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de la Guerra, Sheila

From: Steinfeld, Amy <ASteinfeld@bhfs.com>
Sent: Monday, April 1, 2019 10:51 AM
To: Villalobos, David
Cc: sbcob; Wilkinson, Whitney
Subject: BHFS Comment Letter: April 3 Planning Commision Briefing on Cannabis Ordinance
Attachments: BHFS Letter to PC, 4.1.19.pdf

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Dear Commissioners,

Attached please find a comment letter from Brownstein in advance of the April 3 Planning Commission Briefing on the Cannabis Ordinance.

Best regards, Amy Steinfeld

Amy M. Steinfeld
Brownstein Hyatt Farber Schreck, LLP
ASteinfeld@bhfs.com
[bio](#) | [vcard](#) | [bhfs](#)
Subscribe to our Water blog at water.bhfs.com

Santa Barbara Office:
1021 Anacapa Street, 2nd Floor
Santa Barbara, California 93101-2706
805.882.1409 tel
805.335.0614 cell
805.882.1482 Melissa Eldridge (Assistant)

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April 1, 2019

Amy M. Steinfeld
Attorney at Law
805.882.1409 tel
805.965.4333 fax
ASteinfeld@bhfs.com

VIA E-MAIL dvillalo@co.santa-barbara.ca.us

Santa Barbara County Planning Commission
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Public Comment re Proposed Cannabis Ordinance Amendments, County Planning
Commission Briefing on April 3, 2019

Dear Honorable Members of the Planning Commission:

My law firm, Brownstein Hyatt Farber Schreck represents several cannabis cultivators in Santa Barbara County. We respectfully request that no additional changes be made to the Cannabis Ordinance at this time. The County of Santa Barbara ("County") approved the Cannabis Land Use Ordinance and Licensing Program and certified the associated Programmatic Environmental Impact Report in February 2018 after months of public testimony and hundreds of hours of staff and consultant involvement—a huge expenditure of public funds. It is far too early to contemplate additional changes, especially when over 80 cannabis applicants are currently winding their way through the County's complex permitting and licensing process. The County must encourage regulatory certainty and not prematurely open up the regulations, which will create a moving target and allow the black market to surpass the efforts of legally compliant growers.

A key principle of good policy making is that regulatory agencies should define the problem they are seeking to solve before amending a regulation. Further limiting landowners' ability to grow legal, highly regulated cannabis does not fix the main problem in this County—the existent of black market or non-compliant grow operations. In counties where growing cannabis is illegal, growers often set up their production in the middle of otherwise pristine environments, or in dark warehouses powered by lights that consume massive amounts of energy. Illegal farming operations also tend to use pesticides and rodenticides that are extremely harmful to the environment. The negative impacts of illicit indoor and outdoor cultivation on the environment have been well-documented. We continue to support the County's efforts to enforce and crackdown on unlicensed or noncompliant cannabis cultivators. But it is clear that the majority of cannabis complaints are centered on the bad actors—NOT legally compliant ones.

In contrast, legal cannabis growers are highly regulated. For example, in Santa Barbara County, under the existing Ordinance, growers must obtain a Land Use Permit or Conditional Use Permit, a County Business License, and a State Cannabis License, in addition to demonstrating, among other things, completion of archaeological and paleontological surveys, prime soil compliance, cultivation limits compliance, compliance with the Cannabis Waste Discharge Requirements General Order, compliance with water efficiency standards, a fencing and security plan, a

1020 State Street
Santa Barbara, CA 93101-2711
main 805.963.7000

landscape and screening plan, a lighting plan, a noise plan, an odor abatement plan (in certain zoning designations), tree and habitat protection and wildlife movement plans, site transportation demand management plans, volatile manufacturing employee training plan, and an energy conservation plan. In addition, there are numerous state requirements, such as the California Cannabis Track-and-Trace system (the “CCTT system”), which will require all licensed cannabis businesses to use the CCTT system to record, track and maintain information about their cannabis and cannabis product inventories, and compliance with the State Water Board’s Cannabis Policy. As a result, many Santa Barbara County cannabis farmers have gone out of business and closed their operations, which is reflected in the relatively low number of pending cannabis applications.

