

Medical Marijuana Regulation and Safety Act

Transportation & Planning Committee

April 13, 2016

Background

- Legislation
- Previous T & P Meeting
- AC Working Group Members

Today's Presentation

- Permitting issue updates
- Local licensing issues
- Public process options
- Budgetary impacts

Medical Marijuana Regulation and Safety Act

PERMITTING ISSUE UPDATES

MM Location Policy Options

If the Board desires to allow commercial MM facilities, then County Zoning Ordinance would need amending

- Specify where facility types would be allowed and where they would not be allowed
- Specify standards for facilities to reduce conflicts with existing land uses
 - Minimize potential nuisances resulting from the cultivation, manufacturing or testing sites (could include distance requirements from sensitive receptors)
 - Security measures and ventilation systems to minimize odors outside any building used for cultivation, manufacturing and testing.
- Consider limiting the number of each type of facility

Regulating MM Facility Locations

- MMRSA identifies 17 license classifications
- Four types of commercial facilities:
 - Cultivation
 - Manufacturer
 - Testing laboratory
 - Dispensary

Cultivation Policy Options

- Commercial medical marijuana cultivation be listed as a discrete land use to allow for mitigation of impacts
- Impacts could include odors, noise from generators, other equipment and security considerations
- Additional requirements could include setbacks and screening from public roads; setbacks from sensitive receptors, such as parks, schools, and residences; and security measures, such as fencing
- Zoning code should also specify whether just indoor cultivation, or both indoor and outdoor cultivation would be allowed
- Outdoor sites may be up to one acre; indoor sites may be up to 22,000 square feet of total canopy size

Alameda County

Right to Farm Ordinance

State law and County policy encourages, promotes, and protects agriculture. Agricultural Operations are protected from nuisance lawsuits as long as:

- The agricultural operation is conducted in zoning that allows such uses.
- The agricultural operation is conducted or maintained in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations in the same locality, and in a lawful manner.
- The agricultural operation predates the affected uses on the neighbors' property

Alameda County

Agricultural Advisory Committee

- Sections 6.28.040-6.28.060 of the County General Code establish a procedure for mediation of disputes between agricultural operations and their neighbors by the County Agricultural Advisory Committee
- The purpose of the Committee is to act as a technical advisory panel of experts on matters involving the economic enhancement of agriculture and environmental conservation on applicable agricultural lands in Alameda County. The Committee has authority to provide leadership in developing policies, directing studies, and commenting on legislation. It may advise cities, Alameda County agencies and the Board of Supervisors, as well as other governments and groups.

Manufacturing Policy Options

- The MMRSA defines “manufacturer” as a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis ... or medical cannabis product
- Two license classification levels for manufacturing: “Manufacturing level 1,” for manufacturing sites that use nonvolatile solvents; and “Manufacturing level 2,” for manufacturing sites that use volatile solvents
- The County’s industrial zones may be appropriate areas for medical marijuana manufacturing facilities. Restrictions may be imposed to mitigate potential impacts
- These impacts are likely to be similar to those listed above for marijuana cultivation sites

Testing Laboratory Policy Options

- The MMRSA defines “testing laboratory” as a registered & accredited facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products
- Laboratories are currently allowed in two industrial districts and the commercial zoning districts
- Commercial medical marijuana testing laboratories may be appropriate uses in these zoning districts. Restrictions may be imposed to minimize potential impacts

Dispensary Policy Options

- The MMRSA defines “dispensary” as a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered for retail sale, including delivery of medical cannabis and medical cannabis products as part of a retail sale
- County General Code currently requires that dispensaries be located in a commercial or industrial zone, or their equivalent
- County General Code also requires that dispensaries be located at least 1,000 feet from any other dispensary, as well as from any school, public park or playground, drug recovery facility or recreation center

AC Land Use Zoning

- Planning Department regulates land use in unincorporated area to ensure uses are compatible with existing development
- Under the County's zoning code, only uses that are specifically listed as permitted or conditionally permitted are allowed
- No commercial medical marijuana facilities are currently listed as permitted or conditionally permitted in the code
- Land uses, such as field crop or laboratory, currently allowed in zoning that may be interpreted to include MM facilities

Agricultural Zoning District Policy Options

- Various agricultural uses are allowed by right; however, the zoning code does not specify the types of crops that may or may not be grown
- The East County Area Plan allows a Floor Area Ratio of .025 for greenhouses on properties designated “Large Parcel Agriculture”
- Commercial medical marijuana cultivation may not be appropriate within the South Livermore Valley Plan Area
- MMRSA defines a “nursery” as a licensee that produces only clones, immature plants, seeds, and other agricultural products used for cultivation of medical cannabis
- Since plant nurseries are currently allowed in the “A” district, it may be appropriate to also allow nurseries for cannabis cultivation as a discrete use with additional restrictions due to the sensitive nature of the crop similar to those recommended above for other types of cultivation

Industrial Zoning District Policy Options

- Industrial areas may be appropriate for indoor artificial and mixed light cultivation facilities as well as medical marijuana manufacturing and testing
- The industrial area within the Unincorporated County is located at the western end of Grant Avenue in San Lorenzo
 - Consisting of approximately 117 acres, and includes few vacant properties, potential sites for medical marijuana facilities would be limited
 - An established neighborhood of single-family homes lies immediately to the east of the industrial area, with a railroad right-of-way separating the two land uses
- Potential nuisances, such as odor and noise, resulting from marijuana facilities may impact the residential area and would need to be identified and mitigated.
- Distance requirement could further limit the number of potential sites available in the industrial area

Residential Zoning District Policy Options

- Zoning ordinance lists “field crop,” “orchard,” and “garden” as permitted uses in all residential zones in the unincorporated area
- Zoning ordinance should specify whether or not commercial medical marijuana cultivation would be permitted in residential zones
 - Avoid exposing residents to the potential nuisances discussed above
 - Appropriate distance be required between cultivation sites and existing residences or properties zoned for residential use

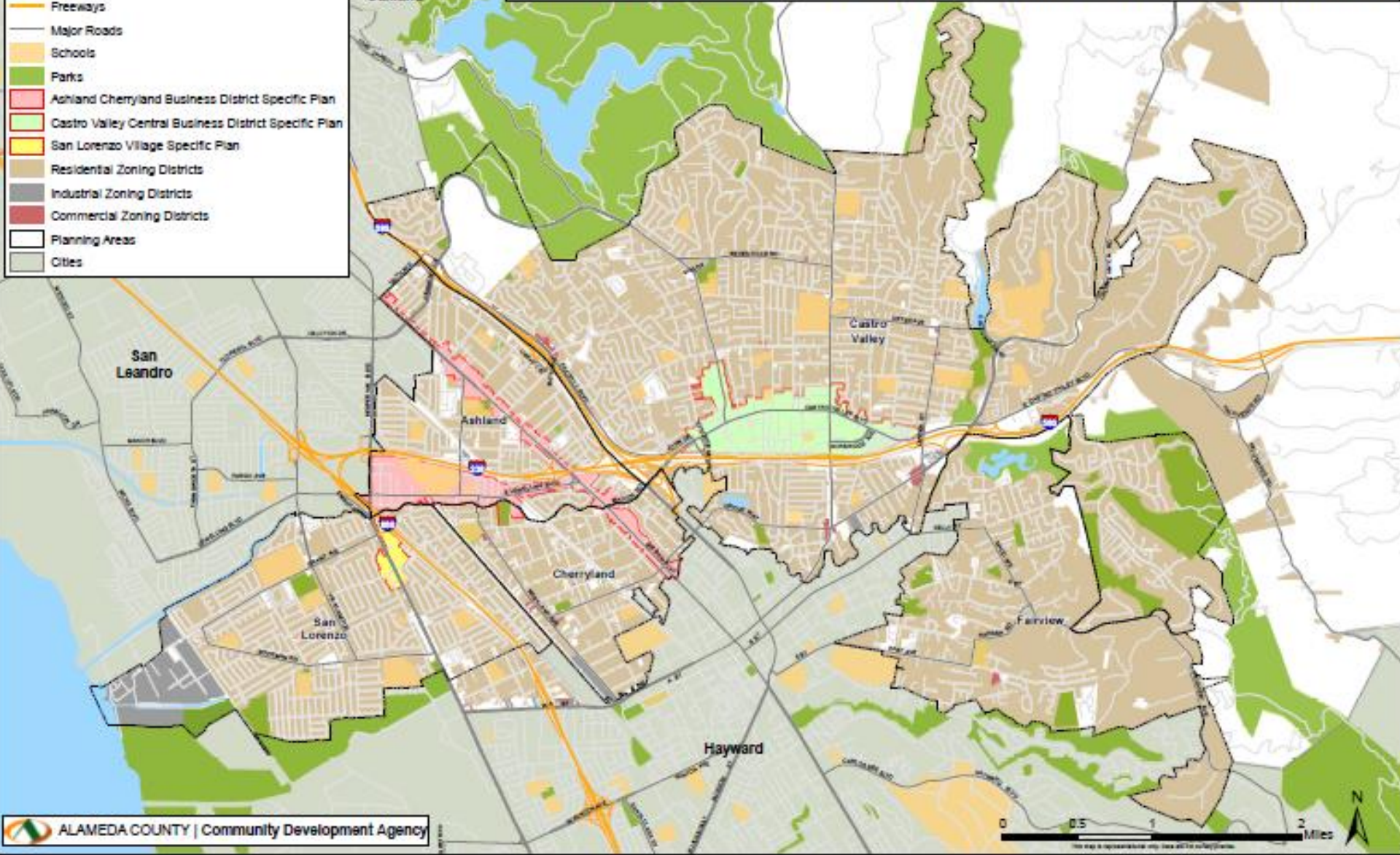
Residential Zoning District Policy Options

