M E M O R A N D U M

December 7, 2016

TO: Board of Supervisors' Transportation/Planning Committee

FROM: Medical Cannabis Interdepartmental Work Group

MEETING DATE: December 8, 2016

SUBJECT: Draft Medical Cannabis Dispensary and Cultivation Ordinances

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Background

Your Committee last heard an update on the proposed medical cannabis dispensary and cultivation ordinances at your November 7th, 2016 meeting. Since that meeting, additional public meetings as well as internal discussions have been held to discuss the proposed ordinances and the comments raised to date. As staff begins to formulate a final draft of the ordinances and the public process transitions to more formal adoption proceedings, what follows is a summary of the proposed ordinances as they stand today based on input from a variety of sources (see attached full calendar). As may be expected, general agreement on a variety of issues remains to be seen, and those are also discussed towards the end of this memorandum. However, the outcome of the rigorous process staff has participated in has led to a series of basic policies that can be reflected in the draft ordinances. Taking a broad strokes approach, the policy direction consists of the following basic concepts:

- The total number of dispensaries in the unincorporated County shall not exceed six (6), with a total of four in the west County and two in the East County.

- Cultivation permits shall not exceed four (4), and must be located in the east County area. As a pilot program, cultivation need not be connected to a dispensary in good standing (as previously required).

- A two-step process is required for any new applications for a dispensary or a cultivation site: an RFP process (chapter 6 of the County code) and a Conditional Use Permit (chapter 17 of the County code). It is anticipated that existing dispensary operators in the County, provided they are in "good standing", may proceed through the RFP process for a cultivation site more expediently than an applicant without any history of operating an approved medical cannabis business within the County. For prospective applicants without an existing dispensary permit, the RFP process (Chapter 6) may require several months to complete.

- Performance standards such as those controlling for odor, track and trace, distance requirements from sensitive uses and safety plans will apply to both new dispensaries and new cultivation sites. Standards for existing dispensaries remain in place.

- Equity and community benefit provisions (more information follows below) may be considered in the application process for each new cannabis dispensary and/or cultivation site.

- CEQA shall apply to all new amendments to the County's cannabis program (draft CEQA document has been completed).

- Fees will be charged to recoup costs associated with administration of new permits. Fees will be calculated to cover staff time from several Agencies/Departments including but not limited to County Sheriff, Planning, Agriculture/Weights and Measures, Environmental Health, and County Administrators Office.

Given the complexity of the issues related to cannabis, and the speed at which policies have been developed, the draft ordinances require some changes before they can proceed to adoption proceedings, but staff is working diligently to complete them in a timely manner. It is expected changes may occur to draft ordinances throughout the adoption process (primarily Planning Commission and Board of Supervisors), yet the above policies are intended to serve as an outline of what the draft ordinances will contain. Continued coordination within the working group will occur so that the draft ordinances are reconciled with applicable state law, the various departments involved and policy decisions made throughout the process.

It should be noted that the County's Sheriff's Office has stated its position early in the process and remains concerned about the prospect of additional dispensaries and cultivation sites in the east County. Concerns about providing adequate resources to ensure public safety, additional delivery services, quantity limitations (or lack thereof) and general concern about the potential for strain on existing resources remain.

Prop 64

Analysis of the impact of Proposition 64 (legalizing adult recreational or non-medical use) is still underway, and barring any intervention from the new federal administration, the land use regulations and performance standards contained in the County's local ordinances, could be updated to also apply to commercial recreational use. Staff does not envision the County necessarily having separate dispensary/cultivation ordinances for both medical and recreational use, and it may be possible that the framework described above could work in both instances. The need to expand the number of dispensaries or cultivation sites due to Proposition 64 is not anticipated at this time.

Other Jurisdictional Information

At your November meeting, Supervisor Miley directed staff to provide information about regulations other jurisdictions are employing to control odor from dispensaries or cultivation sites, whether other jurisdictions restrict the amount of medical cannabis that can be stored at a dispensary, and examples of how other jurisdictions have addressed social equity in their ordinances.

- **Odor Control Measures**

The County's draft medical cannabis dispensary and cultivation ordinances both require applicants to demonstrate that adequate measures will be implemented to control any odors that may emanate from the facility. Section 6.108.060.A.16 of the draft dispensary ordinance and Section 6.106.060.A.16 of the draft cultivation ordinance require that an applicant provide:

> A description of the methods by which the applicant will mitigate any potentially adverse impacts, such as loitering, odors or noise, on surrounding property owners. The dispensary shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the dispensary is not detected outside the building in which it operates, on adjacent public rights-of-way, or within other units located within the same building as the dispensary if it occupies only a portion of the building.

Section 17.52.585 of the draft cultivation ordinance states that no conditional use permit for cultivation shall be issued unless the board of zoning adjustments finds that:

> C. Odorous gases or odorous matter shall not be emitted in quantities such as to be perceptible outside of the cultivation site;

There are several approaches taken by other jurisdictions to control odor from dispensaries and cultivation sites:

- some do not include any reference to odor at all;
- many include a requirement that medical cannabis facilities must not adversely affect neighboring properties, including as a result of odor, but do not specify how this should be achieved;
- some require submission of a plan addressing environmental and amenity impacts, which may include consideration of odor; and
- others require a separate stand-alone Odor Mitigation Plan.

The following are some examples of jurisdictions which include specific requirements relating to odor:

City of Oakland	5.80.020(D)(4)(h) & 5.81.070(B): No cannabis or cannabis odors shall be detectable by sight or smell outside of a permitted facility. 5.81.050(B): An odor mitigation plan must be provided with application for permit for cultivation sites. 5.81.101(B)(6): Exempted collective/ corporative cultivation, processing and manufacturing sites in residential areas must not adversely affect the health or safety of the residence or nearby properties, including through odor.
City of San Jose	6.88.330(A)(1)(i)(viii): An odor management plan detailing steps the collective will take to install air purification systems and air

	scrubbers to ensure that the odor of medical marijuana will not emanate beyond the walls of the collective's premises. 6.88.470: Public safety and safety of location. • A. Each collective shall operate in a manner such that the cultivation of medical marijuana does not adversely affect the health or safety of nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts. • B. Each collective shall utilize appropriate air purification systems and air scrubbers wherever medical marijuana is cultivated, processed, manufactured or dispensed so as to prevent the odor of medical marijuana from emanating beyond the walls of the collective's premises.
City of Richmond	15.04.610.270(F)(1)(d)(v): Ventilations Plans. All cultivation and manufacturing operations must submit detailed information about the proposed ventilation system, including technical specifications indicating that the system is capable of preventing the release into the atmosphere of marijuana odors from the cultivation or manufacturing operation. 15.04.610.270(G)(1): Standards Applicable to All Medical Marijuana Businesses - (g): Ventilation. The medical marijuana business must provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the property is not detected outside the property, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the marijuana dispensary, cultivation site, marijuana product manufacturer or any other subsequently approved marijuana business.
City of San Leandro	4-33-500(c)(5): The Dispensary shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the Dispensary is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the Dispensary, if the use only occupies a portion of the building.

- **Inventory Limits**

Section 6.108.120.A.4 of the County's existing dispensary ordinance limits the amount of cannabis that can be kept on a dispensary's premises to the lesser of:

a. An amount of marijuana equal to eight ounces per qualified patient, primary caregiver and person with an identification card who has received marijuana from the dispensary during the previous thirty (30) calendar days, or
b. A total of twenty (20) pounds of marijuana.

These limits were deleted from the draft dispensary ordinance that is currently under consideration based on the assumption that, as business operators, dispensary owners would not store a large amount of inventory on site that would not be sold in a short amount of time.

At its October 24th, 2016 meeting, the Castro Valley Municipal Advisory Council recommended that the 20 pound limit on the amount of product that can be stored at a dispensary be increased to 100 pounds rather than removing the limit entirely.

In reviewing the dispensary ordinances of other jurisdictions, staff found only one, the City of San Leandro, which includes a limit on cannabis product in a dispensary measured by weight of product.

