



## Legislation Text

**File #:** 18-007, **Version:** 1

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Public Hearing to consider recommending that the Board of Supervisors adopt an ordinance establishing a permanent prohibition of the establishment of commercial cannabis activities, including commercial cultivation of medicinal and recreational cannabis; the commercial delivery, distribution, transportation, processing, collectives, cooperatives, manufacturing, retail operations, microbusinesses, and testing facilities of medicinal and recreational cannabis within the unincorporated areas of Solano County. (Project Planner: Karen Avery)

### **RECOMMENDATION:**

The Department of Resource Management recommends that the Planning Commission:

1. Conduct a public hearing to consider an ordinance amending Chapter 28 (Zoning Regulations) establishing a permanent prohibition on commercial cannabis activities, including commercial cultivation of medicinal and recreational cannabis; the commercial delivery, distribution, transportation, processing, collectives, cooperatives, manufacturing, retail operations, microbusinesses, events and testing facilities of medicinal and recreational cannabis in the unincorporated areas of Solano County; and
2. Recommend that the Board of Supervisors find that the proposed ordinance 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; and
3. Recommend that the Board of Supervisors approve the proposed ordinance amending Chapter 28 (Zoning Regulations) establishing a permanent prohibition on commercial cannabis activities, including commercial cultivation of medicinal and recreational cannabis; the commercial delivery, distribution, transportation, processing, collectives, cooperatives, manufacturing, retail operations, microbusinesses, and test facilities of medicinal and recreational cannabis in the unincorporated areas of Solano County.

### **SUMMARY:**

The Board of Supervisors adopted an interim urgency ordinance establishing a 45-day moratorium on all commercial cannabis activities on December 6, 2016. Under Government Code section 65858 (a), the Board of Supervisors extended the urgency ordinance for 10 months and 15 days on January 10, 2017. Under Government Code section 65858 (a), the Board of Supervisors approved a final one-year extension of the urgency ordinance on November 14, 2017. The interim urgency ordinance will expire on December 6, 2018. It is important to have an ordinance in place addressing cannabis activities prior to the expiration of the interim urgency ordinance. Establishing the permanent prohibition ordinance does not limit future amendments to this ordinance as further changes to the state cannabis regulations are being contemplated, which may result in the need for the county to make changes to the county's cannabis regulations.

### **DISCUSSION:**

Since the passage of the initial interim urgency ordinance in December 2016, the Board of Supervisors hosted a variety of speakers to discuss various aspects of cannabis and cannabis regulations. Speakers 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 industry operators

on the topics of personal and commercial regulations. The Board of Supervisors established an ad-hoc committee on cannabis and designated Supervisors Erin Hannigan and John Vasquez to work with staff to conduct site visits of cannabis operations. Tours were conducted of indoor and outdoor cannabis cultivation sites, an indoor nursery facility, two manufacturing operations as well as two testing facilities.

Per Board request, the overall review of cannabis regulations was separated into two parts: non-commercial (personal and caregiver) and commercial. The personal and caregiver cannabis cultivation ordinance was reviewed and recommended for adoption by the Planning Commission in September 2017 and enacted by the Board in October 2017.

On November 14, 2017, the Board conducted a public hearing to consider the adoption of the one-year extension of the interim urgency ordinance. At that same meeting, the Board received a report from the ad-hoc Cannabis Committee regarding their research and initial findings and recommendations regarding potential commercial cannabis license types that could be given further consideration in certain zoning districts. The ad-hoc Committee recommended the Board authorize further staff review into cannabis nurseries and microbusinesses as license types that could work in Solano County. After considering the ad-hoc Committee's recommendations, the Board directed staff to prepare an ordinance prohibiting all cannabis business activities in the unincorporated area (see Attachment B - excerpt of Minutes of November 14, 2017 Board of Supervisors meeting). The primary reasons for this direction were that the unincorporated areas of Solano County lack water, wastewater treatment, and road infrastructure needed for most commercial and industrial cannabis uses in rural areas. In addition, it was noted that most of the cities in Solano County, as well as near-by counties, have approved some type of commercial cannabis activities, including non-storefront cannabis retailers that provide delivery, and found that there was not a compelling need to duplicate such uses in unincorporated Solano County where services are limited.

#### **ENVIRONMENTAL ANALYSIS:**

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.

#### **UPDATE ON STATE AND LOCAL CANNABIS REGULATIONS:**

Staff continues to follow the cannabis regulatory environment and below is a brief summary of current state and local jurisdictions:

##### **Status of State Law and Recent Changes**

###### **Bureau of Cannabis Control (Bureau)**

The Bureau is currently issuing temporary licenses for cannabis distributors, retailers, testing laboratories, microbusinesses. The Bureau is now allowing individual cannabis businesses to apply for and obtain one license to serve both the medicinal and recreational markets. The Bureau has added two additional license types: Cannabis Event Organizer and Cannabis Event License. A person must have a Cannabis Event Organizer license prior to obtaining a Cannabis Event License to hold a Cannabis Event. The Bureau has established a Cannabis Advisory Committee which advises the Bureau and the other licensing authorities - the California Department of Food and Agriculture and the California Department of Public Health - on the development of regulations to help protect public health and safety and to reduce the illegal market for cannabis. On July 13, 2018, the Bureau released proposed permanent regulations on July 13, 2018 for 45-day public comment; the proposed regulations can be found at the following link:

[<https://cannabis.ca.gov/cannabis-regulations/>. These regulations would replace the emergency regulations that the Bureau is currently operating under.](https://cannabis.ca.gov/cannabis-regulations/)

###### **California Department of Food and Agriculture (CDFA) - CalCannabis Cultivation Licensing**

CDFA is responsible for issuing 18 types of cannabis cultivation licenses including indoor/outdoor/mixed-light cultivation licenses, nursery and processor licenses (cultivation site that does trimming, drying, curing of non-

manufactured cannabis). On July 13, 2018, CDFA released proposed permanent regulations for 45-day public comments; the proposed regulations can be found at CDFA's CalCannabis Cultivation Licensing website at [www.calcannabis.cdfa.ca.gov](http://www.calcannabis.cdfa.ca.gov) <<http://www.calcannabis.cdfa.ca.gov>>. These regulations would replace the emergency regulations that the CDFA is currently operating under.

#### California Department of Public Health (CDPH) - Manufactured Cannabis Safety Branch (MCSB)

The MCSB is currently issuing temporary licenses for four types of cannabis manufacturing: Type 7 - produce an extract or concentrate using a volatile solvent

Type 6 - produce an extract or concentrate using a mechanical method or non-volatile solvent such as CO2 and ethanol

Type N - produce edible or topical products other than extracts or concentrates

Type P - package cannabis products or label cannabis product containers/wrappers only

As of July 1, 2018, all cannabis goods must meet all the statutory and regulatory requirements for testing, packaging and labeling, THC limits for edible and non-edible cannabis products as proposed in MAUCRSA (Medical Adult-Use Cannabis Regulatory and Safety Act). On July 13, 2018, CDPH published proposed permanent regulations for a 45-day comment period; the proposed changes may be found at [www.cdph.ca.gov/mcsb/rulemaking](http://www.cdph.ca.gov/mcsb/rulemaking) <<http://www.cdph.ca.gov/mcsb/rulemaking>>. These regulations would replace the emergency regulations that the MCSB is currently operating under.

#### California Department of Tax and Fee Administration (CDTFA)

As of May 2018, the CDTFA has reported revenue of \$60.9 million from cannabis sales beginning January 1, 2018 which includes the state cultivation tax of \$1.6 million, 15% excise tax of \$32 million and sales tax of \$27.3 million.

The state's cultivation tax rates are:

- \$9.25 per dry-weight ounce of cannabis flowers,
- \$2.75 per dry-weight ounce of cannabis leaves, and
- \$1.29 per ounce of fresh cannabis plant (must be weighed within two hours of harvesting)

The state's excise tax rate is:

- 15% of the "average market price" when purchased at retail

#### California City and County Sales and Use Tax:

- applies to retail sales of cannabis and cannabis products after the excise tax has been added
- does not apply to medicinal cannabis purchased by a holder of a California Medical Marijuana Identification Card issued by a county health department

### **Summary of Solano Cities Cannabis Ordinances**

Since January 2018, cities within Solano County have been holding community meetings and developing their own cannabis regulations.

#### Cities of Fairfield and Vacaville

The City of Fairfield adopted a ban on all commercial cannabis activities and the City of Vacaville continues their moratorium on commercial cannabis activities.

#### City of Vallejo

The City of Vallejo has had medical cannabis dispensaries operating for a number of years, they have currently approved the sale of recreational cannabis within the existing medical dispensaries. Vallejo continues to study regulating recreational cannabis.

#### Cities of Dixon and Rio Vista

The cities of Dixon and Rio Vista have approved cannabis retail stores and cannabis manufacturing businesses.

#### City of Suisun

The Suisun City Council recently approved cannabis regulations which would allow a retailer and other cannabis activities in certain zoning districts.

#### City of Benicia

Benicia has approved the allowance of one retailer, a microbusiness and other cannabis businesses in certain areas of the city.

A more in-depth status of the cannabis regulations for the cities within Solano County can be found in Attachment C - Summary of Solano Cities Cannabis Ordinances.

#### **Overall Statewide Trends**

The Legislature is considering a large number of wide-ranging cannabis-related bills, such as a bill to make compassionate care cannabis exempt from use taxes; a bill to giving cannabis investigators for CDFA the power to serve warrants and effect arrests; and a bill allowing veterinarians the ability to prescribe cannabis for pets. CDPH is continuing to expand on its "Let's Talk Cannabis" initiative to share science-based cannabis awareness information (

<https://www.cdph.ca.gov/Programs/DO/letstalkcannabis/Pages/LetsTalkCannabis.aspx>).

Cannabis retailers are reporting rising demands for "microdosing" products, which typically contain under 5 milligrams of THC. Counties and cities across the state continue to develop cannabis regulations. Since 2018 is an elections year, many jurisdictions have cannabis taxation on their ballots. A trend seen with these new cannabis tax ballot measures is the proposing of a sliding scale for taxation - starting at a low percentage with gradual increase annually or over a specific number of years. Another trend noted by staff is that several jurisdictions with higher rates of taxation and fees on cultivation are now reducing those rates and fees. This reduction has been referenced as providing a relief for cannabis businesses as they begin their newly permitted cannabis operations. Also, it is being recognized that if taxes are too high on legal cannabis operations, there is the potential that it will perpetuate non-legal cannabis operations that exist without permits or proper licenses.

#### **RECOMMENDATION:**

Staff recommends that the Planning Commission finds that the proposed ordinance 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; and recommends such finding to the Board of Supervisors. Staff recommends that the Planning Commission consider the proposed ordinance and recommend the Board approve the proposed ordinance.

#### **ATTACHMENTS:**

- A. Draft Resolution with Exhibit 1 - Proposed Ordinance
- B. Excerpt of Minutes from November 14, 2017 Board of Supervisors Meeting
- C. Summary of Solano Cities Cannabis Ordinances

