



## OFFICE OF THE COUNTY COUNSEL

**Deputies**  
BRINA A. BLANTON  
DOUGLAS V. PARKER  
MATTHEW T. KIEDROWSKI  
CHARLOTTE E. SCOTT  
MICHAEL J. MAKDISI  
SHANNON R. COX

### MEMORANDUM

**DATE:** November 15, 2018

**TO:** Honorable Board of Supervisors

**FROM:** Matthew Kiedrowski, Deputy County Counsel

**SUBJECT:** Revisions to Form of Ordinance for Agenda Item 5a – Overlay/Exceptions

#### Corrections to Ordinance Language

In reviewing the agenda packet for the November 16, 2018, meeting regarding Agenda Item 5a (Overlay), staff noticed that the proposed ordinance has outdated ordinance language in Section 2 of the ordinance.

Section 2 of the ordinance is amending section 10A.17.080 of the County Code. The ordinance included as part of the original packet contained the following language:

- (A) Permits under the MCCO will be issued in the following three phases:
- (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until June 30, 2018; provided, however, that applications for Permits within the areas subject to the sunset provision of paragraph (B)(2)(b) of this section shall be accepted until December 31, 2018. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.

The above text is outdated language that appears to have been pulled from the online County Code before changes made to the language by Ordinance No. 4411 (adopted June 5, 2018) were codified and made available online by MuniCode.

Ordinance No. 4411 extended the application deadline for Phase One permits until December 31, 2018. The proposed ordinance for this item is not intending to make any changes to this paragraph or deadline. The proposed ordinance instead creates a new section 10A.17.081 concerning application deadlines related to the Overlay process.

The paragraph (A)(1) should instead read as follows, as last amended by Ordinance No. 4411:

(A) Permits under the MCCO will be issued in the following three phases:

- (1) Phase One: Following the effective date of the MCCO, Permits will only be issued to applicants who provide to the Agricultural Commissioner pursuant to paragraph (B)(1) of this section proof of cultivation at a cultivation site prior to January 1, 2016 ("proof of prior cultivation"), and who comply with all other applicable conditions of this Chapter and Chapter 20.242. Applications for Permits during Phase One shall only be accepted until December 31, 2018. Applicants able to provide proof of prior cultivation may apply for a Permit on a relocation site pursuant to paragraph (B)(3) of this section.

Staff has provided an updated redline and clean version of the ordinance with the correct text for paragraph (A)(1) to the Clerk of the Board for posting with this item.

#### Issues Related to Application Period Extensions/Re-Openings

In revising the ordinance to reflect the above changes, staff also reviewed proposed section 10A.17.081 and determined that it only provides for a generic extension of time for applicants in new overlay areas. However, there are two new exceptions being added as part of this agenda item that do not rely on being within an overlay district. These are found in a new paragraph (C) in section 20.242.040 and a new paragraph (C) in section 20.242.070, both of which create exceptions through an administrative permit. Without some form of application deadline extension, these provisions would be of limited usefulness.

Before creating a separate application window for these new administrative permits, staff notes that other items on today's Board agenda also include proposed changes that would also be utilized with an extension or re-opening of the application deadline. For example, Item 5c includes a change to the definition of "legal parcel" that makes additional persons eligible to apply for a cultivation permit. Several items in Item 5b, the Ad Hoc Committee recommendations, would also expand the pool of eligible applicants.

Staff's recommendation is that there only be a single six-month window for any extension or re-opening of the application deadline. To accomplish this, staff would prepare a single ordinance for a future meeting date with a single six-month window, for all recommended changes (the Exceptions administrative permits, the "legal parcel" change" and any changes made as a result of the Ad Hoc Committee's recommendations). The window could be specific to applications made eligible by the changes being made, or a single blanket six month extension that would apply to any applicant.

Alternatively, if the Board does not direct additional changes that make additional persons eligible to apply for a permit, staff would return with a specific ordinance amendment that would create a new application window that would apply to applications affected by the newly created administrative permits.