



MEMORANDUM

September 23, 2016

TO: Board of Supervisors' Unincorporated Services Committee

FROM: Medical Cannabis Interdepartmental Work Group

SUBJECT: Draft Medical Cannabis Dispensary and Cultivation Ordinances

BACKGROUND

At your June 29th, 2016 meeting, the Office of the County Counsel presented an overview of the Medical Cannabis Regulation and Safety Act (MCRSA) and the process underway to revise the existing county dispensary ordinance to align with the local licensing provisions of MCRSA. Since your June meeting, a work group composed of staff from the County Administrator's Office, the Sheriff's Office, the Office of the County Counsel, the Environmental Health Department, the Agriculture/Weights and Measures Department, and the Planning Department has developed draft medical cannabis dispensary and cultivation ordinances consistent with the MCRSA and with direction provided by the Board Transportation and Planning Committee. The draft ordinances are attached.

DISCUSSION/SUMMARY

Dispensary Ordinance

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. Proposed changes to the dispensary requirements necessitate revisions to the existing dispensary ordinance as well as amendments to the Zoning Ordinance in Title 17 of the General Code to allow medical cannabis dispensaries as a conditional use, including as a conditional use in combination with cultivation in the "A" (Agricultural) District.

The following changes to the provisions of the existing dispensary ordinance are included in the draft ordinance:

- Increase the maximum number of dispensaries allowed in the unincorporated area from three to six, with no more than four in west county and no more than two in east county.
- Require dispensaries to comply with all zoning requirements in Title 17 of the Alameda County General Code and Alameda County Measure D (Save Agriculture and Open Space Lands), including the requirement to obtain any conditional use permits.
- Prohibit dispensaries in residential zoning districts.

- Allow up to two dispensaries in the “A” (Agricultural) Zoning District as a conditional agriculture-related use accessory to a permitted cannabis cultivation site.
- Reduce the buffer required between dispensaries and sensitive receptors from 1,000 feet to 600 feet to align with the MCRSA.
- Require selection of new dispensaries through a “Request for Proposals” (RFP) process.
- Provide appropriate regulation for each license – deferring to anticipated state regulations and augmenting the state regulations as necessary.
- Allow an unlimited number of permits for the delivery of medical cannabis from permitted “brick-and-mortar” dispensaries located within the unincorporated area and in other jurisdictions to patients.
- Remove the twenty-pound limit on the amount of cannabis that can be stored at a dispensary.
- 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 and safety standards as opposed to private home kitchens.

Potential Dispensary Locations

West County

The existing dispensary ordinance includes a map that overlays the boundaries of three areas onto the unincorporated communities of Ashland, Cherryland, Castro Valley, and San Lorenzo (see Map Option 1, Exhibit A - Medical Marijuana Dispensary Areas from County General Code Chapter 6.108 - Medical Marijuana Dispensaries attached). Area 1 includes San Lorenzo and a strip of Ashland that lies south of Interstate 238 and north of San Lorenzo Creek; Area 2 includes Cherryland and the remainder of Ashland; and Area 3 includes the Castro Valley urban area. The ordinance allows one dispensary in each of the three areas, for a maximum of three dispensaries. Currently, one dispensary is located in Area 1, on East Lewelling Boulevard in Ashland; and the other is located in Area 2, on Foothill Boulevard in Cherryland.

Because the draft ordinance would increase the maximum number of dispensaries allowed in the unincorporated west county to four, the existing method of allocating dispensaries among the communities needs to be revised (see Section 6.108.030.D. of the draft dispensary ordinance). Staff proposes the following two options for the Committee’s consideration:

Option 1: Maintain the same three areas depicted on the map in the existing ordinance (see Map Option 1, attached); and allow a maximum of two dispensaries in any one of the three areas and one dispensary in each of the two remaining areas for a total of no more than four dispensaries.

Option 2: Allow one dispensary in each of the four unincorporated communities of Ashland, Cherryland, Castro Valley, and San Lorenzo as those areas are defined in the Eden Area General Plan and the Castro Valley General Plan (see Map Option 2, Urban Unincorporated County Zoning Designations and Sensitive Receptors 600 ft. Buffer (with boundaries of Unincorporated Communities of Ashland, Cherryland, San Lorenzo and Castro Valley), attached) for a total of no more than four dispensaries. As stated above, the two existing dispensaries are located in Ashland and Cherryland; therefore, under this option, the two additional dispensaries that would be allowed in this area under the revised ordinance would be limited to locations in San Lorenzo and Castro Valley.

At the September 12th Castro Valley Municipal Advisory Council (MAC) meeting, a member of the Council suggested a third option of capping the number of dispensaries allowed to the existing two, reducing the number of dispensaries allowed under the existing ordinance by one. At the September 15th San Lorenzo Village Homes Association meeting one of the speakers suggested distributing dispensaries on a per capita basis rather than by community.

East County

The proposed dispensary ordinance revisions would allow two dispensaries in the East County (see Map of Rural Unincorporated County Zoning Designations and Sensitive Receptors 600' Buffer, attached), where no dispensaries are permitted under the existing ordinance. Because almost all of the unincorporated area in the East County is zoned "A" (Agriculture) and subject to Measure D (Save Agriculture and Open Space Lands) which was adopted by County voters in 2000, the land uses allowed in this area are limited primarily to agriculture-related uses. Proposed revisions to Section 17.06.040 of the Zoning Ordinance would allow medical cannabis dispensaries as a conditional use in the "A" (Agriculture) Zoning District only where accessory to a cannabis cultivation operation.

The 600-foot buffer required between dispensaries and sensitive receptors eliminates the potential to locate a dispensary in Downtown Sunol due to the proximity of the school and nearby parkland. (See attached Map of Rural Unincorporated County Zoning Designations and Sensitive Receptors 600' Buffer.) Under the provisions of the draft ordinances, it may be possible for a dispensary to be located in the outlying areas of Sunol with "A" (Agriculture) District zoning.

At the September 7, 2016 Board Transportation and Planning Committee meeting, Supervisor Haggerty directed staff to tentatively consider an option that would allow one of the two east county dispensaries to locate in the South Livermore Valley Plan Area (SLVPA) and the second east county dispensary in another area of the east county, outside of the SLVPA.

Cultivation Ordinance

The cultivation ordinance would establish a medical cannabis cultivation pilot program that would allow existing dispensaries that have been operating in good standing for at least one year to establish medical cannabis cultivation sites. Implementation of the cultivation pilot program will require revisions to Title 6 of the County General Code to establish requirements for the program, as well as amendments to the Zoning Ordinance in Title 17 to allow the cultivation of medical cannabis as a conditional use in the "A" (Agricultural) District and "M" (Industrial) districts.

The following code provisions are proposed to implement the cultivation pilot program:

- Limit the duration of the pilot to two years.
- Limit eligibility to obtain a ministerial cultivation permit to currently permitted dispensary operators in good standing.
- Allow medical cannabis cultivation as a conditional use in the "A" (Agricultural) and "M" (Industrial) Zoning Districts.
- Allow only indoor/greenhouse cultivation and limit the size of the cultivation canopy.

- Require each cultivation site to obtain a Conditional Use Permit subject to compliance with adopted performance standards before beginning operation.
- Require a 600-foot buffer between cultivation sites and sensitive receptors to align with the MCRSA.

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 amount of dispensaries in the Unincorporated County
- Any cultivation in the Unincorporated County
- Any deliveries in the Unincorporated County
- Unlimited amount of cannabis at the dispensaries, and
- Any edibles sold at the dispensaries.

California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires that an environmental review be conducted for the proposed ordinance amendments and establishes a process for completing the review. The level of review necessary will be determined by the outcome of an Initial Study, which may conclude that a negative declaration, mitigated negative declaration, or environmental impact report is needed. The length of time required to complete the review will depend on the type of document determined to be appropriate. Staff is in the process of selecting a consultant to perform the CEQA review.

Fee Assessment

In order to set fees at an appropriate level to ensure that implementation of the medical cannabis ordinance will be revenue neutral and in compliance with the requirements of Proposition 26, it will be necessary for the County to conduct a fee assessment to determine appropriate fee levels to cover staffing and other costs associated with application processing, and ongoing administration and enforcement. Staff is in the process of hiring a consultant to conduct the assessment.

Continuing Public Outreach

At your June 29th 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. Since your June meeting, staff has presented the draft ordinances at several public meetings.

Board Transportation & Planning Committee

At the July 18th Transportation & Planning Committee meeting staff reviewed the direction the Committee had provided thus far regarding provisions of the proposed ordinances, presented a tentative

schedule for the process required to adopt the ordinances, and outlined additional resources that will be required to complete the process. Several members of the audience spoke both in favor of the draft ordinances and against them.

At the September 7th Transportation and Planning Committee meeting, staff presented the text of the draft dispensary and cultivation ordinances, as well as options for the siting of new dispensaries within unincorporated communities. Several members of the public commented on specific provisions of the ordinances.

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 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.

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.

Next Steps

With the concurrence of your Committee, staff will make revisions to the draft ordinances necessary to incorporate any 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 tentative schedule to complete the ordinance approval process, including the remaining public meetings.

In addition to the meetings on the schedule below, Supervisor Haggerty has directed staff to schedule a community meeting in the east county; and the Castro Valley MAC has requested a workshop to discuss the ordinances in detail. Dates for these meetings have not yet been determined. Depending on when these meetings occur, the project timeline may need to be modified to accommodate them.

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/>.

Medical Cannabis Ordinance Revision Public Meeting Schedule	
October 3	Transportation/Planning Committee Meeting
October 17	Second Planning Commission Meeting
October 25	Agricultural Advisory Committee Meeting
October 26	Unincorporated Services Committee Meeting (if needed)
November 7	Transportation/Planning Committee Meeting (if needed)
November 8	Board of Supervisors
November 22	Board of Supervisors
December 23	New ordinances become effective

Attachments

1. Draft Ordinance Amending Chapter 6.108 of the Alameda County General Code to Conform the Medical Marijuana Dispensaries Ordinance to the California Medical Cannabis Regulatory and Safety Act, and 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. Draft 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
3. Draft Ordinance Amending Chapter 6.106 and Title 17 of the Alameda County General Code to Implement a Pilot Program Regulating the Cultivation of Medical Cannabis in the Unincorporated Area of Alameda County
4. Draft Performance Standards and Standard Conditions for Cultivation Sites

Map Option 1: Exhibit A - Medical Marijuana Dispensary Areas from County General Code Chapter 6.108 - Medical Marijuana Dispensaries

Map Option 2: Urban Unincorporated County Zoning Designations and Sensitive Receptors 600 ft. Buffer (with boundaries of Unincorporated Communities of Ashland, Cherryland, San Lorenzo and Castro Valley)

Map - Rural Unincorporated County Zoning Designations and Sensitive Receptors 600' Buffer