



OFFICE OF THE COUNTY COUNSEL

MEMORANDUM

DATE: January 24, 2024
TO: Board of Supervisors
FROM: Jared S. Schwass, Deputy County Counsel JS
SUBJECT: Mendocino County Code Chapter 10A.17

INTRODUCTION

The Mendocino County General Government Committee (the “**Committee**”) has asked staff to prepare proposed amendments to Mendocino County Code Chapter 10A.17 (the “**Cannabis Ordinance**”) that would further streamline the application and review process for local Commercial Cannabis Business Licenses (“**CCBLs**”). County staff has received feedback from the local cannabis community and Committee members to prepare the proposed amendments to the Cannabis Ordinance, which were submitted along with this staff report (“**Proposed Amendments**”). Below is a short description of the Proposed Amendments and the reasoning behind each change.

BACKGROUND

On May 17, 2022, the Board of Supervisors (the “**Board**”) directed the Mendocino County Cannabis Department (“**MCD**”) to determine whether the cannabis license application and review processes were as streamlined as possible and, if not, provide recommendations on streamlining the cannabis ordinance. As a result of that process, the Board adopted Resolution No. 23-0600, which amended the Cannabis Ordinance to streamline the licensing process on May 23, 2023. That ordinance amendment process focused on changing the cannabis permit review process to the new CCBL review process, which streamlined the review and issuance processes. As such, some potential amendments were not included in that process and the Board indicated that future amendments could be brought forward later in the year.

County staff has prepared draft ordinance amendments and brought it forward to the Committee during a regular meeting on October 30, 2023. At that meeting, County staff received feedback from both the local cannabis community and Committee members. The Committee then referred Staff to bring these Proposed Amendments to the Board. As such, County staff prepared the Proposed Amendments and is presenting them to the Board for possible approval.

DISCUSSION

Proposed Amendments

The Proposed Amendments are discussed below in numerical order as presented in the Cannabis Ordinance along with the reasoning behind each proposed change. The only Proposed Amendments not discussed below can be classified as editorial changes.

Sec. 10A.17.020 – Definitions

Definitions for “Attorney General’s Guidelines” and “Hoop House” were removed from the definitions section as a clean-up of the section because they are not referenced in the Cannabis Ordinance.

The definition for “Mixed light cultivation” or “mixed light” was amended so that cultivators who use the light deprivation method and no artificial light do not fall within this definition. Rather, they will now fall under the outdoor cultivation definition and will be able to operate with an outdoor cultivation CCBL. This definition matches the license types of the California Department of Cannabis Control (“DCC”).

Sec. 10A.17.040 – General Limitations on Cultivation of Cannabis

Subsections (A)(2) & (5) were amended to change the date that the increased setback requirements kick in to be based on the phases that the applications were submitted rather than the date of January 1, 2020. As drafted, the intent was for the increased setback to not apply to Phase One and Phase Two applications because they would have been submitted before the January 1, 2020, date. However, due to MCD delays in reviewing and processing Phase One applications, many Phase One applications have fallen into the increased setback requirement. As such, this change better reflects the initial intent.

Subsection (6)(b) was amended to align with Mendocino County Planning and Building Services (“PBS”) Policy Statement #1, Cannabis Processing in Residential Structures, published on October 26, 2022.

Subsection (B) was amended due to the proposed removal of the fence requirement for commercial cannabis cultivation, as further discussed below.

Subsection (H) was amended to remove the fence requirement for commercial cannabis cultivation. Rather, the proposed amendment refers to DCC security measures to secure commercial cannabis cultivation sites. As such, all CCBL holders must secure their cultivation site as required by the DCC.

Subsection (L) was added so that the fence requirements remain for cannabis cultivation that is exempt from acquiring a CCBL under the Cannabis Ordinance. This was added because the exempt cannabis cultivation is not regulated by the DCC and does not fall under their jurisdiction.

Sec. 10A.17.060 – CCBL Types

The CCBL Types were amended so that cultivators who use the light deprivation method and no artificial light are not required to acquire a mixed light CCBL. Rather, they will now fall under the outdoor cultivation definition and will be able to operate with an outdoor cultivation CCBL. This proposed amendment matches the license types issued by the DCC.

The language added at the end of the section allows current mixed-light CCBL holders to elect to operate under the old definition so they will not be forced to obtain a new license under the amended definitions.

Sec. 10A.17.070 – Requirements for All CCBL’s

Subsection (F)(1) was amended to change the timeline for CCBL holders to install an alternative power source if they do not have a grid power source. The amended timeline will be

based on the date the CCBL is issued rather than the date the application is submitted. The Cannabis Ordinance was drafted with the intent that there would be limited time between the date an application was submitted and permit/CCBL issuance. As such, it was not intended to require individuals to make a capital investment to install an alternative power source without knowing if they were going to be issued a CCBL. This proposed amendment matches the original intent and does not shift the consequences of the delayed review process onto the applicants/CCBL holders.

Subsection (G) was amended to require CCBL holders to maintain all Track and Trace records and to provide such information to MCD upon request. This requirement was added based on the request of the Mendocino Department of Agriculture (“**Dept. of Ag**”) due to a lack of response for information in preparation for the Crop Report. For further clarification, see the memorandum prepared by the Dept. of Ag enclosed with this Staff Report.

Subsection (X) was amended to refer to the new proposed renewal section, as discussed further below.

Subsection (X)(1) was amended to remove the term “annual” because, as proposed, CCBLs will have five (5) year expirations rather than annual. The increased expiration proposal is discussed further below.

Subsection (Y) was amended to remove the requirement for MCD to conduct on-site pre-CCBL inspection. MCD is currently testing its ability to conduct remote/satellite inspections to confirm compliance with the Cannabis Ordinance before issuance. Removal of the on-site inspection requirement provides MCD the flexibility to decide on how to best complete the pre-CCBL inspections.

Subsection (Z) was amended to allow for the assignment of CCBL applications in addition to issued CCBLs. This was added to lift the transferability restriction so that individuals who no longer wish to continue commercially cultivating cannabis can assign an application before issuance so the number of individuals in the program does not decrease.

Sec. 10A.17.090 – CCBL Application and Zoning Review

This section was amended to change the term “annual” to “every five (5) years” because the Board has directed staff to increase the expiration date of CCBLs to every five (5) years rather than requiring annual renewals.

The proposed added language clarifies MCD’s ability to move an application forward if it does not receive a response from external referrals within the allotted thirty-day timeline. Without such clarity, it has been unclear what occurs when there is no response, or delayed response, on external referrals. This proposed language provides clarity that MCD can move an application forward if it determines that all requirements of the Cannabis Ordinance are satisfied.

Subsection (C) was amended regarding the requirements for site plans submitted with a CCBL application. The proposed amendment would provide MCD planners with the information needed to expedite the review process and remove items not needed during that process.

Sec. 10A.17.100 – CCBL Review and Issuance

Subsection (C)(1)(b) was amended to allow MCD to extend compliance plans for additional one-year terms. In some instances, it can take over one (1) year to obtain permits or complete projects needed to come into compliance. MCD can now allow CCBL holders to remain in the

program under a compliance plan so long as they are making good-faith efforts to come into compliance.

Subsection (D)(1) was amended to provide some clarity in potential denial scenarios and to better reflect how MCD currently processes and reviews applications.

Subsection (F) was inserted to provide clarification on what is required to submit for a renewal application. Previously, no section in the Cannabis Ordinance addressed the process to submit for a renewal.

Subsection (G) was inserted to provide clarification that applicants and CCBL holders must inform MCD whenever there are proposed changes to the information provided in the initial application. As drafted, the proposed language allows MCD to adopt a form that would allow it to decide on whether additional information/documents and a full review are required for a proposed change, or if only notice to MCD is required. If the modification is such that only requires notice, MCD will develop an expedited review and approval process.

Subsection (H) was inserted to allow MCD to regulate future workflow caused by the increased expiration dates. The inserted language allows MCD to provide shorter expiration dates to CCBLs one time as a means to stagger future renewals.

Sec. 10A.17.120 – Certifications

This section was amended to reflect the requested increased expiration for all CCBLs to five (5) years from one (1) year, as discussed above.

CONCLUSION

As discussed above, the Proposed Amendments will further streamline the CCBL review and issuance processes, in addition to providing some clarity for the applicants/CCBL holders. As such, County staff requests the following:

1. The Committee approves the Proposed Amendments and refers them to be brought before the Board.

JSS/jc