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Mendocino County Board of Supervisors
501 Low Gap Road
Ukiah, CA 95482

June 20, 2022

Re: Urgent Action Needed

Dear Supervisors,

Urgent action by you is needed to avoid injustice. Despite MCD's best efforts, the delays in processing applications have led to the unfortunate situation where there will be insufficient time for people to resolve outstanding issues after learning of their status later this week and before the state must have the ok from the local jurisdiction that the applicant is further along in their permit review in order for them to have their pending state provisional license application processed and issued before June 30th. Despite my attempt to simplify the issues, this is a technical matter and will require your patience in reading my full memo. However, since the issue is urgent and there is insufficient time to bring it back to the Ad Hoc for recommendations to the full Board, I ask that you take the 10 minutes it will take to fully ready it. I remain available for any follow-up or further information.

New State License Issuance deadline June 30th: Without Immediate Intervention, Deserving Applicants Will be Shut Out

Background

For five years, every applicant that had an embossed receipt and had not withdrawn or been denied had local authorization and were eligible for a state license. Unfortunately, now, with the combination of the phased ending of provisional state licensing and legislation that required additional proof that the application had been furthered along, together with the more specific subcategories in local status report submitted to the state, only those that have an "application complete" status is eligible for a new state license. This is true even if they are only switching license types to better align with their operations and their county authorization. Currently, anyone who applied for a Nursery license, or a mixed light license who is not an equity program verified participant has only until June 30th for the state to issue a provisional license. After that, those categories will no longer be issued as provisional licenses by the state.

The move from the more generic status of local authorization (if issued an embossed receipt) to more specific subcategories occurred when our local program tried to start figuring out the mess that was left in the wake of the original program under the Ag Department, and because the state asked for a breakdown of the specific point in local permit processing for each applicant so it (the state) could determine if the applicant could demonstrate not only local authorization, but furtherance of the annual permit and movement towards eventual CEQA compliance. This resulted in the County's "under review" category for anyone who was put into the portal and did not receive

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an “application complete” status at the end of the first portal. In addition to some who may have small technical corrections to make, those that have a legitimate basis for believing that a listed deficiency outlined by MCD in its portal review process was mistaken, and those taken out of the portal process because of Veg Modification letters, as explained below, mostly will be unable to receive an “application complete” status until after that matter is resolved. Fortunately, Director Nevedal, was able to negotiate with the state to hold open the State license applications that had been submitted by those folks until after MCD finished reviewing all the corrections portal submissions and give the state an updated list of “application complete” statuses. Unfortunately, those reviews will not be complete until this week, leaving no time to rectify unresolved issues or possibly incorrect determinations.

As the Ad Hoc and some members of the Board know, there were aspects of the first portal that caused some confusion, so it was not uncommon for even a diligent applicant to wind up without an “application complete” status. Unfortunately, there were also inconsistencies with the criteria for what triggered the need for having to go through the second “corrections portal” process, resulting in some being thrown into the corrections portal instead of receiving an “application complete” in instances of very small errors, such as typos or misunderstanding by the reviewer. In its request for support to contract to obtain and build out the Accella program, MCD even acknowledges “the challenges users have experienced with the MC portal.” (See, MCD Report for 6/22/22 BoS Agenda Item 3w). Despite the hard work of MCD, it has simply not had sufficient staffing to return phone calls or promptly answer emails. Additionally, some processes are still being refined. As a result, there may files that are treated differently due to the moment in time that issues arose or were attempted to be resolved.

There are folks that are vulnerable to losing out on getting the State license they applied for because of unforeseen delays in the County processing. Specifically, anyone[1] that was given Veg Modification letters and for whom the Veg Mod issue is not resolved, is vulnerable. While MCD offered some of those people the opportunity to move to a different location on their property, often those offers were impossible for the applicant to take advantage of. The result is that they will likely not be issued application “complete status” and will lose the ability to receive the provisional license they applied for, even if in the end, upon further review, appeal or hearing it is determined they in fact did not violate the tree removal provision of the ordinance.

Board clarification on the disease and safety exceptions, for example, could dramatically change the status for many people who received Veg Mod letters and were either taken out of the portal process all together and are in limbo, or who were allowed to resubmit in the corrections portal, but only if they moved cultivation areas, regardless of whether the Veg Mod issue was properly determined.

As stated above, it is not just those caught up in the Veg Mod issue. Those that have small, non-substantive corrections, may be denied “application complete” status and hence miss out on the cutoff for state provisional license issuance. That means due to various reasons, even a diligent applicant that has responded to every request for information, submitted to every portal process, and applied for a new state license in sufficient time before the deadline will be denied a state

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license even though they have properly cultivated for five years, through four or five department management changes, different standards of review and processes, often without clear published standards, that even the most ardent supporter would agree have been confusing and difficult to navigate. I applaud the changes MCD is trying to implement to streamline and modernize the system, but since they, as the prior regimes before them, are forced to build the plane while flying it, unintended mistakes and confusion ensues.

Examples of Deserving Applicants Who May Be Shut-Out of State Licensing If The Board Does Not Act Immediately

Examples of people who may be shut out of issuance of a new state provisional license that is pending, in some cases since last year, include:

(1) Applicant had a mixed light and nursery permit local authorization (two separate embossed receipts). The nursery authorization had been granted years before, but the applicant did not plant the nursery cultivation, so they previously had not applied for a state nursery license. A fire burned their property. When they were informed that despite having previously responded to every request from the cannabis program throughout the years, they were assigned to the portal, they decided to switch their Mixed Light to Outdoor and to finally implement the Nursery permit, so they resubmitted application materials for both and applied for state Outdoor (to replace their active state Mixed Light) and Nursery licenses. That was last year. Each local portal submission came back with "corrections" that were different from one another for the same topic, a few of which MCD later acknowledged should not have been reported as a correction deficiency. Both permit applications went through the second, corrections portal. After submission through the portal the second time, they received a Veg Modification letter. They submitted a timely response with documentation they strongly believe will support the finding that they did not violate the ordinance, but they have not received any information on any determination of that issue. If MCD has not made a determination, or MCD disagrees with the applicant and denies the permit but as a result of further review or appeal, the applicant's position is fully supported and the allegation of MCD was found to be misplaced, this applicant would have been prevented from getting their new state licenses because they might not receive an "application complete" status before the state deadline. This applicant has responded to every request made of them for many years.

(2) Applicant had a provisional state license and either accidentally let it lapse or could not afford to renew it when it expired before the state equity fee waiver program started. Despite having responded to every request for information by the county, their file had not been reviewed by the current MCD so they were placed into the portal. Confusion and applicant mistakes resulted in the need to go through the corrections portal. If a small error has happened in that process, despite having substantially complied with all requirements, they could be determined to not receive an "application complete" status and they could have insufficient time to correct any minor issues or rectify any misunderstandings with MCD in time to obtain the state license they had reapplied for because the two portal processes took so much longer than everyone had hoped. In contrast, someone who entered the local permitting program at the same time, who happened to have had the luck of having MCD conduct a full review of their file and go through the various

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corrections processes prior to the implementation of the portal, was given a "good standing" status and would be eligible for a new state provisional license even though they will in fact need to go through additional screening, such a Veg Modification, or perhaps because criteria has changed or has been refined since MCD's assignment of "in good standing."

Should Random Timing Be The Basis of One Applicant Being Shut Out And Another Spared?

It could be that only the random placement of whether MCD staff was able to get to a full review or not before MCD made portal assignments that could determine whether the applicant had the label of "good standing" or not within the timeframe for issuance of a provisional license before the cutoff. Last spring, MCD acknowledged that some applicants were assigned to the portal even though they had responded to detailed corrections and information requests, simply because MCD was not able to rereview those files before the portal assignments were made. While it is totally understandable that MCD abandoned the old style of file review in favor of portal submissions, it is unfair to the unlucky people who fully responded to relatively recent information requests combined perhaps with a mishap in the correction portal or a Veg mod allegation that turns out to be misplaced or remains unresolved, that some people will be shut out of provisional licensing.

The Additional Time Given By The State To Issue Equity Applicants' And Outdoor Only New Licenses Does Not Solve the Problem For Nursery And Mixed Light Permit Applicants That Have Not Received A Verification Of Eligibility From The Equity Program

The fact that the state deadline for issuing new state provisional licenses for equity program verified applicants is later, only helps some people. Many applicants have not applied for the local equity program because of the horror stories other equity program participants have related. Also, some have applied but have not made it through the verification process yet.

People who responsibly held off in implementing Nursery operations until they could manage them responsibly, or people who had to add or change a license type due to market and other conditions, will be shut out if they do not have equity program verification (which is an entire separate application process from the specific grant or fee waiver applications) and they needed a new state license but did not have the benefit of a "good standing" status from before and had challenges with the portal processes or the Veg Modification issue.

Folks that were some of the first to come forward to be regulated, who have hung in there through every twist and turn, now abruptly will be ineligible for a State Provisional License.

These Applicants Have Substantially Complied With Local Application Requirements Deserving Of Immediate Board Action

MCD is hesitant to grant the status necessary for an applicant to qualify for the state provisional before June 30th if the applicant did not receive an "application complete" status. In part, MCD states that the state not only needs "local authorization" but also needs to see progress in the status of the file with respect to compliance with the ordinance and ultimately CEQA. However, I strongly believe that the circumstances warrant the temporary, wholesale granting of the needed

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status to every applicant in the portal system or taken out of it, unless the applicant had not at all responded to requests for information or did not submit through the portal when asked to do so.

Those that have responded, have substantially complied with all application requirements and do not deserve to be shut out of state provisional licensing after the substantial delays in the first and second portal, the continued limbo regarding Veg Modifications, and the still unseen appeals process. The mess with the equity program and the fact that MCD staffing has been insufficient to promptly return phone call and emails also contribute to the reason why some people might not have been able to achieve "application complete" status. Certainly, a coincidence of timing regarding which files MCD had time to rereview after the mess left by prior regimes comes into play. It would be different if through all of MCD's hard work, all rereviews and Veg Mod determinations were conducted and complete in sufficient time for applicants to clear up technical issues or misunderstandings, or appeal unreasonable Veg Mod determinations before the end of the timeframe by which provisional state licenses can be issued. It certainly raises questions about whether similarly situated applicants were treated unequally based on a coincidence of timing and MCD's switch to the portal process.

Many Of The Pending License Applications Are For Legitimate Reasons And Are In Fact Indicative Of Efforts To Align Local Permits With State Licenses Or To Add A License Type Due to Changes In Interpretation or Decisions To Proceed With Long-Held Authorizations

As stated above, there are a variety of reasons why someone would have to apply for a new state license in recent time. Some has provisional expire and did not receive equity funding in time. Some never operationalized a Nursery component and by virtue of the portal system realized they needed to do so now if they were going to at all. Some were told different things by different inspectors regrading what constituted outdoor vs mixed light operations, or what type of facilities were needed for a mixed light operation which necessitated either adding a license (if one wanted both outdoor and mixed light) or changing licenses types (if for example, they decided they could no longer afford the building permitting process required to have proper mixed light structures and decided to switch to outdoor only). There are probably additional reasons and circumstances. The point is these are not just people who refused to apply for a state license when they should have. Differences in local and state rules (mix and match vs separate licenses), confusion over whether little twinkle lights could be strung up outside and qualify as mixed light instead of outdoor (not ok because of light emission, but at one time a solution that inspectors offered to applicants) and being told (at one point) that no application changes could be made until later, all led to confusion over state licensing. The point is that there are legitimate reasons why someone could be in the position of only recently having applied for the state license that is pending. Sadly, some have been pending since last year but because of the county delays, are stuck in limbo.

Proposed Targeted Action To Prevent The Injustice of Applicants Who Have Substantially Complied With Local Application Requirements From Being Shut Out of New State Licenses Without Compromising The County's Ability To Ultimately Deny An Application And Have The local Authorization And State License Revoked

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If every active (i.e., responsive) program participant is issued a substantial compliance status and the county advocates to the state that substantial progress toward program and CEQA compliance had in fact been made on all of these applications despite some issues being outstanding, and further suggests the state could have the applicant directly provide evidence of substantial compliance and furtherance of CEQA to the state, then we can ensure that folks were not shut out of state provisional licensing and would still be able to retain the ability to follow up with the applicant to perfect or resolve the remaining issues. If after further attempts to resolve, or after an appeals process is in place, an applicant must be denied, the county can still issue a denial and report that to the state who would I turn revoke any provisional license that they issued. Additionally, the county has a robust code enforcement and nuisance process it can pursue in any instance of any violation.

<u>The History Of The Program Changes And Delays Combined With the Termination Of State Provisional License Eligibility For These Applicants Warrants The Unusual, Immediate Action By The Board</u>

Because of the sullied history of this long process of regulating those that stepped forward to be taxed and regulated, and because of the unanticipated delays in the entire rereview process, and the insertion of new forms, new standards, and new processes that have still not been fully worked out, it would be unfair to not let responsive applicants who have no proved violation or issuance of denial be shut out of the state provisional licensing. As stated above, the county would still have the ability to deny the application, revoke local authorization and inform the state. It would also be able to, at any time, pursue code enforcement and nuisance actions. These cultivators have been cultivating all this time, why not take whatever measures are necessary to ensure they are not shut out of the state provisional licensing system, essentially, keeping the status quo, until there has been sufficient time to resolve the outstanding issues unless someone is nonresponsive or there is a separate basis for immediate denial such as a health or safety issue?

Please, prevent this injustice and take the targeted immediate action to grant temporary substantial compliance status to all applicants that need it and have not otherwise been denied or nonresponsive. Further, actively ask the state to recognize the “substantial compliance” status and grant provisional licenses to these people, assuring the state that further processing will result in perfection or denial for which the state will be notified.

Thank you for your consideration,

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