

CHUCK MORSE
Agricultural Commissioner
Sealer of Weights & Measures

E-MAIL:
morsec@co.mendocino.ca.us

TELEPHONE
(707) 234-6830



COUNTY OF MENDOCINO
DEPARTMENT OF AGRICULTURE
890 N BUSH STREET
UKIAH, CALIFORNIA 95482

DIANE CURRY
Assistant Agricultural Commissioner
Assistant Sealer of Weights & Measures

E-MAIL:
curryd@co.mendocino.ca.us

FAX
(707) 463-0240

MEMORANDUM

DATE: SEPTEMBER 27, 2016
TO: BOARD OF SUPERVISORS
FROM: CHUCK MORSE, AGRICULTURAL COMMISSIONER
RE: SUMMARY OF FOUR MINOR VERBIAGE CHANGES TO THE CURRENT DRAFT CANNABIS CULTIVATION ORDINANCE.

At the Board of Supervisors meetings on August 16th and September 13th, I informed the Board that there were a few items within the current DRAFT cannabis cultivation ordinance that I felt needed further clarification or amending to more completely address some issues that had been raised. On September 13th, the Board of Supervisors gave direction to summarize these issues and provide clarifying language in the form of a MEMO to be submitted on the consent calendar at the next regularly scheduled meeting of the Board. What follows is a list of specific issues or points which were recognized as needing revision or addition to the current DRAFT ordinance and the proposed language to be inserted into the DRAFT ordinance. Unless otherwise amended or withdrawn by the Board, these changes will be incorporated into the DRAFT cannabis cultivation ordinance.

Item 1

Issue: Seed production = medical cannabis production.

The Type 4 "Nursery" cultivation permit allows for the production of vegetative starts and/or seeds for the propagation of medical cannabis. This permit type also has the largest square footage of cultivation area allowed by any of the proposed permit types, given the unique nature and potential space requirements of nursery operations producing vegetative starts that need to hold many mature "Mother" plants of various strains simultaneously and possibly older clone starts that have been potted into larger containers prior to sale as well. For a Nursery permit holder that is engaged in seed production, the very nature of the process leads to the production of mature cannabis flowers and plants to obtain the seeds. This results in the production of medical cannabis product that will need to be entered into the Tack and Trace system to track that product to its final disposition. Given the

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square footage allotment provided to Type 4 permit holders (22,000 square feet), a possible outcome of the currently worded DRAFT ordinance could be a seed producer occupying up to 22K sq. ft. of cultivation producing seeds and medical cannabis product as a consequence of that seed production. The largest medical cannabis product (flower) production permits in the current DRAFT ordinance have a maximum of 10,000 sq. ft.. Given the relative space needed to produce seeds for individual strain development and subsequent larger-scale production of seeds for sale and to avoid the production of medical cannabis product (flower) in an area greater than that allowed for our flower cultivating permits, the following is proposed:

Establish a cap of 5,000 sq. ft. of canopy cover for those elements dedicated to seed production under the Type 4 permit. (This matches the sq. ft. maximum for our medium (Type 1) flower cultivation permits).

Proposed verbiage addition to the current DRAFT cultivation ordinance:

In Section 10A.17.080 – Cultivation Permits – Specific Requirements, under item (J) “Type 4” permits: (“Nursery” and/or “Seed” permits) , **add** a separate requirement stating: “A maximum of 5,000 square feet of canopy cover may be dedicated to medical cannabis seed production under this permit. This canopy cover shall be considered equivalent to cultivation area and counted towards the maximum allowable square footage allowed under this permit.”

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Item 2

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Issue: Prohibition of generator usage for power requirements for indoor or mixed-light cultivation.

The Board has set policy that: “The indoor or mixed-light cultivation of medical cannabis shall rely on the electrical grid or some form of an alternative energy source to meet its power requirements for production” and that “The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power.” There are two elements within this policy that I feel need attention and revision:

2A) As worded, this is a prescriptive requirement and would exclude any cultivator who currently uses a generator as a primary power source from obtaining a cultivation permit from the county. It does not provide a path forward for cultivators in this situation to move forward towards obtaining a local permit to cultivate medical cannabis and attaining the intent of establishing an alternative power source for their cultivation operation. To establish a mechanism that might accomplish these ends, the following verbiage is suggested:

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In Section 10A.17.040–General Limitations on Cultivation of Medical Cannabis , item (C), **add** the following language, identified in blue below, to the existing language:

(C) The use of light assistance for the indoor or mixed light cultivation of medical cannabis shall not exceed a maximum of 35 watts of lighting capacity per one square foot of growing area. The indoor or mixed-light cultivation of medical cannabis shall rely on the electrical grid

or some form of an alternative energy source to meet its power requirements for production. The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power. If no grid power source is available and there is not an alternative power source supporting both the required legal dwelling unit and the indoor or mixed-light permit operations, a generator may be used only under the following conditions: 1) the permittee shall actively research and install an alternative power source that will meet at least one-half of the combined power requirements by the expiration of the first permit issued by the program and 2) it will be a condition of the re-issuance of a permit that the cultivator commit, in writing, to expand their alternative power source to fully meet the combined needs of the cultivation operations and the required legal dwelling unit by the end of the second permitted year.

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2B) There was concern raised by industry members that there was clarification needed around when the use of a generator is allowed. This was also discussed briefly in prior Board meetings. What was sought was a more descriptive explanation of the conditions that would warrant the use of a generator to support cultivation activities. The following verbiage is suggested to more clearly define the conditions for generator usage:

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In Section 10A.17.040—General Limitations on Cultivation of Medical Cannabis , item (C), **add** the following language, identified in blue below, to the existing language:

(C) The use of light assistance for the indoor or mixed light cultivation of medical cannabis shall not exceed a maximum of 35 watts of lighting capacity per one square foot of growing area. The indoor or mixed-light cultivation of medical cannabis shall rely on the electrical grid or some form of an alternative energy source to meet its power requirements for production. The indoor or mixed-light cultivation of medical cannabis shall not rely on a generator as a primary source of power. See Section 10A.17.110 (E) for details on when a generator may be used to support cultivation activities.

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And, in Section 10A.17.110 (E), **add** the following language:

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(E) If a generator is used to support any aspect of the permitted cultivation operations (excluding the conditions set forth in 10A.17.040 (C)), it shall be as a secondary or back-up power source. The use of the generator is only allowed when, under certain conditions, the primary alternative power source is unable to provide its normal output and generate sufficient power to meet the needs of the cultivation operation and the legal dwelling unit. In this manner, the generator will serve as a backup and provide for the primary power needs on site only until the extenuating circumstances cease or are remedied and the alternative power source can again become the primary source for power. The containment area . . .

Item 3

Issue: Consider additional operation requirements around generator usage.

It was brought to my attention that there were alternatives to the current wording contained in the section of the DRAFT ordinance that pertains to various operational requirements to use a generator to support cultivation activities that may be more consistent with the intent of the Board. Generator construction varies greatly and so do their operational characteristics. Some generators are designed to be very quiet without any additional remediation while others are intended to operate where sound level is not a concern. In an effort to assure the quiet operation of generators, the following language is suggested:

In Section 10A.17.110 (E), **add** the following language, identified in blue below, to the existing language:

(E) If a generator is used to support any aspect of the permitted cultivation operations, it shall be as a secondary or back-up power source. The containment area construction and dimensions to contain any leak or spill that may develop or occur shall be identified. **The Owner's Manual and/or Operation Manual (or operational fact sheet) providing the operational characteristics and maintenance schedule for the generator shall be on-site and available for review.** Also, provide a maintenance plan for the generator that details how spent oil, used oil filters, expired batteries and other hazardous wastes generated from the operation of the generator will be handled, including fuel storage and delivery systems. The generator shall be, **at a minimum**, equipped with the manufacturer's specified muffler. **An analysis of the noise levels produced by the generator at full operational speed shall be performed by an accredited acoustical engineer. If this analysis indicates any violation of Mendocino County General Plan Policies DE100, 101 and 103, the generator shall be equipped with a hospital-grade muffler and a second acoustical analysis shall be performed by an accredited acoustical engineer. If this second analysis indicates a violation of Policies DE100, 101 and 103, the generator shall be enclosed in a separate structure (other than the generator housing) designed for sound suppression, and shall comply with General Plan Policies DE100, 101 and 103.** Any electrical wiring associated with the generator shall be of sufficient capacity and installed in such a way as to provide for the minimum installation and safety standards for the electrical service provided by that generator.

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