

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
3.52
(ID # 8884)

MEETING DATE:

Tuesday, January 29, 2019

FROM : TRANSPORTATION AND LAND MANAGEMENT AGENCY (TLMA):

SUBJECT: TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: Adoption of Board of Supervisors Policy No. B-9 regarding Commercial Cannabis Activities; Adoption of Resolution No. 2019-037 Amending Procedures and Requirements for the Consideration of Development Agreements (Commercial Cannabis Activities); Introduction of Ordinance No. 671.21 amending Ordinance No. 671 regarding Development Agreement processing fees (Clerk to Advertise). All Districts. [\$0 Total Cost] (CEQA Exempt) (Clerk to Advertise)

RECOMMENDED MOTION: That the Board of Supervisors:

1. FIND that Board Policy No. B-9 and Resolution No. 2019-037 are EXEMPT from the California Environmental Quality Act (CEQA), pursuant to Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and Section 26055(h) of the California Business and Professions Code as set forth below; and
2. FIND that Ordinance No. 671.21 is EXEMPT from CEQA pursuant to State CEQA Guidelines section 15273 and section 15061(b)(3) based on the findings set forth below; and
3. ADOPT Board of Supervisors Policy No. B-9 regarding Development Agreements for Commercial Cannabis Activities, including provisions regarding Public Benefits, Annual Increases, and Terms of Duration; and
4. ADOPT Resolution No. 2019 – 037 Amending Procedures and Requirements for the Consideration of Development Agreements, setting forth the procedures and requirements for consideration of Development Agreements for Commercial Cannabis Activities pursuant to Government Code section 65865; and
5. INTRODUCE, read title and waiver further reading of Ordinance 671.21, an ordinance amending Ordinance No. 671 to amend the processing fees for Development Agreements; and
6. Set a public hearing on February 26, 2019 on adoption of Ordinance No. 671.
7. APPROVE the Request for Proposal formats attached as Exhibits – F, G, and H.

ACTION: Policy, Clerk to Advertise

Juan C. Perez, Director of Transportation & Land Management

1/24/2019

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MINUTES OF THE BOARD OF SUPERVISORS

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS:			Budget Adjustment: No	
			For Fiscal Year: 18/19	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

On October 23, 2018 (Item 19.1) the Board adopted Ordinance No. 348.4898, amending the County's zoning ordinance (Ordinance No. 348) to establish regulations and development standards to conditionally permit Commercial Cannabis Activities in the unincorporated areas of the County of Riverside, as well as approval of an Implementation Process for the first year, phased in processing of conditional use permits for Commercial Cannabis Cultivation and Retail Sales. The Board directed staff to bring back for the Board's consideration:

1. A Board Policy regarding the use of Development Agreements for Commercial Cannabis Activities, including a Development Agreement Public Benefit payment. Staff recommendations on these items are included as part of this proposed Board agenda item.
2. A Board Resolution setting forth the procedures and requirements for consideration of Development Agreements for Commercial Cannabis Activities pursuant to Government Code section 65865. Staff recommendations on such procedures and requirements are included as part of this proposed Board agenda item.
3. Further study allowing commercial cannabis cultivation in three specific zones (the R-A, R-R, and W-2 zones) and return to the Planning Commission with recommendations. This matter is expected to be presented to the Planning Commission in April or May 2019, and is not further addressed in this agenda item.

The Board also approved on October 23, 2018 (Item 3.33) entering into a contract with HdL Companies for cannabis consulting services. The scope of work under this contract includes assisting County staff in determining a Baseline Public Benefit Fee structure for use in Development Agreements that will cover the County's regulatory costs associated with allowing Commercial Cannabis Activities.

It should be noted that in addition to the Baseline Public Benefit Fee, there is proposed to be an Additional Public Benefit Fee that is discussed in more detail further in this report.

