



April 16, 2020

To: El Dorado County Board of Supervisors
Re: Cannabis Ordinance

Dear Supervisors,

We have reviewed the presentation made to the El Dorado Planning Commission by County Counsel Breann Moebius concerning the legal status of medical cannabis cultivation in California. This is an admittedly confusing area of rapidly changing law over the last twenty years.

In her presentation, Ms. Moebius stated that current law limits personal medical cultivation of cannabis to six plants per person and per residence. **While it is true that California law does indeed limit nonmedical personal cultivation to six plants, we believe that County Counsel was in error in stating that the same limitation applied to personal medical cultivation.**

In support of this position, we offer the following:

Prop. 64, the Adult Use of Marijuana Act, ("AUMA"), specifically distinguished between medical and nonmedical cannabis. The Proposition added B&P §26000(a) which reads:

(a) The purpose and intent of this division is to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of nonmedical marijuana and marijuana products for adults 21 years of age and over.

AUMA provided as follows:

SECTION 3. PURPOSE AND INTENT.

The purpose of the Adult Use of Marijuana Act is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana.

AUMA added Health & Safety Code §11362.1(a)(3) which affirmatively states it is lawful for a person 21 and older to cultivate up to six plants. **Nothing in the section states it is illegal to grow in excess of six plants. This is dealt with in another section, as will be explained below.**

AUMA similarly added §11362.2 to the Code to place limits on 11362.1(a)(3) cultivation. The fact that this exception for up to six plants, and the restrictions placed thereupon, was intended for nonmedical personal cultivation is further supported by §11362.2(b)(4), also added by AUMA, which provides that the restrictions on the cultivation allowed under 11362.1(a)(3) are repealed “upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law.”

Also consistent with these AUMA provisions being limited to personal nonmedical cultivation is the fact that §11362.1 applies only to persons 21 and older, while the Compassionate Use Act does not limit personal medical cultivation to those 21 and older. This is further reflected in one of the stated purposes of AUMA: “(n) Deny access to marijuana by persons younger than 21 years old who are not medical marijuana patients.

In addition, AUMA added Health & Safety Code §11362.45, which states as follows:

Nothing in section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt:
(i) Laws pertaining to the Compassionate Use Act of 1996 [Prop. 215, which legalized the use and cultivation of medical marijuana in California].

AUMA specifically addressed medical cannabis in Section 5, where it placed no new limits or attempted to change established law regarding personal medical cultivation.

CURRENT STATE LAW

Health & Safety Code §11358 currently prohibits cultivation of any plants whatsoever. Interestingly, it is silent on both the six legal nonmedical plants allowed in §11362.1(a)(3), as well as regarding the personal medical cultivation allowed in §11362.5.

H&S §11362.1(a)(3) creates an exemption to §11358 for nonmedical cultivation of up to six plants per person/residence.

Similarly, H&S §11362.5 creates an exemption to §11358 for a valid patient to cultivate a number of plants reasonably related to current medical need. See *People v. Kelly*, 47 Cal.4th 1008, 1049 (2010).

Furthermore, the Kelly court held that the 6 mature/12 immature plant language in H&S §11362.77, which was specifically relied upon by County Counsel, was an unconstitutional amendment of the Compassionate Use Act of 1996, codified as §11362.5. It is now only applicable to prevent the arrest of a person who has both a state medical cannabis ID and is within the 6/12 plant limit. As the Supreme Court has explained, a person cultivating more than six plants may be arrested, but may still use the

Compassionate Use Act to establish they were cultivating an amount reasonably related to their medical need and, as such, cultivating legally.

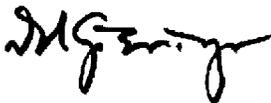
Given this, we ask that the Board of Supervisors not pass the ordinance before them, which will trample on the rights of medical marijuana patients in El Dorado county. We have heard from several patients in the county who are concerned that they will be unable to grow an adequate amount of cannabis to meet their medical needs under the new ordinance. AUMA's aim was to expand on the rights of adults to use and cultivate cannabis, not to impinge on patients' rights to cultivate an adequate supply of medical cannabis for their own use. There is no need to use Prop. 64/AUMA as a reason to undo the ordinance currently in place in El Dorado County.

