



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO Members of the Alameda County Planning Commission
HEARING DATE December 7, 2020
RE Amendments to the County Ordinance Code to allow the remaining unallocated West County cannabis retail permit to be made available in West County or East County and, if in East County, to require it to be a boutique operation, and to allow water-hauling from off-site for cannabis cultivation

GENERAL INFORMATION

On November 2nd, the Board of Supervisors’ Transportation and Planning Committee directed staff to proceed with ordinance amendments to amend the County Ordinance Code to allow the one remaining unallocated permit for a cannabis retail store in unincorporated Alameda County to be allowed in West County or East County and, if in East County, to require it to be a “boutique” operation. The draft ordinance amendments are attached. The ordinance amendments also include changes to allow hauling water from off-site for cannabis cultivation. This change to the cultivation ordinance was initiated at the request of the Agricultural Advisory Committee.

STAFF RECOMMENDATION

Staff requests that the Commission review the draft ordinance amendments, provide comments to staff, and recommend that the Board of Supervisors approve the ordinance amendments.

STAFF ANALYSIS

Boutique cannabis retail

The Alameda County Ordinance Code currently allows a maximum of five permits for cannabis retail in unincorporated Alameda County. Two are allowed in East County, and those permits have been issued through a Request for Proposals (RFP) process. Three are allowed in West County, with a maximum of two allowed in Area 1 (Ashland and Cherryland) and Area 2 (Castro Valley). The two existing cannabis retail stores – We Are Hemp and Garden of Eden – are both located in Area 1. Therefore, the remaining one unallocated cannabis retail permit would currently be available to be located only in Castro Valley. Under the requirements of the ordinance, any future permit would be issued through an RFP process.

To allow the remaining permit for a cannabis retail store to be allowed in West County or East County and to require the operation to be “boutique” if it is in East County, Chapters 6.108 and 6.109 of the County Ordinance Code would need to be amended. Chapter 6.108 regulates cannabis retail permits and Chapter 6.109 regulates the ability for a permitted retail store to apply to become a Combined Cannabis Operation (CCO). A CCO allows a cannabis retail permit holder to include at least two of the following activities - cultivation, manufacturing and/or distribution - in addition to retail, with any cultivation area limited to not exceed 10,000 square feet.

Draft ordinance amendments

The main changes in the attached draft ordinance amendments are to:

- Amend paragraph D of Chapter 6.108.030 so the total number of permits in West County and East County respectively shall not exceed three, retaining the overall maximum of five permits in total; and
- Include in paragraph D.2. of Chapter 6.108.030 the following requirements for any third permit in East County:
 - “b. If a third permit is issued for a retail operation in the unincorporated area shown in Exhibit B (East County), that permit must be issued to a retail operation within the boundaries of the South Livermore Valley Area Plan area and the retail operation must include a boutique component or components (e.g., educational or informational features or activities, or other features or activities designed to enhance customer experience or highlight attractions or characteristics of the local region). If only two permits are issued for the East County, they may but are not required to include a boutique component or components.
 - c. If a third permit is issued for a retail operation pursuant to paragraph D.2.b., the five-mile separation distance required in paragraph D.2.a. does not apply to that retail operation. The premises of the operation permitted pursuant to paragraph D.2.b may be within five miles of another retail operation in the unincorporated area shown in Exhibit B (East County).”

The description of what a boutique operation could include is intended to provide flexibility for applicants to demonstrate how they would meet the requirement without requiring them to include any particular aspect of an operation in their business plan. Each application’s response to the requirement to include a “boutique component or components” would be assessed and considered through the RFP process. A map showing the current boundaries of the South Livermore Valley Area Plan is attached.

The proposed changes to Chapter 6.109 are related amendments that would enable a third cannabis retail permit in East County to apply to become a CCO.

Comments

On October 27th, staff provided the attached draft ordinance amendments to the Agricultural Advisory Committee for consideration. Comments raised by the public and members of the committee during the meeting included discussion of the following items:

- Suggestions that a “boutique” operation should be more clearly defined;
- Support for the concept of including educational or informational features to a boutique operation;
- Support for the potential economic benefits an additional cannabis retail operation could bring to boost agritourism and visitor numbers and be an economic driver in East County;
- Concern about whether the proposed amendments for boutique cannabis retail would include on-site consumption (staff confirmed the current ordinances and proposed amendments do not allow this);

- Concern that it is inappropriate to allow an additional cannabis retail operation in the unincorporated East County, and any retail should be located within the adjoining cities; and
- Discussion about whether the boutique cannabis retail operation should be subject to additional requirements (for example, to feature local products, have a connection to or collaboration with local cultivators, reflect the character of the community or be limited to locations within the winery and tourism areas of East County).

