



COUNTY OF HUMBOLDT

For the meeting of: 3/25/2025

File #: 25-368

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Time Certain Matter

Vote Requirement: Majority

SUBJECT:

1:30 PM - Reconsideration Of Board of Supervisors Oct. 24, 2023, Direction Relative to Payment of Measure S Taxes

RECOMMENDATION(S):

That the Board of Supervisors:

1. Direct that those who have paid at least 50% of their tax obligation or spent at an amount equal to their tax obligation in condition compliance be granted a 6-month extension to pay their full tax obligation until Sept. 31, 2025; and
2. Direct that a discussion of the future of Measure S be agendized for a future Board Meeting; and
3. Direct staff to develop a program to either recapture owed taxes and to provide accountability for lack of payment.

STRATEGIC PLAN:

This action supports the following areas of your Board's Strategic Plan.

Area of Focus: A Diverse, Equitable & Robust Economy

Strategic Plan Category: 2001 - Promote strong economic resiliency and growth

DISCUSSION:

Executive Summary

This request is being brought forward to allow the Board of Supervisors to consider whether to enforce the previously established deadlines related to payment of Measure S taxes, or to allow some flexibility in the payment of these taxes. This report lays out the background and provides the Board with options to consider. The California cannabis marketplace has been difficult for farmers in Humboldt county, and yet the majority of permit holders have paid their Measure S tax obligations. Approximately 24% of active cultivators are in a payment plan and owe Measure S taxes. The decision before the Board of Supervisors is whether to stay the course set in place 18 months ago, or to change course for 394 permit holders who owe Measure S taxes. Staff recommends the Board give consideration to those who have paid off more than 50% of their tax obligation or have condition compliance expenses exceeding the Measure S tax obligation. This would only apply to a few of the 394.

Background

On Oct. 24, 2023, the Board of Supervisors set a deadline (March 31, 2024) for cannabis farmers to pay the costs associated with processing and inspecting their permits and to enter into an agreement with the Treasurer Tax Collector (Board report from Oct. 24, 2023, attachment1). By entering into the agreement, the farmers would have until March 31, 2025, to pay their Measure S tax balances. In response to this offer, over 423 permit holders entered payment plans with the Treasurer Tax Collector. This involved making an initial payment of \$100 with the agreement to have this paid in full by March 31, 2025.

As we approach the March 31, 2025, deadline there is a great deal of angst because many farmers have not been able to pay their Measure S taxes. Table 1, below, has been prepared to show where the cannabis farming community stands in relation to payment of Measure S tax. The table shows that of the active permits, approximately two-thirds of those had their Measure S obligations paid off without entering a payment plan. There are 423 active permits under the payment plan. There were more, but some have fallen into an inactive status. Of the active permits under a payment plan 29 have been paid off. Some entered a payment plan and made no payments. The majority made only a single payment. There are 210 active permits with no payment plan and have not paid off their Measure S taxes; these permits are already in violation and Planning and Building have started bringing these permits forward to your Board for revocation.

The big question for the Board to decide upon is what to do with the 394 active permits that still owe Measure S taxes as of March 31, 2025. This represents approximately 24% of the active permits that are not already subject to revocation.

Discussion

The narrative surrounding payment of Measure S taxes would give the impression that most of the cannabis cultivation permit holders are unable to pay their Measure S Tax obligations. The numbers in Table 1 do not support this narrative. Each of the permits represents a person or family who is affected by this decision. At the same time the numbers represent people and families who have paid their Measure S taxes and continue to do business. There is a fairness issue to be considered. Those who have paid their Measure S taxes have that as a business expense as they compete in the statewide market, while those who have not paid their tax obligations do not have that business expense as they compete in the same market.

Table 1

Total Active Permits	1,861
Permits with no outstanding balance (2/17/2025)	1,228
Number of Payment Plans (with TTC)	423
Payment plan paid off	29
Payment plan with no payments	26
Payment plan with 1 payment	295
Payment plan 2-5 payments	48
Payment plan 6-9 payments	11
Payment plan 10+ payments	15
No payment plan	210

Note: This does not represent the number of farms, but rather the total number of active cultivation permits.

