



BOARD OF SUPERVISORS **Agenda Number:**
AGENDA LETTER

Clerk of the Board of Supervisors
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Santa Barbara, CA 93101
(805) 568-2240

Department Name: County Executive Office
Department No.: 012
For Agenda Of: April 2, 2019
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

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

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

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors (Board):

- a) Receive an update on the status of cannabis land use permitting, business licensing, 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 second quarter (from November 1, 2018 to January 31, 2019) of implementation of the County’s cannabis regulations including land use permitting, business license activity, cannabis enforcement, second quarter tax receipts, and State licensing activity, and goals for the next quarters.

In summary, in this second quarter, the County completed 12 enforcement actions against illegal cultivators: 56,449 plants were eradicated with a crop value of \$7.1 million. Forty-two operators have sought permits and four of those operators have successfully obtained Land Use Permits. State data shows that 98 operators hold active State temporary licenses in Santa Barbara County that would equate to approximately 513 acres of cannabis cultivation. To date, four business license applications have been received, as operators must first obtain land use permit approval. Second quarter gross receipts tax is \$1.4 million compared to \$1.8 million received in the first quarter, with 27 operators reporting that they had no taxable gross receipts.

Operationalization of commercial cannabis land use and business licensing regulations in the inland portions (non-Coastal Zone) of Santa Barbara County began in June 2018 upon notice that the Treasurer-Tax Collector was successful at opening a bank account in to which cannabis tax and fee revenue could be deposited. This satisfied a requirement in the County’s ordinances necessary for the ordinances to become operative and thus begin the permitting and licensing process. Land use and business licensing regulations in the Coastal Zone were subsequently adopted following certification by the California Coastal Commission and became operational in November 2018.

Background:

Cannabis Compliance: Land Use Planning Permits

As of January 31, 2019, cannabis operators have submitted 49 permit applications to the Planning & Development Department. The status of the applications:

| Land Use Permitting Status | Number |
|--------------------------------------|---------------|
| Land Use Permits Issued | 4 |
| Conditional Use Permit Applications | 9 |
| Coastal Development Permits | 6 |
| Land Use Permit Applications Pending | 21 |
| Development Plan Applications | 9 |
| Total | 49 |

Four of 25 Land Use Permit applications have been issued. Other Land Use Permit applications have been reviewed but require additional information before action can be taken. Many of the properties do not have adequate information on the water source, or require biological surveys or fencing plans. Many also need complete site plans/topographic maps and must show proof of legal lot status or permitted structures.

Nine Conditional Use Permit applications have been received in the following unincorporated areas of the County: three in Tepusquet Canyon, four in the Cebada Canyon area (Cebada Canyon Road, Wild Oak Road, Campbell Road), one in Santa Maria (Morning Hill Road), and one in Carpinteria (Via Real). Each of these applications has been determined to be incomplete and additional information has been requested from the applicants. Commonly, more information is needed on water well data, fencing plans, and adequate site plans/topographic maps.

Cannabis Compliance: Business Licensing

As of January 31, 2019, the County has received Cannabis Business Licensing applications from the four operations that have completed the land use planning permitting process for the following unincorporated areas of the County: outdoor cultivation in Los Alamos, nursery in Goleta, mixed-light cultivation, nursery, and manufacturing in Los Alamos, and another outdoor cultivation license in Los Alamos. All are in the licensing review process with the County’s interdepartmental team of license application reviewers. Staff anticipates starting to issue Cannabis Business Licenses by late March to applicants compliant with the County Code.

The County's new online licensing application portal will be operational by early April. It will be able to receive new applications and will provide the ability to receive annual renewal requests. Until that time, applications are being taken on a paper application form and transferred into a database.

The County Executive Office has assigned one coordinator (Fiscal and Policy Analyst) to lead the inter-departmental team of licenses application reviewers. Agricultural Commissioner, Sheriff, Planning & Development, Treasurer-Tax Collector, as well as, Fire and Environmental Health as needed, have each assigned staff to cannabis business application review duties. This is consistent with the Board approved positions authorized in the current budget for the program.

Cannabis Compliance Program Staffing

The Board approved Final FY2018-19 Annual Budget included 11 Full Time Equivalents (FTEs) needed for cannabis land use permitting and business licensing. All staff requested for cannabis compliance activities have been hired, filled through reassignment of existing staff, or are in the recruit and selection process. These are all fee-covered positions budgeted at \$1.6 million annually. Planning and Development has recently filled the Planner III position to support permitting operations, and is in the process of filling the Supervising Planner position.

