

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS - LAND USE
WEDNESDAY, OCTOBER 06, 2021**

MINUTE ORDER NO. 1

**SUBJECT: NOTICED PUBLIC HEARING:
AMENDMENT TO THE CODE OF REGULATORY ORDINANCES AND THE
ZONING ORDINANCE TO FACILITATE ONGOING OPERATIONS OF FIVE
EXISTING MEDICAL MARIJUANA COLLECTIVE FACILITIES AND
UPDATE ON THE SOCIALLY EQUITABLE CANNABIS PROGRAM
DEVELOPMENT (10/6/2021 - FIRST READINGS; 10/20/2021 - SECOND
READING) (DISTRICTS: ALL)**

OVERVIEW

On January 27, 2021 (4), the Board of Supervisors (Board) directed staff to develop a Socially Equitable Cannabis Program (Program) and increase enforcement of unpermitted and unlicensed cannabis facilities. Since that time, staff has begun work on the Program, while various County of San Diego (County) teams have increased enforcement of unpermitted cannabis facilities.

On June 9, 2021 (2), the Board directed staff to develop ordinance amendments that will allow the five existing dispensaries within the unincorporated region to (1) sell cannabis for adult use, (2) operate past their sunset date of April 14, 2022, (3) sell edible and drinkable cannabis products, (4) sell branded merchandise, (5) expand by up to 10,000 square feet, and (6) transfer business licenses among existing permit holders. As the County teams continue their enforcement against unpermitted cannabis facilities, the proposed ordinance amendments will increase access to licensed cannabis facilities in the unincorporated area. The ordinance amendments being considered today will allow cannabis customers to access legal cannabis at the five existing dispensaries in the unincorporated area, while the larger, more comprehensive Program is developed over the next two years.

The proposed updates to the County's Code of Regulatory Ordinances (Regulatory Code) and the San Diego County Zoning Ordinance (Zoning Ordinance) for Board consideration today implement the Board direction from June 9, 2021, related to the five existing dispensaries.

Additionally, today's actions include an update for the Board on the overall Program's development, including an update from Planning & Development Services (PDS) on future Zoning Ordinance amendments, an update on work by the Office of Equity and Racial Justice developing the Social Equity component of the Program, and work by the Finance and General Government Group developing the County's Cannabis Taxation Program.

Lastly, today's update also includes the work by several County departments on enforcement of unpermitted and unlicensed cannabis facilities including the Sheriff's Department, PDS, County Counsel, and the District Attorney's Office.

**RECOMMENDATION(S)
PLANNING COMMISSION**

On August 6, 2021, the Planning Commission (PC) considered the proposed amendments to the San Diego County Zoning Ordinance for the five existing Medical Marijuana Collective Facilities and information contained in the Draft Notice of Exemption. The PC has specific authority to make

recommendations regarding land-use decisions; other matters relating to the County of San Diego's Code of Regulatory Ordinances are offered as opinions of the PC. A majority of Commissioners supported allowing the existing dispensaries to continue operating past the sunset date, sell cannabis for adult use, sell edible products, sell branded merchandise, and transfer Operating Certificates. They also added a recommendation to allow the use of groundwater to the same extent as cultivators of other crops. This action followed a request by owners of the existing dispensaries to be allowed to use groundwater resources in the same manner as other agricultural operations. However, it was further stated that existing dispensaries should not receive exemptions from Special Area Designators that may lead to a Site Plan review process, and no special concessions for any enlargement or expansion of the facilities. Special Area Designators are zoning ordinance tools that assure consideration is provided in areas of special interest. Three of the existing dispensaries have "B" designators, which refers to Community Design Standards. One existing dispensary has both a "B" designator and an "S" designator which refers to Scenic Design Standards. B and S designators often require discretionary permits, such as Site Plans, and additional environmental review for new development. On August 6, the PC voted to recommend that the Board of Supervisors (1) remove the sunset date of April 14, 2022, (2) allow adult use, (3) allow the transfer of operating certificates, (4) allow the sale of edibles and branded materials, (5) allow the use of groundwater, and (6) no concessions for any enlargement or expansion of these facilities.

DEPARTMENT OF PLANNING & DEVELOPMENT SERVICES

Planning & Development Services (PDS) concurs with the following recommendations of the Planning Commission (PC) to the Board of Supervisors (Board): (1) to remove the Sunset Date, (2) to allow adult-use sales, (3) to allow the transfer of Operating Certificates, and (4) to allow the sale of edibles and branded materials.

The PC's recommendation to not allow special concessions for enlargement or expansion of the existing cannabis dispensaries and not allow an exemption from Special Area Designators to enable the use of a ministerial permit (i.e., a checklist-type permit rather than a full discretionary review by staff) is inconsistent with Board direction on June 9, 2021. The proposed amendments recommended by PDS staff create a ministerial process for up to 10,000-square-foot expansions and exempt the four existing dispensaries located in the Ramona and Valley Center Community Planning Areas with Special Area Designators from discretionary Site Plan approval. Three of the existing dispensaries have "B" designators, which refers to Community Design Standards. One existing dispensary has both a "B" designator and an "S" designator, which refers to Scenic Design Standards. B and S designators often require discretionary permits and additional environmental review for new development. One existing dispensary has no "B" or "S" designator. To maintain a ministerial building permit process, the ordinances exempt expansions up to 10,000 square feet from the B & S designators. However, to accommodate the PC's concern and maintain the ministerial process for up to 10,000-square-foot building expansions, the Board could direct PDS staff to meet with existing dispensaries to discuss design review checklists as part of the process. The design review checklists have been developed to provide guidance on meeting Special Area Designators and would provide a useful tool to aid in voluntary compliance.

All existing dispensaries have access to municipal water services. The proposed ordinances stipulate that only municipal water be used for cultivation, which is more consistent with language related to environmental review (CEQA Exemption Section 15301) requiring the project to be "in an area where all public services and facilities are available..." Since groundwater use was not previously directed by the Board, and its overuse is a concern raised by several stakeholders during outreach, the PDS staff recommendation does not include the PC recommendation to allow for the use of groundwater for cultivation. However, the Board could decide to remove the requirement that only municipal water be

used for cultivation purposes from the proposed ordinance amendments and any new wells would require County well permits.

To summarize, the Board directed staff to draft ordinance revisions allowing the five existing dispensaries to:

1. Allow for commercial adult use cannabis sales (i.e., anyone over 21 regardless of a medical prescription; applies to Zoning Ordinance and Regulatory Code),
2. Continue operating past the April 2022 sunset date (applies to Zoning Ordinance),
3. Allow for the sale of edible and drinkable cannabis products (applies to Regulatory Code),
4. Allow for the sale of branded merchandise (applies to Regulatory Code),
5. Allow for up to 10,000-square-foot building expansions (applies to Zoning Ordinance), and
6. Transfer business licenses (which are also called Operating Certificates; applies to Zoning Ordinance and Regulatory Code).

PDS identified the following ordinance revisions that further the direction received from the Board and offers them as options:

- A. Exempt expansions up to 10,000 square feet from Special Area Designators B (community design) and S (scenic) (applies to Zoning Ordinance).
- B. Require the availability and use of municipal water for cultivation purposes (applies to Zoning Ordinance and Regulatory Code).

The action sheet (Attachment G) includes language for each option that the Board could use to amend the ordinance in today's reading to enact their preferred choices.

PDS recommends that on October 6, 2021, the Board take the following action:

1. Find in accordance with California Environmental Quality Act (CEQA) Section 15061(b)(3), the Commonsense Exemption, that receiving staff reports and any direction from the Board regarding the overall Socially Equitable Cannabis Program is exempt from CEQA review, since it can be seen with certainty that there is no possibility that today's actions may have a significant effect on the environment and no unusual circumstances or exceptions to the exemptions apply.
2. Find in accordance with CEQA Guidelines Sections 15301, 15303, and 15304, that adopting changes to the Zoning Ordinance and Code of Regulatory Ordinances are exempt from CEQA review since the ordinance amendments result in negligible or no expansion of use, all public services and facilities are available to allow for maximum development permissible in the General Plan, the area in which the project is located is not environmentally sensitive, expansions are limited to 10,000 square feet or less, there are no unusual circumstances, and no exceptions to the exemptions apply.

3. Consider, and adopt the ordinance entitled: AN ORDINANCE AMENDING THE SAN DIEGO ZONING ORDINANCE RELATED TO DEFINITIONS, MEDICAL MARIJUANA COLLECTIVE FACILITIES, AND PROHIBITION OF MARIJUANA FACILITIES - MEDICAL OR NON-MEDICAL, AND ADDING SECTION 6861 RELATED TO NONCONFORMING CANNABIS FACILITIES (POD 21-001) (Attachments B and C).
4. Approve the introduction of the Ordinance (first reading), read title and waive further reading of the Ordinance: AN ORDINANCE AMENDING TITLE 2, DIVISION 1, CHAPTER 25 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES RELATED TO MEDICAL MARIJUANA (POD 21-001) (Attachments D and E).
5. Receive the updates on development of the Socially Equitable Cannabis Program, including the Social Equity Program, Cannabis Taxation Program, and enforcement against unpermitted and unlicensed facilities.

If on October 6, 2021, the Board takes the actions recommended in Item 4, then on October 20, 2021:

Consider and adopt the attached Form of Ordinance amending the County of San Diego Code of Regulatory Ordinances to allow the sale of edibles and branded merchandise, and to allow the existing five nonconforming medicinal cannabis collective facilities dispensaries (existing dispensaries) to expand operations to commercial sales of medical and adult use cannabis: AN ORDINANCE AMENDING TITLE 2, DIVISION 1, CHAPTER 25 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES RELATED TO MEDICAL MARIJUANA (POD 21-001) (Attachments D and E).

EQUITY IMPACT STATEMENT

The amendments for the existing dispensaries address equity by allowing the existing dispensaries to continue operations so that they may later provide avenues for job training opportunities in the cannabis industry for potential new applicants to the County of San Diego's Socially Equitable Cannabis Program (Program), if adopted. Representatives for some of the existing dispensaries committed in the June 9, 2021, Board hearing to provide internships, job training, and education to members of impacted communities. Experience in existing cannabis dispensaries in the unincorporated region will allow applicants to build relationships with residents and planning groups they will interact with while seeking necessary approvals for future businesses. Direct business experience in the industry will also improve their ability to navigate the licensure process and operate a successful business in the long term.

To develop the Program in conformance with the California Cannabis Equity Act of 2018, a comprehensive equity assessment will be conducted to (1) review and analyze local historical rates of arrests and convictions for cannabis law violations, (2) identify the impacts that the ban on cannabis has had on local communities, and (3) demonstrate how the population has been negatively impacted by cannabis criminalization. In April 2021, the Office of Equity and Racial Justice (OERJ) held two listening sessions to solicit community stakeholder feedback to guide the process for conducting the equity assessment and subsequent program design. Comments gathered from those meetings informed the development of a Request for Proposals for a consultant to develop and implement the Social Equity Assessment and Program. Data gathered through the equity assessment process will inform the research and development of the Program. Additional community and stakeholder engagement will be conducted on an ongoing basis to ensure that the Program adequately addresses and rectifies the injustices caused by cannabis criminalization. Consequently, this program will have a positive impact on economic development, jobs, and workforce equity. Planning & Development Services staff will collaborate with OERJ to align with OERJ's social equity program.

On June 9, 2021 (2), the Board directed staff to begin a Program Environmental Impact Report (PEIR) to develop the Program. Staff heard from stakeholders who have suggested that the social equity program should be up and running six to twelve months ahead of the commercial licensing program. Concurrently developing the social equity program and preparing an in-depth environmental review is one way to provide the lead time requested.

FISCAL IMPACT

There is no fiscal impact associated with these recommendations. There will be no change in net General Fund costs and no additional staff years.

The fiscal impact of the Socially Equitable Cannabis Program will be determined by the proposed future taxation of cannabis activities within the county. California laws require that voters approve taxation as part of a local ballot measure. The Finance and General Government Group has released a Request for Proposals to obtain a consultant to develop and design all aspects of the County of San Diego Cannabis Taxation Program, ballot measure, and ordinance. It is anticipated that the consultant will be on board by Fall 2021. The goal is to complete the development of the taxation program by Spring of 2022, with a goal of placing the measure on the ballot for the November 2022 general election.

BUSINESS IMPACT STATEMENT

If approved by the Board of Supervisors, the ordinance and regulatory code amendments will enable the continued operation and expansion of the five existing dispensaries operating in the unincorporated area. Therefore, the ordinance and regulatory code amendments will maintain jobs offered by the five dispensaries. Expansions of the existing dispensaries may also create new jobs to support the enhanced operations at the five facilities.

ACTION:

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

1. Found in accordance with California Environmental Quality Act (CEQA) Section 15061(b) (3), the Commonsense Exemption, that receiving staff reports and any direction from the Board regarding the overall Socially Equitable Cannabis Program is exempt from CEQA review, since it can be seen with certainty that there is no possibility that today's actions may have a significant effect on the environment and no unusual circumstances or exceptions to the exemptions apply.
2. Found in accordance with CEQA Guidelines Sections 15301, 15303, and 15304, that adopting changes to the Zoning Ordinance and Code of Regulatory Ordinances are exempt from CEQA review since the ordinance amendments result in negligible or no expansion of use, all public services and facilities are available to allow for maximum development permissible in the General Plan, the area in which the project is located is not environmentally sensitive, expansions are limited to 10,000 square feet or less, there are no unusual circumstances, and no exceptions to the exemptions apply.

3. Adopted Ordinance 10749 (N.S.) entitled: AN ORDINANCE AMENDING THE SAN DIEGO ZONING ORDINANCE RELATED TO DEFINITIONS, MEDICAL MARIJUANA COLLECTIVE FACILITIES, AND PROHIBITION OF MARIJUANA FACILITIES - MEDICAL OR NON-MEDICAL AND ADDING SECTION 6861 RELATED TO NONCONFORMING CANNABIS FACILITIES (POD 21-001).
4. Took action to further consider and adopt the attached Form of Ordinance on October 20, 2021, amending the County of San Diego Code of Regulatory Ordinances to allow the sale of edibles and branded merchandise, and to allow the existing five nonconforming medicinal cannabis collective facilities dispensaries (existing dispensaries) to expand operations to commercial sales of medical and adult use cannabis: AN ORDINANCE AMENDING TITLE 2, DIVISION 1, CHAPTER 25 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES RELATED TO MEDICAL MARIJUANA (POD 21-001).
5. Received the updates on development of the Socially Equitable Cannabis Program, including the Social Equity Program, Cannabis Taxation Program, and enforcement against unpermitted and unlicensed facilities.
6. Alternative Options
 - A. Process for existing dispensaries to expand to 10,000 square feet – The proposed amendments to ordinances before the Board include a ministerial process for the five existing dispensaries to expand up to 10,000 square feet.
Adopted Option 2 - Ministerial Process and Voluntary Design Review Compliance: Establish a ministerial process for existing dispensaries to expand up to 10,000 square feet as proposed in the amendments to the zoning Ordinance, and direct staff to assist existing dispensaries when expanding in the future to voluntarily comply with the requirements for Special Area Designators found in each applicable community’s Design Review Checklist.
 - B. Use of groundwater for cultivation of cannabis at existing dispensaries – The proposed amendments to ordinances before the Board require that existing dispensaries only use municipal water for cultivation purposes.
Adopted Option 2 – Allow Use of Groundwater: Allow the use of groundwater and municipal water supply for cultivation. For this option, the Board would strike Section 6861(i) from the Zoning Ordinance language provided in Attachment B, Section 21.2504(g) from the Regulatory Code language provided in Attachment D and reorder the numbering of remaining items in that section.

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

