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SUPERVISOR, SECOND DISTRICT
SAN DIEGO COUNTY BOARD OF SUPERVISORS

AGENDA ITEM

DATE: June 15, 2022

TO: Board of Supervisors

SUBJECT

CANNABIS PROGRAM ENHANCEMENT MEASURES: INCREASING SAFETY, PROVIDING EDUCATION, AND IMPROVING EQUITY WITHIN THE UNINCORPORATED COMMUNITIES (DISTRICTS: ALL)

OVERVIEW

On January 27, 2021 (4), the Board of Supervisors (Board) voted to approve the development of a Cannabis Permitting Program that includes numerous elements to prioritize social equity, access, and business opportunities. My board letter today expands on those elements to comprehensively address concerns raised by the communities I represent, including the children throughout the unincorporated communities.

Although I have never supported the legalization of cannabis, the California voters made their voice heard when Proposition 64 was passed in 2016. In that spirit, I have not opposed any of the Board votes related to implementation of legal recreational cannabis over the past year and a half that I have been in office. After listening to my constituents, however, it is paramount to broaden the discussion surrounding cannabis facilities and equity.

The County's Socially Equitable Cannabis Program must include programs to address disproportionate impacts to the underserved unincorporated communities. These communities already lack equity with regards to public safety, infrastructure, transit options, health, education, and economic opportunity compared to incorporated residents. The underserved unincorporated residents will most greatly feel the impacts of the proliferation of legal cannabis operations in their communities. As we move forward with the Socially Equitable Cannabis Program, the needs of the communities impacted by the facilities deserve equal consideration as all other stakeholders.

I am requesting 16 measures to be included within the Cannabis Permitting Program Environmental Impact Report (EIR) and Socially Equitable Cannabis Program that will, broadly: enhance the safety of our residents, improve the character and vibrancy of our communities, and develop a youth cannabis prevention curriculum. Some of these measures will be enshrined within the program, some require staff research and a return back to the Board, while others will require outreach to our valued community members. These measures will ensure that our unincorporated communities will flourish along with the legal cannabis industry.

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RECOMMENDATION(S)
SUPERVISOR JOEL ANDERSON

PROGRAM DESIGN FEATURES FOR THE CANNABIS PERMITTING PROGRAM EIR

The following measures shall be included as part of the project to be analyzed within the Cannabis Permitting Program EIR and alternatives, in addition to considering the recommendations within the Socially Equitable Cannabis Program:

1. Expand the definition of “sensitive” uses to include the following (as defined by the General Plan and/or Zoning Ordinance that can also be further refined by staff):
 - a. regional parks, local parks, trails, recreation facilities, and preserves (if preserve has visitor-serving amenities)
 - b. places of worship (churches, temples, etc.)
 - c. childcare centers
 - d. public libraries operated by the County and/or other cities
 - e. residential care facilities
 - f. schools (including public, private, and charter)
 - g. other cannabis facilities
2. Increase the setback of any cannabis facility from “sensitive” land uses from 600 feet to 1,000 feet (measured at the property line)
3. Expand existing County billboard regulations to prohibit advertising of cannabis on a billboard within 1,000 feet of a “sensitive” use

PROGRAM CONSIDERATIONS THAT REQUIRE RESEARCH AND RETURN TO BOARD

The intent of these measures is to provide Planning & Development Services (PDS) staff the time to research and collaborate with the community and to return to the Board within one year to provide options. These measures would direct the CAO to report back on the following:

4. For each type of cannabis facility, develop a ministerial objective design guideline checklist, similar to existing design guidelines in unincorporated communities, that will generally serve to detract those under 21 from seeking to visit the facility. These criteria could prohibit such designs that include, but are not limited to, bright colors and misleading facility names. The design guideline criteria shall be included as a checklist. If any of the criteria cannot be met, the applicant shall be required to submit justification.
5. Propose options for each community planning area that includes a limit on each type of cannabis facility based on the following criteria (including criteria set forth within Measure 1), along with a cumulative limit on indoor consumption lounges in the unincorporated area:
 - a. Geographic and population size of each community
 - b. Facility type related to land use designations and zoning
 - c. Consider previous Board direction related to VMT and sustainability

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6. Develop a definition for a “cannabis event” and provide guidance that could include geographic restrictions and limit frequency of cannabis events that could include consideration of VMT, noise compatibility, and road safety.
7. Provide options to enhance restrictions set forth within State law (California Code of Regulations, Title 4, Section 15017) to include the same requirements set forth by the Alcohol Beverage Control (ABC) licensing process.
8. Determine the legality and return to the Board with options of prohibiting, limiting, or restricting employment using the same criteria set forth by the ABC licensing process.
9. Establish a Community Equity Contribution Program, to be funded by the County, that will be integrated within the Socially Equitable Cannabis Program. This would include a report with data-driven recommendations combined with a community-led input process to determine the needs of each unique community. The Program should explore the potential of permit fee waivers or other incentives that will instead provide direct benefits to the community where these facilities and operations will be located. The intent of the Program, which could be similar to work currently being researched by County staff for Community Benefit Agreements, would be specific to cannabis facilities and could include funding for education, community beautification, and other community-related benefits, as part of the Socially Equitable Cannabis Program.
10. With the Code Compliance division of PDS leading the effort, develop recommendations to combat the illicit cannabis market and public safety concerns, in consultation with Sheriff and other regional law enforcement stakeholders, that would include (but not limited to):
 - a. Parameters on deliveries (must come from a facility with a valid license and building, geographical restrictions, and limits on hours of deliveries)
 - b. Enhanced enforcement options (shoulder tap/minor decoy)
 - c. Other possible restrictions related to onsite consumption lounges, temporary cannabis events, and cultivation practices

PROGRAM CONSIDERATIONS THAT REQUIRE FURTHER COST RESEARCH

These measures would direct the CAO to report back on resources needed within 180 days to determine the need for future budgets (and to determine potential alignment on efforts being worked on by the Office of Equality and Racial Justice) to accomplish the following:

11. Explore how to incentivize local ownership of cannabis facilities and explore guidelines on the transfer of business licenses

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12. Determine exposure-related health risks to workers at indoor consumption lounges, and, if protective measures are necessary, create requirements that shall be followed through licensing requirements.
13. Determine if code enforcement penalties can be specific to cannabis facilities, and if so, develop a set of criteria that will result in possible penalties for cannabis facilities that have documented code violations that escalate quickly if not actively resolved. This should include, in order: financial fines, forced temporary closure, and permit revocation.
14. Work collaboratively with research partners engaged through the Marijuana Prevention Initiative to develop recommendations that include a comprehensive, evidence-based marijuana prevention curriculum to be available for schools throughout the San Diego region.
15. The curriculum should also include, but not be limited to, the following:
 - a. Require education to cannabis retail staff not to provide medical advice
 - b. Conduct education with public health nurses, school nurses, and programs serving pregnant women about the adverse impacts of marijuana use.
 - c. Require warning signs in cannabis shops about contraindications and negative health impacts when using cannabis with prescribed medications.
 - d. Establish a framework for updating educational materials as medical research documented within medical journals progresses
16. Develop a Board Policy that includes minimum funding requirements for code and law enforcement against illegal dispensaries.

EQUITY IMPACT STATEMENT

The unincorporated area of San Diego County is the size of the state of Connecticut and has a wide array of communities—from the somewhat densely urbanized areas to the sparsely populated rural areas. These communities rely on the County for almost all of their government services. Equity should inherently be all inclusive. The 16 measures proposed here will ensure that the unincorporated area will co-exist with this new industry while sharing the benefits, remaining a safe place to live, and to provide expanded educational opportunities. This action intends to build upon the existing work of the Socially Equitable Cannabis Program to include underserved unincorporated communities as equal stakeholders.

FISCAL IMPACT

Funds associated with the measures 1 through 10 are included in the Fiscal Year 2022-23 Chief Administrative Officer's recommended budget in the Department of Planning and Development Services. If approved, the recommendations will result in costs of approximately \$500,000. The funding source is unassigned General Fund Balance there will be no additional staff years and no change in General Fund net cost. Measures 11 through 16 direct County staff to research the cost that would be necessary to develop the specifics of each measure and return back to the Board.

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BUSINESS IMPACT STATEMENT

The proposed actions will ultimately help cannabis facility operators as well as the communities affected by providing a programmatic mechanism to benefit communities, provide limitations on some types of facilities so that one community is not overconcentrated (likely leading to failure for inexperienced business operators), and will provide adequate protections for workers. The measures also intend to incentivize the local operations of these facilities to the extent feasible.

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

On January 27, 2021 (4), the Board voted to approve the development of a new Cannabis Permitting Program that directed staff to develop Zoning Ordinances that allow a suite of cannabis facility uses, and to include numerous elements to prioritize social equity, access, and business opportunities. This included a Social Equity Program that is intended to help rectify the injustices caused by the War on Drugs. The motion also established appropriations of \$500,000 for immediate and aggressive enforcement by the San Diego County Sheriff's Office and/or Code Enforcement of unlicensed, illegal dispensaries, labs, or any related operating facilities and directed the CAO to return to the Board with an analysis and recommendations for ongoing, long-term enforcement options.

On March 3, 2021 (11), the Board received an update on staff progress on the Socially Equitable Cannabis Program and directed staff to return to the Board in 90 days with another progress report, an analysis of options for compliance with California environmental laws, and options to enable the existing five dispensaries in the unincorporated county jurisdiction to allow ongoing operations.

On June 9, 2021 (2), the Board approved the preparation of a Program EIR (PEIR) that allows for all potential commercial cannabis uses, such as indoor and outdoor cannabis cultivation, distribution, testing, retail, manufacturing, and microbusinesses. The timeline was approximately two years (i.e., standard PEIR timeframe) with no appropriation of funds required.

On August 17, 2021 (15), the Board unanimously approved my proposal to provide an increase of \$1.2 million to assist the District Attorney in supporting and expanding ongoing prosecutions of unlicensed dispensaries. A few months prior to this action, my advocacy spurred an increase of \$1.2 million dollars in the County's Fiscal Year 2021-22 budget to support a full-time enforcement team within the Sheriff's Department, dedicated to the investigation and eradication of illegal cannabis operations in our neighborhoods.

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For the Cannabis Permitting Program to move forward in a socially responsible fashion that truly benefits the impacted communities, it must:

- Provide a mechanism for communities to flourish alongside cannabis facilities
- Include parameters on the siting of cannabis facilities to minimize both the potential land use conflicts and the success of businesses
- Establish commonsense guidelines regarding cannabis facility design and advertising
- Protect the health of workers
- Make efforts to mitigate the negative health impacts of chronic marijuana¹ use has on the general population, and youth in specific

In the initial Board direction provided on January 27, 2021, recommendation B(1)(g) stated that there should be setbacks of 600 feet from a qualifying “sensitive use” as described in Section 5026 of the California Code of Regulations, Title 16, Division 42, or any successor or amended section, that is operational at the time of the application, including an analysis to consider, as part of a data driven process, to allow setbacks of up to 1,000 feet from a qualifying “sensitive use.”

Measures 1 and 2 within this Board Letter will serve to update this direction to further refine the definition of a sensitive use and to include the 1,000-foot setback to supersede the previous 600-foot requirement. State law (see CCR Title 4 et. seq.) allows for a local jurisdiction to include more stringent requirements regarding the definition of a sensitive use as well as a larger setback. This measure is meant to work in tandem with Measure 5 to give the Board a clear idea of how many cannabis facilities could be allowed within each community, and also to not significantly inhibit potential business opportunities. By including this as a component of the project within the Program EIR, this will allow for a clear picture of where cannabis facilities can be sited, thus providing the public with transparency.

For Measure 3 regarding billboards, there is compelling evidence that supports a correlation between cannabis advertising and promotion to underage smoking and ingesting of cannabis and cannabis products. As an example, the City of San Diego adopted an ordinance² regulating cannabis advertising on billboards within 1,000 feet of sensitive uses. Although the County has existing regulations for where billboards of any kind can be located, this measure will reduce the chances that younger kids will be subjected to this type of marketing when it is illegal and potentially harmful for those under the age of 21 to use cannabis.

Measure 4, related to the development of design guidelines for cannabis facilities, will similarly serve to detract from the promotion of these facilities to children while also providing a valuable tool to preserve the unique character of the County communities. Design guidelines have been utilized for decades within the unincorporated area to ensure that each project has a thoughtful design that does not significantly stand out from existing development.

¹ Substance Abuse and Mental Health Service Administration: <https://www.samhsa.gov/marijuana>

² https://docs.sandiego.gov/council_reso_ordinance/rao2020/O-21174.pdf

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Measures 5 and 6, related to potential limitations on cannabis facilities and events, are intended to give County staff a broad level of guidance in order to determine options for the Board to consider. The measures do not intend to significantly disrupt the free market, rather they are a reflection of the unique geography and demographics of each of our unincorporated communities. In addition, these measures could ultimately help businesses thrive as an unlimited number of cannabis facilities could drive some to not succeed, thus resulting in abandoned facilities and potential blight. Though cannabis facilities can be a profitable venture, it is not guaranteed and some limitations would serve both the communities and businesses.

Measures 7 and 8 serve to protect public safety. The California Department of Alcohol and Beverage Control (ABC) uses the definition of crimes of a moral turpitude when determining if an applicant is eligible for ownership of a liquor store or bar. While the Bureau of Cannabis Control (BCC) may use similar criteria, a local approving agency can add criteria to reinforce the qualifications for local license holders. This type of balance will ultimately aid in ensuring that those attending, living near, or working at a cannabis facility can be safe.

Measure 9 sets the framework for a Community Equity Contribution Program that will be integrated within the Socially Equitable Cannabis Program. Many of the unincorporated communities have been traditionally overlooked and underserved in terms of resources – unincorporated communities receive approximately 30% fewer public resources than their neighbors in incorporated cities.

Representative Unincorporated Area Communities												
	Borrego Springs	Campo	Jacumba	Pauma Valley	Potrero	Rainbow	Fallbrook	Mountain Empire	Ramona	Spring Valley	Winter Gardens	Valley Center
Median Household Income (\$)	58,344	49,709	50,368	84,589	39,754 est.	65,694	69,250	51,038	77,832	80,161	77,394	99,223
Poverty (%)	11.4	28.0	50.1	5.6	40.8	10.1	16.7	26.6	4.9	11.6	8.8	14.0
BIPOC (%)	38.13	46.00	86.00	61.00	100.00	39.00	65.50	44.00	49.10	68.20	35.80	51.70

Measure 10 would provide PDS additional direction in coordinating with the Sheriff's Department other regional law enforcement stakeholders in both enforcement of illegal cannabis facilities and helping shape parameters for the newly permitted facilities. Restricting the illegal cannabis trade is paramount to not only protecting the safety of the community but also ensuring that legal businesses thrive. The Sheriff's Department, along with the District Attorney, and the Planning & Development Services (PDS) Department, has done an exceptional job in shutting down illegal cannabis facilities since receiving funds as part of the numerous actions undertaken by my office and supported by the Board. Over the course of 2021, this led to almost all of the illegal pot shops throughout East County being eradicated. It is therefore crucial to continue this coordination of financial allocations.

Measure 11 intends to empower County staff with opportunities to incentivize local ownership of cannabis facilities. Although cognizant of the free market, there could be pathways to provide bonuses, fee waivers, or other incentives to provide our local community (including farmers) a step up in obtaining a permit. Building on this, not allowing the transfer of a license within certain

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timeframe parameters would hopefully serve to disincentivize the “flipping” of licenses for cannabis facilities. The City of Chula Vista has a similar measure that can be used as an example.

Measure 12 concerns the possible exposure of cannabis smoke to those that would be employed at consumption lounges. Since it is not legal federally, the Occupational Safety and Health Administration has not provided guidance regarding this potential hazard. It is recommended that staff develop or use other existing criteria to protect these workers with measures such as enhanced ventilation systems, barriers, or personal protective equipment.

Measure 13 was developed to provide an enhanced code compliance process. Although most legal cannabis facilities have a track record of being good neighbors throughout the state, this measure would allow County staff to ramp up fines and potential closure in an expedient manner. If not operated properly, cannabis facilities could create a nuisance to residents and businesses

Measures 14 and 15 are related to the expansion of the health awareness program. This would allow the Health & Human Services Agency (HHS) to further collaborate with the Office of Equity & Racial Justice (OERJ) to determine if this information can supplement future efforts. While there are cases where medical use of marijuana has a positive therapeutic effect, the negative significant health impacts of recreational use on adults, and especially youth, can increase rates of cancer, reduce brain function, impair respiratory functions, and result in birth defects.

- **Marijuana and Cancer:** Cannabis (marijuana) smoke and tobacco smoke contain many of the same potent carcinogens. A 40-year cohort study³ assessed the relationship between marijuana use of young marijuana users and cancer. The study found that lifetime use of greater than 50 times resulted in a two-fold increase in the chances of developing lung cancer. Another large study⁴ noted that “marijuana smoke contains polycyclic aromatic hydrocarbons and carcinogens at higher concentration than tobacco smoke.” Many other studies establish the link between taking carcinogenic smoke into your lungs and cancer.
- **Marijuana and Brain Damage in Youth and Young Adults:** A 2012 peer-reviewed study⁵ published in *Proceedings of the National Academy of Sciences* found a strong correlation between heavy marijuana use by adolescents and loss of IQ. The study looked at 1,037 participants who completed/ survived the 40-year period over which the study was conducted. Based on the data from the surviving cohort, the study found that heavy marijuana users lost an average of 8 IQ points, while non-users increased IQ by one point. In all studies that identified loss of IQ, the loss appeared to permanent and was linked to starting marijuana use as an adolescent.

³ National Library of Medicine: *Marijuana use and risk of lung cancer: a 40-year cohort study*, July 12, 2013
<https://pubmed.ncbi.nlm.nih.gov/23846283/>

⁴ National Library of Medicine: *Cannabis smoking and lung cancer*, June 30, 2014
<https://pubmed.ncbi.nlm.nih.gov/25012035/>

⁵ Nature: *Drop in IQ linked to heavy teenage cannabis use*, August 28, 2012
<https://www.nature.com/articles/nature.2012.11278>

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- **Marijuana and Respiratory Impairment:** A French study⁶ found that smoking marijuana produces a rapid bronchodilator effect and that “chronic use provokes a reduction in specific conductance and increase in airways resistance.” The same study concluded that “stopping smoking cannabis will bring about important benefits for lung function.”
- **Marijuana Use and Chromosomal Damage/Congenital Abnormalities** A July 2021 *Nature* peer reviewed article⁷ notes: “Cannabis and cannabinoids are implicated in multiple genotoxic, epigenotoxic and chromosomal-toxic mechanisms and interact with several morphogenic pathways, likely underpinning previous reports of links between cannabis and congenital anomalies and heritable tumors.” This translates into the fact that not only is there scientific evidence that marijuana use can cause genetic abnormalities and birth defects, but that the underlying mechanisms are at least partially understood.

Measure 16 would ensure that the County retains the relevant funding on an annual basis to continue the eradication of illegal dispensaries.

Overall, these 16 measures will serve to protect our communities, provide reasonable parameters to keep legal cannabis facilities viable, and set forth a comprehensive educational program that can be used to educate our citizens with fact-based information.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

This action includes a comprehensive set of measures that directly support several strategic initiatives within the County of San Diego's 2022-2027 Strategic Plan. The measures expand the definition of Equity, a key initiative, to ensure that the unincorporated County residents can similarly benefit from the siting of cannabis facilities within their communities. It will also implement the strategic initiative of Community by increasing safety, implementing further community engagement, and providing an opportunity to maximize community partnerships.

Respectfully submitted,



JOEL ANDERSON
Supervisor, Second District

⁶ Review des Maladies Respiratoires: *Cannabis use and impairment of respiratory function*, March 13, 2013
<https://pubmed.ncbi.nlm.nih.gov/23664286/>

⁷ Nature: *Epidemiological overview of multidimensional chromosomal and genome toxicity of cannabis exposure in congenital anomalies and cancer development*, July 6, 2021 <https://www.nature.com/articles/s41598-021-93411-5>