



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482
120 WEST FIR STREET • FT. BRAGG • CALIFORNIA • 95437

IGNACIO "NASH" GONZALEZ, AICP INTERIM DIRECTOR
JULIA ACKER KROG, ASSISTANT DIRECTOR
TELEPHONE: 707-234-6650
FAX: 707-463-5709
FB PHONE: 707-964-5379
FB FAX: 707-961-2427
pbs@mendocinocounty.org
www.mendocinocounty.org/pbs

MEMORANDUM

DATE: APRIL 19, 2021

TO: HONORABLE BOARD OF SUPERVISORS

FROM: JULIA KROG, ASSISTANT DIRECTOR

SUBJECT: ORDINANCE ADOPTING CHAPTER 22.18 – COMMERCIAL CANNABIS ACTIVITY
LAND USE DEVELOPMENT ORDINANCE AND AMENDING CHAPTER 10A.17 –
MENDOCINO CANNABIS CULTIVATION ORDINANCE AND CHAPTER 20.242 –
CANNABIS CULTIVATION SITES (OA_2021-0002)

INTRODUCTION/BACKGROUND

On April 4, 2017, the Board of Supervisors adopted Ordinance Number 4381, adding Chapters 10A.17 and 20.242 to the Mendocino County Code (MCC), which included a largely ministerial program for Phase Three of the cannabis program, applicable to new cultivation activities. Since adoption, the Board of Supervisors has amended and provided direction on these chapters on multiple occasions, including postponing the opening of Phase Three of the program.

On January 22, 2019, the Board of Supervisors formed a Cannabis Cultivation Ad Hoc Committee, consisting of Supervisors Haschak and McCowen, to discuss issues related to the Cannabis Cultivation Ordinance (Chapter 10A.17). On May 14, 2019, the Board of Supervisors reviewed the recommendations of the Cannabis Ad Hoc Committee and provided direction to staff to transition to Use Permits/Administrative Permits for Phase Three for all cultivation activities and align permit categories with the California Department of Food & Agriculture (CDFA). On July 14, 2020, the Cannabis Cultivation Ad Hoc Committee, consisting of Supervisors Haschak and McCowen, was terminated. On August 4, 2020, a new Cannabis Cultivation Ad Hoc was formed consisting of Supervisors Haschak and Williams.

The Board of Supervisors has given direction to staff on consideration of a discretionary permit process for new cannabis cultivation activities (Phase Three) on May 14, 2019, December 10, 2019, February 25, 2020, June 16, 2020, August 4, 2020, and October 13, 2020. Staff has prepared a draft ordinance that adopts a new Chapter 22.18 for cannabis cultivation permitting regulations, which chapter refers to the use permit processes of the zoning code. The proposed ordinance would adopt Chapter 22.18 and would make corresponding changes to Chapters 10A.17 and 20.242, including the deletion of references to Phase Three.

On January 25, 2021, the Board of Supervisors provided direction to Planning and Building Services regarding drafts of Chapter 22.18. The direction received from the meeting was incorporated into the drafts presented to the Planning Commission. Key issues or revisions made to the draft Ordinance since the review with the Board on January 25, 2021 were called out in the staff report presented to the Planning Commission. In addition, the draft Ordinance presented as part of the Planning Commission agenda packet included the necessary corresponding changes to Chapters 10A.17 and 20.242 of County Code to remove references to the original Phase Three regulations of each ordinance and also to specifically place an ending date for Phase Two.

On March 19, 2021, the Mendocino County Planning Commission reviewed the draft Ordinance and provided recommendations to the Board of Supervisors regarding aspects of proposed Chapter 22.18 and additional comments for the consideration of the Board of Supervisors. No revisions or

recommendations were made by the Planning Commission with regards to the corresponding changes to Chapters 10A.17 and 20.242 of County Code. Staff has included a discussion below of the recommendations from the Planning Commission.

On March 22, 2021, the Board of Supervisors adopted an urgency ordinance establishing a temporary moratorium on the commencement of Phase Three cannabis cultivation permitting pending the study and consideration of land use and other regulations pertaining to cannabis cultivation. As of the writing of this report it is anticipated that the Board of Supervisors will review a possible extension of the temporary moratorium at their April 12, 2021, special meeting.

PLANNING COMMISSION RECOMMENDATIONS

At the March 19, 2021 Planning Commission hearing, the Planning Commission adopted a resolution which provided several recommended changes to the proposed ordinance, as well as recommended considerations for the Board of Supervisors. Each recommended change from the Planning Commission is addressed individually below.

- (A) The Planning Commission recommends that section 22.18.030(A)(1) be revised to allow for the drilling of test water wells.
- (B) The Planning Commission recommends that the provisions in section 22.18.030 regarding cultivation exempt from a permit remain in Chapter 10A.17.
- (C) The Planning Commission recommends that the eligibility criteria in section 22.18.050(A) for Phase 1 applicants who may apply for a Land Use Permit be modified to not allow those who may have been denied a permit for one of the following reasons:
 - (1) Tree removal violation
 - (2) Failure to pass the required background check
 - (3) Lack of proof of prior cultivation
 - (4) Legal parcel established after January 1, 2016.
 - (5) Non-responsiveness to requests for information from the County.
- (D) The Planning Commission recommends that section 22.18.050(B)(1) regarding the type of Land Use Permit required for Phase 1 applicants be modified to require an Administrative Permit instead of a Major Use Permit.
- (E) The Planning Commission recommends that section 22.18.060 be revised to include a streamlined application process for applicants of Phase 1 permits to obtain an Administrative Permit under Chapter 22.18, and also include a 30-60 day window of time where Phase 1 applicants may apply for an Administrative Permit under Chapter 22.18 before the application process is opened to all applicants.
- (F) The Planning Commission recommends that section 22.18.060 be revised to include a requirement for applicants for Land Use Permits on parcels located abutting private roads to notify all property owners abutting that private road of the public hearing for the Land Use Permit.

Staff Comments on this item:

Both the Planning and Zoning Law (see, e.g., Government Code section 65093) as well as other sections of the Zoning Code (section 20.196.025(C)(6)) provide that the failure to receive certain required notices shall not constitute grounds to invalidate the actions of the local agency for which the notice was given.

Proposed section 22.18.060(A)(3), as recommended to be added by the Planning Commission, creates a separate notice obligation to owners of property abutting a private road on which a Land Use Permit is being applied for. As this is a new notice obligation, Staff would recommend adding a

sentence to this paragraph similar to those that would apply to use permits generally. Staff recommends the following addition at the end of paragraph (A)(3):

“Failure of any person or entity to receive the notice required by this paragraph shall not constitute grounds to invalidate any action taken regarding the application.”

Staff has included this additional recommended language in the drafts presented to the Board of Supervisors as part of the agenda packet.

- (G) The Planning Commission recommends modifications to Appendix A regarding the type of Land Use Permit required for the various cultivation types in the allowable zoning districts, as follows:
- (1) Specialty Cottage outdoor limitations be modified to be consistent with State law and regulations.
 - (2) For all Specialty Cottage cultivation types, the permit required by the zoning table be changed to an Administrative Permit.
 - (3) Require a Major Use Permit for all medium outdoor, medium mixed light and medium indoor cultivation types on Agricultural zoned parcels.
 - (4) Require a Major Use Permit for Nursery permits in Agricultural, Upland Residential and RR-10 zoning districts.
 - (5) For Small Outdoor and Small Indoor cultivation types in the RR-10 and Upland Residential zoning districts, a Major Use Permit is required.
 - (6) For Small Indoor and Small Mixed Light Tier 1 and Tier 2 cultivation types in the Agricultural zoning district, a Minor Use Permit is required.

All changes noted above in A through G have been incorporated into the redline drafts of the proposed ordinance that is attached to the Board of Supervisors agenda packet.

In addition to the specific changes to the ordinance recommended above, the Planning Commission made further recommendations for the consideration of the Board of Supervisors, as follows:

- (H) Consider requiring renewable energy sources for Medium Indoor and Medium Mixed Light Tier 1 and Tier 2 in order to reduce greenhouse gas emissions due to high energy usage.
- (I) Place an acreage limitation on the amount that can be cultivated pursuant to footnote *6 in Appendix A. The Commission was not able to reach consensus on a limitation, but discussed a maximum area from 1 acre up to 5% of the parcel size, but one Commissioner recommended allowing up to the 10% of parcel size in the Rangeland zoning district.
- (J) The Planning Commission emphasized the importance of allocating appropriate resources to the Department of Planning and Building Services and the Mendocino County Sheriff's Office for permitting, enforcement and oversight.

ENVIRONMENTAL DETERMINATION

The proposed Ordinance is statutorily exempt from the California Environmental Quality Act pursuant to subdivision (h) of section 26055 of the Business and Professions Code as an ordinance adopted by a local jurisdiction that requires discretionary review and approval of permits to engage in commercial cannabis activity.

TERMINATION OF MORATORIUM

On March 22, 2021, the County adopted an urgency moratorium on the commencement of Phase Three cannabis cultivation permitting under Mendocino County Code Chapters 10A.17 and 20.242, pending the study and consideration of land use and other regulations pertaining to cannabis cultivation. On April 12, 2021, the County will consider an extension of this moratorium for an additional ten months and 15 days, in accordance with Government Code section 65858.

This moratorium was enacted for the specific purpose of not commencing Phase Three permitting while

the County was in the process of studying and preparing documents for the code changes proposed by the ordinance being considered by the Board of Supervisors as part of this agenda item. If the Board of Supervisors adopts the ordinance under consideration, the need for the moratorium would be extinguished, as Phase Three permitting would no longer exist.

As such, the ordinance contains a section terminating the moratorium as of the effective date of the ordinance. Since this memorandum and packet is being made available before April 12, 2021, the ordinance contains a blank for the ordinance number of any renewal of the urgency moratorium. This section of the ordinance will be updated based on the outcome of the April 12, 2021, moratorium renewal agenda item.

This staff memorandum and supporting documentation are also intended to be the written report required pursuant to Government Code section 65858 describing the measures taken to alleviate the condition which led to the adoption of the moratorium ordinance. The ordinance adding Chapter 22.18 and eliminating Phase Three permitting from Chapters 10A.17 and 20.242 would eliminate the possibility of conflicting existing and proposed regulations and the confusion, increased workload, and resulting negative impact on permit processing that would ensue.

RECOMMENDED MOTION FOR THE BOARD OF SUPERVISORS

See agenda summary for this item for a recommended motion.

ATTACHMENTS

- A. Planning Commission Hearing Packet
- B. Planning Commission Signed Resolution
- C. Draft Ordinance (Redline of all Chapters)
- D. Draft Appendix A (Redline)
- E. Draft Ordinance and Appendix A (Clean)