



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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TO: Board of Supervisors

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**SUBJECT: AMENDMENTS TO THE MENDOCINO COUNTY CODE TO ADD CHAPTER
6.36 – CANNABIS FACILITIES BUSINESSES AND CHAPTER 20.243 –
CANNABIS FACILITIES**

1. INTRODUCTION

The Mendocino County Board of Supervisors (Board) intends to establish the Cannabis Facilities Code (CFC) to govern the commercial processing, manufacturing, testing, dispensing, and distributing, of cannabis for medical and adult use in unincorporated Mendocino County, outside the Coastal Zone. The CFC will be established through proposed Mendocino County Code Amendments to add two new chapters. Chapter 6.36 —Cannabis Facilities Businesses, of the Mendocino County Business License Code—will be administered by the Business License Division of the County Treasurer - Tax Collector Department to require business licenses and annual renewals for businesses engaging in commercial processing, manufacturing, testing, dispensing, and distributing of cannabis. Chapter 20.243 —Cannabis Facilities, of the Mendocino County Zoning Ordinance Inland—will be administered through the Department of Planning and Building Services (PBS) to regulate land use and zoning to ensure that the location and scale of processing, manufacturing, testing, dispensing, and distributing, of cannabis is compatible with the County's land use and environmental setting, establish permit requirements for certain cannabis businesses, and require compliance with environmental and public health regulations.

Chapter 6.36 is intended to be of County-wide application. Changes proposed by staff would incorporate certain limitations of Chapter 20.243 so that the limitations would apply to any cannabis business license applied for in the County. As applied, this would mean that cannabis businesses in the Coastal Zone could seek a cannabis business license, but be subject to the same limitations developed for Chapter 20.243; such businesses would also remain subject to all existing Coastal Zoning Code requirements.

The CFC was originally presented at a Board of Supervisors Workshop on January 27, 2017. At that workshop, the Board and members of the public provided feedback regarding the initial draft Chapter 6.36 Business License Regulations and Chapter 20.243 of the Zoning Ordinance. A second Board Workshop was held on May 23, 2017. At that workshop the Board provided several directives and requested that the item be sent to the Planning Commission for review

and recommendation. Planning Staff addressed the Board directives in the Planning Commission staff report and made changes to the draft CFC to for Planning Commission review. The staff report prepared for the Planning Commission is attached to this agenda packet. The Planning Commission held a public hearing on September 7, 2017. At that hearing the Planning Commission solicited public comments and made recommendations to the Mendocino County Board of Supervisors regarding Ordinance Amendment OA_2017-0001 and the related CEQA exemption.

2. BACKGROUND

The current effort to adopt local regulations related to cannabis facilities is responsive to recent statewide legislation and guidelines that have been issued regarding cannabis facilities. In January 2016 the Medical Cannabis Regulation and Safety Act (MCRSA) took effect which developed guidelines for the establishment of regulations for the medical cannabis industry. MCRSA created a dual license system, which required medical cannabis businesses to obtain State and local permits for cultivation, processing, manufacturing, testing, dispensing, distribution and transportation of medical cannabis. MCRSA was followed by the passage of Proposition 64, the Adult Use of Marijuana Act (AUMA) in November 2016. AUMA developed guidelines for the establishment of regulations governing adult use cannabis industry.

Most recently these two bodies of regulation have essentially been combined into the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) which was passed in June 2017. MAUCRSA generally imposes the same requirements on both commercial medical and commercial-adult use cannabis activity. Under MAUCRSA, the types of licenses available for commercial adult-use cannabis activity and commercial medicinal cannabis activity are the same.

State licensing under MAUCRSA is expected to be available January 1, 2018.

