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**Document for Planning Meeting, July 13**

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To: Planning Department <planning@edcgov.us>

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 1 attachments (657 KB)

CAC-Annual-Report-2021, Cannabis.pdf;

Please review and add to Public Comment Received for meeting.

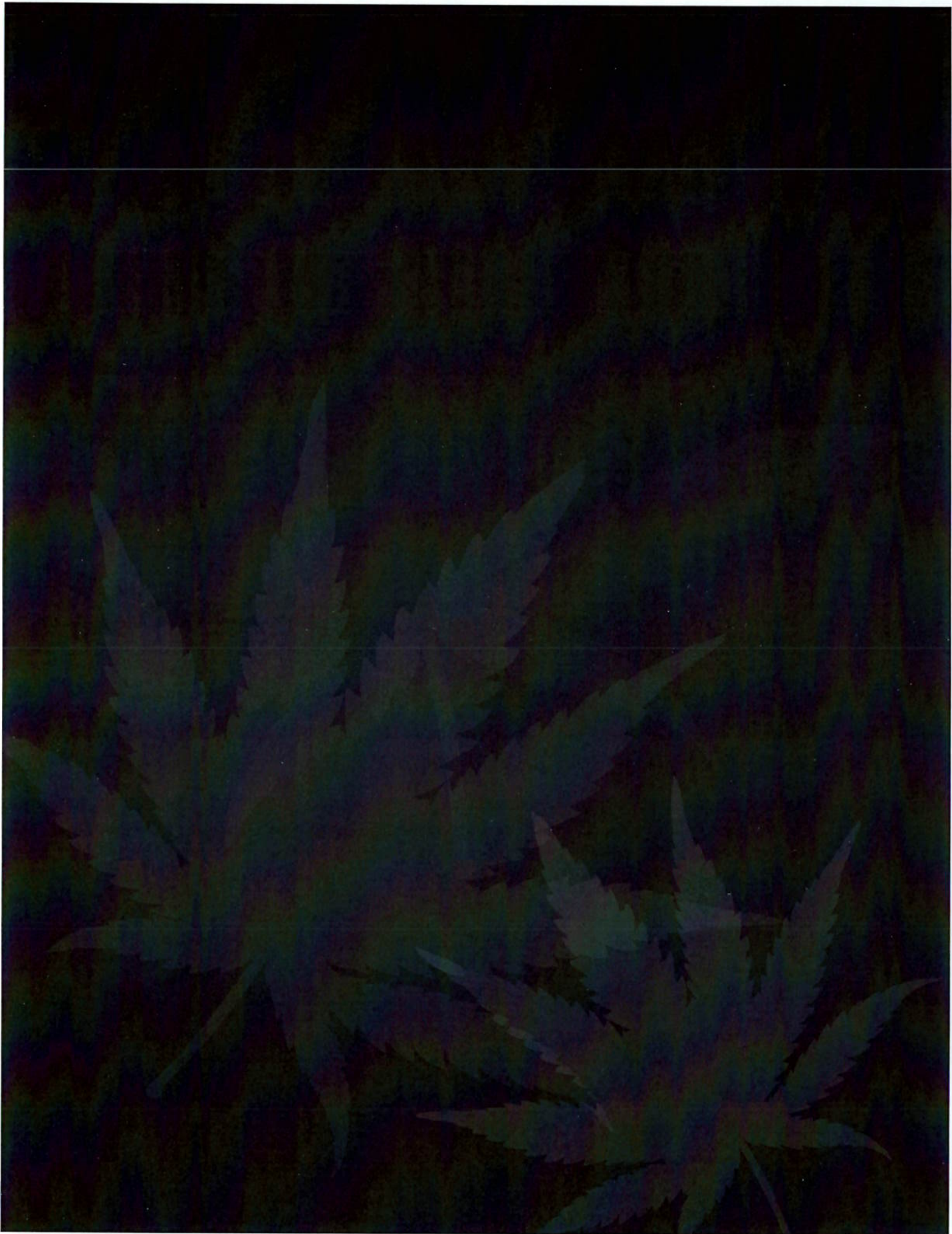
Thank you.

David Harde

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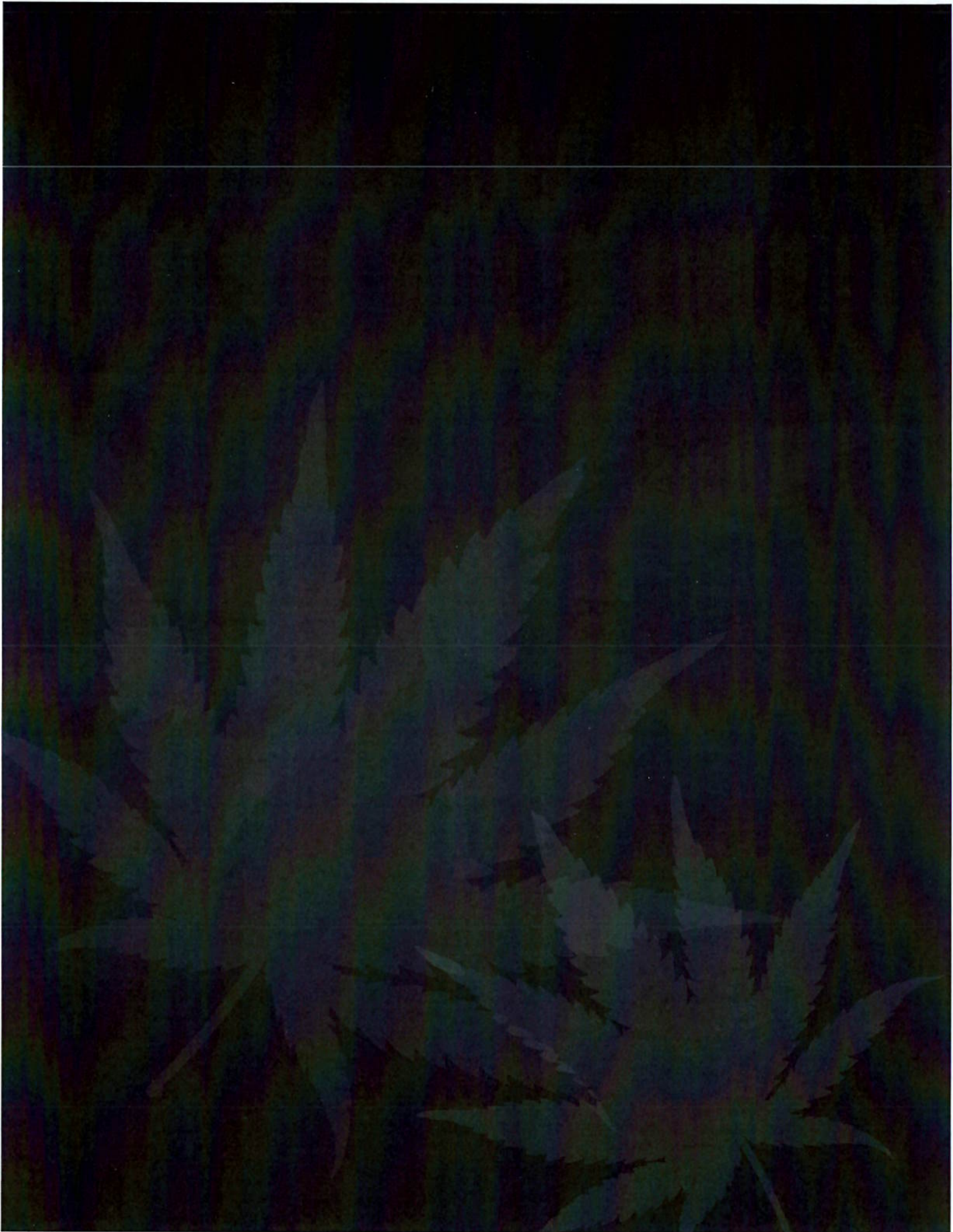
ANNUAL REPORT

**CALIFORNIA CANNABIS ADVISORY COMMITTEE**



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## INTRODUCTION

Given the truncated schedule of the Cannabis Advisory Committee (Advisory Committee) meetings due to the pandemic, this report seeks to provide an annual update, highlight the work of the newly formed Department of Cannabis Control (DCC), and capture the recommendations that culminated from public input. Consistent with previous years, the principles of protecting public health and safety while ensuring commercial cannabis regulations do not impose barriers that perpetuate the illicit cannabis market guided our work and our recommendations. We appreciate the public participation and dedication of the DCC in support of the work of the committee. We welcome Nicole Elliott, Director of the DCC, and her team. We look towards bold leadership to build out effective, streamlined, and coordinated programs and the opportunity to develop the collaboration needed to craft comprehensive solutions to address persistent structural challenges.

In 2021, the California cannabis industry, the world's largest legal cannabis market, is shifting towards a critical inflection point brought forth by longstanding global challenges associated with the illicit market and exacerbated by the impacts of the COVID-19 pandemic. Because of the federal designation of cannabis, cannabis businesses have historically been excluded from many protections afforded to other industries. The COVID-19 related protections and budget investments made by the Newsom Administration in the last two years proved beneficial to the state, resulting in economic recovery and an anticipated \$31 billion budget surplus. Fortunately, because of consumer demand coupled with pandemic-related in-home adult-use, the cannabis market experienced pronounced growth in sales in 2020 by nearly 57.5 percent.<sup>1</sup> This growth however tapered off dramatically in 2021, to 19 percent<sup>2</sup> compared to the same period last year. The lack of stability in sustaining sales can be in part attributed to the competition of the illicit market, which offers cannabis products at a fraction of the price of legal products.

## ILLICIT MARKET


Since the passage of the Compassionate Use Act 25 years ago and subsequent adult-use legalization five years ago, the vision of a legal market reaching full maturation has not materialized. The size of the illicit market and the significant number of jurisdictions that do not allow legal cannabis activity have posed difficult challenges for the legal market and its participants.

Many of the issues that plague the legal market have been identified by the Advisory Committee and stakeholders in prior years; the majority of these longstanding challenges require more than just regulatory changes. The consequences of prolonging the resolution of these issues have proved detrimental. Some license holders have expressed that they are struggling with operational costs associated with permitting and licensing fees, extensive compliance requirements, and local and state cannabis taxes. Some commercial cannabis businesses, including legacy operators and Black, Indigenous, People of Color (BIPOC) entrepreneurs, who could not secure a license due to lack of local licensing opportunities and California Environmental Quality Act (CEQA) challenges, have indicated they have experienced unrecoverable debt. Vulnerable Californians and their

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1 *MJBizDaily*. <https://mjbizdaily.com/adult-use-cannabis-sales-slip-from-2020-pace-after-lackluster-summer/>

2 *MJBizDaily*. <https://mjbizdaily.com/adult-use-cannabis-sales-slip-from-2020-pace-after-lackluster-summer/>



caregivers may be forced to seek illicit cannabis products that are untested and potentially contaminated because there are no legal retailers within reasonable distances to their residences.