Board Policy and Baseline Public Benefit Fee

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TLMA and County Counsel have worked to develop a Board of Supervisors Policy regarding Development Agreements for Commercial Cannabis Activities, Board Policy B-9, which is attached as Exhibit A. This policy includes a proposed rate structure to establish a Baseline Public Benefit Fee, which would be paid annually under the Development Agreements by approved and permitted Commercial Cannabis uses, which can be used to recover the County's costs of associated with regulating the industry, including a portion of indirect costs of ordinance enforcement against unregulated uses that otherwise compete with the regulated industry. The Baseline Public Benefit Fee has been developed in consultation with HdL, which has prepared a Memorandum (attached as Exhibit B) explaining the approach and methodology. HdL has developed four potential estimated program revenue scenarios, in consultation with staff, which include a range of different mixes of uses and sizes based on possible industry interest. The proposed Baseline Public Benefit Fee structure reflects a graduated fee structure that increases as uses increase in size, with four overall separate and distinct fee Cannabis Activity Categories (Cultivation, Retail, Manufacturing, and Other – which includes Nursery, Distribution and Testing). The estimated annual Baseline Public Benefit Fee based on the four scenarios analyzed ranges from \$3,085,000 - \$4,168,000. It should be noted that these amounts represent an estimate of what may be collected after the program is up and running over a couple of years, depending on market demand, the approval and building process, etc. The actual allocation and distribution of Baseline Public Benefit Fees collected under the executed Development Agreements would be subject to Board actions as part of the budget process once the program is up and running, and based on actual revenue collected or anticipated in any given budget year.

Staff has provided to HdL a recommended program expenditure for regulatory costs which include funding for several different County Departments, which is what is proposed to be recovered from the Baseline Public Benefit Fee. It should be highlighted that, given that this is the County's initial experience with regulating these uses, these are estimates that will need to be reviewed over time based on actual experience, and adjusted appropriately. The total annual program regulatory costs, with some enforcement included as well, are estimated to be \$3,154,707. Any Baseline Public Benefit fees received under the Development Agreements that results in an amount greater than the annual program regulatory costs can be used for other essential services supplied by the County, including but not limited to additional enforcement and subject to Board actions during the budget process.

The Code Enforcement Department is expected to be the County's main regulatory arm in dealing with a Commercial Cannabis Activities regulatory program, as the group tasked with making sure that the Conditions of Approval of any permitted uses (which are meant to reduce impacts of that use on adjacent communities) are properly implemented; perform regular inspections as needed; serve as the initial point of contact for public inquiries and concerns regarding permitted and unpermitted uses; and coordinate with other County Departments involved in the regulatory process. The estimated funding costs for Code Enforcement (\$1,326,460) consists of establishing a focused Cannabis Enforcement Unit, including a Senior Code Officer, 6 Code Enforcement Officers, and a Technician, for implementation of the

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program throughout the unincorporated area. Additionally, program funding (\$346,868) is being recommended to provide 2 focused Planning and Land Use personnel that can assist the industry, and the public, with general questions on the Commercial Cannabis Activity program. Staff will also further recommend that the cost to set up this comprehensive regulatory program, estimated at about \$110,000 and which has been funded out of the Planning budget, be reimbursed out of the initial proceeds. It should be noted that the costs of processing the conditional use permits and Development Agreements for each proposed individual Commercial Cannabis Activity application, which will have to undergo a separate public review and approval process like any other similar business land use application, will be in addition to these overall program coordination costs.

TLMA staff has also consulted with the District Attorney's office as to applicable costs that they may have regarding illegal cannabis operations. The District Attorney's office has provided an estimate of the costs associated with funding their County-wide District Attorney Cannabis Regulation Task Force, and has pro-rated those costs based on activity in the unincorporated area, which amounts to \$547,593.

A similar amount (\$500,000) is being proposed to be set aside for enforcement efforts by the Riverside Sheriff's office, in the absence of having received more refined enforcement cost information last year. It should be noted that funding for additional Sheriff Patrol staff (over-and-above this \$500,000), ideally focused in the unincorporated communities where the Commercial Cannabis Activity uses are located, will be one of the potential Additional Public Benefits that staff will suggest that the industry considers as part of the Request for Proposals Process and as set forth in Board Policy B-9. .

