



COUNTY OF SANTA CRUZ

OFFICE OF THE COUNTY COUNSEL

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January 21, 2014

Agenda Date: January 28, 2014

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

**RE: CONSIDER PROPOSED ORDINANCE RELATING TO THE
CULTIVATION OF MEDICAL MARIJUANA; MAKE CEQA
DETERMINATIONS; AND APPROVE ORDINANCE IN CONCEPT AS
RECOMMENDED BY COUNTY COUNSEL**

Dear Members of the Board:

On December 10, 2013, your Board gave initial consideration to a proposed ordinance relating to the cultivation of medical marijuana. Following public testimony, this Office was directed to return on this date with a revised ordinance. Your Board further directed the Planning Department to evaluate the ordinance for compliance with the Environmental Quality Act. On December 17, 2013, your Board gave additional directions that a process for third-party certification and an increase in the minimum parcel size for cultivation activities in the Residential Agriculture Zone District be included with the proposed ordinance.

Planning staff have evaluated the proposed ordinance and concluded that it will not result in a direct or reasonably foreseeable indirect physical change in the environment pursuant to CEQA Guidelines Section 15060(c)(2), based on a determination that the ordinance would restrict medical marijuana cultivation consistent with existing legal authority. Because the existing baseline of conditions is that medical marijuana cultivation is not legally authorized and the proposed ordinance would specifically ban such activity, the proposed ordinance would result in no direct or reasonably foreseeable indirect physical change or impact upon the environment. There is no substantial evidence to claim that the ordinance would require any existing cultivation activities to close and change the availability of medical marijuana or the way that people obtain it. As a result, any such claim would be speculative.

The proposed ordinance is also categorically exempt under CEQA Guidelines Section 15308 as the ordinance is an action taken by a regulatory agency to enhance the environment by prohibiting rather than authorizing the cultivation of medical marijuana.

Finally, even if adoption of the ordinance were considered to be a project, it would be subject to the "common sense" exception as there is no possibility that its adoption would result in a significant effect on the environment.

IT IS THEREFORE RECOMMENDED that your Board:

1. Take public testimony concerning the proposed medical marijuana cultivation ordinance;
2. Approve the CEQA determination;
3. Adopt in concept the attached Ordinance Relating to the Cultivation of Medical Marijuana;
4. Direct that the Ordinance return on February 11, 2014, for final action.

Very truly yours,

DANA MCRAE COUNTY COUNSEL


By


Rahn Garcia

Chief Deputy County Counsel

Attachments: Notice of Exemption
Ordinance

cc: County Administrative Office
Planning Department

Recommended:




County of Santa Cruz

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PLANNING DEPARTMENT

701 OCEAN STREET, 4TH FLOOR, SANTA CRUZ, CA 95060
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KATHLEEN MOLLOY PREVISICH, PLANNING DIRECTOR

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NOTICE OF EXEMPTION

To: Clerk of the Board
Attn: Tess E. Fitzgerald
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Project Name: Medical Marijuana Cultivation Ordinance

Project Location: Countywide

Assessor Parcel No.: Not Applicable

Project Applicant: County of Santa Cruz

Project Description: The proposed ordinance is intended to prohibit medical marijuana cultivation while granting limited immunity from the enforcement of the prohibition to those medical marijuana cultivation activities that do not violate the restrictions and limitations outlined in the ordinance. The ordinance is also intended to mitigate the negative impacts and secondary effects associated with ongoing medical marijuana cultivation activity including, but not limited to, demands placed on law enforcement and administrative resources; neighborhood disruption; the exposure of children to medical marijuana; robberies; burglaries; assaults; drug trafficking and other violent crimes; and the damage to the natural environment resulting from destructive cultivation activity.

Agency

Approving Project: County of Santa Cruz Board of Supervisors

County Contact: Rahn Garcia Telephone No. (831) 454-2040

Date Completed: January 17, 2014

This is to advise that the County of Santa Cruz Board of Supervisors has approved the above described project on _____ (date) and found the project to be exempt from CEQA under the following criteria:

Exempt status: (check one)

- The proposed activity is not a project under CEQA Guidelines Section 15378.
- The proposed activity is not subject to CEQA as specified under CEQA Guidelines Section 15060(c).
- Ministerial Project** involving only the use of fixed standards or objective measurements without personal judgment.
- Statutory Exemption** other than a Ministerial Project (CEQA Guidelines Section 15260 to 15285).

Specify type:

- Categorical Exemption**

CEQA Guidelines Section 15061(b)(3) - No possibility for a significant effect on the environment.

CEQA Guidelines Section 15308 – Actions by Regulatory Agencies for Protection of the Environment

Reasons why the project is exempt: Enactment of this ordinance would not authorize or permit the cultivation of marijuana. The ordinance establishes a framework within which the County would exercise its discretion in establishing priorities for code enforcement involving marijuana cultivation operations. For the reasons described above, adoption of the ordinance would not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines Section 15060(c)(2)) and it can be seen with certainty that there is no possibility that the enactment of this ordinance would have a significant effect on the environment.

In addition, none of the conditions described in Section 15300.2 apply to this project.

Signature: [Signature] Date: 1/17/14 Title: Environmental Coordinator

**ORDINANCE ADDING NEW CHAPTER 7.126 RELATING
TO THE CULTIVATION OF MEDICAL MARIJUANA**

The Board of Supervisors of Santa Cruz County hereby finds and declares the following:

WHEREAS, in 1992 the voters of the County of Santa Cruz enacted Measure "A", adding Chapter 7.122 to the Santa Cruz County Code which declared support for making marijuana available for medical use; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996").

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere"; and

WHEREAS, the Board of Supervisors added Chapter 7.124 to the Santa Cruz County Code which implemented provisions of Proposition 215 by establishing a medical marijuana identification card program operated by the County; and

WHEREAS, in 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes; and

WHEREAS, Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420; and

WHEREAS, following enactment of Senate Bill 420, Chapter 7.124 was amended to establish local guidelines consistent with the new State law for the possession and cultivation of medical marijuana used by qualified patients and caregivers; and

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes; and

WHEREAS, the county's unique geographic and climatic conditions, which includes ⁰⁷⁴⁹ dense forested areas receiving substantial precipitation, are favorable to marijuana cultivation; and

WHEREAS, Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Proposition 215, Senate Bill 420, the relevant provisions of the Santa Cruz County Code, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, do not provide comprehensive civil regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the unincorporated area of Santa Cruz County can adversely affect the health, safety, and well-being of the county and its residents. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, obnoxious smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated at a location is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place; and

WHEREAS, on May 6, 2013, the California Supreme Court unanimously ruled in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* ("*Inland Empire*"), that California's medical marijuana laws do not preempt local ordinances that ban medical marijuana facilities. The Court found that the local police power derived from Article XI, section 7, of the California Constitution includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders, and that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders"; and

WHEREAS, on December 10, 2013, the Board of Supervisors adopted an ordinance deleting then reenacting Chapter 7.124 of the Santa Cruz County Code, which prohibited medical marijuana businesses, but also granted a limited immunity from enforcement for such businesses that did not violate the restrictions and limitations added by that Chapter; and

WHEREAS, cultivation of any amount of marijuana at locations or premises within six hundred feet of a school or public park, creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants; and

WHEREAS, as recognized by the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of marijuana grown for medical use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the

risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

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WHEREAS, it is the purpose and intent of this chapter to implement State law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with State law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated territory of Santa Cruz County. The intent and purpose of this chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually, collectively, or cooperatively cultivated in any location or premises, in order to protect the public health, safety, and welfare in Santa Cruz County; and

WHEREAS, the limited right of qualified patients and their primary caregivers under state law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this chapter, Santa Cruz County will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the unincorporated area of the County; and

WHEREAS, nothing in this ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State or federal law. No provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the Santa Cruz County District Attorney, the Attorney General of the State of California, or the United States of America.

NOW THEREFORE the Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

The Santa Cruz County Code is hereby amended adding new Chapter 7.126 to read as follows:

Chapter 7.126 Medical Marijuana Cultivation

Sections:

- 7.126.010 Purpose.**
- 7.126.020 Definitions.**
- 7.126.030 Prohibited business activities.**
- 7.126.040 Limited immunity for medical marijuana cultivation business.**
- 7.126.050 No vested or nonconforming rights.**
- 7.126.060 Limited severability.**
- 7.126.070 Enforcement.**
- 7.126.080 No Duty to Enforce.**

7.126.010 Purpose.

The purpose of this Chapter is to prohibit medical marijuana cultivation while granting limited immunity from the enforcement of its prohibition to those medical marijuana cultivation activities that do not violate the restrictions and limitations set forth in this Chapter.

It is also the purpose of this Chapter to mitigate the negative impacts and secondary effects associated with ongoing medical marijuana cultivation activity including, but not limited to, demands placed on law enforcement and administrative resources; neighborhood disruption; the exposure of children to medical marijuana; robberies; burglaries; assaults; drug trafficking and other violent crimes; and the damage to the natural environment resulting from destructive cultivation activity.

This Chapter is not intended to conflict with federal or State law. It is the intention of the County that this Chapter be interpreted to be compatible with federal and State enactments and in furtherance of the public purposes that those enactments encompass.

7.126.020 Definitions.

As used in this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (A) "Building" means any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels, or property of any kind.
- (B) "Cultivation" or "Cultivate" means the planting, growing, harvesting, drying, processing or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including within a fully enclosed and secure building.
- (C) "Enforcing Officer" means the Planning Director or any other peace officer, public official or employee duly authorized to enforce against violations of the County Code.
- (D) "Fence" means a wall or barrier connected by boards, masonry, rails, panels or any other materials for the purpose of enclosing space or separating parcels of land. For purposes of this Chapter, the term "Fence" does not include tarpaulins, scrap material, bushes or hedgerows.
- (E) "Garden canopy" means the net vegetative growth area measured by the combined diameters of individual marijuana plants.
- (F) "Hazardous Materials" means any substance that is "flammable, reactive, corrosive or toxic", as further defined in California Health and Safety Code Sections 25501 and 25503.5, as may be amended.
- (G) "Location" or "Parcel" means that unit of land assigned a unique Assessor's Parcel Number by the County Assessor, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area. Where contiguous legal parcels are under common ownership, such contiguous legal parcels shall be counted as a single "location" or "parcel" for purposes of this Chapter.
- (H) "Manager" means any person to whom a medical marijuana business has delegated discretionary powers to organize, direct, carry on or control its operations. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the business: (1) to hire, select, direct, schedule or assign employees or staff, including volunteers; (2) to acquire facilities, furniture, equipment or supplies other than the occasional replenishment of stock; (3) to disburse funds of the business other than for the receipt

of regularly replaced items of stock; or (4) to make, or participate in making, policy decisions relative to operations of the business. 0752

(I) "Marijuana" shall be construed as defined in California Health and Safety Code Section 11018 and further shall specifically include any product that contains marijuana or a derivative of marijuana.

(J) "Marijuana plant" means any mature or immature marijuana plant, or any marijuana seedling, unless otherwise specifically provided herein.

(K) "Medical marijuana cultivation business" means any location where marijuana is started, planted, cultivated, harvested, dried or processed. Medical marijuana cultivation business shall not include:

(1) A qualified medical marijuana patient or person holding a valid identification card, or their designated primary caregiver, cultivating medical marijuana solely for the patient's personal use on a parcel that includes the residence of the patient or caregiver. The amount of marijuana grown shall not exceed one hundred (100) square feet of total garden canopy, as measured by the combined vegetative growth area and shall be subject to the following limitations:

(a) If taking place outdoors, evidence of cultivation shall not be visible from any public right-of-way; and

(b) If cultivation takes place within a residence or a structure other than a residence: (i) lighting for cultivation purposes shall not exceed 1200 watts unless a written certification is first obtained from a licensed electrician that the cultivation site has all necessary electrical permits required by the California Building Codes to ensure that the growing operations can be carried out safely; (ii) the use of flammable products such as butane or alcohol for cultivation or processing purposes are prohibited; and (iii) exterior evidence of cultivation is prohibited.

(2) A cultivation site granted an exemption by the Planning Director pursuant to Santa Cruz County Code section 13.10.670 (g) as enacted by Ordinance #5090, so long as the area subject to cultivation is not expanded or enlarged beyond what existed at that location on January 1, 2012.

(L) "Outdoor" or "Outdoors" means any location that is not "indoors" within a fully enclosed and secure structure as defined herein.

(M) "Park" means any playground, hiking or riding trail, recreational area, beach, community center or building, historic structure or facility, owned, managed or controlled by any public entity.

(N) "Residence" means a fully enclosed structure, including any attached garage or ancillary structure, used as the primary dwelling unit of a "Person with an identification card"; "Primary caregiver"; or "Qualified patient".

(O) "School" means any licensed preschool or any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

(P) "Structure" means anything constructed or erected which is supported directly or indirectly on the earth, but not including any vehicle.

(Q) "Third-Party Standards and Certification Program" means a form of certification in which a medical marijuana cultivator's claim of conformity with growing and processing standards is validated by a technically competent body other than one controlled by the cultivator. A third-party standards and certification program shall include, at a minimum, the following elements:

(1) monitor compliance with state and local regulations including: (a) zoning, water quality, and building code requirements; (b) grading and riparian regulations; and (c) timber management practices;

(2) certify that the medical marijuana cultivation business either owns or has the consent of the owner(s) to carry out cultivation activities on the property;

(3) monitor the safety of products used in the cultivation process;

(4) certify that the marijuana produced does not contain unacceptable levels of contaminants;

(5) certify compliance with all labor laws and monitor worker safety practices;

(6) certify adequate security plan.

(R) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a street, sidewalk or waterway, including but not limited to a device moved exclusively by human power.

(S) The following words or phrases when used in this Section shall be construed as defined in California Health and Safety Code Sections 1746, 11362.5, 11362.7, and 11834.02:

"Alcoholism or drug abuse recovery or treatment facility"; "Hospice"; "Identification card";

"Person with an identification card"; "Primary caregiver"; and "Qualified patient".

7.126.030 Prohibited business activities.

(A) It is unlawful and shall constitute a public nuisance to cultivate medical marijuana.

(B) The prohibition in Subsection (A), above, includes renting, leasing, or otherwise permitting a medical marijuana cultivation business to occupy or use a location.

7.126.040 Limited immunity for medical marijuana cultivation business.

Notwithstanding the activities prohibited by Section 7.126.030, and notwithstanding that a medical marijuana cultivation business is not and shall not become a permitted use or activity in the County for so long as this Chapter remains in effect, a medical marijuana cultivation business shall not be subject to the enforcement remedies set forth in the Santa Cruz County

Code solely on the basis of: (1) an activity prohibited by Section 7.126.030; and (2) the fact that 0754
medical marijuana cultivation business is not a permitted use or activity in the County, provided
however that, as authorized by California Health and Safety Code Section 11362.83, this limited
immunity is available and may be asserted as an affirmative defense only so long as: (a)
subsections (A) through (O) of this Section 7.126.040 remain in effect in their entirety; and (b)
only if that medical marijuana cultivation business does not violate any of the following:

(A) Every medical marijuana cultivation business is prohibited that is not collectively or
cooperatively cultivating marijuana for medicine: (1) for use among its members or (2) to
provide medicine to a Santa Cruz County medical marijuana business as defined in and operating
under Santa Cruz County Code Chapter 7.124;

(B) Every medical marijuana cultivation business is prohibited that does not operate in a
manner that ensures the security of the crop and safeguards against diversion for non-medical
purposes;

(C) Every medical marijuana cultivation business is prohibited that employs or otherwise
allows a minor unaccompanied by a parent or legal guardian to enter its premises;

(D) Every medical marijuana cultivation business is prohibited where marijuana is visible
from any public right-of-way;

(E) Every medical marijuana cultivation business is prohibited that illuminates any portion of
its premises between the hours of 6:00 p.m. and 9:00 a.m. by lighting that is visible from the
exterior of the premises, except such lighting as is reasonably utilized for the security of the
premises;

(F) Every medical marijuana cultivation business is prohibited unless it is outside of the
urban area defined by both the Urban Services Line and Rural Services Line, located in a zone
district designated as SU (Special Use), TP (Timber Production), CA (Commercial Agriculture),
A (Agriculture), AP (Agriculture Preserve) or RA (Residential Agriculture) by the Santa Cruz
County Zoning Ordinance;

(G) Every medical marijuana cultivation business is prohibited that prints, publishes,
advertises or disseminates in any way or means of communication, or causes to be printed,
published, advertised or disseminated in any way or means of communication, including, but not
limited to the use of the internet, any notice or advertisement with respect to either seeking or
offering the availability of space to cultivate marijuana, regardless of whether the space is within
a structure or outdoors;

(H) Every medical marijuana cultivation business is prohibited that is located within: (1) six
hundred (600) feet from a school; or (2) six hundred (600) feet from a park. The distance
specified in this paragraph shall be the horizontal distance measured in a straight line from the
property line of the school or park, to the closest property line of the lot on which the medical
marijuana cultivation business is located without regard to intervening structures;

(I) Every medical marijuana cultivation business is prohibited that fails to maintain the
following information and thereafter make said information immediately available upon the

request of any law enforcement officer or enforcing officer: (1) the name of the person or business to which the marijuana is supplied; (2) the address of the location to which the marijuana is supplied; (3) written documentation from the owner of the property where the marijuana cultivation takes place that he or she has agreed to the use of the site for cultivation of marijuana; and (4) if the marijuana is being cultivated indoors, a written certification from a licensed electrician that the cultivation location has all necessary electrical permits required by the California Building Codes to ensure that the growing operations can be carried out safely.

(J) Every medical marijuana cultivation business is prohibited that allows the transfer or delivery of marijuana except to a Santa Cruz County medical marijuana business as defined in and operating under Santa Cruz County Code Chapter 7.124. Except as otherwise provided by this subdivision, the distribution, delivery, dispensing, or sale of marijuana by a medical marijuana cultivation business is prohibited;

(K) Every medical marijuana cultivation business is prohibited if:

(1) It is located on a parcel less than one acre in size, unless it is located on a parcel zoned RA (Residential Agriculture) which shall be no less than five acres in size;

(2) The location contains more than ninety-nine (99) marijuana plants; or

(3) If the total garden canopy for any parcel exceeds the following limits:

(a) For a parcel of one acre but less than five acres in size: one thousand (1,000) square feet of garden canopy with all marijuana plants set back at least one hundred (100) feet from any habitable structure located on an adjacent parcel;

(b) For a parcel greater than five acres but less than ten acres in size: two thousand (2,000) square feet of garden canopy with all marijuana plants set back at least two hundred (200) feet from any habitable structure located on an adjacent parcel;

(c) For a parcel greater than ten acres in size: three thousand (3,000) square feet of garden canopy with all marijuana plants set back at least three hundred (300) feet from any habitable structure located on an adjacent parcel.

(L) The cultivation of marijuana outdoors by a medical marijuana cultivation business is prohibited unless the area cultivated is fully enclosed by an opaque fence at least six (6) feet in height. The fence must be adequately secured by a locked gate to prevent unauthorized entry. Evidence of cultivation shall not be visible from a public right-of-way;

(M) No person owning, leasing, occupying, or having charge or possession of any parcel within the county shall cause, allow, suffer, or permit such premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this Chapter;

(N) The cultivation of marijuana shall be carried out in compliance with all requirements of Title 16 (entitled "Environmental and Resource Protection") of the Santa Cruz County Code and those applicable provisions of Title 7 (entitled "Health and Safety") of the Santa Cruz County Code relating to water used in the commercial cultivation of marijuana including, but not limited to Chapter 7.69 entitled "Water Conservation"; Chapter 7.70 entitled "Water Wells"; Chapter 7.71 entitled "Water Systems"; and Chapter 7.73 entitled "Individual Water Wells."

(O) A medical marijuana cultivation business shall only operate if it is subject to a third-party standards and certification program.

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The limited immunity provided by this Section shall not be available to and shall not be asserted as an affirmative defense to any violation of law except as expressly set forth in this Chapter. Further, nothing contained in this limited immunity is intended to provide or shall be asserted as a defense to a claim for violation of law brought by any county, State, or federal governmental authority. Finally, the limited immunity provided by this Section shall be available and may be asserted only so long as each and every provision and clause of subsections (A) through (O) and of this Section 7.126.040 remain valid, effective and operative.

7.126.050 No vested or nonconforming rights.

(A) This Chapter prohibits medical marijuana cultivation businesses. Neither this Chapter, nor any other provision of this Code or action, failure to act, statement, representation, certificate, approval, or permit issued by the county or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any medical marijuana cultivation business. Any immunity or benefit conferred by this Chapter shall expire permanently and in full upon repeal of this Chapter.

(B) All existing medical marijuana cultivation businesses must immediately cease operation; except that any medical marijuana cultivation business that that does not violate any of the medical marijuana cultivation business prohibitions described in Section 7.126.040, Limited Immunity, may continue to operate but only so long as subsections (A) through (O) of Section 7.126.040 remain valid, effective and operative.

7.126.060 Limited severability.

(A) If any provision or clause of Sections 7.126.040 and/or 7.126.070 of this Chapter are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall invalidate every other provision, clause and application of the invalidated Section, and to this end the provisions and clauses of Section 7.126.040 and 7.126.070 of this Chapter are declared to be inseverable.

(B) Except for the inseverability of the provisions, clauses and applications of Sections 7.126.040 and/or 7.126.070 on the terms set forth hereinabove, if any other provision or clause of this Chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect those provisions, clauses or applications of this Chapter which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this Chapter other than Sections 7.126.040 and/or 7.126.070 are declared to be severable.

7.126.070 Enforcement.

(A) Enforcement of this Chapter may be pursued by one or more of those alternatives set forth in subsection (A) of County Code section 19.01.030. It shall be a separate offense for each and every day during any portion of which any violation of, or failure to comply with, any provision of this Chapter is committed, continued or permitted.

(B) Whenever the Enforcing Officer determines that a public nuisance as defined in this Chapter exists at any location within the unincorporated area of Santa Cruz County, he or she is⁰⁷⁵⁷ authorized to issue a Notice of Violation pursuant to County Code section 1.12.070, except that the violator shall be provided with notice of the opportunity to remedy the violation within seven (7) calendar days without civil penalties.

(C) In the event a court of competent jurisdiction preliminarily or permanently enjoins, or holds to be unconstitutional or otherwise invalid, any enforcement remedy provided for in this Section, then the remainder of the enforcement remedies provided for by this Section shall remain in full force and effect.

7.126.080 No Duty to Enforce.

Nothing in this Chapter shall be construed as imposing on the Enforcing Officer or the County of Santa Cruz any duty to issue a notice of violation, nor to abate any unlawful marijuana business activity or cultivation, nor to take any other action with regard to any unlawful marijuana business activity or cultivation, and neither the Enforcing Officer nor the county shall be held liable for failure to issue an order to abate any unlawful marijuana business activity or cultivation, nor for failure to abate any unlawful marijuana business activity or cultivation, nor for failure to take any other action with regard to any unlawful marijuana business activity or cultivation.

SECTION II

This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this ____ day of _____, 2014, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chairperson of the
Board of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:


County Counsel

cc: County Administrative Office
Planning Director



Community Prevention Partners of Santa Cruz County
A Drug Free Communities Coalition

**BRIDGING DRUG AND ALCOHOL PREVENTION
EFFORTS FOR A SAFER COMMUNITY**

Community Prevention Partners Recommendations for Cultivation of Medical Marijuana

Community Prevention Partners:

Community Prevention Partners (CPP) is an alcohol and other drug prevention coalition of 164 community members and local organizations. CPP's mission is to build a diverse community that promotes health and well being, and enhances youth and community safety through sustainable alcohol and drug prevention efforts.

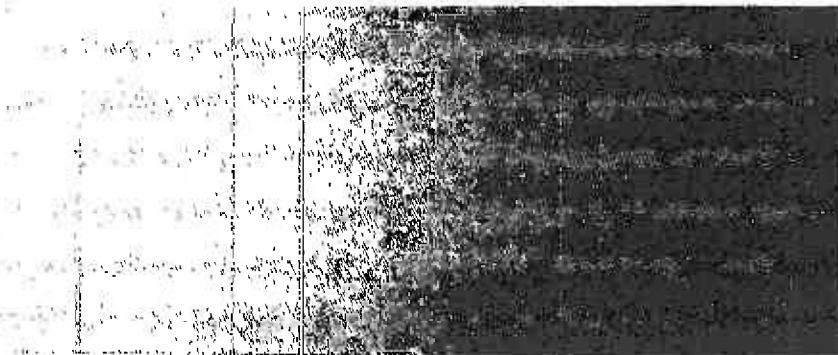
Community Prevention Partners wants to ensure that the county Ordinance for Cultivation of Medical Marijuana will maintain community health and safety.

The CPP recommends that the following regulatory guidelines be adopted-

- Prohibit medical marijuana cultivation businesses that utilize individuals under the age of 21 for paid or unpaid work
- Prohibit any cultivation of medical marijuana in residentially zoned areas that is not in a secure and non-habitable space
- Prohibit outdoor and indoor commercial and non-commercial cultivation of medical marijuana within 600 feet of a school or playground drawn from nearest plant to property line of facility



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January 28, 2014

Board of Supervisors
Santa Cruz County
701 Ocean St.
Santa Cruz, CA 95060

RE: Agenda Item #65

Dear Members of the Board,

The Santa Cruz County Farm Bureau has been asked to participate in the discussion of increased regulation surrounding cultivation medical marijuana. The Farm Bureau felt it is an important enough issue to provide technical expertise in forming those regulations.

Additional regulations are necessary to address a growing trend of conflict in urban and rural neighborhoods, increased environmental threats to water and wildlife and public safety surrounding this industry. As a member of the community, the Farm Bureau supports implementing additional oversight, constraints and confines on this activity.

Regardless of the final details of the Ordinance, Farm Bureau has offered that a legitimate 3rd party Certification System, committed to upholding approved ordinances and environmental laws, could be helpful by providing additional industry oversight, supported fiscally by the industry. This Certification must be free from conflict of interest to offer any real benefit to the public or the industry. We have appended language to address conflict of interest for inclusion into the ordinance.

Though 3rd party Certification systems will only regulate those who wish to comply with the requirements, we believe it is a step in the right direction. This additional layer will not replace the need for enforcement, but may help reduce the number of enforcement cases by encouraging higher standards of compliance.

This Board and the people of this county have been saddled with addressing this topic, which has become a statewide problem. Farm Bureau continues to support the efforts of the Board, and will continue to be available for technical expertise in constructing policy.

Sincerely,

Cynthia Mathiesen, President
Santa Cruz County Farm Bureau

Enclosure
CM/mg

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Santa Cruz County Farm Bureau
January 28, 2014

Prevent conflicts of interest by:

- (i) Not certifying a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;
- (ii) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;
- (iii) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected; and
- (iv) Requiring all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report.

Alicia Murillo

From: cdbosmail@co.santa-cruz.ca.us
Sent: Monday, January 27, 2014 10:01 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 1/28/2014

Item Number : 65

Name : rich mcinnis

Email : seabreezetavern@gmail.com

Address : Not Supplied

Phone : Not Supplied

Comments :

Memo from: Santa Cruz County Property Rights Association
Date: 1/27/2014

Attn: County Supervisors,

I represent the members of the Santa Cruz County Property Rights Association and we represent the property owners in the county.

We would like to address the upcoming vote on item #64 or the medical marijuana cultivation ordinance for district two, and #65 or the medical marijuana cultivation ordinance in all of the county.

In agenda #65 - item J, it seems that the county wants the supply of medical marijuana to be grown in the county in a closed loop system, but this ordinance is very restrictive on where it can be grown. By forcing patients, caregivers, co-ops, and grow-ops who currently grow outdoors to stop growing due to parcel location, lot size, and or new zoning restrictions, they will be forced to buy their own medicine at a dispensary and or make room within their residences to grow indoors. This seems to be creating a scenario where supply will not be able to meet current demand and costs for all patients medicine will rise due to the increased demand for a smaller supply. This will also force more indoor growing of marijuana and further increase the cost to grow due to the high electrical costs incurred generating a sun like environment so the plants can grow and bloom.

Why does it seem that Santa Cruz County is going backwards and not forwards on this issue, we should be showing compassion for our friends and neighbors utilizing medical marijuana to treat a medical condition or illness that only medical marijuana can improve, especially by our county supervisors when enacting laws that will ultimately discriminate against these people by making it extremely difficult or impossible to grow on their own property, and more expensive to attain their medication as well. That's not compassion!

So due to the language in the board's agenda addressing legal challenges below;

Regarding public hearing items: If any person challenges an action taken on the foregoing matter(s) in court, they may be limited to raising only those issues raised at the public hearing described in this notice or in written correspondence delivered to the Board of Supervisors at or prior to the public hearing.

So rather than be specific and potentially lose some legal rights to challenge all aspects of these ordinances in

court, we have concerns with all aspects of these ordinances and any restrictions that will affect our members' abilities to utilize their properties due to these ordinances' implementation.

The Santa Cruz County Property Rights Association hereby retains the right to seek relief in the courts to stop the implementation of these ordinances should they ultimately contain any language or legal restrictions affecting our member's property rights in the county.

Sincerely,

Rich McInnis
President and Member
Santa Cruz County Property Rights Association



January 27, 2014

Via email

Santa Cruz Board of Supervisors
701 Ocean Street, Room 500
Santa Cruz, CA 95065

Re: Proposed Ordinance Relating to the Cultivation of Medical Marijuana

Dear Members of the Board:

I write on behalf of the ACLU of Northern California to express our concerns about some of the aspects of your new proposed medical marijuana regulatory ordinance.

By way of background, the ACLU and I represented the City and County of Santa Cruz and the Women's Alliance for Medical Marijuana (WAMM) in federal court for many years, as co-counsel with County Counsel, Professor Jerry Uelman and local attorney Ben Rice. I believe the federal judge in that case found our legal arguments challenging the DEA's enforcement practices all the more persuasive because WAMM and the City and County were working so cooperatively and effectively together and because WAMM had an impeccable track record and credentials. While direct causation is difficult to prove definitively, we believe that the Santa Cruz-WAMM litigation was the catalyst for the so-called Ogden memo several years ago which led eventually to the latest policy pronouncement from the federal Department of Justice indicating that they will not challenge state medical marijuana laws or broader tax and regulate schemes like the new laws enacted by voter initiatives in Colorado and Washington State. All of which is to say that the ACLU pays very close attention to Santa Cruz medical marijuana policies, because we see them as a model for other jurisdictions to adopt and as having broad impact far beyond Santa Cruz County.

We were therefore very troubled to see the new proposed cultivation ordinance. We are concerned that the new ordinance will severely undermine, and perhaps render inoperable, your excellent medical marijuana dispensary rules, developed over several years with input from numerous patients, doctors, advocates, attorneys and other experts, including the ACLU. If the cultivation rules you put in place are too restrictive, there will simply not be enough marijuana to supply the patients who rely upon the distributors the County has allowed to operate thus far.

We are particularly concerned with the requirement in section 7.126.040(I)(3) that property owners submit in writing a declaration that they have agreed to allow cultivation on their property. Because medical marijuana activity remains illegal under federal law, this admission could result in federal

MICHELLE A. WELSH, CO-EXECUTIVE DIRECTOR | DENNIS MCMAHON, AJAY KRISHNAN, FARAH BRELM, ALLEN ASCH, CHIEF OF COUNSEL | KENNETH J. SUGARMAN, SECRETARY/TREASURER
ABDI SULTANI, EXECUTIVE DIRECTOR | NATASHA MINSKER, ASSOCIATE DIRECTOR | CHERI BRYANT, FINANCIAL DIRECTOR | SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR | REBECCA
FARMER, COMMUNICATIONS DIRECTOR | TALAN SCHLOSSER, LEGAL DIRECTOR | NOVELLA COLEMAN, MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, LINNEA NELSON, MICHAEL RISHER,
JORY STEELE, STAFF ATTORNEY | EVANS PILLUDA BURLINGAME, ALLEN HOPPER, NICOLE A. OZER, JUDITH W. WOODS | STEPHEN V. BOMSE, CLERICAL COUNSEL

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do the same thing. *In re Portnoy*, 21 Cal. 2d 237, 239-40 (1942). The Court therefore invalidated the local ordinance, even though its prohibitions were somewhat broader than the state law and “the control of gambling activities is a matter concerning which local governments possess power to enact and enforce local regulations not in conflict with general law.” *See id.* at 239-42; *see also, e.g., In re Mingo*, 190 Cal. 769, 772-74 (1923) (preempting local liquor law because it duplicated state law). *See generally Pipoly v Benson*, 20 Cal. 2d 366, 370-71 (1942) (discussing duplication preemption).

Health and Safety Code § 11358 has long banned marijuana cultivation and processing:

Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided by law [is guilty of a crime].

The proposed ordinance here purports to prohibit precisely the same conduct. Section 7.126.030 makes it “unlawful” to “cultivate medical marijuana.” While “medical marijuana” is not defined in the ordinance, section 7.126.20(B) defines cultivation to mean “the planting, growing, harvesting drying processing or storage of one or more marijuana plants or any part thereof, in any location, indoor or outdoor including within a fully enclosed and secure building.” Section 7.126.20(I) further provides that “marijuana shall be construed as defined in California Health and Safety Code 11018 and further shall specifically include any product that contains marijuana or is a derivative of marijuana.”

We also note that while it appears the Board’s intent may have been to exempt small personal grows by individual patients, the actual wording of the ordinance fails to provide even this limited exemption. Section 7.126.020(K) excludes individual patients cultivating 100 square feet or less of total garden canopy from the definition of “medical marijuana business.” But section 7.126.030 makes it “unlawful” to “cultivate medical marijuana,” and then section 7.126.040 exempts only “medical marijuana businesses” which comply with the ensuing regulations. So the plain language of the ordinance completely bans cultivation by anyone other than those meeting the definition of “medical marijuana businesses,” including the individual patients with 100 square feet or less of total canopy described in section 7.126.020(K). While this appears to be a drafting oversight, the effect is a complete ban— without even a limited affirmative defense— of any cultivation by those who are NOT “medical marijuana businesses.”

The plain language of the statute and the ordinance thus show that the proposed ordinance’s prohibition, with its broad definition of “cultivation,” prohibits precisely the same conduct as does § 11358: growing, harvesting, drying, and processing marijuana. It therefore duplicates state law prohibiting marijuana cultivation and is very likely preempted by state law.

Moreover, the proposed ordinance is likely also preempted by the Compassionate Use Act³ (CUA) and the Medical Marijuana Program⁴ (MMP). Courts must presume that the voters who passed an initiative were “aware of existing related laws” and intend to “maintain a consistent body of rules.”⁵ Thus, the criminal-defense lawyers who drafted, and the voters who passed, the CUA are presumed to have known both that there were no local prohibitions on marijuana cultivation and that there

³ § 11362.5

⁴ § 11362.7 *et seq.*

⁵ *People v. Bunyard*, 45 Cal. 3d 1189, 1238 (1988); *People v. Weidert*, 39 Cal.3d 836, 844 (1985) (“The enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted. This principle applies to legislation enacted by initiative.”) (internal citations omitted).

dispensaries or even the sale or distribution of medical marijuana; they do, however, expressly permit the cultivation of medical marijuana, just as they permit its possession and use, as discussed above. Further, “the MMP expressly recognizes local authority to ‘regulate’ medical marijuana” dispensaries, showing a legislative intent not to preempt bans on them. *Id.* at 760 (citing §§ 11362.768 (f), (g), 11362.83). Nothing in the MMP indicates any analogous intent to allow local bans on the cultivation of medical marijuana. To the contrary, the MMP expressly provides that patients and caregivers “may” cultivate and possess certain amounts of marijuana and only allows local governments to “retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to *exceed* the[se] state limits.” § 11362.77(c) (emphasis added). This does not authorize a local government to enact a law limiting patients to quantities *less* than those set by the MMP, much less to enact a total ban.

One California Court of Appeal has upheld a local government’s ban of marijuana cultivation. *Maral v City of Live Oak*, 221 Cal. App. 4th 975, 164 Cal. Rptr. 3d 804 (3rd Dist. No. C071822, Nov. 26, 2013). The ACLU is requesting that the Supreme Court depublish that decision.

In sum, the ACLU is very concerned about the proposed ordinance’s requirement that persons wishing to cultivate medical marijuana must obtain written documents that essentially require property owners and electricians to incriminate themselves and subject themselves to federal criminal prosecution and forfeiture of their property. We are also concerned that the structure of the proposed ordinance, by first completely banning cultivation of marijuana, then creating a limited affirmative defense, may be struck down as preempted by state law. We therefore urge the Board to postpone voting on the proposed ordinance and to amend it to address these concerns

Respectfully Submitted,

Allen Hopper
Criminal Justice and Drug Policy Director
ACLU of California

Alicia Murillo

From: cbdbosmail@co.santa-cruz.ca.us
Sent: Monday, January 27, 2014 9:59 PM
To: CBD BOSMAIL
Subject: Agenda Comments

Meeting Date : 1/28/2014

Item Number : 64

Name : rich mcinnis

Email : seabreezetavern@gmail.com

Address : Not Supplied

Phone : Not Supplied

Comments :

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Date: 1/27/2014

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President and Member
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