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COUNTY OF MENDOCINO
BOARD OF SUPERVISORS

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December 4, 2017

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Director Karen L. Smith, MD, MPH
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SUBJECT: COMMENTS ON PROPOSED REGULATIONS FOR CANNABIS

Dear Chief Ajax, Director Parrott and Director Smith:

Mendocino County would like to thank the Bureau of Cannabis Control (BCC), California Department of Food and Agriculture (CDFA) and the California Department of Public Health (CDPH) for their work in releasing their Proposed Regulations for Cannabis on November 17, 2017. These regulations represent an important step in ensuring effective oversight, administration and compliance of the cannabis licensing program commencing in January, 2018.

Mendocino County is a pre-eminent producer county in the state of California, home to a very large number of multi-generational cultivators, manufacturers, and other value added cannabis industry participants. In every license category, consideration must be given to the difficulties facing small cannabis operators in rural communities, who will be unable to compete in the emerging legal market if it demands large sums of investment to scale up and meet regulatory requirements. Consideration must be given to these small producers, many of whom have long advocated for regulation.

The authority for this regulatory consideration lies in the passage of SB 94 and its incorporated terms in California Business & Professions Code Section 26013 (c). This section states that MUACRSA “mandate only commercially feasible procedures, technology, or other requirements, and shall not unreasonably restrain or inhibit the development of alternative procedures or technology to achieve the same substantive requirements, nor shall such regulations make compliance so onerous that the operation under a cannabis license is not worthy of being carried out in practice by a reasonably prudent business person.”

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With these considerations in mind, Mendocino County Board of Supervisors respectfully requests the following modifications be made to the Emergency Regulations of the CDFA, BCC and CDPH:

Local Authorization

CDFA, BCC and CDPH proposed regulations, include requirements that upon receipt of an application the licensing authority shall contact the applicable local jurisdiction to confirm the validity of the authorization. If the local jurisdiction does not respond within 10 calendar days, the licensing authority shall consider the authorization valid. Local authorization is important to ensure that applicants are compliant with local regulations and are eligible for a state license. Local regulations are complex and require the involvement of multiple departments and other governmental agencies. In addition, local jurisdictions are receiving large volumes of applicants across all state license types. A response time of 10 calendar days is not sufficient to respond with verification of a permitted/licensed business or a local authorization for individuals in the process of becoming compliant with local requirements. **For these reasons, we request local jurisdictions be given 30 calendar days to respond to the licensing authority.**

Cannabis Events

The proposed regulations (BCC Proposed Text of Regulations, CCR, Title 16, Section 5602, paragraph (b)) for cannabis events, only allows for sales at a cannabis event to be performed by a retailer or microbusiness. Traditionally, cannabis events and tradeshow have been a mechanism for cannabis farmers, manufactures and nurseries in Mendocino County to showcase quality cannabis product and grow their business. Excluding farmers, manufactures and nurseries from selling their product directly to customers at a licensed cannabis event unfairly harms small businesses. For this reason, Mendocino County requests a provision be added to allow cannabis cultivators, manufacturers and nurseries to apply for a temporary retail seller's permit for cannabis events.

In addition, we recommend expanding the locations a cannabis event is allowed to operate in as authorized by Section 5601 of the BCC proposed regulation. As written, cannabis events would be allowed only at a county fair or district agricultural association. In keeping with the established land use authority of local jurisdictions, we request language be included to allow cannabis events at other venues approved by local jurisdictions.

Manufacturing

CDPH proposed regulations in Section 40236, including requirements that relate to dust, odor, and vapors from a manufacturing facility and equipment use standpoint. Local agencies typically respond to complaints in these instances. We request clarification on how the State intends to respond to these complaints.

Cultivation

Reinstate the One-Acre Cap in line with previous legislation and proposed regulations. The One-Acre Cap was included in MCRSA; it specified a five-year limit in Proposition 64; and the cap was further codified in the California Department of Food and Agriculture Program Environmental Impact Report. Reinstating the One-Acre Cap is consistent with the requirement that Cooperative Associations be capped at four acres. If the one-acre cap is not implemented for the first five years, the intended benefits of the cooperative associations in Business & Professions Code Section 26222 et. seq., would become meaningless. Furthermore, the failure to institute a lower individual cumulative cap specifically undermines MAUCRSA's intent to allow small farmers five years in which to transition to the regulatory market without the necessity of transforming into (or being bought up by) large scale operations.

Allow small cultivation licensees (less than 10,000 sq. ft.) to permanently conduct business with both Adult Use and Medical licensees irrespective of which type (A or M) license is held, beyond the stated transition period defined in B&P Section 8214. This will allow for long-term business planning and increase much-needed financial stability for small entrepreneurs during this volatile period.

We recommend modifying Specialty Cottage Outdoor from “a cultivation site with up to 25 mature plants” to “a cultivation site with 2,500 sq. ft. or 25 mature plants.” Updating the definition would allow outdoor cottage cultivation to be in line with mixed light and indoor standards.

We request, for purposes of determining the correct license type, that canopy be defined as “the cumulative total square footage as measured by the drip line of each plant.” We fully understand that appurtenant areas may have land use impacts and are subject to the jurisdiction of multiple agencies, but only the actual plant canopy should be included in order to determine the correct license type.

Processing and Packaging

The draft regulations do not adequately address the need for tiered processing license types. We recommend a tiered processing license to facilitate economy of scale for smaller operators, some of whom may be located within closer geographical proximity and may want to work together on processing. In addition, we recommend that a processing license should also be made available to Cooperative Associations and included as one of the three possibilities for the Microbusiness License.

Microbusiness

BCC proposed regulations, Section 5500, specifies that all cultivation, manufacturing, distribution, and retail activities performed by a licensee under a Type 12-microbusiness license shall occur on the same licensed premises. This requirement severely disadvantages rural cultivation communities which have significant zoning and land use obstacles to co-locating cultivation production with manufacturing, distribution and retail on a single premise. These rural cultivation communities are relying on vertical integration and direct consumer sales to support a viable local cannabis industry. We strongly recommend allowing microbusinesses to conduct licensed activities on separate premises.

Track and Trace

In reviewing the proposed regulations, we are concerned that the exemption of temporary licensees from track and trace requirements as written—CDFR Proposed Text of Regulations, California Code of Regulations (CCR), Title 3, Division 8, Section 8405, paragraph (e) and BCC Proposed Text of Regulations, CCR, Title 16, Division 8, Section 5052, paragraph (a)—will create a significant gap in Mendocino County’s ability to effectively administer and enforce our local cannabis ordinances and programs. The ability for local agencies to continue to utilize existing track and trace programs already implemented in our jurisdiction can provide a significant benefit to the State until temporary licensing is no longer required.

Per Statute and the Proposed Regulations, all cannabis license applicants to the State must first obtain a license, permit or authorization from the local jurisdiction before being eligible for temporary licenses or annual licensure from the State. Accordingly, we have established comprehensive local ordinances regulating cannabis businesses within our jurisdiction and have procured a comprehensive track and trace enablement system fully compliant with State and Local statutes and ordinances to ensure the public safety, security and integrity of our permitting and local taxation system for regulated cannabis products produced in our community.

The track and trace system and unique identifiers implemented by the County are MAUCRSA compliant and are providing our jurisdiction with the ability to effectively implement and enforce our local ordinances. Per AB 133 (Chapter 253 - Statutes of 2017), Business and Professions Code (BP Code) Section 26069 (d) provides:

A city, county, or city and county may administer unique identifiers and associated identifying information but a city, county, or city and county's identifiers shall not supplant the department's track and trace program.

These programs and the jurisdictional specific unique identifiers they provide further establish a county proof of origin for products grown within the county, as envisioned by BP Code Section 26063, which prohibits cannabis from being advertised, labeled or sold as grown within a county or a county name being used unless the cannabis was grown in that county.

The County's continued ability to effectively administer and enforce compliance from operators with a local license, permit or authorizations is based on the robust set of information currently being provided by our local track and trace solution. As provided by BP Code Section 26068, we urge the State to ensure that the State's track and trace system provide a secure application programming interface (API) at the earliest possible timeframe. The API will enable our platforms to synchronize with the State to ensure the relevant cannabis tracking information is collected and the integrity of the track and trace program is maintained. We further urge the State to consider recognizing the use of local unique identifiers within track and trace, so that the integrity of local proof of origin can be maintained as envisioned under AB 133. In extending the capabilities of the state platform, the local track and trace program will provide invaluable enforcement tools for both state and local regulators where the State Track and Trace system is not being required of State Temporary Licensees who have licenses, permits or authorizations to operate in our jurisdictions.

In 2017, Mendocino County established programs to identify, track, and trace and provide proof of county of origin for county cannabis products. For over a year Mendocino has been involved in developing local regulatory safeguards to protect the public, patients, consumers as well as the regulated industry. In addition, Humboldt and Yolo counties have established local track and trace programs. When Mendocino, Humboldt and Yolo licensing programs are fully implemented, operators in these counties will produce some 70 percent of the regulated cannabis in California. We believe that the State would be doing a disservice to local governments by taking too narrow of an interpretation of the statutes regulating cannabis activity which eliminates utilizing local track and trace programs or local unique identifiers. Mendocino County would like the state's track-and-trace program to work collaboratively with the programs that have been procured at the local level to ensure a seamless and efficient roll-out of a statewide cannabis tracking system that works for all parties.

Security Requirements

We support the elimination of Section 5045 Mandating Security Personnel. Appropriate security arrangements are properly within the purview of the local permitting authority and/or local law enforcement. Requiring security guards on a 24/7 basis is not only cost prohibitive and impractical for small businesses in rural areas, but will also do little to improve public safety. Experience has shown that local cannabis dispensaries in Mendocino County have not been the subject of criminal activity or community complaints. Section 26070 is cited as authority for section 5045, however, there is nothing in section 26070 that specifically requires the proposed security requirements. Again, the appropriate level of security is best determined by local authorities on a site specific basis.

On behalf of the Mendocino County Board of Supervisors, we appreciate the opportunity to provide these comments. We look forward to a cooperative working relationship as California moves forward in the regulation of cannabis activity. Please contact Sarah Dukett at 707-463-4441 or duketts@mendocinocounty.org if you have any questions regarding our concerns and comments.

Sincerely,



John McCowen, Chair
Mendocino County Board of Supervisors

cc: Honorable Mike McGuire, California State Senate
Honorable Jim Wood, California State Assembly
California State Association of Counties
Rural County Representatives of California