## RETAIL BANS

Retail bans also continue to pose an ongoing challenge to a fully realized safe and regulated adult-use market. For context, in the 482 cities in California, approximately 41 percent allow for legal commercial cannabis business activity within their jurisdiction, while approximately 55 percent of counties allow for this activity. Legal access in the state remains out of reach for most Californians even though the number of retail licenses issued by the state has grown by nearly 15 percent in the last six months, bringing the number of licensed retailers to just over 1,100 retailers statewide. According to Politico, California is estimated to have a ratio of two legal retailers per 100,000 residents as compared to Oregon and Colorado where the ratio for access is approximately 18 retail shops for every 100,000 residents.<sup>3</sup> That means the residents of Oregon and Colorado have approximately nine times the amount of access to legal cannabis as California's residents.

The lack of legal retail outlets significantly impacts the amount of cannabis being sold. The New York Times has reported that all of the cannabis grown in California is not consumed in the state and the remainder makes its way to other states.<sup>4</sup> Additionally, it has been alleged that some licensees operate in both the legal and illegal markets.

## CANNABIS TAX RATE

In addition to local challenges and illicit competition constraining the growth of the legal market, many legal cannabis businesses and consumers continue to struggle with the state's cannabis tax rates. Proposition 64 established two commercial cannabis taxes that went into effect on January 1, 2018. The excise tax is imposed upon the retail sale of cannabis products at a rate of 15 percent, and the cultivation tax is imposed on all harvested cannabis that enters the commercial market at a rate of nine dollars and twenty-five cents (\$9.25) per ounce of dry-weight flower, and two dollars and seventy-five cents (\$2.75) per ounce of dry-weight leaf or trim. The tax statute requires that the cultivation tax be adjusted on an annual basis to account for inflation, and on January 1, 2020 the cultivation tax was increased by 4 percent.

Faced with economic uncertainty brought on by the emerging COVID-19 pandemic, the Legislature approved Assembly Bill 1872 (2020) providing for a one year reprieve, precluding the California Department of Tax and Fee Administration (CDTFA) from increasing the cannabis excise tax mark-up rate during the period between September 18, 2020 and July 1, 2021. CDTFA announced that it would maintain the 80 percent mark-up rate for the cannabis excise tax for the remainder of the 2021 calendar year. Assembly Bill 1872 also prohibited the annual inflation adjustment to the cultivation tax during the calendar year, which allowed the rate to remain unchanged from January 1, 2020 through December 31, 2021.

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<sup>3</sup> Politico: <https://www.politico.com/news/2021/10/23/california-legal-illicit-weed-market-516868>

<sup>4</sup> NYTimes: <https://www.nytimes.com/2019/04/27/us/marijuana-california-legalization.html>

With the upcoming sunset of the bill, CDTFA recently announced that the cultivation tax will be increased by 4 percent to account for inflation, effective January 1, 2022. This tax increase comes at a time when taxable legal sales during quarter 3 in California fell by approximately 12.4 percent compared to quarter 2 of this year. According to MJBizDaily, California is not alone as many other Western states have experienced a similar decrease in sales.<sup>5</sup> In response, some local jurisdictions, including the City of Oakland and the County of Mendocino, recently passed resolutions requesting the state immediately eliminate the cultivation tax.

The Advisory Committee has repeatedly heard public comment expressing concerns about challenges brought about by the state's cannabis tax structure and noted in previous annual reports that comprehensive tax changes will be necessary to ensure that commercial cannabis businesses are able to compete with the illicit market. While the devil lies in the details and taking a balanced approach, tax changes can help prevent price collapse of products and allow cannabis businesses to stabilize financially in order to help grow revenue funds in the long-run that many essential programs in the state rely on, including high quality, affordable childcare for working families.

In addition, a 2019 Legislative Analyst Office (LAO) report, *How high? Adjusting California's Cannabis Taxes*, recommended that the Legislature replace the state's existing cannabis taxes with a tax structure designed to reduce harmful cannabis use and change the way the state collects cannabis taxes, and to the tax rate itself in order to undercut illicit market prices, generate sufficient revenues, and discourage youth use.<sup>6</sup>

## PUBLIC HEALTH AND SAFETY

This year, reports of a rise in organized retail thefts along with associated shootings and vandalizations have devastated several licensed cannabis retailers, distributors, and cultivators throughout the state. Adding to the costs of operations, these incidents can completely bankrupt a business, especially brick and mortar operations that are particularly vulnerable to organized break-ins in a cash-dominated economy challenged by limited banking options. Some of the impacted businesses have indicated that they have closed down or are resorting to personal loans to cover the property damage as their insurance claims have been denied. Local jurisdictions, like San Francisco, have moved to support these hard-hit businesses by temporarily suspending the local cannabis tax.

These incidents not only pose a significant financial threat to businesses, but also pose a direct threat to the health and safety of cannabis workers. More work needs to be done around increasing security for the workers and implementing, for example, risk management policies that improve public health and safety.

Public health and safety is also being threatened in our state's great outdoors. According to NBC News, an estimated 80 to 85 percent of illicit cultivation on public land is conducted in our national forests.<sup>7</sup> These massive illegal operations conducted by drug traffickers

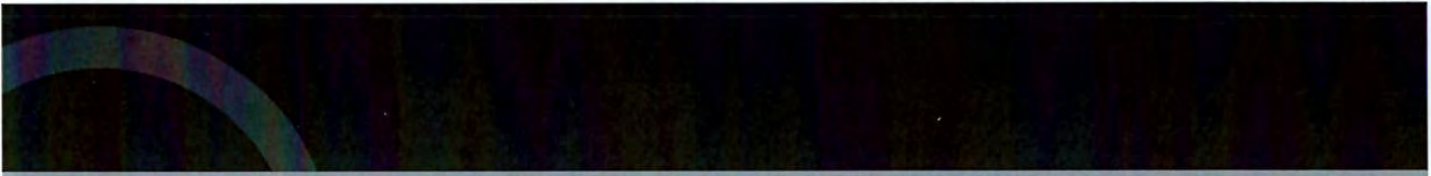
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<sup>5</sup> MJBizDaily: <https://mjbizdaily.com/adult-use-cannabis-sales-slip-from-2020-pace-after-lackluster-summer/>

<sup>6</sup> Legislative Analyst's Office: <https://lao.ca.gov/Publications/Report/4125>

<sup>7</sup> NBC News: <https://www.nbcnews.com/news/us-news/fire-guns-poison-illegal-marijuana-farms-pose-deadly-risks-californias-rcna7153>





have proved to be destructive to the environment with expensive clean-up costs. Negative impacts from illegal cannabis cultivation also include diverting surface water, introducing pesticides into the ecosystem while polluting local water supplies and wildlife, engaging in labor violations, and posing significant fire risk to the surrounding area. Wildfires in the past dozen years have been attributed to this illegal cultivation. More resources to counteract these illicit activities to protect public health and safety

## **DEPARTMENT OF CANNABIS CONTROL (DCC)**

Due to the pandemic, many policies in 2020 that would have strengthened the legal market and laid the groundwork for significant programmatic changes were shifted to this year's budget process. Following the passage of Assembly Bill 141, the long-awaited Department of Cannabis Control was established, consolidating the Bureau of Cannabis Control (BCC), the Department of Public Health's Manufactured Cannabis Safety Branch (CDPH), and the Department of Food and Agriculture's CalCannabis Cultivation Licensing Division (CDFA) into one agency.

The formation of the DCC and the transfer of responsibilities of the three licensing authorities into one department prevents fragmentation and siloing of operations. By providing a single point of contact, the DCC is better equipped to license, regulate, manage the track and trace system for all commercial cannabis license holders, and coordinate with stakeholders including cannabis businesses, local governments, and members of the public.

In September 2021, the DCC adopted emergency regulations to consolidate, clarify, and make consistent licensing and enforcement requirements previously adopted by the three former state cannabis licensing authorities.

In October 2021, the DCC marked its first 100 days as a new California State department. Some of DCC's major achievements include:

- The establishment of a \$100 million Local Jurisdiction Assistance Grant Program that provides aid for local jurisdictions to transition a vast amount of provisional cannabis licenses into annual licenses. This funding was made available to local governments facing significant workloads associated with transitioning these businesses from provisional licenses into annual licenses in an expeditious manner without sacrificing the state's environmental commitments. 17 cities and counties have been deemed eligible for grant funding in amounts ranging from \$400,000 to \$22,000,000.
- Notably, a large number of small, legacy and equity businesses operate within these areas. Local jurisdictions with established equity programs were made eligible for additional grant funding. Grant award notifications have started to go out with final grant funding expenditures by March 31, 2025.
- Transitioned hundreds of provisional licenses to annual licenses, recently surpassing 3,000 annual licenses.
- Served/assisted on over 100 search warrants targeting unlicensed activity, resulting in the seizure and/or destruction of over 70,000 pounds of cannabis and cannabis

product worth nearly \$121.6 million. This includes the eradication of 273,326 plants, seizure of \$655,000 in cash and 14 firearms.

- Merged organizational structure of the three main cannabis programs in the state into one and consolidated three sets of regulations into one, reducing duplicative and conflicting regulations.

## **EQUITY RULEMAKING**

In September 2021, building upon the work and equity grant funding distributed in prior years, Governor Gavin Newsom signed Senate Bill 166. The bill requires the DCC to develop and implement a program to provide waivers and deferrals for state cannabis licensing fees, with at least 60 percent of the total amount of fee waivers and deferrals to be allocated to local equity applicants and license holders. Senate Bill 166 required the DCC to implement the fee waiver program in 2022 and the fee deferral program in 2023. In December 2021, the DCC released proposed emergency regulations to implement the fee waiver program. The DCC anticipates beginning to accept requests for these waivers on January 1, 2022.

This action is important because one of the largest barriers to entry in the regulated cannabis industry is access to capital, and this program, intended specifically for individuals who have been disproportionately impacted by the War on Drugs, provides financial support to equity businesses. There are at least 348 applicants and licensees who could be eligible under the DCC's proposed fee waiver program. The fee waivers lower barriers to entry into the legal cannabis market and help ensure license retention.

