



**PLANNING COMMISSION
STAFF REPORT- ORDINANCE AMENDMENT**

**MARCH 19, 2021
OA_2021-0002**

SUMMARY

APPLICANT: COUNTY OF MENDOCINO
501 LOW GAP ROAD
UKIAH, CA 95482

REQUEST: Review and consider a recommendation to the Board of Supervisors on proposed adoption of Mendocino County Code Chapter 22.18 – Commercial Cannabis Activity Land Use Development Ordinance and corresponding proposed amendments to Mendocino County Code Chapter 10A.17 – Mendocino Cannabis Cultivation Ordinance, and Chapter 20.242 – Cannabis Cultivation Sites. Chapter 22.18 establishes a discretionary permitting process for cannabis cultivation activities. Corresponding changes to Chapter 10A.17 and Chapter 20.242 are proposed as well to avoid conflicting and/or overlapping regulations. Standards and requirements for cultivation exempt from permit requirements are also proposed to be relocated to Chapter 22.18.

LOCATION: Within the unincorporated areas of Mendocino County, not including the designated Coastal Zone areas of the County.

ENVIRONMENTAL DETERMINATION: Statutorily Exempt pursuant to California Business and Professions code section 26055(h)

FROM: JULIA KROG, ASSISTANT DIRECTOR

INTRODUCTION/BACKGROUND

On April 4, 2017, the Board of Supervisors adopted Ordinance Number 4381, adding Chapters 10A.17 and 20.242 to the Mendocino County Code, which included a ministerial program for Phase Three of the cannabis program, applicable to new cultivation activities. The opening of Phase Three of the program has been delayed several times at the direction of the Board of Supervisors. Presently the opening date of Phase Three is April 1, 2021, but as of the writing of this report it is anticipated that an urgency ordinance will be considered by the Board on March 22, 2021 that may establish a temporary moratorium on the commencement of Phase Three cannabis cultivation permitting pending the study and consideration of land use and other regulations pertaining to cannabis cultivation.

On May 14, 2019, the Board of Supervisors reviewed the recommendations of the Cannabis Ad Hoc Committee and provided direction to staff to transition to Use Permits/Administrative Permits for Phase Three for all cultivation activities and align permit categories with the California Department of Food & Agriculture (CDFA). In addition on December 10, 2019, Staff presented to the Board of Supervisors a memorandum detailing the reason why the Range Land (RL) zoning district was removed from Table 2 for New Cannabis Cultivation Sites (MCC Section 20.242.060). The concern expressed in the Mitigated Negative Declaration (MND) (SCH No. 2016112028) for the Mendocino Cannabis Cultivation Regulations was regarding the conversion of agricultural or rangeland to non-agricultural uses through inadvertently incentivizing the development of dwelling units and subdivision of such lands. A Mitigation Measure was adopted in response to this concern. On December 10, 2019, the Board received information on the potential for allowance of new cultivation sites in the Range Land (RL) zoning district and potential expansion above 10,000 square-feet of cultivation area. Staff presented a Draft Revised Table 2 at the

December 2019 meeting for consideration of the Board of Supervisors that included allowances for cultivation in excess of 10,000 square-feet with the obtainment of a Major Use Permit. At the December 10, 2019 meeting the Board directed Staff to work with the Cannabis Cultivation Ad Hoc Committee on the proposed Draft Revised Table 2.

The Board of Supervisors has given direction to staff on consideration of a discretionary permit process for new cannabis cultivation activities (Phase Three) on May 14, 2019, December 10, 2019, February 25, 2020, June 16, 2020, August 4, 2020, and October 13, 2020. Throughout the rest of this report Phase Three will be referred to as "Chapter 22.18".

On January 25, 2021 the Board provided direction to Planning and Building Services regarding drafts of Chapter 22.18. The direction received from the meeting has been incorporated into the drafts presented to the Planning Commission with this agenda packet. Key issues or revisions made to the draft Ordinance since the review with the Board on January 25, 2021 are called out in the remainder of this staff report. In addition, the draft Ordinance presented as part of the agenda packet includes the necessary corresponding changes to Chapters 10A.17 and 20.242 of County Code to remove references to the original Phase Three regulations of each ordinance.

PROPOSED CHAPTER 22.18

The proposed Ordinance will regulate the cultivation of cannabis as a land use issue and review it under existing standards within the Zoning Code, specifically Division I of Title 20 of County Code, and provides for site specific review of all proposed sites. In addition, the proposed Ordinance seeks to eliminate the duplicative permitting process that is currently required by Chapter 10A.17, where cultivators must obtain a local Permit and also a State License that are largely reviewing the exact same criteria. The proposed Ordinance would require a cannabis cultivator to obtain the appropriate discretionary permit locally to authorize the proposed use, as required by proposed Appendix A to the proposed Ordinance. All setback criteria, method of cultivation, background check, and other limitations would be handled through the State License process and all cultivation operations would be subject to compliance with the State regulations in regards to how the cannabis is cultivated. Since each cannabis cultivation operation will be reviewed under a discretionary permit, each site will be reviewed individually for compliance with the California Environmental Quality Act (CEQA). This will allow for appropriate site specific conditions and/or mitigations to be applied to these operations to reduce potential impacts to less than significant levels.

In the remainder of this section of the Staff Report, Staff will highlight a couple areas for the consideration of the Planning Commission.

Section 22.18.030 Allowable Cultivation and Exemptions

Staff has relocated the exemptions that were previously contained in section 10A.17.030 to proposed section 22.18.030 of the current draft Ordinance. With relocating the exemptions two primary changes have been highlighted by Staff for review and comment by the Planning Commission:

1. The requirements to comply with the provisions of section 10A.17.040(B) through (K) have been removed, and
2. The setbacks for exempt cultivation are presently written as the pre-January 1, 2020 setbacks.

Staff does not believe it necessary to include the provisions of 10A.17.040(B) through (K) in the revised exemptions in Chapter 22.18; however, Staff has provided the removed sections from 10A.17 that were previously applicable to exempt cultivation for your review at the end of this section of the Report.

In regards to setbacks for exempt cultivation, section 10A.17.040(A)(2) required that the 100-foot setback be maintained from any occupied legal residential structure located on a separate parcel and that on January 1, 2020 the setback would increase to 200-feet. In addition, section 10A.17.040(A)(5) required that for outdoor or mixed light cultivation that a 50-foot setback be maintained from any adjoining legal

parcel under separate ownership and that on January 1, 2020 the setback would increase to 100-feet. The current proposed Ordinance includes the pre-January 1, 2020 setbacks of 100 feet from an occupied legal residential structure on a separate parcel and 50 feet from any adjoining legal parcel.

Section 10A.17.040(B) through (K) read as follows:

(B) The distance between the listed uses in the above paragraph (A)(1) and cannabis that is being cultivated shall be measured in a straight line from the nearest point of the fence required in section 10A.17.040(H), or if the cannabis is cultivated indoors, from the nearest exterior wall of the building in which the cannabis is cultivated to the nearest point of the exterior wall of the facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs or to the nearest point of any fenced, maintained or improved area where the users of the facility are typically present during normal hours of operation, whichever is closest. The distance in paragraphs (A)(2) and (A)(3) to any residential structure shall be measured from the fence required in section 10A.17.040(H) to the nearest exterior wall of the residential structure. The distance in paragraph (A)(5) shall be measured from the fence required in section 10A.17.040(H) to the boundary line of a legal parcel or access easement.

Applicants may seek a reduction in the setback described in paragraphs (A)(1) and (A)(5) upon issuance of an administrative permit pursuant to Chapter 20.242. See also sections 20.242.060(D) and 20.118.040(D), (E) and (F) for further exceptions to setback regulations.

(C) The outdoor, indoor or mixed light cultivation of cannabis shall not propagate objectionable odors which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public.

(D) The indoor or mixed-light cultivation of cannabis shall rely on the electrical grid or some form of alternative energy source. The indoor or mixed-light cultivation cannabis shall not rely on a generator as a primary source of power.

(E) All lights used for the indoor or mixed light cultivation of cannabis shall be fully contained within structures or otherwise shielded to fully contain any light or glare involved in the cultivation process. Security lighting shall be motion activated and all outdoor lighting shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the legal parcel upon which they are placed.

(F) All activities associated with the cultivation of cannabis shall not exceed the noise level standards as set forth in the County General Plan Policies DE100, 101 and 103.

(G) All cultivation of cannabis shall not utilize water that has been or is illegally diverted from any spring, wetland, stream, creek, or river. The activities associated with the cultivation of cannabis shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water.

(H) All cannabis grown in Mendocino County (excluding indoor growing) must be within a secure fence of at least six (6) feet in height that fully encloses the garden area. The fence must include a lockable gate that is locked at all times when a qualified patient, caregiver or permittee (or their agent) is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.

(I) All buildings where cannabis is cultivated or stored shall be properly secured to prevent unauthorized entry.

(J) Persons cultivating cannabis pursuant to either section 10A.17.030, paragraphs (B) or (C) shall also comply with the provisions of section 10A.17.110, paragraphs (N) and (O).

(K) Prohibition on Tree Removal. Removal of any commercial tree species as defined by Title 14 California Code of Regulations section 895.1, Commercial Species for the Coast Forest District and Northern Forest District, and the removal of any true oak species (Quercus sp.) or Tan Oak (Notholithocarpus sp.) for the purpose of developing a cannabis cultivation site is prohibited. This prohibition shall not include the pruning of any such trees for maintenance, or the removal of such trees if necessary to address safety or disease concerns.

Section 10A.17.110(N) & (O) reads:

(N) Any use of pesticide products shall be consistent with State law and regulations enforced by the California Department of Pesticide Regulation and the Agricultural Commissioner's Office. All agricultural use pesticides and concentrated fertilizers, amendments, and similar materials shall be stored in a locked, hard-faced enclosure to prevent unauthorized entry by humans, to exclude large animals that may be attracted by odors, and to ensure that they will not enter or be released into surface or ground waters.

(O) Fuel shall be stored and handled in compliance with applicable state and local laws and regulations and in such a way that no spillage occurs.

Section 22.18.050 Cultivation Types and Exceptions

On January 25, 2021 the Board directed staff to create a pathway to allow Phase 1 applicants who applied for a permit pursuant to Chapter 10A.17 but were unsuccessful to be allowed to apply for a Land Use Permit under Chapter 22.18. The Board limited the eligible Phase 1 applicants to those not located in a Commercial Cannabis Prohibition (CP) Combining District or sunset area (as described in MCC section 10A.17.080(B)(2)(b)). Staff has incorporated this direction into section 22.18.050 of the proposed Ordinance subject to the following criteria:

- (1) Cultivation of 10,000 square feet or less shall be subject to issuance of a Major Use Permit and need not comply with the zoning district or parcel size criteria in Appendix A.
- (2) Cultivation in excess of 10,000 square feet is subject to the provisions of Appendix A including zoning district and parcel size.

The Board did not provide further direction regarding what they consider to be applicants who were unsuccessful and many Phase 1 permits were denied under Chapter 10A.17 for good reasons such as tree removal violations, no proof of prior cultivation, legal parcel definition, etc. With the direction currently received from the Board, this could potentially open the door to all applicants who applied under Phase 1. The Planning Commission may wish to provide a recommendation to the Board to limit the ability for denied Phase 1 applicants to be able to apply for a Land Use Permit under Chapter 22.18. Potential factors to consider could be if the Phase 1 permit was denied for one of the following reasons:

- Tree removal violation
- Failure to pass the required background check
- Lack of proof of prior cultivation
- Legal parcel established after January 1, 2016.

The Planning Commission may consider providing a recommendation to the Board on limiting the eligible applicants for a Land Use Permit under Chapter 22.18 from individuals who applied for a Phase 1 permit under Chapter 10A.17.

PROPOSED CHANGES TO CHAPTERS 10A.17 AND 20.242

With the proposed Chapter 22.18 to regulate cannabis cultivation, there is a need to remove references to Phase Three of the cannabis program from Chapters 10A.17 – Mendocino Cannabis Cultivation

Ordinance and 20.242 – Cannabis Cultivation Sites. Proposed Changes to Chapters 10A.17 and 20.242 are shown in the attached proposed Ordinance.

Amendments are proposed to the following sections of County Code:

- 10A.17.010 – Title, Purpose and Intent
- 10A.17.030 – Cultivation Permit Required; Exemptions
- 10A.17.040 – General Limitations on Cultivation of Cannabis
- 10A.17.080 – Permit Phases and Requirements Specific to each Phase
- 10A.17.100 – Permit Review and Issuance
- 10A.17.160 – Enforcement and Declaration of Public Nuisance
- 20.242.010 – Intent
- 20.242.020 – Application
- 20.242.050 – New Cannabis Cultivation Sites Located in Industrial Zoning Districts
- 20.242.060 – New Cannabis Cultivation Sites
- 20.242.070 – Planning approval required to cultivate cannabis

ENVIRONMENTAL DETERMINATION

The proposed Ordinance is statutorily exempt from the California Environmental Quality Act pursuant to subdivision (h) of section 26055 of the Business and Professions Code as an ordinance adopted by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity.

GENERAL PLAN CONSISTENCY ANALYSIS

Staff finds that the proposed amendments are consistent with the 2009 Mendocino County General Plan. The proposed Chapter 22.18 and corresponding amendments to Chapters 10A.17 and 20.242 would not constitute an increase in environmental impact, or change to existing land use provisions. The allowed uses would still only be permitted in areas already otherwise allowed for by the General Plan.

RECOMMENDED MOTION FOR THE PLANNING COMMISSION

Adopt the resolution recommending that the Board of Supervisors approve Ordinance Amendment No. OA_2021-0002 which will establish Chapter 22.18 – Commercial Cannabis Activity Land Use Development Ordinance and modify Chapter 10A.17 - Mendocino Cannabis Cultivation Ordinance and Chapter 20.242 – Cannabis Cultivation Sites of the Mendocino County Code.

DATE

JULIA KROG
ASSISTANT DIRECTOR

ATTACHMENTS

1. Proposed Resolution
 - a. Proposed Ordinance – portions in Redline
 - b. Proposed Appendix A to Chapter 22.18