

**Discussion Paper
KEY ISSUES AND POLICY OPTIONS**

**COMMERCIAL CANNABIS CULTIVATION
IN RURAL RESIDENTIAL ZONES**

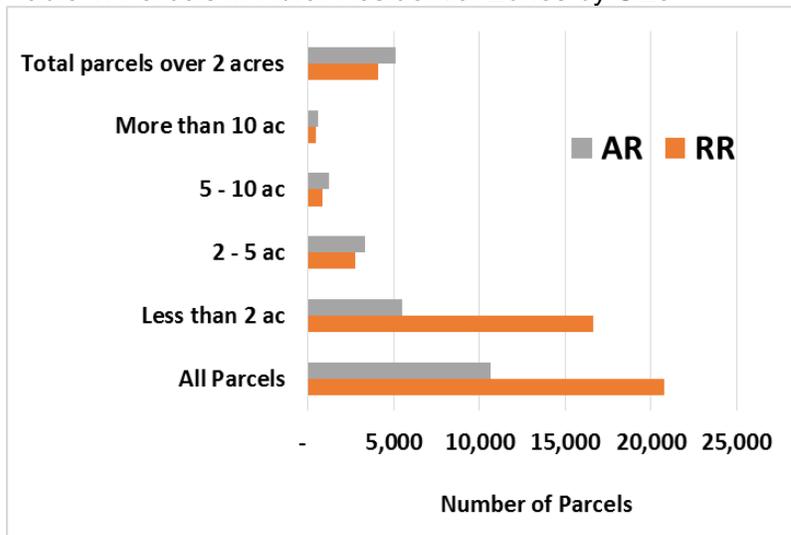
BACKGROUND

The state legislature adopted the Medical Cannabis Regulation and Safety Act (MCRSA) that became effective January 1, 2016, that established a dual licensing scheme similar to that for alcohol related land uses. There are three state license categories that cover commercial cultivation including outdoor, indoor and mixed-light cultivation, with separate license types for different sizes of cultivation operations within each category. The size of cultivation for determining license type is either measured by square footage of canopy per premise, or the number of plants cultivated on noncontiguous plots. For consistency and ease of administration, the draft Ordinance uses the same definitions, license types, sizes and terminology for the different cultivation categories as found in state law. Table 1 provides a Summary of the Allowed Land Uses and Permit Requirements for Cannabis Uses in the proposed Draft Ordinance.

The proposed Ordinance also includes a list of development criteria and operating standards to mitigate potential environmental impacts and enhance land use compatibility (refer to Exhibit B of the Ordinance). These standards include measures that would apply to all commercial cultivation operations.

The Rural Residential land use category includes two zoning districts, Agriculture and Residential (AR) and Rural Residential (RR). These zones are located in unincorporated communities and around the nine incorporated cities. About 80 percent of RR zoned parcels and 52 percent of AR zoned parcels are less than 2 acres in size. A breakdown of parcel sizes for the two rural residential zones is shown in the figure below.

Table 1: Parcels in Rural Residential Zones by Size



According to the Sonoma County General Plan, *“the primary use shall be detached single family homes. Secondary uses include attached dwellings, farming, small scale animal husbandry, home occupations, small scale home care and group care facilities, second dwelling units, public and private schools and places of religious worship, and other uses incidental to and compatible with the primary use.*

Allowing commercial cultivation on residential land would allow land owners to engage in what is considered a commercial scale operation. The key policy question is at what scale does the use become more predominant than the residential use?

Within two rural residential zones (AR and RR) staff is recommending that commercial cultivation be permitted only at the “Cottage” scale with a Minor Use Permit which requires notification to neighbors and consideration of any additional compatibility or environmental issues on a site specific basis. Cottage size is defined consistent with state law to be:

- 25 plants Outdoor Cultivation
- 500 square feet Indoor Cultivation
- 2,500 square feet Mixed Light/Greenhouse Cultivation

KEY ISSUES

Cannabis cultivation within residential areas can cause numerous compatibility concerns including offensive odor, security and safety concerns, proximity to sensitive land uses (i.e. schools), use of hazardous materials, unpermitted electrical and building construction causing high fire danger, light and glare, noise from generators, damage to housing stock from mold and mildew, and reduced housing stock due to single family homes being used for cannabis cultivation. Despite these compatibility issues, there are an estimated 3,000 separate cultivation operations within these districts, most of which are less than 2,000 square feet of canopy size.

The Ordinance includes proposed standards, in the form of development criteria and operational standards (Exhibit B to the Draft Ordinance) which are recommended to minimize compatibility issues and address potential environmental impacts. With the addition of the standards, cultivation may be appropriately permitted on larger rural residential lots where impacts to neighbors can be substantially reduced. However, given the diversity of residential neighborhoods and the potential for overconcentration and compatibility issues, staff recommends establishing a minimum lot size and requiring a minor use permit for cultivation within the RR and AR zones, to ensure neighborhood compatibility and address site specific constraints. Allowing commercial cultivation, with minimum lots sizes and the addition of standards, has the potential to allow a higher percentage of existing cultivators to become permitted by the County and licensed by the state as legalized enterprises.

Odor

Cannabis cultivation operations are associated with a strong odor, especially outdoor cultivation operations during 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 could not employ a filtered ventilation system.

In order to reduce impacts related to odor, outdoor cultivation (25 plant maximum, “cottage” size) would be required to be setback 100 feet from property lines and 300 feet from occupied residences and businesses on adjacent properties. In addition, a two acre minimum is required for outdoor and mixed light cottage sized operations. Indoor and mixed light operations would be required to have air and odor filtration devices.

Light, Noise and Glare

Commercial cultivation operations located within residential areas could pose neighborhood compatibility issues from lighting and loud generators. The draft Ordinance includes standards that require light systems to be fully shielded, including adequate coverings on windows, so as to confine light and glare to the interior of the structure. The use of generators is prohibited, except as emergency back-up systems.

Loss of Housing Stock

Illegal cultivation operations have been known to fully occupy residential structures which reduces the overall housing stock available to potential residents and also causes substantial neighborhood issues related to safety, odor, and increased fire hazards. Under the proposed Ordinance, cultivation would not be allowed within any dwelling unit, second dwelling unit, guest house, or any other residential accessory structure permitted for residential occupancy (R3 building code occupancy). No cultivation could occur within apartments, duplexes, triplexes, or other multifamily dwellings. Indoor and mixed light cultivation must be contained within a garage, enclosed accessory structure, or greenhouse. Cultivation within any structure permitted for residential use (with an R3 occupancy under the building code) would be prohibited.

Security

Due to the illegality of cannabis at the federal level, the high value of the crop, and the cash basis of these operations, there are increased security concerns particularly within residential areas. Such operations have a heightened risk of home invasions due to the amounts of cash and cannabis that may be on hand. The proposed Ordinance includes a standard which requires a Site Security Plan that will be retained as a confidential document, including security cameras capable of recording activity, motion-sensor lighting and alarms, vegetation and fence screening, and a prohibition of weapons and firearms.

Proximity to Sensitive Land Uses

Sensitive land uses include schools providing education to K-12 grades, public parks, childcare centers, and alcohol or drug treatment facilities. The proposed Ordinance includes standards restricting outdoor and mixed light cannabis operations within 600 feet from such uses. The distance is measured from the nearest property lines. The Commission may choose to increase this setback to 800 or 1,000 feet.

Development Criteria and Operating Standards

The following abbreviated list of proposed commercial cultivation standards (Exhibit B) would reduce impacts in the residential areas:

- A. Minimum Lot Sizes for outdoor and mixed Light - 2 acre minimums required for cottage cultivation (see Attachment A Land Use Table).
- B. Property Setbacks for outdoor and mixed light - 100 feet from property lines, 300 feet from occupied residences and business on adjacent properties. Standard building setbacks for indoor.
- C. Separation Criteria for outdoor and mixed light - setback 600 feet from sensitive uses. No separation proposed for indoor.
- D. Site Security Plan required.
- E. Odor filtration systems required for indoor and mixed light.
- F. Noise Limits- must not exceed noise limits within the General Plan. Generators are prohibited except for emergencies.
- G. All lighting shall be fully contained and not visible from offsite.
- H. Renewable Energy requirements- must be 100% renewable (via power company or on site) or carbon offsets purchased.
- I. Annual permit renewal.
- J. Compliance inspections required.

POLICY OPTIONS AND ANALYSIS

A range of policy options related to commercial cultivation within rural residential areas is provided below. The options are grouped into three areas including defining the cultivation limits, the permit requirements and the cultivation standards. These options are intended to work together in combination to address the issues related to commercial cultivation in rural residential areas noted above.

1. **Cultivation Limits.** The following outlines a range of policy options for the size and scale of commercial cultivation considered in rural residential zones. These terms and size limitations are consistent with the license types defined in state law.
 - A. **Cottage.** Allow only cottage-scale cultivation operations within rural residential zones. (25 outdoor plants; 500 square feet indoors; or 2,500 square foot greenhouse)
 - B. **Specialty.** Allow specialty cultivation operations within the rural residential zones (50 plants outdoor or 5,000 square feet indoor or greenhouse) perhaps in conjunction with larger minimum parcel sizes or conditional use permit requirements noted below.
 - C. **Small.** Allow small cultivation operations in residential zones (up to 10,000 square feet of outdoor, indoor, or greenhouse) perhaps in conjunction with larger parcel sizes or conditional use permit requirements noted below.
 - D. **Prohibit Commercial Cultivation in RR zones.** Prohibit all commercial cultivation in the rural residential zones.
 - E. **Differentiate between AR and RR zones.** Allow larger cultivation operations within the AR zone, perhaps in conjunction with larger minimum parcel sizes and conditional use permit as noted below.

- F. **Allow Only Some Cultivation Types.** Allow indoor cultivation operations only, or allow outdoor and indoor, but not the larger area allowed for mixed light.

Analysis

Option A would allow the smallest scale commercial operations in the rural residential zones. This scale would be consistent with the size of accessory structures allowed in residential areas. Cottage scale would also likely be operated by the on-site residents, limiting the potential for increased traffic or other major upgrades for commercial operations. Allowing larger operations as provided by Options B and C could lead to situations where the cultivation is the primary use of the property and not residential uses, as required by the General Plan. Larger scale operations require more employees, accessibility improvements, and building code improvements that are generally not consistent with residential use and have the potential to produce greater crime and odor impacts. Option D would prohibit all commercial cultivation within the RR and AR zones which would not provide a pathway for existing cultivators to come into compliance. This could also create a significant number of potential code enforcement cases. Option E, which differentiates between the AR and RR zone could allow larger operations within the AR, which does allow more agricultural type uses. However, there are minimal differences between the two districts relative to parcel sizes, proximity to schools and other residential uses. Because the impacts would be similar among both districts the policies related to commercial cannabis are recommended to be the same. Additionally, the Board could choose to allow more restrictive cultivation sizes or permit one type of cultivation (e.g. indoor) and disallow another (e.g. mixed light).

Staff Recommendation: Option A. Allow cottage scale cultivation in the rural residential zones. Cottage-scale cultivation includes Outdoor limit of 25 plants; Greenhouse/mixed light limit of 2,500 square feet; and indoor limit of 500 square feet. Cottage operations present less nuisance issues and require few employees, consistent with a zoning designation that prioritizes residential uses over commercial agricultural operations.

2. Permit Requirements

The following policy options provide a range of permit thresholds for the recommended size of cultivation operation allowed by the previous discussion.

- A. **Require a Minor Use Permit with potential for hearing waiver.** A minor use permit is reviewed on a case by case basis and is subject to CEQA, although due to the small scale of uses, may be found exempt. Public notification (at least 300-foot) is required and the public hearing may be waived and the permit approved administratively if no protest or request for hearing is timely filed within the 10-day notice period. Minor Use Permits are processed on an at-cost basis and range from \$2,000 to \$6,000 depending upon the level of CEQA review required.
- B. **Require a Conditional Use Permit with hearing.** A conditional use permit is subject to CEQA and a mitigated negative declaration is most often prepared. Public notification (at least 300 feet and sign posted on site) is required and a public hearing is held by the Board of Zoning Adjustments. Conditional Use

Permits are processed on an at-cost basis and can range from \$6,000 to \$12,000 depending on the scale, site constraints and neighborhood opposition.

- C. **Require Zoning Permits, subject to standards.** Zoning permits are ministerial permits and are not subject to CEQA. The permit is approved based on adherence to the Ordinance standards and requires no public notification. The cost of a zoning permit would be established by the Board based on the cost of administering the standards and issuing the permit. Staff estimates the costs to be from \$1,800 to \$2,500.
- D. **Require Limited Terms and Annual Renewal.** In combination with the options above, the permit would be approved for one year and would be subject to an annual renewal. This allows staff to review compliance and change conditions based on the situation or changes in the Ordinance.
- E. **Increase Noticing Requirements.** In combination with the options above, the noticing requirements could be increased for commercial cannabis uses beyond the 300-foot minimum distance required in state law for use permits. A notice requirement of 600-feet would ensure that any sensitive land uses such as schools, rehabilitation centers, and child care centers are notified.
- F. **Require Neighborhood Meeting.** Some cities require neighborhood meetings for any commercial cannabis use that is within 300-feet of a residential neighborhood. This requirement would be in addition to any required public hearings.

Analysis

In establishing permit thresholds for ministerial zoning permits in an enabling ordinance with a Negative Declaration, the County must determine that in all circumstances where allowed, the use would be consistent with the General Plan, compatible with the neighborhood and that impacts would be substantially mitigated to less than significant. Option C, which would require a ministerial zoning permit for commercial cultivation operations, would not allow for a case by case review of the parcel, neighboring residential uses, and potential compatibility issues. Option B, which would require a conditional use permit may deter applicants due to the cost and time involved to become permitted. Option A, which would require a minor use permit, allows for site by site conditioning but at a more limited cost so as to not deter applicants. Requiring limited term permits allows the County to monitor performance and adjust standards over time. This is particularly helpful for a new emerging industry. Increasing notice requirements is often discussed in the unincorporated area and may be considered appropriate given the state mandated separation criteria of 600-feet from sensitive land uses.

Staff Recommendation Option A and D: Staff recommends a minor use permit be issued to the operator for a limited term with an annual renewal requirement. Given the array of potential neighborhood compatibility issues and the diversity of residential areas, staff recommends using the minor use permit process to ensure that neighbors receive notification and can comment on the proposed use. Staff also recommends the traditional 300 foot notice and not requiring an additional neighborhood meeting to be consistent with our processes for other land uses.

This permitting structure may not be successful at bringing all small operators into compliance. Some operators may still find that the cost of a cottage business is disproportionate and prohibitive, when all regulatory requirements at the local and state level are considered. Additionally, because the cash and high-value crop remain a target for crime, the public process may dissuade many existing operators from applying and disclosing their locations. Regardless of these issues, staff finds that public notification of commercial cannabis uses is within the public interest and outweighs the concerns expressed regarding anonymity.

3. Cultivation Standards

The proposed Ordinance includes development criteria and operating standards that apply to all cannabis uses (Section 26-88-250), as well as, standards that apply to all types and scale of commercial cultivation (26-88-252). These standards are intended to reduce potential environmental impacts and ensure compatibility with neighboring properties (refer to Exhibit B to the draft Ordinance). Staff recommends adoption of these standards coupled with a limited-term minor use permit for “cottage” sized operations on rural residential properties. The following list includes policy options for expanding or modifying certain standards. These can be used in combination with any of the options identified above or modified to provide an equivalent mitigation of potential impacts.

- A. **Minimum Lot Sizes.** The staff recommendation includes minimum lot sizes relative to the size of the cultivation operations, described in the table below. The Commission could reduce or expand the minimum lot sizes for the size of operation allowed in residential areas – as long as an equivalent mitigation of impacts is provided. The minimum lot sizes apply only to outdoor and mixed light or greenhouse operations as they are more apparent with greater potential for odor and security concerns. There are no minimum lot sizes proposed for indoor cultivation which can have odor controls and greater security.

Table 2: Minimum Parcel Size by Cultivation Size

| Cultivation Type | Maximum Size | Min Parcel Size |
|---------------------|-------------------|-----------------|
| Cottage Outdoor | 25 plants | 2 acres |
| Cottage Indoor | 500 square feet | none |
| Cottage Mixed Light | 2,500 square feet | 2 acres |

Minimum lot sizes for larger cultivation operations are included in Table 1 for agricultural and resource zones, but could also be considered for the rural residential areas. Specialty up to 50 plants outdoor or up to 5,000 square feet indoor/greenhouse would require a minimum lot size of 3 acres. Small cultivation sites up to 10,000 square feet in canopy area would require 5 acres.

- B. **On Site Residency Requirement.** The Ordinance could include a standard that a residence must be maintained and occupied in order to allow a commercial cannabis cultivation operation. This standard is also required for personal cultivation.

- C. **Property Setbacks.** The proposed Ordinance includes a setback for outdoor and mixed light cultivation operations of 100 feet from property lines and 300 feet from occupied residences and business on adjacent properties. The Commission could modify these limits provided that equivalent mitigation is provided. The setbacks are intended to address odor and security concerns, visual impacts and access by youth for outdoor and mixed light operations.
- D. **Separation Criteria.** The proposed Ordinance includes a 600 foot setback from sensitive uses for outdoor and mixed light operations. Sensitive uses include schools, parks, childcare centers, and alcohol or drug treatment facilities. These setbacks could be increased to 800 or 1,000 feet, similar to other jurisdictions, but could not be reduced below the 600-foot separation required in state law for schools. The Commission could consider changing the types of sensitive land uses that require separation other than schools (i.e. whether to include parks, or other businesses that primarily cater to children).

Analysis: Minimum lot sizes are used primarily to reduce cumulative impacts and overconcentration. They also serve to mitigate impacts associated with odor, noise, and aesthetics by providing more area to separate land uses, provide screening and attenuate noise. Larger lot sizes also reduce the potential access to children and can deter crime by providing more area for screening, fencing and on-site security. The onsite residency requirement would be in keeping with General Plan policy which states that residential uses shall be the primary use of land within the rural residential land use category. On-site residency would also serve to deter crime and access to children. The property setbacks and separation criteria also enhances neighborhood compatibility by reducing visibility and providing greater separation.

Staff Recommendation: Options A through D. The proposed Ordinance should utilize all tools available to substantially reduce impacts to surrounding residents. Staff recommends the adoption of all of the standard in Exhibit B regardless of the size and scale the Commission chooses to recommend within the rural residential areas. Staff recommends adopting a minimum lot size of 2 acres and setbacks of 100 feet to property lines and 300 feet to an occupied residence or business on a separate parcel. The setbacks and separation criteria are proposed to be applied to outdoor and mixed light cottage cultivation to mitigate odor, noise, and aesthetics, limit access to youth and enhance security. No minimum lot size is recommended for Indoor cultivation which is enclosed and requires odor control filtration and can be screened. Standard building setbacks would apply to Indoor cultivation. Staff is also recommending separation criteria of 600-feet to sensitive land uses and the inclusion of drug and alcohol treatment centers and parks, in addition to schools providing K-12 education.