Our office is always available for consultation on these matters.

Sincerely,



William Panzer
Legal Director, Cal NORML
Co-author, Prop. 215



Dale Gieringer
Director, California NORML
Co-author, Prop. 215

cc: Breann Moebius, County Counsel



EDC COB <edc.cob@edcgov.us>

Fwd: Proposed El Dorado Cannabis Ordinance Does Not Comport With State Law

2 messages

Lori Parlin <lori.parlin@edcgov.us>
To: EDC COB <edc.cob@edcgov.us>

Fri, Apr 17, 2020 at 6:50 AM

The attached was received by all 5 BOS offices. Please attach to 4-21-20 agenda item #25.

Lori Parlin

El Dorado County District IV Supervisor

Phone: (530) 621-6513

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----- Forwarded message -----

From: **Ellen Komp, Cal NORML** <ellen@canorml.org>

Date: Thu, Apr 16, 2020 at 11:46 AM

Subject: Proposed El Dorado Cannabis Ordinance Does Not Comport With State Law

To: <bosone@edcgov.us>, <bostwo@edcgov.us>, <bosthree@edcgov.us>, <bosfour@edcgov.us>, <bosfive@edcgov.us>

Cc: <breann.moebius@edcgov.us>, Dale Gieringer <dale@canorml.org>, William Panzer <wgpanzer@earthlink.net>

Dear Supervisors,

I am attaching a letter from Cal NORML's legal director and executive director regarding the cannabis ordinance you are scheduled to hear at your 4/21 meeting.

In addition to the issues raised in the letter, we have heard from members in El Dorado who are troubled about the county passing this ordinance at this time, when people are unable to participate in meetings except by phone or internet, both of which are not always reliable in your county. One member told me he tried to call in to the planning commission meeting regarding this ordinance, but was unable to get his question heard.

Our office is always available for consultation on these matters.

Ellen Komp
Deputy Director
California NORML
www.CaNORML.org
415-563-5858

Join CalNORML and help fight for our rights!
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CaINORMLletter.pdf

4/17/2020

Edcgov.us Mail - Fwd: Proposed El Dorado Cannabis Ordinance Does Not Comport With State Law

229K

EDC COB <edc.cob@edcgov.us>
To: Lori Parlin <lori.parlin@edcgov.us>

Fri, Apr 17, 2020 at 7:24 AM

Will do thanks Kim

[Quoted text hidden]

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Thank you. Appropriate public comment provided for upcoming agenda items will be added to the corresponding file.

Office of the Clerk of the Board
El Dorado County
330 Fair Lane, Placerville, CA 95667
530-621-5390

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4/17/2020

Edcgov.us Mail - Fwd: Amendments to Ordinance 5067 [Cannabis Cultivation]

Public Comment #25



EDC COB <edc.cob@edcgov.us>

Fwd: Amendments to Ordinance 5067 [Cannabis Cultivation]

1 message

Lori Parlin <lori.parlin@edcgov.us>
To: EDC COB <edc.cob@edcgov.us>

Fri, Apr 17, 2020 at 8:02 AM

Good morning! This email was received by all 5 BOS offices. Please add to the public record for 4-21-20 agenda item #25.

Thank you,

Lori Parlin

El Dorado County District IV Supervisor

Phone: (530) 621-6513

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----- Forwarded message -----

From: **mitch and sue fadel** <mgfadelsg@hotmail.com>

Date: Tue, Apr 14, 2020 at 11:49 AM

Subject: Amendments to Ordinance 5067 [Cannabis Cultivation]

To: bosone@edcgov.us <bosone@edcgov.us>, bostwo@edcgov.us <bostwo@edcgov.us>, bosthree@edcgov.us <bosthree@edcgov.us>, bosfour@edcgov.us <bosfour@edcgov.us>, bosfive@edcgov.us <bosfive@edcgov.us>

Good morning Supervisors,

As acting El Dorado County Director of the American Alliance for Medical Cannabis, a medical cannabis patient advocacy group, on behalf of the legitimate medical cannabis patients of this county, in all fairness to both the community as a whole as well as the patients, I find it necessary to weigh in on the proposed amendments to the cannabis cultivation ordinance.

I have expressed my concerns to the planning commission in both an email, as well as oral comments in regards to the proposed draft amendments of ordinance 5067. Over some fifteen years, I have enjoyed the privilege of engaging with county staff and cannabis patients in seeking a comprehensive cultivation ordinance that was fair to both patients as well as to the whole community. As the cannabis laws in California have continued to change, I understand the necessity of modifications to ord. 5067 due to the changing landscape of the cannabis laws. The one thing that has not changed, is the Compassionate Use Act of 1996 which stands as rule of law. Compassion for the medicinal needs of patients is something, we in El Dorado County have been able to achieve better than any other county in the state. Unfortunately, those good intentions have been misused by many for criminal profit under the guise of medical cannabis. The years of hard work establishing a model for all of California, has been blemished by profiteers that have no regard to the law and cut throat criminals who have caused the tragic loss of a deputy trying to defend an alleged medical cannabis garden from robbery. We are now are faced with the dilemma of enforcement against dangerous elements within our county and still provide the compassion for medical cannabis gardens.

Initially, when I was notified by county staff that there was proposed amendments to the cultivation ordinance, based on changes to California law, I accepted that without question and prepared to notify patients before planting season. After discussing these changes with fellow advocates and legal authorities, it became clear there was some confusion as to the validity of the proposed changes by county staff. There was much public comment to the planning staff to refute the changes and it led me to further research

clarity to the law . I have reviewed the planning hearing meeting video to better understand how county staff came to the conclusions they were advising the planning commission on but I have not found the legal basis to the changes. It seems that the one large change was to lump cannabis cultivation into a single category without differentiating between recreational and medical usage. In essence, staff chose to mix apples with oranges and treat them as one. The state laws that govern cultivation of recreational cannabis would now apply to either recreation or medical cannabis. For the sake of enforcement, that seems to make sense and makes determination of compliance in the field much easier based on satellite imagery. The only problem I can see with this proposal, is I have been unable to define the California law dictating justification of these changes. Everything I have researched is contradictory to the proposed changes. Granted, I am by no means a lawyer, nor do I profess to know all the laws, over my years as an advocate, I have developed a firm understanding of the health and safety code and the business and profession code governing cannabis law.

Before I go any further on my contentions to the proposed amendments, I would like to point out a criminal case that took place in El Dorado County, regarding the arrest and prosecution of the Pure Life Collective in which much time and taxpayer money was spent based on a misunderstanding of the complicated cannabis laws of California and appeal court decisions that set precedents. The presiding judge, dismissed the case in the preliminary hearing phase after deliberating for more than a week studying the merits of the case based on the law. The emotional as well as financial losses due to governmental error should never be repeated due to rash and knee jerk responses to a crisis.

The next point of contention that I must express is my concern over the clause in the proposed amendments, stating "may require registration". It was also stated by staff at the planning hearing that if enforcement was not successful , then the requirement for registration would be adopted. Why has the county committed to spend \$500,000 for the technology to successfully eradicate illegal grows, if enforcement is not confident that it will be successful? Two years ago, registration of gardens was proposed and I adamantly rejected the idea as a violation of the fifth amendment of the US Constitution regarding self incrimination. County staff has down played the threat of self incrimination based on various temporary Congressional laws passed to check funding by the Federal government for investigating legal state cannabis activities. This is all fine and well, but there is no guarantee to the future of those checks to remain in place and the fact remains that as long as cannabis remains an illegal controlled substance under federal law, medical cannabis patients are still in violation of those laws. The Constitution guarantees our civil rights, despite whether there would be consequence or not to one's self incrimination. I would also like to point out that under our current ordinance, it stipulates that a renter must have a notarized state from the land owner granting permission to cultivate cannabis, a illegal controlled substance under federal law. Again, this stipulation is another expectation of self incrimination to allow a premise to be used for the manufacture of a controlled substance under federal law. The owner should not also be put in a position of self incrimination and this clause has no justifiable place in the cultivation ordinance and should be removed. The conditions governing cultivation should lie within a rental agreement that is exclusive to the owner and tenant and no further. I strongly protest to any violation or compromise to an individual's constitutional rights.