Section 4-33-500 of San Leandro's municipal code provides that:

> (6) A dispensary may only dispense, store, or transport marijuana in aggregate amounts tied to its membership numbers. A dispensary may possess no more than eight (8) ounces of dried marijuana per qualified patient or caregiver, and maintain no more than six (6) mature and twelve (12) immature marijuana plants per qualified patient. However, if a qualified patient or primary caregiver has a doctor's recommendation that the above quantity does not meet the qualified patient's needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs. For purposes of determining the quantity of marijuana, only the dried mature processed flowers of female cannabis plants or the plants conversion shall be considered.

The eight ounce limit per patient is consistent with that provided for in section 11362.77[1] of the California Health and Safety Code (HSC) which provides that, unless with a doctor's recommendation for a higher quantity, a qualified patient or caregiver may possess no more than 8 ounces of dried marijuana. It is noted however, that the California Supreme Court in the People v Kelly, 47 Cal. 4th 1008 (2010) found that this section was inconsistent with the provisions of the Compassionate Use Act, which allows patients to possess a "reasonable amount for a patient's personal medical use", which is recognized by the proviso in the San Leandro code allowing qualified patients and primary caregivers to possess amounts consistent with the patient's need.

County staff have not identified any evidence or commentary directly relating to whether the amount of product available at a dispensary would impact the likelihood or severity of the incidences of crime. San Leandro has approved one dispensary (Harborside), but the dispensary has not commenced operation yet, so there is no information about how the product limits there have been implemented. Staff are not aware of any useful data or studies which discuss in detail the rationale and/or effectiveness of imposing product limits on medical cannabis dispensaries.

- **Equity Measures**

At your November meeting, your committee requested that staff investigate equity measures that could be included in the County's medical cannabis ordinances, including consideration of the measures

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[1] http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=HSC§ionNum=11362.77.

proposed by the Alameda County Cannabis Equity Coalition (ACCEC) in the letter ACCEC provided to the committee on November 7th.

Oakland Equity Program

Based on review of various medical cannabis ordinances in California, it appears that the City of Oakland is the only jurisdiction in the State which includes an Equity Program. Oakland's Equity Program was approved unanimously by the City Council in May 2016. It requires that half of all cannabis permits (not including existing approved businesses, which are exempt) must be issued to an applicant comprising no less than 50% ownership by at least one member who resides for at least the last two years prior to the date of application in one of six police beats in East Oakland (those which had the highest number of cannabis-related arrests in 2013) or has been incarcerated within the last ten years for cannabis-related offences which occurred in Oakland.

The Equity Program has been the subject of continued debate since its adoption in May. Those in support of the program maintain that inclusion of equity measures in the medical cannabis ordinances represents a significant opportunity for the city to provide some redress to those in the community who have been disproportionately impacted by cannabis-related offences. Opponents, on the other hand, argue that the program will:

- stifle competition;
- delay or preclude businesses not eligible for the Equity Program from obtaining permits (for example, the program requires that the city must not issue more non-equity than equity permits, so if there are insufficient equity applicants, permits cannot be issued to non-equity businesses);
- unfairly exclude people living in other equally disadvantaged areas within the community by limiting eligibility to a confined area of six police beats; and
- contravene the State and/or Federal constitutions on several grounds, including in relation to discrimination and due process.

On November 14th, the Oakland City Council directed the City Administrator to perform a "racial equity analysis" of proposed amendments to the medical cannabis ordinances. The City's Director of Race and Equity indicated that the racial equity analysis will include consideration of a "racial equity outcome", which is a stated objective for the program. She put forward the following draft racial equity outcome:

> "Promoting Equitable Ownership And Employment Opportunities In The Cannabis Industry In Order To Decrease Disparities In Life Outcomes For Marginalized Communities Of Color And To Address The Disproportionate Impacts Of The War On Drugs In Those Communities."

Oakland City Council will consider proposed amendments to the equity program ordinance provisions in January.

County staff will continue to consider the possibility of inclusion of an equity program in the County's medical cannabis ordinances, including consideration of relevant legal issues by County Counsel.

Community Benefit Measures

Oakland's Director of Race and Equity has stated that equity, for the purposes of the City of Oakland Equity Program, means ownership and the ability to meaningfully compete in the medical cannabis market. This has been the central feature of the program in Oakland, but the ordinances in Oakland also include other measures for community benefit, including the requirement that performance standards be prepared requiring:

- Staff must be 50% Oakland residents and 25% residents from census tracts identified by the City Administrator as having high unemployment rates;
- Businesses that hire and retain formerly incarcerated Oakland residents may apply for a tax credit or license fee reduction based on criteria established by the City Administrator; and
- Employees shall be paid a living wage.

On November 15th, the day after the City of Oakland's meeting to consider the Equity Program, the City Council in the City of Richmond approved an amended zoning ordinance. It includes "Standards Applicable to All Medical Marijuana Businesses", one of which relates to "Job Opportunities for Richmond Residents":

> Job Opportunities for Richmond Residents. All medical marijuana business shall provide maximum feasible opportunities for Richmond residents to apply for jobs through outreach, advertising, and contacts with local job centers. The City encourages "local hires" whenever possible, consistent with General Plan policies and State and federal employment law.

The City of Berkeley's cannabis ordinance also includes a measure directed towards community benefit. It requires that at least 2% (by weight) of annual product from a dispensary be provided at no cost to very low-income members who are Berkeley residents, as verified using income tax returns or other approved reliable method.

Alameda County could consider including community benefit measures in the County's medical cannabis ordinances.

ACCEC Proposal

The main feature of the proposal put forward by ACCEC is similar to the ownership requirement in Oakland. It proposes that 50% of cannabis permits be issued to applicants with 51% ownership by person(s) from specified "Ethnic groups most impacted by historical, systemic racism and The War on Drugs". The proposal includes further specific requirements for eligibility (for example, that income does not exceed $70,000 per year, residency in Alameda County for at least 5 accumulative years, etc.).

Considering the controversy in Oakland and the work being undertaken by the City of Oakland's Race and Equity Department, the County could consider waiting until the outcome of that process in January before considering incorporation of any ownership requirement in the County.

In the meantime, and for the purpose of the draft amendments currently being considered by the community and the Board of Supervisors, it could be appropriate to include a finding in the ordinances acknowledging the communities who have been disproportionately impacted (which is a concept that would need to be carefully considered and defined) and state that inclusion of these communities may be a relevant consideration in the RFP processes provided for in the ordinances.

Public Comments Received to Date

Appendix A contains a summary of public comments received to date and, where applicable, staff comments and responses. The comments raised relate to:

1. specific draft ordinance provisions; and
2. policy issues.

Staff refers the committee to the policy directions on page one of this staff report and seeks policy direction in relation to these and all other outstanding policy issues detailed below. Once the policy position has been confirmed staff will update the draft ordinances accordingly for consideration.

Next Steps

A tentative meeting schedule for the completion of the public process for the approval of the draft dispensary and cultivation ordinances is provided below. This schedule is subject to change as the process progresses and the draft ordinances evolve.

January 12, 2017	Transportation/Planning Committee City of Livermore Council Chambers, 3575 Pacific Avenue, Livermore
January 17, 2017	Second Planning Commission Meeting
January 25, 2017	Unincorporated Services Committee
February 6, 2017	Transportation/Planning Committee
February 14, 2017	Board of Supervisors - First Reading
February 28, 2017	Board of Supervisors - Second Reading

The ordinances will go into effect 30 days after the Board takes action at the second reading of the ordinances. After that time, staff will begin preparing for the solicitation of proposals for the additional dispensaries and the cultivation sites allowed under the 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.

At your committee's November 7th, 2016 meeting, Supervisor Miley directed staff to provide a tentative timeline for the consideration of an ordinance to implement licensing procedures for medical cannabis manufacturing facilities and testing labs to align with the provisions of the Medical Cannabis Regulation and Safety Act (MCRSA) that apply to those facilities. This process can begin shortly after adoption of the dispensary and cultivation ordinances. Staff estimates that the public process for approval of the manufacturing and testing lab ordinance would be completed in approximately six months.

Staff has also commenced work on consideration of the implications of and next steps required in relation to Proposition 64. The draft ordinances currently before your committee relate only to medical cannabis. Staff will consider what amendments and/or new ordinances may be required in the short and longer term to respond to the extent of legalization of non-medical cannabis provided for pursuant to Proposition 64.

APPENDIX A

County Working Group Responses to Public Comments

<u>Specific draft ordinance provisions</u>

Defining "Delivery"

Comment re Section 6.108.020(I) - The definition of delivery should not include "or testing laboratory" – that would be "transport" between licensees, not delivery.

Ordinance § 6.108.020(I) defines "delivery" as "the commercial transfer of medical cannabis or medical cannabis products from a dispensary, … to a primary caregiver or qualified patient …, or a testing laboratory. …"

The Bus. & Prof. Code §19300.(5)(m) also defines "delivery" as "the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient …, or a testing laboratory.

Staff response: Consistent with the Bus. & Prof. Code, it is consistent to maintain "or testing laboratory" within the definition of delivery.

Granting a Variance to the Sensitive Receptor Buffer

Comment re Section 6.108.030(F) - The ability to reduce the buffer between dispensaries and sensitive receptors by 15% should still apply.

Ordinance § 6.108.030(F): "the county has the ability to reduce the location requirement as it applies to schools by fifteen (15) percent upon a finding that the dispensary would not endanger the health and safety of students.

"No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school." Health & Saf. Code § 11362.768(b).

Staff response: If the buffer between a dispensary and a school is reduced to 600 feet, a variance cannot be granted because 600 feet radius is the State minimum buffer. If the buffer remains at 1,000 feet, a variance would not pre-empted by State law.

Note: Prop. 64, the Adult Use of Marijuana (AUMA), contains a 600-radius requirement for all types of non-medical licensees "unless a licensing authority or a local jurisdiction specifies a different radius." Bus & Prof. Code § 26054(b).

Dispensary Sales of Clones without a Nursery or Cultivation License

Comment re Section 6.108.120(A)(4): Ordinance language should be clarified to confirm that a dispensary can keep clones alive and sell them without needing a nursery or cultivation license.

Ordinance § 6.108.120(A)(4): "Unless and until a local and state nursery or cultivation license or permit has been issued for the dispensary location, cannabis may not be grown or cultivated on the premises. ..."

State law defines a "nursery" as a "licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis." Bus. & Prof. Code § 19300.5 (ag) (emphasis added)
"Live plants" means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants. Bus. & Prof. Code, § 19300.5(z). A clone is a live plant.

A "Producing dispensary" is issued a Type 10A license. It is for dispensers with no more than three licensed dispensary facilities who "wish to hold either a cultivation or manufacturing license or both." Bus. & Prof. Code § 19334(a)(3).

Staff Response: The ordinance should be amended to allow the selling of clones and their cultivation on the dispensary premises if the dispensary holds a Type 10A producing dispensary license.

Product Sampling

Comment re Section 6.108.120(A)(5): Some smoking or ingesting on site of a dispensary should be allowed, in order to allow business-driven sampling of products, not general consumption by patients or employees.

Ordinance § 6.108.120(A)(5): "No cannabis shall be smoked, ingested or otherwise consumed on the premises of a dispensary, provided that ingestion by a vaporization device may be authorized in writing by the health care services agency."

Child or Day Care Facilities

Comment re Section 6.108.030(E)(2): Child or day care facility should be limited to licensed facilities.

Ordinance § 6.108.030(E)(2): "No dispensary may be closer than six hundred (600) feet from any school, child or day care facility, public park or playground, drug recovery facility or recreation center."

Health & Saf. Code § 11362.768(b): "No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school."

Note: Prop. 64 (AUMA) prohibits smoking marijuana within 1,000 feet of a "school, day care center, or youth center while children are present". Health & Saf. Code § 11362.3(a)(3). It defines a "youth

center" by reference to Health & Saf. Code § 11353.1 and a "day care center" by reference to Health & Saf. Code § 1596.79.

Health & Saf. Code, § 1596.76 defines a "day care center" as "any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers." It does not limit the term to licensed facilities.

Dispensaries Duty to Ensure Testing

Comment re Section 6.108.120(A)(20): Language regarding submitting new products for testing by licensed testing lab before they arrive at dispensary should be changed. Instead of prohibiting untested cannabis from being stored at the dispensary, the requirement should be that testing is required before it is sold from the dispensary.

Ordinance § 6.108.120(A)(20): "A dispensary shall ensure that a representative sample of its Cannabis and Cannabis Products have been submitted for analytical testing at a licensed testing laboratory, as defined in Business and Professions Code section 19300.5(ak), before the Cannabis and Cannabis Products are delivered to the dispensary."

Bus. & Prof. Code § 19326(b)(1) requires testing of medical cannabis before it is delivered to a dispensary: "All cultivators, manufacturers, and licensees holding a producing dispensary license … shall send all medical cannabis and medical cannabis products cultivated or manufactured to a distributor … for presale quality assurance and inspection by a distributor and for a batch testing by a testing laboratory prior to distribution to a dispensary.

Bus. & Prof. Code § 19326(c)(1) requires a distributor to ensure that the product has been tested: "Upon receipt of medical cannabis or medical cannabis products from a cultivator, manufacturer, or a licensee holding a producing dispensary license … , the distributor shall first inspect the product to ensure the identity and quantity of the product and ensure a random sample of the medical cannabis or medical cannabis product is tested by a testing laboratory."

Physical Copies of Delivery Requests

Comment re Section 6.108.125(A)(3): maintaining a physical copy of an order for delivery is not practical, an electronic order should be sufficient.

Ordinance § 6.108.125(A)(3): During any delivery, the permittee shall maintain a physical copy of the delivery request and shall make it available upon request of the director or law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.

"During delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information." Bus & Prof. Code § 19340(d).

Staff response: As drafted, the Ordinance is consistent with state law requirements.

Indoor cultivation

Comment re Performance Standard No.2: In the cultivation performance standards document, the term "enclosed" should be changed to "indoor" and "mixed light."

Performance Standard No.2: "Indoor cultivation only. All planting, growing, harvesting, drying, curing, grading, or trimming of cannabis must occur within the interior of an enclosed structure, such as a greenhouse. Cannabis must not be visible from the exterior of the premises."
Staff Response: The term "mixed light" can be incorporated, but retaining the description that the structure should be enclosed is recommended. The standard can also be refined to clarify that 100% enclosure is not required (for example, windows and vents would be permitted).

Track and Trace Program Standards

Comment re Section Performance Standard No.6: In the cultivation performance standards document, track and trace should be done by batch and lot instead of tracking individual plants.

Performance Standard No.6: "Track and Trace. Permittee shall institute a track and trace program to be approved by the director to ensure that cannabis cultivated at the site is dispensed only at permittee's permitted dispensary. Unique identifiers shall be attached at the base of each plant and shall be traceable through the supply chain back to the cultivation site. Each permittee shall maintain records of each plant cultivated at the site and its ultimate destination."
Staff Response: As provided below, state law required a "unique identifier" attached to "each plant." At this time, staff recommends keeping the ordinance consistent with the State law to reduce the scope of changes that will be required once the State track and trace program is established.

Bus. & Prof. Code, § 19335(a) requires the Department of Food and Agriculture (DFA), in consultation with the Bureau of Marijuana to establish a track and trace program for reporting the movement of medical cannabis items throughout the distribution chain that utilizes a unique identifier and secure packaging and is capable of providing information that captures, at a minimum, all of the following: (1) The licensee receiving the product; (2) The transaction date; (3) The cultivator from which the product originates.

Health & Saf. Code, § 11362.777(e) (2) requires the DFA to establish a program for the identification of permitted medical cannabis plants at a cultivation site during the cultivation period. The unique identifier <u>shall be attached at the base of each plant</u>. A unique identifier, such as, but not limited to, a zip tie, shall be issued <u>for each medical cannabis plant</u>.

Medicinal v medical

Comment re Section 6.108.180: throughout the draft Ordinances, the word "medicinal" should be changed to "medical".

Ordinance § 6.108.180 – "Prohibited operations. The permittee and or his or her agents shall at all times comply with Section 11326.5 et seq. of the California Health and Safety Code and this chapter in the operation of the dispensary and the delivery operation. This includes, but is not limited to, the prohibition of sales, transportation and delivery of medical medicinal cannabis off the site of the dispensary premises unless the dispensary holds a valid delivery permit.

Staff Response: Agree, medical is the correct defined term.

Policy issues

Number and Distribution of dispensaries

The existing County dispensary ordinance allows a maximum of three dispensaries (Section 6.108.030.D). Dispensaries may be located in commercial or industrial zoning districts. One dispensary is allowed in each of three geographic areas delineated on a map in the ordinance. There are currently two dispensaries operating in the unincorporated area.

The draft dispensary ordinance would allow a maximum of six dispensaries, with no more than four located in the West County and no more than two located in the East County (Section 6.108.030(D). The geographic distribution of the dispensaries within these two areas has not yet been determined.

Comments Received on the Number and Distribution of Dispensaries:

Comment re: Section 6.108.030(D) – The number of permitted dispensaries should not be increased since the need for additional facilities has not been demonstrated.

> *Staff Comment:* As reported at your October 3rd meeting, 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.
>
> 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.

<table>
<tr><th colspan="2">Approximate Ratio of Dispensaries to Population Based on Dispensaries Currently Allowed by Local Ordinance</th></tr>
<tr><td>Unincorporated Alameda County</td><td>Cities</td></tr>
<tr><td></td><td>Sacramento 1: 16,000</td></tr>
<tr><td rowspan="3">Proposed (6 dispensaries)
1: 25,000</td><td>Berkeley 1: 20,000</td></tr>
<tr><td>Oakland 1: 26,000*</td></tr>
<tr><td>San Leandro 1:29,000</td></tr>
<tr><td rowspan="2">Current (3 dispensaries)
1: 37,500</td><td>San Francisco 1: 35,000</td></tr>
<tr><td>Los Angeles 1: 39,500</td></tr>
<tr><td></td><td>San Jose 1: 63,500</td></tr>
<tr><td colspan="2">*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.</td></tr>
</table>

Comment re: Section 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.

Comment re: Section 17.06.040 – Do not allow dispensaries in the agricultural zoning district in the Castro Valley Canyonlands.

Comment re: Section 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.

Staff Response: The total number of dispensaries in the unincorporated County shall not exceed six (6), with a total of four in the west County and two in the East County.

<u>Buffers between Medical Cannabis Facilities and Sensitive Receptors</u>

Section 6.108.030(E) of the County’s existing dispensary ordinance requires a buffer of at least 1,000 feet between any two dispensaries, and between any dispensary and any school, child or day care facility, public park or playground, drug recovery facility or recreation center.

In the draft dispensary ordinance, the required buffer is reduced to 600 feet to align with the Medical Cannabis Regulation and Safety Act (MCRSA). The 600 foot buffer prescribed in the MCRSA is a minimum.

Comment re: Section 6.108.030(E) – The 1,000 foot buffer required in the existing ordinance should not be reduced.

Staff Response: The County could maintain a larger buffer if desired.

Limits on the Storage of Product in Dispensaries

As stated earlier in this report, Section 6.108.120.A(4) of the County's existing dispensary ordinance limits the amount of cannabis that can be kept on a dispensary's premises to the lesser of:

a. An amount of marijuana equal to eight ounces per qualified patient, primary caregiver and person with an identification card who has received marijuana from the dispensary during the previous thirty (30) calendar days, or
b. A total of twenty (20) pounds of marijuana.

These limits were deleted from the draft dispensary ordinance that is currently under consideration.

Comment re: Section 6.108.120A(4) – Increase the 20 pound limit on the amount of product that can be stored at a dispensary to 100 pounds.

Sale of edibles

The existing County dispensary ordinance does not allow the sale of edibles in dispensaries in the unincorporated area. Section 6.108. 120A(7) of the draft dispensary ordinance states that medical cannabis may be provided by a dispensary in an edible form, provided that the edibles meet all applicable state and county requirements.

Comment re: Section 6.108.120A(7) – The sale of edibles should not be permitted in dispensaries.

Comment re: Section 6.108.120A(7) – Allowing the sale of edibles should be delayed until applicable state health and safety regulations are in place.

Proposition 47

Comment re: Section 6.108.120A(12) – Proposition 47 language should be removed.

The existing County dispensary ordinance prohibits a person convicted of a felony with the past 10 years from being actively engaged in the operation of a dispensary. The ordinance was amended to include in this prohibition "a drug related misdemeanor reclassified by Section 1170.18 of the California Penal Code (Proposition 47)" in order to continue to recognize prior drug felonies. A similar provision was included in the *Section 6.108.125A(10*) for those engaged in delivery operations.

Delivery of Medical Cannabis Products to Patients and Caregivers

Under the County's existing dispensary ordinance, the delivery of cannabis products to patients or caregivers is not allowed in the unincorporated area. Section 6.108.035 of the draft ordinance establishes a process for issuing delivery permits to "brick and mortar" dispensaries holding a valid license or permit to dispense medical cannabis issued by the State of California or by a California city, county, or city and county. Because permitted dispensaries outside of the unincorporated area would be eligible to apply for a permit for delivery within the unincorporated area, the draft ordinance does not limit the number of permits that could be issued.

Section 6.108.125A(4) of the draft ordinance states that "No delivery vehicle shall contain a quantity of cannabis in excess of an amount equal to the total of all orders shown on the delivery requests for qualified patients and primary caregivers to whom that the vehicle is then making a delivery. No delivery vehicle shall contain a quantity of Edibles in excess of the total amount of all orders for Edibles shown on the delivery requests for qualified patients and primary caregivers to whom that the vehicle is then making a delivery."

Comment re: 6.108.035 – The ordinance should include a cap on the number of delivery permits that would be allowed.

Comment re: 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.

Cultivation

Comment re: Section 17.52.585 – Cultivation sites should not be allowed in industrial zoning districts.

> *Staff Comment:* Supervisor Miley previously 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 has been made in the revised cultivation ordinance.

Comment re: Section 17.52.585 – Allow cultivation as a conditional use only in the A (Agriculture) zoning district and only in the east county.

> *Staff Comment*: This change has been made in the revised cultivation ordinance.

Comment re: Section 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.

> *Staff Comment:* Staff considers a Conditional Use Permit for cultivation uses to be an appropriate mechanism to discuss the potential impacts of the use on the community and the benefits of this public hearing outweigh potential risks created by disclosing the address of the operation. Additionally, the operation will be required to provide a security plan demonstrating affirmative steps to prevent crime at the site.

Comment re: Section 6.106(B) – Eligibility to obtain a cultivation permit should not be limited to operators of existing dispensaries.

> *Staff Response*: In the proposed revisions to the ordinance, cultivation permits shall not exceed four (4), and must be located in the east County area. Cultivation under the pilot program will be open to dispensaries in good standing as well as other applicants. Dispensaries in good standing

will be eligible to participate in the first stage of the pilot; in the second stage of the pilot, the program will expand the eligibility requirements to include other operators.

On-site ingestion

Comment re Section 6.108.120(A)(5) - The prohibition of ingesting onsite is not practical since sampling is necessary for operation of the business, especially the business of cultivation

Ordinance § 6.108.120(A)(5): "No cannabis shall be smoked, ingested or otherwise consumed on the premises of a dispensary, provided that ingestion by a vaporization device may be authorized in writing by the health care services agency."

Staff Response: Policy direction is requested from the T&P on this issue.