

Discussion Paper
KEY ISSUES AND POLICY OPTIONS

PERSONAL (MEDICAL) CANNABIS CULTIVATION

BACKGROUND

The California Compassionate Use Act (Proposition 215) was enacted by voters in 1996, which enabled patients and designated primary caregivers to possess and cultivate cannabis for personal medical use given a recommendation from a licensed physician. Caregivers may receive reimbursement for their costs, but otherwise must be non-profit. In 2004, the legislature approved SB 420 which established a voluntary state ID card system and enabled patients to form medical cultivation collectives or cooperatives, if allowed by the local jurisdictions. The Sonoma County zoning code does not permit cultivation of cannabis, even for personal medical use. However, in 2006 the Sonoma County Board of Supervisors adopted Resolution No. 06-0846 providing guidelines for the cultivation of medical cannabis in an amount not to exceed more than thirty (30) plants per qualified patient within one hundred (100) square foot total cannabis canopy area. It also set a limit for the possession of up to three (3) pounds of dried cannabis or conversion per year. Pursuant to Proposition 215, SB 420 and the County's Resolution, many residents serve as caregivers and cultivate in Sonoma County as a means of meeting patient needs and supplementing their incomes. Several non-profit "collectives" have formed and cultivate for many patients at a single site.

However, no ordinance was adopted changing the zoning code to allow cannabis cultivation. The Board's Resolution provides only a defense to prosecution and does not provide any authority to permit cultivation under the zoning code. In 2010, the Board of Supervisors amended the zoning code to permit medical cannabis dispensaries subject to certain criteria and conditions, but did not allow cultivation.

The Medical Cannabis Regulation and Safety Act ("MCRSA"), consisting of AB 243 (Wood), AB 266 (Bonta) and SB 643 (McGuire), was signed into law by Governor Brown on October 9, 2015. This legislation established a comprehensive framework for the regulation of commercial cannabis, covering a broad array of topics including cultivation, nurseries, delivery, transportation, manufacturing, environmental standards and enforcement, general enforcement, advertising and labeling, employer/workplace restrictions, appellation/organic standards, fees and taxation, safety standards, criminal penalties, and tracking and tracing systems. MCRSA also establishes a dual licensing scheme under which anyone engaged in commercial cannabis activity must first obtain a local permit, and then a state license.

MCRSA requires local permits and state licenses for all commercial cannabis activities but exempts patients and caregivers who cultivate up to a maximum of 100 square feet for each qualified patient, up to a maximum of 500 square feet. MCRSA eliminates the collective model that stemmed from Proposition 215 and SB 420 and now requires cultivators to obtain a commercial license. While MCRSA includes an exemption for cultivation for personal medical use, it also respects local land use authority and allows local jurisdictions to determine whether, where and how to allow cultivation. Personal cultivation can still be banned entirely, limited to certain areas or types, or limited in

scale to less than what is exempted from the commercial scheme under state law. Local jurisdictions also have authority to adopt additional standards to mitigate impacts of personal medical cannabis cultivation. Now that personal cultivation is more narrowly defined, many cultivators must transition to commercial operations. One of the challenges of legalization is establishing a pathway to transition the larger “personal” operations and collectives from residential and sensitive resource areas to appropriate locations.

KEY ISSUES

Cannabis cultivation within residential areas can cause numerous compatibility conflicts including offensive odor, security and safety concerns, use of hazardous materials, unpermitted electrical and building construction causing high fire danger, light and glare, damage to housing stock from mold and mildew, and reduced housing stock due to single family homes being used for cannabis cultivation.

The odor associated with cultivation, especially outdoor, occurs in the final phase of the growing cycle (typically in late summer, early fall). Generally, the larger the size of the cultivation activity and the proximity to sensitive uses, the greater the potential for odor to be evident. Outdoor cultivation has a greater potential for odor than indoor or mixed light because it is not contained and cannot benefit from a filtered ventilation system.

Indoor cultivation can be problematic due to the amount of electricity required to power artificial lighting and air filtration devices and is also associated with increased fire risk and loss of housing stock. In order to allow personal cultivation, the size and scale of the operation needs to be limited.

Proponents of allowing personal cultivation in residential zones advocate that this is essential to enabling safe, affordable access to medical cannabis. Patients may not be physically capable of accessing a dispensary and may not be able to afford to purchase the medical cannabis as it is not covered by insurance companies.

POLICY OPTIONS AND ANALYSIS

A range of policy options related to medical cannabis cultivation for personal use is provided below. The options are grouped into three areas including defining the cultivation limits, the cultivation standards and appropriate locations. These options are intended to work together in combination to address the issues related to personal cultivation noted above.

1. Cultivation Limits

The following highlights a range of potential options for limiting cultivation for personal medical use within the limits established in state law. Please note that MCRSA exempts cultivation up to 100 square feet in canopy area for each qualified patient up to a maximum of 500 square feet. While Proposition 64, if passed, would enable any adult to cultivate up to 6 plants per residence with no square footage limitation for non-medical/adult use.

- A. Allow 6 Plants, 3 of Which Can Be Outdoor.** Residents would be allowed to cultivate 6 plants total (no more than 100 square feet), with the limit of 3 plants outdoors, per parcel or household. These would be limited to 100 square feet of canopy area per residence.
- B. 2006 Resolution/State Limits:** Limit the size of personal cultivation to a maximum 100 square feet of canopy area per patient (up to a maximum of 500 square feet per residence). This would be consistent with the existing 2006 Board Resolution and the exemption for personal use in state law (MCRSA). The public has utilized the 2006 Resolution as the County's limitations in the absence of any regulations within the Zoning Code.
- C. Prohibit Personal Cultivation:** Do not allow medical cannabis cultivation in either indoor or outdoor settings.
- D. Other Options.** Other options include establishing different limits in urban areas where land uses are more compact or phasing in stricter limits for personal use over time to allow existing cultivators to find suitable sites.

Analysis: Many local residents have relied on the limits expressed in the 2006 Board Resolution (Option B) and are currently cultivating up to 100 square feet per patient. Reducing the amount of personal cultivation below the amount specified in the state law could create a significant number of non-conforming uses and potential code violations. However, many of these residents are cultivating and operating in a way that is more appropriately classified as commercial. Option C which prohibits personal cultivation would limit access for qualified patients to dispensaries only and also could create significant code enforcement cases. Option A which allows 6 plants total, 3 of which can be outdoors is similar to other local cities and also aligns with the maximum cultivation limits in Proposition 64 (see separate discussion paper).

Staff Recommendation: The proposed Ordinance includes a staff recommendation to allow personal cultivation of 6 plants with no more than 3 plants outdoors for qualified patients and caregivers. These limits apply on a per parcel basis and must not exceed the 100 square feet per parcel. This option provides patient access to cannabis cultivation while minimizing many compatibility impacts related to outdoor cultivation.

2. Establish Cultivation Standards

The following list includes several potential standards for consideration to ensure compatibility and to mitigate or avoid impacts. These can be used in combination with any of the options identified above or modified to address key issues.

- A. Limit cultivation to accessory structures with odor filtration ventilation systems.
- B. Prohibit cultivation within any dwelling unit or structure approved for residential occupancy.
- C. Require an on-site residence occupied by the patient or caregiver.
- D. Prohibit volatile substances in manufacturing of cannabis oils, tinctures and edibles.
- E. Prohibit cannabis in front yard areas.

- F. Establish large setbacks for outdoor cultivation.
- G. Cannabis shall not be visible from public right of way.
- H. All structures must be legally constructed with building permits.
- I. All structures must have locking doors.
- J. Light systems must fully contain artificial lights at night.
- K. Prohibit use of generators.
- L. Establish a minimum lot size for cultivation.

Analysis: These standards include siting criteria, separation criteria, and general standards to reduce health and safety impacts for residents and surrounding properties.

Staff Recommendation: Options A-K The proposed Ordinance includes staff recommendation to limit personal cultivation to use of legally established accessory structures (not approved for residential occupancy). An on-site residence is required to be occupied by the qualified patient or caregiver. Odor filtration ventilation systems and locking doors would be required on structures used for cultivation, including greenhouses, in order to protect children and pets. Lighting systems must fully contain light within the structure. Outdoor cultivation must not be located within the front yard setbacks and must not be visible from the public right of way. Use of volatile substances to manufacture cannabis products is prohibited. Use of generators is also prohibited except for emergencies. Staff did not recommend establishing a minimum lot size for cultivation due to the limited amount of cultivation recommended above (6 plants total with no more than 3 plants outdoors) and the standards noted above that serve to mitigate impacts.

3. Cultivation Locations

Personal medical cannabis cultivation and collectives currently occur primarily in residential zones including both rural residential zones (RR and AR) and urban residential zones (R1, R2 and R3) as well as in the resource zone (RRD). In many cases cultivation is also located in agricultural zones (LIA, LEA and DA). Although residences are typically not allowed in commercial zones, residents within existing legal non-conforming residences could also be engaging in cultivation for personal medical use. The challenge for legalizing commercial cultivation is in transitioning collectives and those who currently cultivate as a primary caregiver from the residential zones to more appropriate locations. Another factor to consider in land use decisions is the extent to which changes in laws create “non-conforming” uses and the need for increased enforcement. The following outlines the options for which zoning districts to allow cultivation for personal medical use.

- A. Allow in all zones, except for multi-family zones (R2 and R3).
- B. Allow in all zones with a legal residence.
- C. Allow only in agricultural and resource zones.
- D. Prohibit personal medical cannabis cultivation in some zones (i.e. rural residential).
- E. Allow personal cultivation, but phase out of certain areas over time.
- F. Allow in all zones but provide a combining zone to prohibit in certain areas.
- G. Prohibit in some zones but provide a combining zone to allow in certain areas.

Staff Recommendation: Options A, F and G. The proposed ordinance includes staff's recommendation to allow personal medical cannabis cultivation in all zones where residential uses are found, except for multi-family zones (R2 and R3) where higher densities do not lend themselves to cultivation. Staff also recommends adding two combining zones that could be applied to specific areas to either enable or prohibit personal medical cannabis cultivation. These combining zones would need to be applied through the typical rezoning process, but would provide greater flexibility to address neighborhood concerns.

Staff's recommendation seeks to find a compromise between enabling safe and affordable access for patients with the need to mitigate impacts on neighbors, which can be more pronounced with outdoor cultivation and cultivation within dense residential zones. Staff recommends that the proposed Ordinance supersede the 2006 Resolution 06-0846 providing cultivation guidelines as a defense to prosecution.