



Legislation Text

File #: 2021-0337, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): County Administrator's Office, Department of Agriculture/Weights & Measures, Permit Sonoma, and County Counsel

Staff Name and Phone Number: Christina Rivera, Andrew Smith, Scott Orr, and Sita Kuteira

Vote Requirement: Majority

Supervisorial District(s): Countywide

Title:

Proposed Commercial Cannabis Cultivation in Agricultural and Resource Areas Zoning Ordinance and Zoning Code Amendments; General Plan Amendment

Recommended Action:

- A) Reject proposed General Plan Amendment to include cannabis within the meaning of "agriculture," and "agricultural use" as used in the Sonoma County General Plan.
- B) Adopt a Resolution finding the Subsequent Mitigated Negative Declaration reflects the independent judgment of the Board of Supervisors and satisfies the requirements of the California Environmental Quality Act (CEQA), that all comments received on the SMND have been considered, and that on the basis of the whole administrative record there is no substantial evidence that the project as mitigated will have a significant effect on the environment.
- C) Introduce, read the title of, waive further reading of, adopt an Ordinance (a) adding Chapter 38 to the Sonoma County Code to expand ministerial cannabis cultivation permitting process in agricultural and resource zoning districts (CCCARA); and (b) amending the Cannabis Land Use Ordinance (CLUO) in Chapter 26 (Zoning Code) of the Sonoma County Code to expand use permits for cannabis cultivation and to harmonize with the new Chapter 38.
- D) Adopt a Resolution finding the Ordinance consistent with the goals, objectives, and policies of Sonoma County General Plan.
- E) Approve the addition of 1.0 Chief Deputy Agricultural Commissioner and 1.0 Senior Agricultural Program Assistant financed with ongoing Cannabis tax revenue to implement new expanded permitting process, effective July 1, 2021.

Executive Summary:

This item recommends code changes to update the current Cannabis Program by adding the "Commercial Cannabis Cultivation in Agricultural and Resource Areas" (CCCARA) Ordinance (Chapter 38) and amending the current "Cannabis Land Use Ordinance" (CLUO) to allow ministerial commercial cannabis cultivation permitting in agricultural and resource-zoned areas outside of the coastal zone. Changes include delegating permit authority through the Agricultural Commissioner, if specific development and operational standards are met, and allows expansion of cannabis cultivation sites on larger parcels subject to strict environmental standards. By disapproving the General Plan Amendment, cannabis would remain non-agricultural and required to remain subordinate to and consistent with traditional agricultural uses on agricultural lands.

Under the direction of the Board of Supervisors and the recent Cannabis Ad Hoc (Ad Hoc) composed of Supervisors Hopkins and Gore, county staff prepared a draft Chapter 38 and made specific amendments to Chapter 26 of the Sonoma County Code. In addition, staff engaged local tribal partners in AB 52 and SB 18 consultation, completed English-Spanish informational virtual forums to present staff changes and promote submission of public comments, and recommended policy changes to the Planning Commission. Staff developed these recommendations under Ad Hoc guidance to attempt to balance the neighborhood compatibility concerns and permit streamlining objectives.

Today's hearing will present staff and Planning Commission recommendations for Cannabis cultivation policy improvements for the Board to consider at the close of the hearing.

Recommended policy changes are organized into general and overlapping categories designed to streamline permitting of cultivation activity in agricultural and resource zones, as well as to align where appropriate with state regulatory definitions and other agricultural uses.

Ministerial permitting changes would improve local cultivators to enter the legal industry by reducing barriers to entry, while implementing standards that will limit the scope of ministerial permits to cultivation projects that meet criteria that is more restrictive in an effort to protect our county's natural resources and limit impacts to our residents. In addition, proposed changes provide for better alignment with state regulatory requirements, mitigate environmental impacts, and provide more certainty to permit applicants and the public.

Finally, should the Board agree to adopt the new ministerial permitting ordinance in proposed Chapter 38, included in this report is a recommended action to add staffing resources (Chief Deputy Agricultural Commissioner and Senior Agricultural Program Assistant) to the Department of Agriculture / Weights & Measures (AWM) to support this additional cannabis cultivation permitting work associated with new ministerial permitting policy. Total annual cost is estimated at approximately \$320,000; which will be financed in year 1 with current level of cannabis tax collection for FY 21/22, and subsequently funded with a combination of application/inspections fees and cannabis tax.

