



# PLANNING AND BUILDING DEPARTMENT

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TO: Planning Commission

Agenda of: June 8, 2023

FROM: Evan Mattes, Senior Planner

RE: Public Study Session

Legistar No.: 23-1032

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The purpose of this memorandum is to provide information and background for this cannabis public study session. The subject public study session is a result of *El Dorado County Growers Advocacy Alliance v. El Dorado County Board of Supervisors, et al.* In November of 2021 petitioners filed an action challenging the County's implementation of its commercial cannabis program. The case has now been resolved and part of that process required the Planning Commission to hold a study session to review the County's cannabis regulations, to identify issues related to implementation and functionality, and recommend to the Board of Supervisors whether changes should be considered.

### **Recommendation**

The Planning Commission take action consistent with the direction of the Board of Supervisors as explained below.

### **State Background History**

The State of California has been regulating cannabis since 1996 with the passage of Proposition 215, the "Compassionate Use Act," the first medical cannabis regulation in the United States. In 2003, Senate Bill 420 developed the medical marijuana identification cards. The next significant change in regulation came twelve years later in 2015.

The Medical Cannabis Regulation and Safety Act ("MCRSA"), consisting of Assembly Bill (AB) 243, AB 266 and Senate Bill (SB) 643, was signed by the Governor on October 9, 2015. This legislation established a comprehensive framework for the regulation of commercial cannabis, covering a broad array of topics including cultivation, nurseries, delivery, transportation, manufacturing, environmental standards and enforcement, general enforcement, advertising and labeling, employer/workplace restrictions, appellation/organic standards, fees and taxation, safety standards, criminal penalties, and tracking and tracing systems. MCRSA also

establishes a dual licensing scheme under which anyone who engages in commercial cannabis activity must first obtain a local permit, and then a state license. The state law defers to local land use authority and local jurisdiction may ban cannabis uses altogether or further limit the allowances under state law.

On November 8, 2016, California voters approved Proposition 64, which is the initiative known as the Adult Use of Marijuana Act ("AUMA"). AUMA would allow local jurisdictions to decide whether to allow non-medical cannabis uses, except for personal use and cultivation, which must be permitted indoors with reasonable regulations.

On June 27, 2017, the Governor signed into law SB 94, which repealed the MCRSA, including certain provisions of the MCRSA in the licensing provision of the AUMA, and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retained the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code Section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one (1) or more businesses licensed under the State, within that local jurisdiction.

Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a cannabis business if approval of the State license will violate the provision of any local ordinance or regulation. The MAUCRSA required that a State licensing authority shall begin issuing licenses to cannabis businesses beginning January 1, 2018.

### **State Law and Licensing Requirements**

Legislation under the MCRSA protects local control via dual licensing: all marijuana businesses must have both a State license and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban commercial medical marijuana will be able to retain their regulations or ban. Local governments may enforce State law in addition to local ordinances if they request that authority and if it is granted by the relevant State agency. The types of permits allowed under the MCRSA include commercial cultivation, retail storefronts (dispensaries), manufacturing, testing labs, transporters, and distributors.

### **El Dorado County Cannabis Ordinances**

On July 17, 2018, the El Dorado County Board of Supervisors (BOS) placed five (5) ballot measures on the ballot for the November 2018 election, which enabled voters to decide whether to allow different aspects of commercial cannabis and its taxation. The ballot measures named Measure N (taxation, permitting and enforcement of commercial cannabis), Measure P (commercial outdoor and mixed-light cultivation of cannabis for medicinal use), Measure Q

(commercial outdoor and mixed-light cultivation of cannabis for recreational adult use), Measure R (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for medicinal use), and Measure S (retail sale, commercial distribution, and commercial indoor cultivation of cannabis for recreational adult use). In November 2018, the voters of El Dorado County passed the ballot measures creating a commercial cannabis program in the County that was developed after numerous meetings with stakeholders. These efforts resulted in ballot measures that, if approved by the voters, enacted ordinances that sought to balance the desire for a commercial cannabis program with concerns raised in the community about impacts to communities from such a program. Copies of the approved voter Measures are attached to this report. There have been revisions to the Cannabis ordinance since passage by the voters. Redline versions of those changes are also attached.

A critical piece of this program was the involvement of the El Dorado County Sheriff's Office (EDSO) in reviewing the criminal history of applicants and making recommendations on applications based on that criminal history. In light of the delays with a new application for Live Scan access for this licensing purpose, the El Dorado County Planning and Building Department, EDSO, and County Counsel's Office collaborated to implement an interim procedure that allows applications to continue in the permitting process.

### **Direction from the Board of Supervisors**

The Board has directed that the Planning Commission hold this study session to identify issues related to implementation and functionality of the County's cannabis regulations. The Planning Commission is further directed to recommend to the Board of Supervisors whether changes to County cannabis regulations should be considered. This session is an opportunity for the former petitioners, the cannabis industry, public, and other County departments and agencies to give input on the current cannabis regulations. Once the Planning Commission has concluded the session, a report and recommendation should be sent to the Board of Supervisors, which will be considered at a public Board meeting. If the Board determines that changes to the ordinances are warranted, direction will be provided to staff to pursue changes through the statutory ordinance revision process. If so directed, the cannabis ordinance will return to your Commission for specific revisions and recommendations for adoption by the Board.