



**County of Santa Cruz Board of Supervisors
Agenda Item Submittal**

From: County Administrative Office
(831) 454-2100

Subject: Ordinance Amending SCCC 7.128 (Non-Retail Cannabis) and Various Sections of SCCC 13.10

Meeting Date: June 2, 2020

Recommended Action(s):

- 1) Conduct a public hearing to consider ordinances amending Chapter 7.128 and Chapter 13.10 of the Santa Cruz County Code relating to non-retail commercial cannabis regulations and making findings of exemption from CEQA; close the public hearing;
- 2) Approve the ordinances in concept;
- 3) Schedule the ordinances for second reading and final adoption on June 16, 2020; and
- 4) Upon final adoption, direct the Planning Director to submit the amendments to local coastal plan implementing ordinances to the California Coastal Commission for approval and certification.

Executive Summary

Approval of the proposed changes will allow staff to implement a revised Cannabis Licensing and Land Use Regulatory Program for non-retail cannabis activities, including cultivation, manufacturing and distribution. The proposed amendments are centered upon cannabis cultivation being an agricultural activity, streamlining the use permit and licensing process, aligning small cannabis operations with current home occupation standards and principal permitted uses in various zone districts. These proposed modifications are part of an iterative process to make the cannabis program function as originally intended by the Board of Supervisors.

Background

The provisions in the Santa Cruz County Code (County Code) relating to non-retail commercial cannabis were first adopted by the Board of Supervisors (Board) in May 2018, with the goal of being an iterative regulatory program that would be occasionally reviewed and, when necessary, modified in response to changes in a nascent legal cannabis industry and evolving State and Federal regulatory environment. Since adoption, Chapter 13.10 has been revised to provide clarity and reflect changes made at the State level. As the County's Non-Retail Commercial Cannabis Program evolved, a disconnect emerged between the Board's original stated goal of encouraging more cannabis within the Commercial Agriculture (CA) zone districts and implementation of the program. This disconnect stemmed from the concept that all cannabis development was considered a

commercial use rather than an agricultural process, which impacted the application of specific land-use provisions during the permit process.

On January 28, 2020, the Cannabis Licensing Office (CLO) presented its quarterly update to the Board. The CLO presentation consisted of status updates on compliance, enforcement, and licensing. The licensing update included various suggested amendments to County Code Chapter 13.10. Those suggestions included: (1) identifying cannabis cultivation as an agricultural activity within the County Code; (2) decreasing the approval level for cottage gardens (500 square feet maximum); (3) updating the approval process for cannabis cultivation in CA zone districts once security plans are implemented; and (4) clarifying distribution license types. The Board directed CLO staff to return with draft recommendations for code changes to simplify the approval process and generate more licenses.

Analysis

The non-retail license program implementation began in June 2018 with the enactment of Chapter 7.128. The non-retail licensing process involves obtaining approval from the licensing office and use permit(s) from the Planning Department, including a California Environmental Quality Act (CEQA) determination. Depending on the scope and scale of operations, the use permit may also require a public hearing.

As the CLO has progressed with the licensing process, a variety of issues have presented themselves that seem at odds with the Board's goals for the program. Under current processes, a cannabis operator must go through the same land use permit approvals as a commercial enterprise despite the agricultural activity involved being substantially similar to other crops that do not require such approvals. The County's Conditional Use Permit (CUP) process, as well as costly and complex conditions of approval (COA), continue to stymie operators within the CA zone district. Cannabis operators have faced, at times, insurmountable procedural obstacles that other agricultural operators do not face. Cannabis has been viewed as a commercial activity in the land-use process largely due to state regulations referring to cannabis as "commercial" cannabis cultivation, manufacturing, distribution, etc. The fact that the State defines cannabis as an agricultural product (i.e., a finished good) rather than an agricultural commodity (i.e., a raw material) further muddies the waters. This view point is widespread throughout California, but that view is changing as the State, specifically the California Department of Food and Agriculture (CDFA), has clarified the term "commercial cannabis cultivation" is only meant to define cannabis cultivated for commercial purposes. The CDFA also clarified that cannabis cultivation is an agricultural activity, not a commercial activity.

