



Legislation Text

File #: 2022-0147, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): Permit Sonoma

Staff Name and Phone Number: Crystal Acker and Scott Orr, (707) 565-1754

Vote Requirement: Informational Only

Supervisorial District(s): Countywide

Title:

Comprehensive Cannabis Program Update - Cannabis Land Use Ordinance Framework: Project File No. ORD21-0004

Recommended Action:

Adopt a Resolution of Intention and Cannabis Program Update Framework to direct and guide staff in its preparation of a draft ordinance, potential General Plan Amendments, and a Programmatic Environmental Impact Report to amend the Cannabis Land Use Ordinance and related regulations.

Executive Summary:

On June 8, 2021, the Board directed staff to complete a comprehensive update of the cannabis program, based on community input and an Environmental Impact Report (EIR) to comply with the California Environmental Quality Act (CEQA), and approved an initial resource request for staffing to support the effort. On September 28, 2021, the Board received a report summarizing results of community engagement conducted in August and early September 2021, and provided direction to staff on overall goals and policy options for updating the Cannabis Ordinance and associated EIR. The Board was also presented a tentative timeline, which included completion of a draft ordinance framework outlining all potential program elements to consider in the EIR for the new program.

Staff are seeking direction through a Resolution of Intention to adopt the proposed Cannabis Program Update Framework (Framework). The Framework will guide development of the project description, CEQA alternatives, and draft ordinance. The scope of the EIR and details on the proposed ordinance will be developed in later phases.

Discussion:

LEGISLATIVE BACKGROUND SUMMARY

State

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

the two laws into the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), creating the state cannabis regulatory structure. On July 12, 2021, the state passed Assembly Bill 141, which made changes to MAUCRSA, and created the Department of Cannabis Control (DCC) by consolidating three former state cannabis agencies and transferred all state authority for regulation, licensing, and inspection of cannabis activity in California to the DCC.

Local

Sonoma County first started regulating the cannabis industry with the original dispensary ordinance (Ord. No. 5715) adopted March 20, 2007, and amended on February 7, 2012, to impose a cap of nine dispensaries in the unincorporated County (Ord. No. 5967).

The first comprehensive Cannabis Land Use Ordinance (Ord. No. 6189) was adopted under a Negative Declaration on December 20, 2016, amending Chapter 26 of the Zoning Code to include new definitions and establish special use regulations to allow commercial (and personal) medical cannabis cultivation, and commercial supply chain land uses in various zoning districts.

In April 2017, a multi-department cannabis program was established to implement the ordinances adopted by the Board in December 2016.

On April 10, 2018, the Board conducted a Cannabis Ordinance Study Session and adopted a Resolution of Intent to update the existing Cannabis Ordinance. The update effort was split into two phases. Phase 1 had a limited scope focused on bringing forward amendments that could be developed quickly and brought back to the Board in the next 150 days, including options to increase neighborhood compatibility and to allow adult use by removing the word “medical” from the existing ordinance. Phase II had a larger scope requiring additional analysis, including alignment with state regulations (i.e. adding new license types, updating definitions and reviewing cultivation criteria), and adjustments to ordinances to enhance compatibility and other implementation efforts that would require robust outreach and staff analysis.

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 in addition to medical use, enhance neighborhood compatibility with a 10-acre minimum parcel size for cultivation, add new definitions, and make minor non-substantive amendments to harmonize with California state law and regulations, where appropriate.

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.

On May 18, 2021, the Board voted 5-0 to reject the Planning Commission's recommendation to adopt a Mitigated Negative Declaration and a new chapter 38 to increase ministerial permitting for cannabis cultivation within Agricultural and Resource zoned parcels. The Board, instead, directed staff to bring forth a timeline and resources plan necessary to undertake a comprehensive update of the cannabis program, including an update to the County Code and preparation of an Environmental Impact Report, as expeditiously as possible. Additionally, the Board wanted staff to expedite resolution of permits that have been in process since program adoption. See Temporary Permitting Capacity Increase section at the end of this report for the latest status update.

On June 8, 2021, the Board approved an initial request for resources to launch the first phase of a Comprehensive Cannabis Program Update, consisting of community engagement to inform the Board's Policy Goals, and gave additional direction on an overall project timeline.

On September 21, 2021, the Board adopted an Ordinance No. 6354 to establish a temporary (45-day) moratorium on multi-tenant cannabis cultivation permits.

On September 28, 2021, the Board received a report summarizing results of community engagement conducted in August and early September, 2021, and provided direction to staff on overall goals and policy options for updating the Cannabis Ordinance and associated EIR. The Board was also presented a tentative timeline, which included completion of a draft ordinance framework outlining all potential program elements to consider in the EIR for the new program. Today's discussion includes a request that the Board adopt a Resolution of Intention and Cannabis Program Update Framework to direct and guide staff in its preparation of a draft ordinance, potential General Plan Amendments, and a Programmatic Environmental Impact Report to amend the Cannabis Land Use Ordinance and related regulations

On October 26, 2021, the Board adopted Ordinance No. 6356 to extend Ordinance No. 6354 and amend the cannabis ordinance to prohibit large-scale multi-tenant cannabis cultivation permits, such that multiple zoning permits may only be issued on a single parcel if the aggregate cultivation area does not require a use permit. The ordinance will remain in effect for a period of 22 months and 15 days from the date of adoption, unless earlier repealed by the Board.

Penalty Relief Program

The original Cannabis Land Use Ordinance established a transition period for those cannabis businesses currently operating under the cooperative/collective model to continue operating while coming into compliance with new local permitting requirements. Regulations for the Temporary Code Enforcement Penalty Relief Program were established by Resolution 17-0233 on May 23, 2017. On September 12, 2017, Resolution 17-0319 was adopted to require an application for the Penalty Relief Program by October 31, 2017, after which new applications would not be accepted, and to extend the deadline for submittal of complete land use

applications until June 1, 2018. For additional information on processing of permit applications operating under Penalty Relief, see the Temporary Permitting Capacity Increase section at the end of this report.

DRAFT FRAMEWORK FOR BOARD ADOPTION

At the conclusion of the September 28, 2021, Board meeting discussion, staff had received general direction on policy options and overall goals of the Board for the future cannabis program. Staff took that direction, fleshed out some of the components, and organized it into an outline, or framework, to guide the projected path forward. That proposed Framework (Exhibit A) is intended to ensure consistency with the goals and objectives of the Board, to provide transparency to the public on what will be considered during development of the draft ordinance, and to function as a preliminary scope of work for potential consultants to inform their competitive proposals for the programmatic EIR. The Framework is neither intended to represent every aspect of the new ordinance nor every factor to be evaluated in the EIR, but is intended to be a concise set of guiding principles to direct policy development. The ultimate ordinance amendment(s) may replace, expand on, or eliminate existing provisions in the current cannabis ordinance.

The proposed Framework consists of 16 guiding principles or tenets (see Exhibit A for full list). Some tenets, such as Tenet 1 (Amend the Zoning Ordinance) or Tenet 2 (Transparency) are not anticipated to require further discussion to convey the intent or how the tenet would be implemented. Whereas, other tenets, such as Tenet 3 (Community Engagement) are anticipated to merit discussion due to public interest and multiple ways implementation could occur. Therefore, discussion of selected key tenets of the framework is provided below.

3. Community Engagement. Staff will continue public engagement and community input throughout the ordinance update process. Outreach strategy will focus on meeting with interest groups, including targeted engagement of Spanish-speaking communities. All outreach meetings held online (i.e., via the Zoom platform) will be made available for public viewing on the project webpage (<https://sonomacounty.ca.gov/Cannabis/Comprehensive-Cannabis-Program-Update-and-Environmental-Impact-Report>).

