



## AGENDA

RIO DELL PLANNING COMMISSION  
SPECIAL MEETING— 6:30 P.M  
THURSDAY, JANUARY 14, 2016  
CITY COUNCIL CHAMBERS  
675 WILDWOOD AVENUE, RIO DELL

*WELCOME . . . By your presence in the City Council Chambers, you are participating in the process of representative government. Copies of this agenda, staff reports and other material available to the Commission are available at the City Clerk's office in City Hall, 675 Wildwood Avenue. Your City Government welcomes your interest and hopes you will attend and participate in Rio Dell Planning Commission meetings often.*

A. CALL TO ORDER

B. ROLL CALL

C. PLEDGE OF ALLEGIANCE

D. CEREMONIAL

1) 2016/0114.01 - Introduction of Planning Commissioner Julie Woodall

E. CONSENT CALENDAR

F. PUBLIC PRESENTATIONS

*This time is for persons who wish to address the Commission on any matter not on this agenda and over which the Commission has jurisdiction. As such, a dialogue with the Commission or staff is not intended. Items requiring Commission action not listed on this agenda may be placed on the next regular agenda for consideration if the Commission directs, unless a finding is made by at least 2/3rds of the Commission that the item came up after the agenda was posted and is of an urgency nature requiring immediate action. Please limit comments to a maximum of 3 minutes.*

G. SPECIAL MEETING MATTERS

1) 2016/0114.02 - Medical Marijuana Commercial Land Use Regulations, Section 17.30.195 of the Rio Dell Municipal Code **(DISCUSSION/POSSIBLE ACTION)**

H. ADJOURNMENT



In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (707) 764-3532. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to the meeting.

*The next Regular meeting is scheduled for Tuesday, January 26, 2016 at 6:30 p.m.*


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675 Wildwood Avenue  
Rio Dell, CA 95562  
(707) 764-3532



For Meeting of: January 14, 2016

To: Planning Commission

From: Kevin Caldwell, Community Development Director 

Through: Kyle Knopp, City Manager 

Date: January 8, 2016

Subject: Establishing Medical Marijuana Commercial Land Use Regulations, Section 17.30.195 of the Rio Dell Municipal Code (RDMC)

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**Recommendation:**

That the Planning Commission:

1. Receive staff's report regarding establishing Medical Marijuana Commercial Land Use Regulations, Section 17.30.195 of the Rio Dell Municipal Code;
2. Open the public hearing, receive public input and deliberate;
3. Find that:
  - (a) The proposed text amendment is consistent with the General Plan; and
  - (b) The proposed text amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA);
4. Adopt PC 094-2016 recommending that the City Council establish Medical Marijuana Commercial Land Use Regulations, Section 17.30.195 of the Rio Dell Municipal Code.

## **Background and Discussion**

On October 9, 2015 Governor Brown approved the Medical Marijuana Regulations and Safety Act (MMRSA), a package of three bills enacted by the legislature on September 11, 2015, SB 643, AB 243, and AB 266. The MMRSA provides for comprehensive, concurrent regulation and licensing by state and local governments of medical marijuana as an agricultural product, including its cultivation, processing, testing, manufacture, distribution, transportation, dispensing, and delivery.

The three bills comprising the Medical Marijuana Regulation and Safety Act are summarized below:

**AB 243 (Wood)** regulates marijuana cultivation and provides a regulatory structure specifically to address environmental impacts.

- Places the Department of Food and Agriculture (DFA) in charge of licensing and regulation of indoor and outdoor cultivation sites. Creates a Medical Cannabis Cultivation Program within the department.
- Mandates the Department of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Department of Public Health to develop standards for production and labeling of all edible medical cannabis products.
- Assign joint responsibility to DFA, Department of Fish and Wildlife, and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.
- Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.
- Specifies various types of cultivation licenses.
- Directs the multi-agency task force headed by the Department of Fish and Wildlife and the SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.

AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey and Wood) contains the critical local control provisions and most of the core provisions of the regulatory structure, headed by the Department of Consumer Affairs.

- Protects local control as it establishes a statewide regulatory scheme, headed by Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA).
- Provides for dual licensing: state will issue licenses, and local governments will issue permits or licenses to operate marijuana businesses, according to local ordinances. State licenses will be issued beginning in January 2018.
- Revocation of a local license or permit will unilaterally terminate the ability of the business to operate in that jurisdiction.
- Expressly protects local licensing practices, zoning ordinances, and local constitutional police power.
- Caps total cultivation for a single licensee at four acres statewide, subject to local ordinances.
- Requires local jurisdictions that wish to prevent delivery services from operating within their borders to enact an ordinance affirmatively banning this activity. No specific operative date for the ban is specified.
- Specifies that DCA will issue the following licenses: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
- Limits cross-licensing to holding a single state license in up to two separate license categories, as specified. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.
- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and was enacted on or before July 1, 2015. Also requires such businesses to have operated in compliance with local ordinances, and to have been engaged in all the covered activities on July 1, 2015.
- Requires establishment of uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product.
- Specifies a standard for certification of testing labs, and specified minimum testing

requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.

- Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.
- Provides for civil penalties for unlicensed activity, and specifies that applicable criminal penalties under existing law will continue to apply.
- Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.
- Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun.

**SB 643** (McGuire) contains critical provisions on criteria for state licensing, including disqualifying felonies. It also regulates physicians making medical marijuana recommendations and requires digital seed-to-sale or track-and-trace program for marijuana, similar to that employed for agricultural products.

- Directs California Medical Board to prioritize investigation of excessive recommendations by physicians.
- Imposes fines (\$5000.00) vs. physicians for violating prohibition against having a financial interest in a marijuana business.
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct.
- Imposes restrictions on advertising for physician recommendations.
- Places Department of Food and Agriculture in charge of cultivation regulations and licensing, and requires a track and trace program.
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure.
- Places DPR in charge of pesticide regulation; DPH in charge of production and

labeling of edibles.

- Upholds local power to levy fees and taxes.

The Medical Marijuana Regulation and Safety Act is significant for local jurisdictions because it:

- Protects local control by requiring that all marijuana businesses have a local permit or license – in addition to a state license.
- Provides public safety by providing mandatory minimum statewide security requirements and specifying criteria for state licensing, including disqualifying felonies;
- Protects public health with mandatory minimum statewide health and safety standards, backed up by mandatory product testing; and
- Ensures patient safety with quality assurance protocols requiring random sample testing by certified laboratories for all medical marijuana sold in California.

