

# Update on Issues Related to Taxation Options, Ballot Measure and Potential Cannabis Regulations

Santa Barbara County  
Board of Supervisors  
December 14, 2017



# Proposed Road Map for the Day

- Go through entire presentation
- Recap presentation on economic and tax revenue analysis, taxation structure, ballot measure and staffing options (Recommended Actions A, B & D)
  - Public comment
  - Board deliberations & possible motions to receive and possible direction on the Recommended Actions listed above
- Recap presentation on responding to temporary & annual State licenses
  - Public comment
  - Board deliberation and possible motion to:
    - Determine (Recommended Action J),
    - Receive (Recommended Actions C, E and I)
    - Possible direction on the state license material presented (Recommended Actions G and H)

# Recommended Actions Today

- Receive a report that analyzes economic and tax revenue options
- Provide direction to staff to develop a ballot measure for cannabis taxation
- Receive updates on:
  - Cannabis banking related issues
  - And provide direction to staff on options regarding staffing and methods for implementing compliance and enforcement with local cannabis regulations
  - Health impacts of cannabis consumption
  - State emergency regulations published on November 16th
- Pursuant to Board direction on November 14, 2017 regarding **Temporary State Licenses**
  - Take no action and thereby do not authorize any response to the State for Temporary State License requests; OR
  - Direct staff to provide a letter as the County's response to the State for Temporary State License requests for medical cannabis cultivation; OR
  - Other direction to staff as appropriate;
- Receive an update regarding processing applications for Annual (non-temporary) State Licenses during the "transition period" for Coastal and Inland areas and direct staff to include this process when a final ordinance returns for Board consideration;
- Receive an update on the conceptual cannabis licensing and land use permitting options discussions conducted by the Board on September 19, 2017
- Determine pursuant to the CEQA Guidelines that the above actions are not a project subject to CEQA review

Receive a report on . . .

# ECONOMIC AND TAX REVENUE ANALYSIS AND TAXATION STRUCTURE



# The Developing Cannabis Industry in California

## Recent Changes in Cannabis Regulation

- **Proposition 64 passed November 8<sup>th</sup>, 2016**
  - Adult Use of Marijuana Act
- **SB 94 approved June 27<sup>th</sup>, 2017**
  - Combines medical and adult-use cannabis regulations
- **AB 133 approved September 16<sup>th</sup>, 2017**
  - Allows for multiple licenses on a single premises
- **Emergency regulations released November 16<sup>th</sup>, 2017**
  - Detailed regulations and fees for three State licensing agencies

## California's Cannabis Market

**Total Statewide Cannabis Production:**

**13.5 million pounds**

(CDFA Estimate)

**Total Statewide Cannabis Consumption**

**2.5 million pounds**

(CDFA Estimate)

**1.6 million pounds**

(California Cannabis Opportunity Report)

# California Department of Food and Agriculture Survey

August 2016

**Anticipated Number of  
Cultivation Licenses Statewide  
14,277**

**Potential Cannabis Production  
30 to 40 million pounds**



**Anticipated Number of Cultivation Licenses  
for Santa Barbara County**

**August 2016 CDFA Survey  
200**

**County Cannabis Registry  
1,365**

**Potential Cannabis Production  
3.7 million pounds**

## Take-Aways:

- Current cannabis cultivation in California exceeds the size of the legal market by 5 to 8 times
- Statewide Interest in legal cultivation licenses exceeds the size of the legal market by 12 to 16 times
- California's entire market could potentially be supplied by as few as 200 Type 3A Medium Indoor grows
- Interest in cultivation licenses in Santa Barbara far exceeds the capacity of the entire State market

# Cultivation Tax

Cultivation Tax Rates - 10% of County Registry											
License Type	# of Licenses	Cycles /Year	Tax per s/f	% Tax Rate	Total Annual Tax	Tax per s/f	% Tax Rate	Total Annual Tax	Tax per s/f	% Tax Rate	Total Annual Tax
Type 1	11	1	\$2.00	2.00%	\$79,500	\$4.00	4.00%	\$159,000	\$6.00	6.00%	\$238,500
Type 1A	9	4	\$8.00	2.00%	\$261,000	\$16.00	4.00%	\$522,000	\$24.00	6.00%	\$783,000
Type 1B	11	3	\$6.00	2.00%	\$238,500	\$12.00	4.00%	\$477,000	\$18.00	6.00%	\$715,500
Type 2	12	1	\$2.00	2.00%	\$181,500	\$4.00	4.00%	\$363,000	\$6.00	6.00%	\$544,500
Type 2A	9	4	\$8.00	2.00%	\$546,000	\$16.00	4.00%	\$1,092,000	\$24.00	6.00%	\$1,638,000
Type 2B	17	3	\$6.00	2.00%	\$756,000	\$12.00	4.00%	\$1,512,000	\$18.00	6.00%	\$2,268,000
Type 3	28	1	\$2.00	2.00%	\$1,849,122	\$4.00	4.00%	\$3,698,244	\$6.00	6.00%	\$5,547,366
Type 3A	9	4	\$8.00	2.00%	\$1,201,200	\$16.00	4.00%	\$2,402,400	\$24.00	6.00%	\$3,603,600
Type 3B	23	3	\$6.00	2.00%	\$2,306,700	\$12.00	4.00%	\$4,613,400	\$18.00	6.00%	\$6,920,100
Type 4	28	-	\$1.00		\$210,000	\$2.00		\$420,000	\$3.00		\$630,000
Totals	157				\$7,629,522			\$15,259,044			\$22,888,566

# Manufacturing and Retail Taxes

Commercial Manufacturers						
Type 6/7/N/P Manufacturer	# of Licenses	Avg Gross Receipts	Total Gross Receipts	Revenue @ 2.0% Tax Rate	Revenue @ 4.0% Tax Rate	Revenue @ 6.0% Tax Rate
Manufacturers	5	\$2,500,000	\$12,500,000	\$250,000	\$500,000	\$750,000
Manufacturers	10	\$2,500,000	\$25,000,000	\$500,000	\$1,000,000	\$1,500,000
Manufacturers	15	\$2,500,000	\$37,500,000	\$750,000	\$1,500,000	\$2,250,000
Manufacturers	20	\$2,500,000	\$50,000,000	\$1,000,000	\$2,000,000	\$3,000,000

Cannabis Dispensaries/Retailers						
License Type	# of Licenses	Avg Gross Receipts	Total Gross Receipts	Revenue @ 2.0% Tax Rate	Revenue @ 4.0% Tax Rate	Revenue @ 6.0% Tax Rate
Retailers	3	\$2,500,000	\$7,500,000	\$150,000	\$300,000	\$450,000
Retailers	6	\$2,500,000	\$15,000,000	\$300,000	\$600,000	\$900,000
Retailers	9	\$2,500,000	\$22,500,000	\$450,000	\$900,000	\$1,350,000
Retailers	12	\$2,500,000	\$30,000,000	\$600,000	\$1,200,000	\$1,800,000

## Recommendations:

- Recent changes to vertical integration make gross receipts taxes preferable to other mechanisms
- Local taxes should be set at a level that keeps the cumulative State and local taxes at or around 30%
- A tax rate of 2% could generate around \$8 million
- A tax rate of 4% could generate around \$16 million
- A tax rate of 6% could generate around \$24 million

Provide direction to staff necessary to develop a . . .

# POSSIBLE CANNABIS TAX BALLOT MEASURE

# County Taxation Options

- Taxation Option 1:
  - Excise tax would be based on the gross receipts of each of the cannabis businesses, as follows:
    - Distributors and Nurseries - 2% on gross receipt
    - Outdoor, Indoor cultivators & Mixed Light cultivators - 4% on gross receipts
    - Manufacturers and Retailers - 6% on gross receipt
- Taxation Option 2:
  - Adjust any of the recommended tax rates with a total rate across the supply chain of around 10%
- Taxation Option 3:
  - Opt to start at lower rates, such as Option 1, which the Board could increase at its discretion to a “not to exceed” rate of 8%.
- Other Options:
  - Consider other tax structures, such as per unit taxes

# Tax Measure Options Worksheet

June 2018 or  
November 2018?

## Tax Basis & Rate

- Square Foot?
- Ounce?
- % Gross Receipts?

## Tax Terms & Conditions

- “Not to Exceed?”
- CPI for area or weight tax \$?
- Establish rates by license type?
- Sunset?
- Frequency of collection?
- Direct Auditor preparation of fiscal analysis?

## Tax Type

- Medical & Nonmedical the same or different?
- County wide or Unincorporated?
- General?
- Special?
- Special options?

Condition  
License/Permits only  
with approval of tax?