The Advisory Committee's work is informed and driven by current events and public comment. We want to acknowledge and thank the public, stakeholders, license holders, and applicants for their ongoing participation as the input received is crucial to the committee's ability to provide meaningful recommendations to the licensing authority. We hope this section provides context to the work of our Subcommittees and the full Advisory Committee and we look forward to continued participation and input.

## **CANNABIS ADVISORY COMMITTEE SUBCOMMITTEES**

During the first Advisory Committee meeting of 2021, a number of subcommittees were discussed for development. Advisory Committee members discussed, and heard from the public, the need to address a myriad of issues related to social equity, inclusion and diversity; license types; local permitting challenges and widespread commercial cannabis bans; enforcement; the Metrc Track and Trace system; and a variety of public health issues including the use of minor decoys, high THC concentrates, prevention, treatment, education, and research.

However, due to a reduced meeting schedule caused by the ongoing COVID-19 pandemic, and the transition from three licensing authorities to the DCC administrative structure, it is important to note that the Advisory Committee did not make substantial progress this year on "the protection of the public," which chapter 27, section 10 of MAUCRSA established "shall be the highest priority for all license authorities" because "whenever the protection of the public is inconsistent with other interests thought to be promoted, the protection of the



public shall be paramount.” These challenges also led to the decision to limit subcommittee development. Licensing and enforcement issues were determined to be the priority as the state had announced the consolidation of the three licensing authorities. Additionally, the provisional licensing program was slated to expire at the end of the year, jeopardizing approximately 75 percent of license holders supply chain wide, and the illicit market has continued to impact those in the legal licensed market.

The following subcommittees were established by the Advisory Committee.

- Annual Report Subcommittee which is composed of two committee members tasked with drafting the annual year-end report,
- Subcommittee on License Types, and
- Subcommittee on Enforcement.

#### **SUBCOMMITTEE ON LICENSING**

The Subcommittee on Licensing held a one-day virtual meeting on May 17, 2021. The meeting agenda was broad and contained the following three items for discussion and possible action:

- Creation of a Cottage/Legacy License Type,
- California Environmental Quality Act (CEQA) Regulations, and
- Number of Licenses by Type.

#### **CREATION OF A COTTAGE/LEGACY LICENSE TYPE**

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) provides for several small scale cultivation license types including small, specialty, and specialty cottage cultivation, as well as the microbusiness license type which requires license holders to conduct three out of five allowed activities:

- Cultivation of up to 10,000 square feet,
- Nursery operations,
- Nonvolatile solvent manufacturing,
- Distribution, and/or
- Retail sales.

The microbusiness license type was originally seen by many as a pathway to onramp legacy operators, who had traditionally conducted a variety of cannabis activities. Legacy and equity cannabis operators have expressed that challenges related to premises restrictions, local land use restrictions, and licensing costs have rendered the microbusiness license type inaccessible to many of them. As a result, the Advisory

Committee and licensing authorities have continuously received feedback from stakeholders and members of the legacy cannabis industry that operated under Proposition 215, that the license types provided for in MAUCRSA do not address the needs of legacy operators.

As the licensing authorities moved towards consolidation, the Advisory Committee was asked to consider the following question: should a cottage/legacy license type be created and if so, what should the requirements and parameters for the license type be? The concerns raised by the legacy cannabis industry and this question about the development of a cottage/legacy license type is not new to the Advisory Committee.

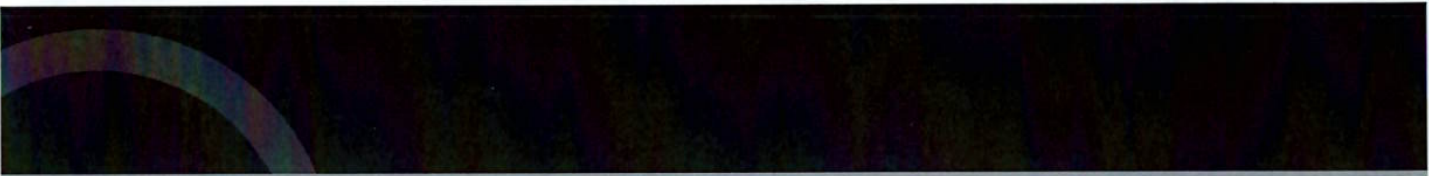
In 2018, the Advisory Committee established the Subcommittee on Microbusiness which met multiple times that year. In an effort to ensure that legacy operators had access to the microbusiness license type, the Subcommittee on Microbusiness made a total of nine recommendations to the Advisory Committee for consideration. Four of which were adopted by the Advisory Committee, but only one was implemented by the Bureau of Cannabis Control.

Microbusiness recommendations approved by the Advisory Committee in 2018 included:

- Recommend, the Bureau, in an effort to create an onramp to legalization, there should be a clarification of microbusiness that includes tiers based on gross receipts and number of employees. The fee schedule should be redefined to include a ceiling that delineates when the business is no longer considered a microbusiness. Incentives should be provided based on equity for compassionate use and rural operators.
- Recommend the Bureau provide a “sub-microbusiness” or “microbusiness A” license that allows up to 10,000 square feet of cultivation including nurseries, three out of four activities to be fulfilled by allowing any type of non-volatile solvent manufacturing including shared space manufacturing, retail sales to happen at events in addition to storefront sale and delivery, and distribution to be fulfilled by full distribution or distribution transport only,
- Recommend the Bureau and CDPH should work together to create a document that they could distribute jointly to clarify that local governments may further limit the types of activities that are permitted to occur under a microbusiness authorized to engage in level one manufacturing within their jurisdiction. Even though the state permits multiple activities under the license type, the community could restrict certain types of activities if they so choose, and
- Recommend the Bureau should consider removing the prohibition on activities allowed within the home, so long as the activities that the applicant is choosing to conduct are activities commonly allowed under cottage business.

In 2020, the licensing authorities posed a number of microbusiness related questions to the Advisory Committee for discussion and possible action. Advisory Committee members were asked to consider the following questions:

- Should the state consider amending the number of commercial cannabis activities and qualifying commercial cannabis activities under the microbusiness license?

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- Should the requirements for a microbusiness premises be amended?
  - Are the current security requirements in regulation sufficient, or does the state need to consider other security measures?

In an effort to make the microbusiness license more accessible, and address concerns raised during public comment, the Advisory Committee passed three additional recommendations, as follows:

- Recommend that the Bureau allow processing as one of the three permissible activities under the microbusiness license,
- Recommend that the licensing authority allow for microbusiness license holders to utilize sales at licensed events to qualify as licensed retailer activity without having to be a delivery service or storefront, and
- Recommend that the licensing authority take out the requirements to have all the different activities be separated by a physical wall or barrier in a microbusiness.

The Department implemented the Advisory Committee's recommendation to remove the requirement that the different activities be separated by a physical wall or barrier in a microbusiness in the emergency regulations adopted in September 2021. The regulations now require separation only between the retail area and the other activities.

During the last three years of Advisory Committee meetings the challenges experienced by legacy operators regarding the microbusiness and licensing constraints have been consistently prominent. A significant number of stakeholders and license holders have repeatedly requested the development of a cottage microbusiness license to ease the challenges.

Public comment during the May 17, 2021, Subcommittee on Licensing was robust with organizations, members of the public, and legacy operators, from throughout the state and located in urban and rural areas, expressing many of the same concerns the Advisory Committee has heard over the last few years. Notable amongst these comments was the fear expressed by legacy and equity commercial cannabis business owners about falling prices in the legal market, the inability to compete with the illicit market, and ongoing struggles with connectivity to the broader supply chain. Local land use restrictions were also cited as rendering the microbusiness license inaccessible, as well as the cost of compliance with the California Environmental Quality Act (CEQA).

Additionally, public comments have indicated that the inability to make products in their home kitchen such as salves, tinctures, and pre-rolled cannabis joints, has impacted the viability of some legacy operators as many of these small businesses used to rely on consumer direct sales at organized events to dispensaries. Under MAUCRSA, only licensed retailers are allowed to sell directly to patients and consumers. Additionally, many licensed cultivators are prohibited from selling, and sharing, their genetics within the legal supply chain.

The Subcommittee had a robust conversation about the need to change regulations to allow for consumer direct sales, and expanded genetic sharing and sales. This conversation resulted in a motion to recommend that the licensing authority consider providing a pathway that allows licensed cultivators and licensed manufacturers to conduct consumer-direct-sales, and secondly, that the licensing authority consider a pathway that allows licensed cultivators to move their genetics into the retail marketplace via a nursery or a licensed retail sales entity.

However, because this motion was not tied to the development of a cottage/legacy license type, counsel determined that the Subcommittee could not consider the motion. In an effort to move these beneficial changes forward the Subcommittee rephrased the motion as components of a cottage/legacy license type. During public comment on the motion, stakeholders expressed significant concern that the Subcommittee had missed the point. In the end, the motion failed. Ultimately, a new license type is not the solution, reiterating that regulatory reform of the current license types was what stakeholders and legacy operators really need.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REGULATIONS**


CEQA, the state's law related to the impact of certain activities on the environment. CEQA applies to all permits or licenses determined by a public agency to be a 'project', or discretionary in nature, and triggers a project-specific CEQA analysis before issuance of a license or permit. Because many local jurisdictions require a local permit to engage in commercial cannabis activity, the project-specific CEQA analysis is most often completed during the local permitting process. Obtaining a local discretionary permit and meeting the CEQA requirements have proven incredibly time consuming for both applicants and local jurisdictions, and adds to the cost of obtaining commercial cannabis licensure.

Many local jurisdictions that allowed commercial cannabis businesses to operate under Proposition 215 and Senate Bill 420 guidelines, have high volumes of legacy applicants, which has resulted in backlogs in permit processing, significantly delaying the issuance of local permits, and further increasing costs as applicants pay leases and/or mortgages to maintain control of the project's location during the CEQA review.

In an effort to ensure that legacy operators maintain commercial cannabis businesses while achieving local permits and state annual licenses, the Legislature passed a series of bills starting in 2018, establishing a provisional licensing program, which allows applicants to operate while completing their project-specific CEQA analysis and local permitting.

As the licensing authorities prepared to move towards consolidation, the Subcommittee on Licensing was asked to consider the regulatory requirements regarding annual licensure. Specifically, what should be required for an applicant to demonstrate evidence of compliance with, or exemption from, the CEQA?

In an effort to reduce barriers to entry and streamline the permitting and licensing process for commercial cannabis businesses, the Subcommittee passed one recommendation, which was also passed by the full Advisory Committee.