The federal government's legalization of industrial hemp and continued prohibition of cannabis, and the State's more relaxed regulation of industrial hemp further highlights the concept of treating cannabis cultivation as an agricultural activity. Notably, industrial hemp and cannabis are the same plant genus and species. They look and smell identical with the only difference being the amount of tetrahydrocannabinol or intoxicant produced by the plant. In 2019, the County began registering industrial hemp cultivators, and we currently have 40 registered cultivation sites spread out across CA, Agricultural (A), and Residential Agricultural (RA) zone districts. Hemp cultivators do not have to obtain any land use approvals and agricultural operators are able to swap out

other crops and replace them with hemp.

The CLO inspects all cannabis operators quarterly, the Agricultural Commissioner's Office provides oversight via the pesticide program and the weighmaster program, the Water Board permits every cultivation site, the Department of Fish and Wildlife review every cultivation site for compliance based on their water source, and the State cannabis licensing agency has oversight on every operator. All cannabis business transactions are recorded via the State track and trace program. Environmental impacts from cannabis operations are and will continue to be mitigated through the County's Best Management and Operational Practices (BMOP) requirements and state environmental regulations related to cannabis cultivation.

The proposed amendments to the County Code aim to encourage the County's non-retail commercial cannabis industry, while continuing to refine the objectives the Board originally had envisioned for the program, including the migration of cannabis cultivation from habitat sensitive mountain areas to commercial agricultural lands. Notwithstanding the code changes, Cannabis business licenses will continue to be considered a discretionary action of the Cannabis Licensing Official, and all cannabis businesses will continue to be subject to discretionary land use permits, except for cultivation and distribution operations within the CA zone district and cottage licensees.

Planning Commission Amendments

On April 22, 2020, the Planning Commission recommended that the Board adopt the proposed amendments with one change to the CLO proposed recommendations which would remove the parcel size reduction in the RA, SU and TP zone district for cottage gardens (500 square foot maximum). The Planning Commission summarized their concerns based on keeping commercial activities out of residential districts, speculative real estate ventures associated with cannabis opportunities artificially driving up real estate costs, concerns over odor and the concept that a good baseline for cottage licenses exist. Based on these concerns, staff has provided the following analysis for the Board's consideration.

The intent of allowing cottage licenses on smaller parcels is based upon CLO staff work with the Sheriff's Office on a variety of search warrants and the fact that small medical grows are located on an abundance of parcels within the mountains (current estimates are in excess of 3,000 sites). These small medical cultivations require no license, registration or oversight from any State or County offices. Staff and Sheriff's Office personnel know this process is being abused to hide commercial sites where the cannabis is being cultivated and sold, undercutting licensed legal operators and potentially being shipped out of the State. Through discussions with Sheriff's Office staff they voiced support for allowing these small operators to be in the system as oversight and security measures increase public safety.

With regards to concerns of keeping commercial activities out of residential districts: Cottage license operations will be small as they are limited to 500 square feet. This type of small scale agricultural operation appears to align with the purpose of the RA zone district (as defined in 13.10.321(B)), the principally permitted uses in the SU district (as defined in 13.10382(B)) and the purpose of the TP zone district (as defined in 13.10.371(A)). The parcels within these districts are intended to be used for homes,

agriculture, and open space.

Staff was confused by this concern as the Planning Commission did not mention any concerns with the addition of allowing transport only distribution as a principally permitted use to these zone districts. Cottage license operations meet the intent of uses allowed in these zone district and both cottage and transport only distribution operations align with current home occupations standards which are applicable to these zone districts.

With regard to concerns of speculative real estate ventures artificially driving up real estate costs:

The green rush the State experienced is over. Venture capital money being filtered through Canadian companies began drying up in 2018, and by late 2019 the large and heavily leveraged firms started showing signs of collapse. 2020 has been the year of contraction in the cannabis industry as the unrealistic valuations of companies has become clear to investors. The smaller companies are leveraging their nimbleness and market share to stay afloat while the larger companies are walking away from investments or selling off bits and pieces for pennies on the dollar. Locally, the “cannabis cost” or increased fees for leases is dropping. Five hundred square foot outdoor grows are not going to make operators rich, but they have the potential to be great sources of extra income for people. A financial analysis of cottage licenses is attached.

By proposing to make these cottage licenses principally permitted the potential to drive real estate speculation will be minimized because without a costly land-use entitlement the license cannot increase value on the land. A license is not an entitlement and must be obtained annually. Entitlements or the potential for entitlements were what caused the speculative real estate bubble associated with cannabis prior to the ordinance.

With regard to concerns over odor:

Odor from cannabis cultivation has been a concern of the County and various localities throughout the State. Due to the current scope of cannabis cultivation operations staff has not historically been able to assess community concerns from legal operations. This past spring the State’s industrial hemp program was enacted and with that the County has seen interest from a variety of operators. Currently, there are 40 agricultural operators farming 136.96 acres of industrial hemp in the CA, A, RA, SU, and TP zone districts (27 sites in CA, 3 sites in A, 6 sites in RA, 3 sites in SU, 1 site in TP) . These sites have provided the County valuable objective information as only three odor related complaints have been received by the CLO, Agricultural Commissioner Office and the Planning Department combined, one of which was associated with an illegal manufacturing operation the other two were associated with industrial hemp operations.

The lack of odor complaints may be objective but odors from these operations were prevalent throughout various portions of the South County, Summit Area and Corralitos based on observations by staff.

With regard to the concept that a good baseline for cottage licenses exist:

Currently, the baseline of a 2.5 acre parcel requiring 400 foot setbacks for outdoor cultivation of 500 square feet has resulted in zero cottage licenses. The few operators

who were interested in these licenses are currently operating medical cultivation gardens, which do not require a license. This baseline of zero paired with the Board's direction, current medical cannabis cultivation limits, feedback from Green Trade and former registrants was the basis staff worked upon for evaluating potential amendments to the cottage garden minimum parcel size being reduced to one acre.

Summary of Proposed Program Revisions

The proposed amendments include changes to County Code's Agricultural Uses Chart, Commercial Uses Chart, Industrial Uses Chart, Residential Uses Chart, and Timber Production Uses Chart. A breakdown of the changes in every use chart is included below.

1. 13.10.312(B) Agricultural Uses Chart

- Proposed changes include:
 - o Allowing commercial cannabis cultivation and Class 1 and 2 distribution to be a principally permitted use in the CA zone district within:
 - § Existing greenhouses;
 - § Outdoor cultivation; and
 - § Cottage gardens
 - This may be a principally permitted use if the cultivation is outdoor and the drying, processing, curing, grading, trimming, packaging, and storage occur within a building which is constructed of non-combustible materials and is exempt from permitting (less than 120 square feet) per SCCC 12.10.315(A)(1). These structures may have a dedicated single 15-amp branch with a single 2-gang duplex receptacle outlet, any electrical work associated with this purpose must be permitted.
- These changes are based on existing commercial agricultural operations being allowed to cultivate agricultural products and distribute or drive those products offsite. By defining outdoor cannabis cultivation and cultivation within existing greenhouses as an agricultural activity, the County Code will align with state regulations in regard to agricultural use rather than commercial use.

2. 13.10.332(B) Commercial Uses Chart

- Proposed changes include:
 - o Allowing cannabis cultivation and non-volatile manufacturing to occur via a level 1 change of use in the C-4 zone district's under if the proposed operation occurs within an existing legal structure;
 - o Allowing cannabis distribution to occur as a principally permitted use in the C-4 zone district if the proposed operation occurs within an existing legal structure;
 - o Allowing cannabis distribution to occur as a principally permitted use in the C-2 zone district if the proposed operation occurs within an existing legal structure and they occur in conjunction with a licensed

dispensary; and

- o Allowing transport only cannabis distribution to occur as a principally permitted use within the PA, C-2, and C-4 zone districts.
 - § Transport only distribution is limited to transport of cannabis goods between state licensed cannabis businesses, and licensees are prohibited from storing cannabis goods. Additionally, transport only licensees will be required to provide a designated off-street parking location.

3. 13.10.342(B) Industrial Uses Chart

- Proposed changes include:
 - o Allowing cannabis cultivation, distribution, and non-volatile manufacturing to occur via a level 1 change of use if the proposed operation occurs within an existing legal structure; and
 - o Allowing transport only cannabis distribution to occur as a principally permitted use.
 - § Transport only distribution is limited to transport cannabis goods between state licensed cannabis businesses, and licensees are prohibited from storing cannabis goods. Additionally, transport only licensees will be required to provide a designated off-street parking location.

4. 13.10.322(B) and 13.10.372(B) Residential and Timber Production Zone Uses Charts

- Proposed changes include:
 - o Allowing cottage gardens to be principally permitted when they are limited to outdoor cultivation operations, as specified in the Agricultural use chart changes; and
 - o Allowing transport only cannabis distribution to occur as a principally permitted use when the parcel has an existing residential structure.
 - § Transport only distribution is limited to transport cannabis goods between state licensed cannabis businesses. and licensees are prohibited from storing cannabis goods. Additionally, transport only licensees will be required to provide a designated off-street parking location.
- The first proposed change is based on existing state law and the County Code, which allows medical cannabis cultivation gardens up to 500 square feet of canopy. The County Code's medical cannabis cultivation regulations provide the same allocation as the cottage garden license type. By allowing this license type as principally permitted for outdoor cultivation only, the County is increasing public safety by gaining insight to these small gardens by assuring they meet site security requirements, which are approved by the Sheriffs Office. By allowing these as principally permitted uses, it also aligns these operations with the County Home Occupation standards.
- The second proposed change is based on the County home occupation standards and the limitations on transport only distribution operations ensure public safety associated with these operations is not compromised.

Various proposed changes to limitations on non-retail commercial cannabis activities include:

- 13.10.650(C)(2): Reduction in the minimum parcel size from 2.5 to 1 acre for cottage gardens in the RA, SU, TP, and A zones. As stated above, state law and the County Code allow medical cannabis cultivation gardens up to 500 square feet of canopy. These medical gardens are not restricted by zone district or parcel size and do not require approval by the County. This change would result in the following increase in total parcels able to cultivate cannabis for commercial purposes in each zone district:
 - o 1,760 additional parcels in the RA zone district for a total of 3,591 eligible parcels;
 - o 523 additional parcels in the SU zone district for a total of 1,525 eligible parcels;
 - o 9 additional parcels in the TP zone district for a total of 17 eligible parcels; and
 - o 177 additional parcels in the A zone district for a total of 910 eligible parcels.
- 13.10.650(C)(3) and 7.128.110(B): Removal of the requirement in the RA, SU, and TP zone districts that a person show cannabis cultivation was occurring on the property since January 2013. This restriction is impractical to implement as there is not a clear method to ensure compliance. Additionally, this requirement has proven punitive to many former registrants who did not cultivate cannabis based on the legal uncertainties surrounding Proposition 215 and younger members of the County who may not have owned property in 2013.
- 13.10.650(C)(4)(c): Setbacks for outdoor cultivation for cottage gardens has been reduced to 100 feet to align with the smaller minimum parcel size and the minimum setback which requires an exception request previously included in this section.
- 13.10.650(C)(4)(c): Setbacks for indoor cultivation to an adjacent habitable structure have been removed based on:
 - o The small number of indoor cultivation sites in the Rodeo Gulch area and the non-conforming homes within that industrial area;
 - o The extensive security requirements, paired with no signage and odor controls.
- 13.10.650(C)(4)(n): Setback measurement method has been altered to reflect the findings that are often required for various sites which share or have a parcel boundary within 600 feet of a municipal boundaries, schools, day care centers, youth centers, libraries, and drug treatment facilities, but the actual operations are often in excess of 1,000 feet from the property boundary or the operational area of the potential sensitive receptors facility.
- 13.10.650(C)(4)(p): Setback exceptions may be allowed upon recommendation of the Licensing Official as previously stated in code. This has been modified to remove the increase to a Level 5 approval process.
- 13.10.650(D)(3) and (E)(3): setback language has been altered to reflect the exception finding language included in the cultivation setbacks. These changes to setbacks for manufacturing and distribution were not included in

the original modifications presented to the Planning Commission. The Planning Commission did review this setback language associated with cultivation and these changes are proposed to align all setbacks for non-retail operations. The setbacks have previously been aligned and should continue to be for continuity and clarity within Code.

- 13.10.650(E): Transport only distribution and the restrictions associated with this license type have been added to this section. The restrictions are described above.
- 13.10.700(C): The definition of cannabis cultivation as an agricultural activity has been added.
- 7.128.030(T): The definition of a financial interest holder has been added to ensure that adequate background checks include people/entities with a 10% or greater interest in a company
- 7.128.030(MM): The definition of owner has been modified to ensure that adequate background checks include people/entities with a 10% or greater interest in a company
- 7.128.030(TT): The definition of Transport only distribution has been added to incorporate this activity into various portion of 13.10 and 7.128.
- 7.128.050: The prohibited activities section has been updated to reflect issues encountered during enforcement activities and to clarify language within the section.
 - o The additional proposed prohibited activity is the counterfeiting of cannabis products.
- 7.128.150(A)(3): Restrictions on transport only distribution operations have been included to state:
 - o Transport Only: A transport only licensee is for a licensee who transports cannabis and cannabis products between State licensees. A transport only licensee shall not store or hold title to any cannabis or cannabis products.
- 7.128.150(B): Restrictions related to all cannabis distribution operations have been added based on proposed changes to 13.10.
- 7.128.170(U) and (V): Advertising and packaging restrictions which are included at the State level have been incorporated to reflect the current practice of the CLO which includes having the County Health Officer assess if advertising or packaging may be appealing to minors.
- 7.128.170(W): The BMOP has been included during the Use Permit review and verification occurs during compliance inspections. Adding this to requirements for licensure further clarifies the general intent of the CLO's responsible to ensure operators are complying.
- 7.128.190(B): This section has been added to provide the Licensing Official the ability to deny new licenses for a minimum period of three (3) years for people who have previously violated this chapter. It additionally includes a license revocation clause for licensees who violate this chapter three (3) times within a two (2) year period.

The enforcement section (7.128.210) is proposed to be completely revised and an appeals and administrative hearings section (7.12.230) is proposed to be added. These changes include:

- 7.128.210(B)(2): This section has been included to differentiate violations of County code for licensees versus non-licensees. Licensees violating code may be issued fines at a rate of:
 - o \$2,500 for a first violation;
 - o \$5,000 for a second violation, within the same year; and
 - o \$7,500 for a third violation, within the same year.
- 7.128.210(B)(3): This portion of the enforcement section have been revised to reflect illegal activity observed during enforcement efforts within the County and to simplify the administration of enforcement remedies for non-licensees. The changes include:
 - o Fines based on each cannabis plant being cultivated;
 - o Fines based on the mass of manufactured cannabis extract;
 - o Fines based on each consumer ready package of cannabis product;
 - o Fines based on the mass of cannabis biomass (trim, fresh frozen, etc.); and
 - o Fines based on the mass of cannabis flower.
- 7.128.210(C): This section has been included to provide further clarity on liability involving unlawful cannabis activities for property owners. It clarifies administrative citation procedures for code violations and procedures which may be followed to remedy these issues prior to imposition of fines and penalties.
- 7.128.210(D-G): The remaining sections have been added to clarify how administrative citations may be appealed, paid for, the County's collection process, the authorization to administer notices of violation and the authority of the County or District Attorney to pursue remedies.
- 7.128.230: This section has been added to clarify the appeal and administrative hearing process which is currently detailed in SCCC 1.13. The addition of this section reduces the cross referencing to SCCC 1.12, 1.13 and 19.01.030 which are currently required to implement the enforcement alternatives such as administrative citations. This addition also reflect recent changes in state laws in regards to violations of local codes.

There are several small grammatical and code clean-up changes, which have been included for uniformity across the use charts and clarity within various section of both 7.128 and 13.10.

Conclusion

The proposed changes to the Non-Retail Commercial Cannabis Program reflect the Board's direction and seek to address the challenges the program has encountered. Redefining cannabis cultivation as an agricultural activity supports the Board's direction to encourage cannabis cultivation in CA zone district. The challenges surrounding that direction have been based on the concept that any activity related to cannabis is commercial in nature. This concept has led many of the County's existing agricultural business to avoid cannabis because it is not feasible for them to bring their agricultural sites up to commercial standards. For the few agricultural operators who have completed the CUP process, only the operators who grow outdoors (no greenhouses, no hoop houses, no drying structures, no processing on-site) and sell their product wet have been able to meet the conditions of approval.

The strict discretionary land use requirements for large (>500 square foot) cultivation operations are maintained through this change for potential sites outside of the CA zone district and existing permitted structures in the C-4 and M zones. Existing permitted structures in the C-4 and M zones will require tenant improvements, and, at a minimum, mechanical permits for odor control and building permits for security related improvements. Existing structures within the CA zone will be assessed on a site-specific basis to ensure human health and safety are maintained. If CLO or Building Department staff identify deficiencies permits will be required to utilize existing structures.

An unknown number of cannabis cultivators have not sought permits from the County due to the significant costs involved. However, the proposed changes to cottage gardens provides small cultivators the opportunity to test the commercial market. The changes align the cottage gardens with the maximum medical cannabis cultivation limits, which, notably, require no permitting at the County or State level. This change also aligns with the County's existing home occupation standards. By providing this option, the County will increase public safety through regulations while ensuring security protocols are met.

The proposed code amendments help further align the Non-Retail Commercial Cannabis Program with the initial goals set by the Board. The iterative nature of these changes further reflects the will of the Board and the recent direction the Board gave to staff to, "Identify potential changes to 7.128 and the County Code (13.10), in order to simplify this (approval and licensure) process."

Strategic Plan Element(s)

5.C (Dynamic Economy: Local Business) - Strengthen and retain small businesses and key sectors through innovation, flexibility and technology.

6.A (Operational Excellence: Customer Experience) - Provide our customers with equitable access to efficient, effective and culturally responsive services.

Submitted by:

Carlos J. Palacios, County Administrative Officer

Recommended by:

Carlos J. Palacios, County Administrative Officer

Attachments:

- a Ordinance Chapter 7.128
- b Ordinance Chapter 13.10
- c Chapter 7.128 (strikeout-underline)
- d Chapter 13.10 (strikeout-underline)
- e CEQA Notice of Exemption (NOE)
- f Planning Commission Resolution 2020-03
- g CEQA NOE Per Planning Commission Recommendations

- h Map of A-zone Parcel Size Change Effect for Cottage License
- i Map of RA-zone Parcel Size Change Effect for Cottage License
- j Map of SU-zone Parcel Size Change Effect for Cottage License
- k Map of TP-zone Parcel Size Change Effect for Cottage License
- l Cottage License Economic Projections