

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



ITEM: 21.3
(ID # 22815)

MEETING DATE:

Tuesday, August 29, 2023

FROM : TLMA-PLANNING:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/PLANNING: Public Hearing on Cannabis Baseline and Community Benefit Fees Payment Plans – Exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines sections 15061(b)(3) (Common Sense Exemption) and Section 15273 (Rates, Tolls, Fares, and Charges) – Applicant: County of Riverside – REQUEST: Authorize County staff to have the ability to enter into payment plans for a cannabis operator’s baseline and secondary community benefit fees. Direct staff to conduct an analysis of the Board of Supervisors Policy B-9 (Commercial Cannabis Activities) and return to the Board with modification options, based upon industry standards and best practices. All Districts. [Payment Plans - Applicant Fees 100% / Policy Analysis - \$10,000 Total Cost - NCC 100%]

RECOMMENDED MOTION: That the Board of Supervisors:

1. **FIND** that the proposed project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption) and Section 15273 (Rates, Tolls, Fares, and Charges). based on the findings and conclusions incorporated in the staff report;
2. **AUTHORIZE** the County Planning Director or approved designee to enter into a baseline and secondary community benefit fee payment plan with cannabis operators for a maximum of three (3) years after opening, where the total amount due is not changing. No modifications to the Development Agreement would be required; and,
3. **DIRECT** staff to evaluate the Board of Supervisors Policy B-9 (Commercial Cannabis Activities) baseline and secondary community benefit fee rates and return to the Board with modification options based upon industry standards and best practices.

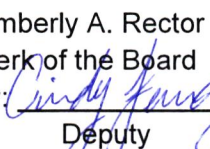
ACTION:Policy


John Hildebrand, Planning Director 8/29/2023

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Washington, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Perez, Washington, and Gutierrez
Nays: None
Absent: None
Date: August 29, 2023
xc: Planning, COBAB

Kimberly A. Rector
Clerk of the Board
By: 
Deputy

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$10,000	\$0	\$10,000	\$0
NET COUNTY COST	\$10,000	\$0	\$10,000	\$0
SOURCE OF FUNDS: General Funds 100%			Budget Adjustment: No	
			For Fiscal Year: 2023/2024	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

As of the drafting of this report in August 2023, Riverside County has approved 24 separate Cannabis business Conditional Use Permits, with 9 in operation and several more pending opening. Part of the final clearance process is payment of the baseline fee and secondary community benefit fee as described in the Board of Supervisor’s Policy B-9 (Commercial Cannabis Activities) and detailed in each Development Agreement. The first annual payment is generally due prior to final occupancy, which could be any time of the year. The first year’s payment, is an amortization of the total amount, leading up to the July 1st fiscal year date. The second year and all subsequent annual payments are due in full prior to July 1st.

The County has received multiple requests from cannabis operators for deferment of the full amount of fees and that the payment be spread over time through a structured payment plan, quarterly or monthly. Historically, any change to payments required a modification to the Development Agreement and Board of Supervisor’s action. Given the extensive amount of payment plan requests, coupled with the time and cost of processing multiple Development Agreement amendments, staff is requesting the Board of Supervisors take the following actions:

- 1) Authorize the Planning Director or approved designee, to be able to negotiate a cannabis baseline and secondary community benefit fee payment plan, without any further modifications to the Development agreement; and,
- 2) Payment plans may be allowed for up to three (3) years maximum, after a new facility opens. After the third year, annual payments in full, will become due prior to July 1st; and,
- 3) The overall total amount due, as specified in the Development Agreement will not change; and,
- 4) The agreed upon payment plan structure will be added to each Development Agreement as an exhibit and continue to be reported on annually to the Board of Supervisors.

The County amended Ordinance No. 348 (Land Use) in October 2018 establishing the framework for permitting and operations of cannabis facilities, requiring Board approval of a

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Conditional Use Permit and Development Agreement. This amendment was then followed with the creation of the Board of Supervisors Policy B-9 (Commercial Cannabis Activities), which established a baseline cannabis fee rate structured around the floor area in square footage for retailers and the grow area in square footage for cultivation. This baseline fee is partially allocated to Code Enforcement which receives 45% of the funds, and the remaining 55% is allocated to the County General Fund. The Policy document also set forth the requirement for a secondary community benefit fee, which is negotiated on a case-by-case basis. 100% of the secondary community benefit fees are intended to go back into the community where they originated from for physical upgrades, programs, or services, that a specific community could benefit from.

