




AGENDA ITEM NO.
J-1

COUNTY OF HUMBOLDT

For the meeting of: June 19, 2018

Date: May 28, 2018

To: Board of Supervisors

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

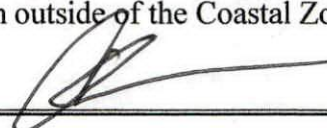
Subject: Extension of Temporary Moratorium on Accepting Applications for any Permits for Commercial Cannabis Activities in the Yurok Area of Traditional Tribal Cultural Affiliation

RECOMMENDATIONS

That the Board of Supervisors

1. Introduce the proposed ordinance extending for 10 months and 15 days the 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 by title [Attachment 1]; and
2. Open the public hearing, receive and consider the staff report and proposed determination of exempt status under CEQA, accept public comment, and close the public hearing; and
3. Deliberate on the proposed Ordinance; and
4. Adopt Ordinance No. 2602 [Attachment 1] extending for 10 months and 15 days 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 (4/5 vote required); and

Prepared by Michael Richardson, Supervising Planner

CAO Approval 

REVIEW:

Auditor _____ County Counsel JMR Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:

_____ Consent

_____ Departmental

X Public Hearing

_____ Other _____

PREVIOUS ACTION/REFERRAL:

Agenda Order No. C-1

Meeting of: May 8, 2018

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Bass

Seconded by Supervisor Fennell

Ayes Bass, Fennell, Sundberg, Bohn, Wilson

Nays _____

Abstain _____

Absent _____

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

Dated: 6/19/18

By: 

Kathy Hayes, Clerk of the Board

5. Direct the Clerk of the Board to publish a Summary of the Ordinance within 15 days after adoption by the Board, along with the names of those Supervisors voting for and against each ordinance [Attachment 2] and to post in the Office of the Clerk of the Board of Supervisors a certified copy of the full text of the adopted ordinance along with the names of those Supervisors voting for and against the ordinance. Government Code Section 65858.

SOURCE OF FUNDING:

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

DISCUSSION:

This item involves adoption of an ordinance to extend the duration of an earlier interim ordinance adopted by the Board on May 8, 2018 (Ordinance No. 2600). Both ordinances prohibit commercial cannabis activities within unincorporated portions of the county inside the Yurok Area of Traditional Tribal Cultural Affiliation. The prior ordinance (Ordinance No. 2600) will expire on June 22, 2018. The proposed new ordinance would extend the prohibition for an additional 10 months, 15 days.

The ordinance was prepared as an urgency measure in response to Board discussion and direction received during the May 8th meeting when the Board approved the Commercial Cannabis Land Use Ordinance (CCLUO) and at the same time adopted an interim ordinance to establish a temporary moratorium on accepting applications for any permits for Cannabis Activities in the Yurok Area of Traditional Tribal Cultural Affiliation. The ordinances are intended to provide the time necessary for the Board's Ad Hoc committee created to work with the Tribe to address the Tribe's concerns with the CCLUO.

The Yurok Area of Traditional Tribal Cultural Affiliation extends into the Coastal Zone. However, through prior adoption of Ordinance No. 2583 and 2586, the Board of Supervisors already has implemented a moratorium throughout the entirety of the Coastal Zone. This moratorium would not be repealed until the Coastal CCLUO has been certified by the California Coastal Commission. This is not expected to occur for at least several months, which is longer than the ad-hoc subcommittee is likely to need to complete their work with the Tribe. Accordingly, the temporary moratorium extension only applies to the Yurok Area of Traditional Tribal Cultural Affiliation outside of the Coastal Zone.

CEQA Compliance

Adoption of the urgency ordinance does not constitute a "project" as defined under section 15378 of the CEQA Guidelines, in that the adoption of the prohibitory ordinance will not result in a reasonably foreseeable direct or indirect physical change in the environment. The urgency ordinance may also be found exempt from CEQA under the following sections: 15061(b)3 'General Rule', 15308 'Class 8: Actions taken by local ordinance to assure protection of the environment', and 15321 'Class 21: Enforcement Actions by Regulatory Agencies'. For the above-stated reasons, staff believes the proposed ordinance is exempt from further environmental review under CEQA.

FINANCIAL IMPACT:

Staff costs for preparation and review of this ordinance extension are less than \$2,000. 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 extension is consistent with the Board's 2017 Strategic Framework as it will help enforce laws and regulations to protect residents. Working with the Yurok Tribe to address their concerns with the CCLUO will 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:

Besides County Counsel and the County Administrative Office, no other agencies have been involved in developing this Ordinance extension.

ALTERNATIVES:

The Board could take no action and allow the temporary moratorium to expire on June 22nd. This alternative would only be appropriate if the Board was successful in addressing the Yurok Tribe's concerns with the CCLUO before the June 19th meeting. Given these discussions are ongoing; it is unclear if agreement can be reached between the County and the Yurok Tribe before then.

ATTACHMENTS:

Attachment 1: Ordinance No. 2602 Extending for 10 months and 15 days a Temporary Moratorium on accepting applications for any permits for Cannabis Activities in the Yurok Area of Traditional Tribal Cultural Affiliation Outside the Coastal Zone.

Attachment 2: Post-Adoption Summary of the Ordinance.

ATTACHMENT 1

**Ordinance Extending a Temporary Moratorium on Accepting Applications for
Any Permits for Cannabis Activities under the CCLUO within the
Yurok Area of Traditional Tribal Cultural Affiliation Outside the Coastal Zone**

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings, Meeting of June 19, 2018

ORDINANCE EXTENDING FOR 10 MONTHS AND 15 DAYS A TEMPORARY MORATORIUM ON ACCEPTING APPLICATIONS FOR ANY PERMITS FOR COMMERCIAL CANNABIS ACTIVITIES WITHIN THE YUOK AREA OF TRADITIONAL TRIBAL CULTURAL AFFILIATION, OUTSIDE OF THE COASTAL ZONE

ORDINANCE NO. 2602

The Board of Supervisors of the County of Humboldt ordains as follows:

WHEREAS, California Government Code Section 65858. authorizes the Board of Supervisors, by 4/5ths vote, to adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that it is considering, based on findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional use permits or other entitlements which are required to comply with the zoning ordinance would result in that threat to public health, safety, or welfare; and

WHEREAS, on May 8, 2018, the County of Humboldt adopted a comprehensive update of its land use regulations with respect to medicinal and adult use commercial cannabis activities (Commercial Cannabis Land Use Ordinance, or CCLUO, Ordinance No. 2599) for which it certified an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA), Public Resources Code Section 21000, et seq.; and,

WHEREAS, CEQA mandates that in the preparation of an EIR the lead agency shall consult with Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed project (Pub. Res. Code §§ 21080.3.1, 21080.3.2, 21082.3) and shall avoid, when feasible, damaging effects to any tribal cultural resource. (Pub. Res. Code § 21084.3). The CEQA requirements for tribal consultation are commonly referred to by the legislation by which they were adopted - AB 52 (Gatto), Statutes of 2014, Chapter 532; and,

WHEREAS, in accordance with AB 52, the County provided invitations for consultation with eleven Native American tribes traditionally and culturally affiliated with unincorporated areas of Humboldt County that will be affected by the activities that may be permitted under the CCLUO, including the Yurok Tribe; and,

WHEREAS, the government-to-government consultation between the County of Humboldt and the Yurok Tribe has not yet been concluded; and,

WHEREAS, on May 8, 2018, the Board of Supervisors adopted Ordinance No. 2600, which suspended implementation of the CCLUO within the Yurok Tribal Area of Traditional and Cultural Affiliation to allow further consultation with the Yurok Tribe to develop feasible ordinance language, policies and procedures, or other agreement acceptable both parties, if possible, that will avoid damaging effects to any Yurok tribal cultural resource; and,

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings, Meeting of June 19, 2018

WHEREAS, the Board of Supervisors adopted an interim ordinance prohibiting all commercial cannabis activities inside the Coastal Zone on October 17, 2017 (Ordinance No. 2583) that was extended under separate ordinance (Ordinance # 2586) for up to two (2) years (October 17, 2019) or until Humboldt County ordinances regulating Commercial Cannabis Activities in the Coastal Zone are certified by the Coastal Commission, whichever occurs first, which is not anticipated to occur before the consultation between the County and the Yurok Tribe can be concluded; and,

WHEREAS, continuing a temporary moratorium on accepting applications under the CCLUO for any permit for cannabis activities outside of the Coastal Zone that is within the Yurok Area of Traditional Tribal Cultural Affiliation is required to protect the public health, safety, and welfare;

WHEREFORE, the Board of Supervisors of the County of Humboldt finds as follows:

1. For the reasons set forth in the above recitals there is a current and immediate threat to the public health, safety, and welfare due to the potential damaging effects to Yurok tribal cultural resources that may result from activities that may be permitted by the CCLUO outside of the Yurok Reservation but within the ancestral territory of the Yurok Tribe that cannot be adequately assessed and avoided, if feasible, until such time as the consultation between County and the Yurok Tribe can be concluded.
2. This interim ordinance is not subject to the California Environmental Quality Act (CEQA) because the activity is not a project as defined by Section 15378 of the CEQA guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly. Furthermore, pursuant to Section 15060(c) (2) of the CEQA Guidelines the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.
3. This interim ordinance has no potential for denying approvals needed for the development of projects with a significant component of multifamily housing.

NOW, THEREFORE the Board of Supervisors of the County of Humboldt ordains as follows:

SECTION 1. Section 314-54 is in Title III, Chapter 4 of the Humboldt County Code is hereby readopted as follows:

314-54 PROHIBITION OF APPLICATIONS SUBMITTED AFTER DECEMBER 31, 2016 FOR COMMERCIAL CANNABIS ACTIVITIES IN THE YUROK TRIBAL AREA OF TRADITIONAL AND CULTURAL AFFILIATION.

No application for a Zoning Clearance, Special Permit, or Use Permit submitted after December 31, 2016, to authorize commercial cannabis activities, including cultivation, processing, manufacturing, testing, distribution or sale, which might otherwise be conducted pursuant to the Medicinal and Adult Use Cannabis Regulation and Safety Act, or any other state statute, shall be accepted or processed for approval for activities that would be conducted on any parcel within the Yurok Tribal Area of Traditional Cultural Affiliation outside of the Coastal Zone, as depicted on the map attached as Exhibit A to Ordinance No. 2600, adopted by the Board of Supervisors of the County of Humboldt on May 8, 2018.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings, Meeting of June 19, 2018

SECTION 2. DECLARATION OF URGENCY - EFFECTIVE PERIOD

This interim ordinance is hereby declared to be an urgency ordinance for the immediate preservation of the public health, safety and welfare of the County of Humboldt and it shall take effect immediately upon its adoption based upon the findings set forth above. Pursuant to Government Code Section 65858, this ordinance shall be in full force and effect for 10 months and 15 days from the date of its adoption by the Board of Supervisors, unless sooner repealed, or, following a public hearing noticed pursuant to Government Code Section 65090 and four-fifths vote of its members, the Board of Supervisors extends the ordinance in accordance with the provisions of Government Code Section 65858.

PASSED, APPROVED AND ADOPTED this 19th day of June, 2018 on the following vote, to wit:

AYES:	Supervisors	Fennell, Bohn, Sundberg, Bass, Wilson
NOES:	Supervisors	--
ABSENT:	Supervisors	--



Ryan Sundberg, Chair
Board of Supervisors of the County of Humboldt,
State of California

(SEAL)

ATTEST:

Kathy Hayes, Clerk of the Board of Supervisors
of the County of Humboldt, State of California

By: _____

Ryan Sharp, Deputy

ATTACHMENT 2

**Post-Adoption Summary of Ordinance, amending
Chapter 4 of Division 1 of Title III of the County Code
for Areas Outside the Coastal Zone**

SUMMARY OF ORDINANCE

(To be published within fifteen days after adoption of this ordinance.)

On June 19, 2018, during its regularly scheduled Board meeting, the Humboldt County Board of Supervisors adopted Ordinance No. _____.

These amendments retain for 10 months and 15 days Section 314-54 of Humboldt County Code *Prohibition Of Applications Submitted After December 31, 2016 for Commercial Cannabis Activities in the Yurok Tribal Area of Traditional and Cultural Affiliation*, which reads as follows:

“No application for a Zoning Clearance, Special Permit, or Use Permit submitted after December 31, 2016, to authorize commercial cannabis activities, including cultivation, processing, manufacturing, testing, distribution or sale, which might otherwise be conducted pursuant to the Medicinal and Adult Use Cannabis Regulation and Safety Act, or any other state statute, shall be accepted or processed for approval for activities that would be conducted on any parcel within the Yurok Tribal Area of Traditional Cultural Affiliation outside of the Coastal Zone, as depicted on the map attached as Exhibit A to Ordinance No. 2600, adopted by the Board of Supervisors of the County of Humboldt.”

A copy of the ordinance is posted in the office of the Clerk of the Board of Supervisors, 825 Fifth Street, Room 111, Eureka, California 95501-1153, and is available online on the County’s website.

The names of the Supervisors voting for and against are as follows:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors: