



## CALAVERAS COUNTY BOARD OF SUPERVISORS AGENDA SUBMITTAL

<b>Short Name/Subject</b> INTRODUCE Repeal of Cannabis Background Check Ordinance	<b>Board Meeting Date</b> November 12, 2024	<b>Agenda Number</b> 18
<b>Dept:</b> Building <b>Contact:</b> Doug Oliver <b>Phone:</b> (209) 754-6390	<b>Supervisory District Number</b> Countywide	Regular Agenda
<b>Published Notice Required:</b> No <b>Public Hearing Required:</b> No		<b>Estimated Time:</b> 1 Hour
<b>Type of Document:</b> Action Item <b>PowerPoint Presentation Included:</b> No		

### **RECOMMENDATION:**

1) Introduce and waive first reading of an ordinance repealing Chapter 9.22 of Calaveras County Ordinance Code related to Cannabis Background Clearance Badges, 2) find ordinance "not a project" or exempt from CEQA, and 3) authorize a summary publication of the ordinance.

### **DISCUSSION/SUMMARY:**

On September 12, 2023, the Board of Supervisors heard an informational presentation by the Chief Building Official regarding the cannabis cultivation permit program, which is regulated primarily by Chapter 17.18 of the County Code (formerly 17.95). Contained in the presentation was a request for direction on the Cannabis Background Clearance Badge (CBCB) program that is primarily contained in Chapter 9.22 of the Calaveras County Code. During this presentation, the Board of Supervisors gave direction to the Chief Building Official to repeal the CBCB program. The ordinance proposed by staff repeals Chapter 9.22 of County Ordinance Code, which accomplishes the Board's direction. The Planning Commission has already approved proposed amendments to Chapters 17.95 (now Chapter 17.18, most commercial cannabis activities) and 17.91 (commercial cannabis retailers) to remove citations to the requirements of the CBCB program, and—assuming the Board of Supervisors authorizes the repeal of Chapter 9.22—the proposed Title 17 changes will be brought to the Board for final adoption at the same meeting the final adoption of this action.

By ending the program, the cannabis cultivation workload processed by the Building Department is reduced by approximately 500 hours, or .3 FTE, which accomplishes a Building Department Strategic Plan Goal of streamlining permit processes for business.

### **FINANCING:**

Due to a dwindling volume of new badge applications, the CBCB program currently collects approximately \$6,500.00 in revenue from new badge applications and renewals of existing badges. While the cost to provide services to process a new application is compensated for by the processing fees, the renewal fees are less than the cost to provide services to renew and monitor the current total of active badges, resulting a total cost annually of approximately \$20,000.00.

### **CEQA**

The changes proposed through this ordinance related only to background checks and could not give rise to any potentially significant change in the environment. No new development is being

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authorized through the repeal of this Chapter. Therefore, the repeal of Chapter 9.22 is not a project and therefore not subject to review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code §21065, as the adoption of this ordinance will not cause either a direct or foreseeable indirect change to the physical environment. The Board further finds that, even if this Ordinance was a project, it is nonetheless exempt from CEQA pursuant to Title 14, Chapter Three of the California Code of Regulations, Section 15061(b)(3), which applies “[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment,” as the ordinance does not authorize any direct or indirect changes to the physical environment. The ordinance being repealed simply sets forth a criminal history eligibility requirement for participation in commercial cannabis activities within the County, due process provisions for those who are deemed ineligible based on criminal history, and a means of identifying those individuals on commercial cannabis sites who have been deemed eligible. Chapter 9.22 did not authorize any actual commercial cannabis land uses and its repeal will similarly not authorize or affect any actual commercial cannabis land uses.

**ALTERNATIVES:**

The Board may direct staff not to move this ordinance forward for adoption. If so, the current program will remain in place.

**OTHER AGENCY INVOLVEMENT:**

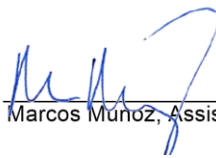
County Counsel, Planning

**APPROVED BY:**



Doug Oliver, Chief Building Official

10/28/2024



Marcos Munoz, Assistant, CEO

10/29/2024



Julie Moss-Lewis, Deputy County Counsel

10/31/2024



Stacy Simpson, Deputy Clerk to the Board

11/1/2024

## **~~Chapter 9.22 CANNABIS BACKGROUND CLEARANCE BADGE (CBCB)~~**

### **~~9.22.000 Authority.~~**

~~Pursuant to Article XI section 7, of the California Constitution, the county of Calaveras ("county") may adopt and enforce ordinance and regulations not in conflict with general laws to protect and promote the public health, safety and welfare of its citizens.~~

~~(Ord. No. 3123, § 1, 10-22-2019)~~

### **~~9.22.010 Purpose and intent.~~**

- ~~A. The purpose of this chapter is to reduce certain health and safety risks to law enforcement, civil enforcement officials, and the public at large by preventing those individuals from owning or working at commercial cannabis businesses within Calaveras County who have a prior conviction or convictions which demonstrate a proclivity for violence or violent threats; a proclivity to engage in illegal production, trafficking, and selling of controlled substances; a proclivity to engage in acts of fraud or deceit; or a proclivity to disregard public safety. Any ambiguity in this chapter should be construed in whatever manner best effectuates this intent.~~
- ~~B. This chapter establishes the county's criminal background check screening procedures and eligibility criteria for those applying for county commercial cannabis permits under Title 17 of the Calaveras County Code and for those workers who plan to participate directly in commercial cannabis activities at any commercial cannabis site.~~
- ~~C. The provisions of this chapter shall supersede the provisions of any other local ordinances requiring a background check prior to being authorized to engage in commercial cannabis activities within the county or to work at a commercial cannabis site.~~
- ~~D. All references to laws and ordinances shall be interpreted as applying equally to any subsequent amendments made to such laws and ordinances.~~

