

Cultivation Subgroup Report

The Cultivation Subgroup has been tasked with comparing the current county ordinance with the newly released state regulations to determine the differences and make recommendations on how the county can best align with the state in order to allow Sonoma County cultivators the best opportunities for viable businesses in the regulated marketplace.

Current Findings:

1. Sonoma County begin developing cannabis policy in 2016 based on MMRSA passed in November of 2015. The Sonoma County Board of Supervisors adopted the Cannabis Ordinance for Land Use, Medical Cannabis Health Ordinance, and Cannabis Business Tax Ordinance in December 2016.
2. California released passed further legislation in 2016 to establish Medical Cannabis Regulation and Safety Act (MCRSA).
3. Citizens of California passed Prop 64 to include Adult Use cannabis marketplace, of which Sonoma County voted 59% in favor.
4. California released the Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) on November 16, 2017.
5. On November 16th, 2017 the State of California released emergency regulations issued by the CA Bureau of Cannabis Control, CA Dept of Public Health and CA Dept of Food and Agriculture.
6. Additional guidance has been provided throughout 2017 by CA Dept Fish and Wildlife, CA State Water Board, CA Dept of Pesticides, CA Dept of Taxes and Fees Administration.
7. **Sonoma County's Ordinance 6189 is severely outdated and does not align with the new state regulations that took effect January 1, 2018.**

Recommendations:

This CAG Subgroup recommends immediate action on the following priority points to bring Sonoma County in line with the state and to help ensure the success of operators. It is essential Sonoma County take cues from the state in order for operators to succeed as they transition into the regulated marketplace. Discrepancies between the local and state regulations produce barriers to operators entering the regulated marketplace.

Immediate Priorities

1. **General Provisions and Definitions:** It is essential for operators to have clarity of definitions between state and local regulations. Operators are at a serious disadvantage to statewide competition and will bankrupt before they can pay fall taxes due to Sonoma County's outdated definitions placing excessive burden on operators. The following definitions need to be added or updated in order to match the state emergency regulations: "cannabis", "premise" "batch" or "harvest batch", "canopy", "dried flower", "flowering", "immature plant" or "immature", and "mature plant". Many of these definitions are essential for Sonoma County Operators to align the way square footage is measured by the state, specifically cultivation area vs. canopy.

See Definitions PDF: Attached.

RECOMMENDATION: Reconcile the differences in defined language between Sonoma County and MAUCRSA to ensure maximum compatibility between the local permits and state licensing programs for businesses. These definitions must be drafted in this spring and prepared for final draft after the permanent state regulations are released in July.

2. *Sonoma County's Definition of Cultivation Area vs State's Definition of Canopy:*

STATE: Defines "canopy" and allows for a license type with a certain square footage that includes mature, flowering plants only.

COUNTY: Defines "cultivation area" and allows for a maximum cultivation building footprint of a certain square footage based on the permit type, including the spaces in between plants and immature plants.

RECOMMENDATION: This subgroup recommends the local ordinance must align with the State with respect to immature plants not counting towards cultivation square footage and not restricting the permit type by building footprint and instead mature plant canopy only. By not counting immature plants in the total canopy square footage, we will allow our local cultivators to stand on equal footing with the other farmers in the state, rather than at a further economic disadvantage. This would not apply to nursery licenses, but only for flowering commercial cultivation sites.

3. *Set Backs:*

STATE: In section § 8102. Annual License Application Requirements, the state requires that a proposed location site be at least a 600 foot radius from a school providing instruction in kindergarten or any grades 1-12, day care, or youth center.

COUNTY: Currently, the County requires a proposed location site for outdoor and greenhouse cultivation be at least a 1000 foot radius from schools and parks. The County also requires 100 foot setback from property lines and a 300 foot setback from occupied residence and businesses on surrounding properties for these same operations.

RECOMMENDATION #1: Given the extreme shortage of qualified properties due to zoning restrictions and rising neighborhood concerns, we would like to recommend the County to take setbacks on a case by case basis.

(EX: 40+ acre parcel located next to a small park, by current ordinance this parcel is in-eligible, however the actual garden would be located acres away from this property line shared with the park and therefore it should be considered acceptable since the cannabis project is well over 1,000ft from the park)

(EX: A concerned neighbor feels like the garden is too close to their residences.. the operators can shift the garden in another direction that puts it within 100ft of another property line but that owner is OK with it so the garden moves and is now further away from concerned neighbor).

*We recognize there is disagreement about the matter of setbacks. This is just one recommendation.

4. *Processor License:*

STATE: In order for cultivators to process (dry, cure, trim, package) their cannabis, significant investment is required to upgrade structures, including costly infrastructure such as sprinklers and ADA restrooms. The state now offers a processor license type for cultivators to bring their cannabis to for processing. This type of business would be beneficial to the local operators who cannot afford to build processing facilities on their permitted properties.

COUNTY: 26-88-254(f)(2) Square Footage Limitations. ...*Structures and areas where cannabis is processed, dried, aged, stored, trimmed, packaged or weighed and areas where equipment is stored and washed shall be limited to the on-site cultivation use only.*.. This current language essentially restricts Sonoma County producers from utilizing centralized processing facilities. But wouldn't necessarily restrict those processors from providing their services to outside producers from other jurisdictions. This means that currently a small Sonoma County cannabis farmer could not have his product transported to a larger Sonoma facility to have it processed.

RECOMMENDATION: Allow centralized processing licenses on parcels zoned agricultural and industrial.

5. *No tax on non-flowering plants & auxiliary cultivation areas:*

RECOMMENDATION: Non-flowering plants and any cultivation for research and development that does not enter the supply chain should not be taxed or counted towards our licensed canopy area.

6. *Greenhouse with no electrical should fall under outdoor tier and tax rates:*

RECOMMENDATION: Outdoor operators that use a greenhouse structure during certain times of the season with no electrical wiring should fall under the outdoor tier and tax rate.

7. *Allow for temporary structure to be used for processing:*

RECOMMENDATION: Operators should be allowed to use temporary structures for processing such as trailers for trimming or storage and processing during harvest season.

8. *Caregivers:*

STATE: The state Bureau regulations allows for caregivers, non-commercial gardens of up to five patients to cultivate at one location, to produce cannabis for personal use. Medical cannabis patients may live in circumstances where they cannot cultivate cannabis, such as federally subsidized housing.

COUNTY: Limit of 100sf of personal cultivation per parcel.

RECOMMENDATION: The county should allow for a caregiver to cultivate on behalf of these patients should not require commercial cannabis permits, as this medicine is provided directly to qualified patients in Sonoma County.

Additional Priorities

1. Inclusion/Exclusion Zones (defer to this subgroup)
2. State requires Track and Trace Program which Sonoma has not integrated
3. Allow Cooperative Cultivation Sites (allowing 1+ acre cooperative cultivation on large, approved parcels)
4. At the state level, nurseries may maintain a research and development area for mature plants that would be tagged but prohibited from entering the supply chain (Article 4 Sec 8302). Nursery operators & cultivators should be allowed a small cultivation area for R&D, such as breeding of new genetics, that does not count towards the total canopy allowance.

Consequences of Inaction

It is imperative the county prioritize the reconciling the inconsistencies between Ordinances 6189, 6188 and MAUCRSA to reflect the progress of a burgeoning industry. Operators are making significant financial commitments based on state regulations and the current Sonoma County ordinance. Because of the disparity in alignment, there are significant challenges placed on businesses as they formulate business plans, create contracts, make purchasing decisions and move forward with applying for state licensing. It is of the utmost importance that the Board of Supervisors align their ordinance with the state as soon as possible enabling businesses to make reasonable decisions as they move forward in the regulated cannabis market at the local and state level; delayed alignment of state regulations with the local ordinance will only hurt early adopting compliant operators in the long run.