

## Fresno County supervisors deny medical marijuana appeals, issue fines totaling \$477,000

By Marc Benjamin



A detail of a photo of marijuana being grown in a Fresno County home's greenhouse in May 2014.

JOHN WALKER — THE FRESNO BEE

- *Advocates, lawyers continue to square off against county on ordinance.*
- *Fines levied against residents with medical marijuana cards.*
- *Supervisors are still considering employing an appeals hearing officer.*

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Fresno County supervisors held an abbreviated version of their medical marijuana appeals hearings Tuesday morning, but they are still getting push back from advocates and lawyers about the county's enforcement.

Cases heard Tuesday were holdovers from last year and took about two hours. Last year's hearings lasted five to six hours on average, which led to a renewed call to have a hearing officer oversee the ordinance violations, a route that

a majority of supervisors seem willing to follow. Supervisors denied appeals Tuesday, resulting in \$477,000 in fines.

Gabino Zambrano was fined \$95,000 because a renter was growing 95 plants on his property. Zambrano, a trucker, said he didn't know his renter was growing marijuana even though the renter had built a growing area behind the house. Zambrano said he wouldn't go into the house and the growing area was out of view behind a wall from the street, which sheriff's officials confirmed. His renter, Soprath Prak, also was fined \$95,000, but Zambrano's lawyer said the county will come after Zambrano because his tenant has no money.

Ana Maria Morales, a Fresno County property owner who lives in Kern County, was fined \$6,700, 10% of a \$67,000 violation, because her father was planting medical marijuana on her property. Luciano Morales must pay the remainder of the fine. A citation was issued against Ana Maria Morales two months after her father was cited.

There was no evidence that Ana Maria Morales used or contributed to the violations, said Michael Green, a Fresno medical marijuana advocate.

Ana Maria Morales said her father had a doctor's recommendation to grow marijuana plants. She also said she had a high-risk pregnancy last year and had no knowledge of her father's plants.

A third couple, also notified two months after marijuana was removed from property they rented out, avoided fines altogether.

"It's so arbitrary," said lawyer Robert Wynne, who intends to take legal action against the county on behalf of Zambrano. "Our point will be a due process and equal protection violation. You are treating people differently in the same situation."

Zambrano's tenant, Prak, also said he had a doctor's recommendation to grow and wasn't aware of the county's medical marijuana ordinance. Prak said he uses it for cooking, smoking or putting in baths.

Prak's plants were removed immediately without a determination of danger to public health, Wynne said following the hearing.

Zambrano said he collects rent from another tenant who lives at a home in the front of the property.

Under the county's ordinance, medical marijuana is a danger to public health and safety and deputies can pull plants out and fine the grower and property owners, said Dan Cederborg, the county's counsel. There are about a dozen lawsuits filed against the county for carrying out the ordinance, which has been enforced for 13 months.

Carl Hager was at risk of a \$228,000 fine but was able to avoid it after he told supervisors he received a notice in the mail in October, two months after the plants were pulled. He said he didn't know marijuana was grown on his property. Sheriff's deputies said the plants were small when they were pulled in August and could have been planted only a month earlier. The day after getting the notice, Hager evicted his tenant, who was fined last year for the plants.

Following the hearing, Hager said he worried about the similarities of his case to Morales'. She was ordered to pay 10% of the fine. He told supervisors that he and his wife would have to sacrifice their daughter's college education if he had to pay 10% of the \$228,000 fine.

"I don't think it's a good ordinance," he said. "You fine the people growing it and send an abatement ordinance to the landlord. I'm sorry I rented to him to begin with."

Fresno County sheriff's Sgt. Homer Montalvo said there is a decline in Fresno County marijuana gardens and that people are moving to other counties to cultivate.

"I think the time is coming where we won't have as many cases," said Supervisor Henry R. Perea.

He said he would favor eliminating fines if marijuana plants were removed the same day deputies find them and under sheriff's office supervision.

Perea also said he supports a hearing officer for medical marijuana appeals, possibly hiring a retired judge and alternate to fill the post.

Supervisor Andreas Borgeas said he also wants supervisors to consider hiring a hearing officer.

New supervisor Buddy Mendes, who observed marijuana appeals hearings last year and went through his first one as a supervisor on Tuesday, observed that "it's like going to the dentist. I'm just kind of wondering if there's a better venue to hear these."

He said he is willing to examine alternatives because there probably are better ways for supervisors to spend their time.

"There was a desire to see how the process works before saying this isn't working," Mendes said.

The other new supervisor, Brian Pacheco, said that based on Tuesday's hearings, he's not ready to hire a hearing officer.

While he admits there is room for improvement in the process, he said the board should be required to see "the true ramifications" of laws they approve.

"Whenever you have a new ordinance there is going to be a learning curve," he said. "The ordinance does seem to be working because grows are leaving the county, which was the intent of the ordinance."

Board Chairwoman Debbie Pochigian also has supported leaving supervisors in charge of medical marijuana appeals.

Brenda Linder, a Fresno lawyer who has filed many of the cases opposing the county medical marijuana ordinance, said a hearing officer would be a more objective way to handle ordinance issues.

"This is a farce," she told supervisors Tuesday. "By the way you drafted it, you direct staff how to collect it and county counsel advises you on it, which also advised and drafted this. You are not a neutral, fair hearing officer when you're directing people to be cited for more (money) during these appeals."

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