



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: 18-197

Board Meeting Date: 3/13/2018

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: John L. Maltbie, County Manager
Michael Callagy, Assistant County Manager
Steve Monowitz, Community Development Director

Subject: Ordinance repealing Chapter 5.148 of Title 5 of the San Mateo County Ordinance Code and replacing it with a new Chapter 5.148, to require a discretionary, rather than ministerial, license to engage in commercial cannabis cultivation in the unincorporated area of San Mateo County.

RECOMMENDATION:

Recommendations regarding commercial cannabis cultivation in the unincorporated area of San Mateo County:

- A) Adopt an ordinance repealing Chapter 5.148 of Title 5 of the San Mateo County Ordinance Code and replacing it with a new Chapter 5.148, to require a discretionary, rather than ministerial, license to engage in commercial cannabis cultivation in the unincorporated area of San Mateo County, previously introduced on February 27, 2018, and waive reading of such ordinance in its entirety; and
- B) Adopt a resolution setting aside adoption of the Negative Declaration regarding the Commercial Cannabis Ordinance.

BACKGROUND:

On December 12, 2017, the Board of Supervisors adopted Chapter 5.148 of the San Mateo County Ordinance Code, which established regulations for commercial cannabis activities and imposed a license requirement for the cultivation of commercial cannabis in the unincorporated area of San Mateo County. The Board directed staff to continue to monitor developments in the rapidly-developing commercial cannabis field and to return, as necessary, with modifications to the program.

The existing ordinance allows the County to issue ministerial licenses for mixed-light (i.e., greenhouse) cultivation and greenhouse nursery cultivation operations in areas designated "Agriculture" by the County General Plan, or on lands on which documented agriculture has been

conducted for at least three (3) years preceding the adoption of this ordinance. These lands are distributed throughout the unincorporated San Mateo County, primarily in the Coastal Zone. While the ordinance provided for ministerial approval of the cultivation license, other existing zoning or land use regulations could require that an applicant obtain discretionary permits prior to engaging in cannabis cultivation. Other commercial cannabis activities, such as indoor and outdoor cultivation, retail, and manufacturing, are currently prohibited until December 31, 2018.

The existing ordinance also allows specified noncommercial cannabis activities without a license, in compliance with State law, including personal cultivation for medical purposes (both by the qualified patient and primary caregiver), and personal cultivation for adult use purposes within a private residence or an accessory structure.

DISCUSSION:

Staff now proposes that the existing ordinance in Chapter 5.148 of the Ordinance Code be rescinded and replaced with a revised Chapter 5.148 that would require that applicants obtain a *discretionary* license prior to engaging in commercial cannabis cultivation. The current ordinance contemplates the issuance of a *ministerial* license.

Staff recommends this change for a number of reasons. First, the Planning and Building Department (“Department”) continues to refine its analysis of potential cannabis cultivation activities that could be permitted under the adopted ordinance. This analysis, which included GIS mapping of protected sites and staff analysis of existing greenhouses, indicates that the number of potential locations that could qualify for a ministerial approval (i.e., existing greenhouses that satisfy all locational criteria) is smaller than initially thought. Therefore, most cultivation operations will require a discretionary land use approval (such as a Coastal Development Permit to allow either construction of a new greenhouse or substantial modification of an existing greenhouse) prior to engaging in commercial cannabis cultivation. The provision in the earlier ordinance allowing the opportunity for ministerial issuance of a license was therefore determined to be too rare a circumstance to be beneficial.

Moreover, as staff continues to review the matter, it has determined that the staff time needed to review and act on a discretionary license is not appreciably greater than the time needed to process a ministerial application for a cultivation license. Finally, given that the effort required to process applications on a discretionary basis is not appreciably greater than that needed to review them on a ministerial basis, staff believes that it is in the County’s best interest to undertake discretionary, site-specific analysis of each cultivation license application. Such site-specific analysis will include review under the California Environmental Quality Act, and will allow staff to consider any unique circumstances or environmental conditions, and to impose conditions tailored to the proposed activity, the site, and the surrounding environment.

There are no other substantive changes to the County’s regulation of commercial cannabis activities currently proposed. However, staff will continue to monitor developments in commercial cannabis, both statewide and locally, and return to the Board as necessary to ensure the County’s regulatory program is consistent with State law and responsive to local concerns.

Adoption of the proposed ordinance is exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to California Business and Professions Code Section 26055(h), which states that CEQA “does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable

environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.”

Adoption of the proposed ordinance will obviate the need for Negative Declaration previously adopted in support of Ordinance Number 4791 on December 5, 2017. Staff therefore proposes that the adoption of the Negative Declaration be set aside.

County Counsel has reviewed the proposed ordinance and resolution as to form.

SHARED VISION 2025

Adoption of the proposed Ordinance contributes to the Shared Vision 2025 of an Environmentally Conscious Community by regulating commercial cannabis activity, thereby controlling potentially negative environmental impacts associated with such activity.

FISCAL IMPACT:

The change proposed by the ordinance is not expected to materially increase the cost of administering the cannabis licensing program. As is the case for the existing ordinance, implementation of the licensing program is intended to be cost-neutral, and staff is currently preparing a fee-study to determine an appropriate fee schedule in light of anticipated costs.