After discussion and considering public comments, the Agricultural Advisory Committee passed a motion supporting the draft ordinance amendments, subject to adding a requirement that any boutique cannabis retail store in East County must “contribute to agritourism viability in East County”, must be limited to the South Livermore Valley, North Livermore Valley or Sunol, and would retain the 5-mile separation distance requirement between permitted retail operations.

In response to these comments and on review of the draft ordinance amendments provided by staff, on November 2nd the Board Transportation and Planning Committee directed staff to make to restrict the availability of the boutique cannabis retail operation in East County to the South Livermore Area Plan only and remove the 5-mile separation distance requirement for the boutique cannabis retail operation. The attached draft ordinance amendments include these changes as directed by the Transportation and Planning Committee.

Water-hauling for cannabis cultivation

In Chapter 6.106, the ordinance code currently contains a standard condition that prohibits hauling water from off-site for the purpose of cannabis cultivation. On October 27th, the Agricultural Advisory Committee initiated a request that this restriction be deleted to enable cannabis cultivators to haul water from off-site for agricultural purposes like any other agricultural use is permitted to.

Draft ordinance amendments

To give effect to this change, the attached ordinance amendments propose deletion of sub-paragraph 21 in Paragraph A of Section 6.106.125 of the ordinance code.

Comments

At the Agricultural Advisory Committee meeting on October 27th, comments raised by the public and members of the committee in relation to water-hauling for cannabis cultivation included discussion of the following:

- Suggestions that cannabis cultivation is a permitted type of agriculture and should not be denied access to on-site water, if available, for cultivation purposes and concern that it is inconsistent and not justified to treat cannabis cultivation differently than from other agricultural crops that would be able to access on-site water for cultivation;
- Concerns that the provision requiring no off-site water to be used for cultivation was part of a longer 3-year cannabis ordinance development process and no concerns were raised during that time;
- Concerns about the traffic impacts of additional water trucks on narrow agricultural roads and the interface of trucks with commuter traffic;

- Concerns that allowing cannabis cultivation operations to access water could have impacts on limited groundwater resources; and
- Suggestions that the CUP process is adequate to manage consideration of water access issues.

After discussion, the Agricultural Advisory Committee passed a motion supporting the removal of paragraph 21 from the standard conditions in the cultivation ordinance. This proposed change will be considered by the Board Transportation and Planning Committee at their meeting on December 7th.

CEQA

The ordinance amendments are exempt from CEQA per state law. Business and Professions Code section 26055(h) exempts from CEQA the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review for commercial cannabis permits or other authorizations, where CEQA review will be part of that discretionary review. This exemption is effective through July 1st, 2021. Because all commercial cannabis operations in the County will require discretionary review in the form of a conditional use permit with associated CEQA review, this ordinance amendment is exempt.

CONCLUSION

The Planning Department will take comments from your commission in relation to the proposed changes and will take comments from the Board Transportation and Planning Committee in relation to the cultivation water-hauling change. These ordinance amendments will be presented to the Board of Supervisors for approval on December 15th, 2020.

ATTACHMENTS

Draft ordinance amendments to Chapter 6.106, Chapter 6.108 and Chapter 6.109
Map of the South Livermore Valley Area Plan

PREPARED BY:	Sophie McGuinness, Senior Planner and Elizabeth McElligott, Assistant Planning Director
REVIEWED BY:	Albert Lopez, Planning Director

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTERS 6.106, 6.108 AND 6.109 OF THE
ALAMEDA COUNTY GENERAL ORDINANCE CODE REGARDING CULTIVATION,
RETAIL AND COMBINED CANNABIS OPERATIONS

SECTION I

The Board of Supervisors makes the following findings of fact in support of this ordinance:

1. In enacting this ordinance, the Board of Supervisors of the County of Alameda, State of California hereby reaffirms and incorporates by this reference the findings contained in Section 1 of Ordinance No. O-2019-22.
2. Pursuant to Chapter 6.108 of the Ordinance Code, up to two cannabis retail operations are allowed in the East County and up to three cannabis retail operations are allowed in the West County; and
3. As of the date of hearing for this ordinance, there are two existing retail operations in West County and the County has approved two Title 6 permits for retail operations in the East County following a competitive selection process, neither of which is yet operational; and
4. As of the date of the hearing for this ordinance, the County has not commenced a selection process for the third potential West County retail site (i.e., the fifth potential retail site for the unincorporated area); and
5. The Board of Supervisors finds that it will promote the health and welfare of residents to enable the fifth potential retail site for the unincorporated area to operate in either the more populated but geographically smaller West County or in the less populated but geographically larger East County; and
6. If the fifth potential retail site is permitted in the East County, the Board of Supervisors finds that it will promote the health and welfare of residents for the operation to include a boutique component or components (e.g., enhanced consumer environment, tours, educational experiences, other visitor-serving components); and
7. Pursuant to Chapter 6.109 of the Ordinance Code, retail operations can apply to become combined cannabis operations; and
8. Pursuant to Chapter 6.106 of the Ordinance Code, cannabis cultivation operations are subject to a standard condition requiring that water is to be sourced locally (on-site) and trucked water shall not be allowed for general cultivation purposes; and
9. The Board of Supervisors finds that it is not unreasonable to allow cannabis cultivation sites to use trucked water for cannabis growing, as would be permitted for other agricultural cultivation purposes; and

- 10. All retail operations pursuant to Chapter 6.108 of the Ordinance Code, all combined cannabis operations pursuant to Chapter 6.109 of the Ordinance Code and all cultivation operations pursuant to Chapter 6.106 of the Ordinance Code will be required to comply with state law and state regulations; and
- 11. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. sections 801, *et seq.* or to license any activity that is prohibited under said Act except as mandated by State law; and
- 12. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) exempt cannabis operators or operations from compliance with zoning and land use regulations, or, (3) allow any activity relating to the retail, delivery, cultivation, manufacturing, distribution, testing, or consumption of cannabis that is illegal under state or federal law.

SECTION II

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Alameda, as follows:

Paragraph A of Section 6.106.125 of the Alameda County General Ordinance Code is hereby amended to delete the all of the text following sub-paragraph 21 and replace with “RESERVED”.

The remainder of Section 6.106.125 remains unchanged.

Paragraph D of Section 6.108.030 of the Alameda County General Ordinance Code is hereby amended to read as follows:

- D. At no time shall the county have in effect more than five permits, including all permits issued for Exhibit A (West County) and Exhibit B (East County) combined.
 - 1. In the West County, in no event shall the total number of permits for all areas shown in Exhibit A (West County) exceed three. No more than two permits shall be issued in any one of the two areas shown in Exhibit A (West County). No more than one permit shall be issued in the other area shown in Exhibit A (West County).
 - 2. In the East County, in no event shall the total number of permits for all areas shown in Exhibit B (East County) exceed three.
 - a. No permit shall be issued for a retail operation within five miles of another retail operation in the unincorporated area shown in Exhibit B (East County) or within one mile of a permitted retail operation location in an incorporated city, except as provided in subparagraph c. below
 - b. If a third permit is issued for a retail operation in the unincorporated area shown in Exhibit B (East County), that permit must be issued to a retail operation within

the boundaries of the South Livermore Valley Area Plan area and the retail operation must include a boutique component or components (e.g., educational or informational features or activities, or other features or activities designed to enhance customer experience or highlight attractions or characteristics of the local region). If only two permits are issued for the East County, they may but are not required to include a boutique component or components.

- c. If a third permit is issued for a retail operation pursuant to paragraph D.2.b., the five-mile separation distance required in paragraph D.2.a. does not apply to that retail operation. The premises of the operation permitted pursuant to paragraph D.2.b may be within five miles of another retail operation in the unincorporated area shown in Exhibit B (East County).
3. No permit shall be issued in any portion of the unincorporated area that is not within one of the areas delineated in Exhibit A or Exhibit B.

The remainder of Section 6.108.030 remains unchanged.

Subparagraph 2 of Paragraph E of Section 6.109.030 of the Alameda County General Ordinance Code is hereby amended to read as follows:

2. In the East County, the maximum number of permits is subject to the following:
 - a. In no event shall the total number of combined cannabis operation permits for all areas shown in Exhibit B (East County) exceed thirteen (13).
 - b. Collectively, the number of retail operation permits and permits for combined cannabis operations that include a retail operation in the areas shown in Exhibit B (East County) shall not exceed three. If a third permit is issued to a retail operation or a combined cannabis operation including retail, that operation must include a boutique component or components (e.g., educational or informational features or activities, or other features or activities designed to enhance customer experience or highlight attractions or characteristics of the local region). If only two permits are issued for the East County, they may but are not required to include a boutique component or components.
 - c. No permit shall be issued for a combined cannabis operation that includes a retail operation, if the subject premises is within five miles of a retail operation or combined cannabis operation that includes retail in the unincorporated area shown in Exhibit B (East County) or within one mile of a permitted retail operation or combined cannabis operation (or equivalent permitted activity subject to a state microbusiness license) location in an incorporated city.

The remainder of Section 6.109.030 remains unchanged.

SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the _____ day of _____, 2020, by the following called vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

RICHARD VALLE
President of the Board of Supervisors

ATTEST:
Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: _____
Heather Littlejohn
Deputy County Counsel

South Livermore Plan Area

