



MENDOCINO COUNTY *MEMORANDUM*

Date: October 3, 2017

To: Board of Supervisors

From: Supervisor John McCowen

Subject: Agenda Item 5E "Cannabis Zoning Exemption Development"

Background: Chapters 10A.17 and 20.242 of the Mendocino County Code specify the zoning districts and conditions under which permits to cultivate cannabis may be issued. Except for non-commercial cultivation pursuant to a patient, caregiver, or personal use exemption, cultivation permits are generally not allowed in residential zoning districts or on parcels less than two (2) acres in size.

Request for Proposal (RFP) No. 18-17, "Cannabis Zoning Exemption Development" was issued in response to Board of Supervisors direction that an alternative process be developed to allow existing cannabis cultivators, who are unable to comply with the zoning and setback requirements of Chapters 10A.17 and 20.242, to apply for cultivation permits. The term "overlay" has become shorthand for referring to an alternative process that could also include "exemptions" and/or "exceptions" or some other zoning tool.

Section 10A.17.080 currently creates an exception for existing cultivation sites on legal parcels located in the R-1, R-2, R-3, S-R, R-C, R-R:L-1&2 and R-R:L-5 (non-conforming - less than five acre parcel size) zoning districts or on legal parcels less than two (2) acres in size in any other zoning district where a dwelling unit is a principally permitted use. Existing cultivators in these zoning districts, or with legal parcels less than two (2) acres in size, may apply for small outdoor, indoor, or mixed light permits, (not to exceed 2,500 square feet of total plant canopy), subject to the following requirements:

- They are in compliance with all other applicable requirements of Chapter 10A.17 (including setbacks);
- There is an occupied dwelling unit on the legal parcel with the cultivation site;
- The permit is subject to a "Sunset Provision" and may be renewed and valid only until three (3) years following the effective date of the ordinance adopting Chapter 10A.17.

The Board of Supervisors directed that an alternative process be developed based on awareness that there are neighborhoods and/or communities where cannabis cultivation in residential zoning districts or on smaller parcels is generally consistent with prevailing cultural and social norms. As directed by the Board, a community or neighborhood that is approved via an alternative process would not be subject to the Sunset Provision. Additionally, setbacks from property lines and occupied dwellings on neighboring parcels could be reduced or eliminated.

Subsequent to release of the RFP for an alternative process, the Board directed that a process also be developed to allow a neighborhood to "opt out" even though the zoning and parcel sizes would otherwise allow cannabis cultivation permits to be obtained. More recently, the Board directed the formation of working groups, including an "Overlay Working Group," to assist with refinements to the cultivation ordinance.

The Board is requested to approve a contract with Michael Baker International to provide consultant services to fulfill Board direction to develop an alternative process.

Issue: Exhibit A, the Definition of Services for the proposed contract with Michael Baker International, provides a detailed task list. Included within the tasks is a kickoff meeting which is intended, among other things, to discuss the County's general goals and "confirm Board of Supervisor's objectives for the proposed exemption process." The primary purpose of this memo is to provide a means for the full Board to confirm our goals and objectives for the proposed exemption process and provide guidance on some of the methods that are most likely to help achieve them. The following suggestions and/or comments are numbered for ease of reference during Board discussion.

1. Clarify that the primary objective is to identify or create a process that can be used to exempt concentrations of existing cultivators in a community or in a neighborhood from the Sunset Provision and/or the setback requirements that would otherwise be applicable in residential zoning districts and on small parcels.
2. Clarify that an additional objective is to identify criteria that can be used to identify individual properties with existing cultivation sites that may be granted an exemption based on findings that deviation from the zoning or setback requirements is otherwise consistent with the goals and objectives of the ordinance. Examples might include: 1) parcels that do not meet the minimum parcel size required (9 acres instead of 10) but where all the surrounding parcels are larger; 2) parcels that do not meet property line setbacks due to topography but where there are no nearby sensitive uses or residential neighbors. Other examples can be identified and refined through the community outreach and public hearing process.
3. Clarify that the "Cannabis Regulations Working Group" referenced in Definition of Services is separate from the "Overlay Working Group" recently formed at Board direction. Or is it? An outcome of the kickoff meeting (task 1.1) is to determine the role and membership of the Cannabis Regulations Working Group. Task 1.2 is to "schedule biweekly coordination calls with County staff and/or the working group." In person meetings with the working group are included in task 3.2, 3.3, and 4.3 meetings. I recommend that the "Cannabis Regulations Working Group" include two to four individuals recommended by the stakeholders participating in the Overlay Working Group balanced between those favoring an overlay process and those concerned about neighborhood impacts.
4. The Definition of Services (task 3.2) includes creation of "an inventory of existing cannabis cultivators operating in the County." The purpose is to identify "concentrations of existing cultivators that do not meet the recently adopted zoning regulations and may be potential areas for a new zoning tool to allow continued cannabis cultivation." Clarify that there is no intention to attempt to create a map or inventory of all existing cultivators, but only to identify areas that may qualify for an overlay or exemption process.
5. Instead of expending resources creating an inventory of existing cultivators, the process of identifying neighborhoods that are candidates for an exception or overlay process can be accomplished by working with the "Cannabis Regulations Working Group" and the newly formed "Mendocino Cannabis Outreach Coalition" which has volunteered to assist with outreach.
6. As noted previously, the Board has subsequently directed that an "opt out" process be developed. I recommend that staff be directed to work with the consultant to revise the Definition of Services to include the development of criteria that support an "opt out" process and the approval or denial of at least one neighborhood scale "opt out" zone.
7. Clarify that the consultant cannot guarantee approval of overlay zones or opt out zones, but is required to identify and present candidates for overlay zones or apt out zones with the understanding that approval can only be granted by the Planning Commission and/or the Board of Supervisors.
8. The RFP specified that the consultant guide to completion the process of identifying at least one community wide and three neighborhood scale overlay zones. If the Board approves point 6., as stated above, the opt out zone identified would count as one of the three required neighborhood scale zones.

9. Clarify that while it is understood that there are inherent difficulties in developing a process, and simultaneously using the process to complete a task, that is the goal that the Board hopes to see accomplished.
10. The Definition of Services currently calls for three (3) focused stakeholder interviews; four (4) community workshops; two (2) “Big Tent meetings/Study sessions with decision makers”; three (3) in person meetings with the Cannabis Regulations Working Group; two (2) preliminary meetings/workshops before the Planning Commission and/or the Board of Supervisors; two (2) Planning Commission hearings for adoption; and two (2) Board of Supervisors meetings for adoption. These meetings are in addition to regular consultations with staff. I recommend the Board direct staff to work with the consultant to revise the proposed scope and purpose of the 18 specified meetings with a goal of accomplishing the goals and objectives specified in this memorandum. At a minimum, the Definition of Services needs to be refined since the four (4) community workshops are identified as task 2 meetings and are also identified as task 4.2 meetings.
11. Exhibit B – Payment Terms, provides a cost estimate for each of six categories of tasks that make up the total project cost of \$142,235. Environmental Review, at \$32,400, is easily the most expensive. I am concerned that this cost estimate derives from an incomplete understanding of the scope of the project. Based on current Board direction, the overlay or exemption process will only apply to *existing* cultivators who apply for small outdoor, indoor or mixed light permits. *All* existing cultivation is included within the environmental baseline and no new cultivation will be approved. Therefore, adoption of an overlay process and approval of eligible communities or neighborhoods ought to be feasible subject to approval of a Negative Declaration.
12. Finally, I believe the goals and objectives of the Board can be accomplished within the total proposed project cost by revising the Definition of Services as described above, particularly with regard to mapping/inventory; greater reliance on the Overlay Working Group and other stakeholders for outreach; revising the scope and purpose of the proposed meetings; and carefully evaluating the **requirements for CEQA compliance.**