

Memo

Date: June 16, 2020

To: Board of Supervisors

From: Supervisor McCowen

Additional Background for Agenda Item 6b: Potential Re-direction of the Cannabis Cultivation Program

Lack of Detail

1) Public Comment has called for more detail. The proposal, in a nutshell, is to transition the County away from issuing cultivation permits, which must still be obtained from the State, and instead focus County resources on regulating the land use impacts of cannabis cultivation. The broad outlines of this proposal are contained in the Agenda Summary with some additional background contained in this memo. If the Board approves moving in a new direction staff will develop recommendations to be presented to the Board during future public meetings, but at this time the entire proposal is before the Board.

CEQA Issues

2) Applicants are understandably concerned about the potential cost and time delay of a new permitting process and the effect it may have on their ability to obtain a State Annual License but after four years of impasse there is no guarantee that State CEQA concerns will be resolved with anything less than site specific environmental review. Staff agrees that our Mitigated Negative Declaration, which provides a programmatic environmental review of our cannabis cultivation program, is legally sufficient to support approval of our legacy cultivators but it does not satisfy the State requirement for site specific environmental review.

3) Section 10A.17.100(A)(2) of the current ordinance requires consultation with the California Department of Fish and Wildlife (CDFW) for every permit application. CDFW may approve the application, request a site inspection or request additional studies in order to make a determination that no impacts to sensitive species will occur. In the past year our staff has referred approximately 170 applications to CDFW for review and has received comments back on 54. More applications could be referred but CDFW has requested that they be submitted in phases since they only have one individual available to review the applications, in addition to fulfilling her other responsibilities.

4) Section 10A.17.100(A)(2) also describes a process that permits the County to develop a policy, in consultation with CDFW, to allow the County to objectively determine when referral to CDFW is warranted, and otherwise exempt applicants from the automatic referral. A draft policy was developed and submitted to CDFW about a year ago. CDFW recently suggested that they might be able to approve the policy, with modifications, to allow a pilot program to be overseen by CDFW, to verify that the determination regarding the need for a referral to CDFW is being accurately applied. At least in the short run it is difficult to see how this is an improvement over the current requirement to refer all applications to CDFW. These comments are not intended to be critical of CDFW but are offered as confirmation that we do not currently have a program that guarantees approval for all qualified applicants by a date certain. All phase 3 applications would still be referred to CDFW.

5) Concurrently, staff has also worked closely with the California Department of Food and Agriculture (CDFA), the State cannabis permitting authority, to develop a document that would potentially allow for the ministerial approval of legacy applications. The document, known as Appendix G, was negotiated over approximately 8 months by our legal staff and CDFA legal staff. I have not seen the document but I am told that it is approximately 27 pages long and incorporates the environmental elements of our cannabis cultivation program, including sensitive species review. Theoretically, if an application was in perfect conformance to the requirements of Appendix G, the application could be approved ministerially. However, if one question remains or one condition needs to be attached, the application could not be approved. As a pilot, staff has reviewed two applications through the lens of Appendix G and has submitted them to CDFA but as of yesterday had not received comments back. It is currently unknown if Measure G is a viable option but there is no ability for cost recovery by staff as any application fees received have been exhausted long ago.

6) In summary, various commenters express hope that issues with CDFW around sensitive species review will be resolved or that site specific v. ministerial permitting issues with CDFA will be resolved. However, after countless hours and several years of effort there is no guarantee. In that light, while site specific CEQA review may require additional expense for an Administrative Permit or Use Permit, it will also provide additional certainty since all environmental issues will be resolved in the permit process.

Zoning Table Issues

7) The Board will need to give direction on the Zoning Permit Requirements for legacy and non-legacy cultivation whether the Board supports a new direction for cannabis cultivation or stays with the current ordinance. The Board will still need to discuss and give direction as to which cultivation permit types will be allowed in which zoning districts and the final table(s) will be incorporated into the Zoning Code.

Staff Capacity and Prioritization

8.) The first priority of staff will continue to be successfully permitting the legacy cultivators who are currently seeking local permits and State licenses. Concern has been raised about the capacity of staff to develop a new cultivation program while continuing to process permits through the current system. First, it must be said that staff will continue to diligently process the current applications, will continue to make referrals to CDFW, will continue efforts to develop a County policy to determine when CDFW referrals are required and will continue to work with CDFA on the applicability of Appendix G. Staff will not do anything that will disadvantage current applicants while it works on developing the proposed new program. The first priority of the new program will be the successful transitioning of the legacy cultivators and securing of State Annual Licenses. I'm confident that Planning and Building and Cannabis Program staff are capable of working to permit current applicants while simultaneously developing a new program which will offer significant streamlining. Staff will be assisted based on recent Board direction to increase cannabis program staff from 5.5 FTE to 8 FTE.

Equity Program

9.) I believe a majority of equity program funds ought to be used to resolve environmental and infrastructure concerns but the Board may direct that equity funds be used in part to address additional permitting fees that may be required.

Phase Three

10) The opening of Phase Three and whether or not there is a separate opportunity for legacy cultivators to apply are separate but related issues. The Board has recently directed that the opening of Phase Three be delayed so that staff can focus on developing a more functional program. I believe this is still good direction. Once Phase Three is opened I do think it is appropriate that additional legacy applicants who may come forward would also be eligible to apply for equity program funding.

Other Options

11.) Although not part of this proposal, I have no objection if the Board chooses to direct staff to explore possible amendments to Section 10A.17.100(A)(2) or if Board members wish to lobby our State agencies or State legislators.

Staff Preference

12. Although this proposal is not being presented by staff, I believe it accurately reflects the preferences of staff. Assuming the issues with CDFW and CDFA can be resolved, we will still be left with a very cumbersome process that is difficult for applicants to navigate and for staff to administer. I believe staff agrees that their time as planning professionals is best spent reviewing and mitigating land use impacts instead of continuing to administer the current confusing, duplicative, and ever-changing program that produces little, if any, benefit for the regulated community, the general public or the environment.