




AGENDA ITEM NO.
J1

COUNTY OF HUMBOLDT

Hearing Date: May 8, 2018

To: Board of Supervisors

From: John H. Ford, Director of Planning and Building 

Subject: **Zoning Ordinance Amendments**
Commercial Cannabis Land Use Ordinance
Case Number OR-17-02

RECOMMENDATIONS

That the Board of Supervisors

1. Introduce the proposed ordinance establishing a temporary moratorium outside of the Coastal Zone on accepting applications for any permits for Cannabis Activities in the Yurok Area of Traditional Tribal Cultural Affiliation by title and waive further reading [Attachment 6]; and
2. Receive and consider; the staff report; the Planning Commission's recommendation to certify the Final Environmental Impact Report (FEIR) and adopt the ordinances; the FEIR [Attachment 10]; and written comments received since the April 10, 2018 meeting [Attachment 11], open the public hearing, and accept public comment on any new information presented; and
3. Close the public hearing; and
4. Deliberate on the proposed ordinances; and

Prepared by Michael Richardson
Michael Richardson, Supervising Planner

CAO Approval TLF

REVIEW: Auditor _____ County Counsel JWZ Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

PREVIOUS ACTION/REFERRAL:
 Agenda Order No. _____ F-3
 Meeting of: April 10, 2018

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor
 Seconded by Supervisor

Ayes
 Nays
 Abstain
 Absent

SEE ACTION SUMMARY

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: _____
 By: _____

Kathy Hayes, Clerk of the Board

Recommendations (continued)

5. Adopt the proposed ordinances by taking the following actions:
 - a. Adopt the attached Resolution No. ____ [Attachment 1] certifying the Final Environmental Impact Report (FEIR), making the findings required by CEQA, and adopting the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program; and
 - b. Adopt Resolution No. ____ [Attachment 2] A Resolution of the Board of Supervisors of the County of Humboldt making findings pursuant to Humboldt County Code Section 312-50 concerning adoption of zoning ordinance amendments and consistency with the Coastal Act, and transmitting the coastal zoning ordinance, including all necessary supporting documentation, to the California Coastal Commission as an amendment to the certified Local Coastal Program for their review and certification in accordance with Public Resources Code Section 30514; and
 - c. Adopt Resolution No. ____ [Attachment 3] A Resolution of the Board of Supervisors of the County of Humboldt making findings pursuant to Humboldt County Code Section 312-50 concerning adoption of zoning ordinance amendments not in the coastal zone.
 - d. Adopt Ordinance No. ____ [Attachment 4] approving the proposed Coastal Zoning Ordinance changes amending sections 313-55.4, 313-55.3.11.7, 313-55.3.7 and 313-55.3.15 of Chapter 3 of Division 1 of Title III of the County Code; and
 - e. Adopt Ordinance No. ____ [Attachment 5] approving the proposed Inland Zoning Ordinance changes amending sections 314-55.4, 314-55.3.11.7, 314-55.3.7 and 314-55.3.15 of Chapter 4 of Division 1 of Title III of the County Code; and
 - f. Adopt Resolution No. ____ [Attachment 7] establishing a limit on the number and acres of Cultivation Permits, and prohibiting expansion of existing cultivation and new cultivation in designated subwatersheds; and
 - g. Adopt Ordinance No. ____ [Attachment 6] establishing a Temporary Moratorium on accepting applications for any permits for Cannabis Activities in the Yurok Area of Traditional Tribal Cultural Affiliation outside of the Coastal Zone; and
 - h. Direct the Clerk of the Board to publish Summaries of the Ordinances within 15 days after adoption by the Board, along with the names of those Supervisors voting for and against each ordinance [Attachments 8, 9] and to post in the Office of the Clerk of the Board of Supervisors a certified copy of the full text of each adopted ordinance along with the names of those Supervisors voting for and against the ordinance; and
 - i. Direct Planning Staff to prepare and file a Notice of Determination and Notice of Exemption for the Coastal CCLUO provisions with the County Clerk and Office of Planning and Research; and
 - j. Direct staff to schedule a noticed public hearing no later than 45-days from the date of adoption of the Temporary Moratorium Ordinance on accepting applications for any permits for Cannabis Activities in the Non Coastal Yurok Area of Traditional Tribal Cultural Affiliation to consider an extension to that ordinance in accordance with the provisions of Government Code Section 65858.

