



## MEMORANDUM

March 19, 2018

TO: Board of Supervisors' Transportation/Planning Committee

FROM: Cannabis Interdepartmental Work Group

MEETING DATE: March 21, 2018

SUBJECT: Consideration of Issues regarding County Ordinances for Cannabis Manufacturers, Distributors, Testing Laboratories, and Microbusinesses

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### **BACKGROUND**

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which was signed by the Governor in June of 2017 and amended by AB 133 in September of 2017, consolidated the licensure and regulation of commercial medicinal and adult-use cannabis activities. On November 16, 2017, the three state agencies with licensing responsibility for cannabis activities -- the Department of Consumer Affairs (CDCA), the Department of Food and Agriculture (CDFA), and the State Department of Public Health (CDPH) -- released revised regulations which were adopted through an emergency rulemaking process in order to take effect January 1, 2018. The Bureau of Cannabis Control (BCC), which is part of CDCA, is responsible for licensing retailers, distributors, testing laboratories, and microbusinesses; CalCannabis, which is part of CDFA, is responsible for licensing cultivators; and the Manufactured Cannabis Safety Branch (MCSB) of CDPH, is responsible for licensing manufacturers of cannabis products. State regulations require that, with the exception of testing labs, licensees must hold an A-license to engage in adult-use commercial cannabis activity and an M-license to engage in medicinal commercial cannabis activity. A business may hold both A- and M-licenses at the same premises; however, the cannabis moving through the supply chains in each of the two license categories must be tracked separately.

### **DISCUSSION/SUMMARY**

Recently-adopted County ordinances address cannabis retail sales, delivery, and cultivation, but not manufacturing, distribution, testing laboratories, or microbusinesses. In order to allow these additional uses in the unincorporated area, amendments to the County Ordinance Code, similar to those for retail sales and cultivation, would need to be adopted.

Since these additional facility types raise many of the same concerns as cannabis retailers and cultivators, it would be appropriate for these new ordinances to include many of the same requirements, for example, security measures, mitigation of potential nuisances such as odors, and buffers from sensitive uses such as schools, parks, and daycare centers to reduce potential conflicts with existing land uses. In order to further minimize potential impacts on existing communities, the Board may also consider limiting the number of each type of facility allowed as the retail sales and cultivation ordinance do.

## **Cannabis Manufacturing**

### State Licenses and Regulations

MAUCRSA defines “Manufacturer” as “a licensee that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.” Four types of cannabis manufacturing licenses may be obtained from the State Department of Public Health:

- Type 7 for extraction using volatile solvents, such as butane, hexane, or pentane
- Type 6 for extraction using a mechanical method or a non-volatile solvent, such as food-grade butter, oil, water, ethanol, or carbon dioxide
- Type N for manufacturers that use infusion processes, such as using pre-extracted oils to create edibles, beverages, capsules, vape cartridges, tinctures, or topicals
- Type P for manufacturers that only package or repackage cannabis products or label or relabel the cannabis product container.

For each license type, a licensee may also conduct all of the operations allowed under the license types below it. For example, under a Type 7 license, a manufacturer may conduct all operations allowed under Type 6, Type N, and Type P licenses. Currently, each licensee is required to have a separate premises. CDPH is in the process of developing an additional license type, Type S, which will allow businesses to share facility space on the same premises. CDPH anticipates that this license type will be ready to be issued in early 2018.

State regulations require manufacturing licensees to have written procedures for inventory control, quality control, transportation, security, and cannabis waste disposal. The regulations are intended to ensure that production occurs in a sanitary and hazard-free environment, cannabis products are contaminant free, and THC levels are consistent throughout the product and within required limits. Extraction processes using carbon dioxide or a volatile solvent must be conducted using a closed-loop system, certified by a California-licensed engineer. Volatile solvent, carbon dioxide and ethanol extractions must also be certified by the local fire code official. The regulations contain extensive requirements for packaging and labelling; for example, edibles packaging must be opaque, tamper-evident, child-resistant, and not attractive to children; labels must include an ingredient list, THC content, mandated warning statements, and a CDPH-issued universal symbol to indicate that the product contains cannabis.