**Advisory Committee Recommendation:** Recommend that the licensing authorities consider uncoupling the project-specific CEQA analysis from annual licenses and instead, provide guidance to local jurisdictions to ensure that applicants meet CEQA compliance during the local permitting process.

#### **NUMBER OF LICENSES BY TYPE**

For background information on this item, the licensing authorities provided a statistical update on the number of provisional licenses versus annual licenses issued by the state as of May 13, 2021. The statistical report showed that roughly 75 percent of California's licensed commercial cannabis businesses were still operating under provisional licenses, and that 100 percent of the state's testing laboratories were operating under provisional licenses. The statistical report also highlighted that overall license growth had been slow, since the licensing authorities last statistical report in 2019. The number of manufacturing licenses throughout the state actually declined by approximately 7 percent between 2019 and 2021.

The slow growth of licensed commercial cannabis businesses throughout the state, especially in the retail sector, coupled with the high percentage of licenses operating under provisional licenses led to a robust discussion by the Advisory Committee about the need to extend the provisional licensing program beyond December 31, 2021. During public comment, stakeholders expressed alarm over the expiring provisional license program, and noted that the slow growth in the retail sector was resulting in an excess of cannabis material further challenging the viability of licensed cultivators.

Alarmed by market conditions, the Subcommittee moved to recommend an extension to the provisional licensing program. However, counsel determined that such a motion was not appropriate for the agenda item and instead redirected the conversation toward the establishment of license caps and/or floors. Feeling unprepared to suggest either, the Subcommittee decided to close the item and adjourn the Subcommittee meeting.

#### **SUBCOMMITTEE ON ENFORCEMENT**

The Subcommittee on Enforcement held one virtual meeting on May 19, 2021. During this meeting the Subcommittee was asked to consider the different enforcement models established by the Bureau of Cannabis Control, and the California Department of Agriculture, and to consider what type of enforcement priorities the licensing authority should pursue to curb noncompliant activities in the legal market, and unlicensed activities in the illicit market.

After a thoughtful discussion by the Subcommittee about the disciplinary tiers of regulatory and statutory violations in the Bureau and CDFA disciplinary guidelines, and public comment, the Subcommittee agreed that it was too early to consider changes to the disciplinary tiers and disciplinary guidelines.

The Subcommittee did, however, pass two motions that were adopted by the Advisory Committee in relationship to enforcement priorities. The first motion passed addressed enforcement priorities of licensed commercial cannabis businesses.

**Advisory Committee Recommendation:** Recommend that the licensing authority prioritize for disciplinary action, violations that impact public health or result in environmental degradation. Specifically focus on sales to minors, sales and distribution of contaminated or unsafe products, and egregious environmental damage. Motion passed unanimously.

The second motion addressed enforcement priorities for unlicensed commercial cannabis businesses.

**Advisory Committee Recommendation:** Recommend that the licensing authority focus enforcement efforts in jurisdictions that allow licensed commercial cannabis operators over jurisdictions that do not so that the licensed operators can thrive and prioritize enforcement efforts against unlicensed businesses that are selling to minors, selling contaminated products, or that cause egregious environmental harm. Motion passed unanimously.

## INFORMATIONAL PRESENTATIONS

The Advisory Committee was fortunate to receive two informational presentations during the 2021 calendar year.

### “Budget Proposal to Consolidate Cannabis Licensing Authorities”

Nicole Elliott, Former Senior Advisor on Cannabis, Governor Gavin Newsom, Office of Business and Economic Development

### “State of Cannabis Equity The United CORE Alliance”

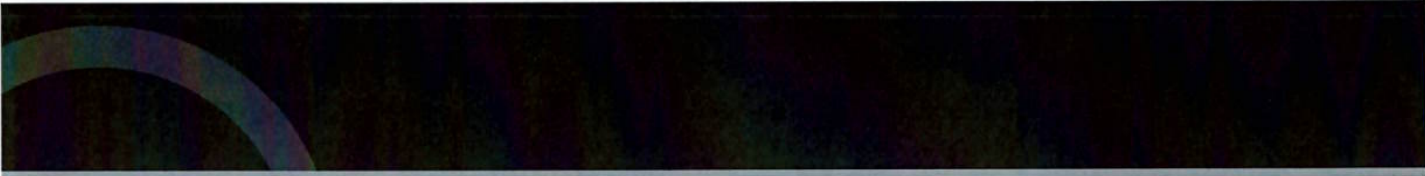
Brandon Bolton and Khaleel Ferguson from the United CORE Alliance. Mr. Ferguson presented.

## CONCLUSION

Throughout the course of this year’s Advisory Committee meetings, several committee members and members of the public expressed the desire to have new members appointed to the committee. The Committee has experienced a reduction in members due to several factors given the time frame since the establishment in 2017. Advisory Committee members and the public have expressed the need to appoint individuals to fill the vacant seats with backgrounds in:

- Equity, diversity, and inclusion,
- Public health and safety,
- Patient advocacy, and
- Local government.





The diversity and extensive knowledge that committee members bring to the meetings are fundamental to shaping meaningful recommendations for the licensing authority.

Based on December 2021 numbers, compared to the licensing statistics presented by the licensing authorities on May 15, 2021, the number of licenses have increased slightly in most categories, distribution remained the constant, and manufacturing slightly decreased.

- Retail licenses increased by approximately 9 percent,
- Testing licenses increased by approximately 8 percent with all testing licensees operating under provisional licenses,
- Distribution licenses remained the same,
- Manufacturing licenses decreased by approximately .43 percent, and
- Cultivation licenses increased by approximately 21 percent.

The Advisory Committee acknowledges that significant reforms are still needed to meet the Administration's objectives of developing a medical and adult-use framework that protects public health and safety, while ensuring commercial cannabis regulations do not unduly limit the development of the legal market and in so doing perpetuate the illicit market.

California has always been a leader, paving the way for legalization, with four additional states, New York, Virginia, New Mexico, and Connecticut joining in decriminalization this year. The DCC is well positioned to take intentional and thoughtful steps towards building out programs to help expand licensing in the legal market and create equity for underserved communities. We all have a role to play in ensuring the success of California's legal medical and adult-use market and working together to bring forward necessary legislative and political action to reach our goals inside and outside of the regulatory process.

## ACKNOWLEDGMENTS

### CANNABIS ADVISORY COMMITTEE MEMBERS

**JEFFREY P. FERRO (Chair)**, Labor Organization Representative; Director, Cannabis Workers Rising/Executive Assistant to the Director of Organizing, United Food and Commercial Workers International Union

**KRISTIN HEIDELBACH (Vice Chair)**, Labor Organization Representative; International Representative/Cannabis Division Director, Teamsters

**AVIS BULBULYAN**, Cannabis Industry Representative; CEO, SIVA Enterprises/President, Los Angeles Cannabis Task Force

**TIMMEN CERMAK, MD**, Physician Representative; Psychiatrist, California Society of Addiction Medicine

**MATT CLIFFORD**, Environmental Expert Representative; California Water Project Attorney, Trout Unlimited; Chair of the Subcommittee on Enforcement

**ERIC HIRATA**, Alcoholic Beverage Control Representative; Director, Department of Alcoholic Beverage Control

**KRISTIN NEVEDAL**, Cannabis Industry Representative; Mendocino County Cannabis Program Director; Member of the Committee on the Annual Public Report, Chair of the Subcommittee on Licensing

**LAVONNE PECK**, Cannabis Industry Representative; Owner, Native Network Consulting

**MATT RAHN**, City Representative; City Council Member, City of Temecula

**KEITH STEPHENSON**, Cannabis Industry Representative; Founder and CEO, Purple Heart

**TAMAR TODD**, Community Equity Representative

**DAVID WOOLSEY**, Local Law Enforcement Representative; Sergeant, Division of Cannabis Regulation, San Jose Police Department

**BEN WU**, Cannabis Industry Representative; Former Chief Operating Officer, Kush Bottles

**BEVERLY YU**, Labor Organization Representative; State Government Affairs Director, UDW/AFSCME Local 3930; Member of the Committee on the Annual Public Report

## **ACKNOWLEDGMENT OF FORMER ADVISORY COMMITTEE MEMBERS**

We would like to thank the following Advisory Committee members for their service on the Committee.

**ALICE A. HUFFMAN**, Community Equity Representative; Former President, California Hawaii NAACP (Resigned, 2021)

**KRISTIN LYNCH**, Labor Organization Representative; Director of Strategic Growth, Service Employees International Union (Resigned, 2021)

**HELENA WILLIAMS**, State Law Enforcement Representative; Captain, Drug Evaluation & Classification Program, California Highway Patrol (Resigned, 2021)

