



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 10/15/2019

Agenda Placement: 9B

Set Time: 9:15 AM PUBLIC HEARING

Estimated Report Time: 15 minutes

NAPA COUNTY BOARD OF SUPERVISORS

Board Agenda Letter

TO: Board of Supervisors

FROM: David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805

SUBJECT: First reading of an ordinance to address commercial cannabis

RECOMMENDATION

Director of Planning, Building and Environmental Services requests first reading and intention to adopt an ordinance amending Napa County Code Chapter 8.10 to add section 8.10.025 prohibiting commercial cannabis activities.

ENVIRONMENTAL DETERMINATION: The adoption of this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations, sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility that the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Board of Supervisors further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption, 14 C.C.R. § 15308 (regulatory activity to assure protection of the environment).

EXECUTIVE SUMMARY

On August 27, 2019, the Board of Supervisors directed staff to discuss with the State the effects of the expiration on December 4, 2019 of the County's cannabis moratorium, and to return with a report and options to address those effects, if any.

Based on staff analysis and discussions with State officials, on September 17, 2019 staff reported to the Board its understanding that the existing County Code would effectively prevent any applicant from initially obtaining a state license for commercial cannabis. However, staff also reported that through a process of appeal to the State, the outcome would be less certain. Although staff believes the County would likely prevail if such an appeal occurred, the issue has not been tested and the decision is not guaranteed. In addition, the County would incur significant litigation costs in defending the County Code.

On September 17, 2019, the Board directed staff to: (1) Prepare an ordinance explicitly prohibiting the commercial cultivation, manufacturing, and/or retail sale of cannabis in the unincorporated area, for consideration at the October 15, 2019, regularly scheduled meeting; and (2) Hold a series of public outreach meetings beginning in January 2020, to provide information and to hear directly from the public their opinions regarding commercial cannabis activities.

Staff recommends that the Board hold a public hearing regarding the draft ordinance, receive public comments, and express its intent to adopt the draft ordinance. The second reading and adoption of the ordinance would be held on October 22, 2019. The ordinance would become effective following 30 days, on November 21, 2019.

PROCEDURAL REQUIREMENTS

1. Receive the staff report;
2. Open the Public Hearing and receive public comments;
3. Close the Public Hearing;
4. Clerk reads the Ordinance Title;
5. Motion, second, discussion and vote to waive the balance of the reading of the ordinance; and
6. Motion, second, discussion, and vote on intention to adopt the ordinance.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?

No

County Strategic Plan pillar addressed:

Collaborative and Engaged Community- Engage the public with County programs and resources to promote even greater understanding and a stronger sense of community.

Vibrant and Sustainable Environment - Develop a balanced approach to growth based on data-informed decisions.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The adoption of this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations, sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility that the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Board of Supervisors further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption, 14 C.C.R. § 15308 (regulatory activity to assure protection of the environment).

BACKGROUND AND DISCUSSION

History

In February 2016, the Board of Supervisors adopted an ordinance banning the outdoor cultivation of cannabis in the unincorporated area and only allowing indoor cultivation of cannabis. In November 2016, California voters

passed Proposition 64, which legalized the personal cultivation, possession, and use of small amounts of cannabis by persons age 21 or older. Proposition 64 granted California residents age 21 and older the right to cultivate up to six cannabis plants for personal use indoors and authorized local jurisdictions like the County to determine how many - if any - of those six plants could be grown outdoors by local residents. Following Proposition 64's passage, the California Legislature has passed and continues to consider additional legislation relating to cannabis cultivation, possession, and use. As a result of this massive overhaul of state law, the Napa County Board of Supervisors decided to re-evaluate its existing cannabis ordinances and explore potential policy changes consistent with Napa County voters' approval of Proposition 64.

On April 4, 2017, the Board of Supervisors selected Supervisors Gregory and Ramos to serve on an ad hoc committee - later named the Cannabis Roundtable - with representatives from each city and town within Napa County. The goal of the Cannabis Roundtable was to learn more about the legalization of adult use, the State's regulatory framework, and how local municipalities can work together to find consistencies in developing local ordinances. The Cannabis Roundtable held three meetings consisting of panelists discussing all aspects of cannabis regulation, and the Roundtable members toured three commercial cannabis facilities in Oakland.

At the November 14 and 21, 2017, meetings, the Board received a report from staff and from fellow Board members on the Cannabis Roundtable and discussed various aspects of cannabis regulation. The Board prioritized two cannabis-related issues that it sought to address over the next year: (1) ensuring access for medical cannabis patients and County residents by considering allowing the six plants allowed by law to be grown outdoors; and (2) exploring the possibility of allowing one or more types of commercial cannabis businesses to locate and operate within the unincorporated county.

On December 5, 2017, the Board adopted a temporary moratorium prohibiting outdoor cultivation and commercial cannabis activities in the unincorporated area while studying these issues.

On January 16, 2018, the Board extended the moratorium prohibiting commercial cannabis activities. It was extended again on November 13, 2018, until December 2019. The moratorium cannot be extended past December 2019.

On January 23, 2018, the Board discussed and provided direction to staff regarding various policy considerations related to the development of an ordinance to allow the outdoor cultivation of cannabis for personal use.

On June 19, 2018, the Board approved the first reading and notice of intent to adopt an ordinance allowing the outdoor cultivation of cannabis for personal use. The ordinance was adopted by the Board on July 10, 2018, and it became effective on August 9, 2018.

