



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY  
PLANNING DEPARTMENT**

**STAFF REPORT**

**TO** Members of the Alameda County Planning Commission  
**HEARING DATE** March 1, 2021  
**RE** Amendments to the County Ordinance Code to allow water-hauling from off-site for cannabis cultivation

**GENERAL INFORMATION**

This item was continued from the Planning Commission meeting on December 7<sup>th</sup>, 2020. At that meeting, the Commission requested more information, including an update on the status of the commercial cannabis permits issued in unincorporated Alameda County, and more background about the need for the proposed ordinance amendments. The update on permit status is addressed in a separate item on the Commission's March 1<sup>st</sup>, 2021, agenda. On October 27<sup>th</sup>, 2020, the Agricultural Advisory Committee 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 deleted to allow cannabis cultivators to access water from off-site for cultivation purposes like other agricultural uses can. On December 7<sup>th</sup>, 2020, the Board of Supervisors' Transportation and Planning 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). The draft ordinance amendments are attached.

**STAFF RECOMMENDATION**

Staff requests that the Commission review the draft ordinance amendments, provide comments to staff, and recommend that the Board of Supervisors approve the ordinance amendments.

**STAFF ANALYSIS**

**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 following sub-paragraph 21:

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 propose to 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.

### **Responses to Previous Planning Commission Comments**

When staff presented the draft ordinance amendments to the Planning Commission on December 7<sup>th</sup>, 2020, the Commission continued the item and requested staff provide further information in relation to 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.

Staff confirms that none of the CUP applications for cannabis cultivation currently being considered by the County propose to rely on trucking of water from off-site. However, staff has been advised that the change has been requested to enable permit holders to have the option to potentially apply to rely on trucked water to some extent in future, if circumstances require. When the Agricultural Advisory Committee initiated the request for the change on October 27<sup>th</sup>, 2020, that agenda item was initiated in response to discussions arising in Supervisor Miley's cannabis industry stakeholder group, which includes participants who hold cultivation permits within unincorporated Alameda County.

Staff presented the Agricultural Advisory Committee's proposed ordinance amendments to the Board of Supervisors' Transportation and Planning Committee meeting on December 7<sup>th</sup>, 2020. The Transportation and Planning 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, which could reduce the availability of water from the local aquifer for vineyards in the area. Supervisor Miley commented at that meeting that although the change would remove the prohibition on trucking water from the ordinance, permit applicants would still be required to demonstrate adequate and appropriate supply of water through the conditional use permit (CUP) process, including through referral to the Alameda County Flood Control and Water Conservation District, Zone 7 (Zone 7). Supervisor Miley noted that the County is being asked to consider these changes to the ordinances to make sure the permit requirements are workable for the permit holders in the unincorporated areas.

### **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 1<sup>st</sup>, 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.

### **CONCLUSION**

Staff recommends that your Commission recommend that the Board of Supervisors adopt the proposed ordinance amendments. Staff will present your recommendation to the Board Transportation and Planning Committee before taking the ordinance amendments to the full Board for approval.

## ATTACHMENTS

- Draft ordinance amendments to Chapter 6.106
- Summary of AAC comments and action

<b>PREPARED BY:</b>	Sophie McGuinness, Senior Planner and Elizabeth McElligott, Assistant Planning Director
<b>REVIEWED BY:</b>	Albert Lopez, Planning Director

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:

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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

**Summary of AAC comments and action  
on proposed cannabis cultivation ordinance changes**

On October 27<sup>th</sup>, 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 Agricultural Advisory Committee passed a motion supporting the removal of paragraph 21 from the standard conditions in the cultivation ordinance.

Staff presented the proposed ordinance amendments to the Board of Supervisors' Transportation and Planning Committee meeting on December 7<sup>th</sup>. The Transportation and Planning 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.