



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: June 22, 2021
Placement: Departmental
Estimated Time: 45 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Director
Mona Miyasato, County Executive Officer
Jeff Frapwell, Assistant County Executive Officer
Brittany Heaton, Principal Analyst

SUBJECT: Update on Cannabis Compliance, Enforcement, and Taxation – Third Quarter
FY 2020-21

County Counsel Concurrence

As to form: Yes

Risk Management:

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a) Receive an update on the status of cannabis tax collection, land use permitting, business licensing, and enforcement;
- b) Provide direction to staff to respond to State Local Authorization inquiries with a ‘Pending’ or ‘Local Compliance Underway’ for provisional license holders and operators only if they demonstrate appropriate progress through the land use or business licensing application process; file required County cannabis tax report(s) and pay required taxes on cannabis operations; and continue to comply with other conditions of Chapter 50, as outlined in this report;
- c) Provide any other direction to staff regarding the County’s cannabis program; and
- d) 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).

Auditor-Controller Concurrence

As to form: Yes

Summary Text:

This item provides the Board and public an update for the third quarter of fiscal year 2020-21 (from January 31, 2021 to March 31, 2021). This report includes a summary on the implementation of the County’s cannabis regulations, tax receipts, land use permitting, business license activity, State licensing activity, enforcement, and objectives for the upcoming quarter and next fiscal year. Appendix A, attached, includes detailed reporting on these items including comparisons to prior quarters and past fiscal years.

In summary, during the third quarter, the County collected \$5.1 million in cannabis gross tax receipts paid by 59 operators. 176 proposed project applications have been submitted for land use entitlements and 26 projects received issued permits. Sixty-nine operators submitted applications to obtain 119 business licenses, of which 22 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 taken advantage of concurrent processing but have yet to obtain, at a minimum, an approved land use entitlement. The County completed four enforcement actions against cannabis operators: 594 plants were eradicated, 123 pounds of cannabis product were confiscated totaling an estimated street value of \$600,000, and six arrests were made.

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. Staff continues to execute the Board’s direction in all cannabis program segments, including tax collection, land use permitting, business licensing, State licensing, and enforcement, all of which is summarized below. Detailed numbers and comparisons to past quarters can be found in Appendix A.

Cannabis Taxes

In the third quarter reporting period of fiscal year 2020-21 (taxes collected as of April 30, 2021 for the period January 1 to March 31, 2021), the Treasurer-Tax Collector reported \$5.1 million from cannabis operators holding State licenses. This represents an over 160% increase in the tax amount collected from the same quarter of the last fiscal year. Based on the amount of revenue received through the third quarter, staff estimates that we could realize as much as \$16 million for the current fiscal year, an increase of \$5.4 million above the adopted level of \$10.6 million. Table 1 of Appendix A lists revenues for the first three quarters of FYs 19-20 and 20-21, as well as operator reporting data.

Cannabis Compliance: Land Use Entitlement Permits

The Planning and Development Department (P&D) has received 176 total project applications for commercial cannabis activities. Table 2 of Appendix A summarizes the number of cannabis-related project applications submitted to P&D from the start of the cannabis program to the end of the third quarter for FY 20-21. In addition, the table provides clarity regarding the locational distribution of the projects within the County, actions taken to-date, appeals filed, and projects still under review. At the close of Q3, a total of 26 projects received issued permits and an additional 15 were approved, but on appeal to the Planning Commission or Board of Supervisors.

Acreage Caps

Two cultivation acreage caps were adopted by the Board: 1) in the Carpinteria Agricultural Overlay District (capped at 186 acres), and 2) the remaining unincorporated area (capped at 1,575 acres.) Tracking acreage of eligible cannabis operations against the cap is maintained on an Eligibility List established by the County Executive Office. For a commercial cannabis operator to be placed on the Eligibility List the operator must: 1) have an approved land use entitlement; 2) request placement on the list by submitting the Eligibility List Placement Request Form to the County Executive Office; 3) submit a complete cannabis business license application that has been accepted and deemed complete by the County Executive Office; and 4) pay all required cannabis business licensing fees/deposits. Table 3 of Appendix A highlights how many acres of cannabis cultivation are currently in the land use entitlement process and how many acres have been permitted. Table 4 details the Acreage Cap Eligibility List by area, listing the operators that have secured their place on the Eligibility List by meeting the aforementioned criteria. A commercial cannabis operator remains on the Eligibility List regardless of permit appeal status, however their spot is nontransferable and subject to annual renewal as requested by the County Executive Office.

