



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: TMP-0716

Board Meeting Date: 7/11/2017

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: John L. Maltbie, County Manager
Subject: Proposition 64: Cannabis Study Session Update

RECOMMENDATION:

Review updated information on Federal and State regulatory framework for commercial medical and non-medical cannabis activities, and provide additional direction to staff on how to proceed in the unincorporated areas of the County.

Review anticipated countywide regulatory impacts to County of potential commercial cannabis activities, whether permitted by the County or by a city, and discuss possible cost recovery mechanisms

BACKGROUND:

County Efforts to Date

At a study session on Marijuana Regulation on December 6, 2016, the Board directed staff to explore the possibility of developing a coordinated regional approach to the regulation of nonmedical marijuana. Subsequently, on December 13, 2016 the Board adopted an Interim Urgency Ordinance establishing a temporary moratorium on commercial nonmedical marijuana activity and outdoor cultivation of marijuana within the unincorporated area of the County, and on January 24, 2017 extended the ban until December 12, 2017 to give staff "an opportunity to consider options and legal authority to regulate nonmedical marijuana activity in a manner consistent with the newly enacted State laws."

In March 2017 County staff hosted 17 cities and towns for a presentation and a discussion on countywide collaboration to develop a common regulatory framework. Among cities present, there was variation in level of readiness for implementation. Several jurisdictions, like the County, have adopted interim bans to give themselves additional time to adopt local regulatory approaches and make appropriate land use decisions. Some cities are exploring permanent bans on commercial marijuana activities, while a couple appear to be moving toward allowing some commercial activities.

After the March 2017 meeting County staff formed separate cross-jurisdictional working groups focused on four key regulatory issues: Cultivation; Manufacturing; Sales; and Revenue. None of the working groups expressed a strong interest in adopting a uniform countywide regulatory approach,

though there is interest in some additional coordination. Interest appears strongest in local (i.e., jurisdiction-specific) regulation of commercial cultivation. Some cities expressed general interest in pursuing their own licensing cannabis testing facilities. Interest in licensed brick-and-mortar dispensaries was limited.

Finally, County staff hosted a meeting with agricultural stakeholders who confirmed interest in cannabis as a local crop, but also highlighted some concerns that local cannabis cultivation may lead to greater resource use, to increased pressure on the limited farm labor supply, and that the “cash-crop” nature of the industry may impact local property values and displace some existing local agriculture.

Federal and State Regulatory Framework

Amidst local discussions, the Federal and State groundwork has shifted. While the Federal government has taken a hands-off approach to state-sanctioned cannabis activities the past few years, the current Attorney General has threatened to be more aggressive in prosecuting non-medical cannabis activities. Further, though legalized at the state level, cannabis remains classified as a Schedule I drug under the US Controlled Substances Act (CSA) and licensed California businesses could be subject to prosecution by the Department of the Treasury and the Department of Justice.

On June 15, 2017 the State Legislature passed Assembly Bill 94 to effectively merge the voter-approved Adult Use of Marijuana Act (Proposition 64) and the Legislature’s previously approved Medical Cannabis Regulation and Safety Act (MCRSA). Rather than continuing two parallel permitting schemes for medical and non-medical commercial activities, there will be a single uniform standard - the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). Local jurisdictions will have to provide State agencies with a copy of any ordinance or regulation related to commercial cannabis activity and a point of contact for state licensing agencies at the local level. Locally permitted business will be able to apply for a state license on January 1, 2018.

As under the previous schemes, the recently renamed Bureau of Cannabis Control (formerly the Bureau of Medical Cannabis Regulation or BMCR) will be the lead state agency for much of the State's licensing and regulatory responsibilities, with the California Department of Food and Agriculture (CDFA) taking the lead on cultivation regulation and development of the track-and-trace program, and the California Department of Public Health (CDPH) taking lead on manufacturing regulations. Draft regulations for commercial medicinal cannabis were issued by these State agencies in April for public comment, and they will all be issuing new rules under the new scheme by the end of the year.

The County faces similar types of land use decisions in the unincorporated area as those faced by its municipal jurisdictions. However, should cities decide to license commercial nonmedical cannabis activities, the County will also have to deal with an increase in its cross-jurisdictional countywide regulatory responsibilities. As previously acknowledged, there will be both mandated and optional ongoing oversight functions at the County level.

DISCUSSION:

In sum, cannabis regulation continues to be a dynamic environment with a lot of uncertainty. This uncertainty is likely to continue well into next year as statewide regulations get approved and rolled out. The area, which appears to have some of the greatest interest, least regional effects, and which might be subject to a relatively straightforward local regulatory scheme, is small scale indoor, mixed light cultivation. While it is clear that cannabis is going to have community costs, it will continue to be challenging to estimate those costs and the recoverability of those costs until the scope of allowable

uses and regulations are decided.

Personal Cultivation

Under state law, individuals over the age of 21 may grow up to six (6) plants for personal use. While local governments may regulate and place reasonable limitations on this cultivation for personal use, local agencies may not completely ban indoor cultivation and no state license is required.

San Mateo County's existing temporary moratorium on outdoor personal cultivation is in place until December 12, 2017. The Board can consider extending the ban on outdoor personal cultivation or to set minimum lot-size and set-back requirements for outdoor personal cultivation.

The Board may additionally regulate indoor personal cultivation in the unincorporated area and impose a registration process with reasonable restrictions. It is of note that regulations in at least one jurisdiction (Fontana) are subject to a legal challenge and staff has identified some enforcement challenges.

Commercial Cultivation

If the County were to permit cannabis cultivation in the unincorporated area, there are a variety of license-types it may wish to permit or prohibit. These each present slightly different impacts to consider, and vary based on size and light-environment.

State issued licenses for cultivation of medicinal and adult-use cannabis are:

Type 1 - Specialty outdoor; Small,

Type 1A - Specialty indoor; Small.

Type 1B - Specialty mixed-light; Small.

Type 1C - Cultivation; Specialty cottage; Small.

Type 2 - Cultivation; Outdoor; Small.

Type 2A - Cultivation; Indoor; Small.

Type 2B - Cultivation; Mixed-light; Small.

Type 3 - Cultivation; Outdoor; Medium.

Type 3A - Cultivation; Indoor; Medium.

Type 3B - Cultivation; Mixed-light; Medium.

Type 4 - Cultivation; Nursery.

The State will not be issuing licenses for large-scale cultivation (Type 5, 5A, 5B) until January 1, 2023.

Outdoor cultivation (Type 1, 2, 3, 5, and potentially Type 4 and 12) will generate more substantial odor issues for surrounding communities and raises greater security and environmental concerns. Mitigating visual impacts or shielding outdoor grows behind fences may be problematic in coastal agricultural areas. Outdoor grow operations present greater water demands and risk to watershed.

Indoor cultivation (Type 1A, 2A, 3A, 5A, and potentially Type 4 and 12) presents the opportunity for more agricultural activities in more urban areas than typical and where they may or may not conform

to existing zoning requirements. Indoor growhouses present unique fire prevention requirements and health and safety risks, though they greatly reduce community odor impacts and security concerns. Draft State regulations have attempted to partially address some of these environmental/energy use impacts by requiring 42% renewable power. But if the County were to permit indoor or mixed-light cultivation, it may wish to set a higher requirement.

From a community perspective, mixed-light cultivation (Type 1B, 2B, 3B, 5B, and potentially Type 4 and 12) offers some of the benefits of reducing community odor impacts, environmental, and security concerns, while reducing energy demands on a per square feet basis. Nighttime light-pollution from mixed-light facilities is a concern that would need to be addressed.

Nursery licenses (Type 4) which allow the growing of starts or pre-bloom plants, are not limited by size by proposed State regulations, and may be co-located with other cultivation licenses where harvesting occurs. Nurseries will typically be indoor or mixed-light.

Commercial production of industrial hemp, having no more than three-tenths of 1 percent tetrahydrocannabinol (THC), is exempt from this commercial licensing arrangement and will be separately administered the California Department of Food and Agriculture.

Manufacturing and Testing

Non-sales commercial/industrial licenses available under MAUCRSA include:

Type 6 - Manufacturer 1 (Products using non-volatile solvents)

Type 7 - Manufacturer 2 (Products using volatile solvents)

Type 8 - Testing laboratory

Manufacturing may include raw cannabinoid extraction or the manufacture of consumable products using cannabis extracts. Safety standards for extraction processes and for consumable product labelling and packaging are not yet established, and there remains uncertainty as to enforcement responsibilities between State and local agencies as regulations are still under development.

Licensed testing laboratories will be responsible for testing samples of cannabis batches and products for levels of specific cannabinoids and potency, for residual solvents and processing chemicals, for residual pesticides, for microbiological impurities, for mold, and more. Testing of products manufactured or sold in the County should be a primary concern with respect to the County's public health and safety responsibilities. Unfortunately, as testing labs will also be applying to the State for licensure January 1, 2018, the State will allow the manufacture and sale of untested products for at least 180 days.

Retail Sales and Other Licensed Activities

The 2009 County ordinance regulating the licensing of marijuana collectives generated some interest but there are no still no medicinal collectives operating in the unincorporated area. This ordinance does not reflect the new commercial cannabis licensing structure:

Type 10 - Retailer.

While retail sales offer the greatest potential for local government revenue through additional sales tax revenue, they also carry significant regulatory and enforcement issues. Zoning for and siting of retail cannabis facilities typically requires the greatest community involvement. MAUCRSA will also allow for licensing of non-brick and mortar dispensaries, and delivery-sales of cannabis across jurisdictional lines presents regulatory difficulties.

Type 11 - Distributor.

Distributor licenses have zero-store front, but operate between licensed cannabis businesses and may store cannabis under strict conditions.

Type 12 - Microbusiness.

Microbusinesses present unique problems as small vertically-integrated businesses that may grow, extract, and sell at a single site.

County Costs and Revenue

Costs to the County of commercial cannabis legalization will depend greatly on types of activities licensed by individual cities or by the County in the unincorporated areas. Even if commercial activities were not licensed anywhere in the County, personal cultivation and use would generate public health and safety costs. Certain enforcement responsibilities of the Environmental Health Division, the Agricultural Commissioner, and Planning may be fee recoverable. However, certain public health, law enforcement, and code compliance costs may not be directly recoverable.

The County could anticipate some increase in its share of local sales-and-use tax if non-medical sales occur within the County. Although beginning on January 1, 2018 the State will levy an additional 15% excise tax on purchasers of marijuana products and tax the cultivation of marijuana at \$9.25 per dry-weight ounce of marijuana flower and \$2.75 per dry-weight ounce of marijuana leaves, the County cannot not anticipate receipt of State excise revenues to cover cannabis-related expenses, including a local public education campaign or prevention programming.

The County has authority to impose a countywide or an unincorporated-area-only tax on cannabis activity that would be administered like a business license tax. The type of tax sought to be imposed (if any) can effect when the vote can occur and the proportion of electorate necessary for adoption. It is important to remember that a business license tax will only raise revenue if cannabis businesses are actually licensed. Thus, revenue projections can only be made concurrent with or after licensing decisions.

Next Steps

The Board may wish to give staff direction on its priorities for permitting or prohibiting commercial cannabis activities in the unincorporated areas of the County, for future action. It may also want to signal its preferred approach to managing future costs.

PERFORMANCE MEASURE:

N/A.

FISCAL IMPACT:

The full fiscal impact is unknown at this time and will likely depend on future decisions by individual cities and by the Board.