

No on Measure AF

Questions and Answers

Where did Measure AF come from?

Measure AF, the "Mendocino Heritage Act," was written by local marijuana growers who collected enough petition signatures to qualify for the November, 2016 ballot. It is 60 pages long. It repeals County Code Chapter 9.31 (Medical Marijuana Cultivation Regulation) and replaces it with a new Chapter 6.22 called "Lawful Cannabis Permits." It also amends the County Zoning Code to add a new Chapter 20.162(inland) and Chapter 20.514(coastal) to provide zoning to allow marijuana cultivation, processing, manufacturing and sales. The entire text is available at https://mendocinoheritageinitiative.files.wordpress.com/2016/03/an-initiative-of-the-people-of-the-county-of-mendo_032216_v7.pdf

What are the problems with Measure AF?

- **It would regulate the marijuana industry but it's written by the marijuana industry itself.**

The cultivation, processing and sale of marijuana are major economic activities but they have created many nuisance and environmental problems. These problems must be controlled by appropriate regulations and enforcement. The decisions about regulation should be made by the Board of Supervisors with consideration for all our citizens, not just marijuana entrepreneurs. The Board of Supervisors enacted the present Chapter 9.31 regulations and is working hard at revised rules. Measure AF would throw out everything the Board of Supervisors has done and instead enact a law written for the convenience of marijuana growers, allowing them to greatly expand operations with no effective limitations.

This is the worst way to make public policy. Laws should be written by the democratically elected representatives of the people, and not by a special interest group that would benefit by a marijuana free-for-all.

- **By replacing the sheriff with a slow and weak civil enforcement process, Measure AF would effectively eliminate any restrictions whatsoever.**

Measure AF says that marijuana operations will require a County permit with environmental standards, but it also says that “No violations of this Chapter shall be subject to criminal enforcement.” [Measure AF, Section 6.22.150(A)(1)]. Instead, various ordinary County departments are required to issue permits and, presumably, issue “administrative citations” for violations. But as long as a grower has applied for a permit, “No enforcement of provisions of this Chapter shall take place against a permit applicant while their application is pending.” [Ibid.] And if a citation is made, the fine is only \$100. After 60 days, the fine can go up to \$1,000. But any citation can be appealed and the “permittee shall be allowed to continue operating during the Appeals process.” [Section 6.22.150(D)(1)] In order to process an appeal, the County must hire a “hearing officer” who is independent of the department that issued the citation [Section 6.22.150(D)(1)(c)], and a hearing officer’s decision can be appealed to a court. The County currently uses a hearing officer procedure for code enforcement cases and it has proven to be extremely slow and expensive, costing the County around \$1,000 per day to hire hearing officers.

This weak scheme for enforcement would instantly be recognized as a joke by marijuana growers. History has shown that the only effective regulation comes from the sheriff, and with the sheriff prohibited from involvement, the permit rules of Measure AF would be a dead letter. Marijuana growers could do whatever they wanted and the public would have no recourse. A new “Green Rush” of would-be growers from outside the county would occur as the word got around that there was no effective enforcement of any rules in Mendocino County.

- **Measure AF would vastly increase the size of commercial marijuana grows and allow them in any zoning district.**

Presently County Code Chapter 9.31 limits marijuana growing to 25 plants per parcel unless a special permit, with many restrictions, is obtained from the sheriff, in which case up to 99 plants could be grown on parcels larger than 10 acres. Measure AF would throw out these limits and instead allow marijuana grows as follows:

2,500 square feet of plant canopy on parcels less than 1 acre

5,000 square feet of plant canopy on parcels of 1 acre to 5 acres

10,000 square feet of plant canopy on parcels of 5 acres to 20 acres

43,560 square feet of plant canopy on parcels larger than 20 acres
[Measure AF, Sections 162.040(B) and 514.040(B)]

But since Measure AF would have no effective enforcement, these limits could be exceeded with impunity.

- **Measure AF would allow marijuana grows too close to neighbors**

The odor from large numbers of marijuana plants annoys or even sickens many people. Yet Measure AF would allow grows to reach as close as 30 feet from property lines and within 100 feet of a neighbor's house that's on "a parcel under separate ownership." [Measure AF, Section 6.22.060(B)(2&3)]. This doesn't protect mobile home parks which have many mobile homes occupying a single legal parcel. For them, there is no setback protection whatsoever because there are no legal parcel boundaries between the homes.

- **Measure AF would reduce or eliminate separations from places where children are present**

Youth and child advocates are extremely concerned that marijuana shouldn't be pushed onto children because it can seriously interfere with their learning and development. That's why current County Code Section 9.31 requires a 1000 foot setback of marijuana grows and dispensaries from any school, park, youth-oriented facility, church, or residential treatment center. Measure AF abolishes this setback requirement from youth-oriented facilities, churches, and residential treatment centers. Measure AF reduces the setback to parks and schools to 600 feet [Measure AF, Section 6.22.060(B)(1)].

- **Measure AF would block neighbors from complaining about marijuana odor**

Measure AF amends County Code Section 10A.13.010 to declare that "The commercial cultivation of cannabis, in accordance with all applicable state and local laws, ordinances and regulations, shall be considered an agricultural operation within the meaning of this Chapter." [Measure AF, Section 3] This means that marijuana grows would be protected by the County "Right to Farm" ordinance, which is designed to block nuisance complaints for impacts like odor.

The “Right to Farm” policy in County Code states: “No existing or future agricultural operation or any of its appurtenances, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs and standards, shall become or be a nuisance, private or public, for adjacent land uses in or about the locality thereof after the same has been in operation for more than three (3) years, when such action was not a nuisance at the time it began; provided that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.” [Mendocino County Code Section 10A.13.020].

- **Measure AF would allow an unlimited number of dispensaries in any commercial zoning**

Measure AF states that the County Health and Human Services Agency “shall” issue permits for marijuana dispensaries. [Measure AF, Section 6.22.090]. Dispensaries would be a “principal permitted use” (meaning they are allowed without the need for discretionary approval) in all commercial zoning. [Measure AF, Sections 162.040(L) and Section 514.040(L)]. As noted above, this means that unlimited numbers of marijuana dispensaries could be placed right next door to a youth-oriented facility, church or residential treatment center, and only 200 yards from schools and parks.

- **Measure AF would authorize butane processing of marijuana to make hash oil in any industrial zone**

Mendocino County is confronting a crisis of fires and explosions caused by the use of butane, a volatile and highly flammable solvent, to make marijuana into hash oil. Incredibly, Measure AF makes processing marijuana with volatile solvents “a principal permitted use in all zoning districts where General Industrial Use is a principal permitted use.” [Measure AF, Sections 162.040(F) and 514.040(F)]. “Volatile solvents” are defined as “explosive gases such as butane, propane, xylene, styrene, gasoline kerosene, O2 or H2, or carcinogens, such as methanol, isopropyl alcohol, methylene chloride, acetone, benzene, toluene, and tricolorethylene.” [Measure AF, Section 6.22.020].

Couldn’t the Board of Supervisors amend Measure AF if it passes?

No--not until June 1, 2018, and then only if amendments are “consistent with and further the purposes and intent of this Ordinance.” [Measure AF, Section 8]. Those “purposes” include recognizing marijuana as “an agricultural product” that the County Right to Farm Ordinance “conserves, protects and encourages.” This language opens the door to a lawsuit to fight any changes to Measure AF that marijuana growers don’t like.

If Measure AF is defeated, will the Board of Supervisors enact an ordinance?

The Board of Supervisors has a draft ordinance that is currently under environmental review for compliance with the California Environmental Quality Act (CEQA). This ordinance, if approved, would amend Chapter 9.31 to allow larger commercial marijuana cultivation in appropriate locations, subject to mandatory inspections to ensure compliance with health, safety and environmental rules. Unlike Measure AF, the proposed County ordinance would try to effectively protect neighbors and youth from harmful impacts. Its permit enforcement would have teeth, unlike the toothless Measure AF. However, if Measure AF passes, it would supersede and overrule any ordinance that the Supervisors might pass.

Does the No on Measure AF Committee support the Supervisors’ proposed tax on marijuana?

The Committee does not take a position on any other ballot measure.

What policies on marijuana does the No on Measure AF Committee advocate?

The Committee takes no position except to urge a “No” vote on Measure AF, and believes that local regulations should be enacted by the Board of Supervisors, not by the marijuana growers’ measure. The Board of Supervisors can be responsive to the needs of the entire community, and can freely amend regulations if circumstances require.

Isn’t marijuana going to be legalized by the State?

The Medical Marijuana Regulation and Safety Act (MMRSA), which was passed by the legislature and went into effect on January 1, 2016, specifically states that a local government permit is needed in addition to a state license. Proposition 64 (the Parker initiative) on the November 2016 ballot, would supersede the MMRSA by legalizing personal use and authorizing commercial cultivation. However, Proposition 64 specifically would specifically “allow local governments to reasonably regulate the cultivation of nonmedical marijuana for personal use by adults 21 years and older.” [Proposition 64, Section 3(m)]. All this means that Mendocino County retains the

obligation to establish local permit rules and zoning that apply to marijuana cultivation, processing, manufacturing and sales.