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TO: BOARD OF SUPERVISORS

**FROM: Matthew Kiedrowski, Deputy County Counsel
Brina Blanton, Deputy County Counsel**

DATE: March 28, 2017

**SUBJECT: Board Direction Regarding the Drafting of An Ordinance In
Response to the Passage of Proposition 64 and Corresponding
Amendments to Mendocino County Code Chapter 9.31**

BACKGROUND

On February 14, 2017, this Board gave direction to staff to draft an ordinance regulating the cultivation of marijuana allowed by California Proposition 64 (“adult use marijuana”), and to draft corresponding changes to Mendocino County Code Chapter 9.31. In the drafting process, questions have arisen for which further Board direction is needed.

DISCUSSION

1. Consistency

On February 14th, staff proposed to the Board the creation of a new Chapter 9.30 regulating personal cultivation of adult use marijuana as allowed pursuant to Proposition 64. This new Chapter 9.30 was proposed to be based on the County’s Chapter 9.31, with possible changes to Chapter 9.31 to reflect an overall cap of 25 plants, 6 of which could be for adult use marijuana.

After beginning to prepare drafts of Chapter 9.30 and amendments to Chapter 9.31, staff believes that additional amendments to Chapter 9.31 are appropriate in order to create consistency across the County’s current and proposed marijuana cultivation ordinances. Proposed new Chapter 10A.17 contains certain requirements for cultivation of medical cannabis which may have had their genesis in Chapter 9.31,

but have been revised. Staff believes it is important for clarity and ease of enforcement that to the extent possible or practical, rules regarding cultivation be consistent between all of the County's cannabis ordinances.

As a review, the County has had first reading of an ordinance creating Chapters 20.242 and 10A.17, which only affect the inland zoning areas of the County. Chapter 9.31 will still be controlling in areas of the County not covered by Chapters 10A.17 and 20.242. Chapter 9.30 will be the County's only regulation on cultivation of adult use marijuana until a broader ordinance regarding adult use marijuana cultivation on a commercial scale is either drafted or folded into Chapter 10A.17, and corresponding changes to the zoning code are made.

2. Reasonableness Concerns

As discussed with the Board on February 14, 2017, Proposition 64 (specifically, as codified in Health and Safety Code section 11362.2), allows the County to "enact and enforce reasonable regulations to reasonably regulate." The same section provides that the County may not "completely prohibit" certain actions inside a private residence or an accessory structure to a private residence. Reading these provisions together, the County would appear able to reasonably regulate cultivation activities, even inside a residence, but it is unknown what the reasonableness standard for such regulations would be.

Staff has compiled the following list of discussion points on which staff is seeking direction or additional discussion from the Board.

A. Ten acre parcel size requirement for outdoor cultivation. Staff received direction that adult use marijuana could only be grown indoors if on a parcel less than 10 acres in size. However, as drafted, Chapter 20.242 allows cultivation up to 5,000 square feet of medical cannabis on 5-acre sites with a zoning clearance. Chapter 10A.17 does not place such a size limitation on exempted personal cultivation. We would like to clarify whether the Board desires such a gap between personal cultivation of adult use marijuana and medical cannabis.

B. 100 Contiguous square feet for indoor cultivation. Proposition 64 allows for six plants, but does not speak to square footage for indoor cultivation. It is unknown if limiting the number of square feet, and requiring the plants to be contiguous, would be reasonable.

C. Indoor Cultivation and Youth Setbacks. A complete ban of indoor cultivation within the 1000 foot setback requirement is unlikely to be considered a reasonable limitation. However, allowing indoor cultivation under Proposition 64 within this setback area would create a lesser restriction for adult use marijuana than Chapter 10A.17, as drafted, would allow for medical cannabis cultivation.

D. Restriction on cultivating in a habitable space. Chapter 10A.17 provides that *permitted* cultivation sites may not use any habitable space, but does not apply this to qualified patient or personal caregiver cultivation. Under Proposition 64, the

County may not completely prohibit indoor cultivation, but certain restrictions may be reasonable. Prohibiting cultivation in all habitable space (kitchen, bedrooms, bathrooms, living room, and hallways) may not be reasonable, but limiting to cultivating in a certain amount of square footage of habitable space may be. If crime is a concern, it may be reasonable to prohibit cultivation in spaces fronting a right-of-way, or to ensure that any cultivation in a garage is reasonably shielded when the garage door is open. Staff seeks discussion on what restrictions might be reasonable for cultivation in a personal residence.

E. Cultivation under both Chapter 10A.17 and Proposition 64. The Board generally asked staff to review the letter of the Ukiah Area Rural Residential Concerned Neighbors and also asked staff to review the possible interplay between medical cannabis and adult use marijuana.

It is not clear how cultivation exempt from a permit under both proposed Chapter 10A.17 and Proposition 64 would interact. The County's proposed Chapter 10A.17 allows for cultivation of medical cannabis by a primary caregiver for up to 200 square feet for 2 separate patients. It is not clear that the primary caregiver could then reasonably be restricted from cultivating up to 6 plants for the caregiver's personal, recreational use. This situation hypothetically would see 200 square feet plus six plants of cannabis cultivation without the issuance of a permit.

Some of the above topics and existing regulations may serve to place some curbs on these cumulatively exempt cultivation operations. Setbacks on outdoor cultivation already create limits as to the amount of cannabis that can be grown outside on many parcels. The County may be able to limit the amount of habitable space used for cultivation within a residence and require the rest to be done outdoors or within an accessory structure, consistent with all setback requirements.

To the extent that members of the public or the Board have additional questions or concerns, staff welcomes the opportunity to discuss these issues. The goal of staff is to be able to prepare an ordinance for first reading after today's meeting.