RESOLUTION - ACTION REQUESTED 2017-678

MEETING: October 3, 2017

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: General Plan Amendments: Prohibit Commercial Marijuana Uses and Activities

RECOMMENDATION AND JUSTIFICATION:

Adopt a Resolution approving General Plan/Zoning Amendment No. 2017-048, amending the General Plan and Zoning Ordinance to prohibit any uses or activities requiring a license from the State of California, pursuant to Division 10 of the Business and Professions Code, in accordance with the “Control, Regulate and Tax Adult Use of Marijuana Act” (Proposition 64), and Finding that the Amendment is Exempt from CEQA.

On August 18, 2017 the Planning Commission considered information presented to the Board of Supervisors on March 11 and April 25, 2017 and thereafter adopted Resolution 2017-11 (attached) recommending that the Board of Supervisors adopt amendments the Mariposa, Coulterville and Fish Camp Town Plans, and to the Zoning Ordinance, to prohibit, within Mariposa County, any activity for which a license is required pursuant to CA Business and Professions Code, Division 10.

This resolution will amend the Mariposa Town Planning Area Specific Plan, Fish Camp Town Planning Area Specific Plan, Coulterville Town Planning Area Specific Plan and Mariposa County Code Title 17 (Zoning Ordinance) to prohibit activities for which a license is required pursuant to Division 10 of the Business and Professions Code. The activities to be prohibited relate to commercial cultivation, processing, manufacture, sale or public consumption of marijuana plans and any resulting or derivative product.

The amendments will not affect those aspects of Proposition 64 which allow limited personal possession, private cultivation and private use of marijuana.

The amendments will not affect existing County regulations related to medical marijuana.

The recommended amendments have been determined to be exempt from CEQA and a Notice of Exemption (attached) will be filed with the County Clerk.

Note: Minute Traq (MT) Item 7489 is for adoption of an ordinance and is related to this item; therefore, the Background and History and attachments of the subject item and MT item 7489 are the
same.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On April 25, 2017 the Board of Supervisors, conducted a public hearing and reconsidered information presented on March 21, 2017 and adopted Ordinance 1123 extending Ordinance 1122 for 10 months and 15 days. In accordance with Mariposa County Code Section 17.128.020.B, the Board also adopted Resolution 2017-236 initiating General Plan and Zoning Ordinance Amendments to prohibit, within Mariposa County, any activity for which a license is required pursuant to California Business and Professions Code, Division 10.

On March 21, 2017 the Board of Supervisors adopted Ordinance 1122, an Interim Urgency Ordinance prohibiting operation of any activity for which a license is required pursuant to Division 10 of the Business and Professions Code. The Board of Supervisors considered public testimony and information referenced in the staff report dated March 21, 2017 considered by the Board of Supervisors in adopting the Urgency Ordinance directing staff to prepare the subject amendment.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Alternative: Amend text to be processed. The amendments may need to be referred back to the Planning Commission for action.

Negative Action: Not adopting resolution - would not be consistent with Board direction on March 21, 2017.

FINANCIAL IMPACT:
There will be no financial impact on the General Fund resulting from the initiated amendments.

ATTACHMENTS:
171003.BOS.Res.GP Amend (DOC)
BOS.171003.SR (DOC)
170216 Sheriff's Memo (PDF)
170213 DA Letter (PDF)
2017-048.NOE (PDF)
PC.Res.2017-011 (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Dallin Kimble, County Administrative Officer 9/28/2017
RESULT:       ADOPTED [UNANIMOUS]
MOVER:       Merlin Jones, District II Supervisor
SECONDER:    Kevin Cann, District IV Supervisor
AYES:        Smallcombe, Jones, Long, Cann, Menetrey
TO:  County Clerk  
     County of Mariposa  
P.O. Box 247  
Mariposa, CA  95338

FROM:  Sarah Williams  
       Planning Director  
       5100 Bullion St,  
       Mariposa, CA  95338

**Project Title:**  Mariposa County Project 2017-048, Adult Use of Marijuana Act.

**Project Location:**  Mariposa County, county-wide.

**Description of Project:**  At their April 25th meeting, the Mariposa County Board of Supervisors Adopted a Resolution of Intention pursuant to Zoning Ordinance 17.128.020.B, initiating amendments to the General Plan and Zoning Ordinance to prohibit any uses requiring a license from the State of California, pursuant to Division 10 of the Business and Professions Code, in accordance with the “Control, Regulate and Tax Adult Use of Marijuana Act”. Amendments will affect the following:

1)  Mariposa Town Planning Area Specific Plan: Section 3.4;
2)  Fish Camp Town Planning Area Specific Plan: Section: XIII;
3)  Coulterville Town Planning Area Specific Plan: Section VI;
4)  Zoning Ordinance: Sections 17.108.200 and 17.334.055

The resolution initiating and referencing proposed amendments to the General Plan is attached for reference.

