



**PRELIMINARY WORKING DRAFT
FRAMEWORK FOR
REGULATING CANNABIS IN THE
UNINCOPORATED AREA OF
CONTRA COSTA COUNTY**

October 24, 2017



**PREPARED FOR THE CONTRA COSTA COUNTY BOARD OF SUPERVISORS
BY
THE CONTRA COSTA COUNTY DEPARTMENT OF CONSERVATION AND DEVELOPMENT**

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(NOTE: Guidance on refining this document is requested of the Board of Supervisors at the October 24, 2017 meeting. Yellow highlighted text marks ideas or components on which Board input is particularly needed.)

I. Introduction

In response to California voter approval of Proposition 64 (Adult Use of Marijuana Act) in November 2016, the Contra Costa County Board of Supervisors has directed the County staff¹, to initiate the process of preparing regulations for the establishment of commercial cannabis businesses in the unincorporated areas of the County. The regulations will also address cultivation of cannabis for personal use at home.

This working draft document is intended to provide an overview of potential cannabis regulations being formulated for the unincorporated areas of the County, including aspects still very far from being settled, based on guidance from the County Board of Supervisors at the April 25, 2017 and July 18, 2017 meetings as well as additional concepts to be discussed by the Board on October 24, 2017. Once refined by the Board, a future version of this document may be used to solicit further detailed public input on this matter.

In addition to preparation of land use and health regulations for commercial cannabis uses, the Board has also initiated the process of analyzing and preparing a potential taxing program for the various commercial cannabis uses. It is anticipated that no commercial cannabis uses would be authorized until such time as a cannabis tax ballot measure has been approved by County voters. A County cannabis tax initiative could be considered by voters at the next General Election in November 2018, so regulations permitting commercial cannabis uses are not expected to become effective until that time at the earliest.

No decision has been made by the Board on the regulatory framework contemplated in this document. Currently, and unless or until new regulations are approved by the Board of Supervisors, the commercial cultivation, distribution, storage, manufacturing, processing, and sale of medical cannabis and adult use cannabis and the outdoor cultivation of cannabis for personal use ***are prohibited*** within the unincorporated areas of the County.

II. Types of Commercial Cannabis Uses Under Consideration

The County is considering regulating and permitting the establishment of various commercial cannabis uses. No decisions have been made and it is possible that some or all categories of use will not be permitted. Types of use under consideration include:

¹ Staff from the following County Departments have been involved: County Administrators Office, County Counsel, Sheriff's Office, District Attorney, Health Services Department (HSD), Probation, Treasurer-Tax Collector, Agriculture, and Conservation and Development (DCD). DCD is taking the lead with respect to developing land use regulations. HSD is taking the lead with developing health regulations.

- **Cultivation-** “Cultivation” refers to the growing of cannabis for commercial use, including artificial, mixed light and natural light cultivation (i.e. indoor, greenhouse and outdoor).
- **Retail Sales/Delivery-** “Retail sales” of cannabis refers to the sale of cannabis to retail customers from a storefront that sells only cannabis products. Retail delivery refers to deliveries from a storefront or other permitted site to customers. The establishment of delivery-only retail may have fewer potential impacts on neighborhoods and may be preferred in some, many or all instances.
- **Manufacturing/Processing-** Involves the processing of cannabis or cannabis products into various marketable forms, including edibles, oils, tinctures, etc. The County may be well-positioned to attract and retain these types of businesses because the County has significant industrial land and a strong industrial base.
- **Distribution Center-** A cannabis distribution center refers to a site where cannabis or cannabis products are warehoused and distributed to licensed cannabis retailers. The retail sale of cannabis or cannabis products is not permitted from cannabis distribution centers.
- **Testing-** A “cannabis testing” facility is a facility where cannabis and cannabis products are tested for potency, quality, and health and safety requirements.

III. Land Use Permitting Process

All applications for commercial cannabis uses are proposed to be subject to the County Land use Permitting Process (Article 26-2.20 of County Code). Under the land use permitting process, applications for all commercial cannabis uses would be subject to the following procedures:

- Review of application for completeness.
- Solicitation of comments from other County, State, and community agencies/organizations.
- Review of project for compliance with the California Environmental Quality Act.
- Mailing of public hearing notice to all property owners within 300-feet of property where use is proposed.
- Public hearing before the County Zoning Administrator.

