



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

MEMORANDUM

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December 12, 2017

TO: Board of Supervisors' Transportation/Planning Committee

FROM: Chris Bazar, Director, Community Development Agency
Albert Lopez, Planning Director

MEETING DATE: December 14, 2017

SUBJECT: Consideration of Potential Ordinance Amendments to Permit and Regulate Adult-Use Cannabis Businesses in the Unincorporated Areas of Alameda County and Discussion of Medical Cannabis Ordinances

BACKGROUND

State Law

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which was signed by the Governor in June of 2017 and amended by AB 133 in September of 2017, consolidated the licensure and regulation of commercial medicinal and adult-use cannabis activities. The three state agencies with licensing responsibility for cannabis activities, the Department of Consumer Affairs' Bureau of Cannabis Control, the Department of Food and Agriculture, and the State Department of Public Health, released revised draft medical and adult-use regulations on November 16, 2017, which are to be adopted through an emergency rulemaking process in order to take effect January 1, 2018.

Starting on January 1, 2018, cannabis businesses with local permission to operate will be able to seek temporary state licenses allowing them to conduct business consistent with MAUCRSA, including but not limited to, producing and selling adult-use cannabis and cannabis products. Accordingly, for those jurisdictions that permit adult-use cannabis operations, including but not limited to the Cities of Oakland, San Francisco and San Jose, operators in those jurisdictions with both state and local approval could begin producing or selling adult-use cannabis and cannabis products as early as January 2018.

County Ordinances

The County's recently adopted ordinances allow medical cannabis dispensaries and medical cannabis cultivation sites, under specified conditions. All dispensaries and all new cultivation sites must obtain a Medical Cannabis Dispensary or Cultivation Operator's Permit pursuant to Chapter 6.108 or Chapter 6.106 of the Ordinance Code. The new sites will also need to obtain a conditional use permit pursuant to the Zoning

Ordinance, which was amended to allow medical cannabis dispensaries and cultivation sites as a conditional use in certain zoning districts. These ordinances will be reviewed within the next year or two and may be revised based on experiences gained through implementing the ordinances. Additionally, the cultivation ordinance was adopted as a “pilot program” that expires in two years and will need to be reevaluated prior to its expiration. Uses not permitted by the Ordinance Code and therefore prohibited in the unincorporated areas of the County include manufacturing, testing and distribution of medical and/or adult-use cannabis and adult-use cannabis dispensaries and cultivations sites.

DISCUSSION/SUMMARY

Prior Consideration of Ordinance Amendments to Allow Adult-Use Cannabis Businesses

Discussions regarding adult-use cannabis regulation have occurred at the scheduled October, November, and December Transportation and Planning Committee meetings; however, none of these meetings included a quorum of the two committee members. Consequently, staff proceeded based on the direction of a committee members present to bring to the Board of Supervisors a proposed ordinance that would serve to clarify and confirm the County’s existing prohibition on adult-use cannabis businesses. Staff proposed the first reading of an ordinance banning adult-use cannabis business activities at the December Board of Supervisors’ Planning Meeting. The Board declined to adopt the ordinance, with various Board members indicating that the ban was not needed to preserve the status quo and that the County should proceed with adopting ordinances to regulate, rather than ban, adult-use cannabis. Based on this direction from members of the Board of Supervisors, staff now seeks further direction from this Committee regarding the content and timing of such adult-use cannabis regulations.

Continuing Consideration of Ordinance Amendments to Allow Adult-Use Cannabis Businesses

With the passage of Proposition 64, and the consolidation of the state medical and non-medical cannabis statutes through MAUCRSA and AB 133, it is an appropriate time for the County to consider whether and how to allow adult-use cannabis operations. While addressing both medical and adult-use cannabis, MAUCRSA required medical and adult-use operations to be “separate and distinct.” AB 133 removed these restrictions, so that a facility such as a dispensary would be allowed to sell both medical and adult-use cannabis. This is a substantial change which will have a significant effect on how the County may approach an adult-use ordinance. Staff continues to review the new legislation and regulations to determine the County’s options for permitting and regulating adult-use cannabis operations.

Overview of State Regulatory Framework

MAUCRSA established twenty license types: fourteen for cultivators, two for manufacturers, and one each for retailers, distributors, testing laboratories, and microbusinesses. The Bureau of Cannabis Control, which is part of the Department of Consumer Affairs, will license retailers, distributors, testing laboratories, and microbusinesses; CalCannabis, which is part of the Department of Food and Agriculture, will license cultivators; and the Office of Manufactured

Cannabis Safety, which is part of the State Department of Public Health, will license manufacturers of cannabis products.

Bureau of Cannabis Control	CalCannabis Cultivation Licensing	Office of Manufactured Cannabis Safety
Dept. of Consumer Affairs	Dept. of Food and Agriculture	Dept. of Public Health
Will license: <ul style="list-style-type: none"> ○ retailers ○ distributors ○ testing labs ○ microbusinesses 	Will license cannabis cultivators and establish a track-and-trace system.	Will license manufacturers of cannabis products, such as edibles.
California Cannabis Portal: http://cannabis.ca.gov/		

State law requires that all commercial cannabis activity be conducted between licensees, and that the commercial transportation of cannabis and cannabis products be conducted only by a licensed distributor, with the exception of a testing laboratory employee who must transport samples of cannabis or cannabis products taken at a distributor’s premises to the testing laboratory for required testing.

The regulations recently released by each of the three licensing agencies contain detailed requirements for each of the license types within their purview. State agencies will not issue a state license if the license would violate the provisions of a local ordinance or regulation. If an applicant provides a copy of a local license or permit, the agency will contact the local jurisdiction to verify the information and the local jurisdiction will have ten days to respond before the state license is issued. If an applicant does not provide a local license or permit, the agency will contact the local jurisdiction to verify that issuing the state license would not violate a local ordinance or regulation. The local jurisdiction must reply within 60 days or the state agency will assume that the applicant is in compliance with local requirements.

A licensee may hold multiple state licenses and multiple license types, except a person who holds a testing laboratory license is prohibited from licensure for any other commercial cannabis activity. Licensees must hold an A-license to engage in adult-use commercial cannabis activity and an M-license to engage in medicinal commercial cannabis activity. The exception is testing laboratories, which may test cannabis goods for both license types. Each licensee must have a separate licensed premises, with the exception that a licensee who holds both an M-license and A-license for the same type of commercial cannabis activity may conduct that activity for both medicinal and adult-use on the same premises if all requirements specified in the regulations are met.

The Bureau of Cannabis Control’s regulations apply to retailers, distributors, and testing laboratories. The regulations limit the types of products retailers may sell and the packaging of those products on the premises. The regulations also place restrictions on the delivery of cannabis from a retailer to a customer. Distributors must arrange for sample collection and testing by a licensed testing laboratory, check for appropriate packaging and labeling, and collect taxes. The

regulations also contain specific requirements for the transport of cannabis and cannabis products. The regulations for testing laboratories establish requirements for collecting cannabis samples for testing, the types of tests to be performed on each sample, and the implementation of a quality assurance program.

The CalCannabis cultivation licensing regulations include requirements for participation in the state's track and trace system to record the movement of cannabis and cannabis products through the state's supply chain, environmental protection, pesticide use, and waste management. The regulations also include the phase-in of renewable energy requirements.

The regulations released by the Manufactured Cannabis Safety Branch of the Department of Public Health contain requirements pertaining to manufacturing procedures to ensure that production occurs in a sanitary and hazard-free environment. The regulations include product standards, THC limits, and packaging and labeling requirement. The CDPH is currently developing an additional license type which will allow businesses to share facility space. This license type is expected to be ready to be issued in early 2018.

Consideration of County Ordinance Amendments to Allow Adult-Use Cannabis Dispensaries, Cultivation Sites, Manufacturing, Testing and Distribution

The recently-adopted County ordinances address medical cannabis dispensaries and cultivators, but not adult-use businesses of any type and not manufacturers, distributors, or testing laboratories (medical or adult-use). In order to allow these additional uses, amendments to the County Ordinance Code, similar to those for medical dispensaries and cultivators, would need to be adopted.

Issues to be considered in the development of County ordinances to allow adult-use businesses include:

- Should adult-use cannabis businesses be combined with medical cannabis businesses or be sited separately?
- Should each adult-use business type (e.g., dispensary, cultivation, etc.) be regulated or prohibited separately?
- Should there be limits on the size and number of each type of facilities, as there are in the medical dispensary and cultivation ordinances?
- Should the number of businesses be capped and if so, should the County use a selection process similar to that currently being used for the new medical cannabis dispensaries and cultivation sites?
- Are these facilities appropriate land uses in the unincorporated area?
- If appropriate, in what zoning districts should they be located?
- Should the consideration of adult-use and medical manufacturing, testing and distribution be simultaneous? Or should the medical use ordinances be developed separately from the adult-use ordinances?
- Should "microbusinesses" or other combined cannabis uses be allowed on a single property?
- What is the Committee's recommendation as to the timeline for developing and circulating the proposed ordinances?

NEXT STEPS

Based on direction from your Committee, staff will report on options for the consideration of new ordinances for adult-use cannabis manufacturing operations, distributors, and testing labs at your February Committee meeting.