



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

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: November 13, 2018
Placement: Departmental
Estimated Time: 45 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Mona Miyasato, County Executive Officer
Director(s) Sheriff Bill Brown, Sheriff's Department
 Dianne Black, Planning and Development Department
 Harry Hagen, Treasurer-Tax Collector's Department

Contact Info: Dennis Bozanich, Deputy County Executive Officer

SUBJECT: **Update on Cannabis Compliance, Enforcement and Taxation – First 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 against unlicensed operators and State licensing;
- b) Adopt a resolution authorizing the Sheriff's Office to access state and federal level criminal history checks for cannabis business license applicants as required by Section 50-11 of the Cannabis Business License Ordinance; and
- c) Find that the proposed actions are an 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:

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.

This item provides the Board and public an update on the first quarter (to October 31, 2018) of implementation of the County's cannabis regulations including land use permitting, business license activity, cannabis enforcement, first quarter tax receipts, and State licensing activity, and goals for the next quarters.

In short, in this first quarter, the County completed nine enforcement actions against illegal cultivators. To date, 417,771 plants were eradicated with a crop value of \$88.9 million. Sixty operators have sought permits or planner consultations, with over half of those being in the Coastal Zone. State data shows that 96 operators hold active State temporary licenses in Santa Barbara County that would equate to approximately 196 acres, which is less than the 315 acres reported three months ago. Few business license applications have been received, as operators must first get land use permit approval. First quarter gross receipts tax is \$1.8 million, with 41 operators reporting that they have not yet had taxable gross receipts.

Background:

Cannabis Compliance: Land Use Planning Permits

As of October 21, 2018, approximately sixty cannabis operators have submitted permit or planner consultation applications to the Planning & Development Department. The status of the applications:

Land Use Permitting Status	Number
Permits Issued – One indoor nursery in Goleta and one outdoor cultivation operation in Los Alamos	2
Planner Consult Applications	36
Conditional Use Permit Applications	5
Land Use Permit Applications	11
Development Plan Applications	2
Other	1
Total	57

Two of 13 Land Use Permit applications have been issued. One was for an indoor cannabis nursery in Goleta and the other an open-field cultivation site in Los Alamos. 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.

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

A total of 36 Planner Consultation applications have been received and completed. Twenty-three of these Planner Consultations were reviewed for cannabis operations in the Carpinteria area of the coastal zone, in advance of the ability of operators to submit applications for Coastal Development Permits or

Development Plans while waiting for ordinance certification from the Coastal Commission. The County anticipates numerous permit submittals when Article II Coastal Zoning regulations are in effect on November 8, 2018. While some of these applications appear to be straightforward, others will need to address previously identified zoning violations for unpermitted construction or expansion of greenhouses, packing houses, storage containers and employee dwellings.

Cannabis Compliance: Business Licensing

As of October 21, 2018, the County has provided Cannabis Business Licensing applications to the two permitted operations. All are in process with the operators, and we expect to receive our first completed application in late October.

The County's new online permit application portal will be operational by the end of the year. 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 Board adopted ordinance adding Chapter 50, Licensing Commercial Cannabis Operations, requires operators to submit most owners, managers and employees to State and federal criminal background checks. See Chapter 50-11.b. This requirement requires a resolution from the Board to authorize access to those records. Staff has attached the Resolution (Attachment A) for consideration and possible action.

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, 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 12.5 Full Time Equivalents (FTEs) needed for cannabis land use permitting and business licensing. All positions have assigned personnel through recruitment and selection or the reassignment of existing staff and hiring others to cover their prior duties. A recent request has been made to add one Investigator position to the District Attorney's Department to conduct follow up investigations for either criminal or civil prosecution. Planning and Development has active recruitments for a Supervising Planner and Planner III.

Cannabis Enforcement

Coordination of enforcement actions has been led by the Sheriff's Office. Staff from 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. The Enforcement Team meets every other week to coordinate activities. Frequently, enforcement actions begin as the result of complaints that come from members of the public through the cannabis web portal's complaint form. Enforcement of illegal cultivation without state licenses or historic cultivation has been the highest priority.

As of October 31, 2018, Sheriff staff has initiated ten enforcement actions against unlicensed cannabis operators. This has led to one arrest and the destruction of over 417,700 plants worth an estimated \$88.9 million in the unlicensed market.

Planning and Development has opened 30 enforcement cases. Nine Notices of Violation to address cannabis cultivation violations and cannabis-related zoning and building code violations have been sent. One Notice of Violation resulted in the removal of approximately 8,000 plants on a property near Buellton

and 400,000 plants near Santa Maria. Most violations are the result of operators not having valid state licenses to cultivate cannabis, 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.

While many complaints have been received regarding odor in the Carpinteria area, the requirements for odor abatement in the AG-I zone districts of the coastal zone have not been in effect. Existing legal nonconforming operators are allowed to continue to cultivate without odor abatement until their amortization period expires (June 2019) or until they commence operations pursuant to an approved County permit that will require 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 such that it cannot be detected beyond the site boundaries.

Complaints regarding night lighting are also difficult to address until Planning and Development staff can review permit applications and ensure that features are in place in greenhouses and are effective in mitigating lighting impacts. It should also be noted that night lighting is used in other crops in the Carpinteria area, not just for cannabis, and that these non-cannabis operations need to be monitored through Planning and Development's existing enforcement program.

Cannabis Enforcement Staffing

The Board approved Final FY2018-19 Annual Budget included 9.5 Full Time Equivalents (FTEs) needed for cannabis enforcement. All positions have assigned personnel through recruitment and selection or the reassignment of existing staff and hiring others to cover their prior duties.

A recent request has been made to add an Investigator position to the District Attorney's Department to conduct follow up investigations for criminal or civil prosecution. Early efforts to address the issues arising from the legalization of cannabis production have shown that there will be a significant number of cases involving environmental and land use issues. These issues are often best addressed using civil remedies, as many of the issues do not have a corresponding criminal violation attached to them. Environmental and other civil remedies will be addressed by the District Attorney's Civil/Environmental Unit. These cases are outside of the area of expertise of traditional law enforcement officers. Environmental and other civil prosecutions often require extensive follow-up investigation, with the investigator working closely with the environmental prosecutor on often-complex regulatory schemes. Some of the issues that have already arisen include banned pesticide usage and streambed alterations, which are not the type of issues typically handled by a law enforcement officer working purely criminal cases.

In order to ensure the success of criminal and civil cannabis enforcement, it is critical that the District Attorney's Bureau of Investigations be able to support fully prosecution efforts. A dedicated Cannabis Enforcement Investigator would enable the District Attorney's Office to prosecute cannabis-related civil, criminal and environmental cases without diverting core resources and support from all other public safety concerns.

Outreach and Education

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

June	<ul style="list-style-type: none"> • Workshop for cannabis industry in Goleta (Dan Klemann)
July	<ul style="list-style-type: none"> • Public meeting at Supervisor Adam's Office in Lompoc for Cebada Canyon residents
September	<ul style="list-style-type: none"> • CEO and P&D Workshop in BoS Santa Barbara Hearing Room (broadcast to Santa Maria) • State Water Boards Workshop in Carpinteria • Presentation to Carpinteria-Summerland Fire Protection District
October	<ul style="list-style-type: none"> • Public presentation to Tepusquet and Cebada Canyon residents in Santa Maria • Four Workshops on pesticide laws and regulations, as well as, weights and measures regulations conducted by Agricultural Commissioner staff
Ongoing	<ul style="list-style-type: none"> • Updates to the FAQs, Complaint Form, Informational Documents on the County's Cannabis website

Cannabis Taxes

As of October 31, 2018, the Treasurer –Tax Collector reported collecting \$1.8 million from thirty cannabis operators. This is in alignment with the estimate of \$5 to \$25 million annually. Forty-one operators stated that they had no gross receipts during the quarter. This may be the result of the timing of sales for outdoor cultivation sites (approximately 75% of cultivators in Santa Barbara County) which harvest and process in October, and therefore the tax on gross receipt will be assessed in the following, second quarter. Thirty-one of ninety-six licensed operators did not submit reports for this first quarter.

State Licensing

In July 2018, the State reported the County had 1,289 active State temporary cultivation licenses for 315 acres.

During the first quarter, there were 96 operators with active State licenses on approximately 77 parcels. As of October 19, 2018, those operators had 832 active State licenses that would equate to approximately 196 acres countywide. The majority (70%) of the acreage are in the Lompoc and Santa Ynez Valley areas.

It is unknown whether license holders will let excess or unneeded licenses lapse, and if other people will replace them. The State's authority for issuing new or extending existing temporary licenses expires on December 31, 2018. The State has expressed a willingness to extend, for 90-days, qualifying active temporary licenses one last time on the final day of the year. To qualify for that extension, temporary license holders must have submitted an application for an annual license. During the period between January and the end of March, State officials will determine if applicants qualify for a Provisional Annual License or a regular Annual License.

The Governor signed a bill, SB1459, into law in September creating a Provisional Annual Cannabis License. The Provisional Annual License is available to applicants for annual licenses that have submitted all required documents for State annual licensing except for proof of CEQA completed compliance. (Bus. & Prof. Code § 26050.2.). Documenting CEQA compliance has been a challenge statewide for license applicants.

The County engages in CEQA review on the County's Land Use Permit (or Conditional Use Permit) and Cannabis Business Licenses. Operators with their local permit and license may be considered by the State for a regular Annual License.

Emerging Issues

Hoop Ordinance – Hoops structures are consistently used for outdoor cultivation of cannabis in the inland portions of the county. The determinations made by policy makers 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 be challenged to enter into the cannabis permitting process without certainty about the exemption, or permitting, of hoops. The draft hoops ordinance is anticipated to go to the Board December 11, 2018.

Further State actions – Ongoing adjustments to State cannabis statutes and licensing agency regulations of the cannabis industry will require careful monitoring over the next year as the industry continues to move toward compliance. In October 2018, the State licensing agencies released another round of updated regulations for public comment. It is possible that the State will take up reforms to the cannabis cultivation tax if licensing and collections continue to fall below expectations. Staff also expects some State efforts to streamline cannabis licensing.

Implementation Goals for the Upcoming Quarters

During the 2nd quarter, the staff involved in 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:

Please provide Sergeant Frank Vasquez with a signed copy of the Resolution.

Attachments:

Attachment A – Resolution Authorizing Sheriff’s Office Access to State and Federal Criminal History Reports for Cannabis Operations

Authored by: Dennis Bozanich, Deputy County Executive Officer, 805-568-3400