



MEMORANDUM

October 4, 2016

TO: Members of the Castro Valley Municipal Advisory Council

FROM: Medical Cannabis Interdepartmental Work Group

MEETING DATE: October 10, 2016

SUBJECT: Medical Cannabis Dispensary and Cultivation Ordinances

GENERAL INFORMATION

On June 20th, 2016, your Council heard a presentation by the Office of the County Counsel on the Medical Cannabis Regulation and Safety Act (MCRSA) and the process underway to revise the existing county dispensary ordinance to make it consistent with the MCRSA. 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. Councilmembers expressed an interest in reviewing the draft ordinance and requested that residents of the unincorporated area be given greater opportunity to provide input.

On September 12th, 2016, staff presented the draft ordinances to your Council. The number of members of the public who spoke were fairly evenly divided between supporters of the ordinance revisions and opponents. Many speakers voiced strong opposition to locating a dispensary in Castro Valley. While not making a formal recommendation, MAC members stressed the need to slow down the process and wait to take action until after the outcome of the November vote on Proposition 64, which would legalize the non-medical adult use of cannabis, is known; and also to allow time to learn from the experiences of other jurisdictions.

They questioned whether there is a need for more dispensaries in unincorporated communities. One member suggested that instead of increasing the number of dispensaries allowed, the County cap the number of dispensaries at two, reducing the number allowed under the existing ordinance by one. Council members expressed concern that the draft ordinances favor the cannabis industry. They questioned the provision allowing for an unlimited number of delivery permits; and noted that the pilot cultivation program's requirement that only dispensaries in good standing be allowed to obtain a cultivation permit unfairly favors the existing dispensaries. The Council indicated that the draft ordinances are too complicated and that the dispensary, delivery, and cultivation sections should be separated and considered separately. The Council also agreed to put off making a recommendation on the proposed ordinances to a future meeting.

Public Outreach

Since your September 12th meeting, staff has presented the draft ordinances at the following public meetings:

San Lorenzo Village Homes Association

On September 15th, staff presented the draft ordinances to the San Lorenzo Village Homes Association. The Board members and members of the public expressed concern about the potential for negative impacts on the community and questioned whether there is enough demand for more dispensaries in the unincorporated area. There were objections to allowing an unlimited number of delivery permits, removing the limit on the amount of cannabis that can be kept at a dispensary, reducing the buffer from sensitive receptors, moving licensing responsibilities from the Sheriff's Office to CDA, and the speed at which the ordinance approval process is moving. There were also concerns that more dispensaries would lead to an increase in crime which would tax the resources of the Sheriff's Office.

The Homes Association Board adopted a motion to emphatically oppose the ordinances due to the potential for negative impacts on law enforcement resources, the potential for increased crime, and a lack of economic benefit to the community.

Planning Commission

At the September 19th Planning Commission meeting staff presented an overview of the proposed ordinances to the Commission. Few members of the public spoke. One unincorporated area resident spoke against the ordinances, indicating the potential for negative impacts on the communities. Four industry advocates spoke in favor of the ordinances, noting the benefits of medical cannabis and refuting the claims that dispensaries lead to an increase in crime. One of the commissioners stated that the County should consider how to avoid the clustering of dispensaries near city boundaries. For example, if Hayward were to allow a dispensary within the city but near their boundary with the unincorporated area, we should avoid locating a dispensary near the one within the city.

Unincorporated Services Committee

At the September 28th Unincorporated Services Committee meeting, many community members spoke against the draft ordinances, expressing concerns about potential negative impacts on the unincorporated communities. Speakers objected to the proposed increase in the number of dispensaries, to allowing an unlimited number of delivery permits, and to the proposed reduction in the buffer required between medical cannabis facilities and sensitive receptors. Speakers also stated their concerns regarding safety around dispensaries, the appearance of the existing dispensaries, and the lack of regulation of the potency of edibles. A few speakers stated that they feel that the potential impacts on communities would outweigh any benefits that would result from tax revenue. One speaker noted that the County should wait for other jurisdictions to determine best practices for medical cannabis facilities before adopting its own ordinance. The San Lorenzo residents indicated by a show of hands that a majority of those present do not want any additional medical cannabis facilities in their community.

A few speakers spoke in favor of the draft ordinances, noting the benefits of medical cannabis for seriously ill patients. One speaker in support of the ordinances cited studies that indicate that the presence of dispensaries does not result in negative impacts, such as an increase in crime, on the surrounding community. Another speaker stated that delivery of medical cannabis is important for the sickest patients who cannot drive to a dispensary. Other speakers noted that they have not witnessed any negative impacts caused by the existing dispensaries.

The Committee was divided on the issues of whether there is a need to increase the number of dispensaries in the Unincorporated Area and whether the County should adopt a tax on dispensaries. Supervisor Chan also questioned provisions in the ordinance that would permit cultivation in industrial zoning districts since the only area with industrial zoning is located in San Lorenzo.

Dispensary Ordinance

The Council received copies of the draft ordinances for the September 12th meeting, and copies are also attached to this report (See Attachments 1-4). The existing dispensary ordinance in Chapter 6.108 of the County General Code allows a total of three dispensaries on specified parcels zoned for commercial or industrial use.

The following changes to the provisions of the existing dispensary ordinance are included in the draft ordinances in Attachments 1 and 2:

- Increase the maximum number of dispensaries allowed in the unincorporated area from three to six, with no more than four in west county and no more than two in east county.
- Require dispensaries to comply with all zoning requirements in Title 17 of the Alameda County General Code and Alameda County Measure D (Save Agriculture and Open Space Lands), including the requirement to obtain any conditional use permits.
- Prohibit dispensaries in residential zoning districts.
- Allow up to two dispensaries in the “A” (Agricultural) Zoning District as a conditional agriculture-related use accessory to a permitted cannabis cultivation site.
- Reduce the buffer required between dispensaries and sensitive receptors from 1,000 feet to 600 feet to align with the MCRSA.
- Require selection of new dispensaries through a “Request for Proposals” (RFP) process.
- Provide appropriate regulation for each license – deferring to anticipated state regulations and augmenting the state regulations as necessary.
- Allow an unlimited number of permits for the delivery of medical cannabis from permitted “brick-and-mortar” dispensaries located within the unincorporated area and in other jurisdictions to patients.
- Remove the twenty-pound limit on the amount of cannabis that can be stored at a dispensary.
- Allow the sale, distribution, and delivery of edibles if produced in a commercial facility (that does not produce food items) constructed in accordance with applicable building standards and health and safety standards as opposed to private home kitchens.

Cultivation Ordinance

The cultivation ordinance would establish a medical cannabis cultivation pilot program that would allow existing dispensaries that have been operating in good standing for at least one year to establish medical cannabis cultivation sites. Implementation of the cultivation pilot program will require revisions to Title 6 of the County General Code to establish requirements for the program, as well as amendments to the Zoning Ordinance in Title 17 to allow the cultivation of medical cannabis as a conditional use in the “A” (Agricultural) District and “M” (Industrial) districts (See Attachment 3).

The following code provisions are proposed to implement the cultivation pilot program:

- Limit the duration of the pilot to two years.
- Limit eligibility to obtain a ministerial cultivation permit to currently permitted dispensary operators in good standing.
- Allow medical cannabis cultivation as a conditional use in the “A” (Agricultural) and “M” (Industrial) Zoning Districts.
- Allow only indoor/greenhouse cultivation and limit the size of the cultivation canopy.
- Require each cultivation site to obtain a Conditional Use Permit subject to compliance with adopted performance standards before beginning operation (See Attachment 4).
- Require a 600-foot buffer between cultivation sites and sensitive receptors to align with the MCRSA.

Sheriff’s Office Concerns

The Sheriff’s Office, which is participating in the County’s Medical Cannabis Interdepartmental Work Group, opposes the following provisions of the proposed ordinance amendments, primarily for public safety and quality of life issues, affecting the unincorporated citizens of Alameda County:

- Any increase in the amount of dispensaries in the County:
 - The Sheriff’s Office is concerned that more dispensaries could increase crime in the affected areas. The Sheriff’s Office feels this has not been an issue with the current dispensaries because of the lesser amount and smaller size of these dispensaries. In the past, with more dispensaries, we had homicides, robberies and burglaries associated with the businesses.
 - The Sheriff’s Office does not feel the unincorporated area should have to carry the burden of maintaining an excessive amount of dispensaries when the neighboring cities have less, to none, than the unincorporated area and apparently do not see the need for any.
 - The Sheriff’s Office is concerned of the affect to neighboring businesses for any future proposed dispensary site. This was a huge complaint from dispensary neighboring businesses in the past, as the excessive traffic of patients impacted those neighboring businesses.
 - Doubling the amount of dispensaries will require more man hours dedicated to patrolling and inspecting the dispensaries and their proposed larger operations. There is no current

revenue stream identified to take effect immediately to augment the Sheriff's Office staffing, as well as the other impacted County agencies.

- Any cultivation in the County:
 - Cultivation sites would be target for robbery and this is especially concerning in the Tri-Valley area where our patrol response time can be extended. Security is a major concern at any proposed site of this kind.
 - The Sheriff's Office believes there should be more discussion on cultivation and interaction with the Bureau of Medical Cannabis Regulation for a creation of best practices before any cultivation, if any, is allowed in unincorporated Alameda County. At this time there are just too many unknown consequences that could be detrimental to the unincorporated County and its citizens.
 - There has not been a substantial plan submitted by any proposed cultivator yet that addresses water drainage issues or other environmental impacts.
- Any deliveries in the County:
 - The Sheriff's Office is concerned that deliveries into neighborhoods will be targets for robbery and endanger the public. Currently, delivery is not allowed under the existing ordinance and the draft amendment does not establish any limits to the amount of marijuana these deliverers can possess, or any other regulatory oversight, making them attractive targets of criminals.
- Unlimited amount of cannabis at the dispensaries:
 - Allowing an unlimited amount of marijuana that a dispensary can have on hand will make it an attractive target for robbery and burglary by criminals. Again, another major security concern.
 - Additionally, large amounts of cannabis will produce a strong, pungent, and offensive odor that could create a nuisance to the neighborhood and neighboring businesses.
- Any edibles sold at the dispensaries:
 - The Sheriff's Office is concerned about public safety when it comes to edibles. Even though the ordinance will require the packaging not to be enticing to children it still has to come out of the package at some point and could be accidentally consumed by children and pets.
 - There is nothing in place at this time to insure actual product quality and potency. All that is proposed is to make sure the product is manufactured in an approved kitchen.
 - There are still too many uncertainties with edibles. The Sheriff's Office feels that this is another area in which the County should have further interaction with the Bureau of Medical Cannabis Regulation for the creation of best practices, if edibles are ever allowed to be sold by dispensaries in the unincorporated area.
 - It has been well documented in Colorado that edibles have contributed to an increase in hospital emergency room visits for children. There was one such incident recently in San Francisco that poisoned several adults and children.

The Sheriff's Office, along with other County agencies, has worked extremely hard over the last several years to improve the quality of life for the citizen's and families of the unincorporated area of Alameda

County. Just one example of this is the beautiful REACH Center located on E. 14th Street, which was created as a place where families and children of our area could go to for program assistance and to meet in a safe place. The Sheriff’s Office believes to allow more dispensaries would be counter intuitive to the progress that has been made to improve this area, and others, in unincorporated Alameda County.

CONCLUSION

The table below contains a list of the public meetings that have been scheduled thus far. Additional public meetings may also be added to the schedule. Depending on when these meetings occur, it is likely that the project timeline will need to be modified to accommodate them. The meeting schedule, including times and locations, is also available on the County website at: <http://www.acgov.org/cda/planning/landuseprojects/medical-cannabis.htm>. In addition, this webpage provides a list of past meetings and links to presentations and written materials from those meetings.

Medical Cannabis Ordinance Revision Public Meeting Schedule	
October 25	Agricultural Advisory Committee Meeting
October 26	Unincorporated Services Committee Meeting (if needed)
November 7	Transportation/Planning Committee Meeting (if needed)
TBD	Second Planning Commission Meeting
TBD	Board of Supervisors – first reading
TBD	Board of Supervisors – second reading
30 days after second reading	New ordinances become effective

A link to the draft ordinances is also provided on the Unincorporated Communities Website at: <http://www.acgov.org/uninc/>.

STAFF RECOMMENDATION

Staff requests that the MAC review the attached draft ordinances, hear the presentation by staff, take public testimony, and provide a recommendation regarding the proposed ordinances.to the Planning Commission and Board of Supervisors.

ATTACHMENTS

1. Draft Ordinance Amending Chapter 6.108 of the Alameda County General Code to Conform the Medical Marijuana Dispensaries Ordinance to the California Medical Cannabis Regulatory and Safety Act, and to Permit and Regulate the Delivery of Medical Cannabis in the Unincorporated Area of Alameda County, and to Regulate the Sale, Dispensing and Delivery of Edibles.
2. Draft Ordinance Amending Title 17 of the Alameda County General Code to Conditionally Permit Medical Cannabis Dispensaries in Specified Districts within the Unincorporated Area of Alameda County

3. Draft Ordinance Amending Chapter 6.106 and Title 17 of the Alameda County General Code to Implement a Pilot Program Regulating the Cultivation of Medical Cannabis in the Unincorporated Area of Alameda County
4. Draft Performance Standards and Standard Conditions for Cultivation Sites

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