



Legislation Text

File #: PC 17-037, Version: 1

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Public Hearing to consider specific modifications to the Planning Commission recommended ordinance amending Chapter 28 (Zoning Regulations) regulating non-commercial personal and caregiver cannabis cultivation that include a ban on outdoor cannabis cultivation, redefining greenhouse cannabis cultivation as indoor cultivation, and the addition of an exemption process to allow outdoor cannabis cultivation for the needs of medicinal patients. (Project Planner: Karen Avery)

Published Notice Required? Yes X No
Public Hearing Required? Yes X No

RECOMMENDATION:

The Department of Resource Management recommends that the Planning Commission:

1. Consider specific modifications to the Planning Commission-recommended ordinance amending Chapter 28 (Zoning Regulations) regulating non-commercial personal and caregiver cannabis cultivation that include a ban on outdoor cannabis cultivation, redefining greenhouse cannabis cultivation as indoor cultivation, and the addition of an exemption process to allow outdoor cannabis cultivation for the needs of medicinal patients; and
2. Consider approval of the Draft Resolution recommending the Board of Supervisors adopt the modified ordinance regulating non-commercial personal and caregiver cannabis cultivation.

SUMMARY:

The Planning Commission (PC) began review of draft regulations for personal cultivation in November 2016 which included both medicinal and recreational cultivation as outlined in state law, as well as "caregiver" cultivation of medicinal cannabis. The Planning Commission held three public hearings; received reports from the Solano County Agricultural Commissioner on the horticultural and agricultural impacts of cultivating cannabis, and Solano County Public Health representatives on possible public health impacts of cannabis regulation. The PC also received updates from staff from a Community Outreach meeting held in February 2017 and an Industry Stakeholder meeting held in March of 2017, in which staff received public input on possible regulations on personal and "caregiver" cultivation as well as comments on commercial types of cannabis regulations. After a public hearing on March 16, 2017, the PC made their formal recommendation to the Board of Supervisors on personal and "caregiver" cannabis cultivation.

Since the time that the PC made their formal recommendation in March, there have been changes to state law in regards to cannabis regulation. The PC approved draft ordinance was amended to reflect these changes and was included in the draft ordinance submitted to the Board of Supervisors for their consideration at a special Board of Supervisors meeting on August 29, 2017.

On August 29, 2017, the Board of Supervisors held a public hearing on the Planning Commission's recommended draft ordinance amending Chapter 28 (Zoning Regulations) for personal and caregiver cultivation. After Board discussion and public comment, the Board requested several modifications to the Planning Commission-recommended ordinance: ban of all outdoor cannabis cultivation (personal and caregiver), redefine greenhouse cannabis cultivation as indoor cultivation; and add an exemption process to allow limited outdoor cannabis cultivation for medicinal patients.

As one or more of these modifications were not previously considered by the Planning Commission, the modifications must now go before the Planning Commission for their report and recommendation pursuant to Government Code section 65857.

ENVIRONMENTAL ANALYSIS:

All zones where the proposed personal use of cannabis cultivation would occur are already able to have a "kitchen garden" incidental to a residential use. Growing six mature cannabis plants and/or twelve immature cannabis plants are similar to the establishment of a kitchen garden. In accordance with the California Environmental Quality Act (CEQA), it has been determined that this project is exempt from further environmental review under Section 15061(b)(3) of Title 14 of the California Code of Regulations because there is no possibility that the project may have a significant effect on the environment.

DISCUSSION:

Status of State Law and Recent Changes

As mentioned above, after the Planning Commission (PC) issued their recommendation in March 2017, SB 94 (referred to as MAUCRSA - Medicinal Adult Use Cannabis Regulation and Safety Act) was signed by Governor Brown on June 27, 2017. The primary purpose of MAUCRSA was to try to combine the Medical Cannabis Regulation and Safety Act (MCRSA) and the Adult Use of Marijuana Act (AUMA) to harmonize the laws regulating medicinal and recreational cannabis.

Previously, under state law medical cannabis cultivation for personal use was limited to a maximum of 100 square feet of canopy, while cultivation of personal recreational cannabis was limited to six (6) plants. Under MAUCRSA references to medical and recreational cannabis were eliminated in favor of calling both types of cultivation "personal cultivation". Also, the amount of cannabis that can be cultivated for individual personal medicinal and recreational use is now the same - 6 plants. Instead of 500 square feet for "caregiver" cultivation for up to five patients, MAUCRSA allows a caregiver to cultivate no more than six (6) mature plants or twelve (12) immature plants per patient for up to five (5) patients. The amended ordinance includes the new state cultivation amounts of no more than six (6) mature plants for non-commercial personal cultivation and "caregiver" cultivation of no more than six (6) mature plants or twelve (12) immature plants for up to five (5) patients.

