

Agenda Item: ID#15-267 (1-M)

Date: 4/9/15

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Items – ID#15-267

Contents of Supplement: Correspondence regarding medical marijuana and CEQA

Item(s)

***BILL NO. B-8- (Intro. 3/26/15) (For adoption) - Amending Section 12-2103 by amending Subsection (c) and adding Subsection (g), amending Section 12-2104 and adding Sections 12-2104.1 and 12-2108 to the Fresno Municipal Code relating to medical marijuana cultivation - Council Subcommittee on medical marijuana - Council President Baines, Councilmember Olivier and former Councilmember Xiong

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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CITY CLERK, FRESNO CA

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April 8, 2015

VIA ELECTRONIC MAIL
AND PERSONAL DELIVERY

City Council
City of Fresno
c/o Yvonne Spence, City Clerk
2600 Fresno Street
Room 2133
Fresno, CA 93721

Re: Bill No. B-8 - Amending Sections 12-2103 and 12-2104; adding Sections 12-2104.1 and 12-2108 to the Fresno Municipal Code relating to medical marijuana cultivation; Environmental Assessment No. EA-15-009 - Environmental Finding of No Possibility of Significant Effect

Dear Honorable Council Members:

This firm represents Union of Medical Marijuana Patients, Inc. ("UMMP") and Fresno Cannabis Association ("FCA"). As you may be aware, both of my clients brought suit against the City of Fresno ("City") alleging that the City violated the California Environmental Quality Act ("CEQA") when it adopted Ordinance No. 2014-20, which sought to prohibit the cultivation of all medical marijuana within the City of Fresno. This case is currently pending in Fresno County Superior Court. I have recently become aware that the City is poised to adopt a new ordinance ("Ordinance") that would allow for limited cultivation of medical marijuana by qualified patients (albeit through so-called "limited immunity"). While adoption of the ordinance is certainly a step in the right direction, the City has still erred by maintaining that the proposed ordinance is exempt from CEQA.

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Non-Compliance with CEQA

With regard to CEQA, the Staff Report prepared for the Ordinance dated March 26, 2014 states the following:

“Staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, section 15061 (b)(3), has determined with certainty that there is no possibility that this project may have a significant effect on the environment. This is because current law prohibits all cultivation of marijuana and the amendments would allow immunity for the indoor cultivation of up to four medical marijuana plants. This would allow medical marijuana patients the ability to cultivate their own medical marijuana and reduce the need to travel outside of the City to procure medical marijuana. Therefore, this project is not subject to CEQA.”

This exemption is limited to circumstances where there is **no possibility** a project may cause significant environmental impacts. If legitimate questions can be raised about whether a project might have a significant impact and there is any dispute about the possibility of such an impact, the City cannot find with certainty that the Ordinance is exempt.

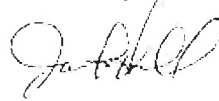
The City's reliance on the common-sense exemption is flawed. As a purely legal matter, the fact that the City has opted to authorize the cultivation of medical marijuana via “limited immunity” (as opposed to affirmatively authorizing such activity) does not render the Ordinance exempt from CEQA pursuant to the so-called “common sense” exemption. The bottom line remains - the City is taking an action that will allow for an activity to occur, namely, the cultivation of medical marijuana. The City cannot find with certainty that there is no possibility that the Ordinance may not have a significant effect on the environment because the City has already admitted in prior City Council hearings and staff reports related to the adoption of Ordinance No. 2014-20 that the cultivation of medical marijuana inherently has potentially significant environmental impacts. For example, in a Staff Report dated March 20, 2014, the City stated, among other things, that cultivation of medical marijuana had resulted in dangerous electrical alternations, noxious odors, increased heat and humidity and increased water consumption. The City believed that these environmental impacts were so significant that it opted to ban all cultivation of medical marijuana. This staff report may be accessed via the City's website at <http://www.fresno.gov/CouncilDocs/agenda3.20.2014/300.pdf>. The City's proposed limited-immunity Ordinance creates the same impacts that the City sought to eliminate when it adopted Ordinance No. 2014-20. In addition, both UMMP and FCA have previously made the City aware of the environmental impacts of cultivation. In fact, UMMP submitted a lengthy letter to the City dated March 19, 2014. This letter may viewed at <http://www.fresno.gov/CouncilDocs/agenda3.27.2014/1e.pdf>. As explained in UMMP's letter to the City, the cultivation of medical marijuana is an inherently agricultural activity that necessarily creates environmental impacts, such as increased water consumption and hazardous

waste (such as fertilizer and runoff). The City's admissions regarding the significant environmental impacts of cultivation coupled with the comments that the City received from both FCA and UMMP remove the ability of the City to utilize the common-sense exemption for the Ordinance.

Finally, the City cannot rely on reduced travel as a basis for exempting the Ordinance from CEQA because the environmental impacts associated with the cultivation activity outlined above remain.

In sum, the City should conduct an Initial Study under CEQA to analyze the potential environmental impacts of the Ordinance and consider potential mitigation measures to lessen the impact. The common-sense exemption is not designed to be utilized in situations such as this – where the environmental impact of a particular activity is readily acknowledged by the public agency.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jamie T. Hall".

Jamie T. Hall
Channel Law Group, LLP