

ITEM NO. #9

MEETING DATE 1/25/18

APPLICATION NO. PW-17-04

**TRINITY COUNTY PLANNING COMMISSION
STAFF REPORT**

APPLICANT: Trinity County

REPORT BY: Leslie Hubbard

APN: Countywide

PROJECT DESCRIPTION:

Amendment to the County's Zoning Ordinance to amend Ordinance 315-826 Allowing for Wholesale Cannabis Nurseries and Resale of Auxiliary Nursery Products in the General Commercial ("C-2") zoning district (Exhibit A).

LOCATION: Countywide

PURPOSE:

The purpose of this item is for the Planning Commission to re-consider allowing Cannabis nurseries and resale of auxiliary nursery products in the General Commercial (C-2) zoning district. The Board of Supervisors also requested that the Commission provide clarification of the Heavy Industrial/Manufacturing (M-2) and Light Industrial/Manufacturing (M-1) zoning districts identified as allowable zoning districts in Ordinance 315-826.

BACKGROUND INFORMATION:

This ordinance appeared before the Commission on May 25 and September 28, 2017; and before the Board of Supervisors on October 17, and December 4, 2017. The Ordinance was passed and enacted on December 4, 2017, and appeared before the Board again on January 3, 2018 for an amendment.

During the January 3, 2018 Board meeting, public feedback precipitated the Supervisors' request that the attached Cannabis Nursery Ordinance return to the Planning Commission for further discussion regarding adding C-2 as an allowable zoning district for activities conducted in accordance with a Trinity County Cannabis Nursery License.

In addition to promoting discussion regarding C-2, the Board of Supervisors also provided direction to staff to clarify the definitions of M-1 and M-2 zoning districts.

STAFF EVALUATION:

General Commercial (C-2)

In previous discussions before the Planning Commission and the Board of Supervisors, much attention and discussion was focused on which zoning districts would be most appropriate for wholesale Cannabis nurseries and resale of auxiliary nursery products as defined and described in the ordinance.

Section 21 of the Trinity County Zoning Ordinance provides the general description of C-2: *The purpose of this District is to provide appropriate locations for intensive commercial activities. General Commercial Districts are generally centralized within the community and located on major or arterial streets.*

The Zoning Ordinance identifies the following uses as permissible after securing a use permit:

- Church
- Laundromat when located in a non-sewered area
- Storage warehouse
- Equipment rental yard
- Restaurant with drive-thru service
- Financial institution with drive-thru service
- Auto sales
- Contractors yard
- Private club
- Outdoor storage or sales associated with any of the uses listed in Section B
- Recycling with outdoor storage
- “Hotel/Motel over then (10) units or Hotel/Motel not hooked up to a community sewer system”
(as outlined in Ordinance 315-711)
- Lumber yard
- Wholesale distributor
- Welding or machine shop
- Card room
- Residential caretaker unit (See Special Regulations in Section 30(L) (Ordinance no. 315-580)

Based on the general description of C-2, the purpose of the zoning district is to provide areas suitable for intensive commercial activities—a purpose that is well aligned with the activities that will likely occur in association with a Cannabis Nursery.

The description also includes the premise that C-2 parcels are generally located on major or arterial streets which presents some confusion because the true classification of streets includes “major arterial” and “major collector” streets, not “major” and “arterial.” Examples of major arterial streets include: Lance Gulch Road, Rush Creek Road and Trinity Dam Blvd. while examples of major collectors include Industrial Parkway, portions of Oregon Street, Forest Avenue, South Miner Street, Lewiston Road, portions of Mad River Road, portions of Hyampom Road, Tule Creek Road, Wildwood Road, and Van Duzen Road.

Staff recommends that the Commission discuss if the activities allowed by a commercial Cannabis nursery licensee issued pursuant to the ordinance would be appropriately located in areas identified within the C-2 zoning district.

If Cannabis Nurseries are allowed in C-2, the requirement for a Conditional Use Permit will allow site-specific evaluation of each proposal to determine if the proposed use is suitable for that location.

Clarification Regarding Light Industrial/Manufacturing (M-1) and Heavy Industrial/Manufacturing (M-2) zoning districts

During the process that culminated in the adoption of the Hayfork Community Plan in 1996, two new zoning districts were created to address two former mill site areas in Hayfork – M1 and M2. They are

effectively Industrial zones, but the community wanted the designation to reflect the industrial history of the properties as it pertains to past timber mill activities (M=Mill). In fact, there are no properties in the Hayfork Community Plan that are zoned M-1; they are all zoned M-2. However, M zones were not described in the text of the Hayfork Community Plan, although M-2 parcels were identified on the accompanying maps.

Staff has been directed to clarify these special zones by rezoning all the parcels with M-2 zoning back to the Industrial zoning district. This will allow better guidance to Planning and the public when projects are proposed on these lands and it will reduce the confusion about the Zoning Ordinance.

ENVIRONMENTAL EVALUATION:

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 nursery facilities will require a Planning Commission-issued Conditional Use Permit requiring the applicant to complete a Project Initial Study-Environmental Checklist and Evaluation of Environmental Impacts.

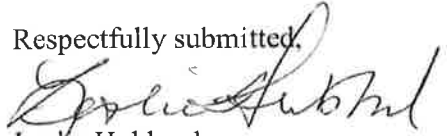
STAFF RECOMMENDATION:

Staff recommends the following:

Discuss and provide direction to staff regarding amending Ordinance 315-826 Allowing for Wholesale Cannabis Nurseries and Resale of Auxiliary Nursery Products to include General Commercial ("C-2") zoning district.

Recommend to the Board of Supervisors the rezone of all "M" zoned property in the Hayfork Community Plan area to Industrial, based on the following findings of fact:

1. The rezone will reduce confusion and apply an already established zoning district ("I") to properties zoned "M-2"; and
2. The rezone will allow the county and the public to evaluate proposals based on an adopted set of development standards provided in the Industrial District of the county's Zoning Ordinance.
3. The rezone of M-2 to Industrial does not change the basic potential use of these lands.

Respectfully submitted,

Leslie Hubbard
Interim Planning Director

ORDINANCE NO. 315-826
AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF TRINITY
ALLOWING FOR WHOLESALE CANNABIS NURSERIES AND
RESALE OF AUXILIARY NURSERY PRODUCTS

Section I: The Board of Supervisors of the County of Trinity hereby finds and declares as follows:

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 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.

The County hereby enacts the following as Section 28.4 of the Trinity County Zoning Ordinance No. 315, as follows:

Sections:

- (1) Definitions
- (2) Allowable Zoning Districts
- (3) Regulation of Nurseries
- (4) Required Conditions of Use Permit Approval
- (5) Enforcement
- (6) Fees
- (7) Denial/Rescission of License

(1) Definitions:

- (a) "Authorized School Bus Stop" means any location established by a school district for pick-up and/or delivery of school children.
- (b) "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.
- (c) "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.
- (d) "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.
- (e) "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- (f) "Residential Treatment Facility" means a facility providing for treatment of drug and alcohol dependency.
- (g) "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.
- (h) "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.

(2) Allowable Zoning Districts:

All Cannabis nursery facilities require a Type 4 State license.

- (a) Cannabis nursery facilities may be permitted only in the following Zoning Districts subject to first securing a Planning Commission-issued Conditional Use Permit:
 - i. Agriculture (A)
 - ii. Heavy Commercial (C-3)
 - iii. Heavy Industrial/Manufacturing (M-2)
 - iv. Light Industrial/Manufacturing (M-1)
 - v. Industrial (I)
 - vi. Specific Unit Development (SUD), whose guidelines specifically identify parcels for industrial development.
- (b) Regardless of Zoning District, Cannabis nurseries shall not be permitted within the following areas:
 - i. Recreation District #1(RD-1) [This is primarily the area included within the Shasta-Whiskeytown-Trinity National Recreation Area]
 - ii. Ruth Lake Specific Unit Development [This is primarily the area within the Ruth Lake Recreation Area]

(3) Regulation of Nurseries:

- (a) The following requirements shall apply to all Cannabis nurseries:
 - i. A Cannabis nursery shall possess and be in full compliance with a Type 4 State license.
 - ii. 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. Variances are allowed upon review of the Planning Commission.
 - iii. 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.
 - iv. 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.
 - v. Cannabis nurseries may grow clones and immature plants indoors, but only when allowed by the required Conditional Use Permit.
 - vi. Cannabis nurseries shall comply with all other provisions of the Trinity County Code and the Zoning Ordinance.
 - vii. 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.

- viii. 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.

(4) Required Conditions of Use Permit Approval:

- (a) In addition to any other conditions and mitigation measures required, all of the following conditions shall apply to all Cannabis nurseries:
 - i. All Cannabis nursery license holders shall maintain accurate records on sales, including proof that sales occur only to licensed individuals.
 - ii. Sales shall only be to licensed Cannabis cultivators in the State of California.
 - iii. License holders shall comply with all applicable State and County laws.
 - iv. The Trinity County Agricultural Commissioner may create standards for plant quality which shall comply with State of California regulations.
 - v. All sales locations shall have adequate parking to accommodate customers.
 - vi. 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.
 - vii. Cannabis nurseries shall comply with the cultivation plan required in State Type 4 licenses.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) Any person operating a Cannabis Nursery shall obtain a valid and fully executed commercial Cannabis cultivation Type 4 State License prior to commencing operations and must maintain such license in good standing to continue operations.
- (f) 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.
- (g) Cannabis nurseries and related activities shall be maintained in accordance with operating plans approved by the County.
- (h) 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.
- (i) 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.

- (j) Cannabis is not recognized under Federal law and an application does not grant any right to violate federal law.
- (k) 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.
- (l) 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.
- (m) 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.

(5) 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.

(6) Fees:

- (a) 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.
- (b) Such fee shall fairly and proportionately generate sufficient revenue to cover the costs of administering, implementing, and enforcing this Chapter.
- (c) The Cannabis Nursery Program Fee is set at:
 - i. Nursery License: \$2,500, plus \$1,000 toward general plan update
 - ii. Inspection Fee: \$200.
- (d) Fees shall be paid thereafter annually prior to March 1 of each year.

(7) Denial/Rescission of License:

- (a) Applicant’s Application shall be denied or the issuance of a license rescinded if the County becomes aware that:
 - 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 the Chapter and with all applicable laws, including zoning and County ordinances.
- (b) 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.
- (c) 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.

Section II: This ordinance shall take effect and be in full force and effect thirty (30) days after its passage and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in the Trinity Journal, a newspaper of general circulation published in the County of Trinity State of California.

Ordinance No. 315-XXX

January 3, 2018

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Introduced at a regular meeting of the Board of Supervisors held on the 17th day of October, 2017, 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

, CHAIRMAN
Board of Supervisors
County of Trinity
State of California

ATTEST:
RICHARD KUHNS
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:

Margaret E. Long, County Counsel