If the number of permit holders who owe Measure S taxes were to be all or most of the permit holders, then perhaps it would be compelling that something should be done about the tax for everybody, but this is not the case. While Measure S taxes undoubtedly pose a significant expense, 76% of active permit holders, not subject to revocation, have been able to pay their Measure S obligations. The fact that some are struggling should not come as a surprise. Nobody envisioned that all permit applicants would be successful in a statewide legal market. This is currently a tough industry in which to compete across the state. In the Feb. 17, 2025, issue of the SF Chronicle (SFGATE) an article titled "Complete Failure: California Pot Industry hits another grim milestone" points out that

there are now more inactive state cannabis licenses in California than there are active licenses. Pulling information from the Department of Cannabis Control Data Base they point out that there are 10,828 inactive and surrendered licenses and 8,514 active licenses. In fairness 1,071 of the surrendered licenses are licenses where the farmer consolidated licenses but the point remains there are still slightly more surrendered and inactive licenses than there are active licenses. There is a very high failure rate across the state. The article goes on to cite a 2023 study of technology companies finding that 75% fail within the first 5 years. Business failure is part of the normal marketplace and can be expected within the cannabis industry. County cultivation permits reflect a similar trajectory.

Apart from the typical new business attrition there has been an added component observed in Humboldt County that is a good portion of the county cannabis permit applicants and permit holders do not act until it is an absolute necessity. Several staff in the Planning and Building Department have had discussions with farmers who have stated they are not paying their taxes yet as they are waiting to see if the Board extends or waives the deadline. The inference here is that there are some who have the money to pay the taxes, but if they don't have to pay it now, they will not. This is confirmed by the most recent Planning and Building Department effort to bring cannabis permit holders unpaid department invoices current for their inspection deposits. The department had a \$500,000 account receivable balance just for this one activity. A letter was sent notifying farmers that if they did not pay the money owed within 30 days, their permit would be suspended. Over half of the farmers receiving this letter came in and paid their balances bringing in \$240,000. Letters were sent out to those who did not respond resulting in the suspension of 115 permits. Permit holders have continued to come in to pay their deposits. A final accounting is not available at the time this report is written, and many are still coming in and paying their invoices.

It is clear some do not have the money to pay Measure S taxes. The data shows some have been working to pay them as they have made numerous payments. The records do not show how much has been paid, but there is a record of an ongoing effort. Others may have worked to complete compliance with their conditions of approval and now do not have the money to pay their taxes. If the Board were to give consideration to an extension, it should be to cases where there has been an effort to either pay Measure S tax and/or to install required improvements. This should not include improvements funded by Department of Cannabis Control local jurisdiction grant money.

A point that should not be overlooked in the numbers in Table 1 is that 76% of the active permit holders who entered a payment plan have made 0 or 1 payment. In most cases the one payment is the initial \$100 required to enter the payment plan. Again, the records do not show how much has been paid.

Based on the information presented above the Board of Supervisors could choose from several options in how to address this. These are discussed as follows:

Alternatives:

1. Maintain the Oct. 24, 2023, direction. This would result in all permits that are not current as of March 31, 2025 (payable as late as April 1, 2025, because March 31 is a holiday), being suspended on April 2, 2025, or as soon thereafter as practicable. They would remain suspended for 30 Days after which time they would be scheduled for a revocation hearing. Revocation hearings would begin in May and would be brought forward in large groupings.
2. Provide Limited Time Extensions. This would allow those relatively few who have made regular good faith efforts to take the opportunity to finish paying their obligation. This could be extended to those who have expended and prioritized their own limited resources to fund improvements required by a county or state permit over the outstanding Measure S balance. Improvements installed using Trellis or DCC grant funds would not qualify. It is recommended that the time extension be for 6 months or until Sept. 30, 2025. This would require the permit holders to demonstrate to the Planning and Building Director that they have been making a substantial effort to pay their taxes. A measurement would be that at least 50% of their taxes have been paid before publication of this report (March 21, 2025). For those who have expended resources on compliance, the cost of compliance would need to equal the Measure S taxes.
3. Extend the Timeframe for all farmers who entered into a payment agreement. This would grant everyone who has already entered into a repayment agreement for another year (March 31, 2026) to pay off all their Measure S Taxes. If the Board were to choose this option, it may also be reasonable to expect that some of the permit holders who are current on their taxes would want some of the tax money paid, returned to them until that same due date.

