



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: County Executive Office
Department No.: 012
For Agenda Of: November 14, 2017
Placement: Departmental
Estimated Time: 1.5 hours
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department: Mona Miyasato, County Executive Officer
Director(s)
Contact Info: Dennis Bozanich, Deputy County Executive Officer

SUBJECT: State Cannabis Licensing Options and Amendments to Article X, Chapter 35 Zoning Ordinance

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: NA

Recommended Actions:

That the Board of Supervisors (Board):

On options for providing a Letter of Authorization for Temporary State Cannabis Licenses:

- A. Receive requested information on, consider options for, and provide direction to staff for temporary business licensing and land use permitting that conforms with requirements for local authorization of applications for Temporary Cannabis Licenses;
- B. Determine, pursuant to the California Environmental Quality Act (CEQA) Guidelines 15378(b)(5), that the above actions are not a project subject to CEQA review because they are administrative activities that will not result in direct or indirect physical changes in the environment.

On amending Article X of Chapter 35 of the County Code:

- C. Consider the recommendations of the County Planning Commission to approve Case No. 17ORD-00000-00007 which would amend Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code to terminate the exemption from the prohibition of medical marijuana cultivation for medical marijuana cultivation locations that existed as of January 19, 2016, as follows:
 - 1. Make the findings for approval, including California Environmental Quality Act (CEQA) findings, of the proposed Ordinance (Attachment A);

2. Determine that the adoption of this Ordinance is categorically exempt from CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Attachment B); and
3. Adopt an Ordinance (Case No. 17ORD-00000-00007) amending Article X, Medical Marijuana Regulations, of Chapter 35, Zoning, of the Santa Barbara County Code (Attachment C).

Summary Text:

At its October 17, 2017 meeting on cannabis operations, the Board discussed various options with several follow up requests. This Board letter provides information regarding the following:

- a) **Information on the State's expected process for issuing temporary business licenses (as of January 2, 2018).** On October 17, 2017, the Board rejected a proposed process to determine legal, nonconforming status of existing medical cannabis cultivation operations. The State will be requiring the County to provide authorization letters for submission with a request for temporary state licenses. Staff will provide potential options for consideration at the November 14, 2017 hearing. However, there are still likely to be outstanding issues, and the State's regulations for these temporary licenses have not yet been released. *Therefore, the Board may wish that staff return in December for final Board direction.*
- b) At the October 17, 2017 meeting, the Board deferred action on amendments to Article X and directed staff to return with a revision providing only for an amortization period of any existing legal, non-conforming cannabis operations. *The revised Article X ordinance is provided, and staff recommends the Board approve the ordinance.*

Staff plans to bring information on possible revenue, taxation, banking and ballot measure development during the month of December. Staff provided the Board with information on conceptual licensing and permitting options at the meeting on September 19, 2017. Much of this information is being analyzed in the Environmental Impact Report (EIR) and, given the timing of the Final EIR, staff will agendize further Board discussion on conceptual permitting and licensing options at a meeting in December 2017 or January 2018.

Discussion:

OPTIONS FOR AUTHORIZING TEMPORARY STATE LICENSES

As discussed further in this Board Letter, on October 17, 2017, the Board considered amendments to Article X of Chapter 35 of the County Code. The Board asked staff to follow up with the State for greater clarity as to the County's requirements for the State's temporary (interim) license process.

Temporary license. California Business and Professions Code section 26050.1 specifies that a state licensing authority may issue temporary licenses that are good for 120 days with possible 90 day extensions if an application for the State's Annual license (non-temporary) has been submitted to the state agency. Under this state code section, a cannabis operation seeking a temporary license from the State, must submit a written request for a temporary license and a copy of a license, permit or letter of authorization from the local jurisdiction. The license, permit or letter of authorization would need to state that the applicant can "conduct commercial cannabis activity at the location requested for the temporary license."

State information on temporary license procedure. Staff did speak with a licensing authority in Sacramento about the components of the letter of authorization. Licensing authority staff was reluctant to give specific requirements during the final days of approval for the emergency regulations due out by the end of this month. They did convey that it would need to include the specific business name, business type and business address. Any other specific content of the letter of authorization would be included in the regulations. County staff is awaiting the State's regulations on temporary licenses which, to date, have not been released.

County authorization for temporary license in context of current prohibition. Currently, the County of Santa Barbara has prohibited all medical and non-medical cannabis operations with a limited exception for medical cannabis cultivators existing prior to January 19, 2016 that was compliant with state laws at that time. Additionally, the County is engaged in an environmental review process and preparing an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA), which will inform a future policy decision on where, if anywhere, cannabis operations may occur and what, if any, mitigation may be required to reduce the significance of environmental impacts that will result from cannabis operations. However, the project description that is the subject of the EIR does not include a temporary licensing program and, therefore, the environmental impacts of such a program are not disclosed in the EIR. Currently, cannabis business licenses are not available.

Given the prohibitions, status of environmental review and without a process to determine whether the exemption in Article X applies, it would only be possible for the County to provide a *letter of authorization to support a request for a temporary State license for a medical cannabis cultivator that meets the exemption requirements in Article X.*

Possible Board options:

Option 1: One possible path to receive a letter of authorization for submission with a request for a temporary state license would be applicable only to medical cannabis cultivators who meet the requirements of Article X. Given the absence of a process of determining legal conforming use, this is the most practical approach. Medical cannabis cultivators may:

- 1) Submit a request for a Letter of Authorization to seek a Temporary State License to the County Executive Office by December 15, 2017 that includes all required letter of authorization content as specified in the State's Emergency cannabis regulations, and
- 2) Submit a sworn affidavit, under penalty of perjury, attesting to their qualification for the medical cannabis cultivation exemption in Article X of Chapter 35 on the county code of ordinances.
 - a) Affidavit must provide details and descriptions of the person who is engaged in medical cannabis cultivation, where that cultivation is occurring, the beginning date of medical cannabis cultivation at that site and the organizational descriptions that qualifies them for medical cannabis cultivation under State law as it existed on January 19, 2016.
 - b) Affidavit could also require that the applicant, upon request by the County, provide documentation as to its qualifications as a medical cannabis cultivator that meets the County's exemption requirements per Article X.

The County could explore other requirements or consequences should the applicant not be able to produce such documentation upon County request in a timely manner. Should the Board wish for staff to provide this path for medical cannabis cultivators, staff will return in December with final language, including additional requirements expected in the State's emergency regulations and specific request for direction from the Board to implement the Letter of Authorization process in the unincorporated area of the county.

Option 2: Another option is for staff to **not act** on the applications for State temporary licenses until the County has completed its own local ordinance, which will have an expected effective date of March 2018.

State Annual (non-temporary) Licenses

As noted above, State licensing authorities may, but are not required by statute, issue a temporary license. These temporary State licenses are conditional and are only able to be extended if individuals have submitted a complete application for the State's Annual License. If a state licensing authority refuses to issue or extend a temporary State license, there is not an appeal process.

The State of California is expected to begin taking applications for annual (non-temporary) cannabis licenses on January 2, 2018. At that time, applicants for annual state licenses can voluntarily submit a local license, permit or other authorization. Regardless of local documents submitted with applications for annual State licenses, State licensing authorities will notify the local jurisdiction of each application and, in accordance with Business and Professions Code section 26055, will ask the local jurisdiction if the applicant is compliant, or non-compliant, with local ordinances and regulations. If a local jurisdiction does not respond within sixty (60) business days, the state licensing authority will presume that the applicant is compliant with local ordinances and regulations and proceed with licensing.

Since the County will not consider cannabis licensing and permitting until February 2018 and the ordinances would not take effect until thirty (30) days after adoption and that any licensing or permitting of cannabis activities in the coastal zone would require Coastal Commission certification (estimated in the second quarter of 2019) there is a need to consider operational options during the three or four month transition period (approximately twelve to fifteen months in the coastal zone) between state applications becoming available and adoption and certification of local ordinances and regulations.

Staff has identified the following options for the transition period:

Inland and Coastal Area: Transition period (period from January 2, 2018 until the new County ordinance is effective, which is anticipated late March 2018)

- Option 1: Respond to the state licensing authority and inform the licensing authority that the applicant is not in compliance with local regulations since the new ordinance is not in effect (and therefore current prohibitions continue).
- Option 2: Do not respond to state licensing authority and after 60 business days allow the state license to go into effect. Local licensing and permitting would follow when ordinances become effective.

Coastal Areas only: Coastal Commission certification period (period from when the new County ordinance is effective inland, anticipated late March 2018, until certification by the Coastal Commission, which is anticipated June 2019)

- Option 1: Respond to the state licensing authority and inform the licensing authority that the applicant is not in compliance with local regulations since the new ordinance is not yet certified by the Coastal Commission.
- Option 2: Respond to the state licensing authority and inform the licensing authority about the proposed operation's compliance with the ordinance. Compliance would be determined by:
 - Completing a local application and site visit by local licensing and permitting staff that confirms compliance with local licensing and permitting requirements, or
 - Completing a local application and actively participating in a consultation process with planning or business licensing staff to assess compliance with the effective, but not operative, ordinances.
- Option 3: Do not respond to state licensing authority and after 60 business days allow the state license to go into effect. Local licensing and permitting would follow when ordinances become effective.

Given there is a 60 -day time period to respond to the State for the permanent licenses after January, there appears to be more time for the County to develop policy on a response. In December, staff will be seeking policy direction from the Board about how to proceed in responding to State licensing authorities during the period between the commencement of State licensing in January 2018 and the operative date of the County's ordinances in the inland and coastal zones.

AMORTIZATION AMENDMENT TO ARTICLE X OF CHAPTER 35 OF THE SANTA BARBARA COUNTY CODE

The Medical Marijuana Regulation and Safety Act (MMRSA) became effective on January 1, 2016, and established a comprehensive, state-wide regulatory structure for the cultivation and distribution of medical marijuana. In response to the MMRSA, the Board, by the adoption of Ordinance No. 4954 on January 19, 2016, added Article X, Medical Marijuana Regulations, to Chapter 35, Zoning, of the Santa Barbara County Code (collectively, "Article X"). As adopted, Article X prohibits the cultivation and delivery of marijuana except for two very limited exemptions. One exemption is for small, personal medicinal cultivation sites as allowed by State law. The other exemption applies to medical marijuana cultivation locations that were operating in compliance with State and local laws as of January 19, 2016. Article X provides that such operations are considered to be legal, nonconforming uses that can continue to cultivate marijuana.

Article X. Article X does not require existing legal, nonconforming cultivators of medical cannabis to either cease their operations or comply with any new regulations by a certain date. However, the recent changes in State law resulting from SB 94 will enable local jurisdictions to more effectively control and regulate existing medicinal cannabis activities as compared to the MMRSA. These recent changes included a number of requirements that pertain to the regulation of medical cannabis activities, as well as newly permissible non-medical cannabis activities, which previously either did not exist or were not enforced by the State. In addition, the County is considering adopting comprehensive regulations on medical and non-medical cannabis and currently has a draft environmental impact report studying various regulatory options. Thus, the Ad-hoc Advisory Subcommittee advised the Board to adopt, and, consequently, the Board directed staff to prepare, amendments to Article X to require that by a specific date, existing legal nonconforming cultivators of medical cannabis must either cease their cultivation activities or operate their cultivation activities in compliance with current State requirements and local ordinances that will result from the Cannabis Land Use Ordinance Amendments and Licensing Program.

Board Action on October 17, 2017. Staff prepared draft amendments to Article X based on direction from the Planning Commission and, on October 17, 2017, staff presented the Planning Commission's recommendations to the Board, regarding the Article X amendments. The Planning Commission recommended that—in addition to the elimination of the legal nonconforming status for existing medical cultivators, discussed above—the Board should adopt a procedure by which existing medical cultivators could obtain a determination regarding a medical cultivation site's compliance with Article X. However, after considering the staff report and public testimony, the Board:

- Took no action on the proposed ordinance amendment to Article X that would have (1) established a process to determine legal, nonconforming status of existing medical cannabis cultivation operations, and (2) provided that the current exemption from the prohibition on medical cannabis cultivation for legal, nonconforming locations that existed as of January 19, 2016, shall terminate on a certain date, and
- Directed County staff to return to the Board of Supervisors on November 14, 2017, with a revised ordinance that only addresses the termination of the current exemption from the prohibition on medical cannabis cultivation.

Revised Ordinance. The revised ordinance amendment that the Board requested at the October 17, 2017, hearing is included as Attachment C to this Board letter. The ordinance amendment would add language to Section 35-1003, Prohibited Acts and Exemptions, of Article X to provide that the current exemption from the prohibition on medical cannabis cultivation, for locations that existed as of January 19, 2016, if they were legal under State law as of that date, shall terminate:

- Six months after the operative date of the County ordinances that result from the Cannabis Land Use Ordinances and Licensing Program, or at a minimum of 18 months from the effective date of the amendment to Article X; or
- At a later date, provided the nonconforming operation can be permitted under the ordinance amendments that result from the Cannabis Land Use Ordinance Amendments and Licensing Program and the operator (1) has filed a complete application with the County to obtain the necessary permit(s) and local licenses, and (2) continues to comply with the restrictions on nonconforming uses.

Cannabis is an annual, dioecious, flowering herb, that completes its lifecycle within 12 months. Including this six month or longer period following the operative date of the new ordinances, or a minimum of 18 months from the effective date of this amendment to Article X, would give an operator of an existing, nonconforming cultivation location adequate time to either obtain the necessary State and local licenses, or, if licenses cannot be issued, sufficient time to recoup the operator's economic investment in the operation.

CEQA Exemption. Finally, the adoption of the proposed ordinance amending Article X would be exempt from environmental review pursuant to Section 15061(b)(3) of the State CEQA Guidelines. Section 15061(b)(3), the general rule exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment that the activity is not subject to CEQA. As explained further in Attachment B (Notice of Exemption), no significant environmental impacts would occur as a result of this ordinance amendment.

Performance Measure:

Not applicable

Contract Renewals and Performance Outcomes:

Not applicable

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

Narrative: Staff time and contracted services to support the development of possible regulations of the cannabis operations in unincorporated Santa Barbara County is included in the Fiscal Year 2017-18 Adopted Budget.

Key Contract Risks:

Not applicable

Staffing Impacts:

Legal Positions:

Not applicable

FTEs:

Special Instructions:

Attachments:

Attachment A – Article X Findings

Attachment B – Article X Notice of CEQA Exemption

Attachment C – Article X Ordinance Amendment

Authored by:

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cc: