



Monterey County

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Board Report

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Receive a Cannabis Program status report; approve the Cannabis Program Strategic and Implementation Plan; and approve budget augmentations for the following departments (4/5th vote required): Agricultural Commissioner Office, County Administrative Office, District Attorney, Health Department, and Resource Management Agency.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve the Cannabis Program Strategic and Implementation Plan;
- b. Authorize an increase to estimated appropriations in the amount \$149,732 for the Agricultural Commissioner Office Budget Unit 001-2810-8001-AGR001 (4/5th vote required), and amend the Agricultural Commissioner Office Budget Unit 001-2810-8001-AGR001 to add one FTE, Weights and Measures Inspector III;
- c. Authorize an increase in appropriations in the amount of \$300,000 to the CAO Other Financial Uses Budget Unit 001-1050-8038-7013-CAO17 of which \$100,000 is allocated from the General Fund Cannabis Assignment, BSA-3132 (4/5th vote required);
- d. Authorize an increase to estimated appropriations in the amount \$145,819 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, Management Analyst III;
- e. Authorize an increase to estimated appropriations in the amount \$73,284 for the CAO Budget Unit 001-1050-8045-CAO001 (4/5th vote required), and amend the CAO Budget Unit 001-1050-8045-CAO001 to add one FTE, Accounting Clerk;
- f. Authorize an increase to revenues in the amount \$1,668,721 for CAO Non-Program Revenue Cannabis Tax 001-1050-8041-4130-CAO019 (4/5th vote required);
- g. Authorize an increase to estimated appropriations in the amount \$594,999 for the District Attorney Budget Unit 001-2240-8062-DIS001 (4/5th vote required) and amend the District Attorney Budget Unit 001-2240-8062-DIS001 to add two FTEs: one District Attorney Investigator III, and one Deputy District Attorney;
- h. Authorize an increase to estimated appropriations in the amount \$275,130 for the Health Department - Environmental Health Bureau Budget Unit 001-4000-8116-HEA005 (4/5th vote required), and amend Health Department - Environmental Health Bureau Budget Unit 001-4000-8116-HEA005 to add two FTEs: two Environmental Health Inspector IIIs;
- i. Authorize an increase to estimated appropriations in the amount \$129,757 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;

- j. Authorize the Auditor-Controller's Office to incorporate approved modifications in the FY 2018-19 Adopted Budget; and
- k. Authorize the CAO to incorporate the changes to the FY 2018-19 Adopted Budget to reflect the change in position counts.

SUMMARY/DISCUSSION:

Monterey County desires to become a cannabis industry leader in the State of California. To become a leader, we must demonstrate the highest performance level of an industry that is used as a standard or benchmark for others. Often, a leader will equal or exceed their own expectations. The Monterey County Cannabis Program completed one of the important critical steps in becoming an industry leader by developing the Cannabis Program Strategic Plan. (Attachment A). The Strategic Plan and accompanying Implementation Action Plan was presented and approved by the Board of Supervisors Cannabis Committee on July 23, 2018. During the development of the Strategic Plan, insufficient allocations were identified as a critical area of concern that would need to be further evaluated and addressed with the Board of Supervisors.

Cannabis Program Enforcement: Two Different Teams: Enforcement and Compliance:

The Enforcement Task Force is committed to work collaboratively internally, as well as with our cannabis industry. Our goal is to foster a legal, compliant industry where we demonstrate our internal and industry best practices. While the legal cannabis industry is developing in Monterey County, it is critical that the illegal cannabis activity be controlled.

The Cannabis Program Enforcement Task Force had not previously included a process or identified the need for compliance resources because enforcement was historically based reactive rather than proactive enforcement. Staff finds that the current environment requires a more proactive approach to manage compliance checks on legal operators. One additional Code Compliance Inspector would allow staff to visit sites and meet with operator's multiple times per year, which is what staff feels is and will be needed for Program compliance. RMA would assume the lead for these inspections (verifying canopy, assessing site conditions, condition compliance once permits are issued, etc.). This is a crucial component of the Program with efforts to facilitate economic development, protection of public safety, health, and the environment as the industry flourishes; and implementation of a well-managed County program with effective and equitable compliance, and enforcement that is self-funded.

- Compliance - focuses on compliance with County and state laws by operators who are legally operating, or are attempting to operate legally in the County. Typically, the process to cure non-compliance occurs over a period of time working with cooperative business operators. Compliance cases will use the administrative process through Code Enforcement, Environmental Health, or the Agricultural Commissioner when needed. Compliance cases can be escalated to Enforcement when necessary.

- **Enforcement** - focuses on stopping illegal cannabis operations or unfair business practices. Enforcement against an illegal cannabis operation occurs when there is engagement in any unpermitted cannabis activity without obtaining all required permits and licenses. Enforcement cases will use the civil or criminal prosecution process through the Sheriff and District Attorney. Compliance Task Force departments may be called to participate in the enforcement actions. Enforcement begins with the investigation step and may result in a search warrant service. After the service is completed, the legal action begins and may take months to resolve which requires a level of law enforcement staff until resolution.

Cannabis Program Budget Allocation Request:

During FY 2017-18, the Cannabis Program departments were requested to project staffing allocations for FY 2018-19. The initial estimated cost was \$10,214,557. Through further analysis it was reduced to \$7,383,898. Departments were again requested to re-evaluate their requests due to budget constraints and were allocated \$2,731,110. At the direction of the Board of Supervisors, the Cannabis Program has been tracking staff hours to related cannabis work since July 1, 2018. For FY 2018-19, 1st Quarter, the following hours were tracked as follows:

- Agricultural Commissioner: 904 hours at a cost of \$49, 511
- Assessor Clerk Recorder: 17 hours at a cost of \$838
- Auditor-Controller: 21 hours at a cost of \$2,308
- CAO: 454 hours at a cost of \$32,603
- County Counsel: 193 hours at a cost of \$18,946
- District Attorney: 862 hours at a cost of \$75,041
- Health Department: 749 hours at a cost of \$48,319
- RMA: 320 hours at a cost of \$32,013
- Sheriff Office: 349 hours at a cost of \$29,575
- Treasurer Tax Collector: 888 hours at a cost of \$53,277

The total staff hours for this time period was 4,757 hours at a cost of \$342,431. Departments that work on cannabis activities are adjusting work tasks in order to meet the demands of the cannabis work requests. Based on the hours tracked, to date, it appears that the Program is insufficiently resourced to meet the Program strategic goals.

Cannabis Community Forums:

During the spring 2018, the Cannabis Program conducted “District Community Forums” with the purpose to gather input from the public regarding the potential use of cannabis tax revenue. Both the on-line and telephone surveys identified the following as priority.

- Early education and pre-school program
- Providing quality healthcare, including mental health, for County residents
- Programs to reduce and prevent crime and violence

- Services for homeless families and adults

During FY 2017-18, cannabis tax revenue, approximately \$285,000, was allocated to the Homeless Shelter. During 2018-19, cannabis tax revenue, approximately \$3,317,000, has been allocated to Social Services, Libraries, and the Interlake Tunnel. The County has taken into consideration the input received from the community forums and applied accordingly.

It should be noted that an allocation of \$5,405,061 was used to fund the County's FY 2018-19 Annual Appropriations for Contingencies, thereby freeing up monies to pay for essential augmentations for public safety programs that do not include enforcement and compliance work related tasks.

County Administrative Office:

The overall Cannabis Program is currently allocated with one Program Manager to coordinate and collaborate nine County departments, implement the Strategic Plan, act as the State Agency Point of Contact, assist our industry operators, track multiple data collection systems, and create program standards with efficiencies. The Program functions and demands out pace one position in a practical manner. Staff hours exceed a normal 40-hour work week. Examples of work tasks that involve more time than anticipated include, but are not limited to, communication between departments and state agencies, data collection, and analytics. The Program requests a Management Analyst position to support the Program Manager in all of its duties. In addition, the Cannabis Program requests an augmentation of one Account Clerk that reports to the Administrative Finance Manager. The Finance Manager has limited resources and is currently tasked with duties that are of an Account Clerk responsibility. The Account Clerk will allow a reallocation of duties that fit the classification. In so doing, the Finance Manager will have time to assist the Cannabis Program in duties that fit the classification. One critical aspect of the Program is the financial data collection of payroll time and revenue as it relates to the overall budget functionality of the Program.

As stated above, the Cannabis Program Manager acts as the coordinating hub between the nine County departments, industry, and external agencies. In the past six months, staff observed that although expectations and goals are set, the capacity of each department is very limited to manage the workflow efficiently and effectively. Cycle time is described as the total time from the beginning to the end of a process defined by a customer. An example of a complex work task is the processing of a State Agency Cannabis Temporary/Provisional/Annual License. In respect to the Temporary Licenses, the State allows for a ten-day response time, or the license becomes valid without local jurisdiction input. Departments who manage multiple, priority tasks may not have the "bandwidth" to be able to update databases accurately or respond to requests for information. Staff has identified that Monterey County cannabis business entities often change business names through the cessation of business process and change parcel locations. This one example creates a dynamic, complex set of data points to monitor and accurately track.

Insufficient resources and the ability to respond in a timely manner, for internal and external requests of information, creates a domino effect of delays, possible errors, and the difference between “good and bad data.” The State Cannabis licenses impact all nine departments because it is one of the essential components for a business operator. The State Cannabis licenses are a key critical component in compliance inspections and illegal enforcement actions.

Agricultural Commissioner:

Every cannabis cultivator and other related businesses need to be a licensed weighmaster, and have sealed scales for all product that enters the track-and-trace system. This is a significant increase in anticipated workload. Without the additional resource, there will be little to no consumer protection activities in the dispensaries, no inspection of point-of-sale systems (scanner), quantity control, or product labeling.

District Attorney:

The Cannabis Program Strategic Plan, Goal B states, “Protect public safety, health and the environment as the cannabis industry grows in Monterey County.” This strategic goal is the backbone of a robust enforcement strategy. There is a fundamental need for the addition of a Civil Deputy District Attorney and a Civil District Attorney Investigator to continue investigations and prosecute criminal and civil cases. Applicable criminal cases include violations of the Monterey County Code, and any other violations of the Penal or Health & Safety Codes. Applicable civil cases include unfair business practices, environmental harm, and workers compensation insurance violations. During the period of May-June 2018, the District Attorney agreed to take a short enforcement operation and reassigned District Attorney Investigators from their regular duties to search for and eradicate illegal cannabis cultivation sites throughout Monterey County. Search warrant services were served on six parcels with the eradication of approximately 13,000 plants of illegal cannabis. This short time period of investigation uncovered the complexity of not only criminal, but also civil violations within the illegal industry as well as those that are attempting to become legal and compliant.

Health Department, Environmental Health Bureau

The Environmental Health Bureau plays a significant role in both compliance inspections and illegal cannabis investigations and search warrant services. The bureau is also involved in testing of evidence taken from parcel sites as well as monitoring all aspects of cannabis cultivation, manufacturing, transportation, and dispensing operation. The need for the additional two Environmental Health Inspectors and lab fees are critical to the overall cannabis enforcement strategy.

Resource Management Agency:

The Resource Management Agency (RMA) is the lead agency to develop regulations, process permits (use/coastal development permits, cannabis business permits, building permits), and enforce

compliance (permit conditions, zoning codes, building codes). These functions are being managed by existing staff. While RMA can manage with existing resources, they have been asked to perform increased, routine compliance inspections. Inspections to date have taken two people a minimum of four hours for each large cultivation site. It has been found to be more efficient with two people where one focuses on the inspection, and the other taking photos and notes. For two people conducting site inspections under current conditions, RMA must pull other resources, like Planning, to assist the one funded inspector. The Cannabis Program Manager asked RMA to increase compliance inspection activities to be more proactive given the current environment. In order to meet the targets being proposed by the Cannabis Program Manager, RMA would request a second inspector in order to avoid needing to pull resources from other areas. Pulling resources from other areas has an impact on those services (permit process and/or building inspections). It is anticipated that this is a long-term, or permanent, condition with this industry, which would warrant a full-time Code Compliance Inspector position added to RMA. In addition to the increased need for compliance, there are about 80 cannabis Use/Coastal Development Permit applications to process. The plan was to have these applications assigned to planners that would give them priority and balance that with their workload. Planning currently has a backlog of about 300 applications. Adding the cannabis applications would impact that condition, and very likely impact the processing time for other applicants. In order to manage this situation, RMA has two consulting firms under on-call contract. If funding was allocated to help expedite cannabis permits, we could manage this push without impacting other applicants. While staff is required to review the consultant work product, it significantly reduces the time required and can help meet the state timelines. In addition, RMA is considering preparing a programmatic environmental document (Mitigated Negative Declaration) that would address all the emerging issues that have cumulative effects (water, drainage, energy, air, traffic, security, fire, etc.) for all the known applications. Staff has requested that the industry provide funding to complete the programmatic document.

Attachment B-1 and 2 shows the FY 2018-19 Board of Supervisor approved Cannabis Program allocations as reported in the 2019 Recommended Budget. The last two columns show the request for additional allocations to the Cannabis Program. If approved, the total allocations for the Cannabis Program would be 19.48 full-time equivalent employees at a cost of \$4,329,072. The FY 2018-19 Cannabis Tax Revenue would fund the newly requested allocations based on the estimated cannabis revenue provided in FY 17-18 except for \$100,000 which would be considered one-time money for an outside consultant to assist with cannabis permit processing. The \$100,000 would be funded from the General Fund Cannabis Assignment. A 'right sized' Cannabis Program is required for success. Staff recommends that the Board of Supervisors consider the requested augmentations to allow the Program to develop its structure and foundation during its growing years.

FINANCING:

The approval of the recommended actions will require augmentations to the following departments in

budget FY 2018-19, financed by an increase to revenues in CAO Non-Program Revenue Cannabis Tax, in the amount of \$1,668,721.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Proposed augmentation requests for additional staffing provides support to the overall program to meet the Board of Supervisors expectations while supporting departments who have shifted priorities to meet the Cannabis Program needs. Additional staffing will gain efficiencies of internal processes including staff time and meeting expected service levels.

Related Board of Supervisors Strategic Initiatives include:

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

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Approved by: Nicholas E. Chiulos, Assistant CAO

Attachments:

- Attachment A: Cannabis Program Strategic Plan and Implementation Plan (A1/A2)
- Attachment B: Cannabis Resource Allocations

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