

ITEM NO. 5

MEETING DATE 5/10/18

APPLICATION NO. PW-18-03

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Trinity County

REPORT BY: Leslie Hubbard

APN: Countywide

PROJECT DESCRIPTION:

Amendment to the County's Zoning Ordinance by adding Section 28.7, an ordinance allowing for Non-Storefront Commercial Cannabis Licenses (Exhibit A).

LOCATION: Countywide

PURPOSE:

The purpose of this item is for the Planning Commission to consider allowing non-storefront sales of commercial Cannabis as proposed in the attached draft ordinance.

BACKGROUND INFORMATION:

This ordinance appeared before the Board of Supervisors on April 3 and April 17, 2018 and before the Planning Commission on April 26, 2018. During the April 26 meeting, the Commission provided several edits incorporated in the attached ordinance.

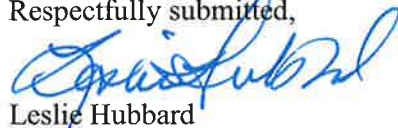
At the State level, the Type 9 Non-Storefront Retail License is regulated by the Bureau of Cannabis Control. As described in State regulations, a Type 9 license allows retail sales of Cannabis by delivery only. Section 5414 requires that Type 9 licensees comply with all the requirements applicable to Type 10-Retailer licensees, although the licensed premises of a Type 9-Non-Storefront Retailer licensee shall be closed to the public.

STAFF RECOMMENDATION:

Staff recommends the following:

Discuss, provide direction to staff, and/or provide a recommendation to the Board of Supervisors regarding the proposed Ordinance Allowing for Non-Storefront Commercial Cannabis Licenses.

Respectfully submitted,



Leslie Hubbard
Interim Planning Director

EXHIBIT A
ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF TRINITY
ALLOWING FOR NON-STOREFRONT COMMERCIAL CANNABIS LICENSES**

The Board of Supervisors of the County of Trinity, State of California, ordains as follows:

Section 1: Findings and Declarations:

- A. 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 Cannabis for medical purposes upon the recommendation of a physician are not thereby subject to criminal prosecution or sanction.
- B. 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.
- C. 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, manufacturing, 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.
- D. Previous landmark Cannabis legislation, including the Compassionate Use Act and the Medical Marijuana Program Act have precipitated a “green rush” with individual moving to Trinity County to grow and manufacture Cannabis; with some seeking to capitalize on ambiguities in the law while others lack an awareness of community and environmental consciousness.
- E. 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, manufacturing, 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.

- F. In the absence of a formal regulatory framework, Cannabis businesses are less likely to learn of, or implement, guidelines that are protective of the public peace health, safety and the environment.
- G. 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.
- H. 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.
- I. This ordinance provides regulations and control over Cannabis, and prevents the potential introduction of dangerous product and practices within the County.

Section 2: Application

The County hereby enacts the following as Section of the Trinity County Zoning Ordinance No.315: Cannabis Non-Storefront Retail

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. "Non-Storefront Retail" is defined as the selling and delivering of Cannabis and cannabis goods to customers from a licensed premise that is not open to the public.
- C. "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.
- D. "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. Regulations: Cannabis Non-Storefront Retailers shall comply with all of the following regulations:

- A. Non-Storefront Retail licensees must identify one of the following license application types:
 - i. Adult-Use (A-License)
 - ii. Medicinal (M-License)
- B. Non-Storefront Retail businesses shall comply with the following:

- i. Sales and deliveries must only take place between 6:00 a.m. and 10:00 p.m. Pacific Time.
 - ii. All Cannabis goods must be placed in an opaque exit package prior to leaving the premises.
 - iii. Deliveries may be made only by employees of the retailer.
 - iv. *Deliveries must be to a private residence, and cannot be sent to a post office box. The private residence must also be the off-site residence of the consumer. For purposes of this section, "private residence" "means a house, an apartment unit, a mobile home, or other similar dwelling."*
 - v. Delivery vehicles may not contain more than \$3,000 of Cannabis good at any time.
 - vi. The licensee must be able to immediately locate all delivery vehicles at all times.
 - vii. Retailer cannot package or label cannabis goods.
 - a. This is except for dried flower held in inventory by a retailer at the time of licensure that is not packaged may be packaged by the retailer into individual packages for sale beginning January 1, 2018 and before July 1, 2018.
 - viii. Retailer cannot accept, possess, or sell cannabis goods if they are not packaged as they will be sold at final sale
- C. Cannabis Non-Storefront Retailers shall possess a valid County Cultivation license and shall abide by the regulations established under Trinity County's cultivation ordinance. *The retail premises shall be on the legal parcel as designated on the cultivation license.*
- D. Cannabis Non-Storefront Retailers facilities shall be closed to the public. All orders must be placed via phone, facsimile, mail or internet.
- E. Non-Storefront Retailers must allow access to any facilities or any vehicles utilized in transportation, and allow access to records if requested by the County, its officers, or agents, and allow inspections from the County or its officers to verify compliance with all relevant rules, regulations and conditions.
- F. Non-Storefront Retailers must indemnify, defend, and hold the County harmless from any and all claims and proceedings relating to the approval of the permit or relating to any damage to property or persons stemming from the commercial Cannabis activity.
- G. Non-Storefront Retailers must obtain a valid and fully executed commercial Cannabis Non-Storefront Retail license from the State prior to commencing operations, and must maintain such license in good standing in order to continue operations.
- H. *Non-Storefront Retailers and property owners who lease property to Non-Storefront Retailers where commercial activities are taking place must ensure that all commercial Cannabis activities at the site operate in good standing with permits and licenses required by the Trinity County Code and State law.* Property owners who fail to take appropriate action to evict or otherwise remove operators who do not maintain permits or licenses in good standing with the County or State shall be subject to suspension or revocation Non-Storefront Retailer license, as well as personal liability for required enforcement.

- I. Non-Storefront Retailers are only allowed in zones where cultivation license are allows. The facility shall not be on prime Agricultural Soil, as determined by the Planning Director or his/her designee.
 - i. Non-Storefront Retailers will not be allowed within the following areas:
 - a. Trinity County jurisdiction of the Whiskeytown-Shasta-Trinity National Recreation Area and within the lease lots within the Ruth Lake Community Services District.
 - b. Timber Production Zones (TPZ) with the exception made for qualified Phase I Applicants.
 - c. Residential 1 (R1), Residential 2 (R2), or Residential 3 (R3) Zones.
 - ~~d. Within the legal boundaries of the Trinity County Waterworks District #1, Weaverville Community Services District, Coffee Creek Volunteer Fire District and Trinity Center Community Services District and within the following area of the Lewiston Community Services District: Mt. Diablo Meridian, Township 33N, Range 8W, Sections 17, 18, 19, 20, and Mt. Diablo Meridian, Township 33N, Range 9W, Section 24, I3, which are in proximity to high density areas, and therefore, create a substantial risk of a public nuisance. An exception to this limitation is allowed for applicants who have submitted an application for enrollment under NCRWQCB Order #2015-0023 by the following dates:~~
 - ~~e. Weaverville Community Services District by December 31, 2016;~~
 - ~~f. Lewiston Community Services District by January 15, 2017;~~
 - ~~g. Trinity County Waterworks District #1 by July 1, 2018;~~
 - ~~h.d. Coffee Creek Volunteer Fire District and Trinity Center Community Services District by November 30, 2017.~~
- J. Non-Storefront Retail facilities and activities are not allowed within one thousand (1000) feet of a youth-oriented facility, school, church, or residential treatment facility as defined herein. In addition, Non-Storefront Retail facilities and activities are not allowed within five hundred (500) feet from an authorized school bus stop, unless a variance is obtained.
- K. Non-Storefront Retailers must pay an annual Program Fee annually from date of issue. The Cannabis Non-Storefront Retail Program Fee is set at: \$500.
- L. 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.
 - ii. 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.

M. Non-Storefront retailer license holders may also hold a manufacturing and/or distribution licenses.

3. Denial/Rescission of License:

- A. Applicant's Application shall be denied or the issuance of a license rescinded if the Trinity County becomes aware of any of the following:
 - i. The applicant has provided materially false documents or testimony;
 - ii. The operation as proposed if permitted, would not comply with all applicable laws including but not limited to the Building, Planning, Housing, Fire and Health Codes of the County including the provisions of this Chapter and with all applicable laws including zoning and county ordinances.
- B. Applicant shall be given a minimum of seven (7) business days to correct any deficiencies prior to the issuance of a denial or rescission.
- C. 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 Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant Business and Professions Code section 26055(h) until July 1, 2019 because this Ordinance requires discretionary review for the individual licenses that are provided for within.

Introduced at a regular meeting of the Board of Supervisors held on the 3rd day of April, 2018, and passed and enacted this ___day of_____, ____by the Board of Supervisors of the County of Trinity by motion second (/), and the following vote:

AYES: Supervisors
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None

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

Ordinance No. XXXX

April 3, 2018

Page 6 of 6

APPROVED AS TO FORM AND LEGAL EFFECT:

Margaret E. Long, County Counsel