

Discussion Paper
KEY ISSUES AND POLICY OPTIONS

CANNABIS DISPENSARIES

BACKGROUND

The Board of Supervisors adopted Ordinance No. 5715 on March 20, 2007, establishing land use regulations for medical cannabis dispensaries, now codified in Sonoma County Code Section 26-88-126. The Board amended this code section in 2012 to establish a cap to limit dispensaries in the unincorporated County to nine. There are currently five permitted dispensaries and two in the application process.

KEY ISSUES

Staff have identified seven key issues to consider when updating the dispensary ordinance, based on feedback from the public, other agencies, existing dispensaries, and evaluation of the past nine years of dispensary permitting.

Separation Criteria from Sensitive Uses

The existing code includes various separation criteria: 1) 100 foot separation from residential zoning districts; 2) 1,000 feet from other dispensaries and smoke shops; and 3) 1,000 foot separation from sensitive uses including public schools, parks, or establishments that cater to persons under 18.¹ The newly adopted state law (MCRSA) defines sensitive uses differently and requires a minimum of 600 feet. Dispensary applicants and potential applicants have provided feedback that existing separation criteria limits many potential sites.

Dispensary Levels/Operational Size

The existing dispensary ordinance divides dispensaries into two categories, Level 1 and Level 2. Level 1 dispensaries may serve 300 patients maximum and not exceed 1,000 square feet in floor area. Level 2 dispensaries do not have restrictions on the number of patients or floor area. While having distinct levels was intended to limit large dispensaries throughout the county, we have no permitted Level 1 dispensaries. In addition, because patient information is confidential and cannot be submitted to the County, enforcement of this patient limitation is challenging.

The Cap on the Number of Dispensaries (Nine)

The existing Zoning Code allows a maximum of nine dispensaries to locate throughout the unincorporated county, except the coastal zone. Five dispensaries are legally permitted and operating and two applications are in process as of the date of this document. The cap was established to prevent an overconcentration, although it has never been reached.

Edible Products

Edible cannabis products are manufactured products that are intended to be used for human consumption via ingestion. Examples include gummy candies, cookies, beverages, and chewing gum. Edible cannabis products offer an alternative to inhalational methods for patients to consume cannabis. The zoning code is currently silent on edible cannabis products, so they are not allowed, although many dispensaries sell them in response to patient demand. The code would have to be amended to specifically allow sales of edibles in dispensaries.

¹ The existing code allows for waiver of the first two of these setbacks if a physical separation can be shown.

There are safety concerns with edible cannabis products due to the lack of regulation. MCRSA defines edible cannabis products to be neither a “food as defined by Health and Safety Code 109935” nor “a drug as defined by Health and Safety Code 109925;” therefore, none of the existing rules that protect safety of food or drugs apply. Patients are currently consuming edibles which are produced without inspections or basic health and safety standards that protect against contamination and growth of pathogenic microorganisms. Until the state oversight regulations and enforcement mechanisms are finalized, county health officials are in the process of creating local health and safety interim protections.

Vaporizing Products

The zoning code is also silent on the sales of vaporizing products, so they are not allowed. However, the use of vaporizing products to consume cannabis via inhalation is common. Currently, the Sonoma County Code, Chapter 32 (Tobacco Retail License) defines “electronic devices that deliver nicotine or other substances” as tobacco products and requires a tobacco retail license to sell the vaporizers and similar devices. Sonoma County Code also prohibits the issuance of a tobacco retailing license to a medical marijuana dispensary. Sale of devices for the inhalational use of medical cannabis would need to be consistent both with California Health and Safety Code restrictions on sale of drug paraphernalia as well as with the Sonoma County ordinance regarding retail sale of tobacco products and tobacco paraphernalia.

Deliveries

Since the dispensary ordinance was adopted in 2006 there has been pressure on dispensaries to offer delivery to patients. The zoning code is currently silent on delivery services, so they are not allowed. A large number of delivery services have opened separate from dispensaries in an office setting, presenting a challenge for enforcement.

Plants/Clones

Dispensaries currently cannot sell plants starts or clones to patients. The new state licensing scheme under MCRSA and the proposed Ordinance would restrict patients from buying plants and clones directly from cannabis nurseries. It is recommended that these sales be made from dispensaries. Currently the existing Zoning Code allows up to 10% of the floor area up to a maximum of 50 square feet may be devoted to the sale of incidental goods, which would include plants and clones.

ANALYSIS AND OPTIONS

The following policy options provide the Commission a range of options related to dispensary permits.

1. Separation Criteria

As discussed above, with the adoption of MCRSA there is flexibility to potentially reduce the separation criteria from sensitive uses. These options also provide options for separation criteria from residential uses, other dispensaries, and smoke shops.

- A. **Reduce the Sensitive Use Separation to 600 feet.** This option would reduce the separation criteria to the minimum required under state law.
- B. **Eliminate or Reduce Residential, Dispensary, and Smoke Shop Separation.** This option would allow the Commission to remove or reduce the distance restriction from uses other than those defined as “sensitive.”
- C. **Keep the Current 1,000 foot Separation from Sensitive Uses.** This option would keep the existing 1,000 foot separation.

- D. **Reduce the Separation from Sensitive Uses to 800 feet.** This option provides a compromise between the minimum state law requirements and the current 1,000 foot criterion.

Analysis

The existing 1,000 foot separation criterion has been applied for sensitive uses including “any public school, park, or an establishment, public or private, that caters to or provides services primarily to persons under eighteen (18) years of age.” The proposed Ordinance expands this definition to include alcohol or drug treatment facilities. This separation criteria could not be reduced.

Option A would reduce the sensitive use separation criteria from 1,000 feet to 600 feet, consistent with state law. This reduction would also allow more sites to become eligible for dispensary uses.

Option B relates to the residential zone and other dispensaries and smoke shop separation criteria. The existing required separation from a residential district is 100 feet. The existing required separation from another dispensary and smoke shops is 1,000 feet. The existing code allows a reduction to this separation distance if there is a physical separation. These setbacks have been waived by the Board of Zoning Adjustments in the past. Option B would remove this setback requirement entirely, or reduce the required separation distance.

Option C would keep the existing 1,000 foot separation distance from sensitive uses, which would be consistent with the County’s Tobacco Retailers Ordinance (Ord No 6149) that also includes a 1,000 foot separation from schools.

Option D would provide a compromise between Options A and C by providing an 800 foot separation from sensitive uses.

Staff Recommendation: Option A and B- Staff recommends reducing the existing separation criteria from 1,000 feet to 600 feet for all sensitive uses, consistent with state law. This option would provide sufficient separation from sensitive uses and more opportunity for siting of dispensaries. Staff recommends to keep the existing 100 foot required separation from residential districts.

2. Countywide Cap on Dispensaries

The existing Zoning Code includes a cap of nine dispensaries, which has not yet been reached. Under MCRSA and the proposed Ordinance there is expected to be an increase in the number of dispensaries who wish to become established. Some have argued that our existing 1000 foot separation criteria and the limited size of commercial zones has combined to result in very few eligible properties.

In 2012 the Board of Supervisors adopted the cap of nine based on estimates of population, number of patients, and dispensary ratios including those within the cities. Below is a table compiled by the City of Oakland comprised of current population and dispensary data.

Table 1: Permitted Dispensaries by Population

City	Population	Permitted Dispensary	Dispensary to Population Ratio
Oakland, CA	431,775	8	1:51,722
San Francisco, CA	852,468	28	1:30,445
Berkeley, CA	118,853	4	1:29,713
San Jose, CA	1,015,785	16	1:63,487
Sacramento, CA	479,686	30	1:15,990
Los Angeles, CA	3,928,864	100	1:39,289
Denver, CO	663,862	204	1:3,254
Seattle, WA	668,342	198	1:3,375

Sonoma County's current population is 495,023 (2013, US Census Bureau) which means our dispensary ratio using permitted dispensaries (5), including the cities (4) is 1:55,002. If our cap of nine were reached the ratio would be 1:38,079. It should also be noted that the staff recommendation includes the allowance for delivery services, which would increase patient access. The following range of policy options should be considered related to the dispensary cap.

- A. **Keep the cap at nine dispensaries.** Continue to limit the number of dispensaries to nine countywide. If the cap is reached, potential dispensary owners must purchase an existing dispensary, wait for one to close, or wait for a Conditional Use Permit to be revoked through enforcement action.
- B. **Increase the cap.** Increase the cap to allow a larger number of dispensaries, consistent with the siting criteria within the Ordinance and the Conditional Use Permit process.
- C. **Eliminate the cap.** Remove the cap to allow a larger number of dispensaries, consistent with the siting criteria within the Ordinance and the Conditional Use Permit process.

Analysis

Caps are effective by preventing an overconcentration but may also reduce the ability for small dispensaries to open while allowing very few large operations. Option A would keep the existing cap which has never been reached, allowing the potential for a change in the cap during Phase II. Option B, increasing the cap, would provide more opportunity for new dispensaries to open in light of MCRSA and the new County Ordinance which may cause an increase in the amount of demand for such uses. Option C would eliminate the cap allowing an unlimited number of dispensaries that could be established within the unincorporated County. The siting of dispensaries would still be considered on a case-by-case basis through the use permit process and would be subject to annual renewals.

Staff Recommendation: Option A. The staff recommendation includes keeping the existing cap allowing it to be potentially reevaluated during Phase II. A review of the population data results in a demonstration of comparable access for patients in similarly-sized jurisdictions. Changes to the separation criteria may also result in an increase in available locations. There may also become more dispensaries allowed within the incorporated cities in the future.

3. Dispensary Operational Size

As previously discussed, limiting dispensaries by the number of patients is challenging to enforce due to patient confidentiality. The main policy question is whether individual dispensaries should be limited in their size.

- A. **No Limit to the Size of a Dispensary.** This would allow large scale dispensaries with no limit to their square footage.
- B. **Limit the Size of the Dispensary.** This option would provide a square footage limitation to dispensaries.

Analysis

The intent behind providing a size limitation is to allow smaller operations more opportunity. We currently have both small and large dispensaries ranging from approximately 400 to 7,000 square feet. Option A would allow dispensaries of all sizes, subject to a conditional use permit, which would allow staff to review any impacts related to the scale of the structure or operation. Option B would allow the Commission to express a size limitation for future dispensaries (a conditional use permit would still be required).

Staff Recommendation: Option A. Staff recommends to allow dispensaries of all sizes considering the cap of nine. There is potential for four more dispensaries to locate within the unincorporated county, which provides access for smaller dispensaries if they choose to apply. If the cap were to be lifted a size limit could be considered at that time.

4. Edible Cannabis Products

The Sonoma County Department of Health Services is working to establish health and safety standards for cannabis manufacturing and edible cannabis product preparation, packaging, and storage, including inspections and removal of contaminated products.

Policy Options:

- A. **Allow edibles.** Amend the zoning code to allow sales of edible products in dispensaries.
- B. **Prohibit edibles.** Continue to prohibit sales of edible products.

Analysis

Option A would allow edible products to be sold at dispensaries in accordance with the regulations adopted by the Department of Health Services for both manufacturing and sales. Prohibiting edibles under Option B would limit access for patients who consume edibles in lieu of inhaling cannabis and may also encourage the underground market of such products, which would continue to perpetuate issues with public health and access to children.

Staff Recommendation: Option A. Staff recommends allowing dispensaries to sell edible cannabis products. This provides a more regulated approach to edible products which will continue to be produced and consumed regardless if of regulation, thereby protecting the health and safety of patients who decide to consume such products. Dispensaries are currently permitted on an annual basis providing the opportunity to amend or add conditions. A condition would be added requiring adherence to the Department of Health Services' requirements.

5. Deliveries from Cannabis Dispensaries

Staff estimates that there are 20-30 delivery operations servicing the Sonoma County area. Enforcement of these operations is difficult due to the lack of physical addresses. Patients and industry representatives have requested the ability to delivery cannabis to patients. Deliveries are allowed under state law, although they are restricted to brick and motor dispensaries at this time.

- C. **Allow deliveries.** Amend the zoning code to allow delivery services associated with brick-and-mortar dispensaries.
- D. **Prohibit deliveries.** Continue to prohibit deliveries.

Analysis

Delivery of medical cannabis is helpful for patients who are not able to travel to dispensaries. MCRSA currently does not allow cannabis delivery options to occur separately from licensed dispensaries. There has been legislation introduced to change this but nothing was passed, leaving the issue to the next legislative cycle.

Staff Recommendation: Option A. Allow deliveries from brick and mortar dispensaries. The industry has been filling this need by unregulated online or office-based delivery services separate from dispensaries. Staff recommends that the proposed Ordinance be consistent with MCRSA and allow deliveries only from brick and mortar dispensaries.