



CANNABIS PROGRAM
MONTEREY COUNTY

Board of Supervisors Meeting, Item No. 30
November 8, 2022

Proposed Amendment to Manufacturing Tax Rate

History of tax rate for manufacturing activities.

- July 2016: 5.0% of gross receipts for non-cultivation.
- July 2018: 2.5% of gross receipts for manufacturing.
- July 2019: 3.5% of gross receipts for manufacturing after automatic increase of 1.0%.
- May 2020: Board suspended automatic increases.
- May 2021: Board suspended automatic increases.
- March 2022: Board removed automatic increases.

Overview of local commercial cannabis activities.

- 81% of licenses in unincorporated area are cultivation oriented.
 - 2% of licenses are manufacturing: 9 Type 6 licenses and 2 Type 7 licenses.
 - 2 Type 6 are being utilized and 1 Type 7 is being utilized.

Proposed Amendment to Manufacturing Tax Rate

Reasons to consider proposed amendment.

- Incentivize those with active state licensed to complete local requirements and operate.
- May attract new businesses to the jurisdiction.
- Be competitive in this challenging market place.
- Diversify commercial cannabis activities within unincorporated area for some operators.
 - Increases competitive options for value-added services.
 - Reduces supply chain miles.
- Lowering tax rate could result in increased incremental tax revenue.
 - Commercial Manufacturing tax collection:
 - FY 20-21 \$46,346
 - FY 21-22 \$12,558

Manufacturing Tax Rates of Nearby Jurisdictions

Jurisdiction	Rate	Notes on Increases/Maximums
City of Del Rey Oaks	5% of gross receipts	May be increased up to a maximum of 10% by City Council ordinance.
City of Gonzales	5% of gross receipts	May be increased up to a maximum of 15% by City Council ordinance.
City of Greenfield	10% of gross receipts	Beginning on July 1, 2020, the initial rate of 5% increased by 2.5% each July up to the maximum of 10%.
City of King	\$30,000 annually for the first 3 years	
City of Marina	5% of gross receipts	
City of Salinas	5% of gross receipts for the first 3 years	May be increased up to a maximum of 10% by City Council resolution.
County of San Benito	4% of gross receipts	
County of San Luis Obispo	8% of gross receipts	May automatically increase by 2% up to the 10% maximum in July 2023.
County of Santa Barbara	3% of gross receipts	
County of Santa Cruz	6% of gross receipts	Set to increase to 7% in January 2023.
City of Seaside	2% of gross receipts	Subject to initial tax for first quarterly tax payment based on sales per square foot of the use's floor area.

Recommendations

Staff is seeking Board direction on:

- Introduce, waive reading of, and set December 6, 2022 at 10:30 a.m. as the date and time to consider adoption of an ordinance amending Chapter 7.100 of the Monterey County Code to reduce the tax rate imposed upon manufacturers of commercial cannabis from 3.5% of gross receipts per fiscal year to 1.5% of gross receipts per fiscal year.



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Board of Supervisors Meeting, Item No. 31
November 8, 2022

Commercial Cannabis Business Tax Rates and Payment Plan

Background

- Many operators are failing to pay local and/or state taxes for cannabis.
 - This is a widespread issue and is not limited to Monterey County.
 - The industry is requesting deferment so that they can fund other priorities.
- Cannabis business tax delinquency was rarely an issue prior to the market downturn.
 - Since FY 16-17 and until Q4 of FY 20-21, operators have made timely payments.
 - A total of \$77.3m has been collected, with \$63.2m allocated by the Board.
- Below are the balances that remain due by FY:

• FY 20-21	\$145k
• FY 21-22, Quarter 1	\$1,215,404
• FY 21-22, Quarters 2-4	\$2.8m

Commercial Cannabis Business Tax Rates and Payment Plan

Background

- The Board has continuously provided relief to the industry:
 - Allowing multiple canopy modifications.
 - Reduced cultivation and distribution rates.
 - Removed automatic rate increases.
 - Waiving penalties and interest by effectively extending due date.
 - Installments for Q2 – Q4 of FY 21-22 may be paid by January 31, 2023.
- Staff proposed including Q2 of FY 22-23 within conditional waiver period.
 - Directed to return with a formal payment plan.
 - Operators have repeatedly stated their financial crises and potential closures.
 - Payment plan would allow County to receive payments before closures.

