



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 4/18/2018

Agenda Placement: 7C

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Vincent Smith for Jeffrey Richard - Acting County Counsel
County Counsel

REPORT BY: John Myers, Deputy County Counsel II - 707-259-8604

SUBJECT: Personal Cannabis Cultivation Ordinance

RECOMMENDATION

COUNTY OF NAPA / PERSONAL CANNABIS CULTIVATION ORDINANCE

CEQA STATUS: Consideration and possible adoption of Categorical Exemptions pursuant to CEQA Guidelines Section under Section 15301 [See Class 1 ("Existing Facilities")] and Section 15303 [See Class 3 ("New Construction or Conversion of Small Structures")]. 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)].

Request: Consideration and recommendation for adoption of a County-sponsored ordinance to conform County regulations with Proposition 64 as passed by California voters in November 2016 and to allow outdoor cultivation of cannabis for personal use.

Title of Ordinance: An ordinance of the Napa County Board of Supervisors, State of California, amending Chapter 8.10 (Medical Marijuana Cultivation) to ensure consistency with State law and to allow outdoor cultivation of cannabis for personal use.

Staff Recommendation: Recommend that the Board of Supervisors find that the proposed project is exempt from the California Environmental Quality Act pursuant to Public Resources Code Section 21080.17, and adopt the proposed ordinance.

Staff Contact: John Myers, Deputy County Counsel, (707) 259-4521.

THIS ITEM IS SET TO BE DISCUSSED AT 10:30 AM.

EXECUTIVE SUMMARY**Proposed Actions:**

That the Planning Commission recommend to the Board of Supervisors:

1. Find that the proposed project is exempt from the California Environmental Quality Act; and
2. Adopt the proposed ordinance.

Discussion:

State law permits individuals age 21 or older to cultivate up to six cannabis plants for their personal use. In order to promote access for medical cannabis patients and other Napa County residents, the Board of Supervisors is exploring a potential ordinance to allow these six plants to be cultivated outdoors, such as in backyards. The cultivation of these six plants for personal use would be in addition to any plants allowed to be cultivated for medical use by a patient or caregiver living at the same residence.

On March 7, 2018, the Planning Commission held a study session to discuss a potential ordinance allowing residents to cultivate up to six cannabis plants outdoors for personal use. The proposed ordinance would amend Napa County Code Chapter 8.10 to allow for this outdoor cultivation subject to specific requirements and limitations, as well as update the other existing provisions so that they are consistent with state law.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

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”)] and Section 15303 [See Class 3 (“New Construction or Conversion of Small Structures”)]. See also Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Appendix B.

BACKGROUND AND DISCUSSION*Background on Local Cannabis Regulation*

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, 2017, Board of Supervisors meeting, 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: ensuring access for medical cannabis patients and County residents by considering allowing the six plants allowed by law to be grown outdoors and 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 outdoor cultivation until June 2018 to allow the Planning Commission and the Board to craft a new ordinance addressing outdoor cultivation of cannabis for personal use. Also on January 16, 2018, the Board extended the moratorium prohibiting commercial cannabis activities until December 2018.

On March 7, 2018, the Planning Commission held a study session to discuss a potential ordinance allowing outdoor cannabis cultivation for personal use. 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.

Goals of Proposed Ordinance

Through input received by County staff from the Board and the Planning Commission, County staff has developed the following list of goals to be addressed by an ordinance relating to outdoor cannabis cultivation:

- | Prioritizing public safety and environmental protection;
- | Ensuring access to cannabis for Napa County's residents who use cannabis 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 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 balancing access to cannabis and outdoor cultivation for County residents with minimizing the potential harms that could result. Napa County Code Section 8.10.040, which previously prohibited outdoor cultivation, would be amended to allow all residents to cultivate at least some of their state-permitted six cannabis plants outdoors, so long as the total number of plants cultivated at a residence for personal use does not exceed six. Residents residing within 300 feet of a school or park - as defined in the ordinance - would be allowed to cultivate up to two of their six total plants outdoors. All other residents could grow six plants in any combination of indoor or outdoor, or cultivate all six plants outdoors.

This setback based on proximity to schools and parks is proposed in order to minimize the potential exposure of children to harms and to reduce the potential of nearby plants from becoming an attractive nuisance. In the past year, four violent home invasion robberies have occurred in neighboring Sonoma County, with the alleged 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 reducing 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. Reducing 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 desire to ensure access for medical cannabis patients and the Planning Commission's desire to avoid forcing legitimate outdoor cultivation indoors.

Although no County resident would be prevented by County regulations from cultivating at least some plants, the 300-foot setback placed on 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, about 537, or 5.3% of total residential parcels, are located within the 300-foot setback of a school as defined by the ordinance. About 806, or 8% are located within 300 feet of a park as defined by the ordinance. When combining these setbacks, a total of 1,510, or almost 15% 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. Slightly more than 85% of residential parcels in the unincorporated County would be allowed to cultivate all six plants outdoors.

Additionally, 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 all have the ability to cultivate at least two plants - the maximum allowed within city limits. 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.

If residents choose to cultivate cannabis plants outdoors, the proposed ordinance places reasonable restrictions on the growing methods and location of those plants. Cannabis plants cannot be grown in a front yard, and all plants must be grown at least 10 feet away from the property line bordering any property not

owned by the cultivator. Outdoor cultivation must also be enclosed in a locking fence or other physical barrier meeting certain criteria, and care must be taken to avoid having the plants detected or smelled from the public right-of-way or a neighboring parcel. Grow lights, generators, and the use of volatile chemicals in processing or cultivating cannabis would all be prohibited.

Cultivating cannabis in greenhouses or hoopouses would be classified as outdoor cultivation and would require compliance with all applicable restrictions relating to outdoor cultivation.

Violations of the ordinance would be enforced following the same procedures as any other code enforcement or nuisance matter. In the event that potential criminal violations are discovered in the course of a code enforcement investigation, the alleged violations would be referred to the District Attorney's Office or other appropriate prosecutorial agency.

In addition to addressing outdoor cultivation, the proposed ordinance would make additional edits to the other provisions of Chapter 8.10 to ensure consistency with state law.

Potential Amendments to Proposed Ordinance

The proposed ordinance was developed through coordination with internal County stakeholders and intended to establish reasonable, enforceable regulations that meet the Board's and Planning Commission's goals as outlined above. Although state law provides only limited authority to the County to impose reasonable regulations on indoor cultivation, the County has broad authority to regulate or ban outdoor cultivation. Thus, the Board and the Planning Commission have broad authority to amend the proposed ordinance to meet specific needs or address specific concerns.

The proposed ordinance currently includes a setback reducing the number of plants allowed to be cultivated outdoors based on proximity to schools and parks, as defined in the ordinance. As stated above, the County has interest in limiting cultivation close to schools and parks due to the potential for crime and other harms. Schools and parks are generally easy to identify by both the County and residents for the purposes of identifying whether residents live within close proximity. The 300-foot setback is also easy to measure using the GIS system. The cities of Calistoga and Santa Rosa have similar buffer zones for schools and parks - Calistoga prohibits all outdoor cultivation within 300 feet of schools and parks, while Santa Rosa prohibits cultivation on any parcel adjacent to a school but provides no additional restrictions on parcels beyond that range. At the Board's or Planning Commission's discretion, the setback for schools and/or parks could be altered to match of the other jurisdictions or to meet another goal.

The City of Calistoga additionally prohibits cultivation within 300 feet of child care centers, religious facilities, recreation centers, and youth-oriented centers. These terms are not defined in Calistoga's ordinance. At the Board's or Planning Commission's discretion, setbacks for additional uses such as those identified by the City of Calistoga or otherwise identified could be added to the proposed ordinance. Additional uses, however, would need to be thoroughly defined in order to ensure enforceability and to provide sufficient notice to County residents whose cultivation ability would be limited by the setback. The County would also need to identify all of the locations of these uses, determine whether they meet the definition established for the purposes of the ordinance, and notify residents who live within close proximity that they live within the setback area. While most of these issues are easily addressed with schools and parks because those locations are generally readily identifiable, uses such as religious facilities and child care centers may be much more difficult to identify given that they can be located in residential areas and are more readily subject to a change in location or type, and thus, these additional uses can create enforcement and notice

difficulties. Additionally, the County would need a way to resolve any dispute that could arise when a resident's outdoor cultivation predates the establishment of one of these additional uses.

In addition to modifying the setbacks for cultivation within certain distances of sensitive uses, the Board and Planning Commission have the discretion to alter the other provisions of the ordinance as well, such as the fencing requirements, limitations on lights and generators, and enforcement procedures.

Next Steps

County staff seeks the Planning Commission's recommendation for adoption on the proposed ordinance. If recommended for adoption, the ordinance would be brought to the Board of Supervisors for approval. In the event that the Planning Commission wishes to amend the proposed ordinance, such amendments can be incorporated into the ordinance prior to it being brought to the Board.

SUPPORTING DOCUMENTS

- A . BOS Ch 8.10 redline
- B . BOS Ch 8.10 clean

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina