



**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: March 9, 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:
Mona Miyasato
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SUBJECT: Update on Cannabis Compliance, Enforcement and Taxation – Second Quarter FY 2020-21

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Risk Management:

As to form: Yes

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; and
- 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 for the second quarter of fiscal year 2020-21 (from October 1, 2020 to December 31, 2021). This report includes data on the implementation of the County’s cannabis regulations, a reporting of second quarter tax receipts, land use permitting, business license activity, State licensing activity, enforcement, and objectives for the upcoming quarters.

In summary, during the second quarter, the County collected \$2.6 million in cannabis gross tax receipts paid by 56 operators. To date, 174 projects have been submitted for land use entitlements and 25 projects

received issued permits. Fifty-three operators submitted applications to obtain 90 business licenses, of which 20 have been issued to date. The County completed six enforcement actions against cannabis operators: 64 plants were eradicated, 145 pounds of cannabis product were confiscated totaling an estimated street value of \$300,000, and four arrests were made.

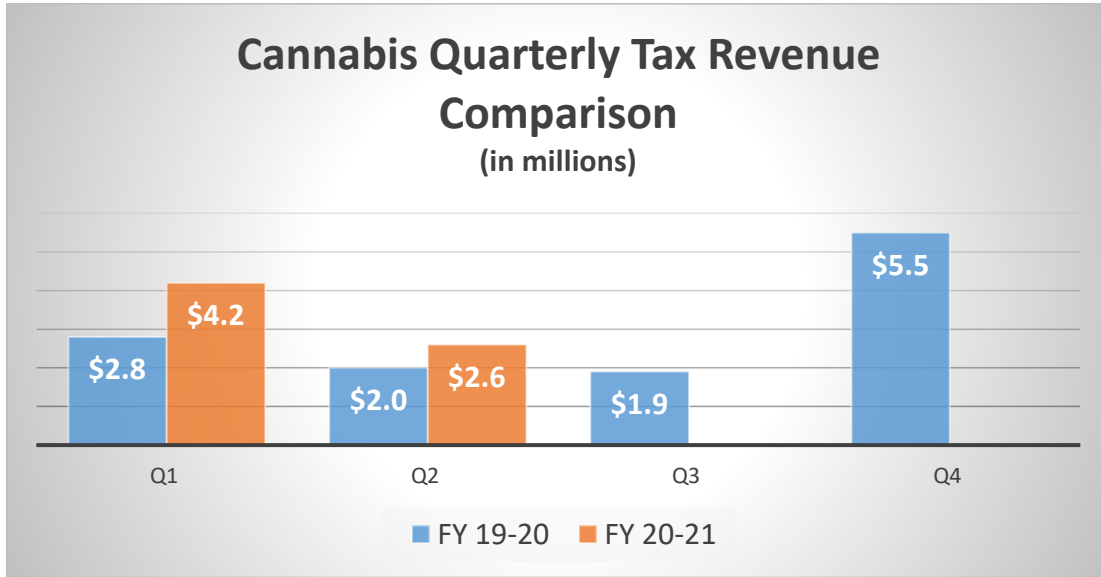
Background: In response to voter approval of Proposition 64 (Prop 64), the Adult Use of Marijuana Act (AUMA), which legalized the use of cannabis for adult-use and allowed for local control of related cannabis land uses, the Board established the County’s cannabis regulatory framework. Staff continues 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 reported on below in greater detail.

Cannabis Taxes

In the second quarter reporting period of fiscal year 2020-21 (taxes collected as of January 31, 2021 for the period October 1 to December 31, 2020), the Treasurer-Tax Collector collected \$2.6 million from cannabis operators holding State licenses. This represents a 30% increase in the tax amount collected from the same quarter of the last fiscal year. Based on the amount of revenue received through the second quarter, staff estimates that we could realize as much as \$14 million for the current fiscal year, an increase of \$3.4 million above the adopted level of \$10.6 million. The table and chart below provide a comparison of operator reporting statistics and tax revenue data for the first two quarters this fiscal year versus the same period last fiscal year.

