



Legislation Text

File #: 2021-0911, **Version:** 2

To: Board of Supervisors

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

Staff Name and Phone Number: Andrew Smith, 707-565-2371

Vote Requirement: 4/5th

Supervisory District(s): Countywide

Title:

1:30 P.M. Cannabis Ordinance Multi-Tenant Urgency Moratorium

Recommended Action:

Adopt an interim urgency ordinance establishing a moratorium on ministerial multi-tenant cannabis cultivation permits under the Cannabis Land Use Ordinance. (4/5th Vote Required)

Executive Summary:

The proposed urgency ordinance would prohibit ministerial review of multi-tenant cannabis permits authorized under the Cannabis Land Use Ordinance, Sonoma County Code (SCC) Section 26-88-250 et seq. Currently, 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) are authorized to issue multiple ministerial cannabis cultivation permits to different applicants co-locating on the same parcel. Following adoption of the urgency ordinance, new applicants looking to co-locate their commercial cultivation operations on a single parcel would need to apply for a conditional use permit to authorize the activity, just as a single applicant would require a conditional use permit for the same size grow. The proposed urgency ordinance extends the term of multi-tenant permits that would otherwise expire without an opportunity for renewal as a result of the moratorium. Staff will then evaluate potential policy options for current multi-tenant permittees and a recommendation will be presented on October 26, 2021, as a part of the Board's consideration to extend or not extend the moratorium.

Discussion:

At issue is a Cannabis Ordinance provision that authorizes 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"):

Multi-Tenant Operations. Multiple permits may be issued for multi-tenant operations on a single parcel provided that 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 is ministerial, each permit is approved if it meets the set standards in the Cannabis Ordinance and thus not reviewed under California Environmental Quality Act (CEQA). Additionally, the process 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	-	-	-	-

Applicants meet the current standard for being “multi-tenant” if the companies do not share a “cannabis business owner” (SCC Sec. 26-04-020) and if the applicants are not close family members, or if the applicants are entities then no cannabis business owners of the entity may be close family members. In staff’s view, the current standards do not appear effective at distinguishing truly multi-tenant operations that meet the Board of Supervisor’s original intent to include a multi-tenant provision that would allow for reducing barriers to

enter the legal market for small farmers.

In several instances the same multi-tenant applicants apply for ministerial zoning permits together on three or four separate, but sometimes contiguous, parcels. As a result, there may be three or four acres of cannabis that are subject to ministerial review instead of discretionary review.

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.

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 for are found to be exempt from CEQA by the State, it is likely that the State will require environmental review for many multi-tenant operations and especially those that have several multi-tenant operations in close proximity. This means that while multi-tenant applicants may receive streamlined ministerial permits from the County, they may still need to undergo full environmental review with the State. Due to staffing, expertise, and location, it is preferable from the State's and applicants' perspectives that this environmental review be done at the local level instead of by the State. For discretionary permits, once the County has completed environmental review, the State generally must rely on that environmental review for issuance of a state cannabis license.

Current Multi-tenant Operations

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. In addition, there are currently 61 cultivation ministerial zoning permit applications in process with the Department of Agriculture/Weights & Measures.

Staff recommends the multi-tenant ministerial zoning permit moratorium in order to allow time for staff to review issued permits and upcoming renewals. Staff will develop recommendations to address how those uses may renew under a use permit as part of the analysis for the Board to consider an extension on the moratorium.

Ordinance Term and Extensions

In accordance with state law, the initial term of this urgency interim ordinance is a maximum of 45 days. If your Board desires, it may on a 4/5 vote subsequently extend the ordinance for up to 22 months and 15 days. If the Board adopts the urgency ordinance today, staff will return on October 26, 2021 for the Board to consider an extension and provide processing recommendations for current multi-tenant permittees.

Prior Board Actions:

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

Expenditures	FY 21-22 Adopted	FY22-23 Projected	FY 23-24 Projected
Budgeted Expenses			
Additional Appropriation Requested			
Total Expenditures			
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance			
Contingencies			
Total Sources			

Narrative Explanation of Fiscal Impacts:

N/A

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Interim Urgency Ordinance

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

Cannabis Land Use Ordinance (Ord. No. 6245)