



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CURRENT PLANNING DIVISION

3015 H Street Eureka CA 95501 Fax: (707) 268-3792 Phone: (707) 445-7541

Hearing Date: June 1, 2017

To: Humboldt County Planning Commission

From: John Ford Director of Planning and Building Department

Subject: **Cannabis Ordinance Amendments – Review of Draft Policy Areas**
Case Number OR-17-002
Assessor Parcel Number (APN): 000-000-000 [countywide]

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Attachments:

Attachment 1: Proposed Ordinance Policy Recommendations and Discussion Items

Please contact Steve Lazar if you have any questions about the scheduled public hearing item at (707) 268-3741, or by e-mail at slazar@co.humboldt.ca.us.

AGENDA ITEM TRANSMITTAL

Hearing Date June 1, 2017	Subject Cannabis Ordinance Amendments – Review of Draft Policy areas	Contact Steve Lazar
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Project: This item provides an opportunity for the public and the Planning Commission to review and comment on policy areas of proposed revisions to the County's Commercial Cannabis Land Use Ordinance (CCLUO). Work is beginning on the update of the CCLUO and the Environmental Impact Report (EIR) that evaluates the environmental impacts of the ordinance. The Commission reviewed a one-page list of objectives to be accomplished by the ordinance on April 6, 2017. To be more useful in the EIR, the one-page list of objectives is expanded in this staff report to comprehensively describe the policy direction of the proposed ordinance. The purpose of this workshop is to review and comment on the policy areas of the ordinance.

Project Location: The ordinance will apply countywide.

Present Plan Designations: Various.

Present Zoning: Various.

Application Number: n/a

Case Number: OR-17-002

Assessor Parcel Numbers: Various.

Applicant Humboldt County	Owner	Agent
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Environmental Review: An EIR is being prepared for the project.

Major Issues: Cannabis activities regulated by the ordinance have a variety of impacts both location-specific and more cumulative which will be described in the EIR.

State Appeal Status: The ordinance amendments that apply in the coastal zone will need to be certified by the California Coastal Commission before they become effective.

Zoning Ordinance Amendment Workshop
Commercial Cannabis Land Use Ordinance (CCLUO) Policy Areas
Case Number OR-17-002

Recommended Commission Action:

1. Describe the application as a workshop;
2. Request that staff present the project.
3. Open the workshop for public comment; and.
4. Provide comments on the ordinance policies presented in the staff report.

Executive Summary

The purpose of this workshop is to review the recommended policy areas for the draft CCLUO (Attachment 1 of this staff report) that will be evaluated in the associated EIR. The policy language presented in this staff report is specific enough to begin to assess its environmental impacts in the EIR, but it is not in final ordinance form. A draft form of the ordinance will be included in the EIR when it is published later this year.

The Commission reviewed a list of objectives to be accomplished by the amendments on April 6, 2017 and the Board of Supervisors reviewed the list on April 11, 2017. That list formed the basis of the proposed ordinance policy areas in this staff report, which include the following features:

- Expand the scope of the Ordinance Nos. 2554 and 2559 to include commercial marijuana operations for adult recreational use now authorized by Proposition 64, the Adult Use of Marijuana Act (AUMA),
- Expand the areas where new cultivation or expansion of existing cultivation sites will be permitted to locations with or without prime agricultural soils,
- Restrict or prohibit generator use,
- Apply special requirements/limitations for projects located within spheres of influence or community areas

The County is now under contract with Ascent Environmental to assist with preparation of the EIR for these zoning ordinance amendments, and to be useful in the EIR, the one-page list of ordinance objectives reviewed by the Commission is given more definition and substance in staff report. The Board of Supervisors is scheduled to review these same ordinance policy areas at their regularly scheduled meeting on June 13, 2017. Comments from the Planning Commission and Board of Supervisors will then be provided to the consultants for use in the EIR, and incorporated into the draft ordinance.

The Department expects to present the full draft ordinance amendments to the Planning Commission and Board of Supervisors in October or November of this year in conjunction with the final EIR for certification by the Board of Supervisors.

Alternatives: The Planning Commission could choose to not provide comments at this time, and reserve comments for the final draft that will be reviewed at public hearings later this year. This alternative should be implemented if the Planning Commission believes they do not have sufficient information to provide meaningful comments on the ordinance policy areas in their present form. Given the Commission's involvement in reviewing and developing the current Commercial Medical Marijuana Land Use Ordinance and review of a number of applications for cannabis permits, the Commission clearly has knowledge that could be useful in guiding the contents of the ordinance at this stage in the review process, so staff does not recommend further consideration of this alternative.

ATTACHMENT 1

Proposed Ordinance Policy Areas and Discussion Items

Outdoor/Mixed Light Cultivation

Definitions:

“New” Cultivation: Permits proposing commercial cultivation of cannabis on a parcel where no cultivation was ever conducted prior to January 1, 2016.

new cultivation sites no longer must be located on or within parcels with prime soils

“Existing” Cultivation: Permits for commercial cultivation of cannabis on a parcel where cultivation was conducted prior to January 1, 2016.

eligibility criteria (to apply for permit, must meet or exceed criteria in each category)

ZONING/LAND USE

RESOURCE PRODUCTION AND RURAL RESIDENTIAL AREAS

new & existing sites

- Cultiv. Area must be located within portion of project parcel planned and zoned for Agricultural Uses
 - Zonings – Resource: AE, AG, FR – principally permitted
 - U (accompanied by agricultural land use designation) – principally permitted (unless AR)
 - TPZ (existing sites only / discretionary permit req’d)
 - RA (with discretionary permit)
 - Land Use - Resource Production: AE, AG, AL
 - AR (discretionary permit req’d)
 - T (existing sites only / discretionary permit req’d)

INDUSTRIAL AREAS

new sites

- parcels planned or zoned for industrial uses or;
- parcels zoned unclassified and developed with an existing industrial use
- Zonings – C-3, ML, MH, U (where developed with an existing industrial use)
- Land Use – IG, CG
 - Up to 1 acre of cultivation may be principally permitted (Outdoor, Indoor, Mixed Light, or a combination of any or each not exceeding a total of 1 acre)
 - Must comply with Specialized Performance Standards for adaptive reuse and management where new cultivation activities proposed on parcels currently host to buildings and other infrastructure developed in association with past or ongoing Industrial Use(s).
 - Additional permits for cultivation in excess of 1-acre may be allowed with a Conditional Use Permit.
 - Properties may also host new Outdoor and Mixed Light Cultivation relocation by sites participating in the RRR program, as a principally permitted use.

SLOPE

new sites only

- slope within proposed cultivation area must not exceed 15%
- Slope means “natural grade” (the surface of the ground prior to grading for development)

existing sites

- discretionary permit required if one or more existing cultivation sites are located within areas exceeding 15% slopes. On-site remediation and reconfiguration to areas of 15% or less slopes subject to Performance Standards for Site Reconfiguration.

TIMBERLAND CONVERSION

new sites

- no new conversions of timberland authorized.
- “new” conversion means a conversion performed with or without the approval of Cal-FIRE, which occurred after 12/31/15

existing sites

- timberland conversion may only occur in association with on-site remediation and reconfiguration activities, subject to Performance Standards for Site Reconfiguration.
 - must comply with reconfiguration performance standards
- No expansion of the total area of conversion for cannabis cultivation (existing on or before 12/31/15) may result. A discretionary permit is required.

PARCEL SIZE / CULTIVATION AREA LIMITS

existing sites

- 2,500 ft.² of Cultivation permitted on AE zoned parcels less than 1-acre in size with a CUP (per CMMLUO)
- All other eligible zones require 1 acre or larger parcel (discretionary permit required if less than 5 acres in size)
- 5,000 ft.² of cultivation principally permitted on parcels between 5 acres and 10 acres in size

new & existing sites

- 5-acre minimum (discretionary permit required if less than 10 acres in size)

Parcels 10 acres or larger

- 10,000 ft.² of cultivation (outdoor, mixed light, or combination of both not exceeding 10,000 ft.²) principally permitted on parcels 10-acres or larger in size
- CUP required for greater than 10,000 ft.² of cultivation. Must meet or exceed all other eligibility criteria categories (Zoning/Land Use, Slope, Timberland, Setbacks, Road Standard, Energy) Maximum of 1-acre and or 4 permits, whichever is less. Cultivation Area identified in permits for “Mixed Light” must not exceed state licensing restrictions.
- Parcels over 320 acres qualify for 1-acre per 100-acre with CUP (must also meet slope criteria) as outlined in CMMLUO.

SETBACKS (for Cultivation Areas & On-site Processing)

new and existing sites

- 30 foot setback from all property lines
- 300 foot setback from residences on neighboring properties (300 setback does not apply to properties where a permit has been issued or is being sought for commercial cultivation)
- A discretionary permit is required if cultivation is located or proposed within the Sphere of Influence of an incorporated City or within 1000 feet of City Limits.
- eliminate current setback from School Bus Stops
- 600 foot setback from any School, Church or other Place of Religious Worship, Public Park, or Tribal Cultural Resources
- A setback of less than 300 or 600 feet (but greater than or equal to 30 feet) may occur, with the express consent of all affected land owners, representatives, or occupants. A discretionary permit is required.

ENERGY USE – Ancillary Nursery Activities (Propagation) or Mixed Light Cultivation

new and existing sites

- Projects served exclusively by grid power or 100% on-site renewable principally permitted

existing sites

- where grid power is not available, projects utilizing a renewable energy system (solar, wind, micro-hydro with battery storage) providing 80% or more of the annual cannabis-related energy demand (nursery and/or mixed light cultivation activities) shall be principally permitted.
 - an energy budget must be included with the permit application detailing all monthly cultivation-related energy use as well as on-site renewable energy generation and storage capacity.
- Ancillary Nurseries and/or Mixed Light Cultivation served by less than 80% renewable energy (i.e. generators) subject to discretionary permit.
 - Ancillary mother plants must be kept at an off-site approved location (utilizing grid power and/or renewable intertie) during off-season required.
 - Mixed Light and/or Nursery activities restricted to March thru August (deprivation season and end of season restocking post-harvest)

APPLICATION DEADLINE FOR “EXISTING” SITES

- Permits for existing sites (which do not meet all eligibility criteria) for new cultivation will not be accepted following the passage of 6 months from the effective date of the regulations.
- Permit resumed or continued operation of eligible “existing” sites, if application is filed within 3 months of the effective date of the regulations. Provide opportunity for “provisional” permitting, subject to a compliance agreement.
- Require that all operations be suspended if 3 month deadline not met.
- Provision for Board modification of deadlines through resolution and accompanying ordinance amendments.
- Applications will continue to be accepted for proposals involving remediation and relocation pursuant to RRR program.

ROAD STANDARD new & existing sites | three-part test

PART 1 – Functional Capacity

- access to the subject property must be available via publicly maintained roadways or private road systems meeting Category 4 road standard (or same practical effect).
- if access to the project parcel provided exclusively via publicly maintained roadways, no further analysis required / principally permitted.
- “publicly maintained roadways” shall be all road systems that are available for year round travel by the general public, which are maintained by the County of Humboldt, or State or Federal Agencies
- If access to the subject property partly provided via a private road system, an analysis of the functional capacity of all private road systems utilized must be included with any permit application.
- The analysis must be prepared by a licensed engineer or similarly qualified professional.

PART 2 – Road Design and Maintenance – Water Quality Protections

- if access to the project parcel provided exclusively via publicly maintained roadways, no further analysis of road design required / principally permitted.
- If access to the subject property partly provided via a private road system, an analysis of the design and maintenance of all private road systems utilized must be included with any permit application.
- The analysis must be prepared by a licensed engineer or similarly qualified professional. Analysis performed in association with preparation of a Water Resource Protection Plan (WRPP) performed in association with enrollment under the Regional Water Quality Control Board’s Waiver of Waste Discharge (Order # 2015-0023) may be provided if covering all relevant private road systems.
- The principal objective of the roadway design and maintenance analysis is to identify road characteristics and maintenance concerns which conflict with common best management practices for prevention of point-source and non-point source discharges of sediment or other pollutants which constitute a potential threat to water quality.
- Best Management practices (BMPs) shall include, but are not limited to:
 - Standard Conditions 1 & 2 (Site maintenance, erosion control, and drainage features and Stream Crossing Maintenance) and associated BMPs described under the Regional Water Quality Control Board’s Waiver of Waste Discharge Requirements (Order # 15-0023)
 - Relevant Road maintenance and Design Best Practices identified in the latest edition of the 5 Counties Roads Salmon Conservation Program Roads Manual.
 - Relevant Road maintenance and Design Best Practices identified in the latest edition of the “Handbook for Forest, Ranch and Rural roads” prepared for the Mendocino County Resource Conservation District.
- Where three or more permit applications have been filed for commercial cultivation (new or existing), on parcels that are served by a shared private road system, the owner of each property must consent to join or establish a relevant Road Maintenance Association prior to operation (for new permits) or non-provisional approval (existing). This requirement shall also apply to existing permittees seeking to renew their permit.

PART 3 – Dead End Road Length

- Projects that are located more than 2-miles (measured in driving distance) from the nearest intersection with a publicly maintained road or private road that is part of a system providing viable secondary access by emergency vehicles and personnel, including wildland fire equipment, shall be subject to a discretionary permit
 - with the exception of eligible existing operators seeking a permit pursuant to the Specialty Cottage provisions (2,500 ft.² of mixed light cultivation or 25 or less plants grown outdoors)

Private Road System Evaluations

- All observations and recommendations shall be summarized in a written report describing and documenting existing road conditions and capacity, and road design and maintenance characteristics.
- Same practical effect means an exception or alternative with the capability of providing equivalent access characteristics, including but not limited to: accommodating safe two-way travel and traffic by regular users in passenger vehicles, and access by emergency wildland fire equipment and simultaneous safe civilian evacuation in the event of a wildland fire.
- The principal purpose of the roadway evaluation is to document compliance with functional capacity and relevant water quality protections of the road standard, and identify all road segments that do not comply with the standard or same practical effect. Where the private roads systems contains segments which do not meet these standards for capacity and water quality protections, the report must identify and prescribe specific road system improvements that will promote compliance, to the greatest extent practicable, or as determined sufficient by the Department of Public Works, Land Use Division.
- Projects located on private road systems not meeting the functional capacity and road design standards shall be subject to a discretionary permit, with the requirement that private road segments be brought up to minimum standards.
 - with the exception of eligible existing operators seeking a permit pursuant to the Specialty Cottage provisions (2,500 ft.² of mixed light cultivation or 25 or less plants grown outdoors)

Performance Standards

GENERATORS – Noise Standards

- Generators must be inaudible within 30 feet of generator location.

WATER SOURCE

- Forbearance (or modified forbearance with consent of CDFW) still required for all cultivation reliant on in-stream diversions. Forbearance also required for wells.
- Dry farming shall be authorized without requiring forbearance and storage, provided irrigation is limited to ancillary propagation and nursery areas ahead of in-ground planting.
- Dry farming shall include but is not limited to: cultivation within floodplains and alluvial terraces adjacent to major watercourses, where plants are placed in native soil and are able to receive water via subsurface hydrological connectivity.

WATER STORAGE

All water storage

- Grading permits for construction of ponds, above-ground storage tanks, or bladders intended to be used for future or existing on-site cannabis irrigation shall not be issued ahead of the Cannabis permit review process.

Ponds

- Except in limited circumstances, ponds shall be located “off-channel” from nearby watercourses and adequately setback from nearby streams, springs, and other hydrologic features.
- To prevent occupancy by and survival of non-native bullfrog species, ponds shall be designed to allow for them to be drained, which shall occur on an annual basis.
- Where an existing or proposed pond is filled from, or outlets to a nearby stream or wetland, permits and review from the Department of Fish & Wildlife shall be required prior to project approval.
 - Introduction of non-native species is prohibited.
- Ponds shall be adequately fenced to prevent them from attracting and endangering wildlife
- Ponds shall be designed with pathways enabling escape by local wildlife. These may include rock-lined portions of the perimeter or similar features providing equivalent means of egress.

Bladders

- Must include secondary containment.
- At minimum, secondary containment shall include a contiguous earthen berm perimeter.
- The berm must be at least one foot taller than the height of the enclosed bladder(s) when full, to provide for sufficient freeboard in the event of a failure.
- A grading permit shall be required
- Bladders proposed to be located within areas subject to localized flooding must include provisions for anchoring.

PROCESSING FACILITIES (APPURTENANT / ON-SITE)

- Must have grid power or 80% on-site renewables
- Must be served by publicly maintained road or private road system meeting road standards
- Must have an approved on-site sewage disposal system (septic)

TOILET FACILITIES

- Application must specify means of sewage disposal
 - On-site waste treatment system (septic)
 - Portable toilet(s)
 - Use of seasonal RV with closed system or septic hookup

PRIME SOILS (new or existing cultivation)

- If cultivation located on prime soils, total cultivation area restricted to 20% of area of prime soils
- 20% limitation not applicable to cultivation within non-prime areas meeting slope criteria.

ADAPTIVE REUSE OF DEVELOPED INDUSTRIAL PROPERTIES

- Development of additional buildings or infrastructure only allowed once existing infrastructure has been fully occupied, pursuant to the principles of adaptive reuse.
 - Interior changes or additions to facilities must not prevent future re-occupancy by new uses which are compatible with the base zoning district or consistent with historic prior operations.
 - all newly constructed facilities must comply with all development standards of the zone
 - Development of additional buildings or infrastructure only allowed once existing infrastructure has been fully occupied.
 - all newly constructed facilities must comply with all development standards of the zone

LIGHTING PERFORMANCE STANDARDS **new & existing sites**

- Carry forward existing provisions of the CMMLUO:
 - Lighting used between sunset and sunrise must be shielded so that little to no light escapes
 - Compliance with International Dark Sky Association standards

SITE RECONFIGURATION CRITERIA **existing sites**

- Where an existing site does not conform to one or more performance standards or certain eligibility criteria, or cannot comply with local, state, or federal regulatory requirements, reconfiguration of the cultivation site and associated infrastructure may be permitted.
 - Where one or more lawfully separate parcels are contiguous or accessed by a shared private road system, and are owned or managed by a single applicant, consolidation and reconfiguration utilizing multiple parcels may be permitted.
 - Reconfiguration between one or more separate applicants under similar conditions may also occur, provided:
 - The application must include a binding agreement signed by all owners, applicants, and relevant parties
 - Permit applications may be filed jointly or separately
 - permits shall be concurrently processed and scheduled for decision
- New areas of a project parcel targeted for development and overall site design must represent the best opportunity for compliance with all relevant regulatory requirements, including those of which the site currently conforms.
- Reconfiguration plans must be prepared by an engineer or similarly qualified professional familiar with local and state water quality protections and requirements.
- A Biological Resource Protection Plan must also be included. The plan shall be prepared by a qualified professional and evaluate whether prior unpermitted development or disturbance has occurred within a Streamside Management Area, Sensitive Plant Community, or area of similar biological sensitivity.
- All new timberland conversion proposed in association with cultivation site reconfiguration must not exceed the areas of existing conversion to be relocated.
 - existing cultivation areas to be relocated must be restored to pre-disturbance conditions and restocked and/or managed to promote recovery by native vegetation and tree species.
- existing interior driveways and road networks may be reconfigured to achieve better design and compliance with road standards and watercourse protections.
 - all relocated road segments must be fully decommissioned and restored to pre-disturbance conditions or mothballed and stabilized to insure that they are no longer a threat to water quality. Relocated road systems occupying the site of converted timberland shall be restocked and/or managed to promote recovery by native vegetation and tree species.

Exception

EXISTING OPERATORS - SPECIALTY COTTAGE PROVISION

- Parcels must be planned/zoned where existing sites are principally or conditionally permitted
- Parcel must be host to an “existing” residential structure (permitted or otherwise)
 - “existing” shall mean an occupied residential structure located on the parcel as of 12/31/2016
 - If not already permitted, residence must become permitted via AOB / Safe Homes program
 - Only one specialty cottage permit per parcel
 - no non-resident staff for cultivation or on-site processing activities
- Limitation of no more than 2,500 ft.² mixed light cultivation or 25 plants (outdoor), per upcoming DFA license restrictions
- Must practice soil conservation
 - Pledge to reuse and amend soil already imported to site.
 - Minimize use of imported soil.
 - Bulk soil delivery prohibited.
- Mixed Light Cultivation must be supplied by grid power or 80% renewable.

Retirement, Remediation, and Relocation Program

- Continue to incentivize retirement and remediation of qualifying existing sites meeting current criteria from CMMLUO
 - site must meet definition for “existing” (pre 1/1/16)
 - must be located on lands zoned TC, FR, TPZ, U, RA, AG, or AE
 - must rely upon surface water diversion without water right or streambed alteration permit.
- Authorize relocation to sites meeting eligibility criteria for principally permitted new outdoor & mixed light cultivation, or parcels currently host to buildings and other infrastructure developed in association with past or ongoing Industrial Use(s). Prime Soils no longer required.
- relocation proposed to occur within prime soils on eligible parcels, subject to 20% limitation.
- No limit to the number of relocation sites on a parcel, if not located within prime soils. Must be sited within areas of 15% or less slopes.
- Allow cultivation at relocation site to be up to quadruple the cultivation area of the existing site to be retired/remediated or 20,000 ft.², whichever is less.

Permitting penalties for violations

- Initiation or expansion of cannabis activities prior to permit issuance shall be grounds for disqualification of the application with no refund of submitted fees.

Indoor Cultivation

- Carry forward existing provisions from CMMLUO:
 - no consideration given for “existing” indoor sites
 - must comply with energy performance standards

Agricultural Zones

- Zonings - RA (on parcels 5 acres or larger), AG, and AE
 - Maximum of 5,000 square feet within existing non-residential structure

Commercial, Industrial, and Unclassified Zones

- Zonings - C-2, C-3, MB, ML, U (where developed with an existing Industrial or Commercial Use)
- Add CH zone to list of eligible zonings.
 - Cultivation of up to 5,000 ft.² allowed with a Zoning Clearance Certificate
 - Cultivation of up to 10,000 ft.² allowed with a Conditional Use Permit

Nurseries & Community Propagation Centers

- Wholesale Nurseries principally permitted use in select Commercial and Industrial Zoning Districts
- Zonings: C-2, C-3, ML, MH, U (where developed with an existing industrial or commercial use)
- Wholesale Nurseries allowed with a discretionary permit in CH and MB Zoning Districts
- Wholesale nurseries shall be a principally permitted use in
 - Zoning Districts: AE, AG, FR, and U (accompanied by agricultural land use designation)
 - must be located on a publicly maintained road
 - subject to compliance with standards for commercial parking and accessibility
- must comply with energy performance standards
- Community Propagation Centers may also be permitted wherever Nurseries are authorized
 - Propagation Centers shall allow for cannabis farmers, operating within regional cultivation areas and communities without grid-supplied electricity, to maintain mother plants in a vegetative state at a nearby facility, during periods where these plants need not be located at the cultivation site.

Energy Performance Standards for Indoor Cultivation and Nurseries

- Power for Cultivation and Propagation activities must be supplied through one of the following:
 - on-grid power from 100% renewable source
 - PG&E Solar Choice, RCEA Community Choice Aggregation, etc.
 - on-grid power with purchase of carbon offset from an accredited source
 - on-site zero net energy provided by a renewable source

Cannatourism

- Allow tours and visits by the general public as a principally permitted use at all locations zoned for Commercial or Industrial uses;
- In agricultural and resource production zoning districts, only permit if access to site is exclusively provided by publicly maintained roads
- Cannabis farmstays shall be permitted within existing residences with a discretionary permit
- All Cannatourism subject to performance standards to insure harmony with neighboring land uses
- Allow tour operators, with a business license, and commitment to only travel to sites permitted to host visits by from the general public.

Microbusinesses

- Add definition of cannabis “microbusiness”, which includes an allowance for cultivation, manufacturing and sales at the same establishment, consistent with state licensing provisions.
- Allow microbusinesses with Special permit in CH, C-2, C-3, MB, ML, U (where planned for commercial, industrial or mixed industrial/commercial/residential use) subject to the following performance standards:
 - Publicly maintained roads
 - Paved roads
 - Grid power or 100% on-site renewable
 - 300 foot setback required from neighboring residences
 - Sites must have adequate parking , comply with accessibility requirements (ADA)
 - Hours of Operation 8am - 6pm
 - 600’ setbacks from sensitive receptors (residential zoning, churches, schools)
 - On-site parking requirements for employees and guests:
 - 1 parking space per 200 sq. ft. of public accessible areas; and
 - 1 parking space for every 2 employees
- Allow on-site consumption, subject to with operational measures and performance standards to insure consumers are not a threat to themselves or others, including but not limited operation of a motor vehicle while impaired.