



COUNTY OF LAKE

COMMUNITY DEVELOPMENT DEPARTMENT

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Item 4

9:20 AM

February 25, 2021

STAFF REPORT

TO: Lake County Planning Commission

FROM: Tocarra Nicole Thomas, *AICP, CQIA*, Deputy Director
Community Development Department
Scott De Leon Director
Community Development Department

DATE: February 25, 2021

SUBJECT: Recommendation of Planning Commission Approval of Text Amendments to Article 27SEC. 21-27 USES GENERALLY PERMITTED (at) Commercial Cannabis Cultivation: (Ord. No. 3084, 05/21/2019) Proposed Amendments to Zoning Ordinance (AM 20-02) Categorical Exemption (CE 20-15)

ATTACHMENTS:

1. Ordinance 3092 AN ORDINANCE AMENDING CHAPTER 21, ARTICLE 27 OF THE LAKE COUNTY CODE PERTAINING TO COMMERCIAL CANNABIS CULTIVATION
2. Ordinance 3096 AN ORDINANCE AMENDING ARTICLES 27 AND 68 OF CHAPTER TWENTY-ONE OF THE LAKE COUNTY CODE TO CLARIFY THE DEFINITION OF PUBLIC LANDS IN REGARD TO COMMERCIAL CANNABIS CULTIVATION
3. Resolution of Intention 2020-178 RESOLUTION OF INTENTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF LAKE TO INITIATE AMENDMENTS TO THE ZONING ORDINANCE TO ESTABLISH REGULATIONS AND DEVELOP STANDARDS FOR THE CULTIVATION OF CANNABIS AMENDING ARTICLE 15 OF THE LAKE COUNTY CODE PERTAINING TO THE PLANNED DEVELOPMENT COMMERCIAL OR "PDC" DISTRICT
4. Planning Commission May 28, 2020 Agenda Item # 3 Discussion of Text Amendments to Article 27SEC. 21-27 USES GENERALLY PERMITTED (at) Commercial Cannabis Cultivation: (Ord. No. 3084, 05/21/2019) Proposed Amendments to Zoning Ordinance (AM 20-02) Categorical Exemption (CE 20-15)

I. Summary

The County of Lake Board of Supervisors discussed and approved several changes to Article 27 over the course of 2020. Those zoning text amendments clarified definitions, changed setbacks for cannabis cultivation, and added protections for existing agricultural uses. Some of these Zoning Text Amendments were approved by the Board of Supervisors, while others were remanded to the Planning Commission for discussion and consideration. This staff report outlines those changes that were made by the Board of Supervisors, the zoning text amendments previously discussed by the Planning Commission as

background information, and the necessary actions for the Planning Commission to take today on the Zoning Text Amendments..

Staff recommends the approval of the Zoning Text Amendments by the Planning Commission and to provide its recommendation to the Board of Supervisors via a resolution of intention per Article 47.13.

II. Previous Discussion and Action on the Zoning Text Amendments by the Board of Supervisors and Planning Commission

The Board of Supervisors considered and approved zoning text amendments to the Zoning Ordinance Article 27 on several dates, May 12, 2020, August 11, 2020, and December 8, 2020, the Planning commission discussed some of the Zoning Text Amendments without formal action during the May 28, 2020 meeting.

Those zoning text amendments are outlined below for informational purposes.

May 12, 2020 Board of Supervisor Discussion and Action Ordinance 3092

On May 12, 2020 the Board of Supervisors discussed and approved the following zoning text amendments:

1. Decrease in minimum acre size for indoor cultivations
2. Elimination of plant count limitations for small scale cultivations
3. Deadline for registering with the California Resources Control Board for water quality protection programs by 10/31/2020
4. Security surveillance system requirements being necessary only during active operations
5. Addition of Type 10 and Type 10 A dispensary license to microbusiness as long as it is part of a resort operation and not stand alone operation
6. Planned Development Commercial District
 - a. Allowance of licensed cannabis processing in parcels zoned as Planned Development Commercial ("PDC");
 - b. Table B of Section 27.11 of Chapter 21 of the Lake County Code is hereby amended as to the section (aaa) Cannabis Processor License to include the Planned Development Commercial (PDC) zoning district to the list of zoning districts in which licensed cannabis processing is generally permitted with a Use Permit
7. Applicants should not be approved to receive a permit until electronic finger print images are submitted to the Department of Justice, Lake County Sherriff Department, or the Lake County Community Development Department has been approved by the DOJ or Lake County Sherriff's Office
8. Due to the nature of Agricultural Work the employee may be permitted to work temporarily upon submitting background information; if there are any employees who have failed the background checks their employment must be terminated immediately

No Action is required on these Zoning Text Amendments as they were previously approved by the Board of Supervisors.

On September 10, 2020 the Board of Supervisors adopted Ordinance Number 3096 which amended Article 27 with the following changes with an effective date of September 10, 2020:

1. In Chapter 21, Section 27.3 (at)(1)(v), the Board of Supervisors suggested to change the setback for public lands from 1,000 feet to 200 feet.

