



# DenverDA

Mitchell R. Morrissey, District Attorney - Second Judicial District

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October 12, 2016

## No on 64 Campaign and SAM Action

California voters are being told that they will see the crime rate go down if they vote to legalize marijuana commercially; this has not been the case in the state of Colorado or the city of Denver. Since the legalization of recreational marijuana in Colorado in 2013 traffic related marijuana deaths have increased 48%, marijuana related emergency room visits have increased 49%, and marijuana related calls to the poison center have increased 100%. According to the Colorado Bureau of Investigations in 2015 statewide homicides in Colorado rose 14.7 % over the previous year. Pueblo, Colorado had the highest homicide rate in the state with 11.1 killings per 100,000 residents. Aurora, Colorado's homicide rate more than doubled from 2014. Additionally more places in Colorado were robbed and more thefts occurred, especially cars, as 193,115 motor vehicles were reported stolen, up 27.7 % in 2015 from the previous year. In 2015, sexual assaults rose 10% in Colorado with Denver, Aurora, Lakewood, Westminster and Pueblo all reporting higher numbers as well.

In the city of Denver since the legalization of recreational marijuana the number of crimes in Denver has grown by about 44 %, according to annual figures the city reported to the National Incident Based Reporting System. In 2015 in Denver alone crime rose in every neighborhood in the city. The murder rate hit a decade high, 1059 more cars were broken into, there were 903 more auto thefts, 321 more aggravated assaults and 231 more homes were broken into compared to 2014.

California voters are also being told that legalizing recreational marijuana will free up law enforcement to work on other criminal activities. Again that has not been the case in Denver. Besides the overall increases in crime we have experience, the Denver police department is dealing with a 900% increase in the unlawful cultivation and manufacture of marijuana concentrate, and a 99% increase in the unlawful distribution of marijuana and marijuana concentrate. The quantity of illegal marijuana seized by the Denver police has increased 3,424% on average per case. The volume of marijuana seized per case has increased from an average of 162 pounds to 5724 pounds. In Denver unlawful public consumption of marijuana citations has increased over 300% per year since the legalization of recreational marijuana. The Denver police department is busier enforcing marijuana laws and investigating crimes directly related to marijuana, including murderers, robberies, and home invasions, than any other time in the history of the city.

Sincerely,

Mitchell R. Morrissey  
Denver District Attorney

From: Normelle ellen@canorml.org  
Subject: Marijuana Ordinance  
Date: Yesterday at 1:01 PM  
To: district2@co.fresno.ca.us, District5@co.fresno.ca.us, District4@co.fresno.ca.us, District1@co.fresno.ca.us, ppinedo@co.fresno.ca.us  
Cc: rappleton@fresnobee.com

Item #5  
12-6-16

Dear Fresno County Supervisors,

I see that you will be considering an urgency ordinance at your meeting tomorrow, including this language:

Ordinance Code of Fresno County, to ameliorate the current and immediate threat to public health, safety and welfare, presented by the possession, planting, cultivation harvesting, drying, or processing of nonmedical marijuana outdoors, or the establishment or operation of a business engaged in commercial marijuana activity, the Board of Supervisors hereby prohibits:

1. The **possession**, planting, cultivation, harvesting, drying, or processing of nonmedical marijuana outdoors on the grounds of a private residence in all Zone Districts of Fresno County.

We think it outside the language and intent of Prop. 64, passed by 57% the voters of California, to prohibit possession of marijuana in someone's backyard.

California Health and Safety Code (Section 11362.1) now reads:

*It shall be lawful under state and local law, and shall not be a violation of state or local law, for persons 21 years of age or older to:*

*(1) Possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis....*

*(4) Smoke or ingest marijuana or marijuana products...*

*(c) Marijuana and marijuana products involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure, and no conduct deemed lawful by this section shall constitute the basis for detention, search, or arrest.*

While the law does allow cities and counties to outlaw outdoor cultivation, and does not permit someone to use marijuana in a “public place,” the section of the Health and Safety Code (11362.3) that mentions a public place also specifically exempts the grounds of a private residence from preclusions against smoking near a school:

*(a) Nothing in Section 11362.1 shall be construed to permit any person to:*

*(1) Smoke or ingest marijuana or marijuana products **in any public place**, except in accordance with Section 26200 of the Business and Professions Code.*

*(2) Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited.*

*(3) Smoke marijuana or marijuana products within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, **except in or upon the grounds of a private residence** or in accordance with Section 26200 of the Business and Professions Code or Chapter 3.5 of Division 8 of the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.*

Fresno county could be leaving itself liable to litigation over the portion of your proposed ordinance that bans possession of marijuana outdoors at a person’s residence.

Our office is always available for consultation on these issues.

Ellen Komp  
Deputy Director

California NORML  
[www.CaNORML.org](http://www.CaNORML.org)

415-563-5858

**From:** normelle [mailto:ellen@canorml.org]  
**Sent:** Monday, December 05, 2016 1:01 PM  
**To:** District2 <district2@co.fresno.ca.us>; District5 (Office of Supervisor Debbie Poochigian) <district5@co.fresno.ca.us>; District4 <district4@co.fresno.ca.us>; District 1 <district1@co.fresno.ca.us>; Pinedo, Patricia <ppinedo@co.fresno.ca.us>  
**Cc:** rappleton@fresnobee.com  
**Subject:** Marijuana Ordinance

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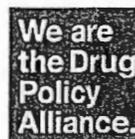
Fresno county could be leaving itself liable to litigation over the portion of your proposed ordinance that bans possession of marijuana outdoors at a person's residence.

