

# Recent Developments in Medical Cannabis Law and Proposals for County of Alameda

East County Community Meeting  
November 15, 2016

# State Statutes



# Key State Medical Cannabis Laws

- Compassionate Use Act (1996)
  - criminal immunity for *patients and primary caregivers*
  - possession and cultivation of cannabis
  - if a doctor has recommended the cannabis for medical use
- Medical Marijuana Program Act (2003)
  - Voluntary ID card program
  - criminal immunity to *qualified patients and primary caregivers* for certain activities, including cultivation as a *collective or cooperative*
- Medical Cannabis Regulation and Safety Act (2015-16)
  - licensing and control of all **medical** cannabis *commercial businesses* in the state
  - criminal immunity for *licensees*
- Proposition 64 (2016)– Adult Use of Marijuana Act

# Medical Cannabis Regulation and Safety Act

The legislation protects **local control** in the following ways:

- **Dual licensing**: A requirement that all cannabis businesses must have **both** a state license, and a local license or permit, to operate legally in California. Local jurisdiction may also ban medical marijuana businesses.
- **Effect of Local Revocation of a Permit or License**: Revocation of a local license or permit terminates the ability of a cannabis business to operate in that jurisdiction under its state license.
- **Enforcement**: Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- **State law penalties for unauthorized activity**: Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law continue to apply.
- Expressly protects local licensing practices, zoning ordinances, and local actions taken under the police power.

# State License Types

- 17 state license types
- Cultivation – by size and light
- Cultivation - nursery
- Testing laboratory
- Manufacturing
- Transportation
- Dispensary – general retail or producing
- Distribution

# Timeline for Implementation

- None of the bills specify a timeline for implementation
- This is partly due to various state departments being at different stages in terms of their readiness to proceed
- The rough timeline that has been given for state licensing to begin is January 2018

# Cultivation of Medical Cannabis

- Dual licensing required
- Local cultivation permit required before applying for state license
- Proposed cultivation must not violate provisions of local ordinances or regulations.
- Local jurisdiction may have express ban or prohibit under principles of permissive zoning (Health & Safety 11372.777(b)).
- Under a “permissive” zoning code, “any use not enumerated in the code is presumptively prohibited.” *City of Corona v. Naulis* (2008) 166 Cal.App.4th 418, 425. Alameda County has a permissive zoning code.

# Additional State Efforts

- Additional State Legislation –
- Fine-tuning original bills
  - SB 837
  - AB 1575
- Anticipated CEQA EIR with State regulations
- Voter Initiatives –
  - Control, Regulate and Tax Adult Use of Marijuana Act (Prop. 64; AUMA)



# Local Ordinances



# General Ordinance Code Revisions

- Guidance from Board Transportation & Planning Committee
  - Dispensaries – increase number and expand locations, allow edibles
  - Delivery – to be permitted from dispensaries to patients
  - Cultivation – to be permitted on a limited, pilot basis

# Potential Revisions to Chapter 6.108

- Increase the number of dispensaries allowed in the unincorporated area from three to six, four in the urban west county and two in the rural east county
- Prohibit dispensaries in residential zones; continue to allow in commercial, industrial, and (potentially) agricultural zones as accessory uses to cultivation sites
- Allow dispensaries in the “A” Zoning District as an agriculture-related use
- Reduce the buffer required between dispensaries and sensitive receptors from 1,000 feet to 600 feet
- Require selection of new dispensaries through a “Request for Proposals” (RFP) process and require each selected facility to obtain a Conditional Use Permit from the Planning Department before beginning operation
- Remove the twenty-pound limit on the amount of cannabis that can be stored at a dispensary
- Provide appropriate regulation for each license – deferring to anticipated state regulations and enhancing state regulations as necessary
- Permit the delivery of medical cannabis only from permitted “brick-and-mortar” dispensaries to patients

# Required Findings for CUP

- Review by Board of Zoning Adjustments to determine whether or not the use:
  - A. Is required by the public need
  - B. Will be properly related to other land uses and transportation and service facilities in the vicinity
  - C. If permitted, will under all the circumstances and conditions of the particular case, materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood
  - D. Will be contrary to the specific intent clauses or performance standards established for the district, in which it is to be located. (Gen. Ord. Code section 17.54.130)

# Cultivation Pilot Program for Existing Dispensaries

- Pilot program permitting 2 currently licensed dispensary operators to begin cultivation
  - New Chapter 6.106 in General Ordinance Code establishing pilot
  - Evaluate a permanent commercial cultivation permit ordinance
- Zoning amendment to allow cultivation on pilot basis
  - Permissive zoning
  - Allow cultivation as a conditional use in the Agricultural (A) district
- Conditional Use Permit process includes public hearing and conditions of approval
- Specific performance standards to be adopted by CDA Director

# Chapter 6.106 – Cultivation Permit

- Eligibility limited to current dispensaries in good standing
  - No revocation or suspension for past year
  - Pilot is vertically integrated for increased control over supply chain
  - Limited to 2 years
- Ministerial review – 1<sup>st</sup> step of required approvals
  - Complete application from eligible dispensary shall be approved
  - Discretionary review via CUP in 2<sup>nd</sup> step

# Title 17 – Cultivation Zoning

- Add a new section to Zoning Ordinance allowing cultivation as a conditional use in A and M districts
  - Step 1, Title 6 cultivation permit as a pre-requisite
- Discretionary review of operations and conditions of approval by Board of Zoning Adjustments
- Existing Conditional Use Permit process includes public hearing with notice to neighbors and interested parties
- General required findings for CUP (Gen. Ord. Code 17.54.130) plus new cultivation-specific findings
- Appropriate conditions of approval may be imposed on cultivation operation

# Additional Required Findings

- The premises are safe and secure
- Theft and diversion of cannabis cultivated on the premises is prevented;
- Not perceptible outside of property:
  - Artificial light between sunset and sunrise, other than as needed for security
  - Glare or heat
  - Noise or vibration
  - Odors
  - Dirt and dust
- No harmful discharge into any public sewer, private sewage disposal system or stream or into the ground. Disposal in accordance with State requirements.



# Cultivation Performance Standards

- Adopted by Director, amended as necessary
- Plans required by permittee at time of application to ensure compliance to include Site Layout, Security, Track and Trace, Cultivation Operations, Worker Safety, Cannabis Processing, and Waste Disposal
- Examples of standard requirements:
  - Indoor cultivation only
  - Maximum cultivation area (TBD, up to 22,000 sq. ft.)
  - Vertical integration (sale by permitted dispensary)
  - Track and trace to be implemented by permittee
  - No manufacturing
  - Proper storage of fuels, pesticides, etc.
  - Proper waste disposal, including wastewater
  - Safe processing practices and labor conditions
  - Compliance with state and local laws and regulations

# Sheriff's Office Concerns

▶ The Sheriff's Office opposes the following provisions of the proposed ordinance amendments:

- Any increase in the number of dispensaries in the County
- Any cultivation in the County
- Any deliveries in the County
- No limit on the amount of cannabis stored at the dispensaries, and
- The sale of any edibles at the dispensaries.

# Roles for County Departments

- CDA will be permitting lead and maintain land use decision responsibilities
- Sheriff will maintain a role in background checks, inspections and enforcement
  - Maintain criminal penalties for violations of the ordinance
  - Require Sheriff approval of security plans
- Environmental Health will inspect packaging and other requirements for edible cannabis products
- Weights & Measures will inspect scales and price scanning devices

# CEQA

- Initial Study to determine extent of potential environmental impact of ordinance revisions
- CEQA document will be circulated for public review
- Further ordinance revisions may require additional environmental review
- Proposed projects may require further, project-specific environmental review

# Fees and Taxes

- Proposition 26 fee study to be completed
- Include provisions for payment of reasonable and necessary fees for all aspects of regulations (permit applications, inspections, renewal applications, etc.) and licensure
- Determine and fund costs for additional staff needs
- Tax not proposed at this time but may occur in the future

# Tentative Public Meeting Schedule

December 5, 2016	Transportation/Planning Committee
January TBD, 2017	Transportation/Planning Committee
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

Check the County website at:

<http://www.acgov.org/cda/planning/landuseprojects/medical-cannabis.htm> for schedule updates.

**QUESTIONS?**

