



County of Nevada
Office of the Treasurer & Tax Collector

Tina M. Vernon
Treasurer & Tax Collector

950 Maidu Ave. Ste 290
P.O. Box 128
Nevada City, CA 95959
(530)265-1285
Fax (530) 265-9857
ttc@co.nevada.ca.us

NEVADA COUNTY BOARD OF SUPERVISORS
Board Agenda Memo

MEETING DATE: July 10, 2018

TO: Board of Supervisors

FROM: Tina Vernon, Treasurer & Tax Collector

SUBJECT: Public Hearing to Consider Introduction of an Ordinance and Resolution placing an ordinance that will impose a Commerical Cannabis Business Tax for voter consideration on the November 6, 2018 ballot.

RECOMMENDATION:

- (1) Introduce and Waive Further Reading of an Ordinance Adding Article 8 to Chapter V of the Nevada County General Code establishing a Commerical Cannabis Business Tax in the unincorporated area of Nevada County.
- (2) Adopt a Resolution Calling for an Election to Present to the Voters of the County A Proposed Ordinance Adding Article 8 to Chapter V to the Nevada County General Code Establishing a Commerical Cannabis Business Tax and Ordering Consolidation of Said Election with the Consolidated General Election on November 6, 2018

FUNDING: Not applicable

BACKGROUND:

Under the Medical Cannabis Regulation and Safety Act (MCRSA), local jurisdictions retain broad authority to assess fees and taxes and are also given explicit taxation authority over cannabis business licensed under the law. Prop 64 passed in 2016, imposed the first and currently only statewide cannabis business taxes. Jurisdictions around the state are continuing to work through these new regulations surrounding cannabis with some adopting various local cannabis ordinances and tax measures.

In January 2018, the Board of Supervisors discussed its annual objectives, including continuing to develop long term County cannabis regulations and exploration of a cannabis revenue measure for the November ballot. The Board then adopted its 2018 Board Objective

at the February 13th, 2018 board meeting solidifying the Board's direction to staff to pursue a potential cannabis revenue measure, including gathering community feedback.

In March 2018, the County commissioned independent public opinion research firm Godbe Research to gather survey data to determine community interest in a commercial cannabis local revenue measure on the November 6, 2018 ballot. This survey was performed in the month of May and the results of the survey indicate that up to 61% of respondents were interested in a commercial cannabis business general purpose measure to maintain and improve essential services such as public safety and environmental regulations enforcement. These results will be presented at the July 10th Board of Supervisors meeting.

To date, fifteen California counties and more than sixty cities have implemented taxes on cannabis businesses in order to generate locally-controlled revenue for enforcement, public education, and general essential County services. The City of Nevada City and 5 other county measures passed with strong support under current law (over 67%) in the June 2018 election. Several more jurisdictions are preparing ballot measures for the November election. The measures vary in their rates and structure and no one size fits all when it comes to structure or rates.

Based on the County's authority under State law and the costs of implementing a cannabis program, staff has determined that tax revenue is necessary to ensure the General Fund can continue to fund general governmental purposes, such as the implementation of a local cannabis program that includes protection of public health and safety. Through fees the County can recover costs associated with issuing permits, inspections, compliance monitoring, etc. However, taxes may be used to pay for other associated costs related to code enforcement, law enforcement, environmental regulations and mitigation, health and education impacts and other costs to the county that are not directly attributable to services provided to a permittee.

Staff has been meeting regularly to discuss known and potential unknown impacts that the legalization of cannabis related business will have on county services. Several meetings have been held with key members of the Nevada County Cannabis Alliance in order to discuss the number of viable businesses, potential rates and structures and to receive their input on what the Alliance believes to be in the best interest of their members.

Although a permanent ordinance has not been adopted, it is important for us to move forward with the placement of the Commercial Cannabis Business Tax Measure on the November ballot so that the rate and structure will be in place when the permanent ordinance is put into place. If we do not move forward with the placement of the measure now, our next opportunity will be in 2020.

There are currently three cannabis tax calculation methodologies used around the state. These are square footage, gross receipts and gross weight. The State of California is taxing

via gross weight although no local jurisdiction is using this method at this time. Seven (7) county and 19 city jurisdictions are collecting by square footage, seven (7) county and 34 city jurisdictions by gross receipts, one (1) County by square footage and gross receipts and one county (Caleveras) previously approved by gross weight but has since implemented a ban. Square footage tax rates for counties range statewide from \$0.50/sq ft to \$25/sq ft. with the median rate per square foot at \$2-\$3 and gross receipt ranges from 1% to 15% with the median percentage at 4.0%.

In order to determine what might be the best tax structure for Nevada County, staff met with members of the Nevada County Cannabis Alliance. A fixed rate (rate placed on square footage or gross weight that is static) versus dynamic rate (rate that is percentage based and will fluctuate with price) was discussed at length and pros and cons were weighed. The County and the Alliance agree that the square footage method, although easy to predict and calculate revenue, has more room for inconsistencies. Discussions with various counties that are currently collecting on square footage have revealed that the issues that arise (crop loss, actual square footage versus permitted, measurement of actual growing space versus canopy, etc.) have posed problems with enforcement and collection and thus they have cautioned against adopting this particular method. When looking at gross receipts versus gross weight, staff feel that either method seems reasonable to implement and collect and allows for self reporting of realized product at the time of sale which decreases large up-front charges. The State's Track and Trace system and the California Cannabis Authority JPA will be beneficial in the collection of gross weight once they are established. Gross receipts, unlike gross weight takes into account the changes in market prices and quality of product, without having to create a more complicated tiered method of collection and is more in-line with current unsecured taxes that are imposed on county businesses and transient occupancy tax collected on short term rental businesses.

After careful review of the pros and cons for each method, staff recommend that the Board of Supervisors propose a general tax based on gross receipts with an initial tax rate of 2.5%. Because of the constantly changing environment, staff is also recommending that the initial rate be set for the first 2.5 years with flexibility in the ordinance to allow the Board to alter the method and rate after this trial period should the changes in the industry warrant this. This would allow the State to further develop the Track and Trace system and will allow other changes to legislation play out. After the initial period, the 2.5% rate would be automatically adjusted by the Consumer Price Index for all urban consumers in the Western Region as published by the US Government Bureau of Labor Statistics or by the Board of Supervisors in intervals up to 2%, not to exceed a maximum of 10%. If passed by the voters, the tax will be effective on January 1, 2019 unless otherwise directed by the Board of Supervisors. Also to consider in regards to the effective date, is how this date will affect temporary licenses.

An initial 2.5% rate on gross receipts on cultivation only is expected to generate approximately \$1.5-\$3.5M annually. This is a best guess estimate based on local outreach

and discussions with the industry in regards to the number of applicants that may apply for and receive licenses. We are cautious as the estimated versus actual revenues collected by local jurisdictions statewide have not met expectations to date. Tax rates that are too high, however can encourage the industry operators to remain or return to the black market. It is our goal to create a tax rate that will cover the costs associated with regulating the industry and provide an incentive to come into compliance, not a barrier. Compassionate (or nonrenumerative) use programs and personal grows are excluded from this tax and not assumed in revenue estimates.

In the event that new revenue becomes available following voter approval of the Commercial Cannabis Business Tax Measure, the proposed Resolution includes draft spending priorities based on community priorities. These high-level draft spending priorities for the general purpose cannabis business tax include:

- Enhancing crime prevention and investigation
- Maintaining public safety
- Environmental regulation/enforcement
- Cannabis licensing and operation regulation/enforcement

Because of legal constraints, a general purpose business tax cannot be dedicated to specific purposes without triggering a two-thirds voter approval requirement. These draft spending priorities provide a general outline for the high-level uses of new revenue, but the actual allocation of tax revenues would be done as part of future budget deliberations.

If the Board of Supervisors places a measure on the ballot, and if voters approve it in November, the new revenue would be reflected in the annual budget process for Board consideration.

Staff has prepared a presentation to review the Survey Results and Proposed Cannabis Tax Ordinance. The deadline for getting the tax measure on the ballot is August 10, 2018. If the Board decides to move forward with placing this tax measure on the ballot placement, staff will work with Lew Edwards Group to finalize the ballot measure language and provide informational outreach.

Initiated and Approved by: Tina Vernon, Treasurer & Tax Collector

Submittal Date: June 28, 2018

Revision Date: