



DRAFT

FRAMEWORK FOR

REGULATING CANNABIS IN THE

UNINCORPORATED AREA OF

CONTRA COSTA COUNTY

April 24, 2018



PREPARED FOR THE CONTRA COSTA COUNTY BOARD OF SUPERVISORS

BY

THE CONTRA COSTA COUNTY DEPARTMENT OF CONSERVATION AND DEVELOPMENT

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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 draft document is intended to provide an overview of potential cannabis regulations being formulated for the unincorporated areas of the County based on guidance from the County Board of Supervisors at previous meetings. The draft zoning ordinance will reflect the general provisions described in this document.

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 to be Permitted

The County is considering regulating and permitting the establishment of various commercial cannabis uses. The types of commercial cannabis uses to be permitted include:

- **Commercial Cultivation**-Refers to the growing of cannabis for commercial use, including artificial, mixed light and natural light cultivation (i.e. indoor, greenhouse and outdoor).

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.

- **Retail Storefront-** Refers to the sale of cannabis to retail customers from a storefront that sells only cannabis products. Deliveries from the storefront business to retail customers would also be allowed.
- **Delivery-Only Retail-** Refers to a business that delivers cannabis from a non-storefront facility to retail customers. The premises would not be open to the public and customers would not be able to purchase cannabis on-site.
- **Manufacturing/Processing-** Involves the processing of cannabis or cannabis products into various marketable forms. Manufacturing may include the extraction of cannabinoid oils from the raw plant as well as the infusion of those oils into products intended for human consumption and/or topical use. Some examples of infused products include: edibles, beverages, oils, and tinctures. Since non-volatile processing techniques are safer, only non-volatile processing, as defined in state regulations, are proposed to be allowed.
- **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.
- Applications for retail storefront and commercial cultivation permits would only be accepted in response to a Request for Proposals issued by the County in order to enforce caps on the numbers of these types of businesses (see below for additional detail).
- All decisions to issue permits would need to be supported by findings that the proposed use is consistent with defined standards. In addition to typical findings required for all land use permits, staff recommends additional findings be required for cannabis uses to prevent adverse impacts to neighbors and communities.

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 under specific circumstances, including, for example, where a State license is suspended or revoked, or where the business is operated in such a way as to cause a public nuisance. A permit would have an initial 5-year term. A permit could be renewed for one or more successive five-year terms if certain conditions are met. A compliance review approved by the Zoning Administrator would be required each year for the first three years of operation. After the first three years, the zoning administrator would require compliance review once every three years. These reviews would generally be performed without the necessity of convening a public hearing, except that a public hearing before the Zoning Administrator would be required for the first such review of any business as well as for any review in which the Zoning Administrator determines the business is not in compliance. Local Health Licenses or operator permits for retailers and edible manufacturing may be required on an annual basis to be consistent with how the Division of Environmental Health regulates and inspects other consumer good businesses.

It is important to note that additional permits from the County (as well as a state license) will be required. For example, Environmental Health is proposing to require applicants to seek and receive a local health license, consistent with the handling and sales of consumer goods (see Section IX). Business licenses would also be required. Building permits may also be required.

The permitting sequence would be as follows:

- 1) Land use permit (which would be conditioned to require subsequent granting of other permits and licenses)
- 2) State license
- 3) Local health license

- 4) Business license and any necessary building permits

IV. Potential Cap on Number of Permits

In order to help ensure the establishment of safe, orderly and accessible commercial cannabis businesses, caps will be placed on the number of retail storefronts and commercial cultivation sites. The cap amount will be reviewed and possibly adjusted after an initial three year period. Due to the lesser impact of specific commercial cannabis uses such as testing, manufacturing, delivery-only retail and distribution, no caps on these uses will be established initially.

- **Commercial Cultivation**-- Maximum of ten (10) during the initial three-years. This cap will be reviewed thereafter.
- **Retail Storefront**- Maximum of four (4) during the initial three years. This cap will be reviewed thereafter.
- **Delivery-Only Retail** – No limit initially.
- **Manufacturing**-- No limit initially.
- **Distribution Center**-- No limit initially.
- **Testing Facility**-- No limit initially.

V. Applicant Selection Process

As described in Section II, 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 land use permitting (LUP) process and any other applicable regulations (e.g. Environmental Health permits and building permits). For the commercial uses subject to a cap (Retail Storefront and Commercial Cultivation), the Board will in the future establish a selection process to determine how available permits will be allocated and facilitate permitting of projects with more benefits and fewer impacts.

