



County of Sonoma Agenda Item Summary Report

Clerk of the Board
575 Administration Drive
Santa Rosa, CA 95403

Agenda Item Number:
(This Section for use by Clerk of the Board Only.)

To: Board of Supervisors

Board Agenda Date: April 10, 2018

Vote Requirement: Majority

Department or Agency Name(s): Economic Development Board, Permit and Resource Management Department (Permit Sonoma), Department of Agriculture / Weights and Measures, County Counsel

Staff Name and Phone Number:

Tim Ricard – 707-565-7257
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Supervisorial District(s):

Title: Cannabis Ordinance Study Session, Program Update, and Resolution of Intention to Update Existing Cannabis Ordinances

Recommended Actions:

Adopt a Resolution of Intention directing staff to update the existing Sonoma County Cannabis Land Use Ordinance, Health Ordinance, and Tax Ordinance to address:

- a) Adult Use;
- b) Alignment with state regulations; and,
- c) Compatibility with neighborhoods.

Executive Summary:

In December 2016, the Sonoma County Board of Supervisors adopted a series of ordinances establishing Phase I of the Sonoma County Cannabis Program (Cannabis Program) to permit and regulate the medical cannabis industry. Since the adoption of the Cannabis Ordinance, the state law has changed to accommodate Adult Use and the state has released emergency regulations, which will be finalized this spring.

In 2017, staff focused on implementing the Cannabis Program (Phase II). County departments hired and trained staff, developed specific rules and guidelines based on the ordinance, created support materials for businesses such as checklists and fact sheets, and built out multi-departmental online permitting, tax collection, and database systems. Phase II also included an extensive public outreach and education program highlighted by the “Dirt to Dispensary” workshop series and the creation of the Cannabis Advisory Group.

Some of the Phase II preparation work was done in advance of July 5, 2017 – the day the County began accepting permit applications from cannabis-related businesses. Still, much of the implementation work continues to hone guidelines, streamline permitting, train staff and consultants, and assist the business and

neighborhood communities with the process. To date, the County has received 152 Cannabis Business Permit applications.

Staff is seeking direction through a Resolution of Intention (Attachment A) to update the existing Cannabis Ordinances due to significant changes in state law and regulations, concerns regarding overconcentration and commercial cannabis near occupied residences, and lessons learned in the first year of implementing the Cannabis Program.

Discussion:

In 1996, voters adopted Proposition 215, entitled the Compassionate Use Act, which allowed for the use of marijuana for medicinal purposes by qualified patients, and for caregivers to provide medical marijuana and receive reimbursement for their costs. In 2004, SB 420 established a County Health ID card program, collective and cooperative cultivation, and “safe harbor” amounts for cultivation and possession. Following these developments, many new land uses evolved, but the interplay between federal, state, and local law was unsettled. More recently, the law has established some statewide parameters for maintaining local land use controls.

State Law

The Medical Cannabis Regulation and Safety Act (Medical Cannabis Act) was enacted in October 2015 and provided a framework for the regulation of medical cannabis businesses. The Medical Cannabis act eliminated the cooperative/collective model and replaced it with a commercial licensing scheme under which operators are required to obtain both local permits and state license approvals. The Medical Cannabis Act retained local control over land use and where and whether commercial cannabis businesses are allowed and under what conditions.

On November 8, 2016, the voters of California passed the Adult Use of Marijuana Act (Adult Use Cannabis Act) legalizing non-medical adult use cannabis. On June 27, 2017 the state passed Senate Bill 94 which consolidated the regulations in Medical Cannabis Act and Adult Use Cannabis Act into the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Cannabis Act). The Cannabis Act created one regulatory system for both medicinal and adult-use cannabis. The three state cannabis licensing authorities, California Bureau of Cannabis Control, CalCannabis Cultivation Licensing, and the Manufactured Cannabis Safety Branch, issued their comprehensive emergency regulations on November 16, 2017 creating the current cannabis regulatory structure.

