



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

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Agenda Item #6
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Honorable Board of Supervisors
Administration Building
1221 Oak Street
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Dear Board Members:

SUBJECT: Resolutions Establishing Interim Operations Programs for Medical Cannabis Dispensaries and Cultivation

RECOMMENDATION:

That the Board of Supervisors:

1. Adopt the revised Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Interim Operations Programs for Medical Cannabis Dispensaries and Cultivation, and the Medical Cannabis Ordinance Amendments; and adopt the attached Resolution.
2. Adopt the proposed resolution establishing an Interim Operations Program for Medical Cannabis Cultivation in the unincorporated area of Alameda County.
3. Adopt the proposed resolution establishing an Interim Operations Program for Medical Cannabis Dispensaries in the unincorporated area of Alameda County.

BACKGROUND:

In 2016, the Board Transportation/Planning Committee initiated amendments to the County's existing dispensary ordinance (Chapter 6.108 of the County General Code) as well as the addition of cultivation ordinances to address the local licensing provisions of the Medical Cannabis Regulation and Safety Act (MCRSA), which was signed into law in October of 2015. An interdepartmental working group representing staff from the County Administrator's Office, the Sheriff's Office, the Office of the County Counsel, the Environmental Health Department, the Agriculture/Weights and Measures Department, and the Planning Department was formed to develop the draft medical cannabis dispensary and cultivation ordinances.

Since that time, the ordinances have been discussed at many public meetings throughout the unincorporated County; the Board Transportation/Planning Committee has continued to provide direction on their content.

The Board of Supervisors considered the proposed ordinances at the April 25, 2017 Board Planning meeting. The Supervisors referred the ordinances back to the Transportation/Planning Committee for consideration of comments received recommending changes to the ordinances.

DISCUSSION/SUMMARY:

Purpose of the Resolutions

On April 28, 2017, the California Department of Food and Agriculture (CDFA) issued draft regulations for licensing medical cannabis cultivation; and the Bureau of Medical Cannabis Regulation (BMCR) issued draft regulations for medical cannabis dispensaries. These regulations are scheduled to be finalized by January 1, 2018. Section 8104 of the draft cultivation regulations provides that a cultivator in operation under a local cannabis cultivation permit by January 2, 2018 may continue operating while their state cultivation license application is pending, provided that the state cultivation license application is submitted to the state by July 2, 2018. Similarly, Section 5018 of the BMCR's draft regulations would allow all applicants for state dispensary licenses who are in operation prior to January 2, 2018, to continue to operate while their state license application is pending if a completed application is received by the bureau no later than July 2, 2018. If these draft regulations go into effect as currently written, cannabis facilities in the unincorporated area that are not able to obtain a permit from the County and begin operation by January 2, 2018 will not be able to operate until their state licenses are issued (which may not occur until 2019 given the large number of applications the state is expected to receive).

Under the current schedule for the public review process and Board adoption of the proposed ordinances, the ordinances are unlikely to become effective until October of 2017. Given this schedule, and the dual permitting processes that the ordinances would require, it is also unlikely that a new cannabis operation could obtain the required local permits prior to the January 2, 2018 deadline in the draft state regulations. The adoption of interim operations programs allowing the dispensing and cultivation of medical cannabis might provide operators the opportunity to take advantage of the proposed State grace period while the County continues to pursue the adoption of the more comprehensive cannabis ordinances.

Adoption of the proposed resolutions is an unusual approach to zoning legislation; the more typical approach would be to amend the existing ordinance by ordinance, not by resolution. The resolution approach may have the potential to generate unintended legal consequences. This proposal to enact zoning legislation by resolution is nonetheless presented to you as an option given the sense of urgency expressed by some parties to finalize these modifications.

Description of the Resolutions

The two proposed resolutions would establish Interim Operations Programs for Medical Cannabis Dispensaries and Cultivation, which would enable the Director of the Community

Development Agency to allow temporary medical cannabis activities, subject to specified conditions consistent with the proposed medical cannabis dispensary and cultivation ordinances. Cultivators would be required to demonstrate eligibility for participation in the interim operations program either through possession of a current and valid permit to operate a medical cannabis dispensary in the unincorporated County; or selection for participation in the program pursuant to a competitive selection process conducted by the Director. New dispensary operators would also be selected through a competitive selection process conducted by the Director. All medical cannabis business operators would also be required to obtain a conditional use permit from the Planning Department prior to beginning operations.

California Environmental Quality Act

A Notice of Intent to Adopt a Mitigated Negative Declaration (NOIA) and the Initial Study/draft Mitigated Negative Declaration (IS/MND) for the proposed Medical Cannabis Ordinances were released on March 7, 2017 for a 20-day public review period. Subsequently, the Initial Study/Mitigated Negative Declaration (IS/MND) that was prepared for the proposed ordinances has been revised to include analysis of the proposed resolutions. The conclusion of this analysis is that the addition of either or both of the resolutions does not constitute a substantial revision, pursuant to Section 15073.5 of the California Environmental Quality Act (CEQA) Guidelines; therefore, recirculation of the IS/MND for additional public review is not required. The NOIA and IS/MND are attached and can also be accessed on the County website at: <http://www.acgov.org/cda/planning/landuseprojects/medical-cannabis.htm>.

The IS/MND identifies Climate Change and Greenhouse Gas (GHG) Emissions impacts as potentially significant, but less than significant with mitigation. The proposed mitigation measure would require an applicant for a medical cannabis cultivation site to employ as many energy reduction measures as necessary at the proposed facility to achieve GHG emissions levels below the specified significance threshold level. Energy reduction measures may include measures such as lower energy lighting, a low-emission vehicle fleet and renewable energy sources.

CONCLUSION:

CDA staff recommends that your Board adopt the IS/MND and adopt either or both of the proposed resolutions establishing interim operations programs for medical cannabis dispensaries and cultivation. Information about the proposed cannabis dispensary and cultivation ordinances is available on the County website at: <http://www.acgov.org/cda/planning/landuseprojects/medical-cannabis.htm>.

Very truly yours,



Chris Bazar, Director
Community Development Agency

Attachments

- **Attachment 1 – Draft resolution for adoption of the Initial Study and Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program**
- **Attachment 2 – Resolution Establishing an Interim Operations Program for Medical Cannabis Cultivation**
- **Attachment 3 – Resolution Establishing an Interim Operations Program for Medical Cannabis Dispensaries**