



**Contra
Costa
County**

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: March 15, 2016

Subject: Hearing on Adoption of Interim Ordinance No. 2016-10 Extending the Prohibition of the Cultivation and Delivery of Medical Marijuana

RECOMMENDATION(S):

1. OPEN the hearing, ACCEPT public testimony, and CLOSE the hearing.
2. ADOPT Ordinance No. 2016-10, extending for a period of 10 months and 15 days, an urgency interim ordinance prohibiting the cultivation of medical marijuana and the delivery of medical marijuana, with a possible exemption for personal medical marijuana cultivation by qualified patients and caregivers.
3. FIND that the adoption of the interim ordinance is exempt from the California Environmental Quality Act (CEQA) per section 15061(b)(3) of CEQA guidelines.
4. DIRECT staff to prepare a permanent ordinance regulating medical marijuana activities.
5. DIRECT the Director of the Department of Conservation and Development to file the Notice of Exemption (NOE) with the County Clerk.

FISCAL IMPACT:

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **03/15/2016** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes: See Addendum

VOTE OF SUPERVISORS

AYE: Candace Andersen, District II
Supervisor

Mary N. Piepho, District III
Supervisor

Karen Mitchoff, District IV
Supervisor

Federal D. Glover, District V
Supervisor

NO: John Gioia, District I
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: March 15, 2016

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

By: June McHuen, Deputy

Contact: Ruben Hernandez, (925)
674-7785

cc:

The cost of preparing a permanent ordinance regarding the regulation of medical marijuana is estimated to be \$20,000 to \$30,000.

BACKGROUND:

On December 15, 2015, the Department of Conservation and Development provided the Board with an update on the approval of the Medical Marijuana Regulation and Safety Act (MMRSA) which was signed into law by the Governor on October 9, 2015. At that hearing, the Board directed the Department of Conservation and Development to prepare an urgency interim ordinance prohibiting the cultivation and delivery of medical marijuana in order to provide staff time to study the impacts of permanent prohibition or regulation relating to the cultivation and delivery of medical marijuana. Adoption of the interim urgency ordinance was also required in order to prevent the possibility of the County relinquishing licensing authority to the state, as provided for in the Health and Safety Code, Section 11372.777(c)(4), which would have given the state sole licensing authority for marijuana cultivation if a local jurisdiction had not adopted regulations or expressly prohibited marijuana cultivation by March 1, 2016. (The March 1, 2016 deadline of the MMRSA was removed from the MMRSA with approval of Assembly Bill 21 (2016), which was signed by the Governor on February 3, 2016, the day after the Board approved the urgency interim ordinance.)

At the direction of the Board, on February 2, 2016, the Department of Conservation and Development presented for adoption Ordinance No. 2016-04, an Urgency Interim Ordinance prohibiting the cultivation and delivery of medical marijuana in the unincorporated area of the County. At that hearing, public testimony was provided in support of an ordinance banning the cultivation and delivery of medical marijuana as well as testimony in opposition to the ban. After accepting public testimony, the Board members discussed the urgency ordinance, the issue of medical marijuana regulation or prohibition, and identified various areas of concern. The issues raised by the Board included concerns regarding the amount of time needed for preparation of a permanent ordinance, the impact of County regulation on cultivation of medical marijuana for personal use, and the need for additional information on how other jurisdictions are dealing with the approval of MMRSA. After discussing the proposed urgency interim ordinance, and other issues related to the prohibition and regulation of medical marijuana, the Board members provided staff with direction and approved the 45 day urgency interim ordinance (Ordinance No. 2016-04) prohibiting the cultivation and delivery of medical marijuana in the unincorporated area of the County.

Extension of Urgency Ordinance

At the February 2, 2016 hearing on adoption of the 45 day urgency interim ordinance (Ordinance No. 2016-04), Board members expressed concerns regarding adoption of a future ordinance extending the urgency ordinance an additional 10 months and 15 days. Staff explained to the Board that the 10 month 15 day extension is the amount of time provided by statute for extension of an urgency interim ordinance (Government Code Section 65858) and that the 10 month 15 day extension can be repealed prior to the expiration of the urgency ordinance. Therefore, if the Board were to approve the current ordinance (Ordinance No. 2016-10) extending the urgency ordinance 10 months, 15 days

to January 30, 2017, the urgency ordinance could be repealed any time prior to the January 30, 2017 expiration date, for instance, upon the adoption of a permanent ordinance addressing the cultivation and delivery of medical marijuana.

