

STAFF REPORT

Subject: Agenda Item 7 - Cannabis Testing Facilities

Date: August 15, 2017

ISSUE: Discuss and/or take action regarding an ordinance allowing for Cannabis testing facilities in Trinity County.

BACKGROUND: In the wake of implementing a Commercial Cannabis Cultivation Licensing (CCCL) program, the County has received numerous requests to allow the establishment of Cannabis testing facilities in Trinity County.

DISCUSSION: The attached draft Ordinance Allowing for Cannabis Testing Facilities (Exhibit A) was created in response to requests from members of the public to address the establishment of Cannabis Testing Facilities in Trinity County. An earlier version of this Ordinance was provided to the Planning Commission at the Planning Commission meetings on March 23, 2017 and May 25, 2017. Planning Commissioners reviewed draft ordinances presented at those meetings, and recommended revisions incorporated herein.

The attached Ordinance Allowing for Cannabis Testing Facilities has been updated from earlier versions to incorporate language that considers recent updates in legislation with the passing of the Senate Bill 94, known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) (Exhibit B). At the end of April, the BMCR provided the *Proposed Text of Lab Regulations* (Exhibit C) in which a comprehensive set of regulations are proposed to oversee the license application process, sampling, standard operating procedures, laboratory analyses and reporting, post-testing procedures, quality assurance and quality control, employee qualifications, and laboratory security associated with Cannabis testing facilities.

As discussed during the May 25, 2017 Planning Commission meeting, one of the primary land use considerations related to this proposed Ordinance included:

1. Should testing facilities be allowed in Highway Commercial Zoning District?

During the May 25 meeting, Commissioners supported allowing testing facilities in the Highway Commercial Zoning District. Since that decision, Staff has reviewed the Highway Commercial Zoning District and finds that allowing testing facilities in that zoning district would not be consistent with the general description of the zoning district which 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.”

One of the main reasons for adding Highway Commercial as an allowable zoning district for testing facilities was to provide equal opportunity to landowners or investors potentially interested in pursuing the establishment of a testing facility in the State Highway 299 corridor downriver, from Junction City to the Humboldt County line. Staff acknowledges that landowners or investors in this geographical area could still pursue establishing a testing facility if they were to first rezone a parcel into an appropriate Commercial or Industrial Zoning District.

Alternatively, the Commission could recommend updating the Highway Commercial Zoning District so that the general description of the district is expanded beyond the current purpose of providing appropriate sites for the needs of recreation and business travelers.

Although the Agricultural Forest Zoning District was recently updated, this action was taken due largely to recognizing that it had been adopted in 1968—nearly 50 years ago. The Highway Commercial Zoning District was adopted in ???

Staff recommends excluding the Highway Commercial Zoning District from the list of allowable Zoning Districts for testing facilities. Staff recommends that the Planning Commission approve the Ordinance Allowing for Cannabis Testing Facilities as written (Exhibit A) and recommend that the Board of Supervisors approve the ordinance.

ALTERNATIVES INCLUDING FINANCIAL IMPLICATION:

1. Discuss the establishment of Cannabis testing facilities in Trinity County and direct Staff to conduct additional review for future Planning Commission and/or Board of Supervisors meeting.
2. Deny recommendations by Staff to allow Cannabis testing facilities in the zoning districts included in the ordinance.
3. Accept the land uses set forth in the Ordinance Allowing Cannabis Testing Facilities and recommend adoption of the Ordinance by the Board of Supervisors.

RECOMMENDATION: Approve the Ordinance Allowing for Cannabis Testing Facilities and recommend final approval and adoption of the Ordinance by the Board of Supervisors.

Respectfully Submitted,

Leslie J. Hubbard
Interim Planning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF TRINITY COUNTY CODE ALLOWING FOR CANNABIS TESTING FACILITIES

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 marijuana 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 marijuana 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 11362.7 et 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 marijuana through collective, cooperative cultivation projects and to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420.
- (3) On September 11, 2015, the State enacted the Medical Cannabis 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, but implementing regulations have yet to be written and state licenses will not be available until 2018. MMRSA was amended by SB 837.
- (4) On June 27, 2017, the State adopted SB 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which 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; (2) Adult-use cannabis and adult-use cannabis products for adults 21 years of age and over.
- (5) Previous landmark Cannabis legislation, including the Compassionate Use Act and the Medical Cannabis Program Act, have precipitated a “green rush” with individuals moving to Trinity County to grow Cannabis; with some seeking to capitalize on ambiguities in the law, while others lack an awareness of community and environmental consciousness.
- (6) Due to the passage of the Medical Cannabis Regulation and Safety Act (MMRSA), and the Adult Use of Cannabis Act (AUMA) and SB 94 (Medicinal and Adult-Use Cannabis

Regulation and Safety Act (MAUCRSA)) in California, there is a concern that if left unregulated, there will be a substantial increase of Cannabis activity in the County.

