



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: County Executive
Office
Department No.: 012
For Agenda Of: October 1, 2019
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: 4/5

TO: Board of Supervisors

FROM: Department Director(s) Mona Miyasato, County Executive Officer
Contact Info: Steven Yee, Fiscal & Policy Analyst – County Executive Office

SUBJECT: Update on Cannabis Compliance, Enforcement and Taxation – Fourth Quarter

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors (Board):

- a) Receive an update on the status of cannabis land use permitting, business licensing, tax collection, enforcement, and State licensing;
- b) Approve Budget Revision Request No. 0006634 to establish appropriations of \$1,043,670 to increase Committed Cannabis fund balance funded by a decrease to Residual fund balance, as a result of greater than anticipated tax revenue received in fiscal year 2018-19; and
- c) Find that the proposed actions are administrative activities of the County, which will not result in direct or indirect changes to the environment and therefore are not a “project” as defined for the purposes of the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15378(b)(5).

Summary Text:

This item provides the Board and public an update on the fourth quarter (from May 1, 2019 to July 31, 2019) of implementation of the County’s cannabis regulations including land use permitting, business license activity, cannabis enforcement, fourth quarter tax receipts, State licensing activity, and goals for the next quarters. Because cannabis tax revenues are due 30 days following the end of the quarter, the first quarter results of FY 2019-20 (August 1, 2019 to October 31, 2019) will be presented in December 2019.

In summary of fourth quarter cannabis program efforts, the County completed 12 enforcement actions against illegal cannabis operators: 471,000 plants were eradicated with an estimated street value of \$118 million, and an additional 50,000 pounds of processed product was seized worth an estimated \$50 million. One hundred and nineteen operators have sought land use entitlements and 13 of those operators have successfully obtained land use entitlements. State data shows that operators held 828 active State Provisional Licenses, 12 State Annual Licenses, and no State Temporary Licenses in Santa Barbara County. Eleven business license applications were submitted and three cannabis business licenses have been issued to-date. Fourth quarter gross receipts tax totaled \$2.3 million paid by 36 operators.

Background:

In response to voter approval of Proposition 64 (Prop 64), the Adult-use of Marijuana Act (AUMA), which legalized the use of cannabis for adult-use and allowed for local control of related cannabis land uses, the Board established the County’s cannabis regulatory framework. Permitting and licensing regulations were operationalized in June 2018 in the inland area of the county. Regulations were subsequently adopted in the Coastal Zone following certification by the California Coastal Commission and became operational in November 2018. Since then, the Board has continued to alter and refine these regulations (details provided below) including a cap on licensed acreage. Staff continues to execute the Board’s direction in all cannabis program segments, including land use permitting, business licensing, tax collection, and enforcement, all of which is reported on below in greater detail.

Cannabis Compliance: Land Use Planning Permits

As of July 31, 2019, cannabis operators have submitted 154 permit applications to the Planning & Development Department. The status of the applications is as follows:

| Land Use Permitting Status | Number |
|---------------------------------------------|---------------|
| Land Use Permits Issued | 11 |
| Land Use Permit Applications Pending | 56 |
| Conditional Use Permit Applications Pending | 27 |
| Coastal Development Permits Issued | 2 |
| Coastal Development Permits Pending | 29 |
| Coastal Development Hearings Pending | 7 |
| Development Plan Applications Pending | 22 |
| Total | 154 |