Sonoma County Laws

In 2006, the County adopted guidelines under Resolution No. 06-0846, providing a defense to prosecution for possession and cultivation in limited circumstances. The guidelines allowed for a defense to be available to those qualified patients and caregivers cultivating up to 30 plants in up to 100 sq. ft. per patient, with no limit to the number of patients. The County first began permitting medical cannabis dispensaries in 2007 and currently permits dispensaries pursuant to Sonoma County Code Section 26-88-126. The Board amended this code section in 2012 to limit the number of dispensaries in the unincorporated County to a cap of nine. There are currently five permitted medical cannabis dispensaries and three in the application process. No delivery services are allowed separate from these permitted dispensaries.

In December 2016, the Board of Supervisors adopted a series of ordinances to establish a comprehensive local program to permit and regulate the complete supply chain of medical cannabis uses, including: cultivators, nurseries, manufacturers, transporters, distributors, testing laboratories, and dispensaries. Sonoma County’s ordinances regulating medical cannabis businesses include:

1. The Medical Cannabis Land Use Ordinance setting forth permit requirements and where and how each cannabis business type may operate;
2. The Medical Cannabis Health Ordinance establishing regulations and permitting for medical cannabis dispensaries and manufacturing to address product safety, labeling and advertising; and
3. The Cannabis Business Tax Ordinance imposing a tax on both medical and nonmedical commercial cannabis businesses operating in the unincorporated County.

Cannabis Business Tax

The Cannabis Business Tax (Measure A) was passed by voters in the March 7, 2017 special election with 71% voter approval. Measure A laid out a framework for taxation that set maximum allowable rates for all operator types and granted authority to the County to, among other things, set lower rates, tax certain operator types, and establish various tax administration policies. On June 13, 2017 the Board adopted Ordinance 6803 creating cannabis business tax rates and regulations.

Penalty Relief Program

The Penalty Relief Program was developed to allow the estimated thousands of existing Sonoma County cannabis businesses sufficient time and incentives to enter the regulated market and to comply with the new County regulations. Without this Program, all applicants operating a cannabis business could be subject to land use fines for operating without a permit and applicants would generally be barred from continuing to operate until their permit is finalized, a process that can take 12 months or longer. However, because land use permits were not previously available to this industry and the County wanted to encourage compliance with the Land Use Ordinance, the Board created the Penalty Relief Program.

The Program created requirements that, if satisfied, allowed cannabis businesses to continue to operate without being subject to land use fines. This Program only applies to cannabis land use violations, and does not include relief from penalties and fines associated with other violations, such as unpermitted structures or electrical. In addition, if at any time the County establishes that a cannabis operation poses environmental, health, or safety risks, such operation will be subject to immediate enforcement and would not be eligible for relief under the Penalty Relief Program. Through this program, qualified cannabis operators on permit eligible parcels have until June 1, 2018 to submit a complete application to the County or cease operations. Qualifying operators who submit a complete application can continue to operate while their permit is being processed.

Community Engagement – Developing the Ordinance

The Board of Supervisors Ad Hoc Committee on Cannabis (Ad Hoc Committee) and staff conducted extensive community outreach in order to develop the Cannabis Ordinance. This outreach included town hall meetings in each supervisorial district, the establishment of a website, email list serve, project-dedicated email, online survey, and meetings with various stakeholder interest groups. An estimated 750 people attended the town hall meetings and over 1,100 people responded to the online survey.

Through these efforts, the Ad Hoc Committee and staff received feedback indicating that many Sonoma County residents support a regulatory framework that legalizes commercial medical cannabis, supports safe and affordable access to medicine, and provides opportunities for existing local cannabis operations to come into compliance. Many residents also expressed concern about crime, public safety, odor and nuisance, and other associated environmental impacts of the cannabis industry. Many concerns were particularly heightened for residential neighborhoods and related most often to cultivation.

