



**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: April 23, 2013

Public Hearing Required	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Published Notice Required	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Advertised Published Notice	Yes	<input checked="" type="checkbox"/>	N/A	<input 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: Extended Interim Zoning Ordinance prohibiting the establishment of new and the expansion of existing legal, 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. Hold a public hearing on April 23, 2013.
2. Approve a categorical exemption per the General Rule Exemption [14 Cal. Code Regs. Section 15061(b)(3)] pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines.
3. Adopt pursuant to Government Code Section 65858, as an urgency measure, an extension of an interim zoning ordinance, Tulare County Ordinance No. 3446, prohibiting the establishment of new medical marijuana collectives and cooperatives and the expansion of existing legal medical marijuana collectives and cooperatives 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 twenty two (22) months and fifteen (15) days from May 3, 2013, expiring on March 18, 2015.
4. Direct the Clerk of the Board to publish the ordinance within 15 days after passage in the Visalia Times Delta.

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5. Adopt this Agenda Item regarding extension of the interim zoning ordinance, as the written report required by Government Code Section 65858 to be adopted ten days prior to the extension of the interim urgency ordinance, and to describe the measures taken to alleviate the conditions which led to the adoption of the ordinance.
6. Direct the Environmental Assessment Officer of the Tulare County Resource Management Agency to file a Notice of Exemption with the Tulare County Clerk.

SUMMARY:

On March 19, 2013, the Board of Supervisors adopted the initial interim urgency ordinance prohibiting the establishment of new medical marijuana collectives and cooperatives and the expansion of existing legal medical marijuana collectives and cooperatives within the unincorporated areas of the County. The initial interim urgency ordinance, Tulare County Ordinance No. 3446, expires on May 3, 2013, unless further extended as proposed herein. These proposals for interim urgency ordinances arose from recent and pending case law regarding the regulation of medical marijuana collectives, cooperatives and dispensaries. The proposed extended 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

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contemplated general plan, specific plan or zoning proposal that the County is considering and studying within a reasonable time. Attachment No. 1 of the March 19, 2013 Board of Supervisors Agenda Item No. 34, hereby incorporated by reference, provides articles displaying numerous accounts of criminal activity related to marijuana and medical marijuana collectives, cooperatives and dispensaries. Recently, on March 27, 2013, Tulare County Sheriff's deputies seized 1,386 marijuana plants, 500 pounds of processed marijuana, approximately \$150,000 in cash and 19 guns after serving a warrant at a marijuana growing site at the 10200 block of Avenue 404, southeast of Dinuba. Three people were arrested at the site on charges of cultivation of marijuana, possession of marijuana for sale, child endangerment and firearms charges. A sheriff's spokesman said the number of plants grown on a greenhouse on the property was "well in excess" of the amount allowed under a medical marijuana recommendation.

Since the initial interim urgency ordinance was adopted on March 19, 2013, the County has taken steps to alleviate the conditions which led to the adoption of the ordinance. County staff is considering revising the Ordinance Code and Zoning Ordinance provisions regulating medical marijuana collectives and cooperatives, and is in the process of discussing potential changes. County staff will also consider the pending court decisions regarding regulation and/or ban of medical marijuana collectives, cooperatives and dispensaries, as described above.

In connection with the California Environmental Quality Act (CEQA), it is concluded that a categorical exemption -- pursuant to the General Rule Exemption included in the State CEQA Guidelines (14 Cal. Code Regs. Section 15061(b)(3) -- is applicable to the proposed action. Essentially, after considering the matter, it can be seen with certainty that there is no possibility that the activity in question (e.g., extension of the interim ordinance) may have a significant effect on the environment.

Specifically, the proposed ordinance does not allow new or expanding development activity in the marijuana field. Instead, it precludes new or expanding development in this field. Consequently, the effect is that it is not foreseeable that there will be any physical change in the environment as a result of extending the interim ordinance. In fact, based on the evidence submitted in connection with this ordinance, the proposed extension will prevent negative impacts from occurring. For example, as indicated above, there is extensive evidence of secondary impacts emanating from marijuana activities and related-facilities. Evidence supporting such adverse secondary impacts is provided in Attachment 3.

Since the proposed extension will allow the opportunity to explore, investigate and study the necessity of requiring any general plan or ordinance changes to protect the public health, safety and welfare, interim prohibition of such marijuana uses on

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new or expanding facilities will prevent adverse environmental impacts. Thus, there is no possibility that the activity in question (e.g., extension of the interim ordinance) may have a significant effect on the environment.

Accordingly, it is requested that the Board of Supervisors approve a categorical exemption per the General Rule Exemption -- 14. Cal. Code Regs. Section 15061(b)(3) -- pursuant to CEQA and the State CEQA Guidelines. It is requested further that the Board direct the Environmental Assessment Officer of the Tulare County Resource Management Agency to file a Notice of Exemption with the Tulare County Clerk.

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.

ADMINISTRATIVE SIGN-OFF:

Michael C. Spata
Assistant Director - Planning

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

Attachment(s):

Attachment 1 - Extended Interim Ordinance
Attachment 2 - Zoning Map
Attachment 3 - Evidence of Secondary Impacts
Attachment 4 - Notice of Exemption
Attachment 5 - Public Hearing Notice

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

IN THE MATTER OF EXTENDED INTERIM)
ZONING ORDINANCE PROHIBITING THE) Resolution No. _____
ESTABLISHMENT OF NEW AND THE) Ordinance No. _____
EXPANSION OF EXISTING LEGAL,)
MEDICAL MARIJUANA COLLECTIVES,)
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. Held a public hearing on April 23, 2013.
2. Approved a categorical exemption per the General Rule Exemption [14 Cal. Code Regs. Section 15061(b)(3)] pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines.
3. Adopted pursuant to Government Code Section 65858, as an urgency measure, an extension of an interim zoning ordinance, Tulare County Ordinance No. 3446, prohibiting the establishment of new medical marijuana collectives and

cooperatives and the expansion of existing legal medical marijuana collectives and cooperatives 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 twenty two (22) months and fifteen (15) days from May 3, 2013, expiring on March 18, 2015.

4. Directed the Clerk of the Board to publish the ordinance within 15 days after passage in the Visalia Times Delta.
5. Adopted this Agenda Item regarding extension of the interim zoning ordinance, as the written report required by Government Code Section 65858 to be adopted ten days prior to the extension of the interim urgency ordinance, and to describe the measures taken to alleviate the conditions which led to the adoption of the ordinance.
6. Directed the Environmental Assessment Officer of the Tulare County Resource Management Agency to file a Notice of Exemption with the Tulare County Clerk.

ATTACHMENT 1

ORDINANCE NO. _____

AN URGENCY ORDINANCE EXTENDING TULARE COUNTY ORDINANCE NO. 3446 AMENDING PART 95 OF THE SUPPLEMENTARY ZONING MAP OF THE COUNTY OF TULARE PROHIBITING THE ESTABLISHMENT OF NEW, AND THE EXPANSION OF EXISTING LEGAL, MEDICAL MARIJUANA COLLECTIVES, COOPERATIVES AND DISPENSARIES FOR AN INTERIM PERIOD OF TIME IN UNINCORPORATED AREAS OF THE COUNTY AS DESCRIBED HEREIN FOR AN ADDITIONAL PERIOD OF TWENTY TWO (22) MONTHS AND FIFTEEN (15 DAYS).

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

Section 1. On March 19, 2013, the Board of Supervisors pursuant to Government Code Section 65858 adopted, as an urgency measure, Tulare County Ordinance No. 3446 which prohibited the establishment of new medical marijuana collectives and cooperatives and the expansion of existing legal medical marijuana collectives and cooperatives for a period of forty-five (45) days in the unincorporated areas of the County, which period of forty-five (45) days would expire on May 3, 2013 unless further extended. The designated areas were legally described in Part 95 of the Supplementary Zoning Map of the County of Tulare.

Section 2. To protect the public health, safety and welfare, the Board of Supervisors hereby extends Tulare County Ordinance No. 3446 such that the establishment of new medical marijuana collectives and cooperatives and the expansion of existing legal medical marijuana collectives and cooperatives are prohibited 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 an additional period of twenty two (22) months and fifteen (15) days beginning on May 3, 2013, so that such urgency ordinance remains in continuous effect without interruption through the initial forty five (45) day period. A true and correct copy of said Supplementary Map is attached as Exhibit "A" and incorporated by reference herein.

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."

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 3. Notwithstanding the interim limitations imposed on development in Section 2, the property located within Part 95 may be used during the extended period of this urgency

ordinance for any uses allowed or permitted within the applicable zones and initiated and operated in accordance the rules, regulations and ordinances of the County of Tulare, however may not be used for the establishment of new medical marijuana collectives and cooperatives and the expansion of existing legal medical marijuana collectives and cooperatives.

Section 4. This extended ordinance is an interim urgency ordinance within the meaning of Government Code section 65858 in that the adoption of this extended ordinance is necessary for the immediate and future protection of the public health, safety and welfare. Based upon extensive evidence submitted to the Board of Supervisors on March 19, 2013 and at a duly advertised public hearing on April 23, 2013, medical marijuana collectives and cooperatives cause a current and immediate threat to the public health, safety or welfare, and the approval, grant or issuance of any subdivisions, use permits, variances, building permits, any inspections in pursuance of said building permits, occupancy permits and any other applicable entitlement for use which is required in order to comply with the zoning ordinance would result in that threat to public health, safety, or welfare, within Part 95 of the Supplementary Zoning Map. As such, this extended urgency ordinance prohibits for an interim period of time any establishment of new medical marijuana collectives and cooperatives and the expansion of existing legal medical marijuana collective and cooperative uses, as they may be in conflict with a contemplated general plan, community plan, specific plan, zoning proposal and/or other land use regulation which the Tulare County Board of Supervisors, Planning Commission or Resource Management Agency is considering or studying, or intends to study within a reasonable time.

Section 5. As authorized by Government Code section 65858, this extended urgency ordinance may be adopted after completing a noticed public hearing and with only one reading. It will become effective immediately and remain in effect for twenty two (22) months and fifteen (15) days past the original effective period of Tulare County Ordinance No. 3446, expiring on March 18, 2015. A four-fifths vote of the Board of Supervisors is required for the adoption of this extended ordinance. Ten (10) days prior to the expiration of this extended, the Board shall issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the interim ordinance.

Section 6. 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. 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 7. Further facts supporting the urgency to protect the public health, safety and welfare are 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.

Section 8. The foregoing ordinance shall take effect immediately upon passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof the ordinance 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 23rd day of April, 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