



Legislation Text

File #: 17-815, **Version:** 1

Conduct a noticed public hearing and consider adoption of a one-year extension of the Interim Urgency Ordinance which established a prohibition on the commercial cultivation of medicinal cannabis and non-medicinal cannabis, and prohibited commercial delivery, distribution, transportation, manufacturing, retail operations, and testing facilities for medicinal cannabis and non-medicinal cannabis within the unincorporated territory of Solano County; Adopt an ordinance approving the extension to the urgency ordinance (4/5 vote required); Consider background information prepared by staff on commercial cannabis license types and possible zoning districts where such activities might be allowed; Receive a report from the Cannabis Ad-hoc Committee regarding their research and initial findings/recommendations regarding possible commercial cannabis license types that should be given further consideration in certain zoning districts in unincorporated Solano County; and Provide direction to staff on possible parameters for a draft ordinance

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

DEPARTMENTAL RECOMMENDATION:

The Department of Resource Management recommends that the Board:

1. Read the proposed ordinance by title only and waive further reading by majority vote;
2. Conduct a public hearing and consider adoption of a one-year extension to the Interim Urgency Ordinance prohibiting commercial cannabis activities in unincorporated Solano County adopted on December 6, 2016 (4/5 vote required);
3. Consider background information prepared by staff on commercial cannabis license types and possible zoning districts where such activities might be allowed;
4. Receive a report from the Cannabis Ad-hoc Committee regarding their research and initial findings/recommendations regarding possible commercial cannabis license types/uses that should be given further consideration as permitted or conditionally permitted in certain zoning districts in unincorporated Solano County; and
5. Provide initial direction to staff on possible parameters for a draft ordinance regarding commercial cannabis activities in unincorporated Solano County for either further review by the Board at a future meeting or, if there is general consensus among the Board on ordinance parameters, refer to the Planning Commission for further development of an ordinance.

SUMMARY:

The County is entering the next phase in evaluating the type and extent of cannabis activities permitted in the unincorporated areas. The Board took final action on a permanent ordinance addressing non-commercial personal and primary caregiver cannabis cultivation on October 24, 2017. Upon adoption of the ordinance on personal cannabis cultivation, provisions in the current urgency ordinance on personal cannabis automatically terminated and are not included in the proposed ordinance extension. Staff is now shifting focus on potential regulation for commercial cannabis uses. The Board has previously taken action to prohibit dispensaries in

unincorporated county. At this time, there remains a number of other cannabis related commercial categories which the Board could consider and provide direction.

The Board of Supervisors adopted the interim urgency ordinance establishing a 45-day moratorium on December 6, 2016. That ordinance was ultimately extended to a full year and is set to expire on December 6, 2017. Under State Law, the County is able to extend such an ordinance for one more year pursuant to Government Code section 65858 (a). Staff is recommending the full one-year extension. The Board's action must include findings (contained in the attached ordinance) and information providing reasoning for the request for the extension (contained in this staff report). Sufficient justification exists to extend the urgency ordinance based on the slow progression of State rulemaking pertaining to the new State cannabis regulations and the extensive amount of staff research that has been necessary to understand the new cannabis regulatory environment. While staff is recommending a one-year extension, it is anticipated, based on progress in staff research and the committee's work, that final recommendations to the Board on a permanent ordinance will be presented sometime in late spring if not sooner. Upon adoption of a permanent ordinance, all interim urgency measures will expire.

DISCUSSION:

Background

Since the passage of the initial interim urgency ordinance in December 2016, a number of actions and measures have occurred during the course of developing cannabis regulations for unincorporated Solano County. From January to June of 2017, the Board of Supervisors has hosted a variety of speakers to discuss various aspects of cannabis and cannabis regulations. Speakers have included independent consultants in the cannabis industry to leaders within the State of Colorado's cannabis regulatory administration. Community meetings were held by staff in order to reach out to citizens and local cannabis industry operators on the topics of the development of personal and commercial cannabis regulations.

As part of the Board's actions at the December 6, 2016 Board meeting, a Board Committee of Supervisors Vasquez and Hannigan was formed to explore the potential for commercial cannabis business options including possible location in the unincorporated areas of Solano County. The Cannabis Committee received input from representatives from the Agricultural Commission's office, several divisions from the Department of Resource Management, Public Health and the Sheriff's Office. They also visited various types of cannabis facilities in other jurisdictions. The Cannabis Committee will be conveying its findings/recommendations to the Board on potential commercial cannabis activities within unincorporated Solano County for consideration by the Board. Preliminary discussions have addressed the possibility of microbusinesses and nurseries in the Agriculture areas of the County. More details will be provided during their briefing to the Board.

As a precursor to the committee's report, staff will be providing background material on commercial cannabis license types and the ramifications for various zoning districts where such activities might be allowed. There are several attachments outlining this information. Similar to issues addressed when dispensaries were considered by the County several years ago, a key challenge for certain types of cannabis businesses is the lack of urban type services/infrastructure in manufacturing and commercial zoning districts in the unincorporated area which limits the feasibility of businesses typical of certain license types. This has been an important factor in the cannabis committee's analysis of what type of businesses/license types might be considered in those districts. Another important factor is the types of cannabis businesses that are being allowed within the incorporated cities in Solano County. City utilities such as sewer and public water are better able to meet the demands of cannabis related activities such as large scale indoor cultivation and manufacturing.

Board Cannabis Ad-Hoc Committee Update

The focus of the Cannabis Ad-hoc Committee (Committee) has been gaining a greater understanding about the commercial cannabis industry; how the industry is being regulated in other jurisdictions in California, as

well as in other states where commercial cannabis businesses are allowed to operate. From February to August 2017, the Committee toured an indoor cannabis cultivation site in Sacramento, an outdoor cultivation site in Yolo County and a nursery facility in Oakland. The Committee also toured a cannabis oil extraction facility in Santa Rosa, a cannabis edible manufacturing operation in Oakland and two laboratory testing facilities - Sacramento and Berkeley. The Committee learned the differences between indoor and outdoor cultivation sites such as how lighting, water use, odor reduction and security measures that were addressed at all locations.

The Committee requested that the regulatory process for non-commercial personal and caregiver cultivation take place, prior to the development of potential commercial cannabis cultivation regulations. The Board took final action on the ordinance addressing non-commercial personal and primary caregiver cannabis cultivation regulations on October 24, 2017.

The Committee has met regularly with the most recent meeting taking place on Tuesday, October 31, 2017. They reviewed the extensive background material on State licensing types and County zoning along with updated materials regarding the status of cannabis businesses being considered by each city in the county (See attachment and further discussion below). There was a general sense that there is a sufficient range of cannabis uses/activities being allowed or considered in the seven cities in the County to minimize pressures for accommodating such uses in the unincorporated area where urban type services are not available but would be preferable for certain types of cannabis uses. The Committee did indicate that smaller scale cannabis operations might be appropriate in limited situations and should receive further consideration in the unincorporated area of the County, such as a microbusiness or nursery, as defined below and in the attachments.

State Cannabis Regulations and Types of Licenses

There are 20 types of medicinal and adult-use (non-medicinal) license types under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). A complete list of these licenses is attached to this report. Majority of these license types relate to the cultivation of cannabis and whether the cannabis is grown outdoors, indoors, or with mixed light. The cultivation licenses are also categorized by the square footage of the canopy of the cannabis plants.

There are two types of cannabis manufacturing; a Level 1 which creates products using non-volatile solvents such as using cannabis oil or butter to bake edibles, and a Level 2 which uses volatile solvents to create products such as those used to extract oil from cannabis plant materials.

The testing/laboratory license encompasses the testing of both medicinal and adult-use (non-medicinal) cannabis. The cultivator or distributor would bring cannabis samples to the testing facility which would test the sample for pesticides, mold, etc.

The retailer license allows the sale and delivery of cannabis with or without a retail store-front. The retailer license functions similar to what is now referred to as a dispensary. However, the retailer license does not require the holder to have a storefront; the retailer could operate as a delivery only business.

The distributor license allows the license holder to transport and distribute cannabis and cannabis products. For example, the distributor would pick-up cannabis buds/flowers from the cultivator, take the cannabis to a testing facility for testing, pick-up the cannabis from the testing facility and deliver to a retailer who could then sell to a customer.

The microbusiness license allows the operator to hold multiple licenses including a cultivation license that allows cannabis cultivation of less than 10,000 sq. ft., allows the operator to manufacture as a Level 1 - non-volatile cannabis manufacturer, and allows the operator to function as a distributor and retailer (with or without a storefront). Based on the County's current permanent ordinance that prohibits cannabis dispensaries, the

allowance of a microbusiness would need to be clearly defined that it would not include a storefront retail operation and would be delivery only.

Legislation Update Regarding Cannabis Monitoring and Regulatory Activities

Cannabis legislation continues to evolve and change. The Bureau of Cannabis Control (BCC) is developing regulations for medicinal and adult-use cannabis and is responsible for licensing retailers, distributors, testing labs and microbusinesses. The Manufactured Cannabis Safety Branch, a division of the California Department of Public Health (CDPH) is responsible for regulating the manufacturers of cannabis-infused edibles for medicinal and adult-use. CalCannabis Cultivation Licensing, a division of the California Department of Food and Agriculture (CDFA) is developing regulations to license cultivators of medicinal and adult-use cannabis and is also responsible for implementing the track-and-trace system to record the movement of cannabis through the distribution chain.

