

June 4, 2018

Sonoma County Planning Commission  
2550 Ventura Avenue  
Santa Rosa, CA 95403

Re: Cannabis Advisory Group Response to Staff Report

Dear Commissioners:

This letter is submitted as a majority response from the Sonoma County Advisory Group (CAG) to the Staff Report prepared for the Planning Commission's meeting to be held on June 7, 2018. On May 30, 2018, the CAG held a regular monthly meeting to discuss staff's policy recommendations for part one of the updates to the existing cannabis land use ordinance (Ord. 6189). During that meeting, CAG members discussed the recommendations in great detail and listened to a wide variety of public comment.

The staff recommendations contain a number of changes and updates that the majority of the CAG supports, including allowing adult use and additional license types. We commend staff's effort in developing these recommended policy changes, and the majority of the CAG supports much of the Staff Report. However, some minority members were disappointed by the neighborhood compatibility measures and would like to see more options for neighbors related to cultivation operations. Additionally, the majority of the CAG has provided the following recommendations for issues in the Staff Report.

### **ISSUE #1: ALIGNMENT WITH STATE LAW**

- **Processor License Type:** This new license type would allow a processing facility separate from individual cultivation sites. A processing-only site conducts trimming, drying, curing, grading, or packaging of cannabis and non-manufactured cannabis products for multiple cultivators. No cultivation of cannabis plants would occur at licensed processor premises. Centralized processing would only be allowed in Industrial Zoning Districts and will likely reduce the need for onsite processing facilities in Agricultural Zoning Districts and their associated impacts.
  - **Issue:** Allowing processing licenses is a vital part of the supply chain, as many cultivators cannot afford to construct and operate facilities, which require significant investment in fire sprinklers, odor mitigation, and security systems. While this license type is necessary, the staff recommendation limits processor operators to industrial zones – far from cultivation locations. Forcing processing into industrial zones will increase security risks by increasing the volume, frequency and distance a large portion of product must travel.
  - **Benefit:** By diversifying the processing locations throughout the county on appropriate Ag zones properties, the roads are less impacted by the regional support services. The economics of off-site processing are more viable for smaller

operations which increases secured processing and reduces more vulnerable onsite processing.

- **Recommendation:** Include AG zoned properties for processing on previously developed land as a conditional use permit. In order to reduce development impacts, conditions can be considered such as: minimum parcel size, increased security and road traffic review.
- **Additional License Types:** While additional license types recommended by staff are important, the majority of the CAG urges the Planning Commissioners to include the following state license types:
  - **Manufacturing Infusion (N License) and Packaging (P License):** The N license allows for infusion of cannabis oil into products like edibles, pre-rolled joints, and topical products. The P license allows for operators to package and repackage, label and relabel cannabis flower and products. The cost of licensure and buildout for N and P licenses can be significantly less than a full Type 6 license, which is important to many smaller cannabis operators.
  - These two license types are subcategories of the existing Type 6 license. Allowing an operator to extract, process, infuse, and package cannabis. However, the N and P license types allow less activities than a Type 6 license. Since the County currently allows Type 6 licenses in Industrial zones, allowing the new manufacturing license types would not allow any new activities and would diversify services available in the supply chain.
    - **Recommendation:** Allow for N and P License types in Industrial Zones where Type 6 manufacturing is currently allowed.
  - **Non-Storefront Delivery (Type 9):** Currently, Sonoma County has a cap of nine dispensaries in the unincorporated county. Although permitted storefronts are allowed to deliver to customers, not all brick and mortar facilities are equipped to operate a delivery service at state standards and many do not operate with a delivery service model. Many customers appreciate and need delivery services for a variety of reasons, including health and transportation issues. Delivery operations are not open to the public for onsite sales and therefore should be allowed in a wider variety of zones. Adding non-storefront delivery would add options for customers and more tax revenue from increased sales. In Sonoma County, Cloverdale, Petaluma, and Sebastopol allow this license type.
    - **Recommendation:** Allow a certain number of Type 9 Delivery Permits in All Commercial & Industrial Zones via a Conditional Use Permit. Add the following definition: Cannabis Dispensary, Non-Storefront- A person authorized to conduct retail cannabis sales exclusively by delivery as defined in Business and Professions Code, Section 26001(p).
  - **Volatile Manufacturing (Type 7):** At the state level, volatile manufacturing (Type 7) allows for the use of different solvents than nonvolatile manufacturing. For the supply chain, this license allows important processes that are distinct from the Type 6 manufacturing license. For instance, the solvents needed for pesticide

remediation fall under the volatile solvent definition. This license type is necessary for the development of products and processes in the local cannabis industry.

- **Recommendation**: Allow Type 7 licenses with a CUP in Industrial zones.
- **Events License**: Sonoma County has long been a destination for cannabis events, which have drawn thousands of tourists to the area. Recently, the annual High Times Cup was held in at the Sonoma County Fair Grounds and brought many tourists and cannabis operators to Santa Rosa. Only persons aged 21 and older are allowed to purchase cannabis from retail or microbusiness licensees. The state also allows for onsite consumption at licensed cannabis events; however, no alcohol or tobacco can be consumed. Cannabis events are still required to obtain local authorization. With a rich history of successful cannabis events, the County would benefit from continuing to allow these events.
  - **Recommendation**: Allow cannabis event permits.
- **Canopy Definition**: The proposed change to the definition of canopy does not align with state law and severely disadvantages Sonoma County cultivators in a competitive California market. To promote clarity for operators and County staff, the County should align with the state’s definition of canopy rather than creating a new and different version. Additionally, CAG members agreed that the proposed canopy definition is unclear and confusing.
  - **Recommendation**: Adopt the state’s definition of canopy, by simply adding language to the ordinance that adopts whatever definition the state uses. This will allow for evolution at the state level while mitigating confusion for local operators and County staff. For example: “‘Canopy’ shall be defined and measured in accordance with state laws and regulations.”
- **Volatile Solvent Definition**: The Staff Report recommends changing the definition of volatile solvent to state “any solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.”
  - **Issue**: Currently, the Sonoma County ordinance allows ethanol use under a nonvolatile Type 6 manufacturing permit, but this proposed change would exclude the use of ethanol. Also, this change does not align with state cannabis regulations, which specifically allows ethanol to be used as a nonvolatile solvent for Type 6 manufacturing. The use of food grade ethanol in cannabis manufacturing is critical to local operators. Ethanol is used for extraction of raw plant material into cannabis oil as well as refining the oil through post-processing. Without the use of ethanol, as allowed by the state as a nonvolatile solvent, Sonoma County’s manufacturers will be at a severe disadvantage. This is particularly important, since Type 7 volatile manufacturing is not currently allowed in Sonoma County.
  - **Recommendation**: Continue to allow the use of ethanol for nonvolatile manufacturing. Adopt the definition from the state cannabis regulations, “‘Nonvolatile solvent’ means any solvent used in the extraction process that is not

a volatile solvent. For purposes of this chapter, ‘nonvolatile solvents’ include carbon dioxide and ethanol.”

- **Additional Alignment Changes:** Staff recommends changes to language throughout the ordinance that could have a significant impact to operators and that do not align with state law.
  - **Development Criteria:** In Section 26-88-254(f) property setbacks, staff recommends removing the word “occupied” from residences and adding business “structures.” While these changes may appear small, the impact could be large for operators and creates uncertainty for projects. These changes do not reflect alignment with state law. Furthermore, the term ‘business structure’ is vague which leads to future confusion. If a neighbor raises a 100’ shed for chickens to sell eggs is this a business structure. Will new proposed or only existing business structures impact the cultivation area setbacks? These new proposed setbacks threaten many existing applicants and can further disqualify the participation in Sonoma County’s regulated market.
    - **Recommendation:** Retain the current property setback requirements.
  - **Exercise of Permit and Notification of Changes:** While the addition of Section 26-88-250(n) is supported by the majority of CAG members, the requirement that new cannabis operators participate in “an orientation and/or exam(s), as determined by the agency having jurisdiction” is burdensome and confusing. What would the exam look like, and which agency will decide if a new owner can be added to the operation? Current operators have no such requirement. Presumably, an operator who wants to add an owner or a person who wants to buy a business would be best to determine the qualifications of a new owner. This requirement adds costs and staff time that is not effective in getting additional information necessary to add or change an owner.
    - **Recommendation:** Remove the requirement for new operators to take an exam or participate in an orientation.

## **ISSUE #2: NEIGHBORHOOD COMPATIBILITY**

- **Pipeline Provision for Applications Approved or In Process:** Over 100 applications are currently pending with Permit Sonoma and the Ag Department. These applicants have relied on the County’s existing ordinance to make significant financial investments in property, professionals, studies, fees, labor, and infrastructure. In recognition for the substantial effort and for following the rules, the compliant operators should be able to continue their businesses after the ordinance changes. The majority of the CAG members urge the Commissioners to recommend policy that recognizes this effort and does not immediately deflate the local regulated cannabis market.
  - **Recommendation:** Allow any permits that are "complete for processing," to continue to be processed and approved. All approved permits should be able to continue operations under the purview of ordinance standards set forth at time of permit application deemed complete for processing. At time of permit expiration, the permit holder shall have the option to incorporate new ordinance standards not

to supersede existing permit authorization allowances. All previously approved permits shall be: limited to the conditions of the original permit, subject to inspections, correct any violations prior to permit renewal, and maintain state licensing.

- **Indoor Cultivation Setbacks** The proposed change to Section 26-88-254(f)(4), adds a 600 foot setback from indoor cultivation to schools (K-12). This change does not align with state law, which allows local jurisdictions to adopt their own setbacks from schools. (See CA Bus. Prof. Code Section 26054(b)).
  - **Issue:** The majority of the CAG believe that indoor setbacks are not necessary as the existing ordinance requires odor mitigation, high levels of security, additional energy requirements and a conditional use permit. Additionally, Sonoma County has a limited number parcels zoned for industrial use. In the Todd Road area, the proposed school setbacks would eliminate most of the industrial zoned properties from permit eligibility in that neighborhood, which is one of the main industrial areas in unincorporated Sonoma County. Operators have relied on the industrial zones and setbacks to find locations for cultivation and have paid higher real estate prices to secure those properties.
  - **Recommendation:** Deny the recommendation to add school setbacks for indoor cultivation. Alternatively, limit indoor cultivation setbacks agricultural zones only and exempt this setback from industrial zones.
  
- **Allow Appeal of Zoning Permits Issued by the Department of Agriculture** (Section 26-88-250(m)): The majority of CAG members do not support allowing appeals of ministerial zoning permits.

### **ISSUE #3: INCLUSION ZONE & ISSUE #4: EXCLUSION ZONE**

After several public meetings and many subcommittee meets of the CAG, the majority and minority of the group found that inclusion and exclusion zone discussion needs further development and input from the community. There was general agreement by the CAG that a more simplified cannabis policy is preferred and should be the goal for policy development in Sonoma County.

### **ADDITIONAL ADVISORY GROUP RECOMMENDATIONS**

In addition to the Staff Recommendations, the majority of CAG members also proposes the following recommendations for your consideration.

- **Sensitive Use Setbacks and Measurements:** Under state law, a 600 foot setback from sensitive uses, including schools providing K-12 instruction, or licensed daycare center or youth centers, and a local jurisdiction can determine a different setback less or greater than 600 feet. State law defines “youth center” means “any public or private facility that is primarily used to host recreational or social activities for minors, including, but not

limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.” Currently, Sonoma County includes parks as a sensitive use, which is not in alignment with state law.

- The measurement method used by Sonoma County also differs from state law. In Sonoma County, setbacks are measured from the property line of the sensitive use (schools, parks, drug treatment facilities) to the property line for the proposed cannabis project. This method of measurement unnecessarily precludes many otherwise suitable properties throughout unincorporated Sonoma County. For instance, surrounding Hood Mountain Regional Park there are many parcels over 100 acres. Under the current measurement, the entire parcel is eliminated from permitting due to the property line to property line measurement. In other cases, the park area may have no human access, such as trails or camping, but the parcel is subject to a complete disqualification from cannabis permits.
  - **Recommendation:** Change the setbacks from cultivation projects to sensitive uses to mirror state law. Allow setback measurements to be calculated from the nearest point of the sensitive use to the nearest edge of the cultivation site.
- **Cannabis Signage:** The entire CAG agreed that cultivation operators should be required to post a sign that discloses the site is permitted by the County and bears the Sheriff Department’s symbol. Similar to a Farm Watch sign, this would indicate to any passerby that the grow is permitted and that local law enforcement will be promptly notified of any issues onsite. If desired, other operators in the supply chain should be allowed to opt-into a cannabis permit signage program.
  - **Permit Renewal Clarity:** With cannabis permits now being issued, the process and criteria for permit renewal is still unknown. Operators need to start preparing for renewal and have no idea how long the process will take or what it will be like. The CAG urges Commissioners to direct staff to develop a renewal process during the current phase of cannabis policy development.

The Cannabis Advisory Group appreciates your attention and consideration of this letter.

Sincerely,

Cannabis Advisory Group Co-Chairs