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TO: Honorable Board of Supervisors

FROM: Matthew Kiedrowski, Deputy County Counsel

DATE: August 22, 2017

**SUBJECT: Medical Cannabis Cultivation Program
Proposed Amendments to Chapter 10A.17**

The Board of Supervisors adopted Ordinance No. 4381, which added Chapters 10A.17 and 20.242 to the Mendocino County Code, on April 4, 2017, and the ordinance was effective on May 4, 2017.

At its July 18, 2017, and August 8, 2017, meetings, the Board provided direction on revising several aspects of the County's Medical Cannabis Cultivation Program and ordinances. Staff is returning to the Board with a proposed ordinance making certain changes to Chapter 10A.17. This memorandum reviews the proposed changes on a section by section basis.

Section 10A.17.020

This section is being modified to (1) delete the definition of "third party inspector" and (2) revise the definition of "youth-oriented facility." The definition of third party inspector is no longer needed as this ordinance is also removing third party inspectors from Chapter 10A.17. The definition of youth-oriented facility is proposed to be amended to include "day care center" and "youth center" as defined by State law, in order to use the same terminology as the State.

Section 10A.17.030

As provided in staff's memo from August 8, 2017, changes are proposed to this section to clarify in paragraph (A) that issuance of a permit under Chapter 10A.17 also requires review under Chapter 20.242 of the Inland Zoning Code. In addition, changes are proposed that clarify that cultivation by qualified patients, persons with an identification card or primary caregivers are subject to certain square footage limits per legal parcel.

Section 10A.17.040

The Board of Supervisors directed staff to review options for modifying the setback requirements of paragraph (A)(1) of this section. During its discussion of the matter on August 8, the Board mentioned possible changes such as measuring the setback from the site of the sensitive receptor (the school, youth-oriented facility, park, etc.) to the cultivation site, instead of the parcel boundary of the sensitive receptor, or clarifying that the setback only applies to sites where children are typically present.

In discussing this matter, staff believes that either measuring the setback differently or adding a review of whether children are typically present create additional complexity in making setback determinations. In revising how a setback is measured, staff will be required to determine the boundary of a certain use, which could be argued as too restrictive or too lenient. In adding a requirement of whether children are typically present, staff will need to determine what qualifies as a child and how often is typical. Creating additional instances where staff is required to make determinations will likely make the permit review process more complex and open to various interpretations.

Given that the concern is whether certain circumstances may mitigate the need for the full 1,000 foot setback required by paragraph (A)(1), staff recommends that a setback reduction be considered through the issuance of an administrative permit. This process provides notice to adjacent property owners and an opportunity for the County to review the situation and where the County may add conditions to the permit.

No change is proposed in the ordinance prepared for today's meeting, as this change would require a simultaneous change to Chapter 20.242 and review by the Planning Commission. If directed, staff would prepare such changes and bring them forward to the Planning Commission at the earliest opportunity. Until such a process was established, applications within a 1,000 foot setback would be placed on hold.

Several changes are proposed for the setback language as part of the proposed ordinance. First is revising paragraph (A)(1) to reflect that the setback will only apply to sensitive receptor facilities in existence at the time of permit issuance. This is consistent with the State law setback language, and also provides an appropriate cutoff date so that new facilities do not affect existing cultivation sites. Paragraphs are being re-lettered for clarity. Newly lettered paragraph (B) now also includes a revision to use the defined term “legal parcel” instead of the undefined term “property” and to specify a measurement standard for the setback defined in paragraph (A)(5).

Alternatively, the Board could determine to otherwise change the setback language. To revise how setbacks are measured, what is now proposed to be paragraph (B) could be modified to measure the distance from the “the nearest boundary ~~line~~ of the ~~legal parcel on which the~~ facility, building, or structure, or portion of the facility, building, or structure in which the above-listed use occurs is located.” To revise language regarding where children are present, paragraph (A)(1) could be modified to add in a clause “where children are typically present” immediately before “that is in existence at the time a Permit is issued.” The Board could also consider lowering the setbacks to 600 feet, or modify the setback to those required by State law.

In addition, the proposed ordinance eliminates a requirement that light assistance not exceed 35 watts per square foot, pursuant to Board direction. Lastly, minor clarifying changes are proposed to the existing paragraph prohibiting tree removal.

Section 10A.17.070

Paragraph (D) is proposed to be amended to clarify limitations on how an applicant may apply for and obtain two permits on a single legal parcel, as discussed with the Board on August 8, 2017.

Paragraph (I)(1) is proposed to be amended to state simply that the Department of Planning and Building Services may accompany a site inspection of an indoor or mixed-light cultivation site. Language previously directing the purpose of the participation of the Department of Planning and Building Services did not refer to clear standards in regards to mixed-light cultivation sites. Deletion of language is proposed to make a simpler statement that representatives of the Department may be present at the site inspection.

Paragraph (J) regarding third-party inspectors has been replaced with “Intentionally Omitted” to reflect the Board’s direction to remove third-party inspectors from Chapter 10A.17.

Section 10A.17.080

Paragraph (A)(1) is proposed to be modified to extend the deadline for Phase One permits to June 30, 2018, pursuant to Board direction.

Paragraph (B)(1) is proposed to be modified to implement Board direction that proof of prior cultivation requires an analysis that the prior cultivation site could have complied with the setback requirements of section 10A.17.040.

A new paragraph (B)(5) is proposed to make it clear that persons eligible for a Phase One permit may apply for a one type of permit at the present time, but could expand or change a permit type in the future, so long as all requirements of Chapter 10A.17 are followed. This would make it clear that a prior cultivator could apply for a smaller cultivation site now, for example, an outdoor cottage permit, but still have the ability to apply for a larger parcel of a different type in the future.

Section 10A.17.090

A minor typographical error is corrected in paragraph (D).

Paragraph (P) regarding a written agreement with a collective or processor has been replaced by “Intentionally Omitted” pursuant to Board direction to remove this requirement.

Paragraph (T) regarding tree removal is proposed for revision, largely in line with how the language was presented to the Board on August 8, 2017. Minor modifications have been made to the last sentence regarding the possibility of a mitigation process, to include whether a case has been otherwise resolved, in the event that a resource protection agency does not require mitigation.

On August 8, the Board directed that language be inserted regarding removal of trees for defensible space or to remove dead, dying or diseased trees, based on a concern that certain tree removal was permitted under CalFire’s statutes and regulations. In speaking with Craig Pederson of CalFire, he did not believe that separate language beyond what was already present in section 10A.17.040 was necessary. Section

10A.17.040(I) already states that the prohibition of tree removal does not include pruning of trees for maintenance or removal of trees for safety or disease concerns.

The proposed language of paragraph (T) specifies that where trees were removed prior to May 4, 2017, the applicant must provide evidence that trees were not unlawfully removed. In the case of removal of diseased trees, Mr. Pedersen indicated that a report from a registered forester would be required to determine that trees were diseased; such a report would qualify as evidence under the terms of the proposed paragraph. Public Resources Code section 4291 also contains specific requirements related to removal of vegetation for defensible space purposes around structures. Such reports and regulations will inform County staff in its review as to whether tree removal was done unlawfully, and County staff may also contact CalFire to consult on specific cases. Staff does not believe that additional language is necessary at this time.

Paragraph (M) regarding violent felonies is unchanged. State law provisions (initially adopted as part of AUMA) regarding review of prior crimes involve other crimes as well as a determination process for a State licensing authority to determine whether the licensee is otherwise suitable for a license. Staff's recommendation is to leave in place the County's existing requirement, but reconsider whether the requirement of paragraph (M) is necessary once the State's licensing system is in place.

The Board discussed the matter of requiring an applicant to provide documentation that any water being trucked to the cultivation site was obtained from a legal source. In reviewing adding this language, County staff had concerns regarding how this requirement would be enforced. In addition, staff is concerned whether this issue will be dealt with by the State Water Board as part of its review of water and cannabis cultivation, and whether additional requirements are necessary at this time. Staff will discuss these concerns in greater detail at the meeting.

Section 10A.17.100

Renumbered this section for ease of use. Removed the reference to third party inspectors. Renamed the "remediation plan" to "compliance plan" to more accurately incorporate the understanding that it may include required permits and just existing violations. Re-drafted the entire paragraph associated with the previously named "remediation plan" in order to more fully describe and clarifying what the compliance plan is and how it will be used and the potential effect it will have. Notably, these proposed revisions provide specific clarity that violations related to the cultivation

Permit will be included in the compliance plan, while violations not directly related to the cultivation Permit will be addressed separately.

Section 10A.17.110

Paragraph (K) is revised to remove a reference to third-party inspectors. In addition, Section 11 of the proposed ordinance provides authorization to refund applications fees paid by applicants to be third-party inspectors.

Section 10A.17.130

This section has been renamed “Intentionally Omitted,” reflecting the removal of third-party inspectors from Chapter 10A.17.

Section 10A.17.140

Redrafted the entire section to redirect the focus from third party inspector to instead focus on enforcement by the Agricultural Department with respect to violations related to an active Permit. These proposed amendments clarify the enforcement process, identify the fees associated with the inspections, and provide much greater detail regarding the grounds on which a notice to terminate permit may be issued and how such notice may be delivered.

CEQA Review

Based on the changes to Chapter 10A.17 being proposed, pursuant to the CEQA Guidelines, staff has prepared an Addendum to the Mitigated Negative Declaration that was prepared for the adoption of Ordinance No. 4381, which added both Chapters 10A.17 and 20.242 to the Mendocino County Code. The Addendum, which is attached to this memorandum, finds that additional review pursuant to CEQA is not required. Staff has also prepared a resolution approving and adopting the Addendum, which should be adopted prior to the proposed ordinance.

Recommended Action

Staff recommends that the Board (1) Adopt a Resolution Approving and Adopting an Addendum to the Previously Adopted Mitigated Negative Declaration, in Compliance with California Environmental Quality Act Requirements, for Amendments to Chapter 10A.17 of the Mendocino County Code; and (2) Introduce and Waive First Reading of an Ordinance Making Certain Amendments to Chapter 10A.17 – Medical Cannabis Cultivation Ordinance.

Attachments

1. CEQA Addendum to the Mitigated Negative Declaration
2. Redline Draft of Ordinance Making Certain Amendments to Chapter 10A.17 – Medical Cannabis Cultivation Ordinance
3. Resolution Approving and Adopting an Addendum to the Previously Adopted Mitigated Negative Declaration, in Compliance with California Environmental Quality Act Requirements, for Amendments to Chapter 10A.17 of the Mendocino County Code
4. Ordinance Making Certain Amendments to Chapter 10A.17 – Medical Cannabis Cultivation Ordinance