



# Monterey County

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

## Board Report

Legistar File Number: RES 19-137

October 22, 2019

**Introduced:** 10/11/2019

**Current Status:** Scheduled PM

**Version:** 1

**Matter Type:** BoS Resolution

Receive a report on various issues concerning the Cannabis Program, including:

A. Staff recommendations on:

- a. Expediting the cannabis tax rate escalator on the existing tax rates;
- b. Review of performance measurement outcomes;
- c. The outdoor grow pilot program cannabis tax rate; and
- d. Cannabis Program resource augmentation requests;

B. Adopt a resolution to:

- a. Authorize the Auditor-Controller to amend the FY 2019-20 adopted budget by increasing appropriations in the amount \$104,207 for the CAO Budget Unit 001-1050-8054-CAO004 (4/5th vote required), and amend the County Administrative Office (CAO) Budget Unit 001-1050-8054-CAO004 to add one FTE, Senior Secretary, as indicated;
- b. Authorize the Auditor-Controller to amend the FY 2019-20 adopted budget by increasing appropriations in the amount \$69,824 for the District Attorney Budget Unit 001-2240-8062-DIS001 (4/5th vote required) as indicated;
- c. Authorize the Auditor-Controller to amend the FY 2019-20 adopted budget by increasing appropriations in the amount \$165,000 for the Resource Management Agency Budget Unit 001-3000-8170-RMA011 (4/5th vote required), and amend Resource Management Agency Budget Unit 001-3000-8170-RMA011 to add one FTE, Code Compliance Inspector II position, as indicated;
- d. Authorize the Auditor-Controller to amend the FY 2019-20 adopted budget by increasing appropriations in the amount \$317,947 for the Sheriff's Office Budget Unit (4/5th vote required), as indicated;
- e. Authorize the Auditor-Controller to amend the FY 2019-20 adopted budget by increasing appropriations in the amount \$656,978 for CAO Non-Program Revenue Cannabis Tax 001-1050-8041-CAO019 (4/5th vote required);
- f. Authorize the Auditor-Controller's Office to incorporate approved modifications in the FY 2019-20 Adopted Budget;
- g. Authorize the CAO to incorporate the changes to the FY 2019-20 Adopted Budget to reflect the change in position counts; and

C. Provide direction to staff as appropriate.

RECOMMENDATION:

It is recommended the Board of Supervisors:

Receive a report on various issues concerning the Cannabis Program, including:

A. Staff recommendations on:

- a. Expediting the cannabis tax rate escalator on the existing tax rates;

- b. Review of performance measurement outcomes;
  - c. The outdoor grow pilot program cannabis tax rate; and
  - d. Cannabis Program resource augmentation requests;
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  - f. Authorize the Auditor-Controller's Office to incorporate approved modifications in the FY 2019-20 Adopted Budget;
  - g. Authorize the CAO to incorporate the changes to the FY 2019-20 Adopted Budget to reflect the change in position counts; and
- C. Provide direction to staff as appropriate.

SUMMARY/DISCUSSION:

On September 30, 2019, the Cannabis Program ("Program") presented an update and recommendations on the following subject areas to the Board Cannabis Standing Committee. The Committee received the report and presentation and directed staff to present to the Board of Supervisors. The Committee approved bypassing the Budget Committee to expedite the discussion on resource augmentations.

Cannabis Tax Rate Escalator

The following summarizes a high-level review of staff analysis on expediting the existing cannabis tax rate escalator prior to July 1, 2020. Specifically, per Chapter 7.100 of the Monterey County Code, the cultivation (indoor and mixed light) and nursery tax rates are currently set to escalate in July 2020. The gross receipts tax rates for manufacturers, distributors, and retailers began to escalate in July 2019. (Attachment A).

- The Monterey County Cannabis industry ("Industry") has not stabilized. A number of land use permits have not been approved due to CEQA compliance which effects the delay in an

operator's ability to apply for the cannabis business permit.

- The Industry is working to cure all violations identified in the Cannabis Compliance Inspection Correction Notice, Follow-Up Correction Notice, Notice of Violation and/or Administrative Citation. A number of building permits are in the process of being approved or have been issued. Operators will need time to complete the permit work and have the permit "finalized" (completed and approved).
- With the approval of Assembly Bill (AB) 97, one of the outcomes affecting the Industry is the extension of the repeal date for the provisional license and continuance of the CEQA exemption for ordinances until January 1, 2022.
- State provisional license holders are required to use the California Cannabis Track-and-Trace ("CCTT") system, which is being implemented and will provide jurisdictions the ability to analyze the data.

Based on these findings, staff does not recommend expediting the cannabis tax escalator at this time. However, staff can reevaluate at the direction of the Board Cannabis Committee.

#### Cannabis Program Performance Measures

The Cannabis Program Performance Measures continue to be developed and refined. Attached are the current measures and outcomes. (Attachment B).

Regarding cannabis staff allocations, the Program will meet quarterly, or as needed, with each department to review payroll hours, ensure department staff are using the appropriate override codes to track cannabis work, and analyze resource utilization data. The current performance measures that relate to cannabis staff utilization is data collected from the Advantage system and WinCams (RMA). Staff hours is the first set of data that the Program will be analyzing to identify resource utilization. The goal for this fiscal year is to establish baselines of payroll hours, review data monthly, and meet with departments quarterly to review and discuss utilization. Some departments have assigned the allocated staff to be 100% dedicated to the Program. Other departments have staff assigned to work on Program tasks as well as other priority department work tasks.

The Program will update the Board Cannabis Committee and Board of Supervisors quarterly on performance measurement outcomes.

#### Outdoor Cannabis Pilot Program Tax Rate:

In June 2019, the Board of Supervisors approved the adoption of two ordinances Titles 20 and 21 of Monterey County Codes to create a pilot program establishing permit requirements and regulations for limited outdoor commercial cannabis cultivation in the Big Sur, Carmel Valley and Cachagua Planning areas. Based on an estimated 100 heritage growers in these areas, staff estimated a potential maximum canopy of 640,000 square feet.

In reviewing other jurisdiction outdoor cannabis cultivation tax rates, staff has analyzed the following:

- Mendocino County - 2.5% gross receipts
- San Benito County - \$5 square foot

- San Francisco City/County - 2.5/5% gross receipts
- San Luis Obispo - 4% gross receipts
- Santa Barbara County - 4% gross receipts
- Santa Cruz County - 5% gross receipts
- Sonoma County - \$1.04 - \$2.08 square feet
- Yolo County - 4% gross receipts

Staff has obtained useful information regarding questions of Monterey County changing to a gross receipt tax for cultivation and nurseries, instead of basing the tax off of square footage. In discussion at the quarterly “Central Coast Cannabis Program” forums, some of the above jurisdictions have stated they have experienced challenges with using a gross receipts tax in verifying actual gross receipts and are unable to appropriately issue cannabis tax invoice statements. In FY 2018-19, Monterey County maintained an average delinquency rate at 9% largely due to the Treasurer-Tax Collector and the Program holding operators accountable to the “Good Standing” criteria. Another consideration is square footage measurement. Although measuring square footage is a manual, time consuming process, it is a process that is visible and can be obtained at different periods of time. A gross receipts tax would need document verification through reviews of financial information, manifest records, and other operator documentation.

On June 18, 2019, the Resource Management Agency (“RMA”) and the Program presented information on the analysis conducted on an outdoor cannabis cultivation pilot program as it related to a proposed cannabis tax rate. In the presentation, staff estimated 100 heritage growers in the Big Sur, Carmel Valley, and Cachagua areas. Industry representatives along with staff estimated a potential of 75 permits. Staff estimates that out of 75 permits, approximately 8% will have a canopy of 2,500 square feet ( $75 \times 8\% = 6$  permits @ 2,500 sq. ft = 15,000 square feet), 18% will have a canopy of 5,000 square feet ( $75 \times 18\% = 13$  permits @ 5,000 sq. ft = 65,000 square feet), and 75% will have a canopy of 10,000 square feet ( $75 - 6 - 13 = 56$  permits @ 10,000 sq. ft = 560,000 square feet). This equates to a potential maximum canopy of 640,000 square feet (15,000 + 65,000 + 560,000). Based on estimated cultivation, comparison of outdoor cultivation tax rates in California, staff recommends an outdoor cannabis cultivation tax rate starting at \$2.50 square feet with an escalator of \$0.25 per year with a maximum of \$5.00. (Attachment C).

Based on estimated outdoor cannabis cultivation, the following identifies potential cannabis tax revenue at a starting rate of \$2.50:  $640,000 \times \$2.50 = \$1,600,000$ .

The industry has stated there are approximately 30 land use applications that are being prepared for submittal to RMA.

