

Staff's recommendation for a "pipeline provision" for all approved uses, whether operating or not, and all land use applications currently in the permitting process is as follows:

SETBACKS

For the purposes of this pipeline provision, "setbacks" means sensitive use setbacks adopted by this ordinance and does not apply to any other applicable setback, such as base zoning development setbacks, riparian corridor, stream or wetland setbacks, building or fire code setbacks.

Policy Option 1. Legal Nonconforming

1A. Permit holders.

1. Uses within new setbacks. All approved cannabis uses as of the effective date of the ordinance, or portions of these uses, that do not conform to new sensitive use setbacks would be allowed to continue as legal nonconforming uses subject to Article 94 – Nonconforming Uses (see below for full text of code section), which includes provisions for continuance, repair, maintenance, reconstruction, and termination of nonconforming uses.
 - a. Sec. 26-94-010(b) would be amended to include outdoor cultivation as a use subject to one-time 10% expansion under this section. The operation would be allowed a one-time expansion not to exceed 10% of the approved outdoor canopy area within a setback with a Use Permit. The 10% canopy expansion would be calculated separately from the floor area expansion under 1A.1.b. below (i.e., if applicable, an operation could expand outdoor canopy by 10% and total floor area by 10%).
 - b. The operation would be allowed a one-time expansion not to exceed 10% of the total existing floor area for any structures within a setback with a Use Permit. The 10% floor area expansion would be calculated separately from the canopy expansion under 1A.1.a. above (i.e., if applicable, an operation could expand outdoor canopy by 10% and total floor area by 10%).
 - c. The operation would be allowed to replace an existing use with another use of the same or less intensity within a setback with a Use Permit, in conformance with 1A.1.a. and 1A.1.b. above (i.e., the replacement use cannot result in expansion of outdoor canopy area or floor area that exceeds the limits set above). For example, space within a structure currently allocated to cultivation could potentially be converted to accessory processing or accessory manufacturing. The key consideration to allowing such a modification is whether the change would result in an intensification of use for the overall operation.
 - d. Cannabis would be considered an agricultural use for the purposes of Sec. 26-94-020. Agricultural structures damaged or destroyed would be allowed to be rebuilt on the original foundation footprint.

- e. Cannabis would be considered an agricultural use for the purposes of Sec. 26-94-040. Remodeling, ordinary maintenance, and repairs to any agricultural structures would be allowed.
 - f. The operation would be subject to Sec. 26-94-030. If the operation were to cease for a continuous period of one year, the operation would lose nonconforming status and the use could not be reinitiated.
 - g. Notwithstanding 1A.1.f. above, Sec. 26-94-030 would be amended to extend the non-operating threshold to two years for outdoor cultivation only. If outdoor cultivation were to cease for a continuous period of two years, the operation would lose nonconforming status and the use could not be reinitiated.
2. Uses outside new setbacks. Any approved uses outside new sensitive use setbacks would not be considered legal nonconforming, and any modification or expansion of uses outside new sensitive use setbacks would be allowed with a Use Permit. For example, if a structure or outdoor cultivation area is located partly within a new sensitive use setback, expansion of the portion that is not within the setback would not be limited by Article 94.
- 1B. Applications in process. Applications accepted as complete by the effective date of the ordinance could continue to be processed as proposed, even if proposed outdoor cultivation and/or existing or proposed structures are entirely or partly within a setback. Proposed uses that do not conform to new sensitive use setbacks would, including outdoor cultivation and all structures proposed for use in the operation, would be considered legal nonconforming uses after permit issuance. Such operations would be subject to 1A.1. above. Similarly, any changes to the proposal within the setback could not intensify the use or increase outdoor cultivation or structures by more than 10%.

Notes on Policy Option 1. Legal Nonconforming:

- a) This option would likely result in phase out of nonconforming uses over time, as nonconforming uses which cease for a continuous period of one year - or two years for outdoor cultivation only - lose nonconforming status and cannot be reinitiated.
- b) This option allows for modified or expanded uses fully consistent with current code (i.e., any modification or expansion outside of setbacks); such uses are not subject to Article 94 – Nonconforming Uses.
- c) This option allows for a one-time ten percent expansion, unlike policy option 2 below (Setback Exception – Approved Uses), but otherwise is more restrictive as the use is not allowed to intensify within the setback, the use is subject to phase-out, and there are restrictions on reconstructions, repairs and maintenance. This option is much more restriction than the recommended policy (Setback Exception – Approved and Modified/Expanded Uses), which grants a setback exception to all approved, modified, or expanded cannabis uses.

Policy Option 2. Setback Exception – Approved Uses

2A. Permit Holders.

1. Approved uses within new setbacks. Setbacks would not apply to uses that were approved as of the effective date of the ordinance. Therefore, approved uses, including outdoor cultivation and all structures approved for use in the operation, would be able to continue at approved locations, even if located entirely or partly within a new sensitive use setback.
2. Modified or expanded uses within new setbacks. Setbacks would apply to modified or expanded uses that are not approved as of the effective date of the ordinance.
 - a. The operation would not be allowed to expand any outdoor cultivation activities within a new sensitive use setback beyond those approved as of the effective date of the ordinance, including outdoor canopy area, outdoor propagation area, or outdoor research and development area.
 - b. The operation would not be allowed to construct new structures for use in the cannabis operation beyond those approved as of the effective date of the ordinance within a new sensitive use setback.
 - c. The operation would be allowed to replace or expand uses within structures approved for use in the operation as of the effective date of the ordinance with a Use Permit, provided that such uses would not result in expansion of total floor area. Modified uses allowed under this option would not be required to be of lower intensity than approved uses being replaced, but such uses would be subject to environmental review and potentially be limited to minimize impacts.
3. Uses outside new setbacks. Modification or expansion of uses outside new sensitive use setbacks would be allowed with a Use Permit. For example, if a structure or outdoor cultivation area is located partly within a new sensitive use setback, expansion of the portion that is not within the setback would be allowed consistent with current code.

2B. Applications in process. Setbacks would not apply to applications accepted as complete by the effective date of the ordinance, and such applications could continue to be processed as proposed, even if proposed outdoor cultivation and/or existing or proposed structures are entirely or partly within a setback. After permit issuance, operations would be subject to 2A.1. and 2A.2. above.

Notes on Policy Option 2. Setback Exception – Approved Uses:

- a) This option allows current permit holders to continue their approved operation in perpetuity, as the operation would not be subject to the nonconforming use termination provision (Sec. 26-94-030). This option eliminates the possibility of “phase out” of the nonconforming use due to non-operation (i.e., under this option the approved Use Permit runs with the land in perpetuity).

- b) This option prohibits all expansion of outdoor cultivation activities and construction of new structures within new sensitive use setbacks but allows modification and intensification of uses within approved structures.
- c) This option allows for less footprint-related expansion potential than policy option 1 (Nonconforming Uses) which would allow for limited expansion within a setback consistent with Article 94. However, this option otherwise provides greater flexibility and less restrictions than policy option 1, as this option allows greater expansion, modification, and intensification of uses within approved structures, does not impose limits on reconstruction, repair, or maintenance of structures, and does not make the operation subject to phase-out. This option is much more restriction than the recommended policy (Setback Exception – Approved and Modified/Expanded Uses), which grants a setback exception to all approved, modified, or expanded cannabis uses.

Recommended Policy. Setback Exception – Approved and Modified/Expanded Uses

A. Permit holders.

- 1. Approved uses. Setbacks would not apply to uses that were approved at the effective date of the ordinance. Therefore, approved uses, including outdoor cultivation and all structures approved for use in the operation, would be able to continue at approved locations, even if located entirely or partly within a setback.
- 2. Modified or expanded uses. Setbacks would not apply to modified or expanded uses. Permit holders could apply for a Use Permit Modification to allow modified or expanded uses (i.e., uses not part of current approval) consistent with uses allowed by current code; such uses could be located entirely or partly within a setback.

- B. Applications in process. Setbacks would not apply to applications accepted as complete by the effective date of the ordinance and such applications could continue to be processed as proposed, even if proposed outdoor cultivation and/or existing or proposed structures are entirely or partly within a new setback. After permit issuance, operations would be subject to A.1. and A.2. above.

Notes on Recommended Policy. Setback Exception – Approved and Modified/Expanded Uses:

- a) This option would allow current permit holders to continue their approved operation in perpetuity, as the operation would not be subject to the nonconforming use termination provision (Sec. 26-94-030). This option would eliminate the possibility of “phase out” of the nonconforming use due to non-operation (i.e., under this option the approved Use Permit runs with the land in perpetuity).
- b) This option would allow expansion of the operation on the permitted parcel consistent with new uses allowed by current code, even if such uses are located entirely or partly

within a new setback. This option is the least restrictive and allows for maximum expansion potential to current permit holders.

TERM LIMITS

Use Permits:

- Term limits would be eliminated. Use Permits would run with the land in perpetuity and would not be required to renew to continue approved operations. Modified or expanded uses would require a Use Permit Modification.

Zoning Permits:

- Z1. Term limits would be eliminated. Zoning Permits would run with the land in perpetuity and would not be required to renew to continue approved operations. Modified or expanded uses would require submission of a Use Permit application.
- Z2. Multi-tenant zoning permits that were granted a 5-year permit term or that extend until there is a decision on the applicable use permit application will remain subject to term limits. But, if the operation is downsized to qualify for a zoning permit under the current ordinance (e.g., 10,000 sf.), the term will be eliminated consistent with Z1 above.

Article 94. - Nonconforming Uses.

Sec. 26-94-010. - Continuance.

The lawful use of land existing on the effective date of the ordinance codified in this chapter although such use does not conform to the regulations specified by this chapter for the district in which such land is located, may be continued but shall not be enlarged or increased, nor be extended to occupy a greater area than that occupied by such use at the time of the adoption of said ordinance, and that if any use ceases, the subsequent use of such land shall be in conformance with the regulations specified by this chapter for the district in which such land is located provided that:

- a) A legal nonconforming use may be replaced by a use of the same or less intensity upon obtaining a use permit or a use permit waiver;
- b) Pursuant to policy LU-1f of the general plan, a legal nonconforming use may be expanded one time not to exceed ten percent (10%) of the total existing floor area for any structures subject to lot coverage and setback requirements and to all other applicable requirements of the this code, and provided that such structures are not located within a designated redevelopment project area;
- c) A legal nonconforming use consisting of a mobile home may be replaced with a newer and larger mobile home in the same location, subject to [Article 82](#).

Sec. 26-94-020. - Reconstruction.

If at any time any commercial or industrial use in existence on the effective date of the ordinance codified in this chapter, which does not conform to the regulations for the district in which it is located, is damaged or destroyed by fire, explosion, Act of God, tortious conduct of a third party, or act of the public enemy, to the extent of more than fifty percent (50%) of the replacement value of the structure, the land shall be subject to all the regulations specified by this chapter or the district in which such land is located. Any legal nonconforming agricultural or residential structure so damaged may be rebuilt on the original foundation footprint. Additional floor area may be added to the structure in accordance with [Section 26-94-010](#)(b). "Replacement value," as used in this section, is equal to the cost of the labor and materials which would be necessary to construct the structure.

Sec. 26-94-030. - Termination of use.

If the actual operation of a legal nonconforming use ceases for a continuous period of one (1) year, unless the legal owner can establish valid proof to the contrary, such cessation of the legal nonconforming use shall be considered termination; then without further action by the planning commission the use of the land shall be subject to all the regulations specified by this chapter for the district in which such land is located.

Sec. 26-94-040. - Repairs and maintenance.

- a) Remodeling, ordinary maintenance and repairs may be made to any legal nonconforming industrial or commercial structures to the extent of twenty percent (20%) of the appraised value of the structure during any calendar year period; provided, that foundation work shall be exempt from the twenty percent (20%) calculation. Remodeling, ordinary maintenance and repairs to any legal nonconforming agricultural or residential structure shall not be limited except as otherwise required by this article or by other provisions of law.
- b) Nonconforming historic structures shall be exempt from the twenty percent (20%) calculation provided that they are either: (1) included in an historic combining district; or (2) are listed as an historic resource in a specific plan or coastal plan; and (3) have been certified to be an historic resource by the Sonoma County historic landmarks commission, or state of California or in the Federal Register of Historic Places; and (4) repair or reconstruction is an authentic replica of the original structure.