



**Contra
Costa
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: June 26, 2018

Subject: Adoption of Cannabis Ordinance Regulating Commercial Cannabis Uses and the Personal Cultivation of Cannabis in the Unincorporated Areas of the County

RECOMMENDATION(S):

1. OPEN the public hearing on Ordinance Nos. 2018-18 and 2018-19 to regulate commercial cannabis activities and personal cannabis cultivation in unincorporated Contra Costa County, and prohibit commercial cannabis activities in the Bethel Island, Sandmound Slough, Contra Costa Centre, Acalanes Ridge, Saranap, and Alamo areas; ACCEPT public testimony; and CLOSE the public hearing.
2. DETERMINE that adoption of Ordinance Nos. 2018-18 and 2018-19 is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Business and Professions Code section 26055(h) (commercial cannabis activities), and pursuant to CEQA Guidelines section 15061(b)(3) (personal cannabis cultivation).
3. ADOPT Ordinance Nos. 2018-18 and 2018-19 to regulate commercial cannabis activities and personal cannabis cultivation in unincorporated Contra Costa County, and prohibit commercial cannabis activities in the Bethel Island, Sandmound Slough, Contra Costa Centre, Acalanes Ridge, Saranap, and Alamo areas.
4. DIRECT the Director of Conservation and Development, or designee, to file the CEQA

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **06/26/2018** ☐ 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: June 26, 2018

Contact: Ruben
Hernandez, (925) 674-7785

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

By: , Deputy

cc:

Notice of Exemption with the County Clerk-Recorder.

FISCAL IMPACT:

The department cost in staff time and materials for preparation of the County Cannabis Zoning Regulations so far is approximately \$270,000. The expense for preparation of the ordinance is included in the department budget. If the Board adopts the proposed Zoning Regulations, and the cannabis tax is approved by voters in the unincorporated area of the County in November 2018, general fund revenue approximately \$2 to \$4 million annually may be generated from commercial cannabis activities. Permit fees are anticipated to cover permitting costs.

BACKGROUND:

The Department of Conservation and Development has prepared for adoption by the Board a proposed zoning text amendment establishing a new County Cannabis Ordinance regulating commercial cannabis activities and the cultivation of cannabis for personal use. The proposed zoning text amendment also involves the establishment of a new "Cannabis Exclusion" (-CE) combining district which would prohibit the establishment of commercial cannabis uses on properties within the combining district. A rezoning to apply the Cannabis Exclusion (-CE) combining district to properties in the Bethel Island, Sandmound Slough, Contra Costa Centre, Acalanes Ridge, Saranap and Alamo is included in the Board recommendation. In addition to adoption of the Cannabis Ordinance and rezoning, the existing regulations prohibiting commercial cannabis uses and regulating the cultivation of cannabis for personal use would be repealed if the cannabis tax measure is approved.

The cannabis ordinance, Cannabis Exclusion combining district, and rezoning presented to the Board today were prepared to conform to the Framework for Regulating Cannabis in the Unincorporated Area of Contra Costa County approved by the Board of Supervisors on April 24, 2018, following completion of a thorough public engagement program and substantial discussion of the matter by the Board at numerous meetings. The ordinance also incorporates the recommendations of the County Planning Commission as adopted at their May 23, 2018 public hearing.

Based upon the approved Framework, the Cannabis Ordinance provides for the regulation of commercial cannabis uses and the personal cultivation of cannabis in the following ways:

- Identifies prohibited uses and provides definitions of cannabis and cannabis terms;
- Requires a land use permit for all commercial cannabis uses and places limits on specific commercial cannabis uses;
- Establishes a five year permit term for cannabis permits;
- Provides for the establishment of a request for proposal (RFP) selection process for specified cannabis activities (details of RFP process to be approved later by BOS);
- Identifies exemptions from permitting requirements, including indoor and outdoor personal cultivation;
- Regulates the delivery of cannabis from outside the County;
- Identifies permit application requirements;
- Provides general standards applicable to all cannabis activities;

- Provides specific standards for each of the commercial uses, including retailers, commercial cultivation, manufacturing, testing laboratories and distribution centers;
- Identifies the specific zoning districts where commercial cannabis activities can operate.

Cannabis Exclusion (CE) Combining District- The ordinance will also establish a Cannabis Exclusion (-CE) combining district. The Cannabis Exclusion (-CE) combining district will be used to prohibit the establishment of commercial cannabis uses in specific zoning districts in the County. The Cannabis Exclusion overlay will be applied to commercial properties in the Contra Costa Centre, Acalanes Ridge/Saranap, Alamo, Bethel Island and Sandmound Slough areas based on their distance (more than 4 miles) from Highways 4 and 80, the established industrial and commercial areas of the County. The Cannabis Exclusion zoning would prevent the establishment of commercial cannabis uses in the affected areas and would encourage these uses and economic development in areas with larger contiguous blocks of commercial and industrial land and buildings. The Cannabis Exclusion areas cover smaller, more isolated patches of commercial zoning districts where the potential impacts of these businesses --odor, security, exposure to youth -- are more likely to affect neighboring properties and communities. The Cannabis Exclusion areas also prevent the establishment of commercial cannabis uses in isolated areas of the County where law enforcement, fire and code enforcement presence is limited and response times hindered. Maps of the areas to be placed within the -CE combining district are attached.

Cannabis Delivery from Outside County- The ordinance also includes a number of detailed provisions to regulate the delivery of cannabis from outside the County, an issue raised by members of the Board and the public during a number of the public cannabis meetings. Section 88-28.406(b) of the draft ordinance exempts the delivery of cannabis from outside the County from the land use permitting process of the ordinance but places specific requirements on delivery businesses located outside the County who want to deliver inside the County, including:

- The delivery business must be licensed and permitted by the state and applicable local agency;
- The delivery business has a County business license;
- The business must have operational safeguards to ensure delivery to persons of legal age and be able to provide specific documentation upon request of County law enforcement;
- All driver and delivery vehicles must conform to specific requirements, including state law for cannabis delivery businesses.

Similar provisions are included in the ordinance as required safeguards for delivery businesses that may be permitted in the unincorporated area.

COUNTY PLANNING COMMISSION HEARING

On May 23, 2018, the County Planning Commission held a public hearing on the proposed cannabis ordinances. The Planning Commission opened the public hearing and received testimony from ten speakers. Most speakers provided testimony and/or comments in support of the ordinance, though testimony was also received regarding concerns with greater access to cannabis and the need for additional drug prevention and

education programs, specifically for youth if the ordinances passes. After accepting testimony from the public, the Planning Commission closed the public hearing and brought the item back to the Commission members for discussion.

After closing the public hearing, the Planning Commission discussed the proposed ordinance and asked various questions of staff. The issues discussed by the Planning Commission included; volatile vs. non-volatile manufacturing; the sale of edibles; geographic distribution of retail stores; Zoning Administrator approval of cannabis land use permits; water conservation measures; the public water agency service requirement and ground water use; and caps on commercial cultivation.

During public comment, multiple speakers provided comment on the water requirements of the ordinance in relation to commercial cultivation. Their main concern focused on the public water service requirement of Section 88-28.408(c)(2) and Section 88-28.414(d). They took issue with these portions of the ordinance because it would prohibit farmers not served by agencies delivering potable or irrigation water from applying for a cultivation permit, even though groundwater may be available for their property. According to some of the speakers, irrigation water is not available year-round which can be a significant hindrance for growing cannabis. Likewise, speakers claimed that cannabis grown in a greenhouse needs to be irrigated with drip irrigation and water from irrigation districts is suitable for flood irrigation, not drip irrigation. These water issues are discussed in additional detail in the letter from JG & Associates dated May 21, 2018, submitted to the Planning Commissioners at the hearing. A copy of the letter is included as an attachment for consideration by the Board.

After discussing the water issue, the Planning Commission agreed with the speakers with regard to the water requirements and included in their motion a recommendation to amend the ordinance as provided in the May 21, 2018 letter from JG & Associates. That letter recommended that the following underlined language be added to the ordinance; Section 88-28.408(c)(2) - "Evidence of an existing sustainable groundwater supply on site or proof of water service availability from a retail water supplier, as defined in Water Code Section 13575." and Section 88-28.414(d) - "Water. Where feasible, water conservation measures, water capture systems, or gray water systems must be incorporated in cannabis cultivation operations in order to minimize use of water. If a sustainable groundwater supply does not exist on a cultivation site, water service for a commercial cannabis business must be provided by a retail water supplier, as defined in Water Code Section 13575."

In order to ensure that the revised provision recommended by the Planning Commission is enforceable, staff has expanded upon the language suggested in the JG & Associates May 21 letter. The following text has been added to Section 88-28.414(d) of the ordinance to implement the Planning Commission's recommendation:

"A commercial cultivation business may satisfy its water demand by pumping groundwater from a groundwater production well if both of the following criteria

are met:

(A) The use of groundwater by the business will not substantially deplete groundwater supplies, and will not substantially interfere with groundwater recharge, such that there would be a net deficit in aquifer volume or a lowering of the groundwater table level.

(B) The business uses groundwater in accordance with any applicable groundwater sustainability plan adopted by a groundwater sustainability agency within which the business is located."

In addition to modifying the ordinance language as described above, the Planning Commission also included other specific Board recommendations in their motion. The Planning Commission's motion included the following recommendations to the Board:

- Land use permit applications for commercial cannabis uses should be processed in accordance with the current land use permitting process where the initial hearing body for commercial cannabis land use permits is the County Zoning Administrator and appeals are heard by the Planning Commission and Board of Supervisors.
- The use of drip irrigation and hydroponic grow beds should be a consideration in the selection process for commercial cultivation cannabis applications.
- The "geographic distribution" of commercial cannabis uses should be a consideration in the permit selection process.

The Planning Commission's recommendations related to the RFP will be presented to the Board again in the future when the RFP process is being considered by the Board.

Analysis of Retail Water Service/Groundwater Issue

It should be noted that the change to the Ordinance recommended by the Planning Commission is not consistent with the Framework approved by the Board. The Framework included a provision to restrict cannabis cultivation to areas served by irrigation and water districts for a number of reasons, including the following:

- Cannabis is a relatively water-intensive crop and water and irrigation districts are carefully managed and overseen to ensure that they have adequate, sustainable water resources to serve their customers.
- Ground water extraction is not yet regulated in California (that is changing, but will take many years).
- Many areas of the County have experienced ground water shortages, causing significant hardship on rural residents who struggled to pump enough water for in-home use, especially in the Tassajara and Marsh Creek Road areas.
- Cannabis has an extremely high value per pound and growing cannabis in an area with limited ground water may incentive the cultivator to drill deeper or take other measures to extract water from the ground even at a significant cost.
- Illegal cultivation efforts in the County and elsewhere have often illegally diverted streams and springs or relied on ground water and these actions have caused environmental degradation.

Areas not served by a public water agency are generally more remote and generally do

not support large areas of intensive cultivation. A cannabis farming operation is likely to be a fairly intense agricultural operation and may have a need for substantial employees, structures and security measures. Consequently, cannabis cultivation may be better suited for areas with greater infrastructure, such as urban areas or those areas of the County that are already dominated by irrigated agriculture.

It should also be noted that the changes to the Ordinance recommended by the Planning Commission would require some analysis and protections regarding ground water supply. In addition to Ordinance provisions regarding documenting water availability, the County's approval of a land use permit for such use would be subject to the requirements of the California Environmental Quality Act (CEQA). CEQA requires, among other things, that impacts to hydrology and water quality be evaluated, including impact to groundwater supplies.

Following the Planning Commission meeting, staff further researched the issues raised by the public regarding the availability of irrigation district water at different times of the year and compatibility with drip irrigation. The East Contra Costa Irrigation District is able to serve water nearly year around, but can't guarantee service 365 days a year. Byron Bethany Irrigation District generally does not provide water in the winter months when the farmers growing outdoors don't need it. Both districts can and do serve water to customers who apply it via drip irrigation techniques. If cannabis cultivators need water service more consistently than irrigation districts are able to provide it, a reasonable adaption would be to use groundwater to address water needs during any periods when irrigation water is not available.

ADDITIONAL CONSIDERATIONS

At the Planning Commission hearing one speaker brought up the issue of allowing the manufacture of cannabis products using volatile substances. The speaker argued in favor of allowing specific "volatile" manufacturing processing which, according to the speaker, are no more dangerous than some of the methods used in the "non-volatile" processes, particularly when only small quantities (e.g. three gallons) of hexane is all that is used onsite. To further explore the issue, DCD staff consulted with County Hazardous Materials staff regarding the use of specific volatile materials such as hexane in the cannabis manufacturing process. According to Hazardous Materials staff, the storage and use of even small volumes (e.g. 3 gallons) of "volatile" manufacturing products such as hexane would still pose a threat. Hazardous Material staff recommend that volatile manufacturing be prohibited.

This ordinance becomes effective, but not operative, 30 days following its adoption by the Board of Supervisors. This ordinance will become operative on the effective date of the Contra Costa County Cannabis Business Tax Ordinance only if the tax ordinance is approved by a majority of voters voting on the tax ordinance at the November 6, 2018, general election. The current restrictions on all commercial cannabis uses and on all outdoor personal cultivation will remain in effect unless and until the tax ordinance is approved by voters.

CEQA

The adoption of Ordinance Nos. 2018-18 and 2018-19 is exempt from environmental review under the California Environmental Quality Act, pursuant to Business and Professions Code section 26055(h) (commercial cannabis activities) and CEQA Guidelines 15061(b)(3) (personal cultivation). The issuance of a permit under Ordinance No. 2018-18 is a discretionary decision. Section 88-28.410(i) in Ordinance No. 2018-18 requires CEQA environmental review to be completed before the County issues a permit under the ordinance. In terms of personal cultivation it has been determined with certainty that there is no possibility that the personal cultivation provisions of the ordinance will result in a significant impact to the environment and is therefore exempt from CEQA pursuant to section 15061(b)(3) of CEQA Guidelines.

CONSEQUENCE OF NEGATIVE ACTION:

If the cannabis ordinance is not approved the current prohibition on commercial cannabis uses will remain in effect and the November 2018 cannabis tax ballot measure would no longer be necessary. No cannabis tax revenue or specific state grant funding would be received.

CHILDREN'S IMPACT STATEMENT:

Approval of the cannabis ordinance could potentially allow access to State grant funding and new revenue streams from the future County cannabis tax which could be used for drug prevention education, additional law enforcement services and health services.

CLERK'S ADDENDUM

Speakers: Oscar Burola Jr, resident of Brentwood; Isreal Martinez, resident of Brentwood; John Thiella, resident of Richmond; Mark Unterbach, resident of Brentwood; Meridith Hendricks, Save Mount Diablo; Eric Thomas, resident of Briones; Ashley Bargaquast, Tully & Weiss, Attorneys at Law; Mei Leng, HOA Rose Garden Encore; Jonathan Yue, Silicon Valley Chinese Association (SVCA); Yanwei Leng, CCC Coalition Against Recreational Marijuana. Written commentary received from JG&Associates, Tricia Bello-Kunkel, Save Mt. Diablo, and Xiaezhen Min (attached). CLOSED the hearing; DETERMINED that adoption of Ordinance Nos. 2018-18 and 2018-19 is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Business and Professions Code section 26055(h) (commercial cannabis activities), and pursuant to CEQA Guidelines section 15061(b)(3) (personal cannabis cultivation); ADOPTED Ordinance No. 2018-18 as modified today in regard to water usage: the cultivator would still be required to be served by a retail water supplier, but groundwater could be used during periods of time when the public water agency water would not be available, provided the sustainability of the ground water can be demonstrated; and DIRECTED the

Director of Conservation and Development, or designee, to file the CEQA Notice of Exemption with the County Clerk-Recorder.

ATTACHMENTS

Ordinance 2018-18

Ordinance 2018-19 Exclusion Area

Water Alternative A

Water Alternative B

JG and Assoc CPC Ltr

Approved Cannabis Framework April 24, 2018

Zoning Maps with 1000 foot buffers

PowerPoint