- While this was originally submitted for the Planning Commission to review, on August 11, 2020 the Board of Supervisors changed the definition of public lands so that only areas designated for public activity such as visitor centers, trails, campsites, and more would be afforded the 1000 foot setback from cannabis cultivation, while other public lands not designated as a public destination can default to a 100 foot setback from cannabis cultivation.

No Action is required on these Zoning Text Amendments as they were previously approved by the Board of Supervisors; providing for information review of what was previously approved.

May 28, 2020 Planning Commission Discussion

On May 28, 2020 the Planning Commission discussed several zoning text amendment changes. No formal action was taken by the Planning Commission; and the Planning Commission directed staff to bring those proposed changes back to the Planning Commission for action. Those changes are:

1. Change the acreage for the following license types to enhance the potential for development of additional microbusiness activities, which in turn allows for the county to collect Measure C and Measure K taxes.

Reduction of Lot Sizes Throughout License Types		
Licensee Type	Current	Proposed
Type 1 – outdoor	Maximum 5,000 sq. ft.	Canopy up to 50 Mature Plants on Noncontiguous plots*
Type 1A - indoor	<ul style="list-style-type: none"> • Maximum 5,000 sq. ft. • 5 Acre Minimum 	<ul style="list-style-type: none"> • Unlimited Canopy • 2 Acre Minimum
Type 1C - outdoor	Maximum 2,500 sq. ft.	Up to 25 Mature Plants*
Type 2A - indoor	20 Acre Minimum	2 Acre Minimum
Type 3A - indoor	20 Acre Minimum	2 Acre minimum.

2. Include language to increase Administrative fines for violations of the zoning ordinance.
 - a. Currently the penalty for violation is \$1,000 for the entire illegal operation regardless of the amount of plants, whether someone has six (6) plants, or 600. Increasing the fine to a “per plant, and per day” basis will provide a significant deterrent to illegal grow operations. This fine increase will only target completely illegal grows that have been determined to not have any permits. This is different from cultivators that have a permit or are in the permitting process and are found to be in violation of those terms.
 - b. Staff recommends increasing the administrative fines to \$1,000 per plant per day

No formal action was taken on these proposed changes by the Planning Commission. Staff was directed to bring these changes back to the Planning Commission for action at a later date. Staff recommends the approval of these zoning text amendments with a Resolution of Intention sent to the BOS.

III. Items for Consideration and Discussion

The following items are being brought before the Planning Commission today for discussion and consideration by the Planning Commission.

1. The current grid in Chapter 21, Section 27.3 (at)(1)(i), shows the minimum acres and setback from property lines for each cultivation license types. Previously the Board of Supervisors discussed reducing the minimum acres for indoor only cultivation operations; but the discussion ended with directing staff to bring this language before the Planning Commission for consideration. The

minimum acres for License Types 1A, 2A, and 3A are currently set for 20 acres for all and the setback from property lines is currently set to 100 feet.

Reduction of Lot Sizes Throughout License Types		
Licensee Type	Current	Proposed
Type 1 – outdoor	Maximum 5,000 sq. ft.	Canopy up to 50 Mature Plants on Noncontiguous plots*
Type 1A - indoor	<ul style="list-style-type: none"> Maximum 5,000 sq. ft. 5 Acre Minimum 	<ul style="list-style-type: none"> Unlimited Canopy 2 Acre Minimum
Type 1C - outdoor	Maximum 2,500 sq. ft.	Up to 25 Mature Plants*
Type 2A - indoor	20 Acre Minimum	2 Acre Minimum
Type 3A - indoor	20 Acre Minimum	2 Acre minimum.

Staff recommends adopting the changes for License Types 1A, 2A, and 3A to directly match the State Regulation for consistency. This will also serve as an economic development incubation tool. Reducing the lot sizes will allow for additional properties to be candidates for cannabis cultivation, allowing for additional microbusiness/economic development opportunities. Staff believes that all of these potential impacts would be mitigated since all future projects proposed as a result of the ordinance would require discretionary review through the Use Permit process and will be analyzed for potential impacts on a project-by-project basis.

2. In Chapter 21, Section 27.3 (at)(2)(i)(d)(10), the current ordinance provides setback from waterways and setbacks for fertilizer and pesticides from waterways.
 - The ordinance currently states that a cultivation must be 100 feet from waterways for all of the above. However, this does not comply with State rules and regulations on setback from waterways which at times is less than 100 feet and sometimes more than 100 feet, which makes the current ordinance out of compliance with State law.

Staff recommends changing the language from a specific setback to stating the setbacks must meet “the required minimum Riparian Setbacks actively approved by the California State Water Resources Control Board.” Changing this language will bring the Zoning Ordinance into alignment with the California State Water Resource Control Board language; which will have the effect of making it easier to process permit applications as the language between the County’s ordinance and the State will be consistent.

3. Amend the language to include specific Site Plan guidelines

- Chapter 21, Section 27.3(at)(2)(i)(d)(10) is amended as follows:
 - (10) Site Plan: A site plan is a graphic representation of the project consisting of maps, site plans, or drawings prepared by a design professional consistent with the requirements of the Department pursuant to Article 55.5.
 - i. This section shall include a map of any spring, top of bank of any creek or seasonal stream, edge of lake, delineated wetland or vernal pool on the lot of record of land or within 200 feet of the lot of record and the required minimum Riparian Setbacks actively approved by the California State Water Resources Control Board.
 - ii. The use of fertilizer shall not be located within the required minimum Riparian Setbacks, actively approved by the California State Water Resources Control Board, 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.

- iii. The use of pesticides shall not be located within the required minimum Riparian Setbacks, actively approved by the California State Water Resources Control Board, 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.
- iv. Include a map of any private drinking water well, a 100 foot setback from any identified private drinking water well. The map shall also include any public water supply well on the lot of record or within 200 feet of the lot of record and a 200 foot setback from any public water supply well.
- v. Pursuant to the California Health and Safety Code, the use of hazardous materials shall be prohibited except for limited quantities of hazardous materials that are below State threshold levels of 55 gallons of liquid, 500 pounds of solid, or 200 cubic feet of compressed gas. The production of any Hazardous Waste as part of the cultivation process is prohibited.
- vi. A topographic map of the parcel where the permitted activity is located with contours no greater than forty (40) feet.

Staff recommends adoption of the above zoning text amendments as these changes will bring additional clarity and specification to the Zoning Ordinance which will facilitate the review of permit applications.

4. Include language to increase Administrative fines for violations of the zoning ordinance.

- vii. Currently the penalty for violation is \$1,000 for the entire illegal operation regardless of the amount of plants, whether someone has six (6) plants, or 600. Increasing the fine to a “per plant, and per day” basis will provide a significant deterrent to illegal grow operations.
- viii. Staff recommends increasing the administrative fines to \$1,000 per plant per day

Staff recommends adoption of increasing the administrative fines as the current fines do not serve as an actual deterrent for the illegal cultivation of cannabis.

IV. ENVIRONMENTAL REVIEW

Pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) projects “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment” are exempt from CEQA. As the activity in question here is merely a text amendment which will not have any effect on the environment, it clearly falls within the common sense exemption. The adoption and implementation of the proposed Zoning Ordinance text amendment, therefore, is exempt from CEQA.

V. RECOMMENDATIONS

Staff recommends that the Planning Commission take the following Actions:

- A. Find that the proposed Text Amendment to the Lake County Zoning Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to § 15061(b)(3) of the CEQA Guidelines with the following findings:

1. The proposed Zoning Ordinance Text Amendments are consistent with the Lake County General Plan and Zoning Ordinance.
2. The proposed Zoning Ordinance Text Amendments will not have a significant effect on the environment.
3. The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

B. Submit a resolution of intention to the Board of Supervisors to consider and approve the proposed Zoning Ordinance Text Amendments:

1. Change the following license types to enhance the potential for development of additional microbusiness activities, which in turn allows for the county to collect Measure C and Measure K taxes.

Reduction of Lot Sizes Throughout License Types		
Licensee Type	Current	Proposed
Type 1 – outdoor	Maximum 5,000 sq. ft.	Canopy up to 50 Mature Plants on Noncontiguous plots*
Type 1A - indoor	5. Maximum 5,000 sq. ft. 6. 5 Acre Minimum	7. Unlimited Canopy 8. 2 Acre Minimum
Type 1C - outdoor	Maximum 2,500 sq. ft.	Up to 25 Mature Plants
Type 2A - indoor	20 Acre Minimum	2 Acre Minimum
Type 3A - indoor	20 Acre Minimum	2 Acre minimum.

2. Change the required minimum Riparian Setbacks actively approved by the California State Water Resources Control Board
3. Include language for the clarification for Site Plans submission
4. Include language to increase Administrative fines for violations of the zoning ordinance. Currently the fine for those who violate the conditions of the EA/Use Permit is only \$1,000 per plant per day.

Zoning Ordinance Text Amendment Approval

1. I move that the Planning Commission find this **Zoning Ordinance Text Amendment, AM 20-02**, is **Categorically Exempt (CE 20-15)** from the California Environmental Quality Act (CEQA) Guidelines pursuant to **§15061(b)(3)**.
2. I move that the Planning Commission recommend approval of the proposed **Zoning Ordinance Text Amendment, AM 20-02** applied for by the **County of Lake** for the reasons listed in the staff report dated **February 25, 2021**
3. I move that the Planning Commission render its final decision on the proposed Ordinance text amendments within ten (10) days of said final decision, in the form of a Resolution of Intention to the Board of Supervisors recommending the formal adoption and approval of these Zoning Ordinance Text Amendments, AM 20-02 as outlined in the staff report dated February 25, 2021

Reviewed By:_____