

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Administrative Office	(2) MEETING DATE 2/9/2016	(3) CONTACT/PHONE Guy Savage / Assistant County Administrative Officer (805) 781-5011	
(4) SUBJECT Submittal of a report and solicitation of Board direction related to the cultivation of Medical Cannabis (Marijuana) and request to authorize the use of Alternative Publication for an Urgency Ordinance regarding the Cultivation of Medical Cannabis. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board: <ol style="list-style-type: none"> 1. Receive an update related to the cultivation of Medical Cannabis (Marijuana) and provide direction to staff; 2. Authorize that a display advertisement of one-quarter page be published in two newspapers of general circulation in the north and south areas of the County, on or before February 17, 2016, indicating the general nature of the urgency ordinance that will be considered on February 23, 2016, can act as the alternative publication pursuant to Government Code §25124(b)(2); and, 3. Authorize that a one-quarter page display advertisement be placed in two newspapers of general circulation within 15 days after adoption of the urgency ordinance by your Board. 			
(6) FUNDING SOURCE(S) General Fund	(7) CURRENT YEAR FINANCIAL IMPACT \$2,500	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? No
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input checked="" type="checkbox"/> Board Business (Time Est. <u>60</u>)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: <u>12/15/2015</u>	
(17) ADMINISTRATIVE OFFICE REVIEW This item was prepared by the Administrative Office			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Administrative Office / Guy Savage / Assistant County Administrative Officer
(805) 781-5011

DATE: 2/9/2016

SUBJECT: Submittal of a report and solicitation of Board direction related to the cultivation of Medical Cannabis (Marijuana) and request to authorize the use of Alternative Publication for an Urgency Ordinance regarding the Cultivation of Medical Cannabis. All Districts.

RECOMMENDATION

It is recommended that the Board:

1. Receive an update related to the cultivation of Medical Cannabis (Marijuana) and provide direction to staff;
2. Authorize that a display advertisement of one-quarter page be published in two newspapers of general circulation in the north and south areas of the County, on or before February 17, 2016, indicating the general nature of the urgency ordinance that will be considered on February 23, 2016, can act as the alternative publication pursuant to Government Code §25124(b)(2); and,
3. Authorize that a one-quarter page display advertisement be placed in two newspapers of general circulation within 15 days after adoption of the urgency ordinance by your Board.

DISCUSSION

Staff from numerous departments have been working to craft an urgency ordinance based on December 15, 2015 Board direction on the topic of cultivation of medical cannabis (marijuana). As part of the ordinance development, staff carefully examined the Mendocino Ordinance, spoke with Mendocino staff about the ordinance's effectiveness, performed continued community outreach, and visited local cultivation sites.

State of California Legislation and Impacts

In late January 2016, both the California Senate and Assembly passed Assembly Bill 21 (see Attachment A). At the time of the development of this Board item, the Bill was awaiting signature by Governor Brown. If the Governor signs AB 21 as expected, staff recommends delaying consideration of an urgency ordinance related to medical cannabis. This would provide more time to complete additional outreach and craft a permanent (not urgency) ordinance to regulate the cultivation of medical cannabis within the County.

AB 21 proposes to remove the AB 243 imposed March 1, 2016 deadline for city and county governments to pass local ordinances regulating cultivation of medical cannabis. The bill also contains language that is intended to ensure local governments retain local control over land use regarding medical cannabis cultivation and ensures qualified patients and their caregivers have access to medical cannabis.

In the final hours of the 2015 legislative session, the State Legislature approved and the Governor signed, a package of legislation to create the first statewide licensing and operating rules for medical cannabis cultivators and dispensaries since Medical Cannabis was decriminalized in 1996. Together, AB 266, SB 643, and AB 243 comprise the California Medical Marijuana Regulation and Safety Act (MMRSA). Following is a brief summary of the legislation, provided by the California State Association of Counties (CSAC):

AB 266

AB 266 (see Attachment B) enacts MMRSA, which includes a licensing and regulatory framework for the medical cannabis industry that requires dual (state and local) licenses for medical cannabis businesses. It also establishes a new Bureau of Medical Marijuana Regulation to oversee this multiagency licensing and regulatory effort, relying on expertise from the California Department of Food and Agriculture (CDFA) and the Department of Public Health.

AB 266 also includes a number of detailed provisions including various definitions and aspects concerning enforcement, licensure, testing, packaging/labeling and reporting. Of particular importance are provisions that:

- Protect existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.
- Allow local governments to adopt ordinances establishing additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity.
- Retain the power of local jurisdictions to assess fees and taxes on licensed facilities and the business activities of those licensees.
- Allow a county to impose a tax on each delivery transaction.
- Ensure that it would not interfere with an employer's rights to maintain a drug and alcohol free workplace.

SB 643

SB 643 (see Attachment C) addresses a wide range of issues pertinent to the overarching framework for medical cannabis including, the establishment standards for physicians and surgeons that prescribe medical cannabis; the assignment of authority and responsibilities to specified state agencies charged with the licensing of medical cannabis activities; track and trace requirements enabling accurate tracking of cannabis products; requirements for pesticide standards for cultivation activities, and licensure suitability provisions. Of particular significance are provisions that:

- Prohibit a licensee from commencing activity under the authority of a state license until the applicant has obtained a local license or permit.
- Require that cultivation be conducted in accordance with state and local laws, as specified.
- Allow local agencies to administer a unique identifier program.
- Authorize licensing authorities and state and local agencies to inspect shipments of medical cannabis and request documentation for current inventory.
- Provide counties with explicit authority to impose taxes on medical cannabis activities and products.
- Direct CDFA to establish an organic program by 2020 and authorizes the new Bureau of Medical Marijuana to establish appellations.
- Include county of origin labeling specifications.

AB 243

AB 243 (see Attachment D) primarily addresses the environmental impacts of medical cannabis cultivation. It comprises a number of means including requirements for the Department of Food and Agriculture (CDFA), the Department of Pesticide Regulation (DPR), the State Department of Public Health (DPH), the Department of Fish and Wildlife (DFW), and the State Water Resources Control Board (SWRCB) to promulgate regulations or standards relating to medical cannabis and its cultivation.

Detailed licensing provisions for cultivation are also included in AB 243. The legislation specifies that if a local government does not have land use regulations or ordinances regulating or prohibiting the cultivation of cannabis in place by March 1, 2016, the Department of Food and Agriculture will be the default licensing entity for all such jurisdictions. The bill also directs CDFA, DFW and SWRCB to take various actions to address the environmental damage caused by cannabis cultivation including illegal waste discharges and water diversions.

AB 243 specifically created a new section of the Health & Safety Code that provides, in part:

"If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of cannabis, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing

March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.” (Health & Safety Code §11362.777(c)(4).)

Urgency Ordinance and Cultivation Considerations

Given the uncertainty about AB 21, staff is requesting general direction regarding the continued development of an urgency ordinance and, if appropriate, detailed direction relative to the following, non-exhaustive, list of considerations regarding the cultivation of medical cannabis:

Number of Plants and Size

The number of cannabis plants allowed is often a key consideration. Similarly, the canopy size of a cannabis grow on a single property may also be restricted in total square footage or as a percentage of the overall lot size. Depending on grow type (personal, caregiver, cooperative, commercial) the number of plants and square footage must also be considered.

Location

In addition to minimum parcel (or site) size, distance from neighbors, schools or other youth facilities, County right-of-way, other grows, and sightlines are common location considerations. Consideration regarding the smell produced during the growth process may be a complaint of those who live too close to a cannabis grow.

Indoor / Outdoor

Restrictions around the allowance of indoor and outdoor grows often lead to further discussion about the use of artificial lighting. In particular, shielding or down-casting of artificial light and noise from generators used in the production of power to generate artificial light are important considerations.

Alternative Publication

Should your Board continue to pursue the development and approval of an urgency ordinance by the AB 243 established deadline of March 1, 2016, staff recommends your Board hold a public for the adoption of the urgency ordinance related to the cultivation of medical cannabis within the County of San Luis Obispo on February 23, 2016.

Because publication of a display advertisement provides clear public notice and would cost substantially less than the full text of the adopted amendments, and because the diversity of topics covered in the proposed ordinance does not enable a meaningful summary, staff is recommending approval of the use alternative publication procedures.

California Government Code establishes specific publication requirements for urgency ordinances and offers two cost-saving alternatives to publishing the complete text of an adopted ordinance after its passage (which has historically been the most commonly-used method). The alternatives include either publishing a summary of the proposed amendments; or, where the official responsible for the ordinance determines that a fair and adequate summary would not be feasible, and with the consent of your Board, a simple display ad can be published in a local newspaper noting the hearing date, brief project description and passage of the ordinance, where it can be obtained, and how your Board voted on its adoption.

A quarter page display ad will be the best option to notice as a fair and adequate summary of the proposed urgency ordinance would be infeasible to prepare. To summarize the urgency ordinance language would leave out important context and provide an incomplete picture of the proposed ordinance. A summary may also be seen as confusing and could discourage people from reading the full text and intent of the program. A display ad is better suited to direct people exactly where to find the proposed ordinance and read the language that will be heard by the Board of Supervisors.

Therefore, in accordance with Section 25124 of the California Government Code, staff is requesting that your Board order that a display advertisement of a one-quarter page be published in two newspapers of general circulation in the County at least five days prior to the hearing date, indicating the general nature of the proposed ordinance to be considered. In addition, it is requested that your Board direct that a one-quarter page display advertisement be placed in two newspapers of general circulation within 15 days after adoption of the proposed ordinance. The request for publication in two

newspapers is consistent with prior Board direction for similar ordinances.

OTHER AGENCY INVOLVEMENT/IMPACT

Departmental representatives from the Sheriff/Coroner, District Attorney, Planning and Building, Agricultural Commissioner, Health Agency (Environmental Health), Human Resources, Auditor/Controller/Treasurer/Tax Collector/Public Administrator, County Counsel, and Administrative Office continue to collaborate on the development of an urgency ordinance. The County Clerk/Recorder's office will be responsible for publishing the notices prior to the hearing and the summary ad following the adoption of the ordinance.

FINANCIAL CONSIDERATIONS

The estimated cost of publishing two quarter-page display ads in two different newspapers is approximately \$2,500.

One display ad will be published prior to the hearing and the second display ad will be published following the decision which summarizes the decision made by the Board. This second display ad provides disclosure to the public that the ordinance was approved, where it may be obtained, and how the Board voted, but does not require that the entire ordinance text be published, thereby saving the cost of publishing the ordinance in its entirety.

In addition, there are broad and explicit financial impacts due to the tax implications of the cultivation, manufacturing, transportation and delivery, and retail sale of medical cannabis. These financial impacts could be significant for the County, other local jurisdictions, and businesses. Given the potential changes to MMRSA and the need for additional discussion on how cultivation, manufacturing, transportation and delivery, and retail sale of medical cannabis will be locally regulated, it is not feasible to quantify these financial impacts at this time.

RESULTS

Receipt of this item will provide the Board with a high level overview of the necessary considerations to be made regarding to the County's responsibility relative to recently passed medical cannabis legislation. In addition, this item outlines potential next steps to enact a local ordinance prior to March 1, 2016 if AB 21 is not signed by the Governor.

Advertising of a proposed urgency ordinance will allow public hearings to occur in conformance with the Government Code and will cost substantially less than publishing the full text of the adopted amendments. This is consistent with the County goal of promoting a prosperous and well-governed community.

ATTACHMENTS

- Attachment A – Full text of AB 21
- Attachment B – Full text of AB 266
- Attachment C – Full text of SB 643
- Attachment D – Full text of AB 243