Since the adoption of the B-9 policy in January 2019, the cannabis industry as a whole, has been rapidly evolving with the State considering higher application fees and tax rates, as well as many of the Cities in Riverside County adopting their own Ordinances to allow cannabis operators. Additionally, the cost of labor, construction, and cannabis products have all increased. When combined, these issues result in cannabis operators having new challenges remaining competitive for sales dollars, with many struggling to maintain operating, forcing an evaluation of expenses. As a result of several operators not only requesting payment plans, but also some relief with the overall fees under the B-9 Policy, staff is requesting the Board of Supervisors take the following additional actions:

- 1) Direct staff to conduct an evaluation of the B-9 Policy rate structures; and,
- 2) Evaluate the fees, taxes, or contribution rate structures of other similar Counties and Cities that allow cannabis operations; and,
- 3) Return to the Board of Supervisors with recommendations for amending the B-9 Policy, based upon the evaluation, industry standards, and best practices.

Impact on Residents and Businesses

Structuring payment plans will not result in impacts to residents or businesses. Payment plans will assist cannabis businesses in maintaining operations while still complying with the provisions of the Development Agreement.

Additional Fiscal Information

The implementation of payment plans for cannabis operator's annual baseline and secondary community benefit fees, will result in no additional County costs. Management of the cannabis Development Agreements and the structuring of payment plans will be individually funded through Deposit Based Accounts (DBF).

Separately, it is anticipated to cost approximately \$10,000 for staff to conduct an analysis and comparison of what other jurisdictions that allow cannabis operations, collect in the way of fees, taxes, or contributions. The analysis will result in suggestions for changes to the County's baseline fee and secondary benefit fees, as outlined in the Board of Supervisors Policy B-9 (Commercial Cannabis Activities). Changes to the County's cannabis fee structure may be

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necessary in order to remain competitive and ensure cannabis business operations are sustainable.

Exhibit A: Board of Supervisors Policy B-9 (Commercial Cannabis Activities)



Aaron Gettis, Deputy County Counsel 8/22/2023

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Purpose:

On November 8, 2016, the voters of California adopted Proposition 64 which legalized the use of cannabis for adult use and established a maximum cultivation allowance of 6 plants for personal use. Proposition 64 allows for local control of adult use cannabis land uses, and reasonable regulation of personal cultivation of up to six (6) cannabis plants per residence. In Riverside County, approximately 53% of the voters countywide voted in favor of Proposition 64. 57% of voters statewide approved Proposition 64.

In recognition of the will of the voters, the Board of Supervisors has evaluated its options with regard to commercial cannabis activities in the unincorporated areas and has developed a comprehensive, regulatory framework for commercial cannabis activities.

That said, the County remains concerned that there has not been enough time to evaluate and determine the impacts and best practices for commercial cannabis activities on a large-scale or the long term impacts of such commercial cannabis activities on surrounding communities given that this is a new land use. For example, children are particularly vulnerable to the effects of cannabis use, and the presence of cannabis plants or cannabis products is an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including schools, parks, and other similar locations. Unregulated commercial cannabis activities in the unincorporated area of Riverside County adversely affect the health, safety, and welfare of the County, its residents and environment in such ways as greater risks of criminal activity, degradation of the natural environment, malodorous smells, and fire hazards. Regulated commercial cannabis activities may also adversely affect the health, safety and welfare of the County, its residents and environment if not regulated properly with specific and enforceable conditions of approval or if multiple commercial cannabis activities are concentrated in one place.

The Board recognizes that the voters of Riverside County support commercial cannabis activities. However, the benefits of commercial cannabis activities occur mainly to the cannabis owner or property owner on where the commercial cannabis activity occurs. The County wants to conditionally permit commercial cannabis activities in the unincorporated area but not at the expense of the surrounding residents and communities.

Permitting of commercial cannabis activities shall be done in a manner to avoid putting the fundamental values of the County, as expressed in its General Plan, in jeopardy. These fundamental values include "sustainability", pursuant to which the County has an expectation that its future residents will inherit communities offering them a reasonable

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range of choices (General Plan pg. V-7); “safety”, pursuant to which the County acknowledge security of person and property as one of the most basic community needs and commit to designing our communities so that vulnerability to natural and manmade hazards, as well as criminal activities, is anticipated and kept to a minimum (General Plan pg. V-6), the “natural environment”, pursuant to which the County is committed to maintaining sufficient areas of natural open space and sustaining the permanent viability of unique landforms and ecosystems (General Plan pg. V-6).

