



## SUMMARY REPORT

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**Agenda Date:** 6/6/2023

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**To:** Sonoma County Board of Supervisors

**Department or Agency Name(s):** Agriculture/Weights & Measures; Permit and Resource Management (Permit Sonoma); County Administrator's Office

**Staff Name and Phone Number:** Andrew Smith, 565-2371; Sue Ostrom 565-2371; Scott Orr 565-1754

**Vote Requirement:** Majority

**Supervisorial District(s):** Countywide

**Title:**

2:15 P.M. Amendments to Chapter 26 of the Sonoma County Code to only allow smaller scale multi-tenant cannabis cultivation permits.

**Recommended Action:**

Conduct a public hearing and adopt an Ordinance amending the Zoning Code to Chapter 26 of the Sonoma County Code to only allow smaller-scale multi-tenant cannabis cultivation permits and finding the ordinance exempt from CEQA (CEQA Guidelines Sections 15301, 15307, 15308, 15061(b)(3)).

**Executive Summary:**

This agenda item proposes to permanently amend the multi-tenant provision of the Cannabis Land Use Ordinance (Sonoma County Code (SCC) Section 26-88-254(f)(2)) to only allow ministerial review of smaller-scale multi-tenant cannabis cultivation permits. This change to the Cannabis Land Use Ordinance was previously established by Urgency Ordinance No. 6354 on September 21, 2021, and extended by Urgency Ordinance No. 6356 on October 26, 2021, until September 10, 2023. Prior to these ordinances, the Department of Agriculture/Weights and Measures (AWM) and the Permit and Resource Management Department (Permit Sonoma) were authorized to issue multiple ministerial cannabis cultivation permits to different applicants co-locating on the same parcel when a cultivation operation of the same size proposed by one applicant required a use permit.

Under the proposed ordinance, new applicants looking to co-locate their commercial cultivation operations on a single parcel would need to apply for a conditional use permit if a single applicant would be required to obtain a conditional use permit for the same size grow. Multiple applicants on the same parcel are still entitled to ministerial review if the collective cultivation area does not exceed the ministerial permit limits.

Staff presented these amendments to the Planning Commission on February 23, 2023, and the Commission adopted Resolution No. 23-07 recommending the Board adopt the proposed revision.

**Discussion:**

**BACKGROUND**

On September 21, 2021, the Board adopted Urgency Ordinance No. 6354 establishing a prohibition on large-scale multitenant cannabis permits. On October 26, 2021, the Board extended Ordinance No. 6354 to September 10, 2023. On February 23, 2023, the Planning Commission adopted Resolution No. 23-07

recommending the Board adopt the proposed revision.

The Urgency Ordinances amended the provision that authorized the AWM and Permit Sonoma to issue multiple ministerial zoning permits to different applicants on the same property when a grow of the same size would require a conditional use permit if proposed by one applicant, SCC Sec. 26-88-254(f)(2) (“multi-tenant provision”): *“Multiple permits may be issued for multitenant operations on a single parcel if the aggregate cultivation area does not exceed the maximum area allowed for the cultivation type and parcel size in compliance with Table 1A-D Allowed Cannabis Uses and Permit Requirements.”*

This original multi-tenant provision was adopted to reduce barriers to entry for small farmers by allowing a property owner to lease to multiple small-scale operators who could each obtain ministerial zoning permits provided the minimum lot size was met and the total cultivation area did not exceed the maximum cultivation area allowed.

For example, a grow up to 10,000 square feet in the Land Extensive Agriculture (LEA) zone is subject to a ministerial zoning permit and the maximum outdoor cultivation area per parcel is one acre. Under the original multi-tenant provision, four operators could each get a ministerial zoning permit for up to 10,000 square feet each on the same 10-acre LEA parcel, see SCC Section 26-88-250 Table 1A below. Because each of the multi-tenant operators’ permits was ministerial, each permit would be approved if it met the set standards in the Cannabis Ordinance and thus not reviewed under California Environmental Quality Act (CEQA) or subject to public comment or administrative appeal. However, if one applicant proposed over 10,000 square feet on an LEA parcel a use permit would be required, which includes being subject to additional county-imposed conditions, CEQA compliance, public comment, public hearings, and the potential for administrative appeal. See current allowed cannabis uses and permit requirements in Table 1A from the Cannabis Land Use Ordinance below.

