

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Trinity County

REPORT BY: Leslie Hubbard

APN: Countywide

PROJECT DESCRIPTION:

Amendment to the County's Zoning Ordinance to amend Ordinance 315-828 Allowing for Distribution of Cannabis in the Agricultural Preserve and Agricultural Forest zoning districts (Exhibit A).

LOCATION: Countywide

PURPOSE:

The purpose of this item is for the Planning Commission to re-consider allowing Cannabis distribution activities in the Agricultural Preserve (AP) and Agricultural Forest (AF) zoning districts.

BACKGROUND INFORMATION:

This ordinance appeared before the Commission on November 9 and December 7, 2017 and before the Board of Supervisors on January 3 and January 17, 2018. The Ordinance was passed and enacted by the Board on January 17, 2018.

During the January 17, 2018 Board meeting, public feedback precipitated the Supervisors' request that the attached Cannabis Distribution Ordinance return to the Planning Commission for further discussion regarding adding AP and AF as allowable zoning districts for activities conducted in accordance with a Trinity County Cannabis Distribution License.

As outlined in Senate Bill 94, Cannabis distributors are the only licensees that can transport Cannabis and Cannabis products between licensees as well as being the only licensees that must make sure third-party testing is completed and that all product packaging and labeling meet state requirements.

Although Cannabis licensees (cultivators / manufacturers) are not specifically required to sell their Cannabis or Cannabis products through a distributor, they are required to contract/interact with a licensed distributor for testing, packaging and labeling quality assurance, even if they are not selling the actual product through the distributor. Distributors are allowed to charge fees for these additional services.

Distributors will also be responsible for collecting and remitting taxes on behalf of cultivators and retailers and they must secure a Board of Equalization permit (in addition to obtaining a State license).

STAFF EVALUATION:

Currently, Ordinance 315-828 allows Cannabis distribution activity as follows:

1. Allowable Zoning Districts

- A. Cannabis Distribution (requiring Type 11 State license) may be allowed in the following zoning districts, subject to first obtaining a Conditional Use Permit:
 - General Commercial (“C2”)
 - Heavy Commercial (“C3”)
 - Industrial (“I”)
 - Agricultural (“A”)
 - Specific Unit Development (“SUD”), whose guidelines specifically identify parcels for industrial development.
- B. The restrictions under Section 2A do not apply to transportation only licenses.
- C. Type 11 Transportation Only licenses will be allowed within the Trinity County jurisdiction of the Whiskeytown-Shasta-Trinity National Recreation Area and within the lease lots within the Ruth Lake Community Services District, although no Cannabis Distribution facilities will be allowed in these areas.

Agricultural Preserve (AP)

Section 13.1 of the Trinity County Zoning Ordinance provides the general description of AP:

Agricultural Preserve Zoning Districts are those areas of the County containing agricultural lands of at least 100 acres which qualify for inclusion under the California Land Conservation Act (Cal. Govt Code, Sec. 51200 et. seq.). Purpose of this Zoning District is to preserve and insure the continuing utilization of lands for agricultural production purposes. To obtain the benefits of Agricultural Preserve Zoning the property owner must enter into a contract with the County. Failure to abide by this contract will result in cancellation of the Zoning and its benefits as well as severe tax penalties.

Furthermore, the list of uses permitted on an AP parcel only after obtaining a use permit include:

- Cattle Feed Yard
- Farm Labor Quarters
- Hydroelectric power generating facilities for commercial use
- Kennel, breeding
- Labor Camp
- Slaughterhouse
- Tent Camp

Based on the general description of AP and allowable uses under a use permit, the activities that are anticipated to occur in association with Cannabis Distribution activities support the bottom line of insuring “the continuing utilization of lands for agricultural production purposes”. Cannabis distributors provide support for the agricultural activity of Cannabis cultivation. They arrange for testing, check for appropriate packaging and labeling, collect taxes, transport cannabis and cannabis products, and may act as a wholesaler. Cannabis and cannabis products must pass through a distributor

prior to being sold to customers at a retail establishment and must also arrange for the laboratory testing and quality assurance for cannabis and cannabis products.

The list of uses permitted on an AP parcel only after obtaining a use permit include similar activities that support the agricultural production occurring on the land.

Thus, Staff recommends that the Commission recommend including AP as an allowable zoning district for Cannabis Distribution activities conducted under a Trinity County Type 11 Cannabis Distribution License.

Agricultural Forest (AF)

Section 14 of the Trinity County Zoning Ordinance includes the following general description for the AF zoning district:

The purpose of this District is to identify and set development standards for lands suitable for forestry management, but which are not zoned Timberland Production Zone. This district is consistent with the "Resource" General Plan land use designation.

