



**Resource Management  
Agency  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

ALLEN ISHIDA  
District One

PETE VANDER POEL  
District Two

PHILLIP A. COX  
District Three

J. STEVEN WORTHLEY  
District Four

MIKE ENNIS  
District Five

**AGENDA DATE:** March 19, 2013

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
CONTACT PERSON: Celeste Perez    PHONE: (559) 624-7010				

**SUBJECT:** Interim Zoning Ordinance prohibiting medical marijuana collectives, cooperatives and dispensaries for an interim period of time in the unincorporated areas of the County of Tulare

**REQUEST(S):**  
That the Board of Supervisors:

1. Adopt pursuant to Government Code section 65858, as an urgency measure, the interim zoning ordinance prohibiting medical marijuana collectives, cooperatives and dispensaries for an interim period of time in the unincorporated areas of the County of Tulare. Adoption of this interim ordinance shall require a four-fifths vote and shall be in effect forty-five days from its date of adoption, expiring May 3, 2013 unless further extended.
2. Approve the summary of the ordinance and direct the Clerk of the Board to publish and post the summary in accordance with Government Code Section 25124 (b)(1).
3. Set a public hearing on April 23, 2013 at 9:30 a.m.
4. Direct the Clerk of the Board to notice such hearing in accordance with Government Code section 65858, in order to consider this ordinance and a proposed extension thereof prior to the expiration of this ordinance in forty-five days.
5. Direct the Director of RMA, or his designee, to issue a written report ten days prior to the expiration of the interim ordinance or any extension, describing the measures taken to alleviate the conditions which led to the adoption of the ordinance.

**SUBJECT:** Interim Zoning Ordinance prohibiting medical marijuana collectives, cooperatives and dispensaries for an interim period of time in the unincorporated areas of the County of Tulare

**DATE:** March 19, 2013

**SUMMARY:**

This agenda is in response to recent and pending case law regarding the regulation of medical marijuana collectives, cooperatives and dispensaries. The Interim urgency ordinance would allow for the County to research, review, investigate, and develop/create, if applicable, any necessary new or amended policies, ordinances, and processes regarding medical marijuana collectives, cooperatives and dispensaries.

Comprehensive civil regulation of premises used for marijuana cultivation and distribution is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, indoor electrical fire hazards and other health and safety concerns that may result from unregulated or improperly regulated marijuana cultivation and distribution. A California Supreme Court decision is pending in *City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc.* regarding whether a local government may ban medical marijuana collectives, cooperatives and dispensaries. (California Supreme Court review was granted on January 18, 2013, No. E052400, previously published at 200 Cal.App.4th 885.) A Third District Court of Appeal case, *Browne v. County of Tehama* (2013 WL 441604, February 6, 2013), recently upheld Tehama County's ordinance regulation of medical marijuana cultivation. Several other state cases regarding local government bans on collectives, cooperatives and dispensaries have been granted appellate court review.

The County is concerned with potential detriments to public health, safety and welfare caused by medical marijuana collectives, cooperatives and/or dispensaries and the County seeks to protect the public health, safety and welfare by prohibiting, for an interim period of time, any uses that may be in conflict with the County's contemplated general plan, specific plan or zoning proposal that the County is considering and studying within a reasonable time. Attachment No. 1 provides articles displaying numerous accounts of criminal activity related to marijuana and medical marijuana collectives, cooperatives and dispensaries. Outdoor cultivation and marijuana activity that is within public view and/or apparent to the public cause detriment to public health, safety and welfare.

**FISCAL IMPACT/FINANCING:**

The impact to the General Fund in fiscal years 2012/2013 and 2013/2014 as a result of this agenda item will depend on the amount of staff time put towards developing and enforcing County Ordinances.

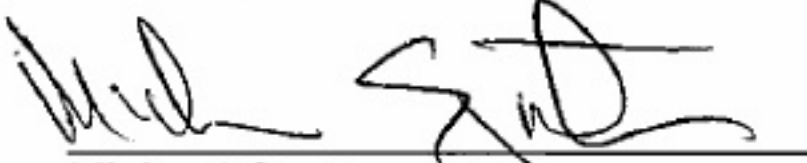
**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

The County's five-year strategic plan includes the Safety and Security Initiative to protect the health safety and welfare of the County and its' residents. The approval of this urgency ordinance will ensure that the County will continue to protect the health safety and welfare of its' residents by allowing time to investigate potential land use impacts of medical marijuana collective, cooperative and dispensary uses.

**SUBJECT:** Interim Zoning Ordinance prohibiting medical marijuana collectives, cooperatives and dispensaries for an interim period of time in the unincorporated areas of the County of Tulare

**DATE:** March 19, 2013

**ADMINISTRATIVE SIGN-OFF:**

A handwritten signature in black ink, appearing to read 'Michael Spata', is written over a horizontal line.

Michael Spata  
Assistant Director - Planning

Cc: Auditor-Controller  
County Counsel  
County Administrative Office (2)

Attachment(s)

- 1) Articles indicating secondary impacts of marijuana and facilities
- 2) Draft Interim Ordinance
- 3) Summaries of Proposed Ordinance and Ordinance
- 4) Proposed zoning map

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF INTERIM ZONING )  
ORDINANCE PROHIBITING MEDICAL ) Resolution No. \_\_\_\_\_  
MARIJUANA COLLECTIVES, ) Ordinance No. \_\_\_\_\_  
COOPERATIVES AND DISPENSARIES FOR )  
AN INTERIM PERIOD OF TIME IN THE )  
UNINCORPORATED AREAS OF THE )  
COUNTY OF TULARE )

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD \_\_\_\_\_  
\_\_\_\_\_, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: JEAN M. ROUSSEAU  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

1. Adopted pursuant to Government Code section 65858, as an urgency measure, the interim zoning ordinance prohibiting medical marijuana collectives, cooperatives and dispensaries for an interim period of time in the unincorporated areas of the County of Tulare. Adoption of this interim ordinance shall require a four-fifths vote and shall be in effect forty-five days from its date of adoption, expiring May 3, 2013 unless further extended.
2. Approved the summary of the ordinance and directed the Clerk of the Board to publish and post the summary in accordance with Government Code Section 25124 (b)(1).
3. Set a public hearing on April 23, 2013 at 9:30 a.m.
4. Directed the Clerk of the Board to notice such hearing in accordance with Government Code section 65858, in order to consider this ordinance and a

proposed extension thereof prior to the expiration of this ordinance in forty-five days.

5. Directed the Director of RMA, or his designee, to issue a written report ten days prior to the expiration of the interim ordinance or any extension, describing the measures taken to alleviate the conditions which led to the adoption of the ordinance.

**Attachment 1**  
**Articles indicating secondary impacts of marijuana and facilities**

These articles will be distributed to the Board of Supervisors on March 19, 2013.

ATTACHMENT 2

ORDINANCE NO. \_\_\_\_\_

AN URGENCY ORDINANCE AMENDING PART 95 OF THE SUPPLEMENTARY ZONING MAP OF THE COUNTY OF TULARE PROHIBITING MEDICAL MARIJUANA COLLECTIVES, COOPERATIVES AND DISPENSARIES FOR AN INTERIM PERIOD OF TIME IN UNINCORPORATED AREAS OF THE COUNTY AS DESCRIBED HEREIN.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. The Supplementary Zoning Map of the County of Tulare, which part is designated as Part 95 is hereby amended and is described as follows:

Part 95: All of the unincorporated areas of Tulare County inclusive.

Section 2. To protect the public health, safety and welfare, medical marijuana collectives and cooperatives are hereby prohibited, in the unincorporated areas of Tulare County, and no building permit, occupancy permit or other land use entitlement for such use shall be issued by the County of Tulare in any areas within Part 95 of the Supplementary Zoning Map on file in the Tulare County Resource Management Agency for forty five (45) days for the adoption of the ordinance adding this part. Pursuant to Government Code section 65858, the Ordinance adding this section may be extended for twenty-two (22) months and fifteen (15) days after notice and a public hearing. No additional extensions are permitted.

