis**

**Zoning and Health.** On April 25, 2018, the Board approved the Draft Framework for Regulating Cannabis in the Unincorporated Area of Contra Costa County, and received a staff report covering zoning and health issues. This action was preceded by detailed Board discussions on November 14, 2017, October 24, 2017, July 18, 2017 and April 25, 2017, and a robust public outreach program that comprised nearly 30 public presentations throughout the county. The Board, in April 2018, made revisions to the general permit terms; placed limits on the number of cultivation permits, retail storefront permits, and stand-alone manufacturing permits in a agricultural zone, and decided to use a Request for Proposals process for those activities; selected buffers from other sensitive land uses; selected criteria for outdoor personal cultivation; and authorized delivery of cannabis in the unincorporated county area, among other changes to the earlier draft regulatory framework.

On June 26, 2018, the Board held a public hearing and adopted Ordinance Nos. 2018-18 and 2018-19 to regulate commercial cannabis activities and personal cannabis cultivation in unincorporated Contra Costa County, and prohibit commercial cannabis activities in the Bethel Island, Sandmound Slough, Knightsen, Contra Costa Centre, Acalanes Ridge, Saranap, and Alamo areas.

The Health Services Department will soon propose an ordinance to require a county health permit for commercial cannabis activities. That ordinance and associated health permit would prohibit flavored products intended to be smoked or used in electronic smoking devices, establish transaction limits on edible/consumable products, ban the use of volatile solvents the manufacturing process, establish requirements for consumer warnings, and establish the authority for Environmental Health Division to inspect and assure that all commercial activity is conducted in accordance with the ordinance.

**Taxation.** On July 18, 2017, the Board of Supervisors reviewed options for a cannabis taxation study and authorized the hiring of consultant Hinderliter, de Llamas & Associates (dba HdL Companies) to prepare a study with recommendations on taxation of various permitted activities. On October 24, 2017, the Board received a presentation by Hinderliter de Llamas (HdL) on the fiscal analysis they prepared for the County on cannabis taxation options. The HdL analysis identified tax options and revenue estimates for the various types of cannabis businesses that could operate in the unincorporated county area, and identified local economic impacts of the cannabis industry. The analysis also considered financial constraints, including the overall tax and regulatory burden, which may affect both the industry's long-term stability and its ability to successfully transition to a legal, regulated paradigm that can outcompete the existing black market. The analysis also provided initial information on estimated costs of regulation and

enforcement.

At the Board's meeting on May 8, 2018, the Board considered options for the taxation of cannabis activities in the County's unincorporated area and development of an ordinance imposing a cannabis business tax ranging from \$1-\$10 per square foot of permitted cultivation area, and up to 6% of gross receipts on all other commercial cannabis activities.

After reviewing and discussing the proposed ordinance at the May 8, 2018 Board meeting, the Board directed staff to prepare an ordinance establishing a tax on various commercial cannabis activities, to be placed on the November 2018 ballot. The Board directed that the ordinance include the following provisions:

1. The tax will be a general tax in the unincorporated County area.
2. The tax on commercial cannabis cultivation will be based on the square footage of a permitted canopy.
3. The ordinance will establish initial tax rates and maximum tax rates, with automatic inflation adjustments of the maximum tax rates, and permit the Board to make annual adjustments to the tax rates.
4. The ordinance will include penalties for delinquent payments.
5. The tax and tax appeals will be administered by the Treasurer-Tax Collector.

The Board also directed staff to examine existing fees and evaluate whether additional fees should be proposed to recover the County's reasonable costs of administering the County's cannabis tax, land use, and health ordinances. Fee proposals will be brought forth by the operating departments as they develop their cannabis program administrative processes and identify full costs of the program.

#### CONSEQUENCE OF NEGATIVE ACTION:

No immediate consequence. However, August 7, 2018 is the last regular meeting of the Board of Supervisors at which the Board could take action to place a measure on the November 6, 2018 ballot.

#### CLERK'S ADDENDUM

#### ATTACHMENTS

Resolution No. 2018/227

Exhibit A to Resolution No. 2018/227: Ordinance No. 2018-22 Cannabis Business Tax

Cannabis Business Tax Ballot Argument\_Nov 2018