

# LAKE COUNTY PLANNING COMMISSION

## MINUTES

### REGULAR MEETING

April 12, 2018

#### Commission Members

P John Hess, District I  
P Bob Malley, District II  
P Eddie Crandall, District III  
P Matt Levesque, District IV  
P Daniel Suenram, District V

#### Staff Members

P Robert Massarelli, CDD Director  
P Michalyn DelValle, Principal Planner  
P Shanda Harry, Deputy County Counsel  
P Danae Bowen, Office Assistant III

---

9:20 a.m.     **Public Hearing on consideration of proposed ordinance amending Article 27 of Chapter 21 of the Lake County Code to regulate the manufacturing, distribution and testing of Cannabis (AM 18-02). Environmental Evaluation: Statutorily Exempt (Mireya Turner)**

Robert Massarelli, Community Development Director, provided background information and a power point presentation on the proposed ordinance.

Mr. Massarelli reviewed the following:

Draft Cannabis Manufacturing, Distribution, and testing Ordinance  
Presentation Outline –

Terms: activities regulated under this ordinance

- Cannabis manufacturing
- Cannabis distribution
- Cannabis testing laboratory

**Section 1: Purpose and Intent**

**Section 2: Applicability**

**Section 3: Cannabis Manufacturing**

**Section 4: Cannabis Distributor/Distributor Transport**

**Section 5: Cannabis Testing**

**Section 6: Table B Revisions**

**Section 7: Section 21.27.3 (at) 3.ii(e) of the Zoning Ordinance amendment**

**Section 8: Section 21.27.3 (at) 3.ii(f) of the Zoning Ordinance amendment**

**Section 9: Section 21.27.3 (at) 3.v of the Zoning Ordinance amendment**

**Section 10: Section 21.27.3 (at) 8 of the Zoning Ordinance amendment**

**Section 11: Program Review**

**Section 12: Sunset**

**Section 13: Conflict**

**Section 14: CEQA****Section 15: Severability****Section 16: Effective Date**

Comm. Hess and Suenram discussed a manual for identifying standards across the board for agricultural manufacturing and that these things have not just been identified for the cannabis industry.

Mr. Massarelli said one of the things that the Board of Supervisors did on the cultivation ordinance, which is reflected in this one, is after one year staff has to report to the Board of Supervisors on how well it is working and if there are any recommended changes, then it can be evaluated at that point. He said the permits are good for ten years. He said this is a use permit that goes with the land and if the owner changes, that operation manual is important, because that is how staff can make sure they continue to operate in a certain way. He said if there is not an operational manual and the ownership changes, then they could change their complete operation and there is nothing staff can do about it. He said it is an important part on how they manage the operations as ownership may change.

Mr. Massarelli pointed out the Errata sheets submitted and reviewed the amendments staff found in the proposed ordinance. He noted on the first Errata Sheet, references to pages 26, 29 and 30 were for the cultivation ordinance and should not have been included in this amendment.

Shanda Harry, Deputy County Counsel, explained that the posted agenda, discussion of changes to the already existing cultivation ordinance is not on the posted agenda, it only discusses the regulation, manufacturing and distribution of cannabis. She said she understands that these changes were posted to the website but it wasn't on the posted agenda.

**10:15 a.m. Opened Public Hearing**

Eric Sklyr, spoke to the current ordinance for manufacturing, and felt there was an error on accessory versus non-accessory use and urged staff to add "PDC" to the places where accessory use of manufacturing is allowed and to make it clear that it does not have to be within a mile of Highway 29. He also spoke to background checks and live scan tests.

Tamara Thorn, Middletown resident, spoke to background checks and management plans for manufacturing and asked that it be made easier for non-volatile extractions. She questioned the major use permit that is required for the non-volatile type 6 license and felt it created more steps to go through.

Brian Martin, Sheriff and Director of Office of Emergency Services (OES), explained that the DOJ is having a one day turnaround on background checks. He said they received as of yesterday, five applications for live scan and the results are back already and they have been turned over to the Community Development Department. He said the issue of whether people could be hired immediately or wait until weeks later, has been

answered, and those background checks are being processed in a timely manner. He said he did not see the need for a background check for a person for multiple businesses, because once a background check has been completed, they receive a subsequent arrest notification from the DOJ. He said if there is a clean background check and you get arrested tomorrow the DOJ notifies the agency, and he can take steps to ensure if it is a disqualifying conviction, they could revoke their permit privileges.

