OVERVIEW
On January 27, 2021 (4), the Board of Supervisors (Board) directed the Chief Administrative Officer (CAO) to explore the implementation of a commercial cannabis ordinance, regulations, and programs with a social equity component for the unincorporated area, including the development and implementation of a commercial cannabis taxation program. Then on May 10, 2022 (20), County of San Diego (County) staff returned to the Board with a draft cannabis business tax ordinance and fiscal revenue analysis developed in conjunction with HdL Companies (HdL), the County’s cannabis taxation program consultant.

At the May 10, 2022 (20) meeting, the Board directed the CAO to take six actions: 1) 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; 2) ensure the ordinance allows the Board to have the option to tax cultivation on a gross receipts or square footage basis; 3) include a component in the ordinance to address relief for crop failure in the cultivation market; 4) identify the tax as a General Tax; 5) indicate the Board will return at a later date to set the tax rates; and 6) specify that the General Tax will only apply to the unincorporated area.

On June 14, 2022 (21), the Board received additional reports from HdL regarding options to tax cultivation, approved the introduction of an Ordinance that would establish a tax on cannabis business activities within the unincorporated area of the county, and received and provided input on a draft resolution that would call an election on said Ordinance.

Today’s recommendations are for the Board to approve the Ordinance (second reading), adopt a resolution calling the election, including the final ballot question approved by the Board, and make other election-related decisions.

Pursuant to Government Code § 53724(b), approval of the ordinance requires a two-thirds vote of the Board, or four votes.
RECOMMENDATION(S)
CHIEF ADMINISTRATIVE OFFICER
On June 28, 2022:

1. Consider, approve, and adopt the Ordinance (second reading; Attachment A, on file with the Clerk of the Board) entitled (4 VOTES):
   
   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.

2. Adopt a Resolution (Attachment B, on file with the Clerk of the Board) entitled:
   
   RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, CALLING FOR AND ORDERING AN ELECTION TO PRESENT TO THE VOTERS OF THE COUNTY A PROPOSED ORDINANCE ADDING CHAPTER 4, OF DIVISION 2, TO TITLE 2 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES ESTABLISHING A TAX ON CANNABIS BUSINESSES AND ORDERING CONSOLIDATION OF SAID ELECTION WITH THE CONSOLIDATED GENERAL ELECTION CALLED FOR NOVEMBER 8, 2022 (COUNTRYWIDE).

3. If the Board approves the Ordinance, consider, and select one of the following options relating to filing written arguments supporting the measure:
   a. Authorize one or more members of the Board to file with the Registrar of Voters a written argument for the measure on behalf of the Board, and a written rebuttal to any arguments against the measure, to be printed in the voter information guide, and further authorize those members to determine any other person(s) to prepare, submit, or sign a written rebuttal argument to any argument against the measure.

   OR

   b. Decline to authorize any members of the Board to file such arguments on behalf of the Board.

4. If the Board approves the Ordinance, consider, and select one of the following options relating to preparing and filing a fiscal impact statement to be printed in the voter information guide:
   a. Pursuant to the authority in Elections Code § 9160(c), direct the Auditor and Controller to prepare a fiscal impact statement to be printed in the voter information guide.

   OR

   b. Decline to direct the Auditor and Controller to prepare such fiscal statement.

5. Direct the Chief Administrative Officer to return to the Board to establish the actual tax rates to be implemented in 2023, should the tax be approved by the voters.
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 (4), 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 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
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 will be no change in 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 and 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.

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 for accounting and reporting in the Auditor and Controller. Overall, there will be a net General Fund cost of $323,311 and 2.50 additional staff years to administer a cannabis tax.

According to HdL, 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. The Land Use and Environment Group (LUEG) will bring forward additional items to the Board 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 Vargas, the Board of Supervisors took the following action:
1. Adopted Ordinance No. 10801 (N.S.) 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

2. Adopted Resolution No. 22-102 entitled: RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, CALLING FOR AND ORDERING AN ELECTION TO PRESENT TO THE VOTERS OF THE COUNTY A PROPOSED ORDINANCE ADDING CHAPTER 4, OF DIVISION 2, TO TITLE 2 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES ESTABLISHING A TAX ON CANNABIS BUSINESSES AND ORDERING CONSOLIDATION OF SAID ELECTION WITH THE CONSOLIDATED GENERAL ELECTION CALLED FOR NOVEMBER 8, 2022 (COUNTYWIDE); and,

Selected option 6 for the ballot language to read: Shall the measure to fund general County purposes including but not limited to parks, fire safety, roads, health, and social equity, by taxing cannabis businesses in the unincorporated area on gross receipts at maximum 6% for retail, 3% for distribution, 2% for testing, cultivation at 3% or $10 (inflation adjustable) per canopy square foot, and 4% for other businesses, generating an estimated $2,930,000 to $5,600,000 annually until repealed by voters, be adopted?
3. Adopted Recommendation 3a: Authorized one or more members of the Board to file with the Registrar of Voters a written argument for the measure on behalf of the Board, and a written rebuttal to any arguments against the measure, to be printed in the voter information guide, and further authorize those members to determine any other person(s) to prepare, submit, or sign a written rebuttal argument to any argument against the measure; and,

Authorized Supervisor Vargas and Supervisor Fletcher to return to the Board in August 2022 with the proposed written argument for the measure.

4. Adopted Recommendation 4a: Pursuant to the authority in Elections Code § 9160(c), directed the Auditor and Controller to prepare a fiscal impact statement to be printed in the voter information guide.

5. Directed the Chief Administrative Officer to return to the Board to establish the actual tax rates to be implemented in 2023, should the tax be approved by the voters.

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