In looking at these three options, anything other than choosing to stay the course of direction given by the Board of Supervisors 18 months ago could be viewed as providing unfair advantage to those who have not paid their taxes. However, it would not be unreasonable to show some consideration to those who have been truly trying. If alternative 2 were chosen, this would provide an extension to 10-20 permit holders and all other permits would be suspended, and if unpaid during the suspension brought back to the Board for revocation.

It is worth noting that any extension of the deadline to pay taxes would trigger the requirement for payment of late fees and penalties during that extension. The previous Board action indicated there would not be late fees or penalties if all invoices were paid by March 31, 2025. A new extension would move outside of that time frame. In the previous action the Treasurer-Tax Collector found there were extra ordinary circumstances associated with the payment of taxes an allowed extension. Any newly granted extension would involve late fees after the March 31, 2025, deadline.

An important consideration is the implication of a suspension or revocation on existing valid state licenses. The Planning and Building Department would not notice the Department of Cannabis

Control about a suspended License but would notify the DCC when a county permit is revoked. This will allow a permit holder to sell product while cultivation is suspended, but once revocation occurs the DCC may take action to revoke the state license.

One other glaring issue to address is the approach to those who have not paid their Measure S taxes. Up to this point this has not been a topic of conversation that has resulted in action. There will be people who fall out of this with taxes owed, and there are many who have walked away and not paid their Measure S taxes. Measure S taxes are owed by the permit holder and not the property owner. It cannot be applied as a lien to the property. There should be accountability for not paying tax obligations. It is recommended that resources be applied to pursue an effective method of either recapturing owed taxes or to report individuals for lack of payment.

The timing of this report coincides with the effort to prepare relevant cultivation permit information upon which the Measure S Taxes are based. The base data for last year's Measure S taxes was recently extracted. It took approximately 40 hours to collect this information from two staff members. This is an approximate cost of \$8,000. If patterns hold true, once farmers receive their tax bills, many will come in and complain they did not cultivate the amount taxed and the department will go through an effort to determine what was cultivated. This will double the cost for each farm analyzed whether there are corrections, or the amounts remain as submitted. This will also require work by the Treasurer-Tax collector. The point being, Measure S as interpreted by the court is extremely cumbersome to implement. Speaking only of the Planning and Building Department, it is not only the actual staff cost involved but also the lost opportunity cost. Planning and Building Staff is spending time working on how much area should be taxed rather than working on other things that may be a higher priority of the Board of Supervisors. Measure S was originally envisioned as a tax that would come out of the bounty that would be associated with legal cannabis. That is not the current circumstance and is unlikely to ever become the situation. Measure S does not produce the income expected, it is cumbersome to implement, puts additional burdens on farmers, which is arguably not where the tax burden should be placed and is diverting staff time from other things that could be more beneficial to the county. For these reasons it is worth revisiting Measure S and considering whether there is a better approach to cannabis taxation. This discussion is not on this agenda and cannot be discussed, but it is recommended that this be brought back for discussion.

Recommendation:

It is recommended the Board of Supervisors take the following actions:

1. Direct that those who have paid at least 50% of their tax obligation or spent at an amount equal to their tax obligation in condition compliance be granted a 6-month extension until Sept. 31, 2025.
2. Direct that a discussion of the future of Measure S be agendized for a future Board Meeting.

3. Direct staff to develop a program to either recapture owed taxes and to provide accountability for lack of payment.

SOURCE OF FUNDING:

There is not a funding source for the preparation of this report. It is covered under the General Fund contribution to budget unit 277.

FINANCIAL IMPACT:

Undetermined. The Board's decisions will influence the manner in which Measure S Taxes are paid.

OTHER AGENCY INVOLVEMENT:

Treasurer Tax Collector

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board Discretion

ATTACHMENTS:

1. October 24, 2023, Board Report

PREVIOUS ACTION/REFERRAL:

Meeting of: Oct. 24, 2023

File No.: 23-1374