



## Legislation Details (With Text)

**File #:** 2021-0912

**Type:** Regular Calendar Item **Status:** Agenda Ready

**File created:** 8/18/2021 **In control:** County Counsel

**On agenda:** 10/26/2021 **Final action:**

**Title:** 1:45 P.M. Extension of Urgency Ordinance No. 6354 - Cannabis Ordinance Multi-Tenant Moratorium

**Sponsors:** County Administrator, Agricultural Commissioner, Permit and Resource Management

**Indexes:**

**Attachments:** 1. Summary Report, 2. Revised Ordinance 10-21-2021 (Track Changes), 3. Revised Ordinance 10-21-2021 (Clean Version), 4. Ordinance (Track Changes), 5. Ordinance (Clean Version), 6. Urgency Ordinance Report (Government Code Section 65858(d)), 7. Ordinance to Establish a Temporary Moratorium on Multi-Tenant Cannabis Cultivation Permits (Ord. No. 6354), 8. Board Summary Report dated 09/21/2021, 9. Public Comment received 09-21-2021 after public hearing through 10-14-2021, 10. Public Comment received 10-15-2021 through 10-19-2021 12 PM, 11. Public Comment received after 10-19-2021 12 PM through 10-22-2021 12 PM, 12. Public Comment received after 10-22-2021 12 PM through 10-25-2021 2:30 PM, 13. Public Comment received after 10-25-2021 2:30 PM through 10-26-2021 12 PM, 14. PowerPoint Presentation

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
|------|------|-----------|--------|--------|

**To:** Board of Supervisors

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

**Staff Name and Phone Number:** Andrew Smith

**Vote Requirement:** 4/5th

**Supervisory District(s):** Countywide

**Title:**

1:45 P.M. Extension of Urgency Ordinance No. 6354 - Cannabis Ordinance Multi-Tenant Moratorium

### Recommended Action:

Hold a public hearing and:

- A) Adopt an extension of the urgency ordinance to extend Ordinance No. 6354 to September 10, 2023 continuing the prohibition on larger-scale multi-tenant cannabis cultivation permits under the Cannabis Land Use Ordinance and allow current multi-tenant uses to continue as legal nonconforming uses.
- B) Approve the issuance of the report required under Government Code Section 65858(d) describing the measures taken to alleviate the condition which led to the adoption of Urgency Ordinance No. 6354.
- C) Approve up to \$200,000 use of General Fund Contingencies to refund multi-tenant cannabis cultivation non-renewal permit fees, if application is withdrawn within 30 days of adoption of this urgency ordinance.

(4/5<sup>th</sup> Vote Required)

### Executive Summary:

The proposed ordinance would extend the prohibition established by Urgency Ordinance No. 6354 on

ministerial review of new multi-tenant cannabis permit applications for larger-scale cultivation areas previously authorized under the Cannabis Land Use Ordinance, Sonoma County Code (SCC) Section 26-88-250 et seq. Under SCC Section 26-88-254(f)(2), 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.

Following an extension of the moratorium on larger-scale multi-tenant cannabis cultivation permits, 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. The urgency ordinance extends 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 date of the urgency moratorium ordinance effective date, which was 9/21/2021.

Current permit applicants for larger-scale multi-tenant operations will need to withdraw their ministerial permit applications and resubmit for use permits or reduce the scale of their multi-tenant proposals. There are 52 multi-tenant permit applications (non-renewal) in the system that will be impacted. Staff recommends using General Fund contingencies of up to \$200,000 to reimburse permit fees for non-renewal applicants that decide to withdraw their application from the Department of Agriculture/Weights & Measures.

In accordance with state law, the proposed extended urgency ordinance would be in effect for 22 months and 15 days from the date of adoption. During this time, staff intends to monitor the use of the multi-tenant provision and whether applicants apply for the small-scale multi-tenant permits. Prior to the end of the urgency ordinance term, ideally as part of the comprehensive Cannabis program update underway, staff will bring a permanent ordinance to make the revised multi-tenant provision permanent or remove it altogether.

#### **Discussion:**

On September 21, 2021, the Board adopted Urgency Ordinance No. 6354 establishing a prohibition on multi-tenant cannabis permits. The Ordinance suspended the provision that authorized the Agricultural Commissioner 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 multi-tenant 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.”*

The 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 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), which does not provide for public comment or administrative appeal.

**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                         |
| Commercial - Outdoor     |  |                     |                            |                            |                     |                             |
| 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                         |
| Commercial - Indoor      |  |                     |                            |                            |                     |                             |
| 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               | -                          | -                          | -                   | -                           |
| Commercial - Mixed-Light |  |                     |                            |                            |                     |                             |
| 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               | -                          | -                          | -                   | -                           |

Further, applicants meet the current standard for being "multi-tenant" if the companies did not share the same "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 entity were close family members. In staff's view, this standard is not effective at distinguishing truly multi-tenant operations that meet the Board of Supervisor's original intent to reduce barriers to enter the legal market for small farmers.

Under the Cannabis Ordinance's ministerial standards, certain reports like the biotic resources study and a hydrogeologic study must review cumulative impacts from other uses in the vicinity and may serve to address some of the environmental concerns raised by operations being in close proximity. Still, in some instances there may be the potential for impacts that are not studied or addressed through the ministerial review that zoning permits undergo.

Additionally, the State Department of Cannabis Control requires all operators to obtain state cannabis licenses, all of which require discretionary approval. While most single operations that 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 multi-tenant operations. Especially those that have several multi-tenant operations in close proximity.

### Multi-tenant Moratorium

Given the benefit of providing a ministerial pathway for smaller farmers organized as multi-tenant operators, staff identified the following policy options for the Board's consideration.

#### *Policy Options:*

- **Recommended:** continue moratorium to September 10, 2023 on larger-scale ministerial multi-tenant permits, while allowing smaller-scale multi-tenant uses that cumulatively do not exceed the cultivation area allowed under one ministerial permit.
- **Alternative A:** extend moratorium to September 10, 2023 on all multi-tenant cannabis cultivation permits.
- **Alternative B:** allow moratorium to expire, and continue issuing multi-tenant permits using current code provisions.

### Multi-tenant Issued Permits

Under the Cannabis Land Use Ordinance, ministerial zoning permits for cannabis cultivation expire one year after issuance, unless a complete application for renewal is submitted prior to the expiration date. Permittees with active permits for multi-tenant cultivation are authorized to continue operating under those permits until they expire. If a permittee submits an application for either a zoning permit or a use permit prior to their permit expiration date, then the active permit does not expire until there is a final determination on the new application or it is withdrawn. This is the case regardless of whether the applicant is applying to renew the exact same use or is applying to renew with modified or expanded uses.

There are currently 85 ministerial zoning permits issued for 20 different multi-tenant sites.

#### *Policy Options:*

- **Recommended:** Extend permit term for five years. The term for active multi-tenant permits would be extended to five years from the effective date of this urgency ordinance. The operations would be subject to a minimum of four inspections per year. Permittees will continue operations in compliance with their issued permits and the Cannabis Land Use Ordinance. At the end of the term, permittees could apply to renew their permits in accordance with the land use regulations in effect at that time.
- **Alternative A:** Remove permit expiration date. Current multi-tenant permits would not expire. The

operations would be a minimum of four inspections subject to a minimum of four inspections per year. All operations would need to comply with the issued cultivation permits and would be subject to the Cannabis Land Use Ordinance currently in effect, including that permits may be revoked for noncompliance. Additionally, if permittees ceased operating for one year the permit would expire and authority for the use would terminate.

- **Alternative B:** Require use permit application. In order to continue a large-scale multi-tenant operation, current multi-tenant permittees would need to apply for a use permit prior to expiration of their current permit. For those applicants that have already submitted ministerial renewal applications, they would be afforded 120 days from the effective date of the ordinance to submit a complete use permit application. Multi-tenant uses would be allowed to continue in accordance with their permits while pursuing the use permit.

