



COUNTY OF PLACER

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David Boesch, County Executive Officer

175 FULWEILER AVENUE / AUBURN, CALIFORNIA 95603
TELEPHONE: 530/889-4030
FAX: 530/889-4023
www.placer.ca.gov

TO: Honorable Board of Supervisors

FROM: David Boesch, County Executive Officer
By: Bekki Riggan, Principal Management Analyst

DATE: May 5, 2015

SUBJECT: Marijuana Cultivation Ordinance

ACTION REQUESTED

Receive an update on citizen concerns and inquiries regarding medical marijuana cultivation and provide staff direction regarding development of a cultivation regulation ordinance.

BACKGROUND

Marijuana cultivation in California has grown exponentially in recent years, both in the number of grows and the size of grow operations. While policy debate surrounding legality of marijuana use continues at the federal, state and local levels, unregulated cultivation poses a number of concerns regarding the health, safety and well-being of residents, businesses and the environment.

Over the past several months, the county has received numerous complaints regarding the negative impacts of unregulated marijuana cultivation along with requests that the county develop a marijuana cultivation ordinance. The more prominent concerns lie with the strong, pungent odor emitted during the growing season that not only infringes upon the use and enjoyment of personal property, but by alerting persons to the existence and location of these highly valuable plants, creates an attractive nuisance associated with increased criminal activity including burglary, robbery and home-invasions.

Outdoor marijuana cultivation has also been associated with degradation of the natural environment through violations of local, state and federal environmental law including unlawful use and divergence of water and the misuse of pesticides and fertilizers which can impact ground water quality. In addition, improper and dangerous electrical alterations and use can increase risk of fire and fire-related hazards.

Indoor cultivation of marijuana within a structure intended for human occupancy poses health and safety risks to inhabitants from improper ventilation and potential exposure to fertilizers, pesticides, fungicides and insecticides. Excessive use of electricity attributed to grow light systems, may also overload standard electrical systems and create increased risk of fire.

In response, many local jurisdictions have begun to regulate marijuana cultivation in a manner that is consistent with state law and that respects the legal rights of medical patients and their caregivers. Jurisdictions that opt not to regulate can become attractive locations for out-of-county and out-of-state cultivators for the purpose of large scale marijuana grows. Many Northern California counties have adopted cultivation ordinances, arguably making Placer County a more attractive option for marijuana cultivators due to its lack of restrictions.

Legislation

Federal

Under the Controlled Substance Act, marijuana remains classified as a Schedule I controlled substance and is thus banned in all forms by the federal government. However, to date, thirty-five states have liberalized laws surrounding medical marijuana, marijuana use in general, or cannabis oil extracts. Twenty-three states, along with the District of Columbia, have legalized medical marijuana, while 13 others have legalized certain cannabis extracts for specific therapeutic use. Four states (Alaska, Oregon, Washington and Colorado) and the District of Columbia have legalized recreational marijuana, with many more reportedly considering legalization in 2016. (*Office of National Drug Control Policy*).

On April 22, 2015, Rep. Dana Rohrabacher (R-Calif.), with bipartisan backing, introduced the Respect State Marijuana Laws Act of 2015 (H.R. 1940), a measure that would require the federal government to respect states that have ended prohibitions on the plant to prevent the federal government from prosecuting individuals and businesses for drug crimes when they are in compliance with their states' marijuana laws.

State

In 1996, California voters approved Proposition 215, "The Compassionate Use Act of 1996", which provides limited immunity and defense from criminal prosecution for certain crimes related to the possession and cultivation of marijuana by qualified patients and their primary caregivers. It is codified as California Health and Safety Code Section 11362.5 and thus does not address land use or other impacts caused by cultivating medical marijuana.

In 2004, the State enacted SB 420, "The Medical Marijuana Program Act", to expand and clarify the scope of the Compassionate Use Act of 1996, establishing a voluntary registration system of qualified medical marijuana patients and their primary caregivers and a statewide identification card to assist law enforcement in identifying those who are legally allowed to cultivate, possess and transport certain amounts of marijuana without being subject to arrest. SB 420 also recognizes the right to collective cultivation of medical marijuana.

In November 2014, Proposition 47 reclassified many marijuana use and possession crimes from felonies to misdemeanors; however, with the exception of qualified medical use, the possession, sale, cultivation, or transportation of marijuana, remains illegal under California law.

In 2013, the California Court of Appeals (*Browne v. County of Tehama*) stated that "Neither the Compassionate Use Act nor the Medical Marijuana Program Act grants... anyone... an unfettered right to cultivate marijuana for medical purposes". Regulating marijuana cultivation in order to ensure the health, safety and well-being of residents, businesses and the environment is clearly within the bounds of county regulation.

Local

As additional States ponder marijuana use and decriminalization, growing numbers of local jurisdictions are grappling with how to minimize adverse impacts and public nuisances associated with marijuana cultivation while respecting the legal rights of medically-qualified patients and their primary caregivers. Many local jurisdictions across California have determined that regulation, either through bans or restrictions, significantly reduces nuisance complaints and the associated risks of fire, crime and environmental impacts caused or threatened by the unregulated cultivation of marijuana.

Regulations enacted across California include location and structural restrictions, setback and screening provisions, limits on the number of plants that can be grown, along with security, fencing, and registration requirements.

Jurisdictions in the greater Sacramento region have developed the following regulations:

- Sacramento County:
 - Outdoor cultivation banned
 - Indoor cultivation allowed with dwelling and restrictions on number of allowable plants
- Nevada County:
 - Outdoor cultivation allowed with zoning and square footage restrictions
 - Indoor cultivation allowed
- El Dorado County:
 - Outdoor cultivation allowed with zoning restrictions
 - Indoor cultivation is not addressed
- Yuba County:
 - Outdoor cultivation banned
 - Indoor cultivation allowed with registration and restrictions on dwelling type and number of allowable plants
- Sutter County:
 - Outdoor cultivation with registration and zoning requirements
 - Indoor cultivation allowed

(See Attachment 1. for a more detailed summary of Sacramento-region ordinances).

Placer County, through a Zoning Text Amendment, disallows medical marijuana collectives, cooperatives or dispensaries by omitting it from allowable zoning and business uses [PCC § 17.04.030 [Definitions of Land Uses] and §17.06.050 [Land Use and Permit Tables].

The production and composting of cannabis is specifically excluded in the definition of “crop production” or “agricultural processing”, which excludes marijuana cultivation from “Right to Farm” protections. Placer County does not address personal marijuana cultivation through its ordinance.

Pending State Legislation

Currently, five California Senate and Assembly Bills have been proposed regarding marijuana cultivation. Several proposals would impose a comprehensive regulatory framework for the cultivation manufacturing, transportation, sale and other aspects of medical marijuana to be administered by the Department of Consumer Affairs or other state agencies. The proposals target the large grows and do not apply to individuals that grow marijuana for their own use or primary caregivers. One proposal would allow local agencies to levy taxes on licensees and would pre-empt local zoning ordinances. Another would authorize civil fines for certain natural resource-related violations in connection with marijuana cultivation. (See Attachment 2. for a more detailed summary of pending State legislation).

Options and Next Steps

Staff is seeking Board interest and direction on whether to ban, regulate, or given the potential changing landscape of state legislation occurring in 2016, take no action in regards to marijuana cultivation in Placer County. Should your Board chose to pursue regulation, the following steps are recommended in order to develop and implement an effective regulation framework and process:

- Public outreach and education
- Development of a complaint filing and response process
- Hiring of additional office and field staff (dependent on volume of complaints)
- Development of enforcement protocols (citation, notice to comply, nuisance abatement process, hearing process, cost recovery).

FISCAL IMPACT

There is no fiscal impact associated with this item, however staff anticipates additional staffing and other resources will be required for any regulation action and subsequent enforcement duties.

Attachment 1.

Summary of Sacramento-Region Marijuana Cultivation Ordinances

County	Indoor Requirements	Outdoor Requirements
Sacramento	<ul style="list-style-type: none"> • Single family detached home of qualified patient or caregiver • 9 plants or fewer • Not visible from outside 	Prohibited
Nevada	<ul style="list-style-type: none"> • Single family detached home or accessory structure where qualified patient or caregiver resides full time • Square footage limits based on zoning requirements 	<ul style="list-style-type: none"> • Square footage limits based on zoning requirements • Minimum 1000 feet from youth-orientated facility
El Dorado	Not Addressed	<ul style="list-style-type: none"> • Square footage limits based on zoning requirements • Must be screened from public view • Minimum 6 foot fence • Minimum 1000 feet from youth oriented facility • Marijuana collectives not to exceed 200 square feet per person
Yuba	<ul style="list-style-type: none"> • Must register with Community Development & Services Agency • 12 plants or fewer • Legal residential accessory structure where qualified patient or caregiver resides full time • Fencing of at least 6 feet but no more than 8 feet high 	Prohibited
Sutter	<ul style="list-style-type: none"> • Minimum 2000 feet from youth oriented facility • Must register name, medical recommendation and number of plants with County Department of Development Services 	<ul style="list-style-type: none"> • Minimum 2000 feet from youth oriented facility • Must register name, medical recommendation and number of plants with County Department of Development Services • Minimum 6 foot fence

Attachment 2.

Summary of Pending State Marijuana Cultivation Legislation

A number of California Senate and Assembly Bills have been proposed with regards to marijuana cultivation. Brief summaries are provided below:

AB 34 – Medical Cannabis Regulation and Control Act.

Would establish a comprehensive licensing and regulatory framework for medical cannabis with the Department of Alcoholic Beverage Control Act (ABC), the State Department of Public Health, and the Department of Food and Agriculture (CDFA), and would set forth the duties of the respective regulatory authorities.

AB 243 – Medical Marijuana Cultivation

Would establish new requirements for marijuana cultivation, requires medical marijuana cultivation to meet the requirements of state law, and requires coordination between the state and local governments to enforce medicinal marijuana cultivation.

AB 266 – Medical Marijuana

Would establish a comprehensive licensing and regulatory framework for the cultivation, processing, transportation, testing, recommendation and sale of medical marijuana to be administered by Department of Consumer Affairs (DCA) and allow conditional licenses to persons for the cultivation, manufacture, transportation, storage, distribution, provision, donation, testing, and sale of medical marijuana, and establish standards for the cultivation, manufacturing, transportation, storage, distribution, provision, donation, and sale of medical marijuana and medical marijuana products.

SB 165 – Act to amend Section 12025 of the Fish and Game, controlled substances.

Would add additional crimes or violations to an existing Fish and Game Code statute which authorizes civil fines for certain natural resource-related violations in connection with the production or cultivation of a controlled substance.

SB 643 – The Medical Marijuana Public Safety and Environmental Protection Act.

Would create a regulatory structure for medical marijuana in California, allow local agencies to levy taxes on licensees under the Act and pre-empt local zoning ordinances.