Sheriff Martin spoke to this ordinance and local control measures implemented in this legislation, and he asked that the Commission exercise that local control to make sure what we have going on in Lake County proves to serve our purposes in the best interests of the community. He said he recognizes the fact that marijuana cultivation has been going on for many generations and is a staple of the community and economy and the voters want to legalize it and will give us an opportunity to incorporate with the revenue that is generated to hopefully, improve our community. He said he was involved in the first ad hoc Marijuana committee and universally there has been opposition to volatile organic manufacturing processes and it is concerning to him that it is written into this draft ordinance that it is going to be permitted. He said it seems that everything that is permissible into the law is written into this ordinance and he was here to ask to strike out any permission of volatile organic manufacturing. He said there are other ways to manufacture and pointed out the type 6 manufacturing. He said volatile organic manufacturing processing does not fit in with Lake County as a source cultivation County.

Sheriff Martin also spoke to sales tax revenues, and safety issues with this process, and that it is a dangerous activity. He pointed out in the proposed ordinance it is addressed at how dangerous it is by the amount of setbacks that are being required. He said his feeling is that we should not be risking the public safety of the community at whole. He said there are other ways to manufacture, that do not use volatile organic chemicals/solvents. He said he is adamantly opposed to the use of volatile organic solvents.

Detective Frank Walsh, presented a power point presentation of the type 7 license volatile solvents and the negative impacts and potentials for failure with closed loop systems.

- Equipment component failure
- Human error
- Assembly mistakes/errors
- Faulty pressure fittings
- Pressurized seal failure

Sheriff Martin said this presentation is in no way to scare the public, but to educate and he said he was not opposed to the volatile manufacturing, but there is other ways to make money in the marijuana industry in Lake County that do not have the negative impacts that volatile chemicals potentially bring to our community. He said we do not have the resources to defend against the natural fires that occur in this county and to bring business in that increases that exposure to us, he did not think was right for Lake County.

Comm. Hess said this is very compelling information and he respects the work that is being done, but it seemed that every photograph that has been shown was for in-home operations or jerry rigged operations. He asked if the point of this ordinance was to create a zone for this activity to be well regulated, so that we are not blowing up individual houses or causing fires. He said if we are silent on this point why that will stop the activity in Lake County.

Sheriff Martin said he did not think they should condone the activity, and the point of showing the pictures is that there are ways to do butane honey oil, and buy things at the local hardware stores, but that is not what is being dealt with on a daily basis. He said they are dealing with professionally manufactured equipment that does fail, because of a faulty O-ring, or it is not assembled correctly. He said even with commercial equipment, there is a potential for failure and there is likely to be a fire. He said he is not opposed to cultivation, but felt this does not belong in Lake County.

Comm. Crandell asked if there was a time where the County could get more sophisticated in cultivation that this could be readdressed.

Sheriff Martin said they could always come back and look at it.

Jack Boyage, member of Kelseyville pear packing facility, said the shift to the volatile solvent issues, and compels him to discuss this subject. He said that they do expect to submit for types 6 and 7 licensing in their facility. He said their plan is to do room in room volatile extraction. He said it is a safe procedure and felt this is the type of regulation that he believes is necessary. He spoke to the fencing and landscaping requirements around facilities and said this would be a significant imposition on their site.

Michael Green, acknowledged Sheriff Martins comments and he agrees with 99% of his statements, up to the point of prohibiting all types of manufacturing. He said perhaps you do not want type 7 as an accessory use on "A", "RR" or "SR", but there is not that much "C3", "M1", "M2" and "PDC" in the County, and it will be an intensive use if you consider type 7 an intensive use, and maybe take it out as an accessory use. He said he would like parcel to parcel language on page 22 to be revisited and on page 50 there were some housekeeping issues.

Del Potter, spoke in favor of volatile manufacturing and noted that the State of California has put in place rigid requirements for the safe conduct of these type of operations and there has not been one single incident in California. He said volatile manufacturing allows

you to separate cannabis into its constituent parts, which allows for more targeted medical formulations that are specific to medical issues.

Dr. Wignall, said she was in support of the type 7 volatile manufacturing and the room in room regulated production. She asked for clarification on page 13 of the Draft Ordinance (k) Use Standards (a) Manufacturing (M- Type 6 & A-Type 6 state Licenses). She said under the use standards there is manufacturing one mile from Highway 29, 20 and 53 and asked why they were not including Highway 175 and major by pass roads, such as Bottle Rock Road/Hwy. 175.

Mr. Massarelli said when they were working on this last year they came up with the concept of the corridors for the manufacturing, which was along Highway 29, 20 and 53. He said they also spoke to the cannabis hub, where they would be concentrated, so the "PDC" could be promoted to do that. He said Highway 175, is not a place where they want to direct truck traffic and manufacturing and the long range plan for Highway 29 is the bypass around the lake for freeways, so it would be a safer place to travel, which is some of the logic that staff had.

Mr. Massarelli said until staff gets more information and understanding about the range of manufacturing and how staff can divide it up into the ordinance, they are putting them all together under the one grouping. He said staff does not have enough experience or knowledge of what the range of manufacturing type operations may be.

Dr. Wignall said that since the geothermal plant is on Highway 175 and also Bottle Rock Road that the Commission should reconsider that is also a manufacturing location, because there is semi-trucks that travel that road and it does not seem to be bothering anything.

Comm. Levesque requested a lunch break.

**11:00 a.m. Lunch Break**

**12:00 a.m. Back to Order**

Joshua Alter stated that he is currently in escrow on an "M1" zoned facility for manufacturing and distribution off of Highway 175. He said he is within a quarter mile of Highway 175 and asked why it was left out.

Mr. Massarelli said that it boils down to policy decision and if you want to have it open to any "M1" zoning or concentrate it in certain corridors. He said that was a thought that staff had a year ago to concentrate it in certain corridors where there is not a lot of traffic and it could be a cannabis hub with multiple facilities collocated on a site. He said as moving forward with the General Plan, he recommends to looking at where you want to locate industrial to minimize impacts on other areas by locating them along those corridors.

Mr. Alter said he did not understand why Highway 175 is considered a highway and now he is being told that he cannot move forward with his facility that he has been working on the last few months, because Highway 29 has future highway plans.

Comm. Hess said he agrees with Mr. Alter about Highway 175 as a potential corridor and he lives near Middletown and uses Highway 175 off of Calistoga and not only was it a major corridor during the fire recovery, in terms of heavy equipment going in and out carrying timber, but there is wine related activity there at certain times of the year, and felt that it could be defined as a corridor.

Mike Mitzel spoke to the type 7 and thought it should be included with the state regulations, and hoped that the Commission would not ban volatile manufacturing.

Erin Carlstrom, Attorney, addressed the concerns with type 7 volatile manufacturing, and thought that the Commission could consider inserting language that would require that the system be certified by a licensed Engineer. She also addressed the 1,000 setback issues and to consider to adopt a different radius on sensitive use setbacks. She said she did not see a type 12 micro business included in the ordinance and thought it would be useful to provide a process for obtaining all of those permits at once in order to apply for it at the state level.

Tony Perkins asked for clarification on exclusionary zones and if they were strictly for cultivation and manufacturing would be allowed in the exclusionary zones as long as they are zoned correctly.

Mr. Massarelli said the exclusionary zones, but the setbacks from schools and parks do apply. He said the community growth boundary and water service areas, the manufacturing is not affected by that.

Lance Williams spoke to CO<sub>2</sub> extraction and hydrocarbon extraction. He said the Fire Department will not sign off on anything unless it is safe and these systems have to be built to lab specifications. He said do not take the type 7 away.

#### **12:15 p.m. Closed Public Hearing**

Comm. Levesque addressed the pictures from Sheriff Martin and agreed that explosives are volatile. He said he is in support of the type 7 volatile manufacturing as long as all the requirements are built into frequent testing. He also commented on the corridor issues and agreed that the zoning already limits what you can do and where you can do it. He said he does like doing it on a major road, but he thought maybe they need to decide what road qualifies and pointed out Highway 175 and Bottle Rock Road to qualify.

Comm. Hess spoke to Highway 175, and if we are going to define corridors, then large parts of Highway 175 should be considered. He said if these type 7 volatile manufacturing systems are properly regulated, they sound perfectly safe to him. He said it does not sound different to him than other kinds of pharmaceutical activity or anything else. He

said the industry is moving away from just providing cannabis to people to smoke and there are other applications, including medicinal or quasi-medicinal. He said if we decide to remove upfront to strip all that activity away from the county, then we have wasted a lot of time on the cultivation side of things.

Comm. Suenram spoke to type 7 and said that it has already been mentioned that the City of Lakeport and the City of Clearlake are allowing it. He said he was under the same concerns that the Sheriff is and he knows that it will still be done illegally and you are putting potentially a bomb in certain area of Lake County and he would be more inclined in restricting and not allowing any type 7's in any of the unincorporated areas of the County and leave those up to Clearlake and Lakeport if they so choose to allow those. He said he would not like to see processing facilities scattered throughout the County and to have them confined in localized areas, with the issue of Highway 175 going into Cobb, where it is not necessarily the safest place in terms of traffic. He said there are other issues that he would like to see addressed that any of these processing facilities to be a certain distance from a major water source and he did not know what the potential contaminants would be from these and if there is any waste in using water for extraction and what could the potential discharge be and perhaps there needs to be setbacks. He thought the processing should be limited to local grows. He asked if there should be warnings for Proposition 64 warnings on the facilities and his concerns were for first responders, responding to a site for even a medical call, and do they know what they are getting into and should this be addressed in the ordinance.

Mr. Massarelli noted on page 14, subsection 8 (f1), it talks about cannabis manufacturing sites are a Group F-1 Occupancy under the Fire Code and they require sprinklers and fire safety. He said they will be involved from the very beginning. He said it can be addressed as condition in the use permit and can be more site specific as to what is going on in that facility and require certain signage.

Comm. Hess said there is very specific language about hazardous materials and the requirements for compliance sound very strict to him. He said if the Commission decides to pull back on volatiles and manufacturing that does not mean that it will not occur in Lake County. He said he would predict that we would see more of those photographs that were clearly in someone's house with the carpet and molding and certified equipment being used by uncertified people, and he cannot see how that is a safer arrangement then by embracing it and making it part of the entire ordinance that we are considering today.

Comm. Suenram thought it would be better to be stricter on things today and possibly next year after things settle down and operations get going. He said we should not allow the type 7s in unincorporated areas.

Comm. Hess said that is where we as colleagues respectfully disagree.

Comm. Malley said he had concerns with the addition of the “APZ”, “ATPZ”, “RL” “RR” and “SR” in type 6 and 7. He said he understands if it is an area of manufacturing level 1 and 2 they are both to do with the actual Marijuana product itself.

Mr. Massarelli said that level 1 is the non-volatile and level 2 is the volatile.

Comm. Malley said he did not see any reason at all to allow any volatile in those areas and he questioned whether it should be allowed in the level 1 area. He said if it is in an area where it can be legally grown and it is a minimal processing license, then he would understand that.

Mr. Massarelli said that they are allowed for regular cannabis cultivation, which includes drying. He said it would be outside the community growth boundaries and 20 acres, except for the 1C, which would be 5 acres. He said the number of plants would vary from the type of license and could go up to an acre.

Comm. Malley said he guessed it was okay under the type 6 level 1, but he did not see any reason at all to allow type 7 volatile anywhere near residential. He pointed out that on Ag. land there is a residence on the property.

Mr. Massarelli said one of the ways it is being addressed, is to put the 150 foot setback from a residence and the setback could be increased.

Comm. Malley said his concern was that on smaller pieces of property, there will not be the sophistication of being able to extract the volatiles as it is done in a commercial lab situation

Mr. Massarelli said they would be subject to the exact regulations of the state as whether they are a large manufacturer or they are doing it for their own cultivation and it will have to be certified by an Engineer and they will have to meet the exact same standards

Comm. Malley said the idea presented earlier about the room within a room situation, if that is the way we go, it will all fall down on them on those small areas as well.

Mr. Massarelli said that is correct. He said the concept is that the accessory use is just for the manufacturer of the cannabis that is on that property, and they are not bringing in cannabis from other places and it is strictly for themselves.

Comm. Malley said he did not see that type 7 level 2 needs to be in “RL”, “RR” and “SR” zoning areas.

Comm. Hess said in the context of cultivation since we have approved those areas for cultivation and since we have essentially have been trying to establish a nexus between where it is cultivated and where it is manufactured, if we have permitted people with cultivation and manufacturing to locate in these areas, and now we are telling them we



are taking the manufacturing away at least with the respect to volatiles, haven't we led people down a path to a certain point.

Comm. Malley said it was stated at the beginning that this was all draft and speculation and this is where we are at the current time.

Comm. Hess said the cultivation ordinance is complete.

Comm. Malley said it does not say you have the right to manufacture volatile in any part of the County. He said we can completely shut down that part of it if we want to.

Comm. Hess said he thought it was understood that people who were here before talking about cultivation, also had acknowledged that they had larger plans in mind and there was a sense of the areas that were identified, especially if we are requiring this collocation in this ordinance. He said somehow we have to thread that needle.

Comm. Levesque asked if the County's zoning requirements match the state zoning requirements for type 7.

Mr. Massarelli said the law is very clear that we have the zoning power and can restrict various uses through our zoning powers and the state does not get into the land use aspect.

Comm. Crandell said that there are a number of different things that needs to be addressed, like the corridors and they type 6 and 7, and if we are going to go with what it says as of now, or if we are going to restrict and strike it out as the Sheriff has requested, or if we are going to go zone restricted as Comm. Malley has implied. He also said background checks need to be resolved and the micro-business and obtaining all the licenses at once.

Mr. Massarelli referenced micro-business and said staff is still struggling to figure out what that is and the recommendation is that when we do retail, we do micro-business at the same time.

Comm. Crandell said if we were to have fire inspections or someone from the fire department to inspect, would those potentially pass those inspections from the fire department or not, or where they done illegally. He said there are still some variables for him.

There was further discussion on explosive volatiles and the huge risks involved of type 7s.

Comm. Crandell asked if there was going to be an onslaught of type 6 and 7 manufacturing level licenses once this takes place because there is the requirements for inspections.

Mr. Massarelli said they have gotten a lot of calls on manufacturing as soon as the cultivation ordinance was passed.

Comm. Suenram asked if there was any information for potential environmental hazards.

Mr. Massarelli said that those issues will be addressed in the Initial Study, because every permit will have to go through an environmental review. He said water quality and air quality will be looked at. He pointed out in "C3" zoning district, fuel type farms, wholesale fuel sales, distributors, clean natural gas and propane distributors and wholesalers are allowed. He said we already allow these activities in the "C3" district as well as "M1" and "M2" of these kind of activities. He said they have assigned where these risk issues can occur in the County. He said if the Commission would like to make a recommendation to the Board of Supervisors to restrict type 7 at this time, it is perfectly fine, and it will be a decision of the Board of Supervisors.

Comm. Crandell said from what he is hearing they need to move forward with this recommendation, they will need to figure out if we are going to be completely restrictive on type 6 & 7, or zone restrict it or if we are going to allow types 6 & 7.

Comm. Hess said that is right and the Board is looking for the Commission's recommendations to table action on some of these things, or if they decide not to act, then we are not providing guidance that the Board has requested. He said it seems to him that the safeguards are in place and the inspection and licensing procedures are in place.

Comm. Suenram asked if the state has a licensed trained inspector specifically in this.

Mr. Massarelli said he did not know the answer to that. He said if that is a concern they can add language in the annual performance report, that they have an Engineer do an inspection on an annual basis, to certify that it has been maintained in the original design and it is being operated correctly.

Comm. Levesque said there are a few areas of contention, but overall he thought they were ready to recommend this to the Board of Supervisors, but we need to figure out the areas that we agree or disagree on. He said obviously the type 7 and what qualifies as a corridor are the real areas of contention.

Comm. Malley said that he would be fine with sending this to the Board of Supervisor's with the caveat that type 7, would not include "RR", "RL" and "SR" zoning areas, otherwise as it is presented it is fine. He said as far as the corridors, he sees Mr. Massarelli's vision for commercial development alongside the highways, but he also knows there are certain restrictions alongside the highways because of the corridor.

Comm. Levesque said he was prepared to offer a motion to recommend this ordinance to the Board of Supervisors with the following adjustments; that we not approve type 7 in "SR", "RR" and "RL" and that we remove the requirement for the one mile for Hwys. 29, 20 and 53 instead of relying on the Zoning Ordinance.

Comm. Hess said that he thought Comm. Malley makes a good point about those lands and if we are being consistent and those other types of activities are not allowed there, it gives him a path forward and we should not do a carve out in either direction for particular industries.

Mr. Massarelli said the recommendation on page 12 section 4, there is a typo and it should be: *"In the 'APZ', 'A', 'TPZ', 'RL', 'RR', and 'SR' zoning districts the M-Type 6, A-Type 6, in the 'APZ', 'A', 'TPZ' zoning districts, M-Type 7, A-Type 7 State licenses are an accessory use...."* He said that makes it consistent with the action on the other table. He referenced the errata sheet that was presented earlier the ones that are related to this specific ordinance, to have those included as part of the motion, and on Errata sheet 2, to include the table.

Comm. Hess asked if we were eliminating the corridor requirement throughout the document. He asked if that was referred to in the area of testing also.

Mr. Massarelli said to make the motion broad, so if it is caught elsewhere to take it out.

Ms. DelValle pointed out page 38 a(1) to include the deletion of this a(1).

Comm. Levesque moved, 2<sup>nd</sup> by Comm. Hess to take out the corridor language and also not allowing 'SR', 'RR' and 'RL' and also to include the errata sheet corrections.

#### **RECOMMENDED ACTION TO THE BOS 4 Ayes 1 Noe (Comm. Suenram)**

Mr. Massarelli said that this will probably be heard by the Board of Supervisors in May and it will be posted on the website as soon as there is a date.