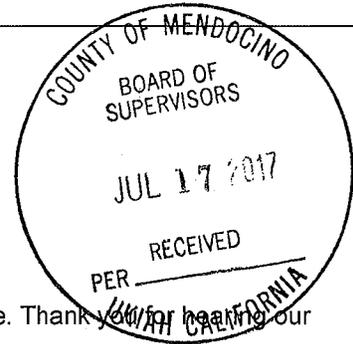


Board of Supervisors - Fw: Steve Miller's comments made to the Mendocino County Board of Supervisors on 7/11/17

From: Steve Miller <smiller10310@yahoo.com>
To: "bos@co.mendocino.ca.us" <bos@co.mendocino.ca.us>
Date: 7/16/2017 8:00 PM
Subject: Fw: Steve Miller's comments made to the Mendocino County Board of Supervisors on 7/11/17

Greetings Board of Supervisors,
 Show original message



Good afternoon members of the Board, Mr. Taylor and those from Agriculture. Thank you for your comments.

When my father, Glenn Miller and Woody Wilson purchased the land that is under discussion today in 1952, and built homes on this property, the primary intent and the top priority was to provide a great environment to raise families. I was "lucky" to be one of the kids in the Miller family, for years we roamed, explored and enjoyed every square foot of the land and Robinson Creek.

In the 1960's Miller and Wilson carefully parceled and sold portions of the property to upstanding, like-minded families. Our neighborhood to this day is full of wonderful, honest, supportive (note the strong representation here today) and community minded people. As the necessary easements were provided, they were for sparse traffic and resident related vehicles. Never, was the intent for the single lane country driveways and single lane private bridge to be used for fully loaded semi-trucks and trailers, a high volume of unwanted commercial traffic traveling through our property day and night. This is disruptive and IT IS WRONG!

This ILLEGAL activity is seriously affecting the quality of life and the integrity of our neighborhood. At least 20 families are being negatively affected by the cannabis growing activities of some "slick", deceitful newcomers. That should NOT happen. My neighbors will be addressing the details of additional issues.

Please, let me remind the board that the primary purpose of government at any level is to; protect the health, safety, possessions and quality of life it's citizens. With the current ordinances, the interpretation and application of them this protection is NOT being provided.

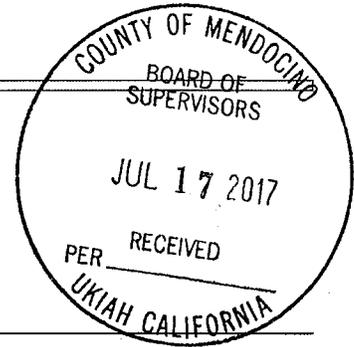
We sincerely request that you all carefully look at and listen to the issues, then make the only fair and sensible recommendation: DENY THE PERMIT for this grow.

Thank you!
 Steve Miller
 1161 Boonville Rd.
 Ukiah, Ca.

707 391 1749

Board of Supervisors - Courtney Bailey -- ADA Opinion Letter

From: Courtney Bailey <bailey.courtney@gmail.com>
To: <bos@co.mendocino.ca.us>
Date: 7/16/2017 9:55 PM
Subject: Courtney Bailey -- ADA Opinion Letter
Attachments: Courtney Bailey_ADA Opinion Letter_2017.pdf



Dear Supervisors:

I am a 2,500 sf applicant and cultivator from Philo. For years I have worked to align myself with dispensaries and branded retail products so I would be ready for transition into the regulated market. Unfortunately, I was not prepared for the costs to bring my greenhouse into compliance with Mendocino County. In preparation for the upcoming regulations, I allotted myself a budget of \$5,000. Which I assumed would be more than needed to bring the greenhouse into full compliance. Due to the regulations, the costs to become compliant are now more than \$50,000. This includes an ADA compliant parking space, more than 400' of walkways from the parking space to the entrance, through the greenhouse, out the back exit, to the ADA compliant bathroom and back to the parking space, an engineer, and the other items needed for a commercial greenhouse permit. These costs are more than the original price of the greenhouse and nearly half of what I can potentially gross in one year before costs.

I understand the tendency to over regulate an already mature market. And I acknowledge that this is a difficult task. My nature is to worry so I can only imagine if I was in your position the type of policies I would deem necessary. Please consider adjusting the requirements for a hoop house/greenhouse structure based on the information attached. I do not believe the cannabis industry should be given any special privileges, but we should be treated with the same considerations as any other commercial business in the county.

Titles I, II, and III of the ADA as well as California's Unruh Civil Rights Act are examined in the attached opinion letter. Since I am not an expert on this matter, I asked an attorney to evaluate the necessity of compliance with the Americans with Disabilities Act.

If you believe the current regulations are appropriate and must remain, please consider a provision to allow grandfather rights or acquired rights in which an old rule continues to apply to some existing situations while a new rule will apply to all future cases.

Sincerely,

Courtney Bailey
PO Box 140, Philo
(707) 472-6772

ERIC B. ALSPAUGH
E-MAIL: ERIC@TECHLAWLLP.COM
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May 25, 2017

Via E-mail: bailey.courtney@gmail.com

Courtney Bailey
Magnolia & Fig Cultivars, Inc.
PO Box 140
Philo, CA 95466, United States
707-472-6772

Re: Legal Services Agreement

Dear Ms. Bailey,

You have requested us to evaluate your business' ("MAGNOLIA & FIG") compliance with the Americans with Disability Act, as amended from time to time ("ADA"). Specifically, you have provided us with a description of your business location and operations in Mendocino County. Our analysis covers Titles I, II, and III of the ADA as well as California's Unruh Civil Rights Act.

Additionally, you have provided us with links to the Mendocino County licensing authority that regulates the medical cannabis industry locally.

Title I Employment

The issue is whether MAGNOLIA & FIG must comply with the employment provisions of Title I to the ADA. The ADA defines "employer" as any person:

Engaged in an industry affecting commerce,
Employing 15 or more full-time employees each working day,
For at least 20 or more calendar weeks in the year.
This means if your business only has 14 or fewer full-time employees, or is only in business for less than 20 weeks a year, then you do not have to comply with Title I.

MAGNOLIA & FIG does not have any employees. While MAGNOLIA & FIG may hire independent contractors for specific tasks, such as harvest preparations or harvesting cannabis this activity does not change the definition of independent contractor to an employee. It is our understanding that hire independent contractors occasionally and that they would not be characterized as employees under federal law. Therefore, Title I of the ADA is not applicable to MAGNOLIA & FIG.

Title II Government

MAGNOLIA & FIG operates as a private entity therefore Title II of the ADA does not apply.

Title III Public Accommodation

Title III prohibits discrimination on the basis of disability in the activities of places of public accommodations (businesses that are generally open to the public and that fall into one of 12 categories listed in the ADA, such as restaurants, movie theaters, schools, day care facilities, recreation facilities, and doctors' offices) and requires newly constructed or altered places of public accommodation—as well as commercial facilities (privately owned, nonresidential facilities such as factories, warehouses, or office buildings)—to comply with the ADA Standards.

As far as Title III is concerned, only businesses considered “public accommodations” are required to comply. The federal law offers this non-exhaustive list of public accommodations:

- Inns, hotels, and motels
- Restaurants and bars
- Bakeries and grocery stores
- Hardware stores or any sales/retail outlet
- Banks
- Laundromats and dry cleaners
- Accountants and lawyers' offices
- Health care providers' offices
- Public transportation
- Recreation venues
- Schools
- Social service centers
- Gyms

Essentially, any business that regularly serves the public is considered a public accommodation, but private clubs or religious organizations are considered exempt. In your case, MAGNOLIA & FIG is privately held. Additionally, MAGNOLIA & FIG does not have facilities open to the public. In fact, the public would have a difficult time accessing your facility due to its remote nature and unpaved access road. You do not have an office for meeting vendors or potential clients. Under the tests for requiring compliance with Title III of the ADA, MAGNOLIA & FIG would not come within the public accommodation requirements.

Additionally, even if MAGNOLIA & FIG were required to make public accommodations under Title III of the ADA, there are exceptions under certain circumstances. For example, under the ADA requirements you would be required to make your greenhouse accessible for wheel chair access. You provided us with dimensions and cost estimates for pouring concrete sidewalks and ramps in excess of \$50,000. The ADA standard is not absolute, and under the rule of reason, since MAGNOLIA & FIG does not generate more than \$100,000 in a year it would be an unreasonable

accommodation for you to install a costly concrete walkway. We believe that you are not subject to the Title III requirements of the ADA.

California state law

Business owners should remember that federal disability law under the ADA is only one part of disability law in any state; there are also corresponding state laws that prohibit discrimination based on disability both in employment and in public accommodations, like California's Unruh Civil Rights Act ("Act").

California employment discrimination law covers nearly all employers. An "employer" for purposes of the FEHA includes anyone regularly employing five or more persons, whether full or part-time; any person acting as an agent of an employer, directly or indirectly; state and local governments; employment agencies; and labor organizations. (Gov. Code, ' 12926, subd. (d)). For purposes of harassment, an employer includes anyone regularly employing one or more persons. In comparison, federal law requires employment of 15 or more employees before an employer will be covered, whether the disability is physical or mental. (42 U.S.C ' 12111(5)(A).)

An employer may refuse to hire or may discharge a person with a physical disability if the person is unable to perform the essential functions of the job even with reasonable accommodation. Also, the employer may refuse to hire or may discharge an individual with a disability who cannot perform the essential functions of the job in a manner which would not endanger his or her health, or the health and safety of others even with reasonable accommodation. These two defenses require a case by case evaluation of each persons abilities and limitations with regard to the specific job in question.

In addition, an employer may discriminate against a whole group of persons with disabilities if the absence of a particular disability is a bona fide occupational qualification (BFOQ). For example, an employer may be able to refuse to hire any person with back problems for a job which requires heavy lifting. However, employers can rely upon a BFOQ defense to exclude a group of people only if the employer can prove that all or almost all members of the excluded group cannot presently perform the job in a safe manner. (Sterling Transit Co. v. Fair Employment Practice Commission (1981) 121 Cal.App3d 791.)

Employers must make reasonable accommodations for applicants and employees with disabilities, unless the accommodation would impose an undue hardship on the employer. Examples of reasonable accommodations include making facilities accessible and restructuring jobs, which might include reassigning or transferring an employee, developing part-time or modified work schedules, acquiring or modifying equipment, minor restructuring of the work site, and providing readers or interpreters. (Cal. Code Regs., tit. 2, §7293.9.)

The California law is almost identical in application as the ADA. For the same reasons discussed above for the ADA, the same reasoning applies to the Act. That is, the Act applies to MAGNOLIA & FIG, however; MAGNOLIA & FIG does not fall within the definition of an

employer. MAGNOLIA & FIG does not qualify as an employer under the Act because MAGNOLIA & FIG does not employ five or more persons.

Summary

We have summarized the applicable state and federal law covering employment in California. We believe that MAGNOLIA & FIG does not meet the minimum requirements to trigger compliance with the Americans with Disabilities Act or the California Unruh Civil Rights Act. Should you or a government agency engage MAGNOLIA & FIG for any commercial purpose you should be able to supply this opinion letter to satisfy the government agency's requirements regarding discrimination in employment and public access to your facility.

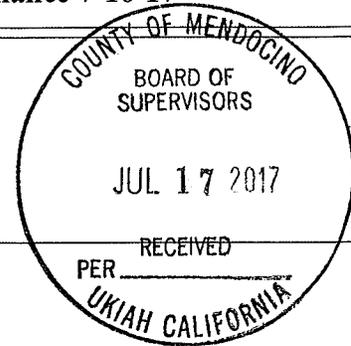
While this opinion is limited to MAGNOLIA & FIG and the facts relied on herein should you have any additional questions please do not hesitate to contact the undersigned.

Very truly yours,

Eric B. Alspaugh, Esq.
Attorney at Law

Board of Supervisors - Letter to Supervisors about Cannabis Ordinance 7-16-17

From: "Casey O'Neill" <casey@cagrowers.org>
To: <bos@co.mendocino.ca.us>
Date: 7/16/2017 8:48 PM
Subject: Letter to Supervisors about Cannabis Ordinance 7-16-17



TO: Mendocino County Board of Supervisors

FROM: Casey O'Neill, HappyDay Farms, Vice-Chair California Growers Association

Thank you for continuing the effort to make the cannabis permitting program workable. This is an opportunity to create and foster policy that will support and sustain the homesteads for which Mendocino County is known. As a community, we are asking for bold leadership from the Board of Supervisors to take clear steps to help small cannabis farms who find themselves facing regulatory hurdles that many cannot accomplish. This letter is made up of suggestions I have received from the community regarding the ordinance process. I have attempted to streamline them into the following:

Cottage License: It would be appropriate for the county to authorize Cottage Cultivators via a one-page Affidavit of Cottage Cultivation and a \$100 filing fee. Cottage Cultivators will still have to face state licensure next year. If county government is serious about helping the smallest farmers, it will avoid the heavy regulations that have been enacted. The program does not work for the smallest farms, we must fix this or see the loss of the backbone of many communities on the North Coast.

Home Manufacturer. AB1616 was passed and signed in 2013 allowing for cottage producers operating from home kitchens. This should serve as a basis for cottage manufacturing. Ethanol, while considered a volatile solvent it can be used in a non-volatile way. Soaking cannabis to make tinctures is as safe as having a bottle of vodka in your liquor cabinet. Using a distiller that is UL listed (like the brand Megahome) is safer than using a coffee maker.

Microbusiness: We suggest the creation of a Vertically Integrated Mendocino Microbusiness permit for small scale farmers.

Transportation: Mendocino farmers need explicit authorization from the county to transport our products.

Crop Loss: Cannabis farming is like all other farming; crop losses can and do occur. There is nothing built into the current system that would support small farmers who often face crop issues. With the stringent microbial and pesticide requirements that will be put in place, we need support from the county for farms that suffer crop failure in the form of waived fees/taxes.

ADA Requirements: It would make sense to use the standard of over 15 employees or open to the public. This would be functional for small farms, while remaining in line with standards for other industries.

Drying Sheds: There is a need to waive commercial building requirements and allow for ag-exempt drying sheds. We'd also like to suggest waiving commercial requirements for small Owner-Operated indoor gardens.

Unpermitted Structures and Ponds: Many farmers purchased properties with existing unpermitted ponds and structures. Good faith remediation efforts should be supported rather than penalized, reflecting the spirit of the shared concern for safety and conservation.

Information Access: Cultivators need to know what policy will be. It has been frustrating for the community to encounter policy changes midstream that raise costs to often unacceptable levels. Without better communication about business requirements, this program will not work.

Greenhouses and Hoophouses: As a vegetable farmer, I have grave concerns about the way that the Dept of Planning and Building is interpreting rules regarding greenhouses and hoophouses. Farmers need these structures to produce crops, and we cannot afford exorbitant costs nor extensive permitting regulations. Onerous processes will threaten the resurgence of small producers at a crucial point; the county cannot afford this.

Track and Trace: Given the facts that we are already late in the season, few permits have been issued, and that the state has gone with a different company, it does not make sense to force cultivators to spend an additional large sum of money to pay for a Track and Trace program that arguably will be ineffective for this season. There is no incentive for entities downstream in the supply chain to participate given the fact that the program next year will be run by an entirely different company.

Extending the Permit Window: The community is trying to come to grips with the vast changes that are occurring. A hard deadline of Dec 31st means that many parcels must be permitted this year or never (RL, TPZ, FL). This is creating havoc and threatens the bedrock of property values within the county. Many elders are struggling with trying to figure out the permitting requirements and are still trying to overcome the fear and stigma that has been created by Prohibition. These folks need time, and they need flexibility from the county throughout program implementation.

Lapse of Permit: If a landowner chooses to take a year off, this should not penalize that person from ever getting a permit again. Once permitted, a location should remain eligible for future permits.

It is my fervent hope that Mendocino County can rise to make a statement about the values we hold as a community. Cannabis has long been an integral part of the economy in our county; there are many farmers who would like to be part of the regulated process who do not feel currently able to participate. The scale of farms in Mendocino is smaller than in many other places in the state. We must make efforts to craft regulatory structures that will help these small businesses compete in a marketplace that is in danger of rapid consolidation. Let us build a strong and prosperous future by working together. Thank you for your public service.

The following is a letter from farmer Jen Paluso, from Mendo Hideout, which provides more depth on some of the above points:

Commercial Building Class Designation (Drying Buildings): At the April 19th Cannabis Workshop put on by the Department of Agriculture, everyone in attendance was told existing buildings would be permittable under Class K by a representative from Planning & Building.

Apparently at some point after the workshop, the Building Director made the decision that commercial code needed to be applied to all buildings, although this information was not publicized nor readily available on the Mendocino County website (further complicated by the migration of the County's website from 'mednocino.ca.us' to 'mendocinocounty.org'). When we submitted our application it was with the understanding that Class K was still an option for the existing, purpose built drying buildings on our property. The potential capital improvement costs to construct new buildings to commercial code in addition to the fees for permits is an unexpected financial hardship, potentially excluding many of the farmers who have every intention of compliancy. There are also environmental implications as the topography in District 3 is mountainous; i.e. flats needing to be constructed, increased heavy equipment traffic on already destabilized County roads, etc...

How can I dry the crop this year? We have every intention of building a commercial drying building, however given the increased demand for architects, engineers, contractors, etc... in the County with lead times exceeding more than 2 months, there is no reasonable way to get it built in time for drying this year's crop.

As the Application to Cultivate Medical Cannabis is part of the Department of Agriculture, could the County modify the "Application for Agricultural Exemption" for drying buildings? Why are cannabis cultivators being held to a different (and more costly) standard than other agricultural businesses within Mendocino County?

ADA Bathroom Compliancy

The Americans with Disabilities Act (ADA) generally requires employers with 15 or more employees to provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability — unless the employer can demonstrate that the accommodation would impose an undue hardship. It is totally unreasonable that an owner operator living at the property with zero employees would be required to construct an ADA compliant bathroom with paved parking and turnouts for wheelchairs. These requirements ARE an undue hardship for the small farmer with less than five (or no) employees. Not to mention the added environmental impact of having to construct said facilities, which would require a concrete slab, and separate septic system and leach field. Again, ADA compliancy flies directly in the face of the stated ordinance goal of avoiding further environmental impact.

This requirement contradicts what the State of California already has in place for agricultural workers per the Department of Industrial Relations in regards to agriculture with requirements reduced for five or less employees (<https://www.dir.ca.gov/Title8/3457.html>). Why are other agricultural businesses allowed to use portable toilet systems to be compliant, but us Mendocino cannabis farmers are not? One of our gardens is nearly a ¼ mile from any facility or building on site, but we're still not allowed to use a portable toilet trailer like the wine industry can? Why are we being held to a different (and again more costly) standard than other agricultural businesses in Mendocino County or the state of California for that matter?

Greenhouses

Greenhouses are an integral part of the growing process, with most cannabis farms in Mendocino County using greenhouses that do not exceed 12'x24'. When you hold growers to the commercial code for a greenhouse, the cost increases tenfold. Again, this will have environmental impacts as to build a commercial code greenhouse will entail building flats affecting local topography, wildlife

and waterways. Also, coming from a construction background, a 110 mile wind rating seems excessive; many greenhouse manufacturers wind ratings are in the 80-90mph range.

--

Casey O'Neill, HappyDay Farms,
Vice Chair California Growers Association
Cell: 707-354-1546 Casey@cagrowers.org
<http://www.calgrowersassociation.org/>