

DEPARTMENT: County Counsel

BY: Steven W. Dahlem

PHONE: 966-3222

**RECOMMENDED ACTION AND JUSTIFICATION:**

Adopt an extension of the Interim Urgency Ordinance which was adopted on January 26, 2010, to define medical marijuana dispensary and prohibit the establishment of medical marijuana dispensaries within the County of Mariposa. This extension shall be effective for ten (10) months and fifteen (15) days commencing on the 12<sup>th</sup> day of March, 2010, and shall expire ten (10) months and fifteen (15) days thereafter unless further extended pursuant to California Government Code Section 65858. This extension is adopted pursuant to California Government Code Section 65858.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

Existing County zoning regulations do not provide for location and regulation of medical marijuana dispensaries and the study of such uses to consider their location, operation and consequences for neighborhood and community character. Mariposa County has received inquiries from parties seeking to open medical marijuana dispensaries in Mariposa County notwithstanding the fact that the County has not yet adopted regulations and requirements for the establishment of such facilities. Without sufficient regulations, standards, procedures and thresholds which are enforceable pursuant to an adopted ordinance, there are potentially detrimental effects to the health, safety, and welfare of the community.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Without appropriate review of location and operational criteria and standards, dispensaries could have potential adverse secondary effects on neighborhoods and the County that present a clear and immediate danger to public health, safety, and welfare.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Without a prohibition of approvals of uses in Agritourism permits might be approved that would have the adverse effects of urbanizing lands in the AEZ.

Financial Impact? ( ) Yes (x) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? ( ) Yes ( ) No ( ) Partially Funded		
Amount in Budget: \$ _____		List Attachments, number pages consecutively _____
Additional Funding Needed: \$ _____		
Source:		Interim Urgency Ordinance _____
Internal Transfer _____		Notice of Public Hearing _____
Unanticipated Revenue _____ 4/5's vote		Staff Report _____
Transfer Between Funds _____ 4/5's vote		
Contingency _____ 4/5's vote		
( ) General ( ) Other		

**CLERK'S USE ONLY:**

Res. No.: 10-111 Ord. No. \_\_\_\_\_  
 Vote - Ayes: 5 Noes: \_\_\_\_\_  
 Absent: \_\_\_\_\_  
 Approved \_\_\_\_\_  
 Minute Order Attached ( ) No Action Necessary

**COUNTY ADMINISTRATIVE OFFICER:**

Requested Action Recommended  
 No Opinion  
 Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The foregoing instrument is a correct copy of the original on file in this office.  
 Date: \_\_\_\_\_  
 Attest: MARGIE WILLIAMS, Clerk of the Board  
 County of Mariposa, State of California  
 By: \_\_\_\_\_  
 Deputy

CAO: [Signature]



# COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

BRAD ABORN  
LYLE TURPIN  
JANET BIBBY  
KEVIN CANN  
JIM ALLEN

DISTRICT I  
DISTRICT II  
DISTRICT III  
DISTRICT IV  
DISTRICT V



## MARIPOSA COUNTY BOARD OF SUPERVISORS

### MINUTE ORDER

TO: STEVEN W. DAHLEM, County Counsel

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: PUBLIC HEARING to Adopt an Extension of the Interim Urgency Ordinance which was Adopted on January 26, 2010, to Define Medical Marijuana Dispensary and Prohibit the Establishment of Medical Marijuana Dispensaries within the County of Mariposa. This Extension Shall be Effective for Ten (10) Months and Fifteen (15) Days Commencing on the 12<sup>th</sup> Day of March, 2010, and Shall Expire Ten (10) Months and Fifteen (15) Days thereafter unless Further Extended Pursuant to California Government Code Section 65858

RES. 10-111

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on March 9, 2010

#### ACTION AND VOTE:

5 **County Counsel**  
PUBLIC HEARING to Adopt an Extension of the Interim Urgency Ordinance which was Adopted on January 26, 2010, to Define Medical Marijuana Dispensary and Prohibit the Establishment of Medical Marijuana Dispensaries within the County of Mariposa. This Extension Shall be Effective for Ten (10) Months and Fifteen (15) Days Commencing on the 12<sup>th</sup> Day of March, 2010, and Shall Expire Ten (10) Months and Fifteen (15) Days thereafter unless Further Extended Pursuant to California Government Code Section 65858

**BOARD ACTION:** Steve Dahlem, County Counsel, presented the staff report. Kris Schenk, Planning Director, presented information on the processing and timelines for this project; and he responded to questions from the Board relative to extending the Ordinance again. County Counsel responded to questions from the Board relative to action taken in other jurisdictions to not allow marijuana dispensaries; process to amend the Zoning Ordinance; relative to the language in Urgency Ordinance No. 1067 directing staff to study this matter and the Board's intent based on input that was received to not allow dispensaries.

The public portion of the hearing was opened and input was provided by the following:

Brian Muller, Sheriff, stated he feels the time being requested is appropriate as there are five different propositions trying to qualify for the November ballot and that could change the entire issue. He further noted that in

counties where dispensaries were allowed, they are being reviewed because they are operating illegally based on Proposition 215 provisions.

The public portion of the hearing was closed and the Board commenced with deliberations. (M)Bibby, (S)Allen, Res. 10-111 was adopted extending the Interim Urgency Ordinance as recommended/Ayes: Unanimous.

Cc: Kris Schenk, Planning Director  
File



# MARIPOSA PLANNING

COUNTY OF MARIPOSA

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MARIPOSA, CALIFORNIA 95338-2039

209 . 742 . 1215 • FAX 209 . 742 . 5024

Kris Schenk, Director

kschenk@mariposacounty.org

Alvaro Arias, Associate Planner

aarias@mariposacounty.org

**February 26, 2010**

**TO: Board of Supervisors**

**FROM: Alvaro Arias, Associate Planner**  
**Kris Schenk, Planning Director**

**RE: Extension of Interim Urgency Ordinance for Medical Marijuana  
Dispensaries in Mariposa County**

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**Summary:**

On January 26, 2010 the Mariposa County Board of Supervisors adopted Ordinance No. 1067, an Interim Urgency Ordinance pursuant to California Government Code Section 65858, which established a definition of medical marijuana dispensaries and prohibited the establishment of medical marijuana dispensaries within the County of Mariposa.

After noticing and holding a public hearing an urgency ordinance may be extended for 10 months and 15 days, for a total of one year. The reason for this urgency ordinance is that existing County zoning regulations do not provide for location and regulation of medical marijuana dispensaries. The interim urgency ordinance would allow for proper research to be conducted; allow time to consider any requirements and conditions for medical marijuana dispensaries; and also allow the Board of Supervisors to provide direction to help determine the appropriate zones, if any, and where they should be permitted, conditionally permitted, or prohibited.

**Background and Discussion:**

In 1996, Proposition 215, the Compassionate Use Act, was passed to allow seriously ill persons the right to use medical marijuana under a physician's recommendation. It also exempts patients and primary care givers from prosecution. In 2003, SB420 was enacted by the State Legislature to establish the Medical Marijuana Program, which established a voluntary system for patients and caregiver to obtain identification cards that prevent them from being arrested for violations of State law regarding marijuana. Neither these, nor other state laws authorize or require the establishment of medical marijuana dispensaries. It should also be noted that marijuana is still illegal under Federal law.

Various neighboring jurisdictions have banned medical marijuana dispensaries, including Madera County and Merced County. Since Mariposa County, did not have any definitions or regulations for medical marijuana dispensaries, on January 26, 2010, the Board of Supervisors adopted an Interim Urgency Ordinance (Ordinance No. 1067) to define and prohibit the establishment of medical marijuana dispensaries. This interim urgency ordinance and this recommended extension allows time for staff to research the issue in depth and review data and possible impacts of medical marijuana dispensaries on the surrounding community. This interim ordinance also allows for the Board of Supervisors to provide direction to staff to determine the appropriate zones, if any, and where they should be permitted, conditionally permitted, or prohibited.

Amendments to Title 17, Zoning Ordinance, would need to be initiated to establish land use regulations for medical marijuana dispensaries. Forty-five (45) days, the length that the interim urgency ordinance is effective if not extended, is not enough time to consider and process amendments to Title 17. Without regulations that are enforceable there are potentially detrimental effects to the health, safety, and welfare of the community.

**Measures Taken To Alleviate Conditions Leading to Adoption of Interim Urgency Ordinance:**

The following actions have been taken or are being taken to establish standards, criteria and procedures that will be needed for a permanent definition of medical marijuana dispensaries and regulations for their establishment:

- Staff has begun researching various other jurisdictions' marijuana dispensary regulations.
- Staff has begun reviewing Title 17 to determine where and how to best update Title 17 to include a medical marijuana dispensary definition and regulations.
- Staff has begun researching impacts from medical marijuana dispensaries on the surrounding community based on evidence from other communities.

Any changes to Title 17, Zoning Ordinance, would take several months, inasmuch as the proposed amendments would have to be circulated, followed by public hearings before the Planning Commission and the Board of Supervisors.

