ANALYSIS OF DRAFT AMENDMENT

Analysis – Background – 2018 Board of Supervisor and Cannabis Ad Hoc Committee Direction

Phase I

This phase will focus on actions including neighborhood compatibility that could happen in quick fashion.

Neighborhood compatibility could be addressed quickly by

1. establishing a 10-acre minimum in all zones. Prohibiting commercial cultivation on non-conforming parcels.

2. abolishing the ministerial process for all cannabis permits.

3. Temporary moratorium on processing of all applications or accepting new ones until flaws in Ordinance fixed

The stated purpose of the ordinance is to protect neighborhoods and the environment with economic development as the third goal. The current backlash by neighborhood groups will only be quelled by immediate action to give beleaguered neighbors immediate relief. It is better to start out with strict and clear guidelines rather than go forward with more rules only to find the need to backtrack and revise which can be very disruptive to all concerned. Do not create additional problems until present ones are solved.

Phase II

A more thorough review of neighborhood compatibly is anticipated for part two, but it will not start until summer and is expected to continue for 18 months. Supervisors Gore, Rabbitt and Zane addressed the need for some fast and workable solutions to neighborhood compatibility in their concluding comments at the 4/10 meeting. This issue cannot wait until 2019 for resolution. Implement the three above mentioned recommendations in part one now. Doing so will address the quick solution three Supervisors expressed in their comments at the end of the 4/10 meeting.

DISCUSSION OF ISSUES

ISSUE #1. ALIGNMENT WITH State law.

Current California Cannabis Regulations are not permanent and are subject to changes resulting from public and agency comments and

current unresolved litigation. The “most recent regulations” alluded to in the discussion of this issue is a re-adoption by the State of the initial emergency regulation with a few additions. This action was needed when the 180-day cap expired. The State now has an additional 180 days in which to develop their final regulation. The county should move this item to phase two and wait until final regulations are adopted by the State to align County policy with changes made during the State process. Address only those alignment issues that are sure not be changed by State in the future.

- New License types. Support all new license types as listed in the Draft amendment. Support issuing the microbusiness license if it will ONLY be permitted in Industrial zoning districts.
- Cannabis Measurement – Canopy - Ask for clarification of the ambiguous phrase “at any point in time” which is used as part of the definition for indoor and mixed license types and outdoor license types. If “at any point in time” is defined as plants being cultivated at any point in their growth cycle from small to flowering, then will support the canopy definition.
- New Definitions Delivery. Define customer. Is this delivery from one licensed facility to another or from a facility to an end user?
- New Definitions Changes in definition of outdoor seems to include use of hoop house if erected for less than 180 days. Changes in definition of outdoor to allow artificial light in propagation area seems to conflict with definition of hoop house which allows no artificial light. This conflict should be resolved.

ISSUE#2 NEIGHBORHOOD COMPATIBILITY

The draft Amendment accurately describes the concerns of individuals and neighborhood groups about the compatibility of cannabis operations where they live. These concerns are listed and include:

- Overconcentration – not addressed in Draft. It appears that staff has attempted to correct overconcentration by opening RR and AR parcels to growing using inclusion zones. This approach will increase incompatibility in residential areas. We disagree with this approach.
- Consistency with adopted area plans – only mentioned in exclusion section
- Proximity to residential – not addressed
- Setbacks from parks, schools and other sensitive uses – We support continuation of 1,000-foot setbacks as detailed in the ordinance and support the same setback proposed for indoor grows near schools. The 300 ft setback from residences and businesses has not been adequate to protect neighbors from impacts. Revise the definition to include a one thousand foot (1,000’) from residences and business structures for all indoor grows.
- Preservation of rural character – not addressed

- Use of private road/access – not addressed
- Substandard parcel sizes – addressed in option 5 but only for DA zoned parcels. Remedy for substandard parcels should apply across all non-industrial zoning

Other concerns expressed by individuals and neighborhoods groups to Staff are not acknowledged in the Draft Amendment. They include Adjacency (permit eligible parcels next to RR and AR parcels where cultivation is prohibited), moratorium on any new applications and/or moratorium on approval of existing applications, creating a mechanism for citizens to generate meaningful input other than the CAG which is heavily represented only by industry spokespeople, designate impartial scientists to evaluate the required reports, crack down on growers who are violating other land use ordinances during the failed penalty relief program, finding a solution to neighborhood CCR's and rural road easements, acknowledging that some projects are simply inappropriate, address the fact that neighborhood notification comes too late in the use permit process, support continuation of setbacks as detailed in the ordinance, Property Setback – Outdoor {PDF, p. 32}, and support the 1,000 foot (1,000') setback be extended to include indoor grows near such sensitive areas to solve the inadequacy of a 300 foot setback from residences and businesses and many more suggestions for generally improving the application process.

Policy Options:

We support Option 1 and 5 Option 5

- OPTION 1

- Require a use permit for cannabis applications in all other zones except for applications of 500 square feet of canopy in industrial zones. Abolish the ministerial application acknowledging that all cannabis applications are controversial and require judgment. "Ministerial" describes a government decision involving little or no personal judgement by the public official as to the wisdom or manner of carrying out the project. Common examples include automobile registration and marriage licenses. All permitting should be moved to Permit Sonoma.
    - OPTION 5
- Strongly support. Prohibit any type of Cultivation in non-conforming DA (parcels under 10 acres) However, we believe this option should include ALL non-conforming parcels across all zoning.

Very supportive of the fact that there is no mention of reintroducing cannabis cultivation in AR and RR zones, thus the retention of the prohibition on cultivation in AR and RR zones is maintained. Citizens and government have very different views of the permitting process.

Citizens find it burdensome, confusing, expensive and time-consuming. They prefer clear, bright lines as to where cannabis can and cannot be cultivated and do not wish to remain constantly vigilant and play whack-a-mole with individual projects for the rest of their lives. The County needs to recognize that cannabis operations are controversial. Creating a situation where citizens constantly need to be ready to oppose a commercial operation where they live is asking too much of both Planning Staff and public.

- OPTION 6

- Pipeline: Support Staff recommendation to allow any pipeline zoning permits to continue for one or more years or until renewal is required. Allow only those applications in the pipeline to continue if the applicant has no code violations (e.g., greenhouses built without a permit) and has been consistently paying taxes on time. This approach will work if a firm date is set immediately (May 25) for pipeline projects or an immediate moratorium to keep a mass influx into the "pipeline". This should not apply to operations that gamed the system by filing for Penalty Relief without filing a permit application.

  Indoor cultivation setback- Support. Should be 1,000 ft to be consistent with other County setback requirements

  Ministerial Appeal Process. Support for appeals of ministerial permits. However, a ministerial process without application of judgement or a provision to make changes to the project is not a significant appeal process. Conversion of all cannabis permitting to a discretionary process (use permit) is necessary to allow neighbors to have access to a GENUINE appeal process.

ISSUE THREE: INCLUSION ZONE OVERLAYS

We believe that land use decisions should be made by professionals in the subject considering all variables. We support a study to determine the best (most practical and impactful) areas to grow. Then an overlay could be made determining where the inclusion areas should be. The options presented in the Draft does not mean they are the only ones. We do not support the approach of the Staff but will comment on them.

COMMENTS ON STAFF OPTIONS

Support this as a tool for future application by parcels ineligible for cultivation for specific neighborhoods or districts but do not support this tool for single parcels. Under current law it is

already possible for an owner to request a zoning change. There is no need for any special provision. Zoning changes come before the Board of Zoning Adjustments routinely.

The example referred to in the Draft (Issue #3: inclusion Zone introductory paragraph) concerning "anomalies within zoning throughout the county where a small commercial property" (or a 20-acre RR parcel), "surrounded by large agricultural properties, is ineligible under existing ordinance but is a logical location due to surrounding agricultural or open space use with no residential compatibility issues" is a perfect candidate for existing zoning changes. There is no need for it to be a candidate for inclusion zoning. If it were rezoned it would no longer be an anomaly.

Agree that there are many anomalies within zoning designations throughout the county but do not single out this anomaly to be solved by a zoning overlay while ignoring other zoning anomalies such as non-conforming DA. Zoning anomalies should be addressed by a review of the General Plan rather than attempting to rezone parcel by parcel. Has it been a County practice to create other zoning overlays for single parcels or does this establish a precedent? This zoning overlay for a single property would become permanent, a status which requires significant study in that follow-up questions would need to be continually addressed re: the expiration date of the overlay, whether it needs to continue under new ownership, disclosure when other neighboring properties sell, etc. Applying this tool to single parcels is a problem in its infancy. A single parcel is hardly a "zone": a specific neighborhood or district is a "zone". Zones consisting of several properties comprising a neighborhood or district would provide a bright line that could easily be communicated to those looking for properties to purchase in cannabis welcoming areas or permanently cannabis free areas.

Inclusion zones should not be permitted in: Class 3 and 4 water scarce areas. In areas where because of topography, access, water availability or vegetation there is a significant fire risk. Areas with biotic resources or riparian areas RC and BH zoned areas. Neighborhoods accessed only by shared driveway, easement (road) without 100% consensus of impacted neighbors. Areas which have a police/emergency response time of more than 15 minutes

Policy Option 1 – Allow Cultivation within Certain Base Zoning Districts:

1a <u>Allow in RR and AR Zoning Districts</u>: Do **not** support this option. It increases neighborhood incompatibility. It would be unfair to those growers who cultivated in RR and AR and were shut down in the last two years or found a permit eligible parcel. These closures by Code Enforcement number in the hundreds. Residents living in RR and AR are happy with the knowledge that they don't have to be constantly on the alert for the possibility that the house next door will be sold for a commercial cannabis business. The Board of Supervisors would be undermining their own decisions in less than two years and would increase backlash from neighborhood groups. Additionally, it would place neighbors in increased danger from crime, increase law enforcement expenses and expose the County to increased liability.

1b <u>Allow in commercial Districts</u>. Support this option-indoor only

1c Allow in Ag Services Districts. Support this option-indoor only

Policy Option 2 – Limit the Inclusion Zone to Certain Areas of the County or Historic Use:

2a. Limit by Planning Areas- Do not support. **Planning Areas** are too large and too inconsistent.

2b. Limit by Area Plan: Support using **Area Plans** for application criteria for establishment of Inclusion or Exclusion zones based on these boundaries but do not support using the nine Planning Areas as they are too large and amorphous.

The terms used in a. and b. are similar and easily confused but "Planning Areas" are too large and diverse and should not be used for this purpose. Conversely, "Area Plans" or "Specific Plans" are relatively small and acceptable to be used as criteria. The key word here is "specific".

2c. Limit to Properties with Historic Cannabis Use: Using the date of January 1, 2018 to establish the historic cannabis use is ludicrous and is hardly "historic". At the very least history should go back at least five years for proof. Grows that began after the cannabis ordinance was approved in 2016 by people who have no connection to Sonoma County cannot possibly be deemed to be "historic". People who began cultivation in anticipation of an ordinance being passed are not historic growers but rather opportunists. It would prove cumbersome for Permit Sonoma to verify the historic accuracy. Proof of historical use should be a history of income or cannabis tax payments going back at least three years.

Policy Option 3 – Criteria to be Used for Consideration of Inclusion Zoning

Should the County decide to pursue single spot inclusion zoning we:

3a. Minimum Parcel Size: Support 10 acre minimum.

3b. Proximity to Residential Uses: Support both b.i. (10-acre minimum) and ii. (no dwelling within ½ mile. Do not support iii

3c. Proximity to Agricultural Uses: Support

Both 3 b. and 3. c. have merit but not in respect to opening RR and AR.

3d. Limitation on Size or Type of Cannabis Cultivation: Support i. Strongly disagree with iii and iv. Allow only indoor. Odor cannot be controlled in outdoor and in some areas the smell will not dissipate while in other windier areas it may not be a problem.

4a. Initiation of Zone Change Request: All applications should be initiated by the neighbors who wish their area to be considered as an Inclusion zone. The County should not initiate if there is no community involvement first but would work with applicants who make the request. With full community involvement the decisions about types and amounts of grows should be developed. This would allow conditions to vary significantly from inclusion zone to inclusion zone based on resident consensus.

Allowing Planning Areas 4 (Russian River), 5 (Santa Rosa and environs) and 6 (Sebastopol and environs) to be used as spots for cannabis cultivation in RR and AR is inherently unfair. Why should residents in those areas have an undue burden placed on them to remain vigilant and do battle time and time again while the residents in the environs of Healdsburg, Sonoma, Windsor, Rohnert Park and Petaluma and the remainder of the County be given a pass on this complicated and divisive issue?

Planning Area 5 includes most of Bennett Valley which is in an Area Plan, one of the criteria for consideration for Exclusion zones. It makes no sense to include this area for both Exclusion Zone status and simultaneously opening it up for cultivation in RR and AR parcels.

Suggest the County propose all 4 southern specific area plans (Penngrove, Bennett Valley, Petaluma Dairy Belt, and Sonoma Mountain area plans) as exclusion zones. There is already community support for this.

ISSUE NUMBER 4 – EXCLUSION ZONES

Support this recommendation fully and propose that County initiate these criteria and add one additional criteria suggested below.

1. **Criteria for Exclusion:**

- Criteria 1.d. Define water issues more fully. Class 3 and 4 water scarce areas and areas historically affected by curtailment requests from the State Water Resources Control Board should be added to existing list of criteria. Homeowners are more fully aware of water scarcity issues in their neighborhood than outsiders.
- Criteria 1.e. Add the words, "state and regional parks," to clarify what are certainly areas of environmental sensitivity
- Criteria 1.g. Add an additional criterion. Area or Specific Plans to existing list of criteria. They are existing County study areas where cannabis cultivation may be inconsistent with the plan.

Initiation of Zone Change Request:

Residents or County can initiate the requests for Exclusion zone status. Propose County designate all four southern Specific Area Plans (Penngrove, Bennett Valley, Petaluma Dairy Belt and Sonoma Mountain area plans) as Exclusion Zones. There is already community support for this.

- Item C Typo should be re-written to say Exclusion not Inclusion.

Pipeline Provisions:

Support the position that approved operations be allowed to continue until the permit expires. Support a one-year permit only. Operation must be shut down when permit expires. Allow any application that is "complete for processing" to be approved provided it is compliant with best management practices, all taxes have been paid on time and the project had no code enforcement violations (e.g., no unpermitted greenhouses). This should not apply to operations that gamed the system by filing for Penalty Relief without filing a permit application. Do not support review on a case by case basis which is unwieldy and time consuming.

Further Recommendations:

Acknowledge that proposed Exclusion areas may be **small** or may be **large** and the process for both will vary.

Large areas such as Area Specific plans can decide at the ballot box. Applicants will pay for the cost of the election.

Smaller neighborhoods will need to use the vacation rental model.

No provision is advanced in this document to begin the process immediately which would satisfy the need for the County to quickly alleviate the neighborhood compatibly goal. Suggest Permit Sonoma provide an "**Application/Intention to Pursue**" immediately so that residents can begin this process this summer. Applicants need only designate the geographical area of the future Exclusion area on this preliminary application. Growers would benefit from the knowledge of the existence of a "Application/intention to pursue" application as well because they would know that the neighbors are pursuing such a zone overlay and would not attempt to apply for a grow in proposed Exclusion zone area.

ISSUE NUMBER 5 - OTHER STAFF CHANGES

EXTEND THE LENGTH OF TIME OF PERMITS: Do not support the extension of the length of time for permits. Permits should be for one year with the possibility of a no fee one-year extension. The extension would only be granted if the project is complying with best management practices, there have been no effects on neighboring wells due to water withdrawals, no code enforcement violations or violations related to storm or wastewater water runoff, no environmental degradation, no workers compensation issues, no increased criminal activity, and all cannabis and property taxes have been paid of time. This would reward those operators who comply with the

terms of the permit and provide an incentive to others to do so. Perhaps two-year lengths for permits might be a future goal when all the kinks are ironed out of this new industry. We need time to evaluate what we already have and figure out whether it works or not. Align with state that currently only issues one-year licenses by issuing one-year permits.

TRANSFERIBILITY: Do not support Licenses are non-transferable and permits should be non-transferable as well. The public has a right to know who a permit is issued to, some of whom have bad reputations. Transfer could be used to allow a person who should not have a permit to receive one and would hide the identity of the permit holder from the public.

REMOVE PRIORITY PROCESSING - Support

ALLOWANCE FOR PROPAGATION AREAS: Do not support. Since the existing code does not express an allowance it would be wise to adopt a "wait and see" position on this issue. Allowing 5% more area for plants whatever their stage in the growth cycle is significant and it is incorrect to categorically state there will be no impact on site. One acre of grow would be allowed another 2,175 sq. feet – a not insignificant amount. Keep propagation plants in a separate area but under the allowed canopy.

ENFORCEMENT SECTION – Do not support removal of liens as an enforcement tool unless this enforcement tool is addressed in other county ordinances that deal with money owed to the County

CLARIFICATION OF LANGUAGE:

1. Maximum amount measurement
2. Biotic-Add to Timber conversion section that in addition to a use permit all conversions must have an approved timber harvest plan prior to use permit application
3. Cultural and Historical- Do not support removal of on-site monitoring provision
4. Security- Do not support removal of language establishing visual quality of fencing. Do not support removal of review of security plans by PRMD
5. Water Supply- Support inclusion of hydrology reports in Class 3 areas as required by the general plan. Do not support removal of PRMD review of hydrology plans for compliance with statewide standards and methods.