



CALAVERAS COUNTY BOARD OF SUPERVISORS AGENDA SUBMITTAL

Short Name/Subject Cannabis Ordinance Study Session #2	Board Meeting Date April 16, 2019	Agenda Number 3
Dept: Planning Contact: Peter Maurer Phone: (209) 754-6394	Supervisory District Number Countywide	Regular Agenda
Published Notice Required? No Public Hearing Required? No		Estimated Time: 5 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:

Receive a presentation and provide direction to staff regarding the content of a cannabis cultivation regulatory ordinance.

DISCUSSION/SUMMARY:

On February 19, 2019 the Board of Supervisors held a study session regarding cannabis cultivation and regulation. At that time the Board indicated its intention to have staff prepare a regulatory ordinance and the Board and staff began a discussion of the contents of that ordinance. Because of the complexity of the issues and the length of time that the session was taking, the Board directed staff to return at a later date with a revised list of staff questions from the affected departments.

The Board also directed staff, as a component of the questions, to provide its recommendations. The department heads and applicable staff have met subsequently to discuss the issues. The following is a list of staff's understanding of the direction given at the prior study session, and questions that remain in order to prepare the regulatory ordinance.

Confirmation of 2/19 direction

1. **Majority of Board wants a regulatory ordinance**
2. **Cannabis cultivation will be limited to the following:**
 - a. **Only previously registered cultivators who were in good standing at the time the ban became effective and had a temporary license from the state are eligible to apply**
 - b. **Outdoor and mixed light cultivation may only occur upon issuance of a non-discretionary permit on the following parcels:**
 - i. **A1, AP and GF zoned parcels of 10 or more acres**
 - ii. **RA zoned parcels of 20 or more acres**
 - c. **A discretionary permit (AUP or CUP) may be considered on the following parcels:**
 - i. **RA zoned between 10-20 acres**

- ii. **U and RR zoned parcels 20 or more acres**
- d. **A land owner may apply to change the zoning in order to comply but that will be considered through the normal zoning amendment process.**

Staff recommends that the minimum parcel size be reconsidered. Most of the complaints were based on the proximity to other residences. Larger parcel sizes will reduce potential conflicts of odor and visibility of plants. Staff suggests that the Board consider a minimum parcel size of 20 acres. (Note: Of the 35 sites that met the non-discretionary permit requirements above, only 2 are less than 20 acres.)

3. **No cultivation may occur until a site has been brought into full local compliance and all required permits and a state license is in place.**
4. **The number of cultivation permits will be limited by zoning and parcel size rather than a numerical cap, and further limited to those who previously were in good standing with the County and had been issued a state license.**
5. **Multiple “premises” (separately issued cultivation sites) may be located on a single parcel.**
6. **Other license types (distribution, nurseries, etc.) will not be included in the regulatory ordinance. Dispensaries (medical retailers) are already permitted under a separate ordinance.**
7. **No permanent residence will be required on parcels containing outdoor/mixed light cultivation sites, but all structures must meet building and health and safety codes and permits must be finalized on all structures before a cannabis permit will be issued.**
8. **Camping and use of an RV will be prohibited except as permitted in County Code.**
9. **Appeals of ministerial permit denials and civil enforcement will be through the administrative hearing process established in Chapter 8.06.**
10. **Annual renewals will be required.**
11. **Permits run with the land and are transferrable, provided a new permittee meets all requirements.**
12. **Personal cultivation will no longer require registration.**
13. **Outdoor cultivation of no more than six plants for personal use may be permitted with an appropriate setback (suggested at 150 yards to minimize odor issues.)**

The minimum setback under the UO for commercial cultivation was 75 feet. A 450 foot setback seems excessive for six plants compared with that. That would require a minimum of 18.5 acres for someone to grow for personal use outdoors. Staff suggests that the same setback be applied as for commercial cultivation.

Additional questions needing answers in order to proceed with drafting a regulatory ordinance

Zoning and parcel size

14. **If a discretionary permit will be considered for RA, RR, and U cultivation, will it require an AUP or CUP?**

The approval authority for an AUP lies with the Planning Director while a CUP is with the Planning Commission. Both are appealable and subject to CEQA. Staff recommends that the County not provide a use permit process for U and RR zoned parcels. Instead, if the site is appropriate for cultivation, a zoning amendment would be the appropriate method to allow cultivation. Furthermore, the zoning ordinance requires that any parcel zone U, Unclassified be rezoned to an appropriate zone prior to approving any discretionary permit. If, however, the

Board decides to provide an avenue for cultivation on RR zoned parcels, a CUP would be appropriate rather than an AUP. Staff believes that most of the requests for a discretionary permit will be controversial and it is better to have the Planning Commission make the decision (CUP) rather than the Planning Director (AUP). The Planning Director's decisions on AUPs would likely be appealed which would result in a Planning Commission hearing regardless.

15. What will the minimum parcel size requirements for co-location of outdoor/mixed light cultivation? Should there be a numerical limit on the number of co-located premises on a single parcel?

Staff recommends a graduated scale, with the minimum parcel size increasing with the number of premises to be allowed, up to a maximum of five. The number of co-located premises allowed on a parcel should be proportional to the minimum size allowed for cultivation, i.e. if ten acres is the minimum, 2 premises on 20 acres, 3 on 30, etc.

16. Should co-location of outdoor/mixed light cultivation be limited to the same zones as a single cultivation site?

Having the same criteria is logical, but the Board could consider stricter requirements for multiple premises, such as only in A1, AP and GF to minimize potential conflicts in RA and other zones. The A1, AP and GF zones are resource zones, intended to have higher intensity resource uses, while the RA zone is intended to provide an equal emphasis on residential and agricultural uses. Multiple premises would make the use more commercial in nature.

17. Will indoor grows be allowed in M1, M2, and M4? If so, what should the maximum cultivation area be?

Indoor cultivation did not seem to create the types of conflicts that the County experienced under the UO as outdoor/mixed light cultivation. Issues of odor can be controlled with adequate filtration. Exposure to hazards (especially high levels of CO2) can be addressed with proper signage. Staff recommends that indoor cultivation be permitted as it was under the UO. Under the UO, the maximum area was up to 10,000 square feet (a small indoor state license type). Staff also recommends that this limitation be retained.

18. Will indoor cultivation be permitted in the zones where outdoor cultivation will be permitted (A1, AP, etc.)?

Several cultivators under the UO had indoor facilities, either separate from or in conjunction with outdoor or mixed light cultivation. Staff recommends that where outdoor cultivation is permitted, indoor may also be permitted.

Buffers/Setbacks

19. State law deems K-12 schools, day care centers and youth centers (as defined in §26001 of the Business and Professions Code) to be sensitive uses for purposes of siting outdoor/mixed light cultivation. Does the Board want to add other uses to that list?

Such uses should be semi-permanent (something that isn't changed regularly), and something staff is able to easily keep track of. They should also be uses that have the potential to place youth or other sensitive groups in proximity to and with access to cannabis. Uses that are unlikely to expose such groups to cannabis cultivation should not be included. Public parks should be included on the list of sensitive uses.

20. What will the sensitive use buffers be for outdoor/mixed light cultivation?

- **State law requires 600 ft. from the premises (the area that the cultivation activity occurs).**
- **UO had 1000 ft. from the closest property line**

21. Do we measure from premises boundaries or parcel lines?

Staff recommends that the 1000 ft. measurement be used but from the premises. This would promote siting the location of the cultivation area internally onto larger parcels, increasing screening opportunities. The premises is the contiguous area identified on the site plan for both the local permit and state license and contains the canopy area and outbuildings and other areas where licensed activities occur.

22. What should the setback of the premises (cultivation area) from the property line be?

There is no setback from the property line established in state law. The UO required a 75' setback. This seems reasonable, but the Board could increase or decrease that distance if appropriate.

Site Development Standards

23. What will the fencing requirements be? What materials?

Under the UO, fencing was required as a means to screen the plants, and to provide security from trespass. In many instances fencing was ineffective as a visual screen, and in some cases was more visually intrusive than the plants themselves. Cultivators will likely want to fence the cultivation area for their own security purposes as well as to prevent damage from deer and other animals. The state requires that fencing be identified on the application site plan but does not specify standards for fencing. Other jurisdictions have created specific standards for fencing. Due to the larger parcel size, and the ineffectiveness of a fence to screen plants, staff recommends that the County not impose fencing standards for visual screening, but include provisions only for security fencing, locking gates, and similar provisions to minimize trespass and theft.

24. Should cultivators be able to use generators?

State standards allow the use of generators, provided that they meet air pollution control requirements. Staff recommends that generators only be used as an emergency backup when there is a power outage. The County received many noise complaints about generators during the UO. Connection to the grid or an alternative power source such as solar should be required.

25. The state has lighting requirements to minimize light and glare from mixed light operations. They require that light be shielded. Does the County want to impose more stringent requirements?

The state lighting standards require downward facing and shielded lighting, and mixed light licensees shield lights from sunset to sunrise. This would be what staff would recommend. However, it may be appropriate to have similar language in the County regulations so that the County can enforce lighting requirements. Excess lighting was one of the concerns expressed by neighboring property owners.

26. Does the Board want to impose specific security requirements for cultivation sites?

The County can require specific security measures (fencing, video cameras, etc.) or leave security up to the needs of the cultivator. The draft regulatory ordinance recommended by the

Planning Commission in 2017 included provisions for minimum security requirements. The Sheriff recommends that those, or similar provisions be included in the ordinance.

27. Does the Board want to impose fire safety and hazmat requirements above those required by the State?

The state requires notification to the local fire protection district of an indoor cultivation application. Staff recommends that all applications for cultivation, whether indoor, outdoor, or mixed light include notification to the fire district. With regard to pesticide regulations, the State occupies the field, and the county does not have the authority to impose alternative regulations. Similarly, all hazardous materials listed under the CUPA program must be reported to Environmental Health if those materials are at or above reportable quantities. Additional standards do not seem necessary.

Application and Procedural Requirements

28. State regulations have a background check requirement. Does the Board want to have its own background check process by the Sheriff or rely on the state process?

Planning staff has met several times with the Sheriff, District Attorney, and County Counsel to review the background check requirements of the state and the needs of local law enforcement. The state requires a background check for all owners and those who have a financial interest in the operation. This is a "Triple I" review of state, federal, and international databases. However, they do not share that with local law enforcement officials. Nor do they conduct background checks for those working at the cultivation sites. Staff recommends that a local background check procedure be established for all persons associated with and working at cannabis sites. The process would need to have clear standards established by the Sheriff's Office, identifying what would be a disqualifying offense. A security clearance card would be issued for any person associated with cultivation, including temporary workers, which would be valid at any site, including dispensaries.

29. What should the code enforcement provisions be and how do you want appeals to be handled?

Under the UO, appeals of staff decisions on cultivation registration applications were handled by the Planning Commission, with subsequent appeals to the Board. This took a substantial amount of time and resources. Appeals of citations for illegal cultivation and non-compliance of ordinance standards were heard by a hearing officer under the provisions of Ch. 8.06. Staff recommends that appeals of ministerial permits for cultivation, citations, fines, and enforcement of the provisions of the ordinance be handled as a code enforcement issue utilizing a hearing officer, similar to the way code issues were handled under the UO. This will expedite the appeals process for both the County and appellants. The land use appeal process is geared towards discretionary permits, so only if we establish a discretionary review and permitting process (AUP or CUP for cultivation in specified zones) should Ch. 17.90 apply.

30. Do you want to retain the abandoned site remediation requirements of the ban?

The remediation requirements established with the ban ordinance should be retained. These are logical and reasonable requirements if a cultivator chooses to shut down an operation, although the timeline should be reduced.

31. Do you want to require bonding or other surety for cleanup of any abandoned sites?

The state requires the posting of a bond for crop destruction only. Staff recommends that a bond be posted to encourage remediation of cultivation sites that may be abandoned.

Summary

At the conclusion of the study session, staff hopes to have sufficient direction from the Board to prepare a draft ordinance that meets the requirements of the majority of the Board. The attached chart shows options and recommendations, and will be used during the study session to document the direction given by the Board. Following preparation of a draft ordinance, an appropriate CEQA document will need to be prepared and hearings will then be scheduled before the Planning Commission, followed by an adoption hearing (or hearings) with the Board of Supervisors.

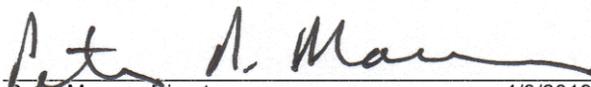
FINANCING:

A fee will need to be established to cover the cost of the regulatory program. The fee can only be used for the purpose of the program and cannot exceed its costs. Any shortfall will have to come from the general fund. The direction from this study session should also provide sufficient information to the various departments involved in the regulatory program to establish the fee to cover the costs of the program. The fee will need to be in place a month prior to adoption of the ordinance due to the requirement that no fee go into effect for 60 days after its adoption (which can be done by resolution) while an ordinance goes into effect 30 days after its adoption.

OTHER AGENCY INVOLVEMENT:

Building, Sheriff, Public Works, EMA, Counsel, DA, Administration

APPROVED BY:

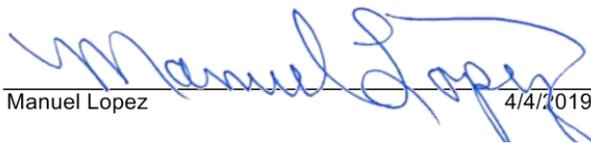

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