



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT
CURRENT PLANNING DIVISION

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Hearing Date: February 15, 2018

To: Humboldt County Planning Commission

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

Subject: **Zoning Ordinance Amendments**
Interim Permitting of Existing Cultivation Activities
Case Number OR 18-001

The attached staff report discussing amendments to the Commercial Cannabis Land Use Regulations has been prepared for your consideration at the public hearing on February 15, 2018. The staff report includes the following:

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Please contact Steven Lazar, Senior Planner, at 268-3741, or by email at slazar@co.humboldt.ca.us, if you have any questions about the scheduled public hearing item.

AGENDA ITEM TRANSMITTAL

Hearing Date	Subject	Contact
February 15, 2018	Zoning Ordinance Amendments – Interim Permits for Pre-Existing Commercial Cannabis Sites	Steven Lazar

Project: Humboldt County has existing ordinances regulating commercial medical cannabis activities, including the Commercial Medical Marijuana Land Use Ordinance (Ordinance No. 2544, which was adopted February 26, 2016 and modified on September 13, 2016 (Ordinance 2559). On November 14, 2017, the ordinance was further modified by Ordinance 2588 to include provisions for the issuance of interim permits to certain eligible applicants seeking to permit lawful pre-existing cultivation sites in accordance with provisions for temporary licensing now authorized under the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") (SB 94). Since becoming effective in mid-December 2017, the Department has processed and issued over 350 Interim Permits to applicants and operators of pre-existing cultivation sites. The project proposes amendments to the interim permitting provisions in Section 314-55.4.8.11 of Humboldt County Code to allow issuance of interim permits to additional eligible pre-existing cultivation sites.

Project Location: The implementing Ordinance would apply to all the unincorporated areas of Humboldt County, outside of the Coastal Zone.

Present Plan Designations: N/A.

Present Zoning: N/A.

Assessor Parcel Number(s): 000-000-000.

Environmental Review: A Mitigated Negative Declaration (SCH# 2015102005) was previously prepared and adopted together with the Commercial Medical Marijuana Land Use Ordinance, which evaluated and addressed the potential environmental impacts from the regulation of commercial cannabis activities. The proposed ordinance amendments would not allow any activity not already authorized, thus there are not any previously unidentified impacts and no additional review is required pursuant to section 15162 of the CEQA Guidelines. The proposed amendment could also be incorporated in the pending comprehensive update of the Humboldt County commercial cannabis ordinance for which an Environmental Impact Report has been prepared and is expected to be certified in conjunction with adoption of the ordinance update. The proposed amendment allowing for additional interim permit eligibility would not cause any environmental impacts not considered in the EIR.

State Appeal Status: Not applicable.

**AMENDMENTS TO HUMBOLDT COUNTY CODE CONCERNING INTERIM PERMITTING OF CERTAIN
ELIGIBLE PRE-EXISTING COMMERCIAL CANNABIS CULTIVATION SITES**
Case Number OR-18-001

Recommended Commission Action

1. Open the public hearing.
2. Request that staff present the staff report and pertinent evidence.
3. Receive public testimony.
4. Deliberate on the draft amendments and public input received.
5. Take the following action:

“Move to make all of the required findings, based on evidence in the staff report and public testimony, and recommend the Board of Supervisors enact the proposed amendments to County Code concerning Interim permitting”

Executive Summary: This item involves amendments to Section 314-55.4.8.11 of the Zoning Regulations that allows issuance of interim permits to lawful pre-existing cultivation sites where a land use permit is being sought. Provisions for interim permitting of pre-existing sites were enacted by Ordinance #2588 (Interim Amendments for Adult Use), which were considered by the Planning Commission on October 19th 2017, and adopted by the Board of Supervisors on November 14, 2017.

The proposed amendments would allow issuance of additional interim permits to applicants seeking permits for eligible pre-existing cultivation sites whose applications are accepted or deemed complete after July 14, 2017 (the cutoff date for eligibility in Ordinance #2588). Allowing additional interim permits is important for two main reasons. First, it enables those with pre-existing cultivation operations to continue cultivation and participate in the legal cannabis regulatory program while final processing of their applications is completed. Interim permitting provides financial benefits for those individuals and for the County which will receive increased tax revenues from those operations. Second, issuance of interim permits reduces the immediate pressure on the County to finalize processing of the applications received because the operations can continue while the permits are being finalized.

Issuance of interim permits by the County of Humboldt does not occur unless the Department has been able to independently verify that the area of pre-existing cultivation (for which a permit is being sought) can be corroborated using aerial or satellite imagery or similar “substantial evidence”. Permit issuance is tied to execution of a written compliance agreement with notarized signatures of owners and applicants, stipulating the terms and conditions of continued operation, and consequences for violation of the agreement.

The proposed ordinance amendments will allow interim permitting of existing cultivation sites with permit applications that have been determined complete for processing, removing the requirement that the application was complete as of July 14, 2017. These interim permits would continue to be subject to execution of a written compliance agreement requiring the applicant complete the permit process in a timely manner and confine continued operation to existing areas only. These agreements would also continue to stipulate that violations of the agreement would result in the loss of ability to obtain a Zoning Clearance Certificate, Special Permit, or Conditional Use Permit. Interim permits enable those existing cultivators who are working diligently toward local permitting to apply for and receive state temporary licenses. Since operators of existing cultivation sites have been allowed to continue cultivating while in the permit process, the proposed amendments would not enable any new activity not already

currently authorized. The interim permitting provisions include a modified sunset date of January 1, 2019 for applicants to complete their local permit process.

The proposed changes to the zoning regulations would not affect the December 31, 2016 application deadline included in the CMMLUO. No new applications will be accepted for commercial cannabis activities (cultivation, manufacturing, processing, and distribution) prior to the certification of the programmatic Environmental Impact Report (PEIR) and adoption of the Commercial Cannabis Land Use Ordinance (CCLUO). The Board may choose to adopt these amendments as a stand-alone ordinance or through integration with the Commercial Cannabis Land Use Ordinance comprehensive amendments package which is scheduled to be presented to the Board at their meeting on February 27, 2018.

STAFF RECOMMENDATION

Staff believes the necessary findings can be made for Board adoption of the proposed amendments described within Attachments 1. Staff requests the Commission make a recommendation supporting Board adoption of the proposed ordinance by adopting the Resolution in Attachment 2 of this staff report.

ATTACHMENT 1

Draft Ordinance Amendments

Amendments to section 314-55.4.8.11 of Humboldt County Code (changes to the existing text are shown in underline and strikeout)

55.4.8.11. Where adequate evidence has been submitted demonstrating that a cultivation site existed prior to January 1, 2016, permit applications seeking authorization of commercial cannabis cultivation and ancillary activities at these sites shall be eligible to receive an interim permit, provided the application was filed prior to January 1, 2017 and has been determined to be complete for processing by the Director of the Planning and Building Department ~~on or before July 14, 2017~~. Prior to issuance of any interim permit, the Department shall independently review evidence of prior cultivation and specify the size of pre-existing cultivation area (if any) based upon aerial and satellite imagery, or other substantial evidence.

Approval of the interim permit is conditional and shall occur through issuance of a Zoning Clearance Certificate and written Compliance Agreement on forms provided by the County. Compliance agreements will specify permit restrictions, penalties, and commitments to complete the permit process and confine continued operation to existing areas only. Violation of the compliance agreement shall be grounds for permit cancellation and disqualification of the property from future permitting.

The interim permit authorizes the permittee to seek state licensure and continue operations until completion of the local permit review process and issuance or denial of a County permit, or ~~January 1, 2019~~ July 1, 2018, whichever occurs first. The Director may extend this deadline for cause. Refusal of the Director to issue or extend an interim permit shall not entitle the applicant to a hearing or appeal of the decision. Additionally, approval of any interim permit does not obligate the County to ~~anything except what is described in the compliance agreement, including but not limited to approval of~~ approve a non-interim permit or extension of the interim permit. Permit cancellation and disqualification of the property from future permitting shall be decided by the Zoning Administrator or the Planning Commission at a noticed public hearing. Those decisions may be appealed to the Board of Supervisors pursuant to the appeal procedures outlined under 312-13 of these regulations. ~~Applicants with pending applications where only minor additional information is needed for approval shall not be issued interim permits unless in the discretion of the Director reasons exist (not within control of the applicant) that the information cannot be provided prior to December 31st, 2017.~~

ATTACHMENT 2

Draft Planning Commission Resolution

A Resolution of the Planning Commission of the County of Humboldt recommending that the Board of Supervisors adopt amendments to current provisions for interim permitting of lawful – pre-existing cultivation sites

Resolution Number 18-____

Case Number OR-18-001

A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF HUMBOLDT RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT AMENDMENTS TO LOCAL PROVISIONS FOR INTERIM PERMITTING OF LAWFUL PRE-EXISTING CULTIVATION SITES, FOUND IN TITLE III, CHAPTER 4 OF THE HUMBOLDT COUNTY CODE - REGULATIONS OUTSIDE THE COASTAL ZONE, SECTION 314-55.4, GOVERNING COMMERCIAL CANNABIS ACTIVITIES FOR BOTH MEDICINAL AND ADULT USE, AND FIND THE AMENDMENTS CONSISTENT WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND SECTION 312-50 OF HUMBOLDT COUNTY CODE, CONCERNING ADOPTION OF ZONING ORDINANCE AMENDMENTS.

WHEREAS, California Government Code Section 65850, et seq. authorizes counties to regulate land use, including agriculture, and to adopt and amend zoning ordinances for such purposes; and

WHEREAS, California Government Code Sections 65853 through 65857 and Humboldt County Code Sections 312-50.7.2 and 312-50.7.3 establish procedures governing the adoption and amendment of zoning ordinances; and,

WHEREAS, the Planning Division caused to be published in the Eureka Times-Standard, a newspaper of general circulation in Humboldt County, a Notice of Public Hearing Regarding the Adoption of Amendments to the Humboldt County Code Regulating Commercial Cannabis Activities for Medicinal and Adult Use to be held on February 15, 2018; and

WHEREAS, on February 15, 2018 the Humboldt County Planning Commission conducted a public hearing on the proposed amendments to the Humboldt County Code Regulating Commercial Cannabis Activities For Medicinal and Adult Use, concerning modification of existing provisions for the issuance of interim permits, and received the staff report on the draft ordinance, took public testimony, and reviewed evidence; and

WHEREAS, the Planning Commission reviewed and considered the report, evidence, and other testimony presented to the Commission regarding the proposed amendments to the Humboldt County Code Regulating Commercial Cannabis Activities for Medicinal and Adult Use; and

NOW, THEREFORE, be it resolved and determined that the Planning Commission:

1. Makes the findings in Exhibit A of this resolution which is incorporated fully herein based on the information contained in the public record; and

2. Recommends that the Board of Supervisors of Humboldt County:

- Hold a public hearing in the manner prescribed by law.
- Adopt findings that the proposed ordinance is consistent with the applicable provisions of CEQA, Humboldt County Code and General Plan.
- By ordinance, approve the zoning ordinance amendments.
- Direct the Planning and Building Department to prepare and file the appropriate notices pursuant to CEQA for the project.
- Direct the Clerk of the Board to publish a post approval summary in a newspaper of general circulation, and give notice of the decision to interested parties.; and

Adopted after review and consideration of all the evidence on _____, 2018.

The motion was made by COMMISSIONER _____ and second by COMMISSIONER _____.

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

ABSENT: COMMISSIONERS:

DECISION:

I, John Ford, Secretary to the Planning Commission of the County of Humboldt, do hereby certify the foregoing to be a true and correct record of the action taken on the above entitled matter by said Commission at a meeting held on the date noted above.

John H. Ford, Director
Department of Planning and Building
County of Humboldt

EXHIBIT A

Findings for Adoption of Zoning Text Amendments

ADMINISTRATIVE PROCEDURES ZONING TEXT AMENDMENT

Findings:

Section 312-50 of the Humboldt County Code specifies the findings that must be made in order to approve an amendment to the Zoning Regulations. The required findings are as follows:

1. *The proposed change is in the public interest.*
2. *The proposed change is consistent with the General Plan.*
3. *The proposed amendment does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.*
4. The California Environmental Quality Act (CEQA) states that one of the following findings must be made prior to approval of any development which is subject to the regulations of CEQA:
 - a) The project either is categorically or statutorily exempt; or
 - b) There is no substantial evidence that the project will have a significant effect on the environment or any potential impacts have been mitigated to a level of insignificance and a mitigated negative declaration has been prepared pursuant to Section 15070 of the CEQA Guidelines; or
 - c) An environmental impact report (EIR) has been prepared and all significant environmental effects have been eliminated or mitigated to a level of insignificance, or the required findings in Section 15091 of the CEQA Guidelines are made.

Public Interest, General Plan, and Housing Element Consistency.

1. **Public Interest:** The following table identifies the evidence which supports finding that the proposed Zoning Ordinance amendments are in the public interest.

Applicable Requirements	Evidence Supporting the Finding
§312-50 of the Zoning Ordinance <i>The Zoning Ordinance Amendment is in the public interest.</i>	The proposed amendments to the Zoning Ordinance are in the public interest because they allow those with pre-existing cultivation operations to continue to cultivate legally while processing of their applications is completed. Interim permitting has financial benefits for those individuals and for the County which will receive increased tax revenues from those operations, giving Humboldt County growers the earliest possible participation in the legal California cannabis market. The proposed amendments reduces the pressure on the County to finalize processing of the complete applications received because the operations can continue legally while the permits are being finalized. Allowing for interim permits also facilitates the transition to fully regulated commercial cannabis activities for Humboldt County residents, and helps maintain Humboldt County's leading role in the regulated cannabis marketplace.

2. **General Plan Consistency:** The following table identifies the evidence which supports finding that the proposed Zoning Ordinance Amendments are consistent the General Plan.

Applicable Requirements	Evidence Supporting Finding
<p>§312-50 of the Zoning Ordinance</p> <p><i>The Zoning Ordinance amendment is consistent with the General Plan.</i></p>	<p>The proposed amendments will enable issuance of additional interim permits to applicants seeking permits for eligible pre-existing cultivation sites. The ordinance amendments establish land use regulations for the commercial cultivation of cannabis for medicinal or adult use within the County of Humboldt.</p> <p>Policy UL-P21 of the 2017 Humboldt County General Plan states: "Cultivation of medical cannabis shall be regulated by ordinance to provide for the health, safety, and welfare of the community, but shall not interfere with the patient's right to medical cannabis." The General Plan policy was finalized prior to California State approval of recreational cannabis, and now applies to both medical and adult use cannabis regulations. This policy states the clear intent of the county that cannabis activities shall be regulated in order to protect the public, health safety and welfare. This ordinance further accomplishes that objective.</p>

3. **IMPACT ON RESIDENTIAL DENSITY TARGET:** The following table identifies the evidence which supports finding that the proposed project will not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

§ 312-17.1.5 Housing Element Densities	
Applicable Requirements	Evidence Supporting Finding
<p>The amendment does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law (the mid-point of the density range specified in the plan designation), except where: 1) the reduction is consistent with the adopted general plan including the housing element; and 2) the remaining sites identified in the housing element are adequate to accommodate the County share of the regional housing need; and 3) the property contains insurmountable physical or environmental limitations and clustering of residential units on the developable portions of the site has been maximized.</p>	<p>The proposed Zoning Ordinance amendments do not apply to single or multifamily residential zones. The proposed commercial cannabis activity ordinance amendments will have no effect on the local housing inventory or sites identified in the Housing Element to help accommodate the County's share of the regional housing need.</p>

Finding 4: Required Finding for Consistency With CEQA

Section(s)	Applicable Requirements
Section 15091 of the CEQA Guidelines	<p>That the proposed zoning ordinance amendments comply with the requirements of CEQA</p> <p>The proposed amendments are a modification of an amendment to the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) previously made by Ordinance #2588. This "Interim" ordinance was adopted on November 14, 2017 pursuant to findings that the amendments were within the scope of the Mitigated Negative Declaration adopted for the initial approval of the CMMLUO on January 26, 2016, such that no additional CEQA review was required, in accordance with CEQA Guidelines §15162. The same finding can be made for this proposed amendment if it is adopted as a stand-alone ordinance.</p> <p>An Environmental Impact Report (EIR) was prepared for the pending Commercial Cannabis Land Use Ordinance which includes the section of the ordinance that is proposed to be amended (SCH #2017042022). The proposed amendments will allow interim permitting of existing cultivation sites with permit applications that have been determined complete for processing, removing the requirement that the application was complete as of July 14, 2017, and that the application for the full permit be approved by July 1, 2018 – extending that deadline to January 1, 2019. Issuance of interim permits under the proposed ordinance will not occur unless the Department has been able to independently verify that the area of pre-existing cultivation (for which a permit is being sought) can be corroborated using aerial or satellite imagery or similar "substantial evidence". The proposed amendments to the interim permitting provisions will have no environmental impact not previously studied in the pending EIR.</p> <p>These interim permits would continue to be subject to execution of a written compliance agreement requiring the applicant complete the permit process in a timely manner and confine continued operation to existing areas only. These agreements would also continue to stipulate that violations of the agreement would result in the loss of ability to obtain a Zoning Clearance Certificate, Special Permit, or Conditional Use Permit.</p> <p>Interim permits enable existing cultivators working diligently toward local permitting to be allowed to apply for and receive state temporary licenses. Since operators of existing cultivation sites have been allowed to continue cultivating while in the permit process, the proposed amendments would not enable any new activity not already currently authorized. The interim permitting provisions include a modified sunset date of January 1, 2019 for applicants to complete their local permit process.</p> <p>If instead of being adopted as a stand-alone ordinance the proposed amendments are integrated into the ordinance amendments considered by the EIR, the proposed ordinance amendments may be considered minor technical changes that involve no new significant environmental effects or a substantial increase in the severity of previously identified significant effects in the EIR because they do not authorize any new development. The proposed zoning ordinance amendments do not affect any of the mitigation measures or alternatives in the EIR because all of the interim permits allowed by the proposed amendments are accompanied by complete permit applications considered by the EIR.</p>