### **Multi-Tenant Applicants**

In addition, there are currently 76 (both renewal and non-renewal) ministerial cannabis cultivation zoning permit applications in process with the Department of Agriculture/Weights & Measures and five ministerial cannabis cultivation zoning permit applications at Permit Sonoma (five 460-sqaure-foot indoor cultivation operations proposed within a single structure on a 13-acre agricultural parcel). All of these applications are for larger-scale multi-tenant uses that would be prohibited by the recommended moratorium policy option. Following extension of the moratorium, the applicants would either:

- A. Be required to modify their ministerial applications to fit within the newly prescribed limits; or
- B. Withdraw the ministerial permits and apply for a use permit. When applications are withdrawn, the Department refunds any unspent fees. However, in some cases, considerable fees have already been spent processing the applications and refunds may be minor. It is necessary to the health and safety of the community that cannabis cultivation applicants be encouraged to come into the permitting processing, even amidst a changing regulatory landscape. Thus, out of fairness to the applicants and to meet the social needs of the community in this effort to aid in the legalization of the cannabis industry, staff proposes refunding all permit fees, even those already spent on staff processing time, paid for multi-tenant permit applications that are no longer eligible for issuance.

### **Ordinance Term**

In accordance with state law, the proposed extended urgency ordinance would be in effect for 22 months and 15 days from the date of adoption. During this time, staff intends to monitor the use of the multi-tenant provision and whether applicants apply for the small-scale multi-tenant permits. Prior to the end of the urgency ordinance term, ideally as part of the comprehensive Cannabis program update underway, staff will bring a permanent ordinance to make the revised multi-tenant provision permanent or remove it altogether.

### **Prior Board Actions:**

September 21, 2021: Board of Supervisors adopts urgency ordinance no. 6354 prohibiting issuance of multi-

tenant cannabis cultivation permits for 45 days.

October 16, 2018: Board of Supervisors adopts modifications to Cannabis Land Use Ordinance (Ord. No. 6245).

December 20, 2016: Board of Supervisors adopts Cannabis Land Use Ordinance (Ord. No. 6189).

**FISCAL SUMMARY**

| <b>Expenditures</b>                | <b>FY 21-22<br/>Adopted</b> | <b>FY22-23<br/>Projected</b> | <b>FY 23-24<br/>Projected</b> |
|------------------------------------|-----------------------------|------------------------------|-------------------------------|
| Budgeted Expenses                  |                             |                              |                               |
| Additional Appropriation Requested | \$200,000                   |                              |                               |
| <b>Total Expenditures</b>          | <b>\$200,000</b>            |                              |                               |
| <b>Funding Sources</b>             |                             |                              |                               |
| General Fund/WA GF                 |                             |                              |                               |
| State/Federal                      |                             |                              |                               |
| Fees/Other                         |                             |                              |                               |
| Use of Fund Balance                |                             |                              |                               |
| Contingencies                      | \$200,000                   |                              |                               |
| <b>Total Sources</b>               | <b>\$200,000</b>            |                              |                               |

**Narrative Explanation of Fiscal Impacts:**

Budgetary adjustments will be incorporated into consolidated quarter two changes, if approved. There are 52 non-renewal multi-tenant ministerial permit applications in process. Ministerial permit application fees are approximately \$3,800 per application.

| <b>Staffing Impacts:</b>                       |  |                               |                               |
|--|--|-------------------------------|-------------------------------|
| <b>Position Title (Payroll Classification)</b> | <b>Monthly Salary Range<br/>(A-I Step)</b> | <b>Additions<br/>(Number)</b> | <b>Deletions<br/>(Number)</b> |
|  |  |                               |                               |
|  |  |                               |                               |
|  |  |                               |                               |

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

N/A

**Attachments:**

Draft Ordinance

Urgency Ordinance Report (Government Code Section 65858(d))

Ordinance to Establish a Temporary Moratorium on MultiTenant Cannabis Cultivation Permits (Ord. No. 6354)

Board Summary Report dated 09/21/2021

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

Cannabis Land Use Ordinance (Ord. No. 6245)