



February 17, 2018

Driving Adoption and Barriers to Compliance

PREFACE

While considering proposals for the Mendocino Ordinance, Staff has cautioned that “You can’t manage what you can’t measure”.

In order to measure it, some things require a microscope, some a yardstick, some a map with a legend.

The overarching thing we are trying to measure is Adoption and Barriers to Compliance.

I was driving with a member of the Mendocino County Sherriff’s Department through Covelo (many years ago) when a pickup truck passed us from the opposite direction at a very high rate of speed.

The Sherriff said “If I were in my squad car, I would make a U-turn and pull that guy over”.

I asked if that would do any good since he had not been clocked by radar.

He responded: “The motor vehicle code is 2 inches thick. I’m pretty sure I could find something to cite him for.” (MORAL: You can always find something wrong if you look hard enough. Strict and literal interpretation often negates common sense.)

Ten Thousand square feet of canopy is NOT a small business. In fact the State calls it a MicroBusiness which implies that it is smaller than a “Small Business”. A Home Occupation or Cottage Industry might be the closest definition that exists in our codes, ordinances, and regulations (let’s call them CORs).

This brings us to the point.

The Cannabis Industry has existed for (in most cases) longer than these COR’s have been on the books. Tasked with creating CORs, for this *newly legalized* industry, it is very challenging for people who have been responsible in one way or another for implementing the existing CORs and developing new ones for an industry that they (through no fault of their own) know little or nothing about. Attempting to shoe-horn these new CORs into the existing ones, in the name of uniform enforcement, makes sense on one level, but it is imperative that *interpretations* of the existing CORs not be extreme and that site specific exceptions be granted.

A recent report states that, as of February 15th, 1% of California’s Cannabis operators have applied for a permit or license. In this document we will attempt to identify some of the issues that are Barriers and some potential solutions.



LEGACY OPERATORS

ISSUE

- Mendocino County has stated that it will not be issuing NEW permits for cannabis operations before January 1, 2020.
- Mendocino County has extended the deadline for applications until June 30, 2018 for applicants that can demonstrate that they have been in operation prior to January 1, 2016 (sometimes referred to as Legacy Operators)

NARRATIVE

While there have been some “Early Adopters”, most people would not enter into a formal business venture without knowing what they are getting themselves into. The CORs have not been finalized on a State or a Local level and things are changing all the time. Some of the issues are, optimistically, 6 months away from a recommendation to the Board of Supervisors. In many ways this is good because a few brave stakeholders have stepped up to try to educate the officials about the industry and the officials (by and large) have been listening and receptive. However, adoption is very low.

SOLUTION

- Eliminate the application deadline for Legacy Operators. It’s only fair to let them make a business decision with all of the facts before they start paying non-refundable fees and substantial money for compliance issues if they, ultimately, can’t comply and exceptions are not granted.
- Extend the Amnesty for building permits for Legacy Operators. Due to the unique nature of this newly legalized industry and for reasons stated above, it’s only fair that they be holding all of the cards before making a decision. Someone applying for another type of business (for example a woodworking shop) has all of the CORs available to them and amnesty would not be extended.



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ADA COMPLIANCE

ISSUE

- The current interpretation from the Building Department is that if you receive a permit to have a Cannabis Operation from your home, the “use” changes to commercial and ADA compliance is required if you have an employee and/or the public is allowed on the premises.

NARRATIVE

This is a very complicated issue.

We are not questioning the Building Department’s authority to interpret the existing CORs as they see fit. Nor are we questioning their knowledge of the existing CORs.

However, we see things a little differently. With all due respect, under the circumstances, we view the current interpretation as rather extreme.

We see the ordinance defining a Home Occupation as an Accessory Use (Sec. 20.156.005) and not a change of use per se.

We see that New commercial buildings must incorporate ADA compliance into their design and existing commercial buildings must include 20% of the total cost of a remodel to ADA compliance (hardship is appealable).

We understand that an employer with less than 15 employees must provide “*reasonable access for their employees*”.

There is a profession called CASp inspectors. Their job is to assess your commercial building for reasonable access if you have public access to the building. There are provisions with both the ADA and the CBC which allows for issues which may not be either “readily achievable” or “technically feasible.”

We believe that imposing the current County interpretation with no regard for circumstances is a major barrier to compliance.

Further, we have heard that the employee provision for Home Occupations and/or Cottage Industries may be removed. This seems counterproductive to us.

SOLUTION

- This is a unique situation and calls for unique solutions. Allow discretion in determining the ADA requirements for Cannabis operators in a site specific manner to facilitate adoption and remove barriers to adoption.



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ACCURATE AND UPDATED INFORMATION

ISSUE

- People come to Building and Planning counter people are less than helpful and give inaccurate information.

NARRATIVE

When people need information they go to the place where they expect to get accurate information and not rely on what their friend told them. Counter people are the only source of information for some people with questions. There have been several reports that they can't get answers to a lot of their questions or the information was wrong (and these are only the ones that have been reported). Many walk away and say "Forget it!". A handful of stakeholders have been trying to educate officials and facilitate the adoption of a reasonable ordinance. This has been an ongoing process for many, many months. Officials (by and large) have been receptive but the process is complicated and slow. There are many facets to be considered; not the least of which is certain groups blackmailing the Board of Supervisors, threatening lawsuits if they don't get their way. The State has yet to come out with their final regulations and that complicates things even more.

We understand. However, there ARE things that are known. Here is a scenario.

Inquiry#1- "How much it will cost to get a permit".

Answer#1- "Well that depends.", is the answer, with no help.

Inquiry-#2 "I would like to apply for a Medical Microbusiness."

Answer-#2 "That is not available. We only have Adult Use Microbusiness licenses."

Inquiry-#3 "But it is allowable under MAUCRSA. That changed."

Answer-#3 No other explanation other than bringing up the current ordinance on the screen, then a snarky, I told you so, smile.

SOLUTION

- Answer#1- It varies. Tell me more and I will try to give you a rough idea.
- Answer#2- The changes haven't made it to the ordinance yet but we are working on it.
- Answer#3- We know but we are trying our best to keep up with the State.
- Perhaps an Excel spreadsheet that has all of the fees and taxes listed that could be used as a tool to estimate individual applicable costs.
- Perhaps weekly "ALL HANDS" Staff meetings and printed updates for current and upcoming changes.
- Perhaps hiring a specialist to answer the onslaught of cannabis inquiries so that other planning and building personnel are not distracted from their other duties. This person would be versed in the entire ordinance and able to answer questions regarding the various departments including Ag and be versed in the Water Board and CDFW regulations. It gets very frustrating when you ask a question to a planner and their answer is "That's a question for Environmental Health"...or "Building". when they share the same counter. This person would also develop a FAQ handout since they are the one that is being asked.



SETBACKS

ISSUE

- Existing CORs regarding setbacks may pose a barrier for compliance.

NARRATIVE

Mendocino County has a landscape that is very diverse in physical characteristics and population density. Zoning setbacks address environmental protection, safety, and nuisance issues. Sometimes the hardship, created by the physical characteristics of the land, needs to be considered if the COR is strictly and literally applied in their case. The cases where this hardship may apply are varied.

SOLUTION

The requirements for setbacks set forth in the CORs may be waived if:

- It can be demonstrated that not waiving of the setback creates a reasonable hardship either physically, geographically, technically, financially, or logistically.
- Waiving of the setback does not create a threat to the environment or safety to the community.
- The owner of the property seeking relief has a signed letter from the owner of the adjacent property stating that this would not create a nuisance and they agree to the waiver.
 - This letter would contain language that the property owner seeking the waiver would agree to renegotiate or satisfy the required setback with the new owner upon change of ownership of the neighboring parcel.
- The responsible Department would be granted the authority to grant such a waiver without the lengthy and cumbersome variance or appeals process thus streamlining the entire process.



SECURITY

ISSUE

- Security measures (as stated in the regulations for MAUCRSA) are completely out of touch with the varying geographical, physical, technical, population, and monetary considerations and the barriers it creates for small, legacy farmers and Microbusinesses.
- It is required to submit a security plan with the application which may have to include the onerous details of these regulations which would be a barrier to compliance.

NARRATIVE

As stated before, Mendocino County has a landscape that is very diverse in physical characteristics and population density. Mendocino Legacy operators may have to comply with the security measures set forth by the State regulations that are geared toward large scale manufacturing operations. This would be an extreme burden at best and unfeasible for the majority of small operators and microbusinesses.

At a recent meeting with the California State Cannabis Advisory Committee they unanimously passed a resolution to allow the local jurisdiction to approve a security plan that suits their constituents. These security plans may be approved as a site specific plan.

SOLUTION

After receiving the applicant's security plan, the County should:

- Consider the location and circumstances surrounding the application.
- Make a reasonable judgment as to the needs of the applicant for security measures.
- Evaluate and approve the security plan on its merits ensuring that it does not create an undue burden.