Eleven Land Use Permits and two Coastal Development Permits have been issued to-date. Other applications have been reviewed but require additional information from applicants before action can be taken. Many of the applications do not include sufficient information to determine whether the applications comply with County Code requirements. In other cases, applications have stalled due to the discovery of unpermitted development on proposed project sites which involve extensive research to determine if the unpermitted development was legally established and, consequently, qualifies as legal nonconforming development, or must be permitted or removed in order to approve the entitlement for the proposed cannabis activity. Other applications are incomplete due to the lack of required information

provided on proposed plans, inconsistencies between application materials and technical reports, additional information required to determine if a project requires additional environmental review, etc. Six Land Use Permits and two Coastal Development Permits were approved by Planning & Development staff as having met all respective Land Use and Development Code (LUDC) or Coastal Zoning Ordinance (CZO) requirements, but were ultimately appealed prior to permit issuance. Land use entitlements having been appealed are subject to an appeal hearing conducted by the County's Planning Commission and, possibly, an appeal hearing conducted by the Board of Supervisors. One Coastal Development Permit appeal was denied by the County's Planning Commission and was subsequently appealed to the Board of Supervisors, which also voted to deny the appeal at a hearing held on August 20, 2019.

Twenty-seven Conditional Use Permit applications have been received through this fourth quarter reporting period with none having been issued to-date. One of these application is scheduled for a Planning Commission hearing, whereas the others are either incomplete or pending County staff review. Many of the deficiencies in Land Use Permit applications described above (e.g., unpermitted development on a project site or the lack of required information provided on proposed lands) also have been found in the Conditional Use Permit applications.

Consistent with any new County program, the Board and staff continue to evaluate established regulations in an effort to improve their effectiveness and address unforeseen issues. Consistent with the recommendation by the Planning Commission, the Board approved and adopted on July 9, 2019, the following ordinance amendments: 1) amendments to the LUDC and CZO to require noticing of all property owners in an Existing Developed Rural Neighborhood (EDRN) or Rural Neighborhood (RN) for commercial cannabis permit applications on property located in an EDRN or RN, property located outside of, yet adjacent to, an EDRN or RN, or that require the use of a roadway in an EDRN or RN, 2) amendments to the LUDC to prohibit commercial cannabis cultivation on all inland area AG-I zoned parcels that are twenty acres or less in size, and 3) amendments to the LUDC to require a CUP on lots zoned AG-I that are greater than twenty acres in size. The Coastal Commission has not yet certified the minor CZO amendment regarding noticing and is therefore not yet operational. Amendments to the LUDC ordinance became operational on August 8, 2019. Finally, pursuant to the Board's direction, County staff will be scheduling Planning Commission hearings to consider additional amendments to the commercial cannabis regulations of the LUDC and CZO. Other amendments to regulate cultivation were adopted as part of the Business License program.

State Temporary and Provisional Licenses

As of July 31, 2019, there were 828 State Provisional licenses, 12 State Annual licenses, and no active State Temporary licenses, as they all expired and were not eligible for renewal after December 31, 2018. The expiration of Temporary Licenses incentivized operators to submit permitting applications as they transition to Provisional Licenses. Without State Provisional licenses, existing cannabis operators not in possession of a local land use entitlement, local cannabis business license, and a State Annual license were required to cease operations upon expiration of their State Temporary licenses. During this fourth quarter reporting period, only one cannabis operator had obtained a local land use entitlement, a local cannabis business license, and a State Annual license.

The overall number of permitting applications submitted increased from the third to fourth quarters, correlating with the expiration of State Temporary Licenses. On December 31, 2018, the State's authority to issue Temporary Licenses expired, as did their authority to issue Temporary License renewals. Temporary Licenses were valid for 120 days and have now all expired. State Provisional Licenses were made available to operators as a means to continue operating while navigating through local jurisdiction

permitting and licensing processes if they meet the following criteria: 1) they have held a Temporary License, and 2) have submitted an application and all required documents for State Annual Licensing, except for proof of completed CEQA compliance.

On January 29, 2019 the Board granted the County Executive Office Point of Contact the authority to provide any requested notification to the State licensing authority, as needed for operators to obtain a Provisional License, of cannabis operators engaging in permitting and/or licensing with the County if an applicant has either: 1) a permit application accepted for processing by Planning and Development and paid the requisite processing fee; or 2) obtained approval of the land use entitlement application for the proposed cannabis operation and submitted a complete application for the corresponding local cannabis business license.

