



## OFFICE OF THE COUNTY COUNSEL

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### MEMORANDUM

**DATE:** November 16, 2018

**TO:** Honorable Board of Supervisors

**FROM:** Matthew Kiedrowski, Deputy County Counsel  
Dr. Harinder Grewal, Agricultural Commissioner

**SUBJECT:** Proposed Amendments to Chapters 6.36 (Cannabis Facilities)  
and 10A.17 (Cannabis Cultivation)

#### Background

County Counsel staff, working with the Department of Agriculture and the Office of the District Attorney, has identified certain changes to Chapters 6.36 and 10A.17 that it recommends be made to the County's cannabis ordinances in advance of the changes being considered by the Ad Hoc Committee.

#### Proposed Changes

##### 1. Criminal History Background Check

Current versions of Chapters 6.36 and 10A.17 require a criminal history background check only for violent felonies as defined in California Penal Code section 667.5(c). However, the State of California criminal background check searches for additional crimes beyond that section; these crimes are listed in Business and Professions Code section 26057(b)(4). Staff recommends bringing the County's ordinance into conformance with the State provisions to be searching for the same crimes the State will be searching for. This change is reflected in the addition of subparagraph (1) to paragraph (B) of section 6.36.060 and subparagraph (1) of paragraph (m) of section 10A.17.

In working with and at the request of the District Attorney, four additional categories are being proposed to be added to the County's criminal history background check process.

First, the District Attorney has identified Health and Safety Code sections 11358, 11359 and 11360 as additional code sections with provisions that should be included in the background check process. Under new subparagraph (2), if the applicant has a felony conviction under these statutes, the application would be denied (or the proposed employee could not be a part of the operation. A felony conviction under these three statutes would generally mean the person had multiple convictions of certain crimes related to cannabis or convictions that resulted in violations of additional statutes, such as illegal cultivation that also resulted in a violation of the

Water Code related to an illegal diversion of water.

Second, the District Attorney has requested that convictions under Health and Safety Code section 11366.5 also be cause for denial. That section relates to convictions for providing a place for manufacture or distribution of controlled substances, with a sentence enhancement for knowingly allowing the place to be fortified to suppress law enforcement entry. New subparagraph (3) would mean that applicants would be denied for having a prior conviction under that section. As proposed, this is a factor for both cannabis cultivation and cannabis facilities.

Third, the District Attorney has requested that convictions under Health and Safety Code section 11379.6 also be cause for denial. That section relates to the crime of to the manufacture of controlled substances by chemical extraction or chemical synthesis. New subparagraph (4) would mean that applicants would be denied for having a prior conviction under that section. As proposed, this is a factor for both cannabis cultivation and cannabis facilities.

Fourth, the District Attorney has requested that the background check also look for conditions of probation, mandatory supervision, post release community supervision, or parole or any other lawful order that prohibits the possession or cultivation of cannabis. The issuance of a County permit or state license does not override such conditions. It seems appropriate for the County to not issue a cannabis cultivation permit or cannabis facilities business license, when the issuance of such permit or license would violate such conditions. New subparagraph (5) would provide for denial of an application if any of these conditions existed.

Attached as part of this agenda packet are relevant sections of the Health and Safety Code, as well as Business and Professions Code section 26057, which includes the crimes the state is reviewing.

## 2. Public Nuisance

Staff is proposing two changes to section 10A.17.

First, the County is proposing to combine and clarify clauses (1) and (2) of paragraph (B). The added language clarifies that in order to avoid a declaration of nuisance on cultivation exempt under section 10A.17.030, such cultivation must comply with all other applicable laws, such as section 10A.17.040. Existing clause (2) is deleted, as adult use cultivation is now an exemption under section 10A.17.030 and therefore falls under clause (1).

Second, the County is proposing additional language to proposed clause (2) (existing clause (3) of paragraph (B)). This clause currently provides that the cultivation of cannabis in absence of an issued permit is not a public nuisance if it is being cultivated by an entity whose application for a Phase One Permit has been submitted to the County and that entity has submitted a sworn affidavit affirming that they have met the requirements of the ordinance or are actively in the process of fulfilling the requirements. As of January 1, 2019, a cultivator must possess either a State temporary, provisional or annual license to cultivate cannabis in compliance with State law. Requiring either a state temporary or provisional license in this clause of the

ordinance will give code enforcement the ability to more effectively address non-permitted cultivation in a manner consistent with State law.

### 3. “Legal Parcel”/“Parcel” Definition Change

The Board of Supervisors has previously provided direction for a specific amendment to the definition of “legal parcel” or “parcel” in section 10A.17.020. The definition currently requires that the lot have been created pursuant to the Subdivision Map Act prior to January 1, 2016, or that a certificate of compliance have been recognized and recorded prior to January 1, 2016 (with an exception related to industrial-zoned districts). The Board directed that the definition be changed so that lots for which applications for subdivision were on file with the Department of Planning and Building Services prior to January 1, 2016, but only finalized after that date (with a recorded map), could also be eligible to apply for a permit. This change is consistent with the overall policy behind establishing the January 1, 2016, cutoff date, which was to discourage people for subdividing property solely for the purpose of creating additional legal parcels for new cultivation sites.

In addition to the amendment to section 10A.17.020, staff is recommending the addition of a new section 10A.17.082. This new section creates a new application period for applicants with cultivation sites not previously eligible to apply under the former definition of “legal parcel” or “parcel,” but eligible following the amendment of the definition by this ordinance. Such applicants would have one hundred eighty (180) days after the effective date of the ordinance to apply for a Phase One Permit.

### **Environmental Review**

The proposed change to Section 6.36.060 regarding revised criminal history background check procedures is categorically exempt from review under the California Environmental Quality Act. CEQA Guidelines section 15061(b)(3) provides that a project is exempt from CEQA if it can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment. The proposed changes related to criminal history background checks is an administrative change that will determine whether an individual is eligible to apply for a County license. There will be no impact on the environment from this change.

Chapter 10A.17 was adopted following the approval of a Mitigated Negative Declaration that reviewed the impacts of the County’s new cannabis cultivation regulations. As such, an Addendum to the Mitigated Negative Declaration has been prepared to satisfy the requirements of CEQA for the changes proposed to Chapter 10A.17 by this ordinance. The addendum makes findings on the level of significance these changes entail with regard to environmental review. A separate resolution has been prepared to adopt the Addendum, and the Addendum is attached to the resolution for review.

### **Recommended Action**

Please see the Agenda Summary for the recommended action.

## **Attachments**

1. Relevant California Codes
2. Resolution Adopting Addendum to Previously Adopted Mitigated Negative Declaration, with Addendum attached as Exhibit A
3. Redline Draft of Ordinance Making Amendments to Chapters 6.36 and 10A.17
4. Ordinance Making Amendments to Chapters 6.36 and 10A.17
5. Ordinance Summary