



**Contra
Costa
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: October 24, 2017

Subject: Adoption of Ordinance 2017- 26 Prohibiting Cannabis Cultivation and Commercial Uses and an Update on Preliminary Cannabis Regulatory Framework

RECOMMENDATION(S):

1. OPEN the public hearing on Ordinance No. 2017-26, ACCEPT public testimony, and CLOSE the hearing.
2. ADOPT Ordinance No. 2017-26, regulating the personal cultivation of cannabis and prohibiting commercial cannabis activities.
3. ADOPT findings in support of Ordinance No. 2017-26
4. FIND that adoption of Ordinance No. 2017-26 is exempt from the California Environmental Quality Act (CEQA) per section 15061(b)(3) of CEQA guidelines.
5. DIRECT the Director of the Department of Conservation and Development to file the Notice of Exemption with the County Clerk.
6. ACCEPT report from HdL Companies on Fiscal Analysis of the Potential Commercial Cannabis Industry in Contra Costa County.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **10/24/2017** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, 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: October 24, 2017

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

Contact: Ruben Hernandez,
(925) 674-7785

By: , Deputy

cc:

7. ACCEPT report from staff on Preliminary Working Draft Framework for Regulating Cannabis in the Unincorporated Area of Contra Costa County, including report from the Health Department on potential

RECOMMENDATION(S): (CONT'D)

regulations to protect public health and safety.

8. PROVIDE direction to staff regarding potential development of a cannabis tax measure for November 2018, refinement of the Preliminary Regulatory Framework and conducting additional public outreach on the matter.

FISCAL IMPACT:

Preparation of regulations on the commercial cultivation, distribution, transport, storage, manufacturing, processing, and sale of medical cannabis and medical cannabis products, and of adult-use cannabis and adult-use cannabis products, as authorized by the Control, Regulate, and Tax Adult Use of Marijuana Act, and on cultivation for personal use, is expected to cost approximately \$100,000 to \$150,000 in staff time and consulting fees.

BACKGROUND:

I. Ordinance 2017-26

Per direction received at the July 18, 2017 Board of Supervisors meeting, the Department of Conservation and Development has prepared an ordinance prohibiting commercial cannabis uses and regulating cultivation for personal use (Ordinance 2017-26) to replace the current urgency ordinance (Ordinance No. 2017-03) which is set to expire on January 30, 2018. The restrictions in the proposed ordinance are identical to those in the current urgency ordinance. Adoption of the proposed ordinance is critical in order to ensure that no unauthorized commercial cannabis uses are established within the unincorporated areas of the County after expiration of the existing urgency ordinance. Also, beginning on January 1, 2018, it is anticipated that the State of California will begin issuing licenses for commercial cannabis uses and if no local regulations are in effect at that time, the State would become the sole licensing authority for such uses. Ordinance 2017-26 could be replaced in the future by a different set of regulations if and when the Board approves a new ordinance. Adopting Ordinance 2017-26 now would enable the County to adjust regulations later without new businesses being permitted by the state in the meantime.

In summary, Ordinance No. 2017-26 would regulate the personal cultivation of cannabis by allowing the cultivation of six or fewer plants indoors for personal use. The ordinance also allows the cultivation of six or fewer plants inside a fully-enclosed and secured accessory structure to a private residence, such as a greenhouse, located on the grounds of a private residence. The ordinance prohibits the outdoor cultivation of cannabis. The ordinance further prohibits all commercial cannabis activities, including the commercial cultivation, distribution, transport, storage, manufacturing, processing and sale of medical cannabis and medical cannabis products, and of adult-use cannabis and adult use cannabis products.

II. County Planning Commission Meeting

Ordinance 2017-26 was heard before the County Planning Commission on October 11, 2017. At the Commission hearing several members of the public provided testimony on the ordinance. Many of the comments related to concerns with limitations on indoor and outdoor personal cultivation and providing for expanded indoor and outdoor personal cultivation was recommended. Additional comments were received on the proposed timeline for preparation of the County's future cannabis ordinance and how important it is that the County adopt the cannabis regulatory ordinance sooner rather than later due to the potential for prospective cannabis businesses to end up behind those in other jurisdictions where commercial cannabis uses are legal. Testimony was also received in support of the proposed cannabis prohibition and in support of the process of preparing comprehensive cannabis regulations as discussed at the previous cannabis workshops.

After accepting public testimony, the Planning Commission voted unanimously to recommend that the Board of Supervisors adopt Ordinance No. 2017-26 with a recommendation that the Board establish a deadline of June 30, 2018 for adoption of comprehensive cannabis regulations and that the Board consider expanding the number of plants that can be grown indoors for personal consumption and establishing a pre-application process that would allow potential cannabis business owners to apply for a permit to operate a cannabis business prior to the County ordinance taking effect so that the businesses could start operation almost immediately once the ordinance becomes effective. Please note, the preliminary schedule is attached and the timing issue is briefly discussed in the Preliminary Regulatory Framework.

III. HdL Report on Cannabis Tax For County

The County enlisted the services of HdL Companies to develop a draft fiscal analysis (Exhibit #) of the commercial cannabis industry for Contra Costa County. The HdL analysis identifies tax options and revenue estimates for the various types of cannabis businesses that could operate in the unincorporated County, and identifies local economic impacts of the cannabis industry. The analysis also considers financial constraints, including the overall tax and regulatory burden, which may affect both the industry's long-term stability and its ability to successfully transition to a legal, regulated paradigm that can outcompete the existing black market. The analysis also provides initial information on estimated costs of regulation and enforcement. HdL will present the report and respond to questions. Staff will seek additional Board guidance on this matter.

IV. Working Draft Preliminary Framework for Regulating Cannabis

Based on direction provided by the Board at its April and July meetings, staff has prepared a Preliminary Working Draft Framework for Regulating Cannabis in the Unincorporated Area of Contra Costa County. In addition to summarizing the general regulatory approach outlined by the Board in previous meetings, the document also includes new concepts or unresolved issues intended to stimulate discussion and feedback. Many of the more significant areas that will require board input are highlighted

in yellow. Once the document has been refined to a level satisfactory to the Board, staff would suggest that we utilize it as a tool for stimulating additional feedback from the public.

ADDITIONAL INFORMATION

Health Services Report- The County Health Department has provided a report identifying Health Department concerns and providing some recommendations for potential Health Department cannabis regulations and requirements. The report is attached.

Maps- In response to input and comments made by Board members at the prior meetings, and in response to input and comments provided by members of the public who are interested in establishing cannabis businesses within the County, changes have been made to the preliminary land use maps previously presented to the Board. The changes include expanding the recommended allowed uses in some of the zoning districts, such as the agricultural zoning districts, that would allow for some “vertical integration” of allowed uses. For example, manufacturing and distribution are now recommended to be permitted within the agricultural zoning districts in order allow cannabis farmers the ability to process, manufacture and distribute their cannabis products directly to retailers. In addition to the previously mentioned changes, all uses have been consolidated into one map, detailed maps have been provided for many areas and buffer options have been consolidated from three options to two options.

Schedule- A preliminary draft schedule is attached. This is an initial projection and will be refined.

Table 1 (Caps and Selection Process)- Table 1 provides additional analysis of this issue which is discussed in Framework document.

Concord Survey- A copy of a September 27, 2017 Cannabis Planning Survey prepared for the City of Concord is attached. The scientific survey collected input from 1,155 likely November 2020 voters on potential cannabis regulations for the City of Concord.

Vertical Integration of Uses- The issue of permitting “vertical integration” of some cannabis uses, such as allowing cultivation and manufacturing at the same site, was raised by Board members at the prior meeting and by members of the public who have shown interest in operating a commercial cannabis business in the unincorporated area of the County. It appears likely that vertical integration of cannabis uses would be permitted under State cannabis regulations and therefore can be permitted and regulated by local jurisdictions. By permitting some vertical integration of specific cannabis uses, a number of inefficiencies could be eliminated from the production process by allowing cultivators to process and manufacture their cannabis crop on-site instead of delivering it to a separate manufacturing or processing facility and by allowing cultivators to distribute their crop to retailers.

The vertical integration of some commercial cannabis uses had been incorporated into the attached Preliminary Framework. As can be seen in the Framework, multiple commercial cannabis uses can be established on properties located within the Agricultural (A-) and industrial (L-I and H-I) zoning districts, as well as within the area wide P-1's (N. Richmond, Rodeo, El Sobrante and Bay Point). Staff recommends that if vertical integration is allowed in rural areas then safeguards should be established to ensure that processing and distribution activities reflect rural constraints, such as lack of sewer and treated water and rural road conditions.

Promoting Sustainability- The issue of energy and water consumption, particularly when it comes to cultivation of cannabis, has been identified as an area of concern during this process. In order to encourage “green” operating practices for commercial cannabis uses, that County regulations could require reusable energy generation to offset new demand and could require a demonstrated sustainable water supply that doesn't harm overburdened ground water supplies, impact natural springs or seeps or tax municipal water supplies. In addition, if the County were to incorporate a scoring system into the selection process, cannabis businesses would receive credit if they incorporate “green” business practices, such as utilizing solar, therefore increasing their competitiveness.

Supporting Local Businesses- At one of the cannabis workshop meetings, the issue of supporting local businesses already operating in the unincorporated areas of the County was brought to the attention of staff. In order to provide support for local businesses looking to get into cannabis, the scoring system discussed in the Preliminary Framework could provide additional points for applicants who currently operate a business within the County. Additional points could be given to local County farmers looking to get into cannabis cultivation.

V. Next Steps

Once the Board is satisfied with the refinement of the Preliminary Cannabis Regulatory Framework document, the Board may direct staff to expand the public outreach process for the County's proposed cannabis regulations and taxation. This could include sharing the Preliminary Framework with community groups, other cities within the County, County Municipal Advisory Councils (MACS), alcohol and drug prevention groups, cannabis advocate groups and any other organizations that might be interested in the County's regulations. The Board may also direct staff to begin advertising and holding public community workshops on the proposed regulations.

County staff continues to monitor and coordinate with city staff as their jurisdiction contemplate updating cannabis regulations. Staff will be prepared to provide a verbal update on October 24th.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board does not adopt Ordinance No. 2017-26, prohibiting the establishment of specific cannabis uses, upon expiration of the current urgency ordinance prohibiting cannabis uses, which is set to expire on January 30, 2018, it could be possible to establish certain cannabis uses without County approvals or authorization.

CHILDREN'S IMPACT STATEMENT:

N/A

CLERK'S ADDENDUM

Speakers: Tom Aswad, Support4Recovery; John A. Thiella, JG & Associates (handout attached); Jim Gonzalez, JG & Associates ; Andrea Bari, SELF; Boaz Benzakry, resident of Martinez; Jennifer Faddis, Center for Human Development; Jaime Rich, Center for Human Development; Ali Wohlgemuth, Bay Area Community Resources; Ed Breslin, ; Arielle Sumilhig, resident of Fairfield; Tiffany Kelly; Nicole McNab, resident of Concord; Mark Unterbad, resident of Brentwood; Sharon golden; Debbie Berandt, resident of Orinda. Written comments were provided by Dr. Anne Sutherland, Alcohol and Other Drugs Advisory Board (attached). CLOSED the hearing; ADOPTED Ordinance No. 2017-26, regulating the personal cultivation of cannabis and prohibiting commercial cannabis activities. 3. ADOPT findings in support of Ordinance No. 2017-26; FOUND that adoption of Ordinance No. 2017-26 is exempt from the California Environmental Quality Act (CEQA) per section 15061(b)(3) of CEQA guidelines; DIRECTED the Director of the Department of Conservation and Development to file the Notice of Exemption with the County Clerk; ACCEPTED report from HdL Companies on Fiscal Analysis of the Potential Commercial Cannabis Industry in Contra Costa County; ACCEPTED report from staff on Preliminary Working Draft Framework for Regulating Cannabis in the Unincorporated Area of Contra Costa County, including report from the Health Department on potential regulations to protect public health and safety; and DIRECTED staff to investigate safety and health impacts of outdoor growth and whether grant money is contingent upon allowing outdoor cultivation; and DIRECTED staff to bring back on the consent calendar, the Preliminary Regulatory Framework document as revised today, and an outreach plan, for Board review and approval. Staff will develop a packet of reference materials and set up a tour in each district for the Supervisor.

ATTACHMENTS

Ordinance No. 2017-26

Findings for Ordinance 2017-26

HdL's Fiscal Analysis of the Potential Commercial Cannabis Industry for Contra Costa County

Preliminary Working Draft Regulatory Framework

Report from Health Services

Maps

Schedule

Table 1- Regarding Caps and Selection Process

Concord 2017 Survey