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January 31, 2017
SPECIAL MEETING

CALAVERAS COUNTY BOARD OF SUPERVISORS IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY CALAVERAS COUNTY AIR POLLUTION CONTROL DISTRICT COMMUNITY SERVICE AREA #1, #2, #4, #8 AND #12 BOARDS

**THIS MEETING WILL BE HELD IN THE BOARD OF SUPERVISORS CHAMBERS
891 Mountain Ranch Road, San Andreas, CA 95249**

In Compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact the Clerk to the Board of Supervisors at 209/754-6370 at least 48 hours prior to the start of the meeting. Notification in advance will allow reasonable arrangements to be made to ensure accessibility to this meeting. Government Code §54954.2(a).

The agenda packet and supporting documentation are available for public review in the Clerk-Recorder's Office, during regular business hours.

If you wish to address the Board on an agenda item, please come to the rostrum when public comment on that item is opened and give your name, if you choose, and your comments. Time limits and order of items shall be the discretion of the Chair, including a break for lunch which generally will be from 12:00 p.m. to 1:00 or 1:30 p.m., unless otherwise noted under Announcements.

9:00 AM: **Call to Order**
Pledge of Allegiance
Announcements

PUBLIC COMMENT - 30 MINUTES

Any item of interest to the public that is within the subject matter jurisdiction of the Board and is not posted on the Consent or Regular agendas may be addressed during the Public Comment period. California law prohibits the Board from taking action on any matter which is not posted on the agenda unless it is determined to be an emergency by the Board of Supervisors. If Public Comment is completed before the 30 minute allotted time period, the Board may immediately move to the Regular Agenda. If Public Comment is not completed during the allotted time period, it will be continued at the conclusion of the Regular Agenda in order to provide an opportunity for the remainder of comments to be heard.

REGULAR AGENDA

1. **PLANNING** Cannabis Study Session

UPCOMING ITEMS -- TENTATIVE SCHEDULE

- January 31, 2017 - 6:00 PM: Regularly scheduled Night Meeting



CALAVERAS COUNTY BOARD OF SUPERVISORS AGENDA SUBMITTAL

Short Name/Subject Cannabis Study Session	Board Meeting Date January 31, 2017	Agenda Number 1
Dept: Planning Contact: Peter Maurer Phone: (209) 754-6394	Supervisory District Number Countywide	Regular Agenda
Published Notice Required? Yes Public Hearing Required? No		Estimated Time: 2 Hours
Type of Document? Informational Item PowerPoint Presentation Included? Yes Budget Transfer Included (Must be signed by Auditor)? No Complete Agreement Required? No Position Allocation Change? No		

RECOMMENDATION:

Cannabis Study Session

Background

A number of important policy decisions regarding the regulation of cannabis cultivation face the Board of Supervisors. The decisions to be made in the near future have long-term implications with regard to the County's communities, the cannabis industry, and County finances, staffing levels and enforcement capabilities. On January 24, 2017 the Board called a Special Election on May 2, 2017 for a citizens' initiative to ban cannabis cultivation with limited exceptions to be submitted to a vote of the people of Calaveras. The voters of the County will then decide whether to impose this ban on cultivation or reject and continue with a regulatory approach to cannabis cultivation and possibly permit and regulate other commercial activities associated with cannabis in conformance with the Medical Cannabis Regulatory and Safety Act and the Adult Use of Marijuana Act (Proposition 64) through a permanent County ordinance.

In the meantime, the urgency ordinance established on May 10, 2016 that placed regulations on existing cultivators is due to expire on February 14, 2017. One additional factor that affects the decisions of the Board was the passage of the cannabis tax measure last November, Measure C. This report is intended to provide an overview of the options, identify some of the pros and cons of those options, along with a status report of the current regulatory program under the urgency ordinance. While this report is coming from the Planning Department, as the primary department that is implementing the current program coupled with the fact that the regulations are a part of the zoning ordinance, many departments are involved and affected by the decisions to be made. These include law enforcement (Sheriff and District Attorney), regulatory departments (Planning, Building, Code Enforcement, Environmental Health, Agriculture, and Public Works) and administrative and financial functions (Treasurer/Tax Collector, Auditor/Controller, County Counsel and Administration).

