



MEMORANDUM

September 30, 2016

TO: Board of Supervisors' Transportation/Planning Committee

FROM: Medical Cannabis Interdepartmental Work Group

MEETING DATE: October 3, 2016

SUBJECT: Draft Medical Cannabis Dispensary and Cultivation Ordinances

BACKGROUND

Your Committee last heard an update on the proposed medical cannabis dispensary and cultivation ordinances at your September 7th, 2016 meeting. At that time, staff presented the draft medical cannabis dispensary and cultivation ordinances which incorporate the direction provided by your committee at previous meetings. Staff also provided a tentative schedule of public meetings where the draft ordinances would be presented. This memo provides a summary of the input received from the community at each public meeting that staff has attended to date.

DISCUSSION/SUMMARY

Summaries of General Comments Received at Public Meetings

Unincorporated Services Committee

At the June 29th Unincorporated Services Committee meeting, many members of the public spoke in favor of increasing the number of medical cannabis dispensaries in the unincorporated area, noting the benefits it provides in the treatment of many illnesses and stressing the need to increase patient access. Others expressed concern regarding potential negative impacts of increasing the number of dispensaries in unincorporated communities and encouraged the Supervisors to slow down the process and provide them with more opportunity to review the ordinance and provide input.

At the September 28th Unincorporated Services Committee meeting, many community members spoke against the draft ordinances, expressing concerns about potential negative impacts on the unincorporated communities. Speakers objected to the proposed increase in the number of dispensaries, to allowing an unlimited number of delivery permits, and to the proposed reduction in the buffer required between medical cannabis facilities and sensitive receptors. Speakers also stated their concerns regarding safety around dispensaries, the appearance of the existing dispensaries, and the lack of regulation of the potency of edibles. A few speakers stated that they feel that the potential impacts on communities would

outweigh any benefits that would result from tax revenue. One speaker noted that the County should wait for other jurisdictions to determine best practices for medical cannabis facilities before adopting its own ordinance. The San Lorenzo residents indicated by a show of hands that a majority of those present do not want any additional medical cannabis facilities in their community.

A few speakers spoke in favor of the draft ordinances, noting the benefits of medical cannabis for seriously ill patients. One speakers in support of the ordinances cited studies that indicate that the presence of dispensaries does not result in negative impacts, such as an increase in crime, on the surrounding community. Another speaker stated that delivery of medical cannabis is important for the sickest patients who cannot drive to a dispensary. Other speakers noted that they have not witnessed any negative impacts caused by the existing dispensaries.

The committee was divided on the issues of whether there is a need to increase the number of dispensaries in the Unincorporated Area and whether the County should adopt a tax on dispensaries. Supervisor Chan also questioned provisions in the ordinance that would permit cultivation in industrial zoning districts since the only area with industrial zoning is located in San Lorenzo.

Agricultural Advisory Committee

On July 26th, the Agricultural Advisory Committee heard a presentation on proposed revisions to the existing county dispensary ordinance which would include allowing dispensaries in unincorporated east county; and to adopt an ordinance to implement a cultivation pilot program. Committee members were concerned that the presence of dispensaries and cultivation sites in rural areas would result in an increase in crime and that it would be difficult for the Sheriff's Office to respond to calls quickly in remote areas. Concerns were also raised about potential illegal diversion of water from creeks and potential difficulties with tracking cannabis crops to prevent diversion for illegal sales.

Livermore Valley Winegrowers Association Government Affairs Committee

On August 22nd, staff presented an overview of the proposed ordinances to the Livermore Valley Winegrowers Association Government Affairs Committee and requested input regarding whether cannabis dispensaries and/or cultivation sites would be appropriate in the South Livermore Valley Plan Area. Committee members stated that they would need to review the specific text of the proposed ordinances and would poll the association's membership before commenting.

Castro Valley Municipal Advisory Council

On June 20th, the Castro Valley Municipal Advisory Council (MAC) heard a presentation by the Office of the County Counsel on the MCRSA and the process underway to revise the existing county dispensary ordinance to make it consistent with the MCRSA. Several councilmembers expressed concern about a potential increase in the number of dispensaries in the unincorporated area, the potential siting of a dispensary in Castro Valley, and the apparent rapid timeline for the ordinance revision process. The councilmembers expressed an interest in reviewing the draft ordinance and requested that residents of the unincorporated area be given greater opportunity to provide input.

On September 12th, staff presented the draft ordinances to the Castro Valley MAC. Members of the public who spoke were fairly evenly divided between supporters of the ordinance revisions and opponents. While not making a formal recommendation, MAC members stressed the need to slow down the process and wait to take action until after the outcome of the vote on Proposition 64, which would legalize the non-medical adult use of cannabis, is known; and also to allow time to learn from the experiences of other jurisdictions. They questioned whether there is a need for more dispensaries in unincorporated communities. One member suggested that instead of increasing the number of dispensaries allowed, the County cap the number of dispensaries at two, reducing the number allowed under the existing ordinance by one. Council members expressed concern that the draft ordinances favor the cannabis industry. They questioned the provision allowing for an unlimited number of delivery permits; and noted that the pilot cultivation program's requirement that only dispensaries in good standing be allowed to obtain a cultivation permit unfairly favors the existing dispensaries.

The Council indicated that the draft ordinances are too complicated and that the dispensary, delivery, and cultivation sections should be separated and considered separately. The Council requested a workshop to review the contents of the ordinance in detail. Since this meeting, the Council has agreed to consider a recommendation for the draft ordinances at the MAC's October 10th meeting.

San Lorenzo Village Homes Association

On September 15th, staff presented the draft ordinances to the San Lorenzo Village Homes Association. The Board members and members of the public expressed concern about the potential for negative impacts on the community and questioned whether there is enough demand for more dispensaries in the unincorporated area. There were objections to allowing an unlimited number of delivery permits, removing the limit on the amount of cannabis that can be kept at a dispensary, reducing the buffer from sensitive receptors, moving licensing responsibilities from the Sheriff's Office to CDA, and the speed at which the ordinance approval process is moving. There were also concerns that more dispensaries would lead to an increase in crime which would tax the resources of the Sheriff's Office.

The Homes Association Board adopted a motion to emphatically oppose the ordinances due to the potential for negative impacts on law enforcement resources, the potential for increased crime, and a lack of economic benefit to the community.

Planning Commission

At the September 19th Planning Commission meeting staff presented an overview of the proposed ordinances to the Commission. Few members of the public spoke. One unincorporated area resident spoke against the ordinances, indicating the potential for negative impacts on the communities. Four industry advocates spoke in favor of the ordinances, noting the benefits of medical cannabis and refuting the claims that dispensaries lead to an increase in crime. One of the commissioners stated that the County should consider how to avoid the clustering of dispensaries near city boundaries. For example, if Hayward were to allow a dispensary within the city but near their boundary with the unincorporated area, we should avoid locating a dispensary near the one within the city. The commissioners agreed to consider making a recommendation to the Board of Supervisors regarding the draft ordinances at the Commission's October 17th meeting.

Sunol Citizens Advisory Council Meeting

On September 21st, the Sunol Citizens Advisory Council heard a presentation on the proposed ordinance revisions. Members of the Council and the public asked whether the current supply of medical cannabis in the County is inadequate. There was discussion of whether the presence of medical cannabis facilities would tend to result in an increase in crime; and potential impacts on the quality of life in the surrounding area. There were also comments regarding the benefits of allowing dispensary operators to operate cultivation sites. These benefits include providing a reliable supply of desirable strains and greater control over the supply chain.

Comments on Specific Ordinance Sections

During the public input process, the following comments on specific ordinance sections have been received:

- 6.108.010 – The definition of delivery should not include “or testing laboratory” – that would be “transport” between licensees, not delivery.
- 6.108.030(D) – The number of permitted dispensaries should not be increased since the need for additional facilities has not been demonstrated.
- 6.108.030(E) – The 1,000 foot buffer required in the existing ordinance should not be reduced.
- 6.108.030(E)(2) – Child or day care facility should be limited to licensed facilities.
- 6.108.030(F) – The ability to reduce the buffer between dispensaries and sensitive receptors by 15% should still apply.
- 6.108.120A4- Ordinance language should be clarified to confirm that a dispensary can keep clones alive and sell them without needing a nursery or cultivation license.
- 6.108.120A5 – Some smoking/ingesting on site should be allowed, in order to allow business-driven sampling of products, not general consumption by patients or employees.
- 6.108.120A(7) – The sale of edibles should not be permitted in dispensaries.
- 6.108.120A12 – Proposition 47 language should be removed.
- 6.108.120A20 – Language regarding submitting new products for testing by licensed testing lab before they arrive at dispensary should be changed.
- 6.108.125A(1) – There may be tax implications involved with this section that the County should look into.
- 6.108.125A(3) – Maintaining a physical copy of an order for delivery is not practical, an electronic order should be sufficient.
- 6.108.125A(4) – The transition time in and out of the shop is the most risky for a delivery person, so it would actually be safer to make less trips and stock a number of common items in the delivery vehicle.
- 6.108.035 – The ordinance should include a cap on the number of delivery permits that would be allowed.
- 17.52.585 – Cultivation sites should not be allowed in industrial zoning districts.
- Cultivation performance standards
 - The term “enclosed” should be changed to “indoor” and “mixed light.”
 - Track and trace should be done by batch and lot instead of tracking individual plants.

- The prohibition of ingesting onsite is not practical since sampling is necessary for operation of the business, especially the business of cultivation

Next Steps

With the concurrence of your Committee, staff will make any revisions to the draft ordinances necessary to incorporate additional direction you provide; and will continue presenting the draft ordinances at a series of public meetings throughout the County to obtain input from all potentially affected communities. The table below contains the schedule of the public meetings that have been scheduled thus far.

In addition to the meetings on the schedule below, Supervisor Haggerty has directed staff to schedule a community meeting in the east county. A date for this meeting has not yet been determined and additional public meetings may also be added to the schedule. Depending on when these meetings occur, it is likely that the project timeline will need to be modified to accommodate them.

Medical Cannabis Ordinance Revision Public Meeting Schedule	
October 10	Castro Valley Municipal Advisory Council Land Use Meeting
October 25	Agricultural Advisory Committee Meeting
October 26	Unincorporated Services Committee Meeting (if needed)
November 7	Transportation/Planning Committee Meeting (if needed)
TBD	Second Planning Commission Meeting
TBD	Board of Supervisors – first reading
TBD	Board of Supervisors – second reading
30 days after second reading	New ordinances become effective

The meeting schedule, including times and locations, is also available on the County website at: <http://www.acgov.org/cda/planning/landuseprojects/medical-cannabis.htm>. In addition, this webpage provides a list of past meetings and links to presentations and written materials from those meetings.

A link to the draft ordinances is also provided on the Unincorporated Communities Website at: <http://www.acgov.org/uninc/>.