



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 7/10/2018

Agenda Placement: 6BB

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: John Myers for Jeffrey Brax - Acting County Counsel
County Counsel
REPORT BY: John Myers, Deputy County Counsel II - 707-259-8604
SUBJECT: Amendment Ch. 8.10 to Allow Outdoor Cultivation of Cannabis for Personal Use

RECOMMENDATION

Second reading and adoption of an ordinance to amend Chapter 8.10 (Medical Marijuana Cultivation) to ensure consistency with state law and to allow outdoor cultivation of cannabis for personal use.

EXECUTIVE SUMMARY

On January 23, 2018, the Board directed staff to bring an ordinance relating to outdoor cultivation of cannabis for personal use to the Napa County Planning Commission. The Planning Commission held a study session and provided direction to staff on March 7, 2018. On April 18, 2018, the Planning Commission considered a draft ordinance and forwarded it to the Board for consideration with numerous suggested edits. Based on the combined goals and expressed desires of the Board and the Planning Commission, staff has drafted the attached ordinance, which seeks to establish reasonable regulations that balance mitigating potential harms of outdoor cultivation of cannabis for personal use with placing minimal restrictions on the rights conferred to Napa County residents through Proposition 64 and the Compassionate Use Act. The ordinance would also, upon its effective date, repeal the County's temporary moratorium prohibiting outdoor cultivation of cannabis for personal use.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: 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 the California Environmental Quality Act (CEQA) is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

It has been determined that this type of project does not have a significant effect on the environment and is exempt from CEQA under Section 15301 [See Class 1 ("Existing Facilities")], Section 15303 [See Class 3 ("New Construction or Conversion of Small Structures")], and Section 15304 [See Class 4 ("Minor Alterations to Land")]. See also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B.

BACKGROUND AND DISCUSSION

Background on Draft Ordinance

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 outdoor cultivation for an additional six months, and extended the moratorium prohibiting commercial cannabis activities for an additional 10 months and 15 days.

On January 23, 2018, the Board discussed policy issues relating to outdoor cannabis cultivation and provided direction to staff on a future ordinance. The Board additionally referred the first draft of the ordinance to the Planning Commission.

On March 7, 2018, the Planning Commission held a study session and provided direction to staff. The Commission generally concurred in the Board's goals and desires regarding a potential ordinance, as well as expressed an interest in creating reasonable regulations that did not create such an undue burden that personal cultivation efforts would be moved indoors.

On April 18, 2018, the Planning Commission considered a draft ordinance relating to outdoor cultivation of cannabis for personal use. The Commission recommended adoption of the ordinance and forwarded it to the Board for consideration, along with the following revisions:

- | Eliminate the restriction prohibiting outdoor cannabis cultivation from being visible from neighboring parcels.
- | Add "animal facilities," including veterinary offices and kennels, to the list of sensitive uses subject to a 300-foot setback limiting outdoor cultivation to two plants.
- | Require a one-year report back to the Board and/or Planning Commission.
- | Create an FAQ or information sheet for public distribution to educate the public about the new law.

Throughout this series of public meetings, the Board and the Planning Commission have identified the following goals for a proposed ordinance relating to the outdoor cultivation of cannabis:

- | Prioritizing public safety and environmental protection;
- | Ensuring access to cannabis for Napa County's residents who use it for medical purposes;
- | Ensuring consistency with neighboring jurisdictions, particularly regarding unincorporated County islands within city boundaries;
- | Establishing regulations that are not so unduly burdensome as to push cultivation indoors; and
- | Enforcing the ordinance through a nuisance- and complaint-based approach similar to code enforcement matters.

Key Provisions of Proposed Ordinance

The proposed ordinance seeks to address the goals identified above by establishing regulations that balance ensuring access to cannabis for County residents through personal cultivation with minimizing the potential harms that could result. The amendment proposes to revise Chapter 8.10 to impose general regulations applicable to all cannabis cultivation, additional regulations solely for outdoor cultivation, and additional regulations solely for indoor cultivation. Residents could grow up to six plants total, which could be grown in any combination of indoor and/or outdoor cultivation, so long as all applicable regulations are obeyed.

The ordinance does not completely prohibit any County resident from cultivating cannabis either indoors or outdoors. However, residents residing within 300 feet of a school or park - as defined in the ordinance - would be limited to cultivating up to two of their total six plants outdoors. The remaining four plants could be grown indoors. All other residents not within this 300-foot zone could grow six plants in any combination of indoor or outdoor.

The ordinance proposes to regulate all cannabis cultivation by limiting personal cannabis cultivation to parcels with private residences; prohibiting the use of volatile chemicals, generators, and pesticides and fertilizers inconsistent with labeling and official guidance; and requiring compliance with other building, fire, and water use laws.

The additional regulations for indoor cultivation remain largely unchanged from the existing Chapter 8.10, and would require that indoor cultivation be conducted in fully enclosed and secure structures with measures taken to prevent mold and adverse odors.

The additional regulations for outdoor cultivation would specify that outdoor cultivation shall be enclosed within a locking fence or similar barrier; cannot be grown in the front yard or within 10 feet of any other property line; cannot be visible from a public right-of-way; and cannot make use of any electrical grow lights. As specified in the existing Chapter 8.10, greenhouses and hoopouses would continue to be defined as outdoor cultivation and required to follow all of the general provisions and additional outdoor regulations.

The additional regulations for outdoor cultivation also include a 300-foot setback from schools and parks that limits the number of plants that can be grown outdoors within close proximity of these sensitive uses. Consistent with the Board's goal of focusing first on public safety and environmental protection, limiting the cultivation to two plants near schools and parks would reduce an outdoor grow's detectability in these areas, which would in turn reduce the potential exposure of children to harms, as well as diminish the potential of nearby plants to become an attractive nuisance.

In the past year, at least four violent home invasion robberies have occurred in neighboring Sonoma County, with the assailants allegedly targeting the homes based on the belief that cannabis was stored or grown there. Limiting the number of plants that can be grown in close proximity to schools and parks - places where children congregate and often travel to by foot or bicycle - would reduce the likelihood that similar invasions would occur in areas travelled or populated by Napa County's students by limiting the detectability of the plants, which emit a strong odor particularly while flowering shortly before they are harvested. Additionally, reducing the cultivation's detectability would also reduce the likelihood that older children would be tempted by the cultivated plants, which could be further distributed to other minors or sold to criminal actors. Focusing on these harms by limiting the number of plants that can be grown - rather than outright banning cultivation in this area - balances these safety measures with the Board's and Planning Commission's desires to ensure access for medical cannabis patients and to avoid forcing permissible outdoor cultivation indoors.

Although no County resident would be prevented by County regulations from cultivating at least some plants

outdoors, the 300-foot setback from schools and parks would limit the cultivation options for some County residents. Based on preliminary data generated utilizing the County's GIS system, there are approximately 10,079 parcels in the unincorporated County with a current residential use. Of those properties, an estimated 421, or 4.2% of total residential parcels, are located within the 300-foot setback of a school as defined by the ordinance. About 657, or 6.5% are located within 300 feet of a park as defined by the ordinance. When combining these setbacks, a total of about 1,043, or 10.3% of total residential parcels, would be limited to cultivating up to two plants outdoors because they are either within 300 feet of a school, a park, or both. These residents would still be allowed to cultivate indoors, so long as the total number of plants does not exceed 6. About 89.7% of residential parcels in the unincorporated County would be allowed to cultivate all six plants outdoors. As with other setbacks, the GIS mapping system can only provide estimates. Like all code compliance complaints, complaints about residents growing too many plants in a setback zone would need to be evaluated firsthand by a code compliance officer, who would physically measure the distance to determine if a violation exists.

A 300-foot setback for schools and parks that limits - as opposed to prohibits - cultivation for some is largely consistent with personal outdoor cultivation ordinances adopted by other jurisdictions throughout Napa County. The City of Calistoga prohibits outdoor cultivation within 300 feet of a school or a park and limits all other outdoor cultivation to two plants. County residents bordering the Calistoga city limits would have similar rights as those living in the city limits. Like Calistoga residents, County residents nearby would have the ability to cultivate at least two plants outdoors. Likewise, although the City of Napa does not have any setback restricting cultivation based on proximity to schools, County residents living within 300 feet of a school or park within or near City of Napa boundaries would still have the ability to cultivate up to two plants outdoors; like their city neighbors, they would not be prohibited from all cultivation activities. The City of American Canyon currently has a temporary moratorium on outdoor cultivation, but is scheduled to revisit this later this year; in the event that the City of American Canyon adopts an ordinance that creates a vast disparity between city residents and County neighbors, the County can revisit its ordinance at that time.

During the Planning Commission's April 18, 2018, meeting, the commissioners recommended adding "animal facilities" - generally including uses such as kennels, stables, and veterinary practices - to the list of sensitive uses that trigger the 300-foot setback for limited outdoor cultivation. Upon staff investigation, however, no other nearby jurisdiction includes similar restrictions, and the addition of these facilities to the ordinance could pose logistical difficulties for staff tasked with enforcing the ordinance. Additionally, the attached ordinance already mitigates potential harms to animals by requiring outdoor cultivation to be enclosed by a locking fence or similar barrier and requiring that all pesticide use be consistent with all laws and regulations.

Extension of Temporary Moratorium

Current ordinances place a temporary moratorium on the outdoor cultivation of cannabis for personal use. This moratorium, however, is currently scheduled to expire on July 19, 2018. If adopted, the proposed ordinance amending Chapter 8.10 to allow outdoor cultivation of cannabis for personal use subject to specified regulations would require a second reading, scheduled for the July 10, 2018 Board meeting. The ordinance would go into effect on August 9, 2018, 30 days after the second reading. Because the temporary moratorium will expire before the effective date of the personal cultivation ordinance, staff recommends that the Board adopt an extension of the moratorium as it relates to personal outdoor cultivation in order to cover the period between July 19, 2018, and the effective date of the personal cultivation ordinance. the proposed moratorium extension would expire on November 19, 2018, or upon the effective date of the personal cultivation ordinance, whichever is sooner.

The portions of the temporary moratorium prohibiting commercial cannabis activities would be unaffected and remain in force until December 2018. The Board will have an opportunity at a future Board meeting to extend those portions of the moratorium for up to an additional year, if necessary.

Clerical Corrections

On June 19, 2018, the Board approved a notice of intent to adopt the attached ordinance. The following clerical edits have been made to this staff report and the attached ordinance since June 19:

- | Minor typo corrected on page 5 of the ordinance.
- | Added ordinance number for moratorium to be repealed on page 8 of the ordinance.
- | Included an additional category of exemption from CEQA into the environmental impact section of the staff report and attached the CEQA memo.

SUPPORTING DOCUMENTS

- A . Amendment to Ch. 8.10 clean
- B . Amendment to Ch. 8.10 redlined
- C . CEQA Memo

CEO Recommendation: Approve

Reviewed By: Helene Franchi