~~(Ord. No. 3123, § 1, 10-22-2019)~~

### **~~9.22.020 Definitions.~~**

~~For the purposes of this chapter, the following terms are defined as follows:~~

- ~~A. "Applicant" means an individual applicant for a cannabis background clearance badge.~~
- ~~B. "Cannabis background clearance badge" or "CBCB" means the written authorization and identification card provided by the Calaveras County Administrative Office, Division of Cannabis Control, pursuant to this chapter.~~
- ~~C. "CAO" means the county administrative officer, or the county administrative officer's designee.~~
- ~~D. "Clerk" means clerk of the office of the county hearing officer.~~
- ~~E. "County" means the county of Calaveras.~~
- ~~F. "Commercial cannabis activity" means any cannabis activity that requires a state license under state law.~~
- ~~G. "Commercial cannabis permit" means the permit issued under Title 17 of the Calaveras County Code authorizing the permittee to engage in a commercial cannabis activity within the county.~~

- H. ~~"Commercial cannabis site" means the physical location(s) at which activities authorized by a commercial cannabis permit may be conducted.~~
- I. ~~"Division of cannabis control" means the division of the Calaveras County Administrative Office that oversees and implements this chapter.~~
- J. ~~"Enforcing officer" means the CAO, a deputy sheriff, a code compliance officer, or any employee of the county who is authorized to participate in regulatory compliance or enforcement activities at a commercial cannabis site.~~
- K. ~~"Owner," for purposes of this chapter, shall have the same meaning as it does in Business and Professions Code Section 26001.~~
- L. ~~"Permittee" means the individual or business entity holding a commercial cannabis permit.~~
- M. ~~"Satisfactorily passed" means that either the CAO, or, after an appeal hearing, an administrative hearing officer has determined that the individual is eligible for a CBCB based on his/her criminal history. In the case of owners, it means that the owner has demonstrated to the satisfaction of the CAO, that the owner has completed the background check portion of the state license application process.~~
- N. ~~"State" means the state of California.~~
- O. ~~"Worker" means an individual other than an owner of the permittee who participates directly in commercial cannabis activities on a commercial cannabis site, including but not limited to cultivating, trimming, drying, transporting, storing, moving, manufacturing, distributing, dispensing, testing, packaging, labeling or selling cannabis. It shall not include an out-of-county state-licensed commercial cannabis distributor whose participation is limited to delivering cannabis to or from a premises licensed under the provisions of Business and Professions Code Section 26000 et seq.~~
- P. ~~"Works" or "working" means participates directly in commercial cannabis activities on a permittee's commercial cannabis site, including but not limited to cultivating, trimming, drying, transporting, storing, moving, manufacturing, distributing, dispensing, testing, packaging, labeling or selling cannabis. It shall not include an out-of-county state-licensed commercial cannabis distributor whose participation is limited to delivering cannabis to or from a premises licensed under the provisions of Business and Professions Code Section 26000 et seq.~~

~~(Ord. No. 3123, § 1, 10-22-2019; Ord. No. 3135, § 1, 4-28-2020)~~

### ~~9.22.030 Criminal background checks required.~~

- A. ~~The permittee shall ensure that every owner or worker on the county commercial cannabis site is in physical possession of a current, valid CBCB identifying him/her as someone who has satisfactorily passed a criminal background check through the division of cannabis control in compliance with this chapter.~~
- B. ~~The requirements of this chapter shall apply regardless of whether the individual has already submitted to a similar criminal background check to obtain a state commercial cannabis license or to any other federal, state, or local criminal background check.~~

~~(Ord. No. 3123, § 1, 10-22-2019; Ord. No. 3135, § 2, 4-28-2020)~~

### ~~9.22.040 Criminal background check procedure.~~

- A. ~~An applicant for a county CBCB shall complete a standardized criminal background check application form provided by the CAO, which may include a request for live scan service form, and shall submit to fingerprinting through a certified fingerprint roller or qualified law enforcement personnel authorized under~~

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California law to perform live scan fingerprinting. The application form shall require the applicant to provide a valid mailing address or a consent to electronic service and certification of email address for purposes of receiving notice of the CAO's resulting determination. The application form shall also require the applicant to notify the division of cannabis control of any change in his/her contact information.

