



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: April 10, 2018
Placement: Departmental
Estimated Time: 2 hours
Continued Item: Yes
If Yes, date from: March 20, 2018
Vote Required: Majority

TO: Board of Supervisors

FROM: Department: Mona Miyasato, County Executive Officer
Director(s)
Contact Info: Dennis Bozanich, Deputy County Executive Officer

SUBJECT: Cannabis Business License Ordinance, Transition Period Options and Cannabis Compliance Staffing

County Counsel Concurrence

As to form: Yes

Other Concurrence: Treasurer-Tax Collector

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

That the Board of Supervisors (Board):

- a) Consider the introduction (First Reading) of an Ordinance of the Board of Supervisors of the County of Santa Barbara adding Chapter 50 to the Santa Barbara County Code, Establishing a Commercial Cannabis Business License (Attachment 1);
- b) Read title: "An Ordinance Adding Chapter 50, Licensing of Commercial Cannabis Operations, to The Santa Barbara County Code," and waive reading of the Ordinance in full;
- c) Receive and consider options from staff and provide direction, as necessary, on the establishment of a policy for continued operational compliance for cannabis operations during the permit and license application process (Transition Period);
- d) Receive an update on cannabis permitting, licensing and compliance staffing in Santa Barbara County;
- e) Provide any other direction as necessary;
- f) Set a hearing on the Administrative Agenda for May 1, 2018, to consider the adoption (Second Reading) of an Ordinance Adding Chapter 50, Licensing of Commercial Cannabis Operations, to the Santa Barbara County Code; and
- g) Make the required CEQA findings and determine for the purposes of CEQA that:

- i. These actions are within the scope of the Cannabis Land Use Ordinance and Licensing Program, and the Cannabis Land Use Ordinance and Licensing Program Final Programmatic Environmental Impact Report (PEIR) [Case No. 17EIR-00000-00003, State Clearinghouse No. 2017071016] adequately describes this activity for the purposes of CEQA.
- ii. Pursuant to CEQA Guidelines section 15162(a), after considering the PEIR certified by the Board of Supervisors on February 6, 2018, that no subsequent EIR or Negative Declaration is required (Attachment 4) because: i) no substantial changes are proposed which require major revisions of the PEIR; ii) no substantial changes have occurred with respect to the circumstances under which the ordinance is undertaken which require major revisions of the PEIR; and iii) no new information of substantial importance concerning the ordinance's significant effects or mitigation measures, which was not known and could not have been known with the exercise of reasonable diligence at the time that the PEIR was certified, has been received.

Summary Text:

In February, the Board approved amendments to Chapter 35 of the County Code establishing land-use zoning, permitting and development standards for cannabis operations in the unincorporated area of Santa Barbara County and asked staff to return with information on possible retail caps. On February 27, 2018, the Board also asked staff to return with options for cultivation caps. On March 20, 2018, the Board received public comment on an ordinance to add Chapter 50, Licensing of Commercial Cannabis Operations to the County Code. The Board directed staff to make specific changes to the ordinance and return on April 10, 2018 for a new first reading of the ordinance.

The purpose of this agenda item is for your Board's consideration of a revised ordinance that would (1) add a local commercial cannabis business license to the County Code, (2) make improvements to wording of three sections of the proposed ordinance and (3) add a complete outdoor cannabis cultivation ban in the coastal zone and an acreage limit to the Carpinteria Agricultural Overlay District. Additionally, staff is seeking policy direction from the Board on how to respond to temporary or annual State license applications from existing or new cannabis operators prior to issuance of local land use permits or licenses. Staff will also provide an update on permitting and license staffing.

Background:

County Cannabis Regulation Overview

In July 2017, staff presented the Board with a strategy for addressing the impacts of commercial cannabis operations in Santa Barbara County through a combination of:

- Local land use zoning and permitting ordinances to address where and how commercial cannabis operations should be allowed, if any; and
- Local business license ordinance to address who would be operating and what types of commercial cannabis operations should be allowed, if any; and
- State annual licensing of cannabis operations.

After completing an Environmental Impact Report (EIR), the Board in February 2018 certified the EIR and adopted a series of amendments to Chapter 35, Zoning of the County Code to identify which zone districts would allow commercial cannabis operations, what type of permit would be required and what development standards would be required.

