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MEMORANDUM

DATE: December 11, 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

On November 16, 2018, the Board of Supervisors reviewed the recommendations of the Ad Hoc Committee regarding proposed changes to the County's Chapter 10A.17 regarding cannabis cultivation, and provided direction to staff regarding the recommendations. Staff was directed to return to the Board of Supervisors at a December 11, 2018, meeting to present an ordinance making certain changes to Chapter 10A.17. Given the relatively short turnaround time for the ordinance, the Board of Supervisors also gave staff the discretion to set aside certain changes for a subsequent ordinance, as certain changes directed at the November 16, 2018, meeting were already going to require additional time to prepare.

In addition to the changes discussed at the November 16, 2018, meeting, staff had prepared a separate ordinance for consideration on that date. That ordinance included two of the changes that were also listed in the Ad Hoc Committee's recommendations, as well as a third item regarding changes to the public nuisance section of Chapter 10A.17. Those changes are included in the ordinance being brought forward to the Board of Supervisors.

The proposed ordinance for consideration includes certain language that was approved by the Board on November 16, 2018, as part of the Overlay ordinance, particularly revised language in the last paragraph of section 10A.17.040(B) and the last paragraph of section 10A.17.080(B)(2)(b). Changes to these sections will have been adopted, but not effective, as of the second reading of the proposed ordinance, so these paragraphs are not shown as changes in the proposed ordinance.

Proposed Changes

The following discussion of the proposed changes is numbered to match the list of recommendations presented by the Ad Hoc Committee at the November 16, 2018, meeting.

1. Section 10A.17.020 – Definitions

The Board of Supervisors generally directed that certain definitions of the County Code be modified to align more closely with the definitions in the State regulations. These definitions are discussed individually below.

A. Cultivation. The County's existing definition of "cultivation of cannabis" already aligns fairly closely to the State regulations. Minor changes were made to the County's definition. The County's definition also includes processing; this term was not deleted.

B. Cultivation site. Staff is proposing only minor changes to this definition. The list of activities allowed at a cultivation site has been revised to match that of the State. While the phrase "packaged for transport" is proposed for deletion, "packaging" is specifically included in the revised definition of "processing." Other portions of the definition not being changed relate to other requirements or allowances of Chapter 10A.17. These would include the ability to have multiple separate areas on a legal parcel to be considered part of the same cultivation site. Also, Chapter 10A.17 requires the cultivation site to exist on a single legal parcel, unless specifically allowed; this is stated in the definition as well.

C. Immature plant. This definition has been revised to that of the State regulations.

D. Mature plant. This definition essentially already matched that of the State regulations.

E. Nursery. The definitions did not include a definition of "nursery," but did include a definition of "nursery producer." The State's definition of "nursery" has been added. The definition of "nursery producer" is proposed for deletion. That phrase was only used in the definition of "seed producer," which is also proposed for deletion given the simplification of how Chapter 10A.17 will approach nurseries.

F. Processing. This definition has been revised to match the State regulations. While the phrase "package for transport" has been deleted, staff believes this phrase is encompassed by the words being added to the definition.

G. Cultivation Types. The Board of Supervisors also directed that the definitions of "indoor cultivation," "mixed light cultivation," and "outdoor cultivation" be revised to more closely align with the State regulations. At the November 16, 2018, Board of Supervisors meeting, staff raised concerns regarding the nature of this change. Chapter 10A.17's existing definitions are generally tied to a type of structure, while the State regulations primarily turn on the amount of artificial light being used. Staff is not opposed to this change, but additional time is necessary to review the remainder of the ordinance to determine if additional changes are needed elsewhere. These changes will be processed along with other zoning-related changes directed by the Board. Only minor changes to the name of each definition are proposed at this time.

H. Additional Deletions. As noted above, the definitions of "nursery producer" and "seed producer" are being deleted due to the simplification of nurseries directed by the Board of

Supervisors. Also being deleted are “collective” and “medical marijuana collective,” as those phrases were only used in section 10A.17.050 regarding medical marijuana collectives, which is proposed for deletion. The definitions of “church” and “residential treatment facility” are also proposed for deletion, as the purpose of these terms is proposed for deletion. “Wildlife exclusionary fence” is also proposed for deletion as the requirement for such a fence was also directed to be deleted.

2. Section 10A.17.020 – Definition of Legal Parcel.

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.

3. Section 10A.17.040(A)(1) – Deletion of “Church” and “Residential Treatment Facility”

As directed by the Board of Supervisors, these terms are being removed from this paragraph. This will have the effect of removing the requirement of any setback for a cultivation site from these facilities.

4. Section 10A.17.040(A)(4) – Visibility from a Public Road

The Board of Supervisors directed that staff bring back options for the Board to consider. Staff of the Department of Planning and Building Services will be present at the meeting to clarify the parameters of the issue and discuss several potential pathways forward. However, as these options may have different impacts, particularly in regards to CEQA, no changes are proposed in the ordinance prepared for consideration at today’s meeting. Staff will take direction from the Board and bring back amendments in the future, along with any required CEQA document.

5. Sections 10A.17.040(D), 10A.17.070(F), and 10A.17.110(E) - Generators

The Ad Hoc Committee generally recommended that the County’s provisions regarding generators align more closely to those of the State. Staff noted at the November 16, 2018, meeting that the State requirements were different than those of the County ordinance, and additional analysis under CEQA would be required for changes made to Chapter 10A.17. Staff was given direction by the Board to revise the generator requirements, but needs additional time to prepare ordinance language and prepare related CEQA documentation. These amendments will be brought back at a later date.

One additional question for the Board to consider on the topic of generators is whether the revised generator requirements should apply to only Permitted cultivation, or also to personal cultivation.

6. Section 10A.17.040(H) – Deletion of Wildlife Exclusionary Fence Requirement

The Board of Supervisors directed the removal of the requirement that the required fence be “wildlife exclusionary” in nature, and also directed the removal of the word “immediate.” These changes have been made in the proposed ordinance.

7. Section 10A.17.050 – Deletion of Medical Marijuana Collective Section

This section has been replaced with “Intentionally Omitted.”

8. Section 10A.17.060 – Revisions to Nursery Permit Language

The Board of Supervisors directed that the County’s requirements regarding nurseries should more closely match the State. However, State regulations do not appear to have a great deal of detail in regards to nurseries. State regulations require specific site plan requirements, including requirements related to seed production and research and development areas, and also discuss nurseries in the context of unique identifiers.

Staff has deleted language regarding how nursery stock or seeds may be sold, as this language is largely superfluous following the adoption of State regulations. Staff has also deleted language requiring how a Permittee may produce immature plants and limitations on the amount of square footage that may be devoted to seed production (it does not appear that there is such a limit in the State regulations). References to a seed manual to be developed by the Agricultural Commissioner have also be deleted, as no such manual has been created.

Remaining requirements include the 22,000 square feet of canopy and a 10-acre legal parcel size minimum; these requirements relate to local control matters developed by the Board of Supervisors. Similarly, the restriction on on-site sales in certain zoning districts has also been retained.

9. Section 10A.17.070(G) – Track and Trace Requirements

The Board of Supervisors directed for the ordinance to clarify that only the State approved system will apply when “online.” Staff’s experience with the State Track and Trace system is that the system exists but is not fully operational, and there is no clarity on when this will occur. Staff recommends changing the requirement in this paragraph from a system “adopted and implemented” by the County to a system “as designated” by the County. This provides the County with the ability to designate the State system when such a system is fully operational. The Board of Supervisors could additionally provide direction to staff to designate the State Track and Trace System at the earliest opportunity. Additional language that provided some additional data entry requirements has been deleted so as not to conflict with any

requirements of the State Track and Trace system.

10. Section 10A.17.070(H) and (I) – Revisions to Fees and Inspections

The Board of Supervisors directed that only first-time applicants are subject to both a pre-permit site inspection and an annual inspection. For renewing Permittees, the previous year's annual inspection will serve as the basis for renewal. Minor clarifying changes have been made to paragraph (I) regarding inspections. Paragraph (H) regarding fees has been clarified to state that the application fee only applies for new applicants.

11. Section 10A.17.080(A)(1) – Extended Application Period

The Board of Supervisors directed that staff create a six-month window during 2019 for Phase One applicants. The Board did not direct a date certain for this window to start, but allowed staff to propose a date. The date of March 11, 2019, was discussed at the November 16, 2018, meeting, and this date is proposed in the ordinance. Staff believes that it is appropriate to have a period of time following December 31, 2018, where it can focus on addressing already submitted applications. Giving staff until March 11 provides enough of a break to do so. Staff has proposed a specific date range, from Monday, March 11, 2019, until Friday, September 6, 2019. This date range is technically 179 days, as the 180th would fall on a Saturday.

12 and 13. Section 10A.17.080(A)(2) – Changes Related to Industrial Zoning

Changes to allow additional sizes and types of cultivation during Phase Two in industrial zones were directed at the November 16, 2018, meeting. However, as stated at that meeting, these changes also need revisions to the Zoning Code to become fully effective. These amendments will be processed at a later date.

14. Section 10A.17.080(B)(4) – Deletion of Dwelling Unit Requirement

This paragraph currently requires that multiple permits may be granted on a single legal parcel that is owned by multiple persons residing on that parcel. The requirement that each of the owners reside on the parcel was directed to be deleted at the November 16, 2018, meeting. The proposed ordinance makes this change.

15. Section 10A.17.080(B)(6) – Notice of Non-Cultivation

As directed by the Board of Supervisors, the proposed ordinance would allow any Phase One Permit holder to file a Notice of Non-Cultivation.

16. Section 10A.17.090(M) – Revisions to Criminal History Background Check

The Board of Supervisors directed that the existing language in paragraph (M) regarding the criminal history background check be revised to reflect changes in the State regulations and also to incorporate recommendations by the District Attorney. While the Board direction only extended to the cannabis cultivation ordinance, staff has also prepared changes to the cannabis

facilities ordinance, Chapter 6.36, so that the changes may be made at the same time.

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.

In working with the District Attorney, several additional categories are proposed to be added to the County's criminal history background check process. As of the drafting of this memorandum, staff believes that the District Attorney will be available to discuss the added categories at the meeting. Separately attached as part of this agenda packet are copies of the sections being referenced in the revisions to paragraph (M).

17. Section 10A.17.100 – Permit Denial

Staff has created a new paragraph (D) regarding denial of permit applications. This new paragraph contains a non-exclusive list of reasons for denial based on the requirements of the ordinance and lists additional reasons where denial may be warranted. The section is meant to clarify and is not intended as a limitation on the inherent authority of the Agricultural Commissioner's Office to deny applications that do not meet the requirements of Chapter 10A.17.

Additional Change: Section 10A.17.160 – Public Nuisance

One additional item that staff had separately brought forward to the November 16, 2018, meeting was in regard to two changes to section 10A.17.160. The agenda item that contained these changes was not heard on November 16, 2018, but staff asked to bring all items that were part of that agenda item forward with the ordinance proposed for today's meeting. Staff believes that changes to this section are warranted as discussed below.

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.

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 proposed 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