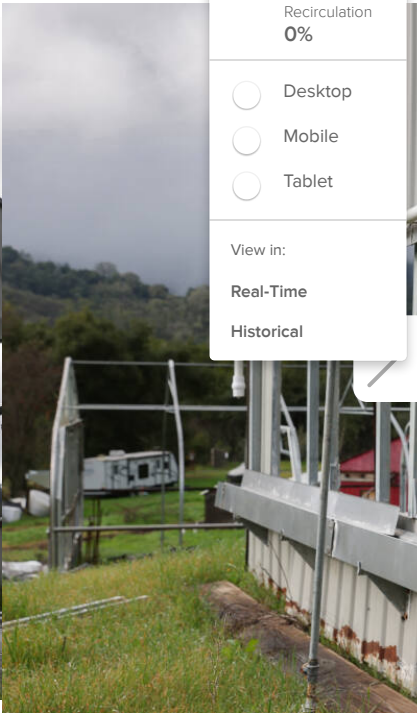


How a fight between a cannabis farmer and Sonoma County reflects a crippled industry

A year and a half and countless county hours and resources have been spent litigating a question that boils down to something as seemingly mundane as the use of plastic tarps. | 41



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Jeremy Freitas, owner of Patriot Valley Farms, has been entangled in a battle with Sonoma County due to contradicting state and local cannabis regulations. Photo taken near Cloverdale on Wednesday, Jan. 17, 2024. (Christopher Chung / The Press Democrat)

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THE PRESS DEMOCRAT
February 16, 2024, 6:58AM | Updated 1 minute ago

It is the morning of Sept. 19, and I'm meeting Jeremy Freitas at his cannabis grow, Patriot Valley Farms, in northern Sonoma County. It's a collection of plots tucked into an idyllic hillside with sweeping views. The plants are almost ready for harvest, and I'm there to tag along for a county inspection. Freitas is uneasy.

"The anxiety I have right now is through the roof," he says as we wait for inspectors to arrive. "I didn't sleep at all last night."

Maggie Furlong, senior agricultural program assistant with Sonoma County's Department of Agriculture, arrives with a code enforcement officer and spends the next couple of hours walking the rows of different cannabis strains, measuring the crop for tax assessment purposes. The conversation is cordial but strained. Small talk is interspersed with back-and-forth over measurements and other points of disagreement.

The tension stems from an inspection by Furlong in June 2022 that set off a contentious and protracted battle with the county. The dispute continues today and has saddled Freitas with tens of thousands of dollars in fees and fines he says are unwarranted and have threatened the future of his business.

A year and a half and countless county hours and resources have been spent litigating a question that boils down to something as seemingly mundane as the use of plastic tarps.

The saga reflects the difficulty regulators face in striking a balance in setting up a new industry as well as the challenges for growers in navigating an ever-shifting, often punitive and sometimes conflicting regulatory system that many feel has failed them.

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Freitas founded Patriot Valley Farms in 2021 and launched Brothers Mark, a veteran-owned and operated cannabis brand, with the goal of promoting and providing marijuana, especially as treatment for chronic pain and mental health issues like post-traumatic stress disorder. He also co-founded the Veterans Cannabis Group as an educational resource and family support service for veterans who use medical marijuana. Freitas himself contracted Lyme disease during his service, which came with lasting impacts and various prescription drugs before he turned more heavily toward cannabis. The farm, too, serves as an occasional haven, he said, for different veterans' groups who've visited to learn about plants and hike or do yoga and other activities on the property.

Shifting goal posts

His path has been anything but smooth, however. In 2021, Freitas paid \$30,000 for a state license for mixed-light cultivation, which happens in greenhouses or hoop houses and can involve varying degrees or combinations of natural and artificial light manipulation, leading to more growth and harvests in a year. Getting county approval for the same type of growing, though, proved more difficult.

Proceeding through the many monthslong local permitting process, Freitas racked up tens of thousands of dollars in fees and lost precious time crucial to keeping his operation afloat. He's not alone. County cultivators say the glacial pace and ever-evolving requirements that come with hefty penalties for violations have driven many out of the county or even out of business altogether.

Freitas has been able to hang on, but in the summer of 2022 he found himself caught between state and county regulations. To stay in compliance with his state license, Freitas needed to perform some sort of light manipulation, but that was barred under the parameters of his county permit. In an attempt to toe the line between both, he attached black tarps, which can be used to limit natural light exposure, to his hoop house structures but did not actually deploy them, he said.

The county took issue with his interpretation and slapped him with \$83,000 in penalties. Freitas opted to appeal through an administrative hearing process. It's a costly and risky endeavor, since anyone appealing a county call has to pay not only the expense of their own lawyers and experts but also the costs of the hearing officer, court reporter and county staff and witnesses involved. Worried the original fine would break him, however, Freitas felt he had no other choice.

A virtual hearing took place in May 2023. The county contracts with Sacramento-based California Hearing Officers LLP to preside over its administrative hearings. In Freitas' case, Kimberly Buchholz, an estate planning and probate attorney, was assigned. A number of veterans and others joined to vouch for Freitas and the positive impacts of his business and nonprofit work. Several staff and departmental officials appeared for the county.

The county argued that Freitas was warned on multiple occasions that his solution wouldn't satisfy local restrictions on his permit. But Freitas said he was put in an impossible position between "the state license and local regulations where mixed light was simultaneously required and prohibited," as he put it in a prehearing brief. Following the June 2022 inspection, Furlong of the Department of Agriculture sent Freitas an email acknowledging his awkward circumstance: "I am working on figuring out what if anything can be done since you are in a tough spot between state and county authorizations," she wrote.

The magnitude of the fine, then — which Freitas says could put his business under — felt particularly punitive and out of step, especially given that the violation centered on a few plastic tarps rather than using an electrical form of light manipulation, which has more significant environmental and safety implications.

