



## NOTICE OF TELECONFERENCE MEETING & AGENDA

May 22, 2020 11:00 a.m. – 12:00 p.m.

Conference Call Line: 916-407-1517, no password necessary

*In line with guidelines issued by the Department of Public Health and Executive Orders issued by the Governor of the State of California intended to minimize face-to-face interactions during the present State of emergency, CCA will conduct this meeting of the Board of Directors entirely by teleconference call with no physical locations available for participation by either Board Members or the public. Members of the public are encouraged, however, to call in and participate as they have in the past via our teleconferencing system and a time will be made available during the meeting for public questions and comments.*

- I.      **11:00 am**                    **Opening Remarks & Roll Call**  
*Supervisor Fennell, CCA President*
  
- II.     **11:05**                     **Operational Update, Member Out-Reach**  
*Greg Turner, Executive Director / Counsel, CCA*
  
- III.    **11:10**                    **Legislative Update**  
*Greg Turner, Executive Director / Counsel, CCA*
  
- IV.    **11:15**                    **Platform Update**  
*Adam Crabtree, NCS Analytics*
  
- V.     **11:25**                    **Platform Access**  
*Greg Turner, Executive Director / Counsel, CCA*
  
- VI.    **11:45**                    **Alternative Revenue Options**  
*Greg Turner, Executive Director / Counsel, CCA*
  
- VII.   **11:55**                    **2020 Calendar**

**VIII.   Public Comment**

*The Board welcomes and encourages public participation in its meetings. The public may take appropriate opportunities to comment on any issue before the Board. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment. Each speaker is limited to two minutes. If you are addressing the Board on a non-agenda item, the Board may briefly respond to statements made or questions posed as allowed by the Brown Act (Government Code Section 54954.2). However, the Board's general policy is to refer items to staff for attention, or have a matter placed on a future Board agenda for a more comprehensive action or report.*

**IX.     12:00 p.m.                Closing Comments & Adjournment**

*Except where noticed for a time certain, all times are approximate and subject to change. The meeting may be canceled or changed without notice. For verification, please contact [gturner@cca.ca.gov](mailto:gturner@cca.ca.gov). Action may be taken on any item on the agenda. Items may be taken out of order, tabled or held over to a subsequent meeting, to accommodate speakers, or to maintain a quorum.*

*The Governor's orders (specifically Executive Order N-29-20) regarding the conduct of meetings of legislative bodies during the State of Emergency can be found at <http://www.gov.ca.gov/>*



CCA Board Meeting  
Via Conference Call  
April 24, 2020  
**MINUTES**

**April 24, 2020**

President Fennell called the meeting to order at 10:00 a.m.

**1. Roll Call.**

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| <u>  X  </u>  | Estelle Fennell, Humboldt County, CCA President  |
| <u>  X  </u>  | Mary Zeeb, Treasurer-Tax Collector, Monterey County, CCA Secretary   |
| <u>  X  </u>  | Jim Hamilton, TT Collector/ Auditor Controller, SLO, CCA Treasurer, CCA Board Member<br>Justin Colley in proxy as Alternate. |
| <u>      </u> | Chad Rindle, Yolo County, CCA Board Member Alternate   |
| <u>  X  </u>  | Alisha McMurtrie, Treasurer-Tax Collector, Inyo County, CCA Board Member   |


Others: Adam Crabtree, Alan Fernandes, Greg Turner, Justin Cooley (SLO).

- 2. Approval of the Minutes:** The minutes from the January 2020 and February 2020 meetings were presented with the single modification to remove Mendocino County from the roll call and vote for having vacated their Board seat starting in January 2020. Approved by a unanimous vote.
- 3. Operational Update:** Greg Turner, CCA’s newly appointed Exec. Dir. gave an update on organizational changes occurring in light of the transition of a new ED; including planning for a budget for next fiscal year. It was agreed that for next year, the budget be taken up in January to more closely align with County planning. Additionally, the Members discussed the need for a new strategic plan and marketing effort to raise awareness of CCA within the Counties and demonstrate value for each sector of County government that plays a role in overseeing commercial cannabis. The “Task Force” models being implemented in SLO and Monterey were examples of the approach and CCA is working in each of those Counties to show value to each unit participating in the Task Forces. Also included was a proposed “transparency project”, an effort to take aggregate data within the County to provide the public with relevant and timely information regarding commercial cannabis activity in their jurisdictions.
- 4.** Monterey County raised some concern with being the predominant participant / funder of CCA and whether that could be sustained into the next fiscal year. Without greater participation by other Counties, the present revenue models would need to be significantly modified from their present form.
- 5. Legislative Update:** Greg Turner provided a short legislative update noting the Legislature is not presently meeting but planning on returning May 4. There are rumors that focus in the short term will be exclusively a “workman” like budget, and most substantive issues pushed into late summer

or fall. CCA is reaching out to Legislative staff regarding the Governor's proposed consolidation of cannabis regulatory programs and anticipates updating the Board at its next meeting.

- 6. Platform Update:** Adam Crabtree, CCA's technology provider gave an update on a significant change to the platform; access to METRC data via licensee API keys. After successful pilot projects in Yolo and Monterey County, Adam indicated that the system is now prepared to handle pulling this data for each licensee within each county. All that will be required is that licensees provide an API key either to the County or CCA directly. There may be additional data the County wishes to be submitted, but that can generally be done on a monthly or quarterly basis. This new API key process should substantially reduce, if not virtually eliminate, burdens of self-reporting by licensees and/or third-party vendor access.
- 7. Platform Access:** Greg Turner discussed the issue raised by several Board members regarding access to the platform by other units within the County. CCA will be producing a memo in the short term that addresses these issues, but essentially, Counties should understand that CCA data is not "tax return" data that is often severely restricted in terms of who may have access by state and sometimes federal law. Though the data can have similar features, supplying that data to CCA is neither from tax returns nor a product of the taxing function; but a condition of licensure. The memo will address access to the platform by other units including law enforcement, who have specialized issues and may need specialized rules as a result.
- 8. Calendar:** CCA's next meeting is May 22. Our June meeting, scheduled to be in person, will be via zoom and a date and time to be announced shortly.
- 9. Public Comment.** No public comment.



To: Members of the Board  
From: Greg Turner, Executive Director / Counsel   
Date: May 11, 2020  
Re: Data Platform Access

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At our Board meeting of April 24, an issue was raised concerning the scope of access to the CCA Data Platform by County personnel. This memo seeks to provide guidance to our Member Counties regarding what we believe to be the proper framework for access to the CCA Data Platform by County personnel. Counties in their discretion and to meet their local needs may establish different rules and procedures; this discussion represents what we believe to be foundational guidelines.

#### The Foundation

Establishing our framework begins with an understanding of the County's scope of authority regarding the regulation and taxation of commercial cannabis. Under general police powers, counties have plenary authority to govern, subject to the limitation that they exercise this power within their territorial limits and subordinate to state law.<sup>1</sup> County's generally don't have inherent taxing power.<sup>2</sup>

It would be a mistake, however, to look at the regulation and taxation of commercial cannabis activities through the lens of other commercial enterprises. While the long term goal for proponents of legalization might be normalization of the industry, when voters approved Proposition 64, the Adult Use of Marijuana Act (more specifically the "Control, Regulate and Tax Adult Use of Marijuana Act"),<sup>3</sup> central to the initiative measure was local control and *comprehensive* regulatory and tax oversight that is unlike the oversight applicable to other commercial businesses, perhaps even those considered "highly regulated" industries.

*The purpose of the Adult Use of Marijuana Act is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana produces, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana.*<sup>4</sup>

In addition to this broad scope of purpose language, Proposition 64 included more than two-dozen specific "Purpose and Intent" provisions. From taking "sales out of the hands of the illegal market," to

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<sup>1</sup> Const. art, XI § 7. See *Simpson v. City of Los Angeles* (1953) 40 Cal.2d 271, 279-280.

<sup>2</sup> See Gov't Code § 23003, 230004(e) "a County may ... levy and collect taxes authorized by law."

<sup>3</sup> See Voter Information Guide, Gen. Elec. (Nov. 8, 2016) (Voter Information Guide) text of Prop. 64, §1, p. 178. When the State's divergent laws regarding cannabis production, sale, and use were subsequently harmonized in 2018, the title was changed to the Medicinal and Adult-Use Regulation and Safety Act." See Bus. & Prof. Code § 26000.

<sup>4</sup> Voter Information Guide, *supra*, text of Prop. 64, § 3, p. 179.

## CCA Data Platform Access

ensure the “protection of public safety, public health and the environment,” “[a]llow local governments to enforce state laws and regulations”, and allow local governments to “enact additional local requirements for nonmedical marijuana business” or “ban nonmedical marijuana businesses” altogether.<sup>5</sup> Should the Courts be brought to review the scope of authority granted state and local governments by Proposition 64, such expressions would frame a Court’s understanding of voters’ intent.<sup>6</sup>

When the Legislature subsequently harmonized various existing state laws with Proposition 64 in Senate Bill 94<sup>7</sup> to create the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), the basic foundation of Proposition 64’s dual licensing system and its emphasis on a *comprehensive* approach to a *robust* regulatory environment while maintaining *local control* was not diluted.<sup>8</sup> Moreover, MAUCRSA carried over Proposition 64’s express recognition of the various aspects of local government regulation and taxation that were empowered *by the initiative*, including law enforcement, land use, permitting, licensing and taxation.<sup>9</sup>

It is within this context of that Proposition 64 created, and MAUCRSA enhanced, the “track and trace” system for “reporting the movement of cannabis and cannabis products through the distribution chain.”<sup>10</sup> Proposition 64 and its revisions by MAUCRSA understand a basic truth; without comprehensive data tracking commercial cannabis from seed to sale, stamping out the black market would be all but impossible. Consequently, while MAUCRSA ensures the confidentiality of information received and contained in records kept by the State for purposes of administering MAUCRSA (and therefore not disclosable under the California Public Records Act),<sup>11</sup> excepted from that proscription is the disclosure of information to “any city, county, or city and county *to perform official duties pursuant to [MAUCRSA] or local ordinance.*”<sup>12</sup>

Reference by the statute to the County (as opposed to a specific officer or county official) in context of the initiative’s comprehensive approach to robust regulation, plainly authorizes any county personnel access to track and trace data in the performance of their official duties. This is the foundation from which CCA governs access to the Data Platform.

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<sup>5</sup> Voter Information Guide, *supra*, text of Prop. 64 § 3, p. 179, 180.

<sup>6</sup> See *People v. Valencia* (2017) 3 Cal.5<sup>th</sup> 347, 375 citing *Robert L. v. Superior Court* (2003) 30 Cal.4<sup>th</sup> 894, 905, quoting *Hodges v. Superior Court* (1999) 21 Cal.4<sup>th</sup> 109, 114 “[i]n the case of a voters’ initiative statute ... we may not properly interpret the measure in a way that the electorate did not contemplate: the voters should get what they enacted, not more and no less.”

<sup>7</sup> (2017-2018 Reg. Sess.) Stats. 2017, chp. 27 (S.B. 94). Initiative measures may only be amended without subsequent voter approval if the initiative itself authorizes such amendments. Const. art. II, §10(c). Prop. 64, included such authorization, “provided that such amendments are consistent with and further the purposes and intent of this act as stated in Section 3” and are approved by a two-thirds vote. Voter Information Guide, *supra*, text of Prop. 64, § 10, p. 210.

<sup>8</sup> S.B. 94, *supra*, Section 1(f) [“In order to strictly control the cultivation, process, manufacturing, distribution, testing, and sale of cannabis...”] and (g) “as well as maintaining local control...”

<sup>9</sup> See Bus. & Prof. Code §§ 26055(d), 26060(b)(2), 26066, 26200(a), (b).

<sup>10</sup> Bus. & Prof. Code § 26067(a).

<sup>11</sup> Gov’t Code § 6250, et. seq.; Bus. & Prof. Code § 26067(b)(6).

<sup>12</sup> Gov’t Code § 26067(b). (Emphasis added.)

## CCA Data Platform Access

### The CCA Data Platform

CCA is a Joint Powers Authority established and governed by California Counties pursuant to the Joint Exercise of Powers Act (the “Act”)<sup>13</sup> with the broad purpose of assisting local governments fulfill their obligations under MAUCRSA in regard to the licensing, enforcement and taxation of cultivation, manufacturing, retail sale, transportation, storage, delivery and testing of cannabis and cannabis related activities.<sup>14</sup>

As many among our Board come from tax administration, it is natural that the information and records supplied by licensees to the CCA Data Platform would be viewed through the lens of taxpayer return information, which is protected in many contexts by both State and federal laws. Though useful in the administration and enforcement of local tax ordinances, CCA’s membership are “Public Agencies” and not particular offices or personnel within those Public Agencies.<sup>15</sup>

What’s more, the information and records which populate the CCA Data Platform are generally provided by licensees pursuant to the County’s regulatory police powers, not their taxing power, per se (though some counties may include in the CCA Data Platform either local tax return data or actual local tax returns). Just as an example, in Monterey County, commercial cannabis permits and the obligation of those licensees to supply track and trace data to CCA, were enacted pursuant to the County’s general police powers, not authorized state tax authority.<sup>16</sup> Thus, while the data housed in the Platform may be useful, even critical to the administration of the County’s taxing function it would be inaccurate to describe the data as “taxpayer return” information. Local licensees provide data to CCA as a condition of their local operating permit which derives from the County’s police power, not their taxing power.

It is important to point out, that while CCA includes members from multiple counties and hopes to add others, the platform does not allow access to commercial cannabis activity that does not occur within the member’s county.

### State Limits on Sharing Confidential Tax Return Information

Notwithstanding that MAUCRSA and the County’s exercise of its police powers establish the proper framework for access to commercial cannabis activities in the CCA Data Platform, we should be cognizant of various state and federal limitations and their potential impact on CCA making platform data available to personnel within the County.

One such example, is Business & Professions Code § 16100.1, which places limits on a County’s dissemination of “Personal Information” (including “income and tax information”) collected for purposes of issuing a business license pursuant to the County’s police power. It is important to note two things about this limitation: First, Section 16100.1 is concerned with the *public disclosure* of Personal Information, not intra-county disclosure among departments, units or persons within the County pursuing their official duties connected to the regulation and taxation of cannabis within the County. Perhaps this is self-evident given that statute refers to the County singularly, not any one regulatory or taxing unit or office within the County.

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<sup>13</sup> Gov’t. Code § 6500 et. seq. The Act authorizes two or more public agencies by agreement to jointly exercise any power common among them, whether together or through an entity separate and apart from each member, and notwithstanding that such joint powers are not exercisable by each contracting party with respect to the geographical area in which such powers are to be jointly exercised. (Gov. Code, §§ 6502, 6503.5.)

<sup>14</sup> California Cannabis Authority, Joint Powers Agreement, January 12, 2018, Art. I, § 2.

<sup>15</sup> See Gov’t Code § 6500 defining “public agency” as, among other things, “a county...”

<sup>16</sup> See Monterey Code § 7.90.010 citing Const. Art. XI, § 7.

## CCA Data Platform Access

Second, even if the disclosure of information covered by Section 16100.1 might arguably encompass disclosure between units or persons with official regulatory or tax functions within the County, Section 16100.1 expressly excludes such exchanges of information “as required to administer the licensure program or comply with a judicial warrant, subpoena, or court order.”<sup>17</sup> Intra-county disclosures connected with the administration and enforcement of the County’s cannabis licensing program appear to expressly comply with the plain reading of the statute.

