

**Sonoma County Cannabis Ad Hoc Committee
Cannabis Advisory Group
Sub-Committee: Inclusion & Exclusion Zones**

February 28, 2018 Update

Discussion: On December 6, 2016 the Planning Resource and Management Division (PRMD) of Sonoma County and the Planning Commission made recommendations to the Board of Supervisors (BOS) on adopting a Medical Cannabis Ordinance. The PRMD and Planning Commission recommendation was made to provide a pathway for LIA, LEA DA, RRD, RR and AR zones to be included in the medical cannabis land use ordinance (see attachment A). In open meetings, the BOS on December 6 discussed, and on December 13 voted, to remove RR and AR zones from consideration following considerable public comment. The ordinance was adopted upon second reading at the BOS meeting the following week on December 20, 2016.

The discussion of cultivation in RR and AR by the BOS in these meetings focused on the trade-off between including as many small growers as possible under the umbrella of the regulations and minimizing the impacts of commercial cultivation on non-growers in rural residential neighborhoods. The decision to eliminate RR and AR from commercial cultivation effectively preserved the residential, non-commercial character of land zoned as residential, but did not address the residential neighborhood enclaves in other land zones such as Diverse Ag. The choice to eliminate RR and AR from commercial cultivation also served to marginalize potentially thousands of Sonoma County resident/growers who lived and cultivated in RR and AR areas. It is likely that many of these growers will choose to continue their operations in RR/AR, and will sell their product into the black market. An additional effect of this decision has been to cause congestion in the limited legal cultivation zones (DA especially) with newly displaced cultivators seeking to earn a place in the booming California market.

The policies and regulatory framework that were developed by the County to implement this new plan and oversee a new industry were completed with the anticipation that the industry would bring in significant tax and permit dollars from applicants. However, with the exclusion of RR and AR zones that previously housed many craft cultivators, a significant number of local growers found themselves unable to join the new regulated market. Those that found investors or managed to have millions saved to purchase a property in a designated zone often found themselves no longer owners of their own family business, but instead were forced to give up majority ownership to investors in order to be able to afford new property. This choice of land use by the BOS has created the opportunity for larger, better funded operations to come in and dominate the local landscape. Most smaller craft cultivators lacked the resources to buy coveted Sonoma County rural land and found themselves being left behind. Cannabis is a cash industry, and cultivators are not eligible for federal loans to kick start a new business.

The county ordinance has had significant impacts on property owners in legal cultivation zones like Diverse Agriculture (DA). Some owners have been happy to watch their property values increase significantly with the newly adopted ordinance, while others who valued the simplicity

and privacy of their rural existence have become unhappy with new commercially minded neighbors and new traffic. Some of the new neighbors have been friendly and responsible, while others not so. Seeing the influx of new businesses and having been exposed to irresponsible operations, some neighborhood groups have rallied to try to create exclusion zones. There is a perception amongst some neighborhood groups that enforcement of non-compliant operations has been ineffective. This has led to resistance against all operators, both compliant and non-compliant. The new operators desiring to work within the regulations find themselves at odds in their new neighborhoods despite their best efforts to comply. The revival of young farmers wanting to engage in the agricultural industry of Sonoma County is supported by the more lucrative cannabis and grape crops. Providing opportunity for farmers to preserve our ag land, amidst skyrocketing land prices.

Cannabis cultivation, like (but more so than most) other agricultural endeavors, brings with it a number of externalities that impact those living near the cultivation. The Sonoma County cannabis ordinance and permitting process requires an applicant to submit cultural resource use plans in an attempt to address and mitigate those externalities. With development at the proper scale for specific sites, it is generally agreed that many of the externalities can in fact be mitigated by following cultivation best practices and site-specific management plans. In these plans, issues like odor control (indoor), traffic mitigation, light pollution prevention, and water use can be directly assessed and addressed. However, neighbors of cultivation operations continue to be concerned about their visual, commercial, olfactory, and especially crime-related impacts. Despite the fact that fences and security plans are requirements applicants must meet to be eligible to cultivate cannabis, neighbors find that tall fences and security cameras, especially around the perimeter of smaller properties, detract from the openness and serenity of their neighborhoods, and that the seasonal odor of outdoor crops is still objectionable.

While some community members are comfortable with vineyards and other commercial crops in their neighborhoods others feel that allowing cannabis operations in a rural neighborhood creates conflicts by bringing in owners whose first priorities are not to create harmonious places to live, but instead are to make use of their land to earn a living. However others acknowledge that Zones like AR (Agricultural Residential) or AS (Agricultural Services) have historically been setup to permit such land preserving endeavors. One of the most important issues neighbors are concerned about is the cash nature of the cannabis crop, along with the inability to use banking, which in the black market leaves large amounts of high value cannabis and cash as potential targets for thieves. However, the new regulations mitigate these issues with the demand for a third-party distributor to handle the sale of the crop, keeping cash transactions separate from the cultivation site. The past several years in Sonoma County have shown how black-market cultivation sites have been the targets of home invasions and violent crime. While these were not sites that had been through the permitting process, they were locations that had (or were thought by the perpetrators to have) cash and cannabis on hand. These marginalized community members may have been able to prevent such tragedies if they were protected by a well-regulated market.

So this leaves a situation in the Sonoma County cannabis scene with two sides with conflicting priorities. Up to now, the industry had developed with many growers cultivating cannabis on small lots in residential areas, many of them supporting families by selling their product to local dispensaries. Creating a pathway for these growers to participate in the newly regulated market using the land that they already own is one of the two priorities. This would increase the diversity and health of the legal cannabis industry in Sonoma County while also increasing the tax base. The second priority is that of existing homeowners who live in rural neighborhoods. They wish to maintain the residential character of their neighborhoods and avoid the impacts and potential conflicts from commercial operations moving into otherwise residential areas.

Potential Solution Ideas

1. One potential solution to the overcrowding and subsequent problems in newly zoned areas is to reconsider allowing cannabis cultivation in RR and AR zones with minor use permits, uphold the initial recommendation by the Planning Commission and PRMD at the December 6, 2016 BOS meeting. This would decongest the zones now impacted by new cannabis cultivators and help the craft cultivators who have been producing their products from their homes. This would undo the fiscal and social impact that the original decision had on these cultivators and restore the balance of medical cannabis craft cultivators and the current housing crisis. This idea, however, is contrary to the BOS decision in 2016 and does not strictly fall within the bounds of Inclusion/Exclusion Zones.
2. Another potential solution to the mom and pop growers' priority would be to offer cultivation permits to growers in RR/AR who could prove that they have been living in their location for at least 5 years, and who have written agreement from nearby neighbors. This would allow long term cultivators who are readily accepted by neighbors a chance to continue their current cultivation practices, while not bringing in new "business-first" growers into neighborhoods.
3. A solution to the neighborhood priority of maintaining residential character might be to allow inclusion zones in RR/AR areas that are not currently being used residentially, while creating exclusion zones in DA areas that have small parcels and are currently being used residentially. This solution acknowledges the current mismatch between current zoning and actual land use in Sonoma County. It would likely result in less land available for small cultivators, however.

Some residents consider cannabis an unsavory crop largely because of the lack of understanding by the public of how stringent the regulated market really is and how most of the issues neighbors have had, are a direct result of an unregulated market. While the cannabis plant itself is safe to grow, the public policies surrounding the crop have historically put the cannabis cultivator and his or her community in jeopardy and have generated a public trust

deficit. DEA Chief Administrative Law Judge, Francis Young, in response to a petition to reschedule cannabis under federal law concluded in 1988 that, "In strict medical terms marijuana is far safer than many foods we commonly consume.... Marijuana in its natural form is one of the safest therapeutically active substances known to man. By any measure of rational analysis marijuana can be safely used within the supervised routine of medical care."

These and potentially other alternative solutions will be further discussed and fleshed out with detailed criteria in sub-group meetings over the next month. Most likely a list of alternative sets of criteria will finally be submitted to the CAG for consideration before the summer.