

Cannabis Committee January 29, 2021

Receive a report on the utilization of Cannabis Program allocations, make recommendations for proposed augmentation requests for Fiscal Year 2021-22, and direct the Cannabis Program to either return to the Cannabis Committee with additional information or to receive direction from the Board of Supervisors.

RECOMMENDATION:

It is recommended that the Board of Supervisors Cannabis Committee:

- a. Receive a report on the utilization of Cannabis Program allocations;
- b. Make recommendations for proposed augmentation requests for Fiscal Year 2021-22;
- c. Direct the Cannabis Program to either return to the Cannabis Committee with additional information or to receive direction from the Board of Supervisors; and
- d. Provide additional direction to staff as appropriate.

SUMMARY

The Cannabis Program (“Program”) was directed to review allocated resources funded by cannabis tax revenue to provide analysis on how they are utilized, review any barriers or challenges, and make conclusions based on this analysis and department interviews.

There were common threads running through each interview: impacts to non-allocated support and supervisory staff and a need for additional resources to more effectively carry out responsibilities, which have increased in breadth and depth since the inception of the Program. Staff has included proposed augmentations for Fiscal Year 2021-22 for review.

DISCUSSION:

At the October 14, 2020 Board of Supervisors Cannabis Committee (“Committee”) meeting, the Committee directed the Program to review current Program allocations, analyze findings, gain input from Program departments, identify current Program needs, and return to the Committee with findings, conclusions, and recommendations.

This request provided the Program with the opportunity to evaluate how departments have been impacted by the incremental responsibilities they have accrued as the Cannabis Program and industry evolved.

Here is a list of critical functions assumed by the Program or Cannabis Department:

- Cannabis Program Manager designated as the Appropriate Authority for oversight of the Monterey County Code (“MCC”) Chapter 7.90 which includes the review, issuance, renewal and, if required, revocation of the Cannabis Business Permit (“CNB”).
- Assistance of department finance managers to track CNB specific costs and disbursements.
- Departments responsible for review and approval of the CNB according to their scope of oversight.
- Ongoing effort by the Office of the County Counsel and appropriate departmental staff to continuously review state law and receive industry input by proposing amendments to ordinances to either align with state regulations or to address specific local concerns.

- Creation and maintenance of effective data tracking mechanisms and Program indicators, reporting figures through monthly Cannabis Program memorandums.
- Collaboration with County Administrative Office (“CAO”) Finance Manager and Housing and Community Development (“HCD”) Finance Manager to track resource utilization through payroll time tracking.
- Grant management, including making the application, executing the agreement, and conducting the scope of work outlined in both Equity Assessment and Proposition 64 Grants.
- California Cannabis Track-and-Trace, commonly known as Metrc, launched in September 2019 with extensive collaborative work with the CA Cannabis Authority (“CCA”) and the Treasurer-Tax Collector (“TTC”) Office.
- Program staff responsible for handling cannabis related public records requests.
- Expanded role of Cannabis Program to act as ombudsperson for industry operators.
- Expanded effort of Health Department, Public Health Bureau to inform the public on cannabis consumption and dangers related to use of unlicensed cannabis products.
- Increased enforcement of unlicensed cannabis activities in collaboration with the District Attorney and Sheriff’s Office, including the Department of Fish and Wildlife.
- Monitoring subsequent arrests or denial of applicants who were required to undergo a LiveScan.
- Management of the CNB Fee Study with MGT Consulting Group, Inc. to establish a standard fee for the CNB initial and renewal application process.

These added responsibilities (Attachment A, Exhibit 3) greatly expanded the scope of oversight for the Program, prompting the need to build efficiencies into the workflow of each staff person to accommodate the additional workload. This was achieved through rapid learning and adaptation of staff to identify opportunities for streamlining processes.

The Program reviewed the current allocations (Attachment A, Exhibit 2) paid by cannabis tax revenue, implemented an online department survey to gain initial input, followed up with individual department meetings, analyzed findings, and developed conclusions based on this information. Staff also prepared a timeline of events by Fiscal Year (“FY”).

Program History, Allocations and Utilization by Fiscal Year

The nine departments contributing to the success of the Cannabis Program each have distinctive scopes of oversight, with areas of overlap where intradepartmental collaboration occurs. The oversight of each department and the responsibilities of their respective staff can be referenced in Attachment B. Below is a summary of the Program by FY.