**Name of Public Agency Approving Project:**  Mariposa County Board of Supervisors

**Name of Person Carrying Out Project:**  Mariposa Planning Department

**Exempt Status:**  General Rule Exemption; Section 15061(b)(3), Section 15060(c)(2); and Categorical Exemption Section 15308; CEQA Guidelines.

**Reason Why Project Is Exempt:**  This ordinance is 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), CEQA Guidelines. This proposed ordinance would adopt amendments to the above-mentioned Specific Plan and Zoning Ordinances Sections to prohibit the establishment and operation of any business or use requiring a license pursuant to Section 26200 of Division 10 (Cannabis) of the California Business and Professions Code.

The activities which require licensing pursuant to Division 10 include those relating to commercial cultivation, processing, manufacture, sale or public consumption of marijuana plants and any resulting or derivative product by any person, organization or for profit or non-profit entity. The purpose of the ordinance is to protect the environment and the health, safety and welfare of the public from the adverse effects and nuisances associated with the above activities requiring a license pursuant to Division 10, including but not limited to disagreeable odors, negative effects on physical, mental, and community health, increased risk of burglary and other property crimes.
The proposed amendments that are being adopted do not entail any construction or land disturbing activities, it can be seen with certainty that there is no possibility that the proposed project will have a significant effect on the environment; consequently, the project is not subject to environmental review. In addition to the foregoing general exemptions, the following categorical exemptions apply: Categorical Exemptions Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment); CEQA Guidelines.

**Lead Agency Contact Person:** Sean Conway, Assistant Planner (CEQA Determination)

**Phone Number:** (209) 966-5151

Sarah Williams
Planning Director

10/4/17 Date
WHEREAS, on November 9, 2016, the voters of the State of California approved Proposition 64 entitled “Control, Regulate, and Tax Adult Use of Marijuana Act”, relevant portions of which are codified within Division 10 of the California Business and Professions Code at Sections 26000 et. seq. (“Division 10”); and

WHEREAS, Proposition 64 also added Sections 11362.1 through 11362.45 to the Health and Safety Code, which provisions are in effect at this time enabling personal possession, private cultivation and private use of marijuana under circumstances specified therein; and

WHEREAS, Proposition 64 added Sections 11362.712, 11362.713, 11362.84 and 11362.85 to the Health and Safety Code, and amended Section 11362.755 of the Health and Safety Code affecting the use of medical marijuana; and

WHEREAS, Section 26200 of Division 10 enables the County of Mariposa to: “...adopt and enforce local ordinances to regulate businesses licensed under this Division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment and operation of one or more types of businesses licensed under this Division”; and

WHEREAS, Mariposa County Code Chapter 8.56 contains regulations and standards for the cultivation of medical marijuana within Mariposa County; and

WHEREAS, it is not the intent or purpose of this proposed ordinance to affect any changes in current Mariposa County Code provisions for personal possession, private cultivation and private use of marijuana or those local regulations for medical marijuana cultivation currently in effect contained in Chapter 8.56; and

WHEREAS, on March 21, 2017 the Board of Supervisors adopted Interim Urgency Ordinance 1122 prohibiting all commercial marijuana activities for 45 days and thereafter on April 25, 2017 adopted Ordinance 1123 extending Ordinance 1122 for an additional 10 months and 15 days; and

WHEREAS, Ordinance 1122 directed the preparation of necessary documents, including a resolution, ordinance and CEQA determination, to amend the
Mariposa County General Plan and Zoning Ordinance to prohibit, within Mariposa County, any activity for which a license is required pursuant to Division 10; and

WHEREAS, on April 25, 2017 the Board of Supervisors, in accordance with Mariposa County Code Section 17.128.020.B, adopted Resolution 2017-236 initiating General Plan and Zoning Ordinance Amendments to prohibit, within Mariposa County, any activity for which a license is required pursuant to Division 10; and

WHEREAS, on April 25, 2017 the Board of Supervisors also adopted Ordinance 1123, extending Ordinance 1122 for 10 months and 15 days; and

WHEREAS, a duly noticed Planning Commission public hearing was scheduled for August 18, 2017; and

WHEREAS, on August 18, 2017 the Planning Commission did conduct a public hearing and considered the project staff report packet and all input. The Planning Commission adopted Resolution 2017-11 recommending that the Board of Supervisors adopt amendments to the General Plan and Title 17, Zoning, to prohibit, within Mariposa County, any activity for which a license is required pursuant to Division 10; and

WHEREAS, the recommended amendments are intended to prohibit any activity and use within Mariposa County that may be authorized by license pursuant the Adult Use Of Marijuana Act, including commercial, or not for profit, cultivation, processing, manufacture, wholesale or retail sale or public consumption; and

WHEREAS, this resolution is prepared based on direction contained within Ordinance No. 1122 and Resolution 2017 – 236; and

WHEREAS, Division 10 requires that any category of activity listed therein shall first obtain a license issued by the State of California Bureau of Marijuana Control designated licensing authority; and

WHEREAS, Division 10 also establishes a process and protocol for establishment, by the State of California Bureau of Marijuana Control, of a regulatory scheme for issuance of licenses and subsequent oversight and enforcement of conditions under which such uses will operate; and

WHEREAS, the activities which require licensing pursuant to Division 10 include those relating to commercial cultivation, processing, manufacture, sale or public consumption of marijuana plants and any resulting or derivative product by any person, organization or for profit or non-profit entity; and

WHEREAS, the Bureau of Marijuana Control and licensing authorities are required to consult with various State agencies charged with protection of
sensitive habitats and environments, scenic, cultural, historical and agricultural resources in the development, implementation and enforcement of regulations and issuance of licenses; and

WHEREAS, Sections 26014 and 26190 of Division 10 require annual reports to the Legislature by an advisory committee and each licensing authority regarding best regulatory practices and any requests for regulatory relief or rule-making changes. In addition, Section 26191 requires that the Bureau of State Audits conduct a performance audit of the Bureau of Marijuana Control. Annual reports and audits are to be commenced on January 1, 2019, a full year after the commencement of licensing; and

WHEREAS, licensing protocols and standards for consultation and audit pursuant to Division 10 have not been established, in operation or evaluated to an extent that would enable the County of Mariposa to determine that such standards and protocols are sufficient to protect the health, safety and general welfare of residents and businesses in the County of Mariposa. The absence of licensing protocols and standards for the review, issuance and enforcement of licenses, or the conclusion of legislative reports and performance audits, makes it impossible for the County to determine the relationship of any particular licensed category to guiding principles, policies and standards contained in the Mariposa County General Plan; and

WHEREAS, as with any industry, there is the potential that commercial or industrial cultivation, processing, manufacture, storage and use of marijuana and derivative products may adversely affect the health, safety and general welfare of the County and its residents, requiring the adoption of local standards in addition to or other than the standards established by the licensing authorities; and

WHEREAS, marijuana is a prohibited, controlled substance under Federal law, and Mariposa County contains substantial areas (over 52% of the county) of Federal land within the jurisdiction of the Bureau of Land Management, Forest Service and National Park Service. Local, permissive regulations pursuant to Division 10 may potentially endanger the safety and general welfare of residents and visitors by establishing a false sense of governmental acquiescence and tacit approval of activities that are otherwise illegal under Federal Law; and

WHEREAS, as a result of the lack of sufficient definitions, regulations, and standards required in Division 10, the Board of Supervisors finds that it is necessary to protect the public safety, health and welfare of the citizens of Mariposa County as delineated in the below findings:

1. The potential establishment of any category of licensed activity pursuant to Division 10 poses a current and immediate threat to public health, safety and welfare; and
2. The County has received multiple inquiries regarding the establishment of activities requiring a license from the State of California. Such uses, without County review of location and operational standards, have the potential to adversely affect neighborhoods, commercial areas, and sensitive natural resource areas, resulting in a clear and immediate danger to public health, safety, and welfare; and

3. The establishment of any category of licensed activity pursuant to Division 10 while the County is evaluating the adequacy of State of California standards and protocols to protect Mariposa County resources will conflict with the County General Plan guiding principles (General Plan Chapter 3):

   a) Clear approval standards have not been developed;
   b) A nexus between the impacts of any project and project conditions and mitigation measures cannot be determined;
   c) Potential impacts on agricultural uses and activities have not been evaluated;
   d) The effect on the desirability of neighborhoods located in Rural Residential and Mountain Home Districts has not been determined;
   e) A stable and diverse economy may be impacted by the potential dominance of licensed categories; and
   f) The need for infrastructure to accommodate licensed uses and activities has not been determined; and

WHEREAS, a duly noticed Board of Supervisors public hearing was scheduled for October 3, 2017; and

WHEREAS, a Staff Report and Notice of Exemption were prepared pursuant to the California Government Code, Mariposa County Code, California Environmental Quality Act, and local administrative procedures; and

WHEREAS, the Board of Supervisors held a public hearing on the noticed date and considered all of the information in the public record, including the Notice of Exemption and Staff Report, testimony presented by the public concerning the application, and the resolution to initiate amendments.

NOW THEREFORE BE IT RESOLVED THAT, the Board of Supervisors hereby approves General Plan/Zoning Amendment No. 2017-048 including amendments, as shown in Attachments A-E:

A The Mariposa County General Plan, Mariposa Town Plan Section 3.4;
B The Mariposa County General Plan, Fish Camp Town Plan: Section VIII;
C The Mariposa County General Plan, Coulterville Town Plan: Section VI;
D The Mariposa County Zoning Ordinance, Section 17.334.055;
E The Mariposa County Zoning Ordinance, Section 17.108.200; and

BE IT THEREFORE FURTHER RESOLVED THAT, the Board of Supervisors hereby finds that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Sections 15060(c)(2), 15061(b)(3), and 15308.
The proposed amendment will prohibit projects otherwise subject to CEQA that would potentially result in substantial changes to the environment.

**ON MOTION BY** Supervisor Jones, seconded by Supervisor Cann, this resolution duly passed and adopted this 3rd day of October 2017 by the following vote:

**AYES:** SMALLCOMBE, JONES, LONG, CANN, MENETREY

**NOES:** NONE

**ABSENT:** NONE

**ABSTAIN:** NONE

[Signature]
Marshall Long, Chair
Mariposa County Board of Supervisors

Attest:

[Signature]
René LaRoche
Clerk of the Board of Supervisors

Approved as to Form:

[Signature]
Steven W. Dahlem
County Counsel
ATTACHMENT A
Amendments to the Mariposa County General Plan, Mariposa Town Plan Section 3.4

(new text shown in italicized underlined font)

SECTION 3.4 MISCELLANEOUS DEVELOPMENT STANDARDS

3.41 Environmental Protection Standards
(No change to this section)

3.42 Prohibited Uses

The following land uses are prohibited in all Districts:
A. Medical marijuana dispensaries;
B. The collective or cooperative cultivation of marijuana;
C. The cultivation of marijuana for medical purposes by person(s) not residing on the property on a permanent basis; and
D. Any activity or use for which a license is required pursuant to California Business and Professions Code, Division 10, Marijuana.
ATTACHMENT B

Amendments to the Mariposa County General Plan, Coulterville Town Plan
Section VI

(new text shown in italicized underlined font)

VI. Goals, Objectives and Policies
   A. Land Use Classifications
      (No change to this section)

   B. Coulterville Land Use Policies – Area Applications
      (No change to this section)

   C. Special Land Use Area Policies
      (No change to this section)

   D. Community Design
      (No change to this section)

   E. General Policies On The Keeping Of Small Animals
      (No change to this section)

   F. The following land uses are prohibited in all Classifications and Areas:
      1. Medical marijuana dispensaries;
      2. The collective or cooperative cultivation of marijuana;
      3. The cultivation of marijuana for medical purposes by person(s) not residing on
         the property on a permanent basis; and
      4. Any activity or use for which a license is required pursuant to California Business
         and Professions Code, Division 10, Marijuana.
ATTACHMENT C
Amendments to the Mariposa County General Plan, Fish Camp Town Plan Section VIII

(new text shown in italicized underlined font)

VIII. Specific Plan Implementation

A. Planned Development Overlay Zone
   (No change to this section)

B. Plan Amendment Standards

C. Streets and Roads
   (No change to this section)

D. Community Services District
   (No change to this section)

E. Financing New Services
   (No change to this section)

F. Prohibited Uses
   The following land uses are prohibited in all Land Use Classifications:
   1. Medical marijuana dispensaries;
   2. The collective or cooperative cultivation of marijuana;
   3. The cultivation of marijuana for medical purposes by person(s) not residing on the property on a permanent basis; and
   4. Any activity or use for which a license is required pursuant to California Business and Professions Code, Division 10, Marijuana.

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ATTACHMENT D
Proposed Amendments to Zoning Ordinance Section 17.334.055 for Town of Mariposa

(new text shown in italicized underlined font)

CHAPTER 17.334

SUPPLEMENTARY USE STANDARDS

Sections:
17.334.010 Home based occupations.
17.334.020 Bed and breakfast and vacation rentals.
17.334.030 Day care and small residential care facilities.
17.334.040 Agricultural uses.
17.334.050 Special use provisions for historic structures.
17.334.055 Uses prohibited in all zones.
17.334.060 Interpretation by the planning director.
17.334.070 Transitional and supportive housing.

17.334.010 Home based occupations.
(No change to this section)

17.334.020 Bed and breakfast and vacation rentals.
(No change to this section)

17.334.030 Day care and small residential care facilities.
(No change to this section)

17.334.040 Agricultural uses.
(No change to this section)

17.334.050 Special use provisions for historic structures.
(No change to this section)

17.334.055 Uses prohibited in all zones.
The following land uses are prohibited in all zoning districts:
A. Medical marijuana dispensaries;
B. The collective or cooperative cultivation of marijuana;
C. The cultivation of marijuana for medical purposes by person(s) not residing on the property on a permanent basis.
D. Any activity or use for which a license is required pursuant to California Business and Professions Code, Division 10, Marijuana.

17.334.060 Interpretation by the planning director.
(No change to this section)

17.334.070 Transitional and supportive housing.
(No change to this section)
ATTACHMENT E
Proposed Amendments to Zoning Ordinance Section 17.108.200

(new text shown in italicized underlined font)

Chapter 17.108

SUPPLEMENTARY STANDARDS

Sections:
17.108.010 Purpose and intent.
17.108.020 Effect of regulations.
17.108.030 Similar uses.
17.108.040 Minimum parcel or lot size standards.
17.108.050 Density standards.
17.108.060 General use standards.
17.108.070 Home enterprises.
17.108.080 Rural home industry.
17.108.090 Mobile home parks.
17.108.095 Pre-1976 mobile homes.
17.108.100 Planned or cluster residential development and preservation of open space.
17.108.110 Mineral or construction material processing site standards.
17.108.115 Model homes and model homes with sales offices within residential zoning districts.
17.108.120 Off street parking.
17.108.130 Structure location.
17.108.140 Structure height.
17.108.150 Secondary residences.
17.108.160 Nursing care facilities.
17.108.170 Day care facilities.
17.108.180 Bed and breakfast and residential transient rentals.
17.108.190 Signs.
17.108.200 Uses prohibited in all zones.

17.108.010 Purpose and intent.
(Section not changed)

17.108.020 Effect of regulations.
(Section not changed)

17.108.030 Similar uses.
(Section not changed)

17.108.040 Minimum parcel or lot size standards.
(Section not changed)

17.108.050 Density standards.
(Section not changed)
17.108.060 General use standards.
(Section not changed)

17.108.070 Home enterprises.
(Section not changed)

17.108.080 Rural home industry.
(Section not changed)

17.108.090 Mobile home parks.
(Section not changed)

17.108.095 Pre-1976 mobile homes.
(Section not changed)

17.108.100 Planned or cluster residential development and preservation of open space.
(Section not changed)

17.108.110 Mineral or construction material processing site standards.
(Section not changed)

17.108.115 Model homes and model homes with sales offices within residential zoning districts.
(Section not changed)

17.108.120 Off street parking.
(Section not changed)

17.108.130 Structure location.
(Section not changed)

17.108.140 Structure height.
(Section not changed)

17.108.150 Secondary residences.
(Section not changed)

17.108.160 Nursing care facilities.
(Section not changed)

17.108.170 Day care facilities.
(Section not changed)

17.108.180 Bed and breakfast and residential transient rentals.
(Section not changed)

17.108.190 Signs.
(Section not changed)
17.108.200 Uses prohibited in all zones.
The following land uses are prohibited in all zoning districts:
A. Medical marijuana dispensaries;
B. The collective or cooperative cultivation of marijuana;
C. The cultivation of marijuana for medical purposes by person(s) not residing on the property on a permanent basis.
D. Any activity or use for which a license is required pursuant to California Business and Professions Code, Division 10, Marijuana.