Lastly, I would like to know why there was no input from the county health director's office in regard to the proposed allowance of the cultivation of cannabis without the necessity of a doctor's recommendation? This is a health consideration as well as public safety, and considering that the majority of citizens of this county voted against Prop 64, why is the county choosing to ignore the will of the voters and allow widespread cannabis cultivation without medical necessity? Due to the Covid 19 pandemic and the inability for a normal process for hearings and bos meetings, there has been a lack of participation from both sides of the issue on cannabis cultivation that has happened in the past meetings, leading me to believe there are many citizens unaware of the process taking place, and how will they feel the next time they vote at elections. Has their votes been discounted?

This pretty much sums up the major concerns I have, although there are other issues that I have not raised at this time, and I may entertain to do so at a later time should I feel the need. I feel committed to this on going process that I have been involved with for a very long time. The successful enforcement of the

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Edcgov.us Mail - Fwd: Amendments to Ordinance 5067 [Cannabis Cultivation]

criminal activity is definitely a priority in everyone's mind, but not at the cost of legitimate patient's well being, nor the afflicted neighborhoods that are experiencing an outlaw behaviour. As always, I stand ready to serve this community in any capacity that may be needed to ensure El Dorado County is a safe and healthy environment for all.

Sincerely, Mitch Fadel / American Alliance for Medical Cannabis



EDC COB <edc.cob@edcgov.us>

4/21 Agenda Item #25 - Cannabis Cultivation Ordinance

1 message

Ellen Komp <ellen@canorml.org>
Reply-To: ellen@canorml.org
To: edc.cob@edcgov.us

Fri, Apr 17, 2020 at 12:33 PM

Dorado Supervisors,

Please do not pass the proposed ordinance limiting all cannabis cultivation in El Dorado county to six plants per parcel. This amount is inadequate to meet many medical cannabis patients' needs.

While Prop. 64, passed by the voters of California in 2016, required counties to allow six-plant gardens for recreational use, it clearly stated that its intent was not to interfere with patients' rights under Prop. 215, which voters passed in 1996. Under that law, courts have ruled that patients can grow any amount reasonable to their medical needs. Additionally, under Prop. 64, legitimate caregivers may provide for up to five (5) qualified medical patients and be exempt from the requirement of state commercial cannabis licensing.

Requiring registration of cannabis gardens is unnecessary and problematic. Marijuana is still a Schedule I drug federally and patients will be incriminating themselves by registering their gardens, in clear violation of our 5th amendment rights.

Taking away the current ordinance will encourage guerrilla grows in the El Dorado National forest that will cause environmental damage, and public safety concerns.

To move on this ordinance without the opportunity to make public comment in person will severely hamper citizen involvement. Many citizens of El Dorado county don't have reliable internet or phone access.

Please do not pass this ordinance, or at least table this discussion until after the COVID crisis, allowing a full hearing and involvement for all El Dorado County citizens.

Ellen Komp
ellen@canorml.org
2747 Regent St
Berkeley, California 94705



EDC COB <edc.cob@edcgov.us>

4/21 Agenda Item #25 - Cannabis Cultivation Ordinance

1 message

Neva Hall <info@email.actionnetwork.org>
Reply-To: mattkayhall@yahoo.com
To: edc.cob@edcgov.us

Fri, Apr 17, 2020 at 1:56 PM

County Supervisors,

Please do not pass the proposed ordinance limiting all cannabis cultivation in El Dorado county to six plants per parcel. This amount is inadequate to meet many medical cannabis patients' needs.

While Prop. 64, passed by the voters of California in 2016, required counties to allow six-plant gardens for recreational use, it clearly stated that its intent was not to interfere with patients' rights under Prop. 215, which voters passed in 1996. Under that law, courts have ruled that patients can grow any amount reasonable to their medical needs. Additionally, under Prop. 64, legitimate caregivers may provide for up to five (5) qualified medical patients and be exempt from the requirement of state commercial cannabis licensing.

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Please do not pass this ordinance, or at least table this discussion until after the COVID crisis, allowing a full hearing and involvement for all El Dorado County citizens.

Neva Hall
mattkayhall@yahoo.com
5563 Rainier Dr
Garden Valley, California 95633



EDC COB <edc.cob@edcgov.us>

4/21 Agenda Item #25 - Cannabis Cultivation Ordinance

2 messages

Frank kolsut <info@email.actionnetwork.org>
Reply-To: frankkolsut@yahoo.com
To: edc.cob@edcgov.us

Fri, Apr 17, 2020 at 3:24 PM

County Supervisors,

Please do not pass the proposed ordinance limiting all cannabis cultivation in El Dorado county to six plants per parcel. This amount is inadequate to meet many medical cannabis patients' needs.

While Prop. 64, passed by the voters of California in 2016, required counties to allow six-plant gardens for recreational use, it clearly stated that its intent was not to interfere with patients' rights under Prop. 215, which voters passed in 1996. Under that law, courts have ruled that patients can grow any amount reasonable to their medical needs. Additionally, under Prop. 64, legitimate caregivers may provide for up to five (5) qualified medical patients and be exempt from the requirement of state commercial cannabis licensing.

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Please do not pass this ordinance, or at least table this discussion until after the COVID crisis, allowing a full hearing and involvement for all El Dorado County citizens.

Frank kolsut
frankkolsut@yahoo.com
2759 hawks landing ct
[placerville, California 95667](https://www.google.com/maps/place/Placerville,+CA)

4/17/2020

Edcgov.us Mail - 4/21 Agenda Item #25 - Cannabis Cultivation Ordinance

Reply-To: koenckdavid@gmail.com
To: edc.cob@edcgov.us

County Supervisors,

Please do not pass the proposed ordinance limiting all marijuana grows to 6 plants!

I'm a disabled veteran, 58 years old and I have chronic low back pain from a spinal injury that is a direct result of my military service. I'm from Iowa, but I moved here 7 1/2 years ago to get away from opiates! I was prescribed a total of 29 pills/day, taking Ultram, Flexaril, Zoloft, Gabapentin, Oxycontin, Morphine and the stool softeners because of what they were doing to my gut! You couldn't tell I was on ANYTHING! Until I missed a dose. Then it took 3 days to recover.

In the past 7 1/2 years, since moving to California, I've taken ONLY 7 PILLS! And NOTHING stronger than naproxen! I'm more MOBILE, I'm alert instead of a zombie, and I DON'T GET HIGH when I smoke!

I've noticed that it takes different strains to help with different things, such as pain, PTSD, vision, appetite, anxiety, depression, and insomnia. So, the thought of NOT having the variety I need to function is NOT A HAPPY ONE!

Every year, I've paid the price to stay LEGAL AND LEGIT, had the means and permission to grow 30 plants but NEVER had more than 20. I'm NOT in it for the money, I grow my own medicine! I DON'T SELL ANYTHING! I pay my helpers (also patients) with green medicine. We can't AFFORD it from the dispensary! It's taxed 7X before it gets to the consumer!

But the THOUGHT of wiping out the underground/black market cannabis world is unlikely! The government has been trying for years, and it only gets stronger! IT WAS SUPPOSED TO BE RECLASSIFIED, BY THE PRESENT ADMINISTRATION, BUT...MANY THINGS were SUPPOSED to be done, until he was seated in the BIG BOY CHAIR! Then he RENEGED! TYPICAL!

David Koenck
koenckdavid@gmail.com
GARDEN VALLEY CA
Garden Valley, California 95633