

COUNTY RESPONSE TO STAKEHOLDERS' PROPOSAL FOR MEDICAL MARIJUANA DISPENSARY ORDINANCE UPDATES



TRANSPORTATION & PLANNING COMMITTEE

MAY 2, 2016

GENERAL ORDINANCE CHAPTER 6.108

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- **ADOPTED IN 2005**
- **REGULATES MEDICAL MARIJUANA DISPENSARIES IN THE UNINCORPORATED AREA OF ALAMEDA COUNTY**
- **LIMITS THE NUMBER OF DISPENSARY PERMITS TO 3**

MEDICAL MARIJUANA REGULATION AND SAFETY ACT (MMRSA)

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- The MMRSA was enacted in November 2015 as a comprehensive state regulation of commercial medical marijuana
- MMRSA regulates all aspects of commercial activity, from seed to sale
- A group of community stakeholders drafted a proposed amendments to Chapter 6.108 of the County General Code to conform to the MMRSA
- County staff reviewed the stakeholder proposal and provide this initial response

PERMITS

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- Evaluate increasing the number of dispensary permits to be responsive to patient need yet not negatively affecting neighborhoods by clustering or excessive density; reduce conflicts with existing land uses. Eight permits is likely excessive.
- Prohibit dispensaries in residential zones; continue to allow in commercial or industrial zones
- Create separate permits/licenses that mirror state license types (dispensary, nursery, cultivation, manufacture, transport)
- Provide appropriate regulation for each license – deferring to anticipated state regulations and enhancing state regulations as necessary
- Require bidders in the dispensary permit RFP process to identify the proposed dispensary site, but to obtain zoning entitlements after the bid process concludes

DELIVERY OF MEDICAL MARIJUANA

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- Include a separate permit and application process for the delivery (retail) of medical marijuana
- Limit delivery permits to licensed, brick and mortar dispensaries
- Include in the ordinance the definition of “delivery” from the MMRSA
- Suspension or loss of a “delivery” permit would not affect the dispensary permit

ROLE OF SHERIFF

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- While CDA will be lead, maintain a role for the Sheriff in licensure/permitting, inspections and enforcement
- Maintain criminal penalties for violations of the ordinance
- Require Sheriff approval of security plans

DISPENSARY REGULATION

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- Allow persons under age 18, who are qualified patients, on the premises only when accompanied by a parent or guardian
- Prohibit sales to persons under the age of 18
- Clarify visibility standards
- Expand nuisance regulations (noise, odors, etc.)
- Retain 1,000 spacing for sensitive receptors
- Require pre-approval for the transfer of a permit to a new location
- Require compliance with weights & measures regulations

EDIBLES

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- Business & Professions §19300.5(s) “edible cannabis product” ... “is not considered food” (Health & Safety § 109935) “or a drug” (Health & Safety § 109925)
- Require compliance with applicable Health & Safety Codes

VERTICAL INTEGRATION/CULTIVATION

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- Evaluate Anti-Competition/Sherman Act Concerns (monopoly operators)
- Establish a commercial cultivation permit
- Consider CEQA requirements for a cultivation program
- Defer cultivation entitlements until proper zoning is in place
- Defer manufacturing activity authorization until proper zoning is in place
- Permissive Zoning – commercial medical marijuana cultivation is not presently permitted or conditionally permitted in the Zoning Ordinance; it must be listed as a discrete land use and appropriate conditions imposed before it is authorized as a permitted zoning use in appropriate zoning districts.

VERTICAL INTEGRATION/CULTIVATION

- Right to Farm – Neither the Right to Farm Ordinance nor MMRSA create an entitlement for zoning for marijuana as an agricultural product
- H & Safety § 11362.777(a) “**For purposes of this section** and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.”
- Medical cannabis is not an “agricultural product” for *all purposes*, including local zoning
- The Alameda County Right to Farm Ordinance (Gen. Code Chap. 6.28) “does not exempt farmers, agricultural processors or others from compliance with the law.”
- Section 6.28.010 defines “agricultural operations” with the qualification that agricultural practices and operations must be “consistent with county regulations.”
- The Right to Farm Act (Civil Code § 3482.5) precludes commercial agricultural activities from being deemed a nuisance after being in lawful operation for three years; commercial cannabis operations can not meet this standard

FEES AND STAFFING COSTS

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- Include provisions for payment of reasonable and necessary fees for all aspects of regulations (permit applications, inspections, renewal applications, etc.)
- Determine and fund costs for additional staff needs

COUNTY RESPONSE TO STAKEHOLDERS' PROPOSED CHANGES

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QUESTIONS?