



AGENDA

RIO DELL PLANNING COMMISSION
SPECIAL MEETING— 6:30 P.M
TUESDAY, MARCH 8, 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

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) 2016/0308.01 - Cultivation Recommendations - 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, March 22, 2016 at 6:30 p.m.

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



For Meeting of: March 8, 2016

To: Planning Commission

From: Kevin Caldwell, Community Development Director 

Through: Kyle Knopp, City Manager

Date: February 29, 2016

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

Recommendation:

That the Planning Commission:

1. Receive staff's report regarding Cultivation Regulations associated with Medical Marijuana Commercial Land Use Regulations, Section 17.30.195 of the Rio Dell Municipal Code; and
2. Open the public hearing, receive public input and deliberate; and
3. Identify and recommend cultivation locations, sizes and Performance Standards.

Background

At the Planning Commission meeting of February 23rd, the Commission elected to break down the discussion of the Medical Marijuana Land Use Ordinance (MMLUO) into three meetings. At the meeting of March 8, 2016 the Planning Commission is scheduled to discuss Cultivation provisions, including:

- The type of cultivation, Outdoor, Mixed-Light and Indoor;
- The location of allowed cultivations sites; and
- Performance Standards.

At the meeting of March 22, 2016 the Planning Commission is scheduled to discuss Manufacturing provisions, including:

- “Manufacturing Level 1”, for manufacturing sites that produce medical cannabis products using nonvolatile solvents;
- “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 will limit the number of licenses of this type; and
- Cannabis Commercial Kitchens that produce edibles.

At the meeting of April 12, 2016 the Planning Commission is scheduled to discuss Testing Laboratories and Dispensaries provisions, including:

- “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; and
- “Dispensary; General”, Type 10 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; and
- “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.

Discussion - Cultivation

There are three types of cultivation, Outdoor, Mixed-Light and Indoor that are allowed under the Medical Marijuana Regulation and Safety Act (MMRSA). Although the State allows Outdoor-Open Field cultivation, at this time staff is recommending that Outdoor – Open Field cultivation not be allowed within the City. Mixed – Light cultivation is known as light-deprivation or “depo” cultivation. This type of cultivation utilizes artificial light and black-out techniques to produce flowering. Staff is recommending that cultivation only be allowed with a Conditional Use Permit (CUP).

Staff recommends that the size of the cultivation (canopy) area be determined by the zoning/land use designation and the size of the parcel on which the activity is to be conducted. Although, staff did not originally recommend that any cultivation activities, including nurseries be allowed in Urban Residential zones, staff has been contacted by a number of folks who either are or may be interested in cultivating on lands designated Urban Residential.

Outdoor (Greenhouse) & Mixed-Light Cultivation

Staff is recommending that Outdoor and Mixed-Light cultivation commercial cultivation be conducted entirely within a fully enclosed, secure and lockable greenhouse.

Staff originally recommended that Outdoor and Mixed-Light cultivation be limited to the **Rural (R) and Natural Resources (NR) designations**. However, as indicated above, staff has been contacted by a number of folks who either are or may be interested in cultivating on lands designated Urban Residential. Below is a copy of staff’s recommended allowable canopy sizes based on parcel size and subject to the recommended Performance Standards and any other conditions deemed appropriate by Planning Commission and/or the City Council.

Outdoor (Greenhouse) & Mixed-Light Cultivation

State License Type	Parcel Size	Allowable Canopy
Type 1 & 1B, “Specialty Outdoor& Specialty Mixed Light”	< 1 acre	1,000 sq. ft.
	1-2.49 acres	2,000 sq. ft.
	2.5-4.99 acres	5,000 sq. ft.
Type 2 & 2B, “Small Outdoor& Small Mixed Light”	5.0- 19.99 acres	10,000 sq. ft.
Type 3 & 3B, “Outdoor& Mixed Light”	≥ 20 acres	22,000 sq. ft.

Indoor Cultivation

Staff is recommending that indoor commercial cultivation of cannabis for medical use shall be conditionally permitted in the Industrial Commercial (IC), Rural (R) and Natural Resources (NR)

designations. Below is a copy of staff’s recommended allowable “Indoor” canopy sizes based on parcel size and subject to the recommended Performance Standards and any other conditions deemed appropriate by Planning Commission and/or the City Council.

Indoor Cultivation – Industrial Commercial (IC)

State License Type	Parcel Size	Allowable Canopy
Type 1A, “Specialty Indoor”	< 1 acre	5,000 sq. ft.
Type 2A, “Small Indoor”	1.0- 1.99 acres	10,000 sq. ft.
Type 3A, “Indoor”	≥ 2 acres	22,000 sq. ft.

Indoor Cultivation – Rural (R) and Natural Resources (NR)

State License Type	Parcel Size	Allowable Canopy
Type 1A, “Specialty Indoor”	< 1 acre	1,000 sq. ft.
	1-1.99 acres	2,000 sq. ft.
	2.0-4.99 acres	5,000 sq. ft.
Type 2A, “Small Indoor”	5.0- 9.99 acres	10,000 sq. ft.
Type 3A, “Indoor”	≥ 10 acres	22,000 sq. ft.

Nurseries

Nurseries, as defined by the MMRSA, producing commercial cannabis nursery products for retail sale, bulk wholesale sale or to supply retail nursery outlets is recommended to be a conditionally permitted use in the Industrial Commercial (IC), Rural (R) and Natural Resources (NR) designations. The State has not capped the size of nurseries. As with all other use types, staff is recommending nurseries be subject to the conditions and limitations set forth in the proposed ordinance and as deemed appropriate by Planning Commission and/or the City Council.

Performance Standards

Application Requirements for All MMCLUO Permits and Licenses:

- The name, contact address and phone number(s) of the applicant.
- 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.
- 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.

- 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.
- 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.
- Description of water source, irrigation plan, and projected water usage.
- 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.
- 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.
- If the source of water is a well, a copy of the County well permit, if available.
- If the parcel 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).

- 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.
- For indoor cultivation facilities, identify the source of electrical power and plan for compliance with applicable Building Codes
- 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).
- Each applicant shall execute a Hold Harmless Agreement. 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.
- Each applicant shall submit a Security Plan identifying security measures, including fencing, video monitoring, safes or secure rooms, etc.

Performance Standards for all MMCLUO Cultivation and Processing Operations:

- 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 17.30.195(14) 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.
- 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.
- 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.
- 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.

- 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.
- 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.
- Comply with the terms of any applicable Streambed Alteration Permit obtained from the Department of Fish & Wildlife.
- 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).
- Consent to a minimum at least two (2) annual on-site compliance inspection, to be conducted by appropriate City officials during regular business hours (Monday – Friday, 9:00 am – 5:00 pm, excluding holidays).
- 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).
- Pay all applicable application and annual inspection fees.
- 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 15th to October 31st 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.

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

Employee Performance Standards for Cultivation and Processing Activities:

- 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.”
- 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).
- Cultivators engaged in processing shall comply with the following Processing Practices:
 - Processing operations must be maintained in a clean and sanitary condition including all work surfaces and equipment; and
 - Processing operations must implement protocols which prevent processing contamination and mold and mildew growth on cannabis; and
 - Employees handling cannabis in processing operations must have access to facemasks and gloves in good operable condition as applicable to their job function; and
 - Employees must wash hands sufficiently when handling cannabis or use gloves.
- All persons hiring employees to engage in commercial cannabis cultivation and processing shall comply with the following Employee Safety Practices:
- 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.
- 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.
- 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.
- On site-housing provided to employees shall comply with all applicable federal, state, and local laws and regulations.
- All cultivators shall, at the time of the application for a cultivation permit, include a Processing Plan with all of the following:
 - Summary of Processing Practices.
 - Description of location where processing will occur.

- Estimated number of employees, if any.
- Summary of Employee Safety Practices.
- Description of toilet and handwashing facilities.
- Description of plumbing and/or septic system and whether or not the system is capable of handling increased usage.
- Description of source of drinking water for employees.
- Description of increased road use resulting from processing and a plan to minimize that impact.
- Description of on-site housing, if any.

Performance Standards for Mixed-Light Cultivation:

- 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.
- 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.
- 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.
- 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.

Term of Conditional Use Permit and License; Annual Inspection.

- 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.
- 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.
- 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.

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.

Attachments

Attachment 1: State Cultivation License Types

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.