#### Cannabis Program Augmentation Request

Based on the existing Program workload, projected number of outdoor grow cannabis pilot program applicants, the upfront costs of establishing and administering the pilot program, preparation of documents and materials, attendance at meetings, correspondence, increased number of cannabis compliance inspections, increased number of compliance notices, enforcement actions, and time to work with the existing and new industry operators, staff recommends the following augmentations at an

estimated total cost of \$656,978 per fiscal year. (Attachment D).

- CAO Cannabis Program, 1 FTE, Senior Secretary, overhead costs and compliance training.
  - The Program has a variety of clerical and administrative support duties to complete. The Senior Secretary position is needed as all administrative tasks are absorbed by current staff precluding them from completing their primary work tasks in an efficient, time sensitive manner. The Program Manager, Management Analysts and Permit Technician currently absorb these duties. Clerical and administrative support is critically needed.
  - The Cannabis Compliance Inspection team needs comprehensive cannabis training to further expand their knowledge that will be applied directly to their daily work tasks.
- District Attorney's Office, overtime, storage containers, investigative equipment.
  - The DA requests additional resources to fund the overtime of Investigators, routinely incurred during the course of investigative activities. Additionally, due to the odorous nature of the cannabis and related evidence there is great need for off-site storage of evidence obtained during cannabis investigations. This includes storage containers, fencing to secure the area around the containers, a security system required by the Department of Justice, and the required permits and installation. Also need is specialized equipment for the investigators, including tactical helmets, digital cameras, spotting scope, surveillance drone, a duplex radio scanner, microphone for our portable radios and additional uniforms. With the exception of the overtime resources, all requested resources are one-time expenditures.
- Sheriff's Office, overtime, services, training, vests.
  - The SO requests additional resources to fund the overtime of Deputies, routinely incurred during the course of investigative activities. Additionally, specialized equipment includes safety protection vests and the use of air surveillance to expand their capabilities in investigations. Additional funding is also requested for specialized training.
    - For FY 2019-20, the SO has used \$21,594 for cannabis overtime work. With that said, in the same period of time, the department utilized numerous staff not allocated to cannabis to conduct search warrant services.
- RMA, 1 FTE, Code Compliance Inspector II, vehicle, and overhead costs.
  - The Cannabis Compliance team has five inspection staff; three are from the Health Department, Environmental Health Bureau and two from the RMA. The inspectors work in teams of two thus the need for a third Code Compliance Inspector. With the addition of the outdoor grow pilot program, a third team will be necessary due to geographic distances as the duration of inspection times will increase.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel, District Attorney's Office, Sheriff's Office, and RMA have been involved in the review of the proposed cannabis tax rate and outdoor grow pilot program augmentation request. The following departments have been involved in the collection of performance measurement data: CAO Cannabis Program, Agricultural Commissioner's Office, Assessor-Clerk Recorder's Office, Office of the County Counsel, District Attorney's Office, Health Department,

RMA, Sheriff's Office, and Treasurer-Tax Collector's Office.

FINANCING:

The approval of the recommended actions will require augmentations to the following departments: CAO Cannabis Program, District Attorney's Office, RMA, and Sheriff's Office, in budget FY 2019-20, financed by an increase to revenues in the CAO-Non-Program Revenue Cannabis Tax, in the amount of \$656,978.

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

Prepared by: Joann Iwamoto, Program Manager II, x3017

Approved by: Nicholas E. Chiulos, Assistant CAO, x5145

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Nicholas E. Chiulos, Assistant County Administrative Officer

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Date

Attachments are on file with the Clerk of the Board

Attachments:

- A: Monterey County Cannabis Tax Rate Schedule
- B: Outdoor Cannabis Cultivation Tax Rate Comparisons
- C: Cannabis Program Performance Measures, FY 18-19 and July 2019
- D: Cannabis Program Resource Augmentations
- E: Board of Supervisors Resolution

cc: Charles McKee, County Administrative Officer (CAO)

Nicholas E. Chiulos, Assistant CAO

Henry Gonzales, Agricultural Commissioner

Steve Vagnini, Assessor-Clerk Recorder

Leslie J. Girard, Acting County Counsel

Kelly Donlon, Deputy County Counsel

Jeannine Pacioni, District Attorney

Elsa Jimenez, Health Department Director

Irma Ramirez-Bough, Human Resources Director

Carl Holm, Resource Management Agency  
Stephen Bernal, Sheriff  
John Mineau, Undersheriff  
Mary Zeeb, Treasurer Tax-Collector

*Mri10.15.19*