#### State – Local Deadline

The Medical Marijuana Regulation and Safety Act required that local jurisdictions develop regulations by March 1, 2016 or be pre-empted by state law. Many jurisdictions were scrambling to prepare and adopt local regulations. Apparently a significant number of jurisdictions together with the League of California Cities and the California State Association of Counties (CSAC) contacted the Sacramento lawmakers and expressed concerns over the short timeline for local jurisdictions to prepare and adopt local regulations. In response, Assemblyman Wood amended AB 21 to eliminate the March 1<sup>st</sup> deadline. In a Press Release issued last week Assemblyman Wood said *“We have widespread support for this fix, including bi-partisan support from both houses, stakeholders and the Governor’s office. I am hoping that AB 21 will be on the Governor’s desk before the end of the month and local lawmakers will give this complicated issue the time it deserves.”*

As the Planning Commission is aware, the City does have local regulations regarding cannabis cultivation in regards to personal medicinal use. The City Attorney has recently indicated that the existing medical marijuana regulations, Section 17.30.190 of the Rio Dell Municipal Code do satisfy the State requirement of having an ordinance in place by the March 1<sup>st</sup> deadline. As such, even if the deadline is not postponed, the City Attorney is of the opinion that the City would retain local land use control in the regulation of medicinal marijuana.

Staff scheduled Planning Commission's Special Meeting in response to the March 1<sup>st</sup> deadline. Based on AB 21, including comments from Assemblyman Wood and the fact that the City has an existing land use ordinance regarding medical marijuana, staff is recommending that the Commission engage in a more deliberative rather than expedited process in developing, considering and recommending local regulations for commercial activities.

### **State License Types**

AB 243 has established ten (10) State cultivator license types issued by the Department of Food and Agriculture.

- **Type 1, "Specialty Outdoor"**, for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.
- **Type 1A, "Specialty Indoor"**, for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.
- **Type 1B, "Specialty Mixed-Light"**, for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.
- **Type 2, "Small Outdoor"**, for outdoor cultivation using no artificial lighting between 5001 and 10,000 square feet, inclusive, of total canopy size on one premises.
- **Type 2A, "Small Indoor"**, for indoor cultivation using exclusively artificial lighting between 5001 and 10,000 square feet, inclusive, of total canopy size on one premises.
- **Type 2B, "Small Mixed-Light"**, for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5001 and 10,000 square feet, inclusive, of total canopy size on one premises.
- **Type 3, "Outdoor"**, for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

- **Type 3A, “Indoor”**, for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.
- **Type 3B, “Mixed Light”**, for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.
- **Type 4, “Nursery”**, for cultivation for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

The State Department of Public Health is responsible for the regulations governing the licensing of cannabis manufactures and testing laboratories.

Manufacturing involves the process of taking all or portions of the raw plant and transforming the cannabis into a concentrate, an edible product, or a topical product either directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. A manufacturing licensee may not send product directly to a dispensary, but instead will have to send all cannabis through a distributor and testing licensee, who will test for concentration, purity of product, and contaminants. Manufacturing licenses to be issued are as follows:

- **Type 6, “Manufacturing Level 1”**, for manufacturing sites that produce medical cannabis products using nonvolatile solvents.
- **Type 7, “Manufacturing Level 2”**, for manufacturing sites that produce medical cannabis products using volatile (i.e. butane, hexane, ethanol, etc.) solvents. This process will be regulated at a higher level. The State Department of Public Health shall limit the number of licenses of this type.

Testing is required for all cannabis and cannabis products. Testing licensees (laboratories) must adopt standard operation procedures using methods consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization.



- **Type 8, “Testing”**, Testing licensees shall have their facilities licensed according to the regulations set forth in Section 19341 et. seq. of the Business and Professions Code. A testing licensee shall not hold a license in another license and shall not own or have ownership interest in any other license type.

Dispensaries will operate much the same way as they do today from the patient’s perspective. However, on the business side, things will change. Dispensaries will be prevented from purchasing or accepting product from an unlicensed grower, and all products within the dispensary will be tracked and traced from the moment it enters the dispensary to the point of sale.

- **Type 10, “Dispensary; General”**, Dispensaries are facilities where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale. Only one retail site is allowed and no other licenses are allowed under the Type 10 license.
- **Type 10A, “Dispensary; No More Than 3 Retail Sites”**, A Type 10A dispensary licensee may apply for other licenses in an effort to be vertically integrated, which is required in some cities. And even though a dispensary may obtain a cultivator and/or manufacturing license, it must first transport all cannabis through a distributor and testing licensee before it re-enters the dispensary (if the grow is located in the same place) for sale.

The Distribution license is intended to coordinate the distribution of cannabis in a tracked and orderly fashion. It is designed to help assure the delivery of safe cannabis for patients by forcing all cannabis through a third party distributor and testing licensee.

All cultivation and manufacturing licensees must send all harvested and manufactured cannabis to a distributor for quality assurance and inspection. The distributor will be required to make sure the cannabis receives a “batch test” analysis and certification before sending it to a dispensary.

As mentioned above, even if a dispensary has a cultivation license as part of its operation at the same location, it must send all cannabis off-site to a third-party distributor for testing before it is dispensed. Although a cultivator and dispensary may have contracted to buy cannabis at a certain price and quantity, the distributor remains obligated to carry out the terms of that agreement and is authorized to charge a commission or fee for doing so. As opposed to a transporter who *may* obtain a distributor license, a distributor *must* obtain a transporter license.

- **Type 11, “Distribution”**, A distributor is a person permitted to engage in the in the business of purchasing, medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

Traditionally, growers transported cannabis to a dispensary. Now, a third party is required to transport cannabis from the farm or processing facility to the distributor and then from the distributor to the dispensary. In fact, a transporter’s license is required to transport cannabis from any one licensee to another, regardless of type.

- **Type 12, Transporter”**, Transporters will be prohibited from having a cultivator, manufacturer, or any other license by the state, except for a distributor license, which a transporter may hold.

### Staff’s Recommendations

#### Cultivation

The type of License that shall be required in order to engage in the commercial cultivation of cannabis for medical use within the City shall be determined by the size of the parcel on which the activity is to be conducted in accordance with the Table of License Types.

Outdoor and Mixed-Light commercial cultivation of cannabis for medical use shall be conducted entirely within a fully enclosed, secure and lockable greenhouse and shall be conditionally permitted in the Rural (R) and Natural Resources (NR) designations, pursuant to the “Outdoor” and “Mixed-Light” parcel size and cultivation area provisions described in the Table of License Types, and subject to the conditions and limitations set forth in the ordinance and as deemed appropriate by Planning Commission and/or the City Council.

**Table of License Types**

License Type	Parcel Size	Allowable Canopy
<b>Type 1: Outdoor (Greenhouse), no artificial lighting.</b>		
(A)	1-4.99 acres	5,000 sq. ft.
(B)	5-9.99 acres	10,000 sq. ft.
(C)	10-19.99 acres	22,000 sq. ft.
(D)	≥ 20 acres	43,560 sq. ft.
<b>Type 2: Mixed Light, combination of natural and artificial supplemental lighting.</b>		
(A)	< 1 acre	2,500 sq. ft.
(B)	1-1.99 acres	5,000 sq. ft.
(C)	2-2.49 acres	10,000 sq. ft.
(D)	≥ 2.5 acres	22,000 sq. ft.

Indoor commercial cultivation of cannabis for medical use shall be conditionally permitted in the Industrial Commercial (IC), Rural (R) and Natural Resources (NR) designations pursuant to the “Indoor” parcel size and cultivation area provisions described in the Table of License Types, and subject to the conditions and limitations set forth in the proposed ordinance and as deemed appropriate by Planning Commission and/or the City Council.

Nurseries, as defined by the MMRSA, producing commercial cannabis nursery products for retail sale, bulk wholesale sale or to supply retail nursery outlets shall be a conditionally permitted use in the Industrial Commercial (IC), Rural (R) and Natural Resources (NR) designations, subject to a Conditional Use Permit and the conditions and limitations set forth in the proposed ordinance and as deemed appropriate by Planning Commission and/or the City Council.

**Table of License Types**

License Type	Parcel Size	Allowable Canopy
<b>Type 3: Indoor, exclusively artificial lighting.</b>		
(A)	< 1 acre	2,500 sq. ft.
(B)	1-1.99 acres	5,000 sq. ft.
(C)	2-2.49 acres	10,000 sq. ft.
(D)	≥ 2.5 acres	22,000 sq. ft.
<b>Type 4: Nursery</b>	<b>N/A</b>	<b>43,560 sq. ft.</b>

**Processing Facilities**

Processing Facilities for commercial cannabis for medical use shall be considered an accessory and ancillary use on approved cultivation sites. Stand alone processing facilities are recommended to be a conditionally permitted use in the Industrial Commercial (IC), Rural (R) and Natural Resources (NR) designations zoning districts, subject to a Conditional Use Permit and the conditions and limitations set forth in the proposed ordinance.

**Manufacturing**

Manufacturing of commercial cannabis for medical use shall be a conditionally permitted use in the Industrial Commercial (IC) designation, subject to a Conditional Use Permit and the conditions and limitations set forth in the proposed ordinance and as deemed appropriate by Planning Commission and/or the City Council.

**Testing Laboratories**

Testing laboratories would be treated no differently than any other testing laboratory. As such, medical cannabis laboratories would be principally permitted in the Town Center (TC),

Community Commercial (CC) and Neighborhood Center land use designations and conditionally permitted in the Residential Multifamily (RM) land use designation.

### **Dispensaries**

Currently the City does not allow medical cannabis dispensaries, Ordinance No. 275. The County has indicated that they plan to allow fifteen (15) additional dispensaries, five (5) in the northern part of the County, five (5) in the mid part of the County and five (5) in the southern part of the County. Its staffs understanding that there are three (3) permitted dispensaries within the County. Two (2) of them are located in the City of Arcata and one (1) is located in Garberville. The Garberville dispensary does not sell raw cannabis, only edibles, oils, salves and tinctures.

Obviously it would be convenient for those patients living within the City to have access to their medicine within the City. A dispensary would also provide economic benefits to the City. In addition to sales tax, the City could adopt other taxes through the Proposition 218 process. Some Cities have flat taxes based on square footage and/or taxes based on overall sales. In addition, a dispensary in the City could attract travelers/tourists to visit the City which could benefit other businesses within the City.

If the Commission and the City Council were interested in allowing dispensaries, staff would recommend that they (it) be restricted to the Town Center zone, allowed with a Conditional Use Permit.

### **Wholesale Distribution Facilities**

Wholesale Distribution Facilities for commercial cannabis for medical use shall be a conditionally permitted use in the Industrial Commercial (IC) designation, subject to a Conditional Use Permit and the conditions and limitations set forth in this proposed ordinance and as deemed appropriate by Planning Commission and/or the City Council.

### **Distribution and Transporters**

As staff understands, the State is the sole licensing authority for Type 11 (Distribution) and Type 12 (Transporter) permits.

### **Procedural Requirements.**

Pursuant to Section 17.35.010 of the City of Rio Dell Municipal Code, the following City procedures are required to amend the Ordinance:

- An amendment may be initiated by one or more owners of property affected by the proposed amendment, as set out in Section 17.35.010(3), or by action of the Planning Commission, or the City Council.

- The application of one or more property owners for the initiation of an amendment shall be filed in the office of the City Clerk on a form provided, accompanied by a filing fee.
- Subject only to the rules regarding the placing of matters on the Planning Commission agenda, the matter shall be set for a public hearing.
- Notice of hearing time and place shall be published once in a newspaper of general circulation at least ten calendar days before the hearing or by posting in at least three public places.
- At the public hearing, the Planning Commission shall hear any person affected by the proposed amendment. The hearing may be continued from time to time.
- Within 40 days of the conclusion of the hearing, the Planning Commission shall submit to the City Council a written report of recommendations and reasons therefore.
- Subject only to the rules regarding the placing of matters on its agenda, the City Council, at its next regular meeting following the receipt of such report, shall cause the matter to be set for a public hearing. Notice of the time and place of the hearing shall be given as provided in Section 17.35.010(5), hereof.
- At the public hearing, the City Council shall hear any person affected by the proposed amendment. The hearing may be continued to a specified future date, but shall be concluded within 60 days of the commencement thereof.
- The City Council shall not make any change in the proposed amendment until the proposed change has been referred to the Planning Commission for a report, and the Planning Commission report has been filed with the City Council.

**Zone Reclassification Required Findings:**

**1. The proposed amendment is consistent and compatible with the General Plan and any implementation programs that may be affected.**

There are no polices in the General Plan which would prohibit the City from establishing medical marijuana commercial land use regulations. Of course there are policies encouraging economic development.

**2. The proposed amendments have been processed in accordance with the California Environmental Quality Act (CEQA).**

Based on the nature of the project including recommended zoning districts and the discretionary Conditional Use Permit (CUP) process, staff has determined that the project is Statutorily Exempt pursuant to Section 15061(b) (3) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations. Pursuant to Section 15061(b) (3) of the CEQA Guidelines this exemption 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 project in question may have a significant effect on the environment, the project is not subject to CEQA. Staff believes there is no evidence to suggest that the amendments will have a *significant* effect on the environment.

#### **Attachments**

Attachment 1: Draft Ordinance No. 342-2016. Establishment of a Commercial Medical Marijuana Land Use Ordinance (CMMLUO), Section 17.30.195 of Title 17 of the Rio Dell Municipal Code.

Attachment 2: Resolution No. PC 094-2016 recommending that the City Council adopt Ordinance No. 342-2016 establishing a Commercial Medical Marijuana Land Use Ordinance (CMMLUO), Section 17.30.195 of Title 17 of the Rio Dell Municipal Code.

**ORDINANCE NO. 342-2016**



**An ordinance establishing Section 17.30.195 of Title 17 of the Rio Dell Municipal Code relating to the Commercial Cultivation, Processing, Manufacturing and Distribution of Cannabis for Medical Use.**

**The City Council of the City of Rio Dell ordains as follows:**

**WHEREAS**, California Government Code Section 65850, et seq. authorizes counties and cities to regulate land use, including agriculture, and to adopt and amend zoning ordinances for such purposes, and sets forth procedures governing the adoption and amendment of such ordinances; and

**WHEREAS**, on October 9, 2015 Governor Brown approved a package of three bills enacted by the legislature on September 11, 2015, SB 643, AB 243, and AB 266, providing for comprehensive, concurrent regulation and licensing by state and local governments of medical marijuana as an agricultural product, including its cultivation, processing, testing, manufacture, distribution, transportation, dispensing, and delivery; and

**WHEREAS**, AB 243, Section 6, adds Section 11362.777 to the Health and Safety Code which includes the provision in subsection (d) (4) that:

"If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing **March 1, 2016**, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county"; and

**WHEREAS**, pursuant to Section 11362.777, subsection (c)(3), "A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the Department of Food and Agriculture's state licensing requirements"; and

**WHEREAS**, the state statutes establishing a regulated, legitimate basis for commercial medical cannabis economic activities under the authorization of state law provide an opportunity to bring unregulated activities into compliance with existing law and ameliorate adverse environmental impacts, while bringing it out of the shadows of an underground,

black-market economy into a legitimate agricultural and commercial contributor to the local and state economy; and

**WHEREAS**, the City of Rio Dell has previously adopted a land use ordinance governing indoor and outdoor cultivation of medical marijuana for personal use; and

**WHEREAS**, the Planning Commission held a public hearing on the proposed Ordinance governing the Commercial Cultivation, Processing, Manufacturing and Distribution of Cannabis for Medical Use commencing on January 14, 2016, to receive a report on the draft ordinance, as well as evidence and testimony; and

**WHEREAS**, the Planning Commission reviewed and considered the report, evidence, and other testimony presented to the Commission, and recommended revisions to the draft land use Ordinance Governing the Commercial Cultivation of Commercial Cultivation, Processing, Manufacturing and Distribution for Medical Use; and

**WHEREAS** the City has reviewed and processed the proposed amendment in conformance with Sections 65350 – 65362 of the California Government Code; and

**WHEREAS** the City has reviewed and processed the proposed amendment in conformance with Section 17.35.010 of the City of Rio Dell Municipal Code; and

**WHEREAS** the City finds that based on evidence on file and presented in the staff report that the proposed amendment is consistent and compatible with the General Plan and any implementation programs that may be affected; and

**WHEREAS** the proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA); and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Rio Dell does hereby ordain as follows:

**SECTION 1. Section 17.30.195 of Title 17 of the Rio Dell Municipal Code is hereby added as follows:**

**(1) Authority and Title**

This Section shall be known as the Medical Marijuana Commercial Land Use Ordinance (“MMCLUO”), which provides for the regulation of Commercial Cultivation, Processing, Manufacturing and Distribution of cannabis for medical use, as defined in this Code, located within the City of Rio Dell



## **(2) Purpose and Intent**

The purpose of this Section is to establish land use regulations concerning the commercial cultivation, processing, manufacturing and distribution of cannabis for medical use within the City of Rio Dell in order to limit and control such cultivation in coordination with the State of California in the implementation of the Medical Marijuana Regulation and Safety Act (MMRSA)(SB 643, AB 266, and AB 243 as adopted September 11, 2015, and approved by the Governor on October 9, 2015), so as to ensure the health and safety of employees, independent contractors, visitors to the area, neighboring property owners, and end users of medical marijuana; to protect the environment from harm to streams, fish, and wildlife; to ensure the security of the medical marijuana; and to safeguard against the diversion of medical marijuana for non-medical purposes. It is intended to address the City of Rio Dell's prerogative to license, permit, and control commercial cultivation, processing, manufacturing and distribution of cannabis for medical marijuana as set forth in the MMRSA, including, but not limited to the provisions of Business and Professions Code Sections 19315, 19316, 19320, 19322, 19332, and 19360 and Health and Safety Code Section 11362.777, in conjunction with state licensing requirements, in order to protect the public health, safety, and welfare of the residents of the City of Rio Dell, and to reduce or eliminate any adverse environmental effects of existing commercial cannabis cultivation operations in the City of Rio Dell, and to prevent adverse environmental effects of any new commercial cannabis activities which may be permitted in the future in accordance with this Section and state law. This Section is not intended to supersede the provisions of Section 17.30.190 of the Rio Dell Municipal Code concerning cultivation of medical marijuana for personal use.

## **(3) Applicability and Interpretation**

- (a) These regulations shall apply to the location and permitting of commercial cultivation, processing, manufacturing, and distribution of cannabis for medical use in zoning districts within which such use is authorized, as specified in this Section.
- (b) The commercial cultivation, processing, manufacturing, and distribution of cannabis for medical use within the jurisdiction of the City of Rio Dell shall be controlled by the provisions of this Section, regardless of whether those activities existed or occurred prior to the adoption of this Section.
- (c) Nothing in this Section is intended, nor shall it be construed, to exempt the commercial cultivation, processing, manufacturing, and distribution of cannabis for medical use, from compliance with all other applicable zoning, and land use regulations, as well as compliance with any applicable state laws.
- (d) Nothing in this Section is intended, nor shall it be construed, to exempt the commercial cultivation, processing, manufacturing, and distribution of cannabis for medical use, as

defined herein, from any and all applicable local and state construction, electrical, plumbing, land use, water rights, waste water discharge, streambed alteration, or any other environmental, building or land use standards or permitting requirements.

- (e) Nothing in this Section is intended, nor shall it be construed, to preclude a landlord or property owner from limiting or prohibiting commercial cultivation, processing, manufacturing, or distribution of cannabis for medical use on private property.
- (f) The definitions in this Section are intended to apply solely to the regulations in this section.
- (g) Notwithstanding the fact that Health and Safety Code Section 11362.777 declares that medical cannabis is an agricultural product for purposes of that Section and the MMRSA, Business and Professions Code Section 19300, et. seq., the commercial cultivation of cannabis for medical use is a highly regulated specialty crop and cultivation and processing of that specialty crop shall not be allowed as a principal permitted use unless a Conditional Use Permit is first obtained from the City of Rio Dell, and the person engaged in such activity has obtained all state licenses and permits which may be required by the applicable state licensing authorities whenever such licenses become available.

#### **(4) Release of Liability and Hold Harmless**

As a condition of approval for any Conditional Use Permit approved for the commercial cultivation, processing, manufacture, or distribution of cannabis for medical use, as defined herein, the owner or permittee shall indemnify and hold harmless the City of Rio Dell 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 commercial cultivation, processing, manufacture, or distribution 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 commercial cultivation, processing, manufacture, or distribution of cannabis for medical use.

#### **(5) Penalties and Enforcement**

All of the remedies provided for in this Section shall be cumulative and not exclusive of remedies available for violations under any other Section of the Rio Dell Municipal Code and the MMRSA

Any violation of this Section, including, but not limited to failure to obtain and maintain in good standing the required Conditional Use Permit specified in this Section, shall be, and the same hereby is declared to be, a public nuisance and unlawful and shall be subject to injunction, abatement or any other administrative, civil, or criminal remedy available to the City under the applicable state and City laws, including those set forth in the Rio Dell Municipal Code.

## **(6) Definitions**

“Area of Traditional Tribal Cultural Affiliation” means geographic areas of historic occupancy and traditional cultural use by local indigenous peoples (California Native American Tribes), as shown on the latest mapping prepared by the County of Humboldt Planning & Building Department, created from geographic information supplied by the Tribes of Humboldt County.

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. For the purpose of this section, “cannabis” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agriculture Code or Section 11018.5 of the Health and Safety Code.

“Commercial Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for medical use, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered, or sold in accordance with the Medical Marijuana Regulation and Safety Act (MMRSA) for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.

“Cultivation Area” the area encompassed by the perimeter surrounding the area within which cannabis plants are cultivated. Where plants are cultivated in separated pots, beds or plots, the cumulative total surface area of all such pots, beds or plots, and the surface area underneath the maximum anticipated extent of vegetative growth of cannabis plants to be grown in separate pots, beds or plots, used in combination for a single permitted cultivation operation.

“Cultivation site” means the location or a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, except where drying, curing, grading or trimming is otherwise prohibited.

“Distribution Facility” means the location or a facility where a person licensed with a Type 11 license pursuant to the MMRSA conducts the business of procuring medical cannabis from licensed cultivators or manufacturers for sale to licensed dispensaries, and the inspection, quality assurance, batch testing by a Type 8 licensee, storage, labeling, packaging and other processes prior to transport to licensed dispensaries.

“Indoor” means indoor cultivation using exclusively artificial lighting.

“Licensee” means a person issued a state license under the MMRSA to engage in commercial cannabis activity.

“Manufacturing Facility” means a process whereby the raw agricultural product is transformed into a concentrate, an edible product, or a topical product, and the production, preparation, propagation, or compounding of medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

“Mixed-Light” means cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold as set forth in performance standards in Section 55.4.11 (t), et seq. of this ordinance, or as to be determined by the Department of Food and Agriculture, whichever is less.

“Nursery” means a licensee that produces only clones, immature plants, seeds, and other agricultural products for retail or wholesale sale, used specifically for the planting, propagation, and cultivation of medical cannabis.

“Outdoor” means outdoor cultivation using no artificial lighting.

“Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

“Premises” means a legal parcel compliant with the Subdivision Map Act, or a leasehold interest in agricultural land for agricultural purposes of outdoor or mixed-light cultivation or processing of medical cannabis, or space in an industrial or commercial building for purposes of indoor cultivation, processing, manufacture, or distribution of medical cannabis.

“Processing Facility” means the location or facility where medical cannabis is dried, cured, graded, trimmed, and/or packaged by or under the control of one or more licensed cultivators, at a location separate from the cultivation site where the medical cannabis is grown and harvested.

“State license,” means a state license issued pursuant to the MMRSA.

“Tribal Cultural Resources” means sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe, including unique archaeological resources and historical resources as described under sections 21074, 21083.2(g), and 21084.1 of the Public Resources Code, respectively. Tribal Cultural Resource shall also include sites or resources identified by the tribe through an action of the Tribal Council or equivalent body.

## **(7) General Provisions**

This section applies to all facilities and activities involved in the Commercial Cultivation,

Processing, Manufacture, or Distribution of cannabis for medical use, as defined in this Section.

- (a) All commercial cultivation, processing, manufacture, or distribution of cannabis for medical use shall operate in compliance with this Section, as well as all applicable state and local laws.
- (b) Outdoor and Mixed-Light commercial cultivation of cannabis for medical use shall be conducted entirely within a fully enclosed, secure and lockable greenhouse and shall be conditionally permitted in the Rural (R) and Natural Resources (NR) designations, pursuant to the "Outdoor" and "Mixed-Light" parcel size and cultivation area provisions described in the Table of Permit Types, and subject to the conditions and limitations set forth in this Section
- (c) Indoor commercial cultivation of cannabis for medical use shall be conditionally permitted in the Industrial Commercial (IC), Rural (R) and Natural Resources (NR) designations pursuant to the "Indoor" parcel size and cultivation area provisions described in the Table of Permit Types, and subject to the conditions and limitations set forth in this Section.
- (d) Processing Facilities for commercial cannabis for medical use shall be a conditionally permitted use in the Industrial Commercial (IC), Rural (R) and Natural Resources (NR) designations zoning districts, subject to a Conditional Use Permit and the conditions and limitations set forth in this Section.
- (e) Manufacturing of commercial cannabis for medical use shall be a conditionally permitted use in the Industrial Commercial (IC) designation, subject to a Conditional Use Permit and the conditions and limitations set forth in this Section.
- (f) Wholesale Distribution Facilities for commercial cannabis for medical use shall be a conditionally permitted use in the Industrial Commercial (IC) designation, subject to a Conditional Use Permit and the conditions and limitations set forth in this Section.
- (g) Nurseries, as defined herein, producing commercial cannabis nursery products for retail sale, bulk wholesale sale or to supply retail nursery outlets shall be a conditionally permitted use in the Industrial Commercial (IC), Rural (R) and Natural Resources (NR) designations, subject to a Conditional Use Permit and the conditions and limitations set forth in this Section.
- (h) Other than as enumerated in this Section, the commercial cultivation, processing, manufacturing or distribution of cannabis for medical use in any other zoning district in the City of Rio Dell is prohibited.

- (i) The fact that an applicant possesses other types of state or county or city permits, licenses or other entitlements does not exempt the applicant from the requirement of obtaining a Conditional Use Permit from the City of Rio Dell to engage in the commercial cultivation, processing, manufacturing or distribution of cannabis for medical use within the jurisdiction of the City.
- (j) No more than four commercial cannabis activity permits of any type enumerated in Sections 17.30.195(8)(b) through 17.30.195(8)(g) of this ordinance may be issued to a single person, as defined herein. For purposes of this limitation, any natural person who owns or controls any interest, directly or indirectly, in a firm, partnership, joint venture, association, cooperative, collective, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, shall be collectively considered a single person with those entities.

**(8) License Types, Parcel Size and Allowable Canopy**

The type of License that shall be required in order to engage in the commercial cultivation of cannabis for medical use within the City shall be determined by the size of the parcel on which the activity is to be conducted in accordance with the following table:

License Type	Parcel Size	Allowable Canopy
<b>Type 1: Outdoor, no artificial lighting.</b>		
(A)	1-4.99 acres	5,000 sq. ft.
(B)	5-9.99 acres	10,000 sq. ft.
(C)	10-19.99 acres	22,000 sq. ft.
(D)	≥ 20 acres	43,560 sq. ft.
<b>Type 2: Indoor, exclusively artificial lighting.</b>		
(A)	< 1 acre	2,500 sq. ft.
(B)	1-1.99 acres	5,000 sq. ft.
(C)	2-2.49 acres	10,000 sq. ft.
(D)	≥ 2.5 acres	22,000 sq. ft.
<b>Type 3: Mixed Light, combination of natural and artificial supplemental lighting.</b>		
(A)	< 1 acre	2,500 sq. ft.
(B)	1-1.99 acres	5,000 sq. ft.
(C)	2-2.49 acres	10,000 sq. ft.
(D)	≥ 2.5 acres	22,000 sq. ft.
<b>Type 4: Nursery</b>	<b>N/A</b>	<b>43,560 sq. ft.</b>

- (a) Processing of cannabis that is cultivated pursuant to these regulations may occur at the cultivation site subject to the Processing Performance Standards and Employee Safety Practices enumerated in Section 17.30.195(10) thru 17.30.195(12) are met.
- (b) Multiple applicants may obtain a License for outdoor cultivation, mixed-light cultivation, or both, on one legal parcel so long as the cumulative cultivation area is within one contiguous cultivation footprint that does not exceed the total cultivation area size limits set forth in the Table of Commercial Cannabis Cultivation License Types, Parcel Sizes and Allowable Canopies.
- (c) A combination of the License types that may be allowed in the same zone (e.g. outdoor and, mixed light cultivation, or indoor cultivation and processing) that are for a total area equal to or less than the cultivated area size limit for the size of the underlying parcel for those License types.

**(9) Application Requirements for All MMCLUO Permits and Licenses:**

- (a) The name, contact address and phone number(s) of the applicant.
- (b) If the applicant is not the record title owner of parcel, written consent of the owner for the application with original signature and notary acknowledgement.
- (c) Site plan showing the entire parcel, including easements, streams and other surface water features, and the location and area for cultivation on the parcel with dimensions of the area for cultivation and setbacks from property lines. The site plan shall also include all areas of ground disturbance or surface water disturbance associated with cultivation activities, including: access roads, water diversions, culverts, ponds, dams, graded flats, and other related features. If the area for cultivation is within ¼ mile (1,320 ft.) of a school, school bus stop, church or other place of religious worship, public park, or Tribal Cultural Resource, the site plan shall include dimensions showing that the distance from the location of such features to the nearest point of the cultivation area is at least 600 feet.
- (d) A cultivation and operations plan that meets or exceeds minimum legal standards for water storage, conservation and use; drainage, runoff and erosion control; watershed and habitat protection; and proper storage of fertilizers, pesticides, and other regulated products to be used on the parcel, and a description of cultivation activities (outdoor, indoor, mixed light), the approximate date(s) cannabis cultivation activities have been conducted on the parcel prior to the effective date of this ordinance, if applicable, and schedule of activities during each month of the growing and harvesting season.
- (e) Copy of the statement of water diversion, or other permit, license or registration filed with the State Water Resources Control Board, Division of Water Rights, if applicable.

- (f) Description of water source, irrigation plan, and projected water usage.
- (g) Copy of Notice of Intent and Monitoring Self-Certification and other documents filed with the North Coast Regional Water Quality Control Board demonstrating enrollment in Tier 1, 2 or 3, North Coast Regional Water Quality Control Board Order No. 2015-0023, or any substantially equivalent rule that may be subsequently adopted by the City of Rio Dell or other responsible agency.
- (h) If any on-site or off-site component of the cultivation facility, including access roads, water supply, grading or terracing impacts the bed or bank of any stream or other watercourse, a copy of the Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- (i) If the source of water is a well, a copy of the County well permit, if available.
- (j) If the parcel is zoned FR or TPZ, or involves the conversion of timberland as defined under section 4526 of the Public Resources Code, a copy of a less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection (CAL-FIRE).
- (k) Consent for onsite inspection of the parcel by City officials at prearranged date and time in consultation with the applicant prior to issuance of the required Conditional Use Permit and License, and once annually thereafter.
- (l) For indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes
- (m) Acknowledge that the City reserves the right to engage with local Tribes before consenting to the issuance of any clearance or permit, if cultivation operations occur within an Area of Traditional Tribal Cultural Affiliation, as defined herein. This process will follow current departmental referral protocol, including engagement with the Tribe(s) through coordination with their Tribal Historic Preservation Officer (THPO) or other tribal representatives. This procedure shall be conducted similar to the protocols outlined under SB 18 (Burton) and AB 52 (Gatto), which describe “government to government” consultation, through tribal and local government officials and their designees. During this process, the tribe may request that operations associated with the clearance or permit be designed to avoid, minimize or mitigate impacts to Tribal Cultural Resources, as defined herein. Examples include, but are not limited to: conducting a site visit with the THPO or their designee to the existing or proposed cultivation site, requiring that a professional cultural resources survey be performed, or requiring that a tribal cultural monitor be retained during project-related ground disturbance within areas of sensitivity or concern. The City shall request that a records search be performed through the California Historical Resources Information System (CHRIS).



**(10) Performance Standards for all MMCLUO Cultivation and Processing Operations:**

- (a) Cannabis cultivation and other commercial cannabis activity shall be conducted in compliance with all laws, except if upon inspection for the initial application, violations of any building or other health, safety, or other state or county statute, ordinance, or regulation are discovered, compliance with a written approved compliance agreement signed by the applicant and the relevant enforcement agency or agencies, to abate or cure violations at the earliest feasible date, but in no event no more than two (2) years of the date of issuance of the required Conditional Use Permit and License. Applicants shall provide plans for curing such violations to the Planning & Building Department within one (1) year of issuance of the provisional clearance or permit. Once the violations are cured, the permit will no longer be provisional. The violations subject to a compliance agreement pursuant to this paragraph shall be related to land conversion, on-site grading, electricity usage, water usage, agricultural discharges, and similar matters and limited to those improvements, facilities, buildings and sites that are used for commercial cannabis activity and shall not extend to personal residences or other structures that are not used for commercial cannabis activity. The terms of the compliance agreement may be appealed pursuant to Section 55.4.13 below, except the Planning Commission, and not the Zoning Administrator, shall act as Hearing Officer, and shall make a determination within thirty (30) days of the conclusion of the hearing.
- (b) Possession of a current, valid required license, or licenses, issued by any agency of the State of California in accordance with the MMRSA, and regulations promulgated thereunder.
- (c) Compliance with all statutes, regulations and requirements of the California State Water Resources Control Board, Division of Water Rights, at a minimum to include a statement of diversion of surface water from a stream, river, underground stream, or other watercourse required by Water Code Section 5101, or other applicable permit, license, or registration.
- (d) The area of cannabis cultivation shall be located as shown on the application site plan, set back at least 50 feet from any property line, and 600 feet from any School, School Bus Stop, Church or other Place of Religious Worship, Public Park, or Tribal Cultural Resources. The minimum setback required from property lines or adjacent uses may be waived or reduced with the express consent of the adjacent property owner and occupant. Cannabis cultivation is declared to be development, subject to compliance with Section 17.30.110, Environmentally Sensitive Habitat Area's (ESHA's). For purposes of this section, where enhanced, reduced, or modified watercourse or wetland setbacks have been agreed to by the operator and the RWQCB under enrollment pursuant to NCRWQB Order No. 2015-0023 and/or preparation of a Water Resources Protection Plan, these may control and supersede any setback applied pursuant to Section 17.30.110.

- (e) Maintain enrollment in Tier 1, 2 or 3, certification with the North Coast Regional Water Quality Control Board Order No. 2015-0023, if applicable, or any substantially equivalent rule that may be subsequently adopted by the City of Rio Dell or other responsible agency.
- (f) For cultivation areas for which no enrollment pursuant to NCRWQB Order No. 2015-0023, is required by that Order, compliance with the standard conditions applicable to all Tier 1 dischargers.
- (g) Comply with the terms of any applicable Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- (h) Comply with the terms of a less-than-3-acre conversion exemption or timberland conversion permit, approved by the California Department of Forestry and Fire Protection (CAL-FIRE).
- (i) Consent to an annual on-site compliance inspection, with at least 24 hours prior notice, to be conducted by appropriate City officials during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays).
- (j) Refrain from the improper storage or use of any fuels, fertilizer, pesticide, fungicide, rodenticide, or herbicide. Hazardous materials and wastes from agricultural businesses are regulated by the Humboldt County Environmental Health Division, which administers the Hazardous Materials program as one of the Certified Unified Program Agencies (CUPA). This includes the application, inspection, enforcement, and reporting under the program requirements and standards set by the California Environmental Protection Agency (CalEPA).
- (k) Pay all applicable application and annual inspection fees.
- (l) Where surface water diversion provides any part of the water supply for irrigation of cannabis cultivation, the applicant shall either: 1) consent to forebear from any such diversion during the period from May 15<sup>th</sup> to October 31<sup>st</sup> of each year and establish onsite water storage for retention of wet season flows sufficient to provide adequate irrigation water for the size of the area to be cultivated, or 2) submit a water management plan prepared by a qualified person such as a licensed engineer, hydrologist, or similar qualified professional, that establishes minimum water storage and forbearance period, if required, based upon local site conditions, or 3) obtain approval from the RWQCB through enrollment pursuant to NCRWQB Order No. 2015-0023 and/or preparation of a Water Resources Protection Plan.

(m) Trucked water shall not be allowed as the primary water source. Water is to be sourced locally (on-site), except for emergencies. For purposes of this provision, "emergency" is defined as: "a sudden, unexpected occurrence demanding immediate action."

(n) Comply with any special conditions applicable to that permit or parcel which may be imposed as a condition of the required Conditional Use Permit.

**(11) Performance Standards for Cultivation and Processing Activities:**

(a) Pursuant to the MMRSA, Health and Safety Code section 19322(a)(9), an applicant seeking a cultivation license shall "provide a statement declaring the applicant is an 'agricultural employer,' as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law."

(b) Cultivators shall comply with all applicable federal, state, and local laws and regulations governing California Agricultural Employers, which may include: federal and state wage and hour laws, CAL/OSHA, OSHA, California Agricultural Labor Relations Act, and the Humboldt County Code (including the Building Code).

(c) Cultivators engaged in processing shall comply with the following Processing Practices:

- i. Processing operations must be maintained in a clean and sanitary condition including all work surfaces and equipment; and
- ii. Processing operations must implement protocols which prevent processing contamination and mold and mildew growth on cannabis; and
- iii. Employees handling cannabis in processing operations must have access to facemasks and gloves in good operable condition as applicable to their job function; and
- iv. Employees must wash hands sufficiently when handling cannabis or use gloves.

(d) All persons hiring employees to engage in commercial cannabis cultivation and processing shall comply with the following Employee Safety Practices:

- i. Cultivation operations and processing operations must implement safety protocols and provide all employees with adequate safety training relevant to their specific job functions, which may include:
  - Emergency action response planning as necessary; and

- Employee accident reporting and investigation policies; and
  - Fire prevention;
  - Hazard communication policies, including maintenance of material safety data sheets (MSDS); and
  - Materials handling policies; and
  - Job hazard analyses; and
  - Personal protective equipment policies, including respiratory protection.
- ii. Cultivation operations and processing operations must visibly post and maintain an emergency contact list which includes at a minimum:
- Operation manager contacts; and
  - Emergency responder contacts; and
  - Poison control contacts.
- iii. At all times, employees shall have access to safe drinking water and toilets and handwashing facilities that comply with applicable federal, state, and local laws and regulations. Plumbing facilities and water source must be capable of handling increased usage without adverse consequences to neighboring properties or the environment.
- iv. On site-housing provided to employees shall comply with all applicable federal, state, and local laws and regulations.
- (e) All cultivators shall, at the time of the application for a cultivation permit, include a Processing Plan with all of the following:
- i. Summary of Processing Practices.
  - ii. Description of location where processing will occur.
  - iii. Estimated number of employees, if any.
  - iv. Summary of Employee Safety Practices.
  - v. Description of toilet and handwashing facilities.

- vi. vi. Description of plumbing and/or septic system and whether or not the system is capable of handling increased usage.
- vii. Description of source of drinking water for employees.
- viii. Description of increased road use resulting from processing and a plan to minimize that impact.
- ix. Description of on-site housing, if any.

**(12) Performance Standards for Mixed-Light Cultivation:**

- (a) Those cultivators using artificial lighting for mixed-light cultivation shall shield greenhouses so that little to no light escapes. Light shall not escape at a level that is visible from neighboring properties between sunset and sunrise.
- (b) The light source should comply with the International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, and be designed to regulate light spillage onto neighboring properties resulting from backlight, uplight, or glare (BUG). Should the Humboldt County Planning Division receive complaints that the lighting is out of alignment or not complying with these standards, within ten (10) working days of receiving written notification that a complaint has been filed, the applicant shall submit written verification that the lights' shielding and alignment has been repaired, inspected and corrected as necessary.
- (c) The noise produced by a generator used for cannabis cultivation shall not be audible from neighboring residences. The decibel level for generators at the property line shall be no more than 60 decibels.
- (d) Storage of Fuel. Fuel shall be stored and handled in compliance with applicable state and local laws and regulations, and in such a way that no spillage occurs.

**(13) Term of Conditional Use Permit and License; Annual Inspection.**

- (a) Any Conditional Use Permit and License issued pursuant to this section shall expire after one (1) year after date of issuance, and on the anniversary date of such issuance each year thereafter, unless an annual compliance inspection has been conducted and the permitted site has been found to comply with all conditions of approval.
- (b) If the inspector or other City official determines that the site does not comply with the conditions of approval, the inspector shall serve the permit holder with a written statement identifying the items not in compliance, and the action that the permit holder may take to

cure the non-compliance, or file an appeal within ten (10) days of the date that the written statement is delivered to the permit holder. Personal delivery or mailing the written statement to the mailing address listed on the application by regular mail, plus three (3) days after date of mailing, shall constitute delivery. The permit holder may request a reinspection to determine whether or not the permit holder has cured all issues of non-compliance. Failure to request reinspection or to cure any items of noncompliance shall terminate the Conditional Use Permit and License, immediately upon the expiration of any appeal period, or final determination of the appeal if an appeal has been timely filed.

- (c) The City shall notify any state license authority, as defined by the MMRSA, whenever the Conditional Use Permit and License has been revoked or terminated.

#### **(14) Appeal of Annual Inspection Determination**

Within ten (10) business days after delivery of the statement of non-compliance, the determination by the inspector that the site is or is not in compliance may be appealed by any interested party to the Planning Commission. The appeal shall be made, in writing, on a form provided by the City. The fee for filing the appeal is based on the adopted fee schedule in effect at the time of the appeal.

- (a) The appeal shall be heard by the Planning Commission within thirty (30) days following the filing of the appeal. The Planning Commission shall render a written ruling on the appeal within three (3) business days following the hearing.
- (b) The decision of the Planning Commission may be appealed to the City Council in accordance with Section 17.35.050 of the Rio Dell Municipal Code. If a timely appeal to the City Council is not filed, the ruling by the Planning Commission shall be final.

#### **Section 2. Severability**

If any provision of the ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

#### **Section 3. Limitation of Actions**

Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

#### **Section 4. Effective Date**

This ordinance becomes effective thirty (30) days after the date of its approval and adoption.

**I HEREBY CERTIFY** that the forgoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Rio Dell on \_\_\_\_\_, 2016 and furthermore the forgoing Ordinance was passed, approved and adopted at a regular meeting of the City Council of the City of Rio Dell, held on the \_\_\_\_\_, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Frank Wilson, Mayor

ATTEST:

I, Karen Dunham, City Clerk for the City of Rio Dell, State of California, hereby certify the above and foregoing to be a full, true and correct copy of Ordinance No. 342-2016 which was passed, approved and adopted at a regular meeting of the City Council of the City of Rio Dell, held on the \_\_\_\_\_, 2016.

\_\_\_\_\_  
Karen Dunham, City Clerk, City of Rio Dell

**RESOLUTION NO. PC 094-2016**



**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIO DELL  
RECOMMENDING APPROVAL OF AN ORDINANCE ESTABLISHING SECTION  
17.30.195 OF TITLE 17 OF THE RIO DELL MUNICIPAL CODE RELATING TO THE  
COMMERCIAL CULTIVATION, PROCESSING, MANUFACTURING AND  
DISTRIBUTION OF CANNABIS FOR MEDICAL USE.**

**WHEREAS**, California Government Code Section 65850, et seq. authorizes counties and cities to regulate land use, including agriculture, and to adopt and amend zoning ordinances for such purposes, and sets forth procedures governing the adoption and amendment of such ordinances; and

**WHEREAS**, on October 9, 2015 Governor Brown approved a package of three bills enacted by the legislature on September 11, 2015, SB 643, AB 243, and AB 266, providing for comprehensive, concurrent regulation and licensing by state and local governments of medical marijuana as an agricultural product, including its cultivation, processing, testing, manufacture, distribution, transportation, dispensing, and delivery; and

**WHEREAS**, AB 243, Section 6, adds Section 11362.777 to the Health and Safety Code which includes the provision in subsection (d) (4) that:

"If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county"; and

**WHEREAS**, pursuant to Section 11362.777, subsection (c)(3), "A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the Department of Food and Agriculture's state licensing requirements"; and

**WHEREAS**, the state statutes establishing a regulated, legitimate basis for commercial medical cannabis economic activities under the authorization of state law provide an opportunity to bring unregulated activities into compliance with existing law and ameliorate



adverse environmental impacts, while bringing it out of the shadows of an underground, black-market economy into a legitimate agricultural and commercial contributor to the local and state economy; and

**WHEREAS**, the City of Rio Dell has previously adopted a land use ordinance governing indoor and outdoor cultivation of medical marijuana for personal use; and

**WHEREAS** the City has reviewed and processed the proposed amendment in conformance with Sections 65350 – 65362 of the California Government Code; and

**WHEREAS** the City has reviewed and processed the proposed amendment in conformance with Section 17.35.010 of the City of Rio Dell Municipal Code; and

**WHEREAS** the City finds that based on evidence on file and presented in the staff report that the proposed amendment is consistent and compatible with the General Plan and any implementation programs that may be affected; and

**WHEREAS** the proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA); and

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Rio Dell finds that:

1. The proposed amendments are consistent with the General Plan and any applicable specific plan; and
2. The proposed amendments are Statutorily Exempt pursuant to Section 15061(b) (3) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Planning Commission of the City of Rio Dell recommends that the City Council approve the proposed amendments to Chapter 17.10, "Definitions", of the Rio Dell Municipal Code.

**I HEREBY CERTIFY** that the forgoing Resolution was PASSED and ADOPTED at a regular meeting of the Planning Commission of the City of Rio Dell on January 14, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Nick Angeloff, Chairperson

ATTEST:

I, Karen Dunham, City Clerk for the City of Rio Dell, State of California, hereby certify the above and foregoing to be a full, true and correct copy of Resolution No. PC 094-2016 adopted by the Planning Commission of the City of Rio Dell on January 14, 2016.

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Karen Dunham, City Clerk, City of Rio Dell