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TO: BOARD OF SUPERVISORS

**FROM: Matthew Kiedrowski, Deputy County Counsel
Brina Blanton, Deputy County Counsel**

DATE: April 17, 2017

SUBJECT: Discussion and Possible Adoption of an Ordinance Adding Chapter 9.30 to the Mendocino County Code Regarding Adult Use Marijuana Cultivation Regulation and Amending Chapter 9.31 Regarding Medical Marijuana Cultivation Regulation

BACKGROUND

On April 4, 2017, the Board of Supervisors ("Board") adopted Ordinance No. 4381, adding Chapters 10A.17 and 20.242 to the County Code, which adopted a new medical marijuana cultivation regulation system. While the County was drafting this new ordinance the voters of California approved Proposition 64, which legalized the use of marijuana for those over 21 years of age and, among other things, legalized cultivation of not more than six (6) marijuana plants for personal use.

The County's existing Chapter 9.31 and then-proposed Chapters 10A.17 and 20.242 only regulated cultivation of medical marijuana, not adult use marijuana. Staff proposed development of an ordinance that would apply the County's medical marijuana cultivation regulations to adult use marijuana cultivation as well. Staff received direction from the Board, on February 14, 2017, and March 27, 2017, to prepare an ordinance regulating the cultivation of marijuana allowed by California Proposition 64 ("adult use marijuana").

Staff is also proposing changes to the County's existing Chapter 9.31. While the County has now adopted Chapters 10A.17 and 20.242, the permitting component of these Chapters only apply to the portion of the County regulated by the Inland Zoning Code. Until such time as the County is able to adopt regulations for the portion of the County regulated by the Coastal Zoning Code, Staff has prepared amendments to Chapter 9.31 to ensure that the same or similar rules for medical marijuana cultivation

that have applied County-wide for several years continue to apply to the coast. The amendments to Chapter 9.31 also require any marijuana plants cultivated pursuant to Chapter 9.30 to be included within the 25 plant allowance of Chapter 9.31.

Lastly, in preparing the attached ordinance, staff has attempted to create as much consistency between the terms and requirements of Chapter 10A.17 and Chapters 9.30 and 9.31 as possible, to allow for more consistent enforcement. Where there are differences between the ordinances, this is generally due to certain provisions of Proposition 64 or specific Board direction.

DISCUSSION

Chapter 9.30

Chapter 9.30 is designed to apply the County's basic setbacks and growing regulations of medical marijuana to the personal cultivation of adult use marijuana – only the personal cultivation of up to six (6) plants for personal use. Chapter 9.30 does not create a permit process for commercial-level cultivation, which the County intends to review in the future along with its consideration of other marijuana-related regulations, such as a facilities ordinance.

Section 9.30.040

Section 9.30.040 allows a cultivation site of up to six (6) adult use marijuana plants in a private residence or on the grounds of a private residence. A cultivation site is limited by definition to a 100 square foot area of plant canopy (as defined), but this area may be split up into multiple locations.

A person cultivating marijuana pursuant to the qualified patient/primary caregiver exception of section 10A.17.030 may also cultivate pursuant to Chapter 9.30, provided that the 100 square foot cultivation site must contain both the six plants allowed under Proposition 64 and any medical marijuana plants.

A person cultivating marijuana pursuant to Chapter 9.31 may also cultivate adult use marijuana, provided that the six plants allowed under 9.30 must be included in the 25 plant limitation of 9.31.

A permittee cultivating medical cannabis pursuant to a permit issued pursuant to Chapter 10A.17 may also cultivate six (6) adult use marijuana plants, however, those plant must be identified on the permittee's site plan required pursuant to Chapter 10A.17.090.

Section 9.30.050

Section 9.30.050 applies the County's standard setbacks to the cultivation of adult use marijuana. These setbacks are similar to those of Chapter 10A.17, which were themselves based on the setbacks as have existed in Chapter 9.31. These setbacks include references to County regulations on accessory structures that were always

applicable to accessory structures but not previously referenced within Chapter 9.31.

Section 9.30.050 also includes limitations on cultivation within dwelling units. Board direction to staff was to determine whether the County could prohibit the use of habitable space for an indoor cultivation site in residential rental units. One basis for the concern is that residential rental units may be occupied by persons seeking to under-occupy the units and use the interior space as a cultivation site. The concern was directed at rental units because these units generally have a lower cost of entry than buying a residential unit and the County currently has a very constrained rental housing market. The effect of additional renters entering the market seeking to use interior space as a personal use cultivation site could be that larger homes suitable for families would instead be used by couples or individuals seeking an interior cultivation site. The goal of limiting cultivation in habitable space is to keep the more affordable and accessible rental housing market available for persons and families and not cultivation of marijuana.

The Board additionally discussed concerns over fire safety and the possibility of fires caused by overloading electrical circuits in rooms that may not have been designed for such intense electrical use.

To respond to these concerns, staff has prepared paragraph (C)(1) of section 9.30.050. This paragraph would require a cultivation site within or on the grounds of a private residence that is a rental unit to be located either in an accessory structure or the garage of the unit. This restriction addresses the concern of the Board that habitable space of a rental unit not be used or converted for a cultivation site. It also seeks to address the fire safety concern of the Board, as it places what may likely be intensive electrical uses in a structure separate from the residential unit, or attached to a residential unit but protected by an occupancy separation wall (firewall). The ordinance also requires cultivation of parcels of less than ten (10) acres in size to occur within a fully enclosed structure.

Chapter 9.31

The initial purpose of amending Chapter 9.31 was to address the direction that a person's 6 adult use plants must count against the person's total 25 plant allowance. Once staff began reviewing Chapter 9.31, staff believed that updating the restrictions to be consistent with those of Chapter 10A.17 was appropriate. This accounts for many of the changes to the sections regarding purpose and intent (section 9.31.010), confidentiality (section 9.31.020), definitions (section 9.31.040), plant limitations and other restrictions (section 9.31.050 and 9.31.060) and collectives (section 9.31.100).

As Chapter 9.31 will remain operative in those areas of the County not subject to Chapters 10A.17 and 20.242, staff is proposing additional changes to the chapter to reflect its continued existence. The effectiveness section has been amended to eliminate the sunset date inserted in 2016 and to reflect that Chapter 9.31 will not apply to areas of the County where Chapter 10A.17 of this Code would require obtaining a cultivation permit in order to cultivate in excess of the limits of the qualified patient/primary caregiver exemption of section 10A.17.030. Provisions related to the

2016 urgency ordinance permit program have also been deleted, consistent with the settlement agreement reached under the *Mendocino County Blacktail Association* litigation. The codified CEQA exemption language has also been deleted, but a separate, non-codified CEQA exemption is a part of the proposed ordinance. Similarly, the codified severability language in Chapter 9.31 has been deleted, and a severability clause has been made a part of the proposed ordinance. Lastly, provisions related to public nuisance and enforcement have been revised to reflect additional enforcement authority following recent Code revisions and to mesh with the nuisance language of Chapter 10A.17.

The proposed changes for consistency with Chapter 10A.17 are generally non-substantive in nature or more protective of the environment. For example, the addition of references to requirements of the zoning code related to accessory structures is non-substantive, because adherence to requirements related to accessory structures was always required. Revisions to other requirements related to light assistance or light placement are intended to be more realistic or more restrictive. The prime example of an additional protection measure is the addition of a prohibition on tree removal, as was made a part of Chapter 10A.17.

CEQA

The adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"). Section 15061(b)(3) of the State CEQA Guidelines exempts activities where it can be seen with certainty that there is no possibility that the activity may have a significant impact on the environment. In addition, Section 15308 of the State CEQA Guidelines exempts actions taken to assure protection of the environment.

Chapter 9.31 is the County's existing marijuana cultivation ordinance and has applied to all areas of the County for several years. Changes proposed to this ordinance are generally non-substantive in nature, and the modification to the effectiveness section is to ensure that these regulations continue to affect property not covered by the new Chapter 10A.17, continuing the status quo in these areas. The limitation of including the 6 plants allowed under Chapter 9.30 within the 25 plants allowed by Chapter 9.31 is intended to not increase the number of plants that may be cultivated under these two regulations from what previously was allowed (25 plants). Lastly, other changes being made are actions taken to assure protection of the environment, such as the prohibition of tree removal.

Chapter 9.30 is applying the County's general marijuana restrictions to a new type of marijuana cultivation not previously allowed under State law. Without adding Chapter 9.30, cultivation of adult use marijuana would be unregulated and could be cultivated without adherence to setbacks or other regulations. In applying the County's general marijuana restrictions to adult use marijuana, the County is acting to assure protection of the environment and prevent cultivation from occurring in ways not previously allowed by the County. Lastly, certain restrictions, such as the limits on cultivating adult use marijuana in rental units, are further restricting cultivation in an effort to provide additional protection of the environment by providing for increased public safety.

ATTACHMENTS

1. Redline Draft of Chapter 9.31
2. Proposed Ordinance adopting Chapter 9.30 and amending Chapter 9.31