

# Recent Developments in Medical Cannabis Law and Proposed Ordinances for County of Alameda

Planning Commission  
September 19, 2016

# State Statutes



# Key State Medical Cannabis Laws

- Compassionate Use Act (1996)
  - criminal immunity for *patients and primary caregivers*
  - possession and cultivation of cannabis
  - if a doctor has recommended the cannabis for medical use
- Medical Marijuana Program Act (2003)
  - voluntary ID card program
  - criminal immunity to *qualified patients and primary caregivers* for certain activities, including cultivation as *a collective or cooperative*
- Medical Cannabis Regulation and Safety Act (2015-16)
  - licensing and control of all medical cannabis *commercial businesses* in the state
  - criminal immunity for *licensees*

# Medical Cannabis Regulation and Safety Act

The legislation protects **local control** in the following ways:

- **Dual licensing**: A requirement that all cannabis businesses must have **both** a state license, and a local license or permit, to operate legally in California. Local jurisdiction may also ban medical marijuana businesses.
- **Effect of Local Revocation of a Permit or License**: Revocation of a local license or permit terminates the ability of a cannabis business to operate in that jurisdiction under its state license.
- **Enforcement**: Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- **State law penalties for unauthorized activity**: Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law continue to apply.
- Expressly protects local licensing practices, zoning ordinances, and local actions taken under the police power.

# State Licensing

- 17 State License Types
  - Cultivation – 10 categories, by size and light or nursery
  - Testing laboratory
  - Manufacturing
  - Dispensary – general retail or producing
  - Transportation – between license types
  - Distribution – purchasing from producer for sale to dispensary
- Limitations on License Combinations
  - 2 of 3: Small Cultivator, Manufacturer, Producing Dispensary
  - Distributor + Transporter
  - Producing Dispensary + Manufacturer + Cultivator (max. 4 acres)
  - All Cultivators and Manufacturers may hold Transporter license

# Timeline for Implementation

- None of the bills specify a timeline for implementation
- This is partly due to various state departments being at different stages in terms of their readiness to proceed
- The rough timeline that has been given for state licensing to begin is January 2018
- BMCR and CDPH are in process of soliciting pre-regulatory comments, holding meetings throughout state
- CDFA issued Notice of Preparation of Program EIR, soliciting comments on scope of EIR
- State moving forward with medical cannabis regulations based on existing law
  - Voter Initiative Prop. 64 (Control, Regulate and Tax Adult Use of Marijuana Act) is moving along a separate trajectory

# Local Ordinances



# General Ordinance Code Revisions

- Guidance from Board Transportation & Planning Committee
  - Dispensaries – increase number and expand locations, allow edibles
  - Delivery – to be permitted from dispensaries to patients
  - Cultivation – to be permitted on a limited, pilot basis



# Overall Administrative Approach

- Migration away from ACSO permit administration to CDA, ACSO remains involved as does EH, Ag Cmsr, etc.
- Two step process to obtain necessary local permits, in addition to state required permits
  - First step is RFP to solicit applications for new dispensaries, CDA director is decision-making body based on criteria to be developed
  - Second step is CUP, allows for site specific review, noticing, BZA action and appeal rights
- Fees to cover complete administration, could include new processes and new staff with expertise

# Overview of Dispensary & Delivery Ordinance Amendments – Title 6

Amendments to Chapter 6.108 (Attachment 1)

- Pages 3-6 include many updated definitions
- Page 7 – Delivery permit requirements & dispensary permit terms
- Page 8-13 include dispensary & delivery permit application or renewal contents and process
- Page 14-18 include standard conditions for dispensaries and delivery operations
- Pages 19-21 include administrative procedures
- Pages 22-23 include direction on edibles

# Dispensaries – Ch. 6.108

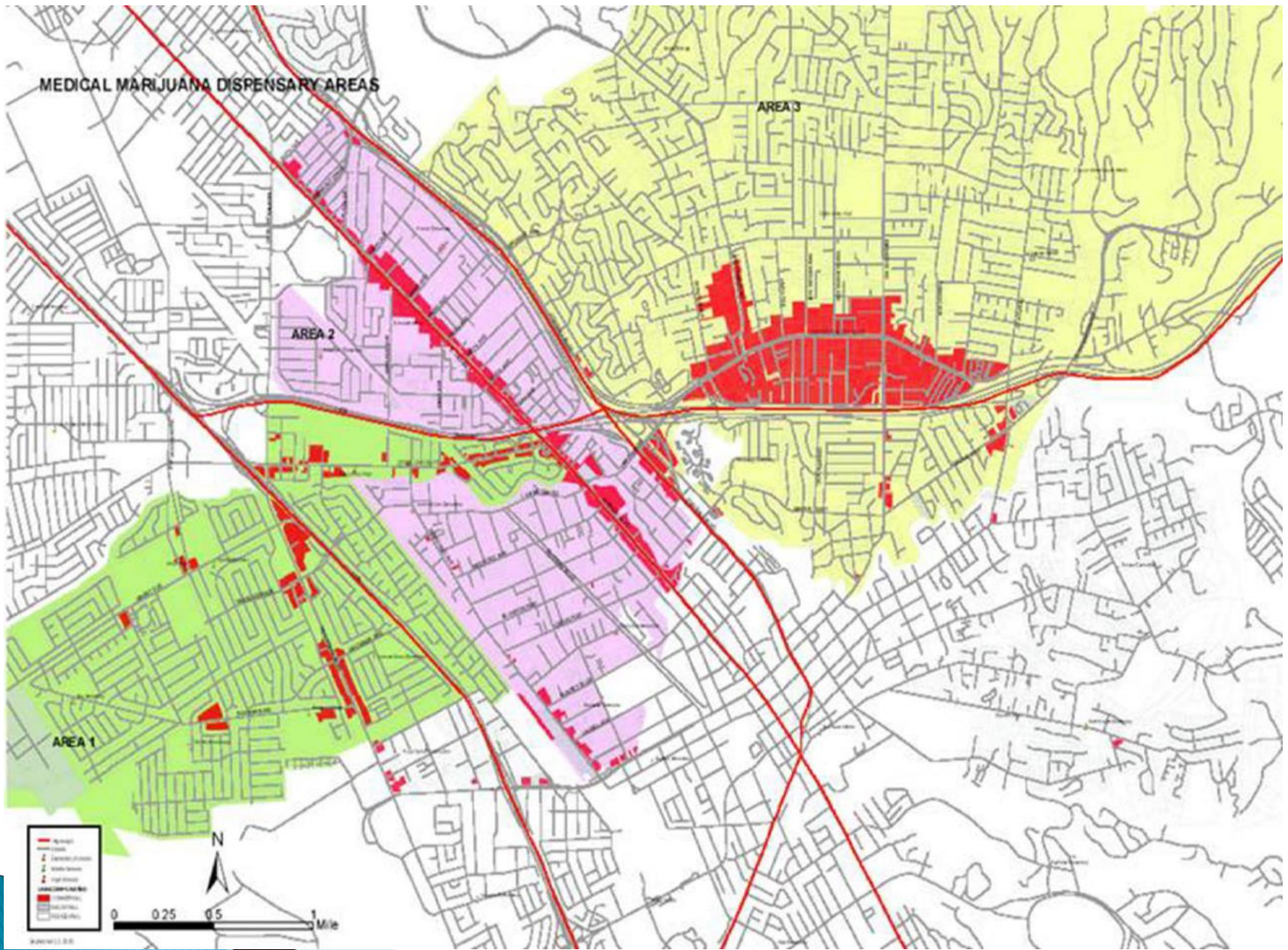
- Increase the number of dispensaries allowed in the unincorporated area from three to six, four in the urban west county and two in the rural east county
- Prohibit dispensaries in residential zones; continue to allow in commercial, industrial, and agricultural zones as accessory uses to cultivation sites
- Allow dispensaries in the “A” Zoning District as an agriculture-related use
- Reduce the buffer required between dispensaries and sensitive receptors from 1,000 feet to 600 feet
- Require selection of new dispensaries through a “Request for Proposals” (RFP) process and require each selected facility to obtain a Conditional Use Permit before beginning operation
- Remove the 20-pound limit on the amount of cannabis that can be stored at a dispensary
- Provide appropriate regulation for each license – deferring to anticipated state regulations and enhancing state regulations as necessary

# Dispensary Regulations

- Prohibit the presence of persons under age 18 on the premises
- Prohibit sales to persons under the age of 18
- Clarify visibility standards
- Expand nuisance regulations (noise, odors, etc.)
- Require pre-approval for the transfer of a permit to a new location
- Require compliance with weights & measures regulations
- Allow edible medical cannabis products to be dispensed
- Require edibles to meet labeling, safe production standards

# Options for Dispensary Distribution

- Current ordinance established three areas with one permit available for each area
- Amended ordinance establishes a total of six permits
  - Two in east county
  - Total of four in west county
- Working Group has come up with two options:
  - Option 1 maintains three areas; allows a max of two dispensaries in one of the areas; others have one each
  - Option 2 allows a max of one dispensary in each of the four unincorporated communities

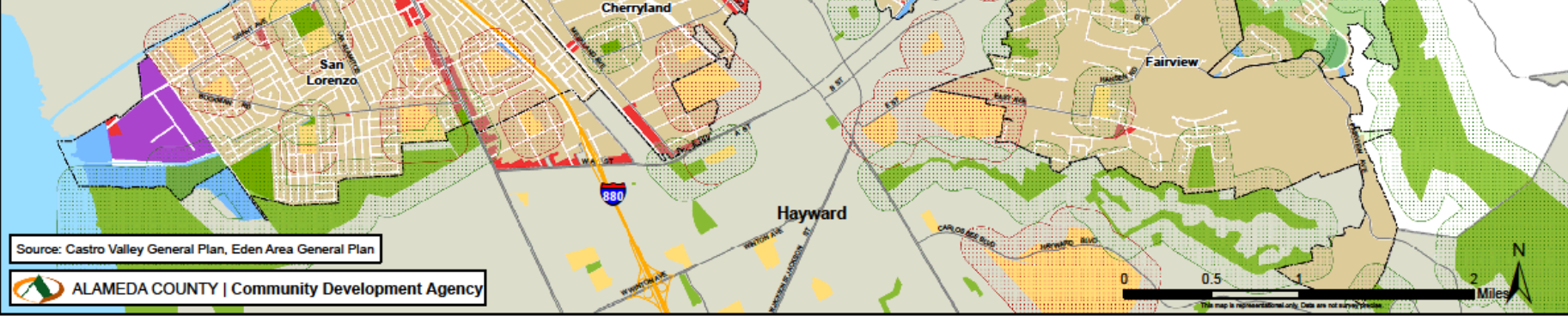


# Urban Unincorporated County Zoning Designations and Sensitive Receptors 600 ft. Buffer

**Legend**

- Existing Medical Marijuana Locations
- Freeways
- Schools 600' Buffer
- Parks 600' Buffer
- Schools
- Parks
- Commercial Parcels Not Within 600' Buffer
- Commercial
- Residential
- Light Industrial and Research & Development/Office
- Public Facilities
- Open Space-Natural
- Open Space-Parks
- Agriculture
- Planning Areas
- Cities

**Map Extent**

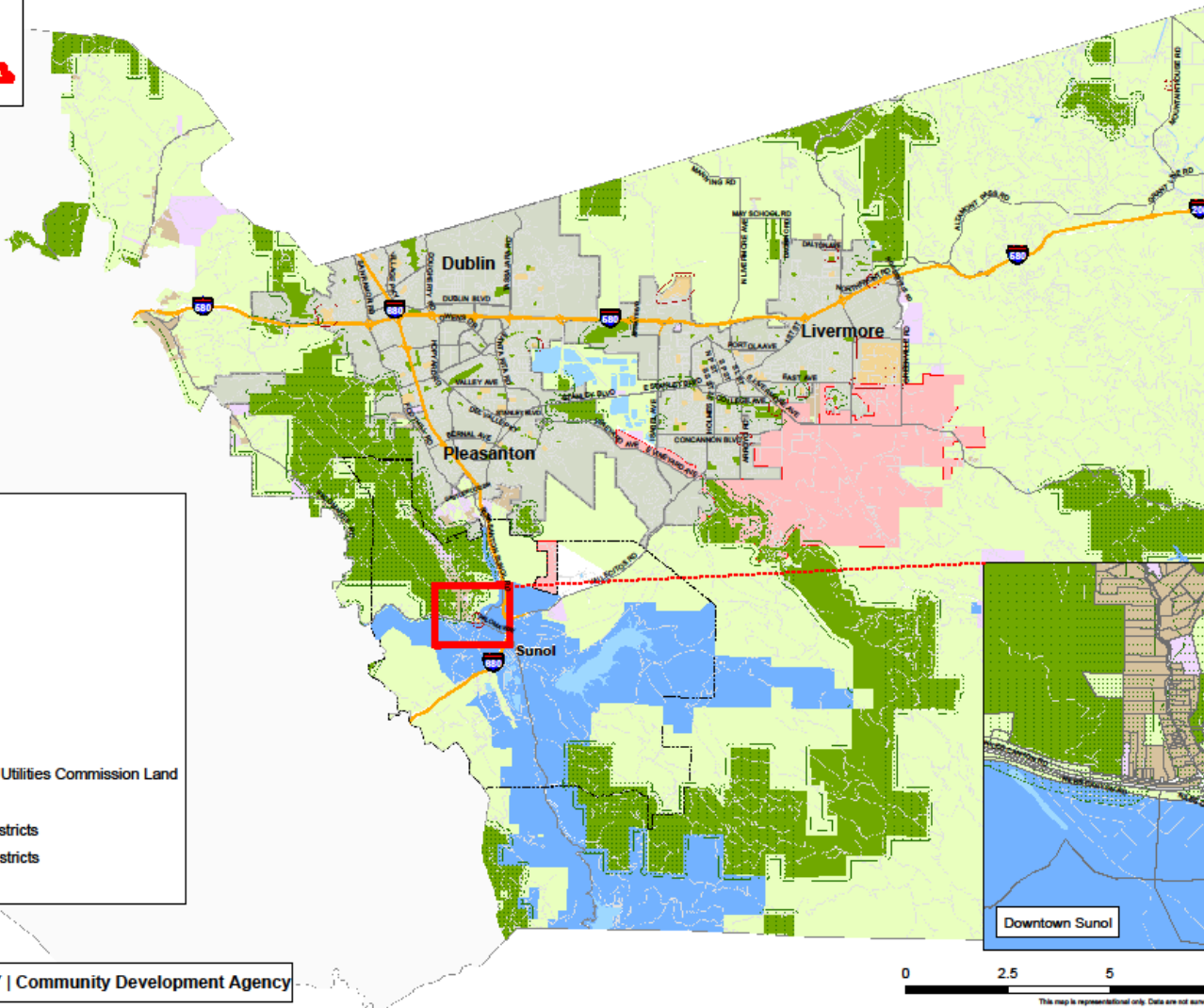
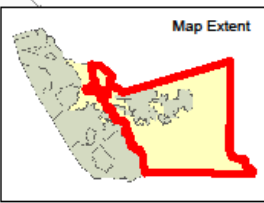


Source: Castro Valley General Plan, Eden Area General Plan

ALAMEDA COUNTY | Community Development Agency

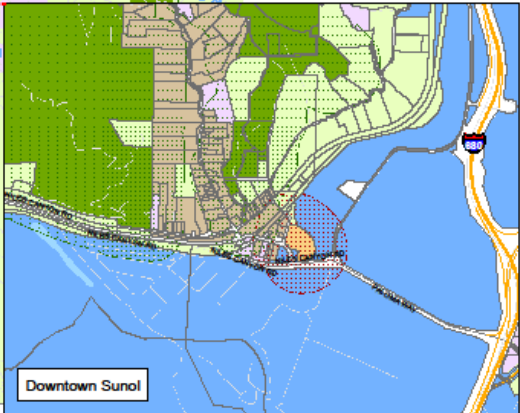


# Rural Unincorporated County Zoning Designations and Sensitive Receptors 600' Buffer



**Legend**

- Parks 600' buffer
- Schools 600' buffer
- Planning Areas
- Freeways
- Major Roads
- Schools
- Parks
- Specific Plan
- San Francisco Public Utilities Commission Land
- Cities
- Residential Zoning Districts
- Agricultural Zoning Districts
- PD





# Overview of Dispensary & Delivery Ordinance Amendments – Title 17

## Amendments to Title 17 (Attachment 2)

- Pages 1-3 include updated findings
- Pages 4-5 allow dispensaries as a conditional use in the Agricultural (A) district, where accessory to a permitted cultivation operation
- Pages 5-6 allow dispensaries as a conditional use in Retail Business (C-1) and General Commercial (C-2) districts
- Pages 7-8 allow dispensaries as a conditional use in the Industrial Park (M-P), Light Industrial (M-1) and Heavy Industrial (M-2) districts

# Required Findings for CUP

- Review by Board of Zoning Adjustments to determine whether or not the use:
  - A. Is required by the public need
  - B. Will be properly related to other land uses and transportation and service facilities in the vicinity
  - C. If permitted, will under all the circumstances and conditions of the particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood
  - D. Will be contrary to the specific intent clauses or performance standards established for the district, in which it is to be located. (Gen. Ord. Code section 17.54.130)

# Delivery of Medical Cannabis

- Include a separate permit and application process for the delivery (retail) of medical cannabis
- Include in the ordinance the definition of “delivery” from the MCRSA
- Allow an unlimited number of permits for the delivery of medical cannabis from permitted “brick-and-mortar” dispensaries to patients
- Suspension or loss of a delivery permit would not automatically affect the dispensary permit

# Overview of Cultivation Pilot Amendments – Title 6 & Title 17

Amendments to Chapter 6.106 & Title 17 (Attachment 3)

- Pages 1-3 provide findings for ordinance
- Pages 4-5 amend zoning code (Title 17) to allow cultivation as conditioned use in specific non-residential districts
- Pages 6-7 provides definitions for Chapter 6.106
- Page 8 details cultivation permit requirements
- Pages 8-10 lays out the cultivation application, review and appeal process

# Cultivation Pilot Program for Established Dispensaries

- New Chapter 6.106 in General Ordinance Code establishing pilot
  - Limited to 2 dispensaries with 1-year good standing
  - Evaluate a permanent commercial cultivation permit ordinance
  - Pilot is vertically integrated for increased control over supply chain
- Zoning amendment to allow cultivation on pilot basis
  - Permissive zoning
  - Allow cultivation as a conditional use in Agricultural (A) and Industrial (M) districts
- Conditional Use Permit process includes public hearing and conditions of approval
- Specific performance standards to be adopted by CDA Director

# Pilot Cultivation Permit

- Eligibility limited to dispensaries in good standing
  - No revocation or suspension for past year
  - Limited to 2 cultivation operations
  - Permits limited to 2 years
  - Pilot sunsets December 31, 2018
  - Ministerial review – 1<sup>st</sup> step of required approvals
  - Complete application from eligible dispensary shall be approved
- CUP
  - Discretionary review as 2<sup>nd</sup> step of process
  - General required findings for CUP (Gen. Ord. Code 17.54.130) plus new cultivation-specific findings
  - Appropriate conditions of approval may be imposed on cultivation operation

# Additional Required Findings

- The premises are safe and secure
- Theft and diversion of cannabis cultivated on the premises is prevented
- Not perceptible outside of property:
  - Artificial light between sunset and sunrise, other than as needed for security
  - Glare or heat
  - Noise or vibration
  - Odors
  - Dirt and dust
- No harmful discharge into any public sewer, private sewage disposal system or stream or into the ground. Disposal in accordance with State requirements.

# Cultivation Performance Standards

## Draft Performance Standards (Attachment 4)

- Adopted by Director, amended as necessary
- Plans required by permittee at time of application to ensure compliance to include Site Layout, Security, Track and Trace, Cultivation Operations, Worker Safety, Cannabis Processing, and Waste Disposal
- Examples of standard requirements:
  - Indoor cultivation only
  - Maximum cultivation area (TBD, up to 22,000 sq. ft.)
  - Vertical integration (sale by permitted dispensary)
  - Track and trace to be implemented by permittee
  - No manufacturing
  - Proper storage of fuels, pesticides, etc.
  - Proper waste disposal, including wastewater
  - Safe processing practices and labor conditions
  - Compliance with state and local laws and regulations



# Roles for County Departments

- CDA will be permitting lead and maintain land use decision responsibilities
- Sheriff will maintain a role in background checks, inspections and enforcement
  - Maintain criminal penalties for violations of the ordinance
  - Require Sheriff approval of security plans
- Environmental Health will inspect packaging and other requirements for edible cannabis products
- Weights & Measures will inspect scales and price scanning devices

# CEQA

- Initial Study to determine extent of potential environmental impact of ordinance revisions
- CEQA document will be circulated for public review
- Further ordinance revisions may require additional environmental review
- Proposed projects may require further, project-specific environmental review

# Fees and Taxes

- Proposition 26 fee study to be completed
- Include provisions for payment of reasonable and necessary fees for all aspects of regulations (permit applications, inspections, renewal applications, etc.) and licensure
- Determine and fund costs for additional staff needs
- Tax not proposed at this time but may occur in the future

# Public Meeting Schedule

<i>Sept. 12</i>	<i>CV MAC Land Use Meeting</i>
<i>Sept. 15</i>	<i>San Lorenzo Village Home Association</i>
<i>Sept. 19</i>	<i>Planning Commission</i>
<i>Sept. 21</i>	<i>Sunol Citizens Advisory Committee</i>
<i>Sept. 28</i>	<i>Unincorporated Services Committee</i>
<i>Oct. 3</i>	<i>Transportation/Planning Committee</i>
<i>Oct. 17</i>	<i>Planning Commission</i>
<i>Oct. 25</i>	<i>Ag Advisory Committee</i>
<i>October</i>	<i>Other public meetings if needed</i>
<i>November</i>	<i>Board of Supervisors</i>
<i>December</i>	<i>Ordinances effective if adopted</i>

**QUESTIONS?**