SOURCE OF FUNDING:

The contractual and salary funding for this work is included in the General Fund contribution to the Long Range Planning unit, 1100-282.

DISCUSSION:

These proposed ordinances are a comprehensive update of the Commercial Cannabis regulations within Humboldt County applying to both the Coastal and Inland areas. The ordinances were reviewed by the Board at public hearings held March 19th and April 10th, 2018. During the hearings staff summarized the public process for EIR/ordinance development and key policy concerns, presented a section by section overview of the draft regulations, and presented alternatives for the Board to consider. The public hearing was continued to allow staff to bring final language straw-voted by the Board at the April 10 meeting.

Final Ordinance Language

The Board straw-voted final ordinance language in five areas:

- 1) Proximity of Commercial Cannabis Activities to School Bus Stops
 - Retain a 600-foot setback for Open Air Cultivation, but this provision would not apply to Enclosed Cannabis Activities including indoor and non-flammable manufacturing, and allow reduction or exception with a Special Permit. (See pages 165 and 173.)
- 2) Limitations on the total acreage which may be held by a Person
 - Modify the 4 - acre cultivation limit per Person, to be consistent with the large parcel exception – up to 8 acres per Person may be allowed where the cultivation occurs on parcels 320 acres or larger in size. (See page 161.)

Discussion: Comments were made both in support and in opposition to this change. On the one hand it is cleaner to have the limitations on the number of acres allowed be consistent within the ordinance. On the contrary, there is a desire to continue to limit the amount of acreage that a Person can cultivate. One of the deciding factors from staff's perspective is that the county is regulating land use. Therefore imposing a limitation on who undertakes the activities is not as critical as making sure the activities are accomplished in a manner that protects the environment and public health, safety and welfare. The ordinance allows a maximum of 8 acres on a parcel over 320 acres, it would be easier to implement if the maximum acres a Person can cultivate were also 8 acres. An alternative would be to allow an increase in maximum acreage cultivation for those with larger holdings, but this could be considered the granting of a special privilege. Staff recommends making the modification to allow 8 acres.
- 3) Construction of new Cannabis Support Facilities on parcels greater than 320 acres within resource production zoning districts
 - Allow Cannabis Support Facilities, Manufacturing and up to 10,000 square feet of Indoor Cultivation in new structures in the AE - Agricultural Exclusive and AG - Agricultural General zoning districts outside of the Coastal Zone. (See page 171.)

- Provide information on the number of applications and potentially eligible parcels – perhaps limit the up-to-8-acre exception to no more than 10 Persons. (See page 161.)

Discussion: The Board received public testimony that the Ordinance should be expanded to allow new Indoor Cultivation, Cannabis Support facilities and Manufacturing in agricultural areas on parcels qualifying for the 320 acres size allowance. Individual Board members expressed some concern with expanding the allowed uses in the resource zones without further analysis, and requested staff provide information to assist the Board with this decision.

The proposed Ordinance already allows Cannabis Support facilities, Non-Flammable Manufacturing and Infusion in the AE and AG zones that meet certain locational criteria, so no Ordinance modifications are needed to accommodate that request.

At the meeting, individual Board members expressed they may want to limit the number of applicants that are allowed up to 8 acres of cultivation. The Board requested information about the applications received and the number of parcels that may qualify under the proposed new ordinance.

Staff calculates there are 30 parcels larger than 320 acres in size with submitted applications proposing cultivation of more than one acre, and there are 384 additional parcels larger than 320 acres in size that could be eligible for cultivation permits over one acre under the proposed ordinance. This analysis probably undercounts the number of persons with applications for more than an acre because it does not account for aggregation of parcels together to meet the 320 acre threshold. Nonetheless, based on these figures, staff recommends the Board set the limit between 10 and 30 Persons permitted for over one acre of cultivation in the proposed new Inland CCLUO. As drafted in this staff report, the limit is set to 10 Persons (page 161).

Individual Board members expressed concern that the requested Ordinance changes for Indoor Cultivation in resource zones have not been part of the deliberations so far, so there have not been many opportunities for public comment on the requested changes. Given these concerns, staff recommends limiting new Indoor Cultivation facilities in the AE and AG zones to only parcels larger than 320 acres in size, the same limitation used elsewhere in the Ordinance for cultivation of more than one acre per parcel. Staff also recommends the Indoor Cultivation in resource zones be further limited by including it in the 8 acre per Person limit described above in Paragraph 2.

- 4) Zoning Clearance Certificates (ZCC's) for Open Air Cultivation in community areas submitted under the CMMLUO (Cannabis Ordinance 1.0).
 - ZCC's that have been approved before the effective date of the proposed new ordinance will be given notice to comply with 1 of 4 options (600-foot setback, Odor control, Conditional Use Permit or Retire, Restore and Remediate). These applicants will have 6 months to choose their preferred option and 18 months to complete the work.

- Pending ZCC applications will be required to comply with CCLUO (Cannabis Ordinance 2.0). (See page 151.)

5) Cultivation Permit Cap in Watersheds

- Permit Cap set at 3,500 permits.
- No new or expanded cultivation in impacted and stronghold watersheds.

Discussion: The Resolution establishing the permit cap is in Attachment 7. It has been simplified to combine together applications for new and existing cultivation, and applications under the CMMLUO with applications under CCLUO . Based on application data, the permit cap was also modified to reflect an average cultivation area of 15,000 square feet per application, rather than the 10,890 square feet per application assumption used in the previous versions. (See page 201.)

Ordinance Changes for Clarity and Consistency with the EIR

In addition to the above modifications, staff recommends three other ordinance changes. First, Sections 313-55.4.5.1.4 and 314-55.4.5.1.4 - City Spheres of Influence, Community Planning Areas, Tribal Lands – should be clarified to require a Special Permit for Commercial Cannabis Activities within 1,000 feet of any of the identified Community Planning Areas. (See page 159).

Second for consistency with the EIR, Sections 313-55.4.12.1.8(b)(4) and 314-55.4.12.1.8(b)(4), should be modified to incorporate Mitigation Measure 3.12.2 from the EIR to evaluate encroachment improvements for applications with frontage on state highways and local public roads. (See page 180.)

And third, to incorporate Mitigation Measure 3.8-2, Sections 313-55.4.11 and 314-55.4.11 should be modified to require documentation of conformance with the requirements of the State Water Resources Control Board Order WQ 2017-0023- DWQ and Cannabis Cultivation Policy – Guidelines for Cannabis Cultivation. (See pages 178 and 185).

Response to Comments from the Yurok Tribal Council

At the April 10 meeting the Board established an ad-hoc subcommittee to consult with the Tribe to address their concerns with the Ordinance. The Board also directed staff to include a “carve out” for applications in the Yurok Tribe’s Area of Traditional Tribal Cultural Affiliation in support of that consultation. (See map on page 198.)

The Ordinance in Attachment 6 of this staff report would provide a carve out as directed by the Board through a temporary moratorium on accepting applications for any permits for Cannabis Activities in the Yurok Area of Traditional Tribal Cultural Affiliation. The proposed moratorium would initially last 45 days to provide the time necessary for the subcommittee to complete its work with the Tribe, and the moratorium will need to be extended if the work with the Tribe is not completed in that 45-day window. Anticipating more than 45 days may be needed to complete discussions with the Tribe, staff recommends the Board direct staff to schedule a follow up public hearing within 45 days to consider an extension to the temporary moratorium in accordance with the provisions of Government Code Section 65858.

The Yurok Area of Traditional Tribal Cultural Affiliation extends into the Coastal Zone. However, the Coastal CCLUO will not be certified by the Coastal Commission for several months after adoption, which is longer than the ad-hoc subcommittee is likely to need to complete their work with the Tribe. Accordingly, the temporary moratorium is drafted to only apply to the Yurok Area of Traditional Tribal Cultural Affiliation outside of the Coastal Zone.

FINANCIAL IMPACT:

The cost of preparing the FEIR was \$231,927.00. Staff costs for preparation and review of the ordinance total \$210,838.10 at the time this report was drafted. These costs are supported by the General Fund contribution to the Planning and Building Department, Long Range Planning Unit's FY 2017-18 budget.

The proposed ordinance is consistent with the Board's 2017 Strategic Framework as it will help enforce laws and regulations to protect residents, create opportunities for improved safety and health, encourage new local enterprise, and support business, workforce development and creation of private-sector jobs.

OTHER AGENCY INVOLVEMENT:

The following agencies have been involved in the review of the ordinance:

- Humboldt County Agricultural Commissioner
- Humboldt County Department of Health and Human Services
- Humboldt County Office of Education
- Humboldt County Public Works Department
- U.S. Army Corps of Engineers,
- California Coastal Commission,
- California Department of Consumer Affairs, Bureau of Cannabis Regulation,
- California Department of Fish and Wildlife, Region 1,
- California Department of Food and Agriculture,
- California Department of Forestry and Fire Protection,
- California Department of Parks and Recreation,
- California Department of Pesticide Regulation,
- California Department of Public Health,
- California Department of Transportation, District 1,
- California Department of Water Resources,
- North Coast Regional Water Quality Control Board (Region 1),
- North Coast Unified Air Quality Management District, and
- State Water Resource Control Board.

ALTERNATIVES:

As described above the proposed new CCLUO ordinances were revised in response to the Board's direction at the previous meeting. Staff is prepared to provide alternative language to address any concerns the Board has with the proposed new language if needed.

ATTACHMENTS:

- Attachment 1: Resolution No. 18-40, certifying the Final Environmental Impact Report (FEIR)
- Attachment 2: Resolution No. 18-41, making findings pursuant to Humboldt County Code Section 312-50 – concerning adoption of zoning ordinance amendments for the coastal zone and Title 14 §13551 of the Administrative Code and Public Resources Code, §30200 (Coastal Act)
- Attachment 3: Resolution No. 18-42 A Resolution of the Board of Supervisors of the County of Humboldt making findings pursuant to Humboldt County Code Section 312-50 concerning adoption of zoning ordinance amendments not in the coastal zone.
- Attachment 4: Ordinance No. 2598, amending sections 313-55.4, 313-55.3.11.7, 313-55.3.7 and 313-55.3.15 of Chapter 3 of Division 1 of Title III of the County Code
- Attachment 5: Ordinance No. 2599, amending sections 314-55.4, 314-55.3.11.7, 314-55.3.7 and 314-55.3.15 of Chapter 4 of Division 1 of Title III of the County Code
- Attachment 6: Ordinance No. 2600 Establishing a Temporary Moratorium on accepting applications for any permits for Cannabis Activities in the Yurok Area of Traditional Tribal Cultural Affiliation
- Attachment 7: Resolution Establishing a Cap on the Number Permits and Acres Which May Be Approved for Commercial Cannabis Cultivation and Prohibiting Expansion of Existing Cultivation and New Cultivation in Designated Subwatersheds
- Attachment 8: Post-Adoption Summary of Ordinance, amending Chapter 3 of Division 1 of Title III of the County Code for Areas Within the Coastal Zone
- Attachment 9: Post-Adoption Summary of Ordinance, amending Chapter 4 of Division 1 of Title III of the County Code for Areas Outside the Coastal Zone
- Attachment 10: Final Environmental Impact Report
- Attachment 11: Written Public Comments Received after the April 10, 2018 Public Hearing