

Medical Marijuana Commercial Cultivation Issues, under the Medical Marijuana Regulation and Safety Act (MMRSA) (SB 643, AB 266, and AB 243 as adopted September 11, 2015).

Zoning and Land Use

Alameda County has a permissive zoning code. Thus, medical cannabis cultivation is not a specifically allowed use in the zoning code. While the zoning code does not distinguish the types of crops allowed in the unincorporated county, the cultivation of cannabis has potential impacts that would not be associated with a typical agricultural crop and is a discrete land use.

The County could pursue amendments to Title 17 – Zoning Code and, if necessary, the General Plan (which include the Castro Valley Area Plan and the East County Area Plan).

1. Allow cultivation of medical cannabis and authorize new land uses
 - a. CEQA – may require EIR
 - i. Understanding of cultivation requirements needed
 - b. Public process to pursue development of new land uses, with clear performance standards, for the cultivation of medical cannabis could require representatives from each of the County departments involved in implementing associated regulations (i.e. Counsel, Sheriff's Office, CDA, Environmental Health, Public Health, PWA, Fire)
 - i. Characteristic public meetings could include: CVMAC, SCAC, AAC, PC, BOS subcommittees (T&P, Uninc. Services), & BOS
 - ii. Alternative public meetings: Town hall meetings in different parts of the county.
2. The State cultivator license types issued could include:
 - a. (1) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.
 - b. (2) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.
 - c. (3) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.
 - d. (4) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.
 - e. (5) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.
 - f. (6) Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the

licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

- g. (7) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.
- h. (8) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.
- i. (9) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.
- j. (10) Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

3. Planning Considerations

- a. The initial list (non-exhaustive) of considerations regarding the cultivation of medical cannabis.
 - i. Distinct Rural and Urban Issues
 - 1. Consistency with Measure D
 - a. Floor Area Ratios restrictions would limit the medical cannabis cultivator Type (reference above) to certain land use designations (i.e. LPA, RM)
 - 2. Intensity of use and compatibility with neighboring districts
 - a. For example – The unincorporated county may not have industrial districts available to accommodate large (10,001 to 22,000 square feet) indoor commercial cultivation that uses artificial lighting.
 - ii. Number of Plants and Size
 - 1. The number of cannabis plants allowed is a key consideration. Several jurisdictions, such as Mendocino County, have restricted the number of plants. Similarly, the canopy size of a cannabis grow on a single property may also be restricted in total square footage, or as a percentage of the overall lot size.
 - iii. Location
 - 1. Distance from neighbors, schools or other youth facilities, County right-of-way, other grows, parcel size, and sightlines are common location considerations. Consideration regarding the smell produced during the growth process is a noted complaint of those who live too close to a cannabis grow. May also wish to consider banning medical cannabis in SLVAP to preserve the SLVAP as a unique and historic wine region.
 - a.
 - iv. Indoor versus Outdoor

1. Restrictions around the permitting of indoor versus outdoor grows due to use of artificial lighting. In particular, shielding or down-casting of artificial light and noise from generators used in the production of power to generate artificial light.
- v. Water
 1. Specific provisions regarding water use, erosion, diversion of existing water sources, setbacks from existing water sources, and discharge should be included in the ordinance.
 - vi. Security
 1. Many ordinances require security fencing around outdoor grows.
 - vii. Permit Process
 1. The size of the cultivator may warrant different permitting requirements (e.g. ministerial vs. conditionally permitted).
4. Close coordination and participation with other County Departments is necessary, with legal guidance from County Counsel.

Agriculture/Weights & Measures has a focused role in regulating various aspects of agriculture, and consumer protection, including but not limited to permitting, monitoring and enforcement of all pesticides used in the county, direct marketing of fresh fruits and vegetables, California Organic Program, Nursery site inspections and Weights and Measures Enforcement. Although there is no state mandate for the County Department of Agriculture to carry out a Commercial Marijuana Cultivation Program, it would appear that such a program would have similar components of existing programs already within the County Department of Agriculture/Weights and Measures.

A program must ensure commercial cultivation of cannabis for medical use shall comply with all applicable local and state licenses, standards or permitting requirements:

Licensing:

1. Applicant submission by parcel owner or written consent by owner if not applicant
2. Background check to identify state or federal convictions and arrests
3. Parcel site plan with photographs (Identify License Type) and Zoning Restrictions (see above)
 - a) Dimension of the area for cultivation
 - b) Setbacks from property lines
 - c) Minimum distance from sensitive sites to be determined
4. Cultivation and operational plans must address:
 - a. Water storage and Discharge - Regional Water Quality permits
 - b. Conservation
 - c. Drainage, runoff and erosion control
 - d. Watershed and habitat protection, streambed alteration and F&W permits
 - e. Proper storage and use of pesticides, fertilizers or other regulated products

- f. Security plan – fencing, labor workforce
 - g. Description of cultivation activities (outdoor, indoor, mixed light)
 - a. If indoors – building code compliance - adequate plumbing and electrical systems
 - h. Approximate date(s) of cannabis cultivation activities
5. Unique identifiers for each medical marijuana plant for traceability throughout the growing and distribution chain. Must include:
- a. Licensee receiving the product
 - b. Transaction date
 - c. Originating cultivator and unique identifier
 - d. Electronic data base for manifest content tracking to identify irregular activity – quantity, shipping and receiving times, product category
6. Compliance with all applicable health and safety codes
7. Exemptions from Licensing:
- a. Qualified Patient – exclusive for own use
 - b. Qualified Caregiver – provides for no more than 5 qualified patients

Note: This summary outline does not attempt to address program implementation costs or taxation