



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 10/22/2019

Agenda Placement: 6N

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**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:** Second reading and adoption of an ordinance to address commercial cannabis

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### **RECOMMENDATION**

Second reading and adoption of 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 October 15, 2019, the Board of Supervisors opened the public hearing and received testimony from members of the public and County staff regarding the proposed Ordinance to ban commercial cannabis activities in the unincorporated area of Napa County. After the close of the public hearing, the Board read the title, waived reading the balance of the Ordinance, and declared its intention to adopt the Ordinance.

This item requests that the Board conduct its second reading and take final action on the Ordinance (attached for reference). The Ordinance will become effective 30 days following adoption, on November 21, 2019.

### **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.

On October 15, 2019, the Board of Supervisors opened the public hearing and received testimony from members of the public and County staff regarding the proposed Ordinance to ban commercial activities in the unincorporated area of Napa County. After the close of the hearing, the Board read the title, waived the reading of the balance of the Ordinance, and declared its intention to adopt the Ordinance.

## **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. An explicit ban provides clear guidance for the consideration of State regulatory agencies in making decisions about license applications and their appeals.

As directed by the Board on October 15, 2019, staff recommends that the Board adopt the attached draft ordinance (see Attachment A) to amend the County Code to maintain the status quo and prohibit all forms of commercial cannabis activity within the unincorporated area of Napa County.

#### **SUPPORTING DOCUMENTS**

A . Attachment A - Draft Ordinance Prohibiting Commercial Cannabis Activities

CEO Recommendation: Approve

Reviewed By: Leigh Sharp