The list of uses permitted in AF include agriculture uses in certain circumstances without a use permit:

Agricultural uses on Site Class IV or V timberland (Dunnings scale), as determined by a Registered Professional Forester. However, review by a RPF shall not be required for parcels forty (40) acres or less in size.

Additional agricultural uses are allowed subject to first securing a Planning Director issued use permit:

Uses considered under this subsection shall require a Registered Professional Forester (RPF) to find that the use will not negatively detract from the ability to grow and harvest timber and timber products as part of the use permit application. The RPF shall provide all supporting documentation to the Planning Department. The RPF's report will be considered by the Director when determining if the proposed use is compatible with timber growing and harvesting.

Agricultural uses on Site Class I, II or III timberland (Dunning Scale) as determined by a Registered Professional Forester, when located in a manner to minimize conflicts with timber management activities on the remainder of the site and not interfere with future logging operations (e.g.: location on an established log landing would be discouraged); provided, however, that determination by a RPF shall not be required for parcels forty (40) acres or less in size.

Cannabis cultivation occurs on AF parcels throughout Trinity County consistent with the allowable uses described above. Although activities associated with Cannabis distribution are not agriculture activities that are consistent with the descriptions of the intended uses, above, they are activities that support the agricultural activity of Cannabis cultivation, similar to the list of uses that support forestry or other natural resources and that are permitted subject to first obtaining a Planning Commission issued Use Permit (CUP):

Bed and Breakfast facility.
Campground.
Cell tower and accessory buildings/uses
Logging contractors yard when located in a manner to minimize conflicts with timber management activities on the remainder of the site.
Mining.
Nursery for raising tree seedlings.
Processing facility (e.g.: sand and gravel screening,
Recreational Vehicle Park.
Sawmill.
Resort.
Trailer camp (permanent placement) for laborers.
Winery when located in a manner to minimize conflicts with timber management activities on the remainder of the site.
Other uses found to be similar in nature as determined by resolution adopted by the Planning Commission (ref Section 30.A).

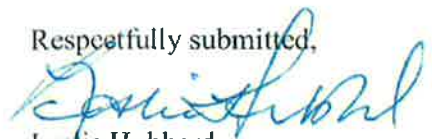
Staff recommends that the Planning Commission recommend including AF as an allowable zoning district for Cannabis Distribution activities conducted under a Trinity County Type 11 Cannabis Distribution License because we anticipate that Cannabis distribution activities (transporting, arranging for testing, arranging for or completing the packaging and labeling of Cannabis and Cannabis products) will be similar in nature to the uses currently permitted with a CUP.

STAFF RECOMMENDATION:

Staff recommends the following:

1. Recommend to the Board of Supervisors that the AP zoning district be included as an allowable zoning district for Cannabis Distribution under uses allowed after first obtaining a Conditional Use Permit.
2. Recommend to the Board of Supervisors that the AF zoning district be included as an allowable zoning district for Cannabis Distribution: under uses allowed after first obtaining a Conditional Use Permit.

Respectfully submitted,



Leslie Hubbard
Interim Planning Director

ORDINANCE NO. 315-828
AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF TRINITY
ALLOWING FOR DISTRIBUTION OF CANNABIS

The Board of Supervisors of the County of Trinity hereby finds and declares the following:

Section 1: Findings and Declarations:

1. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996”). The intent of Proposition 215 was to ensure that seriously ill Californians have the right to obtain and use Cannabis for medical purposes where that medical use is deemed appropriate and has been recommended by a physician, and to ensure that patients and their primary caregivers who obtain and use for medical purposes upon the recommendation of a physician are not thereby subject to criminal prosecution or sanction.
2. The State enacted SB 420 in 2004 known as the Medical Marijuana Program Act (codified as Health and Safety Code section 11362.7et seq.) to clarify the scope of The Compassionate Use Act of 1996, facilitate the prompt identification of qualified patients and primary caregivers avoid unnecessary arrest and prosecution of these individuals, provide needed guidance to law enforcement officers, promote uniform and consistent application of the Act and enhance the access of patients and caregivers to medical Cannabis through collective, cooperative cultivation projects and to allow local governing bodies to adopt and enforce rules and regulations consistent with SB420.
3. On September 11, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (MMRSA) which took effect January 1, 2016, and which mandated a comprehensive state licensure and regulatory framework for cultivation, distribution, distribution, transportation, testing and dispensing of medical Cannabis on a commercial basis. MMRSA was amended by SB 837. On June 27, 2017, the State enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act setting forth regulations for State licensure beginning in January, 2018.
4. Senate Bill 94 known as the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), established a comprehensive system to control and regulate the cultivation, distribution, transport, storage, distribution, processing and sale of both of the following:(1) Medicinal Cannabis and medicinal Cannabis products for patients with valid physician’s recommendations; and (2) Adult-use Cannabis and adult-use Cannabis products for adults 21 years of age and over.
5. The County finds that in the absence of a formal regulatory framework the negative impacts frequently associated with Cannabis distribution are expected to increase resulting in an unregulated unstudied and potentially significant negative impact on the environment and upon the public peace health and safety.

6. It is the purpose and intent of this Chapter to protect the health, safety, and general welfare of the residents and businesses within Trinity County and comply with state law and federal guidelines.
7. It is the intent of the County of Trinity to have a strong and effective regulatory and enforcement system with regard to Cannabis that addresses threats to public safety, health and other law enforcement interests through robust controls and procedures that are effective in practice.
8. This ordinance provides regulations and control over distribution of Cannabis, and prevents the potential illegal distribution of Cannabis within the County.

Section 2: Application

The County hereby enacts the following as Section 28.5 of the Trinity County Zoning Ordinance No.315: Cannabis Distribution

1. Definitions:

- A. "Cannabis" and "Marijuana" are used interchangeably and mean any plant of the genus Cannabis, as defined by section 11018 of the Health and Safety Code.
- B. "Cannabis distribution facility" means a building or premises used exclusively for storage, packaging, labeling, and/or as a transportation terminus for Cannabis products between entities that are properly licensed.
- C. "Distribution" means the procurement, sale and transport of Cannabis and Cannabis products between entities that are properly licensed.
- D. "School" means an institution of learning for minors, whether public or private, 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, excluding homeschools.
- E. "Youth-oriented facility" means Public Park, and 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.

2. Allowable Zoning Districts

- A. Cannabis Distribution (requiring Type 11 State license) may be allowed in the following zoning districts subject to first obtaining a Conditional Use Permit:
 - General Commercial ("C2")
 - Heavy Commercial ("C3")
 - Industrial ("I")
 - Agricultural ("A")
 - Specific Unit Development ("SUD"), whose guidelines specifically identify parcels for industrial development.
- B. The restrictions under Section 2A do not apply to transportation only licenses.

- C. Type 11 Transportation Only licenses will be allowed within the Trinity County jurisdiction of the Whiskeytown-Shasta-Trinity National Recreation Area and within the lease lots within the Ruth Lake Community Services District, although no Cannabis Distribution facilities will be allowed in these areas.

3. Regulations:

Cannabis distribution shall comply with all of the following regulations:

- A. Cannabis distribution facilities shall be located only in zoning districts identified in Section 2.A. in this ordinance as allowable zoning districts for Cannabis distribution facilities.
- B. Cannabis distribution facilities shall not be allowed within one thousand (1,000) feet of a youth-oriented facility, school, church, or residential treatment facility as defined herein or within 500 feet of an authorized school bus stop, unless a variance is obtained.
- C. All Cannabis distributors shall ensure that Cannabis is obtained from licensed cultivation sources and shall implement best practices to ensure that all Cannabis products are properly stored, labeled, transported and tested prior to distribution at a legally permitted and licensed retail facility.
 - i. A Transportation Only license is also available from Trinity County, which will allow the transportation of Cannabis products within the State of California for distribution to licensed distributors and manufacturers.
- D. Security plan shall be developed which is compliant with State requirements and submitted with an application and must be sufficient to restrict access to only those intended and to deter trespass and theft of Cannabis or Cannabis products shall be provided and maintained. The Security plan shall be approved by the Board of Supervisors, or its designee.
- E. A site operations plan shall be submitted with the application for a Conditional Use Permit.
- F. Any license holder of a distribution license shall not have been convicted of 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.
- G. Cannabis and Cannabis products shall only be transported between licensed commercial operations in good standing with the County and the State.
- H. Distributors shall ensure that appropriate samples of Cannabis or Cannabis products are tested by a State- and/or County-licensed testing facility prior to distribution.
- I. Prior to distribution to retailers, the distributor shall receive a certificate of analysis stating that test samples meet specifications required by law.
- J. Cannabis and Cannabis products shall be packaged and labeled in accordance with the requirements of State law.
- K. Overnight storage of Cannabis and Cannabis product is not allowed in any vehicles within the County unless secured in a licensed distribution facility.

4. Required Findings:

A Conditional Use Permit for Cannabis distribution shall not be granted by the Trinity County Planning Department unless all of the following findings are made based on substantial evidence:

- A. The distribution, as approved and conditioned will not result in significant unavoidable impacts on the environment.
- B. The distribution includes adequate quality control measures to ensure Cannabis distributed at the site meets State standards for a regulatory market.
- C. The distribution operations plan includes adequate measures that address the federal enforcement priorities for Cannabis activities.

5. Required Conditions:

In addition to conditions and mitigation measures that may be included in the Conditional Use Permit for a distribution facility, the following conditions shall be met:

- A. The distributor shall allow access to the facility and any vehicles utilized in transportation, and access to records if requested by the County, its officers, or agents, and shall allow inspections from the County or its officers to verify compliance with all relevant rules, regulations and conditions.
- B. The applicant for the distribution facility and the property owner shall indemnify, defend, and hold the County harmless from any and all claims and proceedings relating to the approval of the license or relating to any damage to property or persons stemming from the commercial Cannabis activity.
- C. Any person operating a Cannabis distribution facility shall obtain a valid and fully executed commercial Cannabis distribution license or provisional license from the State prior to commencing operations, and must maintain such license in good standing in order to continue operations.
- D. The property owner shall be responsible for ensuring that all commercial Cannabis activities at the site operate in good standing with permits and licenses required by Trinity County Code and State law. Failure to take appropriate action to evict or otherwise remove licensees who do not maintain permits or licenses in good standing with the County or State shall be grounds for the suspension or revocation of a Conditional Use Permit pursuant to this Chapter.
- E. The distribution facility and activities shall be maintained in accordance with the operating plan associated with the Conditional Use Permit and approved by the County.
- F. Any person who is not the legal owner of a parcel for which they are obtaining a Conditional Use Permit to operate a Cannabis distribution facility shall provide written and notarized authorization from the legal owner of the parcel prior to commencing activities included in the Conditional Use Permit on such parcel.
- G. The Cannabis Distribution Program Fee is due annually on March 1st and is set at:
 - i. Type 11: \$6,000 plus \$1,000 towards the General Plan update.
 - ii. Type 11 (Transportation Only): \$2,000.
 - iii. Fees shall be paid thereafter annually prior to March 1st of each year.

- H. The above Fee amounts are not anticipated to fully cover the cost of administering this Ordinance; however, within twelve months of this Ordinance, the County may conduct a fee study to determine the total cost of administering this Ordinance.
- I. If, based on the results of the fee study, the fee needs to be increased, the County may increase the Fee by way of resolution for any new or renewal registrations.
- J. If, based on the results of the fee study, the fee exceeds the cost of administering this Ordinance the County shall decrease the fee by way of resolution and shall also reimburse applicants their proportional share of any overpayment.

6. Denial/Rescission of License:

- A. Applicant's application shall be denied or the issuance of a license rescinded if Trinity County becomes aware that:
 - i. The applicant has provided materially false documents or testimony; or
 - ii. The operation as proposed if allowed, would not comply with all applicable laws including but not limited to the Building, Planning, Housing, Fire and Health and Safety Codes of the County including the provisions of this Chapter and with all applicable laws including zoning and Trinity County ordinances.
 - iii. Applicant shall be given up to seven (7) business days to correct any deficiencies prior to the issuance of a denial or rescission unless there is an immediate threat to public health or safety that requires an immediate correction of the deficiency.
 - iv. Applicant or Licensee shall have the right to appeal any denials or rescissions as prescribed in Chapter 8.90.130 of the Trinity County Code.

Section 3: CEQA

The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to 14 Cal.Code Regs.Sec. 15378(b)(5) and is an administrative activity that will not result in direct or indirect physical changes in the environment. The establishment of individual Cannabis distribution facilities will require a Planning Commission-issued Conditional Use Permit requiring the applicant to complete a Project Initial Study-Environmental Checklist and Evaluation of Environmental Impacts.

Introduced at a regular meeting of the Board of Supervisors held on the 3rd day of January 2018, and passed and enacted this 17th day of January 2018 by the Board of Supervisors of the County of Trinity by motion second (Morris/Chadwick), and the following vote:

AYES: Supervisors Chadwick, Morris and Groves
NOES: None
ABSENT: Supervisor Fenley
ABSTAIN: None
RECUSE: Supervisor Mines

KEITH GROVES, CHAIRMAN
Board of Supervisors
County of Trinity
State of California

ATTEST:

RICHARD KUHNS, Psy.D
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:

Margaret E. Long, County Counsel