Cannabis Enforcement

Coordination of enforcement actions has been led by the Sheriff's Office. Staff from the Agricultural Commissioner, Planning & Development, Environmental Health, and District Attorney, as well as State partners from Cal Cannabis and State Fish & Wildlife Enforcement Team members, have been involved in enforcement. The Enforcement Team meets every other week to coordinate activities. Frequently, enforcement actions begin as a result of complaints that come from members of the public through the cannabis web portal's complaint form. Enforcement of unpermitted cultivation without state licenses or historic cultivation has been the highest priority and most violations are the result of operators not having valid state licenses to cultivate cannabis.

During the second quarter, Sheriff staff initiated twelve enforcement actions against unlicensed cannabis operators. This has led to one arrest and the destruction of over 56,400 plants worth an estimated \$7.1 million in the unlicensed market.

In this reporting period, Planning and Development opened 32 new enforcement cases, of which 29 are still in progress. Two Notices of Violation to address cannabis cultivation violations and cannabis-related zoning and building code violations have been issued. Most violations are the result of operators using night lighting, installing unpermitted containers for use as offices or storage, and constructing hoop structures without permits. 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.

Many complaints have been received regarding odor in the Carpinteria area. However odor abatement in the AG-I zone is not yet mandatory for legal nonconforming medical cannabis cultivators holding Temporary or Provisional State licenses. Odor abatement will be required as a condition of their coastal permit. Existing legal nonconforming medical cannabis cultivators holding Temporary or Provisional State licenses are allowed to continue to cultivate without odor abatement until their Temporary State license expires and they elect not to pursue a Provisional or Annual State license, or they commence operations pursuant to an approved County permit requiring odor abatement. Some cultivators in the Carpinteria area have voluntarily implemented odor abatement using essential oils vaporized and pumped into an air circulation system within a greenhouse to neutralize the smell of the cannabis with the intent

that it not be detected beyond the site boundaries. In accordance with land use and permitting ordinances all odor control systems will require evaluation by a third party professional engineer or certified industrial hygienist as a part of the documentation prior to issuance of a land use permit or coastal development permit.

Complaints regarding night lighting are also difficult to address until County applications are submitted allowing Planning and Development staff to review permit applications to ensure that features are in place in greenhouses to mitigate lighting impacts. It should also be noted that night lighting is used for other crops in the Carpinteria area, not just for cannabis. These non-cannabis operations will be investigated and monitored through Planning and Development’s existing enforcement program.

Cannabis Enforcement Staffing

The Board approved Final FY2018-19 Annual Budget included 10.5 Full Time Equivalent (FTEs). In December, 2018 the Board approved the addition of one District Attorney Investigator position that was previously vacant and unfunded. This position was filled as of January, 2019. The Enforcement Team is now fully staffed with a total of 11.5 FTEs dedicated to cannabis enforcement against unlicensed cannabis operations. All positions have assigned personnel through recruitment and selection or the reassignment of existing staff and hiring others to cover their prior duties. The cost of the team is \$1.9 million annually, which is funded by cannabis tax revenue.

Outreach and Education

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

| | |
|---------------|---|
| November 2018 | <ul style="list-style-type: none"> Workshop on pesticide laws and regulations, as well as, weights and measures regulations conducted by Agricultural Commissioner staff |
| January 2019 | <ul style="list-style-type: none"> Public presentation to Santa Ynez Valley residents (Solvang) |
| Ongoing | <ul style="list-style-type: none"> Updates to the FAQs, Complaint Form, and Informational Documents on the County’s Cannabis website |

Cannabis Taxes

As of January 31, 2019, the Treasurer–Tax Collector reported collecting \$1.4 million for the previous quarter from 55 cannabis operators and \$3.2 million this fiscal year-to-date. Although second quarter tax revenue receipts declined by \$400,000 when compared to the first quarter, fiscal year end projection totals are expected to exceed budgeted tax revenue of \$5.5 million. The decline in tax revenue is due in part to an increase in the failure rate of product testing as a result of the State’s imposition of more stringent testing thresholds. Twenty-seven operators stated that they had no gross receipts during the second quarter and 16 of the 98 licensed operators did not submit reports.

| | Tax Revenue Received | Operators with Gross Receipts | Operators with Zero Gross Receipts | Operators that Did Not Report | Operator Totals |
|-------------|-----------------------------|--------------------------------------|---|--------------------------------------|------------------------|
| Q1 Tax Data | \$1.8 Million | 30 | 41 | 31 | 102 |
| Q2 Tax Data | \$1.4 Million | 55 | 27 | 16 | 98 |

State Licensing

During the first quarter, there were 102 operators holding 832 active State licenses on approximately 196 acres countywide. As of January 31, 2019, the number of operators decreased to 98 operators holding 2,197 active State licenses that would equate to approximately 513 acres countywide. The majority (70%) of the acreage are located in the Lompoc and Santa Ynez Valley areas. The State's authority to issue Temporary licenses expired on December 31, 2018. These licenses are valid for 120 days and are not eligible for additional 90-day renewal periods after January 1, 2019. This incentivized operators to apply for additional licenses prior to expiration of the State's issuance authority as the licenses were easy to obtain and would allow them to continue to operate for 120 days.

To address the impending expiration of State Temporary licenses, the Governor signed SB1459 into law in September of 2018 creating a Provisional Annual Cannabis License. The Provisional Annual License is available to applicants for annual licenses that currently hold or have held State Temporary licenses, and that have submitted all required documents for State annual licensing except for proof of completed CEQA compliance. (Bus. & Prof. Code § 26050.2.).

Documenting CEQA compliance has been a challenge statewide for license applicants. The County completes CEQA review for the County's land use entitlements. To address the challenge of transitioning operators from State Temporary Licenses to Provisional Annual Licenses, the Board recently granted the County Executive Office Point of Contact the authority to provide any requested notification to the State licensing authority of evidence of engaging in the permitting and/or licensing with the County only if an applicant has either: a permit application accepted for processing by Planning and Development and paid the requisite processing fee; or obtained approval of the land use entitlement application for the proposed cannabis operation and submitted a complete application for the corresponding local cannabis business license.

Without Provisional Annual licenses, existing cannabis operators not in possession of a local land use entitlement, local cannabis business license, and a State Annual license will have to cease operations upon expiration of their State Temporary cannabis licenses. Currently, no existing cannabis operators have obtained a local land use entitlement, a local cannabis business license and a State Annual license.

Emerging Issues

Hoop Ordinance – Hoops structures may currently be used for outdoor cultivation of cannabis in the inland portions of the County, if permitted as greenhouses. Revisions to the Land Use and Development Code to provide separate regulations and exemptions for hoop structures is currently under review and scheduled to be considered by the Board on April 9, 2019. The decisions about standards, conditions, and exemptions or permitting will affect the cannabis industry. Cannabis cultivators that use hoops with their temporary licensed operations will continue to face challenges when entering into the cannabis permitting process without certainty about the exemption, or permitting, of hoops.

Issuance of State Licenses – The State's legal authority to issue Temporary State Licenses expired on 12/31/18 and those licenses are valid for 120 days and are not eligible for 90-day renewal periods after January 1, 2019. The State, particularly CalCannabis, faces the challenge of issuing Annual and Annual Provisional licenses prior to expiration of the Temporary State Licenses.

Implementation Goals for the Upcoming Quarters

During the 3rd quarter, staff involved in the cannabis operations team (permitting, licensing and enforcement) has three goals:

1. Continue enforcement activities,

2. Implement the Accela Cannabis Licensing web portal, and
3. Increase the speed of permit and license issuance to provide the protections sought by residents.

Performance Measure:

N/A

Contract Renewals and Performance Outcomes:

N/A

Fiscal and Facilities Impacts:

Budgeted: Yes **Fiscal Analysis:**

| <u>Funding Sources</u> | <u>Current FY Cost:</u> | <u>Annualized On-going Cost:</u> | <u>Total One-Time Project Cost</u> |
|-------------------------------|--------------------------------|---|---|
| General Fund | | | |
| State | | | |
| Federal | | | |
| Fees | | | |
| Other: | | | |
| Total | \$ - | \$ - | \$ - |

Narrative:

Key Contract Risks:

N/A

Staffing Impacts:

Legal Positions:

FTEs:

Special Instructions:

N/A

Attachments:

N/A

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