Inter-Departmental Meeting on MMRSA

On March 3, 2016, an inter-departmental meeting was held among various County Departments and agencies who may have a stake in the prohibition or regulation of the cultivation and delivery of medical marijuana. The invitees to the meeting were based on the members of the 2006 Medical Marijuana Dispensary Task Force which was created to provide the Board with input on the issue of medical marijuana dispensaries in 2006.

Staff from the Sheriff's Office, District Attorney's Office, Health Services (Behavioral Health, Environmental Health and Public Health), County Administrator's Office, Agricultural Department, County Counsel and Department of Conservation and Development (DCD) attended the meeting. A copy of the Proposed Work-Program for a Permanent Ordinance on Medical Marijuana, information on what other jurisdictions are doing and the February 2, 2016 Board Order were provided to attendees.

The Medical Marijuana Regulation and Safety Act, urgency interim ordinance, local response to passage of MMRSA and the Board's direction as provided at the February 2, 2016 hearing were discussed at the meeting. DCD staff appreciates the time and expertise contributed by these departments and recommends including additional input from them as a permanent ordinance is formulated.

Below please find a brief summary of some helpful information gathered by DCD staff at the March 3, 2016 Inter-Departmental meeting on medical marijuana cultivation and delivery:

- Emerging issues related to marijuana abuse, including:
 - New studies in Colorado indicate significant impacts;
 - Marketing of edible marijuana products to children;
 - Increase in popularity of concentrated, more harmful marijuana products, especially among teens;
 - Illegal processing of concentrated marijuana products resulting in safety hazards (eg. Walnut Creek condominium explosion)
- Participants from the Health Department indicated that medical marijuana can play a meaningful role in the treatment of certain conditions.
- A ballot measure to legalize recreational use of marijuana is likely to be on November Ballot and early polling indicates a measure is likely to pass. Impacts of the legalization of marijuana for recreational use on current medical marijuana regulation unknown. There is some rationale for delaying detailed, comprehensive work on regulations until other results are known.
- Current legal structure not prepared or equipped to address issues related to marijuana use, such as smoking in public, driving under the influence, etc..

- Aspects of marijuana cultivation could trigger various permitting requirements for County Department of Agriculture, Weights & Measures.
- With respect to the urgency interim ordinance some participants felt a partial exemption to prohibition on cultivation for personal use was reasonable and appropriate while others felt the current prohibition should remain in effect through the November election.

Following the meeting, DCD staff invited representatives from the Sheriff and District Attorney to provide a short summary of their thoughts and the following information was received.

Comments Provided by the Office of Sheriff David O. Livingston

The Sheriff's Office indicated that they would support a continuation of the urgency interim ordinance as adopted by the Board on February 2, where all cultivation and delivery are prohibited. This would extend the ban past November, when legalization of the recreational use of medical marijuana will likely be on the ballot, which could result in significant changes on the status of marijuana in the state.

Comments provided by Mark Peterson, District Attorney

The Contra Costa County Office of the District Attorney supports the urgency interim ordinance continuing the county's well-reasoned ban on the cultivation and delivery of medical marijuana and requests that the urgency interim ordinance remain in effect through the November, 2016, election without exception.

The anticipated ballot initiatives to legalize recreational marijuana, which have the majority of voter support in polling, will significantly reduce the need for regulations specific to medical marijuana and will legalize the cultivation of marijuana for personal use with varying restrictions. Given that sweeping reforms may take place within months with restrictions that cannot be anticipated, modifications or exceptions to the ban on cultivation or delivery at this time will result in the needless utilization of resources within multiple County agencies to implement and enforce those short-lived modifications.

Local Regulation and State Laws

At the February 2, 2016 hearing on the adoption of the urgency interim ordinance, the Board requested that staff provide a survey of how other jurisdictions are dealing with MMRSA as well as examples of model ordinances. A chart identifying current regulation of medical marijuana for all cities within Contra Costa County, in addition to the adjacent counties of Alameda, Solano and San Joaquin, is attached.

MMRSA and AB 21 affirmed the authority of counties and cities to regulate or ban all categories of cultivation, dispensing, manufacturing, distribution, and transportation of medical marijuana.

MMRSA also established two broad categories of state licenses for medical marijuana: commercial licenses and Medical Cannabis Cultivation Program licenses. Commercial licenses will regulate commercial cultivation, dispensing, manufacturing, distribution,

and transportation of medical marijuana.

Medical Cannabis Cultivation Program licenses will apply to some qualified patients or primary caregivers. Under MMRSA, if a qualified patient or primary caregiver intends to cultivate medical marijuana but is exempt from the State's commercial licensing requirements, the qualified patient or primary caregiver will be required to obtain a State license under the State's Medical Cannabis Cultivation Program. Under the MMRSA, in order to obtain a State license under the Medical Cannabis Cultivation Program, a person must also have a local license, permit, or other entitlement. If a person does not obtain a local license, permit, or other entitlement, the person may not cultivate medical marijuana.

The Medical Cannabis Cultivation Program licensing requirement will not apply to a qualified patient if the area he or she uses to cultivate medical marijuana for his or her personal medical use does not exceed 100 square feet, and does not apply to a primary caregiver if the area he or she uses to cultivate medical marijuana for the personal medical use of no more than five specified qualified patients does not exceed 500 square feet. Under the MMRSA, if a person is exempt from the Medical Cannabis Cultivation Program licensing requirement, the person is also exempt from the requirement to obtain a local license, permit, or other entitlement.

MMRSA is separate from the Compassionate Care Act of 1996 and the Medical Marijuana Program of 2003. The Compassionate Care Act established a limited defense for qualified patients and primary caregivers to the crimes of possessing or cultivating marijuana. The Medical Marijuana Program established regulations and procedures regarding the issuance of identification cards, and clarifies what is a "reasonable" amount of marijuana for personal medical use. Under the Medical Marijuana Program, a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient, and may also maintain no more than six mature or 12 immature marijuana plants per qualified patient, unless a doctor recommends a greater amount necessary for the patient's medical needs

As the chart shows, most jurisdictions have adopted urgency ordinances or permanent ordinances banning the cultivation and delivery of medical marijuana, while others have indicated that the cultivation and delivery of medical marijuana is not a permitted use within their jurisdiction.

In terms of cultivation for personal medical use, there is some variety in how jurisdictions have dealt with this issue. Many jurisdictions, have indicated that all cultivation is prohibited, including cultivation for personal use. Some jurisdictions have exempted the cultivation of medical marijuana for personal use.

Some jurisdictions, such as the cities of Concord and Pleasant Hill, have adopted ordinances that place restrictions on personal cultivation including limiting cultivation to enclosed areas not visible to the general public (Concord), restricting the number of plants (3) that can be grown outdoors and requiring that any plants grown outdoors meet

a minimum setback from the property line (5-feet), and not be visible from a public right-of-way, or adjacent parcels (Pleasant Hill). Section V of Ordinance No. 2016-10.

Personal Medical Marijuana Cultivation Exemption

The issue of personal cultivation of medical marijuana was a topic of discussion by the Board members at the February 2, 2016 hearing. At that hearing, the Board members had questions regarding the status of personal cultivation and expressed concern regarding future prohibition of cultivation for personal use. Staff informed the Board that based on recent changes in state law, and federal enforcement of marijuana law, the status of cultivation of medical marijuana by qualified patients or caregivers in Contra Costa County was unsettled, but that upon adoption of the urgency interim ordinance all cultivation would be prohibited. Some of the Board members expressed concern with the prohibition of medical marijuana cultivation for personal use and directed staff to include an option for exempting the cultivation of medical marijuana for personal use in the next extension of the urgency interim ordinance.

To provide the Board with the requested option, the urgency ordinance currently being considered (Ordinance No. 2016-10), prohibiting the cultivation and delivery of medical marijuana, includes an exemption (Section V) for the cultivation of medical marijuana for personal use. The exemption would allow qualified patients and caregivers to cultivate up to 6 plants within a maximum area of 100 square feet of growing area on a legal parcel on which the qualified patients or caregiver resides and requires that the plants are not visible to the public, or from neighboring properties, and do not result in any negative impact to neighboring properties such as noise, heat, dust, glare, noxious gases, odor, smoke, traffic, loitering, or other impacts, or result in hazardous conditions due to the use or storage of materials, processes, products, or wastes. The proposed exemption is based on similar exemptions used by other jurisdictions throughout the State, and is based on plant and square footage thresholds contained in the different State laws discussed above. The proposed exemption in the ordinance for qualified patients matches the 6 plant/100 square foot thresholds in State laws for qualified patients. The proposed exemption in the ordinance for primary caregivers is lower than the 30 plant/500 square foot thresholds in State laws for primary caregivers. The proposed urgency ordinance establishes the same limits for qualified patients and primary caregivers (6 plants/100 square feet) in order to keep the exemption small until the issue can be studied further to determine limits and safeguards appropriate for a permanent ordinance.

If the Board determines that the exemption for patients or caregivers is premature at this point, Section V of the urgency ordinance can be removed completely or modified in a manner that the Board deems acceptable.

Schedule and Steps for Preparation of Permanent Ordinance

In order to provide the Board with an idea of the schedule and steps for preparation of a permanent ordinance addressing the cultivation and delivery of medical marijuana, staff

prepared a 2016 MMRSA Work Program. The Work Program identifies the timing of the steps that need to be taken prior to presenting the Board with a permanent ordinance including meeting with staff from other departments, meeting with stakeholders and community groups, presenting the ordinance to the County Planning Commission, etc. The Work Program could be compressed or extended based on the Board's direction, but it provides a general idea of the timing for adoption of a permanent ordinance. The work program is attached.

Conclusion

Ordinance No. 2016-10 would extend the previous urgency interim ordinance prohibiting the cultivation and delivery of medical marijuana in the unincorporated area of the County an additional ten months and 15 days, to January 30, 2017. Per the direction of the Board, the ordinance also includes an exemption for personal cultivation of medical marijuana by qualified patients and caregivers. Adoption of this ordinance would not prevent the Board from approving a permanent ordinance addressing the cultivation and delivery of medical marijuana prior to the expiration of the urgency ordinance, which could be presented to the Board by this summer based on the attached work plan and based on the Board's direction at the conclusion of today's hearing.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board does not adopt the interim ordinance, the previous urgency interim ordinance prohibiting the cultivation and delivery of medical marijuana would expire and applications for the cultivation and delivery of medical marijuana could potentially be submitted to the Department of Conservation and Development under the Medical Marijuana Regulation and Safety Act.

CLERK'S ADDENDUM

Speakers: Youth Leadership for a Healthier Richmond: Jacky F., Jacqueline G., Ronvey S.; Roger Morgan, founder Take Back America Campaign (handouts attached). Jaime Rich and Danielle Butler from the Center for Human Development left written commentary for the Board's consideration (attached). CLOSED the hearing; ADOPTED Ordinance No. 2016-10, extending for a period of 10 months and 15 days (January 30, 2017), an urgency interim ordinance prohibiting the cultivation of medical marijuana and the delivery of medical marijuana, as amended today to remove the exemption for personal medical marijuana cultivation by qualified patients and caregivers; FOUND that the adoption of the interim ordinance is exempt from the California Environmental Quality Act (CEQA) per section 15061(b)(3) of CEQA guidelines; DIRECTED staff to prepare a permanent ordinance regulating medical marijuana activities; and DIRECTED the Director of the Department of Conservation and Development to file the Notice of Exemption (NOE) with the County Clerk.

ATTACHMENTS

Ordinance 2016-10

MMRSA Work Program March 2016

Comparison of Marijuana Regulations in Neighboring Jurisdictions

Comparison of Marijuana Regulations in Neighboring Counties