## Issues to be Considered

### *Appropriate Zoning Districts*

Cannabis manufacturing facilities are similar to other types of manufacturing facilities that are allowed in the M-P (Industrial Park) District, M-1 (Light Industrial) and M-2 (Heavy Industrial) Zoning Districts. The industrial area within the unincorporated county is located at the western end of Grant Avenue in San Lorenzo. Because the area is relatively small, consisting of approximately 117 acres, and includes few vacant properties, potential sites for cannabis manufacturing facilities in this area would be limited. The Environmental Health Department and the Fire Department will be consulted in the development of the cannabis manufacturing ordinance to ensure health and safety issues concerning both the products made at the facilities and the areas surrounding the facilities are adequately addressed.

### *Extraction Using Volatile Solvents*

Because of the potential danger of explosion and fire associated with oil extraction methods that use volatile solvents, some jurisdictions have elected to not allow operations that use these substances. Other jurisdictions limit these uses to heavy industrial zoning districts to ensure that these facilities are located away from concentrations of people and incompatible land uses. The City of Hayward does not allow extraction using volatile solvents, while the City of San Leandro allows all forms of manufacturing with a conditional use permit. The Counties of Monterey and Mendocino allow the use of volatile solvents in specified industrial zoning districts. Sonoma County does not allow volatile solvents.

## **Cannabis Distributors**

### State Licenses and Regulations

MAUCRSA requires that all transportation of cannabis and cannabis products between licensed facilities be conducted by a licensed distributor or their direct employees. Distributors are also responsible for arranging for laboratory testing and quality assurance for cannabis and cannabis products, checking for appropriate packaging and labelling, and collecting taxes. All cannabis and cannabis products must pass through a distributor prior to being sold to customers by a retailer. State regulations require that cannabis goods be transported in a locked container inside a commercial vehicle that is equipped with an alarm. The regulations also require that a manifest containing specified information accompany each shipment.

### Issues to be Considered

Distributors require a location for the storage of cannabis and cannabis products awaiting transport to another licensee, and while testing is being performed. The distributor's premises would be similar to other warehouse-type uses that are currently allowed in the M-1 (Light Industrial) and M-2 (Heavy Industrial) zoning districts. A potential increase in truck traffic, adequate security measures, and mitigation of nuisances such as odor should be considered in developing an ordinance for distributors.

## **Cannabis Testing Laboratories**

### State Licenses and Regulations

MAUCRSA defines “testing laboratory” as “a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the bureau.”

After a distributor takes possession of a cannabis goods batch, state regulations require that the distributor contact a licensed testing laboratory and arrange for a laboratory employee to come to the distributor’s licensed premises to select a representative sample for laboratory testing. The regulations include requirements pertaining to minimum sample size, transportation of the samples to the laboratory site, storage of samples, and documentation of all sampling activity. Tests must be performed to identify and measure a long list of potential contaminants, including heavy metals, microbial impurities, residual pesticides, and residual solvents. Edible cannabis products that contain more than one serving per unit must be tested for consistent levels of THC and CBD. After testing, the laboratory must generate a certificate of analysis that contains the results of the testing and whether the tested batch passed or failed.

### Issues to be Considered

Laboratories are currently allowed in the M-P (Industrial Park) District, the M-2 (Heavy Industrial) District, and the C-O (Commercial Office) District. Since only small amounts of cannabis would be transported to the testing laboratory and stored on-site, testing laboratories are likely to have fewer impacts on the surrounding area than other types of operations. Providing adequate security would still be a consideration.

## **Microbusinesses**

### State Licenses and Regulations

MAUCRSA requires that microbusiness licensees engage in at least three of the following commercial cannabis activities: cultivation (less than 10,000 square feet), manufacturing (with the exception of extraction using volatile solvents), distribution, or retail sales. Licensees may only engage in the commercial cannabis activities listed on the microbusiness license, and are required to comply with all of the state statutes and regulations for each of the cannabis activities included in their operation.

### Issues to be Considered

County ordinances could accommodate microbusinesses by allowing combined cannabis uses on a single property as long as the property is in a location that is appropriate for each of the uses and all other ordinance requirements for each cannabis use are met. The differing characters of the communities

and current limitations on land uses allowed in the various zoning districts would make implementation of the microbusiness model challenging in the unincorporated area.

## **NEXT STEPS**

Based on direction from your Committee, staff will report on options for the consideration of new ordinances for cannabis manufacturing operations, distributors, testing labs, and microbusinesses at your next Committee meeting.