Additionally, the following General Plan Policies may be affected by the large number of conditionally permitted commercial cannabis activities:

- Land Use Element Policy LU 2.1.c. - the County shall provide a broad range of land uses, including a range of residential, commercial, business, industry, open space, recreation and public facility uses (General Plan pg. LU-19).
- Land Use Element Policy LU 5.1- the County shall ensure that development does not exceed the ability to adequately provide supporting infrastructure and services (General Plan LU-24).
- Land Use Element Policy LU 7.1 – the County require land uses to develop in accordance with the General Plan and area plans to ensure compatibility and minimize impacts (General Plan LU-26).
- Land Use Element Policy LU 8.1 - the County shall accommodate the development of a balance of land uses that maintain and enhance Riverside County’s fiscal viability, economic diversity and environmental integrity (General Plan LU-27).
- Land Use Element Policy LU 9.1 - the County shall provide for the permanent preservation of open space lands that contain important natural resources, cultural resources, hazards, water features, watercourses including arroyos and canyons, and scenic and recreational values (General Plan LU-28).
- Land Use Element Policy LU 10.1 – the County shall require that new development contribute their fair share to fund infrastructure and public facilities such as police and fire facilities (General Plan LU-30).
- Land Use Element Policy LU 14.1 - the County shall preserve and protect outstanding scenic vistas and visual features for the enjoyment of the traveling public (General Plan LU-33).

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The purposes of this Board policy are to implement these and other General Plan provisions, to ensure that the County does not disproportionately bear the burden of commercial cannabis activities throughout the County, to ensure the County receives public benefits for the commercial cannabis activities, to ensure there are adequate resources available for enforcement of permitted and unpermitted commercial cannabis activities, and to give cannabis owners and property owners certainty as to the County's requirements.

Policy:

To secure public health, safety and welfare, a commercial cannabis activity permit shall be subject to the requirements of this policy as well as the requirements of any applicable ordinance, state or federal law.

No approval required by Ordinance No. 348, or any other zoning ordinance subsequently adopted by the Board of Supervisors, shall be given for a commercial cannabis activity unless the Board of Supervisors first approves a development agreement for the commercial cannabis activity, setting forth the terms and conditions under which the commercial cannabis activity will operate in addition to the requirements of the County's zoning ordinance, all other local ordinances and regulations, state law and the development agreement is effective.

Each development agreement shall include provisions consistent with the following requirements:

Public Benefits. Cannabis owners and property owners shall pay the County a public benefit fee. The public benefit fee shall consist of two components:

1. An annual baseline public benefit fee established by the County based upon square footage and State license type to be in addition to any application and permit fees applicable to the conditional use permits, which can be used for essential services supplied by the County, including but not limited to ordinance enforcement. The baseline public benefit fees are:

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License Type	Baseline Public Benefit Fee (\$ Per Square Foot)
CULTIVATION	
Mixed-Light, 2,500 square feet (sf) or less	\$2.00
Mixed-Light, greater than 2,500 sf to 5,000 sf	\$2.50
Mixed-Light, greater than 5,000 sf to 10,000 sf	\$3.00
Mixed-Light, greater than 10,000 sf to 43,560 sf	\$3.50
Indoor, 2,500 sf or less	\$4.00
Indoor, greater than 2,500 sf to 5,000 sf	\$4.50
Indoor, greater than 5,000 sf to 10,000 sf	\$5.00
Indoor, greater than 10,000 sf to 43,560 sf	\$5.50
RETAIL	
Small, 2,500 sf or less	\$16.00
Medium, greater than 2,500 sf to 6,000 sf	\$18.00
Large, greater than 6,000 sf	\$20.00
MANUFACTURING (6,7)	
Small, 3,000 sf or less	\$4.00
Large, greater than 3,000 sf	\$4.50
MANUFACTURING (N, S, P)	
Small, 3,000 sf or less	\$3.00
Large, greater than 3,000 sf	\$3.50
OTHERS	
Nursery	\$0.50
Distribution (all sizes)	\$3.00
Testing	\$2.00

2. An additional public benefit as proposed by each Cannabis owner and property owner and to be negotiated with the County. Each development agreement shall describe the benefits that the commercial cannabis activity will provide to the local community, such as, but not limited to, quantifiable employment for residents of the County, community contributions, funding for infrastructure, funding for additional Sheriff patrols, community clean-up or beautification programs, or economic incentives to the County. Said additional public benefit shall be in addition to any mitigation or development impact fees required to be paid for the commercial cannabis activity under state law and County ordinances.

