



Legislation Text

File #: 19-1021, Version: 1

Hearing to consider the first reading of Title 130 Zoning Ordinance for the voter-enacted Measures N, P, Q, R, and S, which authorized the permitting and regulation of commercial cannabis activities in the County (OR19-0001)**. The proposed amendments allow for commercial cannabis nurseries, processors, testing laboratories, and manufacturers in limited zones and subject to specific regulations. As part of implementation of the ballot measures, the proposed amendments also combine the ballot measures for medicinal and adult recreational use cannabis and codify the ordinances in a new cannabis section of Title 130. Additional amendments address changes in state regulations that were enacted after voters passed the ballot measures, changes to the authorized zones for particular commercial cannabis uses, and other minor amendments. Staff is recommending the Planning Commission recommend the Board of Supervisors take the following actions:

- 1) Find that the adoption of the proposed amendments to Sections 130.14.290 (Measure N), 130.14.300 (Measure P), 130.14.310 (Measure Q), 130.14.320 (Measure R), 130.14.330 (Measure S), and the Matrix of Allowed Uses in Article 2 (Zones, Allowed Uses, and Zoning Standards) are not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3), 15060(c)(2), 15060(c)(3), 15305, and 15308 of the CEQA Guidelines and Business and Professions Code Section 26055(h), if extended.
- 2) Recommend approval of the following amendments:
 - i) Section 130.14.290 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Commercial Cannabis Activities Permitting and Enforcement” renumbered as Section 130.41.100 of Title 130, Article 4, with amendments;
 - ii) Section 130.14.300 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Outdoor and Mixed-Light Cultivation of Recreational Adult Use Cannabis” renumbered as Section 130.41.200 of Title 130, Article 4, re-titled “Outdoor and Mixed-Light Cultivation of Commercial Cannabis,” with amendments; and
 - iii) Section 130.14.320 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Retail Sale, Commercial Distribution, and Commercial Indoor Cultivation of Cannabis for Medicinal Use” renumbered as Section 130.41.300 of Title 130, Article 4, re-titled “Retail Sale, Distribution, Indoor Cultivation, Laboratory Testing, and Manufacturing of Commercial Cannabis,” with amendments; and
 - iv) Matrix of Allowed Uses in Article 2 (Zones, Allowed Uses, and Zoning Standards) to include the permitting requirements in the zones where the commercial cannabis uses are allowed.
- 3) Recommend repeal of:
 - i) Section 130.14.270 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Commercial Cannabis Activities”;
 - ii) Section 130.14.310 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled “Outdoor and Mixed-Light Cultivation of Recreational Adult Use Cannabis”; and
 - iii) Section 130.14.330 of Title 130, Article 9 of the El Dorado County Ordinance Code entitled, “Retail Sale, Commercial Distribution, and Commercial Indoor Cultivation of Cannabis for Recreational Adult Use.”

DISCUSSION / BACKGROUND

Request to consider to consider the first reading of the Title 130 Zoning Ordinance submitted by El

Dorado County for the voter enacted Measures N, P, Q, R, and S, which authorized the permitting and regulation of commercial cannabis activities in the County (Ordinance OR19-0001/Zoning Ordinance Commercial Cannabis Amendments). The proposed amendments allow for commercial cannabis nurseries, processors, testing laboratories, and manufacturers in limited zones and subject to specific regulations. As part of implementation of the ballot measures, the proposed amendments also combine the ballot measures for medicinal and adult recreational use cannabis and codify the ordinances in a new cannabis section of Title 130. Additional amendments address changes in state regulations that were enacted after voters passed the ballot measures, changes to the authorized zones for particular commercial cannabis uses, and other minor amendments. (County Contact: Creighton Avila) (Exemption pursuant to Sections 15061(b)(3), 15060(c)(2), 15060(c)(3), 15305, and 15308 of the California Environmental Quality Act Guidelines and Section 26055(h) of the Business and Professions Code, if extended)

The Ad hoc Cannabis Committee is recommending the Planning Commission hold the hearing and first reading of the proposed amendments to the commercial cannabis ordinances and recommend adoption of the proposed amendments to the Board of Supervisors. The proposed amendments, as identified on the red-line versions of the ordinances, include the following:

