

TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT

PLANNER: Drew Plebani, Cannabis Division Director

PROJECT DESCRIPTION:

The purpose of this agenda item is for the Planning Commission to make a recommendation to the Board of Supervisors to adopt an ordinance amending Trinity County Code (TCC) Title 17, Section (§) 17.43 to revise the following Code Sections (§) 17.43.010, 17.43.030, and 17.43.040, to allow for the County to meet its obligation, to allow for multiple medium (Type III) licenses on a single parcel.

LOCATION: County Wide

BACKGROUND DISCUSSION:

December 28, 2020, Ordinance number 315-849 was adopted to incorporate mitigations of the Certified Programmatic Environmental Impact Report (PEIR) in addition to specific regulations for the cultivation of cannabis in Trinity County.

As a result of a settlement agreement entered into by the County, Staff has been directed to prepare ordinance revisions to Chapter 17.43, to allow for multiple Medium (Type III) licenses on a single qualified parcel.

DISCUSSION:

The purpose of this agenda item is for the Planning Commission present an option to the Board of Supervisors to adopt an ordinance amending Trinity County Code (TCC) Title 17, Sections (§) 17.43.010, 17.43.030, and 17.43.040.

Staff have prepared changes to Code sections to be amended with reflected track changes:

TCC (§) Section 17.43.010: "Premises" means the designated structure(s) and land specified in the application that is owned leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises may only be occupied by one county commercial cannabis cultivation license type, with the exception of Type III licenses as identified in 17.43.040. Multiple additional commercial cannabis activities (i.e. nursery, distribution, manufacturing, etc.) may exist on the same legal parcel qualified parcel.

“Qualified Parcel” means a parcel with a distinct and separate assessor's parcel number.

~~TCC (§) Section 17.43.030 (G): Only one application countywide may be submitted per legal parcel. The County may issue only one cultivation License per qualified parcel, except for Type III licenses.~~

TCC (§) Section 17.43.040:

~~A. The County will allow a total of five hundred thirty licenses. Thirty of those licenses shall be issued to property within Trinity County Waterworks District #1. Priority in the program shall be based on the following:~~

~~1. Priority will be issued based on the number issued to a Trinity County Commercial Cannabis License number.~~

~~B. A.~~ The County will allow fifteen Type 3 licenses. These licenses shall be available to those who have already obtained a commercial cultivation license.

1. To be eligible, the applicant must:
 - a. Be applying for property a qualified parcel that is fifty acres or more.
 - b. Apply for and obtain a conditional use permit.

2. The director may increase the number of Type 3 Licenses up to thirty if the environmental documents support this increase.

~~3. Priority will be given to those that hold a valid 2016/2017 Trinity County license and who submit completed applications by a date determined by director. Thereafter, priority will be given based on the Trinity County Commercial Cannabis License number.~~

~~C. B.~~ The County will allow multiple Type III licenses on a qualified parcel that is fifty acres or more. Multiple Type III licenses may not exceed four acres of canopy per qualified parcel and the total canopy area may not exceed 0.5% of the total lot acreage.

1. To be eligible, the applicant must:
 - a. Hold an active and valid Type III license, and have an approved Conditional Use Permit for Type III cultivation.
 - b. Apply for a new CUP, along with a major modification request or submit a new environmental document to satisfy CEQA requirements, which may include, but not be limited to, an Initial Study, Mitigated Negative Declaration, and/or an Environmental Impact Report.

Staff and Cannabis Ad Hoc Committee have determined that a zoning amendment be initiated by resolution in accordance with Trinity County Zoning Code Section 17.35.030 (Amendments) to revise the ordinance to allow for multiple medium (Type III) licenses on a single parcel.

The criteria for amending Title 17 (Trinity County Zoning Code) is provided by Section 17.35.030. This Section provides the opportunity for the Board of Supervisors or Planning Commission to direct staff, via resolution, to bring updates and proposed revisions for review by the Planning Commission. The Planning Commission may then make recommendations to the Board of Supervisors.

ENVIRONMENTAL DETERMINATION:

The approval of this project is a “later activity” associated with the Cannabis Program EIR, as defined by subsection (c) of Section 15168, in that (i) all impacts associated with the approval of this project are within the scope of environmental review previously studied, and (ii) the requirements and mitigations required by Chapter 17.43 and 17.43G of the Trinity County Code, adequately serve to mitigate the impacts associated with approval of this project, it adequately evaluates all potential environmental impacts, and can be appropriately tiered within the Trinity County Cannabis Programmatic Environmental Impact Report.

RECOMMENDATION:

In order to meet the County’s obligation, Staff recommends that the Planning Commission:

1. Conduct a public hearing.
2. Close the public hearing.
3. Adopt or reject a resolution recommending the Board of Supervisors:
 - a. find that the amendment to Chapter 17.43 Section(s) (§) 17.43.010, 17.43.030, and 17.43.040., pursuant to the State California Environmental Quality Act (CEQA) Guidelines, is a “later activity” associated with the Cannabis Program EIR, as defined by subsection (c) of Section 15168, in that (i) all impacts associated with the approval of this project are within the scope of environmental review previously studied, and (ii) the requirements and mitigations required by Chapter 17.43 and 17.43G of the Trinity County Code, adequately serve to mitigate the impacts associated with approval of this project, it adequately evaluates all potential environmental impacts, and can be appropriately tiered within the Trinity County Cannabis Programmatic Environmental Impact Report.; and
 - b. the Board of Supervisors approve an ordinance to amend the Zoning Code of the County of Trinity as identified in Resolution No. 2023-13 Zone Amendment (DEV-23-04)

ALTERNATIVES:

1. The Planning Commission may recommend a modified version of Resolution No. 2023-13 Zone Amendment (DEV-23-04) to the Board of Supervisors to amend the Zoning Code of the County of Trinity.
2. The Planning Commission may request continuance for additional information.
3. The Planning Commission may deny the requested modifications.

ATTACHMENTS:

1. Zoning Code Section 17.43
2. Resolution No. 2023-13

Attachment 1

17.43.010 - Definitions.

As used herein the following definitions shall apply:

"Active building permit" means holding a valid Trinity County Building Permit and is compliant with all Trinity County Building Department requirements for building.

"Agricultural commissioner" or "agricultural commissioner's office" means the Trinity County Agricultural Commissioner's Office or the authorized representatives thereof.

"Area" is the measurement of cannabis plant growth in square feet as defined by the California Department of Food and Agriculture. As of December 21, 2016, the area is defined as canopy area, but it is subject to change. All changes by California Department of Food and Agriculture are automatically incorporated herein.

"Attorney general's guidelines" means guidelines for the security and non-diversion of cannabis grown for medical use issued by the attorney general in August 2008.

"Canopy" means the designated area(s) at a licensed premise that will contain mature plants at any point in time. This definition is intended to mirror the definition of "canopy" as defined by the State of California, or as may be amended.

"CDFW" means the California Department of Fish and Wildlife.

"Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

"Commercial cannabis" means any commercial cannabis activity allowed under MMRSA, AUMA and/or MAUCRSA (SB 94), as limited by the allowable licenses below, as may be amended from time to time, and all uses permitted under any subsequent enacted state law pertaining to the same or similar use for recreational cannabis. Prior to January 1, 2018, the cannabis shall be for medicinal cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215) found at Section 11362.5 of the Health and Safety Code.

"Cultivation" means the planting, growing, harvesting, drying or processing of cannabis plants or any part thereof.

"Designated area" means the hoop-house, greenhouse, and/or outdoor area(s), identified for the planting, growing and harvesting of cannabis, excluding drying, processing and other post-harvest cultivation activities. Designated area shall not exceed two hundred percent of the area for the license type unless otherwise approved by the planning director; canopy (mature plants) will not exceed the square footage allowed per license type and the additional square footage shall include immature plants (in a vegetative state prior to flowering) and access areas. Licensees propagating immature plants for distribution or seed for distribution to another licensee shall obtain a nursery license.

"EPA" means the United States Environmental Protection Agency.

"Fully enclosed and secure structure" means a space within a building or other structure, excluding greenhouses, which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

"Immature" which is defined under California Code of Regulations Section 8000, and, at the time of enactment, means cannabis plant that is not flowering.

"Indoor" means within a "fully enclosed and secure structure" as defined herein, using artificial lights at a rate greater than twenty-five watts per square foot.

"Legal dwelling" means a building intended for occupancy as living quarters built prior [to] 1972 or that is properly permitted by the County.

"Legal parcel" means a parcel with a distinct and separate assessor's parcel number. Where contiguous legal parcels are under identical ownership by an individual or an entity, such legal parcels shall be counted as a single parcel for purposes of this chapter. "Marijuana" and "cannabis" are used interchangeably and means any plant of the genus cannabis, as defined by Section 11018 of the Health and Safety Code.

"Mature" which is defined under California Code of Regulations Section 8000, and, at the time of enactment, means a cannabis plant that is flowering;

"Medical Cannabis" means cannabis or cannabis plant used for medicinal purposes in accordance with California Health and Safety Code Section 11362.7 et seq.

