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To: Contra Costa Board of Supervisors
From: Daniel Peddycord, Director Public Health
Marilyn Underwood, Director of Environmental Health
Randy Sawyer, Chief Environmental Health and Hazardous Materials Officer

Re: Staff Report on considerations for a Cannabis Health Ordinance

Date: 5/8/18

I. Background

On April 24th, 2018, the Board of Supervisors accepted the staff report from the Department of Conservation and Development and approved the final draft of a framework for regulating cannabis in the unincorporated areas of the County. Staff was directed to prepare a land use ordinance based on the framework and subsequent discussion. Additionally the Board directed Contra Costa Health Services to provide a report at the May 8th, 2018 Board meeting, to consider recommendation related to the drafting of a cannabis Health Ordinance for the purpose of further regulating the commercial cannabis industry in the Unincorporated areas of the County.

On November 17th, 2017, the Preliminary Framework for regulating cannabis was presented to the Board of Supervisors as a consent item following conversation and direction given at the October 24th Board meeting.

On October 24th, 2017, the Board of Supervisors received a report on considerations related to cannabis taxation as well as an update and proposed framework applying local land use and other policy considerations for the regulation of the commercial cannabis industry. On that date, the Board also adopted an Ordinance which prohibited the establishment of any commercial cannabis activity, both medicinal and recreational, in the unincorporated jurisdiction of the County.

On July 18, 2017, the Board of Supervisors received a report on local policy and regulatory considerations in the wake of voter approved Proposition 64 (Prop 64), which legalized adult recreational use of marijuana. During this presentation information was provided that highlighted some of the health concerns related the use of cannabis.

On July 11th, 2017 Ordinance No. 2016-01 was introduced to the Board of Supervisors establishing restrictions on the retail sale of emerging and flavored tobacco products and establishing distance and density restrictions in proximity to youth sensitive areas. The ordinance also established a cap on the total number of tobacco retailers in the unincorporated area of the County. The Ordinance as adopted on July 18, 2017.

Of particular interest to Contra Costa Health Services is the ability to locally regulate the manufacture and retail sale of consumer products and to align regulations with recently adopted tobacco policy to the extent feasible. While many aspects of local regulation may be addressed



through land use rules, Contra Costa Health Services recommends that the Board consider 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 support enforcement of appropriate state and local laws pertaining to the cannabis industry.

In light of the newness of regulating the commercial cannabis industry and the evolving landscape of cannabis regulation, Contra Costa Health Services recommends a cautionary approach to local regulation that emphasizes protections for consumers, the public, and at-risk groups such as youth and individuals challenged with substance use disorders.

II. Summary of Health Benefits and Health Concerns:

Over the course of the past 10 months the Board has heard testimony and been provided with various articles, reports and research from both the public and staff related to the health benefits and concerns of cannabis. Individuals and coalitions from both sides of the debate are passionate in their convictions. In June of 2014 an article (attachment 1) was published in the New England Journal of Medicine related to the Adverse Health Effects of Marijuana Use. However, the article also recognized some of the clinical conditions to which the use of cannabinoids may be beneficial. Those conditions include, Glaucoma, Nausea, AIDS- associated anorexia and wasting syndrome, Chronic pain, Inflammation, Multiple sclerosis and Epilepsy. Conversely the article emphasized that there are also numerous adverse effects of marijuana use including; risk of addiction, clear evidence of negative effects of brain development, effect on school performance and lifetime achievement, possible role as a gateway drug, relationship to mental illness – including, anxiety, depression and schizophrenia, and clear association with increased risk of motor vehicle accidents. The article also discussed association with cancer and cardio-vascular disease, including stroke, hypertension and myocardial infarction. The article also discussed the gaps in knowledge as to the full effects on nursing and pregnant mothers and their unborn child. On this later issue Contra Costa Health Services recommends an abundance of caution and that all nursing and pregnant women be informed of the potential risk of harm and to be advised to avoid the use of cannabis during their pregnancy and while nursing. It is also important to note that the article cites that some 1 in 6 or approximately 17% of teens who experiment with cannabis will become addicted to its use and as many as 50% of adult daily users. Additionally many experts, clinicians and researchers in the field of mental health are increasingly confident that the burden of psychosis will increase as a result of the legalization of cannabis and the predictable increased in use. This includes a likely increase in conditions such as schizophrenia.

It is from this cautionary approach that Contra Costa Health Services recommends many of the specific health regulations designed to help protect youth, and other sensitive populations from the potential adverse effects of cannabis use.

III. Recommendations for Local Health Ordinance:

The following matrices identify the health and regulatory concerns related to specific facilities or sectors of the commercial industry that may be allowed, the state law and regulation that address these concerns, and recommendations for additional requirements that will be incorporated into the health ordinance. Please note that some of the health concerns (odors, distance from cannabis



facility to sensitive facilities, capping the number of retail sales locations, security to keep minors out) have already been addressed in the land use ordinance, and will not be repeated here. Testing facilities would not seem to pose health concerns beyond the ones addressed in the land use ordinance. Cultivation has health concerns and since the local Agriculture Commissioner will have the authority to enforce both indoor and outdoor cultivation, we will work with them to address those concerns.

Cultivation
Health Concerns: (To the extent that the Cultivator packages or labels cannabis products)
Packaging or product looks attractive to minors
Food safety for edibles
State Law and Regulation that Address Health Concerns
<ul style="list-style-type: none"> • Similar as for Infusion Manufacturing - (see below)
Recommendations for Additional Requirements in the Health Ordinance
<ul style="list-style-type: none"> • Similar as for Infusion Manufacturing -(see below).

Manufacturing - Extraction
Health Concerns:
Danger of explosion, fires, chemical releases to air, land or surface water
Waste product disposal or reuse
State Law and Regulation that Address Health Concerns:
<ul style="list-style-type: none"> • CUPA program in Hazardous Materials Division has oversight if certain amounts of chemicals are used on-site and if any hazardous waste is generated. • Occupational injury/exposure reports submitted to Cal OSHA • Waste material from extraction must have certain low levels of any THC like material and then can be disposed as green waste, solid waste or hazardous waste. • State Law provides HazMat the authority to issue an annual permit and to inspect if the business is subject to one of the CUPA programs.
Recommendations for Additional Requirements in Local Health Ordinance:
<ul style="list-style-type: none"> • Limit chemical extraction methods to the use of Non-volatile solvents that would include closed loop Carbon Dioxide gas extraction, mechanical extraction and Ethanol Extraction to the extent deemed non-volatile by appropriate State Agencies.. • Extend CUPA program to cover facilities that use smaller quantities of chemicals • Labeling and storage of cannabis oils prepared for post extraction manufacturing • Occupational exposure/injury be submitted to local Public Health • Extend same regulatory requirements for mobile or on-site extraction, if the Board, at a later date permits this • Adoption or application of appropriate fees.
Manufacturing- Infusion
Health Concerns:
Packaging or product looks attractive to minors
Food safety for edibles



State Law and Regulation that Address Health Concerns:

- Standardized dosage of cannabinoids in consumable products may not exceed 10 milligrams of THC per serving
- Edible cannabis products shall not contain more than 100 milligrams of THC per package, with each serving identified
- Packaging of edibles must be opaque and not attractive to children, child resistant, and tamper proof
- Packaging has requirements that must be written in English in a minimum font size, a universal symbol that means it contains cannabis, the THC and CBD content per serving, other ingredients including allergens, and certain nutrition information, and a specific statement that includes a warning about the product containing cannabis and to keep out of reach of children and animals and use during pregnancy or breastfeeding may be harmful.
- Prohibited cannabis products include: alcoholic beverages, dairy products except for **butter**, any product that is not shelf stable except for certain juices and beverages, meat products except for certain dried meat products, seafood products, products that can be easily confused with a commercially available food that does not contain cannabis, is attractive to children, and is in the shape of a human being, either realistic or caricature, animal, insect, or fruit.
- Testing at a state certified lab is required to address potency of portions in edibles and other manufactured products
- No on-site use or consumption by staff
- All employees at an edible manufacturing location must have a current food handler card
- Cannabis waste must be evaluated to see if it qualifies as a hazardous waste and according to the results dispose of according to applicable laws and regulations

Recommendations for Additional Requirements in Local Health Ordinance:

- Annual Health permit and inspections required from Environmental Health
- Environmental Health conduct regular and complaint based inspections. The manufacturer may not manufacture flavored leaf, bud, e-juices or any other product that is designed for smoking or use with electronic smoking devices.
- Adoption or application of appropriate fees.

Distribution

Health Concerns: (To the extent that the Distributor packages or labels cannabis products)

Packaging or product looks attractive to minors

Food safety for edibles

State Law and Regulation that Address Health Concerns

- Same as for Infusion Manufacturing above

Recommendations for Additional Requirements in the Health Ordinance

- Same as for Infusion Manufacturing above.



Lab Testing

Health Concerns:

Laboratory quality and accuracy of measurements of chemical and contaminant contents

State Law and Regulation that Address Health Concerns:

- Quality Controls vetted at State Public Health Lab in Richmond. Ongoing regulatory oversight deferred to Bureau of Cannabis Control.

Recommendations for Additional Requirements in the Health Ordinance:

- None

Retail Sales - Storefront

Health Concerns:

Selling to minors

Overdosing

Addiction

Adverse Health effects on Youth.

Adds potential criminal element to neighborhood

Loitering and partaking nearby

Advertisements are not wanted, seen as promoting drug and potentially lead to loitering

Giving product away and Consumption of product on-site

Edibles may not be handled properly for “food” safety reasons

Specific products may be attractive to youth (lessons learned from Tobacco)

State Law and Regulation that Address Health Concerns

- Lawful ID required for admission to facility
- Must be 21 for admission for adult-use only store
- Must be 18 and have a valid physician’s recommendation for medical store or mixed store
- Employees must be 21 and over.
- A limited access area must be established by the retailer with restricted access to authorized individuals.
- Product cannot be given away, including no sampling
- No on-site use or consumption by staff or patrons, except in some cases related to medical cannabis.
- Limits to single/daily transactions:
 - 28.5 grams of cannabis bud/leaf
 - 8.0 grams of concentrated cannabis
- Returned good must be destroyed/disposed of as waste.
- Organic certification program will be phased in
- All products must be sold in a child resistant packaging or placed in one before leaving the store
- Retailer must not package, repackage or label cannabis goods.
- Cannabis goods shall only be displayed in the retail area.
- No sale of tobacco or alcohol from premise



- No use, including electronic vaping devices in or on the grounds of any public facility, park, library or side-walk
- No use in public buildings or buildings accessible to the public

Recommendations for Additional Requirements in the Health Ordinance

Related to Permitting:

- Require Annual Environmental Health Operator Permit.
- Allow Environmental Health to review and approve initial plans for sales of consumer and consumable products, with subsequent inspection, semi-annual inspection and re-inspections due to findings.
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- Approve or apply appropriate fees.

Related to Display/Advertising/Warnings:

- No storefront product advertising.
- Require posting of large font Warnings related to use by pregnant and nursing women and Warnings related to Accessibility to Youth at entrances and exits of Facility.
- Prohibit false product claims: A licensee shall not include on the label of any cannabis or cannabis product or publish or disseminate advertising or marketing containing any health-related statement that is untrue in any particular manner or tends to create a misleading impression as to the effects on health of cannabis consumption

Related to Products:

- **Prohibit the sale of flavored leaf, bud, e-juices** or any other product that is designed for smoking or use with electronic smoking devices.
- **Prohibit the sale of non-shelf stable juices.**
- **Limit the daily sales to 800 milligrams of THC in total per for edible/consumable products.**
- No sale of any non-cannabis food or beverage products or sundries.
- Require all products to be placed in a secondary child resistant package before leaving the store
- No promotional items may be offered in association with the sales transaction.

Related to Access:

- The County Cannabis Zoning Ordinance should consider a requirement for physical separation between the entrance Lobby and the retail/display area.
- Recommend that the Health Ordinance stipulate that retail service be limited to single customer to single retail assistant at a time. Hence, may not serve multiple customers simultaneously, and that other customers must wait in the lobby until called back for service.
- ID and Age must be verified both upon entry into lobby area and prior to service in the retail area.

No vending machines

- No self-service vending machines for cannabis products of any kind.



Retail Sales- Delivery

Health Concerns:

Selling to minors

Overdosing

Advertisements are not wanted, seen as promoting drugs

Giving product away

Edibles may not be handled properly for “food” safety reasons

State Law and Regulation that Address Health Concerns

- Delivery must be to a physical address and may not be made to any publicly owned facility or lands. This includes Tribal Lands, unless specially authorized by applicable tribal law.
- Employees must be 21 and over.
- Lawful ID required for delivery.
- Must be 21 for receipt of adult-use delivery
- Must be 18 and have a valid physician’s recommendation for medical or mixed use delivery
- Product cannot be given away, including no sampling
- No on-site use or consumption by staff
- Delivery Vehicles must be equipped with a dedicated and operational GPS Tracking system at all times.
- Delivery Vehicles
- A delivery receipt must be conveyed at the time of delivery.
- The delivery route may be from licensed premise of non-storefront retailer to delivery address and from delivery address to delivery address only. No deviation from route is permitted, with limited exceptions, due to road conditions, vehicle repair, rest stops, fuel. GPS System shall be use to track and data available to the Bureau for inspection.
- Limits to single/daily transactions –
- 28.5 grams of cannabis bud/leaf
- 8.0 grams of concentrated cannabis
- Organic certification program will be phased in
- All products must be sold in a child resistant packaging or placed in one before being delivered

Recommendations for Additional Requirements in the Health Ordinance

Related to Permitting:

- Same as for retail storefront
- Restricted to locations and hours of operation consistent with proposed zoning ordinance.

Related to Access:

- ID and age must be affirmed by lawful proof of Identification.
- Delivery must be made in person, person to person and only to the age appropriate person who initiated the transaction.

Related to Warnings:

- The delivery employee must offer a separate written warning of accessibility by youth and warning to avoid use by pregnant and nursing women.



Related to Products:

- Same as for retail storefront.
- No promotional items may be offered in association with the sales transaction.

Mico-Business**Health Concerns:**

Same as for retail, and manufacturing.

State Law and Regulation that Address Health Concerns

- To be eligible the licensee must engage in at least three of the following commercial activities: cultivation, manufacturing, distribution and retail sales.
- Presumably, same requirements as other commercial sectors; manufacturing, retail sales.

Recommendations for Additional Requirements in the Health Ordinance

Consistent with recommendations from DCD, do not allow at this time.

If Micro-Business later becomes authorized under County Land Use Ordinance:

- Apply same requirements and restrictions as for extraction and infusion manufacturing.
- Apply similar requirements and restrictions as for retail storefront.

Temporary Cannabis Events:**Health Concerns:**

Same as for retail.

Considerable concern for intoxication at event and operation of a motor vehicle post event.

State Law and Regulation that Address Health Concerns

- Numerous requirements specific to event organizer.
- Requires a State temporary event license.
- Events limited to a 4 day duration.
- Sale of goods and consumption limited to persons age 21 and older.
- Sales of product limited to same as for Retail environment and limited to a retailer or microbusiness already authorized by State and Local Government.
- Sale and consumption of Alcohol and Tobacco is prohibited.
- Exit packaging required.
- Free Cannabis Goods are permitted, with some limitations.

Recommendations for Additional Requirements in the Local Health Ordinance

Consistent with recommendations from DCD, prohibit Special or Temporary events at this time.

However if Board wishes to consider at a later date:

- Limit event to 2 day duration
- Require local Health permit



- Limit products to same as for storefront retail.
- Limit access to event to persons 21 and older, both patrons and event employees
- Require posting of warnings regarding use by pregnant and nursing women and “Keep out of reach of children”
- Prohibit Advertising of event to a distance no less than 2,000 feet from all youth sensitive areas, including K-12 Schools, youth centers, parks, day care facilities, and drug treatment centers.
- Prohibit Free or discounted goods.
- Limit transaction sales on cannabis products to same as for storefront retail.
- Require “designated driver” and establish limits to cannabis service to those individuals.

Public Use:

Health Concerns:

Increased visibility of public use may lead to increased normalization effecting perception of risk of harm by youth. Second hand smoke from Cannabis has associated health risk.

State Law and Regulation that Address Health Concerns

Proposition 64 – Prohibits:

- Smoke, vaporize or ingest cannabis or cannabis products in any public place.
- Smoke or vaporize cannabis in any non-smoking area **or within 1,000 feet of a school, day care or youth center while children are present, except privately at a residence.**
- Consume cannabis or possess an "open container" of cannabis while driving or riding **as a passenger in any motor vehicle, boat, or airplane.**

Recommendations for Additional Requirements in the Health Ordinance

Other than consideration of prohibiting the smoking of cannabis on public sidewalks, which is not included in current tobacco control policy, most other uses in public places is currently banned under the County Tobacco Control Ordinance.

County Tobacco Product Control Ordinance – Division 445

- **Product Definition Includes smoking of cannabis and use of electronic smoking devices**

SECTION II. Section 445-4.004 of the County Ordinance Code :

445-4.004 Prohibition of Smoking. Smoking is prohibited in the following places within the unincorporated area of Contra Costa County:

- Enclosed places of employment.
- Enclosed public places.
- Service areas.
- All areas within twenty feet of doors, windows, air ducts, and ventilation systems of enclosed places of employment, except while passing on the way to another destination.
- All areas within twenty feet of doors, windows, air ducts, and ventilation systems of enclosed public places, except while passing on the way to another destination.
- The following outdoor areas:
 - Outdoor dining areas at bars and restaurants.
 - Outdoor lounges and outdoor dining areas at places of employment.



- (3) Public trails and public parks.
- (4) Public event venues.
- (g) All multi-unit residence common areas, except that a landlord may designate a portion of an outdoor common area as a smoking area. A designated smoking area of an outdoor common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least twenty-five feet in all directions from non-smoking areas; must not include areas used primarily by children; must be no more than twenty-five percent of the total outdoor common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.
- (h) All areas within twenty feet of doors, windows, air ducts, and ventilation systems of multi-unit residences, except while passing on the way to another destination.
- (i) All outdoor balconies, porches, decks, patios, and carports of multi-unit residences.
- (j) All dwelling units in any multi-unit residence, except as otherwise provided in Section 445-4.006. (Ords. 2018-07 § 2, 2010-10 § 3, 2006-66 § 5, 91-44 § 2).

Taxation

Consider if a portion of local tax should be allocated to address Health concerns and impacts:

Local Health Service Concerns:

- Increase in demand for data and reports on County wide health impacts, including impacts on schools, youth and adult health, EMS and local health delivery system.
- As adult use increases so too will number of individuals seeking addiction treatment services. This will likely also effect youth and the demand for youth treatment services.
- Anticipate a demand for public information and public messaging regarding the potential adverse health effects.
- Predicable increase in psychosis associated with increased use of cannabis.

Specific Suggestions:

- Fund a half time (or half the cost) of an Epidemiologist in Health Services dedicated to tracking injury related data and local impacts of cannabis use by youth and impacts on the larger health system. Require an annual report to Family and Human Services.
- Allocate \$50-100K annually to a public information and awareness campaign for the first 3 years following the effective date of the proposed Health ordinance. Reconsider thereafter.
- Fund a full time position in Behavioral Health, dedicated to ongoing coordination of Health Service efforts related to cannabis, including efforts and outreach to improve screening for persons at risk for cannabis related psychosis. Additionally this position would involve working with data, compiling reports, advising the public information campaign, facilitating public meetings, reporting to the Board and Sub- Committees and working with community stakeholder groups. As Behavioral Health anticipates an increase in demand for a person(s) with clinical responsibilities and skills related to early intervention / first onset Psychosis clinic, First Hope, the position proposed for consideration would best be served by an individual with clinical skills.



