COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS - LAND USE
WEDNESDAY, JUNE 09, 2021

MINUTE ORDER NO. 2

SUBJECT: 90 DAY RETURN: MEASURES TO PROVIDE ECONOMIC ACCESS AND EQUITY IN THE CANNABIS INDUSTRY UPDATE AND ENVIRONMENTAL REVIEW SUMMARY (DISTRICTS: ALL)

OVERVIEW
On January 27, 2021 (4), the County of San Diego (County) Board of Supervisors (Board) directed the Chief Administrative Officer to develop a Zoning Ordinance amendment that allows for a variety of cannabis uses and a social equity program that provides greater opportunities for individuals negatively or disproportionately impacted by cannabis criminalization.

On March 3, 2021 (11), the Board received an update on staff progress on the Socially Equitable Cannabis Program (Program) and directed staff to return to the Board in 90 days with another progress report, an analysis of options for compliance with California environmental laws, and options to enable the existing five dispensaries in the unincorporated county jurisdiction to allow ongoing operations.

Options for Environmental Review
The State’s primary environmental protection law, called the California Environmental Quality Act (CEQA), mandates that for many actions taken by the County, impacts to the environment must be considered beforehand. This includes new programs such as the County's Socially Equitable Cannabis Program. Since March 3, 2021, staff researched cannabis regulations in other jurisdictions, met with cities in the region, and retained a consultant to help analyze environmental review options for the program. Options for conducting varying levels of environmental review for the Socially Equitable Cannabis Program, along with staff's analyses of each option, are provided in this Board Letter.

Generally, the more comprehensive the County's upfront environmental review is for the Socially Equitable Cannabis Program, the less environmental review will be necessary for individual applicants seeking to operate cannabis businesses once the Program is in place. Additionally, a comprehensive upfront environmental review of the entire Program will provide for more cannabis business opportunities with lower barriers to entry by making it faster, easier and more affordable to open a cannabis business in the unincorporated region.

This type of comprehensive review of the entire Program is called a Program Environmental Impact Report (PEIR). The PEIR will allow for the most expansive Socially Equitable Cannabis Program which includes all potential uses, such as retail, distribution, testing, manufacturing, indoor cultivation, outdoor cultivation, and microbusinesses. The main downside to a PEIR is the length of time it takes to conduct (approximately two years), which means that the Socially Equitable Cannabis Program adoption will not occur for several years until after the environmental review is completed.

Staff has heard from stakeholders that they would like the social equity program to be up and running six to twelve months ahead of the commercial licensing program for cannabis. (All of the stakeholder groups that County staff met with are listed on the Socially Equitable Cannabis Program website at sandiegocounty.gov.) The time during which the in-depth environmental review for the PEIR is taking place could also be used to simultaneously establish a social equity program. This, as well as lowering the barriers to entry for cannabis business owners by making it easier to open a cannabis business, best
meets the Board's original direction to adopt a Socially Equitable Cannabis Program. For these reasons, staff’s recommendation is that the County conduct a comprehensive environmental review of the entire Socially Equitable Cannabis Program over the coming two years to determine the impacts of the Program before it comes online.

Staff has also examined other options for lower levels of environmental review that the Board could consider for the Socially Equitable Cannabis Program and provided an analysis of the pros and cons of the other options. For each of the lower levels of environmental review that are allowed under CEQA, the amount of time to conduct the review is shorter and the cost to the County to perform the review is lower, but the program would not be as comprehensive and would require the individual cannabis businesses to spend more time and money to go through their own individual environmental review and permit process.

The lowest level of environmental review under CEQA is called a Negative Declaration (ND). This level of review is used for programs and projects that do not have impacts to the environment that need to be addressed or mitigated. For the Socially Equitable Cannabis Program, if the County were to conduct this level of environmental review, it would take the least amount of time and have the lowest cost to complete, but it would limit the program to the fewest allowable uses, such as limited distribution, testing and indoor cultivation.

The medium level of environmental review under CEQA is called a Mitigated Negative Declaration (MND). This level of review is used for projects and programs that may have some impacts to the environment that can be mitigated or addressed by placing conditions on the program or project. If the County were to conduct this level of environmental review, it would take longer and cost more than an ND to complete, but would allow more uses, such as testing, distribution and both indoor and outdoor cultivation.

Staff also examined an option to split the Socially Equitable Cannabis Program into two separate components with one program for the cultivation of cannabis to allow for the fast-tracking of farming and a second program for all other cannabis uses, including microbusinesses, distribution, manufacturing, testing and retail. Splitting the program would allow for the cultivation or farming of cannabis to happen faster than the other types of activities by allowing farming to proceed under a statewide Program Environmental Impact Report (State PEIR) of cannabis cultivation that has already been conducted by the California Department of Food and Agriculture. However, local environmental impacts for cultivation would still need to be evaluated by the County under a separate Negative Declaration (ND) or (Mitigated Negative Declaration (MND).

If the program is split into two separate components, the County would still need to conduct a separate Program Environmental Impact Report (PEIR) for the remaining, non-cultivation uses, including microbusiness, distribution, manufacturing, testing, and retail.

**Options for allowing existing cannabis permit holders to continue operations**

The County currently has five existing cannabis collective permit holders, otherwise known as dispensaries. The County's current regulations require they operate as collectives, meaning they must operate not-for-profit and may only sell cannabis to members of the collective with medical marijuana cards. The County's current regulations also prohibit them from selling edibles, prevent them from applying for building permits to expand or make structural changes to their dispensary, and require the existing permit holders to close their doors by April 2022. On March 3, 2021 (11), the Board directed staff to work with stakeholders to determine how the regulatory code could be amended to allow the existing dispensaries’ ongoing operations beyond April 2022.
In order for the County to change its cannabis regulations, consideration of environmental impacts must be evaluated first. To ensure the regulation change can be adopted before the April 2022 closing date for the five existing dispensaries, staff recommends the County only make changes to regulations that will clearly have no impact on the environment. For example, allowing the five dispensaries to continue operating will not impact the environment because they will continue to operate in the same manner they have for the past several years.

The same is true for allowing the existing dispensaries to sell edibles, sell branded merchandise, apply for building permits with expansions up to ten percent, and operate as for-profit medical cannabis businesses. These regulation amendments create no significant environmental impacts. Staff recommends these proposed changes be further studied, presented to the Planning Commission in August 2021, and presented to the Board in October 2021 for further consideration.

Representatives of the existing dispensaries have expressed that they would like an opportunity to expand beyond a medical-only operation and move towards an adult-use operation, which would enable them to sell cannabis to anyone over 21 years of age. To accommodate this request, the ordinance updates could allow the existing dispensaries to apply to the County to transition their businesses to adult-use. The same process could be used for a dispensary that wishes to expand operations beyond ten percent. In this way, the County could review and the applicants could address potential environmental impacts as part of an individual project analysis for each dispensary. Staff recommends these proposed changes be further studied, presented to the Planning Commission in August 2021, and presented to the Board in October 2021 for further consideration.

**RECOMMENDATION(S)**

**CHIEF ADMINISTRATIVE OFFICER**

Planning & Development Services recommends that the Board of Supervisors (Board):

1. Find in accordance with Section 15061(b)(3) that today's actions are exempt from the California Environmental Quality Act (CEQA) pursuant to the Commonsense Exemption since it can be seen with certainty that there is no possibility that today's actions may have a significant effect on the environment.

2. Receive the information provided in this Board Letter related to Options for California Environmental Quality Act (CEQA) Compliance and direct staff to proceed with one of the following types of a Socially Equitable Cannabis Program and corresponding level of environmental review:
   a. A scaled down program under a Negative Declaration (ND) that allows for some uses, which may include distribution, testing, and indoor cultivation;
      i. Timeline is approximately 10 months to complete the ND and adopt the program.
   b. A scaled down program under a Mitigated Negative Declaration (MND) that allows for some uses, which may include distribution, testing, indoor cultivation, and outdoor cultivation;
      i. Timeline is approximately 14 months to complete the MND and adopt the program.
   c. The previously directed full program under a Program Environmental Impact Report (PEIR) that allows for all potential commercial cannabis uses, such as retail, distribution, testing, manufacturing, indoor cultivation, outdoor cultivation, and microbusinesses
      i. Timeline is approximately two years (i.e., standard PEIR timeframe); OR
      ii. Timeline is approximately 18 months (i.e., the fast-track timeframe);
d. Process two of the Socially Equitable Cannabis Programs which have independent utility as stand-alone components:
   i. Fast track farming
      1. Develop a standalone cultivation ordinance that relies on a statewide PEIR that has already been completed by the California Department of Food and Agriculture, but also requires the County to consider local environmental impacts of cultivation through an additional environmental review, such as an ND or MND; and
   ii. Develop a separate standalone ordinance for the remaining, non-cultivation uses (i.e., microbusiness, distribution, manufacturing, testing, and retail) under a PEIR.
      1. Note, if the Board would like to evaluate both cultivation and non-cultivation uses under an ND or MND, please consider options 2.a. and 2.b. above.

3. Direct staff to return to the Board in October 2021 with revisions to the Code of Regulatory Ordinances and the Zoning Ordinance to facilitate ongoing operations of the five existing permit holders, including:
   a. Eliminating the April 14, 2022 closing date;
   b. Allowing existing permit holders to sell edible and drinkable cannabis products;
   c. Allowing existing permit holders to sell branded merchandise;
   d. Allowing existing permit holders to apply for building permits with expansions up to ten percent;
   e. Allowing existing permit holders to operate as for-profit medical cannabis businesses;
   f. Providing an option to allow existing permit holders to apply for a discretionary permit, such as a Site Plan, to
      i. expand their operations beyond ten percent, and/or
      ii. to operate as for-profit adult-use cannabis businesses with the ability to serve anyone over the age of 21.

4. Extend the timeframe for the September 2021 Socially Equitable Cannabis Program progress report directed by the Board on March 3, 2021 (11) to coincide with staff's return in October 2021 with regulatory amendments for the existing dispensaries.

EQUITY IMPACT STATEMENT
To develop the Socially Equitable Cannabis Program (Program) in conformance with the California Cannabis Equity Act of 2018, staff will conduct a comprehensive equity assessment to review and analyze local historical rates of arrests and convictions for cannabis law violations, identify the impacts that the ban on cannabis has had on local communities, and demonstrate how the population has been negatively impacted by cannabis criminalization. Staff has already begun community engagement and stakeholder engagement; however, the consultant the County will hire to develop and implement the Social Equity Program will also conduct additional community engagement, assess best practices, and work with local stakeholders to inform the research and development of the Program. By relying on the data gathered during this process, the Office of Equity and Racial Justice (OERJ) will work with the consultant to develop a Program that should provide greater opportunities for individuals impacted by cannabis criminalization to secure a commercial cannabis operating permit from the County. The Program will help to rectify the injustices caused by cannabis criminalization. Consequently, this
program will have a positive impact on economic development, jobs, and workforce equity. Planning and Development Services (PDS) staff will collaborate with OERJ to align with OERJ's social equity program.

The Environmental Review options provided in this Board Letter will impact the social equity program. Generally, the more comprehensive the County's upfront environmental review is for the Program, the less environmental review will be necessary for applicants seeking to operate cannabis businesses once the Program is in place. A comprehensive upfront environmental review provides for more cannabis business opportunities with lower barriers to entry. The main downside to a comprehensive upfront environmental review is that Program adoption will not occur for several years. However, staff has heard from stakeholders that the social equity program should be up and running six to twelve months ahead of the commercial licensing program. The time the in-depth environmental review is taking place could also be used to establish a social equity program. This, as well as lowering the barriers to entry, best meets the Board's original direction to adopt a Socially Equitable Cannabis Program. For these reasons, staff recommendation is that the County conduct a Program Environmental Impact Report (PEIR) over the coming two years to determine the impacts of the Program before it comes online.

FISCAL IMPACT
Funds are included in the Fiscal Year 2020-21 Operational Plan in Planning & Development Services (PDS) for $485,000 for consultant services; $250,000 for the San Diego County Sheriff's Office and $250,000 for Code Enforcement for "immediate and aggressive" enforcement of unlicensed, illegal dispensaries, labs, or any related operating facilities; and $675,000 for the preparation of a Program Environmental Impact Report (PEIR) for a total allocation to PDS of $1,410,000. The funding source of all previous allocations is prior year available General Fund fund balance. This action will not result in additional staff years.

If the Board directs staff to undertake a lower level of environmental review through either a Negative Declaration or Mitigated Negative Declaration, no additional funding is necessary. If the Board directs staff to undertake a PEIR in a typical two-year timeframe, no additional funding is necessary. However, if the Board directs staff to fast-track a PEIR under an approximately 18-month timeframe, staff requests an additional $320,000 to be referred to budget. The funding source to fast-track a PEIR ($320,000) is prior year available General Fund fund balance.

If the Board directs staff to fast-track farming via a standalone cultivation ordinance, staff requests an additional $195,000. Even though this option relies on the California Department of Food and Agriculture's state-wide PEIR, the County must study and review cultivation's local environmental impacts. In this fast-track farming option, the County must still conduct a separate, parallel PEIR for the non-cultivation uses, including microbusiness, distribution, manufacturing, testing, and retail. Money for this PEIR has already been allocated. Therefore, to fast-track farming with a standalone cultivation ordinance, staff requests an additional $195,000 to be referred to budget. The funding source to fast-track farming with a standalone cultivation ordinance ($195,000) is prior year available General Fund fund balance.

The fiscal impact of future taxation of the program is unknown at this time. The County of San Diego will continue to explore revenue generating options for the Program based on the options chosen by the Board today. The Finance and General Government Group (FG3) has initiated the procurement process to engage a consultant to explore taxation program options, potential revenue impacts, and the development of a ballot measure and ordinance for taxation. In terms of implementation, California laws require that voters approve taxation as part of a local ballot measure. This may be done as part of the scheduled elections being held in the fall of 2022 or spring or fall of 2024. The County may also host a
special election for voters to decide on taxation of the program. The County would be required to pay for participation in all election options. Participation in a regularly scheduled election is the most cost-effective option. Financial impact of election costs is unknown at this time. FG3 will continue reviewing the feasibility of taxation options as the Program is developed.

The Office of Equity and Racial Justice is leading the Socially Equitable Cannabis Program development and has been awarded $75,000 from the State's Cannabis Equity Grants Program for Local Jurisdictions.

BUSINESS IMPACT STATEMENT
The actions and recommendations discussed in this Board Letter relate to staff preparing ordinances and programs for future adoption. Consequently, these actions will not directly impact business. Impacts to business will be addressed in the October 2021 report based on the Board’s direction today.

ACTION:
ON MOTION of Supervisor Fletcher, seconded by Supervisor Vargas, the Board of Supervisors took the following actions:

1. Found in accordance with Section 15061(b)(3) that today's actions are exempt from the California Environmental Quality Act (CEQA) pursuant to the Commonsense Exemption since it can be seen with certainty that there is no possibility that today's actions may have a significant effect on the environment.

2. Received the information provided in this Board Letter related to Options for California Environmental Quality Act (CEQA) Compliance and directed staff to proceed with one of the following types of a Socially Equitable Cannabis Program and corresponding level of environmental review and return to the Board for further review and consideration.

3. Adopted the Standard Program Environmental Impact Report (PEIR) timeframe, that allows for all potential commercial cannabis uses, such as indoor and outdoor cannabis cultivation, distribution, testing, retail, manufacturing, and microbusinesses: Timeline is approximately two years (i.e., standard PEIR timeframe) with no appropriation of funds required.

4. Directed the Chief Administrative Officer to prepare and return to the Board for further review and consideration with an ordinance under a CEQA exemption allowing existing permit holders to: sell cannabis for adult use, operate past the sunset date of April 14, 2022, sell edible and drinkable cannabis products, sell branded merchandise, expand up to 10,000 square feet, and transfer business licenses among existing permit holders.”

AYES: Vargas, Anderson, Lawson-Remer, Fletcher
NOES: Desmond
State of California)  
County of San Diego) §

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER  
Clerk of the Board of Supervisors

Signed  
by  Andrew Potter