Commercial Cannabis Cultivation Tax Rates

March 2022 Board removed automatic rate increases and reduced cultivation and distribution tax rates retroactive to January 1, 2022.	August 2022 Cannabis industry proposed cultivation tax rates.	August 2022 Monterey County Cannabis Industry Association proposed cultivation tax rates.	September 2022 Board reduced cultivation tax rates retroactive to October 1, 2021.
Indoor \$7.00/sq. ft. Mixed-light \$3.00/sq. ft. Distribution 0% of GR	Indoor \$2.55/sq. ft. Mixed-light \$1.70/sq. ft. Nursery \$0.85/sq. ft.	Indoor \$1.50/sq. ft. Mixed-light \$1.00/sq. ft. Nursery \$0.50/sq. ft.	Indoor \$3.00/sq. ft. Mixed-light \$2.00/sq. ft.

Commercial Cannabis Business Tax Payment Plan

Implemented and monitored by the Program, with payments collected by the TTC.

Operators would be required to submit form to enable TTC to communicate tax information to Program.

Formal payment plan duration: December 1, 2022 – June 30, 2023.

This would require staff to return to the Board to extend the conditional waiver of penalties and interest through June 30, 2023.

Operators are required to pay 25% of commercial cannabis business cultivation taxes owed no later than November 30, 2022.

Estimated at \$1,412,681.56.

Commercial Cannabis Business Tax Payment Plan

The remaining tax amount due will be collected in a formal payment plan with payments due on the 1st of each month.

Estimated at \$4,238,044.67.

If due date falls on Saturday, Sunday or a holiday, the due date shall be the next regular business day.

Penalties and interest are applied to unpaid tax balances and are removed upon receiving payment in full.

Treasurer-Tax Collector shall record liens for FY 21-22 commercial cannabis business tax to include penalties and interest.

Liens will be released upon full payment of the cultivation taxes due.

Treasurer-Tax Collector shall record liens after each FY 22-23 quarter, as a contingency if the amounts are not paid as agreed upon.

Commercial Cannabis Business Tax Payment Plan

On default, all unpaid commercial cannabis cultivation taxes could be collected through a litigation process if directed by the Board.

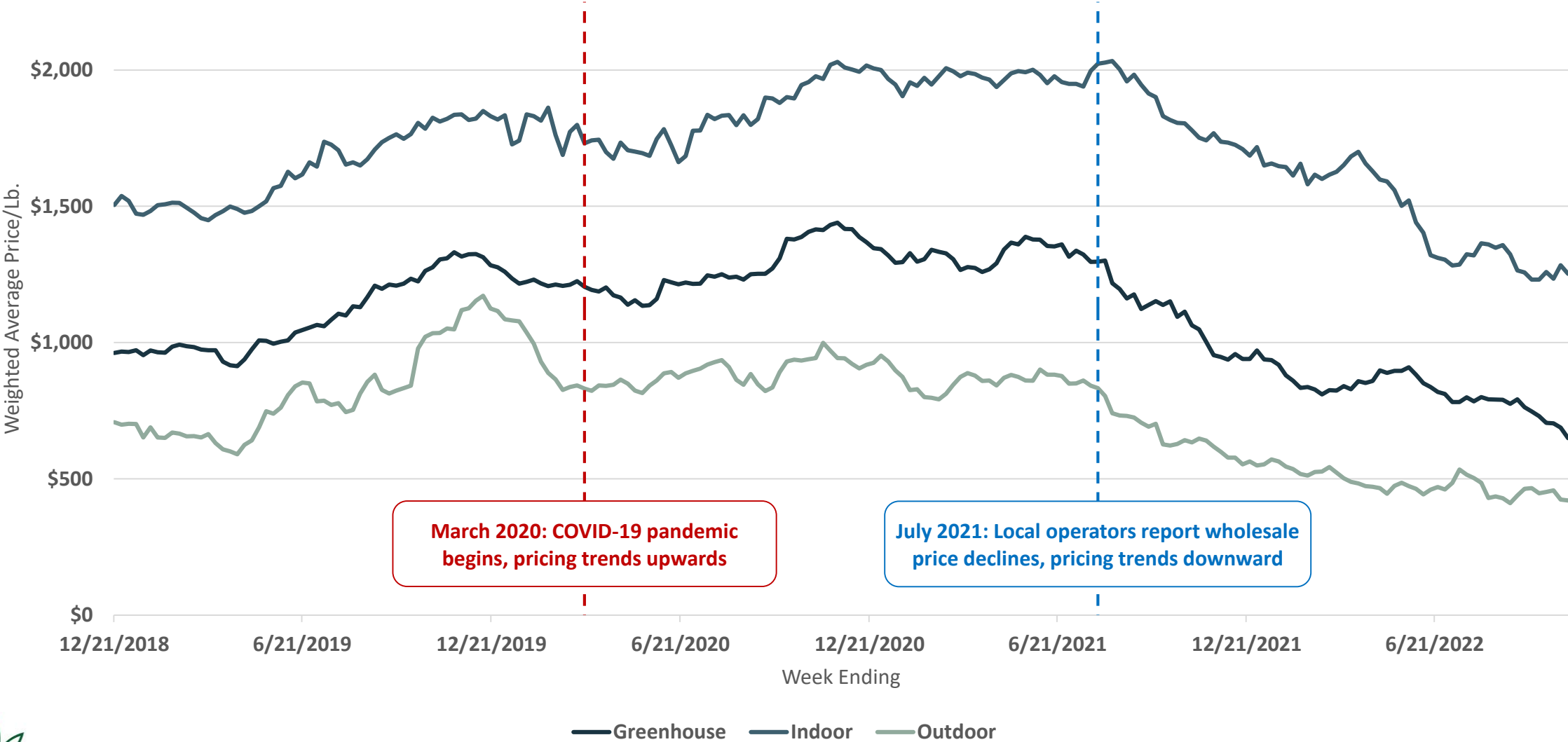
The business would need to coordinate with the Program to shut down operations and follow the process of business closure.

