

City of Lathrop

Regional Cannabis Update

FEBRUARY 8, 2021

ITEM 2.4





Background

- In 1996, voters approved Proposition (Prop) 215, which legalized the use of medicinal cannabis in California.
- In June 2017, California passed SB 94, that integrated MCRSA and AUMA to create the *Medicinal and Adult-Use Cannabis Regulation and Safety Act* (MAUCRSA) contained in Division 10 of the California Business and Professions Code. Under MAUCRSA, a single regulatory system governs the medicinal and adult-use cannabis industry in California.
- On January 29, 2018, the City Council adopted Ordinance 18-387 for the prohibition against all commercial cannabis activities within City Limits (Chapters 5.26, 17.18).



- On August 7, 2018, the San Joaquin County Board of Supervisors adopted Ordinance 4512 which established County regulations for a commercial cannabis industry. This ordinance allowed all types of commercial cannabis, except for outdoor cultivation and cannabis events, however, the ordinance contained a clause stating that the ordinance would not become effective unless the Cannabis Business Tax (Measure B) was approved by voters.
- On November 6, 2018, voters failed to approve Measure B, which meant Ordinance 4512 never became operational.
- On May 21, 2019, the Board of Supervisors (“BOS”) removed the section of failed Ordinance 4512 requiring a tax and replaced it with a different requirement that commercial cannabis projects obtain a Development Agreement (“DA”) as part of the approval process.



- On September 10, 2019, the BOS further amended this ordinance to remove the allowance for non-delivery commercial cannabis sales in unincorporated areas of the County, officially limiting licensed commercial cannabis sales in such areas to delivery only.
- The November 3, 2020 General Election included “Measure X”, a ballot initiative for the implementation of a special tax on commercial cannabis businesses placed on the ballot by the San Joaquin Children’s Alliance. Measure X required a 2/3 vote of the electorate to pass but it did not pass, therefore, the County continues to require DAs for commercial cannabis projects. If it had passed, County Counsel specified that DAs would no longer have been required by the County.



- Staff contacted County Counsel, who specified that implementation of a special tax is ideal because the structure of implementation and enforcement is more equal, and that Measure B and Measure X were structured in a way that was more consistent with the Board of Supervisors ideals surrounding the development of the commercial cannabis industry within the County.
- County Counsel also specified that requiring DAs for commercial cannabis projects is not ideal because each DA, and the scope of fees imposed therein, has to be negotiated. Every aspect of a DA for commercial cannabis projects must vary depending on, but not limited to, community benefit and size and scope of impact. A DA that imposed a set schedule of fees for all commercial cannabis projects could arguably be a tax without a tax, and a violation of California Proposition 218 the “Right to Vote on Taxes Act”.



- In addition to the County’s negotiation and implementation of a DA, Commercial Cannabis projects for unincorporated areas of the County must also obtain approvals from a robust list of licensing requirements imposed by the County and the State. One such requirement is “Locational Criteria” as stated in the San Joaquin County Development Title 4, Division 10, Chapter 9-1090.3(c) which reads:

(c) Locational Criteria. The following locational criteria shall apply to Commercial cannabis activity allowed pursuant to a Cultivator License:

- (1) Shall Only be permitted within an enclosed structure.
- (2) Parcels located in the AG zone shall be located a maximum of two-thousand (2,000) feet from a major intersection or arterial road. A parcel may be located more than two-thousand (2,000) feet from a major intersection or arterial road, measured from the ultimate right- of-way, if all of the following are found true:
 - (A) There is sufficient ease of access from the proposed parcel to an arterial road;
 - (B) There is sufficient access for emergency vehicles; and
 - (C) The Cultivator License holder demonstrates that the parcel may be secured to the satisfaction of the County.



- Staff also contacted the County Planning Division, who specified that the County’s zoning requirements prohibit all commercial cannabis activity in all residential zones.
- County Planning Division stated that protocol is to inform neighboring jurisdictions should they receive an application to license a commercial cannabis project close to neighboring City limits.
- Since legalization of the sale of cannabis within San Joaquin County in 2018, County Counsel has only successfully negotiated one Development Agreement for a commercial cannabis business license application, but that agreement was never executed because the project had stalled due to the applicant. County Counsel specified that this project was located in the Lodi area of San Joaquin County.
- Currently, there are no licensed commercial cannabis businesses operating within the unincorporated areas of the County.