PLN-2020-16479

To: County of Humboldt Planning Commission
Humboldt County Courthouse Aug 20, 2020
825 5th Street, Eureka, Ca 95551

From: Huber C&D
Po Box 882, Garberville, Ca, 95542

Dear Planning Commission,

We are writing in firm opposition to the proposed Financial Security amendments ordinance which would require paid security bonds from all legal Cannabis farmers in the County to ensure payment of the county's excise tax.

Please stop treating legal cannabis farmers differently than you do other businesses. It is time to move on from this discriminatory attitude toward cannabis farmers that assumes they are criminals first, and law abiding tax payers second. These brave folks are the only lifeline for our struggling economy. Don't bite the hand that feeds us. For the county to add another expense to the ongoing compliance burden of these farmers is incredibly unfair and short sighted. There are criminals and bad actors in every industry, but the attitude of the planning department seems to be that the entire cannabis industry is composed of criminals and bad actors which I think warrants some self reflection.

Your efforts to continually move the ball on regulations has cost these business owners over and over. Every change leads to increased costs in professional consultation fees, having to re-design previously approved project documents, not to mention lost revenue due to planning department delays on infrastructure changes that would have improved their efficiency, but are now on hold due to regulatory changes that did not exist at the time the infrastructure was proposed.

The first year that you implement this scheme will require people to effectively pay the tax twice in the same year. It removes months of available timeline to decide how much the farmer is going to be able to cultivate the following year. If we have a drought, and people have to reduce their square footage due to lack of rainwater captured, they will not have the opportunity to make the adjustment because they will have already paid the fees for more square footage. Many people do not sell their crop until after the first of the year, so may not have the funds to pre-pay the fee.

For all taxpayers, late penalties already exist for those who fail to pay ontime. For cannabis farmers unpaid taxes already put their permit at risk. A bond should only be required for those who have failed to pay their fees.

Respectfully,

Ross Huber
Huber C&D

From:	Eugene Denson
To:	Planning Clerk; Eugene Denson; S Nv; KMUD News; Shomik Mukherjee
Subject:	Comments on 3 proposed Ordinances for 20 Aug 20 Planning Commission meeting
Date:	Thursday, August 20, 2020 5:23:03 PM

EUGENE C DENSON, ATTORNEY AT LAW
POB 158, Alderpoint, Ca 95511 USA
707-923-4764, Fax 707-926-5250
edenson95511@gmail.com. www.marijuanadefenselawyer.com

20 Aug 2020

The Planning Commission
Planningclerk@co.humboldt.ca.us

Hello,

Public Comment Re Agenda item H2: Cannabis Ordinance for Small Farmers Analysis:

This small farmer amendments represent a major and important shift in County permitting policy for commercial cannabis cultivation. I have a number of issues with specific sections, but on the whole it is so much better that the ordinances that preceded it that I have to congratulate the drafters. I hope they will amend the main permitting ordinance to include two very important advances:

1. The permit is automatically approved in 30 days unless a letter with specific deficiencies has been sent. There is an enormous backlog of permit applications now which endangers the financial viability of the applicants through no fault of their own.
2. The fees are capped at the amount of the deposit, so applicants will not be surprised by later charges. They are presently sometimes unable to meet the additional costs.

Here is a discussion of the drafting issues I found with the proposed ordinance:

1. Water source: 55,4,6,1,2 (a) 3. This must be non-diversionary and permitted. I take issue with both requirements. **Water diversions** for cannabis must be completed by the end of the rainy season. Rainfall on any parcel in Humboldt county can be measured in acre-feet. Each acre receives about 3-5 feet of rainfall during the season. An acre-foot is 325,828.8 gallons if my calculations are correct (acre-foot = 43560 ft3. 1 ft3 = 7.48 gallons). Thus, a rainfall season of 40" results in almost a million gallons per acre reaching the ground. The internet tells me that a 30ft2 plant uses 900 gallons a year according to Fish and Game. If we assume a sea of green with no gaps in canopy a 2000 ft2 garden will need 60, 000 gallons of water a year. Rainfall capture could easily supply this, so could any class III stream, so the non-diversionary requirement is cosmetic not essential. I prefer rainfall capture in ponds, but permitted diversion does no harm to the

environment and I would remove the requirement from the ordinance.

Permitted: A well might well be permitted, but there is no need for a permit for rainfall capture. My roof is say 1600 ft2 (40x40 house approximately). Capturing the rain from my roof during a 40" year, which is low, would give me an estimated 70 gallons per ft2, or 112,000 gallons, and except for this ordinance, no permit required. I would say "jurisdictional water use must be permitted." (i.e. water for which a permit is required to capture or store). I recommend anyone relying on my math double check it.

2. Permaculture is defined in section 55.4.4 (which is not cited in the Ordinance title and probably should be.) But the definition is hopelessly vague, and so, Constitutionally invalid. I think permaculture is a great idea, but I don't see it as a requirement for a 40x50 garden. If it is going to be required then the definition must reference some standards which can be understood and followed. It seems aspirational rather than defined here.
3. The cultivation must be "full sun." I read that to preclude growing in partial shade. Surely that is not the intent. I would delete the term. "Outdoor" conveys what is wanted, I believe.
4. The restrictions on greenhouse electrical appliances seem to be aimed at generators. It would be cleaner to say, "No power from a generator may be used at any time in or for the greenhouse or its appliances." I imagine the County does not object to solar power, or PG&E power. (55.4.6.1.2 (a) 4)
5. I do not understand what "above" a leach field means that "on" a leach field doesn't. I would strike one or the other, but I suppose there is no harm as written if you don't mean to rule out land uphill from the field and that's made clear. (55.4.6.1.2 (a) 6)
6. The requirement for the parcel being legally created is improper. If the parcel has an APN and the county collects taxes on it, then the legality of its creation is a technical issue for the county with no practical effect on cannabis cultivation and it should be dropped. These legal parcel issues seem go reach back for decades. I applaud wanting to straighten them out, but they have nothing to do with commercial cannabis cultivation. The county knows how to cure a parcel that is not "legally created" and should fix it without burdening the owner. (55.4.6.1.2 (a) 8)
7. I applaud the cost of the permit not exceeding the deposit, but I would feel more comfortable knowing what the deposit will be.

With these problems cured a very good ordinance will be an excellent one, judging from my initial survey of it.

ED Denson for The Rights Organization.

Hello, these are my comments on the proposed amendment to Section 314-55.2 of the County ordinances as revised. Please consider them and place them in the public record. The present code places no size limit for medical cannabis cultivation on parcels larger than 5 acres. The present code places no size limit on the cultivation of personal recreational cannabis on parcels larger than 5 acres. The amendment title purports to lump personal recreational cannabis in with medical cannabis but the HCC section being modified expressly applies only to personal medical marijuana. I oppose the amendment for the reasons below.

Here are my points in summary:

A. Personal medical cannabis is not also personal recreational cannabis. They have separate purposes and are governed by separate laws. The proposed Amendment does not apply to personal non-medical cannabis but the title suggests it does.
B. The amount of medical cannabis a patient needs is properly determined by the patient and their doctor without input from the county or state.
C. A medical cannabis plant presents no more danger to public health and safety than does a commercially permitted plant. We have hundreds of thousands of commercial cannabis plants on parcels greater than 5 acres in size, so referring to these dangers is just a pretext for restricting personal medical cannabis. It is groundless.
D. Restricting the amount of cannabis that can be grown by the small number of patients who need more than 400 ft2 is medically indefensible, commercially purposeless, and fails to provide patients equal protection under the law.
E. The ordinance makes no provision for caretaker gardens. A caretaker may service up to 5 patients.

Here are more developed arguments making those points.

1. Proposition 64 does not pertain to medical cannabis. See Health and Safety Code section 11018 where it cites the Proposition to state it applies to "nonmedical cannabis."

2. Health and Safety Code section 11362.1 was contained in Prop. 64 and it allows 6 plants. As the Prop did not apply to medical cannabis, neither does this section of the Health and Safety Code

3. HCC Section 314.5.2. does not apply to the 6 plants under HSC 11362.1
.
4. Proposition 215 (Health and Safety Code 11362.5) remains the law in California. Much of the interpretation of this brief law has been in court decisions handed down since 1996 when it became law. It is a bit complicated, but it comes to this:
    a. A "qualified patient" becomes qualified by having the recommendation

or approval of a California doctor for the use of medical cannabis.

b. The amount of cannabis a qualified patient may grow and/or possess is "an amount reasonably related to their then current medical needs" (*People v Trippet*, 56 Cal. App. 4th 1532).

c. The standard time period for the amount is a one-year supply (which assumes outdoor cultivation).

d. This amount the patient needs varies from individual to individual depending upon a variety of factors, most of which are not well understood scientifically. The person most likely to know the amount they need is the patient.

e. To prevent endless numbers of jury trials to see if the patient is believed, some basic rules of thumb regarding limits were enacted into state and local law. Patients whose cultivation and/or possession does not exceed these rules were presumed to be within the legal amounts.

i. State: 12 immature or 6 mature plants. One-half pound of bud, unless county limits are higher.

ii. Humboldt County: 100 ft2 of canopy and three pounds of bud.

f. Both county and state limits are subject to higher limits set by the doctor qualifying them as medical patients. The law establishes no upper limit on doctor-set amounts, and the patient is legally entitled to rely upon them. The doctor's word is beyond the reach of the law. Disputes are settled by the medical board, not local authorities or courts.

g. A small number of patients have, after consultation with a doctor, been given documented limits (215's) which are higher than the local or state limits. These limits are sometimes expressed in terms of plant numbers rather than canopy size and are usually coupled with amounts of processed cannabis ("bud") expressed in pounds. At least one doctor recommends in terms of weight of CBD in the bud per pound of body weight.

h. These 215s in some cases cannot be satisfied by the amount a patient can grow in a limited space such as the proposed, 400 ft2 of canopy. Therefore, placing a canopy limit per patient without providing for exceptions is not sound regulation. I would not base the exceptions on medical conditions for the reasons in d. above.

i. Multiple patient gardens are still legal, also, although restricted by relationship to the cultivator, and number of patients. I believe the upper limit is 5. These too cannot always provide the needed medicine in 400 ft2 of space.

j. Setting an arbitrary canopy or garden size limit will result in denying some patients sufficient medicine. Cannabis is expensive on the market and the very patients who have the greatest need are likely to have the least ability to buy it. The result would be needless suffering, and in a few

cases possibly death by suicide.

5. There is nothing inherent in the cultivation of cannabis that requires non-commercial medical cultivation to be limited to 400 square feet on parcels larger than 5 acres. Indeed, the county encourages commercial cultivation and has permitted many operations 25, 50, even 500 times larger than the medical limit sought. In fact, the county is presently contemplating an ordinance with concessions for "small farmers" who will restrict themselves to operations 5 times larger than the proposed limit on non-commercial medical gardens. If 401 ft2 of cannabis threatens the health and safety of the county's residents, those dangers must be nothing compared with the dangers 10,000 ft2 or 100,000 ft2 create, right? The health and safety rationale for this regulation won't work,

6. There being no legal or medical purpose in restricting the size of medical gardens, it seems apparent that the ordinance's purpose is to bolster the county's failing commercial licensing system by driving more people to have to buy their medicine rather than grow it. Or, to put it more kindly, the Board believes that the doctors, despite their years of demanding education and their years of experience in practice, are mistaken about their patients' needs; and the amendment's purpose is to correct these medical professionals mistakes by replacing their medical opinions with the medical opinions of a majority of the Board of Supervisors.

7. If the Board believes that driven by need or greed medical patients might sell their medicine, society has a way to handle that: criminal laws enforced by the Sheriff. Rather than reduce legal medicine to sick people, increase the Sheriff's budget and leave the crime-stopping to people trained to do it. Using civil law to preemptively prevent crime is a perversion of good government. In the justice system "It is better than 10 guilty people go free than that 1 innocent person be convicted." I believe that is the proper standard for the Board to use. Why should the people trust a government that doesn't trust them?

8. The US and State Constitutions guarantee the people equal treatment under the law. This goes for medical patients growing their cannabis as well as large scale commercial enterprises. You might be able to justify being stricter with commercial growers than with sick individuals, but I don't think you can justify the opposite.

Eugene Denson for The Rights Organization.

Public Comment on the Proposed "Measure S amendments" Agenda Item H2 (third ordinance in this item)

Analysis of the Proposed Amendments to County Code Concerning Measure S taxes

The proposed ordinance consists of 10 Sections, which do two things to the Commercial Cannabis Cultivation Tax codes.

1. Changes the person owing the tax back to the permit holder, instead of the landowner. (Sections 4-8, and 10)
2. Requires the permit holders to secure in advance each year's tax payment by posting cash, a surety bond, or their land as security. (Sections 2 and 3)
3. Sections 1, and 9 have to do with technical aspects of the Ordinance (severability, intent)

Changes in who is liable for the tax:

1. It changes HCC 719-4, 719-6, 719-7, and 719-12, all of which are from the Measure S implementation ordinance, from taxing the landowner back to taxing the permit holder. This is the way the ballot initiative read.

2. The County changed the wording of Measure S extensively with Ordinance 2575 about 6 months after it Measure S passed. No voter approval was sought.

3. Section 10 of the proposed ordinance says that the proposed ordinance is "intended to restore the provisions of Chapter 9 of Division 1 of Title VII of the Humboldt County Code as they read before the adoption of Ordinance 2575… It shall be interpreted in light of that intent."

4. The proposed ordinance falls far short of that intent, although it does fix one of the several glaringly illegal changes Ordinance 2575 made in Measure S.

5. These illegal changes were litigated in HUMMAP v. County of Humboldt, and the County lost on most points. It has since appealed, and the case is now in the First District Court of Appeals in San Francisco. This ordinance makes one major issue in the appeal moot, which is a welcome development.

Illegal provisions not restored to the original legal wording:

6. The Measure S that the voters approved provided that the tax would apply to the actual space used for cultivation, not the permitted area as Ord. 2575 altered it.

7. The Measure S that the voters approved said the tax was not due until cultivation began, not the 1st of January of each year as Ord. 2575 altered it. This

means that no cultivation = no tax. Ordinance 2575 altered it so that if you have a permit you owe the tax even if you never grow one plant.

8. Section 2 & 3 of the proposed ordinance restore a bit of the wording of the original by saying that the surety is not due in the year the permit is issued until "the commencement of cultivation."

9. In other words, if you get a permit and never grow, you never have to post surety for the tax. Because it says, "If the Planning Department does not receive the security prior to January 1st or commencement of cultivation, the permit or certificate shall be deemed to have expired." but if there never is commencement of cultivation then the permit is cancelled at the stroke of midnight December 31. Happy New Year.

The permit holder must post security "in an amount the Department determines to be sufficient of secure timely payment of the annual taxes imposed by [Measure S]" by January, or the permit to grow will be cancelled.

1. I am not a tax attorney, so there's lots I don't know about taxation, but I can't think of any other special tax that has to be paid in advance. Doesn't the County trust the growers? They are very people who are the financial backbone of the County economy, after all. The advance payment sections of this ordinance make me feel a bit more like living in a County occupied by a foreign power than like we have a government that is part of our community. We seem to have a government of the government, by the government and for the government.

2. I am not a specialist in governmental law, but don't you think it's strange that the security for taxes is being given to the Planning Department and not the Tax Collector?

3. These prepayments of the taxes place yet another burden on the cultivators. It wasn't long ago that the county was postponing tax payments so that struggling growers could harvest before paying.

4. These impositions of advance taxes show the complete lack of faith the County has in the people it governs. This is not a healthy relationship between the government and the governed.

Eugene Denson

August 20, 2020

To: County of Humboldt Planning Commission
Humboldt County Courthouse
825 5th Street
Eureka, CA 95501

From: Holly Carter
PO Box 2414
Redway, CA 95560

Dear Planning Commission,

I am writing today in opposition to the proposed “Financial Security” amendments to the cannabis tax collection method.

In not to distant past, the Board of Supervisors changed the collection timing to after the cultivation year, with the intent to alleviate the large financial burden on cultivators entering or transitioning into commercial enterprise.

In inquiring to the Tax Collector’s office, I learned that there are 130 delinquent payments of cultivation taxes. A total of $3,891,507.44 is on the overdue currently, with bills ranging from $1.08 on the low end, but functionally $150, to nearly $200,000 on one parcel.

For the 2019 season, $19,704,891.82 was assessed. The overdue payments are not all from 2019, however.

While the overdue bills are certainly a concern, the burden to be placed on the permit holders and the planning department to acquire and accurately track additional paperwork or payments. As we are all aware, there have been concerns in this regard, and I have concerns with adding layers of compliance and paperwork for all involved. The cost burden is another concern, a concern shared by our Board when the timing of payment was shifted.

As a condition to compliance, non-payment of the cultivation tax already is a trigger for permit to be deactivated. Please encourage departments to utilize the tools already available, rather than add hurdles.

Holly Carter

From: Sarah Bstar
To: Planning Clerk
Subject: public Comment on aug 20 planning commission
Date: Thursday, August 20, 2020 5:59:47 PM

Comments August 20, 2020 Planning Commission hearing Case Number PLN-2020-16447

55.4.4 **DEFINITIONS**

- Home-site: Does this mean permitted residence, because as we see a lot of rural dwellings are not permitted, despite residents' willingness to do so for decades. The long debate over rural living has not "had its day in court". The community's reactions to code enforcement actions since the 80's have clearly (and loudly) expressed interest in non-standard development. Those utilizing natural building materials, greywater systems or solar power (with generator backup – of course). Most sites are reoccupying abandoned logging scars and making the best of what's available onsite. The permitting process is daunting. The Planning and Building department deflects any real progress, by leaning on inappropriate technologies for rural livelihoods. The Title 24 is statewide and is often not applicable to housing in Humboldt. The state codes for plumbing and electrical do have the ability to allow for non standard installations, as long as safety is ensured. The Department of Environmental Health could be the experts on water conservation, access to clean water and proper handling of human waste. And have made some progress allowing for dry composting toilets in some very limited conditions.

- Permaculture: It seems at odds to say that water must be stored in plastic lined ponds or tanks but that growing must occur in the ground. A key principle in Permaculture is groundwater recharge and value added cultivation is part of a fully functioning homestead. Breeding chickens for select traits in a controlled environment, cage culturing fish or utilizing greenhouses for the growing of specialty crops are all components to natural farming.

Composting soil and crop rotation as well as pest exclusion are some of the benefits that container gardening can produce. The trucking in of baged soil for single use in greenhouses with improved floors is not a sustainable way to manage the land. It may appear from the air that a greenhouse is a greenhouse. But conventional agriculture works against nature by utilizing weed mats, spraying pesticides to kill insects, fungicides and rodenticides, using artificial light create more harvest cycles per year.

Permaculture designs its' systems to work with nature; by enhancing native and companion plants and reducing invasives, allowing for adaptive integrated pest management to encourage beneficial insects, increasing soil mycrorihzol diversity thusly boosting the fertility of the complex web of life found in healthy soil communities. It is not a nature gone wild approach but rather a care by design. By working with the natural systems the human workload can be reduced. Mechanical pulling of weeds and fostering compatible ground cover eliminated the need for weed barriers. Sustaining habitat for bugs, fungus and other animals balances the eternal "eat or be eaten" battle. To prevent a bug infestation a diverse predator critter population must be part of the farm. Importing hundreds of ladybugs from Nevada may not be as sustainable as creating year round habitat for the native population to thrive. Mechanical pest control is less harmful than chemical controls. Using traps and exclusionary measures is better for the environment that rodenticides. As most in Humboldt already know; it can be a futile effort to plant a large garden without gopher wire beneath the raised beds, or deer fence around the orchard.

Greenhouses enhance the favorable growing environments for high value crops. Conventional agriculture clears the land and imposes these structures to keep nature out (and light in). Greenhouses used as a season extender and crop protector are part of an integrated growing system. Specialty crops often require more energy to produce than feral/forage crops. Energy in terms of labor, infrastructure and actual energy use; but the output is also higher. This value added outcome has long supported family farms.

The Humboldt County Ag department maybe best experienced in determining types of agriculture and their impacts to the watersheds. And the DEH could allow for water conservation measures to enhance the lands.

References: Mollison, Bill: Permaculture: A Practical Guide for a Sustainable Future. Island Press 1990

Ludwig, Art: Create an Oasis with Greywater. Oasis Design 1991

Ludwig, Art: Water Storage. Oasis Design 2013

CALIFORNIA ENVIRONMENTAL QUALITY (CEQA) ADDENDUM TO THE ENVIRONMENTAL IMPACT REPORT FOR THE AMENDMENTS TO THE HUMBOLDT COUNTY CODE REGULATING COMMERCIAL CANNABIS ACTIVITIES (State Clearinghouse # 2017042022) September 1, 2017

The industrial model that has appeared on the landscape since the adoption of Humboldt County's Commercial Cannabis Cultivation Ordinance has encouraged more ground disturbance, more stream and road work, more infrastructure and more vegetation disturbance than the CEQA suggests. The abatement of small scale family farms, that were giving back to the land and living simply so that others may simply live has done irreparable harm to both the human and nonhuman communities.

Sarah Balster

Margro Advisors

To: County of Humboldt Planning Commission
Humboldt County Courthouse
825 5th Street
Eureka, Ca 95551

Aug 20, 2020

From: Margro Advisors
2306 Albee St
Eureka, Ca 95501

Dear Planning Commission,

We are writing in firm opposition to the proposed Financial Security amendments ordinance which would require paid security bonds from all legal Cannabis farmers in the County to ensure payment of the county's excise tax.

This ordinance makes the assumption that all legal tax paying Cannabis farmers are expected to be delinquent in paying their excise tax. This proposed requirement which does not exist for other types of farmers, once again shows the county's ongoing discrimination against those who have the courage to willingly travers the many challenges which exist on the path to legal Cannabis permitting, licensure, and ongoing compliance. Please understand that these trials and tribulations continue to be difficult, from track-and-trace, to multi-agency annual reporting, to increasing Fish & Wildlife required improvements, and more, not to mention the ongoing delays from all agencies in resolving issues, and the multitude of agency related fees these farmers already endure.

For the county to add another expense to the ongoing compliance burden of these farmers is incredibly unfair and short-sighted.

For all taxpayers, late penalties already exist for those who fail to pay ontime. For cannabis farmers unpaid taxes already put their permit at risk, as County permits are not renewed without taxes being paid.

If you believe these are still insufficient penalties, then a bond should only be required for repeat offenders who have failed to pay. To that we say punish the bad actors if you must, but stop punishing those who deserve our support for the courage to weather these ongoing challenges in a highly-regulated market. To do otherwise, is not in the best interest of our community.

Respectfully,

Kelly Flores

Kelly Flores
Margro Advisors