



COUNTY OF SAN DIEGO
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CLERK OF SUPERVISORS

COUNTY OF SAN DIEGO

BOARD OF SUPERVISORS

1600 PACIFIC HIGHWAY, ROOM 335, SAN DIEGO, CALIFORNIA 92101-2470

AGENDA ITEM

DATE: January 27, 2021

04

TO: Board of Supervisors

SUBJECT

FRAMEWORK FOR OUR FUTURE: MEASURES TO PROVIDE ECONOMIC ACCESS AND EQUITY IN THE CANNABIS INDUSTRY (DISTRICTS: ALL)

OVERVIEW

Californians overwhelmingly voted to allow both adult use and medical cannabis, but the Board of Supervisors has blocked access. There is currently no pathway for adult use cannabis access in the unincorporated area, and the five existing medical cannabis facilities have been ordered to close by 2022. Under the current regime approved by the Board in 2017, no new permits for medical cannabis facilities can be issued. Without any process for obtaining a permit, illegal and unlicensed dispensaries have been in operation all throughout San Diego County. As a result, the San Diego County Sheriff's Department has been engaged in a continuing cycle of shutting down various storefronts, only for the same business to re-open the following week. We must make changes.

Cannabis represents a new economic opportunity for our communities and residents, which is necessary during the pandemic-induced recession. Cannabis industry provides new direct and indirect jobs, from farming and manufacturing to testing and retail sales. Cannabis also provides an opportunity to advance social equity in our communities. The overcriminalization of Black and Brown communities for cannabis crimes is an injustice that needs to be addressed in our region.

Our board letter proposes changes to bring our region in line with the will of San Diego voters. Today's action would direct Planning & Development Services to develop Zoning Ordinances that allow for a suite of uses, including retail, cultivation, manufacturing, distribution, testing, or a combination of these uses through a microbusiness license, as well as repeal County Zoning Ordinance Sections 6935 (Medical Marijuana Collective Facilities) and 6976 (Prohibition of Marijuana Facilities – Medical or Non-Medical).

We are also asking the Chief Administrative Officer to develop a new Cannabis Permitting Program for the County of San Diego that will include numerous elements to prioritize social

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equity, access and business opportunities. A Social Equity Program will help rectify the injustices caused by the War on Drugs and be in place prior to the issuance of the first permit. To spur economic recovery, Labor Peace Agreements will be required for every tenth employee at a given cannabis facility. We have asked for ingestible cannabis products to be sold in the unincorporated area. Onsite consumption of cannabis products should be an allowable use. Staff will bring in an expert to research cannabis taxation opportunities and provide recommendations to the Board.

We can also look internally at County operations. Revisions to County hiring practices would remove cannabis as one of the drugs tested for during the pre-employment screening process for certain employee classes.

We are requesting that these components be developed concurrently to create a comprehensive cannabis program, with an initial report back in 90 days including any regulatory changes that can be implemented within that time, and return back to the Board with final ordinances and policies within 180 days.

RECOMMENDATION(S)

CHAIR NATHAN FLETCHER AND VICE CHAIR NORA VARGAS

- A. Find that the proposed actions are not subject to the California Environmental Quality Act (CEQA) as specified under Sections 15060(c)(3) and 15378 of the CEQA Guidelines.
- B. Direct the Chief Administrative Officer to:
 1. Develop Zoning Ordinances that would allow for the following:
 - a. Cannabis Retail allowed in areas zoned commercial and industrial.
 - b. Cannabis Cultivation allowed in areas zoned for agriculture.
 - c. Cannabis Manufacturing allowed in areas zoned for industrial.
 - d. Cannabis Distribution allowed in areas zoned for industrial.
 - e. Cannabis Testing allowed in areas zoned for industrial.
 - f. Cannabis Microbusiness license in areas zoned for agriculture, commercial or industrial.
 - g. Setbacks of 600 feet from a qualifying “sensitive use” as described in Section 5026 of the California Code of Regulations, Title 16, Division 42, or any successor or amended section, that is operational at the time of the application.
 - h. Repeal County Zoning Ordinance Sections 6935 (Medical Marijuana Collective Facilities) and 6976 (Prohibition of Marijuana Facilities – Medical or Non-Medical).
 2. Develop amendments to the County of San Diego Regulatory Code Sections 21.2501 and 21.2503 (a) and develop a new cannabis permitting system that:
 - a. Allows existing and new Medicinal and/or Adult Use cannabis facilities to obtain a County operating permit for one of the following permit categories: Retail (Storefront and/or Non-Storefront), Cultivation, Manufacturing, Distribution, and Testing; or a County operating permit for a Microbusiness license.
 - b. Contains a “Social Equity Program” that provides individuals with past cannabis arrests and/or convictions, and those that were low income and lived in high arrest communities or “Disproportionately Impacted Areas” by providing such individuals with greater opportunities to secure a County

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- operating permit, and is in place prior to the issuance of a County operating permit.
- c. Requires the issuance of Labor Peace Agreements for every tenth employee.
 - d. Follows all applicable State laws and regulations.
3. Allow for the sale of ingestible cannabis products, including edible and drinkable products.
 4. Allow for onsite consumption of cannabis products at specific cannabis facilities and at permitted events.
 5. Engage a consultant to advise the County on cannabis tax options.
 6. Conduct robust stakeholder outreach to help develop all recommendations, and explore program components such as the Social Equity Program, onsite consumption, and the permitting program, including engaging with social and racial justice advocates, farmers, and potential cannabis permit holders.
 7. Provide any staffing necessary to support the issuance and management of the cannabis permits and the Social Equity Program.
 8. Secure grant funding to support implementation of the Social Equity Program.
- C. Direct the Chief Administrative Officer to revise the County of San Diego Drug and Alcohol Use Policy (Policy C-25) to exclude cannabis from the medical pre-screening process under Section E “Applicants for County Employment,” except for safety sensitive positions and employees covered under the Omnibus Transportation Employee Testing Act of 1991.
 - D. Establish appropriations of \$485,000 in the Department of Planning & Development Services, Services & Supplies for consultant services for the ordinance and program development of a Cannabis Permitting Program based on available prior year General Fund fund balance. **(4 VOTES)**
 - E. Report back to the Board in 90 days with an update including any regulatory changes that can be implemented within that time, and return back to the Board with final ordinances and policies within 180 days.

FISCAL IMPACT

Funds for this request are not included in the Fiscal Year (FY) 2020-21 Operational Plan in the Department of Planning & Development Services (PDS). If approved, this request will result in costs of \$485,000 in PDS for consultant services for the ordinance and program development of a Cannabis Permitting Program. The funding source is available prior year General Fund fund balance. Future on going costs of the program will be determined by future Board actions based on information and recommendations contained the report due in 180 days, including potential costs and revenue associated with implementation. County staff will return to the Board with estimates and recommended budget actions as necessary.

BUSINESS IMPACT STATEMENT

Today’s action supports small businesses by allowing cannabis facilities to access permits to operate in the County and expand their businesses.

ADVISORY BOARD STATEMENT

N/A

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BACKGROUND

In 2016, California voters legalized adult use cannabis for adults 21 and older by overwhelmingly supporting Proposition 64. More than 57% of San Diego voters supported legalization. Medical cannabis has been legal statewide since 1996, when more than 55% of voters supported Proposition 215. Since 2016, voters have approved measures that increase cannabis access and equity in the Cities of Chula Vista, Encinitas, La Mesa, Lemon Grove, Oceanside, San Diego and Vista.

However, there has never been a regulatory pathway to allow for adult use cannabis in the unincorporated county. Medical cannabis access has been constricted, as the Board of Supervisors in 2017 prohibited permits for new medical facilities, and the few existing medical cannabis facilities were directed to close shop in five years. Specifically, Section 6976 of the Zoning Ordinance prohibited the establishment, operation, enlargement or transfer of ownership of cannabis facilities. Section 6935 of the Zoning Ordinance established a sunset clause for medical cannabis facilities operating in the unincorporated area of the County. Businesses would need to cease operating by April 14, 2022, to comply. These steps were taken as other cities and counties across the state were expanding legal access to cannabis.

In San Diego County, we should support a safe, regulated, and legal cannabis industry. While we have a ban in place, unpermitted facilities are still operating in the unincorporated area despite law enforcement attempts to shut them down. The operation of unpermitted facilities has a negative impact on the five medical facilities operating legally in the unincorporated area and on cannabis facilities in other jurisdictions that are complying. The lack of a regulated pathway undermines legally compliant businesses, draws business away from entities that are following the regulations, and potentially exposes customers to unsafe products.

With today's backdrop of both the global COVID-19 pandemic-induced recession and the need for racial justice, it is only right that we repair the damages done by the overcriminalization of Black and Brown communities. Creating a Social Equity Program that is at the core of the County's permitting system will ensure progress toward racial justice. Increasing economic access and equity in the cannabis industry can help address these issues, and provide business investment and new employment opportunities.

We have proposed the following comprehensive changes to create a successful and equitable cannabis industry in San Diego County:

Zoning Ordinances

Today's action would pave the way for greater cannabis access and economic opportunity through development of new ordinances. Planning & Development Services (PDS) will develop replacement ordinances that would allow for new uses, including at a minimum cannabis retail allowed in areas zoned commercial and industrial, cannabis manufacturing allowed in areas zoned for industrial, cannabis cultivation allowed in areas zoned for agriculture, cannabis testing allowed in areas zoned for industrial, and cannabis distribution allowed in areas zoned for industrial. Cannabis microbusiness licenses (predefined by the Bureau of Cannabis Control) will be allowed in areas zoned for agriculture, commercial or industrial. Setbacks of 600 feet are proposed from a sensitive use, as defined by the state, that is operational at the time the facility is requesting an

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application. A repeal of County Zoning Ordinance Sections 6935 (Medical Marijuana Collective Facilities) and 6976 (Prohibition of Marijuana Facilities – Medical or Non-Medical) is also proposed. Best practices from other jurisdictions and stakeholder input should be incorporated as part of the new zoning changes.

Permitting System

A permitting system would be put in place to ensure that existing and new cannabis facilities comply with local and state laws. Before any new permits are issued, a new Social Equity Program will need to be operational. Facilities could receive a permit for Retail (Storefront and/or Delivery), Cultivation, Distribution, or Manufacturing, Testing, or a Microbusiness license. Additional permitting guidelines should be based on other jurisdictions' best practices and stakeholder input.

A new requirement will be added for Labor Peace Agreements to be issued for the tenth employee at that facility (rather than the state requirement for every twentieth employee, per Assembly Bill 1291). This permitting requirement will allow for greater economic opportunities at cannabis facilities as this industry expands in the unincorporated area.

Permit conditions will also need to be devised to ensure that all applicable regulations from the Bureau of Cannabis Control are followed, and Code Enforcement would be leveraged to ensure adherence to County Code.

Social Equity Program

Right now, our region is embarking upon much-needed introspection on police policies and the unequal criminalization of anti-drug laws. A disproportionate number of Black and Brown residents remain in jail for low-level drug offenses as a result of the failed War on Drugs. A Social Equity Program is needed to guide the County's approach and rectify the devastating and disproportionate impact of the War on Drugs.

The Office of Equity and Racial Justice, along with PDS, can jointly develop the framework and strategy, including grant funding options, needed to launch a comprehensive Social Equity Program that is linked with the aforementioned Permitting System. Program objectives include reduced barriers to entry for cannabis facility ownership for those individuals with past cannabis arrests or convictions, and those who are low income and live in high arrest communities or "Disproportionately Impacted Areas." Individuals may be provided with a no or low-cost operating license, preferential access to permits, or other strategies that expand business opportunities for those who have been subject to the overcriminalization of cannabis. Best practices can be gleaned from the Bureau of Cannabis Control and other jurisdictions that have similar programs in place. Staff should secure grant funding from the Bureau of Cannabis Control to assist with development of this program.

Stakeholder engagement with racial and social justice advocates will be a critical component to ensure that the Social Equity Program will be successful in its mission. As part of this effort, County staff should also explore with stakeholders and interested jurisdictions the creation of a Regional Social Equity Program that would allow cities within the county to opt-in to such a program. The War on Drugs is a regional problem that can be addressed through regional solutions.

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Edible Products and Onsite Consumption

Patients should be allowed to access alternate forms of cannabis consumption. County Ordinance will be modified to allow retailers to sell edible and drinkable cannabis products. As currently written, Section 21.2505 (Operating Requirements for Collective Facilities) prohibits food or drink containing cannabis. Onsite consumption of cannabis products should also be allowed at specific cannabis facilities and at permitted events.

Cannabis Taxing

If the County of San Diego wishes to impose a tax and place it on the ballot, state law requires that the Board of Supervisors specify the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for special purposes as proposed by the Board. The Board shall also specify whether the tax applies throughout the entire county or within the unincorporated area of the county, and whether to tax adult use cannabis businesses only, or include medical businesses, and any applicable exemptions (i.e. compassionate use).

Hiring a Cannabis taxation consultant would provide the expertise the County would need to prepare for the tax ballot, and other taxing, auditing and compliance requirements as needed. A Board policy could be crafted at a future date to guide allocation of any funding, including toward social equity, community benefits, and prevention programs.

County Hiring Process

Prospective employees with the County of San Diego are required to undergo a drug test as part of the County's medical pre-screening process, pursuant to Board Policy C-25, County of San Diego Drug and Alcohol Use Policy. Currently, cannabis is included as part of the drug test. But given the status of cannabis as a legal substance in the State of California, cannabis should be removed from the medical pre-screening process. This policy change removes unnecessary barriers in the County's attempt to recruit and hire a more diverse workforce. Exceptions to this policy are proposed for specific employee categories that need to comply with non-County regulations for employment, including safety sensitive positions and employees covered under the Omnibus Transportation Employee Testing Act of 1991.

We are requesting that these components be developed concurrently to create a comprehensive cannabis program, with an initial report back in 90 days including any regulatory changes that can be implemented within that time, and return back to the Board with final ordinances and policies within 180 days.

ENVIRONMENTAL STATEMENT

The proposed actions are not subject to the California Environmental Quality Act (CEQA) as specified under Section 15060(c)(3) and 15378 of the CEQA Guidelines because the direction is to return to the Board with future ordinances and regulatory actions and CEQA applicability will be reviewed at that time, and today's direction is administrative activities that will not result in direct or indirect impacts to the environment.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

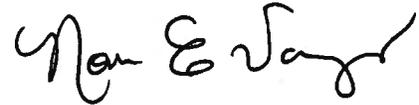
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Today's proposed action to repeal the County's prohibition on cannabis facilities supports the Living Safely and Operational Excellence Strategic Initiatives in the County of San Diego's 2021-2026 Strategic Plan by providing economic access and equity in the cannabis industry.

Respectfully submitted,



NATHAN FLETCHER
Chair, Fourth District



NORA VARGAS
Vice Chair, First District

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AGENDA ITEM INFORMATION SHEET

REQUIRES FOUR VOTES: Yes No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED

Yes No

PREVIOUS RELEVANT BOARD ACTIONS:

June 30, 2010, the Board approved the sections of the San Diego County Code and the Zoning Ordinance pertaining to medical marijuana, enacted in 2011.

February 3, 2016, during public communication, speakers addressed the Board regarding their concerns about medical marijuana dispensaries. The Board referred the matter to the Chief Administrative Officer, with a request to return with potential options available for regulating medical marijuana facilities.

March 16, 2016, the Board adopted the interim urgency ordinance enacting a moratorium on the establishment of medical marijuana collective facilities for a 45-day period.

April 27, 2016, the Board extended the moratorium for an additional 10 months and 15 days.

January 25, 2017, the Board directed the Chief Administrative Officer to return with an Ordinance to place a ban on all medical and non-medical marijuana facilities, collective facilities, dispensaries and cultivation with the unincorporated County.

March 15 and 22, 2017, the Board amended and repealed Section 6935 pertaining to medical marijuana collective facilities, and amended Section 6976 pertaining to non-medical marijuana dispensaries.

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

MANDATORY COMPLIANCE:

N/A

ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):

N/A

ORIGINATING DEPARTMENT: Districts 4 and 1, Board of Supervisors

OTHER CONCURRENCE(S): N/A

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