



## MEMORANDUM

June 1, 2017

TO: Board of Supervisors' Transportation/Planning Committee

FROM: Medical Cannabis Interdepartmental Work Group

MEETING DATE: June 5, 2017

SUBJECT: Draft Medical Cannabis Dispensary and Cultivation Ordinances

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### **BACKGROUND**

The Board of Supervisors considered the proposed Medical Cannabis Dispensary and Cultivation Ordinances at the April 25, 2017 Board Planning meeting. The Supervisors referred the ordinances back to the Transportation/Planning Committee for consideration of comments received recommending changes to the ordinances. At the May 1, 2017 Transportation/Planning Committee meeting, Supervisor Miley reviewed the comments the Board had received and provided direction to staff regarding how to address the comments. The table provided in Attachment 1 contains a list of the comments received at the April 25<sup>th</sup> Board meeting and subsequent to that meeting, direction provided by the Supervisors regarding each comment, and staff's response. The draft ordinances which have been revised to reflect the Supervisors' direction are also attached.

### **DISCUSSION/SUMMARY**

#### **County Building and Fire Code Requirements**

At the April 25<sup>th</sup> Board Planning meeting the Supervisors directed staff to clarify how the County Building and Fire Codes would apply to medical cannabis cultivation operations. Members of the Interdepartmental Work Group met with staff from the County Public Works Agency and the County Fire Department to obtain this information. The Building and Fire Codes do not distinguish between cannabis cultivation and the cultivation of any other crop; therefore, cannabis cultivation operations must comply with all code provisions relevant to any other type of agricultural cultivation operation.

Agricultural structures may be exempt from building permits if all conditions listed in the County Building Code are met. The County Building Code defines an agricultural structure as a structure designed and

constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. The structure may not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor a place used by the public (Section 202 of the California Building Code). Examples of agricultural structures include shade structures, greenhouses, barns, stables and hoop houses.

To qualify for an exemption from building permits, an agricultural structure may not exceed 400 square feet or, on lots greater than 20 acres, may not exceed 12,000 square feet. To obtain an exemption, the property owner must file specified information (including a plot plan) with the building department and pay a fee. The agricultural exemption does not exempt the structure from the need for any required electrical, plumbing, and/or mechanical permits or from the Alameda County Fire Code. If the structure does not qualify for an exemption, the land owner must apply for a building permit.

An agricultural structure is classified as Group U occupancy pursuant to Appendix C of the California Building Code if all relevant code requirements are met. The County Fire Code does not require fire suppression sprinklers in a structure classified as Group U occupancy unless the structure is larger than 5,000 square feet. According to the code, any building larger than 5,000 square feet, regardless of use, must have fire sprinklers. At a meeting on May 30<sup>th</sup> with County staff and representatives of the agricultural community, Fire Department staff indicated that the Department will consider whether the Fire Code could be amended to remove this requirement without compromising public safety.

## **Hoop Houses**

At the April 25<sup>th</sup> Board Planning meeting, staff was requested to provide additional information about hoop houses to consider whether medical cannabis cultivation should be allowed in hoop houses in addition to greenhouses.

The proposed cultivation ordinance does not specify the type of structure in which cannabis cultivation can occur. Section 6.106.080.A.12 requires that applicants submit a “site plan, consisting of a sketch or diagram showing the entire parcel and the area designated for cultivation activities, including the interior configuration of the greenhouse or other structure housing cultivation activities ...”

Section 17.52.585.A of the proposed zoning ordinance amendments states that the “Planning Director may establish additional performance standards and standard conditions providing detailed guidance for applicants and permittees. Permittees shall be required to comply with the performance standards and any conditions of approval applicable to a permit issued pursuant to this chapter.” Therefore, the performance standards will not be adopted as part the ordinances. The draft performance standards that have been provided would require that all “planting, growing, harvesting, drying, curing, grading, or trimming and associated storage of cannabis must occur within the interior of an enclosed, secured structure, such as a greenhouse.”

A hoop house is a structure comprising large hoops or a frame (metal, plastic or wooden) covered by a layer of plastic or polyethylene film, under which plants are grown. A hoop house is also sometimes referred to as a cold frame greenhouse, high tunnel, or poly house. Crops in a hoop house can be planted into the ground, raised beds or moveable containers or pots. Hoop houses have varying degrees of sophistication and automation. A basic hoop house can include roll-up side walls and no automated heating

or irrigation. At the other end of the spectrum, a hoop house can include fully automated lighting, heating and irrigation systems.

If it is the desire of your Committee to clarify that cultivation of cannabis in hoop houses would be allowed, either the draft zoning ordinance amendments or the draft performance standards, or both, can be revised to specifically include hoop houses. It should be noted that cultivation in hoop houses would still need to comply with all other ordinance requirements such as provision of adequate security and odor control measures.

### **Interaction with Criminal Law**

At the April 25<sup>th</sup> Board of Supervisors Planning meeting, the Board asked County staff to change the prohibition on participation in cannabis operations from 10 years to 3 years in accordance with MCRSA. However, the 3-year provision in MCRSA is tied to licensing sanctions, not recent felonies. Instead, MCRSA provides that a state licensing authority “may” (not “shall”) deny a license if the applicant has been “sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.” Health and Safety Code § 19323(b)(7).

With respect to felonies, MCRSA does not provide a 3-year or any other bright line cut off for whether a felony will prohibit participation in commercial cannabis operations. Under MCRSA, a licensing authority also “may” deny a license if the applicant has been convicted of “an offense that is substantially related to the qualifications, functions, or duties of the business.” HSC § 19323(b)(4). Additionally, if the state licensing authority determines that, despite the conviction, the applicant is “otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review.” HSC § 19323(b)(4). The draft regulations issued by the Bureau of Marijuana Control and CalCannabis (CFDA) include additional guidance on what would constitute a “substantially related” offense. (BMC § 5032; CalCannabis § 8108.) MCRSA also provides that “An applicant shall not be denied a state license if the denial is based solely on a substantially related conviction that was dismissed or for which the applicant has obtained a certificate of rehabilitation.” HSC § 19325.

Your Committee may thus wish to consider whether shifting to the State standard instead of the bright line 3-year prohibition would be desirable, either in the current draft or once the State regulations are finalized. An option to incorporate the State standard could include the following:

**6.108.120(A)(12)** Until the Bureau’s regulations become effective, no person who has been convicted of a felony within the past three years may be actively engaged in the operation of any dispensary. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Once the Bureau’s regulations become effective, the impact of a prior conviction on an application shall be evaluated pursuant to Health and Safety Code Sections 19323 and 19325 and the applicable regulations. The director shall adopt procedures, standards and criteria to implement this provision.

A similar edit could be made to 6.108.100(A)(4); 6.108.125(A)(9); 6.106.060(B)(3); and 6.106.100(A)(4).

Separately, the working group has evaluated the violations provision, which states that each day of a violation constitutes a misdemeanor. This is the standard enforcement provision for County ordinances and is used throughout the County code, including for all violations of the Zoning Ordinance. This standard is a useful enforcement tool because, among other reasons, it allows fines of up to \$1000 per day to accumulate for continuing violations. This will provide a deterrent to those who might consider opening or continuing operations without a valid permit or without complying with permit requirements. This standard is also consistent with state law. Pursuant to Government Code Section 25132, a violation of a County ordinance is a misdemeanor unless by ordinance it is made an infraction. That section also provides that the violation may be criminally prosecuted or redressed by civil action. Fines for infractions are limited to \$100 for a first violation, \$200 for a second violation and \$500 for each additional violation within the same year.

## **NEXT STEPS**

Staff will incorporate any additional edits your committee provides into the proposed ordinances. With your concurrence, staff will present the revised ordinances at the following public meetings to receive public input on the revisions and obtain recommendations from these bodies, with the goal of bringing the revised ordinances back to the full Board of Supervisors for consideration on August 1, 2017.

<b>Proposed Public Meeting Schedule</b>	
June 21, 2017	Sunol Citizens Advisory Committee
June 26, 2017	Castro Valley Municipal Advisory Council
June 27, 2017	Agricultural Advisory Committee (Special Meeting)
June 28, 2017	Unincorporated Services Committee
July TBD, 2017	Transportation/Planning Committee (if needed)
July 10, 2017	Planning Commission
August 1, 2017	Board of Supervisors – First Reading
September 12, 2017	Board of Supervisors – Second Reading

## **Fee Study**

Staff is working with a consultant to prepare a fee study consistent with the provisions of Proposition 26 to determine the appropriate level of fees for application review and approval for medical cannabis dispensaries and cultivation sites, as well as medical cannabis delivery; and for costs associated with on-going maintenance and monitoring of these permits to fully recover the cost of County staff time to perform these functions. The fee study is expected to be completed in August, and the Board will be asked to approve the fees in September.

## **Attachments**

- Attachment 1 – Response to Comments Received on Draft Chapters 6.106 and 6.108
- Attachment 2 - An Ordinance Amending Chapter 6.108 of the Alameda County General Ordinance Code to Regulate Medical Cannabis Dispensaries, to Permit and Regulate the Delivery of Medical Cannabis in the Unincorporated Area of the County of Alameda, and to Regulate the Sale, Dispensing and Delivery of Edibles

- Exhibit A (map of West County)
- Exhibit B (map of East County)
- Attachment 3 - An Ordinance Amending Title 17 of the Alameda County General Ordinance Code to Conditionally Permit Medical Cannabis Dispensaries in Specified Districts within the Unincorporated Area of the County of Alameda
- Attachment 4 - An Ordinance Adding Chapter 6.106 to the Alameda County General Ordinance Code to Implement a Pilot Program Authorizing and Regulating the Cultivation of Medical Cannabis in the Unincorporated Area of the County Of Alameda
- Attachment 5 - An Ordinance Amending Title 17 of the Alameda County General Ordinance Code to Implement a Pilot Program Authorizing and Regulating the Cultivation of Medical Cannabis in the Unincorporated Area of the County of Alameda
- Attachment 6 - Draft County of Alameda Community Development Agency Performance Standards and Standard Conditions for Pilot Program Cultivation Sites

**ATTACHMENT 1**

<b>Response to Comments Received on Draft Chapter 6.106 - Medical Cannabis Cultivation Ordinance at and subsequent to the April 25<sup>th</sup> Board of Supervisors Meeting</b>			
<b>Ordinance Sections</b>	<b>Public Comment</b>	<b>Supervisors' Direction</b>	<b>Staff Response</b>
6.106.050, 6.106.060, & 6.106.070	Long-term rural property owners in the East County should be given greater opportunity to participate in the cannabis industry.	The permitting processes for all four cultivation sites should take place at the same time; and preference in the selection process for the cultivation sites not associated with the existing dispensaries should be given to long-term Alameda County property owners.	Staff will begin the RFP process to select the cultivation sites not associated with the existing dispensaries as soon as possible after ordinance adoption and the criteria for the selection process will include preference for long-term rural property owners.
6.106.050 & 6.106.060	Remove any extraneous references to "vertically integrated operations."	Consider revising ordinance in accord with comment.	The term "vertically integrated operations" is used to differentiate between the permitting processes for the 2 cultivation sites associated with existing dispensaries and the 2 that are not associated with existing dispensaries. The ordinance does not require vertical integration.
6.106.050.A.1 & 6.106.080.A.2	Address concern that social security numbers on applications could be subject to disclosure pursuant to the California Public Records Act.	Remove reference to the California Public Records Act.	Ordinance revised as directed.
6.106.050.C	Remove references to the California Public Records Act.	Revise ordinance in accord with comment.	Ordinance revised as directed.
6.106.060.A.3 & 6.106.100.A.1	Change the period of time in which no person who is listed on the application pursuant to subsection (1) or (5) of Section 6.106.050(A) may have been convicted of a felony from ten years to three years, consistent with MCRSA.	Revise ordinance in accord with comment.	Ordinance revised as directed.
6.106.110.C	Delete references to the sheriff.	Revise ordinance in accord with comment.	Ordinance revised as directed.
6.106.150	Delete the first sentence of the section which states, "Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 801 et seq. or to license any activity that is prohibited under	Consider revising ordinance in accord with comment.	Ordinance revised in accord with comment.

	said Act except as mandated by state law;”		
6.106.180	The December 31, 2018 sunset date in the ordinance no longer allows for a two-year pilot.	Change termination date of the cultivation pilot from “December 31, 2018” to two years after the date the cultivation ordinance becomes effective.	Ordinance revised as directed.
Throughout	Change “cultivation” to “cannabis cultivation” to demonstrate this as a special type of cultivation; make similar terminology changes	Consider revising ordinance in accord with comment.	Ordinance revised as directed.
6.108.120.A.4.; and Definitions (6.108.020; 6.106.020)	Allow sale of clones in dispensaries so that prohibition on “cultivation” in dispensaries doesn’t prohibit watering clones	Clarify that dispensaries may sell clones.	Ordinance revised as directed.
Definitions (6.108.020; 6.106.020) and Performance Standards	Add nurseries to ordinance	Clarify that nurseries may be permitted where cultivation is permitted	Ordinance revised as directed.

**Response to Comments on Draft Chapter 6.108 – Medical Cannabis Dispensary Ordinance  
at and subsequent to the April 25<sup>th</sup> Board of Supervisors Meeting**

<b>Ordinance Sections</b>	<b>Public Comment</b>	<b>Supervisors' Direction</b>	<b>Staff Response</b>
6.108.030.D	Consider options for regulating the siting of dispensaries in the East County to ensure that the two dispensaries are not clustered close together and in close proximity to the City of Livermore.	Revise ordinance to require a one-mile buffer between any dispensary in the unincorporated area and a dispensary within a city; and a five-mile buffer between dispensaries in the unincorporated area.	Ordinance revised as directed.
6.108.030.E.2	City of Livermore requested and County Planning Commission recommended that “places of worship” be added to the list of uses from which dispensaries are required to locate a distance of at least 1,000 feet.	Do not add “places of worship” to the list of uses from which dispensaries are required to locate a distance of at least 1,000 feet.	No change to ordinance.
6.108.060.A.2	Address concern that social security numbers on applications could be subject to disclosure pursuant to the California Public Records Act.	Remove reference to the California Public Records Act.	Ordinance revised as directed.
6.108.060.A.10 & 6.108.125.A.9	Delete requirements that each employee, independent contractor, and volunteer must submit to fingerprints and undergo background checks by the sheriff's office.	Consider revising ordinance in accord with comment.	Ordinance revised to encompass those “regularly engaged” in operations
6.108.060.C & 6.108.065.D	Remove references to the California Public Records Act.	Revise ordinance in accord with comment.	Ordinance revised as directed.
6.108.100.A.4, 6.108.120.A.12, & 6.108.125.A.10	Change the period of time in which no person who is listed on the application pursuant to subsection (1) or (5) of Section 6.106.050(A) may have been convicted of a felony from ten years to three years, consistent with MCRSA.	Revise ordinance in accord with comment.	Ordinance revised as directed.
6.108.110.C, 6.108.120.A.11, <b>6.108.120.D,</b> <b>6.108.125.A.9,</b> & 6.108.160.A.	Delete references to the sheriff.	Revise ordinance in accord with comment.	Ordinance revised as directed; some references to sheriff retained with respect to regular inspections and background checks (6.108.060.A.10.; 6.108.120.D, 6.108.125.A.9)
6.108.120.A.1 & 6.108.125.A.1	Delete references to California Health & Safety Code Section 11362.5.	Consider revising ordinance in accord with comment.	Ordinance revised to cite MCRSA instead of Compassionate Use Act



6.108.120.A.4	Revise language to clarify that the sale of clones would be allowed at dispensaries. Selling clones should not be considered a “nursery” or “cultivation” land use type.	Revise ordinance in accord with comment.	Ordinance revised as directed.
6.108.120.A.4	Remove 100-pound limit (previously recommended by CVMAC) on the amount of cannabis allowed on the premises of a dispensary.	Revise ordinance in accord with comment.	Ordinance revised as directed.
6.108.120.A.8	Delete the first sentence which states, “No person who is less than eighteen (18) years of age may be employed or otherwise engaged in the operation of the dispensary.”	Consider revising ordinance in accord with comment.	Recommend keeping ordinance language as is to clarify that persons under eighteen may not be employed by a dispensary at the dispensary site or at an off-site location. Language modified to clarify that qualified patients under 18 may physically visit dispensary, but cannot be employed.
6.108.125.A.4	Remove restriction on the amount of cannabis allowed in a delivery vehicle.	Revise ordinance in accord with comment.	Ordinance revised as directed.
6.108.190	Clarify language regarding misdemeanor violations.	Consider revising, consider whether a new violation every day is necessary.	Recommend maintaining; allowing fines to accumulate for serious or ongoing violations
6.108.230.B.3	Delete requirement that edibles packaging not be transparent.	Consider revising ordinance in accord with comment.	Complies with proposed state regulations, BMC (§ 5184)