Business License Ordinance

On March 20, 2018, the Board received public comment on an ordinance to add Chapter 50, Licensing of Commercial Cannabis Operations to the County Code. The Board directed staff to make specific changes to the ordinance and return on April 10, 2018. As directed, staff made the following changes to the ordinance and is asking you to consider introduction of the Ordinance. The changes requested include:

- A cap of zero acres of outdoor cannabis cultivation in the Coastal Zone of Santa Barbara County;
- A cap of 186 acres of indoor or mixed light cannabis cultivation within the boundaries of the Carpinteria Agricultural Overlay District as established by ordinance in 2004;
- Revisions to the energy conservation section to allow for purchase of renewable energy credits;
- Revisions to simplify the appeals process; and
- Wording additions on personal cultivation location indoors and mature plants being those that are flowering to align with cannabis land use permitting amendments.

If adopted by the Board, the Licensing of Commercial Cannabis Operations Ordinance (Attachment 1) will:

- Add Chapter 50 to the County Code;
- Require a local Cannabis Business License for anyone engaged in any commercial activity, recreational or medicinal, including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or retail sale of cannabis and cannabis products;
- Require that Cannabis Business Licenses to be renewed every year and are non-transferable;
- Establish that a license is required for each entity conducting a commercial cannabis operation on each parcel;
- Establish the cannabis cultivation caps noted above and a retail license cap and a selection process for those that may seek a capped cannabis cultivation or retail license;
- Require licensees to maintain their operations in compliance with their land use permits, state cannabis licenses and require that they pay their taxes;
- Establish clear roles and procedures for cannabis businesses, and county departments, as they engage in processes of applying, reviewing, inspecting, approving or denying, renewing, suspending, revoking or appealing cannabis business licenses;
- Establish a multi-departmental cannabis compliance team from Planning & Development, Sheriff, Agricultural Commissioner, Fire, and Public Health to support the County Executive approving or

rejecting applications and renewals and the Treasurer-Tax-Collector in issuing the cannabis business license or noticing the applicant of a denial;

- Establish standards for operations, compliance reviews, as well as, enforcement and penalties for failure to comply with cannabis business license requirements; and
- Will become effective on the later of the two dates: 1) Thirty days after adoption by the Board (Second Reading) or for portions of the ordinance effective in the Coastal Zone, or 2) the date the ordinance is certified by the Coastal Commission.

Cannabis Compliance Options during the Permit and License Application Process – Transition Period

On December 14, 2017, staff provided the Board with an update on previous conceptual direction to staff about responding to State licensing authorities for cannabis operations seeking annual licenses (non-temporary). Staff noted the plans outlined did not conflict with State statutes or regulations. The plan included:

- For Inland and Coastal Areas: Prior to the operative date of any possible Board adopted business licensing and land use permitting ordinances, staff will respond to the State within 60 days that all applicants that are not legal non-conforming medical cannabis cultivators pursuant to Article X are in **non-compliance** with local ordinances or regulations as allowed under Business and Professions Code 26055, since the County's new ordinance is not in effect. This will result in a denial of their State application.
- For Coastal Areas: Between the possible Board's adoption of business licensing or land use permitting and then the operational date of an ordinance (e.g. Coastal Commission certification, opening a suitable cannabis revenue bank account), if an operator would be in compliance with the regulations that are effective but not operational, staff would not issue a local license or permit and remain silent with the State licensing authorities, if the applicant:
 - Completes a local business license and land use consultation application,
 - Application is determined to contain sufficient information for review, and
 - Actively participates in a consultation process with business licensing and land use permitting staff to assess ongoing compliance with the effective, but not operative, local ordinances.

Failure to participate in the consultation process or failure to take actions to meet the conditions of business licensing or land use permitting will result in notification of non-compliance to the State. Future eligibility for a local business license and land use permit, as well as, continued support for any required State license will require full compliance with local licensing and permitting requirements as may be amended by the Board following Coastal Commission requirements for certification or any other discretionary decision.

If the cannabis operator would not be in compliance, the County would notify the State that they are not in compliance. The County may make this notification at any time.

The Transition Period Challenge

Since the Transition Period Plan was originally reviewed by the Board in December, some anticipated and some unanticipated challenges have arisen, including:

- Board-approved land use permitting ordinance amendments are not operational countywide until the Treasurer successfully opens a bank account for cannabis revenues in a suitable financial institution and, for all cannabis operations in the Coastal Zone, are contingent on Coastal Commission certification of the Coastal Zoning;
- If approved by the Board today, the Business License ordinance will not be effective until May 31st nor will it be operational until the Treasurer successfully opens a bank account for cannabis revenues in a suitable financial institution and a cannabis business licensing fee ordinance is adopted by the Board, whichever is later;
- If approved today, a local cannabis business license is contingent on the granting of land use entitlements for the licensed business location. Accordingly, in the Coastal Zone, business licensing will be delayed until after Coastal Commission certification of the land use ordinance and subsequent permitting;
- Some medical cannabis cultivators claim a non-adjudicated legal non-conforming land use status that is now being amortized until approximately June 2019. Some licensing path would be needed to allow legal, non-conforming businesses to keep operating and achieve their investment-backed expectations until the end of the amortization period;
- Cannabis cultivators cannot currently remove product from their locations without the issuance of state distributor licenses. Distribution licenses are needed to facilitate a portion of the supply chain;
- Under current State regulations, local medical cannabis cultivators that have received State temporary licenses cannot sell product to the adult-use cannabis market after July 1, 2018. A large segment of the market in California has shifted away from medical cannabis and there will be a relatively small medical cannabis market left to sell product to after July 1, 2018; and
- Lastly, State temporary licenses expire after 120 days with 90 day extension periods only allowed if an applicant has submitted an application to the State licensing authorities for an annual license. The first temporary medical cannabis cultivation licenses approved by the State are set to begin expiring on May 1, 2018.

The goal of the Board's actions has been to create a system of compliance and accountability by licensed cannabis operators. To continue achieving this goal, staff recommends additional direction to staff through one or more of the following options:

Option #1 – Extend Countywide the Coastal Area Process suggested in December 2017 (above):

Option #1 would require the Treasurer to open a bank account for cannabis revenue in a suitable financial institution.

The goal of Option 1 is to allow cannabis operators to apply for annual State licenses while in a “consultation process” with county permitting and cannabis license compliance staff. The purpose of the “consultation process” is to achieve local compliance with Board-adopted land use permit and business license requirements in the inland and coastal areas of the County.

If an operator would be in compliance with the County regulations, including those regulations that are not operational, staff would remain silent with the State licensing authorities during the 60-day local verification period, and not issue a local license or permit, if the applicant has:

- Completed a local business license and land use consultation application,
- County staff determine the application contains sufficient information to ascertain current compliance, and
- Actively participates in a consultation process with business licensing and land use permitting staff to assess ongoing compliance with the effective, but not operative, local ordinances.

Failure to participate in the consultation process or failure to take actions to meet the conditions of business licensing or land use permitting will result in notification of non-compliance to the State. Future eligibility for a local business license and land use permit, as well as continued support for any required State license, will require full compliance with local licensing and permitting requirements as may be amended by the Board following Coastal Commission requirements for certification or any other discretionary decision. Option #1 would allow a cannabis business to obtain a local land use permit and business license as soon as possible after all ordinances become operative, **IF** they have met all requirements of the permitting and licensing ordinances.

If the cannabis operator **would not** be in compliance, at any point, the County would immediately notify the State that they are not in compliance.

There are two variations for Option #1.

- Option #1A would be open to all potential cannabis operators, including distributors and any adult-use licenses to address those challenges identified previously. The Board may want to consider whether this option applies in all of the unincorporated portions of the county or in the coastal zone.
- Option #1B would be open **only** to those in possession of a State temporary medical cannabis license and potentially allowing those specific entities to seek adult-use cultivation and/or distribution licenses. If the Board chooses Option #1B, staff would like direction on whether they wish to stop acting on requests for County letters on a date certain or continue the existing Board-approved process of providing county letters based on the signed affidavit. The Board may also want to consider whether this option applies in all of the unincorporated portions of the county or in the Coastal Zone.

Staff recommends Option #1 after meeting the Board's adopted requirements: 1) Treasurer successfully opens a bank account for cannabis revenues in a suitable financial institution and 2) Cannabis business licensing fee ordinance is adopted by the Board, whichever is later. Either Option #1A or #1B address the challenges identified above.

Option #2 – Require Land Use and Business Licensing Ordinances to become fully operational prior to considering the verification of an annual license application to a State Cannabis Licensing Authority:

Option #2 would require the Treasurer to open a bank account for cannabis revenue in a suitable financial institution, approval of the cannabis license fee ordinance, and all operational contingencies in the

County's cannabis ordinances be met, including Coastal Commission certification of the Board-adopted land use amendments.

The goal of Option #2 is to require full local land use permit and business license issuance prior to any verification of an application to a State Cannabis Licensing Authority.

Option #2 would place existing medical cannabis cultivators that have been allowed to continue their non-adjudicated land use as legally non-conforming at risk of continuing to operate legally after the expiration of their temporary state medical cannabis cultivation license. Accordingly, as a result, cultivation staff may be laid-off and any potential tax revenue would be delayed. This option also fails to provide a pathway for local cultivators to move some of their production into adult-use license types when that becomes required July 1, 2018.

There are two variations for Option #2.

- Option #2A would allow only current operators with temporary medical cannabis cultivation licenses to continue with their existing operation until the end of their amortization period by either: 1) seeking extensions of their temporary licenses from the State licensing authority, or 2) seeking, and the County verifying, state annual licenses matching their existing temporary licenses until the end of the amortization period.
- Option #2B would not allow any County verification of existing or future cannabis permits and licenses until the Treasurer opens a bank account for cannabis revenue in a suitable financial institution, approval of the cannabis license fee ordinance by the Board, and all ordinance operational contingencies are met, including Coastal Commission certification of the Board-adopted land use amendments.

Update on Permitting and Licensing Staffing

On December 14, 2017, the Board was provided with preliminary staffing estimates from departments that would be involved in possible land use permit and business license application processing, permit and license compliance monitoring and enforcement activities against the unlicensed cannabis operators.

Since December, the Board has adopted amendments to the land use codes and is considering, in this agenda item, adopting a commercial cannabis business licensing ordinance that lays out specific roles and responsibilities for county departments. Additionally, the Board approved a County letter that allowed those attesting to their legal nonconforming land use status to seek and secure temporary medical cannabis cultivation licenses from the State. Based on those seeking temporary licenses, staff is estimating a total of 100 (current approximate number) to 200 land use permit and business licenses are likely in the unincorporated area of Santa Barbara County. This is a lower number than staff had previously estimated.

The revised scopes of responsibilities and a clearer estimated number of local permits and licenses has allowed departments to reduce their estimated cannabis permitting and licensing processing and compliance monitoring from approximately \$2.5 million per year to \$2.37 million. It is important to note that previous expenditure estimates were based on FY 2017-18 salary and benefits only. These revised estimates are based on FY 2018-19 salary levels plus the fully loaded costs for the identified positions in keeping with Board budget policies. The number of new Full Time Equivalents (FTEs) was reduced from an original estimate of 17.0 in December to 12.5 based on the latest Board policy direction and ordinance

adoption. These permit and license related expenses are paid by those seeking the permits and licenses, not the General Fund. Permit and fee revenue cannot be used to fund enforcement against the unregulated or unlicensed cannabis operations.

The following chart identifies new staffing required for cannabis land use permit and business licensing. Positions listed with zero FTEs are included to show that they will fulfill their roles without a need for additional staff. Actions to add appropriation or authorized positions, if needed, will occur as a part of the Recommended Budget.

Department	FTEs	Job Classification	Full Cost	Activity
CEO	1.0	Enterprise Leader	\$ 278,740	Cannabis License Program Manager
County Counsel	1.0	Deputy County Counsel IV	\$ 210,291	Legal support for compliance
Fire	0.0	Hazmat Engineer I/II	\$ -	Hazardous materials inspections
Fire	0.0	Fire Engineer/Inspector	\$ -	Fire safety facility inspections
Sheriff	2.0	Sheriff's Deputy - Special Duty	\$ 464,000	Security facility inspections
Sheriff	1.0	AOP II	\$ 116,000	Security facility inspections
Public Health	1.0	Environmental Health Specialist	\$ 145,000	Testing and inspections
Ag/W&M	1.0	Ag Bio/W&M Supervisor	\$ 187,200	Pesticide enforcement, weights & measure inspections and cultivation license site inspections
Ag/W&M	2.0	Ag Bio/W&M Inspector	\$ 299,000	Pesticide enforcement, weights & measure inspections and cultivation license site inspections
Planning	0.5	Supervising Planner	\$ 117,475	Site plan reviews and zoning clearance
Planning	1.0	Planner III	\$ 209,550	Site plan reviews and zoning clearance
Planning	1.0	Planner I/II	\$ 184,150	Site plan reviews and zoning clearance
Tax Collector	1.0	FOP Senior	\$ 161,590	Issue licenses and tax compliance checks
TOTAL	12.5		\$ 2,372,996	

In December, staff also presented information on the staffing needed and cost of enforcement on the unregulated cannabis operations in the County. At that time we estimated a cost of \$1.4 million for 9.5 FTEs. Some slight changes have been made to the enforcement staffing plan, including the addition of

District Attorney staff into the table below. The plan now includes 9.5 new FTEs and updated costs of \$1.94 million per year.

The following chart identifies current plans for new staffing necessary to respond to unlicensed cannabis operations in the County.

Department	FTEs	Job Classification	Full Cost	Activity
County Counsel	1.0	Deputy County Counsel IV	\$ 210,291	Legal support for enforcement
District Attorney	1.0	Deputy District Attorney III	\$ 201,110	Prosecute illegal activities
District Attorney	0.5	Legal Office Professional	\$ 40,460	Prosecute illegal activities
Sheriff	0.5	Sheriff's Sergeant	\$ 127,600	Illegal activity investigation supervision
Sheriff	3.0	Sheriff's Deputy - Special Duty	\$ 696,000	Illegal activity investigations
Ag/W&M	1.0	Ag Bio/W&M Inspector	\$ 149,500	Pesticide enforcement, weights & measure inspections and cultivation license site inspections
Planning	0.5	Supervising Planner	\$ 117,475	Zoning enforcement
Planning	1.0	Planner III	\$ 209,550	Zoning enforcement
Planning	1.0	Planner I/II	\$ 184,150	Zoning enforcement
Total	9.5		\$ 1,936,136	

Performance Measure:

NA

Contract Renewals and Performance Outcomes:

NA

Fiscal and Facilities Impacts:

Budgeted: Ordinance development has been budgeted in the current year operating budget. The staffing augmentations for application processing, compliance monitoring and enforcement will be part of the Recommended Budget for Fiscal Year 2018-19. **Fiscal Analysis:**

Funding Sources	Current FY Cost:	Annualized On-going Cost:	Total One-Time Project Cost
General Fund		\$ 1,936,136.00	
State			
Federal			
Fees		\$ 2,372,996.00	
Other:			
Total	\$ -	\$ 4,309,132.00	\$ -

Narrative:

Adopting the Cannabis Business Licensing Ordinance will require additional costs for staffing that are not budgeted in the current Fiscal Year 2017-18 Adopted Budget. The current estimate of additional staffing costs is approximately \$2.4 million annually when permitting and licensing begins. Fee revenue will be generated from license application and compliance fees charged to those applying for and receiving a cannabis business license. Following Board adopted budget policies, the fees will fully recover the cost of the licensing and compliance program. This additional revenue and expense is not likely until FY 2018-19 and is contingent on the Treasurer-Tax Collector opening a bank account in a suitable financial institution. Following adoption of the Cannabis Business License Ordinance, staff will refine the staffing requirements based on the approved scope of responsibilities approved by the Board. A request for any required new legal positions, a fee study and a fee ordinance will be finalized and brought back to the Board for approval on May 8, 2018. If approved by the Board and pending any further direction at the April Budget Workshops, staffing costs for licensing, compliance and enforcement will be included on the FY 2018-19 Recommended Budget.

Key Contract Risks:

None

Staffing Impacts:

Legal Positions:

FTEs:

Special Instructions:

Publish notice as required by this ordinance.

Attachments:

Attachment 1 – Ordinance Adding Chapter 50, Licensing Of Commercial Cannabis Operations, To the Santa Barbara County Code

Attachment 2 – Cross reference of State Licensing requirements with County Land Use Permit and Business Licensing Requirements

Attachment 3 – CEQA Findings

Authored by: Dennis Bozanich, Deputy County Executive Officer, 805-568-3400