



Law Office of Charnel James
A New Dawn in Legal Representation
Charnel James, Esq

January 10, 2016

Attn: Clerk of the Board (Council)
(County)(City)(Council)
(Address)
(City), CA (ZIP)

RE: Recent state regulations that effect the proposed regulations on Medical Marijuana Cultivation

Dear Honorable Board Members (City Council Members)

The last six months have been very busy for legislatures as they have crafted and passed a number of regulations that affect the management and control of Medical Marijuana. This has caused some confusion to the local jurisdictions, and as a custody and on behalf of my various clients I am providing this legal analysis to assist you in your actions for the coming weeks.

The first item is the March 1 deadline to have some type of regulation in place. As you may be aware, there is an open letter to the jurisdictions from Assemblyman Jim Woods pertaining to that deadline. A copy of that letter is attached to this letter as Exhibit 1. The action to correct that typing error of the date will be addressed on January 13, 2016. Even if there is no quick action (as we are all aware of the speed in which the Assembly acts), based on the way that courts have interpreted the medical marijuana cases, that deadline would not stand up in court. (See the legal analysis provided by NORML attached as Exhibit 2.)

Since the March 1 deadline is not a hard and fast date, this jurisdiction can and should slow down this process by creating an ad hoc committee of stake holders in the jurisdiction to form the best land use regulation that would address most of the populous concerns (which includes patients, proponents and businesses.) It will also allow the jurisdiction the time that it needs to gain the review of the Secretary of Agriculture which is a requirement for any and all crops within California.

On October 9, 2015 the governor signed SEC. 6. Section 11362.777 in the Health and Safety Code which classified medical marijuana (cannabis) as an agricultural crop. (See code language attached as Exhibit 3.) In particular the language specifically states:

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“The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary, except as specified in subdivision (c), shall administer this section as it pertains to the cultivation of medical marijuana. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.”

Furthermore, under 52334 under the Agricultural Code, no local jurisdiction can make any regulation that controls and seeds, plants or process. (See attached Exhibit 4.) The exact language is as follows:

“Notwithstanding any other law, on and after January 1, 2015, a city, county, or district, including a charter city or county, shall not adopt or enforce an ordinance that regulates plants, crops, or seeds without the consent of the secretary. An ordinance enacted before January 1, 2015, shall be considered part of the comprehensive program of the department and shall be enforceable.”

The ordinance that you are proposing would require a review by the Secretary of Agriculture to obtain the review and approval of their department, prior to any actions by this Board (COUNCIL). I would strongly suggest that a delay at this point would be prudent in order for this Board to not be in violation of state law.

I would be happy to bring my constituents' concerns to this stakeholders' meeting, and am willing to work with you to help draft land use regulations that fit within MMRSA. Thank you for your time and attention to this matter.

Sincerely

Charnel James
Attorney at Law