

DEPARTMENT: Planning

BY: Alvaro Arias, Assoc. Planner
PHONE: 742-1218

Ord. 1076

RECOMMENDED ACTION AND JUSTIFICATION:

- 1) 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 one (1) year commencing on the 26th day of January, 2011, and shall expire one (1) year thereafter or until a permanent ordinance is adopted. This extension is adopted pursuant to California Government Code Section 65858.
- 2) Provide direction to staff on the preparation of a Resolution of Intention for the establishment of permanent regulations for medical marijuana dispensaries. Alternative actions are presented in the staff report (Attachment D).

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Existing County zoning regulations do not provide for location and regulation of medical marijuana dispensaries. The study of such uses to consider their location, operation and consequences for neighborhood and community character is necessary. The Interim Urgency Ordinance was first adopted on January 26, 2010 and extended on March 12, 2010 for a total of one year. Additional time is needed for preparation of permanent regulations as directed by the Board of Supervisors. 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.

Financial Impact? () Yes (X) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$	Attachments:	
Additional Funding Needed: \$	A. Report Describing Measures Taken to Alleviate Conditions Leading to Adoption of Interim Urgency Ordinance	
Source:	B. Draft Extension of Interim Urgency Ordinance	
Internal Transfer	C. Adopted Ordinance	
Unanticipated Revenue _____ 4/5's vote	D. Report on Medical Marijuana Dispensaries (with attachments)	
Transfer Between Funds _____ 4/5's vote		
Contingency _____ 4/5's vote		
() General () Other		

CLERK'S USE ONLY:


Res. No.: _____ Ord. No. 1076
 Vote - Ayes: _____ 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: 

MARIPOSA COUNTY ORDINANCE NO. 1076

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, on January 26, 2010, pursuant to Government Code Section 65858, Ordinance No. 1067 was adopted to define and prohibit the establishment of medical marijuana dispensaries and set to expire in 45 days; and

WHEREAS, on March 9, 2010 a report was issued describing the measures taken to address pertinent issues prior to expiration of the urgency ordinance; and

WHEREAS, all of the findings cited in Urgency Ordinance No. 1067 were still applicable, on March 9, 2010, the Board of Supervisors extended the Urgency Ordinance until January 26, 2011; and

WHEREAS, on November 2, 2010 the voters of the State of California did not approve Proposition 19, thereby ending the statewide uncertainties concerning the effects of that proposition; and

WHEREAS, on January 25, 2011, following notice pursuant to Government Code Section 65090, the Board conducted a public hearing to extend the moratorium that had been established by Urgency Ordinance No. 1067; and

WHEREAS, at a noticed public hearing on January 25, 2011 a second report was reviewed by the Board of Supervisors describing the measures taken to address pertinent issues prior to the expiration of the interim ordinance; and

WHEREAS, the Board of Supervisors also reviewed a report listing several options that could be taken and provided staff with direction in which to proceed with a Resolution of Intention; and

WHEREAS, all of the findings cited in Urgency Ordinance No. 1067 were still applicable, on January 25, 2011, the Board of Supervisors extended the Urgency Ordinance until January 26, 2012; 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, Sub-Title 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 will continue to study and complete the necessary ordinances and regulations to regulate the establishment of medical marijuana dispensaries in the County by determining appropriate zones (if any) 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.

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 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 shall become effective January 26, 2011 and shall be in effect for one year unless extended by the Board of Supervisors pursuant to California Government Code § 65858.

SECTION V: This Interim Urgency Ordinance is adopted under the authority of California Government Code, Section 65858, and shall become effective upon adoption and shall be of no further force and effect unless extended by the Board of Supervisors pursuant to California Government Code Section 65858.

PASSED AND ADOPTED by the Board of Supervisors of Mariposa County this 25th day of January 2011 by the following vote:

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



JIM ALLEN, Chairman
Mariposa County Board of Supervisors

ATTEST:



MARGIE WILLIAMS
Clerk of the Board

APPROVED AS TO FORM:



STEVEN W. DAHLEM
County Counsel



COUNTY of MARIPOSA

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



JIM ALLEN, CHAIR
JANET BIBBY, VICE-CHAIR
LEE STETSON
LYLE TURPIN
KEVIN CANN

DISTRICT V
DISTRICT III
DISTRICT I
DISTRICT II
DISTRICT IV

MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: KRIS SCHENK, Planning Director

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

SUBJECT: PUBLIC HEARING to Adopt an Ordinance Approving the Final Extension of the Interim Urgency Ordinance Adopted on January 26, 2010, to Define Medical Marijuana Dispensaries and Prohibit the Establishment of Medical Marijuana Dispensaries. Provide Direction to Staff for Preparation of a Resolution of Intention for Permanent Medical Marijuana Dispensary Regulations Based on Information Provided in the Staff Report, to be Brought Back before the Board of Supervisors

ORD. 1076

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on January 25, 2011

ACTION AND VOTE:

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Planning

PUBLIC HEARING to Adopt an Ordinance Approving the Final Extension of the Interim Urgency Ordinance Adopted on January 26, 2010, to Define Medical Marijuana Dispensaries and Prohibit the Establishment of Medical Marijuana Dispensaries. Provide Direction to Staff for Preparation of a Resolution of Intention for Permanent Medical Marijuana Dispensary Regulations Based on Information Provided in the Staff Report, to be Brought Back before the Board of Supervisors

BOARD ACTION: Kris Schenk, Planning Director, advised of the process for extending the interim urgency Ordinance. He advised that staff has been working on this issue; however, there was uncertainty with Proposition 19, and that did not pass. He advised that staff is requesting direction for preparing a resolution to be brought back to the Board. Alvaro Arias, Planner, presented the staff report and he advised of corrections to the staff report, and reviewed staff recommendation and options for action. Staff responded to questions from the Board relative to the Ordinance for Merced County being for the unincorporated areas; where the nearest allowed dispensary is located; whether there has been any public feedback on this matter; and whether dispensaries are legal in the State and relative to the Federal laws.

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

Ivan Laam provided input and he advised of available dispensaries in neighboring counties, Oakhurst and Merced, and on the internet. He commented on the potential benefits to the County for increased tax revenues if dispensaries are

allowed. Supervisor Cann noted that dispensaries are not allowed in Madera County; and Supervisor Allen advised of his discussion with the Madera County Sheriff and there are no dispensaries in Oakhurst.

Doug Binnewies, Sheriff, provided input on the status of the laws since the Compassionate Use Act was adopted in 1996, and he advised that he and the District Attorney support continuation of the moratorium for further research. He commented on law enforcement issues that they have encountered. He responded to questions from the Board as to whether there are benefits to having a dispensary program versus individuals growing their own medical marijuana.

Dr. Mosher, Health Officer, responded to questions from the Board relative to the number of identification cards that have been issued by the Department; and relative to the purpose of the card. Both Dr. Mosher and Sheriff Binnewies responded to a question from the Board and advised that they do not know if any counties allowed dispensaries and then eliminated them.

Sheriff Binnewies responded to questions from the Board as to whether there are other options for marijuana dispensaries other than "store front" dispensaries. Supervisor Allen provided input on the abuse of Proposition 215 and concerns relative to approving the dispensing of a drug (marijuana) without scientific control.

The public portion of the hearing was closed and the Board commenced with deliberations.

(M)Cann, (S)Turpin, the reading was waived and Ordinance No. 1076 was adopted extending the interim urgency Ordinance to define medical marijuana dispensary and prohibit the establishment of medical marijuana dispensaries within the County of Mariposa. Further discussion was held. Supervisor Bibby clarified the action, including reading the title of the Ordinance into the record. Ayes: Unanimous.

Discussion was held relative to providing direction to staff. Supervisor Stetson stated he would like to see an option that involves restricting dispensaries to Mariposa County residents since a small amount is involved to serve the two residents that have identification cards, and he would like for the option to be something that is acceptable to the Sheriff. It was clarified that prohibiting dispensaries does not preclude those with identification cards to their need and access. Discussion was held with staff relative to the option of creating a separate section or chapter in the County Code that would list all prohibited uses in all zones versus amending each zone; and relative to the ability to monitor dispensaries and problems with co-ops. Staff responded to questions from the Board relative to including specific communities with the County in the Ordinance; and it was clarified that these are communities with Town Plans. Steve Dahlem, County Counsel, stated he feels the language is appropriate for the extension; and he noted the request from the Department to be given clear direction on what to bring back to the Board. Discussion was held. Supervisor Bibby stated she supports the prohibition, but would like Planning to watch for changes in case law and to see how other counties are dealing with massive co-ops. Supervisor Stetson stated he feels that we still need public input and to try to find a way that would allow the idea of a dispensary in a clear program and safe environment for County residents.

(M)Cann, (S)Turpin, clear and unequivocal direction was given to Planning to come back to the Board with an Ordinance to prohibit the establishment of marijuana dispensaries in Mariposa County/Ayes: Turpin, Bibby, Cann, Allen: Noes: Stetson. The hearing was closed.

Cc: Steven W. Dahlem, County Counsel
 Doug Binnewies, Sheriff
 Pete Judy, Chief Probation Officer
 File