The Planning and Development Department expects that the acreage caps in both areas will be permitted by the end of Fiscal Year 2021-22. The Cannabis Business Licensing Team is preparing for the influx of business license applications and estimates that the Eligibility List will reach the acreage cap by the end of calendar year 2022.

Cannabis Compliance: County Business Licensing

Through the third quarter reporting period, 69 unique operators submitted applications to obtain 119 County cannabis business licenses – this represents a 32% increase in the total number of license application submittals since the second quarter report was provided to your Board. This recent uptick in business license application activity directly correlates to the increase in land use entitlements being approved by the Planning & Development department, in addition to cultivation and nursery operator's motivation to secure their acreage under the respective cultivation caps. To date, 22 business licenses have been issued to 13 operators that have been deemed compliant with County Code. A significant number of 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 taken advantage of concurrent processing but have yet to obtain, at a minimum, an approved land use entitlement. Table 5, Appendix A provides a detailed update of cannabis business license applications that have been submitted to-date.

In an effort to keep pace with the increase in license application submittals, the business licensing team has focused on the following two objectives beginning in the third quarter: 1) improved process coordination, and 2) a revamping of the business license application portal, Accela, to promote more streamlined processing of applications. Improved process coordination is being achieved through more frequent licensing team meetings (now held bi-weekly, rather than monthly), thereby allowing for more frequent team updates and the sharing of information, in addition to providing increased accountability within the licensing team departments. Additionally, the growing number of applications submitted are being prioritized for the team, allowing them to focus their attention first on renewal applications and applications where an issued land use entitlement has been obtained, then on applications where only an approved (but not yet issued) entitlement has been obtained, and lastly, applications where neither an approved or issued permit has been obtained.

Efficiencies are also being achieved in the re-evaluation and overhaul of Accela, for both the applicant experience, in addition to the back-office workflows that have been configured for the licensing team's

review of applications. The most significant change to the Accela system thus far is the consolidation of what has historically been a three-step application process, consisting of the submittal of three separate sets of information by applicants, each requiring separate reviews by the licensing team. By leveraging existing functionality within the Accela software, this process has now been consolidated into one single step where an applicant provides all required application materials, and the application is then reviewed by the licensing team, also in one single step. This consolidation alone is expected to eliminate a minimum of two months of processing time for any given application, and will enable the County Executive Office to deem applications complete sooner in the process, which is a critical requirement for operators in order to reserve their acreage under the established cultivation caps.

In addition to the licensing team's efforts processing first-time applications, applicants that have been issued a business license from the County are required to submit a renewal application annually to determine applicant's continued compliance with County Code. As of today's report, the licensing team has issued four renewal licenses to three unique operators and are in the process of reviewing an additional four license renewal applications held by two operators.

Staff is seeking additional information to ensure strict compliance with permit and business licensing requirements as well as reconciliation of tax reporting and payment. All state-issued annual and provisional licensees are required to use the California Cannabis Track-and-Trace (CCTT) system, also known as METRC, to record, track, and maintain information about their cannabis and cannabis-product inventories and activities. Staff is exploring membership in a Joint Powers Authority (JPA) called the California Cannabis Authority (CCA) whereby local agencies gain access to a sophisticated data analytics platform that takes information from the CCTT–METRC system. Gaining access to the platform and the track and trace data requires that licensees supply an Application Programming Interface (API) key. Pursuant to section 50-8.b.9 of the County Ordinance the CEO Cannabis Business License team will include a request for the API key from all business license applications as a condition of approval. Staff will also request that any existing state provisional license holders operating in a legal non-conforming status provide an API key. In addition, a forthcoming proposed ordinance amendment will codify the licensing requirements, including any requirements necessary to participate in the CCA and ongoing process improvements.

