



Monterey County

Item No.6

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: 22-814

September 01, 2022

Introduced: 8/25/2022

Current Status: Agenda Ready

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- a. Receive a report regarding the current Cannabis Program “Good Standing” Criteria and which operators it applies to; and
- b. Review the Monterey County cannabis industry’s proposed commercial cannabis business tax rates, including fiscal impacts; and
- c. Direct staff to present the Cannabis Committee’s recommendations to the Board of Supervisors; and
- d. Provide further direction as appropriate.

RECOMMENDATIONS:

It is recommended that the Board of Supervisors Cannabis Committee:

- a. Receive a report regarding the current Cannabis Program “Good Standing” Criteria and which operators it applies to; and
- b. Review the Monterey County cannabis industry’s proposed commercial cannabis business tax rates, including fiscal impacts; and
- c. Direct staff to present the Cannabis Committee’s recommendations to the Board of Supervisors; and
- d. Provide further direction as appropriate.

SUMMARY/DISCUSSION:

The Board of Supervisors directed the Cannabis Program (Program) to present a report on two subjects:

- The current “Good Standing” Criteria.
- The industry’s proposed commercial cannabis business tax rate plan as presented to the Board in public comment submitted for the August 23, 2022, Board Meeting.

“Good Standing” Criteria

The Resource Management Agency (RMA) Director issued a memorandum on February 27, 2017 (Attachment A). At that time, draft State regulations referred to “good standing” with the local jurisdiction as a requirement to obtain a State license. This form of local authorization was requested by the County so that operators would be eligible for state licenses while diligently pursuing all necessary permits, which, it was anticipated, would take [how long was it?] The original Good Standing Criteria (Criteria) contained four criteria: permissible location, diligent pursuit of all necessary permits (progress every 2 months), remaining current on applicable taxes and Code/Condition Compliance. (Attachment A)

The current version of the Criteria contains ten criteria: Location, Permits/Licenses, Taxes, Law and/or Code enforcement, Agricultural Commissioner compliance, compliance with state and local laws and regulations, no outstanding compliance actions (subject to complying by the deadline should one be opened), holding a Provisional Business License, holding applicable Department of Cannabis Control licenses, and transmitting relevant data to the California Cannabis Authority. (Attachment B)

Critically, good standing applies only to operators that have not yet met local requirements to obtain a cannabis business permit. Additionally, good standing criteria determines whether an operator will receive the Provisional Cannabis Business Permit (PCBP) and once issued the operator must abide by the Criteria. However, once an operator obtains an annual permit, it must comply with all applicable State and County regulations. Monterey County Code Chapter 7.90 governs commercial cannabis permits.

Four operators do not meet the tax criteria, as they are delinquent on taxes predating Fiscal Year (FY) 21-22, Quarters 2-4, the period to which the Board extended a conditional waiver of penalties and interest provided the outstanding tax is paid in full by January 31, 2023. Absent contrary Board direction, they will not qualify for a PCBP, and consequently, the Program intends to shut them down.

There are two areas that need further discussion.

- Business operators have been given an extension to pay Quarters 2-4 of FY 21-22 on or before January 31, 2023.
- If a business operator does not pay the Quarter 1 of FY 22-23 taxes due on or before October 31, 2022, they will be considered delinquent.

Other than these deadlines, the Board did not direct partial payment by any specific date. The Committee could consider recommending that the Board adopt one or both of the following.

- Require all operators who owe Quarters 2-4 of FY 21-22 taxes to pay a specific percentage of the tax due by a certain date to allow the County to receive some of the tax revenue due and demonstrate a good faith effort to remain in compliance.
- Extend the due date to on or before June 30, 2023, for:
 - Remaining tax payments for Quarters 2-4 of FY 21-22; and/or
 - All payments of FY 22-23.

Monterey County cannabis industry's proposed commercial cannabis business tax rates.

Through public comment, the Board received two proposals for a reduction in commercial cannabis tax rates. (Attachment C) The first was received from the Monterey County Cannabis Industry Association Executive Director. The second was received from a number of cannabis operators, including local attorneys and consultants. The Board directed staff to advise the Committee on these proposed rates, but considering their impact prospectively only, as opposed to the industry's proposal for their retroactive application. (Attachment D)

The first industry proposal is a tax rate of \$1.50 for indoor, \$1.00 for mixed-light and \$0.50 for nursery. Staff estimates cultivation tax revenue of \$3.6 million for FY 22-23 based on current

cultivation square foot values.

The second industry proposal is a flat tax rate of \$0.75 square feet for nursery, mixed-light, and indoor cultivation. Staff estimates cultivation tax revenue of \$3.1 million for FY 22-23 based on current square foot values. This proposal is complex and makes assumptions based on underlying information that the industry does not have, some of which are proprietary, such as square footage figures and refunds specific to operators that have timely paid. Due to the timing of this report request, staff was unable to analyze or validate industry figures.

Program costs for FY 22-23 are approximately \$7.1 million, which includes 25.23 staff allocated to cannabis, 6 staff not allocated to cannabis, and non-staff costs. Both industry proposals proposed reductions to the FY 22-23 Program budget, which they mistakenly believe aligns with the intent of the Measure Y to recover Program costs at reduced tax rates.

It is important to note that Measure Y was approved as a general tax, i.e. imposed for general governmental purposes that requires approval from a simple majority of voters. Measure Y was not structured as a special tax, which is a tax imposed for specific purposes and requires approval from a supermajority of voters. This is an important distinction, as Measure Y was intended to fund regulation of the cannabis industry and County services and was not intended to strictly recover administration costs.

Staff is seeking direction on how the commercial cannabis tax rate could be modified to:

- 1) Maintain FY 22-23 Program costs.
- 2) Provide additional relief to the local commercial cannabis industry and sustain as many operators as possible.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel was involved in the preparation of the report. Due to the timing of this request, Treasurer-Tax Collector staff were unable to review or contribute to this report.

FINANCING:

Monterey County's Cannabis Program is funded in County Administrative Office - Department 1050, Intergovernmental and Legislative Affairs Division - Unit 8533, Cannabis. The proposed recommendations will not incur additional expenses to the Program.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

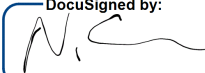
The Monterey County Cannabis Program addresses each of the Strategic Initiative Policy Areas that promote the growth of a responsible and legal Monterey County cannabis industry.

Mark a check to the related Board of Supervisors Strategic Initiatives

- X Economic Development
- X Administration
- X Health & Human Services
- X Infrastructure
- X Public Safety

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Attachments:

- A. RMA Memo 06.30.2017
- B. Good Standing Criteria
- C. Cannabis Industry Proposals
- D. Impacts of Proposed Commercial Cannabis Business Tax Rates