Following the Planning Commission's recommendations, a couple non-substantive changes were made to align with the reformatted Zoning Code (see Ordinance No. 6335) including updating the code section for referencing definitions and removing the amendments to base zoning district uses, which no longer list allowed uses in text format.

Discussion:

Staff report begins with Cannabis legislative background, summarizes staff identified permitting issues and suggested changes, presents ordinance updates and compares them to current ordinance, introduces environmental review analysis, discusses the Planning Commission deliberations and their approved recommendations to the Board.

LEGISLATIVE BACKGROUND

In October 2015, the state enacted the Medical Cannabis Regulation and Safety Act (MCRSA) to provide a

regulatory framework for medical cannabis businesses. On November 8, 2016, the voters of California passed the Adult Use of Marijuana Act (AUMA). On June 27, 2017, the state passed Senate Bill 94, which consolidated regulations into the Medicinal and Adult Use Cannabis Regulation and Safety Act (MACURSA), which related the current state cannabis regulatory structure.

On December 20, 2016, the Board of Supervisors adopted Ordinance number 6189 to amend Chapter 26 to allow personal cultivation of cannabis and permit cultivation of commercial medical cannabis and support land use in various zoning districts, adopting new definitions and establishing special use regulations.

In April 2017, a multi-department cannabis program was established to implement the ordinances adopted by the Board in December 2016. This work focused on not only the implementation of the ordinances, but also community engagement and evaluating and addressing impacts. As part of the community engagement piece, the Board established the Cannabis Advisory Group (CAG). The CAG was a diverse group of stakeholders initially convened in 2017 to provide expertise and guidance to staff and Supervisors in developing improvements to the County's cannabis policy. The last meeting of the Cannabis Advisory Group was held on June 26, 2019 and the group's recommendations are published here <https://sonomacounty.ca.gov/Cannabis/Legislative-Updates/Committees/>

On April 10, 2018, the Board conducted a Cannabis Ordinance Study Session and adopted a Resolution of Intent to update the existing Cannabis Ordinances (https://sonoma-county.granicus.com/MediaPlayer.php?view_id=2&clip_id=780&meta_id=240740). The update effort was split into two phases. On October 16, 2018, consistent with the first phase, the Board of Supervisors adopted Ordinance number 6245 amending Chapter 26 to allow adult use cannabis in Sonoma County for the full cannabis supply chain, enhance neighborhood compatibility, add new definitions, and make minor non-substantive amendments to harmonize with California state law and regulations, where appropriate (10/16/2018 Item #24 http://sonoma-county.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=844).

The scope of the second phase was developed over several months and took into account the work of the previously established Cannabis Advisory Group (CAG). The CAG was a diverse group of stakeholders initially convened by the Board in 2017 to provide expertise and guidance to staff and Supervisors in developing improvements to the County's cannabis policy. The last meeting of the Cannabis Advisory Group was held on June 26, 2019 and the group's recommendations are published here <https://sonomacounty.ca.gov/Cannabis/Legislative-Updates/Committees/>

On December 17, 2019, consistent with the second phase, the Board approved direction for staff to implement certain changes related to the cannabis program and its management. The primary direction was to amend the Cannabis Land Use Ordinance to expand opportunities for ministerial cannabis cultivation permits to be administered through the Department of Agriculture/Weights and Measures (<https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=4283181&GUID=B3E39CB0-BFC3-4DEA-97C2-DF57700DDED3>).

PERMITS TO DATE

Since July 2017, the County has received 166 cannabis use permit applications, 13 cannabis zoning permit applications, and 281

agricultural cannabis permits. The table below contains information for cultivation permits received as of April 30, 2021 (more complete permit information can be found in Attachment L.

Cultivation Permit Type	Applications Received	Applications Approved/Issued	Acres of Cultivation Approved
Cannabis Use Permit (UPC)	142	34	14.7
Cannabis Zoning Permit (ZPC)	13	1	0.01
Agricultural Zoning Permit (APC)	281	166 (91 current)	20.6
Penalty Relief Program (PRP)*	In process: 32	17	15.8

*Penalty Relief Program (PRP) application numbers are included in the Cannabis Use Permit application numbers

POLICY UPDATE OBJECTIVES

As County staff have increased their understanding of cannabis cultivation operations and related laws, some restrictions have become antiquated, burdensome, and of minimal usefulness. Staff gleaned the following list of general objectives from prior Board direction, Ad Hoc’s guidance, staff’s experience processing permits and regulating the industry, and input from the public. These general objectives informed the recommended action and ordinance changes summarized below and listed in Attachment F.

