



County of San Mateo

Inter-Departmental Correspondence

Department: PLANNING AND BUILDING

File #: 16-788

Board Meeting Date: 12/5/2017

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: Steve Monowitz, Community Development Director

Subject: Consideration of an Ordinance repealing Chapter 5.148, consisting of Section 5.148.010 to Section 5.148.100, of Title 5 of the San Mateo County Ordinance Code and replacing it with a new Chapter 5.148, consisting of Section 5.148.010 to Section 5.148.210 to establish regulations for commercial cannabis in the unincorporated area of San Mateo County; and Adoption of a Negative Declaration

RECOMMENDATION:

Recommendation to:

- A) Introduce an Ordinance repealing Chapter 5.148, consisting of Section 5.148.010 to Section 5.148.100, of Title 5 of the San Mateo County Ordinance Code and replacing it with a new Chapter 5.148, consisting of Section 5.148.010 to Section 5.148.210, and waive reading of such Ordinance in its entirety; and
- B) Adopt the associated Negative Declaration.

BACKGROUND:

At the direction of the Board of Supervisors, staff has drafted a proposed Ordinance that will replace Chapter 5.148 of the San Mateo County Ordinance Code in its entirety, and establish regulations for commercial cannabis and a license requirement for the cultivation of commercial cannabis in the unincorporated area of San Mateo County.

Under the proposed Ordinance, the County will only issue 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. Other commercial cannabis activities, such as indoor and outdoor cultivation, retail, and manufacturing, will be prohibited until December 31, 2018 unless the Board, before that date, enacts additional regulations covering such activities or extends the prohibition.

The proposed Ordinance 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.

Report Prepared By: Michael Schaller, Senior Planner

Location: Cannabis Licenses may only be issued on (1) lands designated as “Agriculture” on the San Mateo County General Plan Land Use Map, and (2) other lands where commercial agricultural use has been conducted for the three years preceding the effective date of the ordinance. These lands are distributed throughout the Coastal Zone of unincorporated San Mateo County.

Existing Zoning: Primarily PAD (Planned Agriculture Development). However, there are a few parcels with the “Agriculture” land use designation that also are zoned RM-CZ (Resource Management - Coastal Zone). Commercial cultivation operations could also occur on other rurally zoned lands that allow agriculture by right, if the applicant can document that there have been three consecutive years of commercial agricultural operations on the parcel prior to the adoption of the proposed ordinance.

General Plan Designation: Agriculture (and Open Space - Rural and Timber Production - Rural where three consecutive years of commercial agricultural operations prior to the adoption of the proposed ordinance can be documented).

Existing Land Use: Existing greenhouse complexes on agriculturally designated land, or on land where commercial agricultural use has been conducted for the three years preceding the effective date of this ordinance. Construction of greenhouses on this category of lands will require discretionary approval.

Environmental Evaluation: Staff prepared an Initial Study and Negative Declaration pursuant to the California Environmental Quality Act, with a public review period of October 18, 2017 to November 17, 2017.

DISCUSSION:

A. The Proposed Ordinance

In 2015, the California Legislature established a regulatory framework for medical cannabis activities under the Medical Marijuana Regulation and Safety Act (“MMRSA”). A year later, in November 2016, California voters approved Proposition 64 which established a similar set of regulations for nonmedical cannabis activities. In June 2017, the California Legislature approved Senate Bill 94 (SB94) which unified the regulation of medical and nonmedical cannabis activities under a single regulatory system.

SB94 includes provisions for local jurisdictions to enact and enforce “reasonable regulations” of commercial cannabis activities within their communities, including a complete prohibition. Thus, in order to obtain a State license for either medical or nonmedical commercial cannabis activity, an applicant must comply with local regulations. In other words, if a local entity prohibits particular commercial cannabis activity or requires a local license for it, a State applicant either cannot obtain a State license for the activity (if the activity is prohibited locally) or must first get a local license.

However, if a local entity is silent on cannabis, a State applicant could arguably engage in commercial cannabis activity within the local entity's jurisdiction with only a State license.

The purpose of this proposed Ordinance is to implement State law by providing a means for the reasonable regulation of cannabis cultivation in a balanced manner that is both consistent with State law and tailored to address local concerns, such as the local environment, local agricultural production, and the health, safety, and welfare of residents living within the unincorporated area of the County.

Under the proposed Ordinance, the County will only issue licenses for mixed-light (i.e. greenhouse) cultivation and greenhouse nursery cultivation operations. The proposed Ordinance will not alter any existing discretionary review provisions under County Zoning and Building Regulations or our Local Coastal Program, which discretionary review provisions would apply to qualifying improvements of existing greenhouses and construction of new greenhouses within the unincorporated area.

The proposed Ordinance also seeks to protect existing agricultural use by requiring that commercial cannabis cultivation not displace any non-cannabis commercial agricultural production existing as of January 1, 2017. Alternatively, an applicant could offset a proposed cultivation site by relocating existing agricultural production to another area of the property on a 1:1 ratio, provided such relocation does not conflict with any applicable policy or regulation.

The proposed Ordinance also regulates where authorized commercial cultivation can occur. Licensed commercial cultivation will only be permitted in areas designated as "Agriculture" on the San Mateo County General Plan and on land where commercial agricultural use has been conducted for the three (3) years preceding the effective date of this ordinance. All greenhouse structures associated with cultivation must be setback a minimum of 100 feet from property lines, and a minimum of 300 feet from residences and businesses on surrounding properties. All parcels on which cultivation is proposed must also be setback a minimum of 1,000 feet from any parcels designated for residential use by the San Mateo County General Plan (or the general plan of a neighboring city), any school providing education to K-12 grades, youth center, playground, and any alcohol or drug treatment facility.

The proposed Ordinance also includes, among other provisions: comprehensive application requirements (including criminal background checks); surveillance, security, and access restriction procedures; record-keeping policies and track and trace measures; and detailed operational requirements regulating, for example, odor control and ventilation, noise, lighting, energy and water usage, hazardous materials, and waste management. Finally, the proposed Ordinance includes enforcement mechanisms for failure to comply with the above requirements and an appeal process.

B. Cannabis-Related Moratoria

On December 13, 2016, the Board of Supervisors unanimously enacted a temporary 45-day moratorium on all commercial nonmedical cannabis activities within the unincorporated area of the County. The Board later voted to extend the moratorium through December 12, 2017. Even if this proposed Ordinance is approved, the soonest it would be effective would be after the current moratorium expires, creating, in the absence of a moratorium, the potential for commercial cannabis-related activity to proceed prior to the effective date of the proposed Ordinance. Moreover, because the original moratorium predated SB94, it dealt only with nonmedical commercial cannabis activities.

Thus, in addition to the proposed Ordinance, staff is also separately proposing both an extension of the current moratorium on commercial nonmedical cannabis activities and a new moratorium on all commercial medical cannabis activities, both of which would expire upon the effective date of the proposed Ordinance.

C. Public Outreach and Staff Responses

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| December 6, 2016 | Board of Supervisors (BOS) study session to consider the impacts of the passage of California Proposition 64 on November 8, 2016 and the 2015 passage of MMRSA. |
| December 13, 2016 | BOS adopts Interim Urgency Ordinance that prohibits commercial nonmedical marijuana activity and outdoor cultivation of adult use marijuana on the grounds of a private residence. |
| January 24, 2017 | Urgency Ordinance extended to December 12, 2017. |
| July 11, 2017 | 2 nd BOS study session to review updated information on Federal and State regulatory framework for commercial medical and non-medical cannabis activities, and provide additional direction to staff. The BOS also reviewed anticipated countywide regulatory impacts of potential commercial cannabis activities, whether permitted by the County or by a city, and discussed possible cost recovery mechanisms. |
| July 26, 2017 | Mid-Coast Community Council meeting. |
| August 7, 2017 | San Mateo County Farm Bureau meeting. |
| August 8, 2017 | Pescadero Municipal Advisory Committee meeting. |
| October 25, 2017 | Mid-Coast Community Council meeting. |
| October 30, 2017 | County staff hosts a Bayside Outreach meeting. |
| November 6, 2017 | San Mateo County Farm Bureau meeting. |
| November 9, 2017 | County staff hosts a Coastside Outreach meeting. |
| November 13, 2017 | Agricultural Advisory Committee meeting. |
| November 14, 2017 | Pescadero Municipal Advisory Committee meeting. |

In order to build awareness and solicit input from constituents, staff held extensive public conversations both before and after the release of the initial draft of the proposed Ordinance in October 2017. The proposed Ordinance presented to Board of Supervisors reflects a number of changes based on public input and to ensure compliance with recently released State Regulations, including the following:

- Initial concerns urged reducing the public visibility of commercial operations and related security measures, and some were opposed to encouraging extensive security-fencing in the Coastal Zone. This feedback is reflected in the approach outlined in the proposed Ordinance that requires video surveillance and alarm systems, restricts vehicular access, limits signage, and prescribes sites be screened from public view by native vegetation;

- Setbacks were viewed as both the greatest “protection” from commercial activity and the greatest “impediment” to it. Some Midcoast and Half Moon Bay residents urged greater property-line setbacks, above the proposed 1,000 feet, to further buffer residential communities from potential impacts of commercial cannabis activity. Some members of the Agricultural community urged reduced setbacks so as not to preclude eligibility, and noted that many greenhouses are built nearer to the edge of a property-line to ensure maximum use of the parcel. The proposed Ordinance was clarified to ensure that the setbacks applied equally from similarly zoned parcels in incorporated and unincorporated areas.
- The Agricultural Production Protection requirement was considered by some as difficult to comply with and to enforce as a permanent requirement considering typical crop-rotation. At the Agricultural Commissioner’s suggestion, the date-threshold to identify existing agricultural production for purposes of determining displacement was shifted to June 1, 2017 to align with data collection for the annual Agricultural Crop Report;
- Odor control was cited as both an undue burden on farmers, considering the County’s existing Agricultural Awareness Ordinance, and as difficult to enforce without a more prescriptive standard and regulatory approach. To better ensure adequate odor control and maintain enforcement flexibility this language was modified to require “industry-specific best control technologies and best management practices;”
- The surety bond requirement, intended to cover potential costs of confiscation, storage, clean-up or abatement of wastes, was increased from \$25,000 to \$35,000 based on feedback and further analysis, and its term was clarified;
- The on-premises consumption ban was clarified based on public comment so as not to preclude authorized medicinal use;
- The local hire plan was a cause of practical concern due to local labor market conditions. To ensure an adequately trained workforce for commercial cannabis businesses, the County was also encouraged to look to a local State-approved apprenticeship program, perhaps in partnership with the Community College District. While the Draft Ordinance in not prescriptive in either of these regards, these suggestions may merit future study;

Financial disclosure requirements were criticized as intrusive, particularly due to Federal legal concerns, and potentially redundant of State disclosure requirements. Due in part to limited screening by the State of temporary licensees, these requirements were not modified in the final draft of the proposed Ordinance.

As explained above, the proposed Ordinance would extend the moratorium on most non-Cultivation commercial cannabis activities another year. Some expressed concern that this moratorium extension was not permanent, and that the “sunset” could lead to future expansion of allowed commercial cannabis activities. There was also extensive pushback from proponents of cannabis legalization to allow the full-supply chain of commercial activities and to ensure that at minimum medicinal consumers have access to a safe retail environment. This provision was not modified in the final draft of the proposed Ordinance.

D. Environmental Review

Staff prepared an Initial Study and Negative Declaration (“IS/ND”) in compliance with the California Environmental Quality Act for the proposed Ordinance, with a public review period of October 18, 2017 to November 17, 2017. The IS/ND did not identify any environmental impacts associated with adoption of the proposed Ordinance. A copy of the IS/ND is provided in Attachment A, and incorporated by this reference.

During the public review period for the IS/ND, the County received four comment letters. The comments noted concerns related primarily to night lighting, odor, climate change, water use, population and housing, public services and utilities, and transportation. Copies of the comment letters received are provided in Attachment B, and incorporated by this reference.

Staff has reviewed the comment letters, conducted additional research and analysis where necessary, and determined that there is no substantial evidence that the proposed Ordinance will have a significant effect on the environment. Staff’s responses to the comments received are provided in Attachment C, and incorporated by this reference.

County Counsel has reviewed the proposed Ordinance 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

Implementation of the licensing program established by the proposed Ordinance 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. However, until the licensing program is in place and cultivation businesses are operating within the County, the actual costs remain unknown and staff anticipates adjusting fees as the program develops.

ATTACHMENTS

- A. Draft Initial Study and Negative Declaration;
- B. Staff’s Responses to Comments Received to Draft Initial Study and Negative Declaration; and
- C. Comment Letters Received in Response to Draft Initial Study and Negative Declaration