In October and November of 2016 the Planning Commission held three public hearings to gather input and make modifications to the proposed Cannabis Ordinance. The Planning Commission passed a resolution recommending that the Board of Supervisors adopt the Ordinance on November 16, 2016.

In December 2016 the Board of Supervisors held three public hearings to review and modify the Cannabis Ordinance before adopting a modified ordinance on December 20, 2016.

All six of the Planning Commission and Board of Supervisors meetings included significant public comment and press coverage.

Community Engagement – Implementing the Ordinance

The implementation of the Sonoma County Cannabis Ordinance was unlike the implementation of other local ordinances, and required the creation of an entirely new program to educate and regulate an industry that has been operating without regulation for many years. To develop this program, the County needed to: create multi-departmental online permitting, tax collection and database systems; prepare procedures, guidelines, checklists, and fact sheets; hire and train staff; coordinate with resource agencies; and engage and educate the community.

In order to effectively communicate the new regulations and permit process and assist an industry new to regulation, staff developed and implemented a “Dirt to Dispensary” workshop series. To date, the County has held 18 of these workshops on topics ranging from taxation, permitting, water use best management practices and security. Attendance at many of these workshops has been over 300 people. In addition to the “Dirt to Dispensary” workshop series, staff has developed a variety of tools to efficiently provide key information and respond to a very high volume of questions and assistance requests. These tools include a cannabis-specific website, email and telephone hotline; handouts; a workshop series; and informational presentations.

Through the email and hotline, the Sonoma County community can reach out directly to trained staff members and have any questions or concerns addressed directly. The response to the cannabis hotline has been tremendous and staff continues to respond to 50-100 calls and emails each week. This is in addition to the normal customer service options available at Permit Sonoma and the Department of Agriculture/Weights and Measures, which have also been responding to a large number of cannabis inquiries.

To address neighborhood concerns and educate the community about the Cannabis Ordinance, staff has presented information at approximately 15 very well-attended neighborhood and community group meetings.

Cannabis Advisory Group

The Sonoma County Cannabis Advisory Group was appointed by the Board to offer a diverse perspective on the impacts of cannabis and cannabis regulations, and to provide information and feedback to the County for developing, amending, and funding local cannabis programs and policies.

In order to select the members of the Advisory Group, staff created an open recruitment process. Notification of the recruitment was sent to local press, displayed on the Cannabis Program website, distributed to the Program’s mailing list of over 1,000 recipients, and disseminated through the Marijuana Technical Advisory Committee to varied relevant groups and parties.

The County received over 100 applications. Applicants were identified by supervisorial district and grouped by stakeholder interests including cannabis industry by business type, consultants and other business development representatives, neighborhood and community leaders, health and human services providers, and educators. Applications were reviewed by staff and the Ad Hoc Committee, and further input was gathered from the

Marijuana Technical Advisory Committee to recommend a group of individuals with a broad range of expertise and mixed geographic representation.

On July 18, 2017, the Board of Supervisor approved the appointment of 20 members to serve on the Sonoma County Cannabis Advisory Group. Since that time the Group has meet for seven monthly meetings which have been so well attended that the venue was changed from the Permit Sonoma hearing room to the Glaser Center after the third meeting.

The Advisory Group has formed four Ad Hoc subgroups to research and develop recommendations on Temporary State Licenses, updating the Sonoma County Ordinance to better align with the latest state regulations, and inclusion and exclusion zones. In addition, the Advisory Group has recommended that the County fast-track the development of Adult Use cannabis policy and permitting.

Recommendations from the Advisory Group do not receive a formal vote, but instead reflect the opinion of the majority of the members of the group. Dissenting viewpoints are sought out by staff and the Co-Chairs, and all feedback from the advisory group is shared with County staff and the Board’s Cannabis Ad Hoc.

Recommendations, and the alternative minority recommendations of the Cannabis Advisory Group, are attached as Appendix A.

CANNABIS PROGRAM UPDATE

Land Use Permitting

The Sonoma County Cannabis Ordinance divided the permitting responsibilities between the Department of Agriculture/Weights and Measures (Agricultural Commissioner) and Permit Sonoma. Both departments began accepting Cannabis Business Permit applications on July 5, 2017. The Agricultural Commissioner issues Zoning Permits for outdoor cultivation up to 10,000 sq. ft. in the Land Extensive Agriculture (LEA) and Diverse Agriculture (DA) zones. Permit Sonoma is charged with permitting all other cultivation operations, dispensaries, manufacturing, laboratories, distribution, and transportation.

To date, the County has received 152 permit applications and issued five permits. The slower-than-expected approval of permits is largely due to the high number of incomplete applications (see Chart 1), difficulties implementing a new ordinance, complexity of the permitting requirements, an industry that is new to the permitting process, and community opposition.

Many cannabis applicants apply for multiple types of cultivation, e.g. outdoor and mixed light on a parcel zoned for agriculture or cannabis manufacturing, and indoor cultivation within an industrial building. Although they are applying for multiple uses on the site, it is consider one application. Table 1 provides a breakdown of the 152 applications received to date representing the following number of operations and acres of cultivation:

Cannabis Testing Labs	1
Dispensaries	1
Distribution Facilities	7
Manufacturing Facilities	10
Outdoor Cultivation	34.95 acres
Mixed Light Cultivation	8.23 acres
Indoor Cultivation	5.11 acres

Chart-1 Highlights the application status of the applications received by the County, noting that over 50% are incomplete.

Chart 1-Application Status

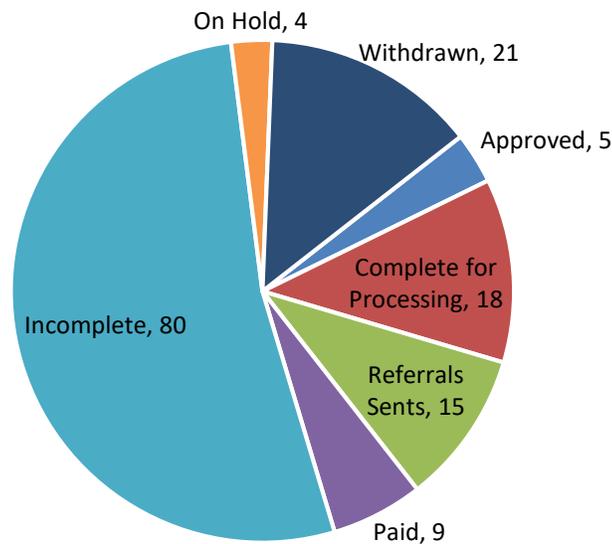


Chart-2 shows the distribution of permit applications by Zoning Designation, while Chart-3 shows the number of applications by Supervisor District.

Chart 2- Applications by Zoning

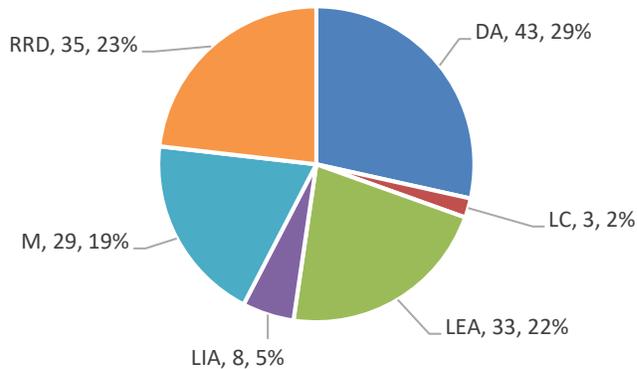


Chart 3- Applications by Supervisor District

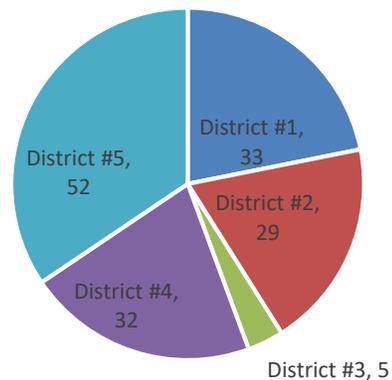
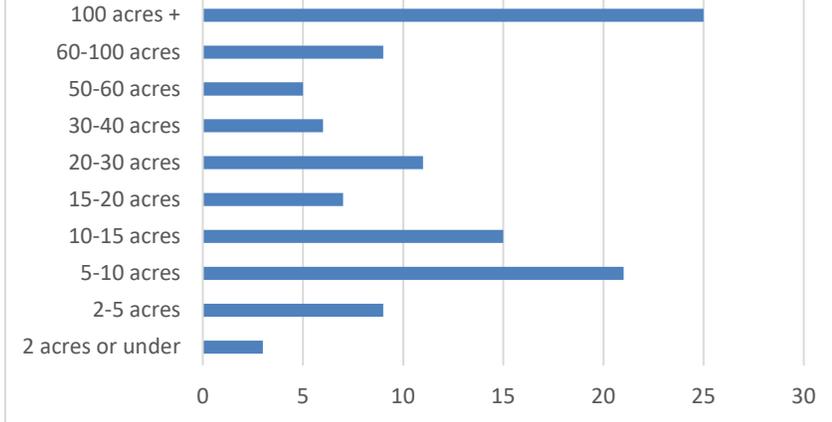


Chart-4 provides information on the parcels sizes of the cultivation applications received in Agriculturally Zoned areas- Land Extensive Agriculture (LEA), Land Intensive Agriculture (LIA), and Diverse Agriculture (DA) as well as Resource Rural Development (RRD).

Chart 4- Application by Parcel Size- LEA, DA, LIA, RRD



Code Enforcement

The cannabis industry heavily impacts code enforcement and public safety and justice services, therefore a robust Code Enforcement Program is crucial to the success of the Cannabis Program. Since January 1, 2017, Code Enforcement staff have received and investigated 545 cannabis-related cases, resolving 443 of these cases.

Permit Sonoma has significantly increased Code Enforcement staff of the last two years, adding three new Code Enforcement positions including a Code Enforcement Manager, a Code Enforcement Inspector dedicated to cannabis-related code violations, and a secretary to strengthen the Code Enforcement section by maintaining records, producing legal notices, coordinating hearings, and supporting the Code Enforcement Manager. However, even with this additional Code Enforcement staff, illegal cultivation continues to be a significant issue in Sonoma County and eliminating these operations will be crucial to the success of the program.

In order to support these efforts, the Code Enforcement Division coordinates closely with the Sheriff's Office, District Attorney, County Counsel and resources agencies such as the California Department of Fish and Wildlife and the California Water Board.

While Permit Sonoma Code Enforcement staff has abated many cannabis operations that cannot or refuse to legalize, it is anticipated that additional County Counsel involvement will be needed going forward to address many of the remaining cases.

Cannabis Budget

After two quarters of cannabis business tax collection, the County has collected \$1.6 million. However, cannabis business tax revenue projections are expected to decrease in Q3 and Q4 due to the one-time tax collection of cannabis businesses located on permit-ineligible properties and businesses that have now been shut down by Code Enforcement. Therefore, staff is projecting \$2.5 million in cannabis tax revenue and \$886,000 in revenue from fines and fees, bringing the estimated total revenue to \$3.4 million

Although this is less than the \$5.2 million in revenue that was initially projected, cannabis program revenues are expected to cover the program costs. Cannabis Business Tax revenues fund 100% of the cost of three FTEs, a portion of nine FTEs, and \$384,645 in Extra Help funding.

Table 2- FY 2017-18 Expenses and Revenue

Expenses	Budgeted	Est. Actual
Permanent Labor Costs	\$ 2,089,258	\$ 1,371,386
Extra Help	\$ 479,645	\$ 86,701
Non-Labor Costs	\$ 846,004	\$ 884,408
General Fund Repayment	\$ 500,000	\$ 500,000
Total Expenses	\$ 3,914,907	\$ 2,842,495
Revenues	Budgeted	Est. Actual
Cannabis Tax	\$ 3,935,502	\$ 2,517,754
Fines, Fees, Other	\$ 1,283,905	\$ 886,828
Total Revenues	\$ 5,219,407	\$ 3,404,582
# of Permanent Positions	14.0	12.0
Cannabis Fund Year End Net Cost Estimate	\$1,304,500	\$562,087

Approximately 332 businesses have applied for the Penalty Relief Program and are therefore required to file taxes. Of these businesses only 143 have filed tax forms. While the Auditor-Controller-Treasurer-Tax-Collector Department has sent out delinquency notices to these businesses, they have limited information regarding these operations which creates difficulties in tax collection.

The Penalty Relief Program also requires that businesses seeking penalty relief submit a complete Cannabis Business Permit application by June 1, 2018. As noted above, the County has received 152 permit applications, of which five have been approved, and 33 have been deemed complete (complete for processing or referrals-sent status).

Therefore, unless the County receives additional complete applications prior to June 1, 2018 the County will only be able to collect the Cannabis Business Tax from 43 business:

- The five approved businesses
- The 33 business with complete applications
- The five approved dispensaries

Based on this information, staff is projecting Cannabis Program revenues of \$2.5 million in FY 2018-19. With approximately \$1.3 million coming from cannabis tax revenue and \$1.2 million in revenue from fees and fines. Through reductions in budgeted non-labor expenditures and extra help funding, the Cannabis Program is still expected to cover its operating costs in FY 2018-19 without dipping into the FY 2017-18 fund balance. Please see Attachment B for additional budget details.

Table 3- FY 2018-19 Expenses and Revenue

Expenses	Projected
Permanent Labor Costs	\$ 1,952,971
Extra Help	\$ 187,125
Non-Labor Costs	\$ 362,312
Total Expenses	\$ 2,502,408
Revenues	
	Projected
Cannabis Tax	\$ 1,363,914
Fines, Fees, Other	\$ 1,230,553
Total Revenues	\$ 2,594,467
# of Permanent Positions	14.0
Cannabis Fund - Year End Net Cost Estimate	\$92,059

RECOMMENDED RESOLUTION OF INTENTION

Staff requests that the Board adopt a Resolution of Intention (Attachment A), initiating the process for updating the Cannabis Ordinances. Through this update staff will develop policies to address the following objectives:

- Consider allowing Adult Use cannabis in unincorporated Sonoma County for the full cannabis supply chain including dispensaries.
- Harmonize the Sonoma County Ordinance with state law and regulations where appropriate
- Neighborhood compatibility and overconcentration issues related to cannabis operations.

Adult Use

In the summer of 2017, Governor Brown signed SB 94 and AB 113, which merged the medical and adult use licensing framework. With a few exceptions, Adult Use and Medical licensing are now mirrored across the supply chain, and the State began accepting Adult Use licenses on January 1, 2018.

Many surrounding localities such as Santa Rosa, Sebastopol, Cloverdale, Cotati, and Mendocino County have adopted Adult Use policies. The Cannabis Ad Hoc and Cannabis Advisory Group have recommended that the Board of the Supervisors take similar action. Staff recommends that Adult Use and corresponding compatible amendments be included in the Resolution of Intention.

Harmonize with State Regulations

While the County controls local use decisions and issues local permits, cannabis operators cannot enter the regulated statewide market without a state license. This dual licensing system can create difficulties for regulators and cannabis businesses if the State and County are using different terms, definitions and license types.

When the County developed its ordinance in 2016, it was largely based on the existing state law, the Medical Cannabis Regulation and Safety Act (MCRSA). At that time the Ordinance provided a path forward for all state license types with the exception of Volatile Manufacturing and Delivery-only Dispensaries. Changes in the state law and regulations have created new license types which are not addressed in the Ordinance. In addition, many of the definitions and methodologies used have changed at the state level, for example the measurement of cultivation area or canopy.

