

Item No. 13
April 27, 2017



TRINITY COUNTY

Board of Supervisors

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Marijuana Permanent Ordinance Ad Hoc Committee

AD HOC STAFF REPORT

TO: Planning Commission
FROM: Marijuana Permanent Ordinance Ad Hoc Committee
DATE: April 27, 2017
RE: Nursery Ordinance

Through public and private meetings, the *ad hoc* committee has learned that the wholesale sale of local nursery Cannabis products is a high priority for members of the public.

In response to this information, the *ad hoc* committee is interested in creating land use regulations for Wholesale Cannabis Nurseries. This would include a license to allow for the production of clones and immature plants and supplies, which can be sold to licensed commercial cultivators. This license category is a component of a comprehensive County Commercial Cannabis Program, which permits and regulates commercial cannabis businesses throughout the County. This license will become available in 2018 in conjunction with the State license program.

This proposed ordinance for nurseries allows for sales to commercial cultivators in the following categories.

1. Licensed nursery cultivators who wish to sell under 100 immature plants (see zoning details in ordinance)
2. Licensed Nursery Cultivators who wish to sell over 100 immature plants (see zoning details)
3. Resale/wholesale – those who wish to resell directly to licensed cultivators (see zoning details)

The Commercial Cannabis Land Use Ordinance (Ordinance) establishes a permitting framework for commercial cannabis businesses engaged in cultivation, nurseries, transportation, distribution, testing, manufacturing and retail. The ordinance establishes allowable zoning districts for each land use, operator qualifications, siting criteria, operating standards and best management practices.

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KEITH GROVES
DISTRICT 1

JUDY MORRIS
DISTRICT 2

BOBBI CHADWICK
DISTRICT 3

BILL BURTON
DISTRICT 4

JOHN FENLEY
DISTRICT 5

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF TRINITY COUNTY CODE ALLOWING FOR CANNABIS NURSERIES AND RESALE OF WHOLESALE NURSERY PRODUCTS

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

Section 1: Finding 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 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 marijuana 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) Previous landmark marijuana legislation, including the Compassionate Use Act and the Medical Marijuana Program Act, have precipitated a “green rush” with individuals moving to Trinity County to grow marijuana; with some seeking to capitalize on ambiguities in the law, while others lack an awareness of community and environmental consciousness.
- (5) Since the adoption of MMRSA, numerous sources, including law enforcement, elected officials, County administrators, neighbors and marijuana 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.
- (6) In the absence of a formal regulatory framework, marijuana cultivators are less likely to learn of, or implement, guidelines that are protective of the public peace, health, safety and the environment; while law enforcement has been deprived of a clear means of

distinguishing legally compliant marijuana cultivators from those who threaten the public peace, health, safety and the environment.

- (7) The County finds that in the absence of 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.
- (8) 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.
- (9) 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.
- (10) This ordinance provides regulations and control over Cannabis nursery products and prevents the potential introduction of pests and disease into the community through the foreign agricultural products.

Section II:

The County hereby enacts the following as Section _____ 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. "Nursery" means a licensee that produces only clones, immature plants, seeds and other agricultural products used specifically for planting, promulgation and of Cannabis.
3. "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.
4. "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. Nursery:

Cannabis nursery facilities may be permitted in the Agricultural ("A") or Agricultural Preserve ("AP") zoning districts. Cannabis nursery facilities may be permitted in Heavy Commercial ("C3"), Industrial ("I"), Rural Residential ("RR10"), and Specific Unit Development ("SUD") zoning districts, subject to a Use Permit in each case. Cannabis nurseries require a Type 4 state license. Cannabis nurseries which sell less than 100 clones, immature

plants, seeds and other agricultural products annually shall be exempt from this Section, if they have a valid State license (1c, 1, 1a, 1b, 2, 2a, 2b, 3, 3a, and 3b), a County license, and only sell to licensed buyers in the State of California.

C. Regulation of Nurseries:

Cannabis nurseries shall comply with all of the following regulations:

1. Cannabis nurseries shall be located only in zones that specifically provide for this use.
2. Cannabis nurseries shall 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.
3. Cannabis nursery operators shall ensure that all clones, immature plants, seeds and other agricultural products are obtained from permitted and licensed cultivation sources and shall implement best practices to ensure that all Cannabis products are properly stored, labeled, transported, and inspected prior to distribution to a licensed individual.
4. Cannabis nurseries shall have security measures sufficient to restrict access to and to deter trespass and theft of Cannabis or Cannabis products. The fence must include a lockable gate that is locked at all times when the property owner and/or employees are not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
5. Cannabis nurseries producing over 10,000 square foot of clones and/or immature plants are only allowable with a Use Permit.
6. Cannabis nurseries may grow clones and immature plants indoor, but only after obtaining a Use Permit.
7. Cannabis nurseries must comply with all building and safety codes.
8. The breeding and flowering area of the Cannabis nurseries shall not exceed 500 sq. ft.
9. Sales are permitted on the property, but the location of sales shall not be more than 10% of the land.

D. Resale of Wholesale Product

1. Individuals or businesses are permitted to resell wholesale Cannabis products in the Agricultural (“A”), Agricultural Preserve (“AP”), Heavy Commercial (“C3”), Industrial (“I”), Rural Residential (“RR5”), Specific Unit Development (“SUD”), and Highway Commercial (“HC”), subject to a Use Permit in each case. Resale of wholesale products requires a Type 4 state license.
2. Cultivation is permitted on the property, but the location of growing shall not be more than 10% of the land, must be fenced off from other part of the establishment.

3. Cannabis nurseries can also sell additional agricultural products, including soil and equipment, but these products cannot be more than 10% of the retail area.

E. Required Conditions:

In addition to any other conditions and mitigation measures required, all of the following conditions shall apply to all Cannabis Nurseries and Resale of Wholesale Cannabis licenses:

1. The following are additional required conditions:
 - a. There should not be any Cannabis nurseries and resale of wholesale Cannabis product in the Shasta-Trinity County Natural Resource Area.
 - b. All license holders must keep accurate records on sales, including proof that they are only selling to licensed individuals.
 - c. Sales can only be to licensed growers in the State of California.
 - d. License holders must comply with all State and County laws
 - e. The Trinity County Agricultural Commissioner shall create standards for plant quality, which much comply with all State of California regulations.
 - f. All sales locations must also have adequate parking to accommodate customers.
 - g. Lights from nursery faculties and resale locations cannot be seen by neighboring properties.
2. Operators of the Cannabis Nurseries shall allow access to the facility and access to records if requested by the County, its officers, or agents, and shall pay for an annual inspection and submit to inspections from the County or its officers to verify compliance with all relevant rules, regulations, and conditions.
3. The applicant, owner, and operator agree to submit to, 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.
4. Operators of the Cannabis Nurseries 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.
5. Any person operating a Cannabis Nurseries shall obtain a valid and fully executed commercial Cannabis license prior to commencing operations and must maintain such permit in good standing in order to continue operations.
6. 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 the Trinity County Code and State law. Failure 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 grounds for the suspension or revocation of the licenses.
7. The Cannabis Nurseries and related activities shall be maintained in accordance with the operating plans approved by the County.

8. This License does not guarantee that the Applicant will be considered compliant with any future land use ordinance.
9. This Application does not give the Applicant any property rights, and it is not a permit or a guarantee that a permit will be issued. Application Registration will be used to apply for permitting under the permanent land use ordinance or for variance if permitting under the ordinance is not possible. Application does not equate to Non-conforming entitlement under any future land use ordinance and the Application is non-transferrable.
10. Cannabis is not recognized under Federal law and Applicant does not grant any right to violate federal law.
11. When the State begin issuing Type 4 under MMRSA, the Applicant or License holder must file a complete application for the appropriate state license with the appropriate State licensing authority within 60 days of obtaining a County license.
12. Notwithstanding any other provision of this Chapter, a person participating in the cultivation of Cannabis who is registered pursuant to this Chapter, but who applies for and is denied a State license before a permanent Cannabis cultivation ordinance has been enacted in the County, must immediately cease all Cannabis cultivation within the County until he/she successfully obtains the proper State cultivation license(s) under MMRSA.

F. Enforcement:

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 Municipal Code.

G. Fees:

1. The County shall collect from the registrant a regulatory program fee (hereinafter referred to as Fee) when an Applicant applies for a registration of a Cannabis testing facilities 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. The Cannabis Testing Facilities Program Fee is set at:
 - i. Nursery Tag to Existing County License: \$250.
 - ii. Nursery and Resale of Wholesale License: \$2,500, plus \$1,000 towards general plan update.
 - iii. Inspection Fee: \$200.
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 the Trinity County becomes aware that:
 - a. The Applicant has provided materially false documents or testimony; or
 - b. 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.

- c. Applicant shall be given a minimum of seven (7) business days to correct any deficiencies prior to the issuance of a denial or rescission.
- d. Registrant shall have the right to appeal any denials or rescissions as prescribed in Chapter 8.90.130 of the Trinity County Municipal Code.

Section III:

CEQA Hold.

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