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DATE: 6/11/2019

TO: Honorable Board of Supervisors

FROM: Brent Schultz, Director of Planning and Building Services
Shari Schapmire, Treasurer-Tax Collector
Matthew Kiedrowski, County Counsel

SUBJECT: Discussion and Possible Action Including (1) Introduction and Waive First Reading of an Ordinance Amending Mendocino County Code Section 6.32.150 – Appeals Procedure and (2) Direction to Staff Regarding a Proposed Appellate Body Structure for the Cannabis Business Tax (Chapter 6.32) and Policy Considerations Related Thereto

BACKGROUND

On April 15, 2019, the Treasurer-Tax Collector's Office mailed Cannabis Business Tax Minimum Due Invoices, in the approximate cumulative amount of \$3.5 million, to 944 cultivators who applied during Phase 1 of the Cannabis Cultivation Permit Application process, through December 31, 2018. In an effort to treat all applicants in a fair and equitable manner, invoices were sent to all cultivators currently registered in the tax system, with the exception of applicants that began applying after April 1, 2019, as part of the reopening of the Phase 1 application period.

After the mailing of the notices, staff received a significant number of questions, comments, and/or complaints, in particular regarding the minimum tax due requirement. In reviewing the issues raised by cultivators, staff reviewed the ordinance and, in particular, section 6.32.150 which creates an appeal procedure.

Paragraph B of section 6.32.050 imposes a tax on "[e]very person who cultivates commercial cannabis in the unincorporated area of the County," sets an initial tax of 2.5% of the gross receipts per calendar year, and further sets minimum tax amounts based on the size of the cultivation permit applied for or issued.

Section 6.32.150 currently provides for an appeal procedure and reads as follows:

Any taxpayer aggrieved by any decision of the Treasurer-Tax Collector with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the Board of Supervisors by filing a notice of appeal with

the Clerk of the Board of Supervisors within fifteen (15) days of the serving or mailing of the determination of tax due. The Clerk shall fix a time and place for hearing such appeal, and the Clerk shall give notice in writing to such operator at the last known place of address. The finding of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

PROPOSED CHANGES

Staff has prepared for the consideration of the Board of Supervisors an ordinance amending Section 6.32.150 that would allow for the Board to delegate the appeal authority, by resolution. Adopting this ordinance would provide the Board of Supervisors with the flexibility of creating a separate appellate body that would hear any appeals pursuant to Section 6.32.150. In addition, staff proposes adding language authorizing the setting of a fee for appeal applications and proceedings and enabling the Board to designate a person other than the Clerk of the Board of Supervisors to organize and notice the appeal hearing.

Please see the attached redline form of the ordinance to review the actual proposed language changes.

RECOMMENDATIONS FOR DISCUSSION

In addition, staff is seeking direction from the Board of Supervisors on the following two issues:

1. Section 6.32.150 provides for an appeal of the decision of the Treasurer-Tax Collector to the Board of Supervisors, but creates no procedure for the appeals process. Staff requests direction from the Board of Supervisors on the procedure for bringing appeals to the Board of Supervisors, or if the Board of Supervisors wants to consider alternative methods for appeals to be heard. Staff has prepared a draft Appellate Body Structure, attached to this agenda packet, based on the County's existing Planning appeals process, for the Board's consideration as the mechanism to hear Cannabis Business Tax appeals.
2. Staff believes that the creation of standardized criteria for appeals or policies regarding the imposition of the tax would assist County staff in making recommendations on responding to appeals or limit the reasons for which appeals could be filed, including, but not limited to, the following:
 - Crop loss / Acts of God
 - Financial Hardship (i.e., loss of life, medical condition)
 - Withdrawals and Denials
 - State Permit Issues (i.e., expiration of Temporary Licenses or lack of a provisional license)

RECOMMENDED MOTION

That the Board of Supervisors Introduce and Waive First Reading of an Ordinance Amending Section 6.32.150 – Appeal Procedure, of Mendocino County Code Chapter 6.32 – Cannabis Business Tax, and provide direction to staff regarding the appeal procedure and policy considerations related thereto.

ATTACHMENTS

1. Ordinance – Redline Version
2. Ordinance – Clean Version
3. Ordinance Summary
4. Draft Appellate Body Structure