



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE: NOVEMBER 5, 2019

TO: HONORABLE BOARD OF SUPERVISORS

FROM: BRENT SCHULTZ, PLANNING AND BUILDING SERVICES
JULIA ACKER KROG, PLANNING AND BUILDING SERVICES

SUBJECT: LOCAL COASTAL PROGRAM AMENDMENT FOR CANNABIS CULTIVATION AND CANNABIS FACILITIES ORDINANCES (OA_2019-0001)

INTRODUCTION:

The Mendocino County Board of Supervisors (Board) directed staff to establish a Coastal Cannabis Cultivation Ordinance to govern the cultivation of cannabis and a Coastal Cannabis Facilities Ordinance to govern the commercial processing, manufacturing, testing, dispensing, retailing, and distributing of cannabis in the unincorporated areas of the Coastal Zone of the County of Mendocino. It should be noted that the Town of Mendocino was excluded from the current chapters to ensure consistency with the uses allowed in Division III of Title 20 and the associated Mendocino Town Plan.

The Coastal Cannabis Cultivation Ordinance and Coastal Cannabis Facilities Ordinance will be established through proposed Mendocino County Code Amendments to add two new chapters to the Mendocino County Local Coastal Program (Title 20, Division II): Chapter 20.537 — Coastal Cannabis Cultivation Ordinance and Chapter 20.538 – Coastal Cannabis Facilities Ordinance. These chapters would be administered through the Department of Planning and Building Services (PBS). The chapters are intended to regulate and establish permit requirements for the location and scale of cannabis cultivation, processing, manufacturing, testing, dispensing, retail, and distribution to ensure that activities are compatible with the County's land use and zoning and to require compliance with environmental and public health regulations.

Once the Board has reviewed these chapters and adopted a Resolution authorizing submittal of the required Local Coastal Program Amendment to the California Coastal Commission, these chapters will need to be certified by the California Coastal Commission. Once certified by the California Coastal Commission there will be a subsequent public hearing held by the Board of Supervisors to adopt the Ordinances.

Minor changes to Chapters 10A.17 - Mendocino Cannabis Cultivation Ordinance and 6.36 - Cannabis Facilities Businesses Ordinance are required to acknowledge these new chapters. These draft Ordinance changes are provided for your consideration as part of this Ordinance Amendment request, but are not proposed for adoption until the California Coastal Commission has certified the Local Coastal Program Amendment.

The Coastal Cannabis Cultivation Ordinance and Coastal Cannabis Facilities Ordinance were originally presented at a Board of Supervisors hearing on April 23, 2019 to solicit Board direction on

the initial drafts. At that hearing the Board provided several directives and requested that the item be sent to the Planning Commission for review and recommendation. The Planning Commission, at their July 18, 2019 meeting, adopted a resolution making a recommendation to the Board of Supervisors that they authorize submittal of a Local Coastal Program Amendment application (OA_2019-0001) to the California Coastal Commission for certification and approve the Project by adopting an ordinance amending Mendocino County Code, Title 20, Division II, to add Chapters 20.537 and 20.538, and amending Chapters 10A.17 and 6.36 of the Mendocino County Code to add references to the proposed new Chapters 20.537 and 20.538, with modifications made at the meeting and as specified in their resolution. Staff has included a discussion below of the recommendations from the Planning Commission for both the Cultivation and Facilities Ordinance amendments.

PLANNING COMMISSION RECOMMENDATIONS ON CHAPTER 20.537 (COASTAL CANNABIS CULTIVATION ORDINANCE): At the April 23, 2019 Board hearing, the Board provided several directives for consideration and recommendation by the Planning Commission. At the July 18, 2019 Planning Commission hearing, the Planning Commission adopted a resolution which provided several recommendations to the Board regarding the Board directives under consideration, as well as additional recommended changes which are addressed individually below.

- a. *Board Directive: Strike language in Section 20.537.025(A)(4) pertaining to a 100-foot setback from an access easement.*

The Planning Commission concurred with the directive recommended by the Board to strike language in Section 20.537.025(A)(4) pertaining to a 100-foot setback from an access easement.

The Planning Commission discussed this directive in the context of the information provided by staff that removing this requirement is a nominal change to the standards, as cultivation will be subject to the same setback requirements as any other development in the Coastal Zone. This includes, at a minimum, front, rear and side yards specific to each zoning district, in addition to the corridor preservation setback standards of the Section 20.444.020 of the Coastal Zoning Code. Corridor preservation setbacks apply to all lots or parcels that abut a publicly maintained street or highway.

- b. *Board Directive: Review the Legal Parcel Definition and establish a date by which parcels would need to be created.*

The Planning Commission agreed with the Board recommendation to make the definition of “legal parcel” align with the definition provided in Chapter 10A.17 of the Mendocino County Code and set the date by which parcels would need to be created as January 1, 2016. The current draft of the chapter reflects said recommendation.