Submittal of a Land Use Entitlement application in order to obtain a Provisional license has funneled operators through the County's regulatory structure, as intended by the Board. Obtaining a land use entitlement requires applicants to demonstrate compliance with established development standards, which commonly includes odor abatement, noise, and lighting requirements, all of which represent the most common complaints received. Furthermore, Provisional License holders are required to participate in the State's Track-and-Trace system used statewide to record the inventory and movement of cannabis products through the commercial supply chain – from cultivation to sale. Participation in the State's Track-and-Trace inventory system will provide county compliance and enforcement staff a valuable tool to ensure that cannabis is inventoried and legal.

Cannabis Compliance: Business Licensing

As of July 31, 2019, the County received 11 Cannabis Business License applications from operations that have completed the land use entitlement process. Three business licenses have been issued to-date in the following unincorporated areas of the County: two licenses for outdoor cultivation in Los Alamos and one nursery license in the unincorporated area of Goleta. The remaining eight applications are in the licensing review process with the County's interdepartmental team of license application reviewers. Commonly identified issues include site security requirements such as fencing, lighting, and surveillance that have not been implemented prior to site inspections conducted by staff. Other common issues noted by staff relate to water well and septic issues that need addressing before obtaining the reviewing department's approval.

Staff continues to evaluate existing business licensing regulations in an effort to improve their effectiveness and provided ordinance amendment options to the Board that were adopted on August 27, 2019. Adopted Business License Ordinance amendments include the following: 1) limit cannabis cultivation operations countywide to the acreage for accepted land use entitlement applications as of July 9, 2019, while maintaining the acreage limitation in the Carpinteria Agricultural Overlay. A cap of 186 acres remains in effect in the Carpinteria Agricultural Overlay District while a cap of 1,575 acres has been established in the entire unincorporated area outside of the Carpinteria Agricultural Overlay District, 2) add to Chapter 50-8 that cultivators currently cultivating must demonstrate the effectiveness of odor control systems during the Business License application review process as soon as the land use entitlement is issued, 3) require the submission of a land use entitlement or evidence of land use application acceptance for processing to allow for concurrent processing of a Business License Application, 4) place cannabis cultivators on an "Eligible List" for the cultivation cap upon approval of a land use entitlement, and 5) expand who may be used as a Hearing Officer to match County Code Chapter 24A. These amendments will become operational September 26, 2019.

Furthermore, staff was directed by the Board on August 20, 2019, to return with revisions to the cannabis retail storefront process, establishing a merit based criteria scoring system rather than the previously adopted random drawing system. Staff anticipates returning to the Board to present merit based retail storefront process options this fall.

Cannabis Compliance Program Staffing

The Board approved FY2018-19 Adopted Budget included 11 Full Time Equivalents (FTEs) needed for cannabis land use permitting and business licensing. These were all fee-covered positions budgeted at \$1.6 million in the FY2018-19 Budget. On June 11, 2019, the Board approved the FY2019-20 budget, which increases cannabis-permitting staff in the Planning & Development Department by 4.0 FTEs, for a total of 6.0 Planners, to address the high volume of permit applications being submitted. Additionally, the Sheriff's Department shifted 1.0 FTE from cannabis licensing, to cannabis enforcement efforts. All staff added for cannabis compliance activities have been hired or filled through reassignment of existing staff. The Board-approved FY2019-20 budget for the Cannabis compliance program includes a total of 14.0 FTEs at a cost of \$2.4 million covered by fees.

Cannabis Enforcement

Enforcement efforts remain a top priority of the County's Cannabis Program and the Enforcement Team continues to vigilantly pursue illegal cannabis operations and eliminate access to illegal and untested cannabis. Coordination of enforcement actions has been led by the Sheriff's Office in conjunction with staff from the Agricultural Commissioner, County Executive Office, District Attorney, Environmental Health, and Planning & Development, as well as State partners from Cal Cannabis and California Department of Fish & Wildlife Enforcement Team members. The Enforcement Team meets every other week to strategically coordinate efforts. Frequently, enforcement actions are initiated as a result of complaints that come from members of the public through the cannabis web portal's complaint form. Enforcement of unpermitted cultivation, without state licenses or historic cultivation, has been the highest priority and most violations are the result of operators not having valid state licenses to cultivate cannabis.

