

# ALAMEDA COUNTY BOARD OF SUPERVISORS' TRANSPORTATION/ PLANNING COMMITTEE SPECIAL MEETING

Wednesday, April 18, 2018  
3:00 p.m.

Supervisor Scott Haggerty, Chair  
Supervisor Nate Miley

Location: Board of Supervisors Chamber – 5th Floor  
County Administration Building  
1221 Oak Street, Oakland, CA 94612

## Summary/Action Minutes

### I. Local Agency Management Plan (LAMP)

Dilan Roe, Environmental Health Department, Health Care Services Agency, gave a brief update on the Local Agency Management Plan.

In 2012, the State Water Board adopted the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy). The OWTS Policy required that local agencies wishing to regulate OWTS submit a Local Agency Management Plan (LAMP) to the Water Board for approval.

The County currently administers a local wastewater management program for Onsite Wastewater Treatment Systems (OWTS) under the authority of Chapter 15.18 of the Alameda County General Ordinance Code.

On June 19, 2012, the California State Water Resources Control Board (State Water Board or SWRCB) adopted the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (State OWTS Policy).

The OWTS Policy became effective in May 2013 and requires local agencies to implement the statewide minimum standards of the OWTS Policy which provides provisions for low risk Onsite Wastewater Treatment Systems, or develop a local program by adopting a Local Agency Management Program (LAMP). The LAMP may allow alternatives to the OWTS Policy; however the LAMP must demonstrate that the standards achieve the same purpose as the OWTS Policy which is to protect water quality and public health. The LAMP must be submitted to the San Francisco Regional Water Quality Control Board no later than May 13, 2016, and must be implemented prior to May 13, 2018.

#### **Lamp Elements Required by the State**

- Development and maintenance of a Water Quality Assessment Program to evaluate OWTS impacts to ground and surface water
- Implementation of Salt and Nutrient Management Plan and Groundwater Sustainability Program Requirements
- Coordination with watershed management groups (Groundwater Basin Managers and Groundwater Sustainability Agencies)
- Monitoring & analysis of water quality data (nitrates and pathogens) in surface & groundwater • Annual & 5-Year Reporting and Program Evaluation Requirements to RWQCB • Regulatory Options

Water Board staff has prepared, as required, a public notice to provide an additional opportunity for written comment. The public comment period runs from March 13, 2018 through April 16, 2018, at 5 pm.

**Purpose:**

- Report progress**
- Advocacy or Education
- Request Transportation and Planning Committee recommendation
- Other:

This item was informational only and required no Committee action.

**II. Draft Solar Policies for Alameda County and the East County Area Plan**  
[Attachment](#)

Albert Lopez, Director, Planning Department, Community Development Agency, presented a memorandum including draft Solar Policies for Alameda County and the East Area Plan.

The Transportation and Planning Committee last heard discussion about broad-based solar policies in July 2013. At that time, the Committee opted for a moderate policy position related to the siting of utility-scale solar energy facilities (SEFs) in the rural East County. The Committee directed Staff to develop a set of policies that would cover most issues of concern, but also wanted the flexibility to evaluate each utility-scale solar proposal on a case-by-case basis. The drafted policies would have applied to ground-mounted solar installations that generate power for off-site use (i.e. Solar Farm). Since these facilities tend to be much more land intensive than roof-mounted or ground-mounted solar systems that generate power primarily for on-site use, they also tend to have the greatest impacts.

According to the County Building Inspection Division (BID), the number of building permits issued annually for solar panels has increased year by year; from 53 permits in 2010 to 85 in 2011, an increase of 60%; and 121 permits in 2012, an increase of 42% over 2011. From 2014 – 2017, County BID issued 1,525 permits for new residential solar PV, an average of more than 380 per year. Staff believes that this ongoing increase in permit activity reflects the evolving private solar market; especially, consistent significant decreases in the price of panels, which are expected to continue into the future, as well as diverse financing options that make installing solar panels a more attractive investment.

**Proposed Policies for Rural East County**

Proposed policies for rural East County reflect the North Livermore location preference, and some of the benefits and issues that occur there. Topics addressed in these policies include the encroachment of incompatible uses, visual and biological resources, alteration of landforms, grading, slope, utilities, cultural resources, and public facilities.

**Consistency with ECAP Land Use Designations**

The proposed policies are based on the premise that SEFs are consistent with the Large Parcel Agriculture land use designation in the ECAP. This designation explicitly permits "...utility corridors, and similar uses compatible with agriculture"; the descriptions for the Resource Management (RM) and Water Management (WM) designations contain no mention of utility uses, based on ECAP language Staff currently considers the RM and WM designations to be unsuitable for solar development.

Staff recommends that your committee direct staff to proceed with implementing an urban unincorporated solar program as discussed above to facilitate and encourage solar near the end user.

In addition staff recommends your committee direct staff to proceed with a general plan amendment to incorporate proposed policies into the East County Area Plan pertaining to utility-scaled solar in the rural unincorporated areas.

## Speakers

Dick Schneider, Kevin White and Beth Wurzburg all spoke in support of the Draft Solar Policies for Alameda County and the East County Area Plan.

### Purpose:

- Report progress
- Advocacy or Education
- Request Transportation and Planning Committee recommendation**
- Other:

**Recommendation from Transportation and Planning Committee:** Support. Move to the full Board of Supervisors.

## III. Discussion of Potential Cannabis Tax Options

### [Attachment](#)

Pete Coletto, Principal Analyst, County Administrator's Office, Tax Collector's Office, presented follow up information on potential Cannabis Tax Options for Alameda County.

The time line for Cannabis Tax Options to be placed on the General Election ballot on November 6, 2018 includes Board of approval for the ballot measure at least 88 days before the election (by August 10<sup>th</sup>), two ordinance readings, and adoption of resolution with 2<sup>nd</sup> reading.

A draft ordinance for Cannabis Tax will be presented to the Transportation & Planning Committee in May, 2018 and considered at a Board of Supervisors retreat in June, with adoption of the ordinance by July 2018.

### Purpose:

- Report progress**
- Advocacy or Education
- Request Transportation and Planning Committee recommendation
- Other:

**Recommendation from Transportation & Planning Committee:** Support. Move to the full Board of Supervisors.

## IV. Cannabis Cultivation, Retail and Delivery Ordinance Implementation Update

### [Attachment](#)

Liz McElligott, Assistant Agency Director, Community Development Agency, presented a memorandum to update the Committee on the Cannabis Cultivation, Retail and Delivery Ordinance Implementation.

At recent Committee meetings, staff has provided updates in relation to the permitting scheme for cannabis cultivation, retail and delivery permits, including ordinance amendments (February 20, 2018 and March 8, 2018), and implementation of the permitting program (February 20, 2018). Since the March meetings, the ordinance amendments for cultivation, retail and delivery permits have been submitted to the Board of Supervisors for a First Reading and staff has continued implementation of the ordinances, including issuing permits.

### **Implementation of Cannabis Cultivation, Retail and Delivery Permits**

Pursuant to the ordinance amendments submitted to the Board of Supervisors for a First Reading on April 17, 2018, the ordinance proposes: 1) Up to five Cannabis Retail Operator Permits (previously referred to as "Dispensary" permits), including the two existing cannabis retailers in the unincorporated area;

2) Up to ten Cannabis Cultivation Operator Permits, all located in the East County; and an unlimited number of Cannabis Delivery Operator Permits, which are available only to applicants holding a valid local and state permit for a store-front cannabis retail location.

The key changes in the ordinance amendments include allowing the sale of adult use cannabis (in addition to medical cannabis), changing cultivation from a pilot program to a permanent use, increasing the number of permits available for cultivation from six to ten, and other minor, non-substantive revisions to address technical issues that have come up during the ordinance implementation process.

### **Cannabis Cultivation Operator Permits**

Four cultivation operator permits have been granted to successful applicants from the Request for Proposals (RFP) process which was conducted pursuant to Section 6.106.070 of the County Ordinance Code. The Board of Supervisors considered appeals in relation to several of these permits on January 9, 2018. The Board rejected the appeals and directed staff to amend Section 6.106 of the County Ordinance Code to increase the number of permits allowed through the RFP process to eight so that the applicants who ranked fifth through eighth would also receive permits in addition to the applicants ranked first through fourth. Several of the permit holders have commenced the pre-application process. All applicants will need to obtain a Conditional Use Permit (CUP) and the appropriate State licenses prior to commencing operation.

#### **Purpose:**

- Report progress**
- Advocacy or Education
- Request Transportation and Planning Committee recommendation
- Other:

This item was informational only and required no Committee action.

## **V. Consideration of Fee Ordinance for Cannabis Cultivation, Retail and Delivery Permits** [Attachment](#)

Liz McElligott, Assistant Agency Director, Community Development Agency, presented a memorandum to update the Committee on the Cannabis Cultivation, Retail and Delivery Ordinance Implementation.

The fee study for cultivation, retail, and delivery permits has been completed and an ordinance to adopt the fees proposed in the fee study is now presented to the Committee for consideration.

SCI Consulting Group has prepared a fee study on behalf of the County to determine the fees that should be applied in relation to the cannabis cultivation, retail and delivery permits pursuant to Sections 6.106 and 6.108 of the County Ordinance Code. Consistent with the provisions of Proposition 26, the fee study proposes fees which have been calculated to recover the County's direct and indirect costs to administer the commercial cannabis regulatory structure. A copy of the fee study is provided as Attachment 1. The Executive Summary provides detailed information regarding the purpose of the fee study, the legal framework and the methodology and approach that was adopted by SCI Consulting Group.

In summary, the fee study includes fees for:

- Processing, review and issue of permits, including developing conditions of approval;
- Renewal and transfer of permits;
- Processing, review and issue of CUP's;
- CUP mandatory review process;
- Appeals; and
- Annual monitoring and compliance.

The fee study does not include any fees that are already incurred by the County, for which another fee recovery process is available or that would be incurred in the usual course of business for non-cannabis related applications. In order to ensure that the fees bear a fair or reasonable relationship to the payers' burden on or benefits from the regulatory program, the fee study proposes the application of flat fees in some instances and deposit-based fees in other instances.

Staff requests the Transportation & Planning Committees' support to move this item to the full Board of Supervisors for adoption of the fee study, together with an ordinance adopting the proposed flat fees identified in the fee study.

**Purpose:**

- Report progress
- Advocacy or Education
- Request Transportation and Planning Committee recommendation**
- Other:

**Recommendation from Transportation and Planning Committee:** Support. Move to the full Board of Supervisors.

**VI. Consideration of Issues regarding County Ordinances for Cannabis Manufacturers, Distributors, Testing Laboratories and Microbusinesses**

[Attachment](#)

Liz McElligott, Assistant Agency Director, Community Development Agency, presented a memorandum for the Consideration of Issues regarding County Ordinances for Cannabis Manufacturers, Distributors, Testing Laboratories and Microbusinesses.

Recently-adopted County ordinances address cannabis retail sales, delivery, and cultivation, but not manufacturing, distribution, testing laboratories, or microbusinesses. In order to allow these additional uses in the unincorporated area, amendments to the County Ordinance Code, similar to those for retail sales and cultivation, would need to be adopted. At the March 21, 2018 Committee meeting, staff presented information regarding state regulations for cannabis manufacturers, distributors, testing laboratories, and microbusinesses, and discussed issues to be considered in allowing these types of facilities in the unincorporated area.

Since these additional facility types raise many of the same concerns as cannabis retailers and cultivators, it would be appropriate for these new ordinances to include many of the same requirement. In order to further minimize potential impacts on existing communities, the Board may also consider limiting the number of each type of facility allowed as the retail sales and cultivation ordinance do.

**Facilities Licensed in Cities within Alameda County**

At the March 21, 2018 meeting there was discussion of whether additional cannabis operations need to be allowed in the unincorporated area, taking into consideration the number of operations that are already permitted in the cities within the County. A total of 61 licenses have been issued for the four manufacturing license types provided by the state. Fifty-two of these operations are located in Oakland.

There are 49 businesses that have received licenses for distribution; two of these are for transport only. Forty-two of the operations are in Oakland. A total of six testing laboratories have received licenses in the County, three in Oakland and three in Berkeley.

**Appropriate Locations for Additional Facility Types**

At the last Committee meeting it was discussed whether cannabis manufacturing facilities, distributors, and testing laboratories should be allowed in the unincorporated area and, if so, where they should be

allowed. Supervisor Haggerty indicated that he does not support allowing additional cannabis operations in District 1.

These additional facility types are similar to other types of industrial uses that are allowed in the County's industrial zoning districts which are located at the western end of Grant Avenue in San Lorenzo. Because this area is located in District 3, the Committee directed staff to contact District 3 staff to determine Supervisor Chan's position regarding allowing cannabis facilities in San Lorenzo. District 3 staff indicated that in response to strong community opposition, Supervisor Chan has consistently opposed the siting of any cannabis-related activities in or around San Lorenzo. Some of the less intensive types of uses, such as edible production and testing laboratories, may be appropriate to allow in some of the commercial districts in the unincorporated area where they would not conflict with other allowed uses.

### **Shared-Use Manufacturing Facilities**

On March 22, 2018, the State Department of Public Health (CDPH) issued emergency regulations for a Type S manufacturing license which would allow the license holder to conduct manufacturing operations at a shared-use facility. The regulations define shared-use facility as a manufacturing facility operated by a Type 7, Type 6, or Type N licensee in which Type S licensees are authorized to conduct manufacturing operations.

### **Proposals from the Stakeholders' Group**

At the Stakeholders' Group meeting on April 5, 2018, one of the stakeholders proposed allowing the use of FlexMOD portable extraction laboratories for manufacturing at cannabis cultivation sites. These portable laboratories are self-contained modular units that resemble shipping containers. According to the manufacturer, the units meet all required safety standards, and are spark proof and blast proof. The County Ordinance Code currently explicitly prohibits cannabis manufacturing at cultivation sites. Because this type of industrial use is inconsistent with the requirements of the A (Agricultural) Zoning District in which the cultivation sites are located, staff does not recommend allowing manufacturing at the cultivation sites.

Several members of the Stakeholders' Group who have been selected to receive cultivation or retail permits also expressed an interest in obtaining a state distributor license to self-distribute cannabis products to and/or from their facilities. Staff will consider this option more fully, but our initial assessment is that this type of distribution could be permitted through a process similar to the process for permitting cannabis delivery in the current county ordinance code.

Based on direction from your Committee, staff will report on options for the consideration of new ordinances for cannabis manufacturing operations, distributors, testing labs, and microbusinesses at your next Committee meeting.

#### **Purpose:**

- Report progress
- Advocacy or Education
- Request Transportation and Planning Committee recommendation
- Other:

**Recommendation from Transportation & Planning Committee:** Staff will report on options for the consideration of new ordinances for cannabis manufacturing operations, distributors, testing labs, and microbusinesses at your next Committee meeting.

## **IV. PUBLIC COMMENT**

None.