The urgency ordinance (Chapter 17.95 of the County Code) provided for anyone who had previously cultivated cannabis or "had taken demonstrable steps toward the development of a medical cannabis cultivation site" no later than May 10, 2016 could register the site under certain zoning, setback, and other compliance restrictions. The deadline for submittal of a registration application was June 30, 2016. Registrants for commercial cultivation paid a \$5000

registration fee, which provides the County cost recovery for the administration, implementation and enforcement of the registration program. Approximately \$3.7 million was collected. As of January 23, 2017, roughly \$1,180,000 has been spent, leaving approximately \$2.5 million in the account set up for the program. The money collected can only be spent on administering, implementing and enforcing the cannabis cultivation registration process. This has included additional staffing in Planning, Code Enforcement, Environmental Management, County Counsel, and the Sheriff's Office, vehicles and equipment, and aerial imaging.

On January 24, 2017, of the 737 commercial applications received, there were 34 commercial cultivation registration issued, 66 had been denied, with the remaining 637 applications in some stage of processing. Processing the applications include the review of the documents and photographs submitted with the original application and comparing them with aerial imagery obtained by the County to confirm that the applicant was indeed cultivating or had taken steps toward establishing a cultivation site, background checks by the Sheriff's Office, review of deeds and corporate documents by County Counsel to determine who is legally responsible, ensuring that documents required to be submitted by September 7, 2016 were submitted and complied with the various agency requirements, and most importantly, a site inspection by Code Enforcement to ensure compliance with the standards established by the County in the urgency ordinance. In addition to the 737 commercial applications that have been acted upon or are still in process, the County received 78 caregiver applications and 137 personal cultivation applications. Of these, 37 have been issued, nine denied, and 169 still in process.

In November the voters of the County adopted Measure C, a tax measure that would place a \$2 per square foot of cultivation area general tax on commercial cultivators for outdoor or mixed-light cultivation, and \$5 per square foot for indoor cultivation for all registered growers. This goes into effect this year, with tax bills for half the amount to be sent out in May with the bill due in June. The second half of the bill will be sent in November and is due in December.

The voters rejected an initiative that was similar to the provisions of the urgency ordinance, but increased the cannabis businesses allowed in the County that are otherwise banned under the urgency ordinance (Measure D). Anticipating the passage of Proposition 64 on the statewide ballot, the drafters of Measure D included cultivation for recreational purposes, not just for medical use as is required by the urgency ordinance. The rejected initiative also lowered the fee for renewal, and did not contain all of the background check requirements contained in the urgency ordinance as recommended by the Sheriff.

Statewide, Proposition 64 passed which limits the County's ability to fully ban cultivation for personal recreational use. The County can restrict the cultivation to no more than six plants per residence, grown indoors in a residential or accessory structure. Barring local regulation, Prop 64 allows six plants grown outdoors if screened from view from the street.

Finally, the prior Board authorized the preparation of an Environmental Impact Report (EIR) for a permanent ordinance, based on the direction the prior Board provided to staff in February of 2016. The Draft EIR is expected to be available for public review and comment in late February. The EIR will address issues related to cannabis cultivation, as well as other commercial activities associated with the industry such as manufacturing, distribution, and testing. Impacts on water, transportation, noise, erosion, and other subjects will be addressed in the EIR.

Options

Staff has identified three basic options relative to the urgency ordinance that the Board could take. Because the Board must act on February 14, their action cannot be dependant on the May election. These are:

1. Let the urgency ordinance expire on February 14, 2017,
2. Extend the ordinance for a period of time, or
3. Modify the urgency ordinance.

Each will be discussed below:

Let Urgency Ordinance Expire

California Government Code §65858 provides for the extension of an urgency ordinance *twice*, for a period not to exceed two years. On June 21, 2016 the Board of Supervisors extended the ordinance to February 14, 2017 (i.e. the first extension). The law allows for up to one additional year, or until February 14, 2018 and requires a four-fifths vote to do so. A vote to not extend the ordinance, or if a motion to extend fails to garner four votes, the ordinance expires and would have no further force and effect. Those that received a registration certificate would be able to continue to cultivate until their certificate expires, the ban is enacted (in which case they would have 90 days to comply), or permanent regulations are adopted through a permanent ordinance and the registrant would have 90 days to comply with whatever regulations are enacted under the permanent ordinance.

The lack of regulations would leave a void for those who did not participate in the registration program, which would be confusing to the public and regulators, potentially leading to many of the same issues that precipitated the need for the urgency ordinance in the first place. Therefore, staff recommends that you not put the County in a position of not having express regulations (or an express ban) as it relates to the cannabis industry.

Extend Urgency Ordinance

Extending the ordinance would keep the existing regulatory program in place for the period of time determined by the Board until the citizens' initiative to ban cultivation is passed or until the Board of Supervisors adopts a permanent ordinance regulating or banning the cultivation of cannabis in the county. No new commercial cultivators would be allowed to register and County Planning staff would continue to process the registration applications previously submitted. Code Enforcement would continue inspections and enforcement actions where necessary. The Board may extend the ordinance for up to one year, until February 14, 2018, or for a lesser period. The ordinance automatically expires upon adoption of a permanent ordinance, whether a ban is enacted by the citizens or the Board, or new, permanent regulations are adopted.

Modify the Urgency Ordinance

The third option would be to extend the ordinance with modifications to it. Several concerns have been expressed by Calaveras County residents regarding commercial cultivation. These include cultivation in rural residential neighborhoods, increasing setbacks from property lines or sensitive uses, limiting the number of registrations issued, and additional environmental safeguards. In order to modify the ordinance, the same findings required to be made with the initial adoption of the urgency ordinance are required. These findings are that "there is a current and immediate threat to the public health, safety, or welfare, and that the approval of...applicable entitlement[s] or use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety or welfare." The County would need to identify how the current urgency is different from the urgency necessitating the original adoption of the urgency ordinance and that the changes to the urgency ordinance address such public health, safety or welfare threats and reduce that threat.

Discussion

Whether to extend the urgency ordinance or not has fiscal as well as enforcement implications. Also to be discussed are possible changes suggested by the public.

Fiscal Impacts

As discussed above, unused fees would have to be refunded if the regulatory program is not continued. In addition, the Measure C tax would not be collected if there is no registration process for commercial cultivation. Based on the numbers of applications (737), the average cultivation canopy area (15,427 sq. ft.) and an estimate of how many registration applications are likely to be approved (one-third to one-half), the potential revenue for the County would be \$7.58 to \$11.37 million annually. This number could change if future regulations are adopted which permit new registrations. As a general tax, this revenue can be directed to any use the Board determines to be appropriate during its annual budget hearings. Should the urgency ordinance not be extended, the County cannot collect this tax, even if the ban initiative were to fail at the ballot box, unless and until a replacement ordinance allowing commercial cultivation can be enacted requiring similar registration of cannabis cultivation as exists with the urgency ordinance. This is in addition to the fees generated specifically for regulation and enforcement of the urgency ordinance.

Enforcement Issues

Inspections and enforcement was slow to be implemented, but staff is now better trained and the process is getting streamlined for faster implementation and enforcement. When the ordinance was being considered last May, staff from most of the affected departments estimated the staffing needs and other costs associated with implementing the ordinance. This was based on an expected 200 to 300 registration applications. Expected costs were estimated at approximately \$1 million. Based on the sheer quantity of applications, the various affected departments clearly needed additional resources and staffing to finish administering and implementing the program. Staff prioritized complaints and clearly identified violations, but enforcement was limited by staff shortages and the difficulty to coordinate law enforcement backup for inspections. Additionally, the current procedures of the County Code for processing violations is time consuming and cumbersome, which may be streamlined by the revised County Code Section 8.06 that the Board directed staff to update on January 24, 2017.

During the fall, staff was inundated with appeals, taking away time in which applications could be processed and enforcement actions taken. Most of those appeals were found to be meritless, but nevertheless the applicants have the right to appeal, taking them through to harvest. Although not a part of this agenda item, an enhanced and streamlined civil abatement procedure (the update to Chapter 8.06) will expedite those appeals and ultimately lead to quicker eradication of illegal cultivation.

With the urgency ordinance in place, the County has a clear ability to cite and ultimately abate unregulated or non-compliant cultivation sites as nuisances, a civil matter that does not involve law enforcement except as back-up protection during abatement and inspections. This relieves the Sheriff's Office to focus its attention on criminal activity in the county, both that associated with cannabis cultivation and crimes not involving cannabis. If the urgency ordinance expires, there is no such clear statement, and the confusion that existed prior to adoption of the ordinance will return to the County. Based on the aerial imagery obtained by the County, there are more than 500 cultivation sites that did not register to grow. With an ordinance (whether that be the urgency ordinance or a permanent ordinance) in place and adequate staff and funding available to enforce the ordinance, these sites could more easily and quickly be eradicated.

Another concern that was intended to be addressed was the environmental impacts of cultivation. The ordinance requires a grading permit and issuance of appropriate permits from the state for water quality. These permits require the registrant to address biological and cultural resources on the cultivation site. Most of the permitting is being done after the fact, since the grading and land disturbance occurred before obtaining the permits. If the ordinance expires, then there would be no ability to enforce those permitting requirements, other than through the complaint-based enforcement procedures of Public Works and the State Regional Water Quality Control Board. That would lead to numerous sites with erosion and drainage problems, and no incentive by the land owners to fix those problems.

Potential Changes to the Urgency Ordinance

There have been several suggestions regarding changes to the urgency ordinance, including limiting the zones in which commercial cultivation is permitted, increasing the setback, and limiting the total number of permits.

Some of the biggest conflict areas have been in rural residential subdivisions, where homeowners have purchased or built homes expecting a quiet, peaceful residential experience. In some instances commercial cultivators have changed that, creating an atmosphere of a commercial operation, with noise, light, traffic, and other distractions. A suggestion has been to restrict cultivation in the RR, Rural Residential zone. The challenge with that is that the RR zone covers a broad range of parcel sizes, from half an acre to 40 acres. Below is a table that shows the number of cultivation registration applications in RR by the zoning parcel size.

Cannabis Cultivation Registration in RR Zones				
Zone	Personal/ Caregiver	Commercial >5 Acre Lot Size	Commercial <5 Acre Lot Size	Total
RR	14	37	11	62
RR-0.5	19	0		19
RR-1	13	0	2	15
RR-2.5	0	1		1
RR-3	6	2	3	11
RR-5	67	11		78
RR-8	0	2		2
RR-10	7	21	1	29
RR-15	4	14		18
RR-18	0	2		2
RR-20	25	57	5	87
RR-40	2	6		8
RR-X	8	9	5	22
RR-MH	4	6	3	13
Total	169	168	30	367

The RR zone has a number of minimum parcel size, identified by the numeric indicator. The straight RR minimum parcels size is what the General Plan land use designation would permit, the X designator means that the existing parcel size is what the minimum is, and -MH indicates it is part of a mobile home park.

As the table shows, most of the cultivation occurring in the smaller RR parcels is for personal or caregiver grows. However, there are several commercial sites as well. Even an RR-20 zone contains sub-standard parcel sizes. Five commercial cultivation registration applications are on parcels less than five acres in size in the RR-20 zone. An alternative may be to increase the minimum parcel size which would also address substandard lots in other zones.

Increased setbacks have also been suggested as a means to address conflicts between cultivators and neighbors. Setbacks are often used to provide sufficient separation between conflicting land uses. While any specific distance is somewhat arbitrary, they are typically based on what would provide sufficient distance to accomplish the purpose for which they were established. The 75-foot setback established with the urgency ordinance was intended to address visual impacts, odors, and security. Increasing that setback could reduce those impacts.

When the ordinance was adopted the expectation was that 200-300 growers would apply. That number was exceeded by 3 times that amount, and as noted above, another 500 growers exist in the county without having received permits. Due to the fact that people have applied under provisions of the code that existed at the time they submitted their application, it would be difficult to impose a cap on the total number of registrations to be issued less than the number of approved registrants, but a future ordinance could certainly impose such a restriction. Anyone currently cultivating legally would be allowed to continue and renew, but once a registration expired or a grower decided not to renew, that could be eliminated from the pool of possible registrations, essentially for the Board to keep the urgency ordinance and direct staff to process all of the applications received under it and the total amount of registrations issued could be the cap set in a permanent ordinance.

Summary

The urgency ordinance was intended to be a stop-gap measure, to halt the increase in new cannabis cultivation activity and freeze the number and size of cultivation until permanent regulations could be adopted. As with any ordinance, it takes time to work out the bugs, develop a new regulatory program, fully staff that program, and bring the issue under control. A year ago people were flooding in on a daily basis with no regulations in place. The climate was ripe for abuse of the system. There are now at least 1500 growers in the county. But because of the lengthy process necessary to adopt a permanent ordinance, the Board acted to stop new cultivation, while allowing those that had previously invested in cultivation to continue.

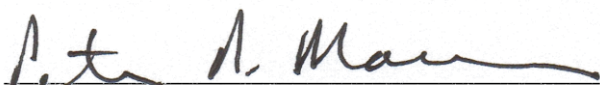
Staff from all departments involved realized that cultivation was not going to be controlled overnight. The Sheriff has stated that it would take two to three years to clean up what had evolved over decades, but exploded last year after the Medical Cannabis Regulation and Safety Act (MCRSA) was signed by the Governor. It takes three to six months to bring new employees on, more for law enforcement personnel. Additional time is needed for training. The details of new regulatory programs need to be worked out, and the regulated individuals need to understand and cooperate in the process. All of this takes time. If the voters approve the ban initiative in May, then all of this will be moot and the compliant growers will likely move on to another county. Should the ban initiative fail, we will be in a position to adopt permanent regulations, addressing concerns not covered and shortfalls of the urgency ordinance identified during implementation, within a couple of months after the election. In the meantime, extending the urgency ordinance will keep some form of regulation in place, enabling the County to continue regulating commercial cultivation providing a tool and funding source for enforcement, and time to craft and process a permanent ordinance without the fear of not having any express regulation in effect, like the prior "wild west".

The Chief Administrative Officer, Building Official, Sheriff, Auditor, Treasurer/Tax Collector, Environmental Management Agency Director, Public Works Director, and Planning Director all recommend that when the extension of the urgency ordinance is considered on February 14, 2017 that the Board of Supervisors extend the ordinance for the additional year as allowed by state law.

OTHER AGENCY INVOLVEMENT:

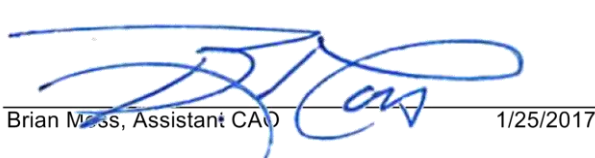
Building/Code Enforcement; Sheriff; Auditor; Public Works:Environmental Management; County Counsel; Treasurer-Tax Collector

APPROVED BY:


Peter Maurer, Director 1/24/2017


Diane Severud, Deputy Clerk of the Board of Supervisors 1/25/2017


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