



Legislation Text

File #: 2023-0322, **Version:** 2

To: Board of Supervisors

Department or Agency Name(s): Auditor-Controller-Treasurer-Tax Collector

Staff Name and Phone Number: Erick Roeser, 707-565-2281

Vote Requirement: Majority

Supervisory District(s): Countywide

Title:

Cannabis Business Tax Ordinance (Chapter 35 of the Sonoma County Code) Amendment

Recommended Action:

- A) Consider an Ordinance amending Chapter 35 of the Sonoma County Code, the Cannabis Business Tax Ordinance, to establish new tax rates for cannabis cultivation, effective July 1, 2023; and
- B) Adopt a Resolution introducing, reading the title of, and waiving further reading of a proposed ordinance amending Chapter 35 of the Sonoma County Code.

Executive Summary:

On February 28, 2023, staff presented the Board of Supervisors with information about the pros and cons of transitioning to a gross receipts' taxation model for cannabis cultivation from the current square footage taxation model. The report from staff included an analysis by HdL Companies, a subject matter expert, which discussed fiscal issues and other considerations around changing the method of taxation. Based on the report, staff presented the Board with options for recommended changes to the County's Cannabis Business Tax Ordinance, codified in Sonoma County Code Chapter 35. At the conclusion of the February 28 Board discussion, the Board directed staff to amend the Cannabis Business Tax Ordinance to maintain the square footage taxation model, but adjust rates based on HdL's tax rate convertor model. This established the following cannabis cultivation tax rates at a gross receipt rate of 2.5%, converted to a square footage rate, effective July 1, 2023:

Permit Type	Rate Per Square Foot
Outdoor	\$0.75
Mixed-Light	\$3.00
Indoor	\$12.50

The tax rates will be annually reviewed by HdL Companies, and staff will recommend to the Board any proposed changes to the rates based on current market trends to allow for effective rate changes that are inherent in the cannabis industry.

Additionally, amended language is proposed for consistency and clarification, including clarifying language regarding the cannabis canopy verification process and the appeals process.

Discussion:

The Cannabis Business Tax (Measure A) was passed by voters in the March 7, 2017 special election with 71% voter approval. Measure A laid out a framework for taxation that set maximum allowable rates for all operator types and granted authority to the County to, among other things, set lower rates, tax certain operator types, and establish various tax administration policies. On December 13, 2016, the Board adopted the Cannabis Business Tax Ordinance (“Ordinance”) 6188 to impose a cannabis business tax on commercial cannabis businesses, which established Chapter 35 of the Sonoma County Code. On June 13, 2017, the Board adopted Ordinance 6203, amending Chapter 35, setting cannabis business tax rates within the voter-approved maximum rates and establishing certain regulations. On August 28, 2018, the Board adopted Ordinance 6241, amending Chapter 35, to make administrative changes. On April 19, 2022, the Board adopted Ordinance 6374, amending Chapter 35, to temporarily reduce the cultivation tax rates by 45 percent and make administrative changes.

On February 28, 2023, the Board directed staff to amend the Ordinance to establish new tax rates for cannabis cultivation effective July 1, 2023. This stemmed from a discussion about the pros and cons of transitioning to a gross receipts’ taxation model from the current square footage taxation model. HdL Companies, a subject matter expert, was engaged to assist in the analysis of the pros and cons of potentially changing the taxation rates. The new tax rates that the Board instructed staff to adopt will maintain the square footage taxation model but will be set based on HdL’s tax rate convertor model, with an annual review. The current rates being adopted are set based upon a gross receipts rate of 2.5%, which equates to the following annual square footage calculation amounts:

Permit Type	Rate Per Square Foot
Outdoor	\$0.75
Mixed-Light	\$3.00
Indoor	\$12.50

Calculating the tax rate in this way allows for control of effective rate changes that are inherent to the current model which have been burdensome on cultivators as the market prices of legal cannabis have dropped.

Because it is difficult to predict when the market price of cannabis will rebound, whether verified and taxable canopy numbers will increase, and what the program update will include, staff have taken a conservative approach to projected cannabis cultivation tax revenue through FY 24-25 in the amount of \$1.8 million annually. Based on that assumption, the recommended cannabis cultivation tax rate, with cannabis tax fund balance, will meet the estimated cannabis tax revenue projections necessary to maintain the annual cannabis program costs through FY 24-25, when the program update is expected to be completed. Staff will continue to track program costs and revenue and will return with program operational adjustments as necessary. See Attachment D.

In addition to the new rates, the Ordinance amendments include administrative changes for consistency and clarity. Below are the key proposed changes to the Ordinance, with a redlined version of the existing Ordinance attached (Attachment C).

- Updated reference to Chapter 26 of the Sonoma County code, to refer to correct section for definitions 26-04-020.
- Amended the definitions of “Indoor”, “Personal cannabis cultivation”, and “Treasurer-tax collector” to make non-substantive corrections.
- Amended the cultivation tax rates to the new rates approved by the Board on February 28, 2023 and removed all references to temporary rate reduction.
- Changed the language regarding reporting and remittance of tax, to clarify when cultivation area (cannabis canopy) verifications should be performed and who has authority over this process. Amended language aligns with existing County practice.
- Changed the language regarding tax assessment hearing, application, and determination to align with existing tax-collector review processes in order to streamline cannabis assessment appeals for the operator and tax-collector.
- Changed the language regarding appeal hearing to explicitly reference the Board’s option to select the Hearing Officer, in line with current practice, and make the Hearing Officer’s decision final.

Strategic Plan:

N/A

Prior Board Actions:

02-28-2023 Cannabis Business Tax Review, Discussion, and Direction to Staff

FISCAL SUMMARY

Expenditures	FY 22-23 Adopted	FY23-24 Projected	FY 24-25 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures		\$0	\$0
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other		\$1,800,000	\$1,800,000
Use of Fund Balance			
Contingencies			
Total Sources		\$1,800,000	\$1,800,000

Narrative Explanation of Fiscal Impacts:

There are no new expenditures related to the implementation of the new tax rate as the taxation methodology is unchanged. Projected cannabis tax revenue for FY 23-24 and FY 24-25 is \$1.8 million and will be revised as cannabis cultivation canopy (taxable) is verified. Annual cannabis program costs will be supplemented with cannabis tax fund balance in the amount of approximately \$700,000 each year in FY 23-24 and FY 24-25.

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Attachment A - Draft Cannabis Business Tax Ordinance

Attachment B - Resolution introducing, reading the title of, and waiving further reading of the proposed Cannabis Business Tax Ordinance

Attachment C - Redline version of existing Cannabis Business Tax Ordinance

Attachment D - Cannabis Program Budget

Related Items “On File” with the Clerk of the Board:

None