In an effort to implement MCRSA, prior to the passage of AUMA and ultimately MAUCRSA, the State prepared *Statewide Proposed Provisions Applicable to All Applicants and Licensees and Statewide Proposed Medical Cannabis Manufacturing Regulations*. These regulations were available for public comment from April 18 to June 13, 2017 and contained detailed regulations for applying for State licensing and operational standards for manufacturing. Although MCRSA was repealed, the State has indicated that the robust public comments they have received will be incorporated into MAUCRSA Regulations. MAUCRSA regulations are expected to be released in November 2017.

Local regulations

Staff has prepared specific amendments to the Mendocino County Inland Zoning Code related to the commercial processing, manufacturing, testing, retailing/dispensing, distribution of cannabis and cannabis microbusinesses, which are to be in a new Chapter 20.243. In addition, staff has prepared a new business license ordinance, specific to cannabis facilities business licenses, which is proposed to be located in Chapter 6.36 of the County Code.

Given that the State's programs are still in development, the Board gave direction to keep the CFC Chapters relatively simple and put more detailed requirements into a performance or user manual so that the Chapters do not have to be revised when the State finalizes their permitting process.

3. PLANNING COMMISSION RESOLUTION

At the September 7, 2017 Planning Commission hearing the Planning Commission provided several recommendations to the Board regarding Ordinance Amendment OA_2017-0001 and the related California Environmental Quality Act (Public Resources Code section 21000 *et seq.*;"CEQA") exemption which are addressed individually below.

- a) *The Planning Commission recommended that the Board of Supervisors consider the adoption of Ordinance Amendment OA_2017-0001 exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).*

As proposed by Staff, all of the facility use types are consistent with the use types found in the zoning districts in which they are proposed. For example, retail cannabis facilities are enumerated in the Commercial zoning district similar to any other retail facility. Likewise, cannabis manufacturing would be allowed in the Industrial zoning district similar to other types of manufacturing facilities. The allowance of these use types have been vetted through the adoption of the Environmental Impact Reports (EIR) for the Mendocino County General Plan and the Ukiah Valley Area Plan and are consistent with existing zoning regulations. As proposed by Staff, the Cannabis Facilities Code merely expressly clarifies that cannabis facilities are an allowed use in a particular zoning district, outlines general limitations, and details application requirements for cannabis facilities. For this reason, it- can be seen with certainty to not cause an environmental effect that has not been previously analyzed. Therefore, the project can be found exempt from CEQA, pursuant to CEQA guidelines Section 15061(b)(3), the General Rule exemption.

- b) *The Planning Commission recommended that the Board of Supervisors find that the adoption of Ordinance Amendment OA-2017-0001 consistent with the General Plan.*

See the General Plan consistency analysis section below.

- c) *The Planning Commission recommends that the Board of Supervisors consider the adoption of Ordinance Amendment OA-2017-0001 in the form attached to this resolution as Exhibit A, with the following recommended changes:*

1. *Section 20.243.070, subdivision (A) be revised so that the reference to Section 20.243.110 shall be changed to Section 20.243.090.*

This change has been made.

2. *The definition of “volatile solvent” in section 20.243.030 be revised to delete the second sentence “Examples of volatile solvents include but are not limited to, butane, hexane, propane, and ethanol.”*

This change has been made.

3. *Section 20.243.060 be revised so that (i) Processing permits be allowed in the AG, RL and FL zoning districts with a minor use permit; (ii) Manufacturing level 2 permits be allowed in the RC, I1, I2 and PI zoning districts with a minor use permit; (iii) Dispensing and Retail permits be allowed in the C1 and C2 zoning districts with a zoning clearance; and (iv) add performance standards to the administrative permit required for the C2 zoning district for Microbusiness permits so that the retail use is the primary use and other uses are incidental and subordinate.*

Item (i) . The Planning Commission recommended processing be allowed in AG, RL, and FL zoning districts with a minor use permit. In these zoning districts no inconsistency is created. Table 1 has been updated to reflect the Planning Commission recommendation. Additionally, upon further review the processing use type has been corrected to reflect that it is an agricultural use type rather than an industrial use type consistent with County Zoning Code.

Item (ii) During previous Board direction, minor use permits were to be required for Retail and Medical Retail/Dispensaries. This would be more restrictive than other retail uses in the commercial zones which are principally permitted. The Planning Commission recommended that these uses be allowed with a Zoning Clearance and Table 1 has been updated to reflect this recommendation.

Item (iii) Previously, major use permits were required for Manufacturing level 2 in the RC, I1, I2 and PI zoning districts. The Planning Commission recommended that Manufacturing level 2 be allowed in these specific zone with a minor use permit. Table 1 has been updated to reflect this change.

Item (iv) In the case of microbusinesses, which allow for multiple license/use types, language was added to Chapter 20.243 to clarify that the assigned use type be consistent with the predominant use of the microbusiness. For example, retail would need to be the predominate use for a microbusiness located in a Commercial zoning district. . While other uses could occur, they would need to be subordinate to the retail use. In the case of microbusinesses in Industrial zoning districts, manufacturing would need to be the predominate use. In all cases, any cultivation occurring as part of the microbusiness would need to be compliant with Chapters 10A.17 and 20.242 of the Mendocino County Code. Because Chapter 20.242 does not allow for cultivation in commercial zones, microbusinesses in commercial zones would not be able to include cultivation.

4. *Section 20.243.040(A)(2) be revised to read as follows:
“Processing facilities for cannabis grown on site pursuant to a permitted cultivation operation shall be allowed as an accessory use in all zones where cultivation is permitted pursuant to Chapter 10A.17 Medical Cannabis Cultivation Ordinance.”*

This change has been made.

5. *Section 20.243.110 be revised to include a definition/description of the Mendocino County Certified Unified Program Agency.*

To address this recommendation the Mendocino County Certified Unified Program Agency (CUPA) has been added to the definitions. The CUPA is the agency certified to implement hazardous waste and hazardous materials management regulations, and in Mendocino County is the Division of Environmental Health.

6. *Section 20.243.040(E)(2)(b) be revised to add statutory or regulatory citations for the phrase “existing smoking ordinances.”*

This change has been made.

- d) *The Planning Commission further recommends that the Board of Supervisors consider the following additional issues related to Ordinance Amendment OA_2017-0001:*

1. *That Chapter 20.243 be reviewed for compatibility with state statutes revised by Senate Bill 94 (“MAUCRSA”).*

Staff reviewed the Ordinance for overall consistency with the recently published Senate Bill 94 (“MAUCRSA”) and as a result made several updates to the definitions section.

Table 1 has been updated to reflect the MAUCRSA license types. One significant change in MAUCRSA is the elimination of the term dispensary.

Within MAUCRSA licenses are separated into two license types:

- “A-license” which means a state license issued for cannabis or cannabis products that are intended for adults 21 years of age and over and who do not possess physician’s recommendations; and
- “M-license” which means a state license issued for commercial cannabis activity involving medicinal cannabis.

Dispensaries are now incorporated into the M-License called medical retail. There are still some significant differences in the medical retail and A-license

adult use retail. Under medical retail customers must possess a physician's recommendation and are not required to be 21 years of age.

In the proposed Chapter 20.243 medical and adult use retail are addressed separately in order to capture this difference and also to clarify that in a medical retail setting there is no prohibition against a compassionate use program, while in an adult use retail setting it would be prohibited to have free product give-aways.

Staff will continue to review MAUCRSA and Assembly Bill 133, which was chaptered on September 16, 2017, to determine if further revision to the County's cannabis regulations are warranted.

2. *That Chapter 20.243 be reviewed for compatibility with statutes and regulations regarding home kitchens.*

This item falls under the jurisdiction of Environmental Health. Environmental Health has previously expressed concern with allowing cannabis products to be produced in home kitchens. Staff from Environmental Health will be present at the Board of Supervisors meeting.

3. *That a temporary permit or authorization process be added to Chapter 20.243.*

Business and Professions Code section 26050.1, adopted by MAUCRSA, provides for the ability of the state to issue temporary licenses to applicants for state licenses. To do so, the applicant must submit a copy of a valid license, permit, or other authorization, issued by a local jurisdiction, that enables the applicant to conduct commercial cannabis activity at the location requested for the temporary license. Staff told the Planning Commission that it would review this language to determine whether any aspect of it could support issuing temporary licenses on a local basis.

The state's temporary license program is predicated on some level of local government approval or authorization for an applicant to conduct commercial cannabis activity. This means the state is able to rely on that lower-level approval as an indication that certain hoops have already been addressed by the applicant. Staff remains concerned about using this language to create a temporary County license because there is no lower approval body for the County to rely on. However, staff will continue to review the issue.

4. *Whether edible cannabis products may be produced at a home manufacturing facility.*

This item falls under the jurisdiction of Environmental Health. Environmental Health has previously expressed concern with edible cannabis products in

general and their ability to be produced in home manufacturing facility. Staff from Environmental Health will be present at the Board of Supervisors meeting.

5. *Section 20.243.070 be revised to (i) allow the use of such facilities with one of the following types of permits: administrative permit, minor use permit or major use permit; (ii) modify paragraph (a)(3) to read “there will be no net expansion of impervious surfaces”; (iii) delete paragraph (a)(4); (iv) modify paragraph (a)(5) to read that “no trees shall be unlawfully removed”; and (v) consider allowing such facilities in any zoning district subject to compliance with the County’s existing nonconforming use requirements in Chapter 20.204.*

As to item (i), the Planning Commission provided direction that any of an administrative permit, minor use permit or major use permit would be adequate for the permit identified in this section. Staff seeks direction from the Board of Supervisors as to whether it desires to stay with a major use permit or whether the section should be amended to be a minor use permit or an administrative permit.

The changes in items (ii)-(iv) have been made. Staff has amended this section to expand the exception beyond FL, AG, or RL Districts, to include any other zoning district where such facilities exist consistent with the County’s nonconforming use requirements found in Chapter 20.204.

6. *Section 20.243.080 to be revised to clarify that existing cannabis facilities with an approved business license would not be required to obtain a new permit pursuant to the Zoning Code.*

This section has been changed to clarify that existing dispensaries operating with a valid business licensee would not be subject to additional permit review, but would be required to meet the basic general limitations outlined in Chapter 20.243.

4. ADDITIONAL CHANGES TO CHAPTER 20.243

The following changes were made to Chapter 20.243 by Staff after the Board workshop on May 23, 2017 and were included in the draft presented to the Planning Commission.

Setback requirements have been modified to use the MAUCRSA 600-foot setback, but use both the County’s and the State’s list of sensitive receptors. This change was consistent with Board direction at the time of the referral of this ordinance to the Planning Commission. However, on August 29, the Board of Supervisors adopted changes to the wording of the setback in Chapter 10A.17, which were discussed with the Planning Commission at its September 7, 2017, meeting. Staff would like direction from the Board as to whether amend the setback to be consistent with the changes made in Chapter 10A.17.

Requirements to comply with all applicable county codes and MAUCRSA were moved to the General Limitations section rather than repeating the requirements within each use type. The severability section was moved to the end of Chapter 20.243 and changed to match the Severability language in the Cultivation Ordinance. Upon further review, staff is recommending that the severability clauses be removed from the individual chapters and placed into an uncodified section of the final ordinance.

Under the provisional operation Section (20.242.080) the item regarding violations was deleted. Because not all facilities require a facilities permit (some are allowed with a Zoning Clearance) the language was not applicable to all facilities and there are other ways to address violations such as not issuing a Business License. This is already standard practice in violation cases and additional language did not seem warranted here.

Section 20.243.110, Permit Revocation was revised from previous drafts of Chapter 20.243 to better refer to existing permit revocation provisions elsewhere in the Zoning Code.

5. CHAPTER 6.36

This section will be administered by the County Treasurer - Tax Collector and requires business licenses and annual renewals for businesses engaging in commercial processing, manufacturing, testing, dispensing, and distributing of cannabis. In cases where only a zoning clearance is required by Chapter 20.243, the business license issued pursuant to Chapter 6.36 will be the last approval by the County.

As shown on the enclosed redline version of Chapter 6.36, staff is recommending certain changes to Chapter 6.36 since the Planning Commission meeting. Some changes are minor, such as referring to MAUCRSA instead of MCRSA and AUMA, or revising certain terms used in the ordinance. The Tax Collector has requested additional flexibility in the duration of a Cannabis Facility Business License, and language has been revised in section 6.36.040(B) to accommodate this request.

Cannabis Facility Requirements

A new paragraph (C) is proposed to be added to section 6.36.020. This paragraph provides that all cannabis facilities shall comply with the general limitations set out in section 20.243.050 (of the Zoning Code), and specifically the setback provision of that section. This change is recommended to create some level of consistency throughout the County as to certain minimum standards for cannabis facilities.

Chapter 6.36 is intended to be the business license requirement for cannabis businesses throughout the County and not tied to any particular region, whether Coastal or Inland. However, the Board's previous direction to staff was to not adopt a moratorium on cannabis facilities until comprehensive regulations were prepared and to work with the County's existing zoning standards until the revised regulations were finalized. In the context of the Coastal Zone, any new zoning chapter (like the proposed 20.243) will require an LCP amendment.

Short of doing that, the County could rely on allowing cannabis uses in zoning districts where analogous uses are already allowed; this is essentially how the zoning table in 20.243 was developed, though the Board did direct certain deviations from what the standard code allowed (for example, directing that a major use permit be required for a dispensary in a commercial zone, when that would otherwise be an allowed use as a retail use).

However, without certain amendments to Chapter 6.36, cannabis facilities would be subject to different standards in the Coastal Zone than in the Inland Zone, as section 20.243.050 would only apply in the Inland Zone. Section 20.243.050 contains general limitations on cannabis facilities, including the County's setback requirement from sensitive receptors. It is important to note that these limitations largely affect operational standards, such as security measures and cannabis waste disposal, and do not change the zones where facilities could be located. Without incorporating the general limitations of section 20.243.050 into Chapter 6.36, cannabis facilities in the Coastal Zone would only be subject to state law and regulations, including the state's setback from sensitive receptors, which does not match that of the County.

As such, staff is recommending that for the time being, the County rely on the existing Coastal Zoning Code to determine what uses are allowed in certain areas and that the general limitations language from section 20.243.050 be required as an element of the business language.

Conviction History

Changes are also proposed to the language regarding prior criminal convictions in section 6.36.060. This language has been revised to refer to the same Penal Code section that Chapter 10A.17 refers to. As previously discussed with the Board of Supervisors in relation to Chapter 10A.17, MAUCRSA contains a longer list of potential crimes that could result in the denial of a state license application, as well as a process that appears to allow a licensing authority to determine that an applicant with a prior conviction is still suitable for the issuance of a license. At present time, the County has not amended Chapter 10A.17 to match MAUCRSA, but the County would amend the ordinance in early 2018 to simply remove the requirement for a County background check when the State's background check system is up and running. As such, staff recommends making Chapter 6.36 consistent with the County's existing Chapter 10A.17. However, the Board could provide direction to staff to instead refer to Business and Professions Code section 26057, which has the complete list of crimes the State will search for, or the Board could provide direction to eliminate the criminal conviction review requirement, since the proposed ordinance will be effective approximately six weeks prior to the scheduled date that State licenses will become available.

6. GENERAL PLAN CONSISTENCY ANALYSIS:

To determine the allowable zones for each facility type, Staff assigned each State license type a use type found in current Zoning Ordinance. The level of review required for each license type is consistent with that required for the assigned use type in a particular zoning district. The permitting requirements identified in proposed Chapter 20.243, Table 1, generally mirror the

uses that are permitted and conditionally permitted under existing zoning districts. For example, manufacturing is a use that is a permitted use in the Industrial Zone. As such, it is proposed that cannabis manufacturing would also be a permitted use in the Industrial Zone. The zoning districts are correlated with General Plan designations that specify a range of allowed uses. By maintaining consistency with the zoning district uses, a finding for General Plan consistency can also be made.

The Board directed Staff to explore ways of allowing processing and manufacturing in the Commercial zoning districts. This desire was reiterated by the Planning Commission. Processing and manufacturing uses are not currently enumerated uses in the C1 and C2 zoning districts nor are they an allowed use in the corresponding General Plan commercial land use designation. Allowing these use types in the C1 and C2 zoning districts would be an expansion of the use types currently permitted.

The intent and general uses of the commercial land use designation as stated in the General Plan are as follows:

Intent: The Commercial classification is intended to be applied to lands appropriate for a variety of commercial uses. Lands classified Commercial should be within or contiguous to developed areas, such as near the boundaries of cities and in Community Planning Areas, and should be served by the publicly-maintained circulation network and should be situated in locations where future growth is anticipated. Residential uses in the commercial classification shall require County findings that the site need not be reserved for future commercial uses, and that the residential use is compatible with existing or anticipated commercial uses.

General Uses: General commercial, mixed uses, public facilities, public services, public assemblies, residential developments, utility installations.

The intent of the commercial land use designation is to allow for a variety of commercial uses. The general uses do not include processing and manufacturing use types.

Conversely, in the industrial land use designation, the general uses identified are: processing and manufacturing, industrial public utilities, industrial public facilities, compatible commercial uses, and utility installations.

Because processing and manufacturing uses have not been previously contemplated in the Commercial land use designations, they were not included in the impact analysis of the General Plan EIR. To include them now, it would be most appropriate to prepare a general plan amendment and conduct environmental review under CEQA. This may result in the preparation of an addendum, a supplemental EIR or other environmental document.

There are broad principles and policies in the General Plan that are supportive of small-scale or niche manufacturing such as General Plan Principle 2-2c:

“Support the county’s resource-based economy and take actions that protect and enhance the county’s diverse natural resources.

- *Promote small-scale or niche manufacturing using local resources for local or general use.”*

The Development Element of the General Plan contains the following policies related to Commercial districts:

- Policy DE-48: Support business creation, expansion, retention and redevelopment to serve local and regional needs, consistent with General Plan objectives.
- Policy DE-49: Expand economic opportunities that respect the individual character of each community area.

Principles and policies such as those cited above could aid in justifying a General Plan amendment for expanding the uses allowed in the commercial land use designation. But alone are not sufficient to expand the allowed uses of the commercial land use designation.

As proposed and presented by Staff, the adoption of this ordinance and creation of Chapter 20.243 is consistent with the applicable goals, policies and land use designations of the General Plan.

7. RECOMMENDATION

Staff recommends that, following the public hearing and taking testimony from the general public, the Board of Supervisors Introduce and Waive First Reading of an Ordinance Adopting Chapter 6.36 – Cannabis Facilities Businesses and Chapter 20.243 – Cannabis Facilities. Alternatively, the Board of Supervisors may provide additional direction to staff regarding modifications to the ordinance; depending on the nature of those changes, the item may need to be re-referred to the Planning Commission.

Attachments:

1. Redline Draft of Chapter 6.36 *Cannabis Facilities Businesses*
2. Redline Draft of Chapter 20.243, *Cannabis Facilities*
3. Planning Commission Staff Report prepared for September 7, 2017, meeting
4. Planning Commission Resolution adopted at September 7, 2017, meeting
5. Ordinance Adopting Chapter 6.36 – Cannabis Facilities Businesses and Chapter 20.243 – Cannabis Facilities