- Small-scale, non-commercial cultivation by qualified patients and caregivers may be appropriate in residential districts
 - Exempt from licensing requirement of MMRSA (100 sq ft/ 500 sq ft)
 - Local governments retain authority to regulate land uses, other ordinances pursuant to police power.
 - May ban cultivation in residential zone, but may not impose criminal penalties for violation.
 - Current zoning ordinance allows possible exemption from zoning requirements as a “reasonable accommodation” to persons with disabilities.

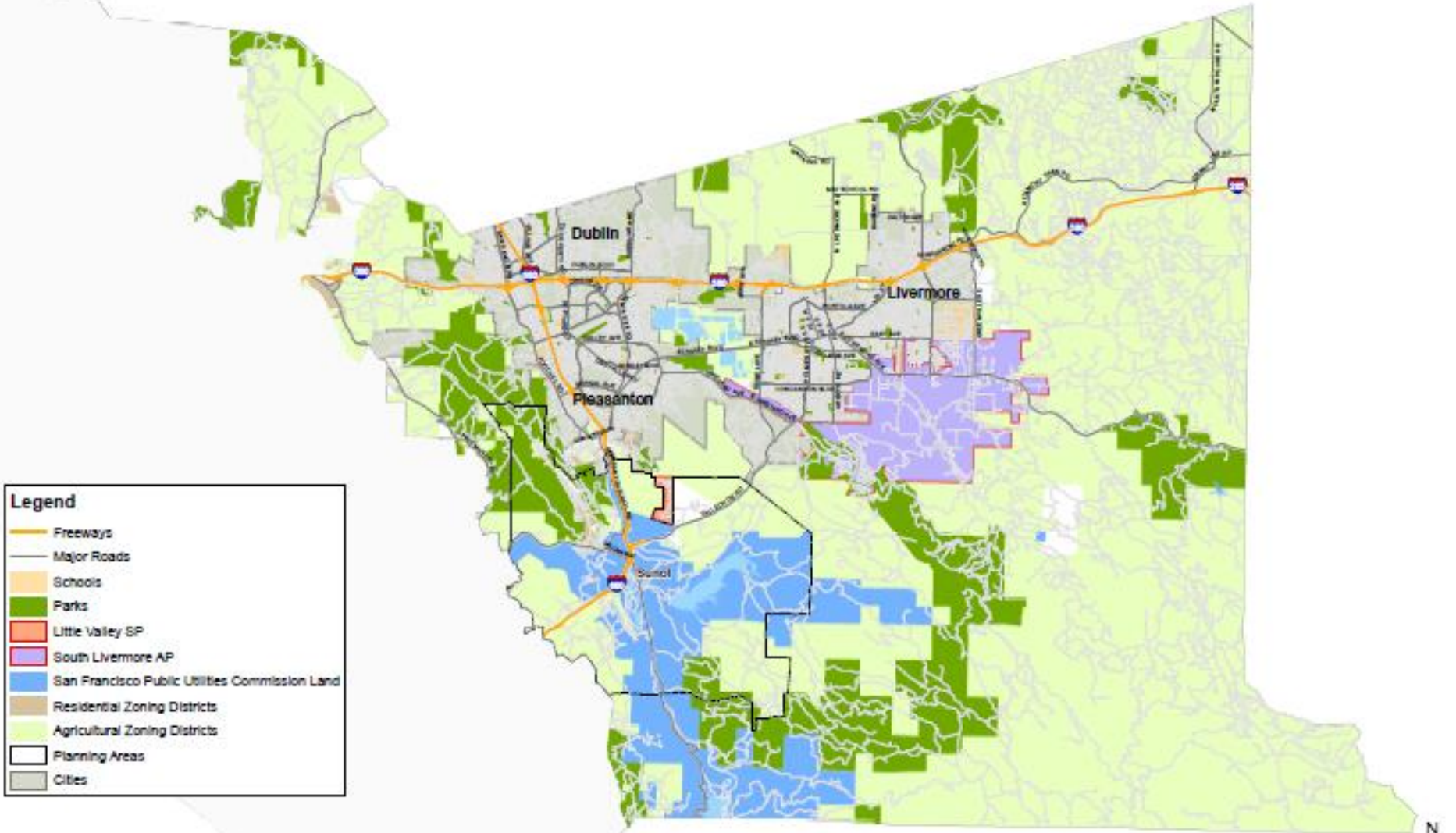
Urban Unincorporated County Zoning Designations and Sensitive Receptors

Legend

- Freeways
- Major Roads
- Schools
- Parks
- Ashland Cherryland Business District Specific Plan
- Castro Valley Central Business District Specific Plan
- San Lorenzo Village Specific Plan
- Residential Zoning Districts
- Industrial Zoning Districts
- Commercial Zoning Districts
- Planning Areas
- Cities



Rural Unincorporated County Zoning Designations and Sensitive Receptors



Legend

- Freeways
- Major Roads
- Schools
- Parks
- Little Valley SP
- South Livermore AP
- San Francisco Public Utilities Commission Land
- Residential Zoning Districts
- Agricultural Zoning Districts
- Planning Areas
- Cities

CEQA Considerations

- Projects undertaken by governmental agencies, including adoption of ordinances and regulations, are subject to CEQA unless exempt.
 - No applicable exemptions have been identified yet that would apply to this ordinance
 - The subject ordinance amendments may permit an activity previously prohibited, which actions may have a significant effect on the environment (e.g., water, biological, noise, GHGs)
 - Initial Study can assist with determining whether an environmental impact (direct, indirect or cumulative) is likely to occur and appropriate next steps:
 - Negative Declaration – No environmental effect
 - Mitigated Negative Declaration – No environmental effect if certain mitigation measures are implemented
 - Project EIR – full evaluation of an identified project
 - Program EIR – full evaluation of a range of related projects; future projects within scope of program may not require new EIR or may “tier” off of Program EIR
- Other jurisdictions:
 - State CDFW will prepare a Program EIR for its regulations - in very initial stages. Might be possible to “tier” off of state EIR; however, it may not be prepared for 1-2 years.
 - Humboldt County prepared an IS/MND; CEQA lawsuit filed by MJ advocacy group

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LOCAL LICENSING ISSUES

Cultivator Licensing Policy Options

- Types
- Operational plan review
- Tagging and tracking- by approved tracking system
- Compliance with health and safety codes
- Compliance with agriculture and weights & measure codes
- Restricting the number size, type or concentration of cultivation licenses

Manufacture Licensing Policy Options

- Types
- Operational plan review
- Compliance with health and safety codes
- Compliance with agriculture and weights & measure codes
- Restricting the number size, type or concentration of manufacturing licenses

Dispensary Licensing Policy Options

- Operational plan review
- Compliance with health and safety codes
- Compliance with agriculture and weights & measure codes
- Restricting the number or concentration of dispensary licenses

Agriculture/Weights & Measure Issues

- Pesticide Use Enforcement – use of legally registered pesticides; applicator/field worker training; storage; recordkeeping
- Pest Exclusion/Management – plant cleanliness, quarantines
- Nursery Stock/Seed – licensing/labeling/cleanliness
- Organic/Standardization/Direct Marketing – labeling; product compliance
- Weight & Measures – accurate scales, packaging
- Operation available for inspection during normal business hours without notice

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PUBLIC PROCESS OPTIONS

Code Amendment Process Options

- Zoning Code amendment process
 - Meetings before the following bodies would reach the most relevant communities potentially affected by the siting of cultivation sites, manufacturing facilities, testing laboratories, and dispensaries:
 - Agricultural Advisory Committee
 - Sunol Citizens Advisory Committee
 - District 4 Agricultural Committee
 - Castro Valley Municipal Advisory Council
 - San Lorenzo Village Homes Association
 - Planning Commission
 - Board Unincorporated Services Committee
 - Board Transportation/Planning Committee
 - Board of Supervisors
 - Staff would reach out to appropriate stakeholders (residents, business interests, etc.) for each facility type and potentially affected area.

Code Amendment Process Options

- General code amendment process

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BUDGETARY IMPACTS

Budgetary Impacts

- Anticipated uses of funds
 - EIR expenses
 - Monitoring and Enforcement of licensing requirements
 - Increased obligations relating to permitting and public process
- Anticipated sources of funds
 - Fees – Proposition 26 compliant
 - Taxes – Voter Approval Required
 - Other funds