

TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT

PROJECT TITLE: Similar Use Determination for Commercial Cannabis Cultivation in the Highway

REPORT BY: Skylar Fisher, Associate Planner

LOCATION: Countywide

PROJECT DESCRIPTION:

Cannabis Division staff are requesting the Planning Commission make a determination of similar use for commercial cannabis cultivation activities in the Highway Commercial (HC) zoning district, with or without a conditional use permit, pursuant to Trinity County Code (TCC) Section § 17.30.010 (Ambiguity).

DISCUSSION:

TCC Section 17.43.050 – Limitation on Location to Cultivate Cannabis discusses where commercial cannabis cultivation is not allowed in the county. Highway Commercial is not listed as a zoning district where cannabis cultivation is not allowed. The general description of the HC district does not appear to be compatible with commercial cannabis cultivation. There is at least one application for a commercial cannabis cultivation license where the proposed site is located within highway commercial.

Commercial Cannabis Cultivation Use in the Highway Commercial (HC) Zoning District

The General Description, which outlines the general tone of the appropriate land use activities within the Highway Commercial Zoning District is:

“The purpose of this zoning district is to provide appropriate sites for the needs of recreation and business travelers. This district is intended to be applied to sites fronting on state highways or along arterial roads that provide access to major recreation destinations. Highway commercial areas should be designed so that all or most of the needs of the traveling public can be accommodated at one stop. This zoning district is not intended to be applied to strip commercial development along highways or arterials.”

The HC Zoning District (TCC Chapter 17.22) contains a list of uses allowed principally (without a use permit), by director's use permit, and by Planning Commission use permit. Examples of uses allowed without a use permit include, but are not limited to:

- Recycling center when conducted entirely indoors.
- General office, retail stores and services when in addition to other highway commercial uses.

While commercial cannabis cultivation activities are not a listed use within the HC zoning district, TCC Section § 17.22.020 (H) states that other uses are allowed when found to be similar in nature as determined by the Planning Commission.

There are some uses allowed which are ancillary to commercial cannabis cultivation activities, such as a dwelling being allowed under certain provisions with a director's use permit. In addition, "highway commercial complex containing more than ten thousand square feet of gross building area or occupying more than two acres" is allowed with a use permit. Both show the ability for a prospective licensee to meet the dwelling requirement for licensure, that there are other intensive uses allowed in the district, and structures which could support cannabis cultivation activities may be consistent with the district.

TCC Section 17.30.010 (Ambiguity) of the Trinity County Zoning Code provides a process by which this type of ambiguity in the Zoning Code may be resolved. This section states the following:

"17.30.010 - Ambiguity.

If any ambiguity arises concerning the appropriate classification of a particular use within the meaning and the intent of this title, or with respect to matter of height, area requirements or zone requirements as set forth herein, the planning commission shall ascertain all pertinent facts, and by resolution set forth its findings and interpretations and thereafter such interpretation shall govern. Similar use, as used in this title, means the same character of use and no less restricted in nature, i.e., generates no more traffic, parking, dust, noise, etc., and if retail uses are specified, "similar" means retail."

This section provides a process for the Planning Commission to consider whether a commercial cannabis cultivation should be allowed principally or with a use permit in the HC district.

When reviewing TCC Chapter 17.22, there were no uses identified by staff that were similar to commercial cannabis cultivation activities specifically, with or without a use permit. Zoning districts where commercial cannabis cultivation typically occurs, such as the Agricultural Zoning District, include uses such as "crop and tree farming" which would be a use identified as more similar to commercial cannabis cultivation than what is listed in the HC Zoning District section.

Commercial Cannabis Cultivation Allowances in Commercial Zoning Districts in Other Counties

Planning staff performed research on other counties which have a commercial cannabis program and have the HC zoning district or a zoning district similar. It was found that Riverside County does allow commercial cannabis cultivation in a similar zoning district.

Existing and Future Uses in Highway Commercial Zoning District

In Trinity County, store-front retail is the only commercial cannabis use currently allowed in the HC district.

Future, not yet proposed, commercial cannabis license types may be consistent in the HC district. For example, a future commercial cannabis tourism use can be considered similar to the Commercial Amusement Enterprise use which is allowed within the HC district with a use permit. In the future, if a cultivation site is used as a commercial amusement enterprise or tourism, with the farm being used as a part of the said amusement, it could match the code for Highway Commercial zoning.

Project Consistency with the California Environmental Quality Act (CEQA)

Discussion and action on the request of a commercial cannabis cultivation variance qualifies as exempt from CEQA, based on Section 15061(b)(3) which states that a project is exempt if it is found that there is no possibility that the activity in question may have a significant effect on the environment.

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Determine that commercial cannabis cultivation is not a similar use in the Highway Commercial Zoning District

ALTERNATIVES

If the Planning Commission does not wish to determine that commercial cannabis cultivation is not a similar use the following alternatives are available:

- A. Continue the item to the next Planning Commission hearing on December 8, 2022 to receive more information
- B. Determine that commercial cannabis cultivation is a similar use to other uses allowed within the Highway Commercial zoning district, with or without a use permit

ATTACHMENTS:

- A. Chapter 17.22 Highway Commercial District

Chapter 17.22 HIGHWAY COMMERCIAL OR "HC" DISTRICT

Sections:

17.22.010 General description.

The purpose of this zoning district is to provide appropriate sites for the needs of recreation and business travelers. This district is intended to be applied to sites fronting on state highways or along arterial roads that provide access to major recreation destinations. Highway commercial areas should be designed so that all or most of the needs of the traveling public can be accommodated at one stop. This zoning district is not intended to be applied to strip commercial development along highways or arterials.

17.22.020 Uses permitted without a use permit.

The following list is representative of highway commercial uses which are permitted on a parcel in the highway commercial zoning district:

- A. Convenience food store with or without petroleum sales.
- B. Restaurant without drive-thru service.
- C. Auto service station (see special regulations in Chapter 17.30).
- D. Hotel/motel ten units or less hooked up to a community sewer system.
- E. General office, retail stores and services when in addition to other highway commercial uses.
- F. Recycling center when conducted entirely indoors.
- G. Church.
- H. Other uses found to be similar in nature as determined by the planning commission.

17.22.025 Uses permitted subject to first securing a planning directors use permit.

A single-family dwelling provided said use is located on the second story or above or in the rear one-half of any commercial structure and accounts for no more than twenty-five percent of the gross square footage of said structure.

(Ord. No. 315-806 , § 1, 1-28-14)

17.22.030 Uses permitted subject to first securing a use permit.

- A. Recycling center when outdoor area is utilized.
- B. Campground.
- C. Commercial amusement enterprise.
- D. Hotel/motel over ten units or not hooked up to community sewer system.
- E. Recreation vehicle park.
- F. Restaurant with drive-thru service.

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- G. Resort.
 - H. Truck service station.
 - I. Auto repair shop.
 - J. Bus passenger station.
 - K. Laundromat.
 - L. Outdoor storage or sales associated with any of the uses listed in Section 17.22.020.
 - M. Car wash.
 - N. Auto sales.
 - O. Highway commercial complex containing more than ten thousand square feet of gross building area or occupying more than two acres.
 - P. Mini storage.
 - Q. Residential caretaker unit (see special regulations in Section 17.30.120).

17.22.040 For subdivision purposes, the minimum parcel size required.

The minimum lot area shall be no less than ten thousand square feet.

17.22.050 Minimum lot width.

Each lot shall be not less than one hundred feet wide.

17.22.060 Building height.

The maximum building height shall be thirty-five feet.

17.22.070 Front yard setback.

The front yard setback shall have a minimum depth of ten feet.

17.22.080 Interior side yard setback.

The interior side yard setback shall be a minimum of six feet unless the side yard abuts a commercial or industrial zoned parcel in which case there are no setback requirements.

17.22.090 Exterior side yard setback.

The exterior side yard setback shall be a minimum of ten feet.

17.22.100 Rear yard setback.

The rear yard setback shall be a minimum of six feet unless the rear yard abuts a commercially or industrial zoned parcel in which case there are no setback requirements.

17.22.110 Maximum lot coverage.

The total lot area covered by structure shall not exceed forty percent of the total area of the lot.

17.22.120 Drainage.

A drainage plan shall be submitted to the department of transportation for review and approval prior to issuance of building permit(s).

17.22.130 Encroachment permit.

Encroachment permits shall be obtained from the department of transportation prior to the issuance of building permits when projects create a new entrance onto a public road.