

**REPORT TO THE SHASTA COUNTY PLANNING COMMISSION**

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| <b><u>PROJECT IDENTIFICATION:</u></b> <b><u>REGULAR AGENDA</u></b>                                      | <b>MEETING DATE</b> | <b>AGENDA ITEM #</b> |
| <b>ZONE AMENDMENT 09-011 (MEDICAL MARIJUANA CULTIVATION)<br/>COUNTY WIDE ZONING PLAN TEXT AMENDMENT</b> | <b>11/10/2011</b>   | <b>R5</b>            |

**RECOMMENDATIONS:** That the Planning Commission recommend that the Board of Supervisors conduct a public hearing and:

1. Find the project exempt from the California Environmental Quality Act (CEQA) and consistent with the County General Plan; and
- 2.. Amend Shasta County Code, Title 17, Zoning Plan adding Section 17.88.320, Medical Marijuana Cultivation, and revising Section 17.94.060(C)(1), to include the Shasta County Sheriff as a concurrent enforcing officer of Title 17 with the Planning Director.

**PROJECT SUMMARY:** Zone Amendment 09-011 (the Project) proposes text amendments to the Zoning Plan initiated by the Board of Supervisors in 2009 to regulate cultivation of medical marijuana. On October 13, 2011, the Planning Commission continued its public hearing on the Project and directed staff to investigate the revisions recommended by agencies and the public, and make changes as appropriate for consideration. This report includes staff's analysis of the suggested revisions, and the appropriate changes have been incorporated into the attached revised draft ordinance.

**BACKGROUND:**

In November 2009, the Board of Supervisors directed staff to research possible regulations for medical marijuana dispensaries and cultivation in recognition of state law (the Compassionate Use Act of 1996 and the Medical Marijuana Program Act of 2004) and the need to mitigate potential adverse impacts to people, property and the environment in the unincorporated area of Shasta County.

Since November 2009, staff has considered various approaches to regulating medical marijuana dispensaries and cultivation, and has discussed the issues with local law enforcement, public health agencies and qualified patients, and has monitored and reviewed ordinances adopted by other jurisdiction, as well as legal developments within the State of California. The Planning Commission held a public hearing on October 13, 2011 to consider an ordinance banning medical marijuana dispensaries and a separate ordinance regulating cultivation at which a number of agencies and individuals testified. The Commission subsequently recommended that the Board of Supervisors adopt the ordinance banning dispensaries, and referred the ordinance regulating cultivation back to staff to examine and report on several suggested revisions presented at the hearing.

**DISCUSSION:**

The goal of the cultivation Ordinance is to strike a reasonable balance between the state law which grants access to and use of medical marijuana in limited circumstances and the need to mitigate the secondary impacts associated with cultivation of medical marijuana. It is in light of this balance that the following issues were evaluated.

1. Require a registration or permitting process with fees for medical marijuana cultivation.

Various agencies and members of the public spoke in favor of establishing a registration or permitting process for qualified patients and primary caregivers as a means of allowing identification of approved cultivation areas, identification of qualified patients or primary caregivers, and approval of the owner of the property where the cultivation has been established. It would also establish a fee to support the permit program.

Analysis: Recent statements by federal prosecutors in California indicate that jurisdictions that affirmatively allow dispensaries and/or cultivation through a permit process may be found to be in violation of federal law. Additionally, the California Court of Appeal recently held that a local agency's permit program for medical marijuana dispensaries was preempted by federal law. Therefore, staff does not recommend establishing a permitting process at this time. If the appeals court decision is challenged and overturned in the future, the Board of Supervisors may want to consider such a program at that time.

2. Prohibit cultivation within residences and limit indoor cultivation to detached accessory structures.

The Ordinance presented to the Commission in October included limited cultivation in residences and structures designed for human habitation. Additional evidence of the potential negative health and safety consequences of such cultivation to those living in the residence, especially to children, due to increased risk of fire, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential criminal activity was presented by the Shasta County Health Officer and others.

Analysis: Staff concurs and is recommending revisions to Section 1(D)(5) of the Ordinance to prohibit cultivation in residences and structures used for human habitation. Indoor cultivation would be permitted only in detached accessory structures that meet the definition of "Indoor" as defined in the Ordinance.

3. Require a 500-foot setback from outdoor cultivation areas to residences on adjacent parcels.

The current draft ordinance provides setbacks from adjoining residences of 15 to 200 feet based on parcel size. An expanded 500-foot setback to residential structures was proposed as additional mitigation for the secondary impacts of cultivation.

Analysis: A 500-foot setback requirement would create a de-facto ban on cultivation when applied to parcels smaller than several acres in size, and would not meet the goal of balancing interests between cultivation for medical needs and mitigating secondary impacts. Therefore, staff does not recommend this change.

4. The limitations on cultivation area are either too restrictive or not restrictive enough.

A number of recommendations were received in regard to the cultivation areas proposed in the draft ordinance. Recommendations ranged from a complete ban on all cultivation in the unincorporated areas of the County, to allowances of up to one acre of cultivation area on parcels 20 acres or larger.

Analysis: In order to determine a reasonable cultivation area, staff reviewed several published studies on cannabis yields and spoke with local qualified patients, growers and law enforcement to establish a baseline "per plant" area

for medical marijuana cultivation. Staff identified a range of nine square feet to 30 square feet for each mature plant depending on type of plant and growing conditions and techniques used. As a reasonable baseline nine to 20 square feet was used to calculate grow area based on the information collected. The Medical Marijuana Program Act (MMPA) allows six mature plants for each qualified patient. In addition, staff consulted with the director of the Shasta County In-Home Support Services program (IHSS) to get an estimate of a reasonable case load for a primary caregiver since an IHSS worker performs much the same function as a primary caregiver as defined in the Health and Safety Code. The average caseload per worker in the IHSS program in September was 1.16.

The following revised cultivation areas are recommended based on the findings above and the following assumptions: 1) techniques are available to accommodate personal cultivation on smaller lots; 2) the secondary impacts of small-scale cultivation decrease as parcel sizes increase; 3) a reasonable number of qualified patients for whom a primary caregiver can grow is two; 4) a reasonable maximum area per mature plant on larger parcels is 20 square feet.

- a. Premises with a gross area of less than one acre shall be limited to 60 square feet of total cultivation area.
- b. Premises with a gross area of at least one acre but less than two acres shall be limited to 100 square feet of total cultivation area.
- c. Premises with a gross area of at least two acres but less than five acres, shall be limited to 150 square feet of total cultivation area.
- d. Premises with a gross area of at least five acres but less than 20 acres, shall be limited to 240 square feet of total cultivation area.
- e. Premises with a gross area of 20 acres or more shall be limited to 360 square feet of total cultivation area.

5. Increasing buffers around sensitive and youth-oriented facilities from 1000 feet to 2000 feet

A Recommendation was received to increase the proposed 1,000-foot restriction on cultivation near schools and other sensitive uses to 2,000 feet.

Analysis: The proposed 1,000-foot buffer in Section I (D)(8) of the proposed cultivation Ordinance is derived from the Medical Marijuana Program Act which establishes a prohibition on smoking within 1,000 feet of any school, recreation center, or youth-oriented facility. Additionally, the 1,000-foot buffer from schools is also consistent with the County's current 1,000-foot buffer for other potentially offensive land uses such as adult entertainment establishments. Therefore, staff recommends the current 1,000-foot restriction.

6. Include home schools in the 1000-foot buffer for sensitive uses.

A Recommendation was received to include home schools in the proposed 1,000-foot buffer from schools, and other sensitive uses.

Analysis: Home schools are not required to identify themselves in any visible manner, thereby making it virtually impossible to reliably locate home schools. The proposed restriction would not be enforceable, therefore, staff does not recommend inclusion of home schools in the 1,000-foot buffer provision.

7. Assess higher fines and allow immediate abatement of marijuana plants in response to complaints.

Several suggestions were presented from both the proponents and opponents of the proposed cultivation Ordinance to charge higher fines associated with the violations on properties regarding medical marijuana cultivation to 1) provide greater incentive to comply; and 2) generate revenue to support the enforcement program.

**Analysis:** The ordinance treats violations of the marijuana cultivation provisions through the nuisance abatement provisions of Title 8, already established in the Shasta County Code, and the same way it treats any other violation of the code. In addition, the Shasta County Zoning Plan (Section 17.94.060(D)) provides that every violation of the zoning code is an infraction, unless it is otherwise required by law to be a misdemeanor or is prosecuted by the district attorney as a misdemeanor. The fines for infractions are set as outlined in Government Code 25132. Therefore, staff recommends maintaining the current enforcement and nuisance abatement program that applies to all infractions, and the fines outlined in Government Code 25132.

**Environmental Determination –** The proposed amendments to the Zoning Plan are not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

**ISSUES** The ordinance revisions outlined above and recommended by staff make reasonable accommodation for the personal medical needs of qualified patients and primary caregivers, as intended by the law, while prohibiting large-scale grows and the abuses, risks and enforcement challenges associated with them as reported by Shasta County and other jurisdictions. In developing this draft ordinance, staff has incorporated input from dispensary owners, qualified patients and primary caregivers obtained through testimony given at hearings and in private discussions, review of ordinances recently adopted by other jurisdictions, input from local law enforcement and public health officials and discussions with County Counsel regarding legal/legislative developments. To date, one letter has been received from the public concerning the proposed revised Ordinance.

**ALTERNATIVES:** The following alternatives are available:

1. Recommend modifications of the proposed ordinance Zone Amendment 09-011.
2. Continue the public hearing to request additional specific information in regard to the regulation of medical marijuana cultivation.
3. Recommend that the proposed ordinance not be approved or adopted, with findings supporting the Commission's recommendation.

**CONCLUSION:** Based on the data received from members of the public and recommendations from affected agencies, staff is of the opinion that the recommendations made at the October 13, 2011 Planning Commission meeting have been analyzed and changes made where appropriate. The project is consistent with the General Plan

policies and regulates medical marijuana cultivation in a manner consistent with The Compassionate Use Act and The Medical Marijuana Program Act, while protecting the public health, safety, and general welfare of the citizens of Shasta County.

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Tom Bosenko, Sheriff, Shasta County  
Stephen Carlton, Shasta County District Attorney  
Project File

Attach: 1. Resolution, Medical Marijuana Cultivation  
2. Draft BOS Ordinance, Exhibit A – Medical Marijuana Cultivation