Item 8.6
3/6/18

Carolyn Purdy

From: Ron Green <rongreen@exede.net>
Sent: Monday, March 05, 2018 4:20 PM
To: Carolyn Purdy; Jeff Smith; Rob Brown; Jim Steele; Moke Simon; Tina Scott
Cc: dgCDD; Robert Massarelli; Mireya Turner; Carol Huchingson; Anita Grant
Subject: Public Comment for Item 8.6 (Cannabis) on the March 6, 2018 Agenda
Attachments: Memo to Board.3.6.18.docx

Follow Up Flag: Follow up
Flag Status: Flagged

I am submitting as an attachment a 4-page memorandum dated March 5, 2018. This is public comment for Item 8.6 (Cannabis) on the March 6, 2018 Board of Supervisors agenda. Please review and consider my comments and make this part of the record.

I am very concerned about 2 provisions in the proposed cultivation ordinance. Firstly, the proposed ordinance requires that personal use cultivators of 1 to 6 plants obtain a zoning permit. As I explain in my attached memo, this violates State law, invites litigation, and is a similar provision to that currently involved in extensive litigation in San Bernardino County. Why do this? It makes no sense. **The Board's remedy is simply to delete the language on Page 11, line 25 through page 12, line 5.** I strongly urge you to do so.

Secondly, the federal law provision on page 3, lines 24-27, appears to nullify the entire ordinance, and could well be read as a total ban on all cultivation in Lake County. **This entire provision should be stricken** from the ordinance. At the very least, the words **"or federal"** should be stricken from the first sentence.

Kindly review my attached memo for considerably more detail. Thank you very much for your consideration.

Item 8.6
3/6/18

March 5, 2018

From: **Ron Green**, Attorney-at-Law

To: Lake County Board of Supervisors

Re: **Public Comment for Item 8.6 (Cannabis) on the March 6, 2018 Agenda**

I am commenting on two very serious problems with the proposed ordinance.

1. Personal Use Grows Should be Exempt from a Zoning Permit Requirement

On page 11, starting at line 25 through page 12, line 5, this ordinance requires the Proposition 64 non-commercial adult use cultivator, as well as the Proposition 215 qualified patient and primary caregiver cultivator growing 1 to 6 plants for personal use, to obtain a **zoning permit**. This provision violates state law and will surely lead to litigation.

There is no valid reason for such a requirement. It is sufficient to state the type of zoning and parcel size where personal use cultivation can occur, and to investigate any complaints. There is no state license required for personal use, and a water board permit is not required for 1 to 6 plants.

The Board of Supervisors is surely aware that this ordinance has been billed as a commercial cultivation ordinance, and although many potential commercial cultivators have attended the hearings, the personal use cultivators who are growing 1 to 6 plants have really not been heard, and have not even been aware that they were being included in this ordinance.

The initial cost of a zoning permit is $190.00, plus $95 an hour for each hour after the first two hours spent by the Community Development Department. This is unfair to the adult use or medical patient grower, particularly if he or she is only growing 1 or 2 (or even 6) plants.

It is unlikely that many personal use cultivators will actually comply, but if they did this would overwhelm a short-staffed department. In addition, non-compliance would subject these residents to steep fines and criminal charges, for exercising a right granted under State law.

On Page 6, lines 5-8 of the ordinance, it states:

2.i. Enforcement

"A violation of any provision of this Section or any condition of a zoning permit is subject to the enforcement and penalties provisions of Article 61.3 Arrest and Citation Powers, and 61.4 Penalties of this Chapter."

And Article 61.4 of the Zoning Ordinance provides steep criminal penalties:

"A violation of any provision of this Chapter or any condition of a conditional use permit is punishable as an infraction by a fine not exceeding one hundred dollars ($100.00); or as a ***misdemeanor by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the County Jail for a period of not more than six (6) months,*** *or by both such fine and imprisonment.* ***Each separate day*** *or any portion thereof on which any violation occurs shall be deemed to constitute a* ***separate offense*** *punishable as herein provided."*

But, under California law, "it shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to . . . possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants." Cal. Health & Safety Code § 11362.1(a).

This very issue is being litigated by the ACLU and the Drug Policy Alliance (with the help of the 740 lawyer firm of O'Melveny & Myers) in San Bernardino County in the case of *Harris v. City of Fontana*. After a decision is rendered, this case will no doubt go the Court of Appeals and then the California Supreme Court regardless of who prevails at the trial level.

As argued by the ACLU *et al.* in the *Fontana* Case, it violates the State Constitution to require residents to register with the County and pay an expensive fee to obtain a permit to grow 1 to 6 plants for their own personal use. Also, if someone cultivates 1 to 6 plants but fails to obtain a Lake County zoning permit, that person is subject to harsh misdemeanor penalties even though the conduct is legal under state law, and this also violates the State Constitution.

Lake County has a duty under the California Constitution not to promulgate ordinances that conflict with the general laws of the State, as provided by Article XI, Section 7 of the California Constitution. Lake County also has a duty under the Due Process Clause of the California Constitution not to condition the receipt of government benefits on the relinquishment or waiver of the **constitutional right not to incriminate oneself**, as guaranteed by Article I, Section 15 of the California Constitution. The proposed ordinance violates this provision by requiring personal use cultivators to obtain a zoning permit and admit on a written application to their intent to commit a federal crime before they can exercise their statutory rights under California Health & Safety Code Section 11362.1(a)(3).

As the plaintiff's lawyers argue in the *Fontana* Case, this objectionable provision of the proposed Lake County ordinance requires applicants to make self-incriminating statements in their permit applications, statements that admit to a violation of federal law and that federal authorities could easily obtain. Not only that, but requiring personal use cultivators of 1 to 6 plants to register and obtain a zoning permit (a public record) puts them and their families in danger from violent criminals looking for an easy hit. The commercial growers will most likely have good security, but the person that cultivates 1 or 2 or 3 (or 6) plants is likely to grow them near his/her home and without expensive/extensive security measures. Of note is the fact that the very conservative Planning Commission of the City of San Bernardino (no doubt aware of the *Harris v. Fontana* litigation) just voted unanimously not to require a permit/registration for personal cultivation because they believed it was an infringement on residents' rights and could lead to households being targeted.

The Board's remedy is simply to delete Page 11, line 25 through page 12, line 5. For the above reasons, I strongly urge you to do so. Furthermore, if building permits are currently required, there is no need to include that language either, so this entire provision on permits (page 11, line 25 through page 12, line 5) should be deleted from the ordinance. Why invite litigation and anger thousands of Lake County residents?

2. The Federal Law Provision Nullifies the Entire Ordinance

On Page 3, lines 24-27, it states:

*"Nothing in this Ordinance shall be construed to allow any activity relating to the cultivation of cannabis otherwise illegal under State **or federal** law. No provision of this Ordinance shall be deemed a defense or immunity to any action brought against any person by the Lake County District Attorney, the Attorney General of the State of California, or the United States of America."*

This entire provision should be stricken from the ordinance. At the very least, the words **"or federal"** should be stricken from the first sentence. If nothing in the ordinance is construed to allow anything illegal under federal law, then the entire ordinance is meaningless and is null and void. **This provision can be read as a total ban on cultivation in Lake County.**

The second sentence is also objectionable. If this ordinance purports to make a cultivation activity legal under the County zoning ordinance, then it certainly should be deemed a defense to an action brought by the County or State.

Thank you for your consideration.

Respectfully Submitted, Ron Green