



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: January 28, 2020
Placement: Departmental
Estimated Time: 45 Minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department: Mona Miyasato, County Executive Officer
Director(s): Barney Melekian, Assistant County Executive Officer
Contact Info: Steven Yee, Fiscal & Policy Analyst – County Executive Office
SUBJECT: Update on Cannabis Compliance, Enforcement and Taxation – First Quarter FY2019-20

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) 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 first quarter of fiscal year 2019-2020 (from August 1, 2019 to October 31, 2019) of implementation of the County’s cannabis regulations including land use permitting, business license activity, cannabis enforcement, first quarter tax receipts, State licensing activity, and goals for the next quarters.

In summary of first quarter cannabis program efforts, the County completed 12 enforcement actions against illegal cannabis operators: 16,684 plants were eradicated with an estimated street value of \$4.2 million, and an additional 1,157 pounds of processed product was seized worth an estimated \$1.2 million. One hundred and seventy-three applications have been submitted for land use entitlements and 18 land use entitlements have been issued. State data shows that operators held 923 State Provisional

Licenses and 21 State Annual Licenses in Santa Barbara County. Twenty-five unique operators submitted business license applications to obtain a total of 40 business licenses and five cannabis business licenses have been issued as of this reporting period. First quarter gross receipts tax totaled \$2.8 million paid by 34 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 including implementation of a cap on licensed cultivation and nursery acreage in the inland area of the County. 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 October 31, 2019, cannabis operators had submitted 173 permit applications to the Planning & Development Department for 204 total acres of proposed cultivation in the Carpinteria Agricultural Overlay and 1,993 acres in the remaining unincorporated area, clearly exceeding the respective caps that are now in place (186 and 1,575 acres, respectively). The status of the applications is as follows:

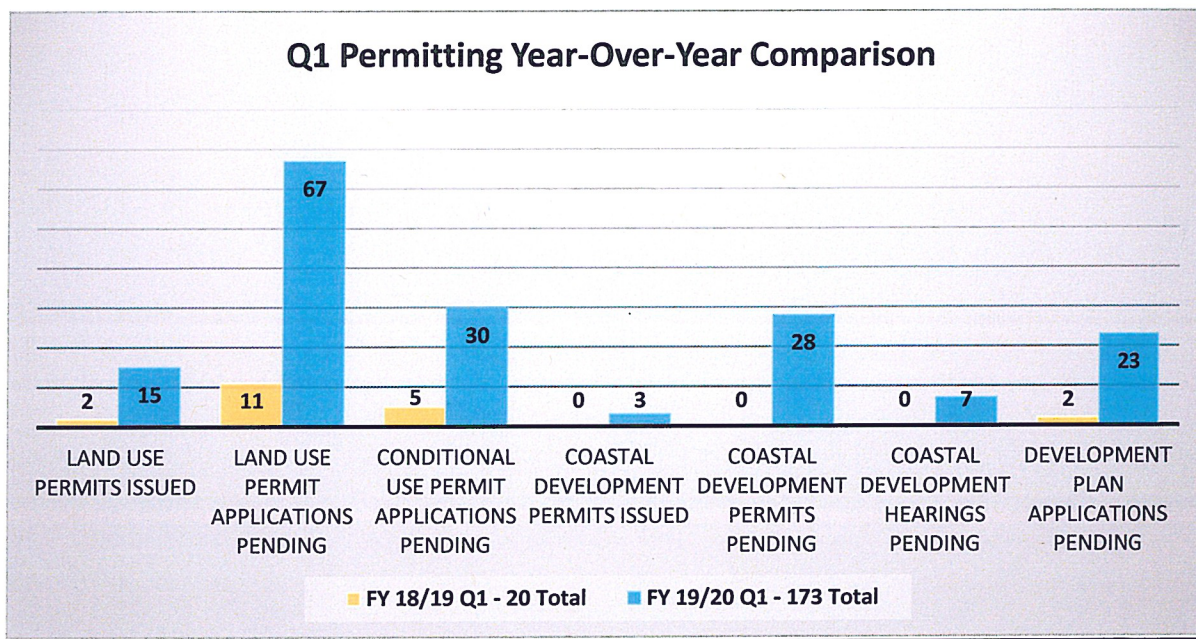
| Land Use Permitting Status | Number |
|---------------------------------------------|---------------|
| Land Use Permits Issued | 15 |
| Land Use Permit Applications Pending | 67 |
| Conditional Use Permit Applications Pending | 30 |
| Coastal Development Permits Issued | 3 |
| Coastal Development Permits Pending | 28 |
| Coastal Development Hearings Pending | 7 |
| Development Plan Applications Pending | 23 |
| Total | 173 |

Fifteen Land Use Permits and three 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. Staff must then determine if the development qualifies as legal nonconforming development or whether the unpermitted development must be permitted or removed in order to approve the entitlement for the proposed cannabis activity. Other applications are incomplete due to applicants not providing required information on proposed

plans, inconsistencies between application materials and technical reports, and the need for staff to obtain additional information and/or studies to determine if a project requires additional environmental review. To-date, 22 Land Use Permits and four Coastal Development Permits have been approved by Planning & Development staff as having met all respective Land Use and Development Code (LUDC) or Coastal Zoning Ordinance (CZO) requirements. Six of the 22 land use permits, and two out of the four Coastal Development Permits were appealed prior to permit issuance. Land use entitlements that are 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 and uphold the approval of the permit at a hearing held on August 20, 2019.

Thirty Conditional Use Permit applications have been received through this first quarter reporting period with none having been issued to-date. One of these applicants appeared before the Planning Commission in December, 2019, however the hearing was continued to a future date. The balance of applications are either incomplete or pending County staff review. Many of the deficiencies in Land Use/Coastal Development Permit applications described above (e.g., unpermitted development on a project site or the lack of required information provided on proposed lands) are occurring in the Conditional Use Permit applications.

A comparison of year-over-year first quarter permitting activity is shown below to illustrate the increase in permitting volume being processed by Planning & Development staff.



Per Board direction at the July 16, 2019 hearing, staff was directed to engage the Planning Commission and return to the Board with recommendations/strategies to mitigate the (1) odor and other impacts of cannabis operations along urban-rural boundaries and (2) conflicts with existing agricultural operations. The Agricultural Commissioner convened a working group to address conflicts with agriculture specifically related to the use of pesticides on traditional agricultural crops and the concerns of pesticide drift to cannabis. At the January 22, 2020 Planning Commission hearing, the Agricultural Commissioner

will present the findings of the working group and their next steps. In addition, the Planning Commission will begin the discussion and consideration of potential recommendations/strategies to address the Board's direction. The hearing is intended to be a "workshop style" format at which the Planning Commission will receive a brief staff report, will receive public testimony, and will provide staff with direction on potential ordinance amendments that the Planning Commission would like staff to prepare, pursuant to the Board's direction. It is anticipated that at least one additional hearing will be required for staff to prepare materials and provide additional information as may be requested for the Planning Commission to make a recommendation to the Board.

State Provisional and Annual Licenses

As of October 31, 2019, there were 923 State Provisional licenses and 21 State Annual licenses issued representing a total of 220 acres Countywide. In order to obtain a State Provisional license in Santa Barbara County, operators are required to have met the following criteria: (1) they held a State Temporary License, (2) they submitted either a permit application accepted for processing by Planning & Development or obtained a land use entitlement for the proposed cannabis operation and submitted a complete application for the corresponding local cannabis business license, and (3) have submitted an application and all required documents for State Annual Licensing, except for proof of completed CEQA compliance.

State Assembly Bill 97 (AB-97) was approved by the Governor and took effect on July 1, 2019, which extended the repeal date for the Provisional license provisions to January 1, 2022. Prior to the passage of AB-97, the State's authority to issue Provisional licenses was set to expire on December 31, 2019. Additionally, AB-97 eliminated the requirement that an applicant previously held a State Temporary license, however, the County of Santa Barbara firmly opposes this aspect of the Bill and has taken the official stance to only authorize Provisional licenses for those legal non-conforming operators that previously held State Temporary licenses.

The requirement of operators to have at least submitted a permit application accepted for processing by Planning & Development 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 commonly received public complaints. Further, 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 October 31, 2019, the County received business license applications from 25 unique operators to obtain a total of 40 business licenses. Five business licenses have been issued to operators deemed to be compliant with County Code in the following unincorporated areas of the County: two licenses for cultivation in Los Alamos, one nursery license in the unincorporated area of Goleta, one cultivation license in New Cuyama, and one retail non-storefront license in Vandenberg Village. The remaining 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 the use of structures approved as part of a land use entitlement but that may not be properly permitted or fully compliant with Planning & Development's Building and Safety Code. Planning & Development staff are urging applicants to consult the Building and Safety Division earlier in the process to ensure that structures are properly permitted for their intended use.

Staff continues to evaluate existing business licensing regulations in an effort to improve their effectiveness. The Board adopted ordinance amendments on August 27, 2019. Adopted Business License Ordinance amendments include the following: (1) limit cannabis cultivation operations countywide to 1,575 acres, while maintaining the acreage limitation in the Carpinteria Agricultural Overlay, (2) add to County Code § 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 became operational September 26, 2019.

