



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO Members of the Alameda County Planning Commission
HEARING DATE March 1, 2021
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

GENERAL INFORMATION

This item was continued from the Planning Commission meeting on December 7th, 2020. At that meeting, the Commission requested more information, including an update on the status of the commercial cannabis permits issued in unincorporated Alameda County, and more background about the need for the proposed ordinance amendments. A more general update on cannabis dispensary and cultivation permits is provided in a separate item on the Commission’s March 1st, 2021 agenda. On November 2nd, 2020, the Board of Supervisors’ Transportation and Planning Committee directed staff to proceed with amendments to the County’s retail and combined cannabis operation (CCO) ordinance 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 and to be located within the South Livermore Valley Plan Area (SLVPA). The draft ordinance amendments are attached.

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

Current Ordinance Provisions

The Alameda County General 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) as shown on the attached map.

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 allowed only in Castro Valley. Any future permit would be issued through an RFP process, and the successful applicant would then need to obtain a Conditional Use Permit (CUP) prior to commencing operation.

Proposed Ordinance Amendments

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 no more than 10,000 square feet. The main changes proposed in the 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 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.

Responses to Previous Planning Commission Comments

When staff presented the draft ordinance amendments to the Planning Commission on December 7th, 2020, the Commission continued the item and requested staff provide further information in relation to:

- General information on the status of other cannabis permits issued or in process;
- The need to expand the area the final cannabis retail permit is allowed from Castro Valley only, to include the South Livermore Valley Plan Area (SLVPA); and
- The proposed non-prescriptive definition of a “boutique” cannabis retail operation in the draft ordinance amendments.

Expansion of area for retail permit

As described above, currently the remaining one unallocated cannabis retail permit would be allowed to be located only within Castro Valley. An RFP to solicit proposals for the fifth cannabis retail permit has not been prepared as Supervisor Miley’s staff indicated that they were researching the possibility of siting the retail operation on the County’s Fairmont Campus. Based on substantial interest for potential cannabis retail operations in the East County, on September 8th, 2020, the Board of Supervisors’ Transportation and Planning Committee directed staff to prepare ordinance amendments that would allow the fifth and final cannabis retail permit in unincorporated Alameda County to be granted to a site in Castro Valley or the East County.

Staff provided additional information and received comments from the Transportation and Planning Committee on October 5th, 2020 and the Agricultural Advisory Committee on October 27nd, 2020 (see attached summary of AAC comments and action). Staff was directed by the Transportation and Planning Committee on November 2nd, 2020, to proceed with the proposed ordinance amendments as currently drafted, which would allow the cannabis retail permit to be in Castro Valley or the SLVPA, and if it is in the SLVPA, to require it to be a “boutique” operation and to not be restricted by the 5-mile separation required between retail operations in the East County under the current ordinance. The purpose of removing the 5-mile separation rule was to not unreasonably restrict potential sites within the significantly more limited area of the SLVPA, which is approximately 22 square miles (14,000 acres). A map showing the current boundaries of the SLVPA is attached.

Staff has received many inquiries recently from people interested in potentially applying for a cannabis retail permit in Castro Valley and the SLVPA. If the ordinance amendments as proposed are adopted by the Board of Supervisors, the remaining cannabis retail permit would be made available through an RFP process. The RFP would solicit proposals for sites in Castro Valley or the SLVPA. As the County did previously for the retail and cultivation permits that were issued in East County in December 2017, staff would convene a panel of staff members to review proposals received and would score the proposals in a competitive process, assessing the proposals against the requirements of the County’s ordinance code for cannabis retail operations.

Definition of boutique cannabis retail operation

Staff was instructed by the Board of Supervisors’ Transportation and Planning Committee to require any additional cannabis retail operation to be “boutique” if it is allowed in East County, so it would be compatible with and could attract visitors to the area to support the existing wineries, olive oil mills, breweries, and other visitor-serving facilities in the area. As currently drafted, 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. The purpose of the proposed requirement for the operation to be a boutique is not to add another layer of restriction to the type of operation that would be allowed, but to encourage those interested in siting a retail operation in South Livermore to develop a proposal that is compatible with other visitor-serving uses in the area.

At the Committee’s direction, staff provided the Board of Supervisors’ Transportation and Planning Committee on October 5th, 2020, with examples of cannabis operations in other counties that are described or advertised as boutique. Staff identified several examples in wine regions, including those that described experiential, educational and food related activities. However, there was no single or defining feature of these boutique operations. The language currently included in the draft ordinance requiring that, “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)”, was intended to be descriptive and provide the County with a basis in the ordinance to evaluate applications against this requirement.

The Agricultural Advisory Committee meeting on October 27th, 2020, included discussion about whether the requirement for a boutique operation could be more clearly defined. The ACC discussed 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, and recommended the ordinance be amended to include a requirement that the boutique cannabis retail store must “contribute to agritourism viability in East County”. This requested change was not adopted by the Board of Supervisors’ Transportation and Planning Committee.

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

Staff recommends that your Commission recommend that the Board of Supervisors adopt the proposed ordinance amendments. Staff will present your recommendation to the Board Transportation and Planning Committee before taking the ordinance amendments to the full Board for approval.

ATTACHMENTS

- Draft ordinance amendments to Chapter 6.108 and Chapter 6.109
- Map of West County Retail Areas 1 and 2
- Summary of AAC comments and action
- Map of the South Livermore Valley Plan Area (SLVPA)

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

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTERS 6.108 AND 6.109 OF THE ALAMEDA COUNTY GENERAL ORDINANCE CODE REGARDING 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. All retail operations pursuant to Chapter 6.108 of the Ordinance Code and all combined cannabis operations pursuant to Chapter 6.109 of the Ordinance Code will be required to comply with state law and state regulations; and
9. 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

10. 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 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 _____, 2021, by the following called vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

RICHARD VALLE
President of the Board of Supervisors

ATTEST:
Clerk of the Board of Supervisors,

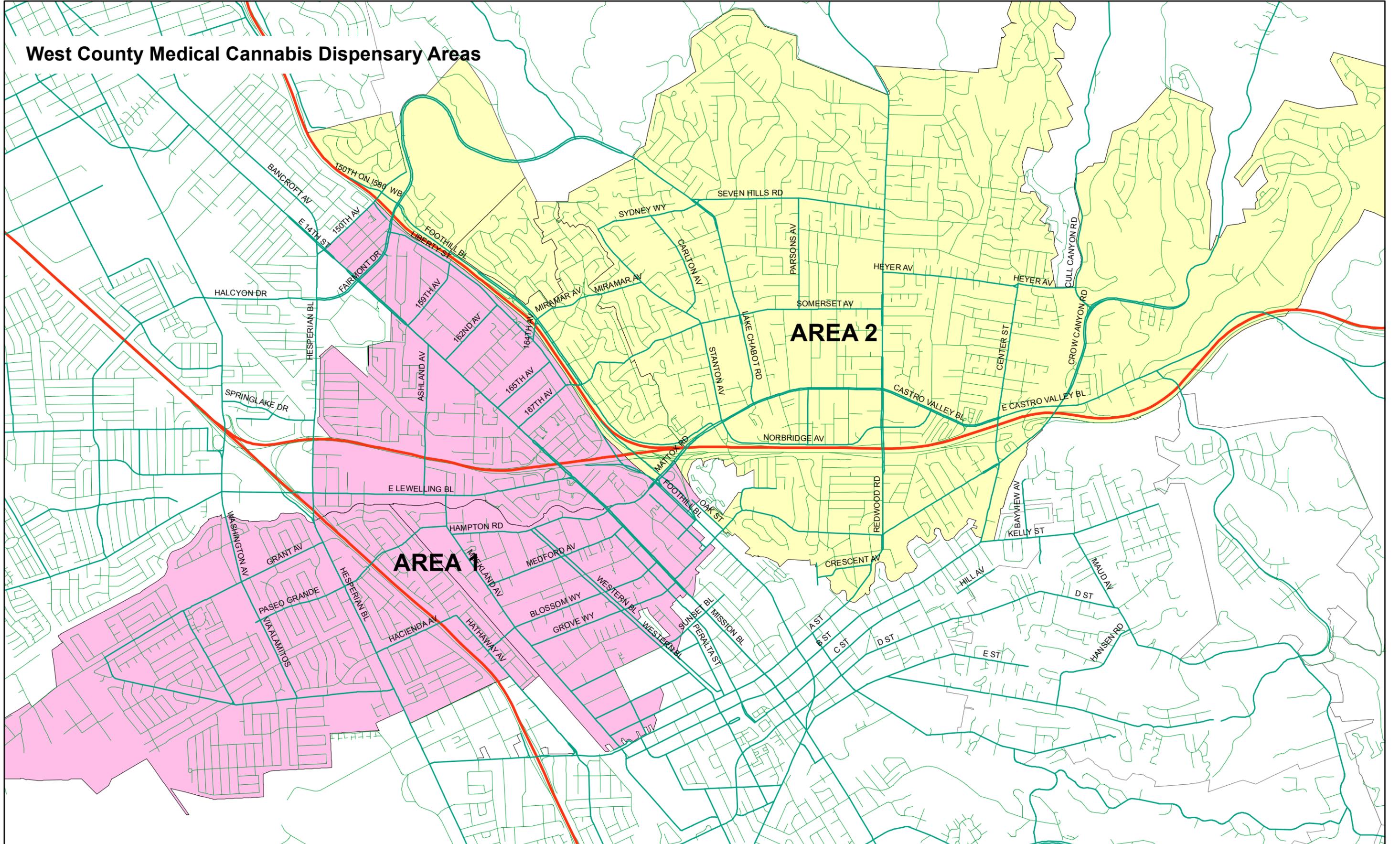
By: _____
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

DocuSigned By:
By: Heather Littlejohn
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Heather Littlejohn
Deputy County Counsel

West County Medical Cannabis Dispensary Areas



**Summary of AAC comments and action
on proposed cannabis retail ordinance changes**

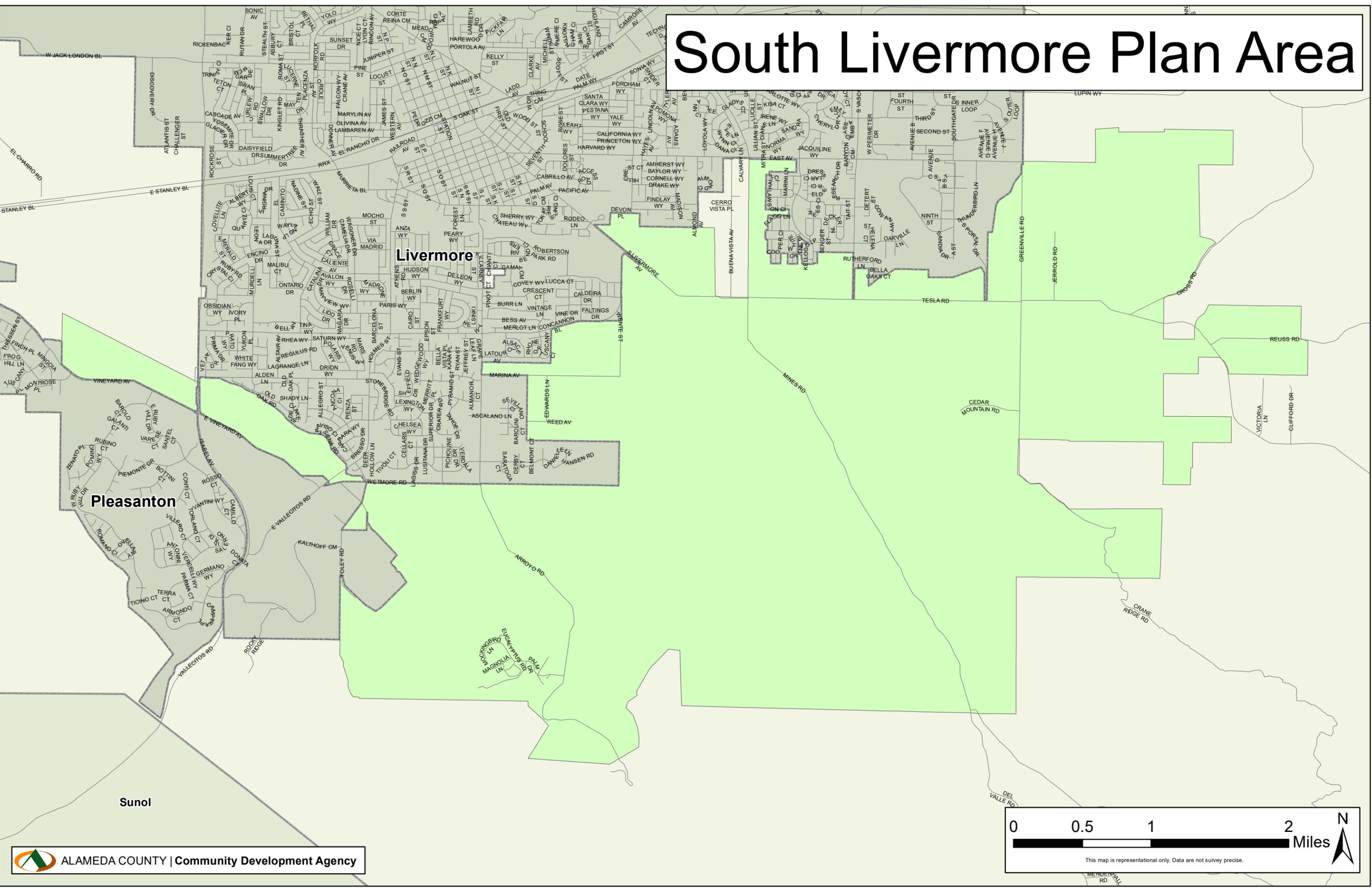
On October 27th, staff provided draft ordinance amendments to the Agricultural Advisory Committee (AAC) for consideration. Comments raised by the public and members of the committee during the meeting in relation to the proposed cannabis retail ordinance changes included discussion of the following items:

- 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 AAC 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 of Supervisors’ Transportation and Planning Committee directed staff to restrict the availability of the boutique cannabis retail operation in East County to the South Livermore Valley Plan Area (SLVPA) and remove the 5-mile separation distance requirement for the boutique cannabis retail operation. The draft ordinance amendments presented to the Planning Commission on December 7th, 2020, and March 1st, 2021, include these changes as directed by the Board of Supervisors’ Transportation and Planning Committee.

South Livermore Plan Area



Livermore

Pleasanton

Sunol