



COUNTY OF HUMBOLDT

Legislation Text

File #: 22-286, Version: 1

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Departmental

SUBJECT:
Policy Guidance for Abatement of Unpermitted Cannabis Operations

RECOMMENDATION(S):
That the Board of Supervisors:

1. Direct the Planning and Building Department to require the removal of unpermitted structures used in unpermitted cannabis operations; and
2. Provide additional direction as needed.

SOURCE OF FUNDING:
The funding for Code Enforcement Unit (1100269) is provided from the General Fund.

DISCUSSION:
The Planning and Building Department seeks direction from the Board regarding removal of unpermitted structures associated with abatement of unpermitted cannabis cultivation. It has been the practice of Code Enforcement to require a site to be returned to pre-cannabis conditions. This requires removal of all cannabis and cannabis infrastructure including demolition of any unpermitted buildings used as part of indoor cultivation to resolve violations. This practice has received increased opposition because property owners often wish to retain the unpermitted buildings. Some of the buildings constructed for illegal cannabis activities are well-built and could be used for other purposes. In several instances properties have been placed on the market without resolution of the violations and the new buyers would also like to keep the buildings.

It is important to consider the unpermitted cultivation of cannabis involves not only the cannabis plant, but also the infrastructure used in this activity. The use of an unpermitted building for the unpermitted cultivation of cannabis is a violation of the Building Code (unpermitted building) and is also an integral part of the unpermitted cannabis activity because the building would not be present without the cannabis activity. Many of the buildings are specifically designed to support indoor cultivation.

Staff has contemplated a policy whereby buildings could remain if they are within the curtilage of the

property and can be refunctioned to support a permitted use on the property (usually the residential use of the property.) This would be consistent with Section 314-55.4.6.6, *Site Restoration Upon Termination or Abandonment of Commercial Cannabis* of the Commercial Cannabis Land Use Ordinance (2.0) which requires removal of all cannabis infrastructure unless it can be repurposed as part of a permitted use. This requires the property owner to prepare a plan describing the intended permitted use of the building.

Many of the buildings are specifically constructed and designed to support indoor cultivation. The height shape, electrical and mechanical components of the building are designed solely for this purpose. And often these buildings are not located in the curtilage of an existing residence, but are stand-alone buildings and constitute the only use of the parcel other than as timberland. These buildings would constitute a use of the property that is probably not a permitted use of the property. In these situations, the buildings should be removed.

There is a growing trend on properties which have been abated by the county for outdoor or mixed light cultivation where greenhouses have been removed, new unpermitted buildings begin to appear. In situations where these buildings have been visited by the Sheriff, it is found that there is now unpermitted indoor cultivation being conducted in these buildings.

Two options are presented for consideration:

1. Continue with the current practice of requiring all unpermitted structures associated with an unpermitted cannabis operation to be removed.

Or,

2. Allow property owners and/or operators to prepare a plan and description of the non-cannabis continued use of the unpermitted structures they want to retain if zoning and land use allow for a legitimate legal use, the building is within the curtilage of an existing residence, that the building can be permitted, and there is not environmental harm in the structure remaining with the understanding that if subsequent unpermitted cannabis cultivation is identified the site will be subject to Day 1 penalties as described in HCC section 352-3(m)(2) of the Humboldt County Code.

The current practice of requiring unpermitted structures to be removed has benefits and disadvantages. The benefits include first, providing clarity to expectations of the consequences for using an unpermitted building for unpermitted cannabis cultivation. Second, requiring removal of these buildings is a deterrent for people tempted to install new facilities knowing that if caught part of the penalty is the inconvenience and expense associated with removing the structure(s). And once word spreads, it will also act as a deterrent to other property owners and operators who are also engaging in unpermitted indoor cannabis operations. There is no opportunity to re-use the structure for subsequent unpermitted indoor cannabis operations. This will also decrease the opportunity and amount of illicit cannabis produced and sold. The disadvantages of requiring the structures to be removed include an increase in the amount of demolition debris entering the solid waste disposal system and a potential

reduction of assessed property taxes collected.

The benefits and disadvantages of allowing the buildings to remain for an alternate use include allowing the reuse of buildings for a permitted use on the property. This also maintains or increases the value of the assessed property taxes that may be collected. These properties would have increased amenities and value. The disadvantage of allowing structures to remain is there is no accountability for unpermitted cultivators who construct unpermitted buildings for unpermitted cannabis growing. Staff recommends that if this option is chosen that the building must be within the curtilage (2-acre area) of the residence or clearly supporting another existing permitted use of the site. This is consistent with the provisions of the CCLUO.

If the Board decides to allow structures to remain, staff recommends that unpermitted indoor cannabis operations be subject to Day 1 penalties as described in HCC section 352-3(m)(2) Imposition Date:

For repeat, subsequent or ongoing cannabis Violations or Violations that exist as a result of or to facilitate illegal cultivation of cannabis, the imposition of administrative civil penalties will start to accrue after service of a Notice of Violation and Proposed Administrative Civil Penalty. If all the following are found to be true by the Code Enforcement Unit or the court, then the date on which administrative civil penalties start to accrue shall not be more than ten (10) calendar days after service of a Notice of Violation and Proposed Administrative Civil Penalty:

(A) A tenant is in possession of the Property.

(B) Owner or its agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.

(C) Owner or its agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the Owner or its agent to have actual notice of the illegal cannabis cultivation.

FINANCIAL IMPACT:

The financial impact would be a potential reduction of assessment value for property taxes assessed, which impacts the General Fund. Since it is unknown how many unpermitted structures are being used for unpermitted cannabis operations and how many of those are currently on the assessed tax rolls, it is not possible to predict the amount of the reduction.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Board could choose to allow property owners and/or operators of unpermitted cannabis cultivations to prepare a plan and description of the non-cannabis continued use of the unpermitted structures they want to retain if zoning and land use allow for a legitimate legal use and there is not environmental harm in the structure remaining. However, the consequences are that there would be no further code enforcement actions if future complaints emerge.

ATTACHMENTS:

None

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A