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Mendocino County Board Of Supervisors
501 Low Gap Road, Room 1010
Ukiah, CA 95482

July 18, 2016

Re: Draft of 9.31/Cannabis Cultivation Ordinance and Corollary Zoning Code Changes

Honorable Supervisors:

The specific issues I continue to be concerned about in the current draft of the ordinance are:

1. Use and Administrative Permit Requirements: The 9.31 application and inspection requirements as well as the adherence to outside agency rules and regulations already provide the oversight necessary to ensure compliance with all safety, environmental, and even Building and Planning permitting rules. It is unnecessary to require 9.31 license applicants to obtain an Administrative or Use Permit and it would create a bottleneck that would effectively eliminate lawful cultivation. The time required to go through those processes are far greater than the growing season. The added expense (not just application for Use or Admin. Permit fees, but fees paid to Consultants who often must help applicants through the process) on top of the license application fees, the taxes on the gross receipts or square footage, the NCRWQCB fees, the State Water Board fees, F&W 1602 permit fees, etc., would also discourage participation in licensing the cultivation activity.
2. Proof of Prior Cultivation: My concern here is on several levels.
    a. Forcing people to provide self-incriminating evidence when the 3 year statute of limitation on bringing charges against a cultivator for growing more than was previously allowed is untenable.
    b. Requiring proof of prior cultivation of the same quantity at the same site by requiring photographic evidence of the entire parcel plus the specifically previously grown site plus the currently grown site, does not take into account that people have moved their sites to conform with ever changing rules and have been promised that if they engaged in the Voluntary Registration (limited to 25 plants or less this year) they would NOT be denied the ability to apply for permits in a greater amount next year.[1] Also, some were abruptly cut-off from applying to the Exemption Program under the Urgency Ordinance and can only prove cultivation of 25 plants at a site when they would otherwise be eligible for a permit beyond that amount.
    c. Those applying for Nursery applications cannot meet these requirements either.

[1] Prior to the cut-off date for 9.31 Exemption Applications I specifically asked Mr. Morse if persons limited their cultivation to 25 plants or less this year, because of the very late date the Urgency Ordinance was passed, were allowed to grow more than that next year under the new "permanent" ordinance if they otherwise met the criteria and he specifically told me "yes." Based on that specific inquiry and response I had numerous clients opt to not enroll in the 9.31 Exemption program under the Urgency Ordinance but instead register voluntarily under the Ag Dept. Registration. It would be unfair and contrary to that specific answer to prohibit those persons from growing more than 25 plants next year just because they could not provide proof of prior cultivation in the same amounts and at the same location.

d. Those on TPZ or FL that limited their cultivation this year to 25 plants or less because of the late date of the Urgency Ordinance or because the deadline for applying for the Exemption Permit was abruptly cut-off.

Setbacks: Continue to be an issue since they changed from what has been in place for years (50 feet from property line and 100 feet from residential dwelling occupied by another). People moved cultivation sites to conform to these requirements. Chickens are allowed to be 5 feet from a property line! They certainly are noisier and just as smelly as cultivation! Likewise, other animal raising is required only to be 40 feet from a dwelling and 50 feet from a property line. I am sure that some animals being raised in accordance with our laws are just as offensive to neighbors as cultivation. Staff used "smell" as one of the reasons for increasing the setbacks, but the proposed ordinance already prevents offensive smell from occurring in any cultivation. The setbacks were further increased when Staff added "or access easement" to the language in between various drafts. Does this mean if someone has an easement through an applicant's property that easement is the setback line? At the very least, we should use the same criteria as the Preservation Corridor Setbacks in Section 20.152.020 (C), which only counts the easement or road as the setback line point if it accesses more than 4 parcels. Finally, It is imperative that should the setbacks increase from the long standing 50/100 foot distances, that the process for applying for a reduction be much less difficult than a full use permit process and waivers should be available when neighbors provide permission on an annual basis.

Legal Parcel/New Requirement of Certificate of Compliance: While the definition finally changed to a sensible definition, in a recent draft Staff added in the words "upon application" when referring to a parcel that the ordinance previously stated it "would be eligible for" a certificate of compliance or created pursuant to the map act. This additional requirement seems to add the requirement that every landowner actually APPLY for a certificate of compliance. As with the Administrative and Use Permit requirements, this would add a substantial burden to the applicant for no good reason and will effectively discourage persons from getting a license.

3 Acre Conversion Requirement When No Timber Is Removed: I continue to wonder how an applicant under 9.31 would be able to meet the requirement of obtaining a 3 acre conversion on TPZ or FL if no timber or stumps have been removed in order to cultivate? As has been noted in prior meetings, there are many parcels zoned TPZ or FL that in fact have substantial clearings (naturally or because of ancient clearing not conducted in recent times). This is one reason why TPZ and FL are zoned for Agriculture. The current wording of the ordinance would require 3 acre conversions when there is no procedure for obtaining such by CDF. CDF looks at applications based on the project CONVERTING timberland by removal of stumps and timber. If one is not removing a thing, how can one obtain a permit? CDF will not consider a conversion permit if there is no timber being removed. Also, CDF has reported that there is no mechanism to bring previously illegally cleared TPZ or FL land into compliance. So, if someone illegally cleared TPZ or FL land 25 years ago and the property was subsequently sold 3 times, the current owner would not be able to obtain a conversion permit and would not be able to obtain some kind of nonconforming use permit.

Conditional/Provisional Licenses: It is important to provide a mechanism for the applicant to obtain a provisional or conditional license since so many departments and outside agencies are involved in compliance issues and have separate permitting requirements. So long as an applicant has applied for necessary permits, actively maintained communication, and provided all necessary information in a timely fashion, the applicant should not be prevented from obtaining a provisional license. If no such a mechanism is provided for, applicants could be waiting for more than a growing season to be licensed.

"And Approved" New Requirement Burden: On page 24, item D, Staff added the words "and approved" to require that applicants have in hand all permits before they can be issued a local license. If this

requirement remains, it will effectively stall all licenses for cultivation for an unknown period of time subject to outside agencies' backlogs.

Amnesty: We still have no Amnesty Program for those who have been waiting since May 17th to apply for building and other permits to bring their buildings into the permitted system.

"Commercial": Sheriff Allman and I have spoken and completely agree that until State law provides otherwise, currently cannabis may only be grown for medical purposes, and exchanged in a closed loop (collective) and not for profit. We also agree that reasonable reimbursement, including for time spent is allowed and that the BOE and other agencies consider that "commercial" activity even if not for profit. As a result, he has no objection to me working with County Counsel to include the term "commercial" in a manner that is consistent with state law. Also, the tax proposal itself uses the term and appropriately references state law. There is no reason to not include the term "Commercial" when describing the activity being regulated, especially when it is used in the tax proposal.

Generators Not As Primary Source: Regardless of whether the Board decides to eliminate the use of generators only in indoor cultivation or in any type of cultivation, it would be prudent, especially if an eventual tax is going to be placed on cultivation activity, to insert the words "as a primary source of power" in the prohibition on generators so that a backup generator may be used if the solar system goes out or even if PGE goes out.

Way To Bring "Nonconforming" into Compliance: Because there have been so many rule changes and because the Urgency Ordinance was abruptly cut-off, it would be good to set forth mechanisms for bringing places or situations that may now become "nonconforming" into compliance if they had been complying under prior rules.

Progressive Discipline/Grace Periods: There is so very much that is new and challenging. We do not have any way of comprehending the multitude of issues that may come up that have to be remedied in order for an honest, hard working applicant to meet all the changing criteria. It would be helpful to have compliance grace periods or other mechanism to allow people to continue to get into perfect compliance rather than cut them out of the process entirely.

Language Regarding Priorities: I request specific language that instructs all County Departments to interpret the licensing programs in a manner that promotes (rather than hinders) participation in the licensing program. Should that language be included, folks then at least have a fighting chance to have some of the specific details worked out by the Administrator and other implementing departments in a way that attempts to bring them into the licensing scheme. I am not suggesting that reasonable limitations and important environmental guidelines are abandoned. **Rather, I am asking that specific language that reminds the implementing agencies that in addition to those important goals (protecting the public safety and the environment), encouraging participation in the licensing scheme is in fact an additional goal of the regulation.**

Thank you for your careful attention to these issues.

Hannah L. Nelson