

**COUNTY OF SAN MATEO
PLANNING AND BUILDING DEPARTMENT**

DATE: November 13, 2017

TO: Agricultural Advisory Committee

FROM: Michael Schaller, Planning Staff, 650/363-1849

SUBJECT: Consideration of proposed amendments to the San Mateo County Ordinance Code (Chapter 5.148) to establish regulations for the cultivation of commercial cannabis in the Unincorporated Area of San Mateo County, and to continue the temporary ban on manufacturing, retail sales, and other forms of cultivation except for specified personal and medical purposes.

County File Number: MNA 2017-00023

PROPOSAL

The proposed ordinance will add a new chapter to Title 5 (Business Regulations) of the San Mateo County Ordinance Code (Chapter 5.148) to establish regulations and a license requirement for the cultivation of commercial cannabis in the unincorporated Area of San Mateo County. Under the proposed ordinance, commercial cultivation of cannabis will be permitted, subject to the issuance of a Cultivation License. The County will only issue licenses for mixed-light (i.e. greenhouse) cultivation and greenhouse nursery cultivation operations in areas designated by the County General Plan for Agriculture, or on lands on which documented agriculture has been conducted for at least three years preceding the adoption of this ordinance. Adopted State law classifies cannabis as an agricultural crop, akin to any other plant such as lettuce or artichokes. As such, the growing of commercial cannabis (within the restrictions established by this Ordinance) is permitted in all zoning districts that allow agriculture as a permitted use. The proposed ordinance will not alter any existing County Zoning Regulations or Local Coastal Program provisions. However, the construction of any new greenhouse structures for cannabis cultivation purposes will continue to be subject to discretionary review and permitting procedures. The proposed ordinance also limits the size and number of potential cannabis cultivation operations on a given site. Commercial cannabis cultivation operations will be able to occur in existing greenhouses under the proposed ordinance without additional environmental review, but subject to issuance of a ministerial Cultivation License.

The proposed ordinance seeks to protect existing agricultural use by requiring that commercial cannabis cultivation not displace any non-cannabis commercial agricultural production existing as of January 1, 2017. Alternatively, a person seeking to engage in

commercial cannabis cultivation may offset a proposed cultivation site by relocating existing agricultural production to another area of the property on a 1:1 ratio, provided such relocation does not conflict with any applicable policy or regulation.

Indoor cultivation (in any building but a greenhouse) and outdoor cultivation for commercial purposes will continue to be prohibited in the unincorporated County. The ordinance will also establish setbacks from specified land uses, including residential areas, performance standards for such operations, and a process for the review of license applications. With regard to cultivation for medical and personal use, the ordinance exempts specific types of non-commercial cultivation from the licensing requirement, in a manner consistent with State Law. See Attachment A for the draft proposed ordinance.

DECISION MAKER

Board of Supervisors

QUESTIONS FOR THE AGRICULTURAL ADVISORY COMMITTEE

1. What feedback would you like to provide to the County regarding the proposed Ordinance?

BACKGROUND

Report Prepared By: Michael Schaller, Senior Planner

Applicant: San Mateo County

Existing Zoning: Primarily PAD (Planned Agriculture Development). However, there are a few parcels with the “Agriculture” land use designation that also are zoned RM-CZ (Resource Management - Coastal Zone). Cultivation operations could also occur on land zoned RM-CZ or TPZ-CZ – (Timber Production Zone – Coastal Zone) if the applicant can document that there have been three consecutive years of agricultural operations on the parcel prior to the adoption of the proposed ordinance.

General Plan Designation: Agriculture (and Open Space – Rural and Timber Production – Rural when the applicant can document that there have been three consecutive years of agricultural operations on the parcel prior to the adoption of the proposed ordinance).

Environmental Evaluation: Initial Study and Negative Declaration, public comment period of October 18 – November 17, 2017.

Setting: All lands designated as “Agriculture” on the San Mateo County General Plan Land Use Map. These lands are distributed throughout the Coastal Zone of unincorporated San Mateo County. Also, lands designated as “Open Space – Rural” or

“Timber Production – Rural” on the San Mateo County General Plan Land Use Map where said lands have documented commercial agricultural operations for three consecutive years prior to adoption of the proposed ordinance.

Will the project be visible from a public road?

The proposed ordinance will not authorize any new development by right. Existing greenhouse structures may be used for commercial cultivation of cannabis, subject to receipt of the required business license, but no new development activities would be permitted. The construction of new structures for cultivation (i.e. greenhouses) is still subject to existing permitting requirements, including discretionary Planning permits. Any future construction of new greenhouses and/or site development that could potentially be used for commercial cultivation will be subject to a separate permitting process at that time. Such a future permitting process will consider the impacts of the physical development of the parcel, including applicable design standards contained within the County Zoning Regulations and Local Coastal Plan, which are designed, in part, to protect scenic vistas and views from existing residential areas and public lands.

In addition, the proposed ordinance provides that individuals engaging in commercial cannabis cultivation must ensure that no cannabis or cannabis products can be seen by persons on adjacent properties or from the public right-of-way; that cannabis operations shall be screened from public view by native, fire resistant vegetation; and that fencing shall be consistent with the surrounding area and shall not diminish the visible quality of the premises where the cultivation occurs or the surrounding area. (See Sect. 5.148.130(g) and Sect. 5.148.160(i) of the proposed Ordinance.)

Will any habitat or vegetation need to be removed for the project?

Adoption of the proposed ordinance does not authorize any new construction or modify any land use regulations. As a result, the proposed ordinance would not authorize any land disturbance that could result in any adverse impacts to sensitive habitats or species. Any impacts to biological resources due to the construction of any future greenhouse buildings that could potentially be used for cultivation will be subject to future discretionary review, including CEQA review.

Is there prime soil on the project site?

At the present time, no license application for commercial cultivation has been submitted to the County. It is possible that in the future, an application could be submitted for operations on prime soils. The impacts of greenhouse development on prime soils will be analyzed at the time such an application is submitted.

DISCUSSION

In November 2016, the voters of the State of California approved Proposition 64 which established a comprehensive system to legalize, control, and regulate the cultivation,

processing, manufacture, distribution, testing, and sale of nonmedical cannabis for use by adults 21 years and older, and to tax the commercial growth and retail sale of cannabis. In June 2017, the California Legislature approved Senate Bill 94 (SB94) which established a regulatory system to enact Proposition 64. SB94 includes provisions for local jurisdictions to enact and enforce “reasonable regulations” to regulate commercial cannabis within their communities, up to and include a complete prohibition on commercial cannabis activities. The purpose of this proposed Ordinance is to implement California State law by providing a means for the reasonable regulation of cannabis cultivation in a manner that is consistent with State law and which addresses the needs and concerns of residents living within the unincorporated area of the County and the protection of the environment, water supply, public health, safety, and welfare.

Under the proposed ordinance, commercial cultivation of cannabis will be permitted, subject to the issuance of a business license, in those areas that are designated as “Agriculture” on the San Mateo County General Plan Land Use Map. Also, it would be permitted on lands designated as “Open Space – Rural” or “Timber Production – Rural” on the Land Use Map where said lands have documented commercial agricultural operations for three consecutive years prior to adoption of the proposed ordinance. All greenhouse structures associated with Cultivation shall be setback a minimum of 100 feet from property lines, and a minimum of 300 feet from residences and businesses on surrounding properties. The 300-foot setback from residences and businesses shall be measured from the nearest exterior wall of the residence/business to the nearest exterior wall of the greenhouse structure associated with Cultivation. All parcels on which Cultivation is proposed shall also be setback a minimum of 1,000 feet from any parcels designated for residential use by the San Mateo County General Plan, any school providing education to K-12 grades, public park, youth center, and any alcohol or drug treatment facility. The 1,000-foot distance shall be measured in a straight line from the closest property line of the residentially designated or otherwise protected site to the closest property line of the parcel with the Cannabis Cultivation (Section 5.148.160(d)).

The County will only issue licenses for mixed-light (i.e. greenhouse) cultivation and greenhouse nursery cultivation operations. The proposed ordinance will not alter any existing County Zoning Regulations or Local Coastal Program provisions, nor exempt operations from complying with the California Uniform Building Code. Any improvements necessary to utilize an existing greenhouse building will require building permits, in addition to the business license. The construction of any new greenhouse structures for cannabis cultivation will be subject to future discretionary review and permitting procedures. Commercial cannabis cultivation operations will be able to occur in existing greenhouses under the proposed ordinance without additional environmental review, but subject to issuance of a ministerial business license (Section 5.148.160(e)).

In addition locational and performance standards, the proposed ordinance also includes provisions for certain non-commercial cannabis activities, application requirements (including criminal background checks), a requirement to hire only local residents, access restriction procedures, record keeping policies, and track and trace measures.