Other Options to Consider

Options for Board consideration:

1. Reduce cultivation rates to zero for remainder of FY 22-23 OR include in payment plan.
 - Cultivation tax revenue for Q2 – Q4 is estimated at \$5,426,276.
 - Commercial cannabis market remains saturated, and prices have not improved.
 - Likely that operators will face similar difficulty in paying taxes when due.
 - Return anticipated if Board does not reduce rates or include in payment plan.
2. Waive up to 50% of the cultivation taxes owed for FY 21-22.
 - Cultivation tax revenue for amnesty period estimated at \$2,761,171.62
 - Significant staff time required to process refunds owed to those who timely paid.

United States Cannabis Spot Index



NCS Transparency Report Year over Year

Figure	11/1/2021	10/31/2022	+/- (#)	+/- (%)
Number of new data points over the last 7 days	240,640	148,987	-91,653	-38%
Number of updated or new plants in database last week	190,808	102,415	-88,393	-46%
Alerts over the last 7 days	4,259	4,825	566	13%
Operator reported sales last week	378,386	1,843,173	1,464,787	387%
Percent of licenses reporting new data to METRC last week	46%	30%	-16%	-35%

- 11/1/2021 and 10/31/2022 are both weeks 45 of the calendar year.
- The decrease in number of new data points aligns with the decrease in percent of licenses reporting new data.
- The number of plants is down significantly, which may be driven by the market decline.
 - Local cultivation canopy in October 2021: 4,811,047
 - Local cultivation canopy in October 2022: 4,235,865
- Alerts have increased, which may be driven by staff turnover and the learning curve associated with Metrc.
- The % of licenses reporting new data is lower, but sales are much higher than the same period last year.

Redefining permissions to operate

- Program and TTC staff consider operators delinquent if taxes are not timely paid.
- Multiple sections of Monterey County Code prohibit operation while delinquent.
- Staff is seeking direction from the Board on how to handle delinquent operators:
 - Begin shut down procedures immediately upon delinquency of applicable taxes or if the formal payment plan is approved, failure to meet requirements.

OR

- Establish grace period to become current.

Impacts to Provisional Cannabis Business Permit and Good Standing

- Failure to timely pay any taxes due would disqualify operators from PCBP Program.
- Although the PCBP Program will supplant Good Standing, entry is determined by it.
 - Criterion 3 addresses commercial cannabis tax.