- Discretionary decisions would be made by the County Zoning Administrator who could approve or deny applications. Zoning Administrator decisions can be appealed to the County Planning Commission and decisions by the Planning Commission can be appealed to the County Board of Supervisors.

Each permitted use would be subject to specific conditions intended to protect public health, safety and welfare (further discussion of key examples of protections is provided below). The permits would be subject to suspension or termination if performance standards are not met or public health, safety or welfare was threatened. The regulations could incorporate automatic expiration of cannabis permits after a set number of years and require re-approval of permits, including a new application review process. Periodic permit review hearings or review procedures could also be included.

IV. Potential Cap on Number of Permits

In order to help ensure the establishment of safe, orderly and accessible commercial cannabis businesses, the Board may wish to consider placing a cap on the number of permits to be issued for some or all of the commercial cannabis use to be permitted. Establishment of a “ramp-up” program where the cap on the number of permits is increased on an annual basis may also be considered by the Board, which would enable enforcement needs and community effects to be assessed and resource allocation to be adjusted in a deliberative manner. Considerations on potential caps for each of the use types are as follows:

[[ULTIMATE OR INTERIM LIMIT, IF ANY, FOR EACH COMMERCIAL USE TO BE DETERMINED BY THE BOARD]]

- **Commercial Cultivation-** [No limit] OR [A maximum of (10?)-(50?)-(100?) (more?)] permits for the commercial cultivation of cannabis, including indoor, mixed light and outdoor cultivation.
- **Retail Sales-** [No limit] OR [A maximum of (3?)-(6?)-(9?)-(12?) (more?)] permits for the retail sale of commercial cannabis and cannabis products. For delivery-only retail the cap could be increased or eliminated altogether.
- **Manufacturing-** [No limit] OR [A maximum of (5?)-(10?)-(15?)-(20?) (more?)] permits for manufacturing of cannabis and cannabis products. Given that the County could have competitive advantages in the sectors of manufacturing, distribution and testing, and that community impacts may be well addressed with proper siting, staff suggests the Board consider a high (or no) ultimate cap on these sectors (interim caps for a “ramp-up” may have merit).

- **Distribution Center-** [No limit] OR [A maximum of (?)-(?)-(?)] permits for cannabis and cannabis products distribution center.
- **Testing Facility-** [No limit] OR a maximum of (?)-(?)-(?) permits for cannabis and cannabis products testing facility.

V. Applicant Selection Process

In order to ensure the establishment of safe and accessible commercial cannabis uses, all applications for commercial cannabis uses would be subject to the County's existing land use permitting process in addition to any additional processes that may be required by the future cannabis ordinance. Applications for a land use permit for commercial cannabis uses would only be accepted on qualifying properties located within the appropriate zoning district and outside of any approved buffer area. Only then could an application for a land use permit be submitted.

If the Board establishes ultimate or interim caps on the number of businesses to be permitted for any use category, we will need to define a selection process to determine how the ability to apply for available permits will be allocated. Three options are identified below and are evaluated in the attached Table 1.

[[SELECTION PROCESS, IF ANY, WOULD BE DETERMINED BY BOARD]]

- (A) ***First come, first served***, through the otherwise standard land use permitting process. Once an application is deemed complete, the number of available permits would be reduced by one. The application would be processed like any other land use permit. Applications would be approved or denied by the Zoning Administrator (or other hearing body, if appealed) based on the ability to make the required land use permit findings and any other specific findings that could be required by the future cannabis ordinance. Once a sufficient number of applications is deemed complete, the County would stop accepting applications, unless and until one or more complete applications was denied.

OR

- (B) ***"Request for Proposal"*** process where applicants submit a proposal for the establishment and operation of a specific commercial cannabis use. The proposal would then be scored utilizing a scoring system established by code. Proposals with the highest scores would be allowed to submit a land use permit application, and the applications would then be processed under the current land use permitting process as

well as any additional processes that may be required by the future cannabis ordinance. The proposal process could be done in phases. For instance, the County could initially invite submission of pre-proposals (shorter and less complex than full proposals), screen the pre-proposals, then invite some proponents to submit full proposal which would be screened again to determine who may apply (this is similar to some grant selection processes). If a permit was not issued to a selected proposal, a proposal just below the initial cut could be invited to apply. Establishing screening process and criteria and any appeals process could be a significant effort.

OR

- (C) "**Lottery**" selection process where complete applications (or proposals) are placed in a lottery and selected at random. Selected applications would be processed under the current land use permitting process as well as any additional processes that may be required by the future cannabis ordinance. If a selected application was ultimately denied, another application could be drawn from the lottery.

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VI. Eligible Locations

The Department of Conservation and Development has prepared a matrix and Preliminary Cannabis Use Maps identifying the zoning districts where specific commercial cannabis uses could be eligible to apply for a discretionary permit. **The draft matrix and maps are still under review by the Board.** The draft matrix is below. The draft maps are in an attachment.

LEGEND ZONING DISTRICT	CULTIVATION			PROCESSING AND MOVEMENT			SALES	
	Artificial Light	Mixed Light	Natural Light	Distribution Center	Manufacturing	Testing	Retail Delivery Only	Retail Storefront
Agricultural Zoning Districts (A-)	Land Use Permit*	Land Use Permit*	Land Use Permit*		Land Use Permit*			
Area-Wide Planned Unit Development (P-1)	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*
Retail- Business (R-B)							Land Use Permit*	Land Use Permit*
General Commercial (C)				Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*
Controlled Manufacturing (C-M), Light Industrial (L-I), Heavy Industrial (H-I)	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*	Land Use Permit*
Potential Sustainability Requirements	Renewable Energy and Sustainable Water Supply		Sustainable Water Supply		Potential limits on number of employees/trips outside ULL			500 feet from another retail location
Key Considerations and Limitations by Use	Maximum 22, 000 sf		Max 2 acres	only within ULL	Potential limits on number of employees/trips outside ULL	only within ULL	only within ULL	only within ULL
	Ag Districts: maximum 10,000 sf structure or in existing structure		Greenhouse only in non- ag districts	Cultivators may distribute own produce to retailers				500 ft from another retail location

Properties with incompatible zoning could apply to be rezoned, but this is a long and complex process requiring Board approval. Outside of the Area-Wide P-1 zoning districts that cover the former Redevelopment Areas (and that may be eligible for cannabis uses per the above matrix), other lands that are zoned P-1 (Planned Unit Development) could go through a different process to become eligible for cannabis uses if they have a compatible General Plan designation. They could apply for a Development Plan modification to include a cannabis use as an eligible use.

VII. Buffer Zones

Sites with eligible zoning are proposed to also be subject to specific buffer requirements from sensitive land uses such as schools, parks, playgrounds, libraries and drug and alcohol recovery centers. The proposed ordinance could also include buffers from residential land uses.

The proposed buffers for commercial cannabis uses are as follows:

- 1,000 feet from any sensitive site including school, community parks/playgrounds, libraries, drug treatment centers, and homeless shelters.
- For retail storefronts, 500-feet from another retail storefront.

Different buffers are also under consideration, including distances larger and smaller than 1,000 feet as well as buffers from other features such as residential zoning districts. However, 500 foot buffers from residential zoning districts would significantly reduce the number of eligible sites and such buffers should be reserved for the uses least compatible with residential (such as volatile manufacturing processes) unless a policy priority is to maintain significant separation of commercial cannabis uses and residential areas.

VIII. Security and Nuisance Abatement Requirements

In order to ensure that commercial cannabis uses are operated in a safe and secure manner, commercial uses are proposed to be subject to substantial security measures to be incorporated into the regulations. Examples of security measure may include (the below are examples only—many additional measures could be considered during development of the detailed regulations):

- Require that cannabis establishments be constructed in a manner that minimizes odors to surrounding uses, and promotes quality design and construction, and consistency with the surrounding properties.

- Require design measures and an enforceable security plan to ensure the applicant will secure the premises twenty-four hours per day, seven days per week. Examples of specific measures include: security cameras; background checks for employees; establishing limited access areas accessible only to authorized personnel; storing all finished cannabis products in a secured and locked room; preventing off-site impacts to adjoining or near properties; and limiting the amount of cash on the premises.

Examples of operational conditions of approval include:

- Requiring permitted facilities (other than retail space in storefronts) to be closed to the general public; prohibiting transporter deliveries and pick-ups between the hours of, for example, 7:00 p.m. and 8:00 a.m.
- Odors shall be contained on the property on which the commercial cannabis activity is located.
- No production, distribution, storage, display or wholesale of cannabis and cannabis-infused products shall be visible from the exterior of the building where the commercial cannabis activity is being conducted.

IX. Public Health Safeguards

Contra Costa Health Services recommends that the Board adopt a local health ordinance that establishes permitted activity, and the conditions under which consumer products which contain cannabis can be manufactured and sold to consumers. Adopting a local health ordinance will also allow county staff to inspect, regulate and enforce appropriate state and local laws pertaining to the cannabis industry. The primary reasons for crafting a local regulatory health ordinance are:

- Providing authority for local environmental health staff to inspect and enforce the numerous state laws pertaining to: i) the manufacturing of food and beverage products that contain cannabis (termed “edible cannabis products”); and ii) the retail sale and dispensing of cannabis products including, but not limited to, leaf, bud, edibles, beverages, tinctures, candies, etc.
- Provide local authority to establish, inspect, and enforce additional rules and restrictions on the manufacturing and sale of consumer products which contain cannabis.
- Provide local authority to restrict use of cannabis in public places and smoking of cannabis in multi-unit housing.

X. Cost Recovery

Fees on cannabis businesses could be considered to cover County costs associated with application review and monitoring compliance with permit conditions.

XI. Taxation

A ballot measure to seek approval for taxes on certain commercial cannabis uses is under consideration. [Insert more information here as this aspect progresses]

XII. Personal Cultivation

In addition to providing comprehensive regulations for the establishment of commercial cannabis uses, the County cannabis ordinance could also address cultivation for personal use. Under current County cannabis regulations, limited indoor cultivation is permitted. The current regulations for personal indoor cultivation has been provided below.

- **Indoor Personal Use Cultivation-** *Under the County's current cannabis regulations*, six or fewer cannabis plants may be cultivated indoors at a private residence, or inside a fully-enclosed and secured accessory structure to a private residence located on the grounds of the private residence, if all of the following conditions are met:
 1. The private residence or accessory structure, and all lighting, plumbing, and electrical components used for cultivation, must comply with applicable zoning, building, electrical, and plumbing codes and permitting requirements.
 2. All living cannabis plants, and all cannabis in excess of 28.5 grams produced by those plants, must be kept in a locked room and may not be visible from an adjacent property, right-of-way, street, sidewalk, or other place accessible to the public.
 3. The private residence must be lawfully occupied by the person who cultivates the cannabis plants within the private residence or within the accessory structure. If the private residence is not owner-occupied, written permission from the owner of the private residence must be obtained before cannabis plants may be cultivated.

The final regulations could continue the current restrictions on cultivation for personal use or they could be expanded to allow for limited outdoor cultivation for personal use and/or allow for variances.

- **Outdoor Personal Use Cultivation**- Examples of restrictions on outdoor cultivation for personal cultivation that could be considered in lieu of outright prohibition include:
 1. Not more than three marijuana plants are cultivated at one time.
 2. The plants are not visible from a public right-of-way or adjacent parcel.
 3. No part of the plants being cultivated are within five feet of any property line.
 4. No more than three marijuana plants per parcel are allowed to be cultivated outdoors, regardless of the number of qualified patients residing on the parcel.
- **Variance or land use permit application to allow for exceptions to limitations on personal cultivation**. The Board could consider whether the limitations on personal cultivation are hard and fast limits with no exceptions or whether to allow a discretionary permit process to enable certain specified exceptions. For instance, outdoor personal cultivation could be permitted or denied through such a process. Or certain exceedances on the limitations on number of plants could be considered on a case by case basis in this manner. The process would require notification to neighbors and a public hearing and decisions would be appealable.

XIII. Enforcement

In order to ensure the orderly establishment of commercial cannabis uses and to prevent and discourage the establishment of unregulated cannabis uses, robust enforcement capacity should be a component of the regulatory program. Additional work is needed by staff to more fully explore the most effective enforcement mechanisms, to identify enforcement roles and identify resource needs.

XIV. Additional sections?

Additional sections may be added to address other aspects of the potential regulations deemed important to include in a summary document such as this Framework.