Cultivators have collectively spent millions of dollars investing in Santa Barbara County through hiring local labor and retaining consultants, land use lawyers and planners to navigate this complex, new regulatory regime, not to mention investing in their farms to comply with the County’s “development-like” conditions that are being placed on farmers. No other crop is subject to this level of regulation.

Meanwhile, legal cannabis cultivators continue to pay hefty taxes to the County and are compliant with all County cannabis regulations and requirements. The cannabis industry is the only industry that is required to pay taxes based on gross receipts. On October 31, 2018, the County collected \$1.8 million in taxes from the cannabis industry and expects to receive even more funds from the industry next quarter.

While there have been complaints about cannabis odors, they are coming from a small handful of wineries in the Valley. We want to set the record straight – there are only two periods during which inland, outdoor cannabis plants produce flowers (the odor-causing part of the cannabis plant): approximately 10 days in early June and 10 days in early September. This 20-day period of potential odor has been overblown by cannabis opponents. In other areas, such as the Monterey and Salinas Valley, wineries have managed to coexist with garlic farms, which produce odor year-round. We anticipate that grape and cannabis growers will eventually find synergies after the County issues cannabis permits and licenses to applicants, and removes the illegal operations. In fact, we believe that the two industries can and will co-exist and, together, increase tourism in Santa Barbara County to the benefit of both industries.

We ask that you support the legal cannabis cultivators in Santa Barbara County, who are producing environmentally friendly, pesticide-free crops, which serve as the foundation for the County’s cannabis industry (manufacturers, retailers, and distributors). This new industry is providing numerous, high paying jobs¹ and an opportunity for farmers to diversify their operations.

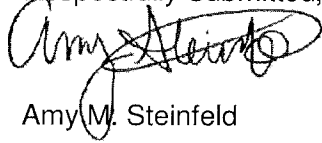
It is unconscionable to consider wiping out these new job opportunities, millions in tax revenue, and the industry’s investments by placing further restrictions on an industry that is already over-regulated. Many of these farmers could see their investment backed expectations wiped out via the proposed amendments to the Ordinance (and those proposed by a few wineries), at a time in which they are in the midst of complying with the Ordinance, which was finalized just last year. This likely constitutes a “taking” of private property in violation of the Federal and State Constitutions. In addition, if the County continues to make changes to the Ordinance, further

¹ <https://www.leafly.com/news/industry/legal-cannabis-jobs-report-2019>.

restricting where and how much cannabis can be legally grown, it will allow the black market to outstrip the labor of legally compliant growers.

We look forward for the opportunity to provide oral testimony on April 3. Should you have any questions or require additional information, I can be reached at 805-882-1409.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Amy M. Steinfeld", written over a printed name.

Amy M. Steinfeld

cc: County Board of Supervisors, sbcob@co.santa-barbara.ca.us
Whitney Wilkinson, wwilkinson@countyofsb.org

de la Guerra, Sheila

From: Ucciferri, Jack W. <jucciferri@bhfs.com>
Sent: Monday, April 1, 2019 12:02 PM
To: 'dvillalo@co.santa-barbara.ca.us'; 'wwilkinson@countyofsb.org'; 'sbcob@co.santa-barbara.ca.us'
Subject: Letter from Jack Ucciferri to Santa Barbara County Planning Commission re Public Comment re Proposed Cannabis Ordinance Amendments.DOCX
Attachments: 19064083_1_TRES OSOS_ BHFS Letter from Jack Ucciferri to Santa Barbara County Planning Commission re Public Comment re Proposed Cannabis Ordinance Amendments.DOCX

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Thank you for your consideration.

Jack

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April 1, 2019

Jack Ucciferri
Law Clerk
805.882.1425 tel
805.965.4333 fax
jucciferri@bhfs.com

VIA E-MAIL

Santa Barbara County Planning Commission
County of Santa Barbara
123 East Anapamu Street
Santa Barbara, CA 93101

RE: Public Comment re Proposed Cannabis Ordinance Amendments, County Planning
Commission Briefing on April 3, 2019

Dear Honorable Members of the Planning Commission:

Imagine that high school civics teachers taught their students that all it took to get a ministerial body to consider changing laws or regulations was for someone to make an unsubstantiated concern and to convince a few dozen community members that it were true. There would be nothing left for us to eat or drink.

The call to reopen Santa Barbara County's well thought out cannabis ordinance after just over one year of being adopted would set a horrible precedent for every county planning ordinance.

The latest issue is about growing cannabis near grapes because a few weeks a year there is an aroma. On its face this concern is counterintuitive and in fact there are no studies or facts to back it up. Even those raising the alarm admit they have no facts. On the other hand, one of the most respected wine publications, *Wine Spectator*, says there is no concern about the infrequent aroma of cannabis impacting nearby grapes.

Opponents of cannabis in a letter to your commission admitted their odor argument has no factual standing:

“While certainly there is no direct peer reviewed research regarding cannabis aromas, this should not be taken as commentary on the probability of impact.”

So they are saying there are no facts or research, but that should not matter, you should re-open a county ordinance. This is not how democracy is supposed to work, according to Mr. Robinson, my own high school civics teacher.

The letter cites the impact that eucalyptus trees or fires may have on grapes, and therefore the 10-20 days of aroma from cannabis will be the same. I don't believe that, but if there were some evidence for it, I would be open to considering it, and so should you. The problem is there is no evidence for that charge and so there is nothing for you to consider other than dubious assertions.

For eucalyptus it is the oils that attach to the waxy surface of grapes and mostly to the grape leaves that fall into grape bins. And fire only impacts grapes if it hangs heavy for an extended time. We all know what this like, you don't just smell it, you taste it and you can see it and touch it when there is ash and smoke for days. Aroma from cannabis is not akin eucalyptus oil or a lingering fire depositing ash directly onto a plant.

But don't take my word, what does *Wine Spectator* say? Here's what Dr. Vinny of the *Wine Spectator* has to say about odor from cannabis and impact on wine:

“While you might smell marijuana in the air, I don't believe that growing marijuana next to a vineyard will affect the flavor of wine. We know the eucalyptol oil from eucalyptus trees in the vicinity of vineyards can attach to the waxy surface of grapes, particularly when leaves fall into grape bins. And we also know that wildfire smoke can impact the flavor and aroma of grapes. But marijuana plants aren't tall trees dropping leaves, and the oil from marijuana is more difficult to extract. And wildfire smoke only influences grapes when it hangs heavily in the air for a suspended period of time, usually weeks; I don't think even Cheech & Chong could manage that. If you believe local lore, there have been rumors for years of winemakers who grow cannabis in or near their vineyards, without any anecdotal evidence of flavor impacting the grapes.

“I don't think there's any reason to worry about west Sonoma losing its reputation as prime Pinot Noir (and Chardonnay!) country. But it will be interesting to see if and how the influence of cannabis changes the landscape. —Dr. Vinny”

Are we going to push this new industry back into the black market over speculation and fear mongering? Are we going to change an ordinance because a few people have hired paid organizers to create a big fuss? Are we going to rule by fact and proper procedure or are we going to give into mob rule?

If we let the mob rule - if we allowed every rumor or hunch influence our decisions we would not drink water, nonetheless wine, we would drink more coffee or none depending on the lasted rumor. And broccoli has an aroma too, so should we not eat kale grown nearby?

As a Planning Commission you are empowered to judge based upon facts and law and in this case there are no facts to back up reopening the cannabis ordinance.

Finally, I believe that wine and cannabis industries can and will co-exist and, together, increase tourism in Santa Barbara County to the benefit of both industries.

Sincerely,

Jack Ucciferri

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