MARIPOSA COUNTY ORDINANCE NO. 1067

AN INTERIM URGENCY ORDINANCE TO DEFINE MEDICAL MARIJUANA DISPENSARY AND PROHIBIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE COUNTY OF MARIPOSA

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 215, codified as Health and Safety Code sections 11362.5 et seq. and entitled "The Compassionate Use Act of 1996 ("Compassionate Use Act"); and

WHEREAS, in 2003 the State enacted SB 420 to clarify the scope of the Compassionate Use Act and to allow public entities to adopt and enforce rules and regulations consistent with SB 420; and

WHEREAS, while the use of marijuana is allowed for medicinal purposes under California law, marijuana is still a prohibited controlled substance under federal law; and

WHEREAS, the existing County zoning regulations do not provide for location and regulation of medical marijuana dispensaries and the study of such uses to consider their location, operation and consequences for neighborhood and community character in any zone that allows retail uses, drug stores or medical uses, or home enterprises and rural home industry; and

WHEREAS, Mariposa County has received inquiries from parties seeking to open medical marijuana dispensaries in Mariposa County notwithstanding the fact that the County has not yet adopted regulations and requirements for the establishment of such facilities; and

WHEREAS, without sufficient regulations, standards, procedures and thresholds which are enforceable pursuant to an adopted ordinance, there are potentially detrimental effects to the health, safety, and welfare of the community; and

WHEREAS, as a result of the lack of sufficient definitions, regulations, and standards contained in Title 17, Chapter 17.300 and Chapter 17.148 of the Mariposa County Code, an Interim Urgency Ordinance is necessary to protect the public safety, health and welfare of the citizens of Mariposa County as delineated in the findings below; and

WHEREAS, during this interim urgency period, County Staff is directed to study the necessary ordinances and regulations to regulate the establishment of medical marijuana dispensaries in the County by determining appropriate zones and/or requiring conditional use permits; and

**WHEREAS**, Section 65858 of the California Government Code empowers the Board to adopt an Interim Urgency Ordinance to protect the public safety, health and welfare of the citizens of Mariposa County.

**NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY**, a political subdivision of the State of California, does ordain as follows:

**SECTION I:** During the dates this Interim Urgency Ordinance and any extension thereof is effective, approvals or establishment of medical marijuana dispensaries and any and all modifications to existing uses to add a medical marijuana dispensary are prohibited within Mariposa County, including but not limited to Coulterville, Wawona, Fish Camp and the Town of Mariposa.

**SECTION II:** As used herein the term "Medical Marijuana Dispensary" or "Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to and/or distributed to one (1) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card, as those terms are defined in California Health and Safety Code section 11362.5 et seq.

**SECTION III:** The purpose of this Interim Urgency Ordinance is to protect the public safety, health and welfare of the citizens of Mariposa County and is based upon the following findings:

A. The Board of Supervisors hereby finds and declares that potential establishment of medical marijuana dispensaries in Mariposa County poses a current and immediate threat to public health, safety or welfare. The County has received multiple inquiries regarding the establishment of medical marijuana dispensaries in the County. If medical marijuana dispensaries are allowed to proceed without appropriate review of location and operational criteria and standards, the dispensaries could have potential adverse secondary effects on neighborhoods and the County that present a clear and immediate danger to public health, safety, and welfare.

B. The Board of Supervisors hereby further finds and declares that if establishment or development of medical marijuana dispensaries were allowed to proceed while the County is studying zoning proposals and regulations for this use, it would defeat the purpose of studying and considering zoning proposals to regulate and/or prohibit this use. Failure to adopt this ordinance may result in significant irreversible changes to neighborhood and community character.


C. Based on the foregoing, the Board of Supervisors does hereby declare this urgency ordinance is necessary to protect the public health, safety, and welfare while considering revisions to the zoning regulations related to medical marijuana dispensaries.

**SECTION IV:** This Interim Urgency Ordinance is adopted under the authority of California Government Code Section 65858 and shall become effective immediately

upon adoption and shall be in effect for forty-five (45) days unless extended by the Board of Supervisors pursuant to California Government Code § 65858.


**PASSED AND ADOPTED** by the Board of Supervisors of Mariposa County this 26<sup>th</sup> day of January 2010 by the following vote:

AYES:	ABORN, TURPIN, BIBBY, CANN, ALLEN
NOES:	NONE
ABSENT:	NONE
ABSTAINED:	NONE

  
\_\_\_\_\_  
KEVIN CANN, Chairman  
Mariposa County Board of Supervisors

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
MARGIE WILLIAMS  
Clerk of the Board

  
\_\_\_\_\_  
STEVEN W. DAHLEM  
County Counsel



## PUBLIC HEARING NOTICE

The public is hereby notified that the Mariposa County Board of Supervisors, on Tuesday, March 9, 2010 at 9:00 a.m. or as soon thereafter as the matter may be heard in the Board Chambers, County Government Center, Mariposa, California, will conduct a public hearing to receive public input and adopt an extension of the Interim Urgency Ordinance which was adopted on January 26, 2010, to define medical marijuana dispensary and prohibit the establishment of medical marijuana dispensaries within the County of Mariposa. This extension will be effective for ten (10) months and fifteen (15) days commencing March 12, 2010, and shall expire ten (10) months and fifteen (15) days thereafter unless further extended pursuant to California Government Code Section 65858. The adopted Interim Urgency Ordinance is available for review at the County Administration Counter.

This extension is proposed to be adopted pursuant to California Government Code Section 65858.

The public is invited to attend and comment on the proposed extension.

Steven W. Dahlem  
County Counsel

Publication dates: 2/25/10

4