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**Contra
Costa
County**

To: Board of Supervisors
 From: John Kopchik, Director, Conservation & Development Department
 Date: December 15, 2015

Subject: California Medical Marijuana Regulation and Safety Act (MMRSA) Update

RECOMMENDATION(S):

A. ACCEPT presentation by Jolena Voorhis, Executive Director of the Urban Counties Caucus, on the California Medical Marijuana Regulation and Safety Act (MMRSA) and the potential for an initiative to be placed on the November 2016 state-wide ballot related to recreational use of marijuana.

B. DIRECT the Department of Conservation and Development, in consultation with County Counsel, to take either of the following actions with regard to medical marijuana regulation:

1. PREPARE and present to the Board an interim urgency ordinance prohibiting the cultivation and delivery of medical marijuana in unincorporated areas of Contra Costa County. Adoption of an interim ordinance by the Board would provide staff the time to analyze and provide a future report to the Board on the following long-term options in response to the MMRSA:

a. Potential adoption of a permanent land use ordinance that would prohibit the cultivation and/or delivery of medical marijuana throughout the unincorporated areas of the County; or

b. Potential adoption of a permanent land use ordinance to establish County requirements that would apply to any or all of the following commercial medical marijuana activities: cultivation, delivery, dispensing, manufacturing, distribution, and/or transport of medical marijuana; or

c. The option of adopting no new regulations in response to the MMRSA.; OR

APPROVE

OTHER

RECOMMENDATION OF CNTY
ADMINISTRATOR

RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **12/15/2015** APPROVED AS
RECOMMENDED

OTHER

Clerks Notes: See Clerk's Addendum

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
 Candace Andersen, District II
 Supervisor
 Mary N. Piepho, District III Supervisor
 Karen Mitchoff, District IV Supervisor
 Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 15, 2015

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Ruben Hernandez,
925-674-7785

By: June McHuen, Deputy

cc:

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2. TAKE NO ACTION in response to the MMRSA. The result of taking no action would be the following:

- a. Beginning March 1, 2016, the State would be the sole entity authorized to license the cultivation of medical marijuana in the unincorporated areas of the County.
- b. Mobile deliveries of medical marijuana would be allowed in the unincorporated areas of the County.
- c. Medical marijuana dispensaries, which are currently prohibited under the County Ordinance Code, would continue to be prohibited in the unincorporated areas of the County.
- d. The manufacturing, distribution, and transport of medical marijuana would not be authorized in the unincorporated areas of the County.

FISCAL IMPACT:

No long term fiscal impact if the Board wishes to strengthen the ordinance and prohibit the cultivation and delivery of medical marijuana. The cost of preparing an urgency ordinance is expected to be around \$5,000. The cost of preparing the ordinance depending of the complexity of the proposed permanent ordinance, it is estimated to be \$20,000 to \$30,000. If the Board of Supervisors decides to adopt an ordinance to license the cultivation of medical marijuana, under SB 643, the County could levy fees and taxes for the cultivation of medical marijuana, resulting in potential additional revenue source for the County General Fund.

BACKGROUND:

Existing State Medical Marijuana Laws and County Ordinance

Ms. Jolena Voorhis, Executive Director of the Urban Counties Caucus, will be making a presentation to the Board on the California Medical Marijuana Regulation and Safety Act (MMRSA) and the potential for an initiative to be placed on the November 2016 state-wide ballot related to recreational use of marijuana. A copy of her slides is attached. The remainder of this Board order pertains only to the potential regulation of medical marijuana in the unincorporated areas of the County. It does not discuss the issue of recreational marijuana, which, as of this date, is still illegal in California.

In 1996, voters approved Proposition 215, the Compassionate Use Act. The purpose of the Compassionate Use Act is to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited circumstances. The Compassionate Use Act (Health and Safety Code (HSC) § 11362.5) established a limited defense for qualified patients and their primary caregivers to the crimes of possessing or cultivating marijuana. A “qualified patient” is a person who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. (HSC § 11362.5(d).) A “primary caregiver” is the individual designated by a qualified patient who has consistently assumed responsibility for the housing, health, or safety of that qualified patient. (HSC § 11362.5(e).) A primary caregiver is authorized to possess or cultivate marijuana for the personal medical purposes of a qualified patient upon the written or oral recommendation or approval of a physician. (HSC § 11362.5(d).)

In 2003, the Legislature enacted the Medical Marijuana Program. (HSC §§ 11362.7-11362.83.) The Medical Marijuana Program established regulations and procedures regarding the issuance of identification cards to patients qualified to use medical marijuana. The Medical Marijuana Program also established a defense to criminal liability for the collective or cooperative cultivation of marijuana. (HSC § 11362.775.) Medical marijuana dispensaries began opening throughout the state as medical marijuana collectives under the Compassionate Use Act and the Medical Marijuana Program.

In 2006, the Board of Supervisors adopted an urgency interim ordinance prohibiting the establishment of medical marijuana dispensaries in the unincorporated area of Contra Costa County. The urgency ordinance was adopted to give staff and the County’s Medical Marijuana Task Force time to study and make recommendations regarding the regulation of medical marijuana dispensaries. The interim ordinance was renewed twice in 2006 as the issue continued to be studied.

In 2008, the Board of Supervisors adopted Ordinance No. 2008-05 to prohibit the establishment of medical marijuana dispensaries in the unincorporated area of Contra Costa County. The ordinance added section 82-4.292 to the Ordinance Code to define a “medical marijuana dispensary” as follows:

“Medical marijuana dispensary” means any facility or location, stationary or mobile, where marijuana is made available, sold, transmitted, given, distributed to, or otherwise provided by or to a primary caregiver, qualified patient, or a person with an identification card, in accordance with the state Compassionate Use Act of 1996 (Health and Safety Code section 11362.5). A “medical marijuana dispensary” does not include the following uses, as long as their location is otherwise regulated by this code or applicable law and as long as their use complies strictly with applicable law including but not limited to Health and Safety Code section 11362.5: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

The ordinance also added section 82-2.022 to the Ordinance Code. Section 82-2.022 states:

The following land uses are prohibited at all locations in all zoning districts in the County:

- (a) Any use that violates state or federal law.
- (b) Medical marijuana dispensary.

Since 2008, Department of Conservation and Development staff has interpreted subsection (a) of section 82-2.022 to completely prohibit land uses associated with medical marijuana, including cultivation. Under the federal Controlled Substances Act, it is illegal to manufacture, distribute, dispense, or possess any controlled substance, including marijuana. However, in 2014 Congress barred the use of federal funds to prevent states from implementing medical marijuana laws. Section 538 of the Consolidated and Further Continuing Appropriations Act of 2015 prohibits the federal Department of Justice from expending funds in connection with the enforcement of any law that prevents California and several other states “from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” With the recent adoption of MMRSA, continued reliance on subsection (a) of section 82-2.022 to prohibit cultivation of medical marijuana may not have the same effect as it did in 2008.

Medical Marijuana Regulation and Safety Act

The Medical Marijuana Regulation and Safety Act (MMRSA) was approved by the Governor and filed with the Secretary of State on October 9, 2015. The MMRSA consisted of three bills: AB 243, AB 266, and SB 643. The purpose of the MMRSA is to regulate the cultivation, dispensing, manufacturing, distribution, and transportation of medical marijuana. Under the MMRSA, to conduct any of these activities, a person or business needs a license from the state. A person or business will also need a local permit to conduct any of these activities, since the MMRSA expressly allows counties and cities to regulate these activities. A county or city may establish a permitting program to allow any or all of these activities. A county or city may also prohibit the cultivation and/or deliveries of medical marijuana, and may effectively prohibit other commercial medical marijuana activities by not establishing a permitting program for those activities.

AB 243 established a regulatory and licensing structure for indoor and outdoor cultivation sites. “Cultivation” means “any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.” (Business and Professions Code (BPC) § 19300.5(l).) AB 243 placed the California Department of Food and Agriculture in charge of licensing and regulating cultivation sites, and created a Medical Cannabis Cultivation Program within the department.

AB 243 established standards for determining when persons and businesses need to obtain a State license to cultivate marijuana. AB 243 established 10 different types of cultivation licenses, which will be issued depending on the size, type, and location of medical marijuana cultivation. (BPC § 19300.7.) AB 243 also established two exemptions from the cultivation license requirement for qualified patients and primary caregivers that meet certain requirements.

Qualified Patient Exemption. A qualified patient who cultivates marijuana is not required to obtain a State license if the area he or she uses to cultivate marijuana does not exceed 100 square feet and if he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. (HSC § 11362.777(g).)

Primary Caregiver Exemption. A primary caregiver who cultivates marijuana is not required to obtain a State license if the area he or she uses to cultivate marijuana does not exceed 500 square feet and if he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients, and receives no remuneration other than reasonable costs and expenses. (HSC § 11362.777(g).)

Commercial Medical Marijuana Activities (AB 266 and SB 643)

AB 266 and SB 643 established regulations for commercial medical marijuana activities. “Commercial cannabis activity” includes the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product. Commercial cannabis activity does not include activity by qualified patients who only use the medical cannabis for personal medical use and by primary caregivers that do not receive remuneration other than for reasonable costs and expenses and do not provide medical cannabis to more than five qualified patients. (BPC § 19319.)

State licenses are expected to be issued starting January 1, 2018. Any facility operating in compliance with local zoning ordinances and other state and local requirements may continue its operations until its application for a State license is approved or denied. (BPC § 19321(c).)

Differences between commercial medical marijuana activities

The MMRSA distinguishes among the delivery, dispensing, distribution, and transport of medical marijuana:

Dispensing. “Dispensing” means “any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.” (BPC § 19300.5(o).) “Dispensary” means “a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.” (BPC § 19300.5(n).)

Delivery. “Delivery” means the commercial transfer of medical cannabis or products from a dispensary to a primary caregiver or qualified patient, or a testing laboratory. (BPC § 19340 (m).)

Distribution. “Distribution” means “the procurement, sale, and transport of medical cannabis and medical cannabis products” between entities that have a State license. (BPC § 19340 (p).)

Transport. “Transport” means “the transfer of medical cannabis or medical cannabis products from the permitted

business location of one licensee to the permitted business location of another licensee.” for the purposes of conducting commercial cannabis activity. (BPC § 19340 (am).)

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County Regulation of Commercial Medical Marijuana Activities

The MMRSA affirmed the authority of counties and cities to regulate the commercial medical marijuana activities described above through the adoption of land use ordinances.

Local Regulation of Cultivation. The County may regulate or ban the cultivation of medical marijuana. If the County does not ban cultivation or establish cultivation regulations by March 1, 2016, the State will be the sole licensing authority for medical marijuana cultivation applicants in the unincorporated area of the County. (H&S 11372.777(c)(4).)

Local Regulation of Mobile Deliveries. Deliveries by dispensaries are permitted with a State license unless a city or county explicitly prohibits delivery of “medical marijuana” and “medical cannabis products.” (BPC §§ 19340(a), 19340(b)(1).) However, even if a local jurisdiction prohibits deliveries within its boundaries, the jurisdiction may not take any action to prevent a person with a State license from carrying medical marijuana on public roads located in the jurisdiction. (BPC § 19340(f).)

Local Regulation of Other Commercial Activities. Under the MMRSA, in order to obtain a State license for dispensing, distribution, transport, or manufacturing activities, a person must also have a local license. If there is no local license or permit, or ordinance providing for such, then a marijuana business may not obtain a State license, and may not operate a business performing commercial cannabis activity. (BPC § 19320(a).)

Taxes and Fees

Under AB 266, the County retains the power to assess taxes (with voter approval) and fees on facilities that are licensed to engage in commercial cannabis activity and the business activities of the licensees. (BPC § 19320 (d).) SB 643 further recognizes local authority to charge fees and to levy taxes on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee. (BPC § 19348.)

Options

As stated in the recommendation section above, the Board may wish to consider the following options for responding to the MMRSA.

Option 1. Option 1 is to prepare an interim urgency ordinance prohibiting the cultivation and delivery of medical marijuana. An urgency ordinance becomes effective immediately upon adoption. This would provide staff the time to analyze and provide a future report to the Board on the following long-term options in response to the MMRSA:

- a. Potential adoption of a permanent land use ordinance that would prohibit the cultivation and/or mobile delivery of medical marijuana throughout the unincorporated areas of the County.
- b. Potential adoption of a permanent land use ordinance to establish County requirements that would apply to any or all of the following commercial medical marijuana activities: cultivation, mobile deliveries, dispensing, manufacturing, distribution, and/or transport of medical marijuana.
- c. The option of adopting no new regulations in response to the MMRSA.

If the Board adopts an interim ordinance, it would be effective for 45 days from the date of adoption under Government Code section 65858. To adopt an interim ordinance, the Board must make findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of permits or other entitlements would result in that threat to the public health, safety, or welfare. The Board may extend the interim ordinance for 10 months and 15 days after a noticed public hearing, and may extend it a second time for one year

after notice and a hearing. No more than two extensions may be adopted. Adoption of the ordinance and any extensions requires a four-fifths vote. In addition, ten days before the ordinance expires, and before any extension expires, the Board must issue a written report describing the measures taken to alleviate the conditions that led to the adoption of the ordinance.

Option 2. Option 2 is to take no action in response to the MMRSA. The result of taking no action would be the following:

- a. Beginning March 1, 2016, the State would be the sole entity authorized to license the cultivation of medical marijuana in the unincorporated areas of the County.
- b. Delivery of medical marijuana from dispensaries to patients or laboratories would be allowed in the unincorporated areas of the County.
- c. Medical marijuana dispensaries, which are currently prohibited under the County Ordinance Code, would continue to be prohibited in the unincorporated areas of the County.
- d. The manufacturing of medical marijuana products and the distribution and transport of medical marijuana would not be authorized in the unincorporated areas of the County. By not establishing a permitting program for these activities, the County would effectively be prohibiting these activities.

CONSEQUENCE OF NEGATIVE ACTION:

If no action is taken by the Board, the following may occur: 1) the County would forego its ability to be a licensing agent for the cultivation of medical marijuana if an ordinance providing for the licensing of marijuana cultivation is not adopted by March 1, 2016; 2) marijuana dispensaries would remain prohibited; 3) marijuana cultivation might become activities permitted and licensed by the State.

CLERK'S ADDENDUM

Speakers: Patty Hoyt, San Ramon Valley Alcohol Policy Coalition; Ralph Hoffman, resident of Walnut Creek; Douglas Dunn, resident of Antioch. Adoption of an interim ordinance by the Board would provide staff the time to analyze and provide a future report to the Board on the long-term options in response to the MMRSA. The Board indicated a preference to begin with the most restrictive policy possible, that could be amended at a later date if desired. ACCEPTED the presentation; DIRECTED the Department of Conservation and Development, in consultation with County Counsel, to prepare and present to the Board an interim urgency ordinance prohibiting the cultivation and delivery of medical marijuana in unincorporated areas of Contra Costa County.

ATTACHMENTS

MMRSA Webinar

Medical Marijuana Legislation Briefing_Urban Counties Caucus

Text of AB 243

Text of AB 266

Text of SB 643