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Justice Department shoots down commercial marijuana cultivation

Obama administration clarifies its policy as cities such as Oakland have considered allowing large-scale, privately-operated farms to supply medical pot dispensaries — and generate more tax revenue.

By John Hoeffel, Los Angeles Times

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With marijuana sold openly at retail stores throughout California, some advocates, pot growers and even city officials believed authorized commercial cultivation could be next. But the Obama administration dashed that notion this week, making clear it will not allow such operations.

In a letter sent Wednesday to federal prosecutors, Deputy Atty. Gen. James M. Cole noted that some cities and states have considered plans for "multiple large-scale, privately-operated industrial marijuana cultivation centers" and wrote that the administration's hands-off policy on medical marijuana patients was "never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law."

Across the country, proposals to bring marijuana cultivation into the open have drawn warnings from federal prosecutors. But it was Oakland's vision of four enormous enterprises with astounding revenue projections that started the federal pushback against the thriving and increasingly bold marijuana industry.

"Unfortunately, this is a step backward," said Joe Elford, chief counsel for Americans for Safe Access. "We kind of regard this as kind of the equivalent of 'don't ask, don't tell.' Obama made certain campaign promises, and he's not carrying through on them."

Elford said the letter could embolden prosecutors in California to take on dispensaries — and lead prosecutors elsewhere to take steps to derail medical marijuana distribution systems set up by the states. "I would be hearing, 'If you get too big, we may well put a target on your back,'" he said.

In California, some collectives have made an effort to raise their own marijuana or develop a network of patient-growers. But many buy from operations hidden in warehouses, industrial buildings, hollowed-out rental homes, secluded farms and forest lands.

Until earlier this year, Oakland had pursued an ambitious cultivation plan, drawing worldwide attention. City officials imagined Oakland as the capital of the fast-emerging industry. One

entrepreneur, Jeff Wilcox, hoped to convert 172,000 square feet of aging and largely empty brick buildings into a marijuana industrial park with growing and manufacturing businesses. He commissioned a report that concluded his proposal could cultivate marijuana worth \$59 million a year and send as much as \$3.4 million in annual taxes to the city.

But in February, Melinda Haag, the U.S. attorney for the state's Northern District, warned Oakland officials that she would consider prosecuting anyone authorized by the city to set up an industrial pot farm, as well as anyone who assisted them, including property owners and financiers.

Wilcox put his plans on hold but believes the city needs to push forward. "Oakland is so broke, and Oakland is going to be more broke next year and the year after," he said.

After Haag's threat, the city hired a law firm to rework its proposal. Under the far more restrained plan, which was unveiled Friday, only nonprofit collectives could apply for growing permits and each cultivation site would be limited to 25,000 square feet.

Arturo Sanchez, the assistant to the city administrator, said the proposal does not conflict with the Justice Department's position. "I think they're saying, 'We didn't envision large-scale grows for profit,' " he said. "At no point have we said this is a profiteering endeavor."

Berkeley was planning much smaller operations, in the range of 5,000 square feet to 10,000 square feet. It has frozen those plans, but Mayor Tom Bates said the city intends to pursue them. "We see a lot of advantages," he said, but stressed that Berkeley would not proceed without approval from local, state and federal prosecutors. "We're going to go with our eyes wide open."

Bates said that having the city's collectives grow in industrial areas would be much safer — allowing Berkeley officials to do more to prevent crimes and fires caused by faulty wiring, as well as inspect the crop to ensure that it was free of pesticides and other potentially harmful substances.

But he was not sanguine about the prospects. "I'm under the view that the Department of Justice will never sanction this," he said. "I think that they're going to be the stumbling block."

Isleton, a Sacramento River town with 840 residents, last month shelved plans to allow a 30,000-square-foot pot farm that was projected to pump as much as \$600,000 a year into its treasury. The plan was attacked by the Sacramento County district attorney, the county grand jury and the U.S. attorney for the area. The grand jury foreman said the growing operation was "perched on the blurry edge of marijuana law."

As a presidential candidate, Barack Obama said the federal government should not raid medical marijuana users and caregivers. Three months after he was inaugurated, his attorney general announced that as the administration's official policy, which later was spelled out in an October 2009 letter to prosecutors.

The policy, in part, set off the explosion of dispensaries and pot-growing operations in California. The Justice Department's letter this week halts what some saw as the next phase:

commercial cultivation.

In his letter, Cole indicated that he was reiterating the department's stance. But it contained a subtle shift. In the 2009 letter, the department advised prosecutors not to focus on "individuals whose actions are in clear and unambiguous compliance with existing state laws" — pointing to people with cancer or other serious illnesses and their caregivers as examples. The new letter cites patients and caregivers not as an example, but as the only exception, and it defines caregiver as an individual and "not commercial operations cultivating, selling or distributing marijuana."

Matthew Miller, a Justice Department spokesman, said the document was intended to restate department policy after more than half a dozen letters were sent by U.S. attorneys in response to medical marijuana developments in their states. "It's not really a new policy," he said.

Miller declined to say whether any large-scale cultivation operation, such as one run by a nonprofit patient collective, could pass muster with the federal government.

Under guidelines issued by Jerry Brown when he was attorney general, most dispensaries in California are organized as nonprofit collectives. The state's new attorney general, Kamala Harris, declined to comment on the Justice Department letter. Her office is currently working to revise the nearly 3-year-old guidelines.

Jane Usher, a special assistant city attorney in Los Angeles, said court cases have repeatedly shown that the city's dispensaries operate outside those guidelines. "Strangers, unidentified strangers, are bringing in large satchels and suitcases and bags of dried marijuana," she said.

The state requires collectives to grow their own marijuana, but Usher said she was awaiting clarification on whether state law requires them to grow on site. She declined to speculate on whether a collective could set up a major growing operation that would be legal under state law. "I don't want to go there," she said. "It's so at odds with the facts on the ground that I don't want to endorse a hypothetical."