



# County of Monterey

**Item No.**

## Board Report

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

**Legistar File Number: 23-216**

**March 14, 2023**

**Introduced:** 3/6/2023

**Current Status:** Agenda Ready

**Version:** 1

**Matter Type:** General Agenda Item

- a. Receive a status update on the Cannabis Program response to Board Referral No. 2022.20, which seeks a staff review of department specific local requirements;
- b. Receive a review of the current status of Monterey County's commercial cannabis cultivation provisional and annual state licenses; and
- c. Provide direction as appropriate.

**RECOMMENDATION:**

Staff recommends that the Board of Supervisors:

- a. Receive a status update on the Cannabis Program response to Board Referral No. 2022.20, which seeks a staff review of department specific local requirements;
- b. Receive a review of the current status of Monterey County's commercial cannabis cultivation provisional and annual state licenses; and
- c. Provide direction as appropriate.

**Discussion:**

At the September 27, 2022, Board of Supervisors (Board) meeting, the Board approved Board Referral No. 2022.20 (Attachment A). Supervisor Lopez made the referral, which was assigned by the County Administrative Officer (CAO) to the Cannabis Program (Program). The referral requests a review of the department specific local requirements for commercial cannabis business operators (Operators) to achieve local authorization for the transition from a Department of Cannabis Control (DCC) Provisional License to Annual Licensure. The referral identifies primary outstanding requirements from Housing and Community Development (HCD), Environmental Health Bureau (EHB), Treasurer-Tax Collector (TTC), and local Fire Agencies.

On October 25, 2022, the Program provided an update on the status of the required land use permits for cannabis entitlement. At that time, 43 of the 91 cannabis land use applications had been approved but only 13 had been Cleared.

For a Monterey County Operator to receive local authorization, the land on which they operate must have the proper land use entitlement and the Operator must have a Cannabis Business Permit (CBP). It should be noted that the applicant of the land use entitlement may not be the Operator. The land use entitlement must be in a "Cleared" status, meaning the planning permit has been approved and any conditions applied to that approval have been satisfied. It should also be noted that this land use entitlement process applies to all businesses and activities in the unincorporated area of the County.

Operators have been allowed to operate while simultaneously working to meet the land use entitlement and CBP requirements. As discussed in many previous board reports, Operators were allowed to begin operations if they obtained a state temporary license, applied for the land use entitlement, and followed the “Good Standing” criteria. These criteria were drafted by the predecessor to HCD, Resource Management Agency. Most land use entitlements were applied for in fiscal year 2016-2017.

Common challenges for applicants to obtain both land use entitlement and CBPs are water system requirements and financial constraints when considering the costs associated with traffic impact fees and fire suppression systems. It should be noted that HCD, EHB, and local Fire agencies follow regulations and statutes that are mandated by federal, state, and local regulations. These regulations for cannabis are no different than any other business seeking a land use entitlement and/or operating permit.

In response to the challenges of Operators meeting land use entitlement and CBP requirements, the Board of Supervisors approved Ordinance 5376 (Attachment B). This ordinance authorized the issuance of temporary commercial cannabis provisional permits, commonly known as the Provisional Cannabis Business Permit (PCBP). The PCBP allows operators to continue to operate if they make continuous effort to meet all local requirements.

The DCC has set specific milestones that impacts all commercial cannabis business operators in the state. Here are the highlights.

- Cultivators growing canopy greater than 22,000 square feet must transition from a provisional to annual license no later than 2023. The transition date is based on the expiration date of the state provisional license. This means if the state provisional license expires on June 30, 2023, the Operator must submit local jurisdictions requirements showing proof they have met the land use entitlement and CBP prior to this expiration date
- Cultivator growing canopy less than 22,000 square feet and other business types must transition from a provisional to annual license no later than 2025. However, there are significant milestones that must be met between 2023 and 2025 and to be eligible for renewal of provisional licenses after July 2023, licensees must meet the following requirements:
  - Progress towards compliance with CEQA must be shown through one of the following ways:
    - The Lead Agency has prepared and circulated for public review a negative declaration or mitigated negative declaration.
    - The Lead Agency has determined that an EIR is required and has either:
      - Made substantial progress in preparing an EIR, or
      - Has a contract in place for EIR preparation.
    - The Lead Agency certifies that it has conducted a reasonably comprehensive site- specific review and deemed complete an initial study, addendum, or checklist to demonstrate the project is consistent with previously circulated and adopted negative declaration, mitigated negative declaration, or EIR.
    - The Lead Agency has reviewed, prepared, and deemed complete a notice of exemption.

- Licensees with cultivation activities must also provide:
  - State Water Board “Notice of Applicability”.
  - A Final Streambed Alteration Agreement issued by the California Department of Fish and Wildlife (CDFW).
  - A Draft Streambed Alteration Agreement provided by CDFW that has been signed and returned to CDFW.
  - Written verification from CDFW that a Streambed Alteration Agreement is not needed.

Staff have prepared a summary of local permits related to Operators with Type 5 equivalent cultivation canopy (greater than 22,000 square feet) whose state cultivation licenses are expiring throughout Calendar Year 2023. If these Operators do not obtain their land use entitlement and CBPs, they will need to reduce cultivation canopy to or below the threshold of 22,000 square feet until they receive local authorization. The breakdown begins with a grand total of affected permits and potential licensed canopy reductions for Calendar Year 2023. This is followed by a monthly subtotal of affected permits and potential reductions to licensed canopy according to the soonest expiring state cultivation licenses of Operators.

- Calendar Year 2023
  - 18 Land Use Permits, 21 Cannabis Business Permits.
  - Potential licensed canopy maximum reduction of 1,171,000.
- March 2023
  - 3 Use permits, 4 CBPs.
  - Potential licensed canopy maximum reduction of 321,000.
- April 2023
  - 4 Use Permits, 6 CBPs.
  - Potential licensed canopy maximum reduction of 197,000.
- May 2023
  - 1 Use Permit, 1 CBPs .
  - Potential licensed canopy maximum reduction of 98,000.
- June 2023
  - 5 Use Permits, 5 CBPs .
  - Potential licensed canopy maximum reduction of 230,000.
- July 2023
  - 2 Use Permits, 2 CBPs .
  - Potential licensed canopy maximum reduction of 191,000.
- August 2023
  - 2 Use Permits, 2 CBPs .
  - Potential licensed canopy maximum reduction of 126,000
- November 2023
  - 1 Use Permit, 1 CBPs.
  - Potential licensed canopy maximum reduction of 8,000

There are 35 Operators without Type 5 equivalent cultivation canopy (greater than 22,000 square

feet). If they continuously make progress to meet local and state milestone requirements, these Operators will have until Calendar Year 2025 to transition from state provisional to annual licensure.

Collaborative Efforts of County Departments and Fire Agencies.

The Program, County Departments, and local Fire Agencies have continuously prioritized our commercial cannabis industry to operate within local requirements. The Program has received favorable input from the commercial cannabis industry and County departments, who both shared that these efforts assist in getting everyone on the same page.

Below are highlights and examples of how the Cannabis Program collaborates with County Departments and Fire Agencies to respond to questions, address requests for assistance, or provide other methods of assistance.

- The Cannabis Program remains responsive to all e-mail and phone call requests for assistance most within 24-hours of the request.
  - Typically, the Program triages the request and contacts appropriate staff to identify a solution or schedules impromptu meetings to discuss/review and ensure the operator understands the path forward.
- Ordinance 5376 allows operators with PCBP's and active state provisional licenses to continue operations while meeting local requirements. The PCBP may be considered for renewal each year if the following conditions are met:
  - 1) Continuous efforts to meet requirements are made.
  - 2) Operator is eligible to renew a state provisional license.
- The Program has scheduled 55 meetings with operator/applicants and respective County Departments and related Fire Agency to:
  - Review the status of the land use permit and identify incomplete items.
  - Review the Cannabis Business Permit and identify incomplete items.
  - Review the entire list of building permits assigned to the parcel or operator with notes to indicate if the permit must be final or can be worked on over time
  - Review fire suppression requirements, if applicable.
- During regular compliance inspection site visits, the compliance inspection team reviews outstanding violations and assists operator with their questions.
- In July 2022, HCD issued an Administrative Policy Memorandum regarding Fixed Restrooms on Properties established with commercial Cannabis Activities (Attachment D).
  - This policy allows portable restrooms to be installed for outdoor cannabis cultivation or within a U occupancy structure, which includes greenhouses.
- EHB has approved CBPs if the operator and/or landowner have made significant progress towards completing Use Permit conditions.
- Fire suppression, standard exit signs, fire extinguishers are common items that have not been completed.
  - The respective agencies continue to work with operators to meet requirements.
- HCD prioritizes cannabis building and planning permit applications.
- The Local Jurisdiction Assistance Grant (LJAG) offers two pass-through funding opportunities:

- Pass-through funding of up to \$10,000 for eligible projects that will assist operators in meeting annual license requirements.
  - 11 applications have been received, where 10 have been approved for a total of \$98,890.
- Mitigation Measure TRA-2 on behalf of land use permits associated with the Initial Study of 45 sites.
  - TRA-2 was a component of the Mitigated Negative Declaration adopted by the Board of Supervisors in December 2020.
    - The amount owed by operator is based on a fair-share calculation at a total of \$740,905.62.
- The Central Coast Community Energy (3CE) established an “Ag Electrification Program” that provides rebates to 3CE customers who replace fossil fuel powered agricultural equipment with new, all-electric equipment or lighting retrofits.
  - To the Program’s knowledge, none of our commercial cannabis operators have applied.
- The Monterey County Growing Equity Together (GET), a subset of the Program, has implemented the GET Program and identified ten approved participants.
  - There will be similar pass-through funding opportunities for GET participants through a combination of funding from the LJAG and Cannabis Equity Grants Program for Local Jurisdictions.

Staff will continue to work collaboratively with the Operators in our goal to create a legal, compliant industry in the County of Monterey.

OTHER AGENCY INVOLVEMENT:

The Office of the County Counsel, Housing and Community Development, Health Department, Environmental Health Bureau, and local Fire agencies were involved in the preparation of 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. It should be noted that any reductions to canopy-resulting either from additional business closures or temporary reductions of cultivation canopy to or below 22,000 square feet-will affect the projected commercial cannabis business tax revenue.

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

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X Infrastructure

X Public Safety

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*Nick Chiulos*

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Attachments:

- A. Board Referral No. 2022.20
- B. Ordinance 5376
- C. Performance Indicators for Local Permits as of February 2023
- D. HCD Administrative Policy Memorandum on Fixed Restrooms