

MARIPOSA COUNTY ORDINANCE NO. 1086

AN ORDINANCE AMENDING THE MARIPOSA COUNTY ZONING ORDINANCE

WHEREAS, a proposal to amend the Mariposa County Zoning Ordinance was initiated by the County on October 11, 2011, and

WHEREAS the application is known as Zoning Amendment Application No. 2011-170. The application proposes to amend Title 17 Zoning to amend the list of prohibited uses in all zones, create a new section of "Uses prohibited in all zones" and to add definitions; and

WHEREAS, the Planning Commission held a duly noticed public hearing on Zoning Amendment No. 2011-170 on the 4th day of November 2011, in accordance with State Law and County Code, and recommended approval of the project to the Board of Supervisors; and

WHEREAS, the Board of Supervisors held a duly noticed public hearing on Zoning Amendment No. 2011-170 on the 6th day of December 2011, in accordance with State Law and County Code; and

WHEREAS, environmental review has been conducted on Zoning Amendment No. 2011-170 in accordance with the California Environmental Quality Act and findings of exemption have been made for the project.

NOW THEREFORE BE IT ORDAINED, the Board of Supervisors does hereby amend Chapter 17 of Mariposa County Code as follows:

Section I: Amend Sections 17.16.010.A.1.c; 17.20.010.A.1.c; 17.24.010.A.1.c; 17.28.010.A.1.c; 17.32.010.A.1.c; 17.36.010.A.1.c; 17.40.010.A.1.d; 17.44.010.A.1.c; 17.76.020.A.4; and 17.80.020.A.4; as follows:

Prohibited uses: All uses listed in Section 17.108.200 of this Title and other uses not listed above are prohibited, except similar uses in compliance with Section 17.08.120 and 17.108.030 of this Title.

Section II: Amend Sections 17.48.010.A.1.c; 17.88.020.B.4; 17.92.020.B.4; 17.96.020.B.4; 17.100.020.B.4; 17.104.020.B.4 as follows:

Prohibited Uses: All uses listed in Section 17.108.200 of this Title and other uses not listed above are prohibited.

Section III: Amend Sections 17.68.010.A.1.c. and 17.72.010.A.1.c. as follows:

Prohibited uses: All uses listed in Section 17.108.200 of this Title and other uses not listed above, including agriculture, are

prohibited, except similar uses in compliance with Section 17.08.120 and 17.108.030 of this Title.

Section IV: Amend Sections 17.312.020.A.3; 17.314.020.A.3; 17.316.020.A.3; 17.318.020.A.3; 17.320.020.A.3; 17.322.020.A.3; and 17.325.020.A.3 as follows:

Prohibited uses:

All uses listed in Section 17.334.055 of the Mariposa County Code and uses not listed as permitted or conditional shall be prohibited, except similar uses in compliance with Section 17.334.060.

Section V: Amend Sections 17.