## **LEADERSHIP**

**Gavin Newsom**, Governor

**Lourdes Castro Ramírez**, Secretary, California Business, Consumer Services and Housing Agency

## **DCC LEADERSHIP TEAM**

**Nicole Elliott**, Director

**Rasha Salama**, Chief Deputy Director

**Matthew Lee**, General Counsel

**Melissa Eidson**, Deputy Director of Administration

**Richard Parrott**, Deputy Director of Compliance

**Eugene Hillsman**, Deputy Director of Equity & Inclusion

**Tamara Colson**, Deputy Director of Legal Affairs

**Bill Jones**, Acting Deputy Director of Enforcement

**Christina Dempsey**, Acting Deputy Director of External Affairs

**Jason Piccione**, Acting Deputy Director of Information Technology

**Gordon Vrdoljak**, Acting Deputy Director of Laboratory Services

**Michael Cheng**, Acting Deputy Director of Licensing

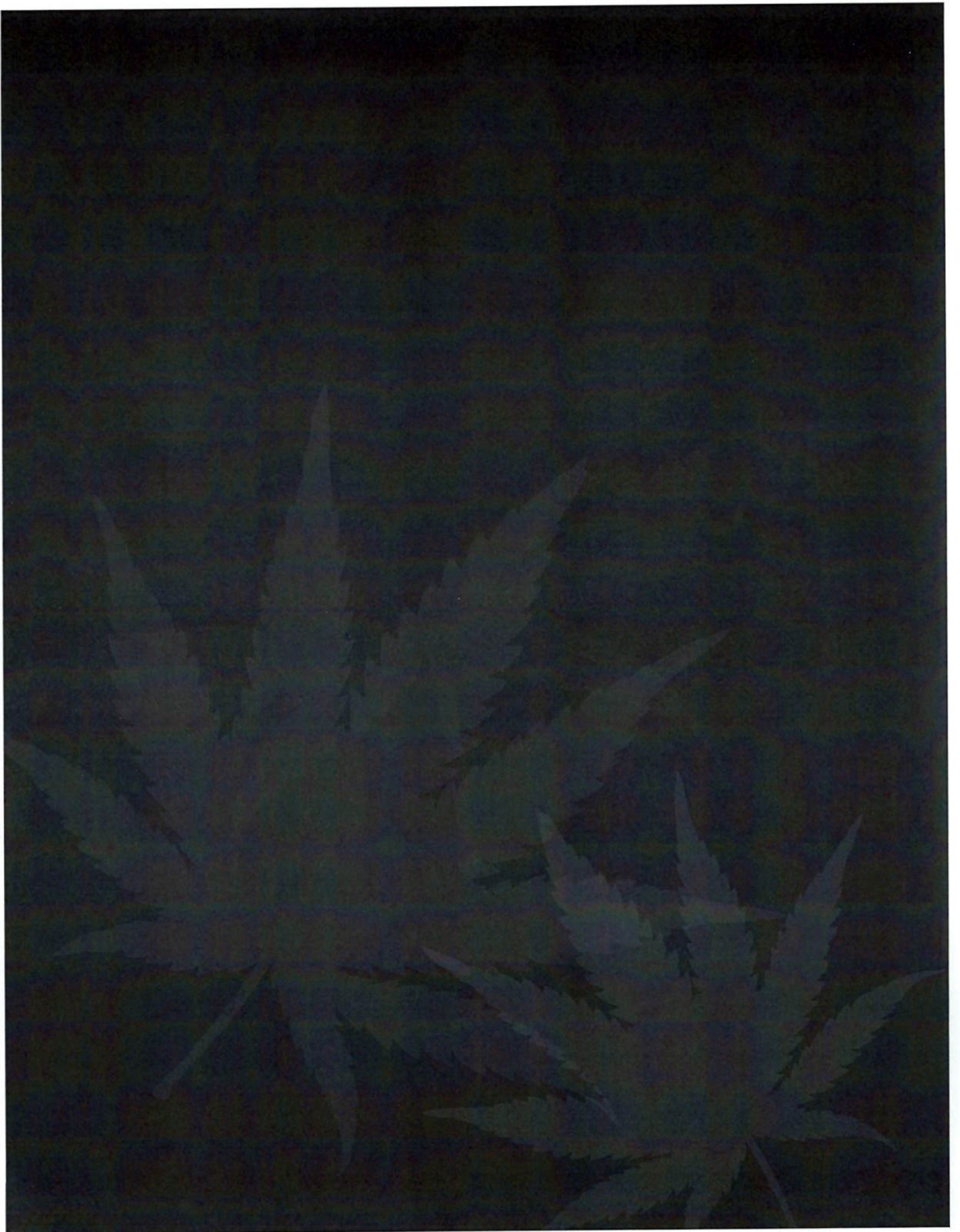
## **DCC COMMITTEE SUPPORT STAFF**

**Sara Gardner**, Attorney IV

**Angela McIntire**, Attorney III

**Ashlynn Blackshire**, Staff Service Analyst

**Kaila Fayne**, Associate Governmental Program Analyst



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## ANNUAL REPORT

DECEMBER 2021



Department of  
Cannabis Control  
CALIFORNIA



Document to Review and Add to Comments Received, Planning Meeting, July 13, 2023

David Harde <davidharde123@gmail.com>

Wed 7/5/2023 9:02 AM

To: Planning Department <planning@edcgov.us>

PC 7/13/2023  
Item #4  
22 pages

 1 attachments (657 KB)

CAC-Annual-Report-2021, Cannabis.pdf;

Hi Planning Commissioners,

Please review for the Thursday Meeting regarding the California Cannabis Industry and recommendations. Thank you.

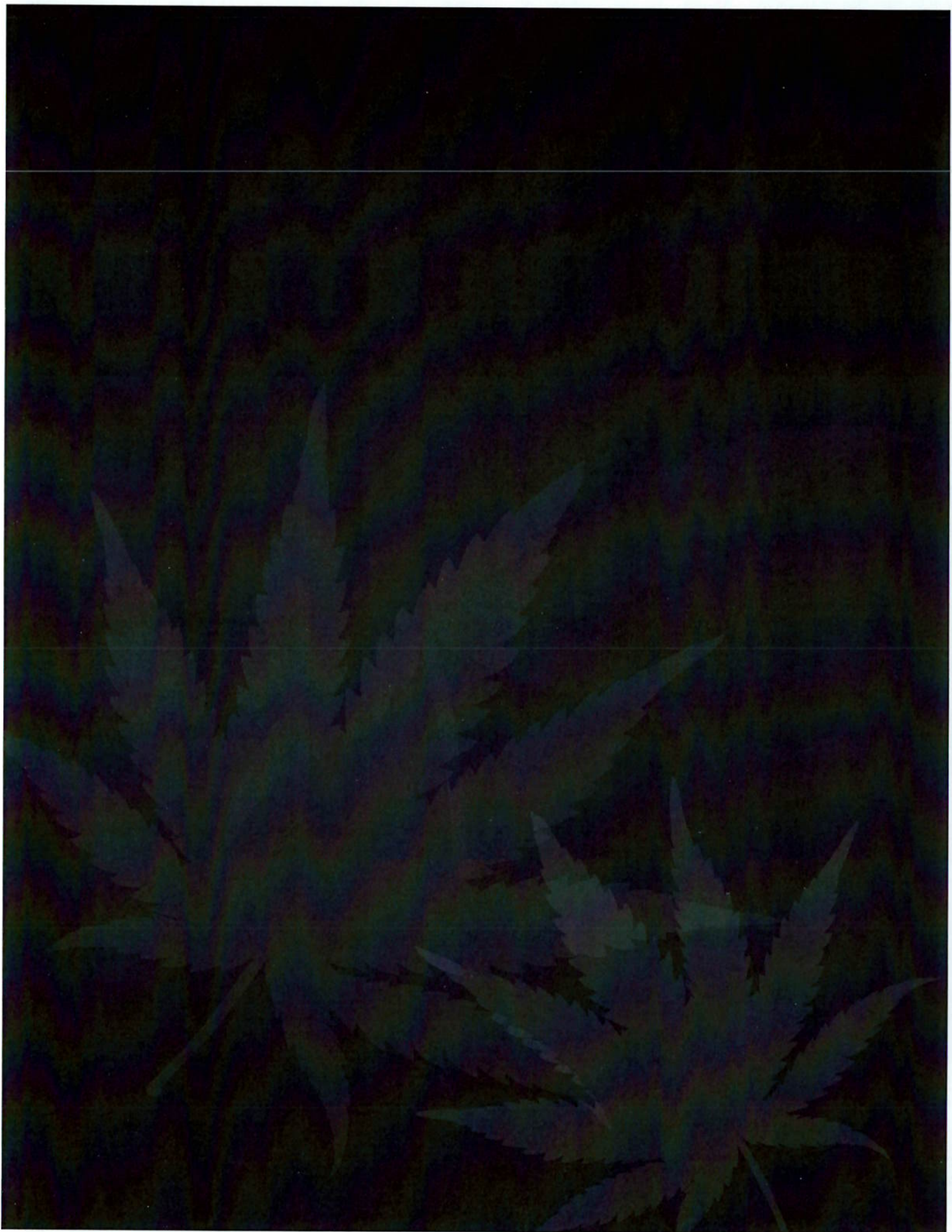
Best,

David Harde

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ANNUAL REPORT

**CALIFORNIA CANNABIS ADVISORY COMMITTEE**





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## INTRODUCTION

Given the truncated schedule of the Cannabis Advisory Committee (Advisory Committee) meetings due to the pandemic, this report seeks to provide an annual update, highlight the work of the newly formed Department of Cannabis Control (DCC), and capture the recommendations that culminated from public input. Consistent with previous years, the principles of protecting public health and safety while ensuring commercial cannabis regulations do not impose barriers that perpetuate the illicit cannabis market guided our work and our recommendations. We appreciate the public participation and dedication of the DCC in support of the work of the committee. We welcome Nicole Elliott, Director of the DCC, and her team. We look towards bold leadership to build out effective, streamlined, and coordinated programs and the opportunity to develop the collaboration needed to craft comprehensive solutions to address persistent structural challenges.

In 2021, the California cannabis industry, the world's largest legal cannabis market, is shifting towards a critical inflection point brought forth by longstanding global challenges associated with the illicit market and exacerbated by the impacts of the COVID-19 pandemic. Because of the federal designation of cannabis, cannabis businesses have historically been excluded from many protections afforded to other industries. The COVID-19 related protections and budget investments made by the Newsom Administration in the last two years proved beneficial to the state, resulting in economic recovery and an anticipated \$31 billion budget surplus. Fortunately, because of consumer demand coupled with pandemic-related in-home adult-use, the cannabis market experienced pronounced growth in sales in 2020 by nearly 57.5 percent.<sup>1</sup> This growth however tapered off dramatically in 2021, to 19 percent<sup>2</sup> compared to the same period last year. The lack of stability in sustaining sales can be in part attributed to the competition of the illicit market, which offers cannabis products at a fraction of the price of legal products.

## ILLCIT MARKET


Since the passage of the Compassionate Use Act 25 years ago and subsequent adult-use legalization five years ago, the vision of a legal market reaching full maturation has not materialized. The size of the illicit market and the significant number of jurisdictions that do not allow legal cannabis activity have posed difficult challenges for the legal market and its participants.

Many of the issues that plague the legal market have been identified by the Advisory Committee and stakeholders in prior years; the majority of these longstanding challenges require more than just regulatory changes. The consequences of prolonging the resolution of these issues have proved detrimental. Some license holders have expressed that they are struggling with operational costs associated with permitting and licensing fees, extensive compliance requirements, and local and state cannabis taxes. Some commercial cannabis businesses, including legacy operators and Black, Indigenous, People of Color (BIPOC) entrepreneurs, who could not secure a license due to lack of local licensing opportunities and California Environmental Quality Act (CEQA) challenges, have indicated they have experienced unrecoverable debt. Vulnerable Californians and their

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<sup>1</sup> *MJBizDaily*: <https://mjbizdaily.com/adult-use-cannabis-sales-slip-from-2020-pace-after-lackluster-summer/>

<sup>2</sup> *MJBizDaily*: <https://mjbizdaily.com/adult-use-cannabis-sales-slip-from-2020-pace-after-lackluster-summer/>



caregivers may be forced to seek illicit cannabis products that are untested and potentially contaminated because there are no legal retailers within reasonable distances to their residences.

