



## Sonoma County Planning Commission STAFF REPORT

**FILE:** ORD20-0001  
**DATE:** June 4, 2020  
**TIME:** At or after 1:20 P.M.  
**STAFF:** Sita Kuteira, Mark Franceschi

**A Board of Supervisors hearing on the project will be held at a later date and will be noticed at that time.**

### SUMMARY

**Applicant:** County of Sonoma  
**Location:** Countywide, except Coastal Zone  
**Supervisory District(s):** All  
**Description:** Amendments to Sonoma County Code Chapter 26 (the “Zoning Code”) Section 26-88-252 (Cannabis Enforcement) including but not limited to moving civil penalties to Chapter 1 adding an alternative civil penalty for unpermitted cannabis activity, removing the “three strikes penalty”, clarifying that cannabis violations are immediately subject to civil penalties, and making other procedural, clarifying, and technical amendments; And amendments to Sonoma County Code Chapter 26 Section 26-88-120(g) (Vacation Rental Ordinance – Enforcement Process) moving the civil penalties to Chapter 1 and making other minor amendments.  
**CEQA Review:** Exempt under Section 15061(b)(3) of the CEQA Guidelines  
**General Plan Land Use:** All, except Coastal Zone  
**Ordinance Reference:** Cannabis Land Use Ordinance adopted December 20, 2016 (Ordinance #6189) and amended October 16, 2018 (Ordinance #6245). Vacation Rental Ordinance adopted March 15, 2016 (Ordinance #6145).

### EXECUTIVE SUMMARY

This item amends Zoning Code Section 26-88-252 (Cannabis Enforcement) to:

- Move cannabis civil penalties to Chapter 1 and modify the Cannabis Penalty Schedule to include a “per plant” penalty calculation option.
- Remove the “three strikes penalty” permit revocation provision.
- Clarify that violations of the Cannabis Land Use Ordinance are immediately subject to civil penalties.
- Make other procedural, clarifying, and technical non-substantive amendments.

This item also amends Zoning Code Section 26-88-120(g) (Vacation Rental Ordinance – Enforcement Process) to:



- Move civil penalties to Chapter 1.
- Make other minor amendments to reference the Administrative Citation Ordinance (Sec. 1-7.6).

## **BACKGROUND**

### **State Law**

In 1996, voters adopted Proposition 215, the Compassionate Use Act, which allowed for the use of marijuana for medicinal purposes by qualified patients, and for caregivers to provide medical marijuana and receive reimbursement for their costs. In 2004, SB 420 established a County Health ID card program, collective and cooperative cultivation, and safe harbor amounts for cultivation and possession. The Medical Cannabis Regulation and Safety Act (Medical Cannabis Act) was enacted in October 2015 and provided a framework for regulating medical cannabis businesses. The Medical Cannabis Act eliminated the cooperative/collective model and replaced it with a commercial licensing scheme under which operators are required to obtain both local permits and state license approvals. The Medical Cannabis Act retained local control over land use regulation that governs whether and where commercial cannabis businesses are allowed, as well as applicable conditions.

On November 8, 2016, the voters of California passed the Adult Use of Marijuana Act (Adult Use Cannabis Act) legalizing non-medical adult use cannabis. On June 27, 2017 the state passed Senate Bill 94 which consolidated the regulations in Medical Cannabis Act and Adult Use Cannabis Act into the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Cannabis Act). The Cannabis Act created one regulatory system for medicinal and adult-use cannabis. The three state cannabis licensing authorities, California Bureau of Cannabis Control, CalCannabis Cultivation Licensing, and the Manufactured Cannabis Safety Branch, are charged with licensing and regulating commercial cannabis businesses at the state level.

The intent of these amendments and the focus of cannabis enforcement is to strengthen enforcement against unpermitted, black market operators. Strict enforcement and high civil penalties are necessary to reduce the prevalence of the black market cannabis industry in the county. For those operators that are working to obtain a permit or are operating under a permit, the County's focus is to achieve compliance with the code and permit standards, starting first with education and information sharing for lower level violations, and increasing enforcement measures for egregious or repeat violators.

### **Sonoma County Laws**

The County began permitting medical cannabis dispensaries in 2007 and currently permits dispensaries pursuant to Sonoma County Code Section 26-88-256. The Board amended this code section in 2012 to limit the number of dispensaries in the unincorporated County to a cap of nine.

In December 2016, the Board of Supervisors adopted a comprehensive local program to permit and regulate the medical cannabis supply chain, including: cultivation, nurseries, manufacturers, transporters, distributors, testing laboratories, and dispensaries (Medical Cannabis Land Use Ordinance, Ordinance No. 6189). The ordinance also allowed personal adult-use cultivation in accordance with Prop. 64. The County began accepting permit applications for commercial cannabis uses in July 2017. In October 2018, the Board of Supervisors adopted Ordinance No. 6245 to better align the local ordinance with updated state regulations and to allow adult-use commercial cannabis businesses, among other changes.

Through the implementation of the cannabis ordinance, Permit Sonoma Code Enforcement section staff have identified the need for an alternative penalty schedule and clarifications to cannabis code enforcement policies



to improve regulatory clarity. These amendments are described in greater detail in the analysis section of this report.

These cannabis-specific enforcement amendments are part of a larger effort to modernize and clarify the County's enforcement mechanisms, including comprehensive changes to Chapter 1 that governs nuisance abatement and the administrative hearing procedures. In order to reduce conflicting and duplicative code language and enhance clarity and simplicity, staff will be proposing that the Board centralize more of the enforcement provisions in Chapter 1 and eliminate unnecessary provisions elsewhere in the code, which drives some of the changes to the enforcement sections of the Cannabis and Vacation Rental Ordinances.

## **PROJECT DESCRIPTION**

Permit Sonoma proposes amendments to the Cannabis Enforcement section of the Zoning Code to:

- Move the Cannabis Cultivation Civil Penalty Schedule to Chapter 1 and modify it to include a “per plant” option as described in the analysis section of this report.
- Clarify that violations of the Cannabis Land Use Ordinance are immediately subject to civil penalties.
- Remove the “three strikes penalty” permit revocation provision to maintain prosecutorial discretion and proportionality.
- Incorporate non-substantive textual amendments to the code, including:
  - Simplifying the code to broadly reference Chapter 1 enforcement provisions
  - Removing or amending redundant or unclear wording
  - Renumbering Zoning Code Section 26-88-252 to accommodate these changes

Staff additionally proposes amendments to the Enforcement Procedures section of the Zoning Code's Vacation Rental Ordinance to:

- Move civil penalties to Chapter 1.
- Make other minor amendments to reference the Administrative Citation Ordinance (Sec. 1-7.6).

## **ANALYSIS**

### **Per Plant Civil Penalty**

The inclusion of a “per plant” civil penalty calculation option is necessary to allow greater flexibility and discretion by the agency when assessing penalties for code violations. Currently, civil penalty calculations are made using the Cannabis Civil Penalty Schedule found in Sonoma County Code Section 26-88-250(d)(3). This schedule provides a variety of options for calculating penalties, each with a maximum penalty amount.

A “per plant” method has been adopted by other jurisdictions as a more effective measure to dissuade large-scale illegal cultivators. Stanislaus and Sacramento Counties, as well as the Cities of Malibu and Redding, have adopted a maximum \$1,000 per plant per day penalty. Placer and the City of Malibu have also adopted a \$1,000 per plant penalty, but it is not expressly applied daily. Fresno County adopted a \$1,000 per plant penalty plus a \$100 per plant per day penalty if a violation remains after an abatement deadline. Civil penalties are effective when the fines create a financial downside risk that exceeds the profitability potential for illegal activity. The per plant fee schedules from the counties and cities cited above were adopted to recognize the extreme profitability of cannabis cultivation. The per plant fee schedule provides an important tool to deter both new and repeat violations.

In Sonoma County, the calculation methodology for civil penalties is prescribed in Sonoma County Code Chapter 1-7(c)(1-8) “Determination of Penalties”:



*(c) Determination of Penalties. The determination of civil penalties calculated pursuant to Section 1-7.1 or by any of the code sections listed in subsection (a) and imposed under this section shall, in the first instance, be performed by the enforcing officer. Such determination shall take into account the facts and circumstances of the violation including, but not limited to;*

- (1) Whether or not the violation poses a threat to human health, safety or to the environment;*
- (2) The seriousness or gravity of the violation;*
- (3) The length of time the violation has existed;*
- (4) The culpability of the person in violation or the willfulness of the violation;*
- (5) The sophistication of the persons creating or causing the violation;*
- (6) The extent of the violation and its effect on adjoining properties;*
- (7) Attempts, if any, to comply with the applicable ordinances; and*
- (8) Any other information which might be relevant to the determination of charges to be imposed by this section.*

This methodology has been in use for many years in Sonoma County and has provided staff a framework to apply consistent civil penalties for all types of code violations, not just cannabis. It has been an effective tool which has been reviewed and thoroughly vetted in Superior Court.

Enforcement staff have found that the currently available civil penalty calculation methods are ineffective for very large cultivation operations and not proportional for very small ones. The extreme profit potential with cannabis cultivation makes the existing civil penalty options in Sonoma County's cannabis ordinance an ineffective deterrent. For example, a 4,000-plant cultivation operation will have an estimated harvest value of at least \$4 million<sup>1</sup>. This calculation does not take into account that a single cannabis plant can generate between two and five pounds of processed cannabis per harvest. A \$10,000 per day penalty would take 400 days of continuously accruing penalties to equal the value of the cannabis at just one harvest with a yield of just one pound per plant. With current cultivation methods, it is possible to have four to six indoor and two outdoor harvests within a 400 day time period.

Conversely, Sonoma County Code Enforcement also encounters situations where slightly more than the allowed six "personal use" plants are being grown. The current per day fee schedule would require a penalty assessment of between \$1,000 and \$10,000 per day, which is excessive in relation to the infraction. With a "per plant" penalty ranging between \$100 and \$1,000, Code Enforcement staff could apply a more proportional disincentive for these minor violations by allowing the enforcing agency greater discretion. The discretion also allows staff to set more scalable and meaningful penalty disincentives to start or continue cannabis cultivation.

Staff proposing adopting a per plant civil penalty similar to Fresno, which imposes a high per plant penalty initially, and then a smaller daily per plant penalty if the cannabis plants are not removed after the abatement period. Staff recommends allowing 5 days after the initial civil penalty prior to imposing additional civil penalties because even large grows can be eradicated in this time period. While the initial penalty is intended to dissuade

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<sup>1</sup> Los Angeles HIDTA (High Intensity Drug Trafficking Area) Drug Price List July – September 2019. Mid-Grade Cannabis \$1,000-\$1,500/pound, High-Grade Cannabis \$1,300-\$2,000/pound

beginning unpermitted activity in the first place, the additional daily penalty should incentivize swift abatement of the unpermitted activity. Staff also proposes moving all cannabis civil penalties to Chapter 1 Section 1-7.1 to be consistent with other civil penalties imposed by the Department. The proposed per plant civil penalty provision would read:

*Per Plant Penalty.*

*(a) For each unpermitted cannabis use, no more than \$1,000 per plant for the first violation; no more than \$2,500 per plant for the second violation within 2 years; and no more than \$5,000 per plant for the third violation within 2 years.*

*(b) An additional up to \$100 per plant per day the unpermitted cannabis use continues past the 5th day of the date of mailing, posting, or personal service of the notice and order, whichever is earlier.*

### **Three Strikes Penalty**

The Cannabis Land Use Ordinance currently provides that a land use permit for commercial cannabis activities is revoked once there have been three violations by the same owner or operator at any of their properties (Sec. 26-88-252(d)(4)). Staff proposes removing this provision for several reasons. First, the County has the authority under Sec. 26-88-252(c) to revoke a cannabis permit for non-compliance with the county code or a permit condition. Under this provision the County may initiate revocation for one significant violation, as opposed to waiting until two other violations had been committed. Second, the language removes discretion from the County so that permit revocation may be required when the three violations are minor and thus not proportionate to the penalty. Because such minor violations could lead to permit revocation, County staff may be dis-incentivized from documenting violations, which could hinder effective enforcement. Lastly, the provision could require permit revocation based on violations that occurred at a different cannabis site, even though the other operation may be run by a different business with different investors, simply because they share one common owner. If the Board wishes to maintain this provision in order to deter noncompliance, staff recommends limiting the types of qualifying violations, limiting violations to the specific permit, and maintaining some discretion to ensure that permit revocation is proportionate to the violations.

### **When Civil Penalties Are Imposed**

*Immediate Imposition of Civil Penalties.* Some have argued that the ordinance is not clear whether cannabis violations are subject to immediate civil penalties or—like certain other violations—violators have the right to a reasonable period of time to cure the violation prior to the imposition of civil penalties. State law requires a reasonable period of time to cure violations that pertain to building, plumbing, electrical or other similar structural or zoning issues (Cal. Gov. Code § 53069.4). Accordingly, civil penalty provisions in Chapter 1 (General Enforcement) generally provide 30 days to remedy building, plumbing, and electrical violations. However, state law does not require a cure period for all zoning violations and the cannabis ordinance did not intend to impose a cure period. Section 26-88-252(d)(5) currently states that cannabis civil penalties “may not apply” if the violation is removed within 5 days. The intent was to incentivize violators to act quickly and provide code enforcement discretion to waive penalties when appropriate. However, this provision has been occasionally misinterpreted to mandate a 5-day cure period. Code enforcement has the discretion to reduce civil penalties when warranted (see discussion on Determination of Civil Penalties above), and so staff recommends removing this provision and clarifying within Chapter 1 that no cure period is required. It is important that the county have the express authority to apply civil penalties immediately because cannabis uses (and other zoning violations)



can be moved, started, and stopped so quickly that violators could always evade civil penalties, and thereby undermine the efficacy of code enforcement on unpermitted cannabis activity.

*Reasonable Period of Time to Cure Option.* Alternatively, a period of time to abate the cannabis violation prior to the imposition of a civil penalty may be considered, such as 5, 10 or 30 days. Similarly, staff provides 30 days to cure building, plumbing, and electrical violations under Chapter 1 Section 1-7.1 (d) (2). Staff recommends removing the abatement allowance for cannabis because, just as with the 5-day cure period, an abatement window undermines the penalty disincentive to engage in unpermitted activities. The abatement provision is most appropriate for building or electrical violations which take time and permits to abate, therefore a daily penalty between fifteen dollars (\$15) and one hundred dollars (\$100) is sufficient to ensure abatement actions proceed steadily while not excessively penalizing a violator during corrective action. Cure periods and abatement options short-cut the enforcement process with cannabis due to the extreme profitability and, as with many other zoning violations, the ability to start and stop violations quickly, and therefore serve as a mere inconvenience.

#### **Grammatical and Non-Substantive Clarifications to Cannabis Code**

The proposed grammatical edits and text revisions to the cannabis ordinance are intended to remove uncertainty, correct unclear language, and clarify the intent of the existing Ordinance as it pertains to code enforcement activity. By removing much of the enforcement language and more simply referencing Chapter 1 enforcement provisions, potentially conflicting language is removed and ambiguity can be resolved.

#### **Technical Changes to Vacation Rental Ordinance Enforcement Section**

Similar to many of the edits to the Cannabis Ordinance enforcement section, staff proposes to move civil penalties for vacation rentals to Chapter 1 to be consistent with other civil penalties. Additionally, minor amendments referencing the Administrative Citation Ordinance (Section 1-7.6), which has been adopted since the Vacation Rental Ordinance, clarify the administrative procedures that govern administrative citations for vacation rental violations. By consolidating more enforcement provisions in Chapter 1, the opportunities for conflicting language and ambiguity is reduced.

#### **RECOMMENDATIONS:**

Staff recommends that the Planning Commission adopt a resolution recommending that the Board of Supervisors find the proposed ordinance amendments exempt from CEQA and adopt the amendments.

#### **FINDINGS FOR RECOMMENDED ACTION**

1. The proposed clarifying and technical amendments to Sonoma County Code Chapter 26 Article 88 Section 26-88-252 and Section 26-88-120, movement of civil penalties to Chapter 1 (General Enforcement), the addition of a “per plant” civil penalty, and the elimination of the three-strikes penalty for cannabis permits, are necessary and desirable to effectively enforce the Cannabis Land Use Ordinance in order to protect the public health and safety and the environment.
2. The proposed amendments are consistent with the overall goals, objectives, policies, and programs of Sonoma County General Plan because they improve enforceability of the Cannabis Land Use Ordinance, which is itself consistent with the Sonoma County General Plan.



3. The proposed amendments are categorically exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the project will have no significant effect on the environment because the proposed ordinance amends provisions related strictly to code enforcement, violation abatement, and civil penalty imposition.

### **ATTACHMENTS**

- ATT 1: Continuance Memo 20200128
- ATT 2: Draft Cannabis Ordinance Amendments
- ATT 3: Draft Vacation Rental Ordinance Amendments
- ATT 4: Draft Resolution
- ATT 5: Public Comments

