

# STAFF REPORT



ITEM NO. 23

CITY OF OCEANSIDE

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DATE: August 21, 2019

TO: Honorable Mayor and City Councilmembers

FROM: City Manager's Office and Development Services Department

SUBJECT: **UPDATE TO THE LICENSING AND TAXATION OF MEDICAL CANNABIS FACILITIES AND ADOPTION OF A RESOLUTION LIMITING THE NUMBER OF CULTIVATION FACILITIES ALLOWED WITHIN THE CITY LIMITS**

## **SYNOPSIS**

Staff recommends that the City Council adopt a resolution formally limiting the number of cultivation facilities allowed within the city limits to no more than 12; and provide direction to staff to return with actions necessary to place a Cannabis Business Tax Measure on the November 2020 Ballot.

## **BACKGROUND**

On March 28, 2018, the City Council introduced an ordinance amending the Oceanside Zoning Ordinance and Chapter 7 Article XIII of the Oceanside City Code. The purpose of the amendment was to update regulations concerning commercial medical cannabis uses and allow the establishment and operation of specified commercial medical cannabis facilities in designated zoning districts subject to the issuance of a local license by the City Manager and a conditional use permit by the City Council. The Council directed that no application for commercial medical cannabis facilities be accepted by the City until the City Council established regulatory fees.

On April 11, 2018, the City Council adopted Ordinance 18-OR0199-1 amending the Oceanside Zoning Ordinance and Chapter 7 Article XIII of the Oceanside City Code to update regulations concerning commercial medical cannabis uses and allow the establishment and operation of specified commercial medical cannabis facilities only in designated zoning districts subject to conditions and limitations. The City Council also voted to hold a workshop on June 20, 2018, to discuss the 1,000 foot separation distance between cultivation facilities, the limit of one cultivation facility per legal lot and to receive a report from the Oceanside Police Department regarding dispensaries.

On April 14, 2018, staff entered a Professional Services Agreement with HdL Companies for the development of fees, application materials and administration of cannabis facility licensing review process.

On May 23, 2018, the City Council adopted resolutions establishing regulatory fees and an application form and procedures for commercial medical cannabis facilities.

On June 20, 2018, the City Council held a public hearing and introduced an ordinance to amend the Zoning Ordinance eliminating the 1,000-foot setback between cultivation facilities and text limiting cultivation facilities and nurseries to 22,000 square feet per legal lot while retaining a 20 percent maximum lot coverage, and allowing for locational waivers for all medical cannabis facilities. The City Council adopted staff's recommendations and directed staff to limit cultivation licenses to five licenses for the first round of applications. Additionally, the City Council received a report from the Oceanside Police Department about dispensaries. After hearing the discussion on dispensaries, the City Council directed staff to return with an ordinance allowing no more than two Type-9 non-storefront dispensaries subject to the issuance of a conditional use permit.

On August 8, 2018, the City Council adopted Ordinance 18-OR0399-1 amending the Oceanside Comprehensive Zoning Ordinance to implement its direction on June 20, 2018. Additionally, the Council introduced an ordinance to allow no more than two local licenses for Type-9 non-storefront dispensaries.

On September 5, 2018, the City Council adopted Ordinance 18-OR0449-1 allowing for two Type-9 non-storefront dispensaries.

On June 25, 2018, staff opened the first application period for commercial medical cannabis facilities with a deadline of October 1, 2018. The City received 27 applications for licenses from 16 business entities; 17 applications were for cultivation licenses, five applications were for distribution and five applications were for manufacturing. Of the 17 applications for cultivation, two were withdrawn by the applicants and three were denied advancement to interviews. The remaining 12 applications received final application scores of 80% or higher, which is the minimum score needed to advance for licensing by the City Manager. Due to the cap on cultivation licenses for the first application period, staff recommended the top five scoring applications for licensing by the City Manager and that the next seven scoring applications be placed on a waitlist. Of the five businesses applying for manufacturing/distribution, one was denied advancement to an interview. Three of the four remaining manufacturing/distribution businesses scored above the 80% threshold for advancing to a recommendation to the City Manager. The City Manager approved staff's recommendation on first round applications on April 9, 2019.

On October 2, 2018, staff opened the second round application period with a deadline of December 3, 2018. The City received seven second round applications; four applications were for Type-9 non-storefront dispensaries, two applications were for

manufacturing and one was for distribution. One application for a non-storefront dispensary was incomplete and did not advance to be reviewed. The three remaining non-storefront applications scored above the 80% threshold for advancement to recommendation for licensing by the City Manager. With a limit of two licenses for Type-9 non-storefront dispensaries, staff recommended the top two scoring applicants be licensed with the third being placed on a waitlist. One manufacturing and one distribution application did not meet the 80% threshold to proceed. The one manufacturing applicant remaining scored above 80% and was recommended for a license. The City Manager approved staff's second round recommendations on May 5, 2019.

## **ANALYSIS**

### **Cultivation:**

There are currently five licensees and seven waitlisted applications from the first round of cultivation local license applications. The five approved cultivation licensees are located within two physical sites located in South Morro Hills. The licensees must now receive Conditional Use Permit (CUP) approval from the City Council as well as a State cultivation license prior to operation. Combined, all 12 cultivation licensees and waitlisted applicants would occupy seven physical sites (see attached map). Staff recommends that the City Council directed cap of five for the first round be reconsidered to include the seven waitlisted licenses that have qualifying scores. Because these 12 cultivation businesses would be located on seven properties, staff believes the secondary effects of these businesses, should they all advance to the point of being operational, could be effectively monitored and managed. While certain jurisdictions such as Carpinteria have experienced significant odor impacts associated with cultivation, through the CUP process, staff intends to condition licensees in a strict manner that ensures the City has the ability to monitor and mitigate any potential operational concerns that may arise.

### **Manufacturing, Distribution, and Testing:**

There are four manufacturing and three distribution licensees whose local licenses have been approved by the City Manager and now preparing CUP applications and state licenses. Currently, one manufacturing/distribution licensee has submitted an application for a CUP. One manufacturing business would be located in the eastern part of the City while the rest lie in proximity to the airport area (see attached maps). All of the manufacturing/distribution businesses require locational waivers and will be seeking such waivers at time of the Conditional Use Permit approval. These application types do not have caps and remain open. The City has received one resubmittal from a previously denied applicant and a few more are expected. With regards to these three license types, staff recommends the City initiate and maintain an annual application filing period to be set for the first business day of October each year. This will allow staff to batch future applications in a structured and efficient process.

### Type-9 non-storefront dispensary:

The Type-9 non-storefront dispensary category presently has two licensees and one waitlisted applicant. The Type-9 licensees also require a CUP approval from City Council and a State license with one business having currently submitted for both. All proposed Type-9 business locations are within the airport area in proximity to the majority of manufacturing/distribution licensees. Staff recommends maintaining the cap of two non-storefront dispensaries set forth in Chapter 7 of the City Code and closing any future filing of this application type.

Now that several local licenses have been approved by the City Manager, staff will begin processing CUP applications. Staff will also begin preparing license renewal applications while collecting associated processing fees, preparing agreements with licensees to ensure the fulfillment of community benefit proposals offered as part of the local license applications, and developing an ongoing regulatory and inspection program for future cannabis businesses.

### Potential Tax Measure

Most California cities that have implemented regulations for commercial and medical cannabis business have established, by a vote of the people, an excise or cannabis business tax for the purpose of funding general services. Generally, these taxes are viewed as a way to generate funds for enforcement of illegal cannabis activities and to fund general city services in exchange for any real or perceived negative impacts generated by the cannabis businesses.

Local jurisdictions can obtain voter approval for these types of local taxes at a general election; the City's next scheduled general election is November 3, 2020. A general tax measure requires approval of 50 percent of voters, plus one. The deadline to place a measure on the November 2020 ballot is August 10, 2020, and requires approval by two-thirds of the City Council (four affirmative votes). If approved, the tax proceeds from a general tax can be spent for any lawful general government purpose.

The most common cannabis taxing methods tax cultivation on a per square foot basis of total canopy area while taxing a percentage of total gross receipts for manufacturing, distribution, deliveries, testing and retail businesses. The average range for taxes statewide are \$10-\$25 per square foot of canopy for cultivation businesses and 6 to 8 percent of gross receipts for business or excise taxes. There were a total of 186 marijuana tax measures in California from 2009 to 2018. Of those, 88 percent were approved (164 measures), and 12 percent were defeated (22 measures).

