



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: CEO
Department No.: 012
For Agenda Of: June 6, 2023
Placement: Departmental
Placement: Departmental
Estimated Time: 30 min.
Estimated Time: 30 min.
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors
FROM: Department: Mona Miyasato, County Executive Officer
Director(s)
Contact Info: Brittany Odermann – Deputy County Executive Officer
Nancy Anderson – Chief Assistant County Executive Officer

DocuSigned by:

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SUBJECT: **Fiscal Year 2022-23 Third Quarter Cannabis Taxation, Compliance, and Enforcement Report**

County Counsel Concurrence

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

It is recommended that the Board of Supervisors:

- a) Receive and file the Fiscal Year (FY) 2022-23 Third Quarter Cannabis Taxation, Compliance, and Enforcement Report;
- b) Provide direction to amend Chapter 50 and related code sections to strengthen penalties and consequences for failing to timely report or timely pay quarterly cannabis taxes, including potential denial of license renewal;
- c) Provide any other direction to staff regarding the County’s cannabis program; and
- d) Determine that the above actions are not a project under the California Environmental Quality Act (CEQA), because pursuant to sections 15378(b)(4) and 15378(b)(5) the recommended actions consist of organizational, administrative, or fiscal activities of government that will not result in direct or indirect physical changes in the environment.

Summary:

This item provides the Board and public an update for the third quarter of fiscal year 2022-23 (January 1, 2023 to March 31, 2023) . This report includes a summary on the implementation of the County’s cannabis regulations, tax receipts, land use permitting, business license activity, enforcement, and

the current fiscal year. Attachment A, includes detailed reporting on these items including comparisons to prior quarters and past fiscal years.

This report also seeks Board direction on changes to Chapter 50 and potentially other code sections regarding filing of reports and payment of tax revenues owed to the County on a quarterly basis. This request was made by Supervisors Capps and Hartmann. Staff is evaluating language changes, impacts, and can return to the Board on June 27, 2023 with a revised ordinance, should the Board provide that direction today.

Discussion:

During the third quarter, the County collected \$2.0 million in cannabis gross tax receipts for total annual to date collections of \$4.2 million. Cannabis Cultivation and Retail Storefront Tax is currently projecting a negative variance of \$10.2 million on an adopted FY 2022-23 budget of \$16.3 million. This projected decrease continues to be primarily driven by a decline in cultivation tax due to the oversupply of wholesale cannabis product and resulting price compression that continues to persist locally and state-wide. Other major factors contributing to the decrease in revenue include cultivators withdrawing from the program for a variety of reasons and some electing not to grow, mostly due to market conditions. Retail Storefront Tax is also projecting lower than budgeted primarily due to the timing of when each retail operator is expected to complete the land use entitlement and business licensing processes, relative to the timing assumptions made when the budget was developed. Despite declining cannabis revenues as reported in the Third Quarter Budget Status Report, the projected revenues in addition to fund balance carryover from last year will be sufficient to fund the FY 2022-23 cannabis program costs and other allocations made from cannabis revenues in prior years.

The County completed six enforcement actions against illegal cannabis activities: 2,657 pounds of cannabis product were confiscated totaling an estimated street value of \$3.4 million. The County also issued 23 new cannabis business licenses.

This quarter, four cannabis operators, that held 42.21 acres in the unincorporated inland area withdrew their business licenses freeing up that acreage in the acreage cap. As reported in the past, the County has approved enough cultivation acreage in land use entitlements to exceed the acreage cap in the unincorporated inland area and there is a waiting list of operators with approved land use entitlements. The freed-up acreage was offered to operators on the waitlist in approval date order. At the close of quarter three there were fourteen operators on the Waiting List requesting a total of nearly 160 acres. The acreage cap in Carpinteria has yet to be committed.

Operators submitted a total of 210 business license applications through the third quarter, of which 99 have been issued. The majority of these pending business license applications remain in process, largely due to: 1) applicants that have been approved for a land use entitlement, but have not yet been issued a final, un-appealable entitlement, as many applications are being appealed after approval, and 2) applicants that have not yet obtained required building permits to construct new buildings or change the use of existing buildings. Further details can be found in Attachment A.

Cannabis License Fees

On May 16th your Board directed staff to consider recouping the fees associated with access to the track and trace data platform provided through contract with the California Cannabis Authority (CCA). In the 2023 legislative session Assembly member Gregg Hart sponsored a bill (AB 687) that would grant access to the track and trace data platform at no cost to local jurisdictions. Consistent with the County's adopted 2023 legislative platform, County lobbyist HBE, submitted a letter of support on behalf of the County. The bill made it out of Assembly appropriations and is scheduled to go before the full Assembly on May 25th for consideration. In addition, staff is working with the CCA Executive Director to negotiate a lower

fixed fee if AB 687 is unsuccessful. Staff plans to return to the Board on July 11th, 2023 once the outcome of the bill is determined and/or a new fee is negotiated. The Board also requested adding the cost of Treasurer-Tax Collector tax compliance. Staff is considering the viability of capturing these costs in the fees.

Cannabis Tax Reporting

As indicated in Attachment A, as of April 30 there were twelve operators that did not submit their third quarter tax report. At the writing of this board letter three operators have since reported. The ordinance requires that any operation with an active State license must file tax reports regardless of their county business license status to ensure that the operators that claimed legal, non-conforming status and are in process of obtaining a county business license are filing and paying taxes on their gross receipts. The current ordinance has no penalties for late filing, or not filing, the quarterly report if there is \$0 reported revenue. At the time of renewal, the operators are required to submit any missing quarterly reports in order to be considered for renewal.

Of the nine operators that did not report, one holds an active county business license and is in operation, and one is operating in a legal, non-conforming status. The balance of operators that did not report have withdrawn from the business license approval process or surrendered their county license. The Office of the Treasurer-Tax Collector (TTC) sends reminder notices to all non-reporters at the close of the reporting period. Currently, the TTC sends notices of non-compliance to operations with two or more outstanding quarterly reports. The TTC also verifies and reviews reported figures, including those that report zero gross receipts, and if there is a discrepancy will follow-up with the operator.

In response to individual Supervisors' desire to remedy the issue of late or non-reporting, staff has begun reviewing options to strengthen penalties and consequences for failing to report or pay quarterly cannabis taxes, or otherwise encourage operators to timely report and pay. Should the Board direct staff to proceed with an ordinance amendment, it would entail several revisions to Chapter 50 – Licensing of Cannabis Operations and potentially Chapter 50A – Tax on Cannabis Operations. Preliminary discussions with County Counsel to provide amended language are underway.

Attachments:

A – Cannabis Taxation, Compliance and Enforcement, Third Quarter FY 2022-23

Authored by:

Brittany Odermann, Deputy County Executive Officer