The ordinance amendment allowing for concurrent processing of a land use entitlement application and business license application has contributed to an uptick in business license applications having been submitted. Due to the two caps on cultivation that are now operational, operators are eager to secure their place on the respective Eligibility Lists in an effort to reserve their acreage under the cap, as expected. The three established requirements for an operator to be placed on either of the two Eligibility Lists are as follows: (1) approval of a land use entitlement, (2) payment of the business license application deposit fee, and (3) submittal of a business license application that has been deemed complete by the County Executive Office. As of December 2019, 1,419 acres remain available on the Inland Eligibility List and 172 acres remain available on the Eligibility List for the Carpinteria Agricultural Overlay District. It is important to note that operators have submitted permit applications for 204 total acres of proposed cultivation in the Carpinteria Agricultural Overlay while 1,993 acres have been applied for in the remaining unincorporated area, clearly exceeding the respective caps that are now in place (186 and 1,575 acres, respectively).

Retail Storefront Selection Process

At the Board of Supervisor's August 20, 2019 meeting, the Board directed staff to return with revisions to the cannabis retail storefront process, establishing a merit based criteria scoring system to replace the previously adopted random drawing system. The Board voted to adopt an ordinance amendment to the Business Licensing Ordinance Chapter 50 to establish this merit based selection process at the Board of Supervisor's meeting held January 14, 2020, and it will become effective on February 13, 2020. Staff will return to the Board on February 11, 2020 to present scoring sheet criteria for business operations proposals and neighborhood compatibility plans, as well as the projected timeline for the selection process.

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 increased 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. In the first quarter, the Planning & Development Department opened 21 new cannabis enforcement cases and 13 were closed. Staff responded to 271 cannabis complaints during the quarter. Two hundred thirty-four (234) complaints were related to cannabis odor and 221 of those related specifically to the unincorporated area of Carpinteria. Six Notices of Violation to address cannabis cultivation violations and cannabis-related zoning violations have been issued. 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 four arrests and the eradication of 16,684 live plants, with an estimated street value of \$4.2 million in the unlicensed market. The Sheriff team also dismantled two butane hash oil (BHO) laboratories. An additional 1,157 pounds of dried product was seized with an estimated street value of \$1.2 million.

Quarterly statistics of enforcement actions to-date are as follows:

| | Q1 FY18-19 | Q2 FY18-19 | Q3 FY18-19 | Q4 FY18-19 | Q1 FY19-20 | Totals |
|---------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|---------------|
| # of Enforcement Actions | 10 | 12 | 12 | 12 | 12 | 58 |
| # Live Plants Confiscated | 417,771 | 56,400 | 38,800 | 471,626 | 16,684 | 1,001,281 |
| Live Plants \$\$\$ | \$88.9M | \$7.1M | \$9.7M | \$118M | \$4.2M | \$227.9M |
| Dried Product Confiscated (lbs) | - | - | 14,900 | 49,939 | 1,157 | 65,996 |
| Dried Product \$\$\$ | \$0 | \$0 | \$14.9M | \$49.9M | \$1.2M | \$66.0M |

Cannabis Enforcement Staffing

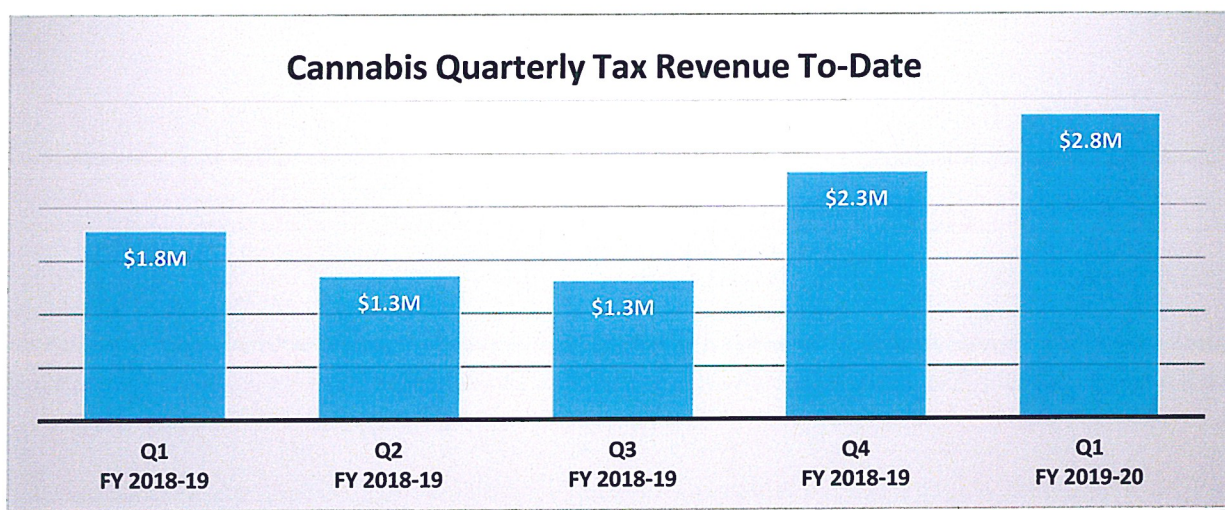
The Cannabis Enforcement Team consists of staff from the Agricultural Commissioner's Office, County Counsel, County Executive Office, District Attorney, Planning & Development, and Sheriff. On June 11, 2019, the Board approved the FY2019-20 budget, which increases enforcement staffing by 1.0 FTE for 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 from \$1.9 million that was budgeted in FY2018-19, reflecting the additional enforcement staff, as well as additional equipment and supplies costs associated with enforcement operations.

Cannabis Taxes

In the first quarter reporting period, the Treasurer–Tax Collector collected \$2.8 million from 34 cannabis operators. An additional 34 operators stated that they had no gross receipts and 22 of the 90 State licensed operators did not submit reports. The first quarter tax revenue received was the strongest of the five quarters of tax collection efforts to-date, as illustrated in the chart below. Given the limited tax revenue data points available, the Board adopted a cannabis tax revenue budget of \$5.6 million for the current fiscal year, which represents a modest 3% increase over the FY2018-19 budgeted revenue. Staff projects year-end actual revenues to meet, and likely exceed, the budgeted amount, however, additional tax revenue data points are needed for the upcoming quarters in order to project year-end totals with accuracy.

On June 11, 2019, the Board approved budget appropriations of \$100,000 for a cannabis tax compliance audit to identify potential underreporting, payment deficiencies, or other compliance issues for each cannabis business. The assumption at the time was that the State would provide access to its Track-and-Trace data, which has not occurred. Staff is currently working with the State to establish a memorandum of understanding (MOU) to take part in a pilot program along with Monterey and Yolo Counties, to gain access to the Track-and-Trace database. The pilot program parameters are in the process of being defined and staff expects to present these parameters and an MOU to the Board early this spring. Establishing the MOU to gain access to the Track-and-Trace data is the critical first step necessary to initiate the implementation of the tax compliance audit. 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.



Outreach and Education

In this first quarter, County Staff has conducted the following outreach and education sessions for members of the public and industry representatives:

| | |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| August 2019 | <ul style="list-style-type: none">• CEO staff presented options to the Board of Supervisors for cannabis regulatory amendments to the Cannabis Business License Ordinance (Chapter 50). |
| October 2019 | <ul style="list-style-type: none">• CEO staff presented a fourth quarter, cannabis program update on compliance, enforcement, and taxation to the Board of Supervisors.• The Sheriff's Cannabis Compliance Team delivered a presentation to the Solvang Citizens Academy on cannabis regulations and the history of the cannabis program in the County.• Representatives from the CEO's office, Planning & Development, Agriculture Commissioner, and Sheriff attended a Cannabis Forum hosted by the City of Buellton for the County's cannabis stakeholders. Staff were present to meet with the public and answer cannabis-related questions. |
| Ongoing | <ul style="list-style-type: none">• Cannabis Education Program implemented by the Public Health Department addressing health education and prevention. The program's target audience is youth (ages 12-20), parents and mentors, and pregnant/breastfeeding women. Digital media campaign ran from May-Dec, 2019. A website has been established to provide additional resources at the following address: letstalkcannabissbc.org Educational materials in both English and Spanish were distributed to health care providers, school districts, and community agencies.• Updates to the FAQs, Complaint Form, and Informational Documents on the County's Cannabis website. |

Emerging Issues

Applicants with Legal Nonconforming Status – A number of operators with land use entitlement applications being processed by Planning & Development are not moving forward to address deficiencies in their application, as they are legally allowed to operate under their legal nonconforming status with State Provisional licenses. Staff is working to develop options to address applicants in such circumstances.

Implementation Goals for the Upcoming Quarters

During the second 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. Commence the coordination of a merit based retail storefront licensing selection process.
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

Authored by:

Steven Yee, Fiscal & Policy Analyst, (805) 568-3433 with review and support from Planning & Development, Sheriff, and Treasurer Tax-Collector.