Under the future selection process, the County would solicit proposals for establishment of certain commercial cannabis uses utilizing a request for proposals (RFP). The proposals submitted in response to the RFP would be scored utilizing a pre-defined, Board-approved scoring system. The scoring system is recommended to be based on criteria that reflect the County's public safety, land use and health policy goals with respect to cannabis, such as providing well-regulated access to adults while avoiding proximity to youth and discouraging abuse, compatibility with neighboring land uses and minimization or avoidance of potential

impacts to public health, safety and welfare. The proposals with the highest scores would then be invited to submit a formal land use permit application, the application would be processed under the County LUP process and would be subject to denial, or conditional approval, by the County Zoning Administrator, County Planning Commission or Board of Supervisors. If a permit was denied, the highest ranked proposal just below the initial cut-off could be invited to apply until the cap on permits is reached. The screening process could be done in phases. For instance, the County could initially invite submission of concise and simple pre-proposals (less detailed and costly to complete than full proposals), review and rank the pre-proposals, then invite the proponents with the highest ranking pre-proposals to submit full proposals which would be screened again to determine who would be invited to submit a formal land use permit application (this is similar to some grant selection processes).

Please note, applications for a land use permit for commercial cannabis uses would only be accepted for qualifying properties located within the appropriate zoning district, outside of any approved buffer areas and outside any exclusion areas (see Sections VI and VII, below).

(Document continues on next page)

VI. Eligible Locations

The County has prepared a matrix and Preliminary Cannabis Use Maps [include link to maps here] identifying the zoning districts where specific commercial cannabis uses could be eligible to apply for a discretionary permit. 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 (in conjunction with cultivation permit only)			
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	100% Renewable Energy and served by a public water agency		Served by a public water agency		Potential limits on number of employees/trips outside ULL			
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 inside ULL or within 1 mile of ULL	Cultivators may distribute own produce to retailers				500 ft from another retail location

Note: 1: ULL refers to Urban Limit Line

Note 2: Microbusinesses (operations that grow, process and sell cannabis products to retail customers at a small-scale site) are also under consideration where cultivation is allowed inside the ULL.

Note 3: For the area-wide P-1 zoning districts in North Richmond, El Sobrante, Rodeo, Contra Costa Centre and Bay Point, suitable areas for commercial cannabis are limited to those with underlying General Plan land use designations of Business Park, Commercial, Commercial Recreational, Light Industrial, Heavy Industrial, and Mixed Use. Subsequent to approval of the zoning ordinance, the County would need to draft and approve amendments to the site-specific provisions of each of these districts. These amendments would establish precisely which commercial cannabis uses would be allowed where in these five area-wide P-1 districts. As these amendments and associated detailed site analysis have yet to be performed, the current draft maps show in yellow all of the areas within these five P-1 districts that have a General Plan land use designation that is compatible with one or more commercial cannabis use, but do not specify precisely which commercial cannabis use is proposed to be eligible on any given parcel within the yellow area.

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 El Sobrante (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 process other than rezoning 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, which would require separate approval but not necessarily by the Board. It is recommended that new P-1 zones outside the ULL not be eligible for commercial cannabis.

Exclusion areas: overlay zone to further restrict commercial cannabis: To restrict eligible sites for retail storefront, delivery-only retail, manufacturing, distribution centers and testing to areas near the two primary freeways serving the shoreline areas of the County where development of new industries has been targeted by the County, to separate these uses from less compatible communities, and to avoid siting in remote areas that are more difficult to oversee and are far from most of the customer base, staff recommends an overlay be added to the Retail Business and General Commercial zoning districts that are located more than five miles from Highway 4 or Interstate 80. Such zoning districts are located in Alamo, Saranap, Bethel Island and Hotchkiss Tract in between Oakley and Bethel Island. No commercial cannabis uses would be permitted in these districts within the overlay.

VII. Buffer Zones

In addition to being located within compatible zoning districts and outside of exclusion areas covered by a zoning overlay, all commercial cannabis uses would be subject to specific buffer

requirements in order to protect certain sensitive uses from potential cannabis influence or to prevent cannabis businesses from being located too close to each other.

Under current State law a buffer of 600 feet is required between any cannabis business licensed by the State and any K-12 school, day care center or youth center. A County ordinance may include more or larger buffers. A County ordinance may also establish buffers between cannabis businesses.

For comparison purposes, the County Code currently restricts the establishment of new tobacco retail establishments within 1,000 feet of any school, playground, park or library and within 500 feet of any existing tobacco retailer.

The Preliminary Cannabis Use Maps attached to the April 24 Board report show three alternatives.

- Option A reflects the state-mandated 600 foot buffers from any K-12 school, day care center or youth center.
- Option B reflects 1000 foot buffers from any K-12 school, day care center or youth center, as well as 1000 foot buffers from drug treatment shelters.
- Option C reflects 1000 foot buffers from schools, day care centers, youth centers, community parks/playgrounds, libraries, drug treatment centers, and homeless shelters, 500 foot buffers from residential zoning districts. Option C closely mirrors the most comprehensive buffer scenario contemplated in the Board's November 2017 Preliminary Framework, while also accounting for the state regulations regarding minimum buffers from day care and youth centers.

County staff recommends Option B combined with 500 foot buffers between retail storefront establishments.

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 incorporated into the regulations. Examples of security measures 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 submission and approval of an odor management plan.

- 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. Require approval and submission of a security plan demonstrating compliance with all security measures set forth in state regulations and any additional security measures outlined in County regulations. Examples of security measures that may need to be included in security plans include: security cameras; 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.
- 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.
- Operational requirements and standards to prevent underage persons from acquiring cannabis that equal or exceed state standards.

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:

- Provide 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. Currently, the County has a second hand smoke ordinance that bans the smoking of cannabis products in the unincorporated area of the County in all of the same places where tobacco smoking is prohibited. Additionally, in March of 2018 the Board adopted a prohibition on smoking in multiunit residences that is inclusive of the use of cannabis. The current and proposed smoking prohibitions also restrict the use of electronic smoking devices (vaping). In addition, the County could consider an outright ban on the use of cannabis in any form at certain public events and venues.

Specific examples of the kinds of safeguards that are being considered for inclusion in new regulations include the following:

- Consider limiting the sale of edible cannabis products to those where dosing is a maximum of 10mg THC/dose and packaged as a single dose. Consumers would be allowed to purchase up to the limit allowed in state law.
- Prohibit sale of flavored leaf and bud.
- Consistent with recent legislation in Colorado, consider prohibiting the sale of edible products that mimic the shape and appearance of animals, humans, or fruit, including gummy bears.
- Prohibit sale of flavored e-juices.
- Establish a limit on the number of edible products that can be purchased in a single transaction.
- Prohibit all self-service vending of all cannabis and products which contain cannabis.

A report from Contra Costa Health Services with detailed recommendations and analysis of health issues is available on the County webpage about cannabis in the section with materials from the Board meeting on October 24, 2017 or by clicking this [link](#).

X. Cost Recovery

The County will establish fees on cannabis businesses to cover County costs associated with application review and monitoring compliance with permit conditions. To apply for and maintain a land use permit, applicants will be required to cover the full costs of the County to review the application and oversee compliance with a resulting permit. Costs of a land use permit are typically covered through a \$2700 initial deposit and payment of County costs on a time and materials basis thereafter. For those prospective businesses responding to the RFP an earlier initial deposit will be required to cover County costs in administering the

selection process. If County costs do not reach the amount of the deposit when reviewing a proposal or land use permit application, the difference will be refunded.

XI. Taxation

A ballot measure to seek approval for taxes on certain commercial cannabis uses is under consideration. 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. The tax measure could provide funding for a variety of public purposes, including but not limited to enhanced public safety, improved public health, drug treatment and education, and enhanced code enforcement capability.

XII. Personal Cultivation

In addition to providing comprehensive regulations for the establishment of commercial cannabis uses, the County cannabis ordinance will also address cultivation for personal use. Under current County cannabis regulations, limited indoor cultivation is permitted. The current regulations for personal indoor cultivation have 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 are proposed to continue the current restrictions on indoor cultivation for personal use and include new provisions to allow for limited outdoor cultivation for personal use.

- **Outdoor Personal Use Cultivation**- Suggestions on restrictions on outdoor cultivation for personal use that could be considered in lieu of outright prohibition include:
 1. Not more than three marijuana plants are cultivated outdoors at one time (total indoor and outdoor may not exceed six).
 2. No part of the plants being cultivated is within ten feet of any property line.
 3. Plants must never exceed five feet in height.
 4. Plants must not be visible from streets or public areas.
 5. Plants must be inside a fenced area with locked gates

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. County staff is working to more fully explore the most effective enforcement mechanisms and to better identify enforcement roles and resource needs.

XIV. Retail delivery from businesses established outside the unincorporated area of Contra Costa County

The state may require that retail delivery businesses located outside of the unincorporated area of the County be able to make deliveries to customers within the unincorporated area without violating county regulations. To address this and provide clarity, staff recommends that such licensed business that are operating in compliance with state and local law and permits, be authorized to make deliveries in the unincorporated area of the County.