



County of San Mateo

Inter-Departmental Correspondence

Department: PLANNING AND BUILDING

File #: 18-1050

Board Meeting Date: 11/13/2018

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Michael P. Callagy, County Manager
Steve Monowitz, Community Development Director
Fred Crowder, Agricultural Commissioner

Subject: Ordinance amending Chapter 5.148 of the San Mateo County Ordinance Code regarding commercial cannabis cultivation in the unincorporated area of San Mateo County

RECOMMENDATION:

Adoption of an ordinance amending Chapter 5.148 of the San Mateo County Ordinance Code regarding commercial cannabis cultivation in the unincorporated area of San Mateo County, previously introduced on November 6, 2018 and waive the reading of the ordinance in its entirety.

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 of Supervisors subsequently amended the ordinance to require a discretionary, rather than ministerial, license prior to engaging in commercial cannabis cultivation. The Board directed staff to continue to monitor developments in the rapidly-changing commercial cannabis field and to return, as necessary, with modifications to the program.

The existing ordinance allows the County to issue discretionary 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 Coastal Zone of unincorporated San Mateo County.

The existing ordinance allows lawful delivery of cannabis, with a valid State license, although no physical locations of such delivery services may be located within the unincorporated area of the County. 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 proposes a number of amendments to the existing ordinance to clarify requirements, align more closely with State law, and allow exceptions from certain requirements for nursery operators where appropriate. (A “nursery” is defined by State law as a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.) The proposed changes include:

Setback Requirements

The ordinance would eliminate the requirement for a 100-foot setback between structures associated with cultivation and the property line, and clarify that the 300-foot setback between structures associated with cultivation and business or residential structures on surrounding properties applies only to *existing* residential or business structures. The ordinance also clarifies that the 300-foot setback requirement does not apply to residential or business structures located on parcels owned by the same owner as the parcel on which Cultivation will occur.

The current ordinance requires a 1,000-foot setback between the property where cultivation is occurring and State-defined sensitive areas (schools, day care centers, youth centers, playgrounds, and alcohol and drug treatment facilities). The proposed ordinance would reduce this setback to 600 feet in accordance with State law. This 600-foot setback remains measured from property line to property line, as required by State law. Nurseries remain subject to this setback requirement.

The current ordinance also requires a 1,000-foot setback between the property where cultivation is occurring and residentially-designated properties (which are not included in the State definition of sensitive areas). The proposed ordinance would reduce this setback to 600 feet, measured from the structure associated with cultivation to the property line of the nearest residentially-designated property. Nurseries would be exempt from this setback requirement.

Sunset Provision

The ordinance would eliminate the sunset provision, which means all currently prohibited commercial cannabis activities will continue to be prohibited after December 31, 2018.

Application Requirements

The ordinance would clarify that at the application stage, an applicant must attest that they intend to apply for a State license, and agree that they will provide the County with documentation of the State license when available. Authority to conduct commercial cannabis activities under local license is also explicitly conditioned upon receipt of a valid State license.

Security Requirements

Consistent with the discretionary approval process, the ordinance would allow the Community Development Director to waive or modify surveillance and security requirements on a case-by-case basis if adequate alternative measures are proposed.

Record Retention

The ordinance would eliminate the requirement to retain training records, which is governed by State law.

ADA Requirements

The ordinance would clarify that State and local requirements for accessibility apply, at a minimum, to ingress and egress.

Notice to Employees

The ordinance would impose an additional requirement that cannabis licensees notify their employees that cultivation and possession of cannabis continues to be unlawful under federal law, and that it is possible that working in the cannabis industry could pose immigration or other legal risks. The licensees would be required to state that they have completed this requirement prior to engaging in commercial cannabis activity, and annually as part of any license renewal process.

Staff conducted outreach to inform the community and solicit feedback regarding the proposed changes. Staff informed the following groups of the proposed changes:

- Pescadero Municipal Advisory Council
- Midcoast Community Council
- North Fair Oaks Community Council
- San Mateo County Farm Bureau
- San Mateo County greenhouse operators
- Coastside Cannabis Coalition

Staff also published notice of the proposed ordinance on October 27, 2018, and sent notice to individuals that provided public comment during the Board's consideration of prior cannabis-related matters.

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."

The Board subcommittee, composed of Supervisor Groom and Supervisor Pine, has reviewed the proposed ordinance. County Counsel has reviewed the proposed ordinance as to form.

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

No fiscal impact is expected.