



Monterey County

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Board Report

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Public hearing to consider an appeal by Old Stage Partners, LLC from the April 25, 2018 decision of the Treasurer-Tax Collector to impose the commercial cannabis tax in the amount of \$181,440.00; and to consider an appeal from LGS Plant Company, Inc. from the April 25, 2018 decision on the Treasurer-Tax Collector to impose the commercial cannabis tax in the amount of \$19,104.00.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- A) Deny the appeal of Old Stage Partners, LLC of the imposition of \$181,440.00 in unpaid commercial cannabis business taxes and associated penalties and interest for the third quarter of FY 2017-18;
- B) Deny the appeal of LGS Plant Company, Inc. of the imposition of \$19,104.00 in unpaid commercial cannabis business taxes and associated penalties and interest for the third quarter of FY 2017-18;
- C) Authorize the Director of the Monterey County Resource Management Agency to cancel, without prejudice, unused/underutilized Cannabis Business Permits issued to Old Stage Partners, LLC and reissue such Cannabis Business Permits for the remainder of the permit validation period (12-14-17 to 12-13-2018); and
- D) Authorize the Director of the Monterey County Resource Management Agency to cancel, without prejudice, unused/underutilized Cannabis Business Permits issued to LGS Plant Company, Inc. and reissue such Cannabis Business Permits for the remainder of the permit validation period (12-14-17 to 12-13-2018).

The Treasurer-Tax Collector is charged with the duty of enforcing the County of Monterey's commercial cannabis business tax, which is codified at Chapter 7.100 of the Monterey County Code ("MCC"). (MCC Chapter 7.100, attached as Exhibit 1). MCC Section 7.100.050 states in relevant part that the Treasurer-Tax Collector shall impose a commercial cannabis business tax based on rates set forth in Chapter 7.100, and that such taxes shall be based on the square footage of canopy authorized by each County permit or by each State license in the absence of a County permit, not deducting for unutilized square footage.

On December 14, 2017, Old Stage Partners, LLC ("OSP") and LGS Plant Company Inc. ("LGS") received nine annual Cannabis Business Permits from the County authorizing 125,760 square feet of commercial cannabis cultivation. Prior to the issuance of the third quarter (Jan 1 to March 31) billing, the Treasurer-Tax Collector received a request on behalf of the cultivator to modify the upcoming tax bills based on several factors including: (1) not operating at licensed capacity; (2) high cultivation tax rate; and (3) unforeseen market factors and the inability to afford to operate in the licensed square

footage. After careful consideration of the facts presented in the correspondence, the Treasurer-Tax Collector denied the tax modification request.

Pursuant to MCC Section 7.100.150, OSP and LGS may appeal the decision of the Treasurer-Tax Collector to the Board of Supervisors. The Treasurer-Tax Collector recommends that the appeal be denied and the unused/underutilized Cannabis Business Permits be cancelled for the remainder of the period in order to help OSP/LGS right size their future tax liabilities with their cultivation plans.

DISCUSSION:

Pursuant to California Revenue & Taxation Code sections 7284 and 34021, Chapter 7.100 was created to impose a tax on lawful commercial cannabis businesses in unincorporated areas of Monterey County. The tax rates were approved by the voters of Monterey County in November 2016, and Chapter 7.100 became operative as of January 1, 2017. The tax is imposed on businesses for the **privilege** of cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling or distributing cannabis (*See* MCC Section 7.100.030).

On or about June 6, 2017, the applicant Green Valley Floral (LGS Farms, Inc.) applied with the Monterey County Resource Management Agency (“RMA”) for a Use Permit authorizing commercial cannabis activities on Assessor’s Parcel 211-221-008, more commonly known as 460 Old Stage Road in Salinas. This Use Permit was granted on August 30, 2017.

On or about September 8, 2017, OSP and LGS applied for the annual Cannabis Business Permits (“Business Permits”) pursuant to Chapter 7.90 of the Monterey County Code. Subsequently, on December 14, 2017, OSP was granted eight Business Permits authorizing the cultivation of 76,032 square feet and LGS was granted one Business Permit authorizing nursery cultivation in the amount of 49,728 square feet. [Exhibit 2].

On December 12, 2017, OSP filed a Commercial Cannabis Business Tax Reporting Form with Treasurer-Tax Collector stating a business start date of October 16, 2017 and cultivation of 27,648 square feet for the October - December second quarter. LGS filed the same form indicating the same start date and a total of 6,912 square feet of nursery cultivation. [Exhibit 3]. All applicable third quarter taxes were paid on January 30, 2018.

