



**Contra
Costa
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: April 25, 2017

Subject: Cannabis Regulation Workshop

RECOMMENDATION(S):

A. CONDUCT public workshop discussion on Proposition 64 and cannabis regulation in Contra Costa County.

B. PROVIDE initial, general, direction to staff from the Department of Conservation and Development in conjunction with staff from the Department of Health, Department of Agriculture, District Attorney's Office, County Counsel, Office of the Sheriff, Treasurer-Tax Collector, the Probation Department and the County Administrator's Office on the preparation of one or more ordinances regulating the cultivation, delivery, manufacturing and distribution of cannabis within the unincorporated areas of the County or request specific additional information on potential cannabis regulation.

FISCAL IMPACT:

In accordance with the provisions of Proposition 64, if the Board were to decide to prohibit all commercial marijuana related activities, specific grant funding would not be made available to the County and no new tax revenue would be generated. With or without a County wide prohibition on commercial cannabis activities the establishment of illicit or unpermitted cannabis related activities is to be expected and the cost of enforcement would

☐ APPROVE

☒ OTHER

☐ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **04/25/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

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: April 25, 2017

Contact: Ruben
Hernandez (925) 674-7785

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

By: , Deputy

cc:

be born solely by the County under a prohibition. The amount of state funding that would be made available to the County if commercial cannabis activities were to be permitted and regulated is uncertain at this time.

Adoption of an ordinance permitting and regulating various marijuana related commercial activities, as well passage of a tax measure or imposition of new fees, could result in additional revenues for the County in addition

FISCAL IMPACT: (CONT'D)

to qualifying the County to access to grant funding as provided for in Proposition 64.

Estimated staff cost of preparing one or more ordinances to regulate and permit commercial cannabis and other provisions is expected to be within the \$100,000 - \$150,000 range but could be higher or lower depending upon the amount of additional research required, the complexity of regulatory approach chosen and the type and duration of the public process. Preparation of a ballot measure to adopt a Countywide cannabis tax would incur additional cost. Enforcement cost would vary with the regulatory approach chosen, which cannot be estimated at this time, but could be significant.

BACKGROUND:

On January 17, 2017, the Board of Supervisors directed the Department of Conservation and Development to schedule a Board workshop to discuss potential marijuana regulations. The workshop was requested in response to voter approval of Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act or the Adult Use of Marijuana Act (AUMA). Prior to the approval of Proposition 64, in October 2015, Governor Brown approved the Medical Cannabis Regulation and Safety Act (MCRSA), formerly known as MMRSA (Medical Marijuana Regulation and Safety Act), which, like Proposition 64, provided local jurisdictions an opportunity to adopt ordinances regulating the cultivation, delivery, dispensing, sale, transport and manufacturing of marijuana and marijuana related products. The purpose of the workshop is to provide the Board with an opportunity to discuss potential marijuana regulation and obtain input and comments from various County Departments. The workshop is also intended to provide the Board with an update on anticipated new activities of County departments as a result of AUMA.

Existing County Marijuana Regulation

The County currently has two separate cannabis related ordinances in effect. The first one, Ordinance #2008-05, was adopted by the Board of Supervisors in February 2008. The ordinance prohibited the establishment of any use that violated State or Federal law, as well as explicitly prohibiting the establishment of medical marijuana dispensaries in the unincorporated areas of the County. The second active ordinance is Urgency Interim Ordinance #2017-03 which was adopted by the Board on January 17, 2017. The ordinance continued the interim prohibition on the cultivation, delivery and sale of marijuana and marijuana products until January 30, 2018 and was a continuation of two previous urgency interim ordinances. The urgency ordinance was adopted in response to the approval of the Medical Cannabis Regulation and Safety Act (MCRSA) which was signed into law by the Governor in October of 2015.

Medical Cannabis Regulation and Safety Act (MCRSA)

The Medical Cannabis Regulation and Safety Act (MCRSA), which was signed into law

by Governor Brown in October of 2015, was the precursor to Proposition 64. Like Proposition 64, MCRSA established a comprehensive structure for the licensing and enforcement of medical marijuana cultivation, product manufacturing, testing, transportation, storage and distribution. MCRSA established a dual licensing system where applicants for state licenses had to provide evidence of local approval of a medical marijuana use prior to issuance of the state license. MCRSA permitted local control of medical marijuana uses and allowed local jurisdiction to prohibit or regulate medical marijuana uses as they saw fit. MCRSA also resulted in the establishment of the State Bureau of Medical Cannabis Regulation, which was subsequently changed to the Bureau of Marijuana Control with the approval of Proposition 64.

Proposition 64 (Adult Use of Marijuana Act or AUMA)

Proposition 64 was approved by California voters on November 8, 2016 with 57% of the vote. In Contra Costa County, 61% of the voters in the unincorporated areas and 60% of voters Countywide voted for Proposition 64. The proposition legalized the recreational use of marijuana for adults over the age of 21 and established a broad range of new legislation regulating the cultivation, manufacture, distribution, transportation laboratory testing, sale and taxation of marijuana and marijuana related products.

Proposition 64 requires the establishment of a state licensing program that would be responsible for the issuance of state licenses for the cultivation, manufacturing, testing, retailing and distribution of marijuana and marijuana related products including hemp[1]. The newly formed Bureau of Medical Cannabis Regulation, California Department of Food and Agriculture and the California Department of Public Health will issue licenses. According to Proposition 64, state licensing agencies have until the beginning of 2018 to have licensing programs in place and to begin issuing state licenses. In order to protect local interest, Proposition 64 established a dual-licensing system, where applicants for state licensing are required to provide evidence of local approval of marijuana related use prior to issuance of a state license.

[1] The term “Hemp” is typically used to describe cannabis that is grown for the production of fiber used for the making of rope and other fabrics. Under federal law hemp is a form of cannabis, which is identified as a Schedule 1 controlled substance, and is treated the same way. In California, hemp is also identified as a type of cannabis and is subject to the same regulations as medical/recreational cannabis or marijuana. The County could explore regulating hemp differently from other forms of cannabis but there may be some enforcement challenges that would need further consideration.

Proposition 64 provides local jurisdictions with significant control over the regulation of commercial marijuana related uses. Under Proposition 64, local jurisdictions have the authority to regulate or prohibit most marijuana related uses, including cultivation, manufacturing, distribution, testing and retail sales. If a local jurisdiction takes no action by the time the state starts issuing licenses (beginning of 2018), the state becomes the default licensing authority and may issue licenses if the use is not explicitly prohibited

within that jurisdiction. For personal use, Proposition 64 permits the indoor cultivation of up to six plants. Additionally, Proposition 64 allows local jurisdictions to prohibit outdoor cultivation for personal use and to also adopt "reasonable" regulations for the indoor and/or outdoor cultivation of up to six plants by an adult over the age of 21 within a private residence. However, a local jurisdiction cannot completely ban indoor cultivation. Other than that, almost every aspect of commercial marijuana related activities can be regulated or prohibited by local jurisdictions. This includes, but is not limited to, prohibiting or limiting the size, scale and number of commercial marijuana businesses within the jurisdiction, adoption of strict security and safety measures and the levying of marijuana taxes.

Key Aspects of Cannabis Regulation Under MCRSA and AUMA

An overview of some of the key provisions, issues, timelines and considerations related to cannabis regulation under MCRSA and AUMA is provided below.

Categories of Cannabis Use

Under MCRSA and AUMA local governments have the authority to regulate or prohibit the following cannabis related uses (both medical and adult-use or recreational):

- **Indoor/outdoor personal cultivation of cannabis or hemp (Personal indoor grow of up to 6 plants must be allowed per AUMA);**
- **Indoor/outdoor commercial cultivation or nursery[1] of cannabis or hemp;**
- **Commercial manufacture of cannabis;**
- **Laboratory testing of cannabis;**
- **Retail sales of cannabis; Retail delivery[2] of cannabis;**
- **Commercial distribution[3] of cannabis;**
- **Cannabis microbusiness[4].**

[1] For remainder of this report, “cultivation” is intended to be inclusive of nursery uses.

[2] While the County does have the ability to prohibit or restrict the establishment of delivery businesses in the unincorporated area that deliver cannabis to customers, staff does not believe the County would have the practical ability to enforce a prohibition on actual deliveries (for instance, from a business legally established in a neighboring jurisdiction to an unincorporated area).

[3] “Distribution” as used in AUMA is a facility where wholesale cannabis is received and distributed to retail cannabis outlets such as dispensaries. Under AUMA, retail sale of cannabis is not permitted with a “distributors” license.

[4] “Microbusiness” under AUMA is a small retailer with a farm not exceeding 10,000 square feet and could be compared to a farm stand where products grown on a property are available for retail sale at the same property.

Licensing and Permitting

- Both the Medical Cannabis Regulation and Safety Act (MCRSA) and the Adult Use

of Marijuana Act (AUMA) require a dual licensing system requiring both a state and local license or permit with revocation of one resulting in revocation of the other.

- Medical (MCRSA) and recreational (AUMA) cannabis uses can be regulated separately or together.
- County can adopt an ordinance that "reasonably" restricts personal indoor cultivation of up to six plants for personal use but cannot completely ban.
- A County cannabis ordinance may impose significant health and safety requirements, location restrictions, operational requirements, environmental protections, etc.
- A limit may be placed on the number of permitted commercial cannabis uses by ordinance (eg. The City of Richmond allows a maximum of 3 cannabis collectives and 3 cannabis product manufactures within city boundaries at any time).
- By ordinance, a selection or request for proposal (RFP) process may be established giving the County the ability to screen and select the most qualified and thorough applicants/applications.

Timeframe

- In order to avoid the possible establishment of cannabis businesses or uses not regulated by the County, permanent County ordinances regulating cannabis uses should be adopted prior to the start of the issuance of licenses by the State, which is expected to begin on January 1, 2018. If the County does not have permanent regulations in effect prior to expiration of the County's urgency interim ordinance on January 30, 2018, the State would become the sole licensing authority. The County could adopt new regulations on commercial cannabis after January 30, 2018, but any state licensed cannabis activities or businesses established in the meantime would be "grandfathered-in" as legal non-conforming uses and could be difficult to do away with, if desired.
- Any permanent regulations adopted by the County prior to January 30, 2018 can be modified thereafter to be more restrictive or permissive. However, once a cannabis use is legally established under the permanent regulations, revoking or rescinding such use could be challenging.

New Federal Administration May Change Approach to Cannabis

According to Federal Law, cannabis is listed as a Schedule 1 controlled substance, making the possession of cannabis a violation of federal law. Under the previous administration, enforcement of the Controlled Substances Act, with regard to cannabis, was identified as a low priority according to the "Cole Memo" issued on August 29, 2013 by Deputy Attorney General James M. Cole.

The Cole Memo provided guidance in regards to state ballot initiatives that legalize under state law the possession of marijuana and the regulation of its production, processing and sale. The memo also indicated that, in furtherance of its objectives, the Department of Justice had focused its efforts on certain enforcement priorities such as preventing:

- Distribution of marijuana to minors

- Revenue from cannabis related businesses going to criminal enterprises or other illegal activity
- Distribution to other states where it is not legal under state law
- Violence and the use of firearms in the cultivation and distribution of marijuana
- Drugged driving and the exacerbation of other adverse public health consequences
- Growing and or possession of marijuana on public land and federal property

The Department of the Treasury Financial Crimes Enforcement Network (“FinCEN”) has issued guidance similar to the Cole Memo to clarify Bank Secrecy Act (“BSA”) expectations for financial institutions. This FinCEN guidance clarifies how financial institutions can provide services to marijuana related businesses consistent with their BSA obligations. A financial institution providing financial services to a marijuana related business that it reasonably believes does not implicate one of the Cole Memo priorities or violate state law should file a “Marijuana Limited” suspicious activity report identifying information and addresses of the subject and related parties. Furthermore, the financial institution should specify the fact that the filing is solely because the subject is engaged in marijuana related business and that no additional suspicious activity has been identified.

Under the new administration, there have been some indications that the Controlled Substances Act would be strictly enforced. Strict enforcement of the controlled substance act would have significant impacts on the cannabis industry and local regulation. It is important to note that the guidance of FinCEN and the Cole Memo does not limit the Department of Justice’s authority to enforce federal law related to marijuana, regardless of state law.

Statewide and Local Response to Proposition 64

In response to approval of Proposition 64 many jurisdictions throughout the state have adopted urgency interim ordinances which prohibit the cultivation, sale, delivery, transportation and manufacture of cannabis and cannabis related products. A few jurisdictions have adopted permanent ordinances regulating and taxing personal and commercial cannabis activities including Sonoma County, the City of Los Angeles and the City of San Diego. In Sonoma County, Los Angeles and San Diego, a special ballot measure was put before the voters of those cities to allow for the taxation and regulation of commercial cannabis activities. All three measures were approved by voters.

Locally, San Joaquin and Solano Counties have adopted urgency interim ordinances generally prohibiting the cultivation, distribution, manufacturing and delivery of cannabis and cannabis related products and are deliberating on the impacts of potential cannabis prohibition, regulation and taxation.

Alameda County allowed dispensaries prior to approval of Proposition 64 and is now deliberating on modifying their existing code to conform with AUMA including expanding on the number of dispensaries permitted within their jurisdiction. [check on

other uses and summarize here]

In Napa County all cannabis related uses are prohibited under their current code, with the exception of indoor personal cultivation, which was the case prior to Proposition 64, but the County Board of Supervisors is currently discussing Countywide perspectives on the passage of AUMA.

Within Contra Costa County, prior to approval of Proposition 64, the City of Richmond permitted the cultivation, dispensing, distribution, manufacturing and taxing of medical cannabis prior to approval of Proposition 64. Prior to Proposition 64, the city of Martinez does permitted the establishment of medical cannabis dispensaries. For both cities, the passage of Proposition 64 has not yet led to a change in cannabis regulations.

Taxing and Revenue

In order to pay for the implementation, oversight and enforcement of AUMA, and to provide some funding for specific drug rehabilitation and educational grant programs, AUMA includes provisions for the taxation of recreational cannabis. AUMA also included provisions which allow local jurisdictions the opportunity to levy additional taxes on the cultivation, sale and distribution of cannabis and cannabis related products.

AUMA included a state tax on growing and an excise tax on the retail price of marijuana and marijuana products. The state tax on growing is \$9.25 per ounce of dried marijuana flowers and \$2.75 per ounce of dried marijuana leaves. A state excise tax of 15% of the retail price of marijuana and marijuana products also applies.

Under AUMA portions of the State revenue generated have been allocated for the following specific purposes:

- Starting in 2018-2019, \$10 million will be allocated for grants for certain services such as job placement assistance and substance use and disorder treatment in communities most affected by past drug policies. Funding for this purpose is expected to grow to \$50 million by 2022-2023.
- \$10 million annually will be allocated to study the effects of AUMA.
- \$3 million will be allocated to create and adopt methods to determine whether someone is driving while impaired, including by marijuana.
- \$2 million will be allocated annually to study the risk and benefits of medical marijuana.
- Of the remaining revenue, 60% will allocated for youth programs; 20% for cleanup and prevention of environmental damage resulting from illegal growing of marijuana and 20% for (a) programs designed to reduce driving under the influence of alcohol, marijuana and other drugs and (b) a grant program designed to reduce any potential negative impacts on public health or safety resulting from the measure.
- If a city/county bans commercial cultivation, or personal outdoor cultivation, or retail sales of cannabis or cannabis products, it is ineligible to receive state grant

monies funded through the new state excise taxes that take effect on January 1, 2018.

Local Taxes

Existing state and local sales tax applies to the cultivation and sale of non-medical marijuana only. In addition to state and local sales tax, AUMA authorizes local governments to tax virtually all other commercial marijuana activities including, but not limited to, cultivating, dispensing, producing, processing, preparing, storing, selling and distributing. Such additional taxes would require voter approval. Below please find examples of taxes that have been passed to date:

Richmond: Business tax of \$50.00 for every \$1,000 of gross receipts

Sonoma: Business Tax (% gross receipts): Manufacturers: 5% starting rate, 10% maximum rate; Nurseries, Distributors, Transporters, Labs and Dispensaries 0% starting – 10% max rate.

Cultivation Tax (per square foot): Outdoor cultivators: \$0.50-\$5.00 starting rate, \$10.00 maximum rate; Indoor cultivation: \$1.88 - \$18.75 starting rate, \$38.00 max rate; Mixed-Light Cultivation: \$1.08 - \$10.80 starting rate, \$22.00 maximum rate (Measure A).

San Diego: Initial cannabis business tax starts at 5% of gross receipts, increase to 8% on January 1, 2019 with a maximum rate of 15% (Measure N).

Stockton: Business tax for medical cannabis dispensaries \$25.00 for every \$1,000 of gross receipts; non-medical cannabis business tax is \$100.00 for every \$1,000 of gross receipts.

Los Angeles: Business tax of \$100.00 per each \$1,000 gross receipts for cannabis sales; \$50.00 per for medical cannabis sales; \$10.00 per for cannabis transportation, testing, or research and \$20.00 per for cannabis manufacturing, cultivation or other commercial cannabis activity (Measure M).

West Sacramento: In the City of West Sacramento instead of putting forth a ballot measure to establish a tax on cannabis, the city and the operator of a cannabis distribution facility entered into a development agreement which required the operator of the distribution facility to pay 2.5% of the gross receipts generated by the facility to the city. Execution of the development agreement was done in conjunction with the review and approval of a land use permit for the facility and adoption of a zoning text amendment identifying a “wholesale cannabis logistics, distribution and transportation facility” as a use requiring approval of a land use permit. This approach could be likened to the “Community Benefit Agreement” process executed by the County with other business

entities in the County.

Code Enforcement

At the state and local level the enforcement of cannabis related laws has become increasing difficult with the approval of Proposition 215 in 1996 and Proposition 64 in 2016.

If the County were to consider adoption of an ordinance allowing and taxing specific cannabis uses, it may be helpful to include cannabis specific enforcement measures. The ordinance could include fines for violators possible criminal charges and/or automatic seizure of product/crop for those who operate any type of commercial cannabis activities without proper County and State approvals.

The current process for the enforcement of zoning code violations provides property owners with sufficient time to address on-going violations, sometimes up to two months, eventually leading to the application of administrative fines of up to \$14,300 per month. Allowing illicit cannabis operations to continue to operate for two months, or longer, before fines are imposed provides minimal motivation for complying with potential regulations since harvest time could occur in less than 60 days depending on the time of year of age of the plants.

Enforcement cost should be a consideration when determining the direction of cannabis regulation. Significant additional enforcement staff could be required for enforcement of any new cannabis regulations, specifically in a situation where cannabis activities are permitted, which could necessitate an increase in enforcement activities with regard to illegal/unpermitted operations.

In the City of Richmond, anyone who is caught violating the City's cannabis ordinance could be deemed guilty of a misdemeanor punishable of a fine of not more than one thousand dollars or by imprisonment for not more than 12 months.

Inter-Departmental Coordination for Cannabis Regulation

To assist with adapting to the changes in state law and to prepare for this workshop, four inter-departmental meetings were held to share knowledge and discuss potential impacts of cannabis regulation on County departments and their areas of responsibility. The inter-departmental meetings were attended by staff from the County Administrator's Office, Office of the Sheriff, District Attorney's Office, Health Services Department (including the Divisions of Behavioral Health, Environmental Health, Hazardous Materials and Public Health), Treasurer/Tax Collector's Office, Department of Agriculture, County Counsel, Department of Probation and the Department of Conservation and Development. The knowledge, experience and counsel of the involved staff has been invaluable. Many participants have attended state-wide briefings and trainings relevant to their particular disciplines on the emerging issue of cannabis

regulation and brought that new knowledge to the table. The staff group is capable at Board direction to provide additional detailed information and analysis beyond what is contained in this staff report, which was intentionally drafted as a high level summary.

Implications for County Departments (Regardless of Regulatory Approach Adopted by the County)

After numerous meetings and extensive discussion on cannabis regulation, Conservation and Development staff requested that each participating department provide a summary of their department's concerns, issues or opinion on cannabis regulation, including any thoughts on the County's potential approach. The input received is as follows:

Office of the Sheriff

Medical marijuana centers and marijuana grow facilities are primarily a cash only business. This poses a significant safety risk for the owners, employees, and patrons who are at risk of being robbed either at the business, in the parking lot, or while being followed to another location. As recently as March of 2017, a brazen daylight burglary took place at a legal marijuana grow facility located in North Richmond.

Over the last year, the Office of the Sheriff has investigated over 650 cases that are associated with either the sales, use, or possession of marijuana. The range of crimes include homicide, robbery, burglary, and aggravated assault. The increase of marijuana use, as expected under legalization, has also led to an increased number of arrests for driving under the influence (DUI).

The Office of the Sheriff would like a policy that builds a collaborative effort of code enforcement inspectors, planners, county counsel, the district attorney's office, public health, health, environmental health and probation to establish land use agreements and a licensing or permitting system to insure public safety and the wellness of our community.

Health Services Department

Contra Costa Health Services anticipates an increase in demand for its services across a wide array of both regulatory and clinical service areas. This includes but is not limited to:

-Division of Environmental Health

The Division of Environmental Health anticipates a need to have substantial and ongoing role with licensing/permitting, regulatory inspections and enforcement of products sold at retail and edible cannabis product manufacturing sites. This is particularly germane to foods, beverages, cosmetics, tinctures, oils and other consumer products infused with cannabis. These functions may also be performed for cities as well, if State Law provides oversight regulatory authority to local DEH,

similar to other food and beverage products. This would include permitting for special events where the event sponsors propose to offer use or consume products on site that are infused with cannabinoids. In addition, DEH anticipates having a role with owner/employee education, as well as with public health investigations associated with cases and clusters of illness or toxicity. There will also be many complaints related to illegal operations where Environmental Health will need to assist law enforcement to understand the “legality” of the operation. In addition, DEH will have an ongoing role related to plan review, approval and ongoing inspection of sanitation and food handling components of operating a business where food and beverages are sold. An early estimate is that will require between 2-4 new FTE to perform these additional regulatory functions [note from John: only if retail sales and/or edible cannabis product manufacturing are allowed?], and additional staff should these functions be performed on behalf of cities. Licensing/permitting and inspection fees are anticipated to cover the majority of the associated cost. A health ordinance would also be needed, similar to what has been adopted by Sonoma and Los Angeles Counties, especially if the County allows dispensaries in the unincorporated area of the County or if the County allows the manufacturing of edibles or other products for human consumption or use.

-Hazardous Materials:

This Division will have an ongoing permitting and inspection role with aspects of cultivation and raw material extraction and manufacturing, particularly for those businesses using volatile as defined by Proposition 62 Health & Safety Code Section 11362.3(a)(8). The regulatory oversight would be for the handling of hazardous materials and the generation of hazardous waste as codified in State law.

-Division of Behavioral Health:

The Division of Behavioral Health anticipates a surge in demand for substance use detoxification, outpatient & residential treatment for youth and adults, regardless of the County allowing or prohibiting commercial marijuana activity. At the present, there is no medical detoxification services specifically tailored for youth in Contra Costa, this may become an area of acute need. Our Division projects that there will also be increased need for public information, both in regards to the hazards and warnings associated with the potential for misuse, abuse and addiction as well as information regarding available treatment and ongoing therapy. AUMA makes specific provisions for mandatory evidence based marijuana specific educational sessions for youth. Alcohol and Other Drugs (AOD) will need to develop an age appropriate curriculum and program conveniently covering all regions in our county. Since we anticipate an increase in court ordered mandatory group educational sessions for youth who violate the provisions of their probation, we will require additional staff dedicated to this program and/or funding to support programming in the community to satisfy the requirement. Lastly, as indicated by the Sheriff's Office, there will be a substantial increase in the number of DUIs, which would need

a collaborative approach for the direct referrals of individuals onto the right alcohol and other drugs level of care, this will support the individual and increase community safety.

The cost associated with the increase of substance use treatment needs and implementation of the mandatory evidence based educational sessions for youth will still be incurred, independently of the actions taken by the Board to prohibit all the commercial aspects of marijuana. Because of the prevalence of marijuana in neighboring jurisdictions, AOD services will still be required.

-Division of Public Health

The Public Health Division anticipates having a role in the licensing/permitting, regulation and enforcement of commercial sales of marijuana products, similar to its current role relative to tobacco retail licensing. Issues such as product labeling, prohibitions on flavored products, storefront advertising, and compliance with other aspects of Health and Safety Code including bans on the use of products in public places and protections from 2nd hand smoke exposure. In addition, the Public Health Division will be the key player in investigation outbreaks of clusters of illness associated with exposure to, use of and/or consumption of products containing cannabis. Additionally, the Division anticipates an increase in demand for public information, including periodic reports on the public health impacts of recreational use of marijuana and issuing periodic health advisories. Lastly, the Division anticipates a surge in demand for Medical Marijuana ID Cards as members of the public seek to avoid taxation associated with the recreational regulatory structure if the State ID Card program remains in place. The Governor proposed the elimination of the program in his Trailer Bill that was released in early April. Additionally, Prop 64 limited the fees that can be charged to administer the Medical Marijuana ID program to \$100 per client, which is less than the true cost of administering this program. Recommendation from staff is to sunset the ID Card Program, if the State dispenses with the program. The Division anticipates the need for 2-3 additional full time staff to address the associated work load issues spread across all areas of the Division from Communicable Disease Control to Vital Records and from Epidemiology to Community Education and Information.

Revenue to cover the anticipated increase in demand for services could partially be covered from the adoption of a Cannabis Retail License if renewed on an annual basis and/or from tax revenue generated from the growth and/or sales of product. Identifying a source of revenue to cover the cost of public education, reports and data tracking is an important consideration.

Even if the County happens to prohibit all commercial aspects of recreational marijuana the Public Health Division anticipates an increased volume of illness and/or toxicity clusters, the need for public information, health advisories and an increase in demand for clinical and counseling services that may impact both

Behavioral Health as well as CCRMC's inpatient and outpatient services. From 2004 through 2015 there were 389 deaths in California that were related, in part, to the use of marijuana. Additionally, from 2008 through 2014 there were 291 non-fatal cases of youth seeking care in Contra Costa Emergency Rooms due to overdose related to the use of marijuana. These numbers are expected to increase in the wake of Proposition 64, with legalization of adult recreational use of marijuana.

Similar to our Environmental Health colleagues the Public Health Division recognizes the need for and advantages of having a separate County Health Ordinance to address a myriad of regulatory issues, especially if the County allows retail dispensaries and/or the manufacturing of any form of edible products, tinctures, ointments, etcetera.

-Emergency Medical Services (EMS) Division

EMS anticipates an increase in EMS calls related to manufacturing as well as personal use associated intoxication, overdose and being under the influence while operating a motor vehicle. This includes providing supportive care for intoxication including needing sedation for anxiety or psychosis. This may include an increase in 5150 related calls. Toxicity related trauma associated with an increase in motor vehicle collisions from alterations in perception and motor dysfunction. Research suggests that 25-40 % of DUI related incidents are likely to involve cannabis alone, hence with increased recreational use we should anticipate an increase in DUI. This level of increase may have a system-wide EMS impact necessitating an increase in ambulance hours to meet new level of service demand. Other Health related concerns are an increase in burns if the use of combustible solvents are permitted during the extraction/manufacturing process. In addition, we might anticipate an increase in Pediatric and Adult accidental ingestions (poisonings) associated with edibles.

In addition the EMS Agency acts as the local entity responsible for certification, licensure and accreditation of prehospital personnel. In that capacity the EMS Agency is responsible for certification and licensure actions such as suspension, probation and revocation of licenses and certification in the event the public safety is threatened. Under Title 22 any use of drugs or alcohol that comes to the attention of the EMS Agency associated with prehospital personnel that is a violation of the law is subject to discipline. It is anticipated that the number of disciplinary cases associated with the legalization of recreational marijuana will substantially increase. The EMS Agency will be compelled to take action and monitor increased numbers of prehospital personnel. This is anticipated to require additional 1-2 FTE to address certification/license suspension issue and manage the probationary requirements associated with these cases. The EMS Agency is currently managing certification actions and probation for approximately 24 substance related cases per month and anticipates this number may double.

Treasurer/Tax Collector

The County Treasurer/Tax Collector has the following comments on potential tax issues related to cannabis businesses:

- If County becomes involved in collecting or accepting monies from cannabis related businesses, there are many challenges associated with the federal Controlled Substances Act and the unwillingness of banks and other financial institutions to accept funds from these businesses.
- There is current legislation under consideration (AB 148) that would enable County Treasurers to collect cannabis tax revenue on behalf of the Board of Equalization.
- Additional security may be necessary due to the cash only business activities of marijuana related businesses and related tax payments to County.
- County assets may be in jeopardy under federal laws if collecting taxes on marijuana related businesses is approved.
- Increased costs would result due to the need for additional staffing, equipment and security.
- Potential new business license fees for cannabis business could include; \$100 Flat Fee per Business; \$10 per Full-Time Employee; Cannabis Retailers License (Similar to Tobacco or Alcohol Retailers License).
- Potential secured property taxes for cannabis uses could include real property taxes, special taxes and assessments and ad valorem taxes and assessments.
- Potential unsecured taxes for cannabis uses could include business property taxes and taxes on some fixtures.
- County sales tax could be added on top of 15% State excise tax.

Department of Agriculture

The permitting of cannabis related uses, whether by the County or by cities within the County, could result in additional staff workload for the Department of Agriculture including additional staff and industry training as well as safety awareness. Estimated additional hours and expense could be approximately \$50,000 annually. Additional staff time could be required in the following areas:

-Weights & Measures Involvement

- Inspecting weighing device used for commercial purposes, suitability of scale, type-approval, testing, and sealing.
- Price verification enforcement for products sold on shelves such as candy bars, vape/e-cig, oils, creams, baked products, prepacked unprocessed cannabis.
- Checking net contents of packaged products for accuracy of labeled weights.
- Labeling requirements inspection on packed goods: identity, responsibility, and net contents.
- Test purchase based on consumer complaint of short weight.

-Agriculture Pesticide Use Enforcement Involvement

- Training of staff and cultivators on the identification and use of pesticides

- Issue pesticide permits.
- Monitor pesticide applications particularly in greenhouse operations.
- Inspect pesticide storage sites and perform record audits.
- Field Worker inspections for compliance with new Federal Worker Protection Standards.
- Investigate pesticide complaints.
- Investigate pesticide exposure reports of occupational illness.

-Crop Report Statistics

- Contact annually for financial production values

Probation Department

The Probation Department supervises juveniles and adults who will be impacted by AUMA. Juveniles referred to Probation for possessing marijuana in violation of H&S 11357 or 11362.3 will be required to complete a four hour evidence based drug education program pursuant to H&S 11362.4. This is a resource that will need to be made available in the community. Juveniles on Probation will still be required to follow all laws, and if they use marijuana, Probation violation petitions will be filed with the court.

There is concern that Prop 64 may result in an increase in the use of marijuana for youth in general, and more specifically at risk youth who are in jeopardy of entering the juvenile justice system and those youth already involved in the juvenile justice system.

Prior to Proposition 64, adults on Probation Supervision were not allowed to use marijuana absent a court order allowing such. At the present time, Probation violations are not being filed for the use of marijuana unless the court specifically prohibits use of the drug.

County Administrator's Office

The County maintains an alcohol and drug free work place. We will continue to follow POST guidelines and County Policy with regard to the possible use of marijuana by employees. POST guidelines to be followed include:

- The manufacture, distribution, dispensing, possession or use of alcohol or a controlled substance is prohibited in the workplace. Violations can lead to disciplinary action.
- An employee will not be disciplined for voluntarily requesting assistance for a substance abuse problem.
- Employees remain responsible to meet the County's performance, safety, and attendance standards.

District Attorney's Office

In accordance with the provisions of Proposition 64, the Office of the District Attorney is recommending that the Counties' prohibition on the retail sale, delivery, cultivation and manufacture of cannabis-based products remain in effect until greater certainty regarding the future of legalized marijuana is attained.

The preparation of the scheme of ordinances that will be required to properly regulate these activities, and the personnel and infrastructure that will be required to enforce the regulations, will be extremely expensive. There is no reliable statistical information that tax revenues and fees generated from these activities will be commensurate with the cost of regulation and oversight by the County. Additionally, as federal law prohibits the receipt of revenue derived from illegal substances by federally insured banking institutions, the County will be required to create its own secure banking system for the revenue that is generated from these activities and the County may violate federal law by receiving that revenue.

This federal prohibition on the receipt of cash generated by marijuana-related activities creates cash-rich marijuana retail, delivery and cultivation sites that are prime targets for robberies and burglaries. This creates the very real risk of an increase in violent crime in our County and no provision has been made to increase law enforcement or prosecutorial personnel. This risk for the increase in violent crime will continue until the federal banking prohibition has been resolved by the federal government.

The indoor and outdoor commercial cultivation of marijuana has the potential for significant negative environmental impact due to the large-scale use of insecticides, fungicides, and fertilizers, both locally and regionally with runoff into the Delta and the Bay. No provision has been made for the investigation and prosecution of cultivators who become environmental polluters.

Marijuana continues to be a controlled substance under federal law. If the United States Attorney General chooses to enforce federal law in the State of California, the Counties expenditure of resources to permit Proposition 64 – related activities will have been pointless.

Proposition 64 gives local jurisdictions the authority to make decisions regarding the implementation of its measures. Contra Costa County should accept that authority and make decisions only once these significant issues have been resolved.

Department of Conservation and Development

The Department of Conservation and Development, being the department responsible for overseeing land use in the County, anticipates a significant role in any cannabis regulation. Any cannabis ordinance to be considered should take into account the impacts such uses could have on the overall quality of life of the residents of the County as well as impacts such uses could have on neighboring and nearby properties. Additional consideration should be given to the additional cost in staff time to be required for

preparation, implementation and enforcement of any future cannabis ordinance.

Preparation of County Regulations on Cannabis

A purpose of this workshop is to provide Board members with summary information regarding the implications, impacts and provisions of MCRSA and AUMA to inform policy decisions. A desired outcome of this workshop is for the Board to provide county staff with initial, broad direction on how to proceed in terms of preparing permanent cannabis regulations for the County or on what additional information the Board requests from staff prior to providing such direction.

For discussion purposes, staff has framed three distinct hypothetical or sample options in order to stimulate discussion. These options describe different approaches to the distinct types of cannabis uses. Because each type of use could be regulated and taxed many different ways, these sample options do not come close to exhausting the range of regulatory approaches the County could approve. Likewise, to keep sample options simple, we have not attempted to delve into detail, such as distinguishing hemp uses from consumption uses, distinguishing medical from adult uses, or of contrasting the sample options in terms of detailed conditions. Attachment 3 provides a detailed overview of the different cannabis uses as well as potential challenges and mitigation measures associated with each. That information was placed in Attachment 3 because it is so detailed, but a quick review of that information may make the below options more clear.

Sample Option 1 would be the most conservative approach and would involve the following:

Sample Option 1

Prepare an ordinance generally prohibiting all medical and non-medical cannabis related uses. This ordinance would be similar to the existing urgency interim ordinance. With this option, all cannabis related uses would be prohibited with the exception of the personal indoor cultivation of up to 6 plants as provided for in Proposition 64.

Sample Option 2, an intermediate approach, would involve the following:

Sample Option 2

Prepare an ordinance permitting the establishment of a limited number of commercial cannabis-related uses. Such an ordinance would designate the types of cannabis uses that may be permitted (and the types prohibited), designate eligible zoning districts (and perhaps other eligibility criteria such as distance from schools), include an application process, safety standards, operational standards and establish an application selection process similar to an Request for Proposal (RFP) process. The County would accept multiple applications/proposals for the establishment of commercial cannabis activities and select the most beneficial/least impactful application. This is the process used in a number of jurisdictions within the State where a cap has been placed on the number of commercial cannabis activities to be permitted. For example, Alameda County currently

allows three (3) dispensaries throughout the County and is considering expanding that amount to four (4) dispensaries and up to four (4) cultivation sites. The City of Richmond currently allows three (3) dispensaries and three (3) manufacturing facilities. The City of Richmond has no limit on the number of cultivation facilities which can be established in specific light industrial or mixed use zoning districts.

In this intermediate Sample Option 2, the following categories of commercial activities could be deemed permissible and invited to submit proposals:

- Commercial indoor or outdoor cultivation
- Manufacturing
- Distribution
- Testing

--A specific cap could be set for each category

--Staff could explore mechanisms for including a pre-defined, fixed term to the approval of the selected businesses (e.g. limit the approval to, say, 5 or 10 years)

--Categories not included in Option 2 are retail sales (dispensary), retail delivery business and microbusiness

--Cultivation for personal use could be expanded to be more permissive with this option, for example, by allowing outdoor cultivation of up to six plants.

Sample Option 3

Adoption of a zoning text amendment allowing the establishment and taxation of all various cannabis related uses and expanding personal cultivation. Please find additional detail on this option below:

- In this more permissive Sample Option 3, the following categories of commercial activities could be allowed in designated zoning districts and under specified conditions:
 - Retail sales
 - Retail delivery business
 - Micro business
 - Commercial indoor or outdoor cultivation
 - Manufacturing
 - Distribution
 - Testing
- Any proposed ordinance permitting and regulating commercial cannabis activities would include adoption of significant regulations and application requirements meant to protect the health, safety and quality of life of the residents of the County.
- An annual use tax of, for example, \$10 per square foot of cultivation, could be collected and a flat tax of 2.5%-5% (or more) of gross receipts could be collected for the manufacturing and distribution operations. A tax could also be imposed on retail sales.
- Any cannabis tax would require voter approval. A special tax to secure dedicated funding for specified purposes would require a 2/3 majority. A general tax would

require a simple majority. There would be additional cost and effort to develop a measure and bring it to the voters.

- An expansion of the personal cultivation provisions of Proposition 64 could be incorporated into this approach also (e.g. outdoor personal cultivation, etc.).

Evaluating the Sample Options

The anticipated pros and cons associated with the sample options are summarized in Table 2. In short, the preliminary comparison of the sample options demonstrates there may at times be tradeoffs between important goals such as facilitating legal access, minimizing substance abuse, reducing the black market, encouraging economic activity, maintaining safety and security, minimizing enforcement costs, generating revenue for services/cost recovery and ensuring public health.

An approach similar to Option 1 would maintain the current status of cannabis uses as provided for with the urgency interim ordinances, resulting in minimal staff costs for preparation of a new ordinance, likely less enforcement costs, less risk of new land use impacts, no risk of conflict with potential changes to enforcement of federal law, least facilitation of cannabis use, least facilitation of cash businesses which present a security risk and no cost recovery. An approach similar to Option 1 could be employed as a first step in a “phase-in” approach, and would be the recommended initial step if deliberation and development of regulations to permit some uses needs to extend into 2018. A benefit of a step-wise approach is that once a use is approved it can be difficult to subsequently prohibit it.

An initial approach such as Option 2 would also enable the County to proceed in a stepwise fashion and would initially permit only certain commercial uses through a request for proposals process. Based on the County’s location within the greater Bay Area, availability of underutilized agricultural/commercial/industrial space, staff believe there would be a market and suitable lands for cannabis uses such as commercial cultivation, distribution and manufacture. Uses related to retail sales have a different and perhaps more complicated set of advantages and disadvantages and would not be permitted initially but could be phased in based on an assessment of initial experience.

An initial approach such as Option 3 would enable applicants to apply for permits to establish all types of commercial cannabis uses according to yet-to-be-defined conditions and zoning restrictions and also would involve developing a potential local tax measure to generate revenue for cost recovery and services. Relative to the other sample options, Option 3 would have the best chance of curtailing black market activities, would increase oversight of health concerns related to manufacture and sales, improve access to a legal product for residents, promote economic activity and generate the most revenue.

Public Outreach and Engagement

Since the approval of Proposition 64, staff has been contacted by numerous

organizations, property owners, business owners and individuals expressing interest in the County's plans for cannabis regulation. Most of the people who have contacted staff were supportive of allowing some forms of cannabis related businesses, but a few called to express concerns with potential uses.

In terms of potential business operators, staff was directly contacted by the representative of two potential business owners looking to establish a cannabis business in the unincorporated area of the County. One business owner was interested in establishing a cannabis oil extraction facility (manufacturer) on an agricultural property and the other was a property owner looking to cultivate within existing greenhouses on an agricultural property in the County. According to the business descriptions provided for each business, both operators owned property in the unincorporated area of the County and are eager to start operating if the Board decides to allow such uses.

In order to encourage public participation in this process staff created a webpage within the County's website that includes updated information on the County's progress on cannabis regulation as well as an email sign-up form where those interested in County cannabis regulation can be placed on a mailing list to be informed of future meetings or hearings. A week prior to this hearing date approximately 60 people had signed up on the email list.

Additional public outreach and involvement will be helpful as the County proceeds with formulating its cannabis policy. Various industry groups, public health advocates, property owners and any other groups or organizations that could be impacted by potential cannabis regulation will have valuable input to offer. Staff would appreciate direction from the Board on which approach(es) to public involvement the Board wishes to implement. For discussion purposes, below please find some alternative approaches (some of which could be implemented in tandem):

- Continue to have all formal discussion occur at the full Board of Supervisors meetings and continue to invite public participation.
- Direct staff to convene focused public meetings with representatives of affected constituencies.
- Convene a follow-up workshop with panelists from affected constituencies.
- Refer this matter to a standing or ad hoc committee of the Board for further detailed discussion and public involvement.
- Seek input from existing, relevant advisory committees, such as the Alcohol and Other Drugs Advisory Board, Municipal Advisory Committees and the P-Zone Committees.
- Seek input from cities.
- Continue to update County's notification list for this issue and notify interested parties of opportunities to participate in discussion of this topic.

Next Steps

- Ask questions of staff

- Hear from the public
- Identify additional information to be requested from staff
- Consider providing initial preliminary guidance to staff on which approach(es) to start work on or explore further
- Consider providing direction on public outreach and engagement

CLERK'S ADDENDUM

Speakers: Javier Quezada & Ilianna Inzonza, Friday Night Live; Ashley Bargaquast, Tully & Weiss Attorneys at Law; Wayne Reeves, Contra Cost County Farm Bureau; Patty Hoyt, ADAPT San Ramon Valley; Ryan Orihood, DROC; Catherine Taughinbaugh, Alcohol and Other Drugs Advisory Board; Brian Eliff, Delta Organic; Timothy Byars, resident of Concord; Rebecca Byars, resident of Concord (handout attached); Jaime Rich, ADAPT Lamorinda; Steve Mick, resident of Alamo; Eric Thomas, resident of Briones; Tom Aswad, resident of Walnut Creek; Tyson Griffin, La Corona Wellness; Eric Rehn, CCIM; Brian Mitchell, La Corona Wellness; Ricardo Munoz, resident of Brentwood; Chris Niewiarowski, resident of Martinez; Nbila Sher, Alcohol, Marijuana, Prescription Drug Coalition; Ryan Doronila, DVC Horticulture Program (book attached); Lucy Cheng; Guita Bahramipour, resident of Moraga; Jenny Jennings, Support Recovery; Joe Partansky, resident of Concord. The Department of Conservation and Development and other departments will return in mid-summer with an outline of options and additional information on the following:

- 1. An outreach plan to hold workshops and town halls for input from the cities and unincorporated areas*
- 2. The appropriate and/or desirable areas in which to allow indoor cultivation, outdoor cultivation, manufacturing, testing, and distribution centers*
- 3. The appropriate and/or desirable location of retail dispensaries to best serve the public, particularly those with disabilities, with the support of the nearby city(s)*
- 4. The use of the tobacco ordinance as a model for regulation of sales of cannabis products and preventing access by youth*
- 5. The use of the urban farms ordinance as a model for the zoning in the siting of cannabis-related businesses*
- 6. Regulation of delivery of cannabis products to residences*
- 7. Information on models used by other areas where programs and regulations are already in place for medicinal or recreational cannabis*
- 8. Information on the cultivation of hemp or cannabis as a crop*
- 9. Information on environmentally friendly and responsible production and construction, such as the use of solar power, recycled water, and the use and management of pesticides and herbicides*
- 10. Information on revenues (taxes and fees) feasible from transactions of cannabis cultivation, testing, manufacturing, distribution and retail sales, particularly as related to funding for youth drug use prevention and treatment, and public safety services - law enforcement and fire protection*
- 11. Information and recommendations in regard to cannabis-related industry siting in the Northern Waterfront Initiative area*
- 12. Information on the handling of banking transactions and revenue collection employed in other regions*
- 13. Further information on the health effects of cannabis use*
- 14. Further information on providing public education on a) youth access b) responsible adult use*

ATTACHMENTS

Attachment 1- Table 1: Preliminary Evaluation of Cannabis Uses

Attachment 2 - Table 2 Preliminary Evaluation of Sample Regulatory Options

Attachment 3 - Considerations for Different Cannabis Use Types

Attachment 4- Powerpoint Presentation

Attachment 5 - Contra Costa County Urgency Ordinance No. 2017-03

Attachment 6 - Contra Costa County Marijuana Ordinance

Attachment 7 - Alameda County Memo and Draft Cannabis Ordinance

Attachment 8 - Sonoma County Cannabis Ordinance

Attachment 9 - Bureau of Medical Cannabis Regulation FAQ's

Attachment 10 - CalCannabis Flyer

Attachment 11 - Colorado Health Institute Report

Attachment 12 - The Battle Over Hemp Article

Attachment 13 - Colorado Revenue Article

Attachment 14- Colorado Legalization Study 2016