## RETAIL BANS

Retail bans also continue to pose an ongoing challenge to a fully realized safe and regulated adult-use market. For context, in the 482 cities in California, approximately 41 percent allow for legal commercial cannabis business activity within their jurisdiction, while approximately 55 percent of counties allow for this activity. Legal access in the state remains out of reach for most Californians even though the number of retail licenses issued by the state has grown by nearly 15 percent in the last six months, bringing the number of licensed retailers to just over 1,100 retailers statewide. According to Politico, California is estimated to have a ratio of two legal retailers per 100,000 residents as compared to Oregon and Colorado where the ratio for access is approximately 18 retail shops for every 100,000 residents.<sup>3</sup> That means the residents of Oregon and Colorado have approximately nine times the amount of access to legal cannabis as California's residents.

The lack of legal retail outlets significantly impacts the amount of cannabis being sold. The New York Times has reported that all of the cannabis grown in California is not consumed in the state and the remainder makes its way to other states.<sup>4</sup> Additionally, it has been alleged that some licensees operate in both the legal and illegal markets.

## CANNABIS TAX RATE

In addition to local challenges and illicit competition constraining the growth of the legal market, many legal cannabis businesses and consumers continue to struggle with the state's cannabis tax rates. Proposition 64 established two commercial cannabis taxes that went into effect on January 1, 2018. The excise tax is imposed upon the retail sale of cannabis products at a rate of 15 percent, and the cultivation tax is imposed on all harvested cannabis that enters the commercial market at a rate of nine dollars and twenty-five cents (\$9.25) per ounce of dry-weight flower, and two dollars and seventy-five cents (\$2.75) per ounce of dry-weight leaf or trim. The tax statute requires that the cultivation tax be adjusted on an annual basis to account for inflation, and on January 1, 2020 the cultivation tax was increased by 4 percent.

Faced with economic uncertainty brought on by the emerging COVID-19 pandemic, the Legislature approved Assembly Bill 1872 (2020) providing for a one year reprieve, precluding the California Department of Tax and Fee Administration (CDTFA) from increasing the cannabis excise tax mark-up rate during the period between September 18, 2020 and July 1, 2021. CDTFA announced that it would maintain the 80 percent mark-up rate for the cannabis excise tax for the remainder of the 2021 calendar year. Assembly Bill 1872 also prohibited the annual inflation adjustment to the cultivation tax during the calendar year, which allowed the rate to remain unchanged from January 1, 2020 through December 31, 2021.

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<sup>3</sup> Politico: <https://www.politico.com/news/2021/10/23/california-legal-illicit-weed-market-516868>

<sup>4</sup> NYTimes: <https://www.nytimes.com/2019/04/27/us/marijuana-california-legalization.html>

With the upcoming sunset of the bill, CDTFA recently announced that the cultivation tax will be increased by 4 percent to account for inflation, effective January 1, 2022. This tax increase comes at a time when taxable legal sales during quarter 3 in California fell by approximately 12.4 percent compared to quarter 2 of this year. According to MJBizDaily, California is not alone as many other Western states have experienced a similar decrease in sales.<sup>5</sup> In response, some local jurisdictions, including the City of Oakland and the County of Mendocino, recently passed resolutions requesting the state immediately eliminate the cultivation tax.

The Advisory Committee has repeatedly heard public comment expressing concerns about challenges brought about by the state's cannabis tax structure and noted in previous annual reports that comprehensive tax changes will be necessary to ensure that commercial cannabis businesses are able to compete with the illicit market. While the devil lies in the details and taking a balanced approach, tax changes can help prevent price collapse of products and allow cannabis businesses to stabilize financially in order to help grow revenue funds in the long-run that many essential programs in the state rely on, including high quality, affordable childcare for working families.

In addition, a 2019 Legislative Analyst Office (LAO) report, *How high? Adjusting California's Cannabis Taxes*, recommended that the Legislature replace the state's existing cannabis taxes with a tax structure designed to reduce harmful cannabis use and change the way the state collects cannabis taxes, and to the tax rate itself in order to undercut illicit market prices, generate sufficient revenues, and discourage youth use.<sup>6</sup>

## PUBLIC HEALTH AND SAFETY

This year, reports of a rise in organized retail thefts along with associated shootings and vandalizations have devastated several licensed cannabis retailers, distributors, and cultivators throughout the state. Adding to the costs of operations, these incidents can completely bankrupt a business, especially brick and mortar operations that are particularly vulnerable to organized break-ins in a cash-dominated economy challenged by limited banking options. Some of the impacted businesses have indicated that they have closed down or are resorting to personal loans to cover the property damage as their insurance claims have been denied. Local jurisdictions, like San Francisco, have moved to support these hard-hit businesses by temporarily suspending the local cannabis tax.

These incidents not only pose a significant financial threat to businesses, but also pose a direct threat to the health and safety of cannabis workers. More work needs to be done around increasing security for the workers and implementing, for example, risk management policies that improve public health and safety.

Public health and safety is also being threatened in our state's great outdoors. According to NBC News, an estimated 80 to 85 percent of illicit cultivation on public land is conducted in our national forests.<sup>7</sup> These massive illegal operations conducted by drug traffickers

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5 MJBizDaily: <https://mjbizdaily.com/adult-use-cannabis-sales-slip-from-2020-pace-after-lackluster-summer/>

6 Legislative Analyst's Office: <https://lao.ca.gov/Publications/Report/4125>

7 NBC News: <https://www.nbcnews.com/news/us-news/fire-guns-poison-illegal-marijuana-farms-pose-deadly-risks-californias-rcna7153>



have proved to be destructive to the environment with expensive clean-up costs. Negative impacts from illegal cannabis cultivation also include diverting surface water, introducing pesticides into the ecosystem while polluting local water supplies and wildlife, engaging in labor violations, and posing significant fire risk to the surrounding area. Wildfires in the past dozen years have been attributed to this illegal cultivation. More resources to counteract these illicit activities to protect public health and safety

## **DEPARTMENT OF CANNABIS CONTROL (DCC)**

Due to the pandemic, many policies in 2020 that would have strengthened the legal market and laid the groundwork for significant programmatic changes were shifted to this year's budget process. Following the passage of Assembly Bill 141, the long-awaited Department of Cannabis Control was established, consolidating the Bureau of Cannabis Control (BCC), the Department of Public Health's Manufactured Cannabis Safety Branch (CDPH), and the Department of Food and Agriculture's CalCannabis Cultivation Licensing Division (CDFA) into one agency.

The formation of the DCC and the transfer of responsibilities of the three licensing authorities into one department prevents fragmentation and siloing of operations. By providing a single point of contact, the DCC is better equipped to license, regulate, manage the track and trace system for all commercial cannabis license holders, and coordinate with stakeholders including cannabis businesses, local governments, and members of the public.

In September 2021, the DCC adopted emergency regulations to consolidate, clarify, and make consistent licensing and enforcement requirements previously adopted by the three former state cannabis licensing authorities.

In October 2021, the DCC marked its first 100 days as a new California State department. Some of DCC's major achievements include:

- The establishment of a \$100 million Local Jurisdiction Assistance Grant Program that provides aid for local jurisdictions to transition a vast amount of provisional cannabis licenses into annual licenses. This funding was made available to local governments facing significant workloads associated with transitioning these businesses from provisional licenses into annual licenses in an expeditious manner without sacrificing the state's environmental commitments. 17 cities and counties have been deemed eligible for grant funding in amounts ranging from \$400,000 to \$22,000,000.
- Notably, a large number of small, legacy and equity businesses operate within these areas. Local jurisdictions with established equity programs were made eligible for additional grant funding. Grant award notifications have started to go out with final grant funding expenditures by March 31, 2025.
- Transitioned hundreds of provisional licenses to annual licenses, recently surpassing 3,000 annual licenses.
- Served/assisted on over 100 search warrants targeting unlicensed activity, resulting in the seizure and/or destruction of over 70,000 pounds of cannabis and cannabis

product worth nearly \$121.6 million. This includes the eradication of 273,326 plants, seizure of \$655,000 in cash and 14 firearms.

- Merged organizational structure of the three main cannabis programs in the state into one and consolidated three sets of regulations into one, reducing duplicative and conflicting regulations.

## **EQUITY RULEMAKING**

In September 2021, building upon the work and equity grant funding distributed in prior years, Governor Gavin Newsom signed Senate Bill 166. The bill requires the DCC to develop and implement a program to provide waivers and deferrals for state cannabis licensing fees, with at least 60 percent of the total amount of fee waivers and deferrals to be allocated to local equity applicants and license holders. Senate Bill 166 required the DCC to implement the fee waiver program in 2022 and the fee deferral program in 2023. In December 2021, the DCC released proposed emergency regulations to implement the fee waiver program. The DCC anticipates beginning to accept requests for these waivers on January 1, 2022.

This action is important because one of the largest barriers to entry in the regulated cannabis industry is access to capital, and this program, intended specifically for individuals who have been disproportionately impacted by the War on Drugs, provides financial support to equity businesses. There are at least 348 applicants and licensees who could be eligible under the DCC's proposed fee waiver program. The fee waivers lower barriers to entry into the legal cannabis market and help ensure license retention.

The Advisory Committee's work is informed and driven by current events and public comment. We want to acknowledge and thank the public, stakeholders, license holders, and applicants for their ongoing participation as the input received is crucial to the committee's ability to provide meaningful recommendations to the licensing authority. We hope this section provides context to the work of our Subcommittees and the full Advisory Committee and we look forward to continued participation and input.

## **CANNABIS ADVISORY COMMITTEE SUBCOMMITTEES**

During the first Advisory Committee meeting of 2021, a number of subcommittees were discussed for development. Advisory Committee members discussed, and heard from the public, the need to address a myriad of issues related to social equity, inclusion and diversity; license types; local permitting challenges and widespread commercial cannabis bans; enforcement; the Metrc Track and Trace system; and a variety of public health issues including the use of minor decoys, high THC concentrates, prevention, treatment, education, and research.

However, due to a reduced meeting schedule caused by the ongoing COVID-19 pandemic, and the transition from three licensing authorities to the DCC administrative structure, it is important to note that the Advisory Committee did not make substantial progress this year on "the protection of the public," which chapter 27, section 10 of MAUCRSA established "shall be the highest priority for all license authorities" because "whenever the protection of the public is inconsistent with other interests thought to be promoted, the protection of the



public shall be paramount.” These challenges also led to the decision to limit subcommittee development. Licensing and enforcement issues were determined to be the priority as the state had announced the consolidation of the three licensing authorities. Additionally, the provisional licensing program was slated to expire at the end of the year, jeopardizing approximately 75 percent of license holders supply chain wide, and the illicit market has continued to impact those in the legal licensed market.

The following subcommittees were established by the Advisory Committee.

- Annual Report Subcommittee which is composed of two committee members tasked with drafting the annual year-end report,
- Subcommittee on License Types, and
- Subcommittee on Enforcement.

#### **SUBCOMMITTEE ON LICENSING**

The Subcommittee on Licensing held a one-day virtual meeting on May 17, 2021. The meeting agenda was broad and contained the following three items for discussion and possible action:

- Creation of a Cottage/Legacy License Type,
- California Environmental Quality Act (CEQA) Regulations, and
- Number of Licenses by Type.

#### **CREATION OF A COTTAGE/LEGACY LICENSE TYPE**

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) provides for several small scale cultivation license types including small, specialty, and specialty cottage cultivation, as well as the microbusiness license type which requires license holders to conduct three out of five allowed activities:

- Cultivation of up to 10,000 square feet,
- Nursery operations,
- Nonvolatile solvent manufacturing,
- Distribution, and/or
- Retail sales.

The microbusiness license type was originally seen by many as a pathway to onramp legacy operators, who had traditionally conducted a variety of cannabis activities. Legacy and equity cannabis operators have expressed that challenges related to premises restrictions, local land use restrictions, and licensing costs have rendered the microbusiness license type inaccessible to many of them. As a result, the Advisory



Committee and licensing authorities have continuously received feedback from stakeholders and members of the legacy cannabis industry that operated under Proposition 215, that the license types provided for in MAUCRSA do not address the needs of legacy operators.

As the licensing authorities moved towards consolidation, the Advisory Committee was asked to consider the following question: should a cottage/legacy license type be created and if so, what should the requirements and parameters for the license type be? The concerns raised by the legacy cannabis industry and this question about the development of a cottage/legacy license type is not new to the Advisory Committee.

In 2018, the Advisory Committee established the Subcommittee on Microbusiness which met multiple times that year. In an effort to ensure that legacy operators had access to the microbusiness license type, the Subcommittee on Microbusiness made a total of nine recommendations to the Advisory Committee for consideration. Four of which were adopted by the Advisory Committee, but only one was implemented by the Bureau of Cannabis Control.

Microbusiness recommendations approved by the Advisory Committee in 2018 included:

- Recommend, the Bureau, in an effort to create an onramp to legalization, there should be a clarification of microbusiness that includes tiers based on gross receipts and number of employees. The fee schedule should be redefined to include a ceiling that delineates when the business is no longer considered a microbusiness. Incentives should be provided based on equity for compassionate use and rural operators.
- Recommend the Bureau provide a “sub-microbusiness” or “microbusiness A” license that allows up to 10,000 square feet of cultivation including nurseries, three out of four activities to be fulfilled by allowing any type of non-volatile solvent manufacturing including shared space manufacturing, retail sales to happen at events in addition to storefront sale and delivery, and distribution to be fulfilled by full distribution or distribution transport only,
- Recommend the Bureau and CDPH should work together to create a document that they could distribute jointly to clarify that local governments may further limit the types of activities that are permitted to occur under a microbusiness authorized to engage in level one manufacturing within their jurisdiction. Even though the state permits multiple activities under the license type, the community could restrict certain types of activities if they so choose, and
- Recommend the Bureau should consider removing the prohibition on activities allowed within the home, so long as the activities that the applicant is choosing to conduct are activities commonly allowed under cottage business.

In 2020, the licensing authorities posed a number of microbusiness related questions to the Advisory Committee for discussion and possible action. Advisory Committee members were asked to consider the following questions:

- Should the state consider amending the number of commercial cannabis activities and qualifying commercial cannabis activities under the microbusiness license?



- Should the requirements for a microbusiness premises be amended?
- Are the current security requirements in regulation sufficient, or does the state need to consider other security measures?

In an effort to make the microbusiness license more accessible, and address concerns raised during public comment, the Advisory Committee passed three additional recommendations, as follows:

- Recommend that the Bureau allow processing as one of the three permissible activities under the microbusiness license,
- Recommend that the licensing authority allow for microbusiness license holders to utilize sales at licensed events to qualify as licensed retailer activity without having to be a delivery service or storefront, and
- Recommend that the licensing authority take out the requirements to have all the different activities be separated by a physical wall or barrier in a microbusiness.

The Department implemented the Advisory Committee's recommendation to remove the requirement that the different activities be separated by a physical wall or barrier in a microbusiness in the emergency regulations adopted in September 2021. The regulations now require separation only between the retail area and the other activities.

During the last three years of Advisory Committee meetings the challenges experienced by legacy operators regarding the microbusiness and licensing constraints have been consistently prominent. A significant number of stakeholders and license holders have repeatedly requested the development of a cottage microbusiness license to ease the challenges.

Public comment during the May 17, 2021, Subcommittee on Licensing was robust with organizations, members of the public, and legacy operators, from throughout the state and located in urban and rural areas, expressing many of the same concerns the Advisory Committee has heard over the last few years. Notable amongst these comments was the fear expressed by legacy and equity commercial cannabis business owners about falling prices in the legal market, the inability to compete with the illicit market, and ongoing struggles with connectivity to the broader supply chain. Local land use restrictions were also cited as rendering the microbusiness license inaccessible, as well as the cost of compliance with the California Environmental Quality Act (CEQA).

Additionally, public comments have indicated that the inability to make products in their home kitchen such as salves, tinctures, and pre-rolled cannabis joints, has impacted the viability of some legacy operators as many of these small businesses used to rely on consumer direct sales at organized events to dispensaries. Under MAUCRSA, only licensed retailers are allowed to sell directly to patients and consumers. Additionally, many licensed cultivators are prohibited from selling, and sharing, their genetics within the legal supply chain.

The Subcommittee had a robust conversation about the need to change regulations to allow for consumer direct sales, and expanded genetic sharing and sales. This conversation resulted in a motion to recommend that the licensing authority consider providing a pathway that allows licensed cultivators and licensed manufacturers to conduct consumer-direct-sales, and secondly, that the licensing authority consider a pathway that allows licensed cultivators to move their genetics into the retail marketplace via a nursery or a licensed retail sales entity.

However, because this motion was not tied to the development of a cottage/legacy license type, counsel determined that the Subcommittee could not consider the motion. In an effort to move these beneficial changes forward the Subcommittee rephrased the motion as components of a cottage/legacy license type. During public comment on the motion, stakeholders expressed significant concern that the Subcommittee had missed the point. In the end, the motion failed. Ultimately, a new license type is not the solution, reiterating that regulatory reform of the current license types was what stakeholders and legacy operators really need.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) REGULATIONS**


CEQA, the state's law related to the impact of certain activities on the environment. CEQA applies to all permits or licenses determined by a public agency to be a 'project', or discretionary in nature, and triggers a project-specific CEQA analysis before issuance of a license or permit. Because many local jurisdictions require a local permit to engage in commercial cannabis activity, the project-specific CEQA analysis is most often completed during the local permitting process. Obtaining a local discretionary permit and meeting the CEQA requirements have proven incredibly time consuming for both applicants and local jurisdictions, and adds to the cost of obtaining commercial cannabis licensure.

Many local jurisdictions that allowed commercial cannabis businesses to operate under Proposition 215 and Senate Bill 420 guidelines, have high volumes of legacy applicants, which has resulted in backlogs in permit processing, significantly delaying the issuance of local permits, and further increasing costs as applicants pay leases and/or mortgages to maintain control of the project's location during the CEQA review.

In an effort to ensure that legacy operators maintain commercial cannabis businesses while achieving local permits and state annual licenses, the Legislature passed a series of bills starting in 2018, establishing a provisional licensing program, which allows applicants to operate while completing their project-specific CEQA analysis and local permitting.

As the licensing authorities prepared to move towards consolidation, the Subcommittee on Licensing was asked to consider the regulatory requirements regarding annual licensure. Specifically, what should be required for an applicant to demonstrate evidence of compliance with, or exemption from, the CEQA?

In an effort to reduce barriers to entry and streamline the permitting and licensing process for commercial cannabis businesses, the Subcommittee passed one recommendation, which was also passed by the full Advisory Committee.



**Advisory Committee Recommendation:** Recommend that the licensing authorities consider uncoupling the project-specific CEQA analysis from annual licenses and instead, provide guidance to local jurisdictions to ensure that applicants meet CEQA compliance during the local permitting process.

#### **NUMBER OF LICENSES BY TYPE**

For background information on this item, the licensing authorities provided a statistical update on the number of provisional licenses versus annual licenses issued by the state as of May 13, 2021. The statistical report showed that roughly 75 percent of California's licensed commercial cannabis businesses were still operating under provisional licenses, and that 100 percent of the state's testing laboratories were operating under provisional licenses. The statistical report also highlighted that overall license growth had been slow, since the licensing authorities last statistical report in 2019. The number of manufacturing licenses throughout the state actually declined by approximately 7 percent between 2019 and 2021.

The slow growth of licensed commercial cannabis businesses throughout the state, especially in the retail sector, coupled with the high percentage of licenses operating under provisional licenses led to a robust discussion by the Advisory Committee about the need to extend the provisional licensing program beyond December 31, 2021. During public comment, stakeholders expressed alarm over the expiring provisional license program, and noted that the slow growth in the retail sector was resulting in an excess of cannabis material further challenging the viability of licensed cultivators.

Alarmed by market conditions, the Subcommittee moved to recommend an extension to the provisional licensing program. However, counsel determined that such a motion was not appropriate for the agenda item and instead redirected the conversation toward the establishment of license caps and/or floors. Feeling unprepared to suggest either, the Subcommittee decided to close the item and adjourn the Subcommittee meeting.

#### **SUBCOMMITTEE ON ENFORCEMENT**

The Subcommittee on Enforcement held one virtual meeting on May 19, 2021. During this meeting the Subcommittee was asked to consider the different enforcement models established by the Bureau of Cannabis Control, and the California Department of Agriculture, and to consider what type of enforcement priorities the licensing authority should pursue to curb noncompliant activities in the legal market, and unlicensed activities in the illicit market.

After a thoughtful discussion by the Subcommittee about the disciplinary tiers of regulatory and statutory violations in the Bureau and CDFA disciplinary guidelines, and public comment, the Subcommittee agreed that it was too early to consider changes to the disciplinary tiers and disciplinary guidelines.

