



COUNTY OF HUMBOLDT
PLANNING AND BUILDING DEPARTMENT

DEPARTMENT POLICY STATEMENT NO. 16-006

ISSUE/SUBJECT: MMLUO Phase IV – Accepting applications from operators of cultivation sites existing as of January 1, 2016 who did not register with the county on or before August 23, 2016

HUMBOLDT COUNTY CODE SECTION(S): MMLUO Section 313-55.4.9.4 and 314-55.4.9.4 (Pre-Application Registration of Existing Cultivation Site)

RELATED POLICY ISSUE(S): Good Standing for priority license consideration by state licensing authorities, pursuant to MCRSA, Business and Professions Code section 19321, subsection (c).

BACKGROUND:

On January 26, 2016, the Humboldt County Board of Supervisors adopted Ordinance No. 2544, the **Medical Marijuana Land Use Ordinance (MMLUO) – Phase IV**, adding section 313-55.4 et seq. to Title III, Division I, Chapter 3, Section B, Part I (Coastal Zoning Regulations), and section 314-55.4 et seq. of Title III, Division 1, Chapter 4, Section B, Part I (Inland Zoning Regulations) to the Humboldt County Code. This ordinance established land use regulations concerning commercial cultivation, processing, manufacturing, and distribution of cannabis for medical use with the County of Humboldt in order to limit and control such cannabis activities in coordination with the State of California in the implementation of the Medical Marijuana Regulation and Safety Act ("MMRSA"). The regulations for cultivation operations involving outdoor and mixed light, as defined, specifically distinguish between operations that were in existence on or before January 1, 2016 ("existing") and those that were not ("new"). Further, the regulations specify an application window of December 31, 2016 for any application for Zoning Clearance Certificate, Special Permit or Use Permit issued pursuant to the CMMLUO. Per the settlement with HUMMAP, this application cutoff date may not be extended until an Environmental Impact Report has been certified.

Ordinance No. 2544, sections 313-55.4.9.4 and 314-55.4.9.4 of the Humboldt County Code regarding Pre-Application Registration of Existing Cultivation Site reads:

All operators of existing cultivation sites seeking recognition of cultivation activities that occurred on or before January 1, 2016, for purposes of obtaining a Zoning Clearance Certificate or discretionary permit for ongoing commercial cannabis cultivation for medical use pursuant to the CMMLUO shall register with the County of Humboldt Department of Planning & Building within 180 days of the effective date of this ordinance. Registration shall be on a form provided by the Planning Department that shall include the name and contact information of the operator, the address and/or Assessor's Parcel Number of the property where the cultivation site is located, the name and address of the property owner of the parcel, the approximate latitude and longitude coordinates of the cultivation site, and the approximate area (in square feet) under cultivation before January 1, 2016. Registrants shall provide sufficient documentation of prior cultivation activity. Registrants shall receive information about their options for obtaining a Zoning Clearance Certificate,

Special Permit, or Use Permit as necessary for the commercial cultivation of cannabis for medical use to comply with the MMRSA. Registrants may also be eligible to receive a certificate of good standing from the County of Humboldt for purposes of obtaining priority processing of state license applications, pursuant to the MMRSA, Business and Professions Code Section 19321 (c).

A question has arisen as to how this section is to be interpreted and applied. One reading is that this provision precludes operators of cultivation sites existing as of January 1, 2016 from applying for a Zoning Clearance Certificate or discretionary permit under the CMMLUO if they have not registered with the county on or before August 23, 2016 (180 days from the effective date of Ordinance No. 2544). Another reading is that operators seeking entitlements for cultivation sites existing prior to January 1, 2016 who did not register prior to the August deadline may apply for a Zoning Clearance Certificate or discretionary permit but do not qualify for good standing.

History of Good Standing Provision

The language of Section 55.4.9.4 derives from the adoption by the Board of Supervisors of Resolution No. 15-127 on December 8, 2015, which first established the Commercial Cannabis Activity Registration program. The program was established to achieve two purposes:

- 1) identify the demand for different license types (cultivation, manufacture, distribution, testing, dispensary, and transport) to guide development of policy and resources to accommodate the potential volume of applicants; and,
- 2) provide a means for persons seeking to demonstrate that they had established commercial cannabis activities in operation by January 1, 2016, to enable the County of Humboldt to certify that such operations were in good standing with the County, so that the applicant would be entitled to priority license consideration by state licensing authorities, pursuant to MCRSA, Business and Professions Code section 19321, subsection (c).

The January 1, 2016 date for purposes of establishing good standing comes from that statute, the pertinent provision of which reads:

In issuing licenses, the licensing authority shall prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016.

When both Resolution No. 15-127 and Ordinance No. 2544 were adopted the county had not yet developed guidelines for establishing what would constitute good standing. That policy has now been formalized. In this context, the phrase in section 55.4.9.4, "seeking recognition of cultivation activities that occurred on or before January 1, 2016, for purposes of obtaining a Zoning Clearance Certificate or discretionary permit for ongoing commercial cannabis cultivation for medical use pursuant to the CMMLUO," means recognition for a determination of being in good standing with the county in order to qualify for priority processing of a state license application, and nothing more. The effect of Ordinance No. 2544 was to extend the registration window from July 31, 2016 to August 23, 2016.

The date of January 1, 2016 also appears in other sections of the CMMLUO. The purpose of selecting that date in those other sections was to establish a baseline date for existing conditions in order to evaluate the environmental effects of the provisions of the CMMLUO for compliance with CEQA. A principal basis for the analysis leading to the adoption of a mitigated negative declaration in conjunction with the CMMLUO was to reduce and not increase the environmental effects of existing illegal cannabis cultivation in environmentally sensitive areas of the county, and to only allow new

cultivation in areas where cultivation would not have a significant environmental effect different from the cultivation of other annual agricultural commodities.

Lastly, Section 55.4.17, Sunset for Applications, specifies that "No application for any Zoning Clearance Certificate, Special Permit, or Use Permit to be issued pursuant to the CMMLUO shall be processed for issuance or approval that is received after December 31, 2016, or until such other time as the Board of Supervisors may specify by amendment of this ordinance." As noted above, this window is now fixed until such time as the EIR has been prepared and certified. However, with respect to the Good Standing question, it is important to note that only a single deadline for receipt of applications is stated, not one deadline coincident with the August 23rd registration date and another for all others.

Section 311-4 of the Zoning regulations provides that where the regulations are unclear, the Director may interpret the code and provide guidance as to the application of the regulations. A clarification is warranted as to whether operators of cultivation sites existing as of January 1, 2016 may still apply for the appropriate entitlement under the CMMLUO until December 31, 2016 whether or not they have registered with the county on or before August 23, 2016.

OPTIONS:

1. The Department could interpret the code to preclude operators of cultivation sites existing as of January 1, 2016 from applying for a Zoning Clearance Certificate or discretionary permit under the CMMLUO if they have not registered with the county on or before August 23, 2016.
2. The Department could interpret the code to allow operators of cultivation sites existing as of January 1, 2016 to apply for a Zoning Clearance Certificate or discretionary permit under the CMMLUO even if they have not registered with the county on or before August 23, 2016.

STAFF ANALYSIS AND RECOMMENDATION:

It is recommended that the Director accept Option 2 as the allowed interpretation. A primary goal of the CMMLUO is the reduction of recognized adverse environmental effects of cannabis cultivation in environmentally sensitive areas by establishing performance standards that would eliminate those adverse effects or reduce them to a less than significant level. That goal is best met by maximizing the participation of existing cannabis cultivators in the legitimate medical cannabis regulatory regime and marketplace.

Under Option 2, all applicants seeking entitlements available for cultivation sites that were in existence as of January 1, 2016, will still have to submit information concerning the name and contact information of the operator, the address and/or Assessor's Parcel Number of the property where the cultivation site is located, the name and address of the property owner of the parcel, the approximate latitude and longitude coordinates of the cultivation site, and the approximate area (in square feet) under cultivation before January 1, 2016, including sufficient documentation of prior cultivation activity, as part of their application on a form that will be provided.

This Option preserves the priority status eligibility for operators of cultivation sites existing as of January 1, 2016, who registered their sites with the county on or before August 23, 2016. These operators will be eligible to receive a Certificate of Good Standing from the county to submit with their state license application upon approval of their application and clearance from other county departments that the operator has no outstanding violations. Those operators who failed to register their cultivation sites by the August 23, 2016 deadline will not be eligible to receive a Certificate of Good Standing.

To adopt Option 1 would restrict the ability of cannabis cultivators to apply for permits by imposing an early deadline for registration and precluding those who did not register by the deadline from further participation. To choose this interpretation would be counterproductive to achieving the environmental benefits of the CMMLUO. Good standing eligibility was never intended as the primary objective of CMMLUO participation and for this reason this Option is not recommended.

Prepared by: Steve Werner, Supervising Planner

Date: September 6, 2016

POLICY DETERMINATION:

I concur with Staff's recommendation.



Date: 9-22-16

Robert S. Wall
Interim Director of Planning and Building Department

Attachment – Resolution No. 15-127

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of December 8, 2015

RESOLUTION NO. 15-127

can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016."

WHEREAS, the state statutes establishing a regulated, legitimate basis for commercial medical cannabis activities under the authorization of state law provide an opportunity to bring unregulated activities into compliance with existing law and ameliorate adverse environmental impacts, and to convert an underground, black-market economy into a legitimate agricultural and commercial contributor to the local and state economy; and

WHEREAS, the unregulated cultivation, processing, testing, manufacture, distribution, transportation, dispensing, and delivery of cannabis is widespread throughout Humboldt County, however the level of interest of existing and prospective operators' participation in a local and state regulated system of commercial cannabis activity for medical use is unknown; and

WHEREAS, in order to determine whether or not facilities or entities operating commercial cannabis activities were in operation and in good standing with the County of Humboldt by January 1, 2016, for purposes of qualification for priority processing of a state commercial cannabis activity license application, a means for registration and recognition of such facilities or entities must be established for each of the 17 different license classifications; and

WHEREAS, the County of Humboldt has previously adopted land use ordinances governing indoor and outdoor cultivation of medical marijuana for personal use on parcels of five (5) acres or less, regardless of zoning; and,

WHEREAS, the County of Humboldt is in the process of adopting land use ordinances governing dispensaries for medical marijuana and the commercial cultivation of cannabis for medical use, which may include provisions for processing facilities separate from cultivation sites, and facilities for distribution, manufacturing, transportation, delivery, and testing.

NOW, THEREFORE, be it resolved and determined by the Board of Supervisors of Humboldt County:

1. The Department of Planning and Building shall immediately establish a form for the registration of persons and entities interested in applying for commercial medical cannabis activity permits or licenses. The registration form shall, at a minimum, include:
 - a. The name, address, telephone number, and email address, if any, of the registrant;
 - b. If registrant desires recognition that the commercial medical cannabis activity was established prior to January 1, 2016; a description of the location, extent and nature of such activity and the dates during which the activity was established and operated;
 - c. If the registrant is proposing to establish a new facility or operation of commercial medical cannabis activity after January 1, 2016, a description of the proposed location, extent and nature of such activity being proposed; and
 - d. The state license classification(s) for which the registrant intends to apply.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of December 8, 2015

RESOLUTION NO. 15-127

can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016."

WHEREAS, the state statutes establishing a regulated, legitimate basis for commercial medical cannabis activities under the authorization of state law provide an opportunity to bring unregulated activities into compliance with existing law and ameliorate adverse environmental impacts, and to convert an underground, black-market economy into a legitimate agricultural and commercial contributor to the local and state economy; and

WHEREAS, the unregulated cultivation, processing, testing, manufacture, distribution, transportation, dispensing, and delivery of cannabis is widespread throughout Humboldt County, however the level of interest of existing and prospective operators' participation in a local and state regulated system of commercial cannabis activity for medical use is unknown; and

WHEREAS, in order to determine whether or not facilities or entities operating commercial cannabis activities were in operation and in good standing with the County of Humboldt by January 1, 2016, for purposes of qualification for priority processing of a state commercial cannabis activity license application, a means for registration and recognition of such facilities or entities must be established for each of the 17 different license classifications; and

WHEREAS, the County of Humboldt has previously adopted land use ordinances governing indoor and outdoor cultivation of medical marijuana for personal use on parcels of five (5) acres or less, regardless of zoning; and,

WHEREAS, the County of Humboldt is in the process of adopting land use ordinances governing dispensaries for medical marijuana and the commercial cultivation of cannabis for medical use, which may include provisions for processing facilities separate from cultivation sites, and facilities for distribution, manufacturing, transportation, delivery, and testing.

NOW, THEREFORE, be it resolved and determined by the Board of Supervisors of Humboldt County:

1. The Department of Planning and Building shall immediately establish a form for the registration of persons and entities interested in applying for commercial medical cannabis activity permits or licenses. The registration form shall, at a minimum, include:
 - a. The name, address, telephone number, and email address, if any, of the registrant;
 - b. If registrant desires recognition that the commercial medical cannabis activity was established prior to January 1, 2016; a description of the location, extent and nature of such activity and the dates during which the activity was established and operated;
 - c. If the registrant is proposing to establish a new facility or operation of commercial medical cannabis activity after January 1, 2016, a description of the proposed location, extent and nature of such activity being proposed; and
 - d. The state license classification(s) for which the registrant intends to apply.

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA
Certified copy of portion of proceedings, Meeting of December 8, 2015

RESOLUTION NO. 15-127

2. Within thirty (30) days of the adoption of this resolution the Department of Planning and Building shall consult with the County Agricultural Commissioner, the County Department of Public Health, the Humboldt County District Attorney, and the Humboldt County Sheriff, and develop criteria for the determination of what constitutes being "in good standing" with the County of Humboldt as of January 1, 2016, for as many of the 17 commercial cannabis activity license categories under state law as possible, and develop an appropriate form of certification for presentation to state license authorities for priority processing.
3. The Department of Planning and Building shall accept registration forms from persons or entities seeking to obtain permits or licenses from the County of Humboldt for commercial medical cannabis activities until July 31, 2016.

Dated: December 8, 2015



ESTELLE FENNELL, Chair
Humboldt County Board of Supervisors

Adopted on motion by Supervisor Lovelace, seconded by Supervisor Bass, and the following vote:

| | | |
|----------|-------------|---|
| AYES: | Supervisors | Sundberg, Lovelace, Fennell, Bohn, Bass |
| NAYS: | Supervisors | -- |
| ABSENT: | Supervisors | -- |
| ABSTAIN: | Supervisors | -- |

STATE OF CALIFORNIA)
County of Humboldt)

I, KATHY HAYES, Clerk of the Board of Supervisors, County of Humboldt, State of California, do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-entitled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my Office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors.



By ANA HARTWELL
Deputy Clerk of the Board of Supervisors of the
County of Humboldt, State of California