"Mixed light" means the cultivation of mature cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using one of the artificial lighting models described below:

1. "Mixed-light Tier I" which is defined under California Code of Regulations Title 3 Division 8 Chapter 1 Article 1 Section 8000, and, at the time of enactment, means the use of artificial light at a rate of six watts per square foot or less;
2. "Mixed-light Tier 2" which is defined under California Code of Regulations Section 8000, and, at the time of enactment, means the use of artificial light at a rate above six and below or equal to twenty-five watts per square foot.

"Outdoors" or "outdoor cultivation" means the cultivation of mature cannabis without the use of artificial lighting in the canopy area at any point in time. Artificial lighting is permissible only to maintain immature plants. Light deprivation is permitted.

"Planning department" means the Trinity County Planning Department, or department or agency that is designated by the Trinity County Planning Director.

"Premises" means the designated structure(s) and land specified in the application that is owned leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises may only be occupied by one county commercial cannabis cultivation license type. Multiple additional commercial cannabis activities (i.e. nursery, distribution, manufacturing, etc.) may exist on the same legal parcel.

"Primary caregiver" means a "primary caregiver" as defined in Health and Safety Code Section 11362.7(d).

"Proof of enrollment" shall mean proof of order number in good standing from the NCRWQCB or the State Water Resource Quality Control Board.

"Qualified patient" means a "qualified patient" as defined in Health and Safety Code Section 11362.7(t).

"Residential treatment facility" means a facility providing for treatment of drug and alcohol dependency.

"Self-transport" means the transportation within the State of California by a licensed cultivator of their own cannabis grown from their own licensed cultivation site. "School" means an institution of learning for minors, whether public or private (excluding homeschools), offering a regular course of instruction required by the California Education Code, or any licensed preschool or child day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education.

"Site" has the same meaning as "premises" as defined within this chapter.

"Summary abatement" means the removal of an immediate threat to the public health or safety.

"SWRCB" means the California State Water Resources Control Board.

"Watts per square foot" which is defined under California Code of Regulations Section 8000, and, at the time of enactment, means the sum of the maximum wattage of all lights identified in a designated canopy area(s) in the cultivation plan divided by the sum of the dimension in square feet of designated canopy area(s) identified in the cultivation plan.

"Wildlife exclusionary fencing" means fencing designed and installed to prevent the entry of wildlife into the enclosed area, such as cyclone or field game fencing a minimum of six feet high measured from grade.

"Variance" is defined as Trinity County Ordinance No. 315, Section 31.

"Youth-oriented facility" means public park, school, authorized bus stop or any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

(Ord. No. 315-849, § 1, 12-28-2020)

17.43.030 - Application requirements.

- A. All applicants will be required to comply and provide the following:

1. Proof of intent to comply with all county setback requirement.
 - a. Specialty Cottage.
 - i. "Specialty cottage outdoor" is an outdoor cultivation site with up to twenty-five mature plants. If cultivation area is under two thousand square feet with a slope less than five percent a water board permit is not required. Or if cultivation area is between two thousand and two thousand five hundred square feet or if under two thousand square feet with a slope greater than five percent a water board permit is required.
 - ii. "Specialty cottage indoor" is an indoor cultivation site with five hundred square feet or less of total canopy.
 - iii. "Specialty cottage mixed-light Tier 1 and 2" is a mixed-light cultivation site with two thousand five hundred square feet or less of total canopy.
 - b. Specialty.
 - i. "Specialty outdoor" is an outdoor cultivation site with less than or equal to five thousand square feet of total canopy, or up to fifty mature plants on noncontiguous plots.
 - ii. "Specialty mixed-light Tier 1 and 2" is a mixed-light cultivation site between two thousand five hundred one and five thousand square feet of total canopy.
 - c. Small.
 - i. "Small outdoor" is an outdoor cultivation site between five thousand one and ten thousand square feet of total canopy.
 - ii. "Small mixed-light Tier 1 and 2" is a mixed-light cultivation site between five thousand one and ten thousand square feet of total canopy.
 - d. Medium.
 - i. "Medium outdoor" is an outdoor cultivation site between ten thousand one square feet and one acre of total canopy.
 - e. All other license types are not allowed at this time by the County of Trinity, unless adopted by the county in subsequent ordinance or ordinances.
2. Proof of enrollment in good standing with NCRWQCB Order #2015-0023 or the SWRCB.
3. Apply for and obtain a board of equalization seller's permit.
4. Employ only persons who are at least twenty-one years of age and comply with all applicable state and federal requirements relating to the payment of payroll taxes including federal and state income taxes and/or contributions for unemployment insurance and state worker's compensation and liability laws.
5. Applicant cannot have been convicted of a serious felony or Schedule I, II or III Felony, excluding a non-serious felony conviction for sale, transportation or cultivation of cannabis, except if the conviction is on public lands. Applicants will have to declare this under penalty of perjury on one of the application forms.
6. As a condition of registering any cannabis cultivation site pursuant to this chapter, the applicant and, if different, the property owner shall execute an agreement to defend, indemnify and hold harmless the County of Trinity and its agents, officers, and employees from any claim, action, or proceeding brought against the county, its agencies, boards, planning commission or board of supervisors arising from the county's registration of the site. The indemnification shall apply to any damages, costs of suit, attorney fees or other expenses incurred by the county, its agents, officers and employees in connection with such action.
7. If using a permitted well, a copy of the Trinity County well permit shall be provided.
8. At the time of renewal or application for the 2018/19 license cycle and after, the applicant shall designate on their application or renewal application whether they intend to cultivate for adult or medicinal use.
- 9., 10. Reserved.
11. Provide all documentation, reports, and other information required by Section 17.43G.030 of this code.
12. Annual relicensing of cannabis operations licensed before 2019 shall require a one-time historic building evaluation, and the results of the evaluation shall be submitted to the county if buildings on-site are over 45 years old and are expected to be used in future operations. If the buildings are determined to be a significant historic resource, then the applicant shall be required to comply with historic resource protection standards set forth in subsection S of Section 17.43G.030 of this code. This requirement does not apply to buildings that are currently being used as part of the cannabis operation. (MM 3.5-1a.)

13. All cultivation sites (new and licensed renewals) are required to demonstrate compliance with all applicable requirements of SWRCB Order WQ 2019-0001-DWQ, or any subsequent water quality standards that apply to all new commercial cannabis cultivation operations, and will not be limited by a minimum area of disturbance as part of application review and at annual licensed renewal. This will include documentation, site management plan, and grading details prepared by a qualified professional to help ensure that the site will be stable and describing how stabilization will be achieved. The documentation will also identify the location of all water quality control features for the site and associated access roads. Roadway design, water quality control, and drainage features shall be designed and maintained to accommodate peak flow conditions and will be consistent with the Road Handbook per California Code of Regulations, Title 14, Chapter 4. Compliance with water diversion standards and restrictions of SWRCB Order WQ 2019-001-DWQ, or any successor to that order, will also be provided to the county. The county will annually inspect compliance with this measure as part of license issuance or license renewal to confirm compliance.

On-site sewage systems shall be designed to accommodate employees and seasonal employees during harvest consistent with the requirements of County Code of Ordinances Section 16.48.122. (MM 3.10-1a.)

- B. Applicants consent to compliance inspections as part of their application process. Inspections will be conducted by county officials during regular business hours Monday through Friday, nine a.m. to five p.m., excluding holidays. Applicants are permitted to participate in the inspection verification or monitoring. If possible, Trinity County will attempt to give twenty-four-hour notice of the inspection by posting the notice and/or telephoning the number listed on the application.
- C. All licensed cultivators within Trinity County can self-transport their own product to licensed distributors and/or manufacturers as permitted by state law. Cultivators must obtain the appropriate state license permitting self-transport within ninety days of receiving permission from the county. Cultivators must indicate on their Trinity County application that they would like permission to self-transport. If so designated in the application, there will be no additional fees.
- D. All documents/plans/monitoring/inspections filed as part of enrollment become part of the county application.
- E. Ownership of a license may only be transferred under the following conditions:
 1. Licensee may transfer their license as part of the sale of the property for which the license has been issued. The new owner shall reapply, pay applicable fees, and meet all requirements for the property to transfer. All exceptions that apply to the original license shall transfer with the license.
 2. Licensee may transfer their license to other property under their ownership or for which they have a valid rental agreement and certification of permission to grow cannabis on the property. The licensee shall reapply, pay the applicable fees, and meet all requirements for the new property and this chapter in order for the license to transfer.
 3. Licenses cannot be transferred more than once in a calendar year.
 4. The licensee may maintain his/her original license number if they are applying for, or obtaining, an alternative cultivation license.
- F. Each premise upon which cultivation will occur must have a legal dwelling unless licensee is cultivating on a contiguous legal parcel with a legal dwelling which is under identical ownership as the parcel upon which cultivation will occur.
- G. Only one application countywide may be submitted per legal parcel.

(Ord. No. 315-849, § 1, 12-28-2020)

17.43.040 - Type III cultivation licenses.

- A. The County will allow a total of five hundred thirty licenses. Thirty of those licenses shall be issued to property within Trinity County Waterworks District #1. Priority in the program shall be based on the following:
 1. Priority will be issued based on the number issued to a Trinity County Commercial Cannabis License number.
- B. The County will allow fifteen Type 3 licenses. These licenses shall be available to those who have already obtained a commercial cultivation license.
 1. To be eligible, the applicant must:
 - a. Be applying for property that is fifty acres or more.
 - b. Apply for and obtain a conditional use permit.

2. The director may increase the number of Type 3 Licenses up to thirty if the environmental documents support this increase.
3. Priority will be given to those that hold a valid 2016/2017 Trinity County license and who submit completed applications by a date determined by director. Thereafter, priority will be given based on the Trinity County Commercial Cannabis License number.

(Ord. No. 315-849, § 1, 12-28-2020)

Attachment 2

RESOLUTION NO. PC-2023-13

A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF TRINITY INITIATING A MINOR TEXT AMENDMENT OF TITLE 17 ZONING CODE SECTION 17.43

WHEREAS, on December 28, 2020, Ordinance number 315-849 was adopted to incorporate the mitigations of the Certified Programmatic Environmental Impact Report (PEIR); and

WHEREAS, The County has proposed changes to Chapter 17.43, in order to meet the County's obligation related to stacking,

WHEREAS, Trinity County Zoning Code Section 17.43.010 will be amended to: "Premises" means the designated structure(s) and land specified in the application that is owned leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises may only be occupied by one county commercial cannabis cultivation license ~~type~~, with the exception of Type III licenses as identified in 17.43.040. Multiple additional commercial cannabis activities (i.e. nursery, distribution, manufacturing, etc.) may exist on the same ~~legal parcel~~ qualified parcel.

"Qualified Parcel" means a parcel with a distinct and separate assessor's parcel number.

WHEREAS, Trinity County Zoning Code section 17.43.030 (G) will be amended to: ~~Only one application countywide may be submitted per legal parcel. The County may issue only one cultivation License per qualified parcel, except for Type III licenses.~~

WHEREAS, Trinity County Zoning Code section 17.43.040 will be amended to:

~~A. The County will allow a total of five hundred thirty licenses. Thirty of those licenses shall be issued to property within Trinity County Waterworks District #1. Priority in the program shall be based on the following:~~

~~1. Priority will be issued based on the number issued to a Trinity County Commercial Cannabis License number.~~

~~B. A.~~ The County will allow fifteen Type 3 licenses. These licenses shall be available to those who have already obtained a commercial cultivation license.

1. To be eligible, the applicant must:

- a. Be applying for ~~property~~ a qualified parcel that is fifty acres or more.
- b. Apply for and obtain a conditional use permit.

2. The director may increase the number of Type 3 Licenses up to thirty if the environmental documents support this increase.

~~3. Priority will be given to those that hold a valid 2016/2017 Trinity County license and who submit completed applications by a date determined by director. Thereafter, priority will be given based on the Trinity County Commercial Cannabis License number.~~

C. B. The County will allow multiple Type III licenses on a qualified parcel that is fifty acres or more. Multiple Type III licenses may not exceed four acres of canopy per qualified parcel and the total canopy area may not exceed 0.5% of the total lot acreage.

1. To be eligible, the applicant must:

a. Hold an active and valid Type III license, and have an approved Conditional Use Permit for Type III cultivation.

b. Apply for a new CUP, along with a major modification request or submit a new environmental document to satisfy CEQA requirements, which may include, but not be limited to, an Initial Study, Mitigated Negative Declaration, and/or an Environmental Impact Report.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the County here by initiates the procedure to amend Chapter 17.43 Section(s) (§) 17.43.010, 17.43.030, and 17.43.040., and makes the following environmental finding: 1. Pursuant to the State California Environmental Quality Act (CEQA) Guidelines, the Planning Commission of the County of Trinity makes the following environmental findings: The approval of this project is a “later activity” associated with the Cannabis Program EIR, as defined by subsection (c) of Section 15168, in that (i) all impacts associated with the approval of this project are within the scope of environmental review previously studied, and (ii) the requirements and mitigations required by Chapter 17.43 and 17.43G of the Trinity County Code, adequately serve to mitigate the impacts associated with approval of this project, it adequately evaluates all potential environmental impacts, and can be appropriately tiered within the Trinity County Cannabis Programmatic Environmental Impact Report.

DULY PASSED AND ADOPTED this 16th day of November, 2023, by the Planning Commission of the County of Trinity by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSE: