



**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:** September 14, 2021  
**Placement:** Departmental  
**Estimated Time:** 45 minutes  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**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 – Fourth Quarter FY 2020-21

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**County Counsel Concurrence**

As to form: Yes

**Risk Management:**

As to form: NA

**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 any other direction to staff regarding the County’s cannabis program; 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 for the fourth quarter of fiscal year 2020-21 (from April 1, 2021 to June 30, 2021). This report includes a summary on the implementation of the County’s cannabis regulations, tax receipts, land use permitting, business license activity, enforcement, and objectives for the current fiscal year. Appendix A, attached, includes detailed reporting on these items including comparisons to prior quarters and past fiscal years.

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**Auditor-Controller Concurrence**

As to form: NA

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In summary, during the fourth quarter, the County collected \$3.8 million in cannabis gross tax receipts paid by 58 operators. The County completed nine enforcement actions against cannabis operators: 6,975 plants were eradicated, 1,615 pounds of cannabis product were confiscated totaling an estimated street value of \$6.1 million, and ten arrests were made. The County also approved seven projects for cannabis land use entitlements and issued two cannabis business licenses.

Since the inception of the County's cannabis program, 181 proposed project applications have been submitted for land use entitlements and 34 projects received issued permits. Seventy-two operators submitted applications to obtain 123 business licenses, of which 24 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.

**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 fourth quarter reporting period of fiscal year 2020-21 (taxes collected as of July 31, 2021 for the period April 1 to June 30, 2021), the Treasurer-Tax Collector reported \$3.8 million from cannabis operators holding State licenses. This represents an 45% decrease in the tax amount collected from the same quarter of the last fiscal year. It is also a 34% decrease over the third quarter which staff did not anticipate. We heard from local operators and it was supported in a MJ Biz Daily article from August 6<sup>th</sup>, (<https://mjbizdaily.com/falling-prices-in-california-marijuana-wholesale-market-alarms-some-growers/>) that fourth quarter wholesale prices were generally down. The explanation may be the amount of cultivation exceeding current demand in California. Staff will continue to monitor these trends and adjust budget estimates accordingly. Table 1 of Appendix A lists total revenues for 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 181 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 FY 20-21. In addition, the table provides insight 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 Q4, a total of 34 projects received issued permits and an additional 12 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

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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 determined to be 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. The remaining acreage available in the Carpinteria Agricultural Overlay is **129.81 acres** and the remaining acreage in the remaining unincorporated areas is **589.62 acres**. However, the Planning and Development Department expects that the acreage caps in both areas will be *permitted* by the end of the 2021 calendar year. The Cannabis Business Licensing Team is preparing for the influx of business license applications and estimates that both Eligibility Lists will reach the acreage cap in early 2022. This projected schedule differs from the third quarter report and has been moved up by nearly a year due to the influx in permit approvals and streamlining the business license application initial intake process. There are approximately 300 acres under review in the business license process and in line to be added to the eligibility list once determined complete.

A commercial cannabis operation on the Eligibility List, remains on the list while permit appeals are processed, however their spot is nontransferable and subject to the need to annually renew their interest to remain on the list.

#### **Cannabis Compliance: County Business Licensing**

Through the fourth quarter reporting period, 72 unique operators submitted applications to obtain 123 county cannabis business licenses. To date, 24 business licenses have been issued to 14 operators that have been determined to be 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 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 nine license renewal applications held by five operators.

Given the high volume of pending license applications, the licensing team continues to seek out process efficiencies by focusing on enhancements to the Accela Cannabis Business Licensing Module for both the applicant and licensing team experience, in addition to maintaining bi-weekly licensing team meetings to promote a coordinated and strategic team approach to prioritizing and processing applications. 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 yet been obtained.

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### **Cannabis Enforcement**

For the fourth quarter, the Sheriff's team executed nine search warrants and made 10 arrests related to illegal indoor and outdoor cultivation, as well as operating illegal delivery services. During the execution of 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. 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 remains focused working 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. Recently, a second full-time enforcement detective was assigned to focus solely on licensing and compliance, 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 continues to improve the licensing process and will fortify the ability to perform regular compliance audits.

In addition to the Sheriff team's efforts, the Agricultural Commissioner's Office remains involved in carrying out compliance and enforcement activities. In the fourth quarter, the Agricultural Commissioner's Department had two ongoing investigations (one in North County and one in South County) regarding worker health and safety, and pesticide use.

During the fourth quarter, the Planning and Development Department opened seven cannabis enforcement cases (five 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 five hundred eighteen (518) cannabis complaints: two (2) general cannabis cultivation complaints in the North County (Tepusquet area); two (2) unpermitted cannabis grading complaints in the North County (Tepusquet area); one (1) unpermitted cannabis structure complaint in the North County (Santa Maria area); fifteen (15) cannabis odor complaints in the North County (Buellton area); two (2) cannabis lighting complaints in the Carpinteria area; one (1) unpermitted cannabis structure complaint in the Carpinteria area; and four hundred ninety-five (495) cannabis odor complaints in the Carpinteria area. Odor complaints are often submitted with multiple instances of detected odor documented in one complaint. This number reflects the total of every instance listed within a complaint. 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.

### **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

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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 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 ranked 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 highest ranked applicant in the Orcutt CPA was notified and invited to start the land use entitlement /permit process on August 23, 2021. The Final Ranked Cannabis Storefront Retail Lists are posted on the Cannabis Retail site: <http://cannabis.countyofsb.org/retail.sbc>. The top ranked applicants have 90 days to submit a land use entitlement application to P&D that is consistent with their Cannabis Storefront Retail Selection Application.

As of the authoring of this letter, the applicants in the five CPAs outside of Orcutt submitted their land use entitlement applications and are working with P&D to ensure complete submittals. The Orcutt deadline for permit application submittal is mid-November.

### **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 B lists each recommendation and a status on implementation.

In addition, staff worked with KPMG in early 2021 to produce a second brief report on the Cannabis Revenue Process (Appendix C). The final report submitted in May yielded three recommendations: 1) Consider becoming a member of the California Cannabis Authority; 2) Build out an "Audit Division" in the Office of the Treasurer-Tax Collector (TTC); and 3) Build out a "Compliance Task Force" led by the CEO's Office with law, code, agriculture and tax enforcement agencies to address compliance activities, state compliance notifications, regulatory changes, criminal activity, and licensing compliance. Currently, staff from multiple departments participate in monthly criminal enforcement meetings and bi-weekly business licensing meetings. Compliance efforts are primarily complaint driven at this time, or occur during the annual business license renewal process. The value provided by a formal compliance task force is more proactive and increased countywide coordination related to cannabis operations, improved revenue collection, and adherence to cannabis-related statutes. The task force will use the real-time information and data analytics made available through the CCA membership to perform targeted and informed compliance reviews for all licensed operators on a more consistent basis. Recommendations 1 and 3 will be covered in the departmental item, *California Cannabis Authority Membership*, immediately following this report. Regarding recommendation 2, the Board approved a budget expansion request in the current fiscal year for the TTC to hire one Enterprise-Business Leader for Cannabis Tax Collection

and Compliance. This position, once in place, will be responsible for cannabis tax collection and compliance auditing efforts.

**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, timeline for finalizing acreage issued, and ineligible legal non-conforming operators after the cap is reached.
3. Regular review of operator's compliance with County regulations to determine whether they should retain their cannabis business license, if issued; or retain the County letter of authorization given in support of the state provisional license as they progress through the permit and licensing processes.

**Objectives for the Upcoming Quarters**

1. Continue with Accela enhancements to facilitate transparency in the form of applicant reporting, 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. Review and propose Chapter 50 ordinance amendment clarify items and address outstanding issues including: business license application renewals, modifications, revisions, ownership transfers, and acreage cap eligibility.
4. Continue the tax audit process utilizing consultant HdL.

**Fiscal and Facilities Impacts:**

Budgeted: Yes

**Attachments**

Attachment A - Appendix A: Cannabis Taxation, Compliance, and Enforcement, 4<sup>th</sup> Quarter Report FY 2020/2021

Attachment B - Appendix B: KPMG Recommendations and Implementation Status Table

Attachment C - Appendix C: KPMG Report - *Cannabis Revenue Process: Operationalizing High-Level Recommended Improvements*

**Authored by:**

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