



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

Chris Bazar
Agency Director

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Agenda Item 4.4 August 1, 2017

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

Honorable Board of Supervisors
Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

SUBJECT: Medical Cannabis Dispensary and Cultivation Ordinances

RECOMMENDATION:

That the Board of Supervisors:

1. Adopt the proposed ordinance amending Chapter 6.108 of the Alameda County General Code to regulate medical cannabis dispensaries, to permit and regulate the delivery of medical cannabis in the unincorporated area of Alameda County, and to regulate the sale, dispensing and delivery of edibles.
2. Adopt the proposed ordinance amending Sections 17.04.010, 17.06.040, 17.38.030, and 17.40.030 of Title 17 of the Alameda County General Code to conditionally permit medical cannabis dispensaries in specified districts within the unincorporated area of the County.
3. Adopt the proposed ordinance adding Chapter 6.106 to the Alameda County General Code to implement a pilot program authorizing and regulating the cultivation of medical cannabis in the unincorporated area of Alameda County.
4. Adopt the proposed ordinance amending Sections 17.04.010, 17.52.585, and 17.54.130 of Title 17 of the Alameda County General Code to implement a pilot program authorizing and regulating the cultivation of medical cannabis in the unincorporated area of Alameda County.

BACKGROUND:

The Medical Cannabis Regulation and Safety Act (MCRSA) was signed into law in October of 2015. The Act was composed of three bills. AB 266 established a dual licensing structure requiring a state license and a local license or permit; AB 243 established a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture; and SB 643 established criteria for licensing of medical cannabis businesses, regulated physicians, and recognized local authority to levy taxes and fees.

On November 8, 2016, the voters of the State of California approved Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act," which decriminalized the adult use of

cannabis for non-medical purposes and established a regulatory scheme at the state level. On June 27, 2017, Senate Bill 94, the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (MAUCRSA) repealed and replaced MCRSA. MAUCRSA consolidates the medical (MCRSA) and non-medical (Proposition 64) cannabis statutes.

In 2016, the Board Transportation and Planning Committee initiated amendments to the County’s existing dispensary ordinance and the addition of cultivation ordinances to address the local licensing provisions of MCRSA. The proposed medical cannabis dispensary and cultivation ordinances must now be consistent with the provisions in MAUCRSA that apply to medical cannabis.

An interdepartmental working group representing staff from the County Administrator’s Office, the Sheriff’s Office, the Office of the County Counsel, the Environmental Health Department, CDA’s Agriculture/Weights and Measures Department, the District Attorney’s Office, and the CDA Planning Department has been working on the development of the draft medical cannabis ordinances. Over the past several months, the draft ordinances have been discussed at many public meetings throughout the unincorporated county; and the Board Transportation and Planning Committee has continued to provide direction on the content of the ordinances. This input has helped shape the current proposed ordinances.

The existing dispensary ordinance in Chapter 6.108 of the County General Code allows a total of three dispensaries on specified parcels zoned for commercial or industrial use in the West County. Proposed changes to the dispensary requirements necessitate revisions to the existing dispensary ordinance as well as amendments to the Zoning Ordinance to allow medical cannabis dispensaries as a conditional use in certain commercial zoning districts and in the “A” (Agricultural) District. The cultivation ordinance would establish a medical cannabis cultivation pilot program. Implementation of the pilot program will require adding Chapter 6.106 to Title 6 of the County General Code to establish requirements for the program, as well as amendments to the Zoning Ordinance to allow the cultivation of medical cannabis as a conditional use in the “A” (Agricultural) District.

DISCUSSION/SUMMARY:

The Board of Supervisors considered the proposed medical cannabis ordinances at your April 25, 2017 Board Planning meeting. Your Board referred the ordinances back to the Board Transportation/Planning Committee for consideration of comments received recommending further changes to the ordinances. The Transportation/Planning Committee has since provided additional direction to staff on how to address the comments. The Transportation/Planning Committee also directed staff to present the revised ordinances at a series of public meetings to provide the public with the opportunity to comment on the changes.

The table provided in Attachment 1 contains a list of the comments received at the April 25th Board meeting and, subsequent to that meeting, direction provided by the Transportation/Planning Committee regarding each comment, and staff’s response. The draft ordinances, which have been revised to reflect the Committee’s direction, are also attached.

Dispensary Ordinances

The following provisions of the proposed dispensary ordinance (Attachment 2) remain unchanged from the April 25, 2017 version:

- Increase the maximum number of dispensaries allowed in the unincorporated area from three to five:
 - Three in West County: no more than two dispensaries would be allowed in either of the two areas shown on the revised Exhibit A map (attached).

- Two in East County, as shown on the new Exhibit B map (attached).
- Require selection of new dispensaries through a “Request for Proposals” (RFP) process.
- Require dispensaries to comply with all land use regulations, including requirements in Title 17 of the Alameda County General Code, the Alameda County General Plan (including Measure D amendments), and any applicable specific plans, including the requirement to obtain any conditional use permits.
- Prohibit dispensaries in residential and industrial zoning districts.
- Permit the delivery of medical cannabis to patients from permitted “brick-and-mortar” dispensaries located within the unincorporated area and in other jurisdictions.
- Allow the sale, distribution, and delivery of edibles if produced in a commercial facility (that does not produce food items) constructed in accordance with applicable building standards and health/safety standards.

A summary of the more substantive changes to the proposed dispensary ordinance made since the April 25, 2017 Board of Supervisors meeting is provided below:

- Section 6.108.030.D was revised to require a one-mile buffer between any dispensary in the unincorporated East County and a dispensary within a city; and a five-mile buffer between any two dispensaries in the unincorporated East County.
- Section 6.108.120.A.4 was revised to clarify that the sale of clones would be allowed at dispensaries and would not be considered a “nursery” or “cultivation” land use type.
- Section 6.108.120.A.4 was revised to remove the 100-pound limit on the amount of cannabis allowed on the premises of a dispensary.
- Section 6.108.120.A.5 was revised to remove the provision allowing ingestion of cannabis by dispensary management for testing purposes on the premises of a dispensary.

No substantive changes have been made to the proposed Zoning Ordinance amendments adding dispensaries to Title 17 of the County General Code (Attachment 3) since the April 25, 2017 Board of Supervisors meeting. These proposed amendments would allow dispensaries as a conditional use in certain commercial zoning districts and in the A (Agricultural) Zoning District.

Cultivation Ordinances

The following provisions of the proposed addition of Chapter 6.106 to the County General Code to implement a cultivation pilot program (Attachment 4) remain unchanged from the April 25, 2017 version:

- Up to two permitted dispensaries in good standing will be eligible for a ministerial cultivation permit.
- Require selection of cultivators to receive permits for the remainder of the cultivation sites allowed by the ordinance through a RFP process.
- Limit cultivation permits during this pilot program to two years in duration.

A summary of the more substantive changes to the proposed cultivation ordinance made since the April 25, 2017 Board of Supervisors meeting is provided below:

- Section 6.106.030.B of the ordinance and draft Cultivation Performance Standard Number 2 (Attachment 6) were revised to increase the maximum number of cannabis cultivation permits allowed from four to six, allowing a maximum of two permits for indoor cultivation operations and four for mixed-light cultivation operations, such as greenhouses or hoop houses.
- Section 6.106.020 of the ordinance and draft Cultivation Performance Standard Number 1 were

revised to clarify that nurseries may be permitted where cultivation is permitted.

- Draft Cultivation Performance Standard Number 11 was revised to prohibit ingestion of cannabis on the premises of a cultivation site, including by management for testing purposes.

No substantive changes have been made to the proposed Zoning Ordinance amendments adding medical cannabis cultivation to Title 17 of the County General Code (Attachment 5) since the April 25, 2017 Board of Supervisors meeting. The following provisions of the proposed amendments remain unchanged from the April 25, 2017 version:

- Allow medical cannabis cultivation as a conditional use in the “A” (Agricultural) Zoning District.
- Allow only indoor/mixed light cultivation.
- Require each cultivation site to obtain a Conditional Use Permit subject to compliance with adopted performance standards before beginning operation.
- Require a 1,000-foot buffer between cultivation sites and sensitive receptors, which is the same buffer required between dispensaries and sensitive receptors.

Sheriff's Office Concerns

The Sheriff's Office, which is participating in the County's Medical Cannabis Interdepartmental Work Group, opposes the following provisions of the proposed ordinance amendments:

- Any increase in the number of dispensaries in the County;
- Any cultivation in the County;
- Any deliveries in the County;
- Increase in the amount of cannabis allowed at the dispensaries;
- Sale of edibles at the dispensaries;
- Ingestion of cannabis on the premises of a dispensary or cultivation site, including by management for testing, purchasing, pricing, or quality control.

Public Meetings to Review Ordinance Revisions

Staff presented the revised ordinances at the following public meeting:

June 21, 2017	Sunol Citizens Advisory Committee
June 26, 2017	Castro Valley Municipal Advisory Council
June 27, 2017	Agricultural Advisory Committee (Special Meeting)
June 28, 2017	Unincorporated Services Committee
July 10, 2017	Planning Commission (Special Meeting)

At its June 26th meeting, the Castro Valley MAC reiterated their earlier recommendations, which were not included in the final version of the proposed ordinances:

- No additional dispensaries should be allowed in West County beyond the two existing dispensaries unless the ordinance specifies that a third dispensary in West County would be located on the Fairmont Campus.
- The amount of product that can be stored at a dispensary should be limited to 100 pounds.
- The sale of edibles should be prohibited until state standards on potency are in place.
- Dispensaries and cultivation sites should not be located on the same property.
- Individuals with Prop 47 reclassified drug violations within the last 10 years should be excluded from employment/licensure at a cannabis facility.

- Individuals who have been convicted of a felony in the last 10 years should be excluded from employment/licensure at a cannabis facility.
- Any funds raised through a future tax on cannabis facilities should be given to the Sheriff's Office.
- Any performance standards developed by the Planning Director under Section 17.52.585 of the proposed ordinance amending the County Zoning Ordinance to implement the pilot cultivation program should be reviewed by the public.
- No more than four cultivation sites should be allowed in the unincorporated area.

At its June 27th meeting, the Agricultural Advisory Committee also recommended that the amount of product that can be stored at a dispensary be limited to 100 pounds. No comments or recommendations regarding the content of the proposed ordinance revisions were received at the Sunol Citizens Advisory Committee meeting or the Unincorporated Services Committee meeting.

California Environmental Quality Act

A Notice of Intent to Adopt a Mitigated Negative Declaration (NOIA) and an Initial Study/draft Mitigated Negative Declaration (IS/MND) for the proposed Medical Cannabis Ordinances were released on March 7, 2017 for a 20-day public review period which ended on March 27, 2017. Subsequently, the IS/MND was revised to include analysis of the proposed ordinance revisions. The conclusion of this analysis is that the ordinance revisions do not constitute a substantial revision, pursuant to Section 15073.5 of the California Environmental Quality Act (CEQA) Guidelines; therefore, recirculation of the IS/MND for additional public review is not required. The IS/MND was adopted by your Board of Supervisors on July 11, 2017. The NOIA and IS/MND can be accessed on the County website at: <http://www.acgov.org/cda/planning/landuseprojects/medical-cannabis.htm>.

Planning Commission Recommendation

At its April 3, 2017 meeting, the Planning Commission voted five to one to recommend that the Board of Supervisors adopt the prior version of the medical cannabis dispensary and cultivation ordinances, with the addition of "places of worship" to the list of uses from which dispensaries are required to locate a distance of at least 1,000 feet (per Section 6.108.030.E.2 of the dispensary ordinance); and with "places of worship" also added to the list of uses from which cultivation sites are required to locate a distance of at least 1,000 feet (per Section 17.52.585.C.9.c of the Zoning Ordinance amendment pertaining to cultivation sites).

At its July 10, 2017 meeting, the Planning Commission voted five to zero to recommend that the Board of Supervisors adopt the proposed ordinances as revised.

Fee Study

Staff is working with a consultant to prepare a fee study consistent with the provisions of Proposition 26 to determine the appropriate level of fees for application review and approval for medical cannabis dispensaries and cultivation sites, as well as medical cannabis delivery; and for costs associated with on-going maintenance and monitoring of these permits to fully recover the cost of County staff time to perform these functions. Staff anticipates that the fee study will be completed by September of 2017. After the study is completed, the Board will be asked to approve a fee schedule.

CONCLUSION:

Staff recommends that your Board adopt the proposed medical cannabis dispensary and cultivation ordinances as revised. A list of past meetings and links to presentations and written materials from those meetings is available on the County website at:

<http://www.acgov.org/cda/planning/landuseprojects/medical-cannabis.htm>.

Very truly yours,



Chris Bazar, Director
Community Development Agency

Attachments

- Attachment 1 - Responses to Comments Received on Draft Chapter 6.106 - Medical Cannabis Cultivation Ordinance and Draft Chapter 6.108 – Medical Cannabis Dispensary Ordinance at and subsequent to the April 25th Board of Supervisors Meeting
- Attachment 2 – An Ordinance Amending Chapter 6.108 of the Alameda County General Code to Regulate Medical Marijuana Dispensaries, to Permit and Regulate the Delivery of Medical Cannabis in the Unincorporated Area of Alameda County, and to Regulate the Sale, Dispensing and Delivery of Edibles
 - Exhibit A (map of West County)
 - Exhibit B (map of East County)
- Attachment 3 – An Ordinance Amending Title 17 of the Alameda County General Code to Conditionally Permit Medical Cannabis Dispensaries in Specified Districts within the Unincorporated Area of Alameda County
- Attachment 4 – An Ordinance Adding Chapter 6.106 to the Alameda County General Code to Implement a Pilot Program Authorizing and Regulating the Cultivation of Medical Cannabis in the Unincorporated Area of Alameda County
- Attachment 5 – An Ordinance Amending Title 17 of the Alameda County General Code to Implement a Pilot Program Authorizing and Regulating the Cultivation of Medical Cannabis in the Unincorporated Area of Alameda County
- Attachment 6 – Performance Standards and Standard Conditions for Pilot Program Cultivation Sites.
- Attachment 7 – Planning Commission Resolution No. 17-11 at Meeting Held July 10, 2017