That's not to mention, he underscores, that he never used the tarps, which should eliminate the concern, and basis for the violation, that they'd been used to produce more cannabis than the county permitted.

A spokesperson said the county could not comment on the specifics of Freitas' situation given active litigation. Broadly, Daniel Virkstis said, continues to communicate with cultivators that they need to comply with both local and state regulations. As state regulations change, staff reviews and develops communication and possible updates to local regulations to maintain alignment."

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The hearing officer issued a decision in July siding with the county on the grounds that ultimately Freitas “clearly was on notice that the County considered the installed tarps a violation.”

Still, the ruling noted that while county witnesses all testified Freitas was informed light deprivation was not permitted, they also did not observe the tarps in actual use. There was “no proof,” it said, that Freitas “received an economic benefit from the installation of the tarps in the hoop houses” and “no evidence was submitted suggesting the violation could or did cause human health/safety or environmental damage.” In a decision on penalty calculation, a county official is quoted as assessing the violation as “minor.”

The hearing officer ordered the \$83,000 penalty be reduced to \$38,511, but also awarded \$19,194 to the county in costs incurred by the Department of Agriculture, Weights & Measures and county counsel for investigative and administrative time. She also saddled Freitas with costs incurred by county departments for the hearing at a varying rate of \$225 to \$282 per hour on top of the costs for the hearing officer and court reporter.

At one point, Freitas reached out to his Sonoma County supervisor, James Gore. Gore told me he looked into the case, but felt like there was little he could do.

“It’s one of those things that’s tough. I understand his frustration,” Gore said. But, code enforcement “had a clear record of visiting the site and talking about the issues at hand. He had a right of going to an administrative law judge to appeal. That didn’t come out in his favor. At that point for me as a public official, I can’t get involved.” Gore agreed “distinctions between the state and local laws can be confusing,” but said the way Sonoma County’s cannabis ordinance was set up doesn’t allow for quick adjustments to be made.

Ironically, while all this played out, a change to state regulations in December 2022 removed the requirement that cultivators must use light manipulation to maintain a mixed-light state license. Another state-level change a month earlier now allows the use of light deprivation, like the tarps, as part of outdoor growing. The county’s definition still considers it mixed-light cultivation, not outdoor.

An ongoing fight

To date, Freitas hasn’t gotten his full approval for a local mixed-light license. It requires expensive infrastructure investments, including an ADA bathroom and changes to septic he hasn’t been able to complete because of the time and money sunk into his legal fight. Still, he has decided to keep pushing back against the county — partly on principle and partly because he says he can’t afford not to.

“You throw confusing regulations on top of a department that seems in chaos, and you’ve got people like us that are barely surviving and being treated like criminals,” Freitas said. So, in the wake of the hearing decision, Freitas decided to challenge the county in court.

“The entire industry is hurting, but when you have laws that conflict, it’s even more difficult,” Freitas said. “The way you guys wrote this is why I’m in such a tough spot.”

County counsel said it does not track litigation by subject matter but identified nine commercial cannabis-related cases filed against Sonoma County, noting, however, that the list may not be exhaustive. Eight of those lawsuits ended in settlements or rulings in the county’s favor. The ninth is Freitas’ case, which has a case management hearing scheduled for March.

California’s legal cannabis industry has been plagued by setbacks that extend well beyond local permitting woes. But, in Sonoma County, as elsewhere, a vocal demand for a better system by both supporters and opponents of cultivation has prompted officials to undertake a revamp.

With strong feelings and advocacy on both sides of the issue, the county is in a difficult position, as reflected in a December meeting to introduce the latest developments in the planned overhaul of the county’s cannabis ordinance, an effort that started mid-2021. A key component is a countywide environmental assessment that would streamline permitting. To date, each potential grow requires its own environmental review — expensive and lengthy endeavors, some also call inconsistent or lacking, that often have been held up by delayed reviews and individual opposition. It is also meant to settle debates over issues like groundwater availability and contamination and proximity to homes, schools and other sensitive community resources. The Board of Supervisors approved a consultant, Ascent Environmental Inc., for the task in October 2022.

Supervisor Gore is hopeful that the all-encompassing analysis for the county will allow “us to reset common-sense regulation in line with the state” and be able to respond more nimbly when situations like Freitas’ arise. He said the county forewent the process initially in a rush to get a local cannabis program off the ground right after legalization.

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ould have raised my hand to say, ‘No, we don’t have to be one of the first counties out,” Gore said. “By sprinting out, now we’ve fallen behind other counties. There’s no way to speed through an (Environmental Impact Report) process. You just have

to grind through and do it.”

During a Dec. 13 meeting, called a “midpoint” through the process meant to provide transparency and gather feedback, several proposals that could make it into the new ordinance were floated. There were elements that eased and riled concerns for both cannabis industry supporters and opponents, with little overlap.

“We have been challenged with the task of trying to make everyone happy,” Scott Orr of Permit Sonoma said during the session. “We really are striving to support both the industry — the people who have been trying to get a viable operation — and the communities that are bringing up valid environmental concerns. It’s not an easy task.”

Stakeholders on all sides have expressed some guarded optimism that a new ordinance has the potential to help right-side where the industry goes from here. The question for growers, however, is who will be left.

According to county data, for fiscal year 2021 to 2022, there were 168 permitted cultivators. The next year, there were 101. For fiscal year 2023 to 2024, there are 79.

In conversations over the past few months, Freitas has alternated between dejected and determined.

“We’re a small farm just trying to make it, and everyone is dying around me,” Freitas told me.

“Fighting this fight against the county is something that has to be done. It’s nothing that I want to do,” he said. “I’ve put too much time and money and my heart into this place.”

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