- ~~B. The division of cannabis control criminal background check application and procedures shall comply with all provisions of the California Penal Code, including but not limited to Sections 11105(b)(11) and 13300(b)(11), and the applicable county resolution authorizing the division of cannabis control to access summaries of criminal history information for the issuance and monitoring of cannabis regulatory background clearance permits.~~
- ~~C. Notwithstanding subsections A and B above, the CAO may, in his or her discretion, devise an alternative or additional method for criminal history review such as entering into a services agreement with a third party vendor or private contractor that provides background check services.~~
- ~~D. The CAO may deem an applicant ineligible for a CBCB where the applicant has been convicted of a felony or misdemeanor, and the conviction is substantially related to the qualifications for, functions of, or duties of an individual engaged in any commercial cannabis activity allowed under Title 17 of the county code.~~
- ~~E. In determining whether an applicant is eligible for a CBCB under this chapter, the following convictions within a ten-year period prior to the submission of the CBCB application are presumed to be substantially related to the qualifications, functions, or duties of an applicant:~~
- ~~1. A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.~~
  - ~~2. A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.~~
  - ~~3. Any felony conviction with enhancement pursuant to Penal Code Section 186.22 or any conviction under Penal Code Sections 182, 182.5, 186.26 and 186.28.~~
  - ~~4. A felony or misdemeanor conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.~~
  - ~~5. A felony or misdemeanor conviction involving violations of Penal Code Sections 374, 374.2, 374.7, 374.8 and 384.5, or Health and Safety Code Section 11358(d).~~
  - ~~6. A felony or misdemeanor conviction involving fraud, deceit, money laundering or embezzlement.~~
  - ~~7. A felony conviction involving trafficking, cultivation, manufacturing, or selling controlled substances in violation of Division 10 of the California Health and Safety Code.~~
  - ~~8. Any felony or misdemeanor conviction of firearms or weapons violations under Health and Safety Code Section 11550e or Penal Code Sections 244.5, 245, 246, 246.3, 247, 417, 12020, 12025, 25800, 29800, 29805, 29815 and 30305.~~
  - ~~9. A felony or misdemeanor conviction for adulterating food or drugs, or selling, giving away, or delivery of adulterated or contaminated food or drugs.~~
  - ~~10. A felony or misdemeanor conviction of Vehicle Code Sections 31, 2800.1 or 2800.2.~~
  - ~~11. A conviction for violation of Penal Code Sections 69, 148, 148.9, 148.10, 236, 236.1, 370, 372, 373a and 374.3 or Welfare and Institutions Code Section 8103.~~
  - ~~12. A felony or misdemeanor conviction under Fish and Game Code Section 1602, Section 5650 or Section 5652, or under Health and Safety Code Section 11358(d)(3).~~
  - ~~13. Any analogous convictions under federal law or under the laws of another state.~~

- F. ~~In determining whether to deny an application based on a conviction that is substantially related to the qualifications for, functions of, or duties of an applicant, the scope of the review shall be limited to the criminal history summaries received as a result of the request for live scan service described in subsection A and any other record and/or search that verifies a conviction. Additionally, the CAO shall consider the following factors and mitigating circumstances:~~
1. ~~The nature and severity of the act(s), violation(s), or crime(s) under consideration as grounds for denial.~~
  2. ~~The time that has elapsed since the commission of the act(s), violation(s), or crime(s).~~
  3. ~~Evidence, if any, of rehabilitation submitted by the applicant, including, but not limited to the following:~~
    - a. ~~Evidence of dismissal under Sections 1203.4, 12034.a, and 1203.41 of the Penal Code or another state's similar law.~~
    - b. ~~A certificate of rehabilitation under Section 4852.01 of the Penal Code.~~
- G. ~~For the purposes of this section, "conviction" shall mean a judgment after a verdict by a judge or jury or a plea of guilty or nolo contendere.~~
- H. ~~After determining whether an individual has satisfactorily passed the background check, the CAO shall serve written notice of this determination in accordance with Section 9.22.060 to the applicant, to any permittee listed on the appeal request form, and to the Calaveras County Planning Department.~~
- I. ~~Each application shall be accompanied by an application fee, which shall be set by resolution of the board of supervisors. No applications will be accepted prior to the division of cannabis control obtaining an originating agency identifier (ORI) from the Department of Justice (DOJ) for the purpose of implementing this chapter, nor prior to the effective date of the fee adopted by the board of supervisors.~~

(Ord. No. 3123, § 1, 10-22-2019; Ord. No. 3135, § 3, 4-28-2020)

### **9.22.050 Subsequent convictions.**

- A. ~~If any holder of a CBCB, after satisfactorily passing the background check authorized by this chapter, is subsequently convicted of any felony or misdemeanor, the CAO shall determine, pursuant to the criteria in Section 9.22.040, whether this subsequent conviction renders this individual ineligible for the CBCB.~~
- B. ~~If the CAO, or, if appealed, an administrative hearing officer, determines that a subsequent conviction renders an owner of a permittee ineligible for a CBCB, the owner's CBCB shall be revoked and surrendered to the division of cannabis control; the permittee shall prohibit the owner from being present on the site; and the planning department shall initiate revocation proceedings of the commercial cannabis permit held by the permittee unless, within thirty days of service of notice of the CAO's determination or final order after hearing, the permittee demonstrates to the satisfaction of the CAO that the ineligible owner has been wholly divested of his/her interest in the permittee.~~
- C. ~~If the CAO, or, if appealed, an administrative hearing officer, determines that a subsequent conviction renders a worker ineligible for a CBCB, the CAO shall revoke the CBCB and the worker shall surrender it to the division of cannabis control. If a worker whose badge has been surrendered to the division of cannabis control is subsequently found on a permittee's commercial cannabis site, the CAO may direct the planning department to initiate revocation of the county commercial cannabis permit held by the permittee unless the permittee can demonstrate to the satisfaction of the CAO that reasonable steps were taken to exclude the worker, including but not limited to evidence that the permittee sent timely written notice to the worker~~

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explaining that he/she is now prohibited from entering the permittee's county commercial cannabis site and that his/her subsequent presence on the site would be reported to the sheriff as trespassing.

