

THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA,
STATE OF CALIFORNIA

R-_____

RESOLUTION ESTABLISHING AN INTERIM OPERATIONS PROGRAM FOR MEDICAL
CANNABIS CULTIVATION

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the “Compassionate Use Act of 1996”) to enable persons who are in need of cannabis for medical purposes to be able to obtain and use cannabis without fear of criminal prosecution under specified circumstances; and

WHEREAS, in 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code section 11362.7 et seq. and titled the “Medical Marijuana Program Act”) to clarify the scope of the Compassionate Use Act of 1996 and further providing that patients and caregivers may provide and acquire medical cannabis in a cooperative or collective manner wherein caregiver members may cultivate cannabis for the use of patient members, with costs and revenues of the cooperative or collective allocated accordingly; and

WHEREAS, in 2015, the State of California first adopted the law now titled the Medical Cannabis Regulation and Safety Act (Health and Safety Code sections 19300, *et seq.*) (“MCRSA”), which established a comprehensive regulatory scheme for commercial medical cannabis business and directs various state agencies to develop regulations to implement a commercial cannabis licensing program; and

WHEREAS, since 2016, with guidance from the Board of Supervisor’s Transportation and Planning Committee, an interdepartmental working group of County staff has been studying cannabis issues and drafting revisions to the County’s ordinances to align with the local licensing provisions of MCRSA; and

WHEREAS, generally, the ordinance revisions would: 1) increase the number of medical cannabis dispensaries allowed in the County from three to five, with no more than three located in West County and no more than two located in the East County and with new dispensary operators selected using a competitive selection process; 2) allow deliveries of medical cannabis from permitted dispensaries to patients; 3) allow medical cannabis dispensaries as a conditional use in certain Commercial zoning districts and in the Agriculture (“A”) zoning district and require a Conditional Use Permit prior to beginning operation; 4) Allow up to four sites for the cultivation of medical cannabis in the A zoning district; 5) allow dispensaries in good standing in the unincorporated area to begin cultivation without being subject to a competitive selection process and select up to two additional cultivation operators using a competitive selection process; and 6) amend the zoning ordinance to allow medical cannabis cultivation as

a conditional use in certain commercial districts and in the A zoning district and require a Conditional Use Permit prior to operation; and

WHEREAS, more than thirty public meetings have been held in 2016 and 2017 to review various iterations of proposed ordinance revisions; and

WHEREAS, at the April 25, 2017, Board of Supervisors meeting, the Board elected not to conduct a first reading of the draft ordinance and referred the matter back to staff for further revision and additional public meetings; and

WHEREAS, on April 28, 2017, the California Department of Food and Agriculture (CDFA) issued draft cannabis regulations implementing MCRSA which are scheduled to be finalized by January 1, 2018, following public comment; and

WHEREAS, CDFA's draft regulations include a deadline of January 1, 2018 for cultivators to begin operations in order to qualify for certain treatment under the regulations, specifically, section 8104 provides that cultivators operating by that date may continue operating while their state application is pending, provided the application is submitted by a July 2, 2018 deadline; and

WHEREAS, if cannabis cultivators in County cannot take advantage of the proposed State grace period for continuing operations, legal commercial cannabis cultivation would not be able to commence until both the required local permits and state licenses are issued, which may not occur until 2019; and

WHEREAS, Board of Supervisors intends to adopt modifications to the County's cannabis ordinances as soon as the drafting and public review process is completed, however, because specific terms and provisions of the revisions are not yet finalized, the ordinances are unlikely to become effective until October of 2017; and

WHEREAS, on this schedule, and given the dual permitting processes that the ordinances would require, it is also unlikely that a new cannabis cultivation operation could obtain the requisite local permits prior to January 1, 2018 in order to qualify for the grace period for continuing operations offered by the draft CDFA regulations; and

WHEREAS, the adoption of an interim operations program allowing the short-term, small-scale cultivation of medical cannabis will provide County business and residents the opportunity to take advantage to the proposed State grace period, while the County continues to pursue the adoption of the more comprehensive cannabis ordinances; and

WHEREAS, allowing cannabis cultivation in the County will advance the goals of the County by ensuring that medical cannabis will be available to the patients in need of it, by promoting a new type of agriculture in the County, and by supporting local and emerging businesses in the County; and

WHEREAS, although cultivation of medical cannabis shares some similarities with other agricultural activities, and as identified by recent state legislation, cultivation of medical cannabis raises health, safety and welfare concerns not raised by other traditional agricultural products and therefore, medical cannabis is not a permitted agricultural use by right for the purposes of land use and zoning; and

WHEREAS, with appropriate conditions, cultivation of medical cannabis may be an appropriate conditionally permitted use in the agricultural districts and outside of the urban growth boundary established in 2000 by the voters with Measure D; and

WHEREAS, medical cannabis cultivation possesses characteristics which require special review and appraisal in each instance, in order to determine whether or not the use is required by the public need; will be properly related to other land uses and transportation and service facilities in the vicinity; if permitted, will under all the circumstances and conditions of the particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood; and will be contrary to the specific intent clauses or performance standards established for the district, in which it is to be located.

WHEREAS, participants in the pilot cultivation program would be permitted to cultivate medical cannabis through the duration of this interim operations program only and would have no right to continue cultivation beyond the expiration of this program; and

WHEREAS, the existing dispensaries operating in the unincorporated County have demonstrated an ability to operate secure and responsible medical cannabis dispensary establishments and to comply with existing county and state laws concerning medical cannabis; and

WHEREAS, during the term of this interim operations program, the County will retain the authority to modify the terms, duration or requirements of the program, including the authority to cancel the program, revoke or modify permits issued, adopt a moratorium on cultivation, and take any other actions within its power to protect the health, safety and welfare of County residents; and

WHEREAS, this Resolution is adopted consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Cannabis Regulation and Safety Act, to protect the public health, safety, and welfare of residents of the County of Alameda in relation to the cultivation of medical cannabis; and

WHEREAS, this Resolution addresses the temporary cultivation of medical cannabis in the unincorporated areas of the County and does not address the cultivation of cannabis for non-medical use under Proposition 64 or otherwise; and

WHEREAS, regulation of cannabis activities is an evolving field, as evidenced by the recent adoption and revision of the Medical Cannabis Regulation and Safety Act, passage of Proposition 64 and the related regulations currently being drafted by various state agencies. As a result, the field of local regulation is also expected to continue to evolve over the next several years including revisions to the County ordinances, policies and performance standards; and

WHEREAS, nothing in this Resolution shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.* or to license any activity that is prohibited under said Act except as mandated by state law; and

NOW, THEREFORE, BE IT RESOLVED THAT:

The Board of Supervisors hereby adopts an Interim Operations Program for Medical Cannabis Cultivation. Temporary, interim medical cannabis cultivation activities may be allowed by the Director of the Community Development Agency (“Director”) in the Agricultural (“A”) zoning district, pursuant to the following conditions:

- a. The cultivator demonstrates eligibility for participation in the interim operations program by virtue of either: 1) possession of a current and valid permit to operate a medical cannabis dispensary in the unincorporated County; or 2) selection for participation in the program pursuant to a competitive selection process conducted by the Director.
- b. The cultivator obtains a conditional use permit from the Planning Department prior to beginning operations pursuant to Sections 17.54.130 and 17.54.140 of the Zoning Ordinance.
- c. The cultivator complies with all conditions imposed by the Director or the conditional use permit.
- d. The cultivator provides written certification that they have reviewed and understand and accept any performance standards for cannabis cultivation that may be adopted by the Director.
- e. The cultivator demonstrates to the satisfaction of the Director the ability to comply with the requirements of other applicable local and state regulations (e.g. building code, grading, fire code, waste management, water quality).
- f. The cultivator demonstrates that the cultivation operation will not cause environmental impacts beyond those evaluated in the Mitigated Negative Declaration adopted for the proposed County medical cannabis regulations.
- g. The cultivator immediately applies for and actively pursues all required local permits and state licenses, once they become available. The Director may establish specific timeframes to implement this section.
- h. The cultivator shall only be permitted to cultivate medical cannabis for the length of time specified in the conditional use permit. The cultivator shall have no right to cultivate after the expiration of the conditional use permit. Notwithstanding the above, the cultivator shall be permitted to cultivate medical cannabis through the duration of this Interim Operations Program only and has no right to continue cultivation if the program is terminated by the Board of Supervisors.

- i. The Director may establish such additional procedures, policies, performance standards and interpretations of this Resolution as may be necessary to implement this Interim Operations Program for Medical Cannabis Cultivation.

BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA