

Willetta Callaghan - Comments for BOS meeting Tuesday, 4-10

From: "Casey O'Neill" <casey@cagrowers.org>
To: <bos@mendocinocounty.org>
Date: 4/9/2018 8:33 PM
Subject: Comments for BOS meeting Tuesday, 4-10

TO: Mendocino County Board of Supervisors

FROM: Casey O'Neill, HappyDay Farms, Vice-Chair California Growers Assoc, Chair MCGA

We appreciate the opportunity to offer comments today on the proposed changes presented by County Staff to the Cannabis ordinances. Below the comments you will find the two letters previously sent to the Planning Commission for each of the preceding meetings. We would also like to indicate support for Hannah Nelson's comments.

Extinguishment: It is important to note that requiring a garden site to be removed has the potential to create more environmental impacts (removal of soil, trucking, disposal) than is necessary. It also has the potential to lower the property value of the "extinguishing" parcel, and disallow for future gardening activities on the site. There are many cultivation sites that may make excellent places to grow food, herbs or fruit trees. It would make more sense to encourage diversified opportunity than to require that sites be erased at what will be significant expense and environmental impact.

Year Off: It is important that we allow flexibility for cultivators who are trying to navigate the complex system of regulatory requirements. With the severe market fluctuations, cultivators are having to weigh their options and some are choosing to bow out temporarily to wait for the regulations to become more set. There have been so many changes in both state and local processes that resources are scarce at this point. Allowing for all cultivators to "freeze" their permit process while they wait for more regulatory certainty is something that we urge the Board to consider. Also, those who re-engage should be allowed to do so under the Phase 1 guidelines, even if the new Phases have begun.

TPZ and FL Expansion: We are of the impression that Board direction was to allow for parcels to be permitted under a Zoning Clearance if they had not expanded their sites. There are some parcels that were enrolled in the 9.31 program, or that had larger sites prior to the passage of the new regulations. So long as these sites meet the requirements of CDFW and the Waterboard, they should not require an Administrative Permit if they did not expand the cultivation site.

Setback Reduction: We support the Administrative Permit option for a Setback Waiver, and also suggest a potential Zoning Clearance threshold if the Application is accompanied by a signed letter of support from the owner of the parcel affected by the lower setback.

The following is a comment letter that was submitted to the Planning Commission for its meeting on April 5th.

TO: Mendocino County Planning Commission

FROM: Casey O'Neill, HappyDay Farms, Vice-Chair California Growers Assoc, Chair MCGA

Comments regarding Agenda Item 7d. CASE#: OA_2018-0005

I appreciate the opportunity to comment today on the proposed changes to the Cannabis Facilities Ordinance. This has been a long and difficult process, and I am grateful to county staff and policy makers for the continued commitment to sorting out this complicated set of regulations in ways that work for Mendocino County communities.

There are 8 proposed changes to the Cannabis Facilities Code; I will address them individually below.

- Remove "Medical/Adult Use": Support for this item, the differentiation is unnecessary.
- Administrative Permit for Setback Waiver: Support for this item, it makes sense to have a process by which the 1000 foot setback could be adjusted. It is worth noting that State setbacks are significantly less stringent than Mendocino County, with 600 foot requirements and churches not included.
- Microbusiness Requires 3 out of 4 Possible Uses: Support for this position, as it makes sense that we not require business owners to do all 4 of the possibilities (cultivation, retail, manufacturing, distribution).
- Home Occupation/Cottage Microbusinesses Limited to Self-Distribution: Opposition to this proposal; these extremely small businesses need to be able to maintain flexibility in their models as they seek to navigate the complicated and onerous system of regulations. It is important that county regulations not unnecessarily limit the possibilities, so long as these businesses follow all other applicable regulations regarding distribution.
- Microbusinesses all under one Premises: Opposition to this proposal because the state is expected to change this requirement. It has been made clear that many businesses will need to operate multiple premises, and when the state changes the requirement, the county will have to readjust again. Better to table this item for now and revisit it in six months to confirm that the state

did make the change to allowing multiple premises.

- Distribution and Transport-Only as Accessory to Cultivation: Strong support for this item, this is a welcome step towards helping streamline the process for cultivators so that market access can be achieved. Right now it is very difficult to accomplish that goal, this would help to make the microbusiness license more functional.

- Non Storefront Retail as Accessory to Cultivation: Strong support for this item, this is an excellent opportunity for cultivators to become more competitive in the changing marketplace. I applaud staff for this recommendation.

The following is a comment letter submitted to the Planning Commission for its meeting on March 15th.

TO: Mendocino County Planning Commission and Staff

FROM: Mendocino County Growers Alliance (MCGA)

SUBJECT: OA_2018-0004- AMENDMENT TO MENDOCINO COUNTY CODE CHAPTER 10 A.17 MEDICAL CANNABIS CULTIVATION AND CHAPTER 20.242- MEDICAL CANNABIS CULTIVATION SITE OF THE INLAND MENDOCINO COUNTY CODE.

We appreciate the opportunity to comment on these important amendments to the cultivation ordinance. We thank the Commission and County Staff for the hard work done in this process.

In addition to offering the following comments, we would like to offer support for the comments submitted by Attorney Hannah Nelson. Our comments are listed along with the language from the Staff Memo submitted for tomorrow.

DISTURBANCE

- “Disturbance” would be defined, in accordance with Staff recommendations, to mean “areas of land where natural plant growth has been removed whether by physical, animal, or chemical means, or natural grade has been modified for any purpose. Land disturbance includes all activities whatsoever associated with developing or modifying land for cannabis cultivation related activities or access. Land disturbance activities include, but are not limited to, construction of roads, buildings, or water storage areas; excavation; grading; and site clearing. Disturbed land includes cultivation areas and storage areas where soil or soil amendments (e.g., potting soil, compost, or biosolids) are located.”

MCGA COMMENT:

1. As written, the definition of disturbance is excessive. We agree that high impact disturbance such as grading and excavation should constitute disturbance. The way this definition is written it, If a farmer cleared 200 sq. ft. of poison oak for a small hoop house for their immature plants, they'd be breaking the rules
2. The inclusion of 'water storage areas' in this definition is particularly problematic as CDFW and/or SWB are requiring a majority of cultivators to install enough water storage to meet the dry month forbearance period.

IMMATURE PLANT CANOPY

- Currently, the square footage of cultivation area dedicated to propagation of starts is included in measuring the cumulative total square footage allowed under a given Permit. This would be changed to no longer count the propagation of immature plants towards the total square footage. A performance standard would also be added that such propagation must not constitute any new disturbance such as grading or clearing.

MCGA COMMENT:

1. Please remove the last sentence... or amend it to read "must not constitute any illegal grading or clearing of trees'... or revise the definition of disturbance so that it is more workable

PHASE 1 DEADLINE EXTENSION

- Paragraph (A)(1) of section 10A.17.080 is proposed to be amended to extend the application deadline for Phase One applications for sites within the Sunset areas until December 31, 2018, pursuant to the direction of the Board of Supervisors

MCGA COMMENT:

1. Please remove 'for sites within the Sunset Areas'. We understand that this extension stems from the delay in the overlay process, but the EXCEPTIONS part of the overlay contract is even further delayed and effects people outside of the sunset zones.

MICROBUSINESS LIMITED TO SELF-DISTRIBUTION

- Microbusinesses that are home occupations or cottage industries would be limited to Self-Distribution of the microbusiness' own cannabis and cannabis products and limited to customer levels as allowed by the home occupation or cottage industry ordinances.

MCGA COMMENT:

1. Please consider allowing Distribution beyond Self-Distribution.

- Distribution Transport Only and Self-Distribution licenses would be allowed in any zoning district as an accessory use to a cultivation site under application review or permitted pursuant to Chapters 10A.17 and 20.242, but the licensee would be restricted to distributing cannabis goods grown or made by the licensee itself.

MCGA COMMENT:

1. Please remove the requirement that the Distribution Transport-Only license would be limited to their own product. This will disallow one person in a neighborhood/region from performing transportation services for the community and force everyone to drive their own product down. This means every cultivator will have to invest in compliant vehicles with security systems. It will cause an increase in traffic.. etc.

CODE ENFORCEMENT MAIL POLICY

- Minor changes are proposed to sections 10A.17.140 through.160 regarding enforcement procedures pursuant to the recommendation of the Code Enforcement Division. It is recommended to delete any requirement of the County to request a return receipt when mailing, and to clarify that letters be mailed to the mailing address associated with the permit. Code Enforcement has stated that the return receipt requested requirement slows down the process and has not added any value. The changes also clarify that cultivating cannabis while in the application process is an exception to the nuisance declaration only during Phase One. Minor formation changes are also recommended.

MCGA COMMENT:

1. Please remove the sentence deeming cultivation a nuisance during the application process after phase one.
2. Isn't the return receipt process designed to prevent cultivators from missing their 10-day response window before realizing they even received a notice of violation? If this change makes it more likely that people will miss their opportunity to appeal, then we do not support it.

FULL SUPPORT OF THESE AMENDMENTS

- Paragraph (D) of section 10A.17.070 is proposed to be amended pursuant to the direction of the Board of Supervisors. Changes would allow a permit to include any combination of cultivation types (though if any of the types would require a permit pursuant to Chapter 20.242, the entire permit would undergo such review) and to allow a single permit for multiple continuous legal parcels under the same ownership.

FULL SUPPORT

- Non-Storefront Retail locations would be permitted in any zoning district as an accessory use to a cultivation site under application review or permitted pursuant to Chapters 10A.17 and 20.242.

FULL SUPPORT

- Eliminate references to “medical”; incorporation of both medical and adult use cultivation; remove language explicitly prohibiting non-medical cannabis purposes.

FULL SUPPORT

- The ordinance currently uses the phrase “medical or adult-use” throughout. Occurrences of this phrase would be eliminated in most cases as the County would not be base their permit types on whether it was a medical or adult use facility.

FULL SUPPORT

- Relevant definitions set by the MAUCRSA would be added, including “A-License,” “Flowering,” “Immature plant,” “License,” “M-license,” “M-licensee,” “Mature plant,” and “Private residence”.

FULL SUPPORT

- Currently, the definition of “Microbusiness” means “the cultivation of adult use cannabis on an area 10,000 square feet or less and acting as a licensed distributor, Level 1 manufacturer, and retailer...”. As such, applicants are required to have all four components to qualify for a microbusiness license. The MAUCRSA only requires an applicant to have three out of the four components to qualify. To align with this state regulation, the definition would be changed to mean, “at least three (3) of the following commercial cannabis activities: cultivation of adult use cannabis on an area 10,000 square feet or less, distribution, Manufacturing Level 1 (Non-Volatile), and acting as a licensed retailer/dispensary under this Chapter...”.

FULL SUPPORT

NO COMMENT ON THESE AMENDMENTS

- The definition of "Baseline date" would be set to August 26, 2017 which is the date the Initial Study under the California Environmental Quality Act for the MCCR was initiated.

NO COMMENT

- Section 10.A.17.030 - Changes have been made to insert provisions of existing Chapter 9.30, governing personal cultivation of adult use cannabis, into this section, with minor changes to Section 20A.17.040 as well. The provisions of Chapter 9.30 were adopted by the Board of Supervisors in April 2017, and are not substantively changing. The intent of the changes is to eliminate Chapter 9.30 and rely on Chapter 10.A.17 for all regulations regarding the cultivation of cannabis for personal use, whether for medical or adult use. An additional change recommended by the Department of Agriculture is the deletion of the requirement that qualified patients or primary caregivers register with the Department. This registration requirement has lost some relevancy following the legalization of adult use cannabis and cultivation. Enforcement of the personal Page 3 cultivation provisions for either medical or adult use may be done without the registration requirement.

NO COMMENT

- Currently, cannabis facilities are prohibited within a one thousand (1000) foot radius of a youth-oriented facility, a school, a park, or any church or residential treatment facility, as defined in Chapter 10A.17.020. Applicants would be able to apply for a reduction in the setback through an administrative permit, subject to the existing limitations of the chapter.

NO COMMENT

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Casey O'Neill, HappyDay Farms,
Vice Chair California Growers Association
Cell: 707-354-1546 Casey@cagrowers.org
<http://www.calgrowersassociation.org/>