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To: Planning Commission Agenda of: August 22, 2013

From: Peter N. Maurer, Principal Planner Item No.: 9.b

Date: August 15, 2013

Subject: **OR13-0002/Medical Marijuana Outdoor Cultivation; Recommended Revisions As Directed by the Planning Commission on August 8, 2013**

On August 8, 2013 the Planning Commission held a hearing on OR13-0002, Medical Marijuana Outdoor Cultivation. The Commission took testimony, closed the public hearing, and directed staff to make changes which were to be brought back to the Commission on August 22, 2013 for final recommendation to the Board of Supervisors. Attached is the revised draft. The changes are shown in underlining and strike-out. The significant changes are as follows:

Sec. B - The definitions of child care center, church, school bus stop and youth oriented facility were deleted due to the direction to delete the separation requirement of D.3. A definition for outdoor cultivation was added. The use of greenhouses was included as part of the definition of outdoor cultivation.

Sec. D.1 - The R20,000 zone was added and some word-smithing done to clarify the intent. At the Commission's direction, the method of measurement was included, which is to measure from the base of the stem, rather than the canopy. There was some concern expressed about how the plots are measured by law enforcement. In Attachment 2 there is alternate language that substitutes canopy for the stem. To clarify that the intent of the ordinance is that there is a single plot, and the space between the plants is included in the 200 sq. ft.

Sec. D.2 – The section on fencing was deleted and replaced by two paragraphs on screening and security. The Commission may want to consider details on the kind of fencing that should be provided to make it secure. Is a picket fence or two strands of wire enough? Should a minimum height and/or specified fencing material be required? Does this create a problem for law enforcement?

Sec. D.3 - The separation requirement was deleted, based on a similar state law provision that requires a 600' setback from schools and parks. However, this appears to only apply to

cooperatives or collectives. Should the commission want it to apply to individual growers, this section or similar language should be retained. The Sheriff has indicated that this is an important provision. Alternative language is attached that provides for a 600' separation and applies to schools and parks. See Attachment 2 of this memo.

Sec. D.4 - The setback was modified so that the measurement is from the cultivation area rather than the fence.

Sec. D.5 - The word "principal" was removed, but language added that requires a permitted dwelling unit to be on the parcel in order to cultivate medical marijuana. The Sheriff's office is concerned that by not having the word principal or primary, it may lead to abuse. The insertion of the requirement that the grower be the resident of the lot, and that the residence be a permitted structure (i.e. not a trailer or tent) is intended to address the concern that vacant land will be rented for out-of-county or non-resident cultivators. The County has had difficulty in other areas of code compliance with determining what was a person's principal residence if he or she owned more than one house.

Sec. D.7 - Additional language was added to protect against erosion and discharge of chemicals.

Sec. E.2 - The last phrase, "or made available to law enforcement personnel" was removed. The Sheriff's office feels this is an important provision and that it should be retained. Law enforcement personnel need to be able to have that information to determine if the cultivation is occurring legally. Alternative language is provided in Attachment 2 that may address the Commission's concern.

Sec. H.2 - The scope of notice was narrowed to just those immediately adjacent to the site where relief was requested, but expanded notice is provided if deemed necessary by the Director as the situation warrants.

Sec. I & J – Two new sections were added at the recommendation of County Counsel based on comments from the commission regarding the duty to enforce using this ordinance as defense against nuisance claims.

Although the public hearing was closed on this item, because revisions to the text have been made, and further discussion of those revisions will occur, the public hearing should be re-opened, but testimony should be limited to the proposed revisions. The Commission may accept the revisions as recommended by staff, substitute the alternative language as provided in Attachment 2, or craft other changes that it finds appropriate.

Recommendation: Staff recommends that the Planning Commission forward a recommendation to the Board of Supervisors to take the following actions:

1. Find that the adoption of the proposed ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines; and
2. Adopt an amendment to Title 17 of the County Code regulating medical marijuana outdoor cultivation as provided in Attachment 1.

Attachment:

Attachment 1.....Revised Draft Medical Marijuana Outdoor Cultivation Ordinance (Section 17.14.260) – Planning Commission/August 22, 2013