Among San Diego County cities with a cannabis business or excise tax in place are the cities of San Diego, Chula Vista, La Mesa, and Vista. The taxes in Chula Vista, La Mesa and San Diego were placed on the ballot by the local jurisdiction. Vista had two measures on the November 2018 ballot, a city-sponsored initiative and a citizen's

initiative. Both were approved however the citizen's initiative was approved by a wider margin and thus became effective. The tax rates in these cities are as follows:

- San Diego (Measure N – 2016): Gross receipts tax of 5 to 15 percent. The rate was set at 5 percent initially and increased to 8 percent on July 1, 2019.
- Chula Vista (Measure Q – 2018): Gross receipts tax on cannabis businesses of 5 to 15 percent and \$10 to \$25 per square foot of canopy, for space dedicated to cannabis cultivation. Actual rate set by City Council Ordinance at 7 percent gross receipts and \$15 per square foot for cultivation.
- La Mesa (Measure V – 2018): Gross receipts tax of up to 6 percent and up to \$10 per square foot of cultivation. The initial rates as set by the ordinance are \$7 per square feet of canopy for cultivation and \$1 per square feet of canopy for nurseries; and gross receipts tax of 0 percent for medicinal dispensaries, medicinal non-storefront retailer and medicinal microbusiness retail sales; 1 percent for testing labs; 2 percent for distribution; 4 percent for adult use dispensary, non-storefront retailer and microbusiness retail sales; and 2.5 percent for all other types including manufacturing.
- Vista (Measure Z – 2018): 7 percent special use tax on gross receipts. (The City Council sponsored measure (Measure AA) would have enacted a cultivation tax at \$14/square foot; and gross receipts taxes rates not exceeding 8 percent on manufacturing and distribution; 10 percent on medicinal retail; 12 percent on adult-use retail; and 3.5 percent on testing).

In evaluating the other local cannabis tax measures, staff proposes a gross receipts tax of 5 to 15 percent and a cultivation tax range of \$10 to \$25 per square foot of canopy, for space dedicated to cannabis cultivation. Furthermore, staff recommends that the initial rates be set at 7 percent gross receipts and \$15 per square foot for cultivation. These rates are consistent with the existing rates in San Diego County and will provide consistency and clarity for cannabis businesses and the public. Staff recommends that the City Council direct staff to return with actions necessary to place a Cannabis Business Tax Measure on the November 2020 Ballot consistent with these parameters.

### **FISCAL IMPACT**

Application fees have been collected to offset staff's cost in reviewing license applications, and Conditional Use Permit applications will be required to pay the applicable processing fees. It is estimated that annual cannabis taxes of up to \$6,771,058 would be generated by the second operational year should all of the current licensees successfully launch their businesses as scoped in their respective applications at a tax rate of 7 percent gross receipts tax for non-cultivation, and \$15 per square foot of canopy for cultivation businesses.

### **COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council adopt a resolution formally limiting the number of cultivation facilities allowed within the city limits to no more than 12; and provide direction to staff to return with actions necessary to place a Cannabis Business Tax Measure on the November 2020 ballot.

PREPARED BY:

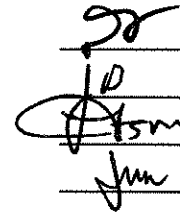
  
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Frank McCoy, Police Chief  
Jane M. McPherson, Financial Services Director

  
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ATTACHMENTS:

- 1. Resolution
- 2. Maps

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE LIMITING THE MAXIMUM NUMBER OF MEDICAL CANNABIS FACILITY LOCAL LICENSES ISSUED FOR CULTIVATION TO TWELVE (12) AND CLOSE THE APPLICATION PROCESS FOR ISSUANCE OF ANY FURTHER CULTIVATION LICENSES

WHEREAS, on April 11, 2018, the City Council adopted an ordinance amending the Oceanside Zoning Ordinance and added Chapter 7 Article XIII to the Oceanside City Code to permit and regulate specified commercial medical cannabis businesses in specified zoning districts subject to the issuance of a local license by the City Manager and the approval of a conditional use permit by the City Council; and

WHEREAS, on June 20, 2018, the City Council conducted a duly noticed public hearing to consider amendments to the Zoning Ordinance and directed staff to limit the maximum number of local licenses issued for commercial medical cannabis cultivation to five (5) licenses in the first round of applications; and

WHEREAS, on April 9, 2019, following the application procedures approved by the City Council on May 23, 2018, the City Manager approved the issuance of five (5) local licenses for medical cannabis cultivation to qualified businesses; and

WHEREAS, on April 9, 2019 the City waitlisted an additional seven (7) medical cannabis qualified applicants for cultivation; and

WHEREAS, the Oceanside City Code (OCC) Chapter 7, Article XIII, Section 7.117.(b), as adopted on April 11, 2018, authorizes the City Council to limit the maximum number of local licenses through the adoption of a resolution of the City Council; and

WHEREAS, the City desires to issue licenses to all qualifying local license applicants for commercial cultivation from the first round of applications and to close the application process for commercial cultivation local licenses;

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1 NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

2 SECTION 1. Pursuant to Chapter 7, Article XIII, Section 7.117.(b) of the Oceanside  
3 City Code, the Oceanside City Council hereby limits the maximum number of local licenses for  
4 commercial cannabis cultivation to no more than twelve (12) licenses, including the five (5)  
5 local licenses approved by the City Manager on April 9, 2019 and the seven (7) applications  
6 waitlisted by the City Manager on April 9, 2019.

7 SECTION 2. The Oceanside City Council hereby resolves that no further local license  
8 applications for commercial cultivation shall be accepted by the City Manager.

9 PASSED AND ADOPTED by the City Council of the City of Oceanside, California,  
10 this 21<sup>st</sup> day of August, 2019, by the following vote:

- 11
- 12 AYES:
- 13 NAYS:
- 14 ABSENT:
- 15 ABSTAIN:
- 16

17 MAYOR OF THE CITY OF OCEANSIDE

18

19 ATTEST:

APPROVED AS TO FORM:

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21 \_\_\_\_\_

22 City Clerk

  
\_\_\_\_\_  
City Attorney



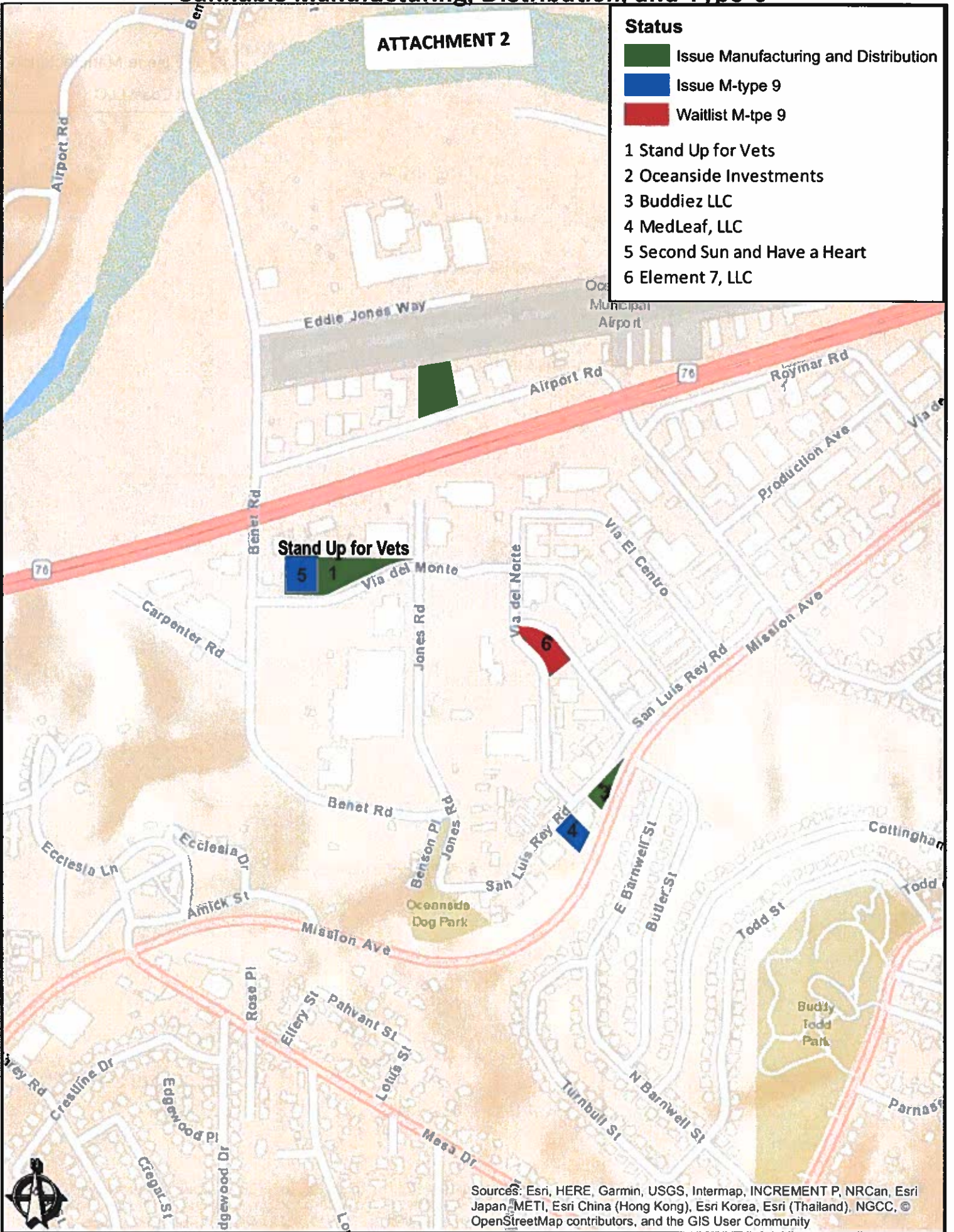
# Cannabis Manufacturing, Distribution, and Type-9 Council District 1

ATTACHMENT 2

**Status**

- Issue Manufacturing and Distribution
- Issue M-type 9
- Waitlist M-type 9

- 1 Stand Up for Vets
- 2 Oceanside Investments
- 3 Buddiez LLC
- 4 MedLeaf, LLC
- 5 Second Sun and Have a Heart
- 6 Element 7, LLC



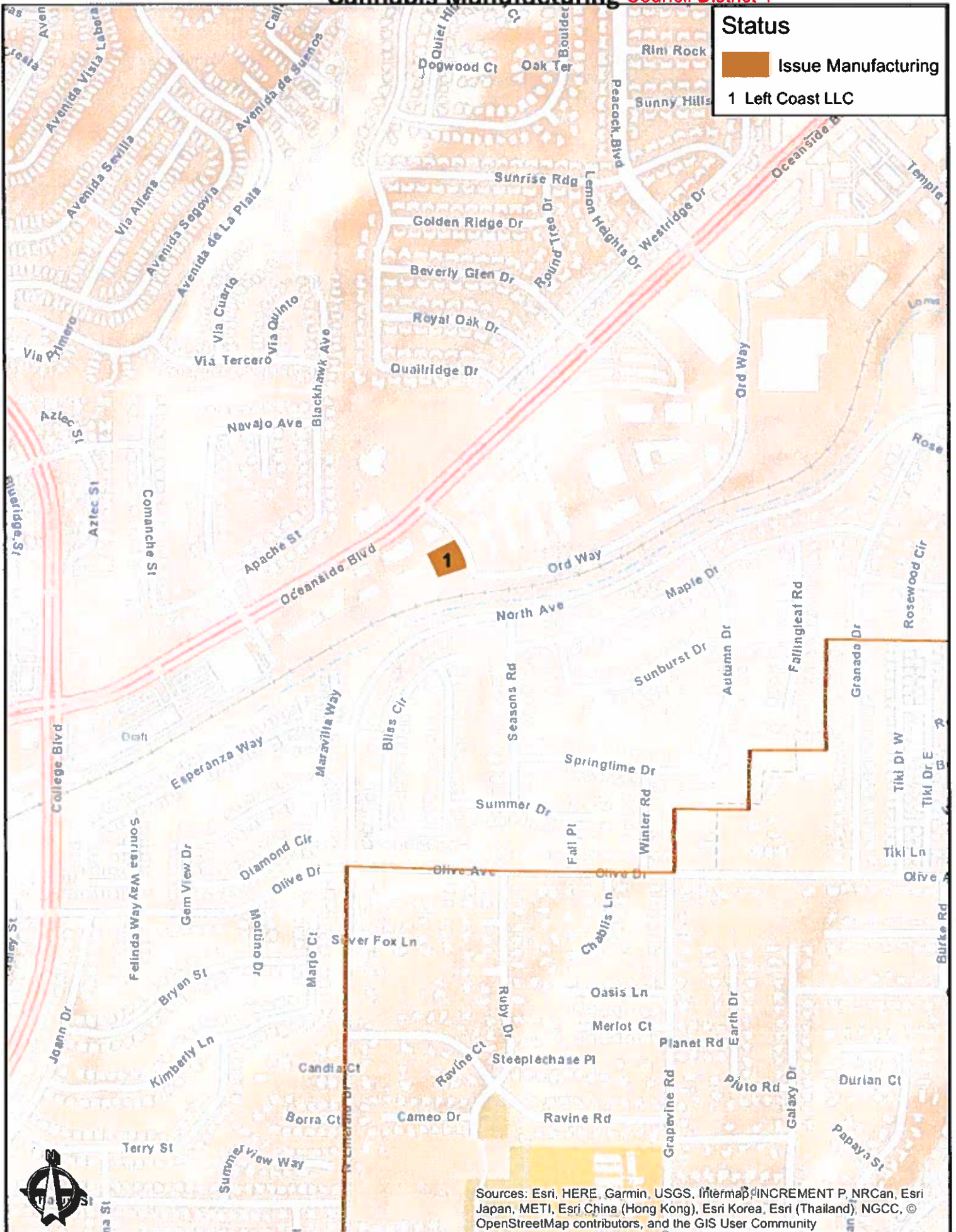
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# Cannabis Manufacturing Council District 4

## Status

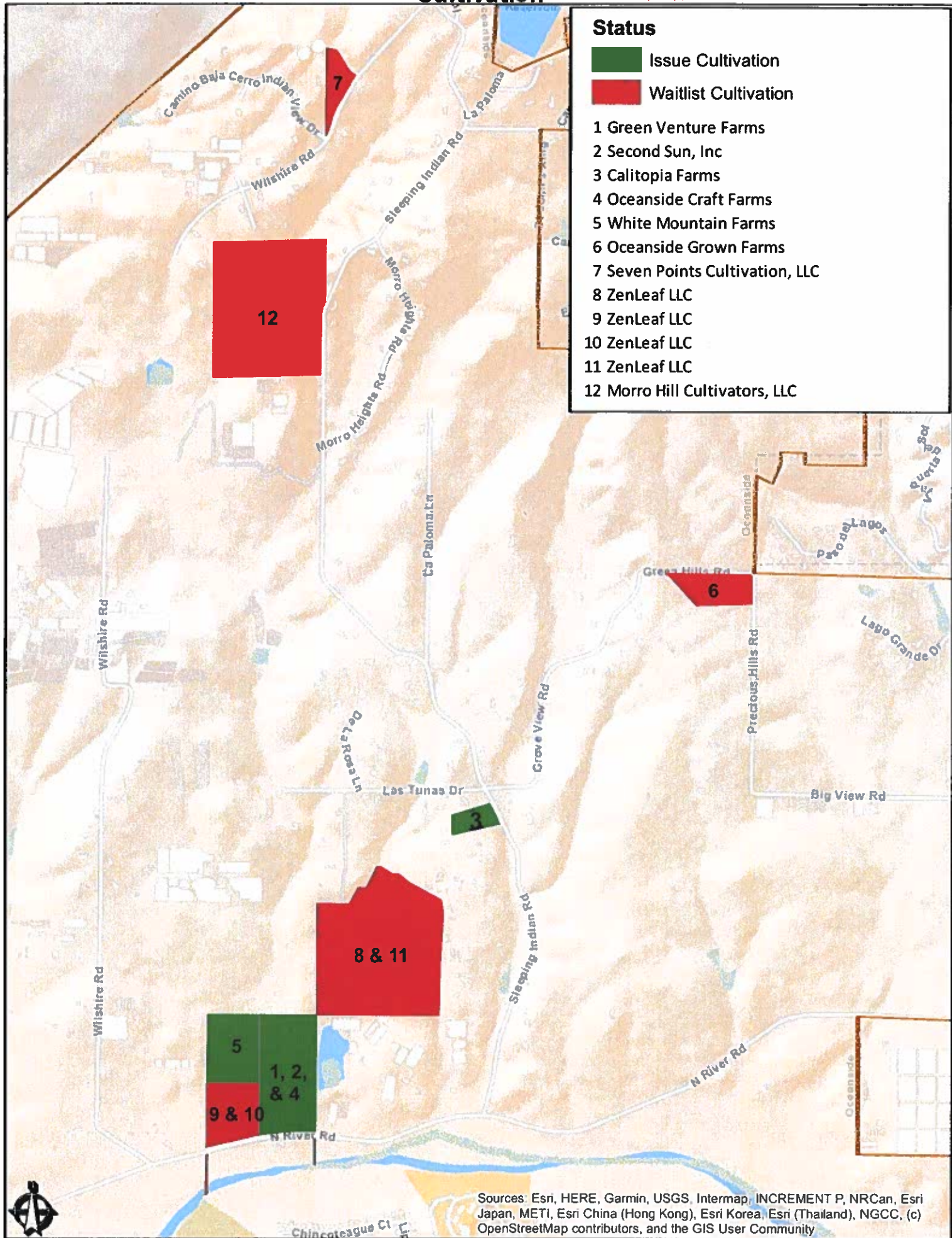
 Issue Manufacturing

 1 Left Coast LLC



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community

# Cultivation Council District 2



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