

August 7, 2017

John McCowen, Chair
Mendocino County Board of Supervisors
501 Low Gap Road
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Sent via Email to: BOS@co.mendocino.ca.us
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RE: August 8, 2017 - Agenda Item 5(a)/Cannabis Ordinance

Honorable Chairperson McCowen and Board Members:

The purposes of this letter are to provide information for the Board of Supervisors' consideration about third-party inspectors for cannabis uses and to request that the Board direct staff to preserve the County's ability to use third party inspectors, by retaining them in the County's Cannabis Ordinance.

Understand that these comments are provided to promote thoughtful and well considered governance of an unprecedented situation. Modern land-use and environmental laws have evolved significantly since the 1960's and 1970's. Local governments regulating medicinal cannabis uses is the first time in the history of modern land-use and environmental law that a large, previously unregulated industry is being regulated under land-use laws. Unlike cannabis uses, other uses such as internet cafés, were new; were not previously unregulated; were small; and did not endure.

CEQA Compliance

I understand that the EIR for the current ordinance included establishing a third-party inspector process as part of the project description. Revisions to a project description for a certified EIR, or any CEQA document, trigger additional analysis to determine if more or different CEQA compliance will be required because of changes to the project description.

Third-Party Inspectors Should be Retained

It is not necessary for third-party inspectors to be deleted from the ordinance because the current ordinance gives the Agricultural Commissioner discretion to allow or disallow them. Mendocino County Code section 10A.17.130 currently authorizes the Agricultural Commissioner's Office to permit third-party inspectors, subject to inspectors meeting specific qualifications. The plain language of the ordinance says:

The Agricultural Commissioner's Office is authorized to allow third party inspectors to assist medical cannabis cultivators in complying with the provisions of this Chapter . . . (Mendocino County Code § 10A.17.130.)

There is no need to delete this language or regulatory scheme merely because the Department of Agriculture has hired six inspectors *for the entire county*. The third-party inspectors supplement rather than supplant County-hired inspectors. Leaving Mendocino County Code section 10A.17.130 unchanged gives the County flexibility to address future needs and to help this industry transition into a regulated industry. If third-party inspectors are deleted from the ordinance, another ordinance amendment will be required to re-insert them.

Policy & Practical Considerations

There are sound policy reasons for retaining third-party inspectors. Third-party inspectors promote the sound policy of bringing a previously unregulated industry into the regulated community. Given the long history of participating in an unregulated industry, some industry members may feel more comfortable with initial outreach and communications with someone who is not a government official. Open communication and a forum to ask questions and be educated promotes the public policy of compliance and encourages industry members to pursue permits.

Second, third-party inspectors are required to communicate with the Agricultural Commissioner's Office, which provides information that the office may not otherwise obtain. Relegating third-party inspectors to the role of consultants does not foster open communication and some consultants' clients may instruct the consultant to withhold information from the office.

Third, six inspectors are simply inadequate to handle the current plus future volume of permits combined with inspections and enforcement actions against those who may not pursue permits. Phase I of implementing the ordinance seeks to legalize existing cannabis uses. As you know, the county was inundated with roughly 650 applications to legalize utilize existing cannabis uses. Phase II allows the Agricultural Commissioner to start accepting Type 1A and Type 2A permits for indoor cultivation in the Limited Industrial, General Industrial, and Pinoleville Industrial zoning district. Phase III allows anyone to submit an application for a cannabis use. The initial Phase I permit applications will be followed by many more permits. Mendocino County contains 2,246,000 acres, or 3,510 square miles, and is the fifth largest county in California, in terms of land area. Eighty percent of this land is in private ownership. The county is geographically diverse and 69% of the population lives in the unincorporated area. While cannabis uses are not allowed in every zoning district, the county's sheer geographic size and population in the unincorporated area, are highly likely to require more than six inspectors.

Fourth, the third-party inspector program is a success - the majority of the pending cannabis applications were submitted with the help of third-party inspectors. The

industry is responding well, working with the third-party inspectors, and these relationships and work are helping the County to begin regulating this industry.

Fifth, there is no guarantee that there will be sufficient funding for these inspectors in the future. Retaining the Agricultural Commissioner's flexibility to allow third-party inspectors provides access this resource during tight budgets and economic downturns. As you know, we recently endured the "Great Recession," which significantly impacted public agencies and Mendocino County's budgets. In the event of a downturn, having the ability to use third-party inspectors is very valuable.

Thank you for the opportunity to comment on this issue. Given the unprecedented nature of this situation, the new regulation of an industry, I respectfully request the Board to direct staff not to eliminate third-party inspectors from the cannabis ordinance.

Sincerely,

Rick Bergland