

Supervisors overturn 99-plant program

By Jennifer Poole/TWN Staff Writer

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The board of supervisors voted 4-1 Tuesday afternoon to eliminate the county's 99-plant permitting program for medical marijuana. The action was recommended by county counsel Jeanine Nadel, in response to threats of litigation from the U.S. Attorney's Office in San Francisco, as well as concerns over a recent court decision.

The 9.31 Medical Marijuana Cultivation Regulation ordinance was not rescinded, but was amended to eliminate all the language allowing cooperatives or collectives to grow more than 25 plants per parcel with a permit from the sheriff's office. The 99-plant program included fees, on-site inspections by the sheriff's office or a third-party certified inspector, and numerous restrictions regarding fencing, signage, odor, lighting, security, water diversion and erosion prevention.

Sheriff Tom Allman's zip-tie program was not eliminated; medical marijuana cultivators growing 25 plants or less, with valid medical recommendations, may still voluntarily pay a fee for zip-ties identifying their plants.

"The 9.31 permit program created an above-ground regulatory framework that balanced safe access to medical marijuana with public safety and environmental protection," said board chair John McCowen, in the county's announcement that it would be reviewing the 9.31 ordinance. McCowen said eliminating the program "will have the effect of driving medical marijuana back underground, making it more illegal, profitable and dangerous."

Nonetheless, McCowen

agreed with Supervisors Dan Hamburg, Kendall Smith and Carre Brown that despite the board's past support for the marijuana permitting program, eliminating it was "our best shot" to "address the federal concern."

"By preserving this ordinance," McCowen said, even with the proposed amendments, "we preserve the

framework of above-ground regulation that this community has supported."

Both McCowen and Brown urged Pinches to help the board "send a clear message" by voting with the board majority, but Pinches said he had decided that the county should wash its hands of any attempt to permit or regulate medical marijuana on the local level.

"We're going to call up the federal government and say, 'OK, we're going to get rid of the 99 plants and just do the 25 plants, so just stay away from us?'" Pinches asked his colleagues. "I think we should tell the federal government we tried to do this, we tried to come up with an ordinance, and now we're dropping the whole thing, you do what you're going to do."

About 30 members of the public spoke in favor of the 9.31 permitting program, most of them identifying themselves as medical marijuana growers who'd participated in the program last year. Many also suggested the board continue the 99-plant program as a voluntary program, pledging to voluntarily pay fees to the county to help maintain it. "We all stepped out of the shadows to take part in this," one speaker from Anderson Valley said, "and I think the board should continue to support the program."

"In my collective," another speaker said, "we have bone marrow cancer patients, and veterans who are suffering from PTSD, anxiety and depression." The 20 patients in his 99-plant collective "are not in a rural ag situation they can grow in," he said, "so we

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collectively organized according to the guidelines of Prop. 215. We're trying to create a completely closed loop, with no commercial transactions, with everyone contributing equally.

"Without the 9.31 program, they won't get their medicine," he said. "They will have to use opiates and pharmaceuticals."

A number of speakers suggested the county should "fight this to the Supreme Court if we have to"; one suggesting the county should take some of the medical marijuana fees and put them into a legal defense fund.

"I don't think anybody on this board dislikes the federal government more than me on many many levels, and this is just one of them," said Supervisor Hamburg. "Supervisor McCowen [the lead on developing the 99-plant waiver and the 9.31 ordinance] and Sheriff Allman really stepped up, trying to do something reasonable and responsible, and we have been met with threats." Hamburg said if he was a private citizen he'd be suggesting the county should put "every last resource" it had into fighting the feds.

"But I am way too knowledgeable about the budgetary situation of our county," Hamburg said, "to think we can carry a lawsuit against the federal government even to the first court, let alone up through the appeals this would lead to.

Other public commenters suggested that the county should wait for the results of the California Supreme Court review of the Ryan Pack vs. the City of Long Beach case, which ruled a medical marijuana permitting program in Long Beach was not legal. But county counsel Nadel said she stood by her recommendation that the county should immediately amend the county's 9.31 ordinance.