



Agenda Submittal

Agenda #: 21 **Status:** Regular Calendar
Type: Ordinance **Department:** Resource Management
File #: 19-247 **Contact:** Karen Avery, 784-3165
Agenda date: 5/7/2019 **Final action:**
Title: Conduct a noticed public hearing to consider the adoption of an ordinance amending Chapter 3 of the Solano County Code to permit and regulate temporary cannabis events at the Solano County Fairgrounds; and Consider the adoption of a resolution to set the business license tax of 7% for retail sales of cannabis and cannabis products during temporary cannabis events at the Solano County Fairgrounds
Governing body: Board of Supervisors
District: All
Attachments: 1. A - Ordinance, 2. B - Resolution, 3. C - Adopted Ord No. 2016-1773, 4. D - Adopted Resolution No. 2016-150, 5. E - BCC Cannabis Event Fact Sheet, 6. F - Local Tax Tables, 7. G - Notice of Public Hearing, 8. Minute Order, 9. Presentation

Date	Ver.	Action By	Action	Result
5/7/2019	1	Board of Supervisors	Denied	

Published Notice Required? Yes X No ___
Public Hearing Required? Yes X No __

DEPARTMENTAL RECOMMENDATION:

The Department of Resource Management recommends that the Board of Supervisors:

1. Read the proposed ordinance by title only and waive further reading by majority vote;
2. Find the proposed ordinance is exempt from further environmental review under Section 15061(b)(3) of Title 14 of the California Code of Regulations because there is no possibility that the project may have a significant effect on the environment;
3. Adopt the proposed ordinance amending Chapter 3 establishing a permanent ordinance to permit and regulate temporary cannabis events at the Solano County Fairgrounds (4/5 vote required);
4. Consider the adoption of a resolution to set the business license tax of 7% for retail sales of cannabis and cannabis products during temporary cannabis events at the Solano County Fairgrounds.

SUMMARY:

On October 2, 2018, the Board of Supervisors adopted Ordinance 2018-1799, which prohibited all commercial cannabis activities in the unincorporated areas of Solano County. Temporary cannabis events were not specifically addressed in that Ordinance. The Board of Supervisors subsequently adopted an urgency ordinance on November 6, 2018 establishing a 45-day prohibition of temporary cannabis events. This urgency ordinance was extended to 10 months and 15-days on December 11, 2018. This moratorium will expire on November 6, 2019.

Also, at the December 11, 2018 Board of Supervisors meeting, staff provided the Board with several options

for consideration for regulating temporary cannabis events. The Board directed staff to prepare an ordinance that would allow temporary cannabis events to be held solely at the Solano County Fairgrounds with further County oversight, allow on-site cannabis sales and prohibit on-site cannabis consumption.

On August 9, 2016 the Board of Supervisors adopted Ordinance No. 2016-1773 (Attachment C) which amended Chapter 11 of the Solano County Code to add a countywide general business license tax on marijuana businesses. The Ordinance states that a “marijuana business shall pay to the County 15% of each dollar of its gross receipts for the reporting period”. The Ordinance also states that “the Board of Supervisors, by resolution, may lower and raise this tax rate from time to time as it deems appropriate, so long as the tax does not exceed the maximum rate of 15% of each dollar of gross receipts.”

Also on August 9, 2016, the Board of Supervisors approved Resolution 2016-150 (Attachment D) which authorized the placement of this business license tax measure on the November 8, 2016 ballot. The voters of Solano County approved this tax measure, known as Measure C, by 63% to 37%. Should the Board choose to allow temporary cannabis events with retail sales, the current tax rate in place will be 15% unless the Board takes specific action to establish a different tax rate between 0% and 15%. One option for the Board is to adopt a 7% business license tax rate for cannabis businesses, which is the same tax rate that will be charged by the City of Vallejo for cannabis businesses within their jurisdiction beginning July 1, 2019 (the current business license tax rate in the City of Vallejo is 10%).

FINANCIAL IMPACT:

The costs to analyze County options for regulating cannabis is included in the Department of Resource Management’s Planning Services budget. The costs associated with preparing the agenda item are nominal and absorbed by the Department’s FY2018/19 Adopted Budget.

DISCUSSION:

Background - State Law Regarding Temporary Cannabis Events

As discussed in previous staff reports to the Board, the Bureau of Cannabis Control (Bureau) currently allows two license types that addresses cannabis events: a “Cannabis Event Organizer License” and a “Temporary Cannabis Event License”. Local approval is required for a temporary cannabis event license, but not for a cannabis event organizer license. An individual would apply for a Cannabis Event Organizer License in order to operate a Temporary Cannabis Event, which includes the consumption and sales of cannabis and cannabis goods, for up to four days. Initially, temporary cannabis events were limited to County Fairgrounds (Solano County Fairgrounds) and Agricultural Association buildings (Dixon May Fair, which is not under the purview of the Board of Supervisors); however, Assembly Bill 2020, signed by Governor Brown in September of 2018, allows local jurisdictions to approve any site they deem appropriate as venues for temporary cannabis events. The approval of AB 2020 benefits some larger jurisdictions as they may have multiple event venues beyond fair buildings and ag association buildings and this will give them the opportunity to choose other possible sites for temporary cannabis events.

All temporary cannabis events must follow these standards to be in compliance with the state law. The Bureau has updated their Cannabis Event Fact Sheet - Attachment E. The Cannabis Event Fact Sheet breaks down how to obtain a state temporary event license. The Cannabis Event Fact Sheet also addresses the on-site sales and consumption of cannabis goods at temporary cannabis events stating that only licensed retailers and microbusinesses can sell cannabis goods to retail customers at cannabis events. Also, that consumption should be restricted to persons 21 years of age and older and the area where consumption is taking place should be out of the view of the general public.

The Bureau of Cannabis Control has also added another type of cannabis event identified as “Informational or Educational Cannabis Events”. These “informational or ‘educational’ events are events where *no sales of*

cannabis goods or consumption of cannabis goods is occurring. These “informational or educational cannabis events” are not required to be licensed by the Bureau.

Solano County - Temporary Cannabis Events

At the December 11, 2018 Board of Supervisors meeting, staff provided the Board with several options for regulating temporary cannabis events. There was some discussion amongst the Board about allowing cannabis sales but prohibiting on-site cannabis consumption. At the conclusion of the Board discussion, the option chosen by the Board directed staff to prepare an ordinance amending Chapter 3 of the Solano County Code to allow temporary cannabis events solely at the Solano County Fairgrounds, to allow sales of cannabis and cannabis products, to prohibit on-site cannabis consumption at these events, and to require further oversight from Solano County.

Staff has drafted a temporary cannabis event ordinance which allows temporary cannabis events to be held solely at the Solano County Fairgrounds, allows sales of cannabis and cannabis products, prohibits on-site consumption of cannabis and requires the temporary cannabis event organizer to file a temporary cannabis event application with the Department of Resource Management. See Attachment A - Temporary Cannabis Events Ordinance.

The Board’s adoption of this proposed amendment to Chapter 3 would supersede the current urgency ordinance prohibiting temporary cannabis events.

State Cannabis Excise Tax and Cultivation Tax Rates

The current State tax rates for cannabis includes the 15% excise tax on the retail purchase of cannabis or cannabis products. The 15% excise tax is based on the average market price of the retail sale. People with a valid Medical Marijuana Identification Card (MMIC) issued from the California Department of Public Health are exempt from the 15% excise tax on cannabis and cannabis products.

In addition to the excise tax, there is a separate cultivation tax on cannabis that is harvested for commercial purposes. The cultivation taxes are currently \$9.25 per ounce of dried flower (about \$148 per lb.) and dried leaves at \$2.75 per ounce (about \$44 per lb.). Fresh cannabis plants are taxed at a rate of \$1.29 per ounce (about \$21 per lb.). Fresh cannabis is considered unprocessed cannabis and weighed within 2 hours of harvesting. These taxes are generally paid by the cultivator but in some cases the payment may be passed to a distributor or manufacturer by way of invoice at the time the cannabis product is first sold or transferred. The distributor or manufacturer would collect the tax from the cultivator at the time the cannabis enters the commercial market. The distributor would be responsible for remitting the tax to the California Department of Tax and Fee Administration (CDTFA).

Business License Tax Comparison with Other Jurisdictions

The focus of staff’s comparison with other jurisdictions is on retail operations since cannabis sales at the temporary cannabis events would be the only cannabis operation where the County’s business license tax would be applicable. In general, while researching cannabis tax rates staff noted that some jurisdictions with higher tax rates have recently adopted lower tax rates citing that their legally permitted retail operations were having a difficult time competing with black market cannabis sales.

The City of Berkeley recently reduced their business license tax rates from 10% to 5% and the City of Oakland is likely to reduce their rates as well. In November 2018, Oakland voters approved a measure to reduce the current business license tax which is 10% for recreational sales and 5% for medical cannabis sales. Action by the Oakland City Council is expected soon.

Dixon voters approved Measure K in 2016 which allows the City Council to set a tax rate of up to a maximum

of 15%. The City of Dixon City Council recently approved a business license tax of 15% of gross receipts for cannabis related businesses that have not entered into a development agreement with the city. This tax appears to specifically target cannabis delivery operations that are not associated with the existing retail operations in Dixon. One reason given by the City's Counsel is that the business license tax was established to help law enforcement pursue illegal cannabis businesses for failure to pay taxes.

The City of Vallejo recently approved an adjustment to their business license tax for retail sales reducing it from 10% to 7%. Vallejo will also begin using differing tax rates per cannabis business. For example, the tax rate for a distributor will be 2% and for a manufacturer 5%. These new business license tax rates will become effective July 1, 2019.

The City of Benicia has set a business license tax rate of up to 6% of gross receipts for retail operations. Currently, there are no retailers operating in Benicia. Benicia also has a similar approach to tax rates as Vallejo, taxing each cannabis business at a different tax rate.

Contra Costa County voters approved up to 4% gross receipts for cannabis retailers. The tax rate for Sonoma County dispensaries is 2% of gross receipts. Yolo County approved an initial rate of 5% for retail businesses and the Yolo County Board of Supervisors can set the tax rates annually but may only increase or decrease the tax rate by 2% annually.

More detailed information regarding local jurisdictions tax rates can be found in Attachment F.

Solano County Cannabis Business License Tax

At the December 11, 2018 Board of Supervisors meeting there was discussion amongst the Board about whether or not the cannabis sales at the Solano County Fairgrounds would be subject to the County business license tax on commercial cannabis businesses. On November 8, 2016, Solano County voters approved a business license tax up to 15% on commercial cannabis businesses. The Board, by resolution, has the ability to set a specific tax rate of up to 15% of gross receipts. See Attachment B - Draft Board Resolution - Business License Tax.

Should the Board set a specific tax rate, a sale of cannabis or cannabis product at the Solano County Fairgrounds would be subject to the 15% State cannabis excise tax, the State and Solano County sales tax of 6.25%, the City of Vallejo's combined 2.125% (1% and 1.125% special tax rate) sales tax and the Solano County business license tax rate to be established by the Board of Supervisors. The current approved Solano County business license tax rate is 15%.

One option for the Board to consider would be to establish the business license tax rate for retail operations that is the same as that used by the City of Vallejo for cannabis businesses. The Solano Fairgrounds are located within the city limits of Vallejo and using the same cannabis tax rate may lessen confusion with vendors. Also, any current Vallejo cannabis retailers, should they participate in the temporary cannabis event at the Fairground, would be familiar with that percentage. Since the Fairgrounds is County property, the County's cannabis business license tax would apply. Below is a sample using a cannabis business license tax rate of 7%:

Tax Calculation Example using a 7% business license tax rate:

Selling price of cannabis - \$40.00
State Excise tax - \$6.00 (\$40.00 x 15%)
Subtotal - \$46.00

Solano County cannabis business license tax - \$3.22 (\$46.00 x 7%)
Subtotal - \$49.22

Sales Tax (State - 6%, County - 6.25%, Vallejo -1 % & Special tax 1.125% - Total 8.375%) - \$4.12 (\$49.22 x 8.375%)

Total due (\$49.22 + \$4.12): \$53.34

Tax Calculation Example using the current Solano County business license tax rate of 15%:

Selling price of cannabis - \$40.00

State Excise tax - \$6.00 (\$40.00 x 15%)

Subtotal - \$46.00

Solano County cannabis business license tax - \$6.90 (\$46.00 x 15%)

Subtotal - \$52.90

Sales Tax (State - 6%, County - .25%, Vallejo - 1% & Special tax 1.125% - Total 8.375%) - \$4.43 (52.90 x 8.375%)

Total due (52.90 + \$4.43): \$57.33

The vendors operating at the temporary cannabis events at the Solano County Fairgrounds would be responsible for assessing, collecting and remitting the sales tax as set by the City of Vallejo, the State, and Solano County including the business license tax on cannabis and remitting them to the auditor's office on a quarterly basis.

Given that temporary cannabis event will be limited in number and duration, staff gave some consideration as to whether a tax would generate enough revenue to justify the costs to administer and track payments. It is something that should be monitored if a tax is established. If the number of events and revenue generated does not justify the administrative costs, the Board has the ability to further evaluate the level or need for the tax at a future date.

As noted above, cannabis retailers that participate in a temporary cannabis event will have to be licensed by the State to conduct cannabis retail sales. To obtain a State license, the retailer must first have approval of their local jurisdiction.

Environmental Analysis

In accordance with the California Environmental Quality Act (CEQA), it has been determined that extending the temporary urgency ordinance is exempt from further environmental review under Section 15061(b)(3) of Title 14 of the California Code of Regulations because there is no possibility that the project may have a significant effect on the environment.

Public Notice Requirement

Consistent with Government Code Section 63858, a public hearing notice was published in the Fairfield Daily Republic, Dixon Tribune, Vacaville Reporter, Winters Express, Vallejo Times Herald, Rio Vista River News Herald and Benicia Herald at least 10 days prior to the public hearing. (Attachment G - Notice of Public Hearing).

ALTERNATIVES:

Temporary Cannabis Events

The Board may choose to:

1. Adopt the Ordinance designating the Solano County Fairgrounds as the only approved venue for temporary cannabis events with no further regulations or oversight.
2. Not adopt the Ordinance and leave the urgency ordinance in place until November 6, 2019.

These alternatives are not recommended as the Board previously directed staff to include further regulatory oversight by County staff of temporary cannabis events and encouraged staff to draft a permanent temporary cannabis events ordinance prior to the November 6, 2019 expiration of the urgency ordinance.

3. Modify the requirements contained in the Ordinance prior to adoption. For example, the Board could choose to allow on-site consumption, designate specific criteria for establishment of consumption areas, and provide a waiver from the County's Smoke-Free Facilities policy. This is at the Board's discretion as the Ordinance, as presented, incorporates the direction previously provided to staff by the Board on December 11, 2018.

Business License Tax

The Board may choose to:

1. Not adopt the Resolution and leave the Business License tax rate set at 15% of gross receipts of cannabis and cannabis products sales.
2. Reduce the business license tax rate from 15% to 0% to reduce County staff costs for receiving and processing monies received from the cannabis business license tax on retail sales of recreational cannabis.

These alternatives are not recommended as the 7% cannabis tax rate will be consistent with the City of Vallejo's. However, the Board of Supervisors has the discretion of lowering and raising the cannabis tax rate over time and as the Board deems appropriate between 0% and 15%, inclusive.

OTHER AGENCY INVOLVEMENT:

Resource Management staff has consulted with County Counsel and the Auditor-Controller in the process of preparing the proposed ordinance extension, resolution, and Board options.

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION