



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: CEO
Department No.: 012
For Agenda Of: July 11, 2017
Placement: Departmental
Estimated Time: 90 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Ad Hoc Subcommittee Members
Supervisors Das Williams and Steve Lavagnino
Contact Info: Dennis Bozanich, Deputy County Executive Officer, 805-568-3400
SUBJECT: Status Report on the Ad Hoc Subcommittee on Cannabis Activities

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: NA

Recommended Actions:

That the Board of Supervisors:

- A. Receive a report on the status of the Board-appointed Ad Hoc Subcommittee on Cannabis Operations and its guidance to date on possible regulation;
- B. Direct staff to prepare and return to the Board with ordinance amendments to Chapter 35, Article X that:
 1. Establish a process for the determination of legal non-conforming status pursuant to County Code Section 35-1003.A.2 for existing medicinal cannabis cultivators; and
 2. Establish a date by which all legal non-conforming cultivation sites must either obtain County permits or cease operations.
- C. Provide other direction to staff; and
- D. 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.

Summary Text:

This agenda item provides the Board of Supervisors and public with an update on the work of the Ad Hoc Subcommittee on Cannabis Operations. Staff from Planning and Development, Agricultural Commissioner, Public Health and other departments providing resources and subject-matter expertise to policy development discussions in support of the Board-appointed Ad Hoc Subcommittee will be providing the updates. Staff will provide an update on the status of State and federal regulations, an

update on the cannabis registry, an update on the environmental and economic analysis, a summary of land use permitting and business licensing, and an analysis of health impacts. This update also provides the Board an opportunity to provide direction, as appropriate, on possible land use and business license regulations. Staff will return in September with more detailed policy options for the Board's review.

Background:

Update on State and Federal Regulations

Governor Brown signed Senate Bill (SB) 94 on June 27, 2017, as one of several budget "trailer" bills. SB 94 establishes a single system of administration at the State for both medical and recreational cannabis licensing activities. The approved bill makes significant changes to State law and amends numerous statutes to improve public safety, tax compliance, testing and packaging of cannabis products, and the collection of data related to driving under the influence. Attachment A is the State Senate's Floor Analysis of this bill that describes in more detail the numerous changes made to State statutes.

Status of the Ad Hoc Subcommittee on Cannabis Operations

The Ad Hoc Subcommittee has met 10 times for roughly an hour each time since March 2017 to discuss issues, the evolving State regulations, and local conditions. Attendance is limited to the two members of the Ad Hoc Subcommittee, their staff, and staff from the County Executive Office, County Counsel, Auditor-Controller, Sheriff, Public Health, Environmental Health, Agricultural Commissioner, and Planning & Development. In the weeks ahead it will be important for staff from some additional departments and agencies to become involved, including District Attorney, Fire, Air Pollution Control District, and Treasurer-Tax Collector.

The Ad Hoc Subcommittee convened two public town hall meetings to provide an overview to residents about possible regulation of cannabis operations and to allow residents to provide comments on what they would like to see included in any possible regulations. The town hall meetings occurred on April 25, 2017, in the Santa Barbara Planning Commission Hearing Room and on June 30, 2017, in the Santa Maria Board of Supervisors Hearing Room. About 150 people attended the first meeting with approximately 50 public speakers in Santa Barbara. In Santa Maria, approximately 100 people attended with 40 public speakers. Overall comments from speakers focused on a range of topics including prohibiting cannabis completely or in certain specific areas, the need to control odors, regulating and taxing the industry (but not too much), conducting enforcement against those operating outside of the law, and concerns about impacts to the environment and water resources.

In April, the Board adopted an ordinance establishing a cannabis registry program for past, current, and possible future non-personal cannabis operations in unincorporated Santa Barbara County. The purpose of the registry was to collect data on past, present, and future cannabis cultivation and related operations in the unincorporated area of the County and to inform future cannabis-related environmental and economic impact analyses. The registry closed on June 30, 2017. The registry received submissions from 534 individuals or entities. The data is self-reported by those registering and has not been verified.

A few preliminary findings in the data are listed below. Not all numbers total, due to small amounts of incomplete data. More analysis and additional findings will be reported in future updates.

