



**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: December 14, 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

DocuSigned by:

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SUBJECT: Update on Cannabis Compliance, Enforcement, and Taxation – First Quarter
FY 2021-22

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: NA

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 first quarter of fiscal year 2021-22 (July 1, 2021 to September 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.

In summary, during the first quarter, the County collected \$3.1 million in cannabis gross tax receipts paid. The County completed eight enforcement actions against illegal cannabis activities: 3,253 plants and 1,205 pounds of cannabis product were confiscated totaling an estimated street value of \$3.4 million, and nine arrests were made. The County also approved 28 projects for cannabis land use entitlements and issued three new cannabis business licenses.

To date, the County has approved enough cultivation acreage in land use entitlements to exceed the acreage cap in the unincorporated inland area. Five operators with approved land use entitlements have been placed on a waiting list. The acreage cap in Carpinteria is predicted to be committed in early 2022. Ninety-two operators submitted applications to obtain 159 business licenses, of which 27 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, unappealable entitlement, as many applications are being appealed after approval, and 2) applicants that have not yet obtained required building permits to construct new buildings, or change the use of existing buildings.

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 first quarter reporting period of fiscal year 2021-22 (taxes collected as of October 31, 2021 for the period July 1 to September 30, 2021), the Treasurer-Tax Collector reported \$3.1 million from cannabis operators holding State licenses. This represents a 25% decrease in the tax amount collected from the same quarter of the last fiscal year. It is also a 17% decrease over the fourth quarter of FY 20-21. Table 1 of Appendix A compares first quarter revenues for the last three fiscal years.

Cannabis Compliance: Land Use Entitlements

The County, via the Planning and Development Department (P&D) has approved approximately 122 acres of cultivation in the Carpinteria Agricultural Overlay Area and 1,860 acres of cultivation in the remaining unincorporated area. Table 3 of Appendix A lists the precise acreage approved compared to the total amount of proposed acreage submitted for permits and the total issued permit acreage. There are 22 cannabis cultivation projects on appeal. Table 4 of Appendix A summarizes the project applications that are currently on appeal to the Planning Commission and the Board.

Acreage Caps

The Board adopted two cultivation acreage caps: 1) in the Carpinteria Agricultural Overlay District (capped at 186 acres), and 2) the remaining unincorporated area (capped at 1,575 acres.) The County Executive Office tracks acreage of eligible cannabis operations against the cap on an Eligibility List. 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

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cultivation are currently in the land use entitlement process and how many acres have been permitted. Table 5 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 100.23 acres. Although there is sufficient acreage approved in land use entitlements in the Unincorporated Area, currently there is a 1.63 acre balance in the cultivation cap.

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 annually renew their interest to remain on the list.

Cannabis Compliance: County Business Licensing

Through the first quarter reporting period, 92 unique operators submitted applications to obtain 159 county cannabis business licenses. To date, 27 business licenses have been issued to 16 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 not yet obtained required building permits for new or existing buildings. Table 5, Appendix A provides a detailed update of cannabis business license applications that have been submitted to-date.

Applications for cannabis cultivation and nursery continued to be submitted for the unincorporated areas of the County outside the Carpinteria Agricultural Overlay District, and as mentioned above, 1.63 acres of the 1,575 acre cultivation cap that your board established, remain uncommitted. Given that the cap is almost fully committed, staff has suspended review of newly submitted business license applications in the unincorporated areas and established a waitlist for operators that are interested in applying for a cannabis business license, based on the timing of when their land use entitlement is approved by P&D. Cultivation acreage in the Carpinteria Agricultural Overlay District remains available with approximately 100 acres that are currently uncommitted.

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 Treasurer-Tax Collector has issued nine renewal licenses to six unique operators and the licensing team is in the process of reviewing an additional seven license renewal applications submitted by four 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, including a newly developed external facing report that summarizes all cannabis business license applications submitted to-date, associated application status updates, and provides each applicant's designated 24-hour contact name and phone number as requested by the general public. This report is currently available and is accessible via the County's cannabis website at: <https://aca-prod.accela.com/sbco/default.aspx>, under 'Reports'.

Cannabis Enforcement

For the first quarter, the Sheriff's team executed eight search warrants and made nine 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, stolen guns and

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other illicit drugs. Table 6 of Appendix A details results of the Sheriff Enforcement Team. Other drugs seized included fentanyl (pills and powder) 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.

In addition to the Sheriff team's efforts, the Agricultural Commissioner's Office remains involved in carrying out compliance and enforcement activities. In the first quarter, the Agricultural Commissioner's Office closed one investigation in Mid-County and has one ongoing investigation in the South County regarding worker health and safety, and pesticide use.

During the first quarter, the Planning and Development Department opened four cannabis enforcement cases (one in the South County and three in the North County) and closed eight cannabis enforcement cases (four in the South County and four North County). During this period the department responded to three hundred forty-five (345) cannabis complaints: five (5) cannabis cultivation complaints in the North County; one (1) unpermitted cannabis construction complaint in the North County; thirty-nine (39) cannabis odor complaints in the North County (Buellton area); and three hundred (300) 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.

The CEO Office sent out a letter to all state license holders in the County requiring submittal of an access code (API Key) to their State track-and-trace entries as required for the California Cannabis Authority (CCA) membership and use of the data analytics platform. Staff is working with NCS Analytics and CCA staff to review cannabis operators' data and establish protocols for data-driven compliance and enforcement activities in early 2022.

Cannabis Processing

At the November 2, 2021 Board meeting, your Board directed staff to research the lack of processing facilities particularly in the Unincorporated/Inland area of the county and propose near-term solutions that could work to address this issue. Staff sent out an email survey to all cannabis permit applicants on file and met with both North and South County industry groups to understand the problem and identify barriers. Two issues were identified: 1) processing activities are currently counted in the acreage cap and as the cap filled up operators dropped processing from their land use permit applications to expedite approval; and 2) the process to permit indoor processing facilities is extensive (e.g. Fire, Environmental Health, building code requirements) and can delay permit issuance, cultivation, and revenue generation. CEO and P&D staff met to discuss near-term solutions and plan to bring a response to address the acreage cap issue in early February through a proposed Chapter 50 ordinance amendment to exclude processing activities from the cap. This solution should allow operators to continue with their current permit and

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license approval for immediate operations while also allowing new permit applications for processing facilities as needed, since these activities would no longer be counted in the cap.

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, including sites that require building permits.
2. Determining timelines for finalizing acreage issued, allowing for phasing operations, addressing fallowing, and phasing out legal non-conforming operators efficiently.
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.
4. Inconsistent definitions of the area of cultivation compared to canopy and acreage between Chapter 50 and the State.
5. Operator requests for change in ownership, clarity on license transferability, and new entity formation.

Objectives for the Upcoming Quarters

1. Transition the cannabis quarterly update to an appendix in quarterly budget updates.
2. Continue with Accela enhancements to facilitate transparency in the form of applicant reporting, application renewals, modifications, and amendments as necessary.
3. Review and propose Chapter 50 ordinance amendment(s) to address outstanding issues including: acreage definitions, changes in ownership, acreage cap eligibility, phasing out legal non-conforming uses, and removing processing activities from the acreage cap calculation.
4. Continue the financial monitoring and tax audit process utilizing consultant HdL.
5. Use data from California Cannabis Authority to target compliance efforts and better understand the local industry.

Fiscal and Facilities Impacts:

Budgeted: Yes

Attachments

Attachment A - Appendix A: Cannabis Taxation, Compliance, and Enforcement, 1st Quarter Report FY 2021/2022

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

Authored by:

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