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MEMORANDUM

DATE: APRIL 19, 2021

TO: HONORABLE BOARD OF SUPERVISORS

FROM: SAM VANDY VANDEWATER, INTERIM SENIOR PLANNER
DEPARTMENT OF PLANNING & BUILDING SERVICES

SUBJECT: OA_2021-0001 CANNABIS FACILITIES ORDINANCE AMENDMENT

INTRODUCTION

The Mendocino County Board of Supervisors (the Board) seeks to amend the regulations for non-cultivation cannabis facilities which include the processing, manufacturing, distribution, testing, and retail of cannabis and cannabis products. These revisions have included additional amendments to the Mendocino County Code which are indirectly related to cannabis facilities.

- On April 4, 2017 the Board adopted Ordinance No. 4381, adding Chapter 10A.17 – Mendocino Cannabis Cultivation and Chapter 20.242 – Cannabis Cultivation Sites to the Mendocino County Code regarding the cultivation of medical and adult-use cannabis in Mendocino County to create a permit program for cultivation in the unincorporated areas of inland Mendocino County. A Mitigated Negative Declaration (MND) was adopted for the ordinance (SCH No. 2016112028).
- On October 17, 2017, the Board adopted Ordinance No. 4394, adding Chapter 6.36 – Cannabis Facilities Businesses and Chapter 20.243 – Cannabis Facilities to the Mendocino County Code regarding the permitting aspects of the non-cultivation cannabis industry which includes processing, manufacturing, testing, distribution, and retail of cannabis and cannabis products. The ordinance was found to be exempt from CEQA under the General Rule and took effect on November 16, 2017.
- On March 27, 2018, the Board adopted Ordinance 4410, amending Chapter 6.36 – Cannabis Facilities Businesses and Chapter 20.243.070 – Cannabis Facilities, as well as the Williamson Act Policies and Procedures. Planning & Building Services (PBS) Staff had been made aware of discrepancies between the Mendocino County Code and the Williamson Act regarding uses that are considered compatible for lands within an agricultural preserve. Amendments provided clarification and consistency between the two documents, allowing cannabis processing, manufacturing, and distribution to be considered as compatible with Williamson Act contracts;
- On August 7, 2018, the Board created the “Non-Cultivation Working Group” (NCWG) for the purpose of identifying key issues with Ordinance 4394 and making recommendations for the Board to consider as solutions. The NCWG was directed to consist of County Staff from the Executive Office and the Mendocino County Department of Planning & Building Services, in addition to members of the public that are stakeholders in the non-cultivation cannabis industry.
- From October 4, 2018, through to July 16, 2019, the NCWG met and discussed recommendations for the Board to consider as direction to County Staff. A total of eight (8) meetings were held and a total of seventeen (17) recommendations were prepared.
- On September 17, 2019, staff from the Executive Office and Department of Planning & Building Services

presented the NCWG recommendations to the Board for their consideration and possible direction to staff. The Board agreed with and provided direction for seven (7) of the recommendations; the ten (10) remaining recommendations were addressed by the Board with varying responses ranging from complete rejection to further investigation required.

- On January 25, 2021, the Board held a special meeting to discuss cannabis cultivation and cannabis facilities. The Board reviewed a draft version of the proposed ordinance amendments and has some additional direction, but otherwise approved of the revised and added language.
- On March 19, 2021, the Planning Commission held a special meeting to discuss the amendments to the Cannabis Facilities ordinance (Chapters 6.36 and 20.243 of the Mendocino County Code). The Commission agreed with a majority of the changes to the ordinance, but provided specific language for certain uses, particularly those that could be located on private roads. The main focus of the Planning Commission's discussions was the location and allowance of farm tours and cannabis events.

BACKGROUND

Through the Non-Cultivation Working Group (NCWG), a number of issues regarding the Cannabis Facilities Ordinance, including both Chapter 6.36 and Chapter 20.243, were identified for discussion amongst the group. The recommendations of the NCWG were presented to the Board of Supervisors for consideration and the Board provided direction to County Staff to make some of the recommended changes. While working to incorporate said direction from the Board regarding the Cannabis Facilities Ordinance, Planning & Building Services (PBS) Staff identified additional language in the County Code for revision to provide a more streamline approach to permitting cannabis events. The main topic addressed other than the Cannabis Facilities Ordinance, was the cannabis events permitting process and requirements.

CHANGES TO CHAPTER 6.36 – CANNABIS FACILITIES BUSINESSES

The proposed amendment to Chapter 6.36 consists of the removal of Section 6.36.150 from the Mendocino County Code related to temporary cannabis facilities business licenses. The provision of such temporary licenses was initially allowed by the California Bureau of Cannabis Control (BCC) in earlier iterations of State language. This provision of temporary licenses was allowed for a designated period of time to ensure transition of cannabis businesses from previous markets into the new market, and has since ceased. The proposed amendment seeks to clean the Chapter and remove language from the Mendocino County Code that is no longer applicable due to expiration of State language.

CHANGES TO CHAPTER 20.243 – CANNABIS FACILITIES

The proposed amendments to Chapter 20.243 include recommendations from the Non-Cultivation Working Group, the Planning Commission, and the Board of Supervisors, but also revisions County Staff feels would help provide clarification to the public regarding certain portions of the code. A common amendment throughout Chapters 6.36 and 20.243 is the disassociation with Chapter 10A.17 and Chapter 20.242.

The amended definitions in section 20.243.030 have been expanded upon for further clarification, incorporated from Chapter 10A.17, or newly added into the section from State regulations for better alignment between County and State language. The changes to the definitions section include the follow terms: Adjacent parcel; Cannabis, Cannabis events; Cannabis Facilities Business License or CFBL; Cannabis farm; Cannabis farmers' market; Cannabis farm tour; Cannabis farm tour operator; Cannabis lodging; Cannabis waste; Infused pre-roll; Kief; Manufacture; Manufacturing Level 1 (Non-Volatile); Nonvolatile solvent; Park; Pre-roll; Process, processing, and processes; School; Shared-use Facility; Volatile Solvent; and Youth-oriented facility.

The amendments to section 20.243.040 include clarification of existing regulations and expansion of several use classifications to provide more opportunities to the cannabis industry of Mendocino County. The proposed amendments, besides revisions related to removing specific references to Chapter 10A.17, include amendments to the following sections:

- 20.243.040(A) – Processing: Language amended to align with Department policies and practices regarding the processing of cannabis from two cultivation sites on a single parcel.
- 20.243.040(B) – Manufacturing: Inclusion of shared-use facility language to allow up to five (5) different cannabis manufacturers to operate in a single unit at staggered times to ensure no overlap of use.

- 20.243.040(D) – Retail: Major revisions and expansion of retail use classification to incorporate canna-tourism uses, in addition to providing clarification to several existing regulations. Clarifications include allowance to consume cannabis on-site, permit certain use types in zoning districts beyond what is allotted in section 20.243.060, and differentiate between Retail Dispensary and Non-Storefront Retail. Additions to the retail language include the permitting of cannabis farmers’ markets, cannabis farm tours, cannabis lodging opportunities, and on-site consumption at cannabis cultivation locations. Revisions to this section include revisions as stated in the report and recommendation from the Planning Commission to the Board of Supervisors.
- 20.243.040(E) – Distribution: Clarification of how local distribution CFBLs align with State distribution licenses.

The proposed amendments to section 20.243.050 align setback language with current language of 6.36 and removes cargo container as a structure in which cannabis facilities may occur.

The proposed amendments to section 20.243.060 focus exclusively on the established table that identifies which cannabis facility use types are permitted (or prohibited) in each zoning district throughout the inland portions of Mendocino County subject to Division I of Title 20 of the Mendocino County Code. Revisions include the allowance of Manufacturing Level 1 (Non-Volatile) into the Limited Commercial (C1) zoning district, and Distributor into the Agricultural (AG), Rangeland (RL), and Forestland (FL) zoning districts. The changes to manufacturing are based on the similarity between Manufacturing Level 1 (Non-Volatile) and Custom Manufacturing with a major use permit. “Packing and Processing – Winery” was considered a less intensive yet similar use to a Distributor for cannabis as materials can be sourced on- or off-site and distributed after processing occurs. These uses are similar in impact but a major use permit will provide opportunity for a noticed public hearing and Planning Commission consideration to ensure compatibility.

The proposed amendments to section 20.243.090 entails the removal of language related to Chapter 10A.17, as well as expanded provisions related to Planning & Building Services’ ability to deny licenses.

The proposed amendments to section 20.243.110 remove the permit revocation language and add cannabis event regulations to the section as directed by the Board of Supervisors. Cannabis events will be allowed pursuant to section 20.168.020, in addition to several specific requirements that are currently written in State regulations.

The proposed amendments to section 20.243.110 results in the addition of section 20.243.120 using the permit revocation language retained from the previous section of the chapter.

On March 29, 2021, the Planning Commission held a special meeting to discuss amendments to the cannabis cultivation and facilities regulations. The Planning Commission agreed with many of the proposed changes to the cannabis facilities ordinance (Chapters 6.36 and 20.243 of the Mendocino County Code), but recommend further amendments to staff for the consideration by the Board of Supervisors. These changes to the ordinance include:

1. Further define “cannabinoid” or “phytocannabinoid”
2. Include in the definitions section a definition of the term “cannabis event”
3. Further define “microbusiness” to clarify home occupation and cottage industry limitations
4. Remove the non-State version definition of “non-volatile solvent”
5. Provide clarity to the retail section regarding the two license subtypes
6. Amend cannabis farm tour language to provide differing limitations depending on location

While working on Item 1 of the recommendations, staff determined that the use and defining of the terms “cannabinoid” and “phytocannabinoid” are not addressed by any cannabis regulation adopted by the State. Therefore, staff has removed this language from the definition section of Chapter 20.243. All other proposed changes have been completed.

In addition to the proposed changes above, the Planning Commission agreed that parcels without frontage on a publicly maintained road should be able to host farm tours, but were unable to determine whether a major use permit or a minor use permit under the jurisdiction of the Planning Commission should be required, and if any farm tours should be allowed as an accessory to a cannabis cultivation site. The recommended language by various commissioners is provided below, but staff has included their preferred language (Commissioner Paulin proposal) in the draft ordinance included in this agenda packet.

Recommended language by Commissioners Nelson, Pernell, and Jones:

- Cannabis farm tours on parcels without frontage on a publicly maintained road shall require a Minor Use Permit under the jurisdiction of the Planning Commission and are subject to section 20.243.040(D)(9) of this Chapter.

Recommended language by Commissioner Wiedemann:

- Cannabis farm tours on parcels without frontage on a publicly maintained road shall require a Major Use Permit section 20.243.040(D)(9) of this Chapter.

Recommended language by Commissioner Paulin:

- Cannabis farm tours on parcels without frontage on a publicly maintained road may have one (1) tour per week of no more than twenty-five (25) persons as an accessory use to the cannabis cultivation site, pursuant to section 20.243.040(D)(9) of this Chapter. A Minor Use Permit under the jurisdiction of the Planning Commission shall be required for two (2) or more tours per week.

ENVIRONMENTAL DETERMINATION

Consistent with the California Environmental Quality Act (CEQA) determination for the CFC, Staff recommends applying Section 15061(b)(3) - General Rule Exemption to this action, as the proposed amendments do not have the potential to cause a significant effect on the environment, and is therefore not subject to CEQA.

ATTACHMENTS

- A. Planning Commission Hearing Packet
- B. Planning Commission Signed Resolution
- C. Draft Ordinance (Redline)
- D. Draft Ordinance (Clean)