

ITEM NO. ⁵~~8~~

MEETING DATE ^{9/28/17}~~8/24/17~~

APPLICATION NO. PW-17-04

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Trinity County **REPORT BY:** Colleen O’Sullivan

APN: Countywide

PROJECT DESCRIPTION:

Amendment to the County’s Zoning Ordinance to adopt an ordinance for Wholesale Cannabis Nurseries in various zoning districts (Exhibit A).

LOCATION: Countywide

PURPOSE:

The purpose of this item is for the Commission to discuss performance standards, requirements, prohibitions and other conditions for the creation of a Wholesale Cannabis Nurseries section of the forthcoming Cannabis Ordinance (tentatively Section 28 of the Zoning Ordinance. This process includes a public hearing before the Planning Commission and a public hearing and adoption by the Board of Supervisors.

BACKGROUND INFORMATION:

In response to community inquiry, and the Planning Commission’s and Board of Supervisors’ direction, staff prepared discussion items and a staff report for allowing Wholesale Cannabis Nurseries in the various zoning districts. It is the Board of Supervisor’s direction to create a Cannabis Wholesale Nurseries Ordinance for adoption, which includes definitions, regulations, required conditions, enforcement, and denial and rescission of license.

STAFF EVALUATION:

Wholesale of Cannabis products

In previous discussions before the Planning Commission, much attention and discussion was directed towards the Wholesale vs. the Retail or Resale of Cannabis products. After consultation with the Ad Hoc Committee, the current draft omits any resale of plant products. Auxiliary sales may take place (soil, tools, pots, etc.) on nursery premises, but cannot exceed ten percent of the nursery footprint. The title of the ordinance reflects this change.

Allowable Zoning Districts

In previous discussions, several zoning districts were considered, especially in the Rural Residential, ten acre minimum (RR-10) district. In the Land Use Element of the General Plan, the following guidance is provided regarding the development and use of rural residential properties:

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Rural Residential intends to describe locations of rural-type residential development. Minimal county services are to be provided and, in general, are not desirable in this area. Densities are designed to ensure the long-term opportunity for individual water and sewer systems. High density will be one density will be one dwelling unit per acre or larger as determined by the county sanitarian and the Regional Water Quality Control Board to allow the use of both individual water and sewer systems on the same parcel. Low density will be one dwelling unit per ten acres. This is to allow limited residential development in outlying areas of the county where minimal impacts are desirable and the overall character of the landscape as well as potential for open space, recreation, or resource production is to be preserved. Special attention should be directed toward the protection of sensitive environmental resources such as water quality, unstable slopes, critical wildlife habitat, etc. This designation should not be construed as discouraging resource production activities, such as logging or grazing.

This description should also provide for small home businesses, for small-scale agriculture, and for small industrial operations, subject to controls to prevent nuisances.

In light of this guidance, continuing conflicts between cultivators and non-cultivators (land use conflicts), and the heavy commercial emphasis of Cannabis nurseries, staff recommends that Rural Residential, ten acre minimum zoning not be considered as an allowable zoning district for this use.

Maximum size of Wholesale Cannabis Nurseries in RR-10 Zones

If the Commission wishes to include RR-10 as an allowable zoning district for this use, the size of these facilities can, and should, be limited to reduce conflicts with neighboring residential uses, ensure compliance with use permit requirements and provide staff with guidance to evaluate project proposals. The State of California, in its latest iteration through MAUCRSA, does not have any size restrictions for these types of facilities, although local jurisdictions can establish limits.

In the Rural Residential district description, maximum lot coverage by all structures cannot exceed 35 percent. The maximum lot coverage applies to structures. One thought for consideration would be to include the nursery area (indoor and outdoor) to be included with the 35 percent lot coverage.

Maximum size of Wholesale Cannabis Nurseries

Earlier versions of State regulations stated a maximum size of one acre for Cannabis nursery facilities. This has since been removed. However, local jurisdictions can impose their own limits on the size of nursery facilities.

Mature Plants and Immature Plants as a Percentage of Nursery Operations

There was a lengthy discussion at the May 25th Commission meeting regarding mature Cannabis plants as a percentage of nursery operations. Staff has not had time to consult with other jurisdictions regarding their policies and implementation of nursery facilities, and will bring back this draft ordinance for further review. Commission input would be helpful.

ENVIRONMENTAL EVALUATION:

The legislature has determined that adoption of Cannabis-related ordinances are not subject to CEQA review (SB 94). In the Business and Professions Code section 26055(h), it states:

“Without limiting any other statutory exemption or categorical exemption, Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule,

or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. To qualify for this exemption, the discretionary review in any such law, ordinance, rule, or regulation shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. This subdivision shall become inoperative on July 1, 2019.”

STAFF RECOMMENDATION:

Staff recommends the following:

1. Discuss and provide direction to staff regarding Wholesale Cannabis Nurseries and direct staff to schedule the final draft for public hearing.

Respectfully submitted,



Colleen O'Sullivan
Associate Planner

ORDINANCE NO. 328-04

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

The Board of Supervisors of the Count 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 recommend by a physician, and to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon recommendation of a physician are not thereby subject to criminal prosecution or sanction.
- (2) The State enacted SB 20 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 their 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 (MCRSA), 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. MCRSA was amended by SB 837.
- (4) Previous landmark 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 MCRSA, 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

outside Trinity County, who seek to expand their current cultivation operations, or start new ones.

- (6) On November 8, 2016, voters approved AUMA to allow recreational use of marijuana by adults over the age of 21.
- (7) 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.
- (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 Ordinance 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 and control over Cannabis nursery products and prevents the potential introduction of pests and disease into the community through foreign agricultural products.

Section II:

The County hereby enacts the following as Section 28.4 of the Trinity County Zoning Ordinance No. 315-28.

A. Definitions:

1. "Authorized School Bus Stop" means any location established by a school district for pick-up and/or delivery of school children.
2. "Auxiliary Nursery Sales": ancillary goods sold within a Cannabis nursery that are directly related, supplementary and subordinate to the Cannabis products sold within the nursery and that are specifically for planting and promulgation of Cannabis.
3. "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.
4. "Cannabis Nursery" means a wholesale sales facility operated by a licensee that produces only clones, immature plants, seeds and other agricultural products used specifically for planting and promulgation of Cannabis and sold only to licensed Commercial Cannabis Cultivation growers. Retail sales are not permitted.

5. "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
6. "Residential Treatment Facility" means a facility providing for treatment of drug and alcohol dependency.
7. "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.
8. "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. Allowable Zoning Districts:

All Cannabis nursery facilities require a Type 4 State license.

Cannabis nursery facilities may be permitted only in the following Zoning Districts subject to first securing a Planning Commission-issued Conditional Use Permit:

Agriculture (A)

Heavy Commercial (C-3)

Heavy Industrial/Manufacturing (M-2)

Light Industrial/Manufacturing (M-1)

Industrial (I)

Specific Unit Development (SUD), whose guidelines specifically identify parcels for industrial development.

Regardless of Zoning District, Cannabis nurseries shall not be permitted within the following areas:

Recreation District #1(RD-1) [This is primarily the area included within the Shasta-Trinity-Whiskeytown National Recreation Area]

Ruth Lake Specific Unit Development [This is primarily the area within the Ruth Lake Recreation Area]

C. Regulation of Nurseries:

The following requirements shall apply to all Cannabis nurseries:

1. A Cannabis nursery shall possess and be in full compliance with a Type 4 State license.
2. Cannabis nurseries shall not be located within one thousand (1,000) feet of a youth-oriented facility, school, 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 appropriately 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 an appropriately licensed individual.
4. Cannabis nurseries shall have security measures, including fencing, sufficient to restrict access and deter trespass and theft of Cannabis or Cannabis products. Fencing must include a lockable gate that is locked at all times when the property owner and/or employees are not on the premises. Fencing 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, although shade cloth may be used on the inside of the fence.
5. Cannabis nurseries may grow clones and immature plants indoors, but only when allowed by the required Conditional Use Permit.
6. Cannabis nurseries shall comply with all other provisions of the Trinity County Code and the Zoning Ordinance.
7. The breeding and flowering area of the Cannabis nurseries shall not exceed 500 square feet.
8. Development standards: The development standards (such as setbacks, minimum lot coverage, etc.) shall be as shown for the applicable zoning district, provided, however, that the Planning Commission may establish more restrictive standards on a case-by-case basis during the use permit approval process.
9. Auxiliary nursery sales are permitted within the established nursery facility; however, the location of sales shall not exceed ten percent (10%) of the Cannabis nursery facility.

D. Required Conditions of Use Permit Approval:

In addition to any other conditions and mitigation measures required, all of the following conditions shall apply to all Cannabis nurseries:

- a) b. All Cannabis nursery license holders shall maintain accurate records on sales, including proof that sales occur only to licensed individuals.
- b) c. Sales shall only be to licensed Cannabis cultivators in the State of California.
- c) d. License holders shall comply with all applicable State and County laws.

- d) e. The Trinity County Agricultural Commissioner may create standards for plant quality which shall comply with State of California regulations.
 - e) f. All sales locations shall have adequate parking to accommodate customers.
 - f) g. Glare from nursery facilities and resale locations shall not emanate onto neighboring properties. This condition will also be reviewed on a case-by-case basis as part of the use permit process.
 - g) h. Cannabis nurseries shall comply with the cultivation plan required in State Type 4 licenses.
2. Operators of Cannabis nurseries shall allow access to the facility and access to records if requested by the County, its officers, or agents; shall pay for an annual inspection; and shall 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 shall agree to submit to, and pay for, routine and focused inspections of operations and relevant records or documents necessary to determine compliance with this Ordinance from any enforcement officer of the County or their designee.
 4. Operators of Cannabis nurseries and, if different, the property owner(s) 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, board, planning commission or board of supervisors arising from the County's registration of the site. The indemnification shall apply to any damages, cost 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 Nursery shall obtain a valid and fully executed commercial Cannabis cultivation license prior to commencing operations and must maintain such license in good standing 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 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 Cannabis nursery license.
 7. Cannabis nurseries and related activities shall be maintained in accordance with operating plans approved by the County.
 8. A license for Cannabis nursery cultivation or for the resale of wholesale Cannabis products does not guarantee that the applicant will be considered compliant with any future land use ordinance.

9. Application for Cannabis nursery cultivation does not give the applicant any property rights, and it does not guarantee that a Cannabis nursery cultivation license will be issued. The Application shall not be transferrable.
10. Cannabis is not recognized under Federal law and an application does not grant any right to violate federal law.
11. When the State begins issuing Type 4 Licenses under Medicinal And Adult Use Cannabis Regulations and Safety Act (*MAUCRSA*), the applicant or License holder shall file a complete application for the appropriate State license with the appropriate State licensing authority within 60 days of obtaining a County license.
12. The effective date of a county issued entitlement for a Cannabis nursery shall not begin until all State and County licensing, permitting and approvals have been obtained.
12. Notwithstanding any other provision of this ordinance or the Trinity County Code, a person cultivating Cannabis for the purposes of nursery sales, or resale of wholesale Cannabis nursery products pursuant to this ordinance, but who applies for and is denied a State license, shall immediately cease all Cannabis nursery cultivation within the County until he/she successfully obtains the proper State nursery cultivation license(s) under *MAUCRSA*.

E. Enforcement

In addition to enforcement measures in this ordinance, violation of this Ordinance also constitutes a nuisance and is subject to fines and abatement pursuant to Chapters 8.64 and 8.90 of the Trinity County Code.

F. Fees:

1. The County shall collect from the applicant a regulatory program fee (“Fee”) when the Application is submitted to 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 Nursery Program Fee is set at:
 - i. Nursery License: \$2,500, plus \$1,000 toward general plan update
 - ii. Inspection Fee: \$200.
4. Fees shall be paid thereafter annually prior to March 1 of each year.

G. Denial/Rescission of License:

- a. Applicant’s Application shall be denied or the issuance of a license rescinded if the County becomes aware that:
- b. The applicant has provided materially false documents or testimony;
- c. 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 the Chapter and with all applicable laws, including zoning and County ordinances.

- d. The applicant shall be given a minimum of seven (7) business days to correct any deficiencies prior to the issuance of a denial or rescission.
- e. The applicant may appeal a denial or revocation as provided in the appeals process of the Zoning Ordinance, or, if applicable as prescribed in Chapter 8.90.130 of the Trinity County Code.

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