- Adds testing laboratories as an authorized use in General Commercial (CG), Industrial High (IH), Industrial Low (IL), and Research and Development (R&D) zones.
- Adds manufacturing as an authorized use; zoned based on license type.
- Adds nurseries as an authorized use; zoned consistent with the zoning for indoor and outdoor cultivation.
- Adds processors as an authorized use; zoned consistent with the zoning for indoor and outdoor cultivation.
- Updates definitions to remain consistent with amended definitions in the State's current regulations. For example, State agencies amended the definition of "immature plant" to address disputes between State and growers as to when a plant was mature.
- Expands notice requirements to include any incorporated city or county within a one-half mile radius of the project (not just Placerville and South Lake Tahoe).
- Adds requirement of a Designated Local Contact: Must be available 24/7 to respond to concerns from the County within the time requested. Contact information for the Designated Local Contact must be provided to property owners and residents within 1,000 feet of the parcel and complaints from citizens must be logged and responded to within a reasonable time.
- Adds section to address out-of-County delivery services and distributors, which requires a County Business License and payment of County taxes and subjects out-of-County delivery services to restricted County hours for delivery.
- Combines the medicinal and recreational adult uses into one ordinance.
- Adds requirement of review by the fire code official and consideration of conditions proposed by that official.
- For indoor cultivation, distribution, and retail delivery, adds Research and Development (R&D) as a permitted zone and removes Community Commercial (CC) and Regional Commercial (RC) as permitted zones.
- Amends the Matrix of Allowed Uses in Article 2 (Zones, Allowed Uses, and Zoning Standards) to include the permitting requirements in the zones where the commercial cannabis uses are

allowed.

Section 130.14.270 provided for a temporary ban of commercial cannabis activities and each ballot measure amended that section to remove the uses authorized through the particular ballot measure. With the passage of the ballot measures and requirements of a Commercial Cannabis Use Permit to engage in any commercial cannabis activity, the temporary ban is no longer necessary. Sections 130.14.310 and 130.14.330 addressed the commercial cannabis activities for adult use recreational cannabis. Because those uses are combined with the medicinal use ordinances in these amendments, repeal of those sections is recommended but will not change the authorized uses as enacted by the voters and the proposed amendments.

During the presentation to the Board of Supervisors on July 17, 2018 (Item 35, Legistar 18-1103), when the Board put the commercial cannabis ballot measures on the November 2018 ballot, it decided to wait on the commercial cannabis uses of manufacturing, nurseries, and testing laboratories until after the election. If all the ballot measures passed, the Board instructed staff to bring ordinances forward for the commercial cannabis uses of manufacturing, nurseries, and testing laboratories. With conceptual approval, staff has been working to complete draft ordinances for the review of the Planning Commission.

Further History of Cannabis Public Meetings in El Dorado County

On July 17, 2018, the El Dorado County Board of Supervisors placed five 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) were passed by the voters.

During a presentation on December 4, 2018 (Item 30, Legistar 18-1844), outlining next steps and an estimated timeline for the development of the County's Commercial Cannabis Program, the Board of Supervisors expressed interest in creating a new ad hoc committee on Commercial Cannabis. The new ad hoc committee would work on the new ordinances for commercial cannabis manufacturing, nurseries, and testing laboratories. In addition, it would work with staff on the creation of an administrative process for commercial cannabis.

As stated in a presentation to the Board of Supervisors on July 17, 2018, if any of the ballot measures passed, the County would need time and resources to develop a Commercial Cannabis Program, including all application materials, procedures, tax rates, fee rates, etc. Measure N gives the County six months to develop the necessary program. Applications must be available at the end of that six months unless the Board of Supervisors grants an extension of time to have permits available, or any other aspect of implementation based on a finding of unforeseen circumstances, changes in state or federal law, lack of sufficient funding, or other reason necessitating an extension. On June 25, 2019 (Item 43, Legistar 19-0894), the Board voted to extend the time for applications to be available to September 30, 2019.

In September 2015, the California State Legislature enacted the Medical Marijuana Regulation and Safety Act (MMRSA), which was signed into law in October 2015. MMRSA was a package of three separate bills (AB 243, AB 266, and SB 643) that established a comprehensive dual state licensing framework for the commercial cultivation, manufacture, retail, sale, transport, distribution, delivery, testing, and taxation of medical cannabis in California. The County did not conduct meetings regarding medical marijuana in 2015 due to the major statutory overhauls undertaken by the State of California, which resulted in MMRSA.

The El Dorado County Board of Supervisors created the ad hoc medical marijuana advisory committee at its March 15, 2016 special meeting (Item 2, Legistar 16-0209) regarding medical marijuana, due to the October 2015 passage of and February 2016 amendments to MMRSA. During that special meeting, the Board of Supervisors received an overview on the current medical marijuana laws and reports from County departments, stakeholder groups and the public on how medical marijuana policy decisions could affect them. At the conclusion of the meeting, the Board of Supervisors created the ad hoc Medical Marijuana Advisory Committee to collect more information on different medical marijuana topics (e.g. cultivation, dispensaries, compliance, commercial activities, etc.).

The Medical Marijuana Advisory Committee met on nine occasions: May 2, 2016 meeting was on the structure of the future meetings; June 20, 2016 meeting was on cultivation; June 27, 2016 meeting was on niche medical marijuana businesses (e.g. dispensaries, nurseries, etc.); August 22, 2016 meeting was on compliance procedures regarding medical marijuana rules; September 19, 2016 meeting was on taxation and fees for medical marijuana; December 12, 2016 meeting was on conceptual changes to the medical marijuana enforcement procedures (e.g. moving towards a civil enforcement process); March 27, 2017 meeting was to discuss the County's administrative decisions for Proposition 64; October 12, 2017 meeting was to discuss recommendations to the Board of Supervisors on new civil enforcement process and October 23, 2017 meeting was to discuss the ad hoc committee's recommendation to the El Dorado County Board of Supervisors on medical and recreational cannabis commercial licenses.

During the time period that the El Dorado County ad hoc Medical Marijuana Advisory Committee was meeting, the California cannabis laws were changing. In June 2016, Governor Edmund G. Brown signed SB 837, which changed the name of the MMRSA to the Medical Cannabis Regulation and Safety Act (MCRSA) and made substantive changes to applicable state laws. The changes affect the various state agencies involved in regulating cannabis businesses as well as potential licensees.

On November 8, 2016, California voters passed Proposition 64, also known as the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), by a vote of 57.1% in favor and 43.9% against. Locally, El Dorado County voters rejected Proposition 64 by a vote 50.1% against and 49.9% in favor (these numbers include the cities of Placerville and South Lake Tahoe). Proposition 64 legalized the non-medical use of cannabis by persons 21 years of age and over and the cultivation of no more than six (6) living cannabis plants for personal use, subject to reasonable regulations adopted by local jurisdictions. AUMA also created a state regulatory and licensing framework governing the commercial cultivation, manufacture, testing, and distribution of adult use/recreational cannabis.

On June 27, 2017, Governor Brown signed into law the Legislature-approved Senate Bill 94 (SB 94). SB 94 combined elements of the MCRSA and AUMA to establish a single, streamlined regulatory and licensing structure for both medicinal and adult-use cannabis activities, since there were

discrepancies between the MCRSA and AUMA. The new, consolidated provisions under SB 94 are now known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), to be governed by the California Bureau of Cannabis Control, CalCannabis Cultivation Licensing, and California Manufactured Safety Branch. MAUCRSA notably refers to medical cannabis as “medicinal cannabis” and nonmedical/recreational cannabis as “adult-use cannabis.”

At its November 14, 2017 meeting (Item 25, Legistar 17-1238), the Board of Supervisors conceptually approved the temporary ban on commercial activities for both medical and recreational (adult) cannabis, with the exception of the medical cannabis dispensaries allowed to operate under El Dorado County Section 130.14.250.

At the Board of Supervisors December 12, 2017 meeting (Item 34, Legistar 17-1238), the Board created the first ad hoc Cannabis Advisory Committee with a goal for the ad hoc committee to study and create ballot measures for different commercial cannabis activities tied to taxation for a local election. Behind this goal was to get a better understanding of what commercial cannabis activities the public would want to allow due to how broad Proposition 64 was. The committee met publicly on nine occasions: January 31, 2018 meeting was on the structure of the future meetings and the ad hoc committee goals; March 5, 2018 meeting was on commercial outdoor cultivation; March 12, 2018 meeting was on indoor and mixed light (greenhouse) cultivation; March 19, 2018 meeting was on dispensaries, deliveries, and distribution; April 23, 2018 meeting was on microbusiness, nurseries, and laboratory testing; April 30, 2018 meeting was on manufacturing; May 7, 2018 meeting was on tax rates and funding of a commercial cannabis program; May 14, 2018 meeting was on the effects of cannabis on communities and County departments; and June 19, 2018 meeting was on the proposed commercial cannabis ballot measures.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

Sheriff’s Office; County Counsel; Planning and Building; Environmental Management; Agriculture, Weights and Measures; Treasurer-Tax Collector; Air Quality Management District; and District Attorney.

CEQA COMPLIANCE

Business and Professions Code section 26055(h) provides a categorical CEQA exemption for the adoption of an ordinance by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in a commercial cannabis activity. While that section became inoperative on July 1, 2019, the Governor’s pending Trailer Bill proposed to extend that categorical exemption to July 1, 2021. (AB 97 / SB 97.) In the proposed amendments, the permitting of any uses remains subject to a discretionary Commercial Cannabis Use Permit that will require compliance with CEQA at a project-specific level and thus would be exempt under this section if it is extended.

Even if that statutory exemption is not extended prior to enactment of the proposed ordinance amendments, the proposed amendments are also exempt under the “common sense” exemption from CEQA in Guidelines section 15061(b)(3) (Title 14, Chapter 3 of the California Code of Regulations), which exempts from CEQA projects for which it “can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The proposed amendments allowing new uses qualify for this common sense exemption because they do not designate additional lands for new commercial cannabis activities that are more intense than the commercial cannabis activities already authorized in those zones through the ballot measures.

Allowing for lesser commercial cannabis activities in zones where more intense commercial cannabis activities are already authorized thus does not result in any different or new effects on the environment than were already assumed with the existing commercial cannabis land use designations. With existing authorized uses, the proposed amendments seek to limit the zones in which those uses are authorized to prevent conflict with non-cannabis commercial uses that are open to the public and instead allow for those commercial cannabis uses to occur in zones where similar uses are already authorized. These changes thus do not result in an unexpected amount of pedestrian and vehicle traffic, noise, visual changes, or other physical effects on the environment that are not already authorized in those zones. The remaining amendments are minor and are made as part of implementation of the existing program and there is no possibility that these amendments will have a significant effect on the environment.

Furthermore, the proposed amendments are not subject to CEQA pursuant to Section 15060(c)(2) of the Guidelines because the amendments will not result in a direct or reasonably foreseeable indirect physical change to the environment; Section 15060(c)(3) because the enactment of the amendments is not a "Project" as defined in Section 15378 since the amendments have no potential for resulting in physical change to the environment, directly or indirectly; Section 15305 because the proposed amendments consist of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density; and Section 15308 because the proposed amendments are intended to protect the environment.

FINANCIAL IMPACT

It is the intent of the County to recoup all costs associated with the development, implementation, and management of the Commercial Cannabis Program.

There are two revenues that could come with the initiation of a commercial cannabis program. First are the commercial cannabis program fees. These fees would be charged to the individuals that are operating permitted commercial cannabis activities in El Dorado County. The fees that are charged would go toward operating the compliance program, which would make sure that the operators were following the El Dorado County rules. The fees can only be used on staff and expenses that relate to the El Dorado County commercial cannabis regulatory program.

Second is the general tax that will be charged. This general tax revenue could be given to programs that are affected by the proliferation of illegal cannabis activities and use. For example, funds could be used for Public Health education programs to educate El Dorado County youth against the use of recreational cannabis and law enforcement for the eradication of illegal commercial cannabis cultivation that endanger our communities and environment. The eradication of illegal commercial cannabis cultivation could be an expensive task. It is estimated in Stanislaus County that it would cost \$3.1 million annually to enforce an unregulated market in their county. This cost could be more in El Dorado County with its difficult topography.

The County requested HdL Companies to do a tax revenue projection for the commercial cannabis measures. HdL has experience in revenue projections for cities and counties in the cannabis market. In its report, HdL looked at many different variables to get a range of tax revenue that the County could receive if the commercial cannabis ballot measures were approved. In its calculation HdL had to use different scenarios due to the different situations that could happen if the ballot measures are passed (e.g. how many licenses are given, what tax rate is selected, what mix of license types are granted, etc.). With all the variables in place HdL provided an estimated tax revenue range between

\$1.9 million to \$52.8 million. However, in HdL's report, it did not think that the high end projection would ever occur due to the tax rate discouraging the industry from coming to the County and discouraging growers from coming out of the black market. At this time, with the current market trends, HdL thinks that a more conservative estimate is in between \$3.0 million and \$4.0 million.

CONTACT

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Chief Administrative Office