- D. — If an administrative hearing officer, overturns a CAO determination that a subsequent conviction renders an owner or worker ineligible for CBCB, the badge of the ineligible party shall be returned.
- E. — After determining whether the subsequent conviction renders an owner or worker ineligible for an existing CBCB, the CAO shall send written notice pursuant to Section 9.22.060 to the ineligible owner or worker.

(Ord. No. 3123, § 1, 10-22-2019)

### **9.22.060 Service of notices.**

- A. — Service of any notice or order required under this chapter may be made by first class mail to the address provided on the application form or appeal form, unless the applicant consented to electronic service and submitted a certification of email address form. If electronic service is chosen, notice will not be sent by mail.
- B. — Service is complete upon depositing a notice or written decision in a sealed envelope with the United States Postal Service with postage prepaid or by sending an email to the address provided by an applicant in a properly executed certification of email address form.
- C. — The notice of denial or revocation of a CBCB shall be sent using a standardized form which provides notice of the appeal rights described in this chapter and basic instructions on how to file a timely appeal.

(Ord. No. 3123, § 1, 10-22-2019)

### **9.22.070 Request for an appeal; written request; submittal; effect of appeal on permittee.**

- A. — To initiate an appeal of a determination or enforcement action made pursuant to Section 9.22.040, 9.22.050, or 9.22.080, the applicant shall, within fifteen calendar days after service of the CAO's written determination, submit a written request for appeal in accordance with subsection B of this section.
- B. — Any request to appeal a denial of an application for, or revocation of, a CBCB shall be submitted on an appeal form created by the division of cannabis control. The appellant's written appeal may state the additional facts, considerations, or mitigating factors that warrant reversal of the CAO's decision to deny the application or revoke the CBCB. The appeal request form and any attachments may be delivered in person to the division of cannabis control, sent by mail, or submitted electronically, pursuant to standardized procedures developed by the CAO. Appellants may attach additional briefs, documents, or other relevant matters to the appeal form.
- C. — The appeal form shall contain, at a minimum, the following information:
  1. — Notice that the appellant is entitled to review the background check information that formed the basis of the CAO's denial by doing any of the following:
    - a. — Requesting a supervised inspection of the documents at the division of cannabis control office upon payment of a fee to be adopted by resolution of the board of supervisors.
    - b. — Requesting inspection at an appeal hearing pursuant to this chapter, after making an oral waiver of privacy rights on the record.
    - c. — Obtaining an independent background check at his/her own expense.
  2. — Notice that the contents of the background report upon which the denial was based will be provided to a county hearing officer and submitted into the public record of the hearing if the matter proceeds to a hearing before the office of the county hearing officer;

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3. ~~The appeal form shall request, at a minimum, the following information:~~
- a. ~~The name of the appellant.~~
  - b. ~~The primary telephone number of the appellant and/or the attorney of record for the appellant.~~
  - c. ~~The mailing address of the appellant and/or attorney of record.~~
  - d. ~~The email address of the appellant and/or attorney of record, together with a notification that the appellant and/or attorney may elect to receive electronic service in lieu of service by mail of all documents appellant is entitled to under the provisions of this chapter.~~
- D. ~~An appellant shall, concurrently with submission of an appeal request, submit an appeal fee with the division of cannabis control office. The fee shall be determined by resolution of the board of supervisors.~~
- E. ~~Further Consideration; Hearing Date.~~
1. ~~After receiving the request for appeal, the division of cannabis control staff shall request of the clerk of the county hearing officer that a hearing be set not less than twenty one days and not more than forty five days after the request for appeal was received by the division of cannabis control. The request for a hearing shall be made via email to the clerk and a copy of the CAO's denial letter, and appellants request for appeal shall be attached to the email.~~
  2. ~~Prior to the hearing date, the CAO may, at his or her discretion, request additional documents or information from the appellant to help determine whether or not to rescind the decision to deny the CBCB application. If the CAO rescinds his or her decision, the appeal fee shall be returned (less a processing fee) to the applicant, and the hearing shall be taken off calendar.~~
- F. ~~Staff Reports and Appellants' Briefs.~~
1. ~~The CAO shall serve on the clerk and the appellant a staff report which states the basis of a decision to deny the application, revoke a CBCB, or undertake enforcement action was based, and includes any further documents or information the CAO wishes to provide in support of his or her decision to deny the application. Staff reports and other materials must be served at least ten days before the hearing.~~
  2. ~~Appellants may submit additional information for consideration by the hearing officer, with receipt no less than five days before the scheduled hearing by:~~
    - a. ~~Submitting it to the clerk in person at the county administrative office,~~
    - b. ~~Mailing it to:~~

~~Clerk of the Office of County Hearing Officer  
c/o County Administrative Office  
891 Mountain Ranch Road  
San Andreas, CA 95249~~
  - ~~or,~~
  - c. ~~Emailing it to email at: hearingofficer@co.calaveras.ca.us  
<mailto:hearingofficer@co.calaveras.ca.us>.~~
  - d. ~~Such additional information shall be submitted at least five days before the scheduled hearing.~~
  3. ~~The hearing officer may, in his or her discretion, accept additional documentary evidence or exhibits at the hearing, if such documents or materials could not have been provided earlier or for other good cause.~~
- G. ~~If a party requests an appeal and fails to appear at the scheduled hearing, the hearing officer may make a decision and issue a ruling based only on matters submitted into the record and the testimony of the parties~~



present at the hearing. If a hearing officer finds that the failure to appear was a consequence of an unforeseen emergency or for other good cause, he or she may, in his or her discretion continue the hearing and impose a rescheduling fee pursuant to Section 9.22.090(B)(6)(b).

~~H. — Effect of Appeal on Permittee.~~

- ~~1. — Appeals by Owners. Requesting an appeal shall not operate as a stay of enforcement, and the permittee shall not allow an owner or worker with a pending appeal to be present on the commercial cannabis site until and unless the appeal is decided in the owner's favor. However, the requirement in Section 17.95.050(a)(1)(a) that the permittee demonstrate that the owner has been fully divested of his/her interest in the permittee shall be stayed until the permittee receives notice of the hearing officer's determination.~~
- ~~2. — Appeals by Workers. Requesting an appeal shall not operate as a stay of enforcement, and the permittee shall not allow a worker with a pending appeal to be present on the commercial cannabis site until and unless the appeal is decided in the worker's favor.~~

~~(Ord. No. 3123, § 1, 10-22-2019)~~

**9.22.080 Enforcement.**

- ~~A. — If an enforcing officer, in the course of his or her duties, finds that an owner or worker without a CBCB is present at a commercial cannabis site in violation of this chapter, the permittee and the owner or worker shall each be liable for the civil penalties described in this section.~~
- ~~B. — The presence of each owner or worker without a CBCB in violation of this chapter shall constitute an independent violation. Every violation shall be punishable as an infraction as described in Government Code Section 25132, and more specifically as follows:
 
  - ~~1. — A fine not exceeding one hundred dollars per permittee and per owner or worker, per day for the first citation.~~
  - ~~2. — A fine not exceeding two hundred dollars per permittee and per owner or worker, per day for the second citation issued within one year of the first citation.~~
  - ~~3. — A fine not exceeding five hundred dollars per permittee and per owner or worker, per day for each additional violation within one year of the first violation.~~~~
- ~~C. — Each person or entity violating this chapter shall be guilty of a separate offense for each and every day, or portion thereof, on which any violation of any portion of this chapter is committed, continued, or permitted by any such person or entity.~~
- ~~D. — In addition to fines for violations incurred under this section, permittees and owners or workers shall be liable for the administrative costs of enforcement, including the costs of collecting fines. Non-payment of fines or enforcement costs, shall be reported to the planning department and, if the non-payment is by a permittee, may be grounds for revocation of a commercial cannabis cultivation or dispensary permit.~~
- ~~E. — Citations shall be served in accordance with Section 9.22.060 and shall be personally served on any owner or worker, permittee, or site manager present on the cannabis site or shall be posted conspicuously at the site.~~
- ~~F. — Permittees and owners or workers who receive a citation for violations pursuant to this section may request an appeal within fifteen calendar days of the service of the citation. Written requests for appeals shall be submitted in accordance with procedures established by the code compliance department. Appeal instructions shall be served with the citation. Appeal hearings shall be held in accordance with Section 9.22.090 through Section 9.22.120.~~

~~(Ord. No. 3123, § 1, 10-22-2019)~~

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### **~~9.22.090 Hearings on appeals of enforcement actions and of CAO's CBCB determinations.~~**

- ~~A. Appeals of background check denial decisions, and of enforcement actions pursuant to this chapter, shall be heard before the office of the county hearing officer, which was established in Chapter 8.06 of the county code.~~
- ~~B. In addition to the powers enumerated in Government Code Sections 27721 and 27722 and those powers specifically enumerated in Chapter 8.06 of the county code, a hearing officer shall have the power to:~~
- ~~1. Undertake de novo review of staff decisions and enforcement actions.~~
  - ~~2. Create and maintain a record of the proceedings.~~
  - ~~3. Reverse or uphold the assessment of administrative fines assessed pursuant to Section 9.22.080.~~
  - ~~4. Reverse or uphold a decision by the CAO to deny, revoke, or suspend a CBCB pursuant to Section 9.22.040 or Section 9.22.050.~~
  - ~~5. Hearings shall generally be open to public observation, however a hearing officer may, in his or her discretion, order closure of a hearing or make other protective orders to the extent necessary or proper for any of the following purposes:~~
    - ~~a. To satisfy requirements of a federal or state statute, or other law, including but not limited to laws protecting privileged, confidential, or other protected information.~~
    - ~~b. To conduct the hearing, including the manner of examining witnesses, in a way that is appropriate to protect a minor witness or a witness with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code, from intimidation or other harm, taking into account the rights of all persons.~~
    - ~~c. To ensure a fair hearing in the circumstances of the particular case.~~
    - ~~d. Where a hearing is closed to public observation, the record of the proceedings shall be subject to the public records act and no portion of the proceeding or any of the materials made part of the proceeding shall be exempt from public disclosure except as provided by law.~~
  - ~~6. A hearing officer shall have the power in his or her discretion to grant continuances upon a showing of good cause.~~
    - ~~a. A request for a continuance should be made in writing and received by the clerk at least five days before the scheduled hearing. The clerk shall forward the request to the hearing officer that has been assigned to the case, to the division of cannabis control and to any involved permittee(s) and permittee's attorney of record, so that they may have an opportunity to object to the continuance and state grounds for any such objection. Objection shall be sent, in writing, and provided to the appellant, appellant's counsel, any involved permittee and permittee's counsel, and the hearing officer assigned to the case. All objections or communication with hearing officer shall be made through the clerk and no requests for continuance or objections to a continuance may be made ex parte to the hearing officer.~~
    - ~~b. A fee, which shall be set by resolution of the board of supervisors, shall be assessed to recover the administrative and staff costs of rescheduling a hearing if a request for a continuance is not received by the clerk at least five days before the hearing and the request for continuance is granted.~~

~~(Ord. No. 3123, § 1, 10-22-2019)~~

### 9.22.100 Administrative hearing procedures.

- A. ~~Those parties who file a timely request for an appeal, shall be given an opportunity, at an administrative hearing, to present and elicit testimony to contest any portion or all of the findings and orders made by the CAO or enforcing officers in support of the decision or determination that is the subject of the appeal hearing. An attorney authorized to practice law in the state of California may represent any party to the appeal.~~
- B. ~~Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The hearing officer may admit into the record all relevant evidence, including but not limited to incident reports, the case notes of enforcing officers, affidavits of witnesses, and other materials deemed appropriate by the hearing officer. The hearing officer is not required to accept into the record evidence that is irrelevant to the matter before him or her.~~
1. ~~Where any documents or exhibits are proffered at the hearing itself and they are found to be untimely or irrelevant, the hearing officer may reject such documents. Where such documents are rejected, the hearing officer may, in his or her discretion either:~~
    - a. ~~Have the exhibits or documents briefly described in the record and returned to the party who proffered such evidence; or~~
    - b. ~~Have such materials entered into the record as evidence not considered by the hearing officer.~~
- C. ~~Witnesses Shall be Sworn. The hearing officer may question witnesses at any time and recall them as necessary for further testimony.~~
- D. ~~All participants, including parties, counsel, and witnesses, will be expected to maintain a civil demeanor and to present only relevant evidence.~~
- E. ~~The hearing officer shall consider the matter de novo, shall exercise independent judgment in reviewing the evidence, and may affirm, reverse, or modify the decision or determination of the CAO or enforcing officers.~~
- F. ~~Ex parte communications, meaning communications between a hearing officer and a party to an administrative proceeding, shall be restricted:~~
1. ~~While the proceeding is pending, except as provided in subsection (F)(5) below, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the hearing officer from any employee or agent of the division of cannabis control or other county department, the appellant, agent or the appellant, or any other party to the proceeding without notice and an opportunity for all parties to participate in the communication.~~
  2. ~~For the purpose of this section, a proceeding is pending from the date the division of cannabis control accepts an application or the date an enforcement action is initiated to the issuance of a final written decision by the hearing officer.~~
  3. ~~Nothing in this section precludes a communication including a communication from an employee or agent of the county, or from an appellant or an interested party if such a communication is made on the record at the hearing in which the matter is being heard.~~
  4. ~~Communications concerning matters of procedure, practice, and requests for continuances shall be directed to the clerk. The clerk shall refuse to provide legal advice to appellants.~~
  5. ~~Notwithstanding subsection (F)(1), communications to a hearing officer from an employee or agent of the county are permissible in any of the following circumstances:~~
    - a. ~~A written communication that is served on all parties to the hearing.~~
    - b. ~~A communication that is made on the record at the hearing in which the matter is being heard.~~

- ~~c. A communication that involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the hearing officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in a manner required by subsection (F)(6).~~
- ~~6. If a hearing officer received a communication in violation of this subsection, the hearing officer shall make all of the following part of the record in the proceeding:~~
- ~~a. If the communication is written, the writing and any written response of the hearing officer.~~
- ~~b. If the communication is oral, a memorandum stating the substance of the communication, any response made by the hearing officer, and the identity of each person from whom the hearing officer received the communication.~~
- ~~7. Documents described in subsections (F)(6)(a) and (F)(6)(b), shall be delivered by mail or email to the clerk and the clerk shall disseminate the writing and any written response to all parties and copies of the writing and any written response shall be scanned and placed in the case file.~~
- ~~G. A party to an appeal hearing may file a motion to disqualify a hearing officer where he or she has reason to believe that the assigned hearing officer is biased or prejudiced against the party or has a personal interest in the subject matter of the hearing.~~
- ~~1. A hearing officer has a disqualifying bias in the matter if any of the following conditions apply:~~
- ~~a. The hearing officer has represented one of the parties in the hearing in his or her capacity as a lawyer and the subject matter of the representation is relevant to hearing;~~
- ~~b. A party to the hearing is a close friend or immediate family member of the hearing officer; or~~
- ~~c. The hearing office has a direct pecuniary interest in the outcome of the hearing.~~
- ~~2. Without further evidence of bias, prejudice, or personal interest, the following shall not, alone, be grounds for disqualification:~~
- ~~a. The hearing officer is or is not a member of a particular racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of a member of that group.~~
- ~~b. The hearing officer has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal or policy issue presented in the proceeding.~~
- ~~3. If a hearing officer has direct, personal, and specific knowledge of disputed material facts in a matter before him or her, that is not generally known or publicly available, the hearing officer must either disclose to the parties, on the record, the nature, scope, and source of such knowledge or recuse himself or herself from hearing the matter.~~
- ~~4. If, after receiving a motion for disqualification, the hearing officer denies the motion and declines to recuse himself or herself, he or she shall state the reason for such a decision into the record and include, in the final written decision, the grounds for denying the motion for disqualification.~~

(Ord. No. 3123, § 1, 10-22-2019)

### **9.22.110 Decisions of the hearing officer.**

- ~~A. The decision shall be in writing and shall include a statement of the factual and legal basis for the decision.~~
- ~~B. The statement of the factual basis for the decision may be in the language of, or by reference to, the staff reports or pleadings of a party. If the statement is no more than mere repetition or paraphrase of the relevant statute or regulation, the statement shall be accompanied by a concise and explicit statement of the~~

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(Supp. No. 20, Update 2)

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~~underlying facts of record that support the decision. If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination.~~

- ~~C. — Nothing in this section limits the information that may be contained in the decision, including a summary of evidence relied on.~~
- ~~D. — An order after hearing is a final administrative order, subject to appeal to superior court pursuant to applicable law.~~

~~(Ord. No. 3123, § 1, 10-22-2019)~~

### ~~9.22.120 Decisions of a hearing officer do not set precedent.~~

~~Prior decisions of hearing officers are not binding and may not be relied upon, in and of themselves, as precedent limiting future decisions. Each matter should be determined on its own merits within the framework of applicable statutes, ordinances, or controlling published appellate court cases.~~

~~(Ord. No. 3123, § 1, 10-22-2019)~~

1 BOARD OF SUPERVISORS, COUNTY OF CALAVERAS  
2 STATE OF CALIFORNIA

3  
4 **AN ORDINANCE REPEALING CHAPTER 9.22 OF THE CALAVERAS**  
5 **COUNTY CODE RELATED TO CANNABIS BACKGROUND**  
6 **CLEARANCE BADGES.**

7 The Board of Supervisors of the County of Calaveras hereby ordains as follows:

8 Section 1. Chapter 9.22 of the Calaveras County Code is hereby repealed.

9 Section 2. The Board of Supervisors hereby finds based on the whole record before it that this  
10 Ordinance is not a project and therefore not subject to review under the California Environmental  
11 Quality Act (CEQA) pursuant to Public Resources Code §21065. The Board of Supervisors further  
12 finds that, even if this Ordinance was a project under CEQA, it would be exempt pursuant to CEQA  
13 Guideline §15061(b)(3), the “common sense” exemption, because there is no possibility that this  
14 ordinance could have any effect on the physical environment. The staff report accompanying the  
15 adoption of this ordinance contains further explanation of why CEQA does not apply, and it is hereby  
16 incorporated by reference into these findings.

17 Section 3. If any section, subsection, clause or phrase of this Ordinance is for any reason held  
18 to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of  
19 this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance  
20 and every section, subsection, clause or phrase thereof, irrespective of the fact that anyone or more  
21 section, subsection, clause or phrase be declared unconditional or invalid.

22  
23 Section 4. This ordinance shall take effect \_\_\_\_\_ and notice of its adoption shall  
24 be published once in summary form within fifteen (15) days of adoption in a newspaper of general  
25 circulation published in the County of Calaveras, including the names of the supervisors voting for and  
26 against the same.

Attachment: CBCB Repeal Ordinance (8226 : INTRODUCE Repeal of Cannabis Background Check Ordinance)



# County of Calaveras

## Building Department

Phone: (209) 754-6390

Email: [buildingweb@calaverascounty.gov](mailto:buildingweb@calaverascounty.gov)

Website: <https://building.calaverasgov.us/>

891 Mountain Ranch Road, Building "E", San Andreas, CA 95249

### BOARD OF SUPERVISORS

### NOTICE OF ORDINANCE AMENDMENT

**LEAD AGENCY:** Calaveras County Building Department  
891 Mountain Ranch Rd.  
San Andreas, CA 95249

**Proposed Ordinance to repeal the Cannabis Background Clearance Badge (CBCB) program:** Calaveras County is proposing to repeal Chapter 9.22 of Calaveras County Ordinance Code in order to eliminate the Cannabis Background Clearance Badge program from the Division of Cannabis Control. The ordinance was introduced at a Board of Supervisors meeting on November 12, 2024. The repeal of this Chapter is not a project under the California Environmental Quality Act (CEQA), or it is exempt pursuant to 14 CCR §15061(b)(3).

**NOTICE IS HEREBY GIVEN** that the Calaveras County Board of Supervisors will conduct a public meeting on **December 10 at 9:00 a. m.** or soon thereafter to consider the above referenced ordinance. The public meeting will be held in the Calaveras County Board of Supervisors Chambers, Government Center, 891 Mountain Ranch Road, San Andreas, California.

You are welcome to review the application at the Calaveras County Building Department during normal working hours, 8:00 a. m. to 4:00 p. m., Monday through Friday except county holidays. The Chief Building Official can be reached at [doliver@calaverascounty.gov](mailto:doliver@calaverascounty.gov) or (209) 754-2823. Staff reports are made available for public viewing online at <https://calaverasgov.us/Meeting-Calendar> on the Friday prior to the scheduled meeting. The staff report can also be viewed at the Building Department located at 891 Mountain Ranch Rd. Building E, San Andreas, California.

Date of Notice –



## CALAVERAS COUNTY BOARD OF SUPERVISORS AGENDA SUBMITTAL

<b>Short Name/Subject</b> INTRODUCE ORDINANCE REDUCING SECTION 3.56.050(B) TAX RATE PER SECTION 3.56.070	<b>Board Meeting Date</b> November 12, 2024	<b>Agenda Number</b> 19
<b>Dept:</b> Building <b>Contact:</b> Doug Oliver <b>Phone:</b> (209) 754-6390	<b>Supervisory District Number</b> Countywide	Regular Agenda
<b>Published Notice Required:</b> No <b>Public Hearing Required:</b> No		<b>Estimated Time:</b> 1 Hour
<b>Type of Document:</b> Action Item <b>PowerPoint Presentation Included:</b> No		

### **RECOMMENDATION:**

1) Introduce and waive first reading of an uncodified ordinance temporarily reducing the cannabis cultivation tax rates specified in County Code Section 3.56.050(B)(1)-(3) by 60% through December 31, 2027, as authorized by Section 3.56.070; and 2) Authorize summary publication. Requires a 4/5 vote.

### **DISCUSSION/SUMMARY:**

On January 9, 2024, the Board approved Ordinance No. 20240109o3191 pursuant to its authority under County Code § 3.56.070, temporarily reducing cannabis cultivation square footage tax rates by 60% for the entire calendar year of 2024.

Given that this temporary tax reduction sunsets at the end of December 2024, staff has conducted research into the state of the legal cannabis market and compared it to data from previous years. The major points gleaned from that research are as follows:

- Wholesale prices for dried cannabis flower in Calaveras County is rebounding, but there is no evidence yet of market stabilization:
  - 2020 - \$800 to \$1,000 per pound
  - 2021 - \$400 to \$500 per pound
  - 2022 - \$150 to \$300 per pound
  - 2023 - \$300 to \$450 per pound
  - 2024 - \$250 to \$400 per pound
- Beginning July 1, 2022, the State curtailed its \$150 per pound tax on cultivation and moved it to retail. This shift appears to have contributed to product values (wholesale prices) dropping rather than shifting the cost to consumers. Bottom line: State tax savings have not been realized by farmers.
- Examples of cultivation tax reduction actions taken by other counties:
  - Humboldt County – 90% reduction as of October 2023
  - Sonoma County – permanently changed their tax format to canopy size.
    - \$.69 per sq ft for outdoor canopy.
    - \$2.51 per sq ft for mixed light
    - \$7.58 per sq ft for indoor



INTRODUCE ORDINANCE REDUCING SECTION 3.56.050(B) TAX RATE PER SECTION 3.56.070

November 12, 2024

- Lake County – Reduced tax by 50% for two years and temporarily changed basis from cultivation area to canopy area
- Monterey County – Reduced tax by varying percentages, extended due dates with waived penalties
- Without interstate commerce, the State of California’s legal cannabis industry’s market prices are not expected to stabilize in a manner consistent with interstate commodities.
- Due to the extension of the temporary tax reduction, the number of permits has stabilized at a total of 92. Further, only 2 permits have been revoked this year for non-payment of taxes.

The information provided would indicate no stabilization of market prices in the immediate future. Until there is data to suggest a stabilized market, the Building Department believes that the industry will continue to need assistance in the form of tax reductions from local governments to support the industry’s economic benefit to local jurisdictions over the long term. The ordinance presented would extend the existing 60% reduction through 2027, at which point it would automatically sunset.

**FINANCING:**

Below is a chart that shows Cannabis Excise Tax receipts in Calaveras County over the past few years:

FY 2021-22 Actuals	FY 2022-23 Actuals	FY 2023-24 Actuals	FY 24-25 Estimate
\$3,554,634	\$3,646,515	\$2,920,920	\$2,800,000

This chart shows growing cannabis tax receipts between FY 2020-21 and FY 2022-23 followed by a sharp reduction in revenue in FY 2023-24 that reflects canopy size reduction across the local industry in response to market volatility. The projection for FY 2024-25 is \$2,800,000, which anticipates zero growth in the industry. Given the estimate in this year’s budget and the on-going volatility in the cannabis industry, staff recommends continuing the reduction through 2027 in order to monitor the industry for long term market patterns.

**ALTERNATIVES:**

The Board could choose to take the following alternative actions.

- 1) Take no action and allow the tax rates to automatically raise to prior levels on January 1, 2025, or could approve a lesser reduction level (e.g., 30% versus 60% reduction). The information provided above indicates that eliminating or modifying the reduction to a lower amount would not be prudent in this still evolving market and could have immediate and long-lasting negative effects on the County’s General Fund revenues and legal cannabis industry in general.
- 2) The Board may choose to change the duration of the tax reduction by reducing or increasing the number of years that the tax reduction is in effect as well as eliminating the time limitation completely. These alternatives will have no effect on the industry. However, the proposed longer reduction duration would allow staff to establish long term market data to establish a baseline for what is a standard market fluctuation without the need to return to the Board annually for direction. Further, the Board is not constrained to any particular timeframe and may direct staff to return for further amendment of the timeframe if the market stabilized.

INTRODUCE ORDINANCE REDUCING SECTION 3.56.050(B) TAX RATE PER SECTION 3.56.070

November 12, 2024

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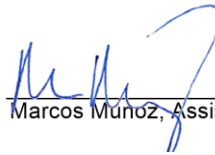
**OTHER AGENCY INVOLVEMENT:**

Tax Collector

**APPROVED BY:**

  
\_\_\_\_\_  
Doug Oliver, Chief Building Official

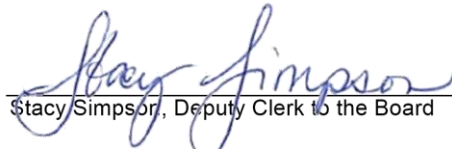
10/28/2024

  
\_\_\_\_\_  
Marcos Muñoz, Assistant, CEO

10/29/2024

  
\_\_\_\_\_  
Julie Moss-Lewis, Deputy County Counsel

10/31/2024

  
\_\_\_\_\_  
Stacy Simpson, Deputy Clerk to the Board

11/7/2024