Other state restrictions similarly appear concerned with the *public disclosure* of *State* tax return information. See Rev. & Tax. Code § 19652 (public disclosure of information derived from returns filed pursuant to the State Franchise and Income Tax Laws); Rev. & Tax Code section 7056 (access to sales or transactions and use tax records held by the board of equalization (now California Department of Tax and Fee Administration)). Even state restrictions relative to local taxes either have no restrictions or exclude those persons with administrative or compliance functions. See Rev. & Tax Code § 7284 (authorization to impose business license tax has no restrictions); Rev. & Tax Code § 7284.6 (utility user tax information may be disclosed to any employee, officer or agent or contractor of the local government jurisdiction “with administrative or compliance responsibilities relating to the utility user’s tax ordinance.”). None of these restrictions appear applicable to limit intra-county personnel access to the CCA Data Platform, including access to local tax return information in that system, provided those personnel have some regulatory or tax oversight function relative to commercial cannabis in that jurisdiction.

Even the California Public Records Act, which generally proscribes the disclosure of “information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information”<sup>18</sup> is concerned with *public* disclosure, not intra-county personnel access to a common data platform that may include taxpayer information for official purposes connected with the regulation and taxation of commercial cannabis in the county.

Our review has disclosed no provision of state law that would limit authorized personnel within the county in pursuit of their official functions related to the administration or taxation of commercial cannabis activities within the County from accessing the CCA Data Platform for those purposes.

### Law Enforcement

Access to commercial cannabis transactional and tax related information by law enforcement within the CCA Data Platform presents a unique challenge. On the one hand, even a casual reading of Proposition 64 illustrates the vital role law enforcement is intended to play in the legalized system. Ensuring the elimination of the black market is naturally dependent on local law enforcement and State law specifically authorizes law enforcement to have access to the State’s track and trace system.<sup>19</sup> On the other, are concerns that might arise regarding overzealous law enforcement actions.

From a purely constitutional perspective, it would not appear that licensees have a “reasonable expectation of privacy” nor a defensible property interest in commercial transactional data supplied as a condition of licensure, given the scope of demands placed on their reporting by Proposition 64 and

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<sup>17</sup> Bus. & Prof. Code § 16100.1(a)(3).

<sup>18</sup> Gov’t Code § 6254(i).

<sup>19</sup> Bus. & Prof. Code § 26067(b)(7).

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MAUCRSA. Consequently, law enforcement access to the Data Platform would not appear to raise State or federal Constitutional questions.<sup>20</sup>

Nevertheless, the system itself has built in safeguards. Counties may choose to provide user level access to specific licensee data based on predicate ‘triggers’ or alerts. When the system itself identifies deviations from expected transactional norms, an alert is triggered, and those licensees who have been identified in the alert define the pool from which greater detail is presented to the user; no unfettered access to transactional data for any licensee is available.

### CCA Platform Access

When a new member joins the JPA, the person designated by the Board of Supervisors (or City Council in the case of a City) is designated the Account Administrator. The Administrator may authorize additional Subordinate Users as they deem appropriate, subject to the guidelines outlined here and the terms outlined in the Designated Access and Use Form.

Each person designated by the Administrator for access to the Data Platform shall in turn file with their Administrator a Terms of Access and Use agreement which requires, among other things, attestation that their access is necessary to accomplish the responsibilities of their employment and that the information derived from their access will remain strictly confidential.

Data is at the heart of a robust and comprehensive regulatory system. So too is coordination within local government jurisdictions to ensure limited resources are committed as efficiently as possible and avoid placing more burden on industry than is necessary to achieve the will of voters in approving Proposition 64. The CCA Data Platform has been structured with these goals in mind.

Certainly, we continue to explore methods to improve the system and its value to our members and look forward to any ideas you may have to help accomplish these goals.

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<sup>20</sup> U.S. Const., 4<sup>th</sup> Amend.; Const. Art. I, § 1. *United States v. Miller* (1976) 425 U.S. 435; *Lewis v. Superior Court of L.A. County* (2017) 3 Cal.5<sup>th</sup> 561.