

BOARD OF SUPERVISORS

Yolo County, California

Date: January 10, 2017

To: CAO ✓

31.

Waive second reading and consider adoption of an ordinance amending Chapter 20 to Title 5 of the Yolo County Code regulating medical marijuana cultivation in the unincorporated area of Yolo County to slightly broaden the exception to the cultivation prohibition, provide an appeals process for those denied a license to cultivate medical marijuana by permit and to add a 1,000 foot outdoor cultivation setback from tribal lands. (No general fund impact) (Nunes/Tengolics)

Pam Welch, Helen McCloskey, Cheri Devarenes, Dr. David Ostrach, Michael McDonald and Wyatt Cline addressed the Board on this item.

Minute Order No. 17-10: Approved recommended action by **Ordinance No. 1483**.

MOVED BY: Provenza / SECONDED BY: Villegas

AYES: Chamberlain, Villegas, Provenza.

NOES: Saylor, Rexroad.

ABSTAIN: None.

ABSENT: None.



County of Yolo

www.yolocounty.org

To: Supervisor Duane Chamberlain, Chair
and Members of the Board of Supervisors

Regular-General Government # 31.

Board of Supervisors

County Counsel

Meeting Date: 01/10/2017

Brief Title: Marijuana Ordinance Amendment

From: Carrie Scarlata, Assistant County Counsel, Office of the County Counsel

Staff Contact: Alexander Tengolics, Legislative/Governmental Affairs Specialist, County Administrator's Office, x8068

Subject

Waive second reading and consider adoption of an ordinance amending Chapter 20 to Title 5 of the Yolo County Code regulating medical marijuana cultivation in the unincorporated area of Yolo County to slightly broaden the exception to the cultivation prohibition, provide an appeals process for those denied a license to cultivate medical marijuana by permit and to add a 1,000 foot outdoor cultivation setback from tribal lands. (No general fund impact) (Nunes/Tengolics)

Recommended Action

Waive second reading and consider adoption of an ordinance amending Chapter 20 to Title 5 of the Yolo County Code regulating medical marijuana cultivation in the unincorporated area of Yolo County to slightly broaden the exception to the cultivation prohibition, provide an appeals process for those denied a license to cultivate medical marijuana by permit and to add a 1,000 foot outdoor cultivation setback from tribal lands.

Strategic Plan Goal(s)

Operational Excellence
Thriving Residents
Safe Communities
Sustainable Environment
Flourishing Agriculture

Reason for Recommended Action/Background

On November 22, 2016, the Board adopted revisions to Yolo County's interim medical marijuana cultivation ordinance banning cultivation of medical marijuana in Yolo County while grandfathering in those currently legally operating and those in the process of getting licensed. At that meeting, the Board requested certain additional revisions to the interim ordinance and the purpose of this amendment is simply to make those limited revisions. The revisions include:

1. Broadening the exception to the cultivation prohibition by including those who have a fully executed purchase and sale agreement for the purchase of the real property on which they will cultivate medical marijuana
2. Providing an appeals process for those denied a business license to cultivate medical marijuana by permit
3. Adding a 1,000 foot outdoor cultivation setback from tribal lands
4. Clarifying that County Code should not be construed to conflict with the Control, Regulate and Tax Adult Use of Marijuana Act of 2016

The Board has previously recognized and protected the efforts of those who have taken significant steps towards cultivating medical marijuana legally under County Code by exempting them from the ban on cultivation. The addition of a 1,000 foot setback from tribal lands would affect approximately three of those cultivators. Accordingly, the proposed ordinance, as drafted for the Board's consideration, is prospective in application only and exempts both patients and those cultivators who are otherwise exempt from the ban from the tribal lands setback. And of course, it applies only to outdoor cultivation.

Since the introduction of this ordinance on December 13, 2016, County staff have received several questions from the public regarding the legality of the proposed buffer from tribal trust and fee lands. The Tribe requested the proposed buffer to ensure the continued use and enjoyment of tribal lands is not impaired by nearby outdoor medical cannabis cultivation. This is a valid basis for County regulation and, as explained further below, the buffer is neither arbitrary nor unreasonable.

State law provides some examples of similar efforts to protect tribal interests, including laws that require state agencies and local governments to consider impacts to tribal lands, economic development opportunities and related matters in the course of performing their governmental functions. (E.g., Pub. Resources Code § 25333, Gov. Code §§ 11019.8, 65351-65352.4.). The California Attorney General has also opined that the California Department of Transportation can promote tribal economic development and self-sufficiency by extending hiring preferences to Native American workers for state highway projects on and near tribal lands, even though the work occurs entirely within state rights-of-way. (93 Ops. Cal. Atty. Gen. 2010 (March 8, 2010).) Further, in a similar government-to-government context, the County has adopted many ordinances and policies that afford special treatment to lands near city boundaries and spheres of influence. (Yolo County General Plan Policies LU-2.1, LU-2.4; Yolo County Code Section 8-2.404(d)(2)(i)(B).) Taking a comparable approach to lands owned by a

quasi-sovereign entity such as Yocha Dehe in the very limited context of outdoor cultivation of medical cannabis is thus legally appropriate and supported by ample precedent.

Finally, questions regarding the legal and policy justification for the buffer must be considered with the understanding that (as noted above) the buffer applies to activities that are already illegal under the Yolo County Code, subject only to limited exceptions that are preserved in the buffer ordinance. The buffer thus has no present effect on the rights of those that own or lease land within its boundaries, and it will become legally relevant only if the prohibition established by the interim ordinance is relaxed in the future. Also, like all elements of any ordinance that eventually (in mid- or late- 2017) replaces the interim ordinance, the buffer will be fully reevaluated by the Planning Commission and the Board of Supervisors in public hearings if it is included in that ordinance for consideration.

Attachment A is the draft amended ordinance, revised as directed by the Board at the first reading of the ordinance on December 13, 2016. Today's second reading is an opportunity for the public to provide input to the Board on these changes prior to adoption of the ordinance.

As requested at the December 13 meeting, staff will bring back an ordinance to implement a ban on non-medical marijuana commercial activities. While commercial activities of non-medical marijuana, including cultivation, is not currently legal under State law, with the passage of Proposition 64, the Adult Use of Marijuana Act, it will become legal in January of 2018 absent local regulations prohibiting such activity.

Collaborations (including Board advisory groups and external partner agencies)

Agriculture, County Administrator, County Counsel, Sheriff's Office, District Attorney, Community Services

Fiscal Information

No Fiscal Impact

Fiscal Impact of this Expenditure

Total cost of recommended action

Amount budgeted for expenditure

Additional expenditure authority needed \$0

On-going commitment (annual cost)

Source of Funds for this Expenditure

General Fund

\$0

Attachments

Att. A. Ordinance

Att. B. Ordinance with Changes Tracked

Form Review

Inbox	Reviewed By	Date
Phil Pogledich	Phil Pogledich	01/04/2017 03:48 PM
Beth Gabor	Beth Gabor	01/05/2017 08:26 AM
County Counsel	Hope Welton	01/05/2017 08:27 AM
Form Started By: Mindi Nunes		Started On: 12/20/2016 08:37 AM
Final Approval Date: 01/05/2017		

FILED

JAN 12 2017

CLERK OF THE BOARD
BY Julia Sachs
DEPUTY

ORDINANCE NO. 1483

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF YOLO
AMENDING CHAPTER 20 OF TITLE 5 OF THE YOLO COUNTY CODE REGARDING
MEDICAL MARIJUANA CULTIVATION

The Board of Supervisors of the County of Yolo ordains as follows:

SECTION 1. Purpose

The purpose of this Ordinance is to amend Chapter 20 of Title 5 of the Yolo County Code regarding medical marijuana cultivation to broaden the exception to the cultivation prohibition, provide an appeals process for those denied a business license to cultivate medical marijuana by permit and to add a 1,000 foot cultivation setback from tribal lands.

SECTION 2. Section 5-20.01 is amended to read as follows:

Section 5-20.01 Purpose and Intent.

It is the purpose and intent of this Chapter to regulate medical marijuana in a manner that is consistent with state law and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Yolo by balancing: (1) the needs of medical patients and their caregivers for enhanced access to medical marijuana; (2) the needs of neighbors and communities to be protected from public safety and nuisance impacts; and (3) the need to limit harmful environmental impacts that are sometimes associated with marijuana cultivation. Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance as defined in this Chapter; (2) to conflict with state law as contained in the Control, Regulate and Tax Adult Use of Marijuana Act of 2016; or (3) allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under California law.

SECTION 3. Section 5-20.04 is amended to read as follows:

Section 5-20.04 Prohibited Activities.

A. The cultivation of medical marijuana, in any amount or quantity, upon any premises, is declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless one of the following conditions is satisfied:

1. Patient Exemption

a. Cultivation is by a qualified patient cultivating marijuana pursuant to Section 11362.5 of the Health & Safety Code if the area he or she uses to cultivate marijuana does not exceed 100 square feet, at full plant maturity, per legal

parcel, and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity.

- b. The 100 square feet limitation is imposed regardless of the number of qualified patients residing on the property, participating directly or indirectly in or benefitting from the cultivation.
 - c. For purposes of this subsection, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants at full maturity on the premises.
 - d. The qualified patient shall reside full-time in the residence where the medical marijuana cultivation occurs and may not participate in medical marijuana cultivation in any other residential location within the County of Yolo.
2. By Permit. Cultivation is in compliance with California Regional Water Quality Control Board Central Valley Region Order No. R5-2015-0113. All medical marijuana cultivation sites cultivating pursuant to this subsection shall provide to the Yolo County Department of Agriculture a copy of a submitted Notice of Intent, which must be complete and have been received with full payment by the Central Valley Regional Water Quality Control Board no later than 5:00 p.m. on October 11, 2016, to obtain regulatory coverage by the Central Valley Water Board as a Tier 1, 2 or 3 cultivator, Monitoring Self-Certification and other documents filed with the Central Valley Regional Water Quality Control Board demonstrating compliance with Order No. R5-2015-0113, or any substantially equivalent rule that may be subsequently adopted by the County of Yolo or other responsible agency. Notwithstanding the foregoing, the garden canopy must be between 1,000 square feet and 43,560 square feet; cultivation of medical marijuana of less than 1,000 square feet under this subsection is prohibited.
- a. Persons cultivating medical marijuana by permit under this subsection shall:
 - 1) Be currently leasing or, as of October 11, 2016, have been the record owner of or have a fully executed purchase and sale agreement for the purchase of, the real property on which they will cultivate medical marijuana and for which they have filed a Notice of Intent with the Central Valley Water Board by October 11, 2016; and
 - 2) Participate in any track and trace program required by the County, pay any associated fees and meet all associated requirements; and

- 3) Sign a written consent to reasonable on-site compliance inspections of the cultivation area by law enforcement or other County personnel during reasonable hours; and
- 4) Execute an agreement to indemnify and hold harmless the County of Yolo and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the cultivation of cannabis for medical use and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the cultivation of marijuana for medical use. The indemnification shall apply to any damages, costs of suit, attorneys' fees or other expenses awarded against the County, its agents, officers and employees in connection with any such action. In addition, the agreement shall release the County of Yolo, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution for cultivation in violation of state or federal laws.

b. Appeals

- 1) The applicant may appeal the denial or revocation of a Yolo County business license to cultivate medical marijuana by permit under this subdivision to the County Administrator or his/her designee by filing a statement in writing setting forth the grounds of the appeal within 15 days after the denial or after the mailing of a notice of revocation. The appeal shall be heard within 15 days after receiving notice of the appeal.
- 2) The scope of the appeal shall be limited to a determination of whether the application for a business license meets the requirements of this Chapter.
- 3) If no appeal is made within the time specified for an appeal following a denial or revocation of a business license, the license shall be deemed denied or revoked, as applicable.
- 4) The decision of the County Administrator or his/her designee shall be final.

SECTION 4. Subsection A(1) of Section 5-20.05 is amended to read as follows:

Section 5-20.05 Limitation on Location to Cultivate Marijuana.


A. The cultivation of marijuana, in any amount or quantity, shall not be allowed in the following areas:

1. Outdoors within 1,000 feet of a youth-oriented facility, a school, a school-bus stop, a park, a church or federal lands held in trust by the federal government for a federally recognized tribal government or lands held in fee by a federally recognized tribal government. The setback from lands held in trust for or in fee by a federally recognized tribal government shall apply prospectively and not be applicable to those exempt under 5-20.04.A.1-2.
 - a. Such distance shall be measured in a straight line from the boundary line of the premises upon which marijuana is cultivated to the boundary line of the premises upon which the youth-oriented facility, school, school bus stop, park, church, residential treatment facility or tribal lands are located.

SECTION 5. The Clerk of the Board will publish the Ordinance codified in this Chapter as required by law. The Ordinance codified in this Chapter shall take effect 30 days after passage.

PASSED AND ADOPTED by the Yolo County Board of Supervisors at its regular meeting on January 10, 2017, by the following vote:

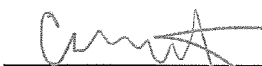
AYES: **Villegas, Provenza, Chamberlain.**
NOES: **Saylor, Rexroad.**
ABSENT: **None.**
ABSTENTION: **None.**

By: 
Duane Chamberlain, Chair
Yolo County Board of Supervisors

Attest: Julie Dachtler, Deputy Clerk
Yolo County Board of Supervisors

By: 
Deputy (Seal)

Philip J. Pogledich, County Counsel

By: 
Carrie Scarlata, Asst. County Counsel

ORDINANCE NO. _____

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- 4) Execute an agreement to indemnify and hold harmless the County of Yolo and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by affected property owners or other third parties due to the cultivation of cannabis for medical use and for any claims brought by any person for problems, injuries, damages, or liabilities of any kind that may arise out of the cultivation of marijuana for medical use. The indemnification shall apply to any damages, costs of suit, attorneys' fees or other expenses awarded against the County, its agents, officers and employees in connection with any such action. In addition, the agreement shall release the County of Yolo, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution for cultivation in violation of state or federal laws.

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AYES:
NOES:
ABSENT:
ABSTENTION:

By: _____
Duane Chamberlain, Chair
Yolo County Board of Supervisors

Attest: Julie Dachtler, Deputy Clerk
Yolo County Board of Supervisors

By: _____
Deputy (Seal)

Philip J. Pogledich, County Counsel

By: _____
Carrie Scarlata, Asst. County Counsel