TLMA staff also reached out last year to other County departments that may be affected/involved in Commercial Cannabis Activity regulation or enforcement. Some of those Departments, such as Fire and Environmental Health, and to a great extent the Agricultural Commissioner's, are expected to receive funding either directly for providing the services through a standard permitting structure and/or State funds. The recommended program funding does include a small set aside of funds for the Agricultural Commissioner's office (\$15,000) that is not covered by other sources. Similarly, there is a recommended direct funding set aside (\$95,000) for County Counsel staff time spent on overall program administration. Other County Counsel costs associated with either enforcement efforts or processing of Development Agreements and Conditional Use Permits will be recovered directly from those cases, as is done for other similar activities now.

One of the departments that made a request to be included in a regulatory fee structure is Public Health, which plays an important role in several areas including community education, reducing access for minors and other vulnerable populations, consumer safety and information, and studying impacts on health care and health outcomes. The estimated program costs that they have provided of \$647,673 includes funding for a Program Coordinator and several Health Education Assistants. This would be for a County-wide program that includes the cities as well.

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In keeping with the methodology used for the District Attorney task force funding, TLMA staff is proposing a pro-rata allocation (using the same proportion as the District Attorney costs) of \$323,786 to the program in the unincorporated area.

Development Agreements

Staff has developed a Development Agreement approach to Commercial Cannabis Activity Permits based on prior Board discussion and direction. Government Code section 65864 et seq. authorizes the County to enter into binding Development Agreements. A Development Agreement is a contract entered into between a Public Agency and a development applicant, through which the Public Agency confers certain rights and privileges to an applicant in consideration of Public Benefits provided by the applicant. The use of negotiated Development Agreements allows the County to achieve Additional Public Benefits in those communities where Commercial Cannabis Activities will be located, in addition to recovering the County's regulatory costs associated with these activities (Baseline Public Benefit Fee).

Resolution No. 2019-037, attached as Exhibit C, sets forth the County's procedures and requirements for consideration of Development Agreements for Commercial Cannabis Activities pursuant to Government Code section 65865. This resolution updates the County's previously adopted procedures and requirements for Development Agreements that was previously adopted in Resolution 2014-034, as shown in red. A Sample Development Agreement Template is included as Exhibit D. Note that this is just a sample and subject to change, as these Development Agreements will be processed with each Conditional Use Permit (CUP) and, while similar in terms in many instances, each will be negotiated and will contain some unique, project specific terms. Except for activities that include cannabis cultivation or cannabis retail sales, all other applicants considering Commercial Cannabis Activities may now submit CUP applications to the Planning Department and process these for CUPs in accordance with Ordinance No. 348 and Board Policy B-9.

Development Agreements do confer certain rights on applicants which provide greater certainty that they will be allowed to continue to operate, subject to meeting the requirements of the Conditions of Approval of an approved case, the terms of the Development Agreement, and other County ordinances and regulations in place at the time that the Development Agreement was entered to. Staff is proposing that we offer an initial 10-year term for the Development Agreements for Commercial Cannabis Activities, with an option that both parties can exercise to extend it for an additional 5 years. This provides the Cannabis business owner with greater certainty to be able to continue to operate during that time, and amortize the costs of operating the business, paying the Baseline Public Benefit Fee annually (recommended to be increased 2% annually), and offering an Additional Public Benefit that will be of significant value to the surrounding community.

