

March 12, 2018



To: Lake County Board of Supervisors

From: Michael S. Green, president
Lake County Growers Association

Re: Article 27 – Draft cannabis cultivation ordinance

We are pleased to offer our support for the latest draft of the cannabis cultivation ordinance, which represents more than two years of public outreach and stakeholder input. The draft ordinance aligns well with Proposition 64, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA/SB 94), and the emergency regulations issued by the three state licensing authorities. Article 27 has been described as a “living document,” and as such we expect it will be refined and amended from time to time, just as the state laws and regulations will be refined and amended.

The following comments are intended to help your board and staff identify and correct several technical errors found within the draft ordinance as it was released last week. While it may be possible to fix some of those errors in subsequent “mop-up” legislation, it would be prudent for your board and staff to consider them now before taking a second and final vote of approval.

For clarity, the initial page and line number of each ordinance subdivision being discussed is included using the format (@ Page: Line).

Personal cultivation

CHANGE Section 27.3(z)(1)(iv), (@ 4:24), to read,

Cannabis indoor cultivation: The cultivation of cannabis within an accessory structure using exclusively artificial light.

CHANGE Section 27.3(z)(1)(xvii), (@ 5:33) to delete residency portion of “qualified patient” definition, which appears designed to prohibit patient cultivation at secondary residences.

Qualified patient: The same meaning as California Health and Safety Code Section 11362.7(f), ~~and whose primary place of residence is within Lake County.~~

DELETE Section 27.3(z)(2)(ii), (@ 6:12), because personal, non-commercial cultivation, by definition, cannot result in an unfair trade practice or other unfair commercial cannabis activity.

CHANGE Section 27.3(z)(3)(i)(c), (@ 7:5), to delete the prohibition of personal cultivation in hoop houses on parcels greater than five acres in size outside community growth boundaries.

CHANGE Section 27.3(z)(3)(i)(l)(g), (@ 8:30), to delete the requirement that greenhouse walls be opaque, as this would preclude the use of most commercially available greenhouses covered with translucent fabric. The requirement is redundant where the greenhouse is enclosed by an opaque fence.

CHANGE Section 27.3(z)(3)(i)(l)(h), (@ 8:32), to delete the requirement for a building permit, as the structure will not exceed 100 square feet and is therefore exempt from Uniform Building Code requirements. Similarly, change Section 27.3(z)(3)(i)(m)(a), (@ 9:16).

Commercial cultivation

CHANGE Section 27.13(at)(1)(xii), (@ 12:38), to read, in accordance with CDFA regulations,

Cannabis indoor cultivation: The cultivation of cannabis ~~using light deprivation and/or artificial lighting below a rate of~~ within a permanent structure using exclusively artificial light or within any type of structure using artificial light at a rate above twenty-five watts per square foot.

CHANGE, if the requirement for a “design professional” is to be retained, Section 27.13(at)(1)(xix), (@ 15:31), to clearly identify the qualified occupations.

Design professional: ~~As defined in the California Civil Code, Division 4 General Provisions, Part 6 Works of Improvement, Title 1 Works of Improvement Generally, Article 1 Definitions. Has the same meaning as Section 8014 of the California Civil Code, as may be amended, and shall include, but not be limited to, a state-licensed architect, landscape architect, professional engineer or land surveyor.~~ Has the same meaning as Section 8014 of the California Civil Code, as may be amended, and shall include, but not be limited to, a state-licensed architect, landscape architect, professional engineer or land surveyor.

CHANGE Section 27.13(at)(3)(ii)(e), (@ 25:17), to allow applicants to utilize any state-licensed LiveScan operator when undergoing a background check, naming the Lake County Sheriff's Department as the recipient agency.

DELETE or CHANGE Section 27.13(at)(3)(ii)(j), (@ 27:7), pertaining to operating hours. Deliveries and pick-ups should be allowed from 8 a.m. to 8 p.m., seven days a week.

DELETE or CHANGE Section 27.13(at)(3)(iii)(c), (@ 28:11), pertaining to “objectionable odors,” in particular as they apply to outdoor cultivation sites where odor mitigation is not practical.

CHANGE Sections 27.13(at)(3)(v)(b)(f), 27.13(at)(3)(v)(b)(g) and 27.13(at)(3)(v)(b)(h), (@ 29:31-33), to provide that a permit may be issued when the applicant obtains and maintains express written authorization to cultivate within 1,000 feet of a water service sphere of influence, designated tribal authority for Federal Indian Trust Lands, or incorporated city sphere of influence, respectively.

CHANGE Section 27.13(at)(3)(v)(c), (@ 30:4) to use the 2014 state farmland map because the 2016 map data for Lake County is not yet available from the state Department of Conservation.

DELETE Section 27.13(at)(4)(i)(c)(a), (@ 33:17), which makes procurement of a water discharge permit from the State Water Boards “as of the effective date of this ordinance” a prerequisite to apply for a major or minor use permit. Obtaining a water discharge permit, and other state and local permits, should be conditions of permit approval. The Cannabis General Order, which is a compliance program of the State Water Boards, should not be used by the county as an artificial bottleneck used to limit the number of cultivation permit applicants. We have been advised it may be illegal for the county to do so.

DELETE Sections 27.13(at)(4)(i)(c)(b) and 27.13(at)(4)(i)(c)(c), (@ 33:22 to 34:22), requiring a pre-application conference for permit applicants. The county proposes to require applicants to obtain a minimum score of 75% to submit a permit application, but does not provide any mechanism for scoring or otherwise ranking the pre-application questions. The submission of a permit application itself should be sufficient to demonstrate the applicant's compliance with the county's development standards.

DELETE Section 27.13(at)(4)(i)(c)(d)(8)(xiv), (@ 36:17), which makes procurement of a water discharge permit from the State Water Boards a prerequisite to apply for a major or minor use permit.

CHANGE Section 27.13(at)(4)(i)(c)(d)(9), (@ 37:4), to delete the costly requirement that site plans be prepared by a “design professional.” State licensing authorities do not impose this requirement.

A site plan prepared by a design professional which is a graphic and written representation of the applicant’s intended development including a cultivation plan shall be provided with the application. ~~During construction, boundaries, distances, and area shall be verified by a licensed land surveyor or civil engineer licensed prior to 1982 in the State of California, if required.~~

CHANGE and SIMPLIFY all management plan sections to reduce the cost and complexity of preparing and processing cultivation permit applications, both for the county and for applicants. References: (@ 40:33 to 41:13), (@42:1-13), (@ 43:16 to 59:8). Most of the required reports are unnecessary because of the small size and complexity of cannabis ag operations, and/or they duplicate management plans required by state licensing authorities during the state licensing process.

The Community Development director has testified repeatedly that the department lacks adequate staff and resources to handle the anticipated workload for the commercial cannabis ordinance. By inserting no less than 13 separate categories into the required management plans, the county will greatly hamper the ability of small and cottage growers to timely submit their use permit applications, and staff will have difficulty reviewing and processing those same applications within the time allotted. We believe the state, not the county, is better able to review and monitor cultivation management plans, where they are necessary. Requiring applicants to share their state management plans should suffice.

More specifically, we request the following changes:

CHANGE Section 27.13(at)(5)(i)(h), (@ 43:34 to 44:13) to clarify that outdoor cultivators are not required to describe or install “mitigation methods” or “contingency measures” for reducing cultivation odors that have no practical means of mitigation.

DELETE Section 27.13(at)(5)(ii), (@ 44:14), pertaining to cultural resources, as these requirements duplicate state law, including the California Environmental Quality Act.

DELETE Section 27.13(at)(5)(iii), (@ 44:35), pertaining to energy usage, as these requirements duplicate state law, including the MAUCRSA.

DELETE Section 27.13(at)(5)(iv), (@ 45:23), pertaining to fertilizer usage, as these requirements duplicate state law, including the Cannabis General Order of the State Water Boards.

DELETE Section 27.13(at)(5)(v), (@ 46:17), pertaining to fish and wildlife, as these requirements duplicate state law, including the General Agreement of the Department of Fish and Wildlife.

DELETE Section 27.13(at)(5)(vii), (@ 47:24), pertaining to pesticide management, as these requirements duplicate state law, including CalCannabis regulations.

DELETE Sections 27.13(at)(5)(xii), (@ 57:16) and 27.13(at)(5)(xiii), (@ 58:3) pertaining to water resources and water use, respectively, as these requirements duplicate state law, including the Cannabis General Order of the State Water Boards.

DELETE Section 27.13(at)(7), (@ 59:16), pertaining to annual reports, as this requirement is not imposed on other crops grown within Lake County and creates burdens for growers and county staff.

Respectfully submitted,



Lake County Growers Association, Inc.