# Cannabis Banking Issues

- Roughly 368 United States financial institutions, comprised of both credit unions, commercial banks and traditional payment processors, are currently serving cannabis operators
- “Cole Memo” offers guidance to federal prosecutors regarding cannabis enforcement priorities
- Financial Crimes Enforcement Network (FinCEN) published a written guidance that clarifies customer due diligence expectations and reporting requirements for financial institutions seeking to provide services to cannabis businesses
- State Treasurer John Chiang has convened the Cannabis Banking Working Group (CBWG) and submitted a report with these steps:
  - Implement a safer, to handle the payment of taxes and fees in cash
  - Develop a data portal of compliance and regulatory data
  - Conduct feasibility study of a public bank or other state-backed financial institution
  - Establish a multistate consortium to pursue changes to federal law to remove the barriers to cannabis banking

Receive updates and possibly provide direction . . .

## STAFFING OPTIONS, HEALTH IMPACTS & STATE EMERGENCY REGULATIONS

# License, Permit, Compliance Staffing

- Here is a brief summary of what a local cannabis business licensing program could entail:
  - License applications would be available from and collected by the Treasurer-Tax Collector and reviewed by a combination of staff from Sheriff, Agricultural Commissioner, Environmental Health and Fire;
  - Effective for one year and would need to be renewed; non-transferable; define the specific cannabis premise for each license; require fingerprinting and background check of owner; require a site inspection; and require the payment of all state and local taxes

# License, Permit, Compliance Staffing

Classification	Budget Total for FY2017-18		Budget Total for FY2018-19		Budget Total for FY2019-20	
	# of FTEs	Salary & Benefits	# of FTEs	Salary & Benefits	# of FTEs	Salary & Benefits
Supervising Planner – Code Compliance	0.50	\$ 173,000	0.50	\$ 178,190	0.50	\$ 183,536
Planner III – Code Compliance	1.00	\$ 160,000	1.00	\$ 164,800	1.00	\$ 169,744
Planner I/II – Code Compliance	1.00	\$ 140,600	1.00	\$ 144,818	1.00	\$ 149,163
Hazmat Specialist I/II	1.00	\$ 125,000	1.00	\$ 125,000	1.00	\$ 125,000
Fire Engineer/ Inspector	2.00	\$ 196,000	2.00	\$ 196,000	2.00	\$ 196,000
Ag Bio/W&M Inspector			2.00	\$ 192,241		
Ag Bio/W &M Supervisor			1.00	\$ 111,640		
Ag Bio/W&M Inspector					3.00	\$ 288,360
Sheriff's Deputy - Special Duty	2.00	\$ 377,206	4.00	\$ 754,412	4.00	\$ 754,412
Sheriff's Sergeant	0.25	\$ 54,785	1.00	\$ 219,140	1.00	\$ 219,140
Administrative Office Professional II	0.50	\$ 46,084	2.00	\$ 184,336	2.00	\$ 184,336
Sheriff's Deputy - Special Duty			2.00	\$ 377,206	2.00	\$ 377,206
County Counsel staffing	1.00	\$ 171,000	1.00	\$ 171,000	1.00	\$ 171,000
Treasurer-Tax Collector staffing		TBD		TBD		TBD
<b>Total</b>	<b>7.75</b>	<b>\$1,099,675</b>	<b>17.00</b>	<b>\$ 2,469,593</b>	<b>17.00</b>	<b>\$ 2,463,361</b>

# Enforcement Staffing

- Funding for enforcement activities to reduce the unregulated and illicit cannabis market is largely anticipated to need to come from general county revenues
- If a cannabis tax is not placed on the ballot or is defeated by voters, the cost of illegal cannabis enforcement would be competing for general revenues used for many other county programs

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Planner I/II	1.00	\$ 140,600	1.00	\$ 144,818	1.00	\$ 149,163
Ag Bio/W&M Inspector			1.00	\$ 96,120		
Ag Bio/W&M Inspector					1.00	\$ 6,120
AG Bio/W&M Supervisor			1.00			\$ 111,640
Health Specialist	1.00	\$ 120,030	1.00	\$ 120,030	1.00	\$ 120,030
Sheriff's Deputy - Special Duty	1.50	\$ 282,905	3.00	\$ 565,809	3.00	\$ 565,809
County Counsel staffing	1.00	\$ 171,000	1.00	\$ 171,000	1.00	\$ 171,000
Treasurer-Tax Collector staffing		TBD		TBD		TBD
<b>Total</b>	<b>6.00</b>	<b>\$ 1,047,535</b>	<b>9.50</b>	<b>\$ 1,440,767</b>	<b>8.50</b>	<b>\$ 1,567,042</b>

# Health Impacts of Cannabis

- *Preparing for Recreational Cannabis workshop* in Buellton, Dr. Larry Wolk, Executive Director and Chief Medical Officer of the Colorado Department of Public Health and Environment and Dr. Cobb Scott, PhD, University of Pennsylvania Department of Psychiatry noted the need for data on the effects of cannabis use
- Based on two years of data in Colorado, significantly more high school youth who use cannabis prefer smoking it; tourists are the major contributor to the increase in ED visits; prevention messages need to be focused and relevant; alcohol continues to be responsible for more illness & injury than any other drug, including cannabis
- Public Health Department supports a measured approach to local adult-use cannabis policies and implementing a robust public education campaign

# State Emergency Regulations

- There is now effectively no limit on the number of small cultivation licenses one company could aggregate with their one (still limited until 2023) Type 3, 3a or 3b license. There are restrictions on excessive concentrations of retail and microbusinesses
- The premise of each cultivation license needs to be clearly defined with their application with its specific location on an illustration of the legal parcel
- A new “Delivery” license (Type 9) has been added to specifically allow for the regulation of providing cannabis or cannabis products to consumers
- Edible cannabis products will be limited to 100 milligrams of THC per package and other products, such as lotions and tinctures, are limited to 2,000 milligrams of THC per package. This will mean that some very potent edibles will be illegal.
- Fees and fines are established by the three State licensing authorities.
- Define “commercial cannabis activity” as including “the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for this Chapter”
- By statute, all licensed cannabis operators will be required to sell their products exclusively to other licensed operators in either the medical or adult use supply chains. However, until July 1, 2018, medical and adult use licensed operators can sell to either the medical or adult use supply chains

Receive information and possibly provide direction to staff regarding . . .

## STATE TEMPORARY LICENSES



# Temporary State License Letters

- On November 14, 2017, the Board directed staff to develop a response to the State for applications for State Temporary Licenses and return in December for final approval
- On November 16, 2017, the state published their regulations; On “other authorization, the regs state:  
“... “other authorizations” shall include, at a minimum, a written statement or reference that clearly indicates the local jurisdictions intended to grant permission to the applicant entity to conduct commercial cannabis activities at the premises.”
- Medical cannabis operators that believe they meet the exemption terms in Article X of Chapter 35 of the County code could submit a request for a letter from the CEO
- They would be requested to furnish the following:
  - Sworn affidavit attesting to qualification for the medical cannabis cultivation exemption in Article X,
  - Details and descriptions of who, where and when medical cannabis cultivation began
  - Proof of property owner approval for cannabis cultivation at their cultivation site, and
  - Documentation on the status of any odor control system and security plan

Board actions may include:

- Taking no action
- Direct staff to provide a letter

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## STATE ANNUAL LICENSES DURING THE TRANSITION PERIOD

# Transition Period Responses

- On November 14, 2017, the Board of Supervisors provided conceptual direction to staff about responding to State licensing authorities for cannabis operations seeking annual licenses (non-temporary)
  - **For Inland and Coastal Areas:** Between January 1, 2018 and prior any possible Board adopted business licensing and land use permitting ordinances, staff will respond to the State within 60 days that all applicants that are not legal non-conforming medical cannabis cultivators pursuant to This will result in a denial of their State application.
  - **For Coastal Areas:** Between the possible Board's adoption of business licensing or land use permitting (see approximate timing above) and then the operational date of an ordinance (e.g. Coastal Commission certification, tax measure approval or "hoop structure" ordinance), if an operator would be in compliance later, staff would not issue a local license or permit and remain silent with the State licensing authorities, if the applicant:
    - Completes a local business license and land use permitting application,
    - Application is determined to be complete, and
    - Actively participates in a consultation process with business licensing and land use permitting staff to assess ongoing compliance with the effective, but not operative, local ordinances;
- Failure to participate in the consultation process will result in notification of non-compliance to the State.
- If the cannabis operator would not be in compliance, even later, the County would notify the State that they are not in compliance.
- Staff recommends you receive this update, confirm the Board's direction, and direct staff to implement this process

# Future Public Hearings

- January 3, 2018 - Montecito Planning Commission hearing; recommendations to the County Planning Commission and Board of Supervisors regarding Article II and Montecito Land Use and Development Code amendments
- January 10, 2018 - County Planning Commission hearing; recommendation to the Board of Supervisors regarding Article II and Land Use and Development Code amendments
- January 30, 2018 – Ballot Measure/Tax Ordinance for Board consideration for June 2018 election or later for November 2018
- February 6, 2018: Board of Supervisors hearing
- March 2018 -June 2019: Coastal Commission certification and Board hearing

# Recommended Actions Today

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  - And provide direction to staff on options regarding staffing and methods for implementing compliance and enforcement with local cannabis regulations
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