During the fourth quarter, the Planning and Development Department opened 31 new enforcement cases, four of which have been closed. Four Notices of Violation to address cannabis cultivation violations and cannabis-related zoning violations have been issued. Seventeen of the cases were opened as a result of odor complaints. Staff responded to 99 odor-related complaints in the unincorporated area of Carpinteria in this reporting period. Most violations continue to be associated with unpermitted cultivation, unpermitted structures, and odor. Enforcement operations are mostly complaint-driven, however some of the sites have been identified using other sources of information and coordinating with the Sheriff's Office and Agricultural Commissioner's Office staff.

Sheriff staff initiated 12 enforcement actions against unlicensed cannabis operators resulting in six arrests and the eradication of 471,626 live plants, with an estimated street value of \$118 million in the unlicensed market. An additional 49,939 pounds of dried product was seized with an estimated street value of \$49.9 million. The Sheriff team also responded to one butane hash oil (BHO) laboratory explosion within the City of Goleta, however nothing of value was recovered due to the damage inflicted by the explosion. The City of Goleta reimbursed the Sheriff's department for their assistance in responding to this incident.

Asset Forfeiture

As the Enforcement Team continues efforts to eliminate illegal cannabis operations and access to illegal and untested cannabis, one significant byproduct of their work is the seizure or forfeiture of assets relating to alleged proceeds or instruments of criminal, and even civil, offenses. Staff from the Enforcement Team, Cannabis Program Administration, and Counsel are beginning to work to identify and explore options to utilize these funds to enhance enforcement efforts, as authorized by law. Potential uses of funds under consideration include: 1) reimbursement of enforcement costs incurred by local or State agencies through court actions and 2) use of recovered funds for payments in lieu of taxes. If these or other options are deemed viable, staff will establish policy and procedures to address utilization of these funds. It is important to note that these funds are not intended to supplant law enforcement budgeting and therefore, by law, may not be budgeted. It is also important to note the timing of when seized or forfeited funds might become available to the County, as required criminal or civil legal processes may delay access to these funds.

Cannabis Enforcement Staffing

For the current fiscal year, enforcement costs represent approximately 50% of anticipated tax revenues. For fiscal year 2018-19, enforcement costs totaled 34% of budgeted revenues. The FY2018-19 Adopted Budget included 10.5 Full Time Equivalent (FTEs) for cannabis enforcement activities. In December 2018, the Board approved the addition of one District Attorney Investigator position that was previously vacant and unfunded. This position was filled as of January 2019. The Enforcement Team concluded the fiscal year fully staffed with a total of 11.5 FTEs dedicated to cannabis enforcement against unlicensed cannabis operations. The cost of the team was \$1.9 million in FY2018-19 and was funded by cannabis tax revenue. On June 11, 2019, the Board approved the FY2019-20 budget, which increases enforcement staffing by 1.0 FTE for a Sheriff Deputy (shifted from cannabis licensing) and 0.5 FTE for a Sheriff Sergeant (a change from half-time to full-time), bringing total Enforcement staffing to 13.0 FTEs. The FY2019-20 approved budget for cannabis enforcement increases to \$2.8 million, reflecting the additional enforcement staff, as well as additional equipment and supplies costs associated with enforcement operations.

Cannabis Taxes

For the fourth quarter reporting period, the Treasurer–Tax Collector reported collecting \$2.3 million from 36 cannabis operators. Total tax revenue received for FY2018-19 totaled \$6.9 million, exceeding the adjusted tax revenue budget of \$5.7 million. Of this \$1.2 million difference, approximately \$1.04 million was booked by the Auditor in FY2018-19 and the budget revision request referenced in the recommended actions will preserve these excess funds in a Committed Cannabis Fund Balance account. The balance of approximately \$162K was booked in the FY2019-20 financial reporting period due to the timing of payments received. Forty-three operators stated that they had no gross receipts during the fourth quarter and 15 of the 94 licensed operators did not submit reports. On June 11, 2019, the Board approved budget appropriations of \$100K for a cannabis tax compliance audit to identify potential underreporting, payment deficiencies, or other compliance issues for each cannabis business. Staff anticipates selection of a vendor and establishment of a service contract by the end of October, 2019. Taxes paid by cannabis operators fund the Cannabis Program’s Enforcement efforts and are therefore critical to enforcing against illegal cannabis operations and eliminating access to illegal and untested cannabis.

| | Tax Revenue Received | Operators with Gross Receipts | Operators with Zero Gross Receipts | Operators that Did Not Report | Operator Totals |
|----------------------|-----------------------------|--------------------------------------|-------------------------------------------|--------------------------------------|------------------------|
| Q1 Tax Data | \$1.8 Million | 30 | 41 | 31 | 102 |
| Q2 Tax Data | \$1.4 Million | 55 | 27 | 16 | 98 |
| Q3 Tax Data | \$1.4 Million | 38 | 19 | 41 | 98 |
| Q4 Tax Data | \$2.3 Million | 36 | 43 | 15 | 94 |
| FY18-19 Total | \$6.9 Million | | | | |

Outreach and Education

County Staff has conducted the following outreach and education sessions for members of the public and industry representatives:

| | |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| June 2019 | <ul style="list-style-type: none"> • CEO staff presented a third quarter, cannabis program update on compliance, enforcement, and taxation to the Board of Supervisors. • Planning & Development staff presented LUDC amendment options to the Board of Supervisors. |
| July 2019 | <ul style="list-style-type: none"> • Planning & Development staff presented LUDC amendment options to the Board of Supervisors. • CEO staff presented options to the Board of Supervisors for cannabis regulatory amendments to the Cannabis Business License Ordinance (Chapter 50). |
| Ongoing | <ul style="list-style-type: none"> • Cannabis Education Program implemented by the Public Health Department addressing health education and prevention. This program’s target audience is youth (ages 12-20), parents and mentors, and pregnant/breastfeeding women. Digital media campaign runs from May-Dec, 2019. A website has also been established to provide additional resources at the following address: letstalkcannabissbc.org • Updates to the FAQs, Complaint Form, and Informational Documents on the County’s Cannabis website. |

Emerging Issues

Pending Legislation:

AB 97, Cannabis Trailer Bill – This bill was signed by the Governor on July 1, 2019, and extends the State’s authority to issue Provisional licenses to January 1, 2022. Prior to passage of this bill, the State’s authority to issue Provisional licenses was set to expire on December 31, 2019.

Local and State Processing Times – The amount of time required for an operator to navigate through the County’s local processes to obtain a land use entitlement, schedule and attend any potential permit appeal hearings conducted by the County’s Planning Commission (and other appeal options through the Board of Supervisors and/or Coastal Commission), and obtain a cannabis business license, may span a

year or longer. In addition to the County's requirements, operators are required to navigate the State's licensing process with processing times of up to six months. The recently adopted amendment to the Business License Ordinance establishing concurrent processing of permit and business license applications will streamline these processes and aims to reduce the aggregate local processing times.

Implementation Goals for the Upcoming Quarters

During the first quarter of fiscal year 2019-20, staff involved in the cannabis operations team (permitting, licensing and enforcement) have three goals:

1. Continue enforcement activities,
2. Develop and implement a merit based retail storefront licensing process, with direction from the Board, and
3. Increase the speed of permit and license issuance via concurrent processing to provide the protections sought by residents.

Fiscal and Facilities Impacts:

Budgeted: Yes

Attachments:

Attachment A – Budget Revision Request BJE 0006634

Authored by:

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