- (7) Since the adoption of MMRSA numerous sources, including law enforcement, elected officials, county administrators, neighbors and Cannabis cultivators have reported numerous inquiries from individuals and entities, both from within and without Trinity County, who seek to expand their current cultivation operations, or start new ones.
- (8) The County finds that in the absence of a formal regulatory framework the negative impacts frequently associated with marijuana cultivation 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.
- (9) 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.
- (10) 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.
- (11) This ordinance provides regulations for the local licensing of Cannabis testing facilities in specified locations and under specified conditions in the County.

Section II:

The County hereby enacts the following as Section 28.6 of the Trinity County Zoning Ordinance No. 315:

A. Definitions:

1. "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.
2. "School" means an institution of learning, 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.
3. "Youth-oriented facility" means public park, school authorized bus stop 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.

B. Applicability:

Cannabis testing facilities (requiring a Type 8 State license) may be allowed with a Use Permit in the following Zoning Districts;

1. C2 (General commercial)
2. C3 (Heavy Commercial)
3. I (Industrial)
4. All other zones are ineligible.

Testing facilities shall be subject to the requirements of this Section. A Use Permit and/or license applications are independent and separate actions. Approval of one does not guarantee approval of the other.

C. Regulations:

1. Within sixty (60) days of adoption of this ordinance any person or entity desiring a Cannabis testing facilities license within Trinity County may apply with the Trinity County Planning Department. An application shall be on a form provided by the Trinity County Planning Department and, will require, at minimum, confirmation that the applicant is meeting the requirements of this chapter. Application shall include a plan of operation pursuant to Section D.6 and D.7.
2. Cannabis testing facilities shall comply with all of the following regulations:
 - a. Shall not be within one thousand (1,000) feet of a youth-oriented facility, a school, any church, or residential treatment facility as defined herein or within five hundred (500) feet of an authorized school bus stop and will be measured from footprint of building to edge of parcel boundary if sensitive receptors are present.
 - b. The owners, operators, and employees of the Cannabis testing facilities shall be independent from all other persons, associations and/or entities involved in the Cannabis industry, and shall not hold any other State or County license related to Cannabis.
 - c. Cannabis testing facilities shall apply for appropriate licensing and/or register with any State Agencies upon establishment of a State regulatory framework as required by the State and provide copies of the license application and the issued license to the County.
 - d. Cannabis testing facilities shall show proof of ISO 17025 accreditation or proof that the applicant is in the process of applying or is preparing to apply for ISO 17025 accreditation as required by the State.
 - e. Cannabis testing facilities shall adopt written standard operating procedures for laboratory processes, and analytical methods as required by State regulations.
 - f. Cannabis testing facilities shall adopt a written standard operating procedure to obtain samples for testing according to State regulations.
 - g. Cannabis testing facilities shall develop and implement scientifically valid testing methodologies for the chemical, physical, and microbial analysis of Cannabis products according to State regulations.
 - h. Cannabis testing facilities shall develop and implement test methods and corresponding standard operating procedures for the analyses of organic and inorganic materials identified by the State. Additional analyses may be conducted as requested by the cultivator of the sample(s) to be tested.
 - i. Cannabis testing facilities shall dispose of test samples according to State regulations and document waste disposal procedures followed for each sample.
 - j. Cannabis testing facilities shall comply with all safety standards and requirements for Cannabis testing facilities identified by the State, and shall ensure the safety of its employees and the proper disposal of all chemicals and byproducts pursuant to California Department of Public Health guidelines,

California Division of Occupational Safety and Health requirements, California Department of Transportation, California Department of Toxic Substances Control (Trinity County CUPA), and Trinity County Department of Environmental Health.

- k. Cannabis testing facilities shall develop and implement standard operating procedures or programs required by the State including quality assurance and quality control,
- l. Cannabis testing facilities shall employ personnel who meet the experience and education requirements specified by the State and shall train qualified personnel as required by the State.
- m. Cannabis testing facilities shall adopt a written security protocol and implement the protocol to prevent diversion, theft, and loss of Cannabis samples.
- n. Cannabis shall not be sold or consumed on or within the premises on which this license is issued.

D. Required Findings:

A license for a Cannabis testing facility shall not be granted by the County unless all of the following findings are made based on substantial evidence:

- 1. The testing facility, as proposed, will comply with all of the requirements of the State of California Bureau of Medical Cannabis Regulation and Trinity County Code for Cannabis testing facilities.
- 2. The Cannabis testing, as approved and conditioned, will not result in significant adverse impacts on the environment.
- 3. The testing facility is accredited by an approved accrediting agency recognized by the State and the County of Trinity.
- 4. Plans for the testing facility demonstrate proper protocols and procedures for statistically valid sampling methods and accurate certification of Cannabis and Cannabis products for potency, purity, pesticide residual levels, mold, and other contaminants according to adopted industry standards.
- 5. The testing facility shall agree to provide as requested and/or required to State and County agencies procedures, processes and/or data collected resulting from testing performed.
- 6. Plans for the testing facility demonstrate proper protocols and procedures for transport, handling, and disposal of all chemicals used in the testing process.
- 7. The testing facility is located in a building permitted by the Trinity County Building Department and meets Trinity County Code.

E. Required Conditions:

In addition to any other conditions and mitigation measures required, all of the following conditions shall apply to all licenses for a Cannabis testing facility:

- 1. Operators of the testing facility shall allow access to the facility and access to records if requested by the County or State, its officers, or agents, and shall pay for routine and focused inspections and submit to inspections from the County or its officers to verify compliance with all relevant rules, regulations, and conditions.
- 2. The applicant, owner, and operator *shall* agree to submit to, allow access for, and pay for, inspections of the operations and relevant records or documents necessary to

determine compliance with this Chapter from any Enforcement Officer of the County or their designee.

3. Operators of the testing facility 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 agents, 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.
4. The facility operator shall be responsible for ensuring that all Cannabis testing activities at the site operate in good standing with licenses required by Trinity County Code and State law. Failure to take appropriate action to evict or otherwise remove operators who do not maintain licenses or licenses in good standing with the County or State shall be grounds for the suspension or revocation of the license.
5. The testing facility and related activities shall be maintained in accordance with the operating plans accepted by the County.
6. A safety and security plan shall be submitted and accepted by the County. This plan shall be updated annually. All security protocols shall be implemented prior to commencing operations.
7. Hours of operation shall be determined on a site-specific basis established in the Use Permit associated with the testing facility.
8. This license does not guarantee that the applicant will be considered compliant with any future land use ordinance.
9. Licenses are transferrable with payment of fees and review of an updated application including information regarding new ownership.
10. Cannabis is not recognized under Federal law and applicant does not grant any right to violate federal law.
10. When the State Bureau of Medical Cannabis Regulation (BMCR) begins issuing Type 8 licenses under MCRSA, the applicant or license holder *shall* file a complete application with the BMCR within 60 days.
11. Notwithstanding any other provision of this Chapter, a person participating in the testing of Cannabis who is registered pursuant to this Chapter, but who applies for and is denied a State license *shall* immediately cease all Cannabis testing within the County until he/she successfully obtains the proper State testing license(s) by BMCR.

F. Fees:

1. The County shall collect from the applicant a regulatory program fee (hereinafter referred to as Fee) when an applicant submits an application to establish a Cannabis testing facility with the Planning Department pursuant to this Chapter.
2. Such fee shall fairly and proportionately generate sufficient revenue to cover the costs of administering, implementing, and enforcing this Chapter.
3. A Use Permit required by this license is an independent action that *shall* require a Use Permit Fee.
4. The Cannabis Testing Facilities Program Fee is shall be:
 - i. Type 8 License: Year 1= \$2 per square foot plus \$1,000 towards General Plan update. Successive years=\$1,000 General Plan Fee, plus \$1,000 processing Fee.

- ii. Inspection/Reinspection Fee: \$200.00
 - iii. Transfer Fee: \$3,000.00
5. Fees shall be paid thereafter annually prior to March 1 of each year.

H. Denial/Rescission of License:

1. 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 licensed, 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.
2. Applicant shall be given a minimum of seven (7) business days to correct any deficiencies prior to the issuance of a denial or rescission.
3. Applicants shall have the right to appeal any denials to the Planning Director. Any person dissatisfied with the decisions of the Planning Director may appeal therefrom to the Planning Commission at any time within ten (10) working days after notice of the decision is given. Such appeal is taken by filing a notice of appeal with the Planning Director and paying the required appeal fee. Upon filing of a notice of appeal, the Planning Director shall within ten (10) days to transmit to the Secretary of the Planning Commission all papers and documents on file with the Planning Director relating to the appeal and schedule the appeal for the Commission hearing.
4. Applicant shall have the right to appeal any denials or rescissions as prescribed in Chapter 8.90.130 of the Trinity County Code.

(7) Enforcement

- (a) Violation of this Chapter constitutes a nuisance and is subject to fines and abatement pursuant to Chapters 8.64 and 8.90 of the Trinity County Code.
- (b) The Code Enforcement Officer shall make reasonable efforts to notify the owner and/or violator.
- (c) Additional fees may be required for code enforcement reinspection.

Section III:

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 testing facilities will require a 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 ____ day of _____, ____, 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

John Fenley, CHAIRMAN
Board of Supervisors
County of Trinity
State of California

ATTEST:
MARGARET LONG
Clerk of the Board of Supervisors

By: _____
Deputy