

Julie Patterson-Hunter

From: Julie Patterson-Hunter
Sent: Monday, October 22, 2018 12:56 PM
To: All BOS Board Members
Cc: Alison Lehman; Alison Barratt-Green; Sean Powers; Brian Foss
Subject: FW: Letter in Support of SR 18-0959, a resolution re pre-approvals for state licensing purposes
Attachments: Letter to Supervisor Hall re Pre-Approval Process vFinal 10.22.2018.PDF

From: Heather Burke <Heather.Burke@gmlaw.com>
Sent: Monday, October 22, 2018 12:47 PM
To: Heidi Hall <Heidi.Hall@co.nevada.ca.us>
Cc: bdofsupervisors <bdofsupervisors@co.nevada.ca.us>; Sarah Smale <Sarah.Smale@gmlaw.com>
Subject: Letter in Support of SR 18-0959, a resolution re pre-approvals for state licensing purposes

Supervisor Hall,

Please find attached a letter in support of one of tomorrow's agenda item, SR 18-0959, regarding a preapproval process for next year's cultivators. We strongly urge you to support this item. Although this letter focuses on the importance of the preapproval process, I also ask that you approve another cannabis related item on tomorrow's agenda, SR 18-0970. These two items work together to make next year's ordinance workable, as it just is not under the current framework.

Thank you sincerely for your consideration,

Heather Burke and Sarah Smale

By: *Heather L. Burke*
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October 22, 2018

Supervisor Heidi Hall, District 1
950 Maidu Avenue
Nevada City CA, 95959
By email to heidi.hall@co.nevada.ca.us

Re: *SR 18-0959, a resolution directing the CDA to establish a pre-application process for the required local authorization for state temporary and provisional licenses*

Supervisor Hall,

I live and work in Nevada City, District 1. Additionally, my office represent cannabis cultivators and related operators in Nevada County and elsewhere throughout the state, including several cultivators in the County's temporary permit program and numerous others who anticipate applying next year under the permanent ordinance.¹ Both as a constituent, a stakeholder, and on behalf of my clients, I am asking you vote in favor of SR 18-0959 with additional direction to staff, as outlined below.

By way of a brief background, the Staff Report for this agenda item is *absolutely correct* that state licensure will be far more difficult for those operators who do not have access to the state's temporary licenses in 2018 due to the recent passage of SB 1459, the provisional license bill, which is only available to those who have or have had a temporary license. (See, Cal. Business & Professions Code § 26050.2(a)(1).) All others will be required to obtain an "annual state license" *before they can begin operations*. However, the annual license application is a cumbersome process and is estimated to take 3-6 months to issue after submittal. Thus, if the County's application process does not begin until May of 2019, farm operations could not commence until some 3-6 months later,² effectively putting all seasonal (i.e. outdoor and many mixed-light) farmers out of business for the 2019 season.

¹ I am also an active member of the International Cannabis Farmers Association, a national nonprofit comprised of cannabis farmers, scientists, and others working to support sungrown cannabis and traditional cannabis farming methods. Additionally, I am a member of the California Cannabis Industry Association (CCIA) and the National Organization for the Reform of Marijuana Laws (NORML), as well as a strong supporter of the Nevada County Cannabis Alliance, the local branch of the California Growers Association.

² This is presuming the Conditional Use Permit [CUP] process set forth in the current draft ordinance is amended pursuant to SR 18-0970, also on your agenda tomorrow. If our farmers were not authorized to begin operations until a CUP is granted, the timeline is far graver, as an application submitted in May would not be approved for some 6 or more months. Thus, if a farmer were to apply in May, and wait until November before their CUP was granted so they could apply for the state's annual license, operations could not begin until February of 2020, in a best-case scenario.

The primary takeaway here is that the County's timeline for permit issuance is detrimental to the very farmers the permanent ordinance is designed to encompass, and it is likely to cause an "extinction event" for many of our longtime cultivators. A brilliant solution, however, is embodied in SR 18-0959, which would allow farmers to obtain state licensure through the temporary/provisional process, and to begin operations next season once certain conditions are met.

With that said, I ask you vote in favor of the resolution with the following additional directives to staff:

1. **Existing permit holders/applicants should be automatically approved without re-applying.**

Existing permit holders under the County's current temporary program should be automatically approved under SR 18-0959 for the square footage they would be eligible for under the draft permanent ordinance, without requiring them to apply again. These cultivators have already submitted detailed site diagrams, security plans, and related documentation, so they are ideally situated to benefit from this resolution without re-applying. Indeed, they should be *the first* approvals to be granted under SR 18-0959.

2. **Streamline the preapproval process wherever possible because the last day to submit applications for temporary state licenses is likely December 2, 2018.**

The state's permanent regulations were issued just this past Friday, kicking off only 45 days until they are likely to become law on December 3, 2018, the same day the emergency regulations are set to expire. As there is no pathway to apply for temporary state licensure after the permanent regulations are enacted, it looks like the final day to apply for our cultivators to apply for the state temporary license is *December 2, 2018*. To streamline the process, I suggest the following:

- Again, automatic approval for the existing permit holders/applicants will save the CDA time, and allow early adopters the benefit of the time/expense already expended.
- Conditional approvals of the pre-applications should be issued electronically, if possible. Not only will this decrease the pressure on the CDA staff, it is critical the applicants upload the local authorization to the state's online system as soon as possible.
- The pre-approvals should include the ancillary "self-distribution transport only," or Type 13, authorization as a matter of course.

3. **Delete the requirement that previous cultivation in the area be demonstrated.**

While this prong appears to address concerns of litigation under the California Environmental Quality Act, the first step in any CEQA analysis is to address the jurisdictional issue, i.e. to see if

the proposed ordinance is a "project" subject to CEQA in the first place.³ A project, however, is defined as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."⁴

Under the resolution before you, the applicant receiving the conditional approval must forgo cultivation until: (1) the EIR is complete, (2) a permanent ordinance is in place, (3) CDA staff inspects the property for compliance. Thus, there is no "direct physical change" in the environment, nor is an indirect physical change "reasonably foreseeable" precisely because there is *no cultivation under this resolution*, and none will be allowed until it occurs pursuant to the permanent ordinance. As such, this resolution is not reasonably subject to CEQA.

Perhaps more importantly, few applicants will be able to demonstrate their prior cultivation was of the same size that will be allowable under the draft permanent ordinance. Should the farmer only be able to show 2,000 sq. ft of prior cultivation, this requirement would limit the "local authorization" to that size, even though they may be eligible for 10,000 square feet under the permanent ordinance. Thus, they would only be able to request the temporary state license for the smaller "speciality" license (5k or less of outdoor), rather than the "small" license (10k or less of outdoor), causing mass confusion and unnecessary complication on both the state and local level.

However, if the Board believes this is a necessary component of SR 18-0959, I would request the Board pass the resolution as-is, rather than sending it back for additional analysis or staff report, due to the serious time constraints.

Conclusion

Thank you for your time and consideration. We are beyond grateful for your leadership.

Sincerely,



Heather L. Burke, Partner
Sarah Smale, Associate Attorney

³ Union of Medical Marijuana Patients, Inc. v. City of San Diego, 4 Cal.App.5th 103, 111 (2016), internal citations omitted.

⁴ *Id.* at 112, citing *Cal. Public Resources Code* § 21065.