



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

Chris Bazar
Agency Director

Agenda Item _____ December 19, 2017

224 West Winton Ave
Room 110

December 14, 2017

Hayward, California
94544-1215

Honorable Board of Supervisors
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Oakland, California 94612

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Dear Board Members:

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SUBJECT: **RESOLUTION ESTABLISHING A POLICY TO ALLOW
ADULT USE CANNABIS AT EXISTING COUNTY
DISPENSARIES**

RECOMMENDATION:

Adopt a Resolution establishing policies to allow existing dispensaries in the County to conduct commercial retail sales of medical and adult-use cannabis.

BACKGROUND:

The Board's Transportation and Planning Committee (Committee) heard this item on December 14th regarding adult use cannabis, and information was shared regarding what the County can anticipate on January 1, 2018 when the new adult use cannabis law becomes effective. Staff provided background information to the Committee, including what our current County ordinances allow, as well as a description of recent changes at the State level indicating that the newly created Bureau of Cannabis Control is planning on issuing temporary licenses to dispensaries allowing combined medical and adult use retail sales. There was significant public and written testimony from the County's two existing dispensaries expressing concern about being unable to compete with other dispensaries in nearby cities that will likely allow both medical and adult use sales. As the County's current ordinances only allow medical use of cannabis, the Committee directed staff to draft a resolution expressing support for our existing dispensaries.

DISCUSSION/SUMMARY:

The Committee members expressed concern that our existing dispensaries could be at a competitive disadvantage come January 1, 2018, and could suffer significant economic harm if not allowed to compete on a level playing field. The Committee concluded that time is of the essence, and directed staff to bring a resolution to the Board to express support for adult use cannabis at existing County dispensaries in advance of ordinance revisions that would formally recognize this and will be completed in early 2018. County Counsel noted that there was some degree of potential risk in this approach, but the Committee concluded that the benefit to our local businesses, especially given the

mandate of Prop 64, outweighed the potential downside. As a result, the Transportation and Planning Committee asked staff to bring a resolution to the full Board on December 19th that would:

1. Recognize existing dispensaries in unincorporated Alameda County as businesses in good standing;
2. Allow the County to, at a policy level, recognize that, pursuant to state law, adult use of cannabis is a legal use and that as of January 1, 2018 adult-use cannabis businesses will become legal, and that allowing such a use in the unincorporated areas is implementing the will of the County's voters;
3. Authorize County staff to find that in the limited circumstances of our two existing dispensaries, cannabis sales for both medical and adult use can occur on the same premises;
4. Authorize County staff to answer in the affirmative when asked by the State's new Bureau of Cannabis Control whether our two existing dispensaries have local permission to conduct sales for adult use;
5. Recognize that a more complete and thorough process to amend the County's ordinances will immediately commence in early 2018 to fully consider new cannabis adult use businesses, including dispensaries, cultivation, manufacturing, testing and delivery.

CONCLUSION:

Attached is a resolution prepared in response to the Committee's direction that, if approved by the full Board, would evidence the County's intent to establish a policy to allow existing dispensaries to engage in retail sales of both medical and adult use cannabis at their respective locations.

FINANCING:

There is no Net County Cost as a result of this action.

Very truly yours,



Chris Bazar, Director
Community Development Agency

cc: Susan S. Muranishi, County Administrator
Donna R. Ziegler, County Counsel
Steve Manning, Auditor-Controller
Stephani Chan, County Administrator's Office
Heather M. Littlejohn, Office of the County Counsel
U.B. Singh, CDA Finance Director

RESOLUTION NO. 2017-_____

A RESOLUTION ESTABLISHING POLICY TO ALLOW EXISTING MEDICAL CANNABIS DISPENSARIES TO CONDUCT RETAIL SALES OF MEDICAL AND ADULT-USE CANNABIS

WHEREAS, in 2015, the State of California first adopted the law subsequently titled the Medical Cannabis Regulation and Safety Act (then codified as Health and Safety Code sections 19300, *et seq.*) (“MCRSA”), which established a comprehensive regulatory scheme for commercial medical cannabis businesses; and

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64 (then codified, in part, as California Business and Professions Code sections 26000, *et seq.* and titled the “Control, Regulate and Tax Adult Use of Marijuana Act”), which decriminalized the use of cannabis for non-medical purposes by individuals 21 years of age and over (“adult-use”) and established a regulatory scheme at the state level; and

WHEREAS, on June 27, 2017, Senate Bill 94 (codified, in part, as California Business and Professions Code sections 26000, *et seq.* and titled the “Medicinal and Adult-Use Cannabis Regulation and Safety Act”, or, “MAUCRSA”) repealed and replaced MCRSA. MAUCRSA consolidates the medical and non-medical cannabis statutes (MCRSA and Proposition 64).

WHEREAS, since 2016, with guidance from the Board of Supervisor’s Transportation and Planning Committee, an interdepartmental working group of County staff has been studying cannabis issues and drafting revisions to the County’s ordinances to align with the local licensing provisions of state law; and

WHEREAS, pursuant to California Business and Professions Code section 26200, nothing in MAUCRSA shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements; and

WHEREAS, the three state agencies with licensing responsibility for cannabis activities, the Department of Consumer Affairs’ Bureau of Cannabis Control, the Department of Food and Agriculture, and the State Department of Public Health, released revised draft medical and adult-use regulations on November 16, 2017, which are to be adopted through an emergency rulemaking process in order to take effect January 1, 2018; and

WHEREAS, as of December 2017, cannabis businesses with local permission to operate may apply for temporary state licenses allowing them to conduct business consistent with MAUCRSA, including but not limited to, producing and selling adult-use cannabis and cannabis products; and

WHEREAS, cannabis businesses located in local jurisdictions that permit adult-use cannabis operations may be issued state licenses to begin producing or selling adult-use cannabis and cannabis products as early as January 1, 2018, creating a risk that the dispensaries in the unincorporated areas of the County will operate at a competitive disadvantage in early 2018; and

WHEREAS, the Bureau of Cannabis Control issued the first temporary licenses for adult-

use cannabis businesses on December 14, 2017, which licenses become effective on January 1, 2018; and

WHEREAS, allowing cannabis dispensaries in the County to conduct retail sales of both medical and adult-use cannabis will advance the goals of the County by supporting local and emerging businesses in the County; and

WHEREAS, on September 12, 2017, the Board of Supervisors revised the County's Ordinance Code to permit and regulate specified medical cannabis operations; and

WHEREAS, two medical cannabis dispensaries are operational in the unincorporated areas of the County and were operational prior to the County's recently revised ordinances; and

WHEREAS, the adoption of a policy allowing the sale of adult-use cannabis will provide County business and residents the opportunity to take advantage of the expanded state regulations of cannabis while the County continues to pursue the adoption of the more comprehensive adult-use cannabis ordinances in early 2018; and

WHEREAS, the two existing dispensaries operating in the unincorporated County have demonstrated an ability to operate secure and responsible medical cannabis dispensary establishments and to comply with existing county and state laws concerning medical cannabis; and

WHEREAS, allowing the two existing dispensaries in the unincorporated areas of the County to conduct cannabis sales for both medical and adult-use will have limited if any impact on other County residents and businesses because it will not materially impact the operations of the dispensaries other than permitting sales to adults over 21 who need not have a physicians' recommendation to use cannabis; and

WHEREAS, in order to obtain the requisite state licenses for commercial cannabis activities, dispensaries will need to demonstrate that the local jurisdiction in which they are located allows the use; and

WHEREAS, the Board of Supervisors intends to grant permission for the existing dispensaries to conduct medical and adult-use retail commercial cannabis activity at their current premises, which authorization may be provided to the state licensing agencies; and

WHEREAS, regulation of cannabis activities is an evolving field, as evidenced by the recent adoption and revision of the Medicinal and Adult-Use Cannabis Regulation and Safety Act, passage of Proposition 64 and the related regulations currently being drafted by various state agencies. As a result, the field of local regulation is also expected to continue to evolve over the next several years including revisions to the County ordinances, policies and performance standards; and

WHEREAS, nothing in this Resolution shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.* or to license any activity that is prohibited under said Act except as mandated by state law; and

WHEREAS, adoption of this policy does not have the potential to cause a significant impact on the environment because it is a minor expansion of an existing use at existing facilities;

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors finds that adoption of this policy is exempt from the environmental review provisions of the California Environment Quality Act (CEQA) pursuant to the general rule in CEQA Guidelines Section 15061(b)(3) and pursuant to Section 15301 regarding existing facilities.

BE IT FURTHER RESOLVED THAT the Board of Supervisors declares its intent to grant permission for each of the existing dispensaries in good standing in the County prior to the date of adoption of this Resolution ("Existing Dispensary") to expand operations from retail sales of medical cannabis only to retail sales of both medical and adult-use cannabis, subject to the following conditions:

- a. On or before December 31, 2017, the Existing Dispensary must provide to the Director of the Community Development Agency ("Director") a copy of its existing County permit to operate the dispensary.
- b. The Existing Dispensary must obtain all requisite license(s) from the State of California prior to commencing sales of adult-use cannabis. The Existing Dispensary must maintain valid and effective state license(s) and must renew or extend temporary or permanent licenses prior to their expiration. The Existing Dispensary must comply with all conditions of the state license(s) and all requirements of MAUCRSA and applicable state regulations.
- c. The Existing Dispensary must not sell, deliver, distribute, provide or allow to be provided cannabis to any person except those persons who are 21 years of age or older, except in accordance with the medical cannabis provisions of MAUCRSA, state regulations and the applicable local requirements.
- d. The Existing Dispensary must not sell, deliver, distribute, provide or allow to be provided cannabis from any location other than its currently-permitted premises.
- e. An Existing Dispensary in possession of a valid and effective delivery permit in accordance with Chapter 6.108 of the Ordinance Code may deliver both medical and adult-use cannabis.
- f. The Existing Dispensary must maintain records of all persons who have received cannabis from the dispensary. For adult-use cannabis sales, these records shall set forth the first name of the customer and a dispensary-assigned customer number. The Existing Dispensary must ensure that no adult-use purchaser is permitted to purchase more than the daily limits established by applicable state regulations.
- g. The Existing Dispensary shall not conduct commercial cultivation, manufacturing, testing or distribution activities on the dispensary premises. Maintenance and sale of clones is permitted, subject to the limitations described in Chapter 6.108 of the Ordinance Code.

- h. The Existing Dispensary must immediately apply for and actively pursue all required local permits. The Director may establish specific timeframes to implement this section.
- i. The Existing Dispensary shall comply with and shall not allow or tolerate violations of the standard conditions applicable to dispensaries pursuant to Sections 6.108.120 and 6.108.125 of the Alameda County Ordinance Code, which sections are incorporated herein by this reference and declared applicable to adult-use retail, with the exception that requirements specifically tailored to medical cannabis shall continue to apply only to the Existing Dispensary's sales of medical cannabis.

PASSED AND ADOPTED by the Board of Supervisors of the County of Alameda at a regular meeting of the Board on the 19th day of December, 2017 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Wilma Chan, President of the Board


ATTEST:

Clerk of the Board of Supervisors
of the County of Alameda

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

BY: _____


Heather M. Littlejohn
Deputy County Counsel