FY 2016-17

With the passage of Proposition 64, staff from then Resources Management Agency (“RMA”) moved quickly to implement a local regulatory framework parallel to that of the state as required in the dual licensing system adopted by the State of California. This effort would enable prospective operators to conduct nearly any commercial cannabis activity while spurring the renovation of properties and structures of a once flourishing floral industry. In July 2016, Ordinance 5270 amended Title 21 to regulate commercial cannabis activities within the unincorporated area.

Ordinance 5274 followed shortly thereafter which imposed the following County general taxes for commercial cannabis businesses in the unincorporated area, contingent upon voter approval of Measure

Y: \$15 per square foot on cultivation, \$5 per square foot on nurseries, and 10% of gross receipts on other marijuana business activities. In the November 2016 General Election, Measure Y was approved by nearly 96,000 Monterey County residents, or approximately 74% of the vote.

FY 2016-17

TTC presented an augmentation request to the Board in December 2016 to support new County functions for issuance of business licenses and collection of taxes for commercial cannabis businesses operating in the unincorporated area. The request for three (3.0) staff, services and supplies, and security enhancements was approved and financed initially with property tax revenue. Measure Y went into effect on January 1, 2017 and the TTC began collecting commercial cannabis business taxes.

Allocated costs for these activities were \$228,491.00; \$120,353.00 for staff positions and \$108,138.00 for non-staff costs. Total costs were 8% of the cannabis tax collected: \$2,882,678. The cannabis override code was not in place at this time.

FY 2017-18

The Program formally began in March 2018 with the reclassification to a Program Manager II position from an existing Management Analyst III position within the Intergovernmental and Legislative Affairs division of the CAO. The 11.48 staff and non-staff department costs were allocated to the Program with the implication they would be 100% dedicated to cannabis work. During the Program's first year, internal processes, a strategic plan, and the compliance inspection process was being developed. Taxes adopted in Measure Y were modified with Ordinance 5305 to reduce cultivation tax rates and establish specific tax rates for other commercial cannabis activities.

In January 2018, Monterey County entered into a Joint Points Agreement with the CCA to develop and manage a statewide data platform that will gather, collect and analyze information from a variety of data sources into one resource to help local governments ensure cannabis regulatory compliance and also provide necessary information to financial institutions that wish to work with the cannabis industry. Ordinance 5299 was adopted in March 2018 amended Title 20 to regulate commercial cannabis activities within the coastal unincorporated area.

FY 2018-19

In September 2018, the Central Coast Cannabis Program Forum was cofounded along two other County level jurisdictions to share best practices, discuss challenges and learn from each other. The Forum now includes participation from 11 jurisdictions. The CNB process was transferred from then RMA to the Cannabis Program in April of 2019. Ordinances 5311 and 5322 were adopted in June 2019 to establish an Outdoor Cannabis Cultivation Pilot Program in the inland and coastal areas respectively.

In October 2018, eight (8.0) additional staff were allocated to five departments in the Program, bringing the total allocated staff to 19.48. Allocated costs were \$3,735,933.50; \$2,700,412.50 for staff positions and \$1,035,521.00 for non-staff costs. Total costs were 24% of the cannabis tax collected: \$15,768,705. Total available hours for allocated staff was 29,494 and utilization was 18,757 at approximately 64% usage. (Attachment A, Exhibit 1)

FY 2019-20

Ordinance 5320 was adopted in November 2019, which designated the Cannabis Program Manager as

the Appropriate Authority. This ordinance would also amend Chapter 7.90 to require operators to submit data to the CCA; local Metrc oversight and compliance was enabled by access to the CCA data platform beginning in April 2020. Ordinance 5324 was adopted in March 2020, which removed the requirement for LiveScans to be conducted for property owners, supervisors, and employees.

2.5 additional staff were allocated to the Program following the budget hearings in June of 2019, bringing the total to 21.98 staff. In October 2019, two additional staff were allocated to the Program, bringing the total to 23.98 staff before the Auditor-Controller deleted the 0.5 position allocation but retained the allocated cost in their budget, bringing total program staff allocations to 23.48. Allocated costs were \$4,721,501.50; \$3,646,395 for staff positions and \$1,075,107.00 for non-staff costs. Total costs were 28% of the cannabis tax collected: \$16,878,601. Total available hours for allocated staff was 45,846 and utilization was 33,562 at approximately 73% usage. (Attachment A, Exhibit 1)

During FY 2019-20, the Board of Supervisors approved three non-cannabis staff to be paid from cannabis tax revenue. The positions reside in Housing and Community Development, Military & Veterans Affairs, and Department of Social Services. The cost for these three positions is \$350,919.00. This report does not include review or analysis of these three non-cannabis positions.

FY 2020-21

Current costs for cannabis program staff and non-staff resources is \$5,070,950.00. Estimates for FY 2020-21 cannabis tax revenue is approximately \$19.5m, which could be 26% of the cannabis tax collected for this FY. There are 23.48 staff currently allocated to the Program. The Program's goals are to continue to improve internal collaboration, processes, work with outdoor grow pilot participants, and increase knowledge and usage of Metrc.

The Program has not been able to track or ensure the cannabis override code is used as a standard for all cannabis related revenue and expenditures by department. Program staff believe they will need assistance from the Auditor-Controller's Office to assist in the development a system to review such data in order to better compile all actual program costs and expenses.

Program History, Allocations and Historical Utilization Conclusions

The calculation for resource utilization assumes eight (8) available hours for each workday of one (1) full-time equivalent ("FTE") positions, typically equaling 2,080 hours annually. Because staff allocations are fully loaded and are intended to be 100% dedicated to cannabis, all hours should be captured with the cannabis override code including holidays and paid leave. Hours reported are divided by available hours to arrive at a percentage utilization. Since tracking began with the cannabis override code, allocated staff utilization has averaged 70%.

While some departments have seen an increase in utilization through more accurate usage of the override code, others have remained consistently underutilized. This is primarily due to the following factors: underreporting of the cannabis override code by staff, staff allocation assigned to other non-cannabis related work, completing work tasks related to cannabis but for Monterey County cities or agricultural requirements.

Decreases in utilization for the Environmental Health Bureau ("EHB") compliance team are attributed to COVID-19 during March 17 – June 1, 2020. Underutilization of the \$200,000 allocation for

enforcement overtime of the Sheriff's Office can also be attributed to COVID-19: this allocation was on pace to be fully expended by year's end before staff availability was limited due to quarantine protocol.

Program Staff has not been able to establish any reliable benchmarks for analysis of the costs of a cannabis program relative to the cannabis tax revenue generated within a jurisdiction. Initial research into other jurisdictions has suggested that Monterey County is atypical in making discrete allocations for the Cannabis Program, which makes it difficult to compare costs, duties, or tax revenue. Existing costs were justified across all departments, with several departments requesting additional resources to meet current and anticipated needs.

Several departments have reported an evolution from the original needs of the Cannabis Program and the duties of allocated staff and have identified unintended consequences and areas of opportunity to improve effectiveness:

- Several departments reported difficulty in staffing 0.50 FTE positions and would prefer that whole positions are allocated.
- Several departments noted monies are not allocated to support staff who are not paid by cannabis tax revenue but still perform cannabis work related duties.
 - In FY 19-20, a total of 6,015 hours were reported under the cannabis override code by 129 unallocated staff. Through Q2 of FY 20-21, a total of 5,085 unallocated hours were reported under the cannabis override code by 120 unallocated staff.
- Several departments reported that despite having staff allocations, unallocated supervisory and support staff within their department is frequently and considerably impacted without any reimbursement.
- The Sheriff's Office would like to keep staff in the field as much as possible, allocating separate support staff within their department to conduct the research and analysis for a more effective division of labor. The SO does not currently have administrative staff paid by cannabis tax revenue to support this goal.
- The scope of compliance of HCD and EHB inspection staff has expanded to include Chapter 7.90 and Metrc compliance.
- Outdoor cultivation in District 5 will increase the need for efficiencies of the compliance inspection teams.

Cannabis Department Needs Assessment

To review and analyze resource utilization, each cannabis department completed an online survey and participated in department meetings to discuss and review data findings. Cannabis departments have proposed the following needs for FY 2021-22:

- Auditor- Controller
 - Augmentation to add 1.0 FTE to support program cost analysis and improve accuracy in using the cannabis override code for all payroll, revenue, and expenses.
- Health Department
 - Delete the 0.5 FTE (Management Analyst II).
 - Increase appropriations for Youth Prevention/Intervention by \$70,000.00
 - Augmentation to add one (1.0) Chronic Disease Prevention Coordinator

- The overarching goal of the Cannabis Education Program is to educate youth and pregnant and lactating women on the adverse effects of cannabis use through the utilization of harm reduction strategies by:
 - Decreasing and delaying the number of youths in Monterey County that use cannabis.
 - Educate on the effects of using cannabis while driving, pregnant, or breastfeeding.
 - Empower parents with strategies to engage youth in cannabis conversations.
 - Replace one (1.0) FTE Environmental Health Specialist (“EHS”) IV with one (1.0) FTE EHS III to match the three inspectors in HCD to provide three complete cannabis inspection teams.
 - Augmentation to add one-quarter (0.25) Environmental Health Specialist IV to lead and supervisor the cannabis inspection staff.
- Housing and Community Development Department
 - Augmentation of one-quarter (0.25) of a Resource Management Services Manager (Building) to supervise the HCD cannabis inspection staff.
- Sheriff’s Office
 - Augmentation to add 1.0 FTE to support the research and analysis efforts related to search warrants of unlicensed cannabis operators.
 - Augmentation for two License Plate Recognition Data and Analytics software, an intelligence solution that enhances policing efforts.
- Cannabis Program
 - The CAO has requested the Human Resources Department to conduct an Organizational/Program Study of the Cannabis Program. The Human Resources Department anticipates having a draft report to the County Administrative Officer by the week of April 19, 2021. The request is on the following:
 - Cannabis is a new industry and program/position needs were unknown in early 2018.
 - Program has taken on increased responsibilities and work in order to develop and expand the internal administrative processes to better serve our cannabis industry.
 - Program may need to re-organize staff workloads when the Equity Program is established and implemented.
 - “Right-size” the cannabis compliance inspection team structure. The original intent was to have three Program compliance inspection teams that conduct site inspections, complete checklists, and findings in Accela Automation, participate in search warrants with the Sheriff’s Office and District Attorney, and other related duties as needed. Currently, we are limited to two teams because one of EHB’s allocations, the EHS IV, does not conduct site inspections on a full-time basis. The EHS IV is a supervisory position which provides leadership and technical direction and support on and off the field with the most complex inspections to the full-time staff. The Agricultural

Commissioner's Office participates in some of the cannabis compliance inspections but primarily participates separately with CDFA Enforcement inspections.

- Current Cannabis Compliance Inspection Allocated Staff:
 - Agricultural Commissioner's Office
 - Allocated 2.5 FTE positions.
 - Improved participation in cannabis compliance inspections.
 - Is not assigned an inspection in Accela Automation therefore inspection findings are not recorded which prevents Program staff from capturing and reporting inspection figures.
 - Hours of allocated positions are used across multiple staff.
 - Under an Agreement with CA Department of Food and Agriculture to conduct inspections and receives compensation per inspection that related to CDFA regulations.
 - Housing and Community Development
 - Three Code Compliance Inspectors, 100% dedicated to the Program.
 - Currently one position is unfilled.
 - Health Department, Environmental Health Bureau
 - Two EHS III support the entire county to conduct cannabis inspections including cities.
 - One EHS IV manages the EHS positions that support the Program and other supervisory duties.
- Contingency Fund
 - A contingency fund would be used under the discretion of the Program for all cannabis departments to support expenditures of enforcement overtime, enforcement tools, testing lab fees, outside consultants for permit processing and other needs as determined critical and necessary. The Program will be seeking an FY 22 budget augmentation for a contingency in the amount of \$620,000.00 (Attachment B).

Other Program Considerations

While considering the current processes and needs, Program staff requests consideration for the following.

- Lab Fees. For the past two fiscal years, lab fees allocated at \$100,000 for Environmental Health Bureau have been minimally utilized with less than \$10,000 spent in total. The original purpose of the lab fees was to test product during compliance inspections or search warrants conducted by the Sheriff's Office. The Program recommends the lab fee allocation be transferred to the Program Contingency fund which will allow all cannabis departments to use as needed. And instead, the Program will reimburse cannabis departments in an ongoing basis for any lab costs incurred in the course of conducting compliance inspections and/or search warrants as funds are available.

- Overhead Costs. If overhead costs are allocated to one department, a fair-share allocation should be provided to all cannabis departments.

OTHER AGENCY INVOLVEMENT:

The following departments contributed and reviewed this report: Agricultural Commissioner, Auditor-Controller, Assessor Clerk-Recorder, County Administrative Office, Office of the County Counsel, District Attorney, Health, Sheriff's Office, Housing and Community Development and Treasurer-Tax Collector.

FINANCING:

Monterey County's Cannabis Program is funded in County Administrative Office – Department 1050, Intergovernmental and Legislative Affairs Division – Unit 8533, Cannabis. Cannabis allocations are funded by cannabis tax revenue. The approval of this report will not incur additional expenses at this time.

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

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Attachments:

- A: Cannabis Program Utilization, Allocations, and Responsibilities by Department
- B: Overview of Proposed Cannabis Program Contingency Fund