MAUCRSA continues to allow local jurisdictions to regulate or even ban both outdoor cultivation of personal and "caregiver" cultivation. MAUCRSA continues to allow local jurisdictions to ban indoor "caregiver" cultivation. However, MAUCRSA does not allow local jurisdictions to ban indoor cultivation for personal use. Local jurisdictions must allow indoor cultivation of up to six plants within a private residence or in an accessory structure on the grounds of a private residence. Local jurisdictions can further regulate indoor cultivation if they choose.

The PC recommended draft ordinance would allow personal and “caregiver” cultivation in zoning districts that allow a residence as a primary use, this would include Rural Residential, Residential Traditional Community including Mixed Use and Multi Family, the Exclusive Agricultural zones, the Marsh Preservation and Watershed/Conservation zones as well as Commercial Recreation zones. The zones that do not allow a residence by-right and therefore would not be eligible to cultivate personal use cannabis are in the Industrial Water Dependent Zone (I-WD), the Industrial Agricultural Service Zone (I-AS), Commercial Highway, Commercial Neighborhood, and Commercial Service Zones.

Planning Commission Draft Ordinance

Personal or Medicinal Cultivation:

The PC draft ordinance allows outdoor cultivation for both personal and caregiver cultivation. Personal cultivation of up to six (6) plants may occur outdoors if it occurs on a parcel with a residence inhabited by the person for whom the cannabis is intended; on the rear 50% of the parcel, screened from public view and with no part of the cannabis plant within ten (10) feet of any property line or easement. The PC recommended ordinance did not include a minimum parcel size for outdoor personal cultivation.

Caregiver Cultivation:

The PC draft ordinance requires general standards for “caregiver” cultivation regardless of whether the cultivation occurs indoors or outdoors. A complete list of these standards is provided in Table 1.0 “Regulatory Options Considered by Planning Commission” (Attachment C). Some of the general standards for “caregiver” cultivation in the PC Draft Ordinance include a requirement that the cultivator obtain a yearly Administrative Permit from the Department of Resource Management, pay permit fees, and provide proof of ownership or landlord permission.

Modified Draft Ordinance

The Board recommended amending the PC draft ordinance to omit outdoor cultivation of both personal and caregiver cultivation citing concern for potential impacts to neighbors. Additional standards were added to the requirements of the administrative permit for caregiver cultivation to decrease the potential for nuisances created from caregiver cultivation. However, the Board recommended that cannabis cultivation within a greenhouse located on the grounds of a residence should be considered indoor cultivation and not outdoor cultivation as stated in the PC draft ordinance. The Board also recommended that there be an exception request process available for medicinal patients who wish to cultivate a limited number of medicinal cannabis plants outdoors.

Staff has amended the draft ordinance to reflect these modifications. See, Exhibit A of Attachment A. (Strikethrough indicates removal; underlined represents addition). The following is a synopsis of the proposed modifications.

Section III. Section 28.82 A. General Requirements

- Removal of allowance of outdoor cultivation for personal and primary caregivers

Section III. 28.82 B. Definitions

- Definitions have been updated to clarify cultivation room
- Addition of the exception for medicinal cannabis outdoor cultivation
- Addition of greenhouse cultivation to the definition of what is defined as indoor cannabis

cultivation

- Removal of greenhouse in the definition of outdoor cannabis cultivation

Section III. 28.82 D. Personal Cannabis Cultivation Standards

- Removal of outdoor cannabis cultivation language
- Addition of language clarifying greenhouse cultivation and lighting restrictions

Section III.28.82 E. Primary Caregiver Cultivation

- Clarification of application requirements for filing an Administrative Permit
- Removal of outdoor caregiver cannabis cultivation language
- Clarification of greenhouse cultivation and lighting restrictions
- Additional standards were added to the Administrative Permit to reduce potential nuisances

Section III.28.82 F. Exception for Medicinal Cannabis Outdoor Cultivation

- Addition of language describing the process for applying for an exception
- Limiting exception to two (2) plants to be grown outdoors
- Clarifies the items required by the applicant for consideration for an exception
 - Proof of ownership or landlord permission
 - Proof of medicinal need
- Plot plan where medicinal outdoor cultivation would occur (10' from property lines and within 150' of residence
 - Payment of fee
 - Notification of contiguous neighbors/10-day issuance if no opposition
- Explanation of hearing process if contiguous neighbor appeals exemption request
 - Explanation of granting exception request

RECOMMENDATION:

The scope of the review by the Planning Commission is limited to the modifications described above and which are shown in the attached amended draft ordinance. The Planning Commission's previous recommendation as to the non-modified portions of the ordinance and the recommendation regarding the California Environmental Quality Act (CEQA) remain in place and are not subject to further study by the Planning Commission. Staff recommends that the Planning Commission consider the modifications to the ordinance and recommend the Board approve the amended draft ordinance to the Board for approval.

ATTACHMENTS:

- A. Draft Resolution with Exhibit A - Modified Ordinance
- B. Table 1.0 "Regulatory Options Considered by Planning Commission"