



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Manager



Date: November 28, 2016
Board Meeting Date: December 6, 2016
Special Notice/Hearing: None
Vote Required: None

TO: Honorable Board of Supervisors
FROM: Mike Callagy, Assistant County Manager
SUBJECT: Study Session: California Marijuana Legislation

RECOMMENDATION:

Review the information provided in this Study Session and provide direction on how to proceed in light of the passage of California Proposition 64 on November 8, 2016 and the 2015 passage of new medical marijuana legislation.

BACKGROUND:

Recent changes to the way California legislates and regulates marijuana require the County to consider local legislation and regulations regarding the use, cultivation, manufacturing, distribution, transportation and sale of marijuana, for both medical and non-medical purposes. In 2015, the State Legislature passed the Medical Marijuana Regulation and Safety Act (MMRSA), a series of bills (AB 266, AB 243 and SB 643) addressing commercial activity and government regulations related to medical marijuana. The November 2016 ballot included Proposition 64, which legalized non-medical marijuana use for persons 21 and over, and established a regulatory framework for commercial activity associated with non-medical marijuana. The regulatory framework the County should consider will be outlined in depth during the study session.

Presently, County regulation of marijuana-related activity is limited to a 2009 ordinance regulating the licensing of marijuana collectives distributing medical marijuana. There are no collectives operating within the County's jurisdiction.

With respect to the medical marijuana legislation, MMRSA requires a local license to obtain a state license allowing the activities covered by MMRSA. Proposition 64, on the other hand, does not require local licensing to proceed with the activities it authorizes. However, Proposition 64 does require State licensing for commercial activities, and based on information to date from the State, this licensing and related regulatory framework is unlikely to be in place prior to January 1, 2018. Further, Proposition 64 authorizes local governments to impose more restrictive regulations than those provided in the legislation or imposed by the State.

DISCUSSION:

The issues presented by the changes in marijuana legislation and regulation touch on many different aspects of County governance, including, among other things, environmental health, agriculture, planning, public safety, and public health.

Regulatory Framework

Proposition 64 legalizes the sale of products containing chemical compounds, or cannabinoids, found in the resin of the marijuana (cannabis) plant. The most well-known cannabinoids are Tetrahydrocannabinol (THC) and Cannabidiol (CBD). THC is the chemical responsible for most of marijuana's psychological effects.

Products made with cannabis extract include, but are not limited to, oils, tinctures, waxes, vapes and food (known as “edibles”). These products are not classified as food nor drugs, but oversight of manufacturing processes will be similar. The State of California Department of Public Health (CDPH) will be licensing and inspecting all manufacturing facilities, and will develop the laboratory standards for testing the concentration of, and contamination in the products. CDPH will also develop compliance requirements, labeling and packaging standards, and product standards for all consumables, including, but not limited to, edibles manufactured with cannabis extracts.

Regulations for dispensing, or sales of marijuana and products made with extracts will be developed by the California Department of Consumer Affairs-Bureau of Medical Cannabis Regulation (BMCR). BMCR will also be licensing and inspecting all dispensaries.

There will be mandated and optional ongoing regulatory oversight at the local level for manufacturing and dispensing operations. Existing state regulations require permitting and inspecting by County Environmental Health Services for hazardous materials management at manufacturing facilities. County Fire will also be conducting routine inspections of manufacturing facilities. Local jurisdictions have the option of developing more restrictive operating requirements and additional inspection programs for manufacturing and dispensaries than the minimum standards being developed by CDPH and BMCR. With respect to any commercial cultivation that might be allowed, the Agricultural Commissioner may have oversight responsibilities over licensing of cultivators and cultivation activity, depending on the regulatory framework the State ultimately establishes.

Land Use

The legalization of marijuana poses a number of significant land-use issues. It is possible that existing zoning regulations could be interpreted as allowing indoor cultivation and storage in industrial districts, as well as indoor and outdoor cultivation throughout the rural areas of the County-zoned Resource Management and Planned Agricultural District. Indoor growing operations would likely involve tenant improvements, (e.g., electrical and ventilation work) that would trigger the need for

building permits, and, in some cases, use permits. Depending on how existing zoning regulations are interpreted, it might be argued that outdoor growing activities would not trigger Planning or Building permit requirements, as land clearing for purposes of preparing a field for crops is generally exempt from the County's Land Clearing and Coastal Development Permit (CDP) requirements.

Producing marijuana products is a manufacturing/industrial use that would arguably be allowed under existing zoning in industrial and commercial districts, in some cases subject to a use permit. To the extent marijuana is considered to be an agricultural product, processing facilities might also be allowed within the Planned Agricultural District (PAD), subject to a PAD permit, a CDP permit, and a Building permit.

Law Enforcement

The Sheriff's Office anticipates a number of challenges related to the legalization of non-medical marijuana, based, in part, on Colorado's experience with similar legislation. These challenges include increases in driving under the influence cases, safety concerns posed by processing laboratories producing marijuana products (primarily hash/honey oil) and black market cultivation, processing, sales and use. Related to these issues, there will be a need to provide additional training for staff regarding the investigation of cases involving marijuana impairment (there is no field testing device for marijuana), protocols for responding to processing laboratories, and addressing "black market" operations. The Sheriff's Office also anticipates increased community concern regarding personal cultivation in residential neighborhoods.

Public Health

The Health System is considering the impacts of Proposition 64 on public health. Prior to the passage of Proposition 64, 20% of respondents of a recent survey of adults in San Mateo County report being current users of marijuana, with 31% reporting that they intend to use marijuana should it become a legal substance. Part of the Health System's consideration is the US Food and Drug Administration's classification of marijuana as a Schedule I substance, which means that 1) there is no current acceptable medical use and 2) there is a high potential for abuse. Additional concerns include marijuana addiction and developmental delays connected to adolescent use; depression, anxiety and loss of motivation associated with regular use; and the fact that in 2010, marijuana use was the cause of the most emergency room visits for people under 21 years of age, even higher than alcohol.

Next Steps

The immediate effects of Proposition 64 (pending the State adopting a regulatory framework) are, primarily, (1) the possession and use of personal amounts of marijuana is no longer a crime for persons over the age of 21, subject to certain location restrictions, and (2) persons over the age 21 are permitted to grow marijuana for personal use either indoors and (absent local regulation) outdoors. In terms of immediate next steps, your Board may wish, in light of the second issue and uncertainty

as to when the State will adopt a regulatory framework, to consider an emergency ordinance imposing a moratorium on marijuana activities that the County may regulate, the primary impacts of which would be a temporary prohibition of personal cultivation outdoors and a prohibition on commercial activities related to marijuana, such as commercial cultivation, processing and sales, until the County has established local regulations for such commercial activities. In general, the issues raised in this study session invite further consideration, including how the County will exercise its regulatory responsibilities over marijuana activities and whether the County should coordinate its efforts in this area with the cities in the County.

FISCAL IMPACT:

The full fiscal impact is unknown at this time and will likely depend on what regulatory provisions the State of California establishes.