- Past cultivators countywide = 240
- Current cultivators countywide = 216
- Future cultivators countywide = 506
- Current in Coastal Zone = 62
- Total current under 1,000 ft² = 55
- Total current over 10,000 ft² = 170
- Total current over 1 acre = 105
- Current # by Region-

- Carpinteria = 52
- All other South Coast = 38
- Buellton = 33
- Lompoc Valley = 58
- Orcutt/Geary/Santa Maria = 20
- Tepusquet = 21
- Total current acres = 396
- Total future acres = 1,126

Within the past couple of weeks the Ad Hoc Subcommittee has worked with staff to form five smaller working groups to begin formulating draft ordinance language or develop processes and required resources to respond to cannabis related operations in the County. The five working groups are:

- Land Use & Development Code Amendments facilitated by Dan Klemann;
- Business License facilitated by Dennis Bozanich;
- Tax Measure facilitated by Supervisor Lavagnino;
- Health Impacts facilitated by Dr. Charity Dean; and
- Enforcement Planning facilitated by Lieutenant Brian Olmstead.

The Ad Hoc Subcommittee and staff have developed a detailed schedule outlining major milestones for the working groups. (See Attachment B) The schedule estimates that staff would bring potential land use and development code amendments to regulate medical and nonmedical marijuana cultivation and other activities, potential business license ordinances, and potential actions on a tax measure, as well as the environmental impact report (EIR), to the Board of Supervisors on February 6, 2018. Prior to February 2018, the schedule includes two more status reports to the Board, one in mid-September and another in early November. The schedule also includes additional public meetings on the code amendments and the environmental review process required by CEQA.

Update on Development of Possible Land Use Regulations

The development of possible land use permitting standards would specify where cannabis-related business activities could occur and how those business activities should occur. The impacts of these zoning and permitting standards will be analyzed in the EIR. State statutes currently require a large number of conditions to be satisfied in order to operate a cannabis business. Local governments may impose additional conditions, and may prohibit cannabis businesses altogether. The Ad Hoc Subcommittee has provided the following general guidance to staff in the development of possible cannabis zoning and permitting regulations:

- No cannabis businesses in residential zones
- Outdoor personal grows (six plants or less) allowed in residential zones, pursuant to the personal use exemption in State law
- Multiple cultivation licenses on one premises would require a limit on how much of a site is converted from its previous agricultural use
- Minimum 600 foot (as measured from legal lot lines) setback from sensitive receptors
- Odor control required near a sensitive receptor
- Security infrastructure required
- Lighting restrictions required
- Permit notifications mailed to owners nearby and posted on permitted site

All of these provisions require further analysis in the environmental review process required by CEQA. Staff from Planning and Development, Agricultural Commissioner, Environmental Health, Fire, and Sheriff's Department staff, in consultation with Air Pollution Control District staff, must further analyze

these provisions as part of the development of a land use ordinance. A complete set of policy options will be brought to the Board in September.

Update on Development of Possible Business License Regulations

The development of possible licensing of one or more types of cannabis businesses would specify who is authorized by the County of Santa Barbara to conduct commercial cannabis operations and what types of operations in which they are allowed to engage. Currently, the Ad Hoc Subcommittee is considering issuing cultivation, non-volatile manufacturing, distribution, transportation, retail, and delivery license types consistent with the relevant State license types. State statutes also require fingerprinting, criminal background checks, and compliance with a number of public and consumer safety requirements. The County could choose not to issue one or more types of cannabis business licenses; however, unless the County's current moratorium on nonmedical cannabis activities is followed up with regulations or a long-term prohibition, once the moratorium expires in 2019 nonmedical cannabis activities within the County could be licensed by the State. The Ad Hoc Subcommittee has provided the following general guidance to staff in the development of possible cannabis related business licensing:

- Live Scans for every employee
- Promote vertical integration
- Licenses issued by Treasurer-Tax Collector
- Limited retail licenses are okay
- Connect delivery to brick and mortar retail (if deliveries are allowed at all)
- Consider license caps
- Allow multiple licenses per premises for cultivation
- Production, retail, and/or deliveries require a weighing device permit
- Determine whether edible cannabis products should be available through retail licensees

Update on Efforts to Address the Health Impacts

Public Health and Behavioral Wellness departments will develop a coordinated plan to monitor and measure the health impacts of cannabis legalization in Santa Barbara County. The plan will include surveillance, data collection, community education, healthcare provider education, and prevention efforts.

