



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

P L A N N I N G D E P A R T M E N T

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MEMORANDUM

DATE: April 5, 2021
TO: Board of Supervisors' Transportation/Planning Committee
FROM: Chris Bazar, Director, Community Development Agency
Albert Lopez, Planning Director
SUBJECT: An ordinance amendment to Chapter 6.106 of the County Ordinance Code to allow water-hauling from off-site for the purposes of cannabis cultivation

BACKGROUND

On October 27th, 2020, the Agricultural Advisory Committee (AAC) initiated a request that a requirement in Chapter 6.106 of the County General Ordinance Code that currently prohibits the hauling of water from off-site for the purpose of cannabis cultivation be removed to allow cannabis cultivators to access water from off-site for cultivation purposes. On December 7th, 2020, your Committee directed staff to proceed with amendments to the County's cultivation ordinance to remove standard condition 21, and replace it with a condition requiring that any water hauled from 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). On March 1st, a motion by the Planning Commission to recommend approval of the ordinance amendments failed on a 3:3 tied vote. The draft ordinance amendments are attached.

DISCUSSION

Current Ordinance Provisions

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).

Proposed Ordinance Amendments

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.

Agricultural Advisory Committee Comments

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 and concern that it is inconsistent and not justified to treat cannabis cultivation differently than from 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 your Committee on December 7th. Your Committee directed staff to delete standard condition 21 and replace it with a requirement that any trucked in water be appropriate quality (e.g., not introducing sub-standard water onto the sites) and not be 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 at the meeting on December 7th, 2020, included discussion of the following issues:

- 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.

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.

NEXT STEPS

Staff seeks direction from your committee to take the draft ordinance amendments to the full Board for a First Reading on April 22nd.

Attachments

- Draft ordinance amendments to Chapter 6.106

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:

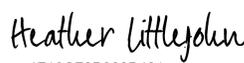
RICHARD VALLE
President of the Board of Supervisors

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