1. Regulate and establish ministerial standards for commercial cannabis cultivation activities in agricultural and resource zones that are protective of the public health, safety, and welfare of the county, and that promote agricultural diversity and a sustainable local economy.
2. Reduce barriers to entering the regulated cannabis market by streamlining the permitting process through ministerial permit review.
3. Increase viability and sustainability of operations by allowing more cultivation sites on permissible parcels provided the intended cultivation can comply with all standards in the proposed ordinance.
4. Ensure ministerial standards are protective of environmental resources and maintain strict environmental standards to ensure all impacts are mitigated.
5. Clarify standards where needed to increase consistency of the code and ease administration.
6. Regulate cannabis more similarly to other land uses by removing ordinance requirements that are unrelated to the operation’s potential impacts.
7. House administration of ministerial commercial cannabis permitting in agricultural and resource zones in the Department of Agriculture / Weights and Measures with appropriate staffing resources.

PROPOSED CANNABIS PROGRAM CHANGES - PLANNING COMMISSION RECOMMENDATIONS

On March 18, 2021, the Planning Commission held a public hearing to consider the proposed general plan amendment, the proposed CCCARA Ordinance (Chapter 38), and the proposed amendments to the Cannabis Land Use Ordinance (SCC Sec. 26-88-250 and 254). The Commission closed the public hearing on March 18, began their discussion, and continued the meeting to March 25.

On March 25, the Planning Commission deliberated and provided direction to staff to make changes to the proposed resolution documenting the recommended ordinance changes, as well as adding restrictions, clarifying specific standards, and continued the meeting to April 15 for a final vote (see Attachment P - Summary of the Planning Commission’s Deliberations Main Points).

On April 15, the Commission voted 3-2 to approve the recommendations discussed below to the Board of Supervisors. The proposed draft ordinance before your Board reflects the Planning Commission’s recommendations, except as indicated below. See Attachment

H to view staff's original proposed ordinance changes to the Planning Commission.

General Plan Amendment:

The general plan is the "constitution" of local land use planning. It provides the highest-level rules with which all zoning ordinances and development permits must be consistent. Since the adoption of the Cannabis Land Use Ordinance in 2016, cannabis has not been considered "agriculture" or an "agricultural use" under the General Plan.

An initial goal of this policy effort was to treat cannabis cultivation more like traditional agricultural uses given the similar nature of the operations. In order to regulate cannabis more similarly to agriculture within the zoning code, staff recommended amending the General Plan to include cannabis within the definition of agriculture. The proposed General Plan amendment would not, in itself, allow for additional cannabis cultivation in the County, but rather would ensure vertical consistency between the General Plan, ordinances, and permits, and that implementation of General Plan policies and programs are not inhibited.

After considering the proposed General Plan Amendment, the Planning Commission voted to recommend that the Board reject/disapprove adoption. It reasoned that because cannabis is still a federally listed Schedule 1 drug under the Controlled Substances Act, it was not sufficiently similar to other traditional agricultural uses and that the redefinition of agriculture to include cannabis was premature. As a result, staff amended the ordinances to be consistent with cannabis as a non-agricultural use, including strengthening farmland protections, ensuring cannabis uses remained subordinate to a primary agricultural use, and clarifying an overall cap on cannabis site development.

Current Cannabis Land Use Ordinance (Chapter 26):

The current Cannabis Land Use Ordinance (CLUO), housed in Chapter 26 of the Sonoma County Code (SCC Sec. 26-88-250 - 254) allows commercial cannabis cultivation, including outdoor, indoor, and mixed light cultivation and associated drying, curing, grading, and trimming facilities. Ministerial zoning permits for outdoor cultivation may be issued by the Agricultural Commissioner, including for grows up to 25 plants in LIA and up to 10,000 sq. ft. in LEA and DA. Ministerial zoning permits and discretionary use permits for all other cultivation activities are issued by Permit Sonoma. The proposed ministerial program, discussed in the next section, is proposed to be housed in a new separate chapter to the County Code.

Cultivation in Agricultural and Resource Areas Ordinance (CCCARA /Proposed New Chapter 38):

The proposed ordinance update adding the Chapter 38 to govern ministerial permitting for commercial Cannabis Cultivation in Agricultural and Resource Areas (CCCARA) would allow more commercial cannabis cultivation uses in agricultural and resource-zoned areas outside of the coastal zone to be approved as under a ministerial permit by the Agricultural Commissioner if specific development and operational standards are met. Proposed cultivation in such agricultural or resource zoned areas that does not qualify for a ministerial permit under the proposed code changes (CCCARA) would still be able to apply for a use permit for that activity under the Cannabis Land Use Ordinance (CLUO) in Chapter 26.

The proposed CCCARA (Chapter 38) ordinance changes are included in Attachment F, which shows the proposed CCCARA regulations as compared to the current Cannabis Land Use Ordinance. The changes focus on establishing standards and requirements that are protective of the environment, public, health, and safety and that streamlining the permit process, and on aligning cannabis cultivation uses more closely with other types of crop cultivation.

All mitigation measures calling for amendments to proposed ordinance language have been incorporated into the proposed CCCARA (Ch. 38) and are shown in redline.

The current Cannabis Land Use Ordinance includes Class 1 Bikeways as a sensitive use and for outdoor and mixed-light cultivation requires a 1,000 foot setback property line to property line, which may be reduced with a use permit. The Planning Commission recommended removing Class 1 Bikeways from sensitive uses. However, staff has not included that in the recommended ordinance because analysis of this policy was not included in the SMND.

Cannabis Land Use Ordinance (Secs. 26-88-250 and 254)-Proposed Amendments to Chapter 26:

The proposed amendments to the Cannabis Land Use Ordinance in Chapter 26 do not affect uses, including dispensaries or testing labs, allowed in zone districts *other* than agricultural and resource zones. The proposed amendments are designed to align with the proposed CCCARA ordinance primarily by allowing the same maximum potential area of commercial cannabis to be cultivated under a use permit as under a ministerial permit, for a given parcel. This ensures that no more cannabis would be permitted under a

ministerial permit than under a use permit for a parcel. In addition, the amendments provide for transitioning ministerial permitting to the Agricultural Commissioner under CCCARA. Overall, the Cannabis Land Use Ordinance will remain substantially in its current state in order to not disrupt the current permit pipeline and to facilitate the Use Permit process for parcels that are not eligible to obtain a ministerial permit.

For ease of review, staff also developed Attachment G, which is a table comparing the proposed amendments specifically to Chapter 26.

ENVIRONMENTAL REVIEW

An Initial Study and Mitigated Negative Declaration (SMND) were prepared to evaluate impacts of the proposed updated Ordinance. The SMND was circulated for public review from February 16, 2021 to March 18, 2021. The SMND (Attachment C) proposes several mitigation measures in order to reduce all potential impacts to a less than significant level. Many comments were received during and after the public review period. All comments have been reviewed and based on the administrative record as a whole; there is no substantial evidence of a fair argument that the proposed Ordinance, including CCCARA and amendments to the Cannabis Land Use Ordinance, as mitigated, may have a significant effect on the environment.

ADDITIONAL PLANNING COMMISSION RECOMMENDATION

Beyond and separate from the Planning Commission's recommendation regarding staff's originally proposed general plan amendment and ordinance changes, the commission also recommended that the Board of Supervisors immediately direct staff to investigate a more comprehensive update of commercial cannabis permitting. The commission envisioned that this separate effort would include the commercial and industrial zoning districts, as the next iterative phase of the County's Cannabis Program in conjunction with preparation of an environmental impact report.

PUBLIC OUTREACH

In an effort to be as transparent as possible, staff released preliminary working draft documents (working drafts) of the Cannabis Ordinance and Subsequent Mitigated Negative Declaration) on January 31, 2021. Those working drafts were revised, and approximately two weeks later, on February 16, 2021, the public review versions, including the draft Cannabis Ordinance, draft Subsequent Mitigated Negative Declaration, draft revisions to Chapter 26, and draft General Plan Amendment, were released for public review (hearing drafts).

In addition, to ensure public awareness and promote public input, four virtual town hall webinars were held the week of March 8, 2021, facilitated by an outside consultant (Bischoff Consulting) and concurrently translated in Spanish. The engagement and outreach effort resulted in 435 webinar attendees and 1,608 chat comments. Please note a subset of the total 435 attendees represent participants that participated in multiple sessions. A significant amount of public comments were received via email and U.S. Mail prior to and during the March 18, 2021 Planning Commission public hearing. There were over 150 attendees recorded for the Commission's March 18 public hearing and over 75 attended each of the subsequent meetings. The summary report provided by Bischoff Consulting (Attachment M), includes a summary of the comments and input received via Zoom's chat feature.

In addition, for ease the public's review, the following County managed GIS interactive tools are available to view county data considered as part of cannabis applications process:

1. Cannabis Site Evaluation
<https://www.arcgis.com/apps/webappviewer/index.html?id=0b784d90045941798d780f288b6f7003>
2. Vineyard & Orchard Site Development (VESCO) - Cannabis Site Suitability
<https://sonomacounty.maps.arcgis.com/apps/webappviewer/index.html?id=3bba48626377432a9aa749505a52a0d6>

OTHER CALIFORNIA COUNTIES

Staff researched and compiled information from other California counties permitting cannabis cultivation. Of the 29 counties that permit cannabis operations, 23 of them allow commercial cannabis cultivation. Select details of these ordinances including minimum parcel size, maximum cultivation size, setbacks, odor management, and water management are provided in Attachment N.

Prior Board Actions:

December 17, 2019: Recommendation of the Cannabis Ad Hoc to explore Cannabis Program improvements, including an expanded ministerial permitting process within a subsequent mitigated negative declaration
 October 16, 2018: Adoption of Phase I of Cannabis Ordinance Update
 December 20, 2016: Adoption of Cannabis Land Use Ordinance

FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	FY21-22 Projected	FY 22-23 Projected
Budgeted Expenses			
Additional Appropriation Requested		\$370,848	\$328,348
Total Expenditures		\$370,848	\$328,348
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other: • Cannabis Tax in FY 21/22 • Cannabis Tax and Fees in FY 22/23		\$370,848	\$328,348
Use of Fund Balance			
Contingencies			
Total Sources		\$370,848	\$328,348

Narrative Explanation of Fiscal Impacts:

FY 21/22 increased operational costs include \$328,348 for two new full time positions, and \$42,500 for one-time expenses associated with vehicles, computers, and inspection equipment. Supplemental adjusting the AWM FY 2021-22 Recommended Budget will be included as part of budget hearings, if request is approved.

Staffing Impacts:			
Position Title (Payroll Classification)	Annual Salary Range (A-I Step)	Additions (Number)	Deletions (Number)
Chief Deputy Agricultural Commissioner	\$84,110.94 - \$102,248.01	1.0	0.0
Senior Agricultural Program Assistant	\$48,567.28 - \$59,023.75	1.0	0.0

Narrative Explanation of Staffing Impacts (If Required):

Increased staffing resources recommended to address estimated growth in permit processing workload.

Attachments:

- Attachment A: Draft Resolution Disapproving General Plan Amendment
- Attachment B: Draft Resolution adopting the Subsequent Mitigated Negative Declaration
- Attachment C: Draft Subsequent Mitigated Negative Declaration
- Attachment D: Draft Ordinance with Exhibits
- Attachment E: Draft Resolution on Ordinance General Plan Consistency
- Attachment F: Proposed Cannabis Cultivation in Agricultural and Resource Areas (CCARA) Chapter 38 vs. the Ministerial Permitting Process under the current Cannabis Land Use Ordinance (CLUO) Sections 26-88-250 and

-254

Attachment G: Amendments to Cannabis Land Use Ordinance (CLUO) Sections 26-88-250 and -254

Attachment H: March 18, 2021 Planning Commission Staff Report

Attachment I: April 15, 2021 Planning Commission Staff Memo

Attachment J: April 15, 2021 Planning Commission Resolution with Exhibits

Attachment K: March 18, 2021 Planning Commission PowerPoint

Attachment L: Sonoma County Cannabis Permitting Information

Attachment M: Cannabis Policy Town Hall Report from Bischoff Consulting

Attachment N: Other California Counties Cannabis Cultivation Information

Attachment O: Public Comment Received after Planning Commission Public Hearing through May 5, 2021

Attachment P: Planning Commission Deliberation Summary of Main Points

Related Items “On File” with the Clerk of the Board:

N/A