The Cannabis Ad Hoc and Cannabis Advisory Group recommend that the County update the Cannabis Ordinance to better harmonize with the current state regulations where appropriate.

Neighborhood Compatibility Issues

Issues of neighborhood compatibility that have been raised by the community include odor mitigation, security concerns, proximity to occupied residences, water use, and overconcentration. In response to feedback from the Cannabis Ad Hoc and concerns raised by neighborhood groups, staff is recommending that as part of the update, we evaluate options to address neighborhood compatibility, including increasing the separation criteria and/or minimum lot sizes, evaluating the appropriate zones or adopting exclusion zones.

Strategies for Updating the Ordinances

Based on recommendations from the Cannabis Ad Hoc Committee and public feedback, staff has outlined some strategies to address the three objectives listed above in a phased process. All of the strategies outlined below will require staff analysis and public hearings before the Planning Commission and Board of Supervisors. To better understand the timing of these efforts staff has broken them into two categories. Phase I updates are those items that can be developed quickly and brought back to the Board in the next 150 days, while the larger ordinance updates outlined in Phase II will require additional analysis and will likely take 12-15 months to develop. The draft project work plan (Attachment C) presents the major tasks and a recommended process for development and consideration of any cannabis ordinance updates.

Phase 1 – (150 days)

- Allow adult use by removing the word “medical” from the existing ordinance
- Options to Increase Neighborhood Compatibility

Phase 2 – (12-15 months)

- Alignment with state laws (i.e. adding new license types, updating definitions and reviewing cultivation criteria)
- Adjustments to ordinances to enhance compliance and address constraints/opportunities for a safe, successful, and comprehensive Cannabis Program

Staff recommends that the Board adopt the attached Resolution of Intention directing staff to update the cannabis ordinance to address the following objectives:

- a) Adult use;
- b) Alignment with state regulations;
- c) Compatibility with neighborhoods; and,
- d) Adjustments to ordinances to enhance compliance and address constraints/opportunities for a safe, successful, and comprehensive Cannabis Program

Prior Board Actions:

September 12, 2017: Approval of a Resolution to modify and extend the Temporary Code Enforcement Penalty Relief Program for Land Use Permits for Cannabis Operations

July 18, 2017: Approval of the appointment of 20 members to serve on the Sonoma County Cannabis Advisory Group for a term of two years.

May 23, 2017: Approval of a Resolution establishing the Code Enforcement Temporary Penalty Relief Program.

April 11, 2017: Approval of staffing and budgetary adjustments to implement the Cannabis Program, adoption of the 2017 Cannabis Ad Hoc Committee Charter, and approval of the Advisory Group Selection and Work Plan.

December 20, 2016: Final adoption of Cannabis Land Use Ordinance.

December 13, 2016: Final adoption of Cannabis Business Tax Ordinance and Cannabis Health Ordinance.

December 6, 2016: Calling the March Special Election for the Cannabis Business Tax Ordinance.

Strategic Plan Alignment Goal 1: Safe, Healthy, and Caring Community

Establishing comprehensive marijuana policies is necessary to preserve our environmental resources, protect the health and safety of our communities, and ensure the industry contributes positively to the economic vitality of our County.

Fiscal Summary

Expenditures	FY 17-18 Adopted	FY 18-19 Projected	FY 19-20 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			

Funding Sources

General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

Staff will be returning to the Board as part of the FY18/19 recommended budget, but the expectation is that all program expenditures will be funded by taxes and fees derived from it.

Staffing Impacts

Position Title (Payroll Classification)	Monthly Salary Range (A – I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

Attachments:

Attachment A: Resolution of Intention

Attachment B: Cannabis Budget Details

Attachment C: Draft Project Work Plan

Attachment D: Cannabis Land Use

Appendix A: Cannabis Advisory Group Recommendations

Related Items "On File" with the Clerk of the Board: