Public Comment #27

EDC COB <edc.cob@edcgov.us>

Tuesday's Meeting

1 message

mmartin95662@aol.com <mmartin95662@aol.com> Tue, May 5, 2020 at 12:18 AM
Reply-To: mmartin95662@aol.com
To: "edc.cob@edcgov.us" <edc.cob@edcgov.us>

Please vote NOT to change the current laws regarding growing marijuana.
Weird people will always do weird things no matter how many times you change the laws,
People who grow for medical or personal use should not have to compromise because of the grow for profit guys. Again, your vote to keep the current growing regulations the same is greatly appreciated.

Shawn Tobol
Georgetown Divide

Public Comment #27

EDC COB <edc.cob@edcgov.us>

Agenda Item #27

1 message

sally haman <haman4626@gmail.com> Mon, May 4, 2020 at 4:08 PM
To: edc.cob@edcgov.us

Hello,
I am writing this letter in regards to the Board of Supervisors proposed changes to medical cannabis cultivation law. If the current law is changed from 200 sq feet per patient, to 6 plants total, it dose not take into consideration how these plants are grown, and the amount of yield per plant. I have been organically growing my annual supply of medical marijuana for a few years now. Since i grow only organic, i do not add chemical fertilizers and pesticides to the soil, this ensures that i do not destroy the land and poison the water run off. Growing organic cannabis also ensures that i am not putting any residual chemicals into my body.

Something to consider, organically grown cannabis plants yield a considerably smaller amount than conventionally agrown plants. I usually grow many smaller plants in the same amount of space that a conventionally grown plant needs. Therefore, if I can only 6 plants of any size and yield, . If the goal here is to eliminate larger grows, this is really going to hurt small organic medical gardens. If the Board of Supervisors change the current law, and i can only grow 6 plants total, i could not grow enough medicine to last me the year. I am on a fixed income, and cannot afford to buy my medicine. (This is why i started growing my own medicine to begin with!) Theses proposed changes to the existing law do not take into consideration the size and yield of each plant.
thank you

EDC COB <edc.cob@edcgov.us>

Fwd: Restriction of Outdoor Medical Cannabis Cultivation for Personal Use

2 messages

The BOSONE <bosone@edcgov.us> Tue, May 5, 2020 at 9:49 AM
To: EDC COB <edc.cob@edcgov.us>

Kind Regards,

Cindy Munt
Assistant to Supervisor John Hidahl, District 1
Board of Supervisors, County of El Dorado
Phone: (530) 621-5650
CLICK HERE to follow Supervisor Hidahl on Facebook
CLICK HERE to visit Supervisor Hidahl's web page

---------- Forwarded message ---------
From: **John Sphar** <johnsphar@gmail.com>
Date: Tue, May 5, 2020 at 9:39 AM
Subject: Restriction of Outdoor Medical Cannabis Cultivation for Personal Use
To: <bosone@edcgov.us>, <bostwo@edcgov.us>, <bosthree@edcgov.us>, <bosfour@edcgov.us>, <bosfive@edcgov.us>

Dear John Hidahl, Shiva Frentzen, Brian Veerkamp, Lori Parlin and Sue Novatel,

I oppose limiting my personal rights to grow medicinal cannabis outside in my garden. My daughter was in a car accident in 2016 and her back was broken. She still suffers from back pain, and cannabis assists with the management of her pain. I also object to overhead surveillance of our property. It is a violation of our privacy. Please do not vote to implement this on May 5, 2020.

Regards,
John Sphar
(650) 400-5740

EDC COB <edc.cob@edcgov.us> Tue, May 5, 2020 at 9:52 AM
To: Donald Ashton <don.ashton@edcgov.us>, Breann Moebius <breann.moebius@edcgov.us>, Tiffany Schmid <tiffany.schmid@edcgov.us>, Jeanette Salmon <jeanette.salmon@edcgov.us>, Robert Peters <robert.peters@edcgov.us>, Julie Saylor <julie.saylor@edcgov.us>

FYI #27

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

[Quoted text hidden]

JOSEPH D. ELFORD
Attorney At Law
600 Fell St. #101
San Francisco, CA 94102
Telephone: (415) 573-7842

May 4, 2020

David A. Livingston
El Dorado County Counsel
330 Fair Lane
Placerville, CA 95667

Via Email Transmission

Re: ***Planning Commission's Proposed Restriction on Medical Marijuana Cultivation***

Dear Mr. Livingston:

I am a medical marijuana attorney who seeks to ensure the rights of medical marijuana patients, as the Compassionate Use Act (Cal. Health & Safety Code, § 11362.5) sought to do. In this regard, I served as Chief Counsel for Americans for Safe Access for approximately ten years and have litigated numerous medical marijuana cases, such as one that presented a disturbingly similar set of facts to your County's proposed restriction on medical marijuana cultivation to only six plants.

As an initial matter, the Adult Use of Marijuana Act ("Prop. 64" or "AUMA") specifically stated in section 11362.45 of the Health and Safety Code that "Nothing in [the AUMA] shall be construed or interpreted to amend, repeal, affect or preempt . . . (i) Laws pertaining to the Compassionate Use Act of 1996." These laws enable qualified medical marijuana patients to cultivate a quantity of marijuana plants that is reasonably related to their current medical needs, so a limitation of this amount would run afoul of the constitutional proscription on legislative amendments to voter-approved initiatives. (See *People v. Kelly* (2010) 47 Cal.4th 1008, 1049.)

While I recognize that the County will likely argue that the limitation described in *Kelly, supra,* applies only to criminal sanctions, rather than to land use regulations, this does not save the Planning Commission's proposed restriction on medical marijuana cultivation from its fatal defect, which is based on the constitutional principle of vested rights. By now, many, if not most, medical marijuana patients have already begun to cultivate the marijuana they need to ameliorate their suffering in the coming year, and have certainly begun the infrastructure to do so. To deprive these patients of this vested right violates due process. (See discussion, *infra.*)

"The rights of users of property as those rights existed at the time of the adoption of a zoning ordinance are well recognized and have always been protected. [Citation.] Accordingly, a provision which exempts existing nonconforming uses is ordinarily included in zoning ordinances because of the hardship and doubtful constitutionality of compelling the immediate discontinuance of nonconforming uses. [Citation.]" (*Edmunds v. County of Los Angeles* (1953) 40 Cal.2d 642, 651.) Where a person uses their property for a legal nonconforming use before the enactment of a zoning ordinance prohibiting this use, the business or property operates as a legal nonconforming use with grandfathered rights. (See *City of Oakland v. Superior Court* (1996) 45 Cal.App.4th 740, 747 fn. 1.) Although a locality may, in the proper exercise of its police power, abate even a grandfathered business if it constitutes a nuisance *in fact* (see *Jones v. City of Los Angeles* (1930) 211 Cal. 304, 311; *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 392 fn. 5), due process requires that the means employed by the government must be reasonably necessary and not unduly harsh. (See *Lawton v. Steele* (1894) 152 U.S. 133, 137; *Korean American Legal Advocacy, supra*, 23Cal.App.4th at p. 392 fn. 5.)

This case involves personal cultivation of medical marijuana on private land, which is expressly authorized by State law (see Health & Safety Code, §§ 11362.77, 11362.775; *Kelly, supra,* 47 Cal.4th at p. 1047), so persons acting in conformity with these laws prior to the passage of the proposed ordinance have a vested right to continue their activity. (See *Edmunds, supra,* 40 Cal.2d at p. 651; *Jones v. City of Los Angeles* (1931) 211 Cal. 304, 316.) Absent a showing that the marijuana cultivation is a nuisance *in fact*, due process forbids the County from extinguishing patients of their vested rights at this late date in the cultivation season. (See *Jones, supra,* 211 Cal. at p. 316; see also *Flahive v. City of Dana Point* (1999) 72 Cal.App.4th 241, 244 fn. 4 ["A city's designation of a nuisance pursuant to an ordinance does not necessarily make it so."]; *Lawton v. Steele* (1894) 152 U.S. 133, 137 ["The [L]egislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations; in other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."]; *Hurwitz v. City of Orange* (2004) 122 Cal.App.4th 835, 852-54 [local nuisance determinations are not immune from judicial scrutiny]; Civil Code, § 3482 ["Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance."].)

Based on this express judicial authority, the medical marijuana patients who will be impacted by the proposed restriction of their constitutional and statutory rights will consider their judicial remedies, if your County goes forward with the proposed ordinance.

Thank you for your consideration.

Yours Truly,

Joseph D. Elford

Joseph D. Elford