



A Tradition of Stewardship
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Agenda Date: 11/3/2015

Agenda Placement: 10A

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: Consideration of an Ordinance Regarding Medical Marijuana

RECOMMENDATION

Director of Planning, Building, and Environmental Services requests the Board receive a presentation of key issues related to an ordinance regarding medical marijuana, and provide direction including whether or not staff should proceed with the preparation of an ordinance and associated approvals for consideration at a future meeting.

EXECUTIVE SUMMARY

On October 9, 2015, Governor Brown signed into law a suite of legislation regarding The Medical Marijuana Regulation and Safety Act, including Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta), and Assembly Bill 243 (Wood). The legislation contains numerous provisions, including the creation of a new state agency: the Bureau of Medical Marijuana Regulation under the California Department of Consumer Affairs. It also defines medical cannabis as an agricultural product.

These bills regulate medical marijuana in five distinct categories: manufacturing, dispensing, transportation, delivery, and cultivation. The first three areas will all be regulated by various State agencies. The activities of delivery and cultivation will fall under local land use jurisdiction.

Delivery refers to the transfer of medical cannabis or cannabis products to a primary caregiver or patient. It also includes transfer to a testing laboratory. Under Section 19340.(b).(1) of the Business and Professions Code, a city or county must explicitly by ordinance prohibit delivery. If the city or county does not adopt an ordinance regarding delivery, then it is prohibited from preventing lawful delivery. Jurisdictions that allow delivery may impose a tax on each delivery transaction.

Cultivation involves the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Section 11362.777.(c).(1) states that a city or county may issue or deny permits to cultivate medical marijuana. Any

conditional permits issued by the city or county must be at least as strict as the state licensing requirements. If, however, a city or county does not have an ordinance regulating or prohibiting the cultivation of marijuana or chooses not to administer a conditional permit program, then the California Department of Food and Agriculture will become the sole permitting authority for medical marijuana cultivation in that city or county.

Any city or county with a business license program may impose fees and taxes on businesses regulated under this legislation.

PROCEDURAL REQUIREMENTS

Open item
Presentation by staff
Public comment
Direction to staff

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The potential cultivation of medical marijuana raises several potential issues.

- | The July 2014 article in the journal "Bioscience" estimated that marijuana requires approximately 1.4 acre feet of water per acre of planted crop. Cultivation in some areas of the county, where water is already strained due to the ongoing drought, may exacerbate local groundwater conditions.
- | Cultivation of medical marijuana on slopes of more than 5 percent would require approval of an Erosion Control Plan, to ensure the protection of downstream surface water quality.
- | Estimates on the yield of marijuana vary greatly, however, a general average seems to be one ton per acre. The October 2015 spot index for medical marijuana in California is \$1,600. Thus, conservatively, medical marijuana could generate gross revenues of \$3.2 million per acre, which far exceed the \$24,000 that could be generated by cabernet (4 tons per acre at \$5,923 per ton).
- | Because of the value of the crop, the cultivation of medical marijuana can create security concerns, leading to greater law enforcement efforts.

Specifically, staff is seeking direction on the following topics:

- | Should an ordinance be prepared regarding the delivery of medical marijuana?
- | Should an ordinance be prepared regarding the cultivation of medical marijuana?
- | Should the delivery and/or cultivation of medical marijuana be allowed under ministerial (non-discretionary) review, regulated under conditional permit review, or prohibited?
- | If the delivery of medical marijuana is allowed, should a tax be imposed on the activity?
- | Should an ordinance be prepared establishing a business license program?

- I Should a fee or tax be placed on medical marijuana businesses under the licensing program?

The Sheriff's Office has indicated that they would support the continued ban on cultivation. Staff from Alcohol and Drug Services and Mental Health also support the continued ban.

Staff from St. Helena and Calistoga have indicated that their City Councils will be considering bans on cultivation.

In order to have an ordinance regulating the cultivation and/or delivery of medical marijuana in place by March 1, 2016, the Board of Supervisors would have to take final action by January 26, 2016. The Planning Commission would have to make their recommendation no later than January 20, 2016.

The full text of each adopted legislative bill is provided in Attachments A - C.

Attachment D provides a summary chart detailing the areas of responsibility for various State and local agencies under the Medical Marijuana Regulatory and Safety Act.

SUPPORTING DOCUMENTS

A . Attachment A - Senate Bill 643

B . Attachment B - Assembly Bill 243

C . Attachment C - Assembly Bill 266

D . Attachment D - Chart of Regulatory Responsibility for Medical Marijuana

CEO Recommendation: Approve

Reviewed By: Liz Habkirk