



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUSH STREET · UKIAH · CALIFORNIA · 95482
120 WEST FIR STREET · FORT BRAGG · CALIFORNIA · 95437

IGNACIO GONZALEZ, INTERIM DIRECTOR
PHONE: 707-234-6650
FAX: 707-463-5709
FB PHONE: 707-964-5379
FB FAX: 707-961-2427
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/planning

MEMORANDUM

DATE: MAY 23, 2017

TO: BOARD OF SUPERVISORS

FROM: MARY LYNN HUNT, CHIEF PLANNER
SHARI SCHAPMIRE, TREASURER TAX-COLLECTOR
DAVE JENSEN, ENVIRONMENTAL HEALTH DIRECTOR
SARAH DUKETT, EXECUTIVE OFFICE
MATTHEW KIEDROWSKI, COUNTY COUNSEL

SUBJECT: CANNABIS FACILITIES BUSINESS LICENSE AND ZONING REGULATIONS

Background: Staff was given direction by the Board to develop local regulations to address cannabis processing, manufacturing, testing, dispensing, distributing, retail sales, and microbusinesses. The first Board Workshop occurred on January 27, 2017, with direction to staff to make revisions and return to the Board. The second Board Workshop was held on May 2, 2017, and staff was given further direction. The following staff report and attachments address the Board directives received at that workshop and provide additional information regarding the recent draft regulations issued by the State for medical cannabis.

A. Statewide Proposed Provisions Applicable to All Applicants and Licensees

On April 28, 2017, the Bureau of Marijuana Control (BMC) released proposed Provisions Applicable to All Applicants and Licensees. These proposed regulations are now in a 45-day public comment period (comment period closes June 13, 2017). The BMC will hold public hearings, any person interested may present statements or arguments orally or in writing relevant to the action proposed. Nearby public hearings include Eureka and Sacramento. Full text can be found at: http://bmcr.ca.gov/laws_regs/mcrsa_ptor.pdf.

In brief, the proposed regulations contain information about the general requirements for applying for State permits regarding applications, application renewals, security, track and trace and cannabis-waste management. The BMC draft regulations also discuss the license types, which will be permitted by the BMC, including distribution, transportation, dispensaries, and delivery.

B. Statewide Proposed Medical Cannabis Manufacturing Regulations

On April 28, 2017, the California Department of Public Health (CDPH) released proposed Medical Cannabis Manufacturing Regulations. These proposed regulations are now in a 45-day public comment period (comment period closes June 13, 2017). Full text can be found at: https://www.cdph.ca.gov/Documents/OMCS_Initial_Text_DPH-17-004.pdf.

In brief, the proposed regulations contain information about good manufacturing processes, operational requirements, product standards, THC limits, and packaging and labelling requirements. Application and operation requirements for various manufactures are listed.

Below is a list of some of the requirements applicants for State licenses must provide:

- Security plan
- Video surveillance
- Written procedures to ensure that the grounds of the premises are controlled and kept in a condition that prevents product contamination
- Facility construction and design adequate to maintain sanitary operations
- Written sanitary operations procedures
- Proper sanitary facilities (water, wastewater, toilet, and handwashing facilities)
- Equipment and utensils that can be adequately cleaned and maintained to prevent contamination

There is also very specific information related to production process controls, and quality of raw materials and ingredients. Each licensee will need to establish and implement procedures to ensure that each piece of equipment and machinery is suitable for its intended use prior to operation and establish and follow a written manufacturing protocol for each unique formulation of cannabis product manufactured and for each batch size to ensure uniformity in all batches produced.

According to the CDPH press release, "...there is currently budget trailer bill language designed to align the Medical Cannabis Safety and Regulation Act with Proposition 64, the Adult Use of Marijuana Act. If that bill passes, the Department will withdraw these proposed regulations and propose a new set of regulations consistent with changes in the law. However, public comments on the regulations published today are still very important. Many of the provisions in the licensing regulations published today will carry over to new regulations if the trailer bill passes. Public comment now will provide valuable information and guide our efforts when crafting any new regulations..."

C. Board Directives

1. *Staff shall create a permit process in which individuals could apply for a standard business license and would have up to one year to apply for any other necessary permits that subsequent Ordinances may require.*

The County's existing business license ordinance, Chapter 6.04, currently requires a review by the Department of Planning and Building Services for each new business license. Pursuant to Chapter 6.04.080, the Department of Planning and Building Services reviews each application to determine if the proposed use, site and building are consistent with all applicable provisions of the County Code, including specifically Chapter 18 (Building Code) and Chapter 20 (Zoning Code).

The review by the Department of Planning and Building Services would compare the proposed use to what use is allowed in the applicable zoning district. For instance, a retail use proposed for a commercial zone would be a permitted use, but a retail use proposed for

an industrial zone would require the issuance of a use permit, and issuance of a business license would be placed on hold until the use permit was approved.

Table 1 in the proposed Chapter 20.243 was intended to mirror what uses are allowed under existing zoning designations. For example, manufacturing is a use that is presently allowed in the Industrial Zone as a permitted use. Table 1 reflects that the same requirement would exist for any kind of manufacturing in the Industrial zone which would include cannabis manufacturing (non-volatile).

County staff could move forward with accepting business license applications for what are cannabis businesses. These applications would be processed by comparing the uses to those that currently exist in the Zoning Code. A certain number of these applications would still require a use permit. However, those that do not would still undergo a zoning clearance review by Planning and Building. Note that this zoning clearance would only be checking against existing regulations. Should the Board adopt setback regulations as part of a new zoning chapter, businesses that had already become established prior to the new regulations would become nonconforming uses not subject to the setback.

2. *Staff shall include language that allows home manufacturing this year for existing cultivators on parcels RR:5 conforming and larger; subject to applying for a Minor Use Permit, once those permits become available through 2.243. This would also apply to people who become eligible for overlay zones or the exemption.*

Home manufacturing is not addressed in the Draft CDPH medical cannabis manufacturing regulations. Many of Draft CDPH regulations would appear onerous for a home manufacturing operation, making it challenging for a home manufacturer to receive a State license. At this time, staff does not believe there would be a viable path forward for a home manufacturer to meet State licensing requirements and it would be misleading to develop a local permitting option that would not be eligible for a State license. More information from current home manufacturers regarding their ability to meet State requirements would be valuable.

It is important to note that State licensing requirements apply to commercial manufacturers. This would not necessarily preclude small scale manufacturing for personal use or by designated caregivers.

3. *The Treasurer/ Tax Collector would determine whether to transition a Regular Business License to a Cannabis Facilities License upon renewal, upon availability, and would pro rate the fee.*

A new paragraph (F) has been added to Section 6.36.020. This creates an allowance for cannabis facilities previously licensed under Chapter 6.04 to continue to operate under that license until it is scheduled to be renewed, at which time the facility must apply for a license under Chapter 6.36.

4. *Allow processing in parcels zoned C1 and C2 subject to a Minor Use Permit.*

The previously proposed permitting requirements in Table 1 were consistent with existing zoning district use types. In the case of processing, per the current zoning ordinance, the only processing allowed in the C1 and C2 zoning districts would be limited to materials grown on site. Because the cultivation ordinance does not allow for cultivation in these

zones this limitation would not be practical to apply. Allowing processing to occur in C1 and C2 districts, permitted with a Minor Use Permit would be an expansion of the use types currently allowed. This could create conflict or inconsistencies with the General Plan designations. One of the findings required for a Minor Use Permit is that the proposed use is in conformance with the General Plan. This could prevent permits from being issued or subject the Ordinance to a higher level of review under CEQA. Therefore Table 1 was not updated with this change.

5. *Grandfather current dispensaries into program based on zoning clearance, rather than a Use Permit.*

Discussion under C1 above also addresses the Board's direction regarding grandfathering current dispensaries. Dispensaries that currently exist in a commercial zone may do so with a zoning clearance as a retail use. However, following the effective date of the ordinance, a new dispensary would be required to go through additional review, such as a use permit.

6. *Allow new dispensary or retail facility in parcels zoned C1 and C2 with a Major Use Permit.*
The proposed revisions are more restrictive than current zoning requirements in the cases of dispensaries and retail facilities, requiring a discretionary permit where a zoning clearance would typically be required for non-cannabis related activities. This does not create a conflict with the General Plan and Table 1 has been updated per this Board Directive.

7. *Allow manufacturing in commercially zoned parcels.*

Manufacturing is not an allowed use in the C1 zoning district. The intent of this district is to allow for a limited number of retail commercial goods and services primarily to meet the day to day needs of local residents. Currently, there are no manufacturing or uses of similar intensity allowed in the C1 district. Allowing non-volatile and volatile manufacturing with a Major Use Permit in the C1 zoning district would be an expansion of the use types currently allowed.

Within the C2 zoning district custom manufacturing is an allowed use subject to a minor use permit. Other types of manufacturing are not included as allowed uses in this zoning district.

Expanding the use types in commercial zoning districts could create conflict or inconsistencies with the General Plan designations. One of the findings required for a Use Permit is that the proposed use is in conformance with the General Plan. This could prevent permits from being issued or subject the Ordinance to a higher level of review under CEQA. Therefore Table 1 was not updated with this change.

8. *Volatile Manufacturing shall be allowed in C1 and C2 parcels with a Major Use Permit. Non-Volatile in C1 parcels would require a Major Use Permit; Non-Volatile in C2 would require a Minor Use Permit.*

As mentioned above in Item 7, the directed changes would be an expansion of uses in the commercial zoning districts, creating potential conflicts with the General Plan designations.

9. *Manufacturing Level 2 Volatile in Rural Communities could be considered with a Major Use Permit.*

Allowing volatile manufacturing with a Major Use Permit in the RC zoning district would also be an expansion of the use. However, the RC land use designation under the General Plan includes light industrial in the allowed uses. This may make granting a Major Use Permit in the RC feasible. Table 1 has been updated to reflect this Board directive.

D. Additional Items

1. January 1, 2016, Date Reference for Existing Operations.

The date of January 1, 2016, was used in Section 20.243.170 (A), Provisional Operations, as the cutoff date of when a medical cannabis facility would have needed to be in existence in order to continue on a provisional basis. Based on public comment and Board direction, staff has changed this section to read “All medical cannabis facilities operating with an approved business license prior to the effective date of these regulations...” Similarly in Section 20.243.160, Exceptions, the requirement for a packaging and processing plant to be existing, has been modified to reflect the effective date of these regulations. However, this section may be further modified in response to discussion in C1 and C5 of this report.

Per the draft CDPH regulations, those that can demonstrate they were in operation prior to January 1, 2016, and had a license or other approval from the local jurisdiction, and whose ownership or premise is currently the same as it was on January 1, 2016, would be considered in ‘**good standing**’ and may receive priority review for State licensing purposes.

The draft CDPH regulations also list the requirements for how operations in existence as of January 1, 2018, may continue operating until such time their permit is approved or denied by the State. The following list of requirements is taken from the CDPH draft regulations, (Pages 24 – 25):

- (a) An applicant that has been operating as a manufacturer on or before January 1, 2018, may continue to operate until the Department approves or denies its application, under the following conditions:
 - (1) The applicant submits a complete application prior to July 2, 2018;
 - (2) The applicant is operating pursuant to a license, permit, or other authorization from the local jurisdiction;
 - (3) The applicant continues to operate in compliance with all state and local requirements; and
 - (4) The applicant submits documentation of operation prior to January 1, 2018, including, but not limited to, any of the following:
 - (A) Local license or permit or other written authorization;
 - (B) Collective or Cooperative Membership Agreement;
 - (C) Tax or business forms submitted to the Board of Equalization or Franchise Tax Board;
 - (D) Incorporation documents;
 - (E) Receipts evidencing business expenditures;
 - (F) Any other verifiable business record adequate to demonstrate the operation of the business prior to January 1, 2018.

- (b) The Department may request additional documentation to verify the applicant's date of commencement of operations.

By changing the dates in the code sections referenced above, it will be more permissive at the local level to allow for manufacturing activities to continue until which time the permits is approved or denied but would not help applicants receive '**good standing**' at the State level unless the criteria specified are met prior to January 1, 2016.

2. State Requirements for Local Jurisdiction Approval.

As part of a State license application, the applicant must provide the following: "Documentation issued by local jurisdiction certifying the application is in compliance with all local ordinances and regulations or will be in compliance with all local ordinances and regulations by the time the Department issues the license." (§40128 (A)(7)).

To be considered in "good standing" and eligible for priority processing, the applicant will need to provide the State with the following information (§5024):

(e) Name of the local jurisdiction office that issued the license, permit, or other authorization for the applicant to conduct commercial cannabis activity in the jurisdiction as required by Business and Professionals Code section 19320;

(f) Name and contact information for the person authorized by the local jurisdiction to sign on its behalf; and

(h)A Statement to the effect of: "The above named party has been issued a license, permit, or other authorization from this jurisdiction to conduct commercial cannabis activity. The above named party began operations and was in good standing in this jurisdiction on or before January 1, 2016."

3. Other Changes made to Zoning Ordinance Chapter 20.243.

Other changes to the proposed Zoning Ordinance Chapter 20.243 include:

- Farm Bureau recommendations regarding exception language in Section 20.243.160 have been added.
- The prohibition on using butane has been eliminated (Section 20.243.080).

4. Other changes to Business License Regulations Chapter 6.36.

Other changes to the Business License Regulations Chapter 6.36 include:

- Adding the definition of "cannabis facility" with a reference to Section 20.243.050.
- Minor clean up changes to the requirements to Cannabis Facility Business License (Section 6.36.020).
- Additional description of license fee and Category Types (Section 6.36.030).
- Minor clarifications to the application procedure (Section 6.36.060)
- No defense language that was originally in Section 6.36.020 was inadvertently deleted in the previous draft provided to the Board; it has been added back into the ordinance Section 6.36.070.

- Clarification that renewal applications will be referred to all relevant departments (Section 6.36.080) has been added.

5. New Considerations.

- New License Types have been identified in Draft State Manufacturing Regulations. Type P Licenses are for entities that only package or repackage medical cannabis products or label or re-label the cannabis product container. Type P Licenses are not for those who package product they manufacture with a Type 6 or Type 7 License. Type N Licenses are for manufactures that produce edible products or topical products or other products but do not conduct extractions. Type N Licenses are subject to same restrictions as Type 6 Licenses. Staff requests direction on whether these license types should be included in the Ordinance.
- The security measures in the Draft State Manufacturing Regulations are more specific and detailed than the measures identified in Chapter 20.243. Staff requests direction of whether these should be enhanced or eliminated with a reference to the State Regulations.

6. Additional Item – Enforcement Related Provisions.

- County Counsel is still in the process of revising the enforcement-related provisions of the two ordinances. It is intended that this language be revised prior to the initial review by the Planning Commission, and the Board would see the revised language prior to adoption. As stated previously, the sections would be revised for consistency with other enforcement provisions in the County Code.

E. **Next Steps:** Staff requests that the Board review the revised Cannabis Facilities Code (Chapters 6.36 and 20.243), the items listed above, and take public comment on the matter; and after doing so, provide recommendations to staff for any desired revisions. After revisions are made staff will take the item to the Planning Commission for review and recommendations. At such time the Planning Commission completes their review, the ordinances will then return to the Board for their final decision.

Attachments:

- (A) Draft Ordinance Update-Chapter 20.243
- (B) Draft Business License Regulations-Chapter 6.36
- (C) Zoning District Maps by Community