

TO: Board of Supervisors

FROM: Planning and Building Services

MEETING DATE: April 23, 2019

DEPARTMENT CONTACT: Julia Acker Krog

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ITEM TYPE: Regular Agenda

TIME ALLOCATED FOR ITEM: 2 hours

AGENDA TITLE:

Discussion and Possible Direction to Staff on Ordinance Amendment No. OA_2019-0001, which Proposes to Amend the Mendocino County Local Coastal Program to Add Two New Chapters to the Coastal Zoning Code Regulating: (1) Coastal Cannabis Cultivation and (2) Coastal Cannabis Facilities.

RECOMMENDED ACTION/MOTION:

Provide direction to Staff on the current draft ordinances.

PREVIOUS BOARD/BOARD COMMITTEE ACTIONS:

In 1991 the Board adopted Division II of Title 20 of Mendocino County Code through Ordinance No. 3785. On April 17, 2017, the Board of Supervisors gave direction to staff to bring forward possibilities for a cannabis cultivation ordinance in the Coastal Zone.

SUMMARY OF REQUEST:

Staff has prepared drafts of ordinance chapters for the Coastal Zone to regulate both coastal cannabis cultivation and coastal cannabis facilities. The chapter regarding Coastal Cannabis Cultivation will govern activities related to the cultivation of cannabis and establish limitations on the location and intensity of cannabis cultivation in the unincorporated area of Mendocino County within the Coastal Zone Area, excluding the Town of Mendocino. The chapter regarding Coastal Cannabis Facilities will regulate land use and zoning to ensure that the scale of processing, manufacturing, testing, retailing/dispensing and distribution of cannabis is compatible with the County's land use and environmental setting, establish permit requirements for cannabis businesses and require compliance with environmental and public health regulations. Please see the staff memorandum and attachments for additional information.

ALTERNATIVE ACTION/MOTION:

N/A

SUPPLEMENTAL INFORMATION AVAILABLE ONLINE AT: www.mendocinocounty.org/government/planning-building-services/public-notices

FISCAL IMPACT:

SOURCE OF FUNDING: N/A

BUDGETED IN CURRENT F/Y: N/A

CURRENT F/Y COST: N/A

ANNUAL RECURRING COST: N/A

SUPERVISORIAL DISTRICT: DISTRICTS 4 & 5

VOTE REQUIREMENT: MAJORITY

AGREEMENT/RESOLUTION/ORDINANCE APPROVED BY COUNTY COUNSEL: Yes

CEO LIAISON: Sarah Dukett, Administrative Analyst II

CEO REVIEW:

CEO COMMENTS:

FOR COB USE ONLY

Executed By:
Date:
Note to Department:

Final Status:
Executed Item Number:



COUNTY OF MENDOCINO
DEPARTMENT OF PLANNING AND BUILDING SERVICES

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MEMORANDUM

DATE: APRIL 23, 2019
TO: HONORABLE BOARD OF SUPERVISORS
FROM: PLANNING AND BUILDING SERVICES STAFF
SUBJECT: OA_2019-0001 COASTAL CANNABIS CULTIVATION AND FACILITIES ORDINANCES

1. INTRODUCTION

The Mendocino County Board of Supervisors (Board) has given direction to staff to establish a Coastal Cannabis Cultivation Ordinance to govern the cultivation of cannabis and a Coastal Cannabis Facilities Ordinance to govern the commercial processing, manufacturing, testing, dispensing, retailing, and distributing of cannabis in the unincorporated areas of the Coastal Zone of the County of Mendocino. The Coastal Cannabis Cultivation Ordinance and Coastal Cannabis Facilities Ordinance will be established through proposed Mendocino County Code Amendments to add two new chapters to the Mendocino County Coastal Zoning Code: Chapter 20.537 — Coastal Cannabis Cultivation Ordinance and Chapter 20.538 – Coastal Cannabis Facilities Ordinance. These chapters would be administered through the Department of Planning and Building Services (PBS). The chapters are intended to regulate and establish permit requirements for the location and scale of cannabis cultivation, processing, manufacturing, testing, dispensing, retail, and distribution to ensure that activities are compatible with the County's land use and zoning and to require compliance with environmental and public health regulations.

The Coastal Cannabis Cultivation Ordinance and Coastal Cannabis Facilities Ordinance are being presented to the Board of Supervisors to solicit board direction on the initial drafts. After receiving Board direction staff will update the drafts and present them to the Planning Commission who will review and make recommendations to the Board.

These chapters are an amendment to the Local Coastal Plan as implemented through the Coastal Zoning Ordinance. Once the Board has approved these chapters they will need to be certified by the California Coastal Commission.

Minor changes to Chapters 10A.17 -Mendocino Cannabis Cultivation and 6.36- Cannabis Facilities Businesses will be needed to acknowledge these new chapters. These will be proposed and brought forward at a later date.

2. BACKGROUND

- On April 4, 2017 the Board adopted Ordinance No. 4381, adding Chapter 10A.17 – Mendocino Cannabis Cultivation and Chapter 20.242 – Cannabis Cultivation Sites to the County Code regarding the cultivation of medical and adult-use cannabis in Mendocino County to create a permit program for cultivation in the

unincorporated areas of inland Mendocino County. A Mitigated Negative Declaration (MND) was adopted for Ordinance No. 4381 (SCH No. 2016112028). The ordinance took effect on May 4, 2017.

- On October 17, 2017, the Board adopted Ordinance No. 4394 adding Chapter 20.243 – Cannabis Facilities and Chapter 6.36 – Cannabis Facilities Businesses to the County Code regarding the processing, manufacturing, testing, dispensing, retailing, and distributing of medical and adult-use cannabis in Mendocino County to create a permit program for cannabis facilities in the unincorporated areas of inland Mendocino County. Adoption of Ordinance No. 4394 was determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3), the General Rule Exemption.
- Following the adoption of Ordinance No. 4381 and No. 4394, direction was given to staff to draft Ordinances to cover cannabis cultivation sites and facilities in the unincorporated areas of the Coastal Zone of Mendocino County. Drafts of the Coastal Cannabis Ordinances are provided in the attachments for Board review and direction.

3. COASTAL CANNABIS CULTIVATION ORDINANCE

Chapter 20.537

The Coastal Cannabis Cultivation Ordinance would allow the cultivation of cannabis in the unincorporated areas of the Coastal Zone of the County of Mendocino. Due to the unique environment of the Coastal Zone and the existing comprehensive review process of development projects proposed in the Coastal Zone, the attached draft Chapter 20.537 – Coastal Cannabis Cultivation Ordinance exhibits numerous differences from its inland counterpart – Ordinance No. 4381. The key differences that should be noted include:

1. Only cultivation for personal use where no associated improvements meeting the Coastal Act and County Code definition of development are requested or required would be exempt from a coastal development permit pursuant to these regulations and the standard Coastal Zoning Code.
2. The Town of Mendocino was excluded from the ordinance to ensure consistency with the uses allowed in Division III of Title 20 and the associated Mendocino Town Plan.
3. Relevant definitions would be modified to align with the Coastal Zoning Code, including “Cultivation site,” “Legal parcel,” “Publicly traveled private road,” and “Rental unit.”
4. The provision for a Compliance Plan with approved permits is no longer necessary, as each project will be subject to discretionary review. Any project-specific conditions will be incorporated into the Conditions of Approval for each coastal development permit.
5. Coastal development permits for cannabis cultivation may be assigned to another person subject to the requirements of Section 20.536.035 of the Coastal Zoning Code.
6. Permits from relevant agencies (CDFW, RWQCB, USACE, etc.) are not required to be included in the submittal of an application for a coastal development permit for cannabis cultivation. The relevant agencies will be contacted for comment during the referral process. Any conditions set by the agencies will be included in the Conditions of Approval of the coastal development permit. This is the current standard for other coastal development permits.
7. Language for standards regarding use of generators has been consolidated into one section.
8. Tree removal language has been modified for consistency with the coastal major vegetation removal standards.

9. Due to the limited number of industrial-zoned parcels in the Coastal Zone, cultivation is not permitted in industrial zones.

The differences between the coastal and inland cannabis cultivation ordinances enumerated above are recommended to better conform to the requirements of a permitting program in the Coastal Zone. Staff is requesting direction from the Board on the following where staff recommendations differ from the inland chapters:

1. *The removal of the differentiation between Rural Residential (RR) zones (RR-1, RR-2, RR-5, RR-10).*

Staff recommends that eligibility for cultivation permits be based on actual parcel acreage and relate it to adjacent parcel acreage rather than acreage-based zoning districts, as parcels within the zoning districts may vary widely in size.

2. *No exception to the dwelling unit requirements for RR-10 parcels*

Staff recommends that all parcels within the Residential Rural zoning district be required to have a legal dwelling without exception. This ensures that each parcel will be developed with the principal use in the zone prior to the issuance of any cultivation permits.

3. *Indoor cultivation allowed in a wider range of zoning districts.*

Based on the constraints of the coastal weather, staff anticipates that indoor cultivation may be the most common cultivation type pursued on the coast. With a coastal development permit required site specific analysis and conditions of approval can ensure there is no conflict with adjacent uses and that indoor cultivation is appropriate for the site.

4. *The treatment of all permits as new permits.*

Staff recommends that all cultivation sites be subject to the same requirements and treated as a new use under this chapter. This simplified approach, as compared to the multi-phased approach inland, will allow new and existing cultivators to seek permits simultaneously following the adoption of these regulations. This would negate the need for proof of prior cultivation and facilitate a modification to the definition of "legal parcel". Existing cultivators that have engaged in construction and/or activities that meet the definition of development in the coastal zone without the benefit of a coastal development permit would be processed as an after the fact coastal development permit. This is typical of all coastal development permits that are sought after the fact.

5. *Approach to setback reductions*

As every permit will be subject to either a Coastal Development Permit or a Coastal Development Use Permit, staff recommends that a setback reduction exception be built into the ordinance. Specific findings are recommended in the ordinance to allow for a reduction to:

- The 1,000-foot setback from youth-oriented facility, a school, or a park;
- The 100-foot setback from any adjoining legal parcel under separate ownership or access easement; and
- The 200-foot setback from any occupied legal residential structure located on a separate legal parcel.

Section 20.537.080(A)(1) through (3) describes different reduction requests and required findings for granting the request.

6. *Water source/ availability requirements defer to the Mendocino County Coastal Groundwater Development Guidelines.*

The Mendocino County Coastal Groundwater Development Guidelines were established to protect coastal water resources. As cultivation will be considered development, in most cases, it will be subject to the same requirements of any other development in the Coastal Zone and the required water investigation requirements will be based upon the projected water use for the particular site. Minor water users are subject to demonstrating Proof of Water, as required by Table 1 of the Mendocino County Coastal Groundwater Development Guidelines. There is a provision that Mendocino County Division of Environmental Health to grant an exception if it can be demonstrated that there is no increase in water use on the site as a result of the proposed development. Major water user thresholds are detailed in Table 1 of the Mendocino County Coastal Groundwater Development Guidelines as equal to or greater than 1,500 gallons per day. If a project qualifies as a major water user then a hydrological study is required prior to permit approval. There is a provision that allows the Mendocino County Division of Environmental Health (DEH) to waive the requirement under certain circumstances and to require studies for minor water use facilities if they are in areas of marginal or critical water resources. Staff recommends that the water availability be subject to the existing standards for commercial development within the coastal zone.

4. COASTAL CANNABIS FACILITIES ORDINANCE

Chapter 20.538

The Coastal Cannabis Facilities Ordinance would allow for the commercial processing, manufacturing, testing, dispensing, retailing, and distributing of cannabis in the unincorporated areas of the Coastal Zone in Mendocino County. Due to the unique environment of the Coastal Zone and the existing comprehensive review process of development projects proposed in the Coastal Zone, the attached draft Chapter 20.538 – Coastal Cannabis Facilities Ordinance exhibits numerous differences from its inland counterpart – Ordinance No. 4394. The key differences that should be noted include:

1. The coastal town of Mendocino was excluded from the Ordinance in order to ensure consistency with the uses allowed in the town.
2. Relevant definitions would be added, including "Cannabis", "Cannabis event", "Dwelling unit", "Legal Parcel", "Park", "Permit", "Permittee", "Private residence", "Processing", "School", "Shared-Use Facility or Shared Facility".
3. Processing may be permitted as an accessory use to a retail license for a storefront dispensary but shall be limited to cannabis to be sold at that retail location. The floor area related to processing shall not exceed twenty-five (25) percent of the retail floor area open to the general public. The floor area shall not include administrative space, storage space, or any other space not visible to customers.
4. A cultivator with multiple cultivation permits and/or locations may process the cultivator's own cannabis at a single facility located on one of the parcels, provided, however, that the parcels on which the cultivation is occurring are contiguous and under the same ownership.
5. Manufacturing structures permitted for non-volatile cannabis may operate as a "Shared Facility" provided certain conditions are met.
6. A cultivator with multiple cultivation permits and/or locations may operate a Self-Distribution facility located on one of the parcels, provided, however, that the parcels on which the cultivation is occurring are contiguous and under the same ownership.

7. Exemptions to obtaining a Coastal Development Permit or Coastal Development Use Permit in the Coastal Zone are limited to the CDP exemptions detailed in Mendocino County Code section 20.532.020.
8. Permit revocation or modification is subject to the provisions in Mendocino County Coastal Zoning Code Section 20.536.030.

The differences between the coastal and inland cannabis cultivation ordinances enumerated above are recommended to better conform to the requirements of a permitting program in the Coastal Zone. Staff is requesting direction from the Board on the following where staff recommendations differ from the inland chapters:

1. *The addition of a Cannabis Events section.*

Given the number of requests for cannabis events under the inland ordinance, staff recommends that cannabis events be addressed in this chapter. Section 20.538.050- Cannabis Events has been added and makes the event request consistent with the other coastal events with additional findings related to state licensing and setbacks to a youth center, school, and/or park. Events of less than 100 people could be permitted with a Coastal Development Administrative Permit.

2. *The treatment of all permits as new permits.*

Similar to the cultivation chapter, staff recommends that all permits be subject to the same requirements and treated as a new use under this chapter.

3. *Removal of “church” and “residential treatment facilities” from the list of sensitive receptors.*

As discussed during the May 8, 2018 BOS hearing, the removal of these sensitive receptors was presented to the Planning Commission by the public. Staff recommends removing these facilities from the list of sensitive receptors that require specific setbacks.

5. **ENVIRONMENTAL RECOMMENDATION**

Pursuant to California Environmental Quality Act (CEQA) Guidelines sections 15250, 15251(f) and 15265, the preparation, approval and certification of a local coastal program is exempt from the requirements for preparation of an environmental impact report because the Secretary of Resources has found that the California Coastal Commission’s review and approval process is the functional equivalent of the environmental impact report process required by CEQA in sections 21080.5 and 21080.9 of the Public Resources Code.

6. **GENERAL PLAN CONSISTENCY ANALYSIS**

Adoption of these chapters requires an amendment to the Local Coastal Plan as implemented throughout the coastal zoning ordinance.

7. **RECOMMENDATIONS**

Provide staff with direction on the current ordinance drafts.

8. ATTACHMENTS

1. Draft Chapter 20.537 – Coastal Cannabis Cultivation Ordinance
2. Draft Chapter 20.538 – Coastal Cannabis Facilities Ordinance