

Discussion Paper
KEY ISSUES AND POLICY OPTIONS

CANNABIS ENFORCEMENT

BACKGROUND

Law enforcement has long faced challenges with cultivation operations and their unique characteristics of being an underground cash-based business with associated criminal activity, and negative impacts to our environment. Unregulated cannabis cultivation is associated with habitat destruction, pollution of waterways, illegal road construction causing erosion and increased sedimentation, unauthorized use of pesticides, illegal water diversion, large amounts of trash, human waste, non-biodegradable waste, and excessive water and energy use. Cultivation within residential areas can cause numerous compatibility impacts 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 homes being used for cannabis cultivation.

A major goal of the proposed Ordinance is to transition existing unpermitted cannabis operations into the permitted economy. The proposed enforcement tools represent staff's best understanding of how to incentivize the industry to take advantage of this pathway and to ensure that we have strong enforcement tools to address those operators who choose not to become permitted. The proposed Ordinance includes separate administrative processes to provide flexibility to choose the most appropriate enforcement tool best suited to the violation. The enforcement program within the proposed Ordinance will require staff to evaluate the violation in order to establish the appropriate monetary penalty. This evaluation would include the permit status (permitted or unpermitted) and the type, scale and duration of the violation. The penalties are designed to act as a deterrent and be commensurate to the value of the cannabis product.

KEY ISSUES

The key issues include establishing an enforcement program that is progressive, incentives compliance, is applicable to diverse land uses, and includes monetary penalties commensurate to the cannabis industry. The proposed Ordinance provides for the "agency having jurisdiction" (the Permit and Resource Management Department (Permit Sonoma), the Department of Agriculture/Weights & Measures, or the Department of Health Services) to enforce using a menu of tools within the enforcement program.

An additional key issue, which is critical to success, is having the staff resources to enforce the proposed Ordinance. While penalties and fees may cover some costs associated with bringing operators into compliance, additional revenue sources will be necessary. Resources will also be required to address the operations that are not able to become permitted (i.e. trespass grows), and which may require assistance from County Counsel, the Sheriff, Department of Health Services, and other agencies.

The following describes the different tools within the enforcement program within the proposed Ordinance.

Administrative Citations

The County is in the process of developing a countywide administrative citation program. This program is scheduled to go to the Board of Supervisors for consideration and adoption in early 2017. The proposed Ordinance includes the use of administrative citations allowing the County to issue citations for violations at the time of discovery. Administrative citation amounts would be based on the following factors; 1) whether the cultivation exceeds the allowed permitted cultivation area; 2) if there is noncompliance with a standard or condition of the permit; or 3) there are unpermitted cannabis uses (other than cultivation). The citation penalty amounts would also increase depending on the number of past violations within a two year period.

Civil Penalties

The existing County code enforcement process includes applying civil penalties to violations. The proposed Ordinance includes higher civil penalties than applied to typical code enforcement violations. These penalties would apply after an operator receives a notice of violation, as described in Chapter 1-7.3. The proposed Ordinance includes the following penalty options, depending on the number of violations within a two year period:

1. A set range of penalties (ranging from \$10,000 to \$50,000);
2. A daily violation amount of \$1,000 - \$5,000 a day for each violation; and/or
3. A square footage violation of \$20-\$50 per square foot of cannabis cultivation or use area¹.

The proposed Ordinance also includes a three strikes provision that would revoke the permit upon the issuance of a third administrative citation within a two year period.

Justification of Penalties

The penalties within the proposed Ordinance reflect staff's recommendations that the penalties be commensurate with the cannabis industry and provide an accurate deterrent. They are much higher than other penalties within the Sonoma County code but are designed to act as a deterrent and motivate compliance.

¹ Here, note the use of cultivation area versus canopy. The reason for using cultivation area is 1) this is the unit of measure for permitting and 2) the plant canopy changes during the growing cycle and is subject to more interpretation than the footprint of the cultivation area.