Update on Possible Fees and Taxes

The Ad Hoc Subcommittee has provided general guidance to staff that voter approval of some type of cannabis tax measure will be necessary for local cannabis business licensing and land use permitting to begin in Santa Barbara County. A wide variety of tax measures have been passed in other jurisdictions. Comments made at the town hall meetings indicate general support for reasonable taxes on cannabis operations. The Ad Hoc Subcommittee would like to develop a variety of options for tax rates from the economic analysis now getting underway with the closure of the registry. The taxes would not need to go directly to enforcement of licensed/permitted cannabis operations, since fees would be collected from operators for licensing, permitting, and compliance checks. Tax proceeds could be appropriated to the General Fund and help defray costs of mitigating public health, safety and environmental impacts related to cannabis. It is anticipated that the tax measure would be placed on the June 2018 ballot.

Legal Non-Conforming Use Determinations

The Ad Hoc Committee identified a need to address the legal non-conforming status of existing medicinal cannabis cultivation sites pursuant to Section 35.1003.A.2 of the County Code (Chapter 35, Article X). Having a process in place for making determinations of legal non-conformance would provide clarity in on-going enforcement cases and would potentially assist existing cultivators in applying for a State license. However, the Subcommittee recommends that such uses not be allowed to continue indefinitely, and should either comply with the new County regulations, once adopted by the Board, or cease operations. Having a “sunset date” for existing legal non-conforming uses would require all existing cannabis cultivation sites to come into conformance with the County’s new regulations or otherwise cease operations.

Therefore, staff recommends that your Board direct staff to prepare amendments to Chapter 35 (zoning regulations), Article X of the County Code to establish a process for the determination of legal non-conforming status for existing medicinal cannabis cultivators, and to establish a date by which all legal nonconforming cultivation sites must either obtain County permits or cease operations. The zoning ordinance amendments would be presented to the County Planning Commission for a recommendation, and then subsequently brought back to your Board for consideration.

Previous Actions

Between 1996 and 2015, voters and the State legislature took a series of actions to allow individuals, then collectives and cooperatives, to cultivate medical marijuana.

In 2011, the County prohibited medical marijuana dispensaries in all zone districts.

In 2016 and 2017, the State of California took major steps to increase regulation of medical marijuana across the State of California. State agencies continue to develop regulations and anticipate accepting applications to issue State licenses starting in January 2018. Failure to comply with the regulations will prevent initial licensure and once a cannabis activity has received a State license failure to continue to comply with the State regulations could lead to revocation of the license and/or civil and criminal penalties. Additionally, local government retains the ability to regulate or prohibit medical marijuana activities separately or completely.

In January 2016, the Board of Supervisors prohibited medical marijuana cultivation in all land use zones except for (1) Limited personal medical cultivation of up to 100 square feet, and (2) Operations which were in existence prior to January 19, 2016, and compliant with California State law and local zoning ordinances.

On November 8, 2016, California voters approved Proposition 64 (Adult Use of Marijuana Act) which decriminalized possession of cannabis for personal use and established a State regulated cannabis business licensing system. Proposition 64 allows local jurisdictions to prohibit or enforce local regulations of cannabis related commercial activities.

In February 2017, the Board received a report on the impacts of voter approval of Proposition 64 on the cannabis industry, the Adult Use of Marijuana Act. The Board directed staff to return with an urgency ordinance prohibiting cultivation and other cannabis activities in unincorporated Santa Barbara County while staff develops an ordinance to prohibit or regulate cannabis. The Board also appointed Supervisors Lavagnino and Williams as an Ad Hoc Subcommittee on Cannabis Activities.

On April 4, 2017, the Board approved an urgency ordinance to prohibit all non-medial (recreational) cannabis operations in the unincorporated area of Santa Barbara County. The urgency ordinance will expire in April 2019. The purpose of the prohibition was to provide the County with time to consider, develop, and approve local regulations or a permanent prohibition.

On April 11, 2017, the Board also approved an ordinance establishing a limited term non-personal cultivation and related activities registry program. The purpose of the registry program was to collect data on past, current, and planned cannabis cultivation or related operations and to inform future cannabis studies including environmental and economic impact studies. The registry closed on June 30, 2017, as required by the ordinance.

Performance Measure:

None

Contract Renewals and Performance Outcomes:

NA

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:

NA

Staffing Impacts:

Legal Positions:

FTEs:

Special Instructions:

None

Attachments:

- A – Senate Bill 94 Senate Floor Analysis
- B – Cannabis Ad Hoc Sub-Committee Schedule

Authored by:

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