On August 28, 2018, the Board engaged in a discussion regarding commercial cannabis activities. In the event that the municipalities within the County did not provide for sufficient access to recreational cannabis through the allowance of one or more recreation cannabis retailers, the Board directed staff to return to a future Board meeting with a proposed ordinance allowing a commercial cannabis retailer in the unincorporated area. (Currently there is only one dispensary in all of Napa County. The dispensary is located within the City of Napa and is limited to medical patients. Two additional dispensaries are licensed by the State to begin operation in the City of Napa, but they do not appear to have opened for business yet. These two additional dispensaries also would only be licensed to serve medical patients.)

On July 23, 2019, the Board received certification of sufficient signatures for the Napa County Commercial Cannabis Regulation Initiative (Initiative), which allows for commercial cannabis cultivation, and directed staff to prepare a report pursuant to Section 9111 of the Elections Code (9111 Report). At that time, the Board also adopted an interim urgency ordinance to establish a 45-day moratorium on the cultivation of industrial hemp.

On August 20, 2019, the Board accepted the 9111 Report and adopted a resolution placing the Initiative on the March 3, 2020, Presidential Primary election ballot, for the purpose of enabling the people of Napa County to approve or reject the initiative. At the same meeting, the Board directed staff to schedule a discussion on the next agenda regarding the timeline and effort needed to prepare an ordinance to allow commercial cannabis uses.

On August 27, 2019, the Board directed staff to return with analysis and recommendations regarding the status of the County's commercial cannabis prohibition once the moratorium ends on December 4, 2019. At that time, the Board also extended the hemp moratorium from September 6, 2019, to July 21, 2020. Subsequently on August 27, 2019, the Napa Valley Cannabis Association, proponents of the Initiative, voluntarily withdrew the initiative from the March 3, 2020 ballot.

On September 17, 2019, the Board directed staff to: (1) Prepare an ordinance explicitly prohibiting the commercial cultivation, manufacturing, and/or retail sale of cannabis and other commercial cannabis uses in the unincorporated area, for consideration at the October 15, 2019 regularly scheduled meeting; and (2) Hold a series of public outreach meetings beginning in January 2020, to provide information and to hear directly from the public their opinions regarding commercial cannabis activities.

County Code

Section 18.12.080 of the Napa County Code (Application of zoning district regulations) states the following:

- a. Except as provided in this title, commencing with Section 18.132.010, no building or other structure, or land, shall hereafter be used or occupied, and no building or other structure or part thereof shall hereafter be erected, constructed, moved or structurally altered except in conformity with all of the regulations herein established for the zoning district in which it is located.
- b. The regulations established by this title within each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of building or other structure, or land.
- c. No commercial use shall be permitted of any property located in the unincorporated area of the county other than as is specifically authorized within the provisions of Title 18.

This section indicates that unless Title 18 (Zoning) specifically authorizes a commercial use, then the Code prohibits the use. This concept is generally referred to as "permissive" zoning; in other words, the zoning code must specifically allow the use for it to be permitted. Title 18 neither mentions nor specifically authorizes commercial cannabis uses.

In addition to the permissive prohibition on commercial cannabis in Title 18, Title 8 (Health and Safety) makes clear the County's intent that large-scale (i.e., commercial) cultivation of cannabis is prohibited in the unincorporated area.

Section 8.10.010 (Personal Cannabis Cultivation - Purpose and intent) states:

- I (A) It is the intent of the board of supervisors to prohibit the large scale cultivation of cannabis in the unincorporated area of the county, while regulating the cultivation of limited amounts of cannabis for personal use as allowed by state law or for medical purposes to accommodate the needs of persons with an identification card and/or their primary caregivers, in order to protect Napa County's unique and sensitive environment, and to preserve the public peace, health, safety and general welfare of the citizens of, and visitors to the county.
- I (B) It is also the intent of the board that nothing in this chapter shall be construed to:
[...]
(2) Allow any form of commercial cannabis activity.

[...]

Analysis

The County Code as currently written provides sufficient legal basis for the State to deny any commercial cannabis license application. Based on staff analysis and discussions with State officials, staff believes the permissive zoning in the Code and the lack of a CEQA determination would effectively prevent any applicant from initially obtaining a state license for commercial cannabis activities. However, if an applicant appeals the denial of a state license, the outcome would be less certain. There has not yet been an appeal of a denied application challenging the adequacy of a local jurisdiction's code prohibiting commercial cannabis uses. Although staff believes the County would likely prevail if such an appeal occurred, the issue has not been tested and the decision is not guaranteed. In addition, the County could incur significant litigation costs in defending the permissive zoning.

The State regulatory agencies operate under guidance from their individual legal counsel and from the Governor's office. Both the California Department of Food and Agriculture (CDFA) and the Governor's office have affirmed their acceptance of the County's permissive zoning prohibition. Although a shift in State policy does not appear likely in the near future, it is possible that the administration's guidance on this issue could evolve regarding the current support of permissive zoning.

Based on a survey of California counties, approximately half currently prohibit commercial cultivation. All of them either explicitly ban commercial cultivation or are in the process of amending their code to include an explicit ban.

As directed by the Board on September 17, 2019, staff has prepared a draft ordinance amending the County Code to maintain the status quo and prohibit all forms of commercial cannabis activity within the unincorporated area of Napa County. An explicit ban provides clear guidance for the consideration of State regulatory agencies in making decisions about license applications and their appeals. The draft ordinance is attached for reference.

If the Board approves the intent to adopt the proposed ordinance on October 15, 2019, the second reading of the ordinance would be held on October 22, 2019. The ordinance would become effective following 30 days, on November 21, 2019, prior to the expiration of the current moratorium on commercial cannabis, which occurs on December 4, 2019.

SUPPORTING DOCUMENTS

A . Attachment A - Draft Ordinance Prohibiting Commercial Cannabis Activities

CEO Recommendation: Approve

Reviewed By: Leigh Sharp