



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

M-1

For the meeting of: June 23, 2015

Date: June 18, 2015

To: Board of Supervisors

From: Supervisor Ryan Sundberg and Supervisor Rex Bohn

Subject: Review of the Current Medical Marijuana (MMJ) Collective or Cooperative Dispensing Facilities Prohibition Ordinance

RECOMMENDATION(S): That the Board of Supervisors direct staff to come back with an Ordinance to:

1. Repeal the existing ordinance; or
2. Adopt the ordinance that was reviewed by the Planning Commission (attached); or
3. Draft a new ordinance based upon Board direction.

SOURCE OF FUNDING: N/A

DISCUSSION: On January 7, 2014, the Board of Supervisors adopted Ordinance # 2511 adding sections 313-56.1 and 314-56.1 to Title III of the Humboldt County Code, prohibiting the establishment of medical marijuana collective or cooperative distribution facilities, and prohibiting the operation of unpermitted medical marijuana collective or cooperative distribution facilities.

Signature

Signature

Prepared by Kathy Hayes

REVIEW:

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

TYPE OF ITEM:

____ Consent
____ Departmental
____ Public Hearing
XX Other Afternoon Discussion Item (30 min)

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

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

As adopted, the proposed changes to the Zoning Ordinance did not affect MMJ dispensing facilities that were currently in operation with a valid Conditional Use Permit (CUP) granted by the County, nor did it affect the ability of these permitted facilities to apply for a new CUP prior to the expiration of their current permits. However, the processing of any current or new collective or cooperative dispensing facility applications or the acceptance of additional applications for such facilities was suspended.

Given the ongoing impacts on medical marijuana patients related to access and availability, the Board has been asked to review the current MMJ Collective or Cooperative Dispensing Facilities Prohibition Ordinance.

FINANCIAL IMPACT: N/A

OTHER AGENCY INVOLVEMENT: N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

ATTACHMENTS:

314-55.1 MEDICAL MARIJUANA LAND USES: INLAND [Note: Original Title and code section – Recommend we change this to reflect regulation of MMJ Dispensaries]

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55.1.4 Penalties [Note: May be superfluous depending upon where this is placed in the zoning code.]

All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this Code.

Any violation of this Code shall be, and the same hereby is declared to be, a public nuisance and unlawful and shall be subject to injunction, abatement or any other administrative, civil, or criminal remedy available to the County under the applicable state and county laws.

55.1.5 Definitions [Note: Original Definitions, so some will be superfluous]

Except as otherwise provided, when used in this Chapter, these terms shall have the following meanings:

Church: a non-profit organization that operates exclusively for religious purposes and is an organization as described in section 501(c) (3) of the Internal Revenue Tax Code, as amended. For purposes of this Code, “church” includes a church, synagogue, temple, mosque, or other place of worship and related church property, such as a school or a youth camp.

Collective or Cooperative Dispensing Facility (CCDF): a medical marijuana collective, cooperative or delivery service, as defined herein, operating in compliance with all applicable state and local laws.

Cultivation of Medical Marijuana for Personal Use: cultivation and processing of medical marijuana indoors in a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed fifty (50) square feet or exceed ten (10) feet in height.

Detached Accessory Building - Residential: a building which is a) incidental and subordinate to the residence or residential use, b) located on the same lot, and c) does not share at least ten (10) feet of common wall with the residence or other accessory building. A greenhouse may be considered a Detached Accessory Building if it is a fully enclosed, secure and lockable structure that has a roof supported by connecting walls extending continuously to a perimeter foundation or equivalent base to which the connecting walls are securely attached.

Indoor(s): within a fully enclosed and secure structure that has a roof supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached.

Medical Marijuana: marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health & Safety 11362.5 et seq.

Medical Marijuana Collective: an organization that is jointly owned and operated by its members in order to facilitate and coordinate the processing and distribution of medical marijuana to its members from a “store-front” as a collaborative effort.

Medical Marijuana Cooperative: a democratically-controlled entity organized under the laws of the State of California, which includes filing articles of incorporation with the State and conducting its business, the distribution of medical marijuana to its members, as a collaborative effort for the benefit of its members from a “store-front”.

Medical Marijuana Delivery Service: a medical marijuana collective or cooperative, as defined herein, that delivers medical marijuana to its members from a “store-front” base of operations located in a commercial or industrial zone within the unincorporated area of Humboldt County. A medical marijuana delivery service shall not be operated from a residential-zoned parcel and is not eligible for an address of convenience.

Personal Medical Marijuana: medical marijuana that is cultivated, processed, or stored for a single qualified patient’s use.

Place Where Children Congregate: may include, but is not limited to, a school bus stop, park, playground, a school as defined herein, tutoring facility, or any establishment that either advertises in a manner that identifies it as providing services primarily intended for minors or the individuals who regularly patronize, congregate, or assemble at the establishment are primarily minors.

Primary Caregiver: an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

Qualified Patient: a person who has a recommendation for medical marijuana by a licensed physician and is entitled to the protections offered by California Health & Safety Code Section 11362.5, and who may or may not have an identification card issued by the State Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

Residence: any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone, that was permitted under the Building Code in effect at the time it was constructed, as adopted by the County of Humboldt.

Residential Cultivation: the growing of up to fifty (50) square feet that is ten (10) feet or less in height of medical marijuana indoors within a residence or detached accessory structure, as defined herein. Such cultivation is for a qualified patient’s personal use and must be subordinate, incidental, and accessory to the residential use.

Residential Treatment Facility: a facility, whether residential or non-residential, providing treatment for drug or alcohol dependency.

School: public or private institution of learning for minors offering a regular course of instruction as required by the California Education Code, or any child or day care facility licensed by the State of California. This includes a nursery school, kindergarten, Head Start program, elementary school, middle school, high school, continuation or vocational school for minors, or any special institute of education, but it does not include a vocational or professional institution of higher education primarily intended for students over eighteen (18), such as a community or junior college, college, or university.

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55.1.20 Medical Marijuana Cooperative or Collective Dispensing Facilities (CCDF)

This section applies to all medical marijuana cooperative or collective dispensing facilities (CCDF), as defined in this Code.

1. All medical marijuana dispensing facilities shall operate in compliance with this Code, as well as all applicable state and local laws.
2. CCDF shall only be allowed in specifically enumerated zones with a conditional use permit, and a valid business license. Zoning districts where a CCDF may be located are C-1, C-2, C-3, CG, CH, CN, MB, ML, MH, and MG.
3. The fact that an applicant possesses other types of state or County or city permits, licenses or other entitlements does not exempt the applicant from the requirement of obtaining a conditional use permit from the County of Humboldt to operate a medical marijuana CCDF within the jurisdiction of the County.
4. Notwithstanding any other provision of the County code, an existing CCDF operating with a conditional use permit and a valid business license approved by the County as of the effective date of this ordinance shall be brought into full compliance with the provisions of this Code within one (1) year of the effective date of the ordinance establishing this Code.
5. In addition to all other requirements for a conditional use permit, all of the following specific requirements must be met in order for the Planning Commission to consider granting a CCDF a conditional use permit.

(A) Preparation of a hazardous materials storage, handling, and disposal plan approved by the Division of Environmental Health, if applicable.

(B) The Planning Commission shall specifically regulate the location of the CCDF by considering the potential impacts and cumulative impacts of the proposed medical marijuana CCDF to the community area as a whole and specifically on the following existing uses located within a 500 foot radius of the proposed CCDF, regardless of whether those existing uses are located within the jurisdiction of the County. The Planning Commission shall have the discretion to deny a conditional use permit for any proposed medical marijuana CCDF within 500 feet of the following uses if the Commission determines that the impacts of the proposed CCDF have the potential to be significant on the following uses:

- i. Residential neighborhoods and their inhabitants;
 - ii. Churches, as defined herein;
 - iii. Playgrounds, public parks, libraries, licensed day care facilities, and places where children congregate, as defined herein;
 - iv. Residential treatment facilities, as defined herein; and
 - v. The cumulative impacts resulting from the addition of another marijuana collective, cooperative, delivery service or other distribution or transfer facility when there are others within a 500 foot radius of the proposed new facility.
- (C) No medical marijuana CCDF, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana shall be located within a 600-foot radius of a school [Health & Safety Code section 11362.768 (b)]. This distance shall be measured in a straight line from the property line of the school to the property line of the medical marijuana dispensing facility, operator, establishment, or provider.
- (D) The CCDF shall at all times be operated in such a way as to ensure the safety of patients and staff; to ensure the security of the medical marijuana; and to safeguard against the diversion of medical marijuana for non-medical purposes. Pursuant to Health & Safety Code Section 11362.765, no profit may be made by a CCDF.
- (E) Submission of an Operations Manual and compliance with the Operating Standards, as presented below.

7. Operations Manual

Notwithstanding any other regulations or requirements for submitting an application for a conditional use permit, a medical marijuana CCDF shall submit to the Planning Commission an Operations Manual which provides for the following:

- (A) Authorization for the County, its agents, and employees, to seek verification of the information contained within the conditional use permit application, the Operations Manual, and the Operating Standards at any time before or after the conditional use permit is issued; and
- (B) CCDF shall implement their policies and procedures as outlined in their Operations Manual as approved by the Planning Commission. Any deviations from or changes in the Operations Manual must be conveyed to Community Development Services in writing within 30 days of the change; and
- (C) A description of the staff screening processes, which shall include a requirement for criminal background checks; and
- (D) The hours and days of the week the medical marijuana CCDF will be open; and
- (E) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana CCDF. The material shall also show structures and land uses within a 500 foot radius; and
- (F) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification, and how these will assure the

safety of staff and members and secure the medical marijuana against diversion for non-medical purposes; and

- (G) A description of the screening, registration and validation process and procedures for qualified patients and caregivers; and
- (H) A description of qualified patient records acquisition and retention procedures and policies; and
- (I) A description of the processes, procedures and inventory controls for tracking the disparate strains, who they were grown by, and amounts of medical marijuana that come in and go out of the CCDF; and
- (J) Description of measures taken to minimize or offset the carbon footprint from the activities of the CCDF; and
- (K) Description of chemicals stored, used and any effluent discharged as a result of the activities of the CCDF; and
- (L) The procedure, documentation, and notice process for assuring the quality and safety of all medical marijuana distributed by the CCDF; and
- (M) The procedure and documentation process for determining patient dosage, including any testing for the major active agents in medical marijuana offered to members, such as cannabinoids tetrahydrocannabinol (THC), Cannabidiol (CBD), and Cannabinol (CBN); and
- (N) Any other information as may be requested by the County, its employees, and/or by the Planning Commission.

8. Operating Standards

Notwithstanding any other regulations or requirements, medical marijuana CCDF shall comply with all of the following operating standards:

- (A) A CCDF that functions as medical marijuana delivery service shall not operate from an address of convenience located in a residential zone, as this category of business is not eligible for an address of convenience. Medical marijuana delivery services shall only operate from a "store-front" facility in a commercial or industrial zone with an approved conditional use permit; and
- (B) Medical marijuana CCDF may not be operated by or employ any persons who have been convicted of a felony or who are currently on probation; and
- (C) No dispensing of medical marijuana to an individual qualified patient shall be permitted more than once a day; and
- (D) The hours of operation of a medical marijuana CCDF shall be no earlier than 10 a.m. and no later than 7 p.m.; and
- (E) Medical marijuana CCDF shall only provide medical marijuana to an individual qualified patient who has a valid, verified physician's recommendation issued in the State of California. The CCDF shall verify on an annual basis that the physician's recommendations of their members are current and valid; and

- (F) Medical cooperatives or collectives shall display their client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the cooperative or collective. A copy of the client rules and/or regulations shall be provided to the qualified patient by the medical marijuana delivery service; and
- (G) Each building entrance to a medical marijuana CCDF shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical marijuana or medical marijuana edibles on the premises or in the vicinity of the CCDF is prohibited; and
- (H) Each building entrance to a medical marijuana CCDF shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are qualified patients and they are accompanied by their parent or legal guardian; and
- (I) No medical marijuana delivery service shall provide medical marijuana to any qualified patient or holder of a medical marijuana recommendation who is under 18 unless their parent or guardian has previously given written permission that is on file with the delivery service and that same parent or guardian is present to accept the delivery of medical marijuana; and
- (J) Every medical marijuana CCDF shall display a copy of the inspection receipt issued by the Humboldt County Sealer of Weights and Measures for all weighing and measuring devices; and
- (K) All medical marijuana dispensed by a CCDF must be obtained solely from their members in accordance with state law and the California Attorney General's Guidelines; and
- (L) All signs for medical marijuana CCDF must comply with sections 313-87.3 and 314-87.2 of the County Zoning Regulations; and
- (M) The cultivation of marijuana by a CCDF to the flowering stage is prohibited. However, a CCDF may distribute pre-flowering live plants to their members only if allowed by an approved conditional use permit; and
- (N) An up-to-date inventory of all hazardous materials stored and used onsite shall be maintained on the premises of the medical marijuana dispensing facility with a copy of this inventory provided to the Humboldt County Division of Environmental Health; and
- (O) Medical marijuana CCDF shall maintain all necessary permits, and pay all required taxes and fees. CCDF shall also provide invoices to vendors to ensure vendor's tax liability responsibility; and
- (P) Medical marijuana CCDF shall implement their policies and procedures as outlined in their Operations Manual as approved by the Planning Commission. Any deviations from or changes in the Operations Manual or in the Operating Standards must be conveyed to Community Development Services in writing within 30 days of the change; and
- (Q) Medical marijuana CCDF shall comply with any and all conditions of their conditional use permit.

9. Performance Review Reports

- (A) Medical marijuana CCDF shall submit a "Performance Review Report" on an annual basis from their initial date of operation for review and approval by the Planning Commission. This annual "Performance Review Report" is intended to identify the effectiveness of the approved conditional use permit, Operations Manual, Operating Standards, and conditions of approval, as well as the identification and implementation of additional procedures as deemed necessary. In the event the Planning Commission identifies problems with the medical marijuana CCDF that could potentially lead to revocation of the conditional use permit pursuant to section 312-14 of the Humboldt County Code, the Planning Commission may require the submittal of more frequent "Performance Review Reports".
- (B) The medical marijuana CCDF shall be inspected by the Humboldt County Sheriff or his/her designee, and/or employees of Community Development Services and/or the Code Enforcement Investigator on an annual basis, or more frequently as requested by the Planning Commission, to determine if the cooperative, collective or delivery service is in compliance with its conditional use permit, Operating Standards, and Operations Manual. After payment of the inspection fees as indicated in the following section, a copy of the results from this inspection shall be given to the CCDF for inclusion in their "Performance Review Report" to the Planning Commission.
- (C) Inspection and review fees pursuant to the County's adopted schedule of fees and charges, as amended from time to time by the Board of Supervisors, shall be paid by the medical marijuana CCDF and accompany the "Performance Review Report" for costs associated with the inspection and the review of the report by County staff.
- (D) Non-compliance by the medical marijuana CCDF in allowing the inspection by the above-mentioned County personnel, or refusal to pay the required fees, or non-compliance in submitting the annual "Performance Review Report" for review by the Planning Commission shall be deemed grounds for a revocation of the conditional use permit and/ or subject the holder of the conditional use permit to the penalties outlined in this Code, above.
10. A conditional use permit shall be revoked or modified according to Humboldt County Code Section 312-14 (Revocation Procedures). Permit revocation or modification shall be sought for non-compliance with one or more of the requirements listed in this Code, for failure to comply with the requirements of the Humboldt County Certified Unified Program Agency (CUPA), or for the grounds listed in Section 312-14.1.