



OFFICE OF THE BUTTE COUNTY COUNSEL

Phone (530) 538-7621
Facsimile (530) 538-6891

INTER-DEPARTMENTAL MEMORANDUM

DATE: May 12, 2011

TO: Butte County Board of Supervisors

FROM: Bruce Alpert, County Counsel
Kathleen Kehoe Greeson, Deputy County Counsel

SUBJECT: Public Hearing regarding Medical Marijuana Cultivation Ordinance

Summary: On May 4, 2011, the Butte County Board of Supervisors held a public meeting and considered a draft Medical Marijuana Cultivation Ordinance. Following public comment from many members of the community, the Board approved the introduction of the draft ordinance as amended at the meeting. As a result, staff has amended the attached Medical Marijuana Cultivation Ordinance as directed. The requirements are highlighted for your review below.

Background: Generally, federal and California law do not permit marijuana cultivation. Proposition 215 and Senate Bill 420 provide a limited immunity from state criminal prosecution for qualified patients and their primary caregivers who cultivate marijuana for medical purposes, including collective and cooperative cultivation, although all marijuana cultivation remains illegal under federal law. This can result in the occurrence of large unregulated medical marijuana “gardens,” especially where multiple patients and caregivers cultivate marijuana in one location. These “gardens” can pose hazards to the surrounding community, including increased risk of serious criminal activity, offensive odors, environmental damage, and risks of fire from indoor cultivation using heat lamps. State law does not regulate these gardens, but specifically provides that counties can adopt ordinances that are consistent with Proposition 215 and Senate Bill 420. The proposed ordinance establishes reasonable regulations of these gardens, consistent with State law in order to protect the public health, safety and welfare, with some main points summarized below:

The draft ordinance, attached for your review, places several requirements on the cultivation of medical marijuana. The ordinance:

- Restricts the quantity of plants that may be grown based on acreage.

- If the premises is 0.5 acres in size or less, the ordinance does not allow plants to be cultivated on the premises.
- If the premises is greater than 0.5 acres but less than 1.5 acres, the ordinance allows no more than 6 mature marijuana plants or 12 immature plants or a mixture of both with no more than 6 mature and 12 total marijuana plants.
- If the premises is greater than 1.5 acres but less than 20 acres, the ordinance allows no more than 12 mature plants, or 24 immature plants or a mixture of both with no more than 12 mature and 24 total marijuana plants.
- If the premises is greater than 20 acres but less than 80 acres, the ordinance allows up to 24 mature marijuana plants, or 48 immature marijuana plants or a mixture of both with no more than 24 mature plants and 48 total plants.
- If the premises is greater than 80 acres but less than 160 acres, the ordinance allows up to 36 mature marijuana plants, or 72 immature marijuana plants or a mixture of both with no more than 36 mature plants and 72 total plants.

- If the premises is greater than 160 acres, the ordinance allows up to 99 marijuana plants, whether immature or mature.
- Requires that growers be residents of Butte County.
- Requires registration of medical marijuana growers with the Department of Development Services, with an exception for small gardens (greater than 0.5 acres but less than 1.5 acres or anyone growing 6 mature or 12 immature or a combination of both with no more than 6 mature or 12 plants total, regardless of the acreage of the premises).
- Provides that the County will keep any information provided in the registration process in confidence and will only reveal it as required by law.
- Requires setbacks for marijuana cultivation based on acreage:
- If the premises is greater than 0.5 acres but less than 1.5 acres, cultivation shall be set back at least 15 feet from all boundaries of the premises and at least 30 feet from a residence on an adjoining parcel.

- If the premises is greater than 1.5 acres but less than 20 acres, cultivation shall be set back at least 100 feet from all boundaries of the premises, with an exception for irregularly shaped lots.
- If the premises is greater than 20 acres but less than 80 acres, cultivation shall be set back at least 250 feet from all boundaries of the premises, with an exception for irregularly shaped lots.
- If the premises is greater than 80 acres but less than 160 acres, cultivation shall be set back at least 500 feet from all boundaries of the premises, with an exception for irregularly shaped lots.
- If the premises is 160 acres or greater, cultivation shall be set back at least 700 feet from all boundaries of the premises, with an exception for irregularly shaped lots.
- Requires setbacks of 1,000 feet from a school, park, church or residential treatment facility and does not permit plants to be visible from public rights of way and roads.
- Requires renters and lessees to provide proof of permission to grow medical marijuana from the land owner.

- Requires a 6 foot opaque, adequately secured fence surrounding the cultivation area, provided, however, that such fence shall not be required on premises of greater than 20 acres so long as such plants are grown out of public sight.

Any “garden” in violation of the ordinance would be declared a public nuisance, and could be abated in accordance with the procedures set forth in the ordinance. The ordinance specifically provides that it does not supplant any existing remedies for illegal marijuana cultivation, and the ordinance is not intended to interfere with the existing authority of the Sheriff or District Attorney.

The purpose of this hearing is to review the requirements of the ordinance and to hear feedback from interested members of the public. Staff requests that the Board review and consider the attached ordinance and approve it for implementation.