

## OFFICE OF THE BUTTE COUNTY COUNSEL

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### INTER-DEPARTMENTAL MEMORANDUM

DATE: April 5, 2011

TO: Butte County Board of Supervisors

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

SUBJECT: Public Hearing regarding Draft Medical Marijuana Cultivation Ordinance

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Summary: On February 22, 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 directed staff to make modifications to the draft ordinance and proposed fees. As a result of this direction and subsequent meetings, staff has drafted the attached Medical Marijuana Cultivation Ordinance. 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 1.5 acres in size or less, 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.

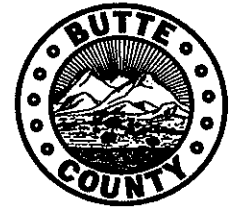
- Requires registration of medical marijuana growers with the Department of Development Services, with an exception for small gardens (1.5 acres or less or anyone growing 6 mature or 12 immature or a combination of both with no more than 6 mature or 12 plants total, regardless of the acreage of the premises).
- 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 1.5 acres or less, 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 (or 100 feet for small gardens with premises 1.5 acres in size or less) 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.

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 related fees and approve both for implementation.

# INTEROFFICE MEMORANDUM



TO: Board of Supervisors

FROM: Dan Blair, Management Analyst, Senior *DB*

SUBJECT: User Fee Review – Butte County Medical Marijuana Cultivation Ordinance

DATE: 4/5/2011

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**Butte County Administration**  
Finance & Risk Management  
Phone: 538-7033  
Fax: 538-3831

The Board of Supervisors established the Butte County Master Fee Schedule by Resolution on March 24, 2009. The Finance Office is responsible for reviewing any proposed fee adjustments and cost of service calculations to ensure compliance with generally accepted accounting principles. At the meeting on May 4, 2011, your Board will be asked to waive the first reading of Chapter 34A, "Butte County Medical Marijuana Cultivation Ordinance," a proposed addition to the Butte County Code. Included in this ordinance is the provision for a new user fee anticipated to fund the costs associated with the program.

The requested fee amount considers cost recovery for an annual registration and one site inspection. The annual registration includes application review and will be performed by the Building Division of the Department of Development Services. It is anticipated that this task will require one hour of staff time at the established Building Division hourly rate of \$127. The annual site inspection will be performed by the Code Enforcement function in the Department of Development Services. This task is estimated to require two hours of staff time at the established Code Enforcement hourly rate of \$79. The staff hours are based on estimates developed by the Department of Development Services.

## Annual Registration and Inspection Fee

Task	Division	Estimated Hours	Hourly Rate	Total Cost
Annual Registration	Building	1	\$ 127	\$127
Inspection	Code Enforcement	2	\$ 79	\$158
<b>Total Fee</b>				<b>\$285</b>

**RESOLUTION AMENDING THE MASTER FEE SCHEDULE  
FOR SERVICES PROVIDED BY THE COUNTY OF BUTTE  
BY ADJUSTING FEES**

**WHEREAS**, the Board of Supervisors established the Butte County Master Fee Schedule by Resolution on March 24, 2009; and

**WHEREAS**, the County of Butte is authorized to adopt and implement fees for services; provided, however, that such fees do not exceed the estimated reasonable cost of providing such services; and

**WHEREAS**, a public hearing was noticed and duly conducted to allow consideration of the proposed fee adjustments prior to adoption of this Resolution; and

**WHEREAS**, the first reading of Chapter 34A, "Butte County Medical Marijuana Cultivation Ordinance," an addition to the Butte County Code, was waived by the Board of Supervisors on May 4, 2011; and

**WHEREAS**, the adopted standards require new or additional County services including application review and inspections; and

**WHEREAS**, the Development Services Department recently developed a comprehensive work time-study to quantify the new services; and

**WHEREAS**, the Board of Supervisors desires to implement new fees for various government services provided by the County of Butte as justified by the above mentioned study.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of the County of Butte adopts the fees as delineated in the attached Exhibit A and amends the Butte County Master Fee Schedule to reflect the new or increased fees. All new fees shall become effective upon the effective implementation date of Chapter 34A, "Butte County Medical Marijuana Cultivation Ordinance."

**PASSED AND ADOPTED** this 4th day of May, 2011, by the following votes:

- AYES:
- NOES:
- ABSENT:
- NOT VOTING:

\_\_\_\_\_  
STEVE LAMBERT, Chair  
Butte County Board of Supervisors

ATTEST:  
PAUL HAHN,  
Chief Administrative Officer  
And Clerk of the Board

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

**EXHIBIT A TO THE RESOLUTION AMENDING THE MASTER FEE SCHEDULE**

**BUTTE COUNTY  
DEVELOPMENT SERVICES DEPARTMENT - BUILDING DIVISION  
Master Fee Schedule**

Activity	Current Fee	Proposed Fee	Notes
<b>MISCELLANEOUS FEES</b>			
59. Medical Marijuana Cultivation:			
a. Annual Registration and Inspection	New	\$285.00	Per Butte County Article I Chapter 34A. Fee is only applicable to properties growing more than six mature medicinal marijuana plants.