Ordinance No. 671.21 – Development Agreement Processing Fees

Given that a Sample Development Agreement Template has been prepared, and that the County is expected to process a large number of Development Agreements efficiently and on

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track with the CUP applications, staff is proposing to reduce the initial processing fee deposit amount for Development Agreement's to a total of \$6,000, which is well below the initial deposit of \$30,000 that we require now for processing Development Agreements. All but an initial \$1,000 in the Development Agreement processing fee (to help offset the cost of the Development Agreement overall program as allowed under Government Code section 65865(d)) will be deposit based, and the actual amount charged either increased or reduced based on the level of effort to prepare a negotiated Development Agreement for a particular Commercial Cannabis Activity application. . Recommendation No. 5 in this Form 11 authorizes the introduction of an amendment to Ordinance No. 671 (the master fee ordinance which governs most land use permitting) to reduce the amount of this initial deposit for Development Agreement processing. Ordinance No. 671.21 amending Ordinance No. 671 with regard to Development Agreement processing fees is attached as Exhibit E.

Additional Public Benefit Contribution

The Implementation Process that was approved along with Ordinance No. 348.4898 at the October 23, 2018 Board meeting contemplated a two-part Public Benefit component to the Development Agreements, (1) a Baseline Public Benefit Fee and (2) an Additional Public Benefit. The Baseline Public Benefit Fee component is described above, and actual annual fee amounts are to be established in the recommended Board Policy B-9. These would be consistent for all uses based on the proposed categories.

The Additional Public Benefit contribution component would be proposed by the applicant and be subject to negotiation with and approval by the County. The intent is that these Additional Public Benefits go directly to serve the surrounding communities that are directly impacted by the permitted Cannabis uses. Each Development Agreement shall describe the additional public benefits that the Commercial Cannabis Activity will provide to the local community. Examples of possible Additional Public Benefits include funding for additional Sheriff patrol hours in a community; construction or funding towards needed infrastructure such as sidewalks or park improvements; community clean-ups or beautification projects; etc. Applicants will be encouraged to do outreach to their surrounding communities in determining appropriate Additional Public Benefits to propose. Staff will also be reaching out to each Board office to seek input on the different community needs in the unincorporated areas, with the goal of providing further examples to prospective applicants of salient Additional Public Benefits.

As part of the analysis done for determining the appropriate Baseline Public Benefit Fee, staff asked HdL to provide input based on their extensive industry experience throughout California, and in particular the Southern California area, of what the overall Public Benefit contribution that the industry is providing in the competitive marketplace with other jurisdictions. The Public Benefit Contributions columns in the matrix attached to the HdL memo serve to provide a basis of comparison of what cannabis uses are contributing, most

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often directly in the form of taxes, and how those pro-rate to a per-square-foot basis. It is important to highlight that the 'Public Benefit Contributions' included in the attached matrix are not included in the specific fee structure that is proposed in Board Policy B-9 (only the Baseline Public Benefit Fee is included in proposed Board Policy B-9). Rather, staff asked HdL to provide this estimate solely as a basis of comparison to verify that the proposed Baseline Public Benefit Fee would not be set so high as to preclude applicants proposing a significant Additional Public Benefit contribution that would go directly back to provide benefits to surrounding communities. As can be seen by comparing the Baseline Public Benefit Fee with the overall Public Benefit contribution of similar market conditions experienced by the industry, the ratio of the Baseline Public Benefit Fee to the overall Public Benefit contribution ranges between roughly 40% - 60% for each of the funding scenarios, indicating that the value of the expected Additional Public Benefit contribution could be expected to be roughly equivalent to that of the Baseline Public Benefit Fee on an annual basis.

Request for Proposal Process

Commercial Cannabis Activities that involve Cannabis Retail Sales Activities and Cannabis Cultivation Activities will be required to take part in the first-year Implementation Process that was approved by the Board on October 23, 2018 (Item 19.1). As part of the Implementation Process, the County would be limiting the number of conditional use permits throughout the unincorporated area to 50 permits for Cannabis Cultivation, and 19 permits for Cannabis Retail uses. At the conclusion of the first year of the program, the Board may evaluate allowing further expansion of the program in subsequent years. As a reminder, the first-year phase in only applies to Cultivation and Retail uses. The submittal window for all other uses (Manufacturing, Distribution, Testing, and Nursery) to submit a land use application for processing a CUP and Development Agreement opened on December 26, 2018.

