



MEMORANDUM

DATE: SEPTEMBER 8, 2011
TO: MENDOCINO COUNTY GRAND JURY
FROM: NASH GONZALEZ, PLANNING AND BUILDING SERVICES DIRECTOR
RE: REPORT TITLED "A POT PARADOX OR BUD BINGO" (FINDINGS # 1, 2, 3, 4, 6, 7 AND 11 AND RECOMMENDATIONS # 1 - 13)

Pursuant to Penal Code Section §933.05, the Mendocino County Civil Grand Jury has requested a response to the Findings and Recommendations contained in the report titled "Are We talking Yet." This response is being transmitted before the due date of July 27, 2011 as requested.

Based on the Grand Jury's Report, the Department of Planning and Building Services was requested to respond to Findings 1, 2, 3, 4, 6 and 7. The Department was also requested to respond to Recommendations 1 - 13. The Department of Planning and Building Services respectfully submits the following responses:

Findings: Required Response: Mendocino County Department of Planning and Building Services

1. This response is relative to Finding Number 1, which states "Mendocino County has not adopted any ordinance concerning Medical Marijuana Dispensary regulation, or whether or not dispensaries are collectives."

The Mendocino County Department of Planning and Building Services partially disagrees with this finding.

Finding Number 1 is correct in that the County has not adopted a Marijuana Dispensary Ordinance, but has adopted Chapter 9.32 which addresses Medical Marijuana Collective Cultivation.

Findings: Required Response: Mendocino County Department of Planning and Building Services

2. This response is relative to Finding Number 2, which states "Other city and county jurisdictions in California have enacted marijuana dispensary ordinances that govern location, size and number under either planning or zoning ordinances, or by action of their Board of Supervisors."

The Mendocino County Department of Planning and Building Services agrees with this finding.

Staff would agree with this finding that several cities and counties have adopted/enacted marijuana dispensary ordinances that have been incorporated into zoning regulations or other sections of their municipal codes.

Findings: Required Response: Mendocino County Department of Planning and Building Services

3. This response is relative to Findings Number 3, which states "The Treasurer-Tax Collector is unable to accurately state how many MMJDs or Collective business licenses have been issued."

The Mendocino County Department of Planning and Building Services partially disagrees with this finding.

Relative to Finding Number 3, this can be best answered by the Treasurer-Tax Collector or the Sheriff's Department, as the requirement for enforcement and establishment rests with the Sheriff's Department. Previously Ordinance 9.31 required applicants for collectives to secure a County Business License, which were reviewed by the Department of Planning and Building Services for use and occupancy only. Since the County does not have "Dispensary regulations", dispensaries maybe applying under other use types such as retail sales uses and would be reviewed under Section 20.024.120 of the Mendocino County Code, Inland Zoning Ordinance; and Section 20.324.120 of the Mendocino County Code, Coastal Zoning Ordinance. Since the request would be for retail sales use, it would be difficult to fully determine the total number by Planning and Building Services until such time as a specific use type is defined for marijuana dispensaries.

Findings: Required Response: Mendocino County Department of Planning and Building Services

4. This response is relative to Finding Number 4, which states "A proposed ordinance named Ordinance adding Chapter 9.32 of Title 9 of the Mendocino County Code Entitled Medical Marijuana Dispensing Collective Regulation by County Counsel was introduced to a committee of the Mendocino County Board of Supervisors (BOS) in October 2009, (Appendix A).."

The Mendocino County Department of Planning and Building Services partially agrees with this finding.

Planning and Building Services will concur that an ordinance was drafted as evidenced by the document being transmitted to PBS from the Grand Jury along with the findings and recommendations.

Findings: Required Response: Mendocino County Department of Planning and Building Services

5. This response is relative to Finding Number 6, which states "An undetermined number of MMJDs have been established within the county boundaries."

The Mendocino County Department of Planning and Building Services agrees with this finding.

It is staff's understanding that this maybe the case. Currently the Mendocino County Code, Title 20, Divisions I and II do not provide for marijuana sales as permitted uses. Many of these so called dispensaries have or are applying as some form of retail sales (i.e herbal sales, etc.). Therefore it is difficult to fully evaluate such uses unless it is specifically noted on an application that such uses are medical marijuana dispensaries.

Findings: Required Response: Mendocino County Department of Planning and Building Services

6. This response is relative to Finding Number 7, which states "Two dispensaries have recently been established in Mendocino Township. These dispensaries are located within 1000 feet of areas frequented by school-aged children in town."

The Mendocino County Department of Planning and Building Services agrees with this finding.

It is staff's understanding that this is the case. The two dispensaries that staff is aware of are located at 10470 Lansing Street, based on GIS this is located approximately 897 feet from the High School and 675 feet from the Community Center which has after school programs. The second is located at 10483 Lansing Street, approximately 500 feet from the Community Center and 890 feet from the High School.

Findings: Required Response: Mendocino County Department of Planning and Building Services

7. This response is relative to Finding Number 11, which states "Due to the lack of a MMJD ordinance:

- Any number of dispensaries can be established anywhere in the county with merely the acquisition of business license,
- There is no enforcement/abatement actions of existing public nuisance codes under Mendocino County Ordinance 9.31 against establishing or operating MMJD,
- The needs of neighbors and communities to be protected from public safety impacts of MMJDs is not met,
- There are no grounds for denial by the county, of a MMJD except the limitations imposed by the business license process."

The Mendocino County Department of Planning and Building Services agrees with this finding.

As noted above in response to Finding #6, individuals have applied for business licenses for retail sales, and as long as the use (retail sales) is being conducted in a zoning district that permits retail sales by right (i.e. C-1 (limited Commercial) or C-2 (General Commercial)) a so called dispensary could be established. Currently there are no specific regulations for MMJDs in the County, with the only regulations currently in place addressing marijuana cultivation under Chapter 9.31 of the County Code. Relative to grounds for denial of a business license, sale of marijuana is not a permitted use contained within the County's Zoning Ordinance and is thus not permitted and a business license could be denied. However, PBS staff cannot regulate a "marijuana dispensary" when an applicant for a business license does not represent such use on an application, and calls it something else that could be permitted within the confines of retail sales. For these reasons, it would be appropriate to have a medical marijuana dispensary ordinance which would establish parameters and criteria for such uses.

Recommendations that Require Response by the Mendocino County Department of Planning and Building Services

This response is relative to the following Recommendations 1 through 13 found on pages 2 and 3 of the Grand jury's report, dated April 20, 2011, Titled, "A Pot Paradox or Bud Bingo?"

1. The BOS adopt a Medical Marijuana Dispensing ordinance, (All Findings)

The recommendation will not be implemented because they are not warranted/ and or are not deemed reasonable

Planning and Building Services is unable to respond to this recommendation as it appears that this question appears to be directed toward the Board of Supervisors.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

2. The BOS consider a 60-day grace period for existing Medical Marijuana Dispensaries to be in compliance with an adopted ordinance, (All Findings)

The recommendation will not be implemented because they are not warranted/ and or are not deemed reasonable

Planning and Building Services is unable to respond to this recommendation as it appears that this question appears to be directed toward the Board of Supervisors.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

3. The adopted ordinance address mobile dispensaries, (All Findings)

The recommendation can be implemented because it is warranted or reasonable.

The Department of Planning and Building Services is more than willing to sit down and

meet with both the County Counsel and the Sheriff and assist with language for an ordinance.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

4. The adopted ordinance address public and neighborhood safety/surveillance, (All Findings)

The recommendation will not be implemented because they are not warranted/ and or are not deemed reasonable.

Planning and Building Services is unable to respond to this recommendation as it appears that Planning and Building Services cannot respond/answer for the Sheriff. This question appears to be directed toward the Sheriff who can best address safety and surveillance issues.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

5. The adopted ordinance address the production and sale of related food-based MMJ products and paraphernalia, (All Findings)

The following recommendation(s) require further analysis and if a MMJ ordinance is drafted, the production and sale of food related MMJ can be addressed. However, PBS staff cannot commit to a time frame as PBS would only be a participant providing assistance to those preparing an ordinance, should the BOS direct that such an ordinance be prepared.

The Department of Planning and Building Services is more than willing to sit down and meet with County Counsel and the Sheriff and assist with language for an ordinance as it relates to zoning/land use/building and safety issue. However, food sales are regulated by the Division of Environmental Health, and perhaps input from this division ought to be sought for incorporation into any future ordinance.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

6. The adopted ordinance address the issues surrounding onsite production of MMJ and its associated food products and paraphernalia, (All Findings)

The following recommendation(s) require further analysis and if a MMJ ordinance is drafted, the production and sale of food related MMJ can be addressed. However, PBS staff cannot commit to a time frame as PBS would only be a participant providing assistance to those preparing an ordinance, should the BOS direct that such an ordinance be prepared.

See comments above under response to Recommendation Number 5.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

7. The adopted ordinance address the establishment of fees and penalties that cover the actual cost of regulation and enforcement, (All Findings)

The following recommendation(s) require further analysis and if a MMJD Ordinance is drafted.

The issue of fees and penalties can be addressed to cover the cost of regulation and enforcement and potentially built into the proposed ordinance. It is recommended that a permit or entitlement be utilized as a mechanism for regulation and enforcement. The Department of Planning and Building Services is more than willing to discuss with the authors of such an ordinance language that could be inserted to provided for an entitlement mechanism for regulatory and enforcement purposes and provide for the collection of appropriate fees to cover the cost of PBS staff to review such entitlements.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

8. The adopted ordinance address patient/caregiver relationships, (All Findings)

The recommendation will not be implemented because it is not warranted or is not reasonable.

This question appears to be addressed to the author of the draft ordinance titled "Ordinance Adding Chapter 9.32 of Title 9 of the Mendocino County Code Entitled Medical Marijuana Dispensing Collective Regulation."

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

9. The adopted ordinance address MMJ transportation issues within the county, (All Findings)

The recommendation will not be implemented because it is not warranted or is not reasonable.

Planning and Building Services is unable to respond to this recommendation as it appears that Planning and Building Services cannot respond to the transportation of marijuana. This question can be best answered by the Sheriff or County Counsel.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

10. The adopted ordinance include a definition of a mature female MMJ plant, (All Findings)

- The recommendation will not be implemented because it is not warranted or is not reasonable.

This recommendation can be best addressed by law enforcement (i.e. Sheriff's Department), as Planning and Building staff do not possess the expertise. However, Planning and Building Services staff can collaboratively work with County Counsel and the Sheriff's Department in assisting with appropriate language.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

11. The adopted ordinance include a minimum age limit for anyone entering a MMJ Dispensary, (All Findings)

- The recommendation will not be implemented because it is not warranted or is not reasonable.

This recommendation can be best addressed by law enforcement (i.e. Sheriff's Department), as Planning and Building staff do not possess the expertise. However, Planning and Building Services staff can collaboratively work with County Counsel and the Sheriff's Department in assisting with appropriate language.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

12. The BOS pass a moratorium suspending the establishment and operation of new MMJDs, in Mendocino County, which would expire upon the adoption of an ordinance, (All Findings)

- The recommendation will not be implemented because it is not warranted or is not reasonable.

Planning and Building Services is unable to respond to this recommendation as it appears that this question appears to be directed toward the Board of Supervisors.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

13. The BOS define MMJD, and whether or not it should be a collective, (All Findings)

- The recommendation will not be implemented because it is not warranted or is not reasonable.

Planning and Building Services is unable to respond to this recommendation as it appears that this question appears to be directed toward the Board of Supervisors.

I have completed the above responses, and have attached, as required the following number of pages to this response form:

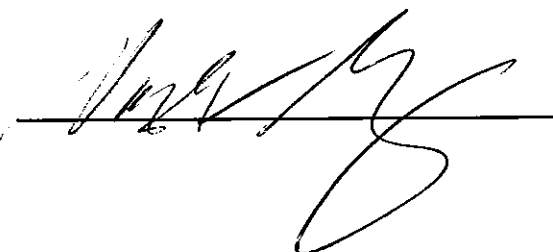
Number of pages attached: Seven (7) pages included addressing responses

I understand that responses to the Grand Jury reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response from and any attachments.

Printed Name: Nash Gonzalez

Title: Planning and Building Services Director

Signed: 

Date: 9-8-11