



December 13, 2017

Board of Supervisors  
Santa Barbara County  
105 East Anapamu Street  
Santa Barbara, CA 93101

Honorable Chair Hartmann and Supervisors,

Re: Update on Issues Related to the Taxation Options, Ballot Measure & Potential Cannabis Regulations

Thank you for your considerations of the following comments on behalf of the Santa Barbara County Cannabis Business Council (CBC). The Business Council represents over 75 local existing and prospective cannabis operators.

### **TEMPORARY STATE LICENSE LOCAL AUTHORIZATION (Recommended Action G)**

The Board of Supervisors voted unanimously on January 19, 2016 to “add an exemption for medical marijuana cultivation locations already existing on January 19, 2016 if they are legal under CA State law; these would become legal nonconforming.”<sup>1</sup> We urge the Board to issue letters of local authorization to existing medical growers in compliance with Article X, which will allow them to apply for Temporary State Cultivation Licenses before January 1, 2018.

The Business Council is requesting a letter that “clearly indicates the local jurisdiction intended to grant permission to the applicant entity to conduct commercial cannabis activity at the premise.”<sup>2</sup> Our membership is very concerned that the State will *not* consider the proposed letter – Attachment C – an adequate local authorization needed to apply for a Temporary License. This is an important first step in the industry’s path to compliance. The State is clear that all businesses operating on January 1, 2018 must have a temporary license, or shut down.

Providing the industry with authorization to secure a Temporary License will achieve several of the County’s stated goals: expedite the industry’s compliance with the new regulations; minimize

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<sup>1</sup> Minutes Board of Supervisors Hearing January 19, 2016

<sup>2</sup> California Code of Regulations, Title 3. Food and Agriculture, Division 8. Cannabis Cultivation, Chapter 1. Cannabis Cultivation Program, Section 8100 Temporary Licenses

impacts to the community; maintain the County’s local authority; and draw a clear distinction between operators on the path to compliance, and those operating illegally.

If we cannot obtain a Temporary License, our membership will be exposed to serious enforcement risk. BPC 26050.1 (a) states that “After January 1, 2018, licensee engaged in commercial cannabis activity prior to obtaining a temporary license” is classified as a “serious” violation class. CDFA Regulations Section 8601(a)(1) Administrative Actions states that “all serious violations are subject to revocation.” Furthermore, section 8601(c) states that “a person(s) engaging in commercial cannabis activity without a license shall be subject civil penalties up to three times the amount of the license fee for each violation.” This could be \$350,000 for an averaged sized cultivation greenhouse operation.<sup>3</sup>

The Business Council’s legal counsel has provided a separate letter recommending minor edits to the proposed County letter to be used for temporary licensing. With these minor amendments, that better contextualize the status of Article X and the County’s efforts on a comprehensive cannabis ordinance, we believe the amended letter will be sufficient for attaining temporary State licenses. This will allow for existing operators that have been faithfully pursuing compliance to continue to maintain their compliance with State law.

### **TAXES (Recommended Action A)**

The Business Council supports the County’s efforts to recoup costs of implementation and regulations of the cannabis industry. However, we do **not** support the proposed recommendation, which will have a negative impact on newly-legalized businesses, hinder local businesses ability to compete and be successful long-term. As the County considers a local tax, we urge your Board to consider the following:

1. The State tax – which amounts to approximately 40% when considering current market prices;
2. New costs of compliance (testing, track & trace, security and odor control);
3. Price compression;
4. Impacts of a “layering” or “compounding” tax; and
5. Ability of the industry to compete with the black market.

The staff is recommending the following rates – gross receipts:

- 2% Nursery and Distribution
- 4% Cultivation
- 6% Manufacturing and Retail
- 8% Maximum Cap

We are most concerned about the proposed gross receipts rates for cultivation (4%) and manufacturing (6%). The proposed manufacturing tax is far more than other jurisdictions, including Sonoma County (3%), Mendocino County (2.5%), and the City of LA (1-2%). Local

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<sup>3</sup> CDFA Article 3, Section 8200 annual license fees, “small mixed light tier 1” annual license cultivation fee \$11,800 x 10 licenses per greenhouse = \$118,000 annual cultivation license fee per average sized greenhouse. 3 times the amount of the license fee for each violation is \$354,000.

growers need the ability to prepare their product for market on their farm – not unlike any other agricultural crop. Therefore, many cultivators will apply for a manufacturing license to extract and package their product. Under the proposed recommendation, a grower will be taxed 4% at cultivation, and taxed again at 6% for manufacturing activities with the same product.

Although 2% gross receipts tax for nursery and distribution licenses seem low, these are also problematic because many cultivators grow their own clones (which requires a nursery license) and will need a distribution license to transport their product. Therefore, local growers will be taxed at multiple points in the supply chain: 1) growing immature plants, 2) cultivating, 3) manufacturing and then 4) transporting/distributing their product. This compounding or “layering” tax is unsustainable and unworkable for our members.

Additionally, the County’s proposed tax is *in addition to the State tax, which amounts to 40% based on current market prices*. The State taxes \$9.25 an ounce for flower, \$2.75 an ounce for leaves, and 15% excise tax at retail sales. Furthermore, the recently released final implementing regulations included increased annual licensing fees for cultivation. For example, average sized greenhouse will be required to pay approximately \$100,000 *annually per farm* in licensing fees.<sup>4</sup>

In addition to the State tax and licensing fees, there are also new annual costs of compliance, per the State regulations:

1. Odor control - \$30,000-\$80,000 annually after initial install costs of \$100,000 – \$300,000<sup>5</sup>
2. Testing - \$100,000
3. Track and trace software - \$150,000

The industry has also experienced significant price compression in recent months. Therefore, the price per pound is expected to continue to decrease.

**Please do not make a final recommendation tomorrow. We are asking for an opportunity to engage in further dialogue with the County regarding a tax rate that will achieve the following objectives:**

- ✓ Balance the financial needs of the County and the viability of the industry
- ✓ Encourage the industry to operate legally and not in the black market
- ✓ Reduce impact of layering tax (taxation across license types)
- ✓ Provide certainty and clarity in the tax rate
- ✓ Collect sufficient revenue to address impacts of the industry

Many other local jurisdictions are considering phase-ins on tax and other creative approaches that we think would be worth further discussion. It’s also important to understand what fees the County anticipates for permitting and licensing. It is the objective of the Business Council to

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<sup>4</sup> CDFA Article 3, Section 8200 annual license fees, “small mixed light tier 1” annual license cultivation fee \$11,800 x 10 licenses per greenhouse = \$118,000 annual cultivation license fee per average sized greenhouse.

<sup>5</sup> Depends on the size of the farm

work on a tax proposal with the County that we can support and advocate for with voters next year.

### **LAND USE (Recommended Action I)**

The Business Council is highly concerned that Page 20 of the Board Letter states that the Board reached “conceptual consensus” during the September 19, 2017 hearing on the following items:

1. Indoor and mixed light on Ag-1 zoned parcels larger than 7 acres with odor control and setbacks and possibly requiring a CUP;
2. Cultivator, distributor and manufacturer licenses on Ag-11 zoned parcels larger than 40 acres; and
3. Manufacturer, testing and retail sales licenses on M-1, M-2 and C-3 and possibly C-1, and C-2.

If the Board supported the above mentioned conceptual licensing and permitting options, it would:

1. Require many existing medical cultivators to shut down or significantly reduce their operations;
2. Preclude local farmers from being able to prepare their product for market (“manufacture”) in pre-existing infrastructure on their farms, near the supply/cultivation, on Ag-1 and Ag-II;
3. Preclude local farmers from being able to transport (“distribute”) their product on Ag-1 and Ag-II;

**The industry does not support ANY minimum parcel size for cultivation, manufacturing or distribution on Ag-1 or Ag-II. Cannabis is agriculture and growers should be permitted to cultivate, extract, process and transport their product on their property, not unlike any other agricultural product.**

***The Business Council supports the original recommendation from staff and the Cannabis Ad Hoc Committee presented to the Board on September 19, 2017, and the proposed project as analyzed in the EIR, that would allow cultivation, manufacturing and distribution on Ag-I and Ag-II zones. (See Attachment A.). The Business Council sees no reason to deviate from the proposed project being analyzed in the EIR and any changes in direction from the proposed project should be informed by the EIR process.***

Additionally, the Business Council does **not** support requiring a CUP or MCUP for cultivation that occurs in pre-existing infrastructure. When using pre-existing infrastructure the permitting requirements should be a Zoning Clearance or LUP in cases where the operator has essentially changed crops.

Thank you for your consideration of the above-mentioned comments on behalf of our members. We look forward to continuing to work collaboratively with the County,

Sincerely,

Mollie Culver on behalf of:

Santa Barbara County Business Council  
Board of Directions

# Attachment A

Board of Supervisors  
Hearing on September 19, 2017  
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Potential Zones for Commercial Cannabis Activities

Use	Zones															
	AG-I	AG-II	All Res Zones	CN	C-1	C-2	C-3	C-S	CH	CV	SC	PI	M-RP	M-1	M-2	M-CR
<b>Cultivation License Types</b>																
Types 1-3 (outdoor, indoor, mixed light) medical and non-medical	X	X	--	--	--	--	X*	--	--	--	--	--	X*	X*	X*	--
Type 4 - Nursery	X	X	--	--	--	--	X*	--	--	--	--	--	X*	X*	X*	--
Type 5 - Large Cultivation (not allowed until 2023)	X	X	--	--	--	--	X*	--	--	--	--	--	X*	X*	X*	--
<b>Manufacturing License Types</b>																
Type 6 - Non-Volatile Extraction	X	X	--	--	X	X	X	X	--	--	X	--	X	X	X	--
Type 7 - Volatile Extraction	X <sup>1</sup>	X	--	--	--	--	--	--	--	--	--	--	--	X	X	--
Type 8 - Testing Lab	--	--	--	--	--	--	X	--	--	--	--	X	X	X	X	--
<b>Commercial Sales</b>																
Type 10 - Retailer (retail sale and delivery)	--	--	--	--	X	X	X	X	--	--	X	--	--	X	--	--
Type 11 - Distributor	X	X	--	--	--	--	X	--	--	--	--	--	X	X	X	--
Type 12 - Micro-business	--	X <sup>2</sup>	--	--	X	X	X	X	--	--	--	--	--	X <sup>3</sup>	X <sup>3</sup>	--

-- = Prohibited; X = Permitted (type of entitlement required, yet to be determined); X\* = Indoor only

<sup>1</sup>Special development standards would likely be required to address proximity to homes, types of volatile extraction, etc.

<sup>2</sup>Type 12 in AG-II zones would only consist of delivery retail--not store front type retail.

Use	Mixed Use Zones				
	MU	CM-LA	NTS	OT-R/LC	OT-R/GC
<b>Cultivation License Types</b>					
Types 1-3 (outdoor, indoor, mixed light) medical and non-medical	--	--	--	--	--
Type 4 - Nursery	--	--	--	--	--
Type 5 - Large Cultivation (not allowed until 2023)	--	--	--	--	--
<b>Manufacturing License Types</b>					
Type 6 - Non-Volatile Extraction	X	X	--	X	X
Type 7 - Volatile Extraction	--	--	--	--	--
Type 8 - Testing Lab			--		
<b>Commercial Sales</b>					
Type 10 - Retailer (retail sale and delivery)	X	X	--	X	X
Type 11 - Distributor	--	--	--	--	--
Type 12 - Micro-business	--	--	--	--	--

Zones	
AG-1	Agriculture I
AG-2	Agriculture II
CN	Neighborhood Commercial
C-1	Limited Commercial
C-2	Retail Commercial
C-3	General Commercial
C-S	Service Commercial
CH	Highway Commercial
CV	Visitor Serving Commercial
SC	Shopping Center
PI	Public and Institutional
M-RP	Industrial Research Park
M-1	Light Industry
M-2	General Industry
MU	Mixed Use
CM-LA	Community Mixed Use Los Alamos
NTS	Naples Townsite
OT-R/LC	Old Town - Residential/Light Commercial
OT-R/GC	Old Town - Residential / General Commercial

**Table 2-5. Allowed Cannabis License Types by Zone District**

Land Use and Development Zones	Permitted Cannabis License Types								
	Cannabis Cultivation - Limited (Type 1 - 3)	Nursery (Type 4)	Cannabis Cultivation - Unlimited (Type 5) <sup>3</sup>	Non-volatile Manufacturing (Type 6)	Volatile Manufacturing (Type 7)	Testing (Type 8)	Retail (Type 10)	Distribution (Type 11)	Microbusiness (Type 12)
AG-I	P	P	P	P	CUP	--	--	MCUP	--
AG-II	P	P	P	P	CUP	--	--	P	CUP <sup>1</sup>
C-1	--	--	--	P	--	--	P	--	CUP
C-2	--	--	--	P	--	--	P	--	CUP
C-3	P <sup>2</sup>	P <sup>2</sup>	P <sup>2</sup>	P	--	P	P	P	CUP
CS	--	--	--	P	--	--	P	--	CUP
SC	--	--	--	P	--	--	P	--	--
PI	--	--	--	--	--	P	--	--	--
M-RP	P <sup>2</sup>	P <sup>2</sup>	P <sup>2</sup>	P	--	P	--	P	--
M-1	P <sup>2</sup>	P <sup>2</sup>	P <sup>2</sup>	P	P	P	P	P	CUP
M-2	P <sup>2</sup>	P <sup>2</sup>	P <sup>2</sup>	P	P	P	--	P	CUP
MU	--	--	--	P	--	--	P	--	--
CM-LA	--	--	--	P	--	--	P	--	--
OT-R/LC	--	--	--	P	--	--	P	--	--
OT-R/GC	--	--	--	P	--	--	P	--	--
Eligible Acres in County	671,023	671,023	671,023	671,718	670,875	2,279	890	671,023	629,994

P = Land Use Permit; CUP = Conditional Use Permit; MCUP = Minor Conditional Use Permit; -- = Use not allowed

<sup>1</sup>Only allows delivery retail and not store front type retail

<sup>2</sup>Indoor only

<sup>3</sup>Type 5 licenses will not be issued prior to 2023

Notes: Where a zone district is not included in this table, the Project would not allow for any cannabis activities. These districts include all Residential [except under certain local and state conditions], Mountainous Areas, CH, C-V, CN, NTS, M-CD, M-CR, PU, REC, RES, and TC zone districts.