Given that there is a processing limit for the first-year of program implementation, the Implementation Process calls for County staff to prepare a Request for Proposal to gauge interest from prospective applicants and evaluate and rank proposals. This is a multi-step approach that includes first gauging interest from applicants through a pre-registration process, and then issuing a Request for Proposal (RFP) to interested parties. The proposed RFP format and process is attached as Exhibits F, G, and H for consideration, comment, and approval. It should be noted that most of the information that is being requested of applicants in the RFP process is typical information that we require as part of a land use application to be able to fully assess the proposed use, it is just being asked earlier as part of this first-year competitive RFP process.

CEQA

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Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) and Section 26055(h) of the California Business and Professions Code exempts from the California Environmental Quality Act (CEQA), until July 1, 2019, the adoption of a specified ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. Board of Supervisors Policy No. B-9 and Resolution No. 2019-037 implement the requirements of Ordinance No. 348.4898, the County's ordinance regulating Commercial Cannabis Activities. Ordinance No. 348.4898, Board Policy No. B-9, and Resolution No. 2019-037 all require discretionary review and land use permits (discretionary conditional use permits and development agreements) for all Commercial Cannabis Activities. Such discretionary review of the conditional use permits and development agreements for Commercial Cannabis Activities will also require compliance with CEQA for each Commercial Cannabis Activity application. Therefore, Board of Supervisors Policy B-9 and Resolution No. 2019-037 are local regulations that comply with Senate Bill 94 and Section 26055(h) of the Business and Professions Code and are exempt from CEQA.

Additionally, the introduction of Ordinance No. 671.21 is exempt from CEQA pursuant to State CEQA Guidelines sections 15273 and 15061(b)(3). The fees adopted by this ordinance are for the purpose of reimbursing the County for the costs associated with developing procedures and requirements for the consideration of development agreements as authorized by Government Code section 65865(d) and the staff time costs associated with County staff negotiating and processing the development agreements. Therefore, the ordinance with these processing fees is exempt pursuant to CEQA Guidelines section 15273. The ordinance provisions are also exempt pursuant to section 15061(b)(3) because the ordinance provisions are solely reducing existing fees and can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.

Impact on Residents and Businesses

The Commercial Cannabis program has been crafted to allow for Commercial Cannabis Activities that could potentially co-exist with existing and future businesses and within reasonable development standards that would protect residential neighborhoods. Because each CUP would be discretionary (including discretionary, negotiated Development Agreements, be subject to public hearings, and be required to comply with the California Environmental Quality Act (CEQA), each case will be individually reviewed and vetted by the hearing bodies and the public to ensure that the proposed permitted use is compatible with surroundings and mitigates potential impacts to residents and businesses.

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Additional Public Benefits would be included in each Development Agreement that would go to benefit the surrounding communities where the uses are located to help enhance quality-of-life issues.

Additional Fiscal Information

The Commercial Cannabis program as proposed would generate fees that significantly help offset the County's regulatory and enforcement costs associated with the program. Further, surrounding communities would realize public benefits through negotiated Development Agreements.

ATTACHMENTS

- Exhibit A – Board of Supervisors Policy No. B-9 – Commercial Cannabis Activities
- Exhibit B – Memorandum from HdL - Matrix of Fees and Public Benefit Contributions
- Exhibit C – Resolution No. 2019-037 Amending Procedures and Requirements for Consideration of Development Agreements for Commercial Cannabis Activities
- Exhibit D – Sample Development Agreement Template for Commercial Cannabis Activities
- Exhibit E – Ordinance No. 671.21, an Ordinance of the County of Riverside Amending Ordinance No. 671
- Exhibit F – RFP for Commercial Cannabis Retailers
- Exhibit G – RFP for Commercial Cannabis Cultivation
- Exhibit H – RFP for Commercial Cannabis Microbusinesses



Gregory P. Priamos, Director County Counsel 1/24/2019