



MENDOCINO COUNTY

MEMORANDUM

DATE: MAY 2, 2017

TO: BOARD OF SUPERVISORS

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SUBJECT: CANNABIS FACILITIES CODE – ZONING REGULATIONS (OA_2017-0001) AND BUSINESS LICENSE

Background: Staff was given direction by the Board to develop local regulations to address the processing, manufacturing, testing, dispensing, distributing, delivering and transportation of cannabis for medical use. At the Board of Supervisors meeting of January 27, 2017 the Board held a workshop to review the draft ordinances and gave direction to staff to address items within the proposed Cannabis Facilities Code. The regulations consist of a draft Chapter 6.36 and Chapter 20.243.

A. Medical Cannabis Regulation and Safety Act (MCRSA)

Assembly Bills (AB) 243, 266 and Senate Bill (SB) 643, collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA) developed guidelines for the establishment of regulations for the medical cannabis industry. The MCRSA creates a dual license system, which requires medical cannabis businesses to obtain State and local permits for cultivation, processing, manufacturing, testing, dispensing, distribution and transportation of medical cannabis. Although MCRSA does not limit the number of licenses a person or entity may hold, MCRSA does limit the different types of permits a person or entity may hold.

MCRSA establishes the State Departments responsible for the development of regulations of the various medical cannabis industries. The State Department of Public Health is responsible for issuing manufacturing licenses; and the Bureau of Medical Cannabis Regulation (BMCR) is responsible for issuing distribution, transportation, laboratory testing, and dispensary licenses. The Office of Manufactured Cannabis Safety (OMCS) was established in the Center for Environmental Health of the California Department of Public Health (CDPH) after the Governor signed MCRSA into law. OMCS is currently developing statewide standards, regulations, licensing procedures and to address policy issues in support of cannabis manufacturers. CDPH is responsible for issuing Type 6 and Type 7 licenses to manufacturers of cannabis and manufactured cannabis products (<http://www.cdph.ca.gov/programs/pages/omcs.aspx>). The BMCR is within the Department of Consumer Affairs. The BMCR is currently in the process of assembling an Advisory Committee to oversee the development of the medical cannabis regulations. The BMCR anticipates that regulations will be developed by January 1, 2018 (http://bmcr.ca.gov/about_us/faq.shtml). Once developed, BMCR can begin accepting applications for State licenses.

Business and Professions Code section 19322(a) sets forth the standards for State licenses for medical cannabis businesses. While the specific requirements, form and application fees are still under development, section 19322 provides an outline of the required application documents. Prior to application for a State license, a medical cannabis business must obtain a permit from the local jurisdiction. State license applications will, at a minimum, require the following:

- Electronic submission of fingerprint images and related information

- Documentation issued by the local jurisdiction
- Evidence of legal right to occupy and use the proposed location
- For cultivators and dispensaries, provide evidence that proposed location is at least beyond a 600-foot radius from a school
- Provide a statement that the information provided is complete, true and accurate
- Provide a seller's permit number
- Provide any other information required by the licensing authority
- For applicants seeking a cultivation license, provide a statement declaring the applicant is an 'agricultural employer' as defined by the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975
- For applicant's seeking licensure as a testing laboratory, register with the State Department of Public Health and provide any information required by the State Department of Public Health
- Pay all applicable fees for licensure required by licensing authority
- For applicants seeking licensure to cultivate, distribute or manufacture medical cannabis, the applicant shall also include a detailed description of the applicant's operating procedures for all of the following:
 - Cultivation
 - Extraction and infusion methods
 - Transportation process
 - Inventory procedures
 - Quality control procedures

B. Adult Use of Marijuana Act (AUMA)

Approved by voters in November 2016, Proposition 64, the Adult Use of Marijuana Act (AUMA), developed guidelines for the establishment of regulations governing adult use cannabis industry. AUMA consolidates the Bureau of Medical Cannabis Regulation into the Bureau of Marijuana Control to broaden the oversight of BMCR to include adult use cannabis.

C. Local regulations

Before the Board today is the latest draft of the Cannabis Facilities Code (CFC). The CFC was originally presented at a Board Workshop on January 27, 2017. At that workshop, the Board and members of the public provided feedback regarding the initial draft Chapter 6.36 Business License Regulations and Chapter 20.243 of the Zoning Ordinance. Based on Board direction, the Chapters have been revised to include both medical and adult use cannabis facilities.

Permitting requirements from the State are still being developed. The Board gave direction to keep the Chapters relatively simple and put more detailed requirements into a performance or user manual so that the Chapters do not have to be revised when the State releases additional permitting details. The manual is currently under development and will be ready for release after the State publishes additional permitting information. The adoption of the CFC will not be contingent on the manual being completed. The CFC Procedures/User Manual would outline possible items required for State licensure while not mandating these items or activities to obtain a County permit, with the intent being state the State would be the entity for enforcing these conditions. The Procedures/User Manual would contain additional information including, but not limited to, operations plans, processing standards, and employee safety practices.

The overall approach with the current revision is to simplify the ordinance. Sections have been eliminated where they have been found to overlap or repeat sections found elsewhere in the County Code. Each license type has been assigned a use type. The permits required for each license type (shown in Chapter 20.243.090 Table 1) are consistent with those required for the assigned use type in a particular zoning district. Track and trace requirements were removed from the Zoning chapter and are found in the Business License chapter only.

Several additional changes were made in response to the direction staff received at the Board Workshop. This included an allowance for on-site consumption for adult use facilities consistent with outdoor smoking standards. A prohibition of giveaways and promotions at adult use establishments has also been included. This would not affect compassionate use programs at dispensaries. The Board clarified that they did not want to establish setbacks between retail establishments. The Board opted to wait until the State developed further standards before endeavoring to regulate retail outlets/ dispensaries ability to sell other items (food/ beverages) on-site in addition to the cannabis products. It does appear that state laws will prohibit the sale of tobacco and alcohol at cannabis establishments.

Several changes have been made to the Business License Chapter as well. Business License Division and Cannabis Facilities Business License have been added to the definitions. References to suspension of licenses have been eliminated. If a violation occurs, license revocation will be the remedy. The term of license timing was changed to match other business licenses (starts March 1, rather than annually from permit issuance).

D. Items Staff was requested to report back on

1. Manufacturing as an accessory to permitted cultivation

Based on the testimony received from several members of the public, staff was asked to develop language that would allow for non-volatile manufacturing of cannabis as an accessory use to a permitted cultivation operation. Upon further review, there may be concerns about this type of use being allowed as an accessory/home occupation use where cultivation is currently allowed. Staff is working with several community members and staff from Environmental Health in developing a threshold/level of home manufacturing that may be acceptable. It will take more input and study to develop the criteria for allowing any type of home manufacturing or making a determination that it should not be allowed. Staff would request additional time to work towards acceptable criteria and language before any further determination is made on this item.

2. Business Offices

Currently Administrative and Business Offices are an existing use type per section 20.024.010 and allowed within various Commercial and Industrial zonings. A proposed cannabis business office with no product on site would be considered as an Administrative and Business Office and would be subject to the requirements of section 20.024.010 and the various zonings that it would be allowed in. No additional wording or regulation is required.

3. Home office as an accessory to permitted cultivation

Chapter 20.156 – Home Occupations, currently allows for home offices. This chapter shall also apply to home offices that are an accessory to a permitted cultivation. The standards required to establish a home office per Chapter 20.156 shall apply.

4. Transportation

Staff was asked to clarify that transportation regulations would not prohibit the transportation of cannabis by a permitted cultivator from a permitted cultivation site to another approved location. Upon further review staff removed the transportation license type. This is not a use type that is included in the zoning ordinance. Nothing in the County regulations would prohibit transportation from being carried out consistent with State licensing. Transportation would still be required to comply with Track and Trace requirements. Delivery would be allowed as an accessory to Dispensaries.

5. Cannabis Farmers Markets and “Bud and Breakfast” facilities

Staff was asked to consider the feasibility of regulating cannabis farmers markets and “Bud and Breakfast” facilities. The State has not issued guidelines related to such facilities and as such staff recommends delaying any policies related to local regulation of these uses until the State releases more information.

6. 200 foot setback from nearest residential structure on a separate parcel

The previous draft presented at the Board Workshop had a general limitation that required a cannabis facility to be located more than 200 feet from the nearest residential structure on a separate legal parcel. Concerns were raised about this in relation to proximity of residences to industrially zoned properties and also the broader applicability in other zoning districts. At this time staff recommends removing the requirement entirely because the various license types are allowed only in zones where they are consistent with allowed use types in that zone. An additional setback is not necessary.

7. Provisional Operation

Section 20.243.100 provides that medical cannabis facilities in existence prior to January 1, 2016, that are allowed with a permit as now required for the zoning district may continue operations on a provisional basis until such time as the permit application has been processed and the hearing body approves or denies the project.

8. Exceptions

Exception language has been added to Chapter 20.243 to include an exception for existing packaging and processing facilities having been permitted as described in Chapter 20.032.040 and 20.032.045. Current language would allow cannabis manufacturing sites to be located in FL, AG, RL Districts with the issuance of a Major Use Permit when certain criteria can be met. The criteria include having been permitted prior to January 1, 2016, with a previously developed site with no expansion of impervious surfaces and no tree removal.

9. Consolidate general provisions/limitations

In the prior draft of Chapter 20.243 there were several provisions repeated for each license type. In the current draft these items have been consolidated into one list of general limitations. The information presented related to each license type has been significantly reduced.

E. New items for consideration/information

1. Fingerprinting

At the workshop the Undersheriff presented alternative language related to the fingerprinting requirements. These would be to add other local police departments and approved private companies to the list of locations where fingerprinting can be obtained. For now the prior language remains in Chapter 6.36.

2. Accessory Non-volatile Manufacturing

In addition to concerns noted above about the appropriateness of accessory manufacturing in certain zoning districts there are questions about if manufacturing can occur in habitable spaces. Section 20.243.070(D) currently contains the following general limitation:

“The processing, manufacturing, testing, dispensing, retailing, and distributing of medical and adult use cannabis is not permitted within any habitable space (i.e., kitchen, bedroom, bathroom, living room or hallway) of a dwelling unit nor is it permitted within any required parking space.”

However, accessory manufacturing is likely to occur within a kitchen. Staff is seeking direction from the Board to clarify where accessory non-volatile manufacturing may occur with a dwelling unit.

3. Use of butane

The current draft Chapter 20.243 prohibits the use of butane. Staff is seeking clarification on if the Board would like to maintain the prohibition on butane, or allow its use in industrial areas only with a Major Use Permit.

4. Transportation

As noted in D4 above the transportation license type has been removed from section 20.243.090 Table 1 as is not directly related to zoning. Staff seeks direction from the Board as to whether any additional language regarding transportation issues should be added to the ordinance.

5. Setbacks from school, youth-oriented facility, park or church

The State requirements for setbacks to schools are 600 feet and the current draft Chapter 20.243 is consistent with the State requirement. However the Cultivation Ordinance requires a 1,000 foot setback from these facilities, and also includes setbacks from additional uses, such as churches, parks, youth-oriented facilities and residential treatment centers. In the case of a cannabis facility where cultivation occurs in addition to the other types of facilities those facilities will need to comply with the larger setback.

6. Adult Use Cultivation

Adult use cannabis cultivation is not included in the County's cannabis cultivation regulations. This means that Adult use retailers will not have access to Mendocino grown cannabis products until such time cultivation is allowed for adult use. Likewise, microbusinesses involving cultivation will not be eligible for licenses until adult use cultivation has been authorized.

F. Next Steps

Staff requests that the Board review the revised Cannabis Facilities Code (Chapters 6.36 and 20.243), the items listed above, and take public comment on the matter; and after doing so, provide recommendations to staff for any desired revisions. As noted in paragraph D1 noted above staff is requesting additional time for criteria development. After revisions are made staff would then return to the Board with the revised documents for final comment before proceeding on to the Planning Commission for their review and recommendation. At such time as the Planning Commission completes their review, the ordinances will then return to the Board for their final decision.

The following attachments are included for review:

- Draft Chapter 6.36 –Medical Cannabis Facilities Business License
- Draft Chapter 20.243 – Medical Cannabis Facilities