**Table 1A: Allowed Cannabis Uses and Permit Requirements for Agricultural and Resource Zones**

Land Use	Maximum Cultivation Area Per Parcel (square feet or plant)	Minimum Parcel Size	Land Intensive Agriculture	Land Extensive Agriculture	Diverse Agriculture	Resources Rural Development
			LIA	LEA	DA	RRD
<b>Commercial - Outdoor</b>						
Cottage	25 plants	10 ac	ZP	ZP	ZP	MUP
Specialty	5,000 sq. ft. or 50 plants	10 ac	CUP	ZP	ZP	CUP
Small	5,001 - 10,000	10 ac	CUP	ZP	ZP	CUP
Medium	10,001 - 43,560	10 ac	CUP	CUP	CUP	CUP
<b>Commercial - Indoor</b>						
Cottage	500	10 ac	ZP	ZP	ZP	MUP

Specialty	501 -5,000	10 ac	CUP	CUP	CUP	CUP
Small	5,001 - 10,000	10 ac	-	-	-	-
Medium	10,001 - 22,000	10 ac	-	-	-	-
<b>Commercial - Mixed-Light</b>						
Cottage	2,500	10 ac	ZP	ZP	ZP	MUP
Specialty	2,501 - 5,000	10 ac	CUP	CUP	CUP	CUP
Small	5,001 - 10,000	10 ac	CUP	CUP	CUP	CUP
Medium	10,001 - 22,000	10 ac	-	-	-	-

**SUMMARY AND ANALYSIS OF PROPOSED AMENDMENTS**

The County began receiving challenges and legal threats related to multi-tenant permitting alleging that applicants were not truly multi-tenant and that any parcel with over 10,000 square feet required discretionary and environmental review under the Cannabis Land Use Ordinance and CEQA.

Applicants met the standard for being “multi-tenant” if the companies did not share a “cannabis business owner” (SCC Sec. 26-04-020), and if the applicants were not close family members, or if the applicants were entities, then no cannabis business owners of the entities were close family members. However, the standard was not effective at distinguishing truly multi-tenant operations and stricter standards were not likely feasible.

CEQA requires an agency to review the environmental impacts of projects as a whole. Piecemealing means chopping one larger project up into smaller pieces and reviewing each separately, which is prohibited because it may mask the true environmental impacts. Opponents argued that treating each 10,000 square foot grow individually instead of as part of the larger 1 acre grow constituted piecemealing, even though each approval was ministerial and arguably did not trigger CEQA or a piecemealing inquiry in the first instance. Still, the multi-tenant provision was unusual and though biological and hydrogeologic studies assessed cumulative impacts, in some instances there may have been the potential for cumulative impacts to go unaddressed.

Additionally, the lack of CEQA review poses a practical barrier for applicants to state licensure. The California Department of Cannabis Control (the State) requires all operators to obtain state cannabis licenses, all of which require discretionary approval. While most single operations for which the County issues ministerial approvals are found to be exempt from CEQA by the State, it is staff’s estimate that the State will require environmental review for many larger multi-tenant operations. Especially those that have several multi-tenant operations in close proximity.

The proposed ordinance would amend the multi-tenant provision to only allow for small-scale multi-tenant operations, essentially imposing the same permitting requirements for single- and multi-tenant operations: “*Multiple zoning permits may be issued on a single parcel provided that the aggregate cultivation area does not require a use permit per Table 1A-D Allowed Cannabis Uses and Permit Requirements.*”

By imposing ministerial or discretionary permitting requirements on cannabis cultivation based on the amount

of cultivation instead of who the applicant is, the County's permitting is more consistent with standard land use practices, insulated from challenge under CEQA, and better aligned with State licensing.

Additionally, the urgency ordinance extended the term of those multi-tenant cannabis uses no longer eligible for a ministerial renewal for a period not-to-exceed five years from the most recent date of issuance. Applicants who were in process were allowed to withdraw their applications and were refunded fees. If multi-tenant operators apply for a use permit within three years from the most recent date of issuance, they will be allowed to continue operating while the use permit is in process. The permits of operators who do not submit a use permit application by the three-year deadline, will expire at the end of the five-year term. The earliest due dates for the three-year deadline are in July 2023. Although the county has not received any applications for conditional use permits by multi-tenant operators, there have been inquiries. There are 78 multi-tenant permits currently active on 16 sites.

There is currently a full program update process underway. A focus of this process is to streamline permitting and ease the administrative burdens for cannabis cultivators.

#### **RECOMMENDATION**

Staff recommends that the Board conduct a public hearing and approve the Zoning Code amendments to Chapter 26 of the Sonoma County Code to only allow smaller-scale multi-tenant cannabis cultivation permits.

#### **Strategic Plan:**

N/A

#### **Racial Equity:**

#### **Was this item identified as an opportunity to apply the Racial Equity Toolkit?**

Yes

Applying a racial equity lens to integrate explicit consideration of racial equity policy in decisions can help to develop strategies and actions that reduce racial inequities and improve success for underserved members in our community. To implement the Board's direction to advance racial equity, the Board expects race equity impact analysis for some significant items on the Board calendar, including this item.

#### *Urgency Ordinances*

This item is permanently amending the Cannabis Land Use Ordinance as directed by the Board in October 2021. A racial equity analysis was not conducted for the Cannabis Multi-Tenant urgency ordinance establishing the moratorium when it was adopted in September 2021, and later extended in October 2021. Due to the nature of the urgency ordinance process, outreach to affected stakeholders was not conducted at the time. Considerable public comment from industry and neighbor stakeholders was received during both public hearings.

The original multi-tenant provision was adopted to reduce barriers to entry for small farmers. That provision established permit fees for a new ministerial permit from the Department of Agriculture/Weights & Measures for outdoor cultivation that are less than a quarter of the minimum cost for a use permit from Permit Sonoma, and an even lower cost for permit renewal. As part of the urgency moratorium, in order to support current

multi-tenant operators, permit terms were extended to five years from the most recent issuance date, and the submittal dates for a use permit application were extended to three years from the most recent issuance date. This extension allows current multi-tenant operators to research and plan for the costly use permit application process.

#### *Demographics of Operators*

Demographic data of current and prospective cannabis cultivators is unknown. As part of reporting for the Cannabis Equity Grants received from the Governor's Office of Business and Economic Development (GO-Biz), staff requests current operators and applicants to voluntarily provide demographic data. Response rates have been low - 10% in 2021 and 8% in 2022. The availability of this data would allow the County to understand demographic representation across operators and applicants and to provide an opportunity to understand if and which operators benefit from the change in policy. Operator and applicant input could also inform strategies to address other barriers to entry and unique challenges for operators from underrepresented or underserved groups. As part of the Local Cannabis Equity Program efforts, targeted outreach to industry stakeholders will be conducted to collect further input, including strategies to encourage submission of demographic data.

#### *Local Cannabis Equity Program*

The operators affected by this moratorium might qualify for financial assistance through the County's Local Cannabis Equity Program. Sonoma County has been awarded a Type 2 Cannabis Equity Grant from GO-Biz in the amount of \$687,560. At least 80% of the funds will be used to support cannabis permit applicants (primarily Penalty Relief Program participants and multi-tenant applicants) through the permitting process and existing permitted cannabis operators with tax support. A portion of funds (no more than 10%) will be used to contract with local business support firms to provide one-on-one consulting sessions with cannabis operators in an effort to help them be effective business owners and operators. The remaining 10% is to be used for administrative costs related to program management. The application process is currently in development with a tentative opening date of July 2023.

Since adoption of the Local Equity Program Manual in March 2023 (<https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=6053601&GUID=5B86F7F5-BD73-40A0-8776-71CFAB6BFB2D&Options=&Search=>), staff has met with numerous industry stakeholders to discuss how the Equity Program might be able to assist current and prospective cannabis permit applications, including multi-tenant operators. Outreach and communications will continue throughout the application development and process. Staff encourages affected multi-tenant operators to apply for financial assistance from the Local Equity Program.

#### **Prior Board Actions:**

10/26/2021: Board of extended Ordinance No. 6354 to September 10, 2023 (<https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=5188036&GUID=4951C6AD-154A-4172-AD80-1FC317A2FD5D&Options=&Search=>)

9/21/2021: Board of Supervisors adopts Urgency Ordinance No. 6354 prohibiting issuance of multi-tenant cannabis cultivation permits for 45 days (<https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=5136553&GUID=1DAF0F0D-DD20-4F9E-B7D5-9F5159BCE575&Options=&Search=>)

10/16/2018: Board of Supervisors adopts modifications to Cannabis Land Use Ordinance (Ord. No. 6245) ([https://sonoma-county.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=844&meta\\_id=251673](https://sonoma-county.granicus.com/MetaViewer.php?view_id=2&clip_id=844&meta_id=251673))

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12/20/2016: Board of Supervisors adopts Cannabis Land Use Ordinance (Ord. No. 6189) ([https://sonoma-county.granicus.com/Viewer.php?view\\_id=2&clip\\_id=675&meta\\_id=210165](https://sonoma-county.granicus.com/Viewer.php?view_id=2&clip_id=675&meta_id=210165))

**FISCAL SUMMARY**

**Narrative Explanation of Fiscal Impacts:**

N/A

**Narrative Explanation of Staffing Impacts (If Required):**

N/A

**Attachments:**

Attachment A: Draft Ordinance

**Related Items "On File" with the Clerk of the Board:**

None