Annual Increase. The baseline public benefit fee shall be subject to annual increases by two percent from and after 2019.

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Sales and Use Taxes. In addition to any provisions of the development agreement, cannabis owners and property owners shall be responsible for timely and accurate submittal of state and local taxes, including but not limited to any sales and use taxes and excise taxes required under the MAURSA. Nothing in the development agreements or this Board policy shall relieve the cannabis owner or property owner from prompt and proper payment of state and local taxes.

Term. The development agreement and conditional use permit for any commercial cannabis activity shall have a ten (10) year term. Such term may be extended for an additional five years pursuant to the provisions of the development agreement and the conditions of approval for the conditional use permit and only in accordance with applicable County ordinance.

Implementation Plan. In addition to the provisions of this policy, there shall be a framework for an implementation process of an initial, first-year, ramp-up for processing for conditional use permits for Commercial Cannabis Cultivation and Retail Sales. The phased Implementation Process consists of an initial limit of fifty (50) conditional use permits issued for cannabis cultivation and nineteen (19) conditional use permits issued for cannabis retailers in the unincorporated areas of the County. The Implementation Process was approved by the Board of Supervisors on October 23, 2018 in Agenda Item 19.1 (Attachment F). Except for activities that include cannabis cultivation or cannabis retail sales, all other applicants considering commercial cannabis activities may submit conditional use permit applications to the Planning Department and process these for conditional use permits, concurrently with a Development Agreement once Ordinance No. 348.4898 is in effect (60 days after the Board's adoption). The Implementation Process shall be followed for the processing of land use applications for cannabis cultivation or retail sales.

Exception. A property owner or Cannabis owner may make a written request to be excepted from this policy at the time the property owner or cannabis owner files an application for a conditional use permit for a commercial cannabis activity or at any time thereafter, prior to approval of the conditional use permit. The Board of Supervisors may grant the exception request upon a finding of special circumstances. Special circumstances shall include, but not be limited to, a determination that the commercial cannabis activity has a substantial benefit to the County above and beyond the payment of required taxes or the implementation of any mitigation measures identified in any applicable environmental document. Special circumstances shall not include financial or economic hardship.

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Definitions:

As used in this policy, the following terms shall have the following meanings:

CANNABIS OWNER is any of the following:

1. A person with an aggregate ownership interest of 20 percent or more in the Commercial Cannabis Activity for which a license or permit is being sought, unless the interest is solely a security, lien, or encumbrance.
2. The chief executive officer of a nonprofit or other entity.
3. A member of the board of directors of a nonprofit.
4. An individual who will be participating in the direction, control, or management of the person applying for a Commercial Cannabis Activity Conditional Use Permit or State license.

COMMERCIAL CANNABIS ACTIVITY. The cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of Cannabis and cannabis products as provided for in Ordinance No. 348, as amended through Ordinance No. 348.4898, and any other subsequently adopted zoning ordinance amendment or subsequently adopted zoning ordinance.

PROPERTY OWNER. All owners to all or any portion of the property that is subject to the development agreement for the commercial cannabis activity. Also, any person having legal or equitable interest in such real property who is reasonably necessary to ensure the full implementation and performance of the development agreement throughout its term shall be considered a property owner for purposes of this policy and the development agreement.

Integration:

Board of Supervisors Policy No. B-9, as adopted on January 29, 2019 is approved as part of a comprehensive, integrated legislative program which also includes the adoption of Ordinance No. 348.4898. The Board of Supervisors declares that it would not have adopted Board of Supervisors Policy No. B-9 unless Ordinance No. 348.4898 was also adopted and effective. In the event that any provision of Board of Supervisors Policy No. B-9 or Ordinance No. 348.4898 is determined to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then Board of Supervisors Policy No. B-9 and Ordinance No. 348.4898 shall be deemed invalid in their entirety and shall have no further force or effect.

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Reference:

- Minute Order 6.16 of 12/07/82
- Minute Order 3.19 of 09/03/85
- Minute Order 3.35 of 03/01/88
- Minute Order 3.15 of 07/25/89
- Minute Order 3.68 of 09/23/97 (Rescinded)
- Minute Order 3.52 of 01/29/19