On January 1, 2018, the California Department of Food & Agriculture (“CDFA”) began issuing temporary cannabis cultivation licenses. As a result, the Treasurer-Tax Collector was no longer able to base the County’s commercial cannabis taxes on the previously accepted “self-reporting” forms. [Exhibit 4]. The County Code is quite clear in that “...*the square footage shall be the maximum square footage or canopy allowed by the County permit for commercial cannabis cultivation, or, in the absence of a County permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the State license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation.* (MCC Section 7.100.050(B)(1)). As many CDFA temporary licenses have “unlimited” maximum square footage designations and the temporary state licenses did not identify specific square feet allowing the applicant to elect a designation within the possible range allowed by the license type as originally anticipated, the Treasurer-Tax Collector decided, after consultation with RMA and counsel, to require local cultivators

who had not yet applied for or received their Business Permits to file an Initial Registration Form for their Business Permits. This document served as the basis for computing the tax obligations for the balance of the fiscal year or until such time as a specific square footage is identified on the Business Permit or annual State license. Shortly after this decision, the Treasurer-Tax Collector and County staff met with industry representatives and explained the new process and it was not met with any opposition.

On or about January 20, January 23 and February 2, 2018, OSP and LGS also received 16 temporary State licenses authorizing cultivation of 169,000 square feet and two temporary State licenses for unlimited nursery cultivation on the above referenced parcel. [Exhibit 5].

On April 24, 2018, the Treasurer-Tax Collector received written correspondence from Jennifer Rosenthal Iverson on behalf of OSP and LGS requesting to pay taxes on a square footage amount they would “self-report” instead of the square footage designations authorized on the Business Permits they had requested and received in December 2017. [Exhibit 6]. In the letter Ms. Rosenthal Iverson states, in part, that they are not operating at the licensed full capacity due to many factors such as the high cultivation tax, unforeseen market factors, and the inability to afford to operate in 48,384 and 38,208 square feet of operations. Ms. Rosenthal Iverson also opines that OSP and LGS are being treated unfairly compared to others in the cannabis industry.

On April 25, 2018, the Treasurer-Tax Collector reviewed and denied the request as there is no legal basis in Chapter 7.100 to reduce the square footage calculation for purposes of taxation [Exhibit 7]. In fact, MCC Section 7.100.060 specifically emphasizes the remittance of tax to be based on the square footage of cultivation authorized by the Business Permit, and that the tax will not be prorated or adjusted for any reduction in the square footage authorized but not utilized for cultivation.

Based on these factors, the Treasurer-Tax Collector does not have the authority or discretion to modify the tax bill. OSP and LGS did have the opportunity, when applying for the Business Permits in December 2017, to only request permits for the amount of canopy they intended to cultivate. It is unknown to the Treasurer-Tax Collector why OSP/LGS obtained Business Permits for canopy far greater than the intended cultivation areas; especially given that Chapter 7.100 has been quite clear on how canopy would be taxed and the mitigating circumstances cited in the appeal letter were already significant industry concerns. Regardless, understanding the difficulties encountered by the cultivators, a suggestion was made to work with the RMA to discuss a downsizing the number of Business Permits, but appellants did not avail themselves of this option.

On April 30, 2018, the Treasurer-Tax Collector issued tax bills to OSP for \$285,120 and LGS for \$24,864 based on the permitted amount of square footage as required by Chapter 7.100. Partial payments were made in the amounts of \$103,680 and \$5,740 respectively.

The Treasurer-Tax Collector understands the uncertainties faced in this new and evolving industry, but does not have the authority to promulgate rules or make tax reductions that run in direct opposition the Monterey County Code. The provisions for taxation incorporated in the Chapter 7.100 have been in place since January 1, 2017 and have not been modified. OSP and LGS applied for and received Business Permits from the County affording them the privilege of cultivating 125,760 square feet of cannabis only three months prior to this appeal. In addition, they have received CDFA permits

allowing for 169,000 square feet and unlimited nursery cultivation. Should they desire to cultivate only 34,560 square feet as they have indicated, it is recommended that RMA cancel a portion of their Business Permits to reduce future tax obligations.

The Treasurer-Tax Collector therefore recommends the Board deny the appeal regarding the imposition of the applicable commercial cannabis cultivation tax and associated penalties for the third quarter of FY 2017-18, and authorize the RMA to work with OSP and LGS to cancel, without prejudice, unused/underutilized Business Permits for the remainder of the permit validation period (12-14-17 to 12-13-2018).

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed this report and resolution as to form.

FINANCING:

There is no negative impact to the General Fund arising from the recommended action. If the recommendation is not accepted, the General Fund will lose \$200,544.00 of discretionary cannabis revenue from the unpaid taxes, plus additional penalties.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

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

Prepared & Approved by Mary A. Zeeb, Treasurer-Tax Collector, x5474

All attachments are on file with the Clerk of the Board:

- Exhibit 1 - Monterey County Code Chapter 7.100
- Exhibit 2 - County Cannabis Business Permits
- Exhibit 3 - Second Quarter Tax Reporting Forms
- Exhibit 4 - Administrative Rules and Procedures - Commercial Cannabis Business Tax
- Exhibit 5 - State Commercial Cannabis Temporary Licenses
- Exhibit 6 - April 24, 2018 Letter from Ms. Rosenthal Iverson
- Exhibit 7 - April 25, 2018 Letter from Tax Collector
- Exhibit 8 - Draft Resolution

cc: Kelly Donlon, Deputy County Counsel
Carl Holm, Resource Management Agency Director