



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 8/27/2019

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: Direction on an Ordinance Regarding Commercial Cannabis

RECOMMENDATION

Director of Planning Building and Environmental Services seeks direction from the Board of Supervisors regarding whether to prepare an ordinance to address commercial cannabis.

EXECUTIVE SUMMARY

On August 20, 2019, the Board of Supervisors directed staff to provide time and cost estimates, as well as a list of other planning priorities, for discussion and consideration regarding the preparation of an ordinance to allow commercial cannabis land uses.

State law provides that the California Environmental Quality Act (CEQA) does not apply to an ordinance adopted by the Board of Supervisors relating to commercial cultivation, manufacturing, and/or retail sale of cannabis if certain conditions are met. To qualify, the ordinance would have to: (1) make all commercial cannabis permits discretionary; (2) apply CEQA review to all use permits regarding commercial cannabis; and (3) ensure that the ordinance becomes effective prior to July 1, 2021. Timely direction from the Board regarding the preparation of a commercial cultivation ordinance is required in order to ensure that action can be completed and made effective prior to the July 1, 2021, deadline.

PROCEDURAL REQUIREMENTS

Discussion and possible Board direction to staff.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	Should the Board direct that an ordinance be prepared, the cost of staff work would be largely reimbursed by General Plan fees, but may be paid for in part by the General Fund.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The direction to prepare an ordinance would be a policy decision, based on the Board of Supervisor's determination that this is a priority for the County.
Is the general fund affected?	Yes
Future fiscal impact:	If an ordinance is prepared that requires more complex CEQA analysis, the cost and effort would likely extend into Fiscal Year 2020-2021.
Consequences if not approved:	If direction to prepare an ordinance is not provided, then the existing prohibition on commercial cannabis cultivation, manufacturing, and retail sales would remain in effect.
Additional Information:	

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

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 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 indoor and outdoor cultivation of cannabis for personal use in compliance with state limitations and local rules. The ordinance was adopted by the Board on July 10, 2019, and it became effective on August 9, 2019.

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.

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).

On August 20, 2019, the Board accepted the 9111 Report and adopted a resolution placing the Initiative on the ballot for the March 3, 2020, Presidential Primary election, 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 whether the County should prepare its own ordinance addressing commercial cannabis uses, and the timeline and effort needed to prepare such an ordinance.

Moratoria

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 July 23, 2019, the Board adopted an interim urgency ordinance to establish a 45-day moratorium on the cultivation of industrial hemp. Staff will bring forward a recommendation on the August 27, 2019, Board agenda to extend the hemp moratorium from September 6, 2019, to July 21, 2020.

Cannabis Ordinances and CEQA

Business and Professions Code Section 26055.(h) states:

Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. This subdivision shall become inoperative on July 1, 2021.

Under this provision, should the Board of Supervisors direct staff to prepare an ordinance to allow the commercial

cultivation of cannabis, the ordinance can be adopted without conducting a study or making other considerations normally required under the California Environmental Quality Act (CEQA). To qualify, the ordinance would have to: (1) make all commercial cannabis permits discretionary; (2) apply CEQA review to all use permits regarding commercial cannabis; and (3) ensure that the ordinance becomes effective prior to July 1, 2021.

Political Reform Act

On August 20, 2019, the Board placed the Initiative on the ballot for the March 3, 2020, election. The State Political Reform Act governs the use of public resources with regards to elections, as enforced by the Fair Political Practices Commission (FPPC). The Act prohibits the County from spending public money in connection with any communication that "expressly advocates the... passage[] or defeat of a clearly identified measure" or "unambiguously urges a particular result in an election." The Board's discussion of whether to direct the preparation of a land use ordinance regarding commercial cannabis uses does not assume or expressly advocate for either passage or defeat of the Initiative. It is a policy discussion that is the culmination of over three years of the Board's continued interest in evaluating commercial cannabis regulation, and follows the County's established process for considering changes to the County Code. It is also in response to several comments by the public, including the Initiative proponent, at the August 20, 2019 meeting requesting that the Board take up the question of whether the County should prepare an ordinance regarding commercial cannabis. As such, this policy discussion is of value to the County regardless of the outcome of the public's decision on the Initiative and does not create any conflict with the Political Reform Act.

Estimated Timelines

The following draft timelines illustrate the process and estimated dates for completion of a commercial cannabis cultivation ordinance, if so directed by the Board of Supervisors. The three scenarios show the differences in the timing of the process depending on the level of California Environmental Quality Act (CEQA) required. These timelines assume that the initial direction is clear and defined; there is no extensive public controversy; there is no initiative or litigation; there are not additional significant projects or efforts directed to PBES and/or County Counsel of a similar priority; and there are no significant changes in personnel at either or both departments.

Additional planning and Counsel staff or consultants may be needed to complete this effort before the July 2021 deadline.

How the ordinance is drafted is critical to the timeline. In order for the draft ordinance to qualify for the nonapplication of CEQA, all cannabis uses would have to require discretionary use permits, subject to CEQA. If a draft ordinance were to include provisions to allow cannabis cultivation, processing, or retail uses with a ministerial permit, the ordinance would be subject to full CEQA review. Depending on the language in the draft ordinance, it could require a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report (EIR). Each of these documents will increase the timeline, staff effort, and County costs to prepare. An EIR would likely require outside environmental consultants which would add to the potential cost.

The timeline below provides an estimate for a land use ordinance only. If the Board also wanted to pursue local taxes on commercial cannabis, the ordinance to impose a tax would likely require a public vote. A fee study, prepared by a consultant, may also be required. These actions would significantly add to the cost and timeline for this effort. One option would be to consider two separate ordinances. The land use ordinance could be adopted first, effective contingent on voter approval of a later tax measure. If the late tax measure failed to secure a majority of the public vote, the land use ordinance would become null and void.

The estimated timeline for a land use ordinance is as follows:

Milestone	Exemption	Negative Declaration	Environmental Impact Report
Study Session/Workshop for Direction	08/27/2019	08/27/2019	08/27/2019
Stakeholder Outreach/ Zoning Review	09/27/2019	09/27/2019	09/27/2019
Board Workshop and Direction	10/08/2019	10/08/2019	10/08/2019
Draft Ordinance	10/25/2019	11/01/2019	11/01/2019
Stakeholder Outreach	11/15/2019	12/02/2019	12/02/2019
Revised Draft Ordinance	12/06/2019	01/03/2020	01/03/2020
CEQA Preparation	12/13/2019	01/24/2020	07/10/2020
CEQA Public Review	12/13/2019	02/24/2020	08/24/2020
Planning Commission First Hearing	12/18/2019	03/04/2020	11/18/2020
Planning Commission Second Hearing	01/15/2020	03/18/2020	12/02/2020
BOS First Hearing	02/04/2020	04/07/2020	01/19/2021
BOS Second Hearing	02/18/2020	04/14/2020	02/09/2021
Second Reading	02/25/2020	05/12/2020	02/16/2021
Effective Date	03/27/2020	06/11/2020	03/18/2021

The timeline indicates that if the County relies on the statutory provision allowing the County to forego a CEQA analysis, an ordinance can be adopted prior to the July 1, 2021, deadline required by the State. If an ordinance requires more complex CEQA analysis, such as a Negative Declaration or an EIR, the July 1, 2021, deadline would not apply.

If the Board directed that a tax measure be prepared, in addition to the land use ordinance, then the public vote would have to occur on the November 2020 election, in order for the ordinance to become effective prior to the July 2021 deadline. If the November 2020 election was infeasible, the Board could consider a special election for the tax measure to ensure that the ordinance became effective prior to the July 2021 deadline.

Work Estimate

County Counsel has estimated that preparation of the ordinance would require approximately 455 person hours at an approximate cost of \$94,447. Planning, Building, and Environmental Services (PBES) staff estimates that the ordinance would require 513 hours of staff time, at a cost of \$76,950. The total time expended would be approximately 968 hours at a cost of \$180,397. These estimates assume an ordinance that relies on the nonapplication of CEQA. An ordinance requiring more complex CEQA review and/or a tax measure would require significantly more staff hours and costs.

Coordination with other County departments including the Agricultural Commissioner, Public Works, Health and Human Services, Sheriff, Tax-Collector, and the County Executive Office would incur additional time and costs. Those estimates are not included in the above estimate.

Priority

On January 15, 2019, the Board adopted the Napa County Strategic Plan: 2019-2022. The Strategic Plan was developed with extensive input from the community and contains 16 goals and 84 action items to be accomplished over the next three years. None of the action items refer to cannabis, marijuana, or hemp.

A large number of the action items are the responsibility of PBES. Action items proposed to be accomplished within the next year include:

- | Climate Action Plan
- | Traffic Impact Fee
- | Residential Development Ordinance
- | Architectural Color Guidelines
- | Commercial Solar Development Ordinance
- | Remote Winery Ordinance
- | Small Winery Protection and Use Permit Streamlining Ordinance
- | Electronic Plan Review
- | Formation of a Sub-Region for Regional Housing Needs Assessment (RHNA) Allocation ***
- | Begin preparation of the Housing Element update ***
- | Enforcement of Short-Term Rentals
- | Begin discussions for a Regional Climate Action Plan
- | Napa Pipe Housing Agreement
- | Begin preparation of the Safety Element update
- | Ordinance to allow Junior Accessory Dwelling Units (JADUs) in the Agricultural Preserve (AP) zone
- | Support establishment of the joint Watershed Monitoring Program with the City of Napa

In addition to the goals in the Strategic Plan, PBES has adopted a set of Department Goals for Fiscal Year 2019-2020. They include the following:

- | Prioritize fire rebuilds
- | Adopt the 2020 Building Codes ***
- | Implement the Process Improvement Study
- | Update Road and Street Standards ***
- | Bring Clover Flat and Hidden Glen landfills into compliance ***
- | Exempt Napa County from the Phase 1 requirements of the Municipal Regional Permit ***
- | Retain jurisdictional authority over winery process wastewater from the Regional Water Quality Control Board ***
- | Obtain approval of the Local Agency Management Plan from the Regional Water Quality Control Board ***
- | Support the alternative Sustainable Groundwater Management Act (SGMA) plan ***
- | Process applications submitted prior to the code compliance deadline

The time estimate provided above of 513 staff hours is equivalent to approximately one-quarter of a full-time position for one year. If the Board directs preparation of a cannabis ordinance, one or more of the above items would likely be delayed. Action items and goals listed above that have state-mandated deadlines have been identified with a ***. Delays in these efforts could have adverse effects on the County and constituents.

Issues

Should the Board direct staff to prepare an ordinance to allow the commercial cultivation, manufacturing, and/or retail sale of cannabis in the unincorporated area, staff requests further discussion and direction regarding the following concerns:

A. Agriculture

1. Should there be a minimum buffer between commercial cannabis and agricultural crops, particularly

vineyards, to reduce potential conflicts related to pesticides, pests, and odor taint?

2. Should there be a limit on the number of parcels where commercial cannabis is allowed to be grown commercially and/or a limit on the number of total acres countywide?
3. Should the commercial cultivation of cannabis be restricted to certain zones or geographic areas within the County?
4. Should there be a minimum buffer between commercial cannabis cultivation and wineries?
5. Should the County Right to Farm Ordinance be revised to exclude commercial cannabis cultivation?
6. Should commercial cannabis cultivation be allowed within Williamson Act contracts?

B. Commercial and Industrial Uses

1. Should retail sales of cannabis for medical and/or recreational use be allowed in the unincorporated area? If so, in which zones?
2. Should manufacturing of cannabis products be allowed in the Airport Industrial Area?
3. Should vaping lounges or on-site cannabis consumption be allowed at retail locations?

C. Environment

1. Should commercial cannabis cultivation be allowed in identified groundwater sensitive areas, such as the Carneros basin, the Napa Valley basin, and/or the MST (Milliken-Sarco-Tulucay) area?
2. Should commercial cannabis cultivation in the AW (Agricultural Watershed) zone be discretionary, subject to preparation of a Water Availability Analysis?
3. Should commercial cannabis cultivation be a ministerial approval if it relies on municipal or recycled water sources?
4. Should there be specific lighting and visual development standards for commercial cannabis uses, particularly regarding hoop houses and greenhouses?
5. Should commercial cannabis cultivation be allowed as the result of timber harvest conversion?
6. Should commercial cannabis cultivation be discretionary for the purposes of greenhouse gas emission reduction?
7. Should commercial cannabis be required to utilize ventilation and odor control filtration for indoor cultivation?

D. Health and Safety

1. Should there be a minimum buffer between commercial cannabis cultivation and schools, hospitals, parks, and other sensitive receptors to minimize odor control and quality of life issues?
2. Should there be a minimum buffer between commercial cannabis cultivation and off-site residences and/or residential zoning, whether the zoning is located in the unincorporated area or in cities and towns?

E. Tourism

1. Should there be a minimum buffer between commercial cannabis cultivation and restaurants and hotels/resorts?

Requested Action

Staff seeks direction from the Board of Supervisors regarding whether to proceed with drafting an ordinance to allow commercial cultivation, manufacturing, and/or retail sale of cannabis in the unincorporated area.

If the Board directs that an ordinance be prepared, staff requests further clarifying discussion regarding the specifics of any proposed implementation.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Leigh Sharp