



Legislation Text

File #: 21-0188, **Version:** 1

Planning and Building Department, Code Enforcement Division, recommending the Board:

- 1) Receive an update on the implementation and enforcement of Ordinance 5122, Cultivation of Cannabis for Personal Use; and
- 2) Direct staff to return with an update on the implementation of Ordinance 5122 in January 2022 with consideration at that time whether to establish a Cannabis Personal Use Ad Hoc Committee.

FUNDING: N/A

DISCUSSION / BACKGROUND

On May 5, 2020, the Board adopted Ordinance 5122 to simplify standards for the cultivation of cannabis plants for personal use and to make the County's allowance of the amount of cannabis cultivated for personal use more consistent with other counties throughout the state. The ordinance is now codified at Chapter 130.42.00 of the County Code. The ordinance was also one step in assisting law enforcement in their efforts to reduce the pervasive illegal grows by organized crime in the County that are supplying the black market and enabling Code Enforcement to more efficiently and safely enforce more minor violations.

The ordinance now allows for a maximum of six (6) cannabis plants per residence, with a maximum of six (6) plants cultivated outdoors per parcel. For a parcel with more than one legal residence, an additional 6 plants per residence are allowed indoors only. Outdoor cultivation is allowed within a greenhouse, hoop-house, hothouse, glass house, conservatory, or other similar structure, provided they comply with all building and zoning codes. Consistent with the prior ordinance, cannabis plants must be screened from view from adjacent streets or parcels and must employ security measures including six-foot high fences secured with locks. In addition to meeting property line setbacks (50 - 100 feet, depending on zoning) all cannabis cultivation must be at least 1,000 feet from sensitive uses, including: schools, school bus stops, churches or places of worship, parks, child care centers, or youth-oriented facilities. Finally, all cannabis cultivation is subject to strict odor control protocols, violation of which may lead to Code Enforcement action taken to mitigate odors escaping a subject property.

The updated ordinance replaced previous cultivation standards for medicinal cannabis that relied upon square footage to determine the quantity of cannabis plants allowed and ranged between 200 and 600 square feet depending upon zoning of each parcel and the number of medical patients, with 200 square feet maximum per medical patient. Under the previous ordinance, cannabis for recreational use could not be grown outdoors. The cannabis cultivation "season" can begin as early as March with germination/sowing seeds and generally terminates by mid-November with the final harvest. Given the timing of adoption of the updated cannabis personal use cultivation standards, the ordinance allowed for an exemption for those who had already commenced cultivation prior to May 6, 2020, so long as it was being used for medicinal purposes in compliance with the prior medicinal use ordinance. As provided for in the ordinance, this exemption was automatically repealed on December 1, 2020, at the end of the grow season. Given the difficulty in establishing whether cannabis cultivation commenced prior to May 6, 2020, the Western Slope El Dorado Narcotics Enforcement

Team (WENET) and Code Enforcement did not bring an enforcement action this past grow season against any owner who claimed to have planted in compliance with the prior ordinance, provided that any grow was reduced to the allowances under the prior ordinance.

Your Board also prioritized criminal and civil enforcement in the ordinance. The County's Code Enforcement Division partnered with WENET and, since May 1, 2020, has participated in 192 WENET cases that were related to joint criminal/civil enforcement, in addition to 38 cases that were solely civil code enforcement cases handled by Code Enforcement.

At the May 5, 2020 hearing on adoption of the amended Ordinance 5122, the Board received public comment from concerned medicinal cannabis users and cultivators about how the new limit of six plants would prevent them from possessing enough cannabis to last through the year and jeopardize their current cannabis crop, respectively. Based on their expertise in estimating the amount of cannabis that a single cannabis plant can yield when grown outdoors in this region, the Sheriff's Office continues to believe that six plants can yield more than enough cannabis for medicinal use by multiple patients in a residence, even if those patients are heavy users and are not expert cultivators.

The Board also agreed at that time to study the ordinance after one year and to assess the feasibility of establishing a Cannabis Personal Use Ad Hoc Committee in January of 2021. Given the exemption the Board allowed for during the 2020 growing season, limited staff resources, and considering the 2021 grow season is yet to commence, staff believe there is insufficient data, evidence, and need to support the establishment of the Cannabis Personal Use Ad Hoc Committee at this time. If your Board would like continued consideration of an Ad Hoc Committee to assess the new ordinance, staff recommends your Board consider receiving another update in January of 2022 after staff have the ability to analyze a full grow season worth of data, when it would be more appropriate to give consideration to the Ad Hoc Committee at that time. Prior to this date, staff will have the opportunity to meet with medicinal cannabis users in the County and receive input on their ability to meet their medicinal needs under the new ordinance.

ALTERNATIVES

- 1) The Board could establish the Cannabis Personal Use Ad Hoc Committee at this time and provide direction as to the scope of purpose of that committee.
- 2) The Board could choose not to establish the Cannabis Personal Use Ad Hoc Committee at this meeting but receive a mid-year 2021 update and continue discussion of formation of an Ad Hoc Committee at that time.
- 3) The Board could decide that further consideration of an Ad Hoc Committee is not necessary at this time and not request staff to return with further updates.

PRIOR BOARD ACTION

The updates to Ordinance 5122 were approved by the Board on May 5, 2020, Item 27, Legistar file ID 20-0565.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

Sheriff's Office, District Attorney, and County Counsel

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

There is no change to Net County Cost associated with this update to the Board on implementation of Ordinance 5122.

CLERK OF THE BOARD FOLLOW-UP ACTIONS

N/A

STRATEGIC PLAN COMPONENT

Public Safety, Healthy Communities, Economic Development

CONTACT

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Planning and Building Department