



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

Chris Bazar
Agency Director

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Agenda Item 46 December 5, 2017

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

Honorable Board of Supervisors
Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

SUBJECT: ADOPTION OF AN ORDINANCE ADDING CHAPTER 6.111 TO THE ALAMEDA COUNTY GENERAL ORDINANCE CODE TO PROHIBIT ADULT-USE CANNABIS OPERATIONS IN THE UNINCORPORATED AREA OF THE COUNTY

RECOMMENDATION:

That the Board of Supervisors adopt an ordinance adding Chapter 6.111 to the Alameda County General Ordinance Code to prohibit adult-use cannabis operations in the unincorporated area of the County.

BACKGROUND:

On November 8, 2016, California voters approved Proposition 64 (codified, in part, as California Business and Professions Code sections 26000 *et seq.* and titled the "Control, Regulate and Tax Adult Use of Marijuana Act"), which decriminalized the adult use of cannabis for non-medical purposes and established a regulatory scheme at the state level.

On June 27, 2017, the Governor signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which established a state licensing scheme for both medicinal and adult use cannabis while preserving local authority to regulate cannabis businesses within the jurisdiction. MAUCRSA "shall not be interpreted to supersede or limit the **authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division**, including, but not limited to, **local zoning** and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to **completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction**" and "shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of **local zoning** requirements or local ordinances, or enforcement of **local license, permit, or other authorization requirements.**" Bus. & Prof. Code 26200(a) (1), (2) (emphasis added).

DISCUSSION/SUMMARY:

At this time, the County does not allow or permit adult use cannabis businesses. The County allows medical cannabis dispensaries, deliveries and cultivation sites only, pursuant to specified permit requirements. In particular, the County's Zoning Ordinance is a "permissive" zoning ordinance, meaning that all uses are prohibited unless specifically permitted by the Zoning Ordinance. Only medical cannabis businesses are permitted at this time, provided they obtain all requisite permits. Because adult use cannabis businesses are not permitted, they are prohibited pursuant to the principles of permissive zoning. Additionally, Chapters 6.106 and 6.108 of the ordinance code and the Board's findings adopted in conjunction with those ordinances clearly indicate that only medical dispensaries, deliveries and cultivation sites will be permitted at this time and that adult use cannabis businesses are not permitted at this time.

Nevertheless, in an abundance of caution and because the State is expected to begin issuing licenses for adult use cannabis businesses in 2018, staff recommends that the County adopt a temporary ban on adult use businesses to clarify to the public and to would-be operators that adult use businesses are not permitted at this time. Staff proposes a regular (not urgency) ordinance stating that adult use cannabis businesses are prohibited. The ordinance can be repealed by a majority vote the Board of Supervisors if and when the Board determines that the ban should be lifted and adult use cannabis businesses should be regulated and permitted by the County. The proposed ordinance would not change the status quo, but rather, would provide certainty to the industry and to County code enforcement and law enforcement personnel.

California Environmental Quality Act

The proposed ordinance has been reviewed in accordance with the provisions of the California Environment Quality Act (CEQA) and has been found to be exempt from further environmental review pursuant to the general rule in CEQA Guidelines Section 15061(b)(3), which specifies that CEQA applies only to any project with the potential to cause a significant impact on the environment.

CONCLUSION:

Staff recommends that your Board adopt the proposed ordinance to prohibit adult-use cannabis operations in the unincorporated area of the County to provide the opportunity to conduct further study and public meetings to consider whether to pursue ordinances that might effectively regulate, license and/or prohibit all facets of adult-use cannabis activities, including but not limited to cultivation, manufacturing, and sales.

Very truly yours,



Chris Bazar, Director
Community Development Agency

Attachment

- An Ordinance Adding Chapter 6.111 to the Alameda County General Ordinance Code to Prohibit Adult-Use Cannabis Operations in the Unincorporated Area of the County of Alameda

ORDINANCE NO. 2017-_____

AN ORDINANCE ADDING CHAPTER 6.111 TO THE ALAMEDA COUNTY GENERAL
ORDINANCE CODE TO PROHIBIT ADULT-USE CANNABIS OPERATIONS IN THE
UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA

SECTION 1

The Board of Supervisors makes the following findings of fact in support of this ordinance:

1. 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"); and
2. The intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances; and
3. 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. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions; and
4. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical cannabis collectives and cooperatives; and
5. In 2015, Assembly Bill 243, Assembly Bill 266 and Senate Bill 643 were enacted (codified in part as California Business and Professions Code section 19300 *et seq.* and titled the "Medical Marijuana Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical cannabis; and
6. In 2016, Senate Bill 837 was enacted to change all references to medical marijuana or marijuana to medical cannabis or cannabis, including changing the name of the Medical Marijuana Regulation and Safety Act to the Medical Cannabis Regulation and Safety Act; and
7. The Medical Cannabis Regulation and Safety Act established a comprehensive framework to license and regulate commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and
8. On November 8, 2016, the voters of the State of California approved Proposition 64 (codified, in part, as California Business and Professions Code sections 26000 *et seq.* and titled the "Control, Regulate and Tax Adult Use of Marijuana Act"), which decriminalized the adult use of cannabis for non-medical purposes and established a regulatory scheme at the state level; and
9. On June 27, 2017, Senate Bill 94 (codified, in part, as California Business and Professions Code sections 26000 *et seq.* and titled the "Medicinal and Adult-Use Cannabis Regulation

and Safety Act", or, "MAUCRSA") repealed and replaced MCRSA. MAUCRSA consolidates the medical and non-medical cannabis statutes (MCRSA and Proposition 64).

10. On September 16, 2017, Assembly Bill 133 was enacted, amending various provisions of MAUCRSA.
11. Pursuant to California Business and Professions Code section 26200, nothing in the Medicinal Cannabis Regulation and Safety Act shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements; and
12. The State of California has indicated its intent to start issuing licenses to adult-use and medical cannabis operators as early as January 1, 2018; and
13. The Alameda County Ordinance Code ("Code") currently prohibits adult-use cannabis operations, pursuant to Chapter 6.106 and Chapter 6.108, which clearly apply to medical cannabis only, and pursuant to the principles of permissive zoning, as the County's zoning ordinance allows only those certain uses listed in Title 17 as permitted or conditionally permitted and adult-use cannabis operations are not among the uses listed; and
14. The County intends to proceed with further study and public meetings to consider ordinances that might effectively regulate, license and/or prohibit all facets of adult-use cannabis activities, including but not limited to cultivation, manufacturing, and sales; and
15. Absent appropriate local regulation, the operation of adult-use cannabis establishments in the unincorporated area of the County would pose a potential threat to the public peace, health, and safety; and
16. This ordinance clarifies that unregulated adult-use cannabis operations are prohibited in the unincorporated areas of the County of Alameda, in order to protect the public health, safety, and welfare of residents of the County of Alameda; and
17. This Ordinance prohibits adult-use cannabis operations in the unincorporated areas of the County and does not address the cultivation, dispensing, delivery or any other facet of cannabis for medicinal use under MAUCRSA, the Compassionate Use Act, the Medical Marijuana Program Act or otherwise and does not prohibit personal cultivation in compliance with Health and Safety Code section 11362.2; and
18. Nothing in this Ordinance 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.

SECTION 2

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Alameda, as follows:

Chapter 6.111 is hereby added to the Alameda County General Ordinance Code, which reads as follows:

Chapter 6.111 – Adult-Use Cannabis

6.111.010 - Purpose and intent.

The purpose and intent of this chapter is to clarify the county's existing prohibition on adult-use cannabis operations in order to promote the health, safety and general welfare of the residents and businesses within the unincorporated portions of the county.

6.111.020 - Definitions.

The following words and phrases shall have the following meanings when used in this chapter:

- A. "Adult-use cannabis" means cannabis and cannabis products for adults 21 years of age and over.
- B. "Adult-use cannabis operation" means the operation of a business, non-profit or other establishment engaged in the sale, cultivation, storage, manufacturing, distribution, processing, packaging, or other similar uses, of adult-use cannabis.
- C. "Cannabis" shall have the same definition as in Business and Professions Code section 26001(f), which defines "cannabis" as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For purposes of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety Code.
- D. "Cannabis cultivation," "Cultivate" or "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis. Cannabis cultivation includes the operations of a cannabis nursery. Cannabis cultivation does not mean the temporary maintenance and selling of clones from a permitted dispensary, where such activities are incidental and subordinate to the primary dispensary operation.
- E. "Cannabis Dispensary" or "Dispensary" means a premises where cannabis, manufactured cannabis, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, cannabis and cannabis products as part of a retail sale under the adult-use provisions of the California Medicinal and Adult-Use Cannabis Regulation and Safety Act and as regulated by this chapter.
- F. "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between entities licensed pursuant to the adult-use provisions of Division 10 of the California Business and Professions Code.
- G. "Manufactured cannabis" or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates, extractions and raw cannabis

that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

- H. "Medical cannabis" or "medical cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.
- I. "Nursery" means a cannabis operation that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.
- J. "Person" means any human being or an incorporated or unincorporated business entity or association established under the laws of the state.
- K. "State" means the state of California.

6.111.030 – Prohibition on Adult-Use Cannabis Operations.

- A. It is unlawful for any person to conduct, engage in or allow to be conducted or engaged in, an adult-use cannabis operation in the unincorporated areas of the County of Alameda.
- B. The fact that a person holds other types of state or county permits or licenses, including but not limited to those related to medical cannabis operations, shall not entitle that person to conduct any adult-use cannabis operations in the unincorporated areas of the County of Alameda.
- C. This chapter does not prohibit the personal cultivation, storage or use of cannabis in compliance with Health and Safety Code sections 11362.1 and 11362.2.
- D. In accordance with California Business and Professions Code section 26080(b), this chapter does not prohibit the transportation of cannabis or cannabis products on public roads by an adult-use cannabis operation with an effective state license issued pursuant Division 10 of the Business and Professions Code from transporting cannabis or cannabis products in compliance with that division.

6.111.040 – Violations.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor. Each person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter or the permit is committed, continued or allowed in conjunction with the operation of a cannabis cultivation site and is punishable accordingly. For purposes of this section, each and every day of violation includes each day on which a failure to comply with this chapter or any conditions of a permit issued pursuant to this chapter continues.

6.111.050 – Enforcement of Public Nuisance.

- A. Any condition caused or permitted to exist in violation of any of the provisions of this title shall be deemed a public nuisance and may abated as such by the county.
- B. The planning director shall have the power to designate by written order that particular officers or employees shall be authorized to enforce particular provisions of this chapter.

- C. All land uses in the unincorporated areas of the County of Alameda are subject to the County's land use regulations, including but not limited to the general plan, applicable specific plans and the zoning ordinance. Uses not in compliance with the zoning ordinance are subject to enforcement and abatement in accordance with Chapters 17.58 and 17.59 of this Code.

SECTION 3

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the ___ day of _____, 2017, by the following called vote:

AYES:

NOES:

EXCUSED:

WILMA CHAN
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:
DONNA R. ZIEGLER, COUNTY COUNSEL

By:  _____
Heather Littlejohn
Deputy County Counsel