



PLANNING AND BUILDING DEPARTMENT

PLANNING DIVISION

<http://www.edcgov.us/Government/Planning>

PLACERVILLE OFFICE:

2850 Fairlane Court, Placerville, CA 95667

BUILDING

(530) 621-5315 / (530) 622-1708 Fax

bldgdept@edcgov.us

PLANNING

(530) 621-5355 / (530) 642-0508 Fax

planning@edcgov.us

LAKE TAHOE OFFICE:

924 B Emerald Bay Road

South Lake Tahoe, CA 96150

(530) 573-3330

(530) 542-9082 Fax

tahoebuild@edcgov.us

TO: Board of Supervisors Agenda of: January 30, 2024

FROM: Evan Mattes, Senior Planner Legistar No.: 24-0175

RE: OR23-0002 Commercial Cannabis Chapter 130.41 Minor Amendment

Recommendation: Planning Staff is recommending the Board of Supervisors take the following actions:

- 1) Approve the Introduction (First Reading) of Ordinance No. ____, (Attachment C) without the additional changes recommended by the Planning Commission, making modifications to the administrative portions of the cannabis program, waive full reading of the Ordinance, read by title only, and continue this matter to the February 27, 2024 meeting of the Board of Supervisors for Final Passage (Second Reading).
- 2) Find the proposed amendment to the Zoning Ordinance, without the additional changes recommended by the Planning Commission, is exempt from the California Environmental Quality Act (CEQA) based on the CEQA Guidelines 15060(c)(2) and 15061(b)(3) as it can be seen with certainty that there is no possibility that the modifications to the administrative portions of the cannabis program will not have a significant effect on the environment, and this change will not result in a direct or reasonably foreseeable indirect physical change in the environment.
- 3) Direct staff to return to the Planning Commission for further recommendation and review of setbacks, canopy limits, propagation, lighting and manufacturing uses.

Discussion: On September 12, 2023, the Board of Supervisors held a study session, and agreed that several cannabis policy items should proceed through the ordinance revisions process and directed that a Resolution of Intention (ROI) be prepared. During the Board's deliberations, ordinance changes related to operational and administrative aspects of the program were separated from the contemplated revisions with potential environmental impacts and approved to move through the ROI process. On September 19, your Board adopted a supplement to the minutes of September 12 to clarify the intent to group the two tax related items and the multiyear cannabis license as related to the operational and administrative portion of the ordinance revisions (Attachment C). The ROI was adopted October 17, 2023, by a 5-0 vote directing staff bring the following to the Planning Commission for consideration.

1. Incorporate the State definition of "owner" of a cannabis business
2. Require issuance of the annual cannabis operating permit issue upon completion of the conditions of the Commercial Cannabis Use Permit.
3. Remove the requirement for resubmission of all application materials upon renewal of an annual operating permit.

4. The Agricultural Commission will review cannabis projects only involving land zoned for or designated agricultural or lands adjacent to agricultural lands (General Plan Policy 8.1.4.1).
5. Consider a multiyear cannabis license

The items identified in the October 17, 2023 ROI were brought to the Planning Commission for consideration on December 14, 2023. During the Planning Commission hearing, public comment by Archon Farms, Inc. was brought forward, which had been submitted and posted December 13, 2023, requesting four revisions to the ROI (Attachment E). Planning Commissioner Boeger brought forward a motion to incorporate items one through 4 listed within the December 13, 2023 public comment by Archon Farms, Inc. The motion was seconded by Commissioner Payne and was passed in a 3-1 vote with one absence. Chair Nevis casted a No vote based upon lack of time for the public to review the proposed additions to the ROI, however he had no objection with the original items brought forward by the BOS. The Planning Commission recommends that the following items should be incorporated into Chapter 130.41 of the El Dorado County Zoning Ordinance, including all four items brought forward in public comment by Archon Farms, Inc:

1. Incorporate the State definition of "owner" of a cannabis business
2. Require issuance of the annual cannabis operating permit issue upon completion of the conditions of the Commercial Cannabis Use Permit.
3. Remove the requirement for resubmission of all application materials upon renewal of an annual operating permit.
4. The Agricultural Commission will review cannabis projects only involving land zoned for or designated agricultural or lands adjacent to agricultural lands (General Plan Policy 8.1.4.1).
5. Cannabis licenses shall be renewed initially on a two year basis and on a three basis after the initial two year renewal
6. Revise the definition of "mixed-light cultivation" to incorporate increases of allowable wattage and the removal of light deprivation requirements
7. Incorporate the State definition of premises
8. Allow for indoor propagation within permanent permitted structures
9. Add non-volatile manufacturing and distribution in rural areas
10. Further define school bus stop and the setback from school bus stops

Planning staff has not analyzed the potential impacts of items 6 through 10 and how these changes may impact other sections of the Zoning Ordinance. The December 13, 2023 letter claims that all proposed changes (items 6-9) would be exempt from CEQA through the Common Sense exemption. The common sense exemption applies to those projects where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. No study sessions, nor analysis, has been conducted regarding the CEQA applicability of the proposed changes, however staff has concerns about the defensibility of the common sense exemption being applied to the additional changes. Initially the BOS had directed staff to bring an ROI to the Planning Commission with administrative changes that would not have land use impacts. Similar letters and public comments to the December 13, 2023 letter were submitted to the BOS on October 16, 2023, prior to the October 17, 2023 BOS meeting. At the time the BOS decided to not incorporate any recommendations from that letter into the ROI to the Planning Commission by unanimous vote.

Item 5 was part of the initial ROI directed by the BOS to explore the potential for a multi-year license, however Staff has concerns over enforcement and fiscal impacts. Typical, public comments received throughout the CCUP process is public concern about enforcement of cannabis activities. Typical staff response to these concerns is that the project is reviewed annually for compliance with the CCUP. By creating a multiyear license there would be review every three years, which Staff does not believe would address public concern of CCUP enforcement. The Planning Department has made budgetary assumptions based upon annual licensing as opposed to multiyear licensing. Interdepartmental outreach should be conducted to assess the impact of multiyear licensing on department operations and enforcement. Concerns have surfaced regarding the collection and enforcement of tax collection on multiyear licenses. Planning Staff is recommending a maximum of a two year license.

Staff has concerns of cohesive CEQA analysis of issues and unanalyzed impacts throughout the Zoning Ordinance, as such, Staff recommends that the Board proceed with items one through four of the ROI, reject changes related to item 5, and reiterate the action of September 12 (Attachment C) that the following items are directed to the Planning Commission for further review and recommendation:

- Re-evaluation of the setbacks of the cannabis ordinance.
- Consideration of expanded cannabis canopy limits.
- Changes to rules to allow for propagation and associated lighting changes.
- Changes to allow for nonvolatile manufacturing on cultivation sites.