COUNTY OF SAN DIEGO  
BOARD OF SUPERVISORS  
TUESDAY, MAY 10, 2022  

MINUTE ORDER NO. 20

SUBJECT: RECEIVE THE FISCAL REVENUE ANALYSIS OF THE COMMERCIAL CANNABIS INDUSTRY REPORT AND DRAFT CANNABIS BUSINESS TAX ORDINANCE (DISTRICTS: ALL)

OVERVIEW
On January 27, 2021 (4), the Board of Supervisors (“Board”) considered an item related to the Framework for Our Future: Measures to Provide Economic Access and Equity in the Cannabis Industry. The Board directed the Chief Administrative Officer (“CAO”) to explore, among other items, a cannabis taxation program. Today’s item is specific to that taxation program. Also, on January 27, 2021 (4), the Board directed the CAO to explore implementation of a commercial cannabis ordinance, regulations, and programs with a social equity component for the unincorporated area, which the CAO will bring to the Board at a later date.

Over the past several months, County of San Diego (“County”) staff, in conjunction with HdL Companies (“HdL”), the County’s cannabis taxation program consultant, have developed a proposed cannabis taxation program.

The proposed cannabis taxation program includes a draft ordinance that imposes a business tax on businesses engaging in cannabis cultivation, retail sales, distribution, manufacturing, or processing of cannabis, or running testing laboratories. As written, this tax will be imposed only in the unincorporated area. The draft ordinance sets maximum tax rates and allows the actual tax rate to be set by the Board at a later date by ordinance or resolution. The Board may set varied rates based on various factors to the extent not prohibited by law. The draft ordinance also does not tax industrial hemp.

Today’s recommendation is for the Board to receive the Fiscal Revenue Analysis of the Commercial Cannabis Industry Report (as provided by the County’s cannabis tax consultant), receive the draft ordinance for the Board’s consideration and input, and direct staff to return to the Board on June 14, 2022, with the necessary actions to place the cannabis business tax on the November 8, 2022, General Election ballot. Today’s action would pass with a majority vote, but approval of the ordinance at a future Board meeting will require four votes.

RECOMMENDATION(S)
CHIEF ADMINISTRATIVE OFFICER

2. Receive and provide input on the attached draft Ordinance (Attachment B) entitled: AN ORDINANCE OF THE COUNTY OF SAN DIEGO, CALIFORNIA ADDING CHAPTER 4 (CANNABIS BUSINESS TAX) TO TITLE 2, DIVISION 2, OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES ESTABLISHING A TAX ON CANNABIS BUSINESS ACTIVITIES WITHIN THE COUNTY.
3. Direct the Chief Administrative Officer to return to the Board on June 14, 2022, with all actions necessary to place the Ordinance on the ballot for the November 8, 2022, General Election.

EQUITY IMPACT STATEMENT
A disproportionate number of Black, Indigenous, and People of Color (BIPOC) individuals remain incarcerated for the past criminalization of cannabis. As cannabis is legalized and permitted in San Diego County, the Board saw the need to create a Socially Equitable Cannabis Program to help guide the County’s approach to this new potential revenue. On January 27, 2021, the Board directed the CAO to develop a Socially Equitable Cannabis Program (Program) to include Zoning Ordinance and Regulatory Code amendments that allow for a variety of commercial cannabis uses, and a Social Equity Program to prioritize equity, access, and business opportunities to help rectify the injustices caused by the War on Drugs. Since that time, the Office of Equity and Racial Justice (OERJ) has initiated development of a comprehensive Social Equity Assessment, which has included several outreach sessions, to inform the Social Equity Program which will include a Program for Social Equity Entrepreneurs. In addition, Planning and Development Services (PDS) is developing the ordinance amendments and corresponding permitting system as directed. A Program Environmental Impact Report (PEIR) will also be prepared by PDS to evaluate the potential environmental impacts of the allowances within the future ordinance.

Specific to a cannabis taxation program, County staff and consultants engaged in three community outreach sessions where information was made available about cannabis history, market demand for cannabis, revenue generating strategies, future trends in cannabis, general tax ordinance structure and rates, and cannabis tax issues. Participants were given the opportunity to ask questions and provide comments about the topics discussed. For the three outreach sessions, there were 80 attendees. Social equity considerations were a common theme in the feedback received, with comments including concerns that too high or too many taxes could be cost prohibitive for social equity businesses, suggestions to invest future tax revenues into social equity businesses or communities most impacted by the past criminalization of cannabis, and a sentiment that addressing historic and current inequities, not generating revenue, should guide the development of the tax ordinance.

There is a great interest, at the County and in the community, in social equity issues to address the historic harms from the war on drugs. OERJ is planning to update the Board on the development of the Equity Assessment and a program for Social Equity Entrepreneurs at a later date. However, there are social equity implications in the taxation of cannabis that the Board may wish to consider in order to fully realize a Socially Equitable Cannabis Program. While specific recommendations are forthcoming in the Equity Assessment, a basic review of other jurisdictions in the state has revealed opportunities for advancing social equity through the taxation of cannabis. In the City of Oakland, the City Council adopted a tax rebate program that allows cannabis operators to receive tax rebates by retroactively lowering their business tax rate as a result of local hiring, purchasing equity products, providing employees with high wages and/or health benefits, or incubating social equity entrepreneurs. In the City of Long Beach, Equity Businesses who applied for an adult-use cannabis cultivation license may pay their first year's taxes on a monthly payment plan instead of the full payment that is usually required prior to issuance of a cannabis cultivation business license. Further, in the County of Sonoma, tax rates vary depending on the physical size of the operation. For instance, for outdoor cultivation, the County has designated four different cultivation license types (1C Specialty Cottage, 1 Specialty Outdoor, 2 Small, 3 Medium) based on maximum cultivation area per parcel (square feet or plant). The tax rate for each of these designations varies, ranging from $1.12 per square foot for the smallest designation (1C Specialty Cottage) to $2.25 per square foot for the largest designation (3 Medium).
The draft tax ordinance proposes a general tax, meaning that it would not be imposed for a specific purpose. However, the Board could choose to appropriate general funds to social equity purposes at a later date.

The input from the community and from HdL is and will continue to be reviewed within the context of the findings of a comprehensive equity assessment as these are developed and finalized. The equity assessment will include an evaluation of the impact of the past criminalization of cannabis and cannabis law violations on local communities.

**FISCAL IMPACT**

There is no fiscal impact associated with today’s recommendations. There will be no change in net General Fund cost and no additional staff years as a result of today’s actions.

If the Board chooses to add this measure to the ballot, the County will incur approximately $800,000 in increased costs to print and translate the measure, along with a portion of shared election-related costs that are already included in the Registrar of Voters’ proposed budget. Funds for the estimated cost to conduct the election are included in the Fiscal Year (FY) 2022-23 CAO Recommended Operational Plan in the Registrar of Voters. There is no net General Fund cost and no additional staff years to add this measure to the ballot.

Additional costs will be incurred to administer the cannabis tax if the cannabis tax is approved by voters on the November 8, 2022, General Election. The funding source for additional costs will be determined by each affected department’s funding structure and will be identified as follows:

* **Treasurer-Tax Collector**
  If a cannabis tax is approved by voters, there will be additional tax administration costs of $262,000 for 2.00 additional staff years ($130,000) in the Treasurer-Tax Collector to collect and deposit payments, to make one-time update to systems used for collections ($50,000), for contract auditing services ($42,000), and to gain access to the California Cannabis Authority Joint Powers Authority cannabis database to ensure accurate tax collection ($40,000). These additional costs and staff years will be requested only after a cannabis tax is passed; the funding source for the additional costs will be included in future Operational Plans, pending identification, prior to returning back to the Board.

* **Auditor & Controller**
  If a cannabis tax is approved by voters, there will be additional tax administration costs of $61,311 for 0.50 staff years in the Auditor & Controller Department to perform accounting, audit and financial reporting of the cannabis tax. These additional costs and staff years will be requested only after a cannabis tax is passed; the funding source for the additional costs will be included in future Operational Plans, pending identification, in future Operational Plans.