Read more here: <http://www.fresnobee.com/news/local/pot-in-california/article118612643.html#storylink=cpy>

Our office is always available for consultation on these issues.

Ellen Komp  
Deputy Director  
California NORML  
[www.CaNORML.org](http://www.CaNORML.org)  
415-563-5858

December 5, 2016

VIA EMAIL

Supervisor Ernest Buddy Mendes  
 Chair, Board of Supervisors  
 Fresno County  
 District4@co.fresno.ca.us

Re: Fresno County Ordinance No. 16-\_\_\_

Dear Supervisor Mendes,

We are attorneys from the Drug Policy Alliance writing to impress upon you the importance of amending the interim urgency ordinance currently being considered that prohibits the possession, planting, cultivation, harvesting, drying, or processing of nonmedical marijuana ("the Ordinance"). As described in further detail below, a provision of the Ordinance, as proposed, violates state law.

The Drug Policy Alliance ("DPA") is a national advocacy group committed to ending the war on drugs and to building a policy response to drugs that is grounded in science, compassion, health and human rights. In addition to contributing support to the drafters of Proposition 64 ("Prop. 64"), through our political advocacy arm and 501(c)(4) organization, Drug Policy Action, we served as co-chairs and co-sponsors of the official campaign. We are thus particularly interested in making sure any local ordinances or regulations are carried out in accordance with the new law.

County Counsel has now proposed an ordinance that will prohibit the "*possession, planting, cultivation, harvesting, drying, or processing of nonmedical marijuana outdoors on the grounds of a private residence in all Zone Districts of Fresno County.*"<sup>1</sup> §5(1).

A plain, or literal, reading of this provision violates state law because it prohibits what the state has made expressly lawful. Pursuant to state law, it is now lawful under state and local law for persons 21 years of age or older to possess up to one ounce of marijuana and up to eight grams of concentrated marijuana. H&S Code § 11362.1. Prop. 64 further provides that it "shall not be a violation of state and local law" for persons to possess as such. *Id.* The Ordinance's prohibition on the possession of marijuana on the grounds of a private residence is in direct conflict with state law and is invalid.

This conflict may simply be the result of a misunderstanding of the new law. The list of activities prohibited outdoors by the Ordinance – possession, planting, cultivation, harvesting, drying, or processing – is directly lifted from paragraph (3) of subdivision (a) of Health and Safety Code section 11362.1. It is these specific activities that Prop. 64 allows a local government to prohibit outdoors upon the grounds of a private residence. *See* H&S Code § 11362.2(b)(3).

The error lies, however, in the misapplication of these activities to the all-inclusive category of "nonmedical marijuana," rather than to "living marijuana plants" and "the marijuana produced by

<sup>1</sup> The Ordinance also prohibits the "establishment or operation of a business engaged in commercial activity in all Zone Districts of Fresno County." § 5(2). We do not dispute the County's ability to enact this provision.

the plants” as Paragraph (3) states. Together with section 11362.2(b)(3), section 11362.1(b)(3) compels the reading that prohibitions on possessing, planting, cultivating, harvesting, drying, or processing are thus only limited to living marijuana plants and the marijuana produced by those plants. These six verbs constitute a single, integrated list of closely related, parallel, and overlapping terms that modify living marijuana plants, not all nonmedical marijuana. The words “nonmedical marijuana” are over-inclusive to include marijuana that is obtained and possessed legally under Prop. 64. A literal reading of the Ordinance’s language would prohibit an adult from possessing this legal marijuana upon the grounds of their private residence. Any expansion of these verbs to encompass a prohibition on the possession of marijuana on private grounds is in conflict with and thus preempted by state law.

We suggest the following amendment to the Ordinance to comport with state law:

**SECTION 5.** Pursuant to California Constitution, article XI, section 7 and Government Code section 65858, and notwithstanding any other provision of the Ordinance Code of Fresno County, to ameliorate the current and immediate threat to public health, safety and welfare, presented by the possession, planting, cultivation, harvesting, drying, or processing of nonmedical marijuana outdoors, or the establishment or operation of a business engaged in commercial marijuana activity, the Board of Supervisors hereby prohibits:

1. The possession, planting, cultivation, harvesting, drying, or processing of ~~nonmedical marijuana~~ living nonmedical marijuana plants outdoors on the grounds of a private residence in all Zone Districts of Fresno County.

In light of these statutory concerns, we ask that you amend the Ordinance in accordance and compliance with state law. We are open to discussing these matters directly with you, including any other regulations the County may consider, and to providing reasonable time to make necessary reforms.

Sincerely,



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DRUG POLICY ALLIANCE

Joy Haviland, Esq.  
Jolene Forman, Esq.  
Tamar Todd, Esq.

(510) 679-2317  
jhaviland@drugpolicy.org

cc: Supervisor Andreas Borgeas  
Supervisor Debbie Poochigian  
Supervisor Brian Pacheco  
Supervisor Henry Perea