



## MEMORANDUM

September 28, 2017

TO: Board of Supervisors' Transportation/Planning Committee

FROM: Medical Cannabis Interdepartmental Work Group

MEETING DATE: October 2, 2017

SUBJECT: Medical Cannabis Ordinances Implementation Update

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### **BACKGROUND**

The Board of Supervisors held the second readings of the Medical Cannabis Dispensary and Cultivation Ordinances at the September 12, 2017 Board Planning meeting, and the ordinances will go into effect on October 12, 2017. In the interim, staff has been progressing on many fronts to implement the new ordinances and also begin the process of considering new ordinances for manufacturing operations, testing labs, and adult use cannabis.

### **DISCUSSION/SUMMARY**

#### **Expanded Interdepartmental Work Group**

In 2016, an interdepartmental working group was formed to develop the medical cannabis dispensary and cultivation ordinances. This original group included staff representing the County Administrator's Office, the Sheriff's Office, the Office of the County Counsel, the Environmental Health Department, the District Attorney's Office, and the Community Development Agency's (CDA) Agriculture/Weights and Measures Department and Planning Department. In August of 2017, with implementation of the dispensary and cultivation ordinances underway and development of ordinances to address manufacturing facilities, testing labs, and adult use cannabis beginning, the working group was expanded to include the Health Care Services Agency's Behavioral Health Care Services and Public Health Department, the Information Technology Department, CDA's Economic and Civic Development Department, the County Fire Department, the Treasurer-Tax Collector, the Public Works Agency, and the Probation Department. More recently, the Office of Education and Human Resource Services were added. The group has been meeting in person once per month, with weekly conference calls in between the monthly meetings. At the next in-person meeting on September 28<sup>th</sup>, the group will begin a discussion of issues to consider in the

development of ordinances for manufacturing facilities, testing labs, and adult use cannabis; and also hear a presentation by the consultant preparing the fee study.

### **Cultivation Permit Process**

The staff memo for Item 2 on your Committee’s October 2<sup>nd</sup> agenda provides the status of the process underway to grant cultivation permits to the two existing permitted dispensaries in good standing; and also the preparation of a Request for Proposals (RFP) to solicit applications for the four additional cultivation sites allowed under the cultivation ordinance.

### **Request for Proposals for Dispensaries**

In accord with Section 6.108.050 of the dispensary ordinance, staff is in the process of preparing a Request for Proposals (RFP) to solicit applications for the two East County dispensaries, pursuant to Section 6.108.030.D of the dispensary ordinance. The RFP includes a description of the application evaluation and selection process, the selection committee who will review and score the applications, and the criteria and method to be used to score the applications. Permits will be granted to the applications ranked highest in the competitive selection process. Two applicant information meetings will be held prior to the application due date to provide County staff with an opportunity to present more detail about the RFP and selection process; and to provide an opportunity for applicants to ask specific questions about the permitting process and requirements, and request RFP clarification. All questions asked at the information meetings will be addressed in an RFP Addendum which will be posted on the County website following the information meetings. The RFP is scheduled to be distributed on October 6, 2017. With an aggressive schedule in place, the selection process will be completed and the two dispensary permits will be granted before the end of the year. The applicants who receive dispensary permits will then need to apply for Conditional Use Permits (CUP). Staff will provide an update on the status of the RFP at your Committee meeting.

### **Fee Study**

SCI Consulting is in the process of preparing a fee study consistent with the provisions of Proposition 26 to determine the appropriate level of fees for application review and approval for medical cannabis dispensaries and cultivation sites, as well as medical cannabis delivery; and for costs associated with on-going maintenance and monitoring of these permits to fully recover the cost of County staff time to perform these functions. Staff is in the process of reviewing an administrative draft of the study. A final document should be completed in the next few weeks.

### **Ordinance Amendment to Delete Provision Limiting the Number of Permits for Specific Cultivation Types**

Section 6.106.030.B. of the recently adopted cultivation ordinance states that, “The county shall have in effect no more than six cannabis cultivation permits throughout the duration of the pilot program, to be selected pursuant to sections 6.106.050 through 6.106.110 herein. A maximum of two permits will be available for indoor cannabis cultivation operations. A maximum of four permits will be available for mixed-light cannabis cultivation operations.”

At the September 12<sup>th</sup> Board Planning Meeting, Supervisor Haggerty stated that he wishes to have the Board consider revising this section of the ordinance to remove the last two sentences to eliminate the restriction on the number of permits available for each of the two cultivation types allowed. If your committee concurs, staff will bring the proposed ordinance amendment to the full Board for consideration at the November 7<sup>th</sup> Board Planning Meeting.

### **Rescission of Resolutions**

On July 11, 2017, the Board of Supervisors adopted two resolutions establishing interim operations programs for medical cannabis dispensaries and cultivation. The two resolutions were intended to enable the director of the Community Development Agency to allow temporary medical cannabis activities, subject to specified conditions consistent with the proposed medical cannabis dispensary and cultivation ordinances.

With the adoption of the ordinances, the resolutions are no longer necessary; therefore, staff recommends that the Board rescind the resolutions. If your Committee concurs, staff will bring a resolution to rescind the two previously adopted resolutions to the November 7, 2017 Board Planning Meeting for the Board's consideration.

### **Assembly Bill 133**

AB 133, which was approved by the Governor on September 16, 2017, amended the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which consolidated the previous medical and non-medical cannabis statutes. There are a few provisions in AB 133 that may affect the implementation of the County's recently adopted dispensary and cultivation ordinances. For example, MAUCRSA required a licensee making deliveries to maintain a physical copy of the delivery request, and to make it available upon request of the licensing authority and law enforcement officers. AB 133 revised the MAUCRSA requirement so that the delivery request is no longer required to be physical. Section 6.108.125.A.3 of the County's dispensary ordinance also requires a permittee to maintain a physical copy of the delivery request during any delivery. The Board may wish to change this ordinance provision to be consistent with the new state law. Staff is still in the process of reviewing AB 133 to identify other changes in the state law that may affect the County's ordinances. If your Committee concurs, at your November Committee meeting, staff will present a list of potential ordinance amendments based on the recent changes in state law for your Committee's consideration.

### **Consideration of Ordinance Amendments to Allow the Sale of Adult Use Cannabis**

So far, the County ordinances have only allowed medical cannabis dispensaries and cultivation. With the passage of Proposition 64, and the consolidation of the state medical and non-medical cannabis statutes through MAUCRSA and AB 133, it is an appropriate time for the County to consider whether to allow adult use cannabis operations. While addressing both medical and adult use cannabis, MAUCRSA required medical and adult uses operations to be "separate and distinct." AB 133 removed these restrictions, so that a facility, such as a dispensary would be allowed to sell both medical and adult use cannabis. This is a substantial change which will have a significant effect on how the County may approach an adult use ordinance. Staff is still reviewing the new legislation to determine the County's

options for permitting and regulating adult use cannabis operations. Staff intends to present options for your Committee’s consideration at your November meeting.

### **Consideration of Ordinance Amendments to Allow Manufacturing of Cannabis Products and Testing Labs**

State law provides the following definitions for “manufacture” and “manufacturer:”

- “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.
- “Manufacturer” means a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

State law also requires the State Department of Public Health to produce regulations governing the licensing of cannabis manufacturers and standards for the manufacturing, packaging, and labeling of all manufactured cannabis products. The draft regulations which were released for public comment earlier this year were subsequently rescinded and are undergoing revision to make them consistent with the recently revised state law. Revised regulations are expected later this fall.

The state will grant two types of manufacturing licenses:

- Type 6 - Manufacturing Level 1, for sites that manufacture cannabis products using nonvolatile solvents, or no solvents, and
- Type 7 - Manufacturing Level 2, for sites that manufacture cannabis products using volatile solvents.

MAUCRSA previously required that a licensed medicinal cannabis manufacturer only manufacture cannabis products for sale by a medicinal cannabis retailer. AB 133 repealed those provisions, so state law now allows manufacturers to produce products for sale for both medicinal and adult use.

State law defines “Testing laboratory” as a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the Bureau of Cannabis Control.

The Bureau is required to develop procedures to ensure that testing of cannabis and cannabis products occurs prior to distribution to retailers, and to specify how often licensees must test cannabis and cannabis products.

Issues to be considered in the development of County ordinances to allow manufacturing facilities and testing labs include:

- Are these facilities appropriate land uses in the unincorporated area?
- If appropriate, in what areas should they be located?
- Should there be a land use distinction between Type 6 and Type 7 manufacturing?
- Should the type of manufacturing that would be allowed be limited?
- Should there be limits on the size and number of facilities?

With direction from your Committee, staff will provide additional information regarding these facilities at your November Committee meeting.

### **Potential Tax Measure**

Staff from the Treasurer – Tax Collector has begun exploring options for a potential measure to be placed on the November 2018 ballot to impose a tax on cannabis operations in the unincorporated area.

### **NEXT STEPS**

The Work Group will continue implementing the recently adopted medical cannabis dispensary and cultivation ordinances, and also continue the process of considering new ordinances for manufacturing operations, testing labs, and adult use cannabis. Staff will report on the progress made at the November Transportation/Planning Committee meeting.