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October 16, 2017

Via email: bos@co.mendocino.ca.us

Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, CA 95482

RE: Board of Supervisor Meeting October 17, 2017 and Agenda Items 5e and 4e

Dear Honorable Supervisors:

Thank you for the extensive time and effort all of you have put forth and dedicated to assist with creation and implementation of regulations for local cannabis operators. There are two major issues that we would like to bring to the Board's attention have the potential to severely impact cannabis operators. Additionally, we provide recommendations to address and assist with some of those issues and concerns. We appreciate you taking the time to carefully review and respond to these issues.

Issues: Business Entities Holding Cannabis Permits and Transfer of Licenses

Under Mendocino Code Section 10A.17.020, the definition of "Person" is "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." Before the Board today is the adoption of Chapters 6.36 and 20.243, which incorporates the definition of "Person" and prohibits the transfer of licenses. However, Mendocino County staff have disallowed the issuance of Phase One cultivation permits for any "person" other than an individual. Staff told our office that this interpretation is based on the transferability of permits and the requirement for proof of prior cultivation. Without Board action on this issue, staff will not issue permits to any business entity and will only issue a permit in the name of an individual. We believe there are simple solutions to this issue, and without a solution the cannabis industry will suffer greatly.

1. Impacts of Not Allowing Businesses to Hold Permits

Cannabis operators must have the ability to conduct business with the full benefit of a lawful business entity in the State of California. Without being allowed to operate and hold permits as business entity, cannabis business owners may face exposure to personal liability and may not be able to accept investment funds necessary to grow their businesses. The costs associated with expanded cultivation, with building out manufacturing facilities, upgrading buildings, hiring employees, etc. will require

significant financial resources. Without a formal business entity, accepting investment funds will be very difficult for cannabis operators. One of the most valuable assets of any business is the legal authorization for that business. In this case, if the cannabis business does not hold the license the asset is not part of the company, and investors will be reluctant to support individuals who hold a license without a stake in the authority to operate the business.

California State laws allow for commercial cannabis licenses to be held by entities. State law defines “person” exactly the same as Mendocino County. Not allowing cannabis operations to be conducted by business entities has unforeseen consequences for state licensing. In order to apply for a state license, applicants must have a local permit or authorization to operate. If the local permit is in the name of an individual, and not the name of a business entity, there is potential for complications with state licenses.

2. Proof of Prior Cultivation

Until recently, the State of California would not approve cannabis operators’ Articles of Organization for Limited Liability Companies and for-profit cannabis operations were not allowed under state law. Now, the state allows for-profit commercial cannabis enterprises and has been approving filings for such companies. Therefore, cannabis operators cannot show that their LLC’s had proof of prior cultivation, but they will be able to operate as for-profit businesses under a state license.

Mendocino County staff has interpreted County Code to not allow for-profit entities to hold permits due to the requirement of proof of prior cultivation for phase one permits. The simple solution to this issue is to require that the person with proof of prior cultivation be a member or owner of the entity that holds the permit. Proof of such ownership or membership would be easy for operators to provide and simple for staff to review. Such proof of ownership or membership could be provided upon annual renewal of the permits.

3. Non-Transferability of Permits

The second reason that Mendocino County staff has declined to issue cultivation permits to cultivators is the issue of transferability, which is another major issue that needs to be addressed by the Board. In Section 20.242.040(e) cultivation permits for existing operations are not transferable except transfers to a spouse/domestic partner, child, parent, or for estate planning purposes. In Section 6.36.100 of the ordinance before the Board today also prohibits the transfer of licenses. The prohibition on transferring cannabis permits will severely limit the economic potential of the industry.

However, the Mendocino County code presents a reasonable solution for transfer of permits. In Section 6.20.070, tobacco retail licenses are also non-transferable, unless the retailer notifies the county of a change in ownership.

A Tobacco Retailer's license is nontransferable. If the information required in the license application pursuant to Section 6.20.030, items 1, 2, or 3, changes, Tobacco Retailer must notify the Agency within 14 days, and update all information on the license application form in order to continue to act as a Tobacco Retailer. For example, if a Tobacco Retailer to whom a license has been issued changes business location, that Tobacco Retailer must supply updated license information within 14 days of acting as a Tobacco Retailer at the new location. If a business is sold, the new owner must apply for a license for that location before acting as a Tobacco Retailer. The current licensee shall notify the Agency of the sale of the business.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

With the new costs of regulation, cannabis operators face a mountain of fees and costs to be compliant with local and state laws. Taking investment funds, adding owners, transferring ownership - these are all business activities that cannabis operators have been denied for years of compliant collective activities. Now that operators are taking massive steps to become one of the most regulated industries in California, we urge Mendocino County to adopt reasonable policies that allow cannabis businesses to flourish.

Recommendations:

1. Allow cannabis operators to hold permits as allowed under the definition of "person." For phase one cultivation permits and renewals, require that the individual with proof of prior cultivation provide proof of ownership or membership in the entity holding the permit. For cannabis business licenses and renewals, require similar proof of ownership or membership in the entity that is issued permits.
2. Amend the ordinance to allow for limited transfer of licenses similar to tobacco retailers in Mendocino County.

A cannabis license is nontransferable. If the information required in the license application changes, the licensee must notify the Agency within 14 days, and update all information on the license application form in order for the cannabis license to continue to be valid. For example, if a cannabis licensee to whom a license has been issued changes business location,

that licensee must supply updated license information within 14 days of acting as a cannabis licensee at the new location. If a business is sold, the new owner must apply for a license for that location before acting as a cannabis licensee. The current licensee shall notify the Agency of the sale of the business.

With cultivation permits currently being issued, we urge the Board to address these issues as soon as possible. Please feel free to contact our office if you have any questions about this letter.

Sincerely,

Julie Mercer-Ingram, Attorney