	Tax Revenue Received	Operators Reporting Gross Receipts	Operators Reporting Zero Gross Receipts*	Operators that Did Not Report	Operator Totals
FY19-20 Q1	\$2.8M	34	34	22	90
FY19-20 Q2	\$2.0M	43	48	15	106
Q1 and Q2 Total	\$4.8M				
FY20-21 Q1	\$4.2M	54	38	29	121
FY20-21 Q2	\$2.6M	56	37	25	118
Q1 and Q2 Total	\$6.8M				

*The reasons that operators report zero gross receipts are varied. Those operators who operate both nurseries and cultivation sites transfer their plants internally within the operation. They are required to report the activity, but it does not constitute a sale. Thus, their nursery operations would report zero gross receipts. With respect to those operators who fail to file the required quarterly reports, the CEO’s office coordinates with the Treasurer-Tax Collector in taking appropriate action against those operators.



Cannabis Compliance: Land Use Entitlement Permits

The table below summarizes the number of cannabis-related project applications submitted to the Planning and Development Department (P&D) from the start of the cannabis program to the end of the second quarter for FY20-21. Previous reports quantified the total number of individual permit applications filed with P&D. For example, numerous projects can have multiple permit types, however they are processed together as one project. The table below is updated to reflect the total number of projects, regardless of the number of individual permits. In addition, the table provides clarity regarding the locational distribution of the projects within the County, actions taken to-date, appeals filed, and projects still under review.

To-date, P&D received 174 projects. Of the 174 projects, 30 were withdrawn or closed through the course of review, such as several projects that were closed due to the Board's July 2020 Ordinance Amendments, which excluded cannabis grows within Existing Developed Rural Neighborhoods. Of the remaining 144 projects, P&D has taken action on 41 projects, 25 projects received issued permits (several were appealed and have been resolved), one was denied and 10 are currently on appeal. The 41 actions taken reflect the initial decision-maker action and do not include *de novo* actions taken on appeal. The remaining 5 projects are awaiting issuance. A total of 29 appeal applications have been filed for 20 projects. Projects can be appealed after each decision-maker action or can be appealed by more than one aggrieved party. Of the 20 projects that were appealed, six projects have been resolved, four project appeals have been withdrawn and ten are currently going through the appeal process.

Q2 Numbers	
New Projects Submitted in Q2	
- Carp-Ag Overlay	0
- Other Coastal (Goleta)	0
- Inland	<u>6</u>
TOTAL	6
Projects Approved in Q2	
- Appealed	5
- Pending Issuance	2
TOTAL	7
Permits Issued in Q2	1

TOTALS (Year-to-Date, including Q2)	
PROJECTS SUBMITTED	
- Carp-Ag Overlay	40
- Other Coastal (Goleta)	2
- Inland	<u>132</u>
TOTAL	174
Projects Appealed	
Appeals Withdrawn	4
Appeals Resolved	6
Currently on Appeal	<u>10</u>
TOTAL	20
Summary Of Actions	
Projects Withdrawn/Closed (No Action)	30
Project Actions Taken	41
- Denied (Final Action)	1
- Issued (Final Action)	25*
- Pending Issuance	5**
- Currently on Appeal	10
Pending Action/Under Review	<u>103</u>
TOTAL	174

*Permits issued reflects the projects that have completed the land use entitlement process (including appeals) and no further action is needed.

** Permits pending issuance reflects projects that have completed the land use entitlement process but have outstanding items due prior to permit issuance or are still in appeal period.

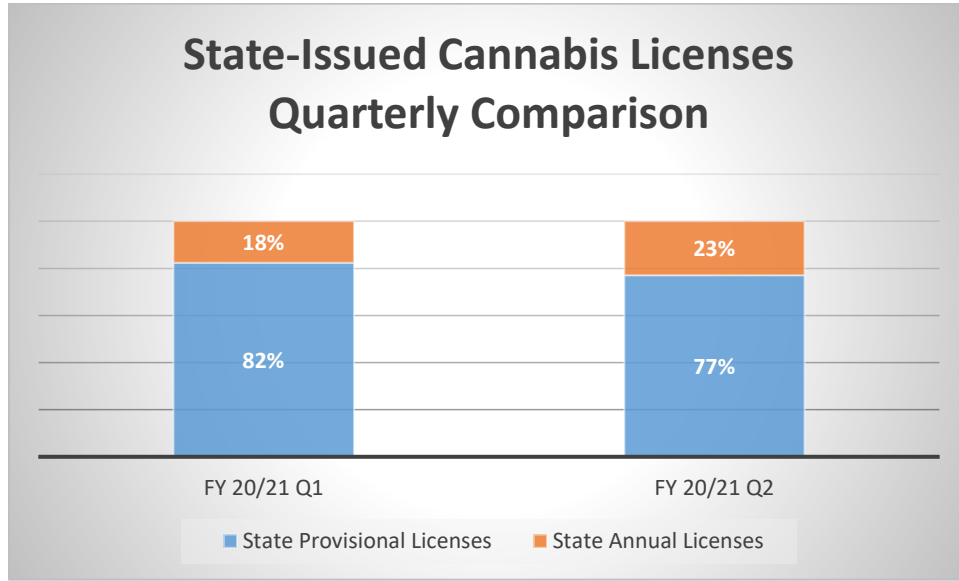
Acreage Caps

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.) The table below summarizes the amount of acreage that has been applied for and the amount of acreage that has been permitted to-date.

