

October 3, 2017

To: Board of Supervisors, Mendocino County

FR: Jude Thilman, owner, Dragonfly Wellness Center; Board member, Mendocino Cannabis Industry Association

Recommendations Amending Ch. 20 and Ch 6 – Mendocino Cannabis Ordinance

GENERAL RECOMMENDATIONS

A. Increase use of Administrative Permits when possible.

Rationale: To avoid staff overwork and agency backlog of applications, some activities are appropriately handled through the use of administrative permits (see below). Examples include nonvolatile manufacturing in commercial zones and processing in RL, FL and TPZ, among others.

“There are approximately 2.5 million acres in all of Mendocino County, of which 1.78 million acres are privately owned (not federal, state or local government owned land) and were considered 'available' for Phase 1 cannabis cultivation. With the ban on new cultivation in FL or TPZ, and then the later removal of Rangeland from consideration for Phase 3 cultivation, that leaves of 172,000 acres available.”

B. Alter General Plan to permit businesses in the coastal zone

1) The CEQA exemption for a cannabis ordinance is afforded by SB 94 (Section 41). It amends Section 26055 of the Business and Professions Code and adds a new subsection (h), which reads:

(h) Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. This subdivision shall become inoperative on July 1, 2019.

(See attached SLO county P&B staff report noting how amendments to the general plan are exempt from CEQA)

2) Consider the county's option to remain silent, if that will permit state licensing to proceed.

3) Local governments in California are permitting commercial cannabis operations in the coastal zone.

<http://cannabusinesslaw.com/california-cannabis-laws-by-county/humboldt-county/>

“55.4.8.5 Manufacturing of commercial cannabis for medical use shall be a permitted use inside the Coastal Zone in zoning districts CG, MB, ML, and MG, subject to a Special Permit and the conditions and limitations set forth in this Section.”

SPECIFIC RECOMMENATIONS

(new language is underlined)

I. Permit Non-Volatile Cannabis Manufacturing in Commercial Zones

Current language Under Ch. 20.243.040

(B) Manufacturing Facilities.

(1) Manufacturing facilities, as defined herein, shall be an industrial use type.

Shall be amended to state:

(B) Manufacturing Facilities.

(1) Non-volatile manufacturing facilities, as defined herein, shall be a commercial C1 and C2 use type.

(2) Volatile manufacturing facilities, as defined herein, shall be an industrial use type.

RATIONALE

1. Mendocino County lacks sufficient industrial zones to accommodate the growth of non-cultivation commercial sectors in the cannabis industry. By distinguishing between non-volatile and volatile manufacturing, the county is recognizing activity that is similar to other safe, light manufacturing activities such as processing grapes, bottling/storage of wine, breweries, auto body shops, glass work/artisanal handicrafts, and other light industry.

According to the CEQA Initial Study from 3/21/17 prepared for the county by LACO Associates, there are a total of 1,995 acres on 420 parcels that are zoned for industrial use. This includes I-1, I-2, and P-I zoning classifications.

According to these statistics, Industrial Zoning makes up 0.11% of the private land in the county (1.78M acres) or 1.1% of the private land in the limited zoning list in consideration for phase 3 cultivation (172K acres).

2. Nonvolatile solvents are defined by closed processes, not “explosive or ignitable mixtures”.

From AB133

(1) “Manufacturing Level 1” for sites that manufacture cannabis products using nonvolatile solvents, or no solvents.

(2) “Manufacturing Level 2,” for sites that manufacture cannabis products using volatile solvents.

(b) For purposes of this section, “volatile solvents” shall have the same meaning as in paragraph (3) of subdivision (b) of Section 11362.3 of the Health and Safety Code, unless otherwise provided by law or regulation.

H&S Code 11362.3 reads:

(3) “Volatile solvent” means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

3. From P&B Staff memo, 10/03/17: “There are broad principles and policies in the General Plan that are supportive of small-scale or niche manufacturing...” These aid in justifying a General Plan amendment for expanding the uses allowed in the commercial designation.

General Plan Principle 2-2c:

- Support the county’s resource-based economy and take actions that protect and enhance the county’s diverse natural resources.
- Promote small-scale or niche manufacturing using local resources for local or general use.

Other relevant sections of the General Plan:

- Principle 2-2a: Emphasize long-term and sustainable economic and community needs over short-term gains.
- Principle 2-2b: Promote a vibrant, diversified and stable economy.
 - a) Facilitate a variety of land uses and employment opportunities in community areas consistent with General Plan and local community needs and environmental constraints.
 - b) Emphasize creation of permanent jobs for all skill levels over short-term job creation.
 - c) Promote and enhance the county’s tourism and recreational sectors, including tourism tied to historic resources.
 - d) Promote small-scale or niche manufacturing using local resources for local or general use.
- Policy DE-5: **Designate sufficient land to accommodate the projected commercial, industrial, residential, and infrastructure needs** of each community, compatible with General Plan policies, site planning constraints, and local community objectives.
- Policy DE-6: **Land use classifications shall be broad enough to allow flexibility in implementation,** but specific enough to provide sufficient direction for carrying out General Plan objectives.
- Policy DE-48: Support business creation, expansion, retention and redevelopment to serve local and regional needs, consistent with General Plan objectives.
- Policy DE-49: Expand economic opportunities that respect the individual character or each community area.

II. Change the county ordinance on setbacks of commercial cannabis businesses

Current language 20.243.050 General Limitations on Medical and Adult Use Cannabis Facilities.

(C) The processing, manufacturing, testing, dispensing, retail sales, and distributing of cannabis for medical and adult use in Mendocino County, shall not be allowed within six hundred (600) foot radius feet of a school providing instructions in kindergarten or any grades 1 through 12, day care center, park, church, residential treatment facility, youth-oriented facility or youth center that is in existence at the

time the zoning clearance or permit is issued, unless the state licensing authority specifies a different distance. ^[1]_{SEP}

Proposed Change in language: Strike out “church”:

(C) The processing, manufacturing, testing, dispensing, retail sales, and distributing of cannabis for medical and adult use in Mendocino County, shall not be allowed within six hundred (600) foot radius feet of a school providing instructions in kindergarten or any grades 1 through 12, day care center, park, residential treatment facility, youth-oriented facility or youth center that is in existence at the time the zoning clearance or permit is issued, unless the state licensing authority specifies a different distance.

RATIONALE:

1) By including “church” we are being too restrictive. There is no more reason to include churches than, say, supermarkets. Both have children and youth as customers/attendees. To require setbacks from churches is to imply that religious institutions require certain protections, on which there is no basis. It also **violates the principle of separation of church and state**.

2) Other local ordinance examples of setbacks are less restrictive.

a. Monterey: **21.67.040 Regulations for Medical Cannabis Dispensaries.**

“Dispensaries shall not be located within six hundred (600) feet from any school, public park, or a drug recovery facility.”

b. Long Beach: “The ordinance prohibits medical marijuana businesses from being located in exclusively residential zones, within 1000 feet of schools or beaches, or within 1000 feet of parks or libraries.”

III. Proposed language regarding delivery of cannabis or cannabis products

N.B. The Bureau of Cannabis Control is in the process of drafting regulations to clarify the specific details regarding the delivery of commercial cannabis and the use of courier services.

(underline = added to existing language)

Ch. 20.243 Medical and Adult Use Cannabis Facilities

Chapter 20.243.030 Definitions

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer through a state licensed entity permitted to perform such deliveries. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

RATIONALE:

1. Producer counties like Mendocino must be able to compete in the statewide marketplace and thus expand the “reach” of locally produced cannabis products if dispensaries/ retail outlets are permitted

to use dedicated delivery services meeting state regulatory requirements for safety, background checks of employees, etc.

2. Currently there are large areas in the state in which there are no dispensaries/retail outlets, creating “access deserts” for patients who need to travel four to five hours to obtain medicinal cannabis. Licensed entities devoted entirely to direct patient delivery of cannabis products will provide equal access for all medicinal cannabis patients.
3. Current language permits dispensaries/retail outlets to use technology platforms to receive and fulfill consumer orders, but would create “black out areas” in the large geographic areas where their delivery systems (vehicles, personnel) cannot reach.
4. Currently, state-based and non-federally regulated delivery entities such as Golden State Overnight, are serving patients with direct home delivery and would be well-suited to continue this service. Mendocino county producers would benefit by allowing new emerging delivery entities to serve patients statewide via licensed dispensaries/retailers.
5. With the updated statutory recognition of “co-operatives”, brick and mortar or technology-based dispensaries could “make all necessary and proper stipulations and arrangements with another cannabis cooperative or association that is formed in this or in any other state for the cannabis cooperative and more economical carrying on of its business or any part of its business.” (AB133 p 5)

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