The overall estimated fiscal impact depends on a number of factors, including policy decisions by the Board, the number, type, and size of cannabis-related businesses, and the compliance of participating businesses. If a cannabis tax is passed, there is anticipated to be a net General Fund cost of $262,000 and 2.00 additional staff years in Fiscal Year 2022-23 to administer a cannabis tax in the Treasurer-Tax Collector; in Fiscal Year 2023-24 there will be a net General Fund cost of $61,311 and 0.50 additional staff years. Overall, there will be a net General Fund cost of $323,311 and 2.50 additional staff years to administer a cannabis tax.
Annual estimates of the cannabis taxation program revenue range from $2.9 million to $5.6 million. However, annual revenue projections also depend on a variety of factors. These projections represent hypothetical future scenarios which will take time to develop and should not be assumed to be a first or second-year projection.

BUSINESS IMPACT STATEMENT
As of October 2021, the Board adopted ordinance amendments to allow the five existing cannabis dispensaries that were in operation prior to the County’s 2017 prohibition on new medical facilities to continue operations and sell commercial medicinal and adult-use cannabis. Currently, no new dispensaries or other cannabis operations are permitted under the existing ordinances. LUEG will bring forward additional items for the Board’s for approving additional cannabis operations at a later date. If the Board approves, it is anticipated that the County would make commercial cannabis permits available to operators in the unincorporated area in spring-summer 2024. At that time, new permits could be issued to the following types of cannabis businesses: cultivators (including nurseries), distributors, manufacturers, retailers, and testing laboratories.

Cannabis businesses support a wide variety of other businesses that are not a part of the cannabis supply chain. Cultivators support garden supply stores, greenhouse manufacturers, irrigation suppliers, soil manufacturers, and a wide variety of contractors, including building and construction, lighting and electrical, HVAC, permitting, and engineering. Manufacturers support many of these same businesses, plus specialized tooling and equipment manufacturers, and product suppliers for hardware, packaging, and labeling. All these businesses support, and are supported by, a host of ancillary businesses, such as bookkeepers, accountants, tax preparers, parcel services, marketing and advertising agencies, personnel services, attorneys, mechanics, facilities maintenance, security services, and others. The cannabis business entrepreneur profits and the salaries paid to employees will move into the local economy, support stores, restaurants, car dealerships, contractors, home sales, and other businesses.

ACTION:
ON MOTION of Supervisor Fletcher, seconded by Supervisor Lawson-Remer, the Board of Supervisors took the following actions:
1. Received the Fiscal Revenue Analysis of the Commercial Cannabis Industry Report (Attachment A).

2. Received and provided input on the attached draft Ordinance (Attachment B) entitled: AN ORDINANCE OF THE COUNTY OF SAN DIEGO, CALIFORNIA ADDING CHAPTER 4 (CANNABIS BUSINESS TAX) TO TITLE 2, DIVISION 2, OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES ESTABLISHING A TAX ON CANNABIS BUSINESS ACTIVITIES WITHIN THE COUNTY.

3. Directed the Chief Administrative Officer to return to the Board on June 14, 2022, with all actions necessary to place the Ordinance on the ballot for the November 8, 2022, General Election.

4. Directed the Chief Administrative Officer to ensure that the ordinance allows the Board of Supervisors to have the option to tax cultivation on gross receipts or square footage.

5. Directed the Chief Administrative Officer to include a component in the ordinance related to crop failure mechanism in the cultivation market.
6. Directed the Chief Administrative Officer to identify the tax as a General Tax.

7. Directed the Chief Administrative Officer to clearly indicate that the Board will return at a later date to set the tax rates.

8. Directed the Chief Administrative Officer to specify that the General Tax will only apply to the unincorporated area.

AYES: Vargas, Anderson, Lawson-Remer, Fletcher
NOES: Desmond

State of California)
County of San Diego) §

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors

Signed
by Andrew Potter