Those three agencies drafted and released regulations on medicinal cannabis for public comment in April and May of 2017. However, due to the passage of the Medicinal Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) on June 27, 2017 which combined the medicinal regulations referred to as MCRSA (Medical Cannabis Regulatory Safety Act) with the recreational regulations known as AUMA (Adult Use Marijuana Act), these agencies withdrew the medicinal regulations and are currently drafting new regulations, based on MAUCRSA, under the Emergency Rule Making Procedures. Each agency has reported that they anticipate releasing regulations in November 2017 and that they do intend to offer 90-day temporary licenses to applicants until the final regulations are adopted. Applicants for these state cannabis licenses are still required to show local jurisdiction approvals prior to these agencies issuance of a 90-day temporary license.

Status of Local Government Efforts in Solano

Staff has been following how the cities within Solano County are addressing commercial aspects of cannabis. A summary of this information is attached. The City of Fairfield has adopted a permanent ordinance prohibiting all types of commercial cannabis businesses within the city limits. The City of Rio Vista has recently adopted an ordinance allowing dispensaries and other commercial cannabis businesses. The City of Vallejo currently has 11 dispensaries in compliance with their regulations and are currently studying the possible allowance of cultivation and manufacturing in association with those operating dispensaries. The City of Dixon is moving forward with commercial cannabis businesses including dispensaries and is reviewing applicants as part of a Request for Qualifications (RFP) for cultivation, manufacturing and distribution cannabis businesses in Dixon's industrial zoned areas. The City of Benicia is currently considering changes to their zoning ordinance to allow personal cultivation for residents, retail sales in commercial zoned areas, and industrial, manufacturing, and laboratory/testing uses in industrial zoned districts. Suisun recently passed a prohibition of commercial cannabis activities until July 1, 2018 as they begin to study possible regulations for commercial cannabis businesses. On October 24, 2017, the City of Vacaville approved an Interim Urgency Ordinance imposing a moratorium on all commercial, industrial and retail cannabis land uses, including deliveries and outdoor cultivation, while they continue to conduct public outreach on how to regulate types of commercial cannabis operations.

Status of Regulatory Review in Adjacent Counties

Staff continues to monitor cannabis regulations in neighboring counties. A summary of this information is attached. Contra Costa County, Napa County and Sacramento County prohibit all outdoor commercial cultivation at this time. Napa County has established a Countywide Cannabis Roundtable group which meets regularly to discuss the potential for regulating commercial cannabis businesses. Yolo County allows indoor and outdoor cultivation of medical marijuana that are in compliance with the County's Interim Medical Marijuana Cultivation Ordinance. Yolo County staff is currently conducting public meetings to receive input on updating the zoning ordinance to require a discretionary use permit for medical cannabis cultivation. Sacramento County limits indoor medicinal cultivation for caregivers to nine plants. It appears that most counties, like Solano, are undergoing further study on regulating cannabis as state law changes and as local jurisdictions wait for final state regulations from the Department of Food and Agriculture, Department of Public

Health and the Bureau of Cannabis Control.

FINANCIAL IMPACT:

The cost to analyze County options for regulating medicinal and non-medicinal cannabis activities are covered by the General Fund within the County Counsel, Department of Resource Management and Agriculture Commissioner budgets. It is anticipated at this time that implementation and enforcement of this ordinance will be initiated utilizing current staff resources.

There will likely be additional costs associated with the regulation and enforcement of cannabis regulations in the county for activities which the Board may opt to permit by County Code as well as activities which are unpermitted. These costs may be covered by fee adjustments to ensure that costs of enforcing cannabis regulations are largely offset by fees or through other funding sources including Cannabis related operations and the County General Fund.

PUBLIC NOTICING REQUIREMENT:

Consistent with Government Code Section 63858, a public hearing notice was published in the Fairfield Daily Republic at least 15 days prior to the public hearing. The notice was also published in the Dixon Tribune, Vacaville Reporter, Winters Express, Vallejo Times Herald, Rio Vista River News Herald and Benicia Herald at least 10 days prior to the public hearing. The public notice is attached.

ALTERNATIVES:

The Board may choose to:

1. Not adopt the one-year extension of the Interim Urgency Ordinance;
2. Not adopt the extension of the moratorium but direct staff to draft a permanent ordinance to address commercial medicinal and non-medicinal cannabis activities; or
3. Not adopt the extension and allow medicinal and non-medicinal cannabis cultivation, distribution, delivery, transportation, manufacturing and testing as allowed by the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) without a local ordinance.

Staff does not recommend any of the alternatives. Adopting the one-year extension of the interim urgency ordinance will allow staff to develop regulations for commercial cultivation of medicinal cannabis and non-medicinal cannabis based on most recent State guidance and local input.

OTHER AGENCY INVOLVEMENT:

County Counsel assisted with this item. Input has been received from Public Health and the Sheriff's office. The County Administrator concurs with the recommended actions.

CAO RECOMMENDATION:

APPROVE DEPARTMENT RECOMMENDATION

