



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES
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MEMORANDUM

DATE: SEPTEMBER 17, 2019

TO: HONORABLE BOARD OF SUPERVISORS

FROM: PLANNING AND BUILDING SERVICES

RE: CANNABIS BUSINESS TAX APPEAL PROCEDURE

On August 20, 2019, the Board of Supervisors provided direction related to the Cannabis Business Tax Appeal Procedure and asked staff to explore empowering a Hearing Officer instead of a panel, as presented to the Board on August 20, 2019, as the authority to administratively determine certain disputes regarding the minimum cannabis business tax. The County currently contracts with Hearing Officers. Based on the current contracts it is estimated that the amount for these services on a Cannabis Business Tax Appeal could range from \$150 to \$700 per hearing. In addition, estimated costs for administrative services to prepare for, complete and manage the records for the Hearing Officer appeals hearing will add approximately \$300 to \$500 to the overall appeal fee, for a total estimated Cannabis Business Tax Appeals fee that could range from \$450 to \$1,200.

Mendocino County Code section 6.32.030, as adopted by Ordinance No. 4432 anticipates two kinds of possible disputes. The first would involve a question about whether a minimum tax is appropriate based on Mendocino County Code section 6.32.050, and the second would involve a question about the calculation of the amount of tax, interest, penalties and fees. Board consensus at the June 11, 2019 meeting was that cultivators may appeal if they can demonstrate that they did not cultivate, or provide proof cultivation occurred at a different permit level. As such, staff recommends that the process discussed today be limited only to appeals involving the appropriateness of the minimum tax being imposed based on whether cultivation occurred, and that all other appeals follow the process as currently stated in Mendocino County Code section 6.32.030, as adopted by the Board through Ordinance No. 4432 in July 2019.

Although Board consensus included consideration of an appeal based on the actual area cultivated if such area was less than the allowed area for permit which the cultivator applied, staff recommends that this not be a basis for appeal. After consulting with County Counsel, staff believes an ordinance amendment would be required to create a pathway to appeal the minimum tax amount based on actual cultivated area without regard for the permit for which the appellant applied. Accordingly, absent an ordinance amendment, staff recommends that appeals be limited to whether or not a minimum tax applies based on whether or not the appellant cultivated cannabis.

The anticipated procedures for use of a Hearing Officer are laid out in the procedures document included with this agenda item. Essentially, an aggrieved person would: submit their appeal to the County; the County would conduct an initial review to determine if evidence existed to counter any evidence submitted by an appellant; the matter would be turned over to the Hearing Officer for hearing; the Hearing Officer would make a determination which would be the County's final administrative determination.

Staff requests Board direction related to the use of Hearing Officers for Cannabis Business Tax Appeals, with the understanding that this may require renegotiation of the existing contracts and potential procurement of services. Should the Hearing Officer approach be approved, then staff will return in October with a proposed Appeal Fee and Resolution for consideration.

Attachment:

1. Proposed Cannabis Business Tax Appeal Procedures