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Edcgov.us Mail - Amendments To Zoning Ordinance Section 130.14.260

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Julie Saylor <julie.saylor@edcgov.us>

Amendments To Zoning Ordinance Section 130.14.260

1 message

Dale Schafer <daleschaferlaw@gmail.com>

Thu, Mar 19, 2020 at 2:15 PM

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Attached please find our position statement regarding the amendments proposed to Zoning Ordinance Section 130.14.260.

Thank you

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LTR to Planning Commission Re_ Medical Cannabis Ordinance.pdf
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March 19, 2020

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Julie Saylor
Clerk of the Planning Commission
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SENT VIA EMAIL

Re: Amendments To Zoning Ordinance Section 130.14.260

Dear Sir/Madam,

These are very uncertain times with the COVID-19 virus lurking and there exists the possibility that the public hearing, on the above-referenced cannabis ordinance changes, will not go forward in the usual public forum. It is my hope that a way can be found to address the legitimate concerns of responsible medical cannabis patients in El Dorado County and allow enforcement to move forward. Please accept this letter as my public statement concerning the proposed changes to the county's personal medical cultivation ordinance.

Medical cannabis patients have a longstanding and trusted relationship with the Board Of Supervisors. Responsible patients worked with prior Supervisors to craft what has been known as Ordinance 5,000. Under the current code sections concerning personal medical cannabis cultivation, patients with a physician recommendation, or a cannabis caregiver [1], are allowed to cultivate up to 200 square feet of flowering canopy. Further, two or three patients, or a

caregiver, are allowed to cultivate 400 or 600 square feet respectively, on designated parcels. These code sections have been in place, and apparently working for responsible patients or caregivers, for years. The murder of Deputy Ishmael has changed all things cannabis in El Dorado County.

It is apparent from reading the proposed changes to the county cannabis cultivation code sections that simplicity is the goal. State law, as passed by Proposition 64 in 2016, allows six (6) cannabis plants to be cultivated by an adult 21 or over per residence. State medical cannabis laws, specifically Health & Safety Code section 11362.77 [2], provide for a medical cannabis patient to cultivate six (6) flowering OR twelve (12) immature plants per patient. Local jurisdictions are authorized to establish guidelines that exceed these numbers. Further, a physician can recommend an increase in these numbers, but ultimately, the patient's needs are what would control. What is being proposed is an elimination of any distinction between adult and medical cultivation and restricting plant numbers to six (6) per residence. Although a set number of plants will make it easier for law enforcement to determine if a cannabis garden is in compliance, there are legitimate, responsible medical cannabis patients that require more plant numbers to meet their reasonable cannabis needs. A compromise would seem in order.

Requirements for state commercial licensing, where medical cannabis patients are concerned, are defined in Business and Professions Code 26033 [3]. It is clear that a qualified patient who is cultivating for their own personal medical needs are exempt from state commercial cannabis license requirements. Additionally, legitimate caregivers may provide for up to five (5) qualified medical patients and be exempt from the requirement of state commercial cannabis licensing. Further, H & S Code 11362.77, supra, gives counties and cities the legal right and power to enact local guidelines that exceed the 6 flowering plant limit outlined in that code section.

It is my experience that many, if not most, legitimate medical cannabis patients are able to meet their needs with six (6) outdoor, full sun cannabis plants. However, there are patients that cultivate cannabis cultivars, or cultivation techniques, that do not produce enough cannabis flowers from six (6) plants to meet their needs and therefore, additional plants are grown, within the 200 square foot allowance. I would urge the Planning Commission to consider an alternative of six (6) plants OR 200 square feet of flowering canopy if additional plants are needed. Additionally, I would urge the Commission to consider allowing up to three (3) patients, or a caregiver, to cultivate on a parcel under the present parcel zones listed in the personal medical cannabis cultivation standards. I would also urge the Commission to consider a process to apply for a waiver of these cultivation requirements that would allow input from recommending physicians and advise any government personnel investigating a parcel where a waiver is in place. Because of the sensitive nature of cannabis cultivation, especially under federal law, the specifics of any parcel with a waiver could be exempted from official requests for public information.

The murder of Deputy Ishmael has hit our entire community very hard, but nothing compared to his family and the law enforcement community. The medical cannabis community is particularly troubled since Deputy Ishmael was led to believe he was investigating a theft from a legitimate medical cannabis garden. The criminal actions of the property owner and the cartel enforcers are being prosecuted and let's hope the system effectively deals with all of them. The entire county is encouraging effective enforcement of ALL laws that are broken during the illegal cultivation of cannabis. The medical cannabis community would like to see enforcement that affords legitimate patients the cannabis they need for their medical conditions. It is hoped that an effective county code can be crafted that accomplishes both.

Respectively submitted:

Dale Schafer Esq
Attorney at Law

[1]Health and Safety Code Section 11362.7

(d) "Primary caregiver" means the individual, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that patient, and may include any of the following:

(1) In a case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01

(commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Section 6922, 7002, 7050, or 7120 of the Family Code.

(f) **“Qualified patient” means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.**

[2] Health and Safety Code Section 11362.77

(a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient

(b) If a qualified patient or primary caregiver has a doctor s recommendation that this quantity does not meet the qualified patient s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient s needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

[3] Business and Professions Code 26033

(a) **A qualified patient**, as defined in Section 11362.7 of the Health and Safety Code, who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not thereby engaged in commercial cannabis activity and **is therefore exempt from the licensure requirements** of this division.

(b) **A primary caregiver** who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code, **is exempt from the licensure requirements** of this division.

PC 3.26.20



Item #3
Julie Saylor <julie.saylor@edcgov.us>

2 pages

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1 message

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Thu, Mar 19, 2020 at 3:01 PM

To The El Dorado County Planning Commissioners,

I am writing today to address the proposed changes to El Dorado County's personal cannabis cultivation ordinance. I support the proposed changes as they relate to recreational cannabis cultivation and to medical cannabis cultivation for parcels sized less than 5 acres, parcels where medical cannabis cultivation is not currently allowed.

However, I believe that El Dorado County's current ordinance allowing cultivation of 200, 400, and 600 square feet of medical cannabis for parcels sized five acres or larger should remain unchanged. El Dorado County has an opportunity to show compassion and allow parcels larger than five acres to support more than one patient.

A somewhat overlooked clause in current California law allows a small collective supporting up to five patients. A primary caregiver (or a collective) must operate within the following confines when acting without a state license:

1. 1. Cultivation, possession, storage, manufacture, transportation, donation, or provision of cannabis must be exclusively for the personal medical purposes of no more than five specified qualified patients for whom the caregiver is the primary caregiver. (B&P section 26033(b));
2. 2. The caregiver cannot receive remuneration for these activities other than for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use cannabis, or for payment for out-of-pocket expenses incurred in providing those services. (B&P section 26033(b), H&S Code section 11362.765(c));
3. 3. The caregiver cannot possess more than eight ounces of dried cannabis per qualified patient unless a physician's recommendation or local guidelines allows amounts in excess of this limit. (H&S Code section 11362.77(a)-(c)); and
4. 4. The caregiver cannot maintain more than six mature or twelve immature cannabis plants per qualified patient unless a physician's recommendation or local guidelines allows amounts in excess of this limit. (H&S Code section 11362.77(a)-(c)).

I hope that you will allow caregivers with parcels larger than 5 acres to continue to support a few other patients. A garden of 200, 400 or 600 square feet would certainly not be considered "unlimited".

Thank you for your consideration.

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Lynell Phillips

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