



MEMORANDUM

June 22, 2016

TO: Board of Supervisors' Transportation/Planning Committee

FROM: Medical Cannabis Interdepartmental Work Group

SUBJECT: Medical Marijuana Regulation and Safety Act (MMRSA) Implementation

BACKGROUND

The Medical Marijuana Regulation and Safety Act (MMRSA) was signed by the Governor in October of 2015. At your April 11 and May 2, 2016 meetings, your Committee discussed potential revisions to the County's existing dispensary ordinance (Chapter 6.108 of the County General Code) to align with the local licensing provisions of MMRSA. A group of industry advocates who met with Supervisor Miley proposed draft ordinance revisions; staff representing various county agencies have reviewed the proposed revisions and prepared a draft revised ordinance for your consideration. The purpose of this memo is to outline options for ordinance revisions and staff recommendations on those possible revisions.

DISCUSSION/SUMMARY

Land Use Considerations

Zoning for Dispensaries - One of the recommendations of the industry advocates' group is to expand the geographic area in which dispensaries would be allowed. Section 6.108.030 of the existing county code requires that dispensaries be located in commercial or industrial zones or their equivalent. Dispensaries are similar to and compatible with other types of retail uses that the zoning ordinance allows in commercial and industrial zoning districts. Most of the unincorporated properties zoned for commercial and industrial uses are already listed in the existing dispensary ordinance as properties where dispensaries would be allowed.

Staff Recommends – Staff recommends the current geographical areas be retained in any revision to the ordinance. Expanding the geographic area where dispensaries may be located would require allowing them in the agricultural zoning district outside the Urban Growth Boundary, or in residential zoning districts. Retail uses are not normally permitted and would not be appropriate in these districts.

Buffer Zone Requirements - Current county code requires that dispensaries be located a minimum of 1,000 feet from any other dispensary, as well as from any school, public park or playground, drug recovery facility or recreation center. Section 19322 of the MMRSA requires that dispensaries be

located “beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code.” The draft ordinance proposed by the industry advocates’ group reduces the required buffer between dispensaries and sensitive receptors from 1000 feet to 600 feet. The attached maps illustrate the difference between the number of parcels with commercial or industrial zoning where dispensaries could potentially be located with the current 1000-foot buffer and with a reduced 600-foot buffer.

Staff Recommends - Staff recommends a public hearing requirement (discussed below) that would allow for a complete vetting, conditions of approval particular to the site, and allow adjacent property owners to comment on the application. Mapping available parcels at both 600’ and 1000’ show that quite a number of parcels would be available to potentially open a new dispensary. The 600’ option provides more opportunity but if the committee concludes that more distance is advisable between schools/parks and dispensaries, the 1000 foot distance can be just as easily used.

The revised dispensary ordinance includes an application and selection process for granting the prescribed number of dispensary permits. Staff recommends that after the selection process has been completed, the selected dispensaries be required to obtain a Conditional Use Permit (CUP). The CUP would address land use related issues such as parking and signage that would not be considered as part of the dispensary permit process. The conditions put in place through the CUP process would ensure that dispensaries are compatible with the surrounding community and that potential impacts are minimized. In addition, the CUP process includes a public hearing before the decision-making body which would provide opportunity for community input.

Number of Dispensary Licenses - The maximum number of dispensaries allowed in the unincorporated area under the existing dispensary ordinance is three. One dispensary is allowed in each of the three areas shown on the map contained in the ordinance. 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. Currently, one dispensary is located in Area 1, on East Lewelling Boulevard in Ashland; and one is located in Area 2, on Foothill Boulevard in Cherryland. The industry advocates’ group has recommended that the maximum number of dispensaries be increased.

Staff Recommends - The County Working Group recommends that determination of the appropriate number of dispensaries for the unincorporated area take several factors into consideration including: geographic parity among the unincorporated communities, the geographic areas available for locating dispensaries given land use constraints such as zoning and proximity to sensitive receptors, and the appropriate number of the facilities necessary to adequately serve demand. Staff is still in the process of evaluating these factors and have not yet reached a determination.

Additionally, the Sheriff’s Office does not support any increase to the number of permitted dispensaries. The Sheriff’s Office is very concerned that this process has not been fully made public for discussion in the areas that would be affected. In the past there was concern from residents and business owners in the prospective areas as to the impact of these dispensaries (crime, traffic, customer access to other businesses) and that was one of the major reasons for the original number of permitted dispensaries and their placement in the unincorporated area.

Environmental Health Considerations

Preparation, Packaging and Labeling of Edibles-Edible production and sales are not allowed in the unincorporated areas under the existing dispensary ordinance.

Staff Recommends - In order to reduce the possibility of unintentional ingestion, food contamination and illnesses from consumption, Edibles should be limited to non-perishable, non-potentially hazardous products to be consumed. Edibles should be prepared, packaged and labeled under controlled conditions by food safety certified food handlers in a commercial kitchen or equal facility. A facility must be constructed, permitted and inspected in accordance with applicable building codes and food safety requirements and comply with State and local laws regarding preparation, labeling, distribution and sales of food as enforced by the Department of Environmental Health. Food handlers must be free of communicable disease, practice good personal hygiene and safe food handling techniques at all times. Edibles must be individually wrapped, clearly labeled as a medication containing Cannabis and not a food, list any allergen information and state the date of manufacture. The Edible packaging should not be attractive to children, be tamper-evident and child resistant. A written or computerized log should be maintained of edible production and testing for contaminants.

Other Considerations

Concerns Regarding Delivery and Cultivation Pilot Program – As for any allowed delivery or cultivation (pilot program), that as of this time is still illegal under California law, the Sheriff's Office will not support any of these activities by the dispensaries or any other activity regarding Medical Cannabis that is currently illegal.

Staff Recommends - The Sheriff's Office believes this process should move along cautiously so that when we are done a full and comprehensive ordinance will be amended properly and not have to go back to committee for additional changes. This would include looking into and determining if there are any California Environmental Quality Act requirements and waiting for cleanup legislation of which the committee has recently become aware. This will also allow time for the newly formed Bureau of Medical Marijuana Regulation to vet out best practices and legal interpretations to give the committee valuable guidance in completing the update of the ordinance.

Castro Valley Municipal Advisory Council Meeting -

On June 20th, 2016, the Castro Valley Municipal Advisory Council heard a presentation by the Office of the County Counsel on the MMRSA and the current process underway to revise the existing county dispensary ordinance to make it consistent with the MMRSA. 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.