



## MEMORANDUM

November 2, 2016

TO: Board of Supervisors' Transportation/Planning Committee

FROM: Medical Cannabis Interdepartmental Work Group

MEETING DATE: November 7, 2016

SUBJECT: Draft Medical Cannabis Dispensary and Cultivation Ordinances

### **BACKGROUND**

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. Proposed changes to the dispensary requirements necessitate revisions to the existing dispensary ordinance as well as amendments to the Zoning Ordinance to allow medical cannabis dispensaries as a conditional use, including as a conditional use in combination with cultivation in the "A" (Agricultural) District.

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 to allow the cultivation of medical cannabis as a conditional use in specified zones.

Your Committee last heard an update on the proposed medical cannabis dispensary and cultivation ordinances at your October 3<sup>rd</sup>, 2016 meeting, at which staff presented a summary of comments that had been received up to that time from members of the public. Attachment A contains a revised list of comments which includes public input received since October 3<sup>rd</sup>. Staff is in the process of preparing recommendations regarding the incorporation of these comments into the draft ordinances for presentation at the Committee's December meeting. In addition, at your October 3<sup>rd</sup> meeting, Supervisor Miley directed staff to revise the draft cultivation ordinance to delete the "M" (Industrial) Zoning Districts from the list of districts in which medical cannabis cultivation would be allowed. This change will be made in a subsequent draft that is being prepared.

## **DISCUSSION/SUMMARY**

### **Determining Dispensary Demand**

At your October 3<sup>rd</sup> meeting, Supervisor Miley directed staff to provide additional information about the determination of demand for medical cannabis dispensaries. Staff's research did not find any widely accepted standard, such as a specific ratio of dispensaries to population size, to determine the appropriate number of dispensaries to be located in a community. If further research is desired, factors that could be considered to better understand local demand for dispensaries include:

- Tax revenue from licensed dispensaries in Alameda County;
- Patient counts/ patient registration at Alameda County dispensaries;
- Obtaining voluntary survey responses about usage;
- National Survey on Drug Use and Health; and
- Retail marijuana tax statistics from the Colorado Department of Revenue

In a February 10, 2016 webinar presented by SCI Consulting Group titled "Cutting Through the Haze: Creating Effective Local Agency Marijuana Policy in California," Neil Hall from SCI, stated that his research found that a "realistic" ratio is one dispensary to a population of 10,000 to 25,000, based on his analysis of tax revenue generated by locations in Colorado and California that allowed sales, correlated with the number of dispensaries and the population of the communities in which they were located to determine where the maximum ratios were. He found that, in general, tax revenue started to level off when the number of dispensaries exceeded one per 10,000 of population, which he interpreted as an indication that buyers were switching to dispensaries because of their location or other factors, as opposed to an increase in purchases.

### **Comparison of Dispensary to Population Ratios in Local Jurisdictions**

The California Department of Finance estimates the January 1, 2016 population of the county unincorporated area at 149,821; therefore, the three dispensaries allowed by the current ordinance would generate a dispensary to population ratio of 1: 37,455. If the number of dispensaries allowed is increased to six as proposed in the draft ordinance, the ratio would be 1: 24,970.

Of the fourteen cities in Alameda County, only Berkeley, Oakland, and San Leandro currently allow dispensaries within their jurisdictions. In October 2016, the Livermore City Council directed staff to move forward with a zoning ordinance amendment that would allow one dispensary to locate in an industrial area on the east side of the city. Attachment B provides a summary of the total number of dispensaries currently allowed by local ordinance in all Alameda County cities plus the unincorporated area, and the number of dispensaries currently operating in each jurisdiction countywide.

The table below compares the dispensary to population ratios for the unincorporated area, based on the three dispensaries currently allowed by the existing county ordinance and the six proposed in the draft ordinance, to the ratios for the cities within the county that currently allow

dispensaries, as well as a few additional California cities. As shown in the table, with the three dispensaries permitted under the current ordinance, the ratio in the unincorporated area is similar to that of San Francisco and Los Angeles. With an increase to six dispensaries, the ratio within the unincorporated area would be similar to that of Berkeley, San Leandro, and Oakland after the first year of implementation of that city’s recently adopted ordinance which allows up to eight new dispensaries per year.

Approximate Ratio of Dispensaries to Population Based on Dispensaries Currently Allowed by Local Ordinance	
<i>Unincorporated Alameda County</i>	<i>Cities</i>
	Sacramento 1: 16,000
Proposed (6 dispensaries) 1: 25,000	Berkeley 1: 20,000
	Oakland 1: 26,000*
	San Leandro 1:29,000
Current (3 dispensaries) 1: 37,500	San Francisco 1: 35,000
	Los Angeles 1: 39,500
	San Jose 1: 63,500
*Oakland’s ratio assumes 16 dispensaries: 8 existing and 8 additional that could be permitted during the first year of implementation of the city’s recent ordinance allowing 8 new dispensaries per year. The city’s ratio will continue to decline as more dispensaries are approved in subsequent years.	

**Next Steps**

Staff is in the process of revising the draft dispensary and cultivation ordinances to include recommended changes that are technical in nature and do not affect the substance of the ordinance language. Staff is also preparing recommendations regarding the incorporation of public comments into the draft ordinances for presentation at the Committee’s December meeting. Staff will also make any revisions to the draft ordinances necessary to incorporate additional direction your committee provides.

Supervisor Haggerty directed staff to schedule a community meeting in the east county. This meeting will be held on Tuesday, November 15<sup>th</sup> at 6:30 p.m. at the County Public Works Building at 4825 Gleason Drive, Dublin. Comments from this meeting will also be incorporated into the list of public comments and considered for incorporation into the draft ordinances.

The public meeting schedule, including times and locations, is 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.

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

## ATTACHMENT A

### PUBLIC COMMENTS ON PROPOSED MEDICAL CANNABIS DISPENSARY AND CULTIVATION ORDINANCES THROUGH OCTOBER 25, 2016

#### Summary of General Comments Made at Public Meetings

##### Unincorporated Services Committee

*June 29, 2016* – Many members of the public spoke in favor of increasing the number of medical cannabis dispensaries in the unincorporated area, noting the benefits it provides in the treatment of many illnesses and stressing the need to increase patient access. Many unincorporated residents expressed concern regarding potential negative impacts of increasing the number of dispensaries in unincorporated communities and encouraged the Supervisors to slow down the process and provide them with more opportunity to review the ordinance and provide input.

*September 28, 2016* – 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.

### Agricultural Advisory Committee

*July 26, 2016* – The Agricultural Advisory Committee heard a presentation on proposed revisions to the existing county dispensary ordinance which would include allowing dispensaries in unincorporated east county; and to adopt an ordinance to implement a cultivation pilot program. Committee members were concerned that the presence of dispensaries and cultivation sites in rural areas would result in an increase in crime and that it would be difficult for the Sheriff’s Office to respond to calls quickly in remote areas. Concerns were also raised about potential illegal diversion of water from creeks and potential difficulties with tracking cannabis crops to prevent diversion for illegal sales.

*October 25, 2016* – The Agricultural Advisory Committee heard a staff presentation of the draft ordinances. The Committee formed a subcommittee to study the ordinances and may convene a special meeting to take a position on the drafts. The committee members and citizens raised a number of issues including: whether the level of security required for these operations may be inconsistent with an agricultural use; potential impacts on roadways/traffic in a “off the beaten path” areas; the potential inclusion of a buffer between medical cannabis facilities and residences in rural areas; insufficient law enforcement presence in remote rural areas; the difference between a hoop house and a greenhouse (indoor vs. outdoor licensure); whether there is demand for dispensaries in the rural unincorporated area; whether specific areas within the unincorporated east county should be identified where medical cannabis facilities would be allowed; and potential tax revenue or general fund money to pay for additional sheriff’s services.

### Livermore Valley Winegrowers Association Government Affairs Committee

*August 22, 2016* – Staff presented an overview of the proposed ordinances to the Livermore Valley Winegrowers Association Government Affairs Committee and requested input regarding whether cannabis dispensaries and/or cultivation sites would be appropriate in the South Livermore Valley Plan Area. Committee members stated that they would need to review the specific text of the proposed ordinances and would poll the association’s membership before commenting.

### Castro Valley Municipal Advisory Council

*June 20, 2016* – The Castro Valley Municipal Advisory Council (MAC) heard a presentation by the Office of the County Counsel on the MCRSA and the process underway to revise the existing county dispensary ordinance to make it consistent with the MCRSA. 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.

*September 12, 2016* – Staff presented the draft ordinances to the Castro Valley MAC. Members of the public who spoke were fairly evenly divided between supporters of the ordinance revisions and opponents. 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 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 requested a workshop to review the contents of the ordinance in detail. Since this meeting, the Council has agreed to consider a recommendation for the draft ordinances at the MAC’s October 24<sup>th</sup> meeting.

*October 24, 2016* – The Castro Valley MAC voted 6-1 to recommend the following changes to the draft ordinances:

**Dispensary/Delivery Ordinance:**

- Limit the number of dispensaries allowed to four, with a maximum of two in east county and two in west county
- Allow two dispensaries with a Conditional Use Permit as an accessory use to a permitted cultivation site only in the east county
- Retain the 1,000 foot buffer between dispensaries and sensitive receptors that is in the existing dispensary ordinance.
- Increase the 20 pound limit on the amount of product that can be stored at a dispensary to 100 pounds
- Prohibit the sale of edibles until state standards on potency are in place

**Cultivation Ordinance:**

- Allow cultivation as a conditional use only in the A (Agriculture) zoning district and only in the east county only
- Retain the 1,000 foot sensitive receptor buffer

**San Lorenzo Village Homes Association**

*September 15, 2016* – 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

*September 19, 2016* – 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. The commissioners agreed to consider making a recommendation to the Board of Supervisors regarding the draft ordinances at the Commission's October 17th meeting.

### Sunol Citizens Advisory Council Meeting

*September 21, 2016* – The Council heard a presentation on the proposed ordinance revisions. Members of the Council and the public asked whether the current supply of medical cannabis in the County is inadequate. There was discussion of whether the presence of medical cannabis facilities would tend to result in an increase in crime; and potential impacts on the quality of life in the surrounding area. There were also comments regarding the benefits of allowing dispensary operators to operate cultivation sites. These benefits include providing a reliable supply of desirable strains and greater control over the supply chain.

## Comments on Specific Ordinance Sections

During the public input process, the following comments on specific ordinance sections have been received:

- 6.108.010 – The definition of delivery should not include “or testing laboratory” – that would be “transport” between licensees, not delivery.
- 6.108.030(D) – The number of permitted dispensaries should not be increased since the need for additional facilities has not been demonstrated.
- 6.108.030(D) – Limit the number of dispensaries allowed to four, with a maximum of two in east county and two in west county
- 6.108.030(E) – The 1,000 foot buffer required in the existing ordinance should not be reduced.
- 6.108.030(E)(2) – Child or day care facility should be limited to licensed facilities.
- 6.108.030(F) – The ability to reduce the buffer between dispensaries and sensitive receptors by 15% should still apply.
- 6.108.120A4 – Increase the 20 pound limit on the amount of product that can be stored at a dispensary to 100 pounds
- 6.108.120A4- Ordinance language should be clarified to confirm that a dispensary can keep clones alive and sell them without needing a nursery or cultivation license.
- 6.108.120A5 – Some smoking/ingesting on site should be allowed, in order to allow business-driven sampling of products, not general consumption by patients or employees.
- 6.108.120A(7) – The sale of edibles should not be permitted in dispensaries.
- 6.108.120A12 – Proposition 47 language should be removed.
- 6.108.120A20 – Language regarding submitting new products for testing by licensed testing lab before they arrive at dispensary should be changed.
- 6.108.125A(1) – There may be tax implications involved with this section that the County should look into.
- 6.108.125A(3) – Maintaining a physical copy of an order for delivery is not practical, an electronic order should be sufficient.
- 6.108.125A(4) – The transition time in and out of the shop is the most risky for a delivery person, so it would actually be safer to make less trips and stock a number of common items in the delivery vehicle.
- 6.108.035 – The ordinance should include a cap on the number of delivery permits that would be allowed.
- 17.06.040 - Allow two dispensaries with a Conditional Use Permit as an accessory use to a permitted cultivation site only in the east county.
- 17.52.585 – Cultivation sites should not be allowed in industrial zoning districts.
- 17.52.585 – Allow cultivation as a conditional use only in the A (Agriculture) zoning district and only in the east county only
- 17.52.585 – A Conditional Use Permit should not be required for a cultivation site since the required public notice and hearing would advertise the location of the site, potentially making them a target for crime.
- Cultivation performance standards
  - The term “enclosed” should be changed to “indoor” and “mixed light.”



- Track and trace should be done by batch and lot instead of tracking individual plants.
- The prohibition of ingesting onsite is not practical since sampling is necessary for operation of the business, especially the business of cultivation
- Throughout – The word “medicinal” should be changed to “medical.”

**Attachment B - Medical Cannabis Dispensaries in Alameda County – October 2016**

	Approximate population in 2016 <sup>1</sup>	Maximum dispensaries allowed under ordinance	Approved dispensaries currently operating	Additional approved dispensaries (not yet opened)
Piedmont	11,219	0	0	0
Emeryville	11,721	0	0 <sup>2</sup>	0
Albany	18,893	0	0	0
Newark	44,733	0	0	0
Dublin	57,349	0	0	0
Union City	72,952	0	0	0
Pleasanton	74,982	0	0	0
Alameda	79,277	0	0	0
San Leandro	87,700	3	0	1 • Harborside
Livermore	88,183	0 <sup>3</sup>	0	0
Berkeley	119,915	6	3 • Cannabis Buyers Club of Berkeley • Berkeley Patients Care Collective • Berkeley Patients Group	3 • iCANN • Berkeley Compassionate Care Collective • The Apothecarium
Unincorporated Communities	149,821	3	2 • Garden of Eden • We are Hemp	0
Hayward	158,985	0	0	0
Fremont	229,324	0	0	0
Oakland	422,856	• 8, plus up to 8 more annually • No limit on delivery-only dispensaries	8 • Oakland Community Partners • Harborside Health Care • Purple Heart Patient Center • Oakland Organics • Blum • Magnolia Wellness • Phytologie • Telegraph Health Center	• Oakland will not issue further medical cannabis permits pending resolution of proposed amendments to the equity scheme in their ordinances.
<b>Total</b>	<b>1,627,910</b>	<b>20 +up to 8 per year</b>	<b>13</b>	<b>4<sup>4</sup></b>

<sup>1</sup> California Department of Finance <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-1/>

<sup>2</sup> Emeryville does not permit dispensaries but the ordinance does allow permits for delivery services into Emeryville from dispensaries outside of the city.

<sup>3</sup> In October 2016, the Livermore City Council directed staff to move forward with a zoning ordinance amendment that would allow one dispensary to locate in an industrial area on the east side of the city.

<sup>4</sup> This leaves 3 dispensaries in total (2 in San Leandro, 1 in unincorporated county) that are allowed under ordinance, but have not been approved/ allocated to a business.