“The subject property and business must be current on all applicable taxes. Pursuant to the Board of Supervisor’s decision to extend the conditional waiver of penalties and interest for Fiscal Year 21-22 Q2 – Q4, operators who owe for those quarters will not be removed from Good Standing. Operators should make every effort to submit monthly payments and to pay in full on or before January 31st, 2023 to be eligible for the conditional waiver of penalties and interest. If the taxes owed from FY 21-22 are not paid in full by January 31st, 2023, or the operator becomes delinquent for any quarter in FY 22-23, the operator will no longer be in Good Standing.”

Impacts to Provisional Cannabis Business Permit and Good Standing

- This criterion applies to the Monterey County Regional Fire District tax on cannabis.
 - MCRFD has 32 active operators in their district and reports a 50% delinquency rate.
 - 3 operators are on payment plans.
 - Delinquent balances by calendar year:
 - 2021 \$188,594.52
 - 2022 Q1 – Q2 \$119,209.33

Impacts to Provisional Cannabis Business Permit and Good Standing

- Under the PCBP, delinquent operators could be subject to immediate shut down.
 - Allowing businesses to remain operational would disincentive paying taxes.
- PCBP Program does not explicitly provide local authorization for state annual licensure.
- Director of HCD could deny incomplete and idle land use applications without prejudice.
 - Staff is seeking Board direction on this.

Recommendations and Next Steps

Staff is seeking Board direction on:

- a. Receive a status update on the commercial cannabis industry's ability to pay delinquent and current taxes due on or before January 31, 2023; and
- b. Consider commercial cannabis business cultivation tax rate options; and
- c. Consider a formal commercial cannabis business payment plan, including requirements and actions if the payment plan is found to be in default; and
- d. Authorize the Treasurer-Tax Collector to record liens for commercial cannabis cultivation business tax for the period of FY 21-22 Q2–Q4, and FY 22-23 Q1 to be released upon payment in full; and
- e. Reaffirm the authority of the Director of Housing and Community Development and authorize the Director to deny cannabis land use permit applications without prejudice if they have remained incomplete for a period of six months or longer; and
- f. Provide further direction as appropriate.

Commercial Cannabis Cultivation Tax Rates

Staff is seeking Board direction on:

Consider commercial cannabis business cultivation tax rate options.

- Commercial Industry and Monterey County Cannabis Industry Association proposals.

March 2022	August 2022	August 2022	September 2022
Board removed automatic rate increases and reduced cultivation and distribution tax rates retroactive to January 1, 2022.	Cannabis industry proposed cultivation tax rates.	Monterey County Cannabis Industry Association proposed cultivation tax rates.	Board reduced cultivation tax rates retroactive to October 1, 2021.
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Recommendations and Next Steps

Staff is seeking Board direction on:

Consider a formal commercial cannabis business payment plan, including requirements and actions if the payment plan is found to be in default; and

- Implemented and monitored with payments collected by the TTC.
 - Payment plan for the period of FY 21-22 Quarters 2-4.
 - Board could consider including FY 22-23, Quarter 1.
- Duration: December 1, 2022 – June 30, 2023.
 - Board could consider a longer duration of payment period.
- Operators are to pay 25% of commercial cannabis business taxes owed no later than November 30, 2022.
 - Board could consider a different percentage down payment.
- Payments due the 1st of each month.
 - Board could consider a number of missed payments before the agreement is found to be in default as long as the operator brings the amount due current.
- TTC records liens for FY 21-22 commercial cannabis business tax to include penalties and interest.

Recommendations and Next Steps

Staff is seeking Board direction on:

Authorize the Treasurer-Tax Collector to record liens for commercial cannabis cultivation business tax for the period of FY 21-22 Q2–Q4, and FY 22-23 Q1 to be released upon payment in full; and

Recommendations and Next Steps

Staff is seeking Board direction on:

Reaffirm the authority of the Director of Housing and Community Development and authorize the Director to deny cannabis land use permit applications without prejudice if they have remained incomplete for a period of six months or longer; and

Other Options

Staff is seeking Board direction on:

- Formal Payment Plan
 - Option 1: reduce rates to zero for rest of FY 22-23 or include in payment plan.
 - Option 2: Waive up to 50% of cultivation taxes owed for FY 21-22.
 - Provides for a practical expectation of a successful formal payment plan.
- Immediate shutdown or grace period for delinquent operators.
 - Amending Good Standing Criteria.
 - Board could consider a grace period before shutdown procedure begins.



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