Cannabis Compliance: State Provisional and Annual Licenses

Operators obtain State-issued licenses, either Provisional or Annual, from the California Department of Food & Agriculture's CalCannabis division (CDFA) and the Bureau of Cannabis Control (BCC). The CDFA sends weekly reports containing cannabis licensing information. As operators complete the County's permitting and licensing processes, they become eligible to apply for State Annual licenses, which is the ultimate goal for all operators. As of the last week in March, there were 1,551 active, state-issued licenses in the County of which approximately 30% are annual licenses. Figure 2 in Appendix A illustrates the movement over time of more operators in our County obtaining annual licenses.

The State sends a notice to the County Executive Office for review and response before State approval and license issuance for all State cannabis license applications, Provisional or Annual. Most of the provisional licenses in our county are held by legal non-conforming operators. As these operators progress through the land use entitlement and business licensing processes they can continue to operate and hold these provisional licenses. With State provisional licenses, CDFA and BCC ask whether, under local ordinances and regulations, the application is: 1) in compliance; 2) pending/local compliance underway; or 3) not in compliance. If the County does not respond within 60 business days of the inquiry, the respective state agency may issue a provisional commercial cannabis license.

To date, legal non-conforming operators that submitted a land use entitlement application and were in good standing received an ‘In compliance’ response. Staff recommends that given the amount of time that has elapsed and the status of legal non-conforming operators under Article X of the Land Use Code that any current or future State licensure inquiries receive a response of ‘Pending’ or ‘Local Compliance Underway’ if the operator continues to comply with the conditions of Chapter 50. These conditions include:

1. Having submitted a complete county land use application prior to the amortization periods in County Code Section 35-1003.c;
2. Maintaining active land use and business license applications that have not been previously denied;
3. Filing required County cannabis tax report(s) and paying required taxes on cannabis operations; and
4. Continuing to make appropriate progress through the land use or business licensing application process. For operators that demonstrate non-compliance in any of these areas the County Local Compliance Officer for the State follows a pre-deprivation process that may result in a Notice of Subsequent Non-Compliance to the State. Appendix B provides an example letter and subsequent notice to the State. This process was recently deployed for an operator in the Carpinteria area and resulted in the surrender of the operator’s state licenses as of June 7th, 2021.

The ‘Pending/Local Compliance Underway’ response authorizes the applicant to continue with the state licensure process and may result in the issuance of a provisional license if all other state licensing requirements are met. Applicants that have been issued a land use permit and business license and remain in good standing will continue to receive an ‘In Compliance’ response.

Cannabis Enforcement

For the third quarter, the Sheriff’s team executed four search warrants and made six arrests related to illegal indoor cultivation and illegal delivery services. During these warrants, the team seized cannabis plants, dried flower, consumable products, and other illicit drugs. Table 6 of Appendix A details results of the Sheriff Enforcement Team. The other drugs seized included several ounces of fentanyl (pills and powder), Xanax, cocaine and methamphetamine. One stolen gun was also recovered, which was possessed by a felon to protect his grow from theft. In all these operations, the team continues to move forward with an adaptive style of enforcement, which is not only focused on illegal cultivation, but also the unsafe circulation of untested cannabis products which pose significant risk to consumer safety, and grossly undermines the legal market.

On the business licensing and compliance front, the team continues to work hand in hand with the Planning and Development Department and the CEO’s Office in an attempt to provide the most effective service to legal cannabis applicants. For the past six months, a full-time enforcement detective has been assigned to focus solely on licensing, which has increased efficacy and eliminated redundancy and delays in the licensing process. Although this move decreased the size of the enforcement team by 20%, it allocated resources to a much-needed area. This allocation significantly improved the licensing process since these tasks were performed ad-hoc prior to the staff re-assignment.

In addition to the Sheriff team’s efforts, the Agricultural Commissioner’s Office remains involved in carrying out compliance and enforcement activities. In the third quarter, the Agricultural Commissioner’s Department conducted one investigation that remains ongoing regarding pesticide use violations in the Santa Rita Valley area. An investigation related to pesticide illness and worker health & safety was also initiated in the Carpinteria area.

During the third quarter, the Planning and Development Department opened five new cannabis enforcement cases (three in the South County and two in the North County) and no cannabis enforcement cases were closed in the South County or North County. During this period the department responded to one hundred three (103) cannabis complaints: one (1) unpermitted cannabis cultivation complaint in the North County; one (1) unpermitted cannabis grading in the North County; four (4) cannabis lighting complaints in the Carpinteria area; and ninety-seven (97) cannabis odor complaints in the Carpinteria area. A majority of odor complaints in the Carpinteria area continue to originate from unpermitted, nonconforming grows. Where known, the Planning and Development compliance team contacts the grower that is likely responsible for generating the odor to question them on their operations at the time, and works with them to ensure that corrective actions are taken to eliminate any odor. For permitted grows, a complaint handling process has been prescribed in the Coastal Zoning Ordinance whereby the grower must respond to the complaint within 24 hours.

