



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT

3015 H Street • Eureka CA 95501
Phone: (707) 445-7541 • Fax: (707) 268-3792

DATE: July 31, 2020
TO: County Administrator's Office
FROM: John Ford, Director 
RE: Response to Grand Jury Report Regarding Cannabis Permitting Activity

As requested, here is Planning and Building's response to the undated Civil Grand Jury memo titled "A GROWING CONCERN, Humboldt County Planning and Building Department and The Cannabis Industry". This title a growing concern should be a call for further investigation and understanding rather than the title of a document providing a litany of unsubstantiated accusations, false findings and misguided recommendations. Most of the statements made by the Grand Jury are either factually incorrect or lack understanding. This response will address the most significant uninformed content in the narrative and will respond directly to the findings and recommendations.

Within the narrative sections titled Summary, Background and Discussion are several repetitive points that warrant a response as follows:

Lack of Transparency in Accounting Procedures.

The Civil Grand Jury stated: *There is a notable lack of in-depth reporting of revenues and expenditures that would accurately show the citizens of Humboldt County the effectiveness and the operational and fiscal efficiency of the Cannabis Planning program.* This is a refrain stated in different ways throughout the document. It targets "cannabis planning" without identifying an actual issue or recognizing the budget structure or procedures in place governing revenue and expenditures for the whole department.

The Planning and Building Department is comprised of five (5) budget units as follows:

1. 1100262 Building Inspection Division
2. 1100268 Cannabis Planning
3. 1100269 Code Enforcement
4. 1100277 Current Planning
5. 1100282 Advanced Planning

Each of these budget units are required to provide an accurate accounting of revenue and expenses in accordance with County procedures as directed by the Auditor Controller's office. All five budget units comply with these procedures. Numerous times it is mentioned that there is not good coordination between the Planning and Building Department and the Auditor

Controller's office. This is very surprising given that the Planning and Building Department follows the directions of the Auditor Controller in how finances are handled. The department is under the impression there is a good working relationship with the Auditor Controller's office and there has never been any concern expressed by that office to this department. These are surprising comments that do not represent the work the department does with the Auditor Controller's office.

Humboldt County utilizes an accounting system called One Solution. All revenues and expenses are reported in One Solution and reports of these revenues and expenses are available to all county departments as well as to the public in a variety of venues and documents including Public Records Act requests. This system is monitored by the Auditor Controller's office and the data is reported in the departmental budget reports. This is a highly accountable and transparent process. Cash handling accountability and transparency is addressed in our response to Finding 1. It is important to point out that every dollar that comes into this department is accounted for and associated directly with either a product or a service.

The Grand Jury report states the accounting of the Cannabis Trust Fund is not transparent, expressing concern that the expenses for the year exceed income causing the department to withdraw from the cannabis trust fund. Stating that if this trend continues there may be a need to use funds from the General Fund. Once again, these statements show a lack of understanding of the nature of the trust fund. The Cannabis Trust fund was created in the 2016 – 2017 budget year. In that year the department received over 2,200 applications with application deposits. The department knew not spend all the deposit money would be expended in that budget year and so rather than allow the money to go into the General Fund, a Trust Fund was created to store those deposits to ensure their availability for these cannabis projects. The department works on a cost recovery basis and so it is expected that money would be withdrawn from the trust fund to pay for the cost of working on these applications. The Cannabis Trust fund is more transparent than alternative mechanisms and insures that application deposits are retained to support processing of applications.

The comment was made: *“that obtaining a simple accounting document from the Planning and Building Department proved very frustrating despite several direct requests by the Civil Grand Jury. Given the huge amount of cash moving through its office and its substantial annual budget, the Planning and Building Department's accounting system appears problematic”*. It is not clear if the information was ever received and it is impossible to know what was being asked for since everybody interviewed by the Grand Jury is sworn to secrecy, thus these statements are without accountability. It is surprising to hear that the information was not immediately provided. This comment is followed by the statement that the department handles a huge amount of cash with a substantial budget making the department's accounting system problematic. The rationale for the accounting system being problematic is not explained, and handling cash is a required activity in every endeavor that charges fees for services. As noted above, all income that comes into the department can be traced to a project and if any income is missing this would be identified (see discussion on cash handling below.)

A comparison was made with the Treasurer Tax Collector's office having a vault and using a armored car to transport the cash to the bank. It is expected that the Treasurer Tax collector

handles significantly more cash than Planning and Building. During the peak of application submittal at the end of 2016, the department did look into having an armored car pick up or having the bank pick up deposits, but the regularity of the pickups was, and still are not sufficient to warrant the cost of this service.

Regulations of Pre-Existing Cultivation

The discussion contained under the title "Starting from Scratch" relative to Ordinance 2.0 is profoundly misinformed. The report understands Ordinance 2.0 to have been developed in response to State Licensing Requirements effective January 1, 2018. Ordinance 2.0 was envisioned going back to litigation associated with adoption with 1.0 in 2016 which set a sunset date for acceptance of cannabis applications at December 31, 2016 until a new ordinance was prepared and analyzed by an Environmental Impact Report. The importance of 2.0 is that it re-opened the application process. It did conform to the County's understanding of state regulations, but it must be pointed out that even 2.0 was completed prior to completion of the State's Cannabis Licensing rule making process.

The report then states: *Previously there existed some latitude to allow pre-existing cultivation to continue while permit applications were being processed, as the State developed its Cannabis Licensing program. This condition no longer exists. In today's regulatory scheme, cannabis cultivation requires a local permit and a state license to be deemed legal.* This statement is confused at best and is entirely misleading. Prior to January 1, 2018 a state license was not required. Humboldt County allowed existing cultivators to continue to cultivate without permit and without license and be considered legal prior to this date. In order to accept over 2,200 applications before December 31, 2016 the Planning and Building Department received incomplete applications just so applicants could meet the application deadline. As January 1, 2018 approached, the date a local permit would be required to obtain a state license, it became clear that nearly all the existing cultivators did not yet have complete applications and would not receive a local permit or a state license. The Planning and Building Department proposed a modification to 1.0 to allow issuance of Interim Permits to existing cultivators so that they could be granted state licenses while their local permit applications were being made complete and reviewed. The County still has approximately 600 applicants operating under an Interim Permit and a Provisional State License. It is probably beyond the concern of the Grand Jury to recognize the Planning and Building Department's actions taken to advocate for legislation adopted to allow issuance of Temporary State Licenses at the State level so that Humboldt County Growers remained eligible to participate in the legal marketplace. It should also be pointed out that a local permit and state license is required under either 1.0 or 2.0. This was not an invention of 2.0 but is a State mandate.

The report states that 2.0 only permitted new farms and did not allow pre-existing cultivation to be approved after December 31, 2019. This is a misleading statement. The Planning Commission in their deliberation on 2.0 added sunset dates for applications to allow both pre-existing cultivation and Retirement, Remediation and Relocation (RRR) sites because there should not be ongoing existing cultivation that is not permitted and if growers want to continue growing it needs to be in the legal market. This provision was adopted by the Board of Supervisors as part of 2.0. In a critique of the Planning and Building Department it is interesting that something completely out of the control of the department is called out in this manner. It

makes one wonder about the true objective of the report.

Complex Process

The report states: *The application requirements are so complex and extensive there are consultants and lawyers who specialize in guiding applicants through the process.* It is true there are those who specialize in permit processing and some provide their services to cannabis cultivators. There are also land use permitting specialists who process current planning permits, and building permits. It is also true that many cannabis cultivators have navigated the process without the aid of a consultant. This also ignores the fact that in early 2017 Planning and Building offered seminars twice a week to cultivators to come in and work with staff to be able to get their application package complete. The department did not charge for this time. This process was discontinued when the only people attending were consultants. It should be pointed out that the cannabis application process uses the current planning application process with minor differences to account for specific requirements within the cannabis ordinances.

The statement is made: *Assistance by the Planning and Building Department is another added cost, billed at a rate of \$150 per hour. Of course, this service is only available when employees are able to provide it.* It seems like this is a reference to the Application Assistance meeting. An experienced Senior Planner is dedicated to conduct these meetings. Applications filed under 2.0 that have worked with this planner are moving through the process very quickly because they are complete, and all concerns are addressed. This statement also ignores the fact that we have a Cannabis Planner assigned to answer questions at the counter and on the phone everyday from 8:30 to 5:00 including the lunch hour. There is no charge to come in and talk to the cannabis planner on duty.

FINDINGS

The Planning and Building Department offers the following responses to the findings and recommendations of the Grand Jury report:

F-1: *The handling of large sums of cash used by applicants to conduct transactions with the Planning and Building Department lacks transparency and creates the perception of potential for fraud. (R-2, 3, 4)*

Disagree. The Planning and Building Department accepts cash payments across all budget units of the department. Cash is not unique to cannabis permitting. The Planning and Building Department has taken all appropriate measures to ensure that cash is handled accurately and efficiently by providing an accurate separation of responsibilities which is verified prior to deposits being made to the bank and the Accela Permitting system identifies how payments are made (cash, check or credit card.)

When a cash transaction is made, two employees work with the customer to count the cash using a cash counting machine. For large amounts of cash this process happens in an office away from the front counter with the customer and two staff members. The cash counting machine counts pieces, denominations, and provides counterfeit detection. The employees responsible for the

initial cash transaction place all cash in bags that are sealed and placed into a safe until the deposit is prepared. The safe is located out of view of the lobby and customers. The employees who make the initial cash count with the customer do not have access to the safe. Access to the safe combination is limited to five senior department employees.

When deposits are prepared, cash is counted a second time by an employee who does not have access to the safe and did not prepare the receipt. This is a point at which the work of prior cash handlers is not only verified, but there is accountability that no cash is missing. The deposits are reconciled to the receipts and reported to the Auditor-Controller. Deposits are then submitted directly to the bank. Humboldt County currently utilizes the services of US Bank and a branch of this bank is located two blocks from the Planning and Building Department office. Deposits are transported to the bank using a wide variety of county or personal vehicles and transportation routes vary. Deposits are not transported to the bank using bags or envelopes that easily identify the contents as a bank deposit.

Cash receipts are not new to the Planning and Building Department, cash receipts are not unique to cannabis, and large sums of money taken in are not always cash transactions. Once any payment is received and receipted in the Department, it is documented and deposited in approved and monitored accounts. This information is provided to the Auditor Controller's office on forms provided by the Auditor's office. The deposit slips themselves do not indicate the amount of cash.

The recent implementation of the Accela permitting software adds another degree of accountability. When opening a file and/or accepting a payment, the program requires recordation of the type of payment received (cash, check or credit card.) the system also identifies who received the payment. This record cannot be modified or deleted from the system so there is always an accurate record of how much cash was received and by who.

F-2: Cash transactions jeopardize the safety of the public and department personnel due to a lack of robust security infrastructure. (R-2, 3, 4)

Disagree. During the initial rush to submit cannabis applications in advance of the December 2016 deadline mentioned earlier, the Planning and Building Department employed armed security guards to remain present during all business hours and accompany staff members taking deposits to the bank. During this time, the Planning and Building Department did see a large influx of cash transactions. Deposits were often made more than once daily to avoid maintaining cash in the Department safe.

Since December of 2016, the Planning and Building Department has not seen the number of applications or cash being submitted. For the fiscal year of 2019-2020, the department accepted total of \$2,017,209.06 in cash, which is approximately 25% of the total receipts for the department (\$7,961,278.16). The following table shows the total receipts by payment type for each budget unit:

	Cash	Check	Cr Card
Other	\$ 62,421.88	\$ 620,364.66	\$ 20,002.54
262	\$ 227,596.10	\$ 1,275,914.99	\$ 232,185.96
268	\$ 562,451.37	\$ 682,786.32	\$ 68,513.14
269	\$ 279,455.93	\$ 135,000.32	\$ 24,761.71
277	\$ 26,860.78	\$ 1,212,752.76	\$ 40,973.83
282	\$ 25,848.00	\$ 397,809.95	\$ 20,244.00
888	\$ 449,808.00	\$ 704,917.81	\$ 17,400.00
VIO	\$ 382,767.00	\$ 402,974.65	\$ 87,466.46
	\$ 2,017,209.06	\$ 5,432,521.46	\$ 511,547.64

This table shows the department receives an average of \$8,000 in cash per day. Cash payments are not made every day. Somedays there is very little or no cash, and sometimes a larger payment is made in cash. The protocols outlined above in response to F-1 provides both accountability for the employees and protection of employees by transporting cash in pairs. This procedure also allows the staff to transport cash when needed so that we are not storing large amounts of cash. The department does not store large volumes of cash.

There is more we could do but have not done to provide increased security in the building and several ideas were explored. Security cameras at the front counter were considered but not employed due to Human Resources labor relations concerns for employee monitoring. Physical changes such as glass barriers at the front counter and a “panic button” door locking mechanism were not implemented in the past years due to intention to relocate the Department from its current location. As that plan has now been delayed, those previous modifications and additional physical security features can be explored again.

The Grand Jury expressed concern with the safety of the public and staff in the department yet in releasing a document that reported that the department stores large amounts of cash and disclosed how this cash is transported to the bank actually put the department staff in danger by presenting the image that the staff often transports large volumes of cash to the bank. In response to the release of the Grand Jury report disclosing this misinformation, the department changed its security protocols to include how deposits are transported to the bank in order to reduce the now increased risk to staff due to what I must believe were unintended consequences of publishing our Department security protocols.

F-3: *Lack of transparent accounting for cannabis-related revenues (permit fees, Trust Fund monies, fines) makes it difficult to determine the economic impact of legalization of the cannabis industry on the County. (R-2, 3)*

Disagree. It is difficult to determine what this finding means. There seems little relationship between the departments accounting practices and the economic impact of the cannabis industry on the county. As discussed above there is accountability and transparency in the way funds are accepted, processed and expended within all budget units of the Planning and Building Department.

F-4: *The cumbersome permitting process defeats the purpose of legalization. It creates the incentive for cultivators to remain in the illicit market.*

Disagree. This an unfounded editorial opinion at best. It is not addressed nor supported in the body of this report, and there are no recommended actions germane to this finding. Its sole purpose appears to be to support an exaggerated title in pursuit of a conclusion the Grand Jury hoped to find but could not. This does not demonstrate the objectivity and fact-based conclusions one would expect from a civil grand jury operating in accordance with its charter.

This finding further seems to cater to the segment of the cannabis industry that is opposed to any regulation. There is a cultural war within the cannabis industry between those who have entered the legal marketplace and are derided for this, and those who refuse to enter the legal industry.

In the responses above only some of the efforts taken to make sure Humboldt County cultivators are successful have been described. We could spend a great deal of time defending the process, but perhaps the response would be better focused on results. The following table shows the top three counties in terms of number of state license applications submitted. Humboldt County is number 2 in the number of license applications submitted to the State but is number 1 by a large margin of the number of licenses issued. Humboldt County growers lead the industry with approximately 30% of the licenses issued by the state.

2019 and 2020 Licensing Totals for top 3 Counties:

County	2019 (Applications Received):	2020 (Total 2019 +2020) Applications Received):	Total Licensed with State
1. Santa Barbara	1175	1225	88 (No 5 in State)
2. Humboldt	689 (No2 in State)	805 (No 2 in State) (16% of state total applications)	792 (No 1 in State) (30% of state total licenses)
3. Mendocino	560	646	555 (No 2 in State)
State Total	4340	4930	2635

F-5: *The Planning and Building Department website is not user-friendly. Applicants are disadvantaged by lack of access to clear instructions and guides. Some information also appears to be out of date. (R-1)*

Partially agree. The Planning and Building Department does not have a website specific to the department. Humboldt County has a website and the Planning and Building Department has designated pages within the main county website.

The Planning and Building Department acknowledges that information on the department website pages is not updated regularly. Additionally, the department could provide enhanced information services to assist the public in understanding some aspects of the permit process. In

our experience, the majority of new applicants prefer face to face interactions regarding the specifics of the projects they are considering. To meet these varied needs in a more tailored way, the Department provides a Cannabis Planner on Duty (CPOD) at no cost to those considering a cannabis related project. The CPOD is available Monday through Friday from 8:30 to 5:00 in our Eureka office and another at our Redway office at least one day per week. Each is available via phone, email, and at the public counter to assist with those considering applications as well as any agents supporting their considerations. The CPOD contact information including the Cannabis Services email and frequently asked questions are included in the web-based information.

The Planning and Building Department is working to enhance the services available to the public through the Accela permitting software system. This included the ability to remotely research the status of a project, upload documents and information directly to a project and submit new permit applications online. Once these enhancements are implemented, the Planning and Building Department can provide links and information to the public on the department website pages.

RECOMMENDATIONS

R-1: *The Humboldt County Planning and Building Department website should be updated to make relevant information regarding permit applications for cannabis cultivation easily searchable. Information presented on the website should be regularly updated to reflect any change in relevant regulations. This should be addressed by September 1, 2020. (F-5)*

Partially agree. In process of Implementing. The Planning and Building Department does not have a website specific to the department. Humboldt County has a website and the Planning and Building Department has designated pages within the main county website.

The Planning and Building Department acknowledges that information on the department website pages is not updated regularly. Additionally, the department could provide enhanced information services to assist the public in understanding some aspect of the permit process.

The Planning and Building Department is working to enhance the services available to the public through the Accela permitting software system. This will include the ability to remotely research the status of a project, upload documents and information directly to a project and submit new permit applications online. Once these enhancements are fully implemented, the Planning and Building Department can provide links and information to the public on the department website pages.

The information currently available on the Planning and Building Department website pages is not unique to cannabis permit activity. All land use and building permit information is available through the Accela permitting software system through the following link:

<https://aca-prod.accela.com/humboldt/Default.aspx>

Additionally, the Department is fully engaged in the County-wide effort underway for some time now to replace the existing public facing web pages. While we are not certain of the transition date to the new County web pages, we are confident this new platform will be a much more efficient and effective vehicle than the existing platform for communicating Department information to remote users.

R-2: *The Humboldt County Civil Grand Jury recommends that the Humboldt County Planning and Building Department should have an audit conducted by an auditor outside the department of all incoming receipts collected for each fiscal year. This should be presented to the Board of Supervisors and made public. This should be done starting fiscal year 2020-2021. (F-1, 2, 3)*

Disagree. Will not be Implemented. The Planning and Building Department is responsible to the Auditor-Controller for accounting standards and practices. The Auditor-Controller engages regularly with Department staff as well as outside auditors. Any audit of department accounting standards and practices should be conducted and organized at the direction of the Auditor-Controller. It would be equally inappropriate to single out the Planning and Building Department for an external audit of Cannabis related receipts since there are multiple County entities that routinely handle financial transactions relating to Cannabis. These activities include business licensing, recording, tax collection just to name a few.

R-3: *The Humboldt County Civil Grand Jury recommends that the Humboldt County Planning and Building Department have a dedicated accountant on staff to organize and maintain current financial records. This should be done by January 1, 2021. (F-1, 2, 3)*

Disagree. Will not be Implemented. The Planning and Building Department recently worked with the Humboldt County Human Resources Department to complete a department-wide classification and compensation study. The resulting analysis received just a few weeks ago did not identify a need for the Planning and Building Department to employ an accountant. The Department does have several Fiscal Specialists who are trained and qualified to perform the required revenue and receipt transactions and tracking needed. While these tasks are technical and specialty skills by design and classified as such, they fall well short of those skills required for an accountant. The cost of employing a full-time accountant to perform basic ledger task would not be an efficient or appropriate use of taxpayer funds and would stand in stark contradiction to the third-party consultant findings of the just completed manpower study results. Further, as our department-wide accounting practices align with the standards established by the Auditor-Controller there does not appear to be any substantive need for such an action.

R-4: *The Humboldt County Civil Grand Jury recommends that the Humboldt County Planning and Building Department direct customers paying in cash to remit said payments directly through the Treasurer-Tax Collector's office. Payment receipts will be accessible to the Humboldt County Planning and Building Department. This should be in effect by January 1, 2021. (F-1, 2)*

Disagree. Will not be Implemented. The Planning and Building Department has appropriate measures in place to ensure that cash is handled in a manner that protects both employees and the public. With adequate separation of responsibilities to prevent a single individual from acting in all capacities from acceptance of cash to deposit, the risk of fraud is minimized. As noted in our response to Finding F-1, cash receipts are not new to the Planning and Building Department and cash receipts are not unique to cannabis. Deposits are recorded in the One Solution accounting system and accompanying reports document the form of payment. Further, the acceptance of cash payments in the Planning and Building Department has resulted in no accusations or investigations of fraud.

This recommendation does not capture a knowledge of how invoices are generated, and payments made. When an application is made, the applicant will work with the planner to open the application in Accela. Based on the application type the fees and deposit will be calculated and an invoice generated. The payment is then made and recorded in Accela including the form of payment. The Application can then be opened. If payment were to be made off-site, the first steps would be followed until time for payment, when the applicant would then need to leave the department go down to the courthouse, make a payment and come back to the department to complete the application process. There would also need to be software reconfigurations for the Treasurer tax collector to receive payments for Planning and Building. This becomes highly bureaucratic and defeats the purpose of the departments objective of improving the customer experience. Additionally, it is the goal of Humboldt County, as well as the Planning and Building Department to create a one-stop venue for activities related to land use and building permits. Asking customers to pay fees at a separate location defeats the goal and purpose of the Board of Supervisor's vision and direction to establish a one-stop convenience for department customers.

In addition to significantly inconveniencing our customers, this change would increase the cost of our program activities as the Treasure Tax Collector would likely need to increase staff to take on this new activity with no offset from this Department. The extra steps needed would also increase the amount of time it takes to process every program activity that requires a payment. It would also impact Department of Public Works Land Use Division who shares the public counter with the department and also takes payments. We could not justify taking payments for one but not the other across the same counter.