

MEMO

To: Board of Supervisors
From: Paul Junker and Mark Corcoran, Michael Baker International
Date: June 12, 2018
Re: Policy Discussion - Frameworks for Cannabis Overlay Zones and Cannabis Zoning Exceptions

The Mendocino County Board of Supervisors directed Michael Baker to prepare amendments to the County's current cannabis regulations to establish two types of overlay zones: areas with modified cannabis cultivation regulations to allow for operators to enjoy more flexible cannabis regulations and development standards (Opt-In Zones), and areas where new commercial cannabis cultivation would be prohibited and existing permitted commercial cultivation would sunset (Opt-Out Zones). The Board also directed Michael Baker to identify specific exceptions to the current cannabis cultivation regulations that promote increased participation in the County's current cannabis permitting process (Exceptions).

To draft the proposed Opt-In, and Opt-Out and Exceptions regulations Michael Baker relied on input from members of the County's Cannabis Overlay Working Group. Michael Baker met with members of the Working Group, which were organized into three Sub-Groups, 16 times from January to March. Following meetings with the Sub-Groups, Michael Baker presented draft frameworks of the proposed Exceptions, Opt-In, and Opt-Out ordinance updates to the entire Working Group. The framework documents identify key points of the proposed ordinance updates that, once approved by the Board of Supervisors, will guide drafting of specific changes to the County's cannabis regulations.

PROPOSED FRAMEWORK OF CHANGES: The proposed frameworks outline amendments to Chapter 10A.17 Medical Cannabis Cultivation, Chapter 20.242 Medical Cannabis Cultivation Site, and Chapter 20.243 Cannabis Facilities are as follows below. All permit types and definitions are the same as those listed in Sec. 10A.17.060, Cannabis Cultivation Permit Types.

1. Exceptions Framework

- 1.1 The proposed exceptions to the cannabis cultivation ordinances offer relief to applicants from certain cannabis cultivation development standards if the proposed cultivation area meets certain specific guidelines. Exceptions will be available throughout the County, including within Opt-In overlay zones. Exceptions will not be available within Opt-Out Overlay zones.
 - a. Modify setback reductions allowed for in Sec. 20.242.060 (D). Currently, a reduction to 50 feet is allowed. Propose a reduction to 20 feet be allowed subject to Administrative Permit approval.

- b. Modify additional required setback from access easements required by Section 10A.17.040(A)(5) for indoor/greenhouse/mixed light cultivation. This setback modification would not reduce setbacks to less than those required by the Corridor Preservation Setback (Section 20.152.020). Modification of the setback to access easements would be subject to an Administrative Permit.
- c. A parcel that is zoned to allow commercial cultivation that is between 3.5 and 4.99 acres and that shares at least 50 percent of its boundaries with parcels 5 acres in size or larger may be issued permit types 1, 1-A and 1-B subject to Administrative Permit approval.
- d. Parcels zoned RR 5 that are between 3.5 (30% reduction from 5 ac) and 4.99 acres and have been issued a permit for commercial cultivation would not be subject to Sunset.
- e. A parcel that is zoned to allow commercial cultivation that is between 7.0 acres and 9.99 acres and shares 50 percent or more of its borders with parcels 10 acres in size or larger may be issued permit types 2, 2-A, 2-B and 4, subject to Administrative Permit approval.
- f. Certain mixed light facilities may be required to only meet standard building setbacks subject to the approval of an Administrative Permit. Approval of the Administrative Permit would require assurances that impacts such as fugitive light and odors are properly mitigated.

2. Opt-In Overlay Zone Framework

- 2.1 Opt-In overlay zones would allow for a reduction of requirements for commercial cannabis cultivators within a specific geographic area. Opt-In overlay zones would be required to be consistent with the following provisions and processing provisions.
 - a. An Opt-In overlay zone may be applied to any residential zone and may include a limited number of non-residential parcels if required to create logical boundaries.
 - b. An Opt-In overlay zone must be composed of a minimum of 20 parcels (as identified by legal lots).
 - c. All parcels within an Opt-In overlay zone must be contiguous excepting separations by public roads.
 - d. A petition for the creation of an Opt-In overlay zone must demonstrate the support of more than 60% of all current property owners (as identified by legal lot / one owner's signature for each legal lot in the proposed zone).
 - e. Applications for an Opt-In overlay zones shall be reviewed and acted upon by the Board of Supervisors following a public hearing.
- 2.2 Once established the following allowed uses and development standards would be applied to an Opt-In overlay zone.
 - a. Sunset Provision for Residential Districts (Sec. 10A.17.080(B)(2)(b)) would not apply within an Opt-In overlay zone.

- b. Cannabis Cultivation Permit types (C) Small Outdoor, (C-A) Small Indoor, Artificial Light, and (C-B) Small, Mixed Light, may be permitted on any parcel regardless of parcel size provided all other existing development standards and application requirements are met. (current regulations are no limitation for existing and 2-acre minimum for new).
 - c. Within the Opt-In overlay zone, the required setback noted in Sec. 20.242.060 (D) will be reduced to 20 feet.
 - d. Within the Opt-In overlay zone, the required setback noted in Sec. 20.242.060 (D) may be reduced to less than 20 feet or waived subject to Administrative Permit approval.
- 2.3 In order to provide assurances and support the investment required for permitting and initiating commercial cultivation, Opt-In overlay zones would be subject to the following restrictions on modification.
- a. An adopted Opt-In overlay zone would remain in-effect (zone would not be repealed and parcels may not be removed) for 10 years after date of approval except when a request to repeal is initiated by petition of more than 70% of all current property owners within the Opt-In overlay zone. A request to repeal an Opt-In overlay zone would be submitted to the Board of Supervisors for consideration at a public hearing.
 - b. Following the in-effect period of 10 years following establishment, a request to repeal, or amend, an Opt-In overlay zone may be initiated by petition of 60% or more of all current property owners within the Opt-In overlay zone. A request to repeal would be submitted to the Board of Supervisors for consideration at a public hearing.
 - c. If an Opt-In zone is repealed at any time all current cultivators that do not meet the development standards of the underlying zone would be permitted to continue operations for three years from the date of repeal of the overlay zone. At three years following the date of repeal of the Opt-In overlay zone, permits for cultivators that do not meet the standards of the underlying zone would not be renewed by the County.
 - d. Parcels adjacent to the Opt-In overlay zone could petition for inclusion into the Opt-In overlay zone. However, additions to the Opt-Out overlay zone would not alter the date of establishment of the adopted Opt-In overlay zone.
 - e. Changes to the underlying zoning of an Opt-In overlay zone would have no effect on the uses permitted and defined by this section, nor would the Opt-In overlay zone limit any use rights granted by a future rezone of property within an Opt-In overlay zone.
- 2.4 There are currently five areas being considered for inclusion into the initial creation of the Opt-In overlay zone.
- a. Laytonville
 - b. Covelo (Fairbanks Road)
 - c. Covelo (Core)
 - d. South Leggett
 - e. Mitchell Creek

3. Opt-Out Overlay Zone Framework

- 3.1 An Opt-Out overlay zone would prohibit the commercial cultivation of cannabis within a specific geographic area. Opt-Out overlay zones would be required to be consistent with the following provisions and processing provisions.
 - a. An Opt-Out overlay zone may be applied to any zone where a dwelling unit is a principally permitted use and where residential use is currently the predominant land use.
 - b. An Opt-Out overlay zone must be composed of a minimum of 20 parcels (as identified by legal lots).
 - c. All parcels within an Opt-Out overlay zone must be contiguous excepting separations by public roads.
 - d. A petition for the creation of an Opt-Out overlay zone must demonstrate the support of more than 60% of all current property owners (as identified by Legal Lot / one owner's signature for each Legal Lot in proposed area).
 - e. Applications for Opt-Out overlay zones shall be reviewed and acted upon by the Board of Supervisors following a public hearing.
- 3.2 Once established the following allowed uses and development standards would be applied to an Opt-Out overlay zone.
 - a. All medical and adult use cannabis operations, except those uses identified as exempt under Sec. 10A.17.030, would be prohibited within an Opt-Out overlay zone.
- 3.3 In order to provide assurances to existing and future residents choosing to reside in an Opt-Out overlay zone, the Opt-Out overlay zone would be subject to the following restrictions on modification.
 - a. An adopted Opt-Out overlay zone would remain in-effect for 10 years after date of approval except when a request to repeal is initiated by petition of more than 70% of all current property owners within the Opt-Out overlay zone. A request to repeal an Opt-Out overlay zone would be submitted to the Board of Supervisors for consideration at a public hearing.
 - b. Following the in-effect period of 10 years, a request to repeal, or a request to amend, an Opt-Out overlay zone would be initiated by petition of more than 60% of all current property owners within the Opt-Out overlay zone. A request to repeal would be submitted to the Board of Supervisors for consideration at a public hearing.
 - c. Parcels adjacent to the Opt-Out overlay zone could petition for inclusion into the Opt-Out overlay zone. However, additions to the Opt-Out overlay zone would not alter the date of establishment of the adopted Opt-Out overlay zone.
 - d. Existing permitted cannabis cultivation sites or permitted cannabis facilities located within a newly adopted Opt-Out overlay zone would be permitted to continue

operations for three years from the date of establishment of the overlay zone. At three years following the date of establishment of the Opt-Out overlay zone, permits for cultivators or licenses for facilities would not be renewed by the County.

- e. Changes to the underlying zoning of an Opt-Out overlay zone would have no effect on prohibition of medical and adult use cannabis operations established under the Opt-Out overlay zone.
- 3.4 There are currently two areas being considered for inclusion into the initial creation of the Opt-Out overlay zone.
- a. Boonville Road / Woody Glen
 - b. Deerwood

ENVIRONMENTAL DETERMINATION: A determination of compliance with the California Environmental Quality Act (CEQA) has not yet been made. Once an Ordinance containing the proposed changes to the Mendocino County Code has been drafted, the appropriate level of CEQA review will be determined.

RECOMMENDATION FOR THE BOARD OF SUPERVISORS: Review the proposed frameworks for the Exceptions, Opt-In Zoning Overlay, and Opt-Out Zoning Overlay regulations and provide input and direction to guide amendments of the County Code.

ATTACHMENTS:

None



OFFICE OF THE COUNTY COUNSEL

MEMORANDUM

DATE: June 12, 2018

TO: Board of Supervisors

FROM: Matthew Kiedrowski, Deputy County Counsel

SUBJECT: CEQA Exemption for Discretionary Cannabis Permit Programs

The Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), chaptered in 2017, included an exemption from the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*; “CEQA”) for cannabis regulatory programs that require discretionary review of permits. The County Counsel’s Office wanted to bring this exemption to the attention to the Board of Supervisors in connection with today’s presentation by Michael Baker International.

Specifically, subdivision (h) of section 26055 of the Business and Professions Code reads as follows:

Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. This subdivision shall become inoperative on July 1, 2019.

To summarize: the adoption of an ordinance regulating commercial cannabis activity (cultivation or facilities) that requires discretionary review for individual projects, such as a use permit, is exempt from review under CEQA. Because environmental review is required for the review of each permit or license, the statute exempts the adoption of the regulatory ordinance from its own environmental review.

The above CEQA exemption could streamline the adoption of additional ordinances regarding commercial cannabis activity, so long as those ordinances required discretionary review of each permit application. Staff requests direction from the Board as to whether staff should investigate additional cannabis ordinance opportunities that might benefit from this CEQA exemption.