

Article 72 - Comments and Suggested Revisions

Lake County Growers Association, Inc., is a nonprofit organization formed in response to changes in state and local laws pertaining to medical cannabis cultivation and related industries. Its members are committed to helping Lake County residents and local governmental agencies develop reasonable regulations governing commercial and non-commercial cannabis activities.

In general terms, we are strongly supportive of amending Article 72 to adapt to state law. In that light, we would like to offer the following comments and suggested revisions to better align with the Medical Marijuana Regulation and Safety Act (MMRSA) and to clarify how the amendments will affect qualified patients and commercial growers seeking MMRSA licensing.

General comments

The proposed ordinance addresses only cultivation, not other types of commercial cannabis activities that are authorized under the MMRSA. Article 72, which is also known as Measure N, primarily addresses personal cultivation by individual Proposition 215 patients and imposes certain requirements that are premised on patient status. In contrast, the new MMRSA does not require state-licensed growers to tie their cultivation activities to individual patients or parcels. For clarity, it is suggested that Article 72 apply to personal cultivation only, and that a new Article 73 be introduced to apply to all commercial cannabis activities, including cultivation.

Also, while the proposed cannabis tax has been deleted from the regulatory ordinance, some of the findings pertaining to the tax remain in the draft language for Article 72. More clarity is needed to demonstrate the nexus between the fees and fines proposed for commercial cultivation permit applicants, which are intended to cover the county's direct costs of regulation, and the taxes that may be placed on the November 8 ballot for consideration by county voters. The proposed \$7,000 fee for indoor cultivation applicants, vs. \$3,000 for larger outdoor operations, stands out in particular as requiring additional documentation and discussion.

The biggest questions we have fielded from growers so far pertain to:

- the proposed numerical caps on permits;
- how many parcels would be permit-eligible, when school buffers are considered;
- the requirement that RL parcels abut agricultural lands to be permit-eligible;
- why no indoor cultivation is allowed in industrial zone districts;
- why no provision is made for greenhouses or mixed-light permits;
- procedural questions regarding permit applications and issuance.

Each of those questions is addressed in further detail in the comments below.

As proposed, the amended Article 72 would address only medical cannabis cultivation, and it could be interpreted to prohibit personal and commercial cultivation of non-medical cannabis. This could create unintended consequences should the Adult Use of Marijuana Act be enacted by state voters in November, as is expected. The more proactive approach would be 1) to amend personal cultivation requirements to cover both medical and non-medical cultivation by adults prior to the adoption of the AUMA, and 2) to authorize AUMA-licensed commercial activities.

While we recommend the drafting of a new Article 73 to address commercial activities, the remainder of our comments will focus on specific sections in the draft amendment of Article 72.

72.1 Findings and Purpose

Strike “allow the use of marijuana for non-medical purposes” from subdivision (s), to read instead, in relevant part: “Nothing in this Article shall be construed to allow any activity relating to the cultivation, manufacturing, distribution or consumption of marijuana that is otherwise illegal under state or local law.”

Add new subdivision (u) to read: “The Control, Regulate and Tax Adult Use of Marijuana Act (“the Adult Use of Marijuana Act”), if enacted by California voters on November 8, 2016, would also establish a dual licensing structure for non-medical commercial marijuana activities and recognize the authority of counties to levy taxes and fees on such activities.”

72.2 Intent

Strike the phrase “for non-medical purposes” from the second sentence. Modify the last sentence to read, “It is further the intent of the Board of Supervisors to develop a permitting and taxing structure in regard to the cultivation of marijuana in Lake County which is compatible with the State's regulatory framework and consistent with the legislative or voter intent of all applicable State marijuana laws.”

72.4 Definitions

Several definitions from the MMRSA should be incorporated for clarity and to ensure the primary goal of alignment with state law is fully realized. Some of the definitions in the Article 72 draft have been slightly modified and incorporated for reference. New definitions for “indoor cultivation,” “outdoor cultivation” and “fully enclosed and secure structure” are strongly recommended to facilitate the use of greenhouses, both for personal cultivation and for mixed-light MMRSA licensees.

(a) “Applicant,” means the following:

- (1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used for the facility, or cultivation site.
- (2) If the owner is an entity, “owner” includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.
- (3) If the applicant is a publicly traded company, “owner” means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(b) “Bureau” means the Bureau of Medical Marijuana Regulation, or its successor agency, within the California Department of Consumer Affairs.

(c) “Cannabis” or “marijuana” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” or “marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” or “marijuana” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. “Cannabis” or “marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, “cannabis” or “marijuana” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(d) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code, as may be amended. For purposes of this Article, the caregiver's primary place of residence shall be within Lake County.

(e) "Chief" means Chief of the Bureau of Medical Marijuana Regulation, or successor agency, within the Department of Consumer Affairs.

(f) "Child Day Care Facility" means any state-licensed day care facility covered by California Health and Safety Code Section 1596.750, as may be amended.

(g) "Code" or "this Code" means the Lake County Code.

(h) "Collective cultivation" or "collective" means any outdoor cultivation or indoor cultivation of medical marijuana by an establishment, association, collective, cooperative, or similar entity that is owned or operated by, or on the behalf of, qualified patients and/or primary caregivers of qualified patients, as provided by California Health and Safety Code Section 11362.775, as may be amended.

(i) "Commercial cannabis activity" or "commercial marijuana activity" includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or medical marijuana, or a medical cannabis product or medical marijuana product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and primary caregivers, or as otherwise set forth in this Article.

(j) "Commercial cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis or marijuana, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered or sold in accordance with the MMRSA for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996, found at Section 11362.5 of the Health and Safety Code. Any commercial cultivation that occurs on or adjacent to agricultural land shall be considered an "agricultural operation" pursuant to Section 3-44 of this Code.

(k) "Commercial cultivation site" means the location or a facility where cannabis or marijuana is planted, grown, harvested, dried, cured, graded or trimmed, or that does all or any combination of those activities in conformance with the MMRSA or, to the extent that the activity is exempt from the MMRSA, in conformance with state or local laws and regulations.

(l) "Delivery" has the same meaning as in Business and Professions Code Section 19300.5(m), as may be amended.

(m) "Director" and "planning director" mean the director of the Lake County Community Development Department, or his/her designee.

(n) "Dispensary", "Medical Cannabis Dispensary" or "Medical Marijuana Dispensary" has the same meaning as in Business and Professions Code Section 19300.5(n), as may be amended.

(o) "Distribution" has the same meaning as in Business and Professions Code Section 19300.5(p), as may be amended.

(p) "Distributor" has the same meaning as in Business and Professions Code Section 19300.5(q), as may be amended.

(q) "Edible cannabis product" and "edible marijuana product" has the same meaning as in Business and Professions Code Section 19300.5(s), as may be amended.

(r) "Enforcement official" shall mean the Lake County Sheriff, Community Development Director, Building Official, Commissioner of Agriculture, Environmental Health Director, or any other official or agent authorized by the County to enforce state or local laws.

(s) "Fence" means a wall or a barrier connected by boards, masonry, rails, panels, wire or any other materials approved by the Community Development Department for the purpose of enclosing space or separating parcels of land. The term "fence" does not include retaining walls, plastic, tarp, bamboo coverings, corrugated metal, or other materials not designed or manufactured for use as a fence.

(t) "Fully enclosed and secure structure" means a building, garage, greenhouse or other accessory structure completely detached from a residence that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, is secure against unauthorized entry, and is accessible only through one or more lockable doors. The term "fully enclosed and secure structure" does not mean a "hoop house" or other temporary structure that is constructed primarily with plastic pipe or plastic sheeting, regardless of gauge.

(u) "Indoor cultivation" means the cultivation of cannabis in a fully enclosed and secure structure, including a greenhouse or accessory building, utilizing artificial light or mixed-light sources.

(v) "License" or "license type" means a state-issued license as described in Business and Professions Code Section 19300.7.

(w) "Licensee" has the same meaning as in Business and Professions Code Section 19300.5(ab), as may be amended.

(x) "Licensing authority" means all of the following depending on the context: the state agency responsible for the issuance, renewal, or reinstatement of the state license; the state agency authorized to take disciplinary action against the license or licensee, the County agency responsible for the issuance, renewal, or reinstatement of the local license, local permit, or other local authorization; or the state or County agency authorized to take disciplinary action against the license or licensee.

(y) "Manager" means any person to whom an owner of an applicant or licensee has delegated discretionary powers to control its operations. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the applicant or licensee: (1) to hire, select, or separate employees or staff, including volunteers; (2) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (3) to disburse funds of the applicant or licensee other than for the receipt of regularly replaced items of stock; or (4) to make, or participate in making, operational or policy decisions of the applicant or licensee.

(z) "Manufactured cannabis", "manufactured medical cannabis", "manufactured marijuana" and "manufactured medical marijuana" means raw cannabis or raw marijuana that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(aa) "Manufacturer" has the same meaning as in Business and Professions Code Section 19300.5(y), as may be amended.

(ab) "Manufacturing site" means a location that produces, prepares, propagates, or compounds manufactured cannabis or manufactured marijuana products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, operated by a licensee for these activities.

(ac) "Medical cannabis product", "medical marijuana product", "cannabis product", or "marijuana product" means a product containing cannabis or marijuana, including, but not limited to, concentrates and extractions, intended to be sold for use in California pursuant to the MMRSA.

(ad) "Medical cannabis business", "cannabis business", "medical marijuana business", or "marijuana business" means any person or entity that conducts any commercial cannabis activity or any commercial marijuana activity in the County.

(ae) "Mixed light cultivation" means the cultivation of cannabis or marijuana in temporary or permanent structures while utilizing both natural sunlight and artificial light sources.

(af) "MMRSA" means the Medical Marijuana Regulation and Safety Act of 2015.

(ag) "Nursery" has the same meaning as in Business and Professions Code Section 19300.5(ah), as may be amended.

(ah) "Outdoor cultivation" means the cultivation of cannabis or marijuana which is performed outdoors, or in a temporary structure including a "hoop house," without the use of artificial light.

(ai) "Owner" means any person having an aggregate ownership interest, other than a security interest, lien, or encumbrance, of 5 percent or more in the licensee and who has the power to direct, or cause to be directed, the management or control of the licensee.

(aj) "Parcel" or "legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code) and also means any parcel that is described, recorded and kept in official County records, including documents and maps used by the County offices of the Assessor, Tax Collector and Recorder.

(ak) "Permit" or "cultivation permit" means the permit that must be obtained to commercially cultivate cannabis or marijuana in the County of Lake and to demonstrate local authorization for such commercial cannabis activity to the Bureau or other state licensing authority.

(al) "Person" has the same meaning as "person" in Business and Professions Code Section 19300.5(aj), as may be amended.

(am) "Personal cultivation" means cultivation by a qualified patient, or by his or her primary caregiver, as defined in this Code and Section 11362.7 of the Health and Safety Code, who cultivates and possesses up to one hundred (100) square feet of plant canopy area exclusively for the patient's personal medical use but who does not sell or distribute cannabis to any other person or entity.

(an) "Pesticide" has the same meaning as set forth in Article 1, Division 6, Section 6000 of the California Code of Regulations, and Article 1, Division 7, Section 12753 of the California Food and Agricultural Code.

(ao) "Premises" means a single parcel of property or contiguous parcels under common ownership or control, or a leasehold interest in land that is appropriately zoned for purposes of outdoor, mixed-light, or indoor cultivation or processing of cannabis or marijuana, or a leased or owned space in a permitted building for purposes of indoor cultivation, processing, manufacture, or distribution of cannabis or marijuana.

(ap) "Qualified patient" or "patient" has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code, as may be amended.

(aq) "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.

(ar) "Sell", "sale", and "to sell" include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or manufactured cannabis products by a licensee to the licensee from whom such cannabis or product was purchased.

(as) "Sheriff" or "Sheriff's Office" means the Lake County Sheriff's Office or the authorized representatives thereof.

(at) "Testing laboratory" has the same meaning as in Business and Professions Code Section 19300.5(z), as may be amended.

(au) "Transport" or "transportation" has the same meaning as in Business and Professions Code Section 19300.5(am), as may be amended.

(av) "Transporter" has the same meaning as in Business and Professions Code Section 19300.5(aa), as may be amended.

72.5 Outdoor Cultivation Limits and Environmental Standards.

(a) Cultivation on vacant properties is prohibited, unless conducted pursuant to the provisions of Section 72.5(k) on "A" zoned land. ~~Personal~~ cultivation is an accessory use to an existing, permitted residential use of a legal parcel, and the ~~qualifying~~ ~~qualified~~ patient or primary caregiver engaged in the cultivation must reside at the site.

(b) Outdoor ~~commercial~~ cultivation, ~~including cultivation within greenhouses or "hoop houses,"~~ is prohibited on any parcel that is located within a Community Growth Boundary as designated by the Lake County General Plan, and on any parcel that is ~~one (1) acre or smaller and~~ located outside of any designated Community Growth Boundary, ~~unless conducted pursuant to the provisions of Section 72.5(k), below.~~

(c) Outdoor ~~personal~~ cultivation ~~for personal use and by primary caregivers as defined by the Medical Marijuana Regulation and Safety Act, whether conducted outside or within a greenhouse or "hoop house" shall not exceed six (6) mature or 12 immature plants on parcels larger than one (1) acre. The foregoing limitation shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation, unless cultivation is conducted in accordance with the provisions of Section 72.5(k), below.~~ is prohibited on any parcel that is located within a Community Growth Boundary as designated by the Lake County General Plan, and on any parcel that is one (1) acre or smaller and located outside of any designated Community Growth Boundary.

(d) Outdoor ~~commercial~~ cultivation shall not be conducted within 1,000 feet of any ~~public or private elementary, middle or high school, developed park containing playground equipment, drug or alcohol rehabilitation facility, child day care facility or nursery school, church or youth-oriented facility that caters to, or provides services primarily intended for, persons under the age of 18 years old.~~ Outdoor ~~personal~~ cultivation shall not be conducted within 600 feet of any school, developed park or other facility described in the immediately preceding sentence.

(e) Outdoor cultivation, including ~~the use and storage of~~ any topsoil, pesticides as defined by Section 72.4(k) of this Article, or fertilizers used for the cultivation of medical marijuana shall not be located within ~~200~~ 100 feet of any spring, top of bank of any creek or seasonal stream, edge of lake, delineated wetland or vernal pool. For purposes of determining the edge of Clear Lake, the setback shall be measured from the full lake level of 7.79 feet on the Rumsey Gauge. ~~This subdivision shall not limit the ability of the County Agriculture Commissioner, the North Coast or Central Valley Regional Water Quality Control Board, or other state licensing authority, to enforce larger setback requirements where required for an applicant or licensee to comply with the MMRSA or applicable state law.~~

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(h) Outdoor ~~cultivation of medical marijuana for personal use shall not be cultivated or otherwise placed~~ occur within 75 25 feet of any property line or within ~~150~~ 100 feet of any off-site residence, as measured from the edge of the fence of the cultivation area. The fence must include a locking gate which shall be kept locked at all times when the qualified patient or caregiver is not in the immediate area. Fences and gates shall comply with the height limits specified in Section 42.11 of the Zoning Ordinance, and the definition of "fence" provided in this Article.

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