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.

Retail Storefront Selection Process

The merit-based retail storefront process was approved by the Board on December 17, 2019. The application was made available in late-September. The application submittal period commenced on November 2, 2020 and concluded on Monday, November 9, 2020. Scoring and ranking of applications was done in three phases. The first phase deemed applications eligible and complete by confirming that the proposed location was zoned appropriately and that all required materials were submitted. Phase two scored the Business Operations Proposal component of each accepted application. The applicants that achieved an aggregate score of 85% or higher, advanced to the third phase of review, scoring, and forced ranking. A total of 20 applications progressed to Phase 3.

Phase 3 - Neighborhood Compatibility included an interdisciplinary committee site visit with representatives from Public Health (Environmental Health), Sheriff, Planning & Development (P&D), the County Executive Office (CEO), and County Counsel. The scoring and ranking committee included one representative each from the CEO, P&D, and Sheriff. This committee reviewed the Neighborhood Compatibility Plans in their entirety and completed a forced ranking in five of the six Community Plan Areas (CPAs). The highest ranked applicant in the following areas: Toro Canyon/Summerland, Eastern Goleta Valley, Isla Vista, Santa Ynez, and Los Alamos were identified and invited to start the land use entitlement /permit process on April 30, 2021 after resolution of scoring protests submitted during the ordinance defined protest period. The Final Ranked Cannabis Storefront Retail List is posted on the Cannabis Retail site: <http://cannabis.countyofsb.org/retail.sbc>. The top ranked applicants have 90 days to submit an application to P&D that is consistent with their Cannabis Storefront Retail Selection Application.

As of the authoring of this letter, the Orcutt Community Plan Area ranking is undergoing a legal challenge and the County is complying with a stay order issued by the Court. An initial hearing occurred on May 21st and was continued to July 23rd, 2021. The preliminary ranked list for this CPA will be released once allowed by the Court.

KPMG Recommendations and Implementation

In October 2020, staff presented a report to the Board addressing an operations and performance review of the cannabis permitting and licensing processes conducted by consultant KPMG. The purpose of the review was to identify areas where service delivery, efficiency, and effectiveness could be improved, relating to cannabis permitting and licensing. As a result of this review, six process improvement recommendations were identified. Appendix C lists each recommendation and a status on implementation.

Emerging Issues

1. Processing a high volume of business license applications in coordination with P&D and the rest of the licensing team in an efficient, and timely manner.
2. Enforcement of acreage cap limits and ineligible legal non-conforming operators.
3. Regular review of operator’s compliance with County regulations to determine whether they should retain their County letter of authorization given in support of the state provisional license.

Objectives for the Upcoming Quarters

1. Continue with Accela enhancements to facilitate application renewals, modification, and amendments as necessary.
2. Hire and on-board two new, Cannabis Business License Specialist positions to support business license application review and approval through the Accela public facing portal; complete conversion of all pending legacy, paper-based applications into Accela; and other duties as assigned.
3. Present recommendations and findings of the KPMG Cannabis Tax Revenue Cycle Report.
4. As recommended in KPMG Report (#3), evaluate California Cannabis Authority (CCA) Membership as a means of receiving data analytics to assist in cannabis oversight, administration, and regulation.
5. Review and propose Chapter 50 ordinance amendment to address outstanding issues including: business license application renewals, modifications, revisions, and acreage cap eligibility.
6. Continue the tax audit process utilizing consultant HdL.
7. At the request of industry, explore options around the timing of state license applications, the county cannabis business license process, and prospective cannabis operations.

Fiscal and Facilities Impacts:

Budgeted: Yes

Attachments

Appendix A: Cannabis Taxation, Compliance, and Enforcement, 3rd Quarter Report FY 2020/2021

Appendix B: Template Notices to Non-Compliant Operators and State

Appendix C: KPMG Recommendations and Implementation Status Table

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