	Acreage Cap	Submitted Permit Acreage	Issued Permit Acreage
Carpinteria Agricultural Overlay	186	233.83	27.09
Remaining Unincorporated Area	1,575	2,850.51	354.84

Cannabis Compliance: State Provisional and Annual Licenses

Operators obtain State-issued licenses, either Provisional or Annual, from the California Department of Food & Agriculture's CalCannabis division (CDFA) and the Bureau of Cannabis Control (BCC). Currently, there are over 1,300 state issued licenses in the County. As operators complete the County's permitting and licensing processes, they become eligible to apply for State Annual licenses, which is the ultimate goal for all operators. The state annual license total increased five percent from last quarter. All State cannabis licenses, Provisional or Annual, are required to be sent to the County Executive Office for review before State approval and license issuance. Once issued, licenses are automatically renewed, unless the County formally objects.



Cannabis Compliance: County Business Licensing

Through the second quarter reporting period, 53 unique operators submitted applications to obtain 90 County cannabis business licenses. To date, 20 business licenses have been issued to 12 operators that have been deemed to be compliant with the County Code. A significant number of business license applications are pending due to: 1) applicants making changes to their permit application project description which impacts the documentation submitted as part of the business license application, and 2) the applicant has not yet been issued a land use entitlement. The latest Chapter 50 Ordinance amendment, which will become effective on March 11, 2021, requires business license applicants to submit an approved Premises Diagram with their license application. This change should alleviate some of the issues related to version control between the permit and license processes rendering the licensing process more efficient. The table below provides a detailed update of cannabis business license applications that have been submitted.

	Business Licenses Issued thru <u>FY20-21 Q1</u>	Business Licenses Issued thru <u>FY20-21 Q2</u>	Business Licenses Pending thru <u>FY20-21 Q2</u>	Total Applications Rec'd thru <u>FY20-21 Q2</u>
Cultivator	10	11	40	51
Nursery	7	8	20	28
Manufacturer	0	0	2	2
Retail Non-Storefront	1	1	2	3
Distributor	0	0	6	6
Totals	18	20	70	90

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In addition to the Business 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. Through the second quarter, the Business Licensing Team has received and are in the process of reviewing renewal applications for four licenses held by three operators.

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 November 2, 2020 and concluded on Monday, November 9, 2020. As of the authoring of this letter, the County Executive Office, with assistance from a third-party evaluator, HdL, has completed the review and scoring of the Business Operations Proposal component of each accepted application. The applicants that achieve an aggregate score of 85% or higher, will advance to the third phase of review, scoring, and forced ranking. A total of 20 applications progressed to Phase 3. The list posted on the County Cannabis website on February 26th, in addition to a survey link to provide community input for consideration in the Phase 3 process.

Phase 3 - Neighborhood Compatibility includes 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 internal selection committee composed of one representative each from the CEO, P&D, and Sheriff will review the Neighborhood Compatibility Plans in their entirety and complete a forced ranking in each of the six Community Plan Areas (CPAs).

Staff anticipates completion of the overall selection process by April 2021, at which time the highest-ranked applicant in each community plan area will be identified. The highest ranked applicant per plan area will be invited to start the process to obtain a land use entitlement/permit and a cannabis retail business license.

Cannabis Enforcement

In the second quarter reporting period, the Sheriff's cannabis enforcement team executed five search warrants and participated in one compliance operation with the Planning & Development Department on the County's Existing Developed Rural Neighborhood (EDRN) ban, which resulted in 100% voluntary compliance. In respect to enforcement operations, the team's focus has been on unlicensed delivery services throughout the county, as a majority of outdoor grows have been dormant due to the season. Of the five operations conducted, one involved an illegal high tech hydroponic indoor grow, with the product being sold through its delivery service. The team continues to evaluate its mission, with the goal of compliance and consumer safety.

	FY 2019-20 Q1 & Q2 Totals	FY20-21 Q1	FY20-21 Q2
# of Enforcement Actions	20	5	6
# Live Plants Confiscated	16,784	7,220	64
Live Plant Value \$\$	\$4.2M	\$3.6M	\$32K
Dried Product Confiscated (lbs.)	1,231	250	180
Dried Product Value \$\$	\$1.3M	\$250K	\$315K

With regard to business licensing and compliance, the team saw a continued uptick in site inspections and plan reviews in anticipation of more operators entering the business license process. The workload is drastically increasing, and the team continues to balance the responsibilities related to enforcement and licensing. The team is working to take a more active approach towards compliance checks with licensed operators, however time and resources remain a factor.

In addition to the Sheriff team's efforts, the Agricultural Commissioner's Office remains involved in carrying out compliance and enforcement activities. In the second quarter, the Agricultural Commissioner's Department completed an investigation regarding pesticide use violations, as well as Worker & Safety violations in the Carpinteria area. This investigation resulted in an Administrative action to the operator. Another investigation was completed regarding pesticide use violations at a cannabis operation in Los Alamos. This investigation resulted in a Compliance action involving education and outreach to the operator.

During the second quarter, Planning and Development Department opened eleven new cannabis enforcement cases (five in the South County and six in the North County) and two cannabis enforcement cases were closed in the South County. During this period the department responded to 105 cannabis complaints: six cannabis odor complaints in the North County; nine unpermitted cannabis cultivation complaints in the North County; two cannabis odor complaints in the Goleta area; three cannabis lighting complaints in the Carpinteria area; and 85 cannabis odor complaints in the Carpinteria area. 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 and coordinating with the Sheriff's Office and Agricultural Commissioner's Office staff.

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, the following six process improvement recommendations were identified:

- The CEO's office and P&D should work together to ensure the permitting software, Accela, and workflows are complementary.

Status: The CEO's office completed transition to the use of Accela for the business license process, and procured a consultant to improve system process, workflows, and ease of use. Full integration of P&D and CEO instance(s) of Accela is planned in the next 1-2 years.

- Expand the existing Subdivision Development Review Committee's function and membership to ensure all cannabis applications get a thorough review from all reviewing departments early in the process.

Status: Currently delayed due to COVID; the business license review team plans for implementation in Fiscal Year 21/22.

- Encourage simultaneous review of use permits and business licenses; and
- Improve the application review process for use permits.

Status: Recent Chapter 50 ordinance amendments clarify that applicants need an approved premise diagram and site security plan to improve concurrent processing; adjustments to review process are ongoing as additional streamlining opportunities are identified.

- Strengthen business license fee procedures

Status: The CEO's office completed initial conversations with affected departments and is working to propose revisions to the fee structure to ensure full cost recovery over the next 6-12 months.

- Modify the cannabis-based website (landing page) to provide a clearer path for applicants

Status: Cannabis website update will be addressed as part of the larger countywide website improvement project expected to be completed in late 2021.

Implementation of KPMG's recommendations is well underway as staff from the County Executive Office and Planning and Development continue to strategize on how to address the recommendations that are discrete to each department, as well as the shared objectives where collaboration between departments is necessary.

In addition, KPMG is reviewing the cannabis revenue process involving the CEO office and Treasurer-Tax Collector's office. That work is currently in process.

Emerging Issues

1. Continue to work to better align the land use permitting process and the business license process.
2. Where appropriate, review operator's compliance with County regulations to determine whether they should retain their County letter of authorization given in support of the state provisional license.

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3. Subject to final conclusions of the KPMG review of the cannabis revenue process, recommend the appropriate staffing in the Treasurer-Tax Collector's office to support an optimized revenue cycle, after conferring with Human Resources.

Objectives for the Upcoming Quarters

1. Complete the retail storefront license selection process.
2. Upgrade and enhance Accela with the assistance of a third-party consultant.
3. Receive all business license applications through the Accela public facing portal; including complete conversion of all pending legacy, paper-based applications into Accela.
4. Evaluate California Cannabis Authority (CCA) Membership as a means of receiving data analytics to assist in cannabis oversight, administration, and regulation.
5. Continue implementation of the KPMG recommendations relating to their assessment of the County's cannabis permitting and business licensing processes.
6. Review and propose Chapter 50 ordinance amendment to address business license application renewals, modifications, revisions, and acreage cap eligibility.
7. Continue the tax audit process utilizing consultant HdL.

Fiscal and Facilities Impacts:

Budgeted: Yes

Authored by:

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