



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
P L A N N I N G D E P A R T M E N T

Chris Bazar
Agency Director

May 24, 2021

Agenda Item #6 June 3, 2021

Albert Lopez
Planning Director

224 West Winton Ave
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Honorable Board of Supervisors
Administration Building
1221 Oak Street
Oakland, CA 94612

Dear Board Members:

**SUBJECT: SECOND READING OF AMENDMENTS TO THE CANNABIS
CULTIVATION ORDINANCE (GENERAL CODE CHAPTER 6.106)**

RECOMMENDATION:

That the Board of Supervisors conduct a second reading, and adopt the proposed ordinance amending Chapter 6.106 to the Alameda County General Ordinance Code to regulate the cultivation of cannabis in the Unincorporated Area of the County of Alameda.

SUMMARY:

On May 6, 2021 the Board of Supervisors conducted a first reading of an ordinance amending Chapter 6.106 of the Alameda County General Code to regulate the cultivation of cannabis in the Unincorporated Area of the County of Alameda, allowing trucked water for cultivation purposes.

This second reading fulfills the statutory legal requirement, and the ordinance will take effect 30 days following a favorable action by your Board.

The complete ordinance is attached.

Very truly yours

DocuSigned by:

Chris Bazar, Director
Community Development Agency

Attachments:

- Attachment A - Ordinance amending Chapter 6.106
- Attachment B – May 6, 2021 Board of Supervisors Planning Meeting Agenda Packet

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 6.106 OF THE ALAMEDA COUNTY
GENERAL ORDINANCE CODE REGARDING CULTIVATION

SECTION I

The Board of Supervisors makes the following findings of fact in support of this ordinance:

1. In enacting this ordinance, the Board of Supervisors of the County of Alameda, State of California hereby reaffirms and incorporates by this reference the findings contained in Section 1 of Ordinance No. O-2019-22.
2. Pursuant to Chapter 6.106 of the Ordinance Code, cannabis cultivation operations are subject to a standard condition requiring that water is to be sourced locally (on-site) and trucked water shall not be allowed for general cultivation purposes; and
3. The Board of Supervisors finds that it is not unreasonable to allow cannabis cultivation sites to use trucked water for cannabis growing, as would be permitted for other agricultural cultivation purposes provided that water is municipal water and is not drawn from the South Livermore Valley Area Plan aquifer; and
4. All cultivation operations pursuant to Chapter 6.106 of the Ordinance Code will be required to comply with state law and state regulations; and
5. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. sections 801, *et seq.* or to license any activity that is prohibited under said Act except as mandated by State law; and
6. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) exempt cannabis operators or operations from compliance with zoning and land use regulations, or, (3) allow any activity relating to the retail, delivery, cultivation, manufacturing, distribution, testing, or consumption of cannabis that is illegal under state or federal law.

SECTION II

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Alameda, as follows:

Paragraph A of Section 6.106.125 of the Alameda County General Ordinance Code is hereby amended to delete the all of the text following sub-paragraph 21 and replace with "Water. Any trucked water for general cultivation purposes must be drawn from a municipal water source. Any trucked water drawn from an aquifer in the South Livermore Valley Plan Area shall not be allowed for general cultivation purposes".

The remainder of Section 6.106.125 remains unchanged.

SECTION III

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the _____ day of _____, 2021, by the following called vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

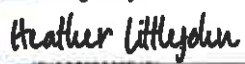
KEITH CARSON
President of the Board of Supervisors

ATTEST:
Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: DocuSigned by:


Heather Littlejohn
Deputy County Counsel



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
P L A N N I N G D E P A R T M E N T

Chris Bazer
Agency Director

April 26, 2021

Agenda Item #6 May 6, 2021

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Honorable Board of Supervisors
Administration Building
1221 Oak Street
Oakland, CA 94612

Hayward
California
94544

Dear Board Members:

phone
510.870.5400
fax
510.785.8793

**SUBJECT: PROPOSED AMENDMENTS TO THE CANNABIS CULTIVATION
ORDINANCE (GENERAL CODE CHAPTER 6.106) RELATING TO
TRUCKED WATER FOR CULTIVATION PURPOSES**

www.acgov.org/cde

RECOMMENDATION:

That the Board of Supervisors adopt the proposed ordinance amending Chapter 6.106 to the Alameda County General Ordinance Code to regulate the cultivation of cannabis in the Unincorporated Area of the County of Alameda allowing trucked water for cultivation purposes.

BACKGROUND:

The Board Transportation/Planning Committee has directed staff to prepare amendments to the County General Ordinance Code to remove standard condition 21, which requires the use of water sourced on-site for cannabis cultivation, from the cannabis cultivation ordinance, and replace it with a condition requiring that any water hauled off-site for the purpose of cannabis cultivation must be drawn from a municipal water source and must not be drawn from an aquifer in the South Livermore Valley Plan Area (SLVPA). County staff has prepared the attached ordinance amendments making these changes.

DISCUSSION/SUMMARY:

Paragraph A of Section 6.106.125 of the Alameda County General Ordinance Code contains standard conditions for cannabis cultivation operators, including the following sub-paragraph:

21. Water. Water is to be sourced locally (on-site) and trucked water shall not be allowed for general cultivation purposes, but may be used for emergencies (e.g., fire).

To allow water to be trucked in for cultivation purposes, subject to some limitations relating to water quality and water source, the draft ordinance amendments would delete Paragraph A of Section 6.106.125 of the Alameda County General Ordinance Code and replace it with the following text:

21. Water. Any trucked water for general cultivation purposes must be drawn from a municipal water source. Any trucked water drawn from an aquifer in the South Livermore Valley Plan Area shall not be allowed for general cultivation purposes.

Public Comments Received

On October 27th, staff provided draft ordinance amendments to the Agricultural Advisory Committee (AAC) for consideration. Comments raised by the public and members of the committee in relation to the proposed cannabis cultivation ordinance changes included discussion of the following:

- Suggestions that cannabis cultivation is a permitted type of agriculture and should not be denied access to off-site water, if available, for cultivation purposes; concern that it is inconsistent and not justified to treat cannabis cultivation differently than other agricultural crops that would be able to access off-site water for cultivation;
- Concerns that the provision requiring no off-site water to be used for cultivation was part of a longer 3-year cannabis ordinance development process and no concerns were raised during that time;
- Concerns about the traffic impacts of additional water trucks on narrow agricultural roads and the interface of trucks with commuter traffic;
- Concerns that allowing cannabis cultivation operations to access water could have impacts on limited groundwater resources; and
- Suggestions that the CUP process is adequate to manage any water access issues.

After discussion, the AAC passed a motion supporting the removal of sub-paragraph 21 from the standard conditions in the cultivation ordinance. Staff presented the proposed ordinance amendments and the AAC's comments to the Board Transportation/Planning Committee on December 7th, 2020. The Board Transportation/Planning Committee directed staff to delete standard condition 21 and replace it with a requirement that any trucked in water be of appropriate quality (e.g., not introducing sub-standard water onto the sites) and not sourced from the South Livermore Valley Plan Area.

Planning Commission Comments

Staff presented the draft ordinance amendments to the Planning Commission on December 7th, 2020. The item was continued to March 1st, 2021, and staff provided further information requested by the Commissioners about the need for the proposed changes, including whether cultivation permit applicants and permit holders in unincorporated Alameda County are experiencing difficulty accessing adequate water on-site and are seeking to rely on trucked-in water for cultivation purposes. Comments from the Planning Commission and members of the public included the following:

- Concern that cannabis cultivation should not be allowed if there is insufficient water available on-site to support it; and concern on the other hand that the County should not be setting potential cannabis cultivators up for failure, if the feedback being received is that they may need access to trucked water for their operations to be viable;
- Support for the proposed removal of the restriction on water-trucking, based on a concern there should not be a different set of rules for cannabis. If other types of agricultural uses are allowed to truck water in for cultivation when required, cannabis should be allowed to also, and the CUP process including referral to Zone 7 would be adequate to manage considerations about water;

- Concern that there is no limit proposed on the amount of water that can be trucked in, but comments on the other hand that there are practicalities about the cost/benefit of trucking water in for cultivation;
- Concern about monitoring and compliance, and whether an annual inspection by Code Enforcement would be adequate to ensure the requirements for trucked water are being met;
- Concerns from neighbors, including in the Morgan Territory Road area, about impacts on the local aquifers, potential contamination of soil and groundwater and traffic impacts if trucking of water is allowed; and
- Concern that the cannabis cultivation ordinance should not be amended until one or more sites have been in operation and tested how the ordinances work in practice.

The Planning Commission considered a motion to recommend that the ordinance amendments be adopted by the Board of Supervisors as shown in the staff report, but changed it to require that the water must be potable water from a municipal source, and that the County shall impose a CUP condition that County staff will verify the source of water used for cannabis cultivation during the inspection process that applies to cannabis operations. This motion failed on a 3/3 tied vote. There was support by some Commissioners for the proposed amendments, but a lack of majority agreement that the changes should be adopted. There is thus no recommendation coming from the Planning Commission on this item.

Board Transportation/Planning Committee

Staff presented the draft ordinance amendments to the Board Transportation/Planning Committee on April 5th, 2021. Comments from members of the public included the following:

- Concern that the amendment was introduced in response to the needs of one cultivation permit holder;
- Concern from neighbors in and around Morgan Territory Road about drought conditions, the water-intensive nature of cannabis cultivation, availability of groundwater and concern that the County would not be able to sufficiently monitor where trucked water is coming from and the quality of the water; and
- Concerns about road safety with the addition of water hauling trucks.

The Transportation/Planning Committee recommended the ordinance amendments proceed to the full Board of Supervisors for adoption.

California Environmental Quality Act (CEQA)


The ordinance amendments are exempt from CEQA per state law. Business and Professions Code Section 26055(h) exempts from CEQA the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review for commercial cannabis permits or other authorizations, where CEQA review will be part of that discretionary review. This exemption is effective through July 1st, 2021. Because all commercial cannabis operations in the County will require discretionary review in the form of a conditional use permit with associated CEQA review, this ordinance amendment is exempt.

Board of Supervisors
April 26, 2021
Page 4

CONCLUSION:

Attachment A shows the draft ordinance amendments proposed. Staff recommends that your Board adopt the proposed amendments to the cannabis ordinances.

Very truly yours,

DocuSigned by:


00281083382915A
Chris Bazar, Director
Community Development Agency

Attachments

- Attachment A - Ordinances amending Chapter 6.106

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4. All cultivation operations pursuant to Chapter 6.106 of the Ordinance Code will be required to comply with state law and state regulations; and
5. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. sections 801, *et seq.* or to license any activity that is prohibited under said Act except as mandated by State law; and
6. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) exempt cannabis operators or operations from compliance with zoning and land use regulations, or, (3) allow any activity relating to the retail, delivery, cultivation, manufacturing, distribution, testing, or consumption of cannabis that is illegal under state or federal law.

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Adopted by the Board of Supervisors of the County of Alameda, State of California, on the _____ day of _____, 2021, by the following called vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:


RICHARD VALLE
President of the Board of Supervisors

ATTEST:
Clerk of the Board of Supervisors,

By: _____
Deputy Clerk

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: 

Heather Littlejohn
Deputy County Counsel