



# COUNTY OF HUMBOLDT

For the meeting of: 10/6/2020

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File #: 20-1208

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**To:** Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**SUBJECT:**

Public Hearing on Draft Amendments to the Commercial Cannabis Land Use Ordinance (CCLUO) for Small Cultivators (Case # PLN-2020-16447), Amendment to the Outdoor Cultivation of Cannabis for Personal Use Ordinance (Case # PLN-2020-16479) and Amendments to the CCLUO to Ensure Financial Security, Introduction of Amendments to the Commercial Marijuana Cultivation Tax Ordinance to Ensure Financial Security (Case # PLN-2020-16579).

**RECOMMENDATION(S):**

That the Board of Supervisors:

1. Introduce the Inland Small Cultivators CCLUO Amendments by title and waive further reading of Ordinance No. \_\_\_\_\_ [Attachment 3], amending sections 314-55.4.4, 314-55.4.6.1, and 314-55.4.6.5 of Chapter 4 of Division 1 of Title III of the Humboldt County Code - HCC;
2. Introduce the Inland Personal Use Ordinance Amendments by title and waive further reading of Ordinance No. \_\_\_\_\_ [Attachment 4], amending section 314-55.2.7 of Chapter 4 of Division 1 of Title III of the HCC;
3. Introduce the Inland and Coastal Financial Security Ordinance Amendments by title and waive the first reading of Ordinance No. \_\_\_\_\_ [Attachment 5], adding section 313-55.4.12.2.9 to Chapter 3 of Division 1 of Title III, adding section 314-55.4.12.2.9, to Chapter 4 of Division 1 of Title III (Financial Security Amendments - Part 1);
4. Introduce by title the amendments to the Commercial Marijuana Cultivation Tax Ordinance amending sections 719-4, 719-6, 719-7 and 719-12 of Chapter 9 of Division 1 of Title VII of the HCC [Attachment 6] (Financial Security Amendments - Part 2);
5. Receive and consider the Planning Commission's recommendation, staff analysis and written comments received [Attachment 7], open the public hearing, and accept public comment;
6. Close the public hearing;
7. Deliberate on the proposed ordinances; and
8. Adopt the proposed ordinances and Plan amendments and set the amendments to the Commercial

Marijuana Cultivation Tax Ordinance for adoption at least one week away by taking the following actions:

- a. Adopt Resolution No. \_\_\_\_\_ [Attachment 1] making findings that the Addendum to the Program Environmental Impact Report (PEIR) for the Commercial Cannabis Land Use Ordinance (CCLUO) prepared for the Small Cultivator Ordinance Amendments is in conformance with the California Environmental Quality Act (CEQA), the Personal Use Ordinance Amendments and the Inland Financial Security Ordinance Amendments are exempt from environmental review pursuant to CEQA per Sections 15050(c)(2) and 15060(c)(3) and making all the required findings for consistency with the General Plan, and Zoning Ordinance and state law;
- b. Adopt Resolution No. \_\_\_\_\_ [Attachment 2], making findings that the Coastal Financial Security Ordinance Amendments are exempt from environmental review pursuant to CEQA per Sections 15050(c)(2) and 15060(c)(3), making all the required findings for consistency with the General Plan, Zoning Ordinance and the Coastal Act and transmitting the Coastal Financial Security Ordinance Amendments to the California Coastal Commission for their review and certification;
- c. Adopt Ordinance No. \_\_\_\_\_ [Attachment 3], the Small Cultivators Ordinance Amendments to the CCLUO; and
- d. Adopt Ordinance No. \_\_\_\_\_ [Attachment 4], the Personal Use Ordinance Amendments;
- e. Adopt Ordinance No. \_\_\_\_\_ [Attachment 5], the Inland and Coastal Financial Security Amendments to the CCLUO (Financial Security Amendments - Part 1) and transmitting the Coastal Financial Security Amendments to the California Coastal Commission for their review and certification;
- f. Set for adoption the Financial Security Amendments to the Commercial Marijuana Cultivation Tax Ordinance [Attachment 6] (Financial Security Amendments - Part 2) at least one week from this hearing date, direct the Clerk of the Board to publish the pre-adoption summary of the Ordinance (Attachment 11), and to post a certified copy of the full text of the proposed Ordinance in the office of the Clerk of the Board, both publication and posting to be done at least five (5) days prior to the Board meeting at which the Ordinance will be adopted [Government Code Section 25124(b)(1)], and direct the Clerk of the Board to publish a post-adoption summary of the ordinance amendments (Attachment 12) with the names of the Supervisors voting for and against the ordinance amendments and to post in the Office of the Clerk of the Board of Supervisors a certified copy of the adopted ordinance amendments along with the names of those Supervisors voting for and against the ordinance [Government Code Section 25124(b)(1)];
- g. Direct the Clerk of the Board to publish Summaries of the Small Cultivators Ordinance Amendments, Personal Use Ordinance Amendments, and the Financial Security Amendments to the CCLUO within 15 days after adoption, along with the names of those Supervisors voting for and against each ordinance amendments [Attachments 8, 9, and 10] 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; and

- h. Direct Planning Staff to prepare and file a Notice of Determination for the Small Cultivators Ordinance Amendments and a Notice of Exemption for the Personal Use Ordinance Amendments and Financial Security Amendments to the CCLUO with the County Clerk and Office of Planning and Research.

SOURCE OF FUNDING:

General Fund

DISCUSSION:

This item is comprised of three parts:

1. Amendments to the CCLUO for Small Cultivators (Small Cultivator Amendments) to allow a streamlined permitting pathway for cultivation of up to 2,000 square feet (sf) on parcels with an existing home. The eligible farms have minimal impacts on the environment and archaeological resources because they are owner-occupied, the cultivation area is no more than 2,000 square feet in size and is within an existing and already disturbed curtilage. Other performance criteria include water for irrigation is from permitted non-diversionary sources, permaculture is practiced, and the cultivation is done outdoors or in permitted or ag exempted hoopouses/greenhouses without use of generators for electrical power. The Small Cultivator Amendments were initiated by the Board of Supervisors as part of the action to delay adoption of the Industrial Hemp Ordinance on Nov. 19, 2019.
2. Amendment to the Outdoor Cultivation of Cannabis for Personal Use Ordinance (Personal Use Amendments). This amendment will clarify the allowances for personal use cultivation on parcels larger than five acres in size - presently the ordinance is silent on what is allowed on these parcels. The proposed standard would allow up to 400 square feet of cultivation area per parcel. In comparison, the current ordinance allows up to 200 square feet of cultivation area for parcels between one and five acres in size.
3. Amendments to the CCLUO (Financial Security Amendments - Part 1) and the Commercial Marijuana Cultivation Tax Code (Financial Security Amendments - Part 2) to better align the CCLUO with the requirements of the County's cannabis tax ordinance. The purpose of the proposed amendments is to provide options for assignment of responsibility for payment of the cannabis tax. If an applicant is different from the property owner, some form of surety is required unless the property owner is willing to consent to collection of the taxes. If the property owner consents to pay the cannabis tax, no surety is required. The Commercial Marijuana Cultivation Tax Code Amendments in Part 2 require a second hearing before the Board of Supervisors for adoption, which is not necessary for approval of the amendments to the Zoning Ordinance in Part 1. The amendments to the CCLUO include a coastal version and an inland version.

*Planning Commission Review*

The Planning Commission held a public hearing on the proposed Ordinance Amendments on Sept. 3,

2020. Deliberations by the Commission during the public hearing explored whether the ordinances should be modified to address some of the concerns expressed in the public comments received. The primary topic the commission struggled with was the requirement for the surety and how this applied to the small farmer amendments. It was pointed out that the small farmer amendments are largely for people who own their property and the surety provisions would not be applicable to them. The surety provisions related to situations where there was an unworkable tenant/landlord relationship. In the end the Commission voted unanimously to recommend the draft ordinances without making any changes.

#### *Coastal Commission Review*

The portion of the Financial Security Ordinance Amendments to the CCLUO that apply within the coastal zone and must be certified or otherwise approved by the Coastal Commission prior to taking effect. Coastal Commission staff has been consulted on the proposed amendments. Because the proposed Ordinance Amendments are strictly fiscal in nature, they are not likely to raise any Coastal Act issues and may be able to be certified as a de minimus amendment to the Local Coastal Program (LCP).

#### *Environmental Review*

An Addendum to the certified Program Environmental Impact Report (PEIR) for the CCLUO (SCH # 2017042022) has been prepared for the Small Cultivator Amendments and is included in the Resolution of Approval in Attachment 1. That Attachment also contains an analysis supporting the finding of exemption from the California Environmental Quality Act (CEQA) Guidelines for the proposed Personal Use and Financial Security Amendments per Sections 15050(c)(2) and 15060(c)(3) of the CEQA Guidelines. CEQA does not apply to the activities of a local government for the preparation and adoption of a de minimus amendment, rather than any major changes to the Local Coastal Program Amendment (LCPA), and therefore the County adoption of the Coastal Financial Security Amendments is statutorily exempt from CEQA.

#### FINANCIAL IMPACT:

Staff costs and other expenses related to public review of this item to date total approximately \$6,000. There will be additional future costs of around \$3,000 to codify the new ordinances and train staff to implement them.

#### STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by streamlining county permit processes; encouraging new local enterprise, creating opportunities for improved safety and health; and facilitating the establishment of local revenue sources to address local needs.

#### OTHER AGENCY INVOLVEMENT:

California Coastal Commission, Department of Health and Human Services - Environmental Health Division, Department of Public Works, and the Office of County Counsel.

#### ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to not adopt any one or any combination of these proposed Ordinance Amendments. These proposed Amendments are intended to address identified needs expressed by the

public and County staff, so staff does not recommend further consideration of this alternative.

ATTACHMENTS:

Attachment 1: Resolution No. \_\_\_\_\_, making findings that the Addendum prepared for the Commercial Cannabis Land Use Ordinance (CCLUO) for the Small Cultivator Amendments is in conformance with the California Environmental Quality Act (CEQA), the Personal Use Amendments and Inland Financial Security Amendments are exempt from environmental review pursuant to CEQA Sections 15050(c)(2) and 15060(c)(3), and making all the required findings for consistency with the General Plan, Zoning Ordinance and state law.

Attachment 2: Resolution No. \_\_\_\_\_, making findings that the Coastal Financial Security Ordinance Amendments are exempt from environmental review pursuant to CEQA per Sections 15050(c)(2) and 15060(c)(3), making all the required findings for consistency with the General Plan, Zoning Ordinance and the Coastal Act, and transmitting the Coastal Financial Security Ordinance Amendments to the California Coastal Commission for their review and certification.

Attachment 3: Ordinance No. \_\_\_\_\_, (Small Cultivator Amendments) amending sections 314-55.4.4, 314-55.4.6.1, and section 314-55.4.6.5 of Chapter 4 of Division 1 of Title III of the Humboldt County Code - HCC

Attachment 4: Ordinance No. \_\_\_\_\_, (Personal Use Amendments) amending section 314-55.2.7 of Chapter 4 of Division 1 of Title III of the HCC

Attachment 5: Ordinance No. \_\_\_\_\_, (Financial Security Amendments - Part 1), adding section subdivision 314-55.4.12.2.9, to Chapter 4 of Division 1 of Title III of the HCC (Attachment 5A - Inland Ordinance), and adding section 313-55.4.12.2.9 to Chapter 3 of Division 1 of Title III of the HCC (Attachment 5B - Coastal Ordinance).

Attachment 6: Ordinance No. \_\_\_\_\_, (Financial Security Amendments - Part 2) amending the Commercial Marijuana Cultivation Tax Ordinance sections 719-4, 719-6, 719-7 and 719-12 of Chapter 9 of Division 1 of Title VII of the HCC.

Attachment 7: Planning Commission Resolution and Staff Report and Public Comments received by the Planning Commission.

Attachment 8: Post-Adoption Summary of Ordinance, amending Chapter 4 of Division 1 of Title III of the HCC for Areas Outside of the Coastal Zone

Attachment 9: Post-Adoption Summary of Ordinance, amending Chapter 4 of Division 1 of Title III of the HCC for Areas Outside of the Coastal Zone

Attachment 10: Post-Adoption Summary of Ordinance, amending Chapter 3 of Division 1 of Title III, Chapter 4 of Division 1 of Title III, Chapter 9 of Division 1 of Title VII of the of the

HCC for Areas Both Inside and Outside of the Coastal Zone

Attachment 11: Pre-Adoption Summary of Ordinance, amending Chapter 9 of Division 1 of Title VII of the HCC

Attachment 12: Post-Adoption Summary of Ordinance, amending Chapter 9 of Division 1 of Title VII of the HCC

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meetings of: 11/19/2019

File No.: 19-1627