



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 12/5/2017
Agenda Placement: 9H
Set Time: 2:00 PM PUBLIC HEARING
Estimated Report Time: 1 Hour

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Helene Franchi for Minh Tran - County Executive Officer
County Executive Office
REPORT BY: John Myers, Deputy County Counsel II - 707-259-8604
SUBJECT: Cannabis Moratorium Ordinance Discussion

RECOMMENDATION

County Executive Officer requests adoption of one of the following ordinances:

1. An interim ordinance of the Board of Supervisors for the County of Napa, State of California, adopting a temporary moratorium on commercial cannabis activity in the unincorporated area of Napa County and declaring the urgency thereof; or
2. An interim ordinance of the Board of Supervisors for the County of Napa, State of California, adopting a temporary moratorium on commercial cannabis activity and outdoor cultivation of cannabis in the unincorporated area of Napa County and declaring the urgency thereof.

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.

General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

EXECUTIVE SUMMARY

In February 2016 the Board of Supervisors adopted an ordinance banning the cultivation of marijuana in the unincorporated area outdoors and only allowing indoor cultivation of medical marijuana. Due to the passage of Proposition 64, which legalized adult use beginning 2018, the County is now in need of updating our local ordinance to comply with the passage of Prop. 64. The Board believed it was important to hear what other municipalities are doing before working on the County's ordinance.

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 and other elected officials. 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. Upon conclusion of the meetings, the goal was to return to the Board and provide feedback before the Board gives direction to staff on a possible ordinance. The Roundtable met four times since May 2017 to discuss different topics, including cultivation, land use, public safety, revenue, taxation, and touring three different facility types (manufacturing, cultivation, and dispensary/retail).

During and following the meetings of the Cannabis Roundtable, other jurisdictions within Napa County have proposed or adopted various ordinances relating to cannabis. On April 18, 2017, the City of Calistoga adopted a personal cultivation ordinance that allows for cultivation of up to six plants, up to two of which could be cultivated outdoors. On November 7, 2017, the Town of Yountville postponed final decision on a proposed ordinance to alter the town's current prohibition on cannabis dispensaries and limitation of personal cultivation to six plants only to be grown indoors. On December 5, 2017, the Napa City Council was scheduled to consider a proposed ordinance to allow a nonmedical cannabis retailer and to allow outdoor cultivation of up to six plants for personal use.

The Board prioritized two cannabis-related issues that it sought to address immediately: establishing a moratorium on commercial cannabis activity in light of the upcoming January 1, 2018, start date for the issuance of State licenses for cannabis businesses, and updating the County's current ordinance on cannabis cultivation.

If the Board wishes to further study the potential for allowing outdoor cultivation of cannabis, staff recommends adoption of ordinance Option 2, which would prohibit commercial cannabis activity and prohibit outdoor cultivation. In the event that the Board does not foresee further studying outdoor cultivation and the policy considerations surrounding it in the near future, staff recommends adoption of ordinance Option 1.

PROCEDURAL REQUIREMENTS

1. Staff reports;
2. Open the Public Hearing and receive 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 (4/5 vote required); and
6. Motion, second, discussion, and vote on intention to adopt the ordinance (4/5 vote required).

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

The adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) because the activity is not a project and meets the "general rule" as defined in Sections 15378 and 15061(b)(3) of the CEQA Guidelines. Adoption of the ordinance has no potential for resulting in physical changes to the environment, either directly or indirectly. Furthermore, pursuant to Section 15060(c)(2) of the CEQA Guidelines, the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment because this Ordinance prohibits changes in the environment pending the contemplated review of zoning ordinance amendments

applicable to commercial cannabis activity and outdoor cultivation of cannabis. Finally, this ordinance adoption is not subject to CEQA under the “general rule” because it can be seen with certainty that there is no possibility the proposed adoption of an ordinance prohibiting new activities may have a significant effect on the environment.

BACKGROUND AND DISCUSSION

At the November 14, 2017, Board of Supervisors meeting, the Board received a report from staff and from fellow Board members relating to meetings of the Napa County Cannabis Roundtable and discussed various aspects of regulating cannabis activities in the wake of recent legislation permitting personal cultivation and use of cannabis and establishing a regulatory framework for commercial cannabis activity. The Board prioritized two cannabis-related issues that it sought to address immediately: establishing a moratorium on commercial cannabis activity in light of the upcoming January 1, 2018, start date for the issuance of State licenses for cannabis businesses, and updating the County's current ordinance on cannabis cultivation.

Pursuant to State Law, State agencies have announced January 1, 2018, as the intended start date for issuing licenses for commercial cannabis activities. Such licenses, however, can only be issued if they comply with local law. Napa County Code Ch. 8.10, while broad in some respects relating to personal cultivation, does not directly address commercial cannabis activities other than by prohibiting medical cannabis dispensaries. As a result, if the State were to issue licenses for commercial cannabis activities within the unincorporated area of Napa County, those commercial cannabis activities would be insufficiently regulated.

Once the State begins issuing licenses for commercial cannabis activities in other jurisdictions, and the State has established a more permanent regulatory scheme for these activities, the County will be in a better position to discuss policy regarding commercial cannabis. In the meantime, however, a moratorium is required to send an unambiguous message - both to cannabis businesses seeking to locate in Napa County and to State cannabis licensing agencies - that operation of a cannabis business in the unincorporated area of the County is illegal.

Updating Napa County's Current Cannabis Ordinance

In February 2016, the Board adopted Napa County Code Ch. 8.10, which prohibits medical cannabis dispensaries and regulates most aspects of personal cultivation of cannabis. As discussed at the November 14, 2017, Board meeting, Chapter 8.10 was passed prior to voter approval of Proposition 64 relating to personal use for nonmedical purposes, and prior to the State's establishment of a cohesive regulatory framework in June 2017 through the passage of Senate Bill 94. As a result, the underlying State statutes upon which Chapter 8.10 was based have changed, and staff recommended that at a minimum, the language in Chapter 8.10 be updated to reflect the changes to State law.

At the November 14, 2017, Board meeting, the Board discussed potentially allowing some or all of the six plants permitted to be cultivated for personal use under State law to be grown outdoors. The Board requested additional information regarding the policy considerations that allowing outdoor cultivation would entail, as well as examples of outdoor cultivation ordinances from other jurisdictions. Staff provided this information, also attached to this item:

- | A summary of outdoor cultivation ordinances from other jurisdictions;
- | A spreadsheet containing the policy considerations that have been included in outdoor cultivation ordinances passed by other jurisdictions; and
- | Fact sheets from State licensing agencies providing summaries of their respective emergency regulations issued on November 16, 2017.

Staff is currently working on updating Chapter 8.10 and can include amendments relating to outdoor cultivation at

the Board's direction.

Proposed Ordinance

Attached are two alternate proposed ordinances for Board consideration:

- | Option 1 - An urgency ordinance that focuses solely on prohibiting commercial cannabis activity; and
- | Option 2 - An urgency ordinance prohibiting commercial cannabis activity and outdoor cultivation of cannabis.

In the event that the Board does not wish to further study permitting outdoor cultivation and is prepared to keep the County's current prohibition on outdoor cultivation intact for the foreseeable future, the Board could opt to adopt Option 1.

In the event that the Board wishes to continue studying outdoor cultivation in light of the additional policy considerations provided, there may be a period of time between today's action and the effective date of any such future ordinance allowing outdoor cultivation. Therefore, unless the Board wishes to keep the outdoor cultivation prohibition in place for the foreseeable future, Option 2 would be preferred because it would provide clarity in the law and preserve the status quo during the interim period before the Board is able to adopt future outdoor cultivation regulations. As indicated in the attached spreadsheet containing the policy considerations relating to outdoor cultivation, the Board will have many policy decisions to make on implementing a permissive outdoor cultivation ordinance, and staff will need time to study these options and craft language to implement the Board's direction. Maintaining the status quo of a prohibition on outdoor cultivation during this interim period will also provide clarity to Napa County's residents while the Board is studying and considering changes to the existing ordinance. As a temporary measure, Option 2 will allow the Board to adopt a more permissive permanent regulatory ordinance in the future, rather than having to impose new regulations on an insufficiently regulated activity.

Both ordinances include some exceptions, either due to State law requirements or due to previous desires expressed by the Board. The ordinances do not prohibit the indoor cultivation of the six plants allowed under AUMA and MAUCRSA, so long as those six plants are cultivated in accordance with the indoor cultivation regulations in Napa County Code sec. 8.10.050(C). Additionally, because State law does not allow Napa County to prohibit the use of its roadways by licensed cannabis businesses to deliver cannabis or cannabis products to a jurisdiction where such deliveries are allowed, the ordinances do not prohibit this conduct. Finally, because the Board has expressed an interest in ensuring that medical cannabis patients in the unincorporated area have sufficient access to cannabis, the ordinance expressly allows for employees of licensed cannabis businesses to complete lawful deliveries to individuals in the unincorporated area.

Timeline for Proposed Ordinance

Both of the attached ordinances are interim ordinances proposed under Government Code secs. 25123 and 65858 as urgency measures needed to address a threat to the public health, safety, and welfare of the County. Pursuant to these sections, the ordinance would go into effect immediately upon being passed by a 4/5 vote of the Board. The ordinance would remain in effect for 45 days. Prior to the 45-day deadline, the Board will have the following options:

- | Extend the moratorium for a total of up to two years;
- | Adopt a permanent ordinance that addresses the threat to public health, safety, and welfare; or
- | Allow the moratorium to expire.

SUPPORTING DOCUMENTS

- A . Summary of Sample Personal Cultivation Ordinances
- B . Policy Considerations for Outdoor and Indoor Cannabis Cultivation
- C . State Licensing Agency Fact Sheets
- D . Option 1 - Urgency Ordinance - Commercial Cannabis
- E . Option 2 - Urgency Ordinance - Commercial and Outdoor

CEO Recommendation: Approve

Reviewed By: Bret Prebula