



# ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

## P L A N N I N G   D E P A R T M E N T

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### MEMORANDUM

**DATE:** November 2, 2020

**TO:** Board of Supervisors' Transportation/Planning Committee

**FROM:** Chris Bazar, Director, Community Development Agency  
Albert Lopez, Planning Director

**SUBJECT:** Proposed amendments to County Ordinance Code to allow the remaining unallocated West County cannabis retail permit to be made available in West County or East County and, if in East County, to require it to be a boutique operation

### BACKGROUND

On October 5th, the Board of Supervisors' Transportation and Planning Committee directed staff to prepare ordinance amendments to amend the County Ordinance Code to allow the one remaining unallocated permit for a cannabis retail store in unincorporated Alameda County to be allowed in West County or East County and, if in East County, to require it to be a "boutique" operation. Staff has prepared the attached draft ordinance amendments and presented these to a recent meeting of the Agricultural Advisory Committee for comment.

### DISCUSSION

The Alameda County Ordinance Code currently allows a maximum of five permits for cannabis retail in unincorporated Alameda County. Two are allowed in East County, and those permits have been issued through a Request for Proposals (RFP) process. Three are allowed in West County, with a maximum of two allowed in Area 1 (Ashland and Cherryland) and Area 2 (Castro Valley). The two existing cannabis retail stores – We Are Hemp and Garden of Eden – are both located in Area 1. Therefore, the remaining one unallocated cannabis retail permit would currently be available to be located only in Castro Valley. Under the requirements of the ordinance, any future permit would be issued through a Request for Proposals (RFP) process.

To allow the remaining permit for a cannabis retail store to be allowed in West County or East County and to require the operation to be "boutique" if it is in East County, Chapters 6.108 and 6.109 of the County Ordinance Code would need to be amended. Chapter 6.108 regulates cannabis retail permits and Chapter 6.109 regulates the ability for a permitted retail store to apply to become a Combined Cannabis Operation (CCO). A CCO allows a cannabis retail permit holder to include at least two of the following activities - cultivation, manufacturing and/or distribution - in addition to retail, with any cultivation area limited to not exceed 10,000 square feet.

## **Draft ordinance amendments**

The two main changes in the attached draft ordinance amendments are to:

- Amend paragraph D of Chapter 6.108.030 so the total number of permits in West County and East County respectively shall not exceed three, retaining the overall maximum of five permits in total; and
- Include in paragraph D.2.b. of Chapter 6.108.030 the following requirement for any third permit in East County to be a boutique operation:

“If a third permit is issued for a retail operation in the unincorporated area shown in Exhibit B (East County), that permit must be issued to a retail operation that includes a boutique component or components (e.g., educational or informational features or activities, or other features or activities designed to enhance customer experience or highlight attractions or characteristics of the local region). If only two permits are issued for the East County, they may but are not required to include a boutique component or components.”

This draft description of what a boutique operation could include is, by providing examples, intended to provide flexibility for applicants to demonstrate how they would meet the requirement, without requiring them to include any particular aspect of an operation in their business plan. Each application’s response to the requirement to include a “boutique component or components” would be assessed and considered on a discretionary basis through the RFP process.

The proposed changes to Chapter 6.109 are related amendments that would enable a third cannabis retail permit in East County to apply to become a CCO.

## **Comments**

On October 27<sup>th</sup>, staff provided the attached draft ordinance amendments to the Agricultural Advisory Committee for consideration. Comments raised by the public and members of the committee during the meeting included discussion of the following items:

- Suggestions that a “boutique” operation should be more clearly defined;
- Support for the concept of including educational or informational features to a boutique operation;
- Support for the potential economic benefits an additional cannabis retail operation could bring to boost agritourism and visitor numbers and be an economic driver in East County;
- Concern about whether the proposed amendments for boutique cannabis retail would include on-site consumption (staff confirmed the current ordinances and proposed amendments do not allow this);
- Concern that it is inappropriate to allow an additional cannabis retail operation in the unincorporated East County, and any retail should be located within the adjoining cities; and
- Discussion about whether the boutique cannabis retail operation should be subject to additional requirements (for example, to feature local products, have a connection to or collaboration with local cultivators, reflect the character of the community or be limited to locations within the winery and tourism areas of East County).

After discussion and considering public comments, the Agricultural Advisory Committee passed a motion supporting the proposed ordinance amendments, subject to the following changes:

- In paragraph D.2.b. of Chapter 6.108.030, add a requirement that any boutique cannabis retail store in East County must “contribute to agritourism viability in East County”; and
- Limit the location of any additional third permit for a boutique cannabis retail operation in East County to South Livermore Valley, North Livermore Valley or Sunol, and retain the 5-mile separation distance requirement between permitted retail operations.

The attached draft ordinance amendments include one proposed change from the version presented to the Agricultural Advisory Committee: the term “boutique experience” has been replaced with “boutique component or components”.

### **NEXT STEPS**

Staff seeks direction from your committee in relation to the draft ordinance amendments. If directed to proceed, staff proposes to take the draft ordinance amendments to the Planning Commission and subsequently to the full Board for consideration.

### **Attachments**

Draft ordinance amendments to Chapter 6.108 and Chapter 6.109

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTERS 6.108 AND 6.109 OF THE ALAMEDA  
COUNTY GENERAL ORDINANCE CODE REGARDING RETAIL AND COMBINED  
CANNABIS OPERATIONS

SECTION I

The Board of Supervisors makes the following findings of fact in support of this ordinance:

1. In enacting this ordinance, the Board of Supervisors of the County of Alameda, State of California hereby reaffirms and incorporates by this reference the findings contained in Section 1 of Ordinance No. O-2019-22.
2. Pursuant to Chapter 6.108 of the Ordinance Code, up to two cannabis retail operations are allowed in the East County and up to three cannabis retail operations are allowed in the West County; and
3. As of the date of hearing for this ordinance, there are two existing retail operations in West County and the County has approved two Title 6 permits for retail operations in the East County following a competitive selection process, neither of which is yet operational; and
4. As of the date of the hearing for this ordinance, the County has not commenced a selection process for the third potential West County retail site (i.e., the fifth potential retail site for the unincorporated area); and
5. The Board of Supervisors finds that it will promote the health and welfare of residents to enable the fifth potential retail site for the unincorporated area to operate in either the more populated but geographically smaller West County or in the less populated but geographically larger East County; and
6. If the fifth potential retail site is permitted in the East County, the Board of Supervisors finds that it will promote the health and welfare of residents for the operation to include a boutique component or components (e.g., enhanced consumer environment, tours, educational experiences, other visitor-serving components); and
7. Pursuant to Chapter 6.109 of the Ordinance Code, retail operations can apply to become combined cannabis operations; and
8. All retail operations pursuant to Chapter 6.108 of the Ordinance Code will be required to comply with state law and state regulations; and
9. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. sections 801, *et seq.* or to license any activity that is prohibited under said Act except as mandated by State law; and

10. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) exempt cannabis operators or operations from compliance with zoning and land use regulations, or, (3) allow any activity relating to the retail, delivery, cultivation, manufacturing, distribution, testing, or consumption of cannabis that is illegal under state or federal law.

SECTION II

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Alameda, as follows:

Paragraph D of Section 6.108.030 of the Alameda County General Ordinance Code is hereby amended to read as follows:

- D. At no time shall the county have in effect more than five permits, including all permits issued for Exhibit A (West County) and Exhibit B (East County) combined.
  - 1. In the West County, in no event shall the total number of permits for all areas shown in Exhibit A (West County) exceed three. No more than two permits shall be issued in any one of the two areas shown in Exhibit A (West County). No more than one permit shall be issued in the other area shown in Exhibit A (West County).
  - 2. In the East County, in no event shall the total number of permits for all areas shown in Exhibit B (East County) exceed three.
    - a. No permit shall be issued for a retail operation within five miles of another retail operation in the unincorporated area shown in Exhibit B (East County) or within one mile of a permitted retail operation location in an incorporated city.
    - b. If a third permit is issued for a retail operation in the unincorporated area shown in Exhibit B (East County), that permit must be issued to a retail operation that includes a boutique component or components (e.g., educational or informational features or activities, or other features or activities designed to enhance customer experience or highlight attractions or characteristics of the local region). If only two permits are issued for the East County, they may but are not required to include a boutique component or components.
  - 3. No permit shall be issued in any portion of the unincorporated area that is not within one of the areas delineated in Exhibit A or Exhibit B.

The remainder of Section 6.108.030 remains unchanged.

Subparagraph 2 of Paragraph E of Section 6.109.030 of the Alameda County General Ordinance Code is hereby amended to read as follows:

- 2. In the East County, the maximum number of permits is subject to the following:
  - a. In no event shall the total number of combined cannabis operation permits for all areas shown in Exhibit B (East County) exceed thirteen (13).
  - b. Collectively, the number of retail operation permits and permits for combined cannabis operations that include a retail operation in the areas shown in Exhibit B (East County) shall not exceed three. If a third permit is issued to a retail operation or a combined cannabis operation including retail, that operation must include a boutique component or components (e.g., educational or informational

features or activities, or other features or activities designed to enhance customer experience or highlight attractions or characteristics of the local region). If only two permits are issued for the East County, they may but are not required to include a boutique component or components.

- c. No permit shall be issued for a combined cannabis operation that includes a retail operation, if the subject premises is within five miles of a retail operation or combined cannabis operation that includes retail in the unincorporated area shown in Exhibit B (East County) or within one mile of a permitted retail operation or combined cannabis operation (or equivalent permitted activity subject to a state microbusiness license) location in an incorporated city.

The remainder of Section 6.109.030 remains unchanged.

### SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following called vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

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RICHARD VALLE  
President of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors,

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: \_\_\_\_\_  
Heather Littlejohn  
Deputy County Counsel