- c. *Board Directive: Review the minimum parcel sizes and possibly modify the minimum parcel sizes for the Cultivation Permit Types C, C-A, and C-B.*

Originally, staff recommended a 2-acre minimum for Cultivation Permit Types C, C-A, and C-B. This size was derived from existing standards of the inland zoning division, as well as an acknowledgement that the setback and lot coverage limitations specific to the Coastal Zone further constrained potential cultivation activities. Additionally, staff presented an option to allow for a Type 1 (1-A, 1-B or 1-C) Cultivation Permit to be issued on sites that maintained a minimum of 3.5 acres when certain criteria were met regarding the surrounding lot sizes.

The Planning Commission recommended modifying the minimum parcel sizes for the Cultivation Permit Types C, C-A, and C-B to 5 acres, without exception. This is also the allowance for Type 1, 1-A, and 1-B permits, and was based on Commissioner’s concerns regarding potential impacts to more residentially zoned and sized properties.

Current standards in the Coastal Zoning Code limit potential impacts from development in neighborhood-like settings, regardless of the use type. For all coastal zoning districts in which cultivation is allowed, the maximum lot coverage provided in each zoning district chapter in the Coastal Zoning Code is *Twenty (20) percent for parcels less than two (2) acres in size. Fifteen (15) percent for parcels from two (2) acres to five (5) acres in size. Ten (10) percent for parcels over five (5) acres in size.*

The recommendation of the Planning Commission additionally negates the relevance of Section 20.537.020(D)(1) of the current chapter. Staff has modified Table 1, as shown in Attachment C, and has deleted Section 20.537.020(D)(1) of the proposed chapter to reflect the minimum acreage for the C, C-A, and C-B permit types recommended by the Planning Commission.

- d. Planning Commission Recommendation: *Strike the language in Section 20.537.035(D) of the current chapter that says, “the approximate date(s) of all cannabis cultivation activities that have been conducted on the legal parcel prior to the effective date of this ordinance.”*

The Planning Commission recommended striking this language as it is burdensome and irrelevant to cultivation activities proposed under the current chapter, as all permits are treated as new permits and no special consideration is given to cultivation sites in existence prior to the adoption of this ordinance.

This information is not required in state law and has been deleted from the proposed chapter.

- e. Staff Recommendation to Planning Commission: *Revise section 20.537.025 of the current chapter to add Coastal Access Points as a sensitive receptor from which the 1000-foot setback would apply.*

The Planning Commission discussed this recommendation and agreed with the staff recommendation to add “Coastal Access Points” as a sensitive receptor. The above addition would ensure consistency with Local Coastal Program policies related to public access points.

PLANNING COMMISSION RECOMMENDATIONS ON CHAPTER 20.538 (COASTAL CANNABIS FACILITIES ORDINANCE): At the April 23, 2019 Board hearing, the Board provided several directives for consideration and recommendation by the Planning Commission. At the July 18, 2019 Planning Commission hearing, the Planning Commission adopted a resolution which provided several recommendations to the Board regarding the Board directives under consideration, as well as additional recommended changes which are addressed individually below.

- a. *Board Directive: Review the Legal Parcel Definition and establish a date by which parcels would need to be created.*

Refer to the discussion in the Coastal Cannabis Cultivation Ordinance section, above.

- b. *Board Directive: Discuss which facility use types should be permissible in the Agriculture (AG) zoning district. It was suggested to allow all facility use types, with the exception of Testing.*

At the April 23, 2019 Board hearing, the Board discussed modifying Table 1 of the current draft to allow all facility use types, with the exception of Testing, in the Agriculture (AG) zoning district. The Planning Commission recommended to limit the facility use types allowed in the AG zoning district to those in the current chapter, as shown in Attachment D.

- c. *Board Directive: For Table 1, the following changes were suggested:*
- i. *Change all Processing permits in all zoning districts where allowed and all Testing permits in the GVMU and GHMU zoning districts to a Coastal Development Permit (CDP), rather than a Coastal Development Use Permit (CDU);*

The Planning Commission agreed with the Board recommendation to change all Processing permits in all zoning districts where allowed and all Testing permits in the GVMU and GHMU zoning districts to a CDP, rather than a CDU for all zoning districts, except in the Rural Residential (RR) zoning district, based on concerns for the potential for commercial cannabis development in neighborhoods. The Planning Commission recommended requiring CDUs in the RR zoning district to ensure that commercial cannabis development in residential areas be thoroughly vetted.

The primary difference between a Coastal Development Permit and a Coastal Development Use Permit is that a Coastal Development Use Permit is always appealable to the Coastal Commission whereas a Coastal Development Permit may or may not be appealable to the Coastal Commission. Staff does not believe this change would impact the level of site-specific review afforded each application; however, it may require adding a provision that all Coastal Development Permits for Testing in the GVMU and GHMU zoning districts are appealable to the Coastal Commission to remain consistent with allowable uses within these zoning districts. Table 1, shown in Attachment D, was modified based upon the Board request and was presented to Planning Commission showing Coastal Development Permits in the GVMU and GHMU districts. No change was required to the table based upon the agreement by the Planning Commission.

- ii. *Allow for Processing and Testing in the Rural Village (RV) and Commercial (C) zoning districts, subject to a CDP*

The Planning Commission recommended that Table 1 of the current chapter remain unchanged and that Processing and Testing not be allowed in the RV and C zoning districts based on land use compatibility, thereby limiting available properties allocated to such uses.

- iii. *Review where microbusinesses are allowed inland and consider allowance in those districts in the Coastal Zone.*

The Planning Commission reviewed where microbusinesses are allowed inland and recommended that Table 1 of the current chapter remain unchanged.

- d. *Board Directive: Evaluate the requirement that retail be the primary use for microbusinesses in commercial zones.*

The Planning Commission recommended that retail continue to be the primary use for microbusinesses in commercial zones. This recommendation was based on the following discussion provided by staff:

Of the approximately 8,174 parcels in the Coastal Zone of Mendocino County, only 191 of these, covering approximately 127 acres, are zoned Commercial (C). In a County with so few commercial-zoned properties, allowing for non-retail use microbusinesses in limited commercial spaces may have detrimental effects on the local economy, as retail space is subsumed for other purposes. Staff recommended maintaining the language in Section 20.538.020(F)(4) that requires microbusinesses proposed in the Commercial (C) and Rural Village (RV) zoning districts to demonstrate that the retail component of the microbusiness is the primary use. This would be more consistent with the existing standards in the Coastal Zoning Code and the Local Coastal Program.

- e. *Board Directive: For Shared Facilities, remove the 5-users per facility limit and discuss an alternative user limit, if any.*

The Planning Commission concurred with the Board-recommended directive to remove the 5-users per facility limit on shared facilities to align with the state requirements on shared facilities. The Planning Commission did not discuss an alternative use limit, as staff found that: according to Chapter 13. *Manufactured Cannabis Safety* of the California code of Regulations, Title 17, Division 1, there is no restriction on the number of users eligible to share a facility. Staff had already changed the draft ordinance based upon Board direction and therefore no change was required as a result of the Planning Commission concurrence.

- f. *Planning Commission Recommendation: Remove the Rural Village (RV) zoning district from Table 1 of the current chapter, thereby prohibiting all cannabis facilities in this zoning district.*

The Planning Commission recommended removing the RV zoning district from Table 1 of the current chapter and prohibit all cannabis facilities in the RV zoning district based on the location of many RV-zoned parcels in the core of small communities, such as Elk, Cleone, and Albion. Additionally, given the limited commercial space available in these communities, it was felt that cannabis related businesses locating on RV zoned properties may cause displacement or economic unbalance. Table 1 of the current chapter, shown in Attachment D, has been revised to reflect this recommendation.

Since the Planning Commission hearing, Staff has found that Sec. 20.538.020(F)(4) would need to remove reference to the RV zoning district if the Board wishes to follow the recommendation of the Planning Commission to remove RV from Table 1, as shown in Attachment D.

ENVIRONMENTAL DETERMINATION: Pursuant to Public Resources Code Section 21080.9, the California Environmental Quality Act (Public Resources Code Section 21000 et seq.; CEQA) does not apply to activities and approvals by a local government as necessary for the preparation and adoption of a local coastal program pursuant to the California Coastal act (Public Resources Code Section 30000 et seq.), and as provided by Section 15265 of the CEQA Guidelines (14 Cal. Code Regs, Section 15000 et seq.), the burden of CEQA compliance for local coastal programs is shifted from the County to the California Coastal Commission.

RECOMMENDED MOTION FOR THE BOARD OF SUPERVISORS: Adopt a Resolution authorizing submittal of a Local Coastal Program amendment to the California Coastal Commission, consisting of an amendment of the Mendocino County Coastal Zoning Code (Title 20, Division II of Mendocino County Code) (OA_2019-0001) to establish a Coastal Cannabis Cultivation Ordinance to govern the cultivation of cannabis and a Coastal Cannabis Facilities Ordinance to govern the commercial processing, manufacturing, testing, dispensing, retailing, and distributing of cannabis in the unincorporated areas of the Coastal Zone of Mendocino County; and authorize Chair to sign same.

ATTACHMENTS

- A. Planning Commission Hearing Packet
- B. Planning Commission Signed Resolution
- C. Chapter 20.537 – Redline
- D. Chapter 20.538 – Redline
- E. Chapter 10A.17 – Redline
- F. Chapter 6.36 – Redline
- G. Board of Supervisors Resolution
Exhibit A - Draft Ordinance
- H. Coastal Commission Comment Letter