The Subcommittee did, however, pass two motions that were adopted by the Advisory Committee in relationship to enforcement priorities. The first motion passed addressed enforcement priorities of licensed commercial cannabis businesses.

**Advisory Committee Recommendation:** Recommend that the licensing authority prioritize for disciplinary action, violations that impact public health or result in environmental degradation. Specifically focus on sales to minors, sales and distribution of contaminated or unsafe products, and egregious environmental damage. Motion passed unanimously.

The second motion addressed enforcement priorities for unlicensed commercial cannabis businesses.

**Advisory Committee Recommendation:** Recommend that the licensing authority focus enforcement efforts in jurisdictions that allow licensed commercial cannabis operators over jurisdictions that do not so that the licensed operators can thrive and prioritize enforcement efforts against unlicensed businesses that are selling to minors, selling contaminated products, or that cause egregious environmental harm. Motion passed unanimously.

## INFORMATIONAL PRESENTATIONS

The Advisory Committee was fortunate to receive two informational presentations during the 2021 calendar year.

### “Budget Proposal to Consolidate Cannabis Licensing Authorities”

Nicole Elliott, Former Senior Advisor on Cannabis, Governor Gavin Newsom, Office of Business and Economic Development


### “State of Cannabis Equity The United CORE Alliance”

Brandon Bolton and Khaleel Ferguson from the United CORE Alliance. Mr. Ferguson presented.

## CONCLUSION

Throughout the course of this year’s Advisory Committee meetings, several committee members and members of the public expressed the desire to have new members appointed to the committee. The Committee has experienced a reduction in members due to several factors given the time frame since the establishment in 2017. Advisory Committee members and the public have expressed the need to appoint individuals to fill the vacant seats with backgrounds in:

- Equity, diversity, and inclusion,
- Public health and safety,
- Patient advocacy, and
- Local government.



The diversity and extensive knowledge that committee members bring to the meetings are fundamental to shaping meaningful recommendations for the licensing authority.

Based on December 2021 numbers, compared to the licensing statistics presented by the licensing authorities on May 15, 2021, the number of licenses have increased slightly in most categories, distribution remained the constant, and manufacturing slightly decreased.

- Retail licenses increased by approximately 9 percent,
- Testing licenses increased by approximately 8 percent with all testing licensees operating under provisional licenses,
- Distribution licenses remained the same,
- Manufacturing licenses decreased by approximately .43 percent, and
- Cultivation licenses increased by approximately 21 percent.

The Advisory Committee acknowledges that significant reforms are still needed to meet the Administration's objectives of developing a medical and adult-use framework that protects public health and safety, while ensuring commercial cannabis regulations do not unduly limit the development of the legal market and in so doing perpetuate the illicit market.

California has always been a leader, paving the way for legalization, with four additional states, New York, Virginia, New Mexico, and Connecticut joining in decriminalization this year. The DCC is well positioned to take intentional and thoughtful steps towards building out programs to help expand licensing in the legal market and create equity for underserved communities. We all have a role to play in ensuring the success of California's legal medical and adult-use market and working together to bring forward necessary legislative and political action to reach our goals inside and outside of the regulatory process.

## ACKNOWLEDGMENTS

### CANNABIS ADVISORY COMMITTEE MEMBERS

**JEFFREY P. FERRO (Chair)**, Labor Organization Representative; Director, Cannabis Workers Rising/Executive Assistant to the Director of Organizing, United Food and Commercial Workers International Union

**KRISTIN HEIDELBACH (Vice Chair)**, Labor Organization Representative; International Representative/Cannabis Division Director, Teamsters

**AVIS BULBULYAN**, Cannabis Industry Representative; CEO, SIVA Enterprises/President, Los Angeles Cannabis Task Force

**TIMMEN CERMAK, MD**, Physician Representative; Psychiatrist, California Society of Addiction Medicine

**MATT CLIFFORD**, Environmental Expert Representative; California Water Project Attorney, Trout Unlimited; Chair of the Subcommittee on Enforcement

**ERIC HIRATA**, Alcoholic Beverage Control Representative; Director, Department of Alcoholic Beverage Control

**KRISTIN NEVEDAL**, Cannabis Industry Representative; Mendocino County Cannabis Program Director; Member of the Committee on the Annual Public Report, Chair of the Subcommittee on Licensing

**LAVONNE PECK**, Cannabis Industry Representative; Owner, Native Network Consulting

**MATT RAHN**, City Representative; City Council Member, City of Temecula

**KEITH STEPHENSON**, Cannabis Industry Representative; Founder and CEO, Purple Heart

**TAMAR TODD**, Community Equity Representative

**DAVID WOOLSEY**, Local Law Enforcement Representative; Sergeant, Division of Cannabis Regulation, San Jose Police Department

**BEN WU**, Cannabis Industry Representative; Former Chief Operating Officer, Kush Bottles

**BEVERLY YU**, Labor Organization Representative; State Government Affairs Director, UDW/AFSCME Local 3930; Member of the Committee on the Annual Public Report

## **ACKNOWLEDGMENT OF FORMER ADVISORY COMMITTEE MEMBERS**

We would like to thank the following Advisory Committee members for their service on the Committee.

**ALICE A. HUFFMAN**, Community Equity Representative; Former President, California Hawaii NAACP (Resigned, 2021)

**KRISTIN LYNCH**, Labor Organization Representative; Director of Strategic Growth, Service Employees International Union (Resigned, 2021)

**HELENA WILLIAMS**, State Law Enforcement Representative; Captain, Drug Evaluation & Classification Program, California Highway Patrol (Resigned, 2021)

## **LEADERSHIP**

**Gavin Newsom**, Governor

**Lourdes Castro Ramírez**, Secretary, California Business, Consumer Services and Housing Agency

## **DCC LEADERSHIP TEAM**

**Nicole Elliott**, Director

**Rasha Salama**, Chief Deputy Director

**Matthew Lee**, General Counsel

**Melissa Eidson**, Deputy Director of Administration

**Richard Parrott**, Deputy Director of Compliance

**Eugene Hillsman**, Deputy Director of Equity & Inclusion

**Tamara Colson**, Deputy Director of Legal Affairs

**Bill Jones**, Acting Deputy Director of Enforcement

**Christina Dempsey**, Acting Deputy Director of External Affairs

**Jason Piccione**, Acting Deputy Director of Information Technology

**Gordon Vrdoljak**, Acting Deputy Director of Laboratory Services

**Michael Cheng**, Acting Deputy Director of Licensing

## **DCC COMMITTEE SUPPORT STAFF**

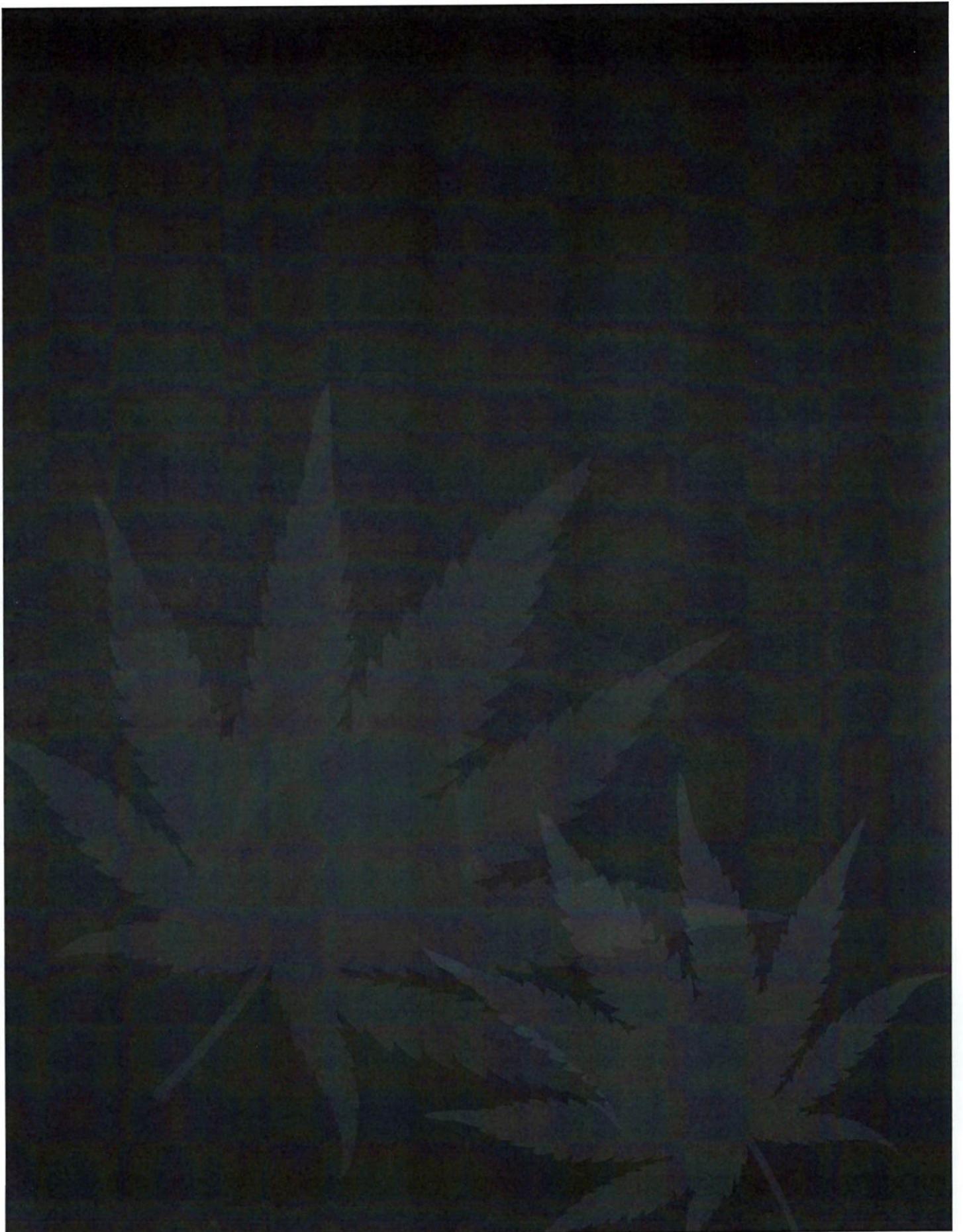
**Sara Gardner**, Attorney IV

**Angela McIntire**, Attorney III

**Ashlynn Blackshire**, Staff Service Analyst

**Kaila Fayne**, Associate Governmental Program Analyst





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## ANNUAL REPORT

DECEMBER 2021



Department of  
Cannabis Control  
CALIFORNIA