For purposes of this urgency ordinance, medical marijuana collectives, cooperatives and dispensaries are defined in Section 15.3 of the Tulare County Zoning Ordinance (Tulare County Ordinance No. 352) and Section 6-21-1010 of the Tulare County Ordinance Code as "medical marijuana collective or cooperative":

(b) "Medical marijuana collective" or "collective" means an entity, facility or location, at a fixed, immobile location, at which two (2) or more qualified patients, persons with an identification card, and the designated primary care givers of qualified patients and persons with an identification card, combined, associate within the unincorporated area of the County of Tulare in order to jointly own and operate the business, facility or location and to collectively cultivate marijuana for medical purposes, as provided in Health & Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code §11362.81, as amended.

(c) "Medical marijuana cooperative" or "cooperative" means an entity at a fixed, immobile location, properly organized, registered and operated as such a corporation pursuant to Corporations Code Section 12200 et. seq. or Food and Agricultural Code Section 54001 et. seq., as amended, so that qualified patients, persons with an identification card, and the designated primary caregivers of qualified patients and persons with an identification card may cultivate marijuana for medical purposes

pursuant to Health and Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code §11362.81, as amended.

Section 3. This ordinance is an urgency ordinance with in the meaning of Government Code section 65858 in that the adoption of this ordinance is necessary for the immediate and future protection of the public health, safety and welfare within Tulare County. The unregulated and improperly regulated cultivation and distribution of marijuana in the unincorporated area of Tulare County can adversely affect the health, safety, and well-being of the County and its residents. Comprehensive civil regulation of premises used for marijuana cultivation and distribution is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation and distribution. Based upon the information provided to the Board of Supervisors at its regularly scheduled meeting on March 19, 2013, the uses prohibited may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the Board of Supervisors, Planning Commission and Tulare County Resource Management Agency is considering or studying or intends to study within a reasonable time in light of a pending California Supreme Court decision and recent case law. A California Supreme Court decision is pending in *City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc.* regarding whether a local government may ban medical marijuana collectives, cooperatives and dispensaries. (California Supreme Court review was granted on January 18, 2013, No. E052400, previously published at 200 Cal.App.4th 885.) A Third District Court of Appeal case, *Browne v. County of Tehama* (2013 WL 441604, February 6, 2013), recently upheld Tehama County's ordinance regulation of medical marijuana cultivation. Several other state cases regarding local government bans on collectives, cooperatives and dispensaries have been granted appellate court review.

Section 4. As authorized by Government Code section 65858, this urgency ordinance may be adopted without public hearing and with only one reading. It will become effective immediately and remain in effect for forty five (45) days from the date of adoption. A four-fifths vote of the Board of Supervisors is required for initial adoption and for any extension thereof. After notice and a public hearing, one extension of this urgency ordinance may be approved by the Board of Supervisors for twenty-two (22) months and fifteen (15) days. Pursuant to Government Code section 65090, there must be one publication of the notice in a newspaper of general circulation at least ten days before the public hearing. No additional extensions are permitted.

Section 5. The facts supporting the urgency to protect the public health, safety and welfare are summarized as follows:

(a) Existing zoning regulations may not adequately address the cultivation, processing, harvesting and distribution of marijuana and the impacts from smoking of marijuana.

(b) There is a significant concern and a threat to the health, safety and welfare of county residents due to impacts of outdoor cultivation, processing, harvesting, distribution and marijuana activity that is within public view and/or apparent to the public. The unregulated and improperly regulated cultivation and distribution of marijuana in the unincorporated area of



Tulare County can adversely affect the health, safety, and well-being of the County and its residents. Comprehensive civil regulation of premises used for marijuana cultivation and distribution is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation and distribution. There have been numerous accounts of criminal activity related to marijuana that staff has determined and evidenced by media reports.

(c) Several criminal incidents within Tulare County and Fresno County have created a severe concern of an urgent matter.

(d) Other public entities have reported, and the Board of Supervisors received information at previous public hearings or public comment regarding marijuana and medical marijuana, that the outdoor cultivation of marijuana and related marijuana activity result in harmful secondary effects such as increased criminal activity, degradation of the natural environment and malodorous smells.

(e) The County hereby prohibits the medical marijuana collectives and cooperatives so that the County may research, investigate, potentially develop, amend or create policy including zoning policy within the unincorporated areas for an interim period of time.

(f) At such time, the County of Tulare may not have adequate land use and zoning regulations that appropriately restrict medical marijuana collectives, cooperatives and dispensaries. It is appropriate under law to provide or establish such restrictions. Therefore, allowing such use and development as required in order to comply with the zoning ordinance, at this time, would hinder the effectiveness of this process and result in a threat to the public, health, safety and welfare. The Tulare County Resource Management Agency is currently studying these concerns and is in the process of developing proposals and alternatives for Planning Commission and Board of Supervisors consideration.

Section 6. The foregoing ordinance shall take effect immediately upon passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a summary shall be published once in the Visalia Times Delta, a newspaper printed and published in the County of Tulare, State of California, together with the names of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the 19<sup>th</sup> day of March, 2013 at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NOES: \_\_\_\_\_

\_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU  
County Administrative Officer/  
Clerk of the Board of Supervisors  
of the County of Tulare

By: \_\_\_\_\_  
Deputy

## **Attachment 3**

### **Summaries of Proposed Ordinance and Adopted Ordinance**

#### 1. SUMMARY OF PROPOSED ORDINANCE

PURSUANT TO GOVERNMENT CODE SECTION 25124(b)(1), THE FOLLOWING IS A SUMMARY OF A PROPOSED ORDINANCE AMENDING PART 95 OF THE SUPPLEMENTARY ZONING MAP OF THE COUNTY OF TULARE PROHIBITING MEDICAL MARIJUANA COLLECTIVES, COOPERATIVES AND DISPENSARIES FOR AN INTERIM PERIOD OF TIME IN UNINCORPORATED AREAS OF THE COUNTY OF TULARE FOR FORTY-FIVE (45) DAYS.

#### SUMMARY OF PROPOSED ORDINANCE

On March 19, 2013, the Tulare County Board of Supervisors will consider adoption, as an urgency measure pursuant to California Government Code section 65858, a Tulare County Ordinance, an interim ordinance prohibiting medical marijuana collectives, cooperatives and dispensaries, for an interim period of time, within the unincorporated areas of Tulare County.

The proposed ordinance summarized above, will take effect immediately after adoption on March 19, 2013, and will expire on May 3, 2013 unless further extended in accordance with Government Code Section 65858.

Within fifteen (15) days of adoption of the proposed ordinance, a certified copy of the full text of the ordinance will be posted in the office of the Clerk of the Board of Supervisors and will be available for public inspection at that location.

COUNTY OF TULARE RESOURCE MANAGEMENT AGENCY (559) 624-7000

2. SUMMARY OF ORDINANCE

ORDINANCE NO. \_\_\_\_\_

PURSUANT TO GOVERNMENT CODE SECTION 25124(b)(1), THE FOLLOWING IS A SUMMARY OF ORDINANCE NO. \_\_\_\_\_ AMENDING PART 95 OF THE SUPPLEMENTARY ZONING MAP OF THE COUNTY OF TULARE PROHIBITING MEDICAL MARIJUANA COLLECTIVES, COOPERATIVES AND DISPENSARIES FOR AN INTERIM PERIOD OF TIME IN UNINCORPORATED AREAS OF THE COUNTY OF TULARE FOR FORTY-FIVE (45) DAYS.

SUMMARY OF ORDINANCE

On March 19, 2013, the Tulare County Board of Supervisors adopted, as an urgency measure pursuant to California Government Code section 65858, Tulare County Ordinance No. \_\_\_\_\_, an interim ordinance prohibiting medical marijuana collectives, cooperatives and dispensaries, for an interim period of time, within the unincorporated areas of Tulare County.

Ordinance No. \_\_\_\_\_ summarized above, took effect immediately after adoption and will expire on May 3, 2013, unless further extended in accordance with Government Code Section 65858.

The ordinance herein summarized was adopted by the Tulare County Board of Supervisors on March 19, 2013 at a regular meeting of said Board, according to the following vote:

Ayes:

Noes:

Absent:

Within fifteen (15) days of adoption, a certified copy of the full text of the ordinance shall be posted in the office of the Clerk of the Board of Supervisors and shall be available for public inspection at that location.

COUNTY OF TULARE

By \_\_\_\_\_  
Pete Vander Poel, Chairman,  
Board of Supervisors

ATTEST: JEAN M. ROUSSEAU  
County Administrative Officer/  
Clerk of the Board of Supervisor of  
Tulare County

By \_\_\_\_\_  
Deputy Clerk

