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Re: Comment on Cannabis Program Update – Retail and Visitor-Serving Uses

Dear Tennis, Scott, and Crystal:

The Neighborhood Coalition advocates for sustainable, environmentally sound, and neighborhood-compatible cannabis policies in Sonoma County. This submission on Retail and Visitor Serving Uses is part of a series of comments on the elements of the cannabis program update that Permit Sonoma released in support of its December 13 meetings on these issues.

Permit Sonoma has clearly stated the primary goals of updating the cannabis program were to “enhance neighborhood compatibility and environmental protections.” We submit that the Retail and Visitor Serving provisions exacerbate the issues surrounding neighborhood compatibility and environmental protections by expanding the footprint of cannabis in rural neighborhoods, increasing traffic including impaired drivers, and creating a magnet for crime in defenseless rural areas. Rather than solving compatibility issues, these proposals create new problems. Specifically, this letter responds to the following provisions of the Key Program Elements which provide:

Retail. Allow incidental retail at all cultivation sites which have a fully enclosed and secure building for the retail use. Within Agricultural and Resource Zoning Districts (LIA, LEA, DA and RRD), allow incidental retail of site grown cannabis similar to that of Farm Retail Sales, Sections 26-18-140 and 26-88-215. Within Industrial Zoning Districts (MP, M1, M2, M3), allow incidental retail of site grown cannabis.

Visitor Serving Uses. Within Agricultural and Resource Zoning Districts (LIA, LEA, DA and RRD), allow incidental education tours; onsite consumption is prohibited. – Within Industrial Zoning Districts (MP, M1, M2, M3), allow incidental educational tours; onsite consumption is prohibited. Periodic special events are allowed, subject to a special event permit in accordance with Section 26-22-120 of the Sonoma County Zoning Code, except that special events involving cannabis are prohibited within all Residential Zoning Districts (R1, R2, R3, RR, AR, PCRR, PCUR). Regular events will not be permitted in conjunction with a land use permit for cultivation.

We are primarily concerned about activities within agricultural and resource zoning districts rather than industrial zoning districts.

I. Justification for Policy – Cannabis Is Not an Agricultural Crop

California law considers cannabis to be separate and distinct from recognized agricultural farming with a separate Department of Cannabis Control and related regulations in place.¹ Permit Sonoma’s unacknowledged effort to merge cannabis with agriculture contravenes State law and muddies the discussion as to retail and visits.²

The approach by Permit Sonoma to merge Ag and cannabis also contradicts the declared intent in the Proposed Cannabis Program Update Framework that Permit Sonoma “include transparency at all levels throughout the ordinance update process.”³ The distinction between cannabis and true agricultural products is fundamental to these discussions and should not be obfuscated by analogies like the one used in Retail provision, above, that “incidental retail of site grown cannabis similar to that of Farm Retail Sales.” This is a sleight of hand which offends the required transparency of the Program Framework.

II. Public Access of Cultivation Sites Is Prohibited by State Law

Both the Retail and Visitor Serving Elements contemplate allowing the public to access cultivation sites. Both provisions directly conflict with the State regulations which prohibit access to premises not open to the public except for “authorized individuals” who include “outside vendors, contractors, or other individuals conducting business that requires access to the licensed premises.” Even as to those individuals, a detailed record must be maintained as to the reason for their visits and the time of their entrance and exit and they must be escorted by an employee of the licensee continuously. While there is reference to visitors in that section, the same exacting rules apply which also prohibit receiving “consideration or compensation” to enter the premises.⁴ These provisions clearly prohibit and contradict Permit Sonoma’s proposals for Retail and Visitor Serving Uses.

¹ **State Regulations source and status:** In 2021-22 California consolidated three licensing authorities into the Department of Cannabis Control (DCC) and then consolidated the cannabis industry regulations in 2023. **Department of Cannabis Control Medicinal and Adult-Use Commercial Cannabis Regulations** (November 2023).

² **The DCC Regulations never associate cannabis cultivation or product with agricultural uses.** In fact, the 224-page set of regulations refers to commercial, cannabis plant, and cannabis product, which are always differentiated from agricultural products or the state’s agricultural environment. The word “agricultural or agriculture” is only used 18 times, primarily in defining science degree requirements (biology, ag, or environmental) or in the names of State departments, entities, or laws (10). The remaining 8 references refer to pests, pesticides, and ag chemicals that are not to be introduced to the State’s ag environment or in reference to “other ag products” used in nurseries.

³ Proposed Cannabis Program Update Framework (March 2022) (“Program Framework”), Item 2.

⁴ Article 5. Security Measures § 15042. Premises Access Requirements. (page 73)

- (a) For a premises that is not open to the public, the licensee shall establish and implement an identification and sign-in/sign-out procedure for all persons accessing the premises, including authorized individuals, suppliers, and visitors.
- (b) Licensees shall ensure that only employees of the licensee and other authorized individuals access the licensed premises.
- (c) For the purpose of this section, “authorized individuals” include outside vendors, contractors, or other individuals conducting business that requires access to the licensed premises.

Independent of the foregoing and of further concern in both provisions is the ambiguous reference to “incidental retail at **all** cultivation sites” as well as “incidental education tours” (emphasis added.) After decades of land use advocacy and multiple environmental lawsuits against the County, Permit Sonoma must know that specifying a use as “Incidental” or “Secondary” to another use, unless specifically quantified, is not allowed. What exactly could be “incidental” to the presence of unauthorized individuals at cultivation sites or “incidental” to an education tour? Similarly problematic is determining exactly what an “education tour” means. Like incidental, the phrase is slippery and lacks definition or context. Certainly, the State regulations prohibit individuals being present under any of those circumstances. These proposals are barred by State law and we object, accordingly, to their inclusion.

III. Retail Sales

Independent of the fact that visitors are prohibited from cultivation sites, Permit Sonoma’s proposal allowing “incidental retail of site grown cannabis similar to that of Farm Retail Sales” cannot withstand scrutiny. Cannabis is not the least bit “similar” to Farm Retail Sales. For starters, the County’s Farm Retail Sales code does not allow selling or serving alcohol or intoxicants without a use permit. Clearly cannabis fits in that description. Furthermore, farm sales have no statutory limitation as to who can be present at the farms and the sales of tomatoes and apples do not require checking identifications, tracking sales, and accounting for product.⁵ The list of differences goes on and on. What is crucial for this discussion is the absence of any similarities to support the attempted analogy in the proposal and an utter absence of transparency into precisely what is being proposed.

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- (d) An individual who enters the licensed premises and is not employed by the licensee shall be escorted by an employee of the licensee at all times while within the licensed premises.
 - (e) A licensee shall maintain a record of all authorized individuals who are not employees of the licensee who enter the licensed premises. The record shall include the name of the individual, the company the individual works for, the reason the individual entered the licensed premises, the date, and the times the individual entered and exited the licensed premises. These records shall be made available to the Department immediately upon request.
 - (f) A licensee shall not receive consideration or compensation for permitting an individual to enter the licensed premises.

⁵ § 15406. **Cannabis Goods for Sale.** A licensed retailer shall not make any cannabis goods available for sale or delivery to a customer unless: (page 100)

- (a) The cannabis goods were received by the licensed retailer from a licensed distributor or licensed microbusiness authorized to engage in distribution;
- (b) The licensed retailer has verified that the cannabis goods have not exceeded their best-by, sell-by, or expiration date if one is provided;
- (c) In the case of manufactured cannabis products, the product complies with all requirements of Business and Professions Code section 26130;
- (d) The cannabis goods have undergone regulatory compliance testing as required by the Act and chapter 6;
- (e) The batch number, if any, is labeled on the package of cannabis goods and matches the batch number on the corresponding certificate of analysis for regulatory compliance testing;
- (f) The packaging and labeling of the cannabis goods complies with Business and Professions Code section 26120 and this division; and
- (g) The cannabis goods comply with all applicable requirements found in the Act and this division.

IV. Crime

In addition to the absence of similarities to farm retail sales, the prospect of cannabis sales at cultivation sites presents the very real risk of increased crime in rural areas. The experience of dispensaries in cities and towns reveals the scary reality of this risk where dispensaries are robbed even with security measures in place, including armed guards. A Google search reveals that robberies are common in Santa Rosa and other cities throughout the Bay Area. Certainly a “cannabis stand” in a cultivation site would be even more vulnerable and would constitute an open invitation for theft and robbery, thereby putting anyone in the vicinity at very real risk of injury or death. Making the situation even more perilous is the fact these areas are far removed from law enforcement, making the situation a soft underbelly even more inviting to criminals and even more dangerous for neighborhoods. As we were preparing these comments, [police officer Tuan Le was shot and killed during a robbery of a dispensary in Oakland](#). There is no possible justification for importing this kind of risk into rural areas.

V. Visitor Serving Uses

A. Incidental Educational Tours

As discussed above, State law prohibits visiting cultivation sites so essentially precludes this aspect of the Cannabis Proposal Update. Nevertheless, independent of that foundational flaw, the proposal presents other concerns. As noted above, the newly-created category of “incidental education tours” has no known definition and appears curiously without purpose in Permit Sonoma’s proposal. It seemingly creates a problem where none exists. Whatever the intention or whatever it contemplates, it seems clear it would involve increased traffic, including impaired drivers, to rural areas which would intrude on neighborhoods and potentially the environment. Accordingly, it contradicts the stated goals of updating the cannabis program to “enhance neighborhood compatibility and environmental protections.”

B. Periodic Special Events

Permit Sonoma’s inclusion of a proposal for special events relating to cannabis ignores the very detailed requirements set forth in the State regulations as to cannabis. DCC Chapter 5: Cannabis Events requires people/entities desiring to hold a Temporary or Periodic Cannabis Event to obtain a § 15600 Cannabis Event Organizer License, in addition to other licenses such as a retailer, as appropriate. State requirements are clear that the siting of cannabis events is restricted: traditionally, they have been held at the fairgrounds. Section 15601 provides, in part:

§ 15601. Temporary Cannabis Event Requirements. (pages 114-118)

(a) A temporary cannabis event license authorizes a licensed cannabis event organizer to hold a temporary cannabis event where the onsite sale and consumption of cannabis goods is authorized at the location indicated on the license during the dates indicated on the license...

(e) A temporary cannabis event may **only be held** at a county fair event, district agricultural association event, or at another venue expressly approved by a local jurisdiction for the purpose of holding a temporary cannabis event (emphasis added.)

Special events involving cannabis are controlled by State regulations. Those regulations clearly contradict Permit Sonoma's proposal as to special events and rule out any proposal that special cannabis events be permitted in rural areas and neighborhoods. As with the other aspects of this proposal, the special event notion would increase neighborhood incompatibility with the intrusion of increased traffic, increased risks of crime, noise, and activities distinctly in contradiction to quiet rural settings. These kinds of events have no place in rural areas and should be confined in accordance with State law.

VI. Permit Sonoma Should Clearly Identify All Illegal Activities in Its Proposals

As discussed above, these proposals clearly violate state and possibly federal law. Item 6 (Administrative Adaptability) in the Program Framework seems to encourage staff to propose illegal activities for purposes of undergoing CEQA review so that CEQA analysis is not needed if the law changes. This seems a peculiar and cynical approach. If Permit Sonoma and County Counsel know these proposals and any other aspects of the revised program elements are illegal under current law, or are arguably illegal, we request that the County specifically and clearly identify them as such. This is a bare minimum obligation under Item 2 (transparency) in the Program Framework. It is a disservice to Sonoma County residents, cultivators, and the supervisors to pretend in an official proceeding that the County has authority to authorize illegal activities. It is also a deeply disturbing approach to good governance.

VII. Conclusion - The Draft Proposal as to Retail and Visitor-Serving Uses Contravenes State Law and Undermines Neighborhood Compatibility and Environmental Protections

The Board of Supervisors has clearly stated the primary goals of updating the cannabis program are to enhance neighborhood compatibility and environmental protections. In contrast to most of the other proposals set forth in the draft, these are obscure and lacking in the transparency promised at the outset of this process. For the reasons outlined above, the Neighborhood Coalition submits these aspects of Permit Sonoma's proposals cannot be supported. They are contrary to State law and would undermine neighborhood compatibility and environmental protections.

Thank you in advance for listening to and addressing our concerns.

Neighborhood Coalition
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