



MEMORANDUM

June 15, 2017

TO: Members of the Castro Valley Municipal Advisory Council
FROM: Medical Cannabis Interdepartmental Work Group
MEETING DATE: June 26, 2017
SUBJECT: Draft Medical Cannabis Dispensary and Cultivation Ordinances

GENERAL INFORMATION

Staff first presented the proposed draft medical cannabis dispensary, delivery, and cultivation ordinances at your October 24th, 2016 meeting. At that meeting, your Council voted 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.
- Retain the 1,000 foot sensitive receptor buffer.

At your February 27th, 2017 meeting, staff presented revised versions of the proposed ordinances. Your Council adopted a motion recommending the following changes:

- No additional dispensaries should be allowed in West County beyond the two existing dispensaries.
- No dispensaries should be allowed in rural areas.
- Dispensaries and cultivation sites should not be located on the same property.
- The sale of edibles should be prohibited until state standards on potency are in place.

- Individuals with Prop 47 reclassified drug violations within the last 10 years should be excluded from employment/licensure at a cannabis facility, as individuals who have been convicted of a felony within the last ten years are.
- Any funds raised through a future tax on cannabis facilities should be given to the Sheriff's Office.
- No testing or ingestion of product should be allowed on the premises of any dispensary or cultivation site.
- The boundaries of Areas 1-3 depicted on Exhibit A of the existing ordinance should not be changed.
- Any performance standards developed by the planning director under Section 17.52.585 of the proposed ordinance amending the County Zoning Ordinance to implement the pilot cultivation program should be reviewed by the public.
- No more than four cultivation sites should be allowed in the unincorporated area.

Since your February meeting, many public meetings have been held to discuss the draft ordinances; and the Board Transportation/Planning Committee has continued to provide direction on the contents of the ordinances. As a result of this input, the proposed ordinances have continued to evolve.

STAFF RECOMMENDATION

Staff requests that your Council review the revised draft medical cannabis dispensary, delivery, and cultivation ordinances, take public testimony, and provide comments on the ordinances.

STAFF ANALYSIS

The Board of Supervisors considered the proposed medical cannabis dispensary, delivery, 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 their May 1st and June 5th meetings, the Transportation/Planning Committee provided additional 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 25th 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. The Transportation/Planning Committee directed staff to present the revised ordinances at a series of public meetings to provide the public with the opportunity to comment on the changes.

California Environmental Quality Act

A Notice of Intent to Adopt a Mitigated Negative Declaration (NOIA) and the Initial Study/draft Mitigated Negative Declaration (IS/MND) for the proposed Medical Cannabis Ordinances were released on March 7, 2017 for a 20-day public review period. The IS/MND is being revised to include analysis of the proposed ordinance amendments.

CONCLUSION

A tentative meeting schedule for the completion of the public process for the approval of the draft dispensary and cultivation ordinances is provided below. 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>. This webpage also provides a list of past meetings and links to presentations and written materials from those meetings.

Tentative Public Meeting Schedule	
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 (Special Meeting)
August 1, 2017	Board of Supervisors – First Reading
September 12, 2017	Board of Supervisors – Second Reading

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

Response to Comments Received on Draft Chapter 6.106 - Medical Cannabis Cultivation Ordinance at and subsequent to the April 25th Board of Supervisors Meeting			
Ordinance Sections	Public Comment	Supervisors' Direction	Staff Response
6.106.030.B		Increase the maximum number of cannabis cultivation permits allowed from 4 to 6, allowing a maximum of 2 permits for indoor cultivation operations and 4 for mixed-light cultivation operations.	Ordinance revised as directed.
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 six 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 4 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	Revise ordinance in accord with comment.	Ordinance revised as directed.

	a felony from ten years to three years, consistent with MCRSA.		
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 said Act except as mandated by state law;"	Consider revising ordinance in accord with comment.	Ordinance revised in accord with comment.
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 25th Board of Supervisors Meeting**

Ordinance Sections	Public Comment	Supervisors' Direction	Staff Response
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, 6.108.120.D, 6.108.125.A.9, & 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.5	Remove provision allowing ingestion of cannabis by dispensary management 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)

