

REPORT TO THE SHASTA COUNTY PLANNING COMMISSION

<u>PROJECT IDENTIFICATION:</u> <u>REGULAR AGENDA</u>	MEETING DATE	AGENDA ITEM #
ZONE AMENDMENT 09-010 (MEDICAL MARIJUANA DISPENSARIES) ZONE AMENDMENT 09-011 (MEDICAL MARIJUANA CULTIVATION) COUNTY WIDE ZONING PLAN TEXT AMENDMENT	10/13/2011	R3

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

A. In regards to Zone Amendment 09-010 – Medical Marijuana Dispensaries:

1. Find the project exempt from the California Environmental Quality Act (CEQA) and consistent with the County General Plan; and
2. Amend the Shasta County Code, Title 17, Zoning Plan adding Section 17.88.310, Prohibition of Medical Marijuana Dispensaries.

B. In regards to Zone Amendment 09-011 – Medical Marijuana Cultivation:

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

PROJECT SUMMARY: This project proposes text amendments to the Zoning Plan initiated by the Board of Supervisors to (1) ban Medical Marijuana Dispensaries and (2) regulate the location and grow area of Medical Marijuana Cultivation to accommodate the needs of patients while promoting the health, safety and welfare of residents and businesses in the unincorporated territory of Shasta County.

BACKGROUND/DISCUSSION: In 1996, the voters of the State of California approved Proposition 215, entitled “The Compassionate Use Act of 1996.” The intent of the Compassionate Use Act is to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances, without being subject to criminal prosecution under certain statutes. In 2004, Senate Bill 420, entitled the “Medical Marijuana Program Act,” was codified to clarify the scope of the Compassionate Use Act.

In November 2009, the Board of Supervisors directed staff to research possible regulations for medical marijuana dispensaries and cultivation in order to accommodate a recognized need and mitigate potential adverse impacts to people, property and the environment in the unincorporated area of Shasta County. Two Proposed Ordinances, one regulating medical marijuana dispensaries, and one regulating medical marijuana cultivation were presented to the Board of Supervisors on February 9, 2010. At that time, there were pending court cases that could have impacted the legality of medical marijuana dispensary operations and clarified the County’s ability to regulate medical marijuana dispensaries. The Board continued the public hearing to an undetermined future date and directed staff to monitor and report on the relevant cases and any legislative action regarding medical marijuana. In the meantime, on February 23, 2010, the Board enacted Urgency Ordinance Number 682 imposing a temporary County-wide moratorium on the establishment and operation of medical marijuana dispensaries to, among other things, allow time

for staff to consider, study, and assess various approaches to regulating medical marijuana dispensaries in light of the pending court cases and the concerns raised at the February 9, 2010 meeting.

In the interval from the February 23, 2010 Board of Supervisors' meeting, two additional Ordinances were adopted extending the moratorium on dispensaries to February 22, 2012. Staff has considered, studied, and assessed various approaches to regulating medical marijuana dispensaries and cultivation, and has continued to monitor related legal developments within the State of California, and the effects of cultivation on the general welfare of the citizens of Shasta County. The following issues have been identified:

1. Due to the County's favorable growing conditions and sparse population the unregulated cultivation of medical marijuana has increased substantially.
2. Large-scale grows encourage nuisance activities, increase the potential risk of violent crime and increase the potential for environmental degradation.
3. People have been living in unpermitted and unsanitary conditions, in violation of zoning, building, and health and safety codes to protect marijuana plants.
4. There have been a substantial number of citizen complaints in regard to overpowering unpleasant smells causing residents to forgo normal outdoor activities in their own yards and neighborhoods.
5. There have been complaints of respiratory problems in children and adults due to strong unpleasant smells.
6. Adverse impacts associated with medical marijuana dispensaries include increased crime, disagreeable odor, loitering, increased traffic, noise, the sale of illegal drugs, and the illegal diversion and re-sale of marijuana from medical marijuana dispensaries in areas surrounding medical marijuana dispensaries.

Since the Board enacted the moratorium on dispensaries in February 2010, County Counsel has advised that there have been the following legal developments which make clear that local jurisdictions have the authority to regulate medical marijuana dispensaries and cultivation.

- Effective January 1, 2011, the California legislature adopted Health & Safety Code section 11362.768, which amended the Medical Marijuana Program Act. That statute applies to any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license (collectively referred to as "Medical Marijuana Dispensaries."). That statute prohibited the location of Medical Marijuana Dispensaries within a 600-foot radius of school. That statute also stated that it did not prohibit a county from adopting ordinances that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment or provider.
- On February 10, 2011, the California Court of Appeal, in *County of Los Angeles v. Hill*, 192 Cal. App. 4th 861 (2011), upheld the validity of Los Angeles County's zoning restrictions on medical marijuana dispensaries. This decision is consistent with previous court decisions upholding a local entity's zoning restrictions on medical marijuana dispensaries. See, e.g., *City of Claremont v. Kruse*, 177 Cal. App. 4th 1153 (2009).

- The Governor recently signed AB 1300, to be effective January 1, 2012, amending Health & Safety Code section 11362.83, which is part of the Medical Marijuana Program Act. AB 1300 provides that nothing in the Medical Marijuana Program Act shall prevent a local governing body from adopting local ordinances that regulate the location, operation, or establishment of medical marijuana cooperative or collective.

In light of the issues and legal developments described above, the previously proposed ordinances for dispensaries and cultivation have been revised. Since these revisions were not previously considered by the Planning Commission, they are to be considered by the Planning Commission for recommendation before being considered by the Board of Supervisors, consistent with the Government Code.

Summary of Ordinances

Zone Amendment 09-010 – Medical Marijuana Dispensaries has been revised to prohibit medical marijuana dispensaries, as defined in the ordinance, within the unincorporated areas of the County. The main provisions of the ordinance are outlined below.

- Medical Marijuana Dispensaries are prohibited in all zones of the County.
- The term “Medical Marijuana Dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is made available, sold, transmitted, given, distributed by or to, or otherwise provided by or to, one or more of the following: a primary caregiver, or a qualified patient.
- However, a Medical Marijuana Dispensary does not include the providing of medical marijuana to qualified patients by their designated primary caregivers in the following locations and uses:
 - A clinic or health care facility licensed pursuant to the Health and Safety Code.
 - A residential care facility for persons with chronic life-threatening illness licensed pursuant to the Health and Safety Code.
 - A residential care facility for the elderly licensed pursuant to the Health and Safety Code.
 - A hospice or a home health agency licensed pursuant to the Health and Safety Code.
 - A qualified patient’s or a primary caregiver’s primary place of residence when the qualified patient or primary caregiver is in compliance with all applicable requirements and standards for Medical Marijuana Cultivation pursuant to Title 17 of the Shasta County Code.

Zone Amendment 09-011 – Medical Marijuana Cultivation has been revised to restrict grow areas in relation to parcel size. The main provisions of the Ordinance are outlined below:

- Cultivation is only allowed as an accessory use to a legally established residence, on a legal parcel.
- Only qualified patients and primary caregivers living in the legal residence may grow.

- Outdoor cultivation area is limited according to parcel size within a range of 60 square feet on parcels less than one acre to a maximum 200 square feet on parcels greater than 20 acres.
- The outdoor cultivation area must meet minimum setbacks from parcel lines and adjacent residences.
- Indoor cultivation within the residence is limited to 100 square feet regardless of parcel size.
- Establishes 1,000-foot no grow zones around schools and other sensitive uses.
- Identifies the Sheriff as a concurrent enforcing officer of Title 17, with the Planning Director.

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: Staff's review of regulations recently adopted by other jurisdictions (e.g., Tehama, Butte, Los Angeles, Orange and Mendocino Counties) shows a trend toward prohibition of dispensaries, and restrictions on cultivation based on parcel size. Some jurisdictions allow larger grows than the ordinance proposed here for Shasta County, but the research shows that with larger grows, the line between legitimate medical cultivation and illegal commercial grows gets very blurry and requires a great deal more staff and resources dedicated to enforcement than are available to Shasta County. The ordinances presented here and recommended by staff make reasonable accommodation for the personal-scale 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 these draft ordinances, 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 and discussions with County Counsel regarding legal/legislative developments. To date, no public comments have been received.

ALTERNATIVES: The following alternatives are available:

1. Recommend modifications of the proposed ordinances (Zone Amendments 09-010 and/or 09-011).
2. Continue the public hearing to request additional specific information in regard to the regulation of medical marijuana cultivation and/or the prohibition of medical marijuana dispensaries.
3. Recommend that the proposed ordinances (Zone Amendments 09-010 and/or 09-011) not be approved or adopted, with findings supporting the Commission's recommendation.

CONCLUSION: Based on the recommendations received from affected agencies and data available, staff is of the opinion that the project is consistent with the General Plan policies and accomplishes the Board of Supervisors' intent to regulate medical marijuana dispensaries and cultivation in a manner consistent with The Compassionate Use Act and The Medical Marijuana Program Act, promotes the public necessity and convenience and protects the public health, safety, and general welfare of the citizens of Shasta County.

Z09-010 -- Medical Marijuana Dispensaries

Z09-011 -- Medical Marijuana Cultivation

PC 10/13 '2011

Page 5 of 5

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 Project File

Attach: 1. Resolution, Prohibition of Medical Marijuana Dispensaries
 2. Draft BOS Ordinance, Exhibit A – Medical Marijuana Dispensaries
 3. Resolution, Medical Marijuana Cultivation
 4. Draft BOS Ordinance, Exhibit A – Medical Marijuana Cultivation