Staff are not recommending formation of a new community advisory group, such as was done previously with the Cannabis Advisory Group (CAG). Through that prior effort, it was found that the many disparate interests of members were difficult to represent, and that, overall, the group was not able to reach a consensus on most issues to help inform policy decisions. Still, the group provided numerous well-informed recommendations that remain highly relevant to this Cannabis Program Update and so staff will review previous [CAG reports and recommendations](https://sonomacounty.ca.gov/Cannabis/Legislative-Updates/Committees/) to help inform ordinance development.

4. Allowed Activities. Staff will evaluate all activities currently allowed under all state license types offered by the California Department of Cannabis Control, and will also consider any new activities likely to be allowed in the future, if such activities are identified and feasible to evaluate without significantly delaying the process. It is important to note, that evaluation of an activity does not mean it will ultimately be allowed under the draft

ordinance.

A list of current state license types and the activities they allow is provided here:

[<https://cannabis.ca.gov/applicants/license-types/>](https://cannabis.ca.gov/applicants/license-types/).

Staff will also evaluate all General Plan Land Use categories and corresponding Zoning Districts to determine which designations and zones are suitable for which activities. The draft cannabis land use ordinance will clearly define allowed and excluded activities per Zoning District.

- a. Activities which are allowed by right.
- b. Activities which are allowed by right, but require a business license.
- c. Activities which are allowed by ministerial permit.
- d. Activities which are allowed by discretionary permit.
- e. Activities which are excluded.

5. General Plan Amendment. Staff will consider whether one or more General Plan Amendments are necessary to maintain the required consistency between the ordinance and the General Plan. Among other potential amendments, staff will evaluate whether to include cannabis within the meaning of “agriculture” and “agricultural use” as used in the Sonoma County General Plan.

The General Plan identifies preservation of agricultural land for agricultural uses as the primary goal for the three agricultural land use categories: Land Intensive Agriculture, Land Extensive Agriculture, and Diverse Agriculture. To support that goal, the General Plan includes many policies to protect and enhance agricultural lands and to encourage land uses related to agricultural production, agricultural support, and visitor-serving uses that promote agriculture.

As part of the ordinance update, staff will be evaluating General Plan Land Use categories to determine which designations are suitable for which cannabis activities. If agricultural lands are determined to be suitable to support cannabis operations such that the new ordinance proposes to expand allowed activities on agricultural lands over what the current ordinance allows, it could create an inconsistency with the general plan if those uses were not considered to be agricultural uses.

Classifying cannabis under the umbrella of agriculture does not indicate that it could then be planted on all agricultural lands with no regulation or restriction. The new ordinance can, and likely will, establish limits on what is allowed, as the current zoning code does for some agricultural land uses, like agricultural support services (limits employee number) and confined animal keeping (establishes setbacks from nonagricultural land uses). The intent of considering a General Plan Amendment to classify cannabis as agriculture is to ensure the new ordinance is consistent with the general plan, should the new ordinance expand allowed cannabis activities on agricultural lands.

7. Neighborhood Analyses. Staff will evaluate options to increase compatibility between cannabis land uses and the neighborhoods they are located within or near. The following polices will be developed and informed

by data, factual analyses, and results from the programmatic EIR:

- a. Neighborhood separation criteria intended to ensure sufficient separation of a cannabis operation from a residential type neighborhood will consider, at minimum, odor, groundwater, visual, safety (including road access and wildfire), and noise impacts.
- b. Criteria to determine what constitutes a “rural neighborhood enclave” will be developed and will consider, at minimum, residential density and community character. If designated rural neighborhood enclaves are adopted, the cannabis land use ordinance will include maps of all such enclaves.
- c. Criteria to establish Exclusion Zones will consider, at minimum, groundwater availability, topography, infrastructure (e.g., road access, lack of electrical/other utilities), safety concerns (including wildfire risk and emergency response times), and biological habitat protection. If designated Exclusion Zones are adopted, the cannabis land use ordinance will include Exclusion Zone maps.

8. Permit Streamlining. Staff will evaluate options to streamline cannabis permitting. The following polices will be developed and informed by data, factual analyses, and results from the programmatic EIR:

- a. Site development and operating standards for ministerial permits will be developed and clearly defined;
- b. Criteria to establish Inclusion Zones will consider, at minimum, groundwater availability, infrastructure (e.g., road access, availability of electrical/public water/sewer/ stormwater facilities), safety concerns (including wildfire risk and emergency response times), biological habitat protection, and proximity/density of sensitive uses. If designated Inclusion Zones are adopted, the cannabis land use ordinance will include Inclusion Zone maps and clearly defined requirements and processes for permits within Inclusion Zones; and
- c. Other permit streamlining options will be explored, such as development of a CEQA streamlining checklist for discretionary permits. The checklist would outline the scope of what was already studied under the programmatic EIR, so that applications which meet the checklist could be approved without additional project-specific environmental review or with only minimal additional environmental review.

10. Environmental Analysis. The programmatic EIR for the cannabis land use ordinance will evaluate all environmental impact categories from the CEQA Guidelines: Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Energy, Geology/Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology/Water Quality, Land Use/Planning, Mineral Resources, Noise, Population/ Housing, Public Services, Recreation, Transportation, Tribal Cultural Resources, Utilities/Service Systems, Wildfire, and cumulative impacts. The following key issues will be specifically considered:

- a. Aesthetics analysis will consider, at minimum, fencing, lighting, stockpiles of equipment used in outdoor cultivation operations such as containers and growth media, temporary hoop houses, and permanent structural development;
- b. Agriculture analysis will consider, at minimum, compatibility of cannabis operations with traditional agriculture and potential conversion of agricultural lands to non-agricultural uses;
- c. Air quality analysis will consider potential impacts from cannabis odors;

- d. Biological resources analysis will consider, at minimum, potential impacts to special status species, Critical Habitat, and to regionally-sensitive and locally-important watersheds, including fish-bearing streams, riparian habitat, the Laguna de Santa Rosa, and other wetland areas;
- e. Energy analysis will consider, at minimum, potential impacts from indoor and mixed light cultivation activities;
- f. Hydrology analysis will consider, at minimum, potential impacts from groundwater overdraft, well interference, streamflow depletion, and water quality related to cannabis water use and agricultural chemical use, and will consider current drought conditions and future drought scenarios;
- g. Noise analysis will consider, at minimum, potential impacts related to emergency generator use, air filtration and ventilation equipment, transportation noise, activities associated with cannabis tourism, and special events;
- h. Utilities/Service Systems analysis shall consider, at minimum, potential impacts related to cultivation waste products, including hoop house membrane materials, growth media and containers, and green waste.
- i. Wildfire analysis will consider, at minimum, potential impacts related to road access (i.e., physical road condition and configuration to support concurrent emergency access by first responders and evacuation by residents), wildfire risk (i.e., site characteristics which influence fire likelihood and fire behavior), emergency response times, and availability of water for fire-fighting purposes; and
- j. Cumulative analysis will consider, at minimum, potential impacts related to multiple cannabis operations in specific geographical areas (i.e., over-concentration).

The key issues above (a. through i.) are called out to assure their specific inclusion in the environmental analysis, as potential impacts like temporary hoop houses and plant odors might not be automatically considered by EIR consultants; whereas, cultural resources and transportation analysis sections (for example) would look at standard ground-disturbing and vehicle use impacts which are similarly considered between all types of projects, and so are not highlighted in the Framework.

12. Equity. Staff acknowledge that certain communities within the county have been substantially and adversely affected by poverty and the criminalization of cannabis, and further, that the greatest disparities occur along racial and socio-economic lines. Therefore, the cannabis land use ordinance, consistent with Strategic Plan Racial Equity and Social Justice Pillar - Goal 3| Ensure racial equity throughout all County policy decisions and service delivery, will consider socio-economic equity throughout all policy decisions.

14. Jurisdictional Comparison. Staff have begun and will continue to conduct a comprehensive review of other county and city cannabis ordinances and programs to identify regulations and management practices from other agencies which might be appropriate to incorporate into the draft cannabis ordinance. Jurisdictions currently identified for review include: Mendocino County, Monterey County, Santa Barbara County, Santa Cruz County, and Yolo County.

16. Economic Analysis. While an EIR does not require an economic analysis, staff recommend conducting one concurrent with the programmatic EIR, as an economic analysis could help inform relevant policy decisions. For example, CEQA requires that all feasible mitigation measures be adopted. A measure could be infeasible based on economic implications; however, such a finding would need to be supported by substantial evidence, which would most reliably be in the form of an economic analysis. The analysis could include, but would not be limited to: evaluation of cannabis tax collection revenue and method(s); staffing costs to implement the program, including permitting, compliance inspection, and code enforcement; permit and inspection fees and other applicant costs to obtain permits and run permitted operations; and civil penalties.

If the Board does not wish to pursue an economic analysis, the Framework will be adopted without this tenet. If this tenet is adopted with the Framework, the economic analysis scope would be added to the EIR consultant selection process.

PROJECT TIMELINE

The following overall timeline was first presented to the Board on June 8, 2021, but has been expanded and updated to represent a more detailed description of remaining tasks and a more accurate tentative schedule to completion.

Develop Draft Ordinance Framework - October 2021 through March 15, 2022

- Complete a draft ordinance framework including all potential program elements to consider in the EIR for the new program
- March 15, 2022 - Present draft framework to the Board

Develop and Refine Draft Ordinance - March 2022 through August 2022

- March 2022 - Initiate Competitive Request for Proposal (RFP) Process for an EIR Consultant
- Continue public outreach to develop and refine potential program elements, listen to concerns, and develop options to address concerns
- August, 2022 - Preliminary draft ordinance, and any general plan amendments needed for consistency, complete for environmental analysis

Environmental Impact Report - September 2022 through Fall 2023

- September 2022 - Board consideration of EIR Professional Services Agreement Board Award
- September 2022 - Notice of Preparation published for the Draft EIR to kick off the EIR scoping effort
- October 2022 - Public scoping meeting(s)
- Seek public input on what Potential Environmental Impacts should be considered in the EIR
- Conduct environmental analysis of the proposed draft ordinance
- Provide public access to technical studies and map products used in the environmental analysis, as available

- Provide regular public status updates on the project webpage throughout the EIR process
- Fall 2023 - Draft EIR Published for Public Comment

Draft Ordinance and EIR Approval - Fall 2023 through Summer 2024

- Fall 2023 Draft EIR to Planning Commission for public comment
- Revisions to draft ordinance based on public comment and Planning Commission direction
- Spring 2024 Planning Commission Hearing on Proposed Ordinance
- Summer 2024 Board Hearing on Proposed Ordinance

RESOURCES NEED

Cannabis Ordinance Update

On June 8, 2021, staff estimated that a comprehensive ordinance update and EIR would likely require full time services of a supervising planner, staff planner, clerical support staff, community engagement specialist, and GIS Technician. On June 8, 2021, the Board approved funding for a supervising planner and a clerical position. On November 16, 2021, funding for a staff planner was approved during the Fiscal Year 2021-22 First Quarter Consolidated Budget Adjustments. The approved ordinance planner position has not yet been filled as Permit Sonoma has been experiencing a significant staffing deficit over the past year due to loss of existing planning staff and has not been able to hire replacement staff due to a lack of suitable candidates. A new staffing recruitment was initiated in January 2022 to fill existing vacancies and newly created cannabis positions (including the ordinance planner and additional staff to be supported by a state grant, described below), the goal being to fill all positions by the end of March 2022.

Staff will return to the Board in September 2022 with a detailed cost and an EIR consultant professional services agreement.

Temporary Permitting Capacity Increase

Much concern has been expressed, from the public and from the Board, regarding the existing permit application backlog, especially related to applications operating under the Penalty Relief Program, and that policy options should be provided to facilitate processing of this backlog to decision. The comprehensive ordinance update is too long-term (tentative completion fall 2024) to assist with expediting applications currently in the pipeline; however, staff do recognize the need to address the current permit backlog.

Although not part of the ordinance update, CAO and Permit Sonoma staff have applied for and secured for the county a \$1,158,023 Local Jurisdiction Grant from the state Department of Cannabis Control to increase internal capacity to speed up permit processing and resolve the backlog of existing cannabis use permit applications. To support this work effort, Permit Sonoma is requesting three time-limited positions, effective March 1, 2022, and terminating June 30, 2024, including two full time planners and one full time clerical support staff. The proposed time-limited positions would be dedicated to the cannabis program, with primary

focus on processing the remaining 47 Penalty Relief Program land use permit applications within the next 2.5 years (application number at the time of publication). A time-limited in-house staffing increase dedicated to cannabis applications will focus work efforts on the backlog of applications. This staffing request was considered by the Board as a separate item on [March 1, 2022 <https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=5461694&GUID=ACE110B7-59C5-4C43-BD3D-7FAFDE8D8077&Options=&Search=>](https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=5461694&GUID=ACE110B7-59C5-4C43-BD3D-7FAFDE8D8077&Options=&Search=>). The goal is for these term-limited positions to also be filled by the end of March 2022.

CONTINUATION OF PERMITTING

The existing cannabis land use ordinance will continue to apply until or unless amended or repealed by the Board of Supervisors. Existing permit applications and new applications submitted during the ordinance update process will be processed under the current ordinance.

Strategic Plan:

N/A

Prior Board Actions:

For a list of prior Board actions related to the full legislative history of the County's cannabis land use ordinance, see Attachment 2. Actions listed below are directly related to the current comprehensive cannabis program update.

[May 18, 2021 <https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=4980692&GUID=5660F6FA-D82C-4CDE-A2CD-4A13DD10D20B>](https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=4980692&GUID=5660F6FA-D82C-4CDE-A2CD-4A13DD10D20B): The Board of Supervisors voted 5-0 to:

1. Accept the Planning Commission's recommendation and disapprove the proposed general plan amendment;
2. Disapprove the Planning Commission's recommendation and do not adopt the SMND;
3. Disapprove the Planning Commission's recommendation and do not adopt the Ordinance Adding Chapter 38 to the Sonoma County Code to Expand Ministerial Cannabis Cultivation Permitting in the Agricultural and Resource Zones and Amending Chapter 26 to Expand Cannabis Cultivation Use Permits and Align with Chapter 38; And, that the Board of Supervisors directs staff to schedule a future public workshop, and take other necessary steps, to discuss and develop proposed revisions to the Cannabis Land Use Ordinance (Sonoma County Code Section 26-88-250 et seq.) that are to be studied under an environmental impact report.

[June 8, 2021 <https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=4969677&GUID=1D8008A1-D8F2-4D66-B35D-4E9382722B18>](https://sonoma-county.legistar.com/LegislationDetail.aspx?ID=4969677&GUID=1D8008A1-D8F2-4D66-B35D-4E9382722B18): The Board of Supervisors approved an initial resource request to launch the Cannabis Program Update and associated Environmental Impact Report.

FISCAL SUMMARY

N/A

Narrative Explanation of Fiscal Impacts:

N/A

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

Att 1. ORD21-0004 Draft Resolution of Intention

Att 1-A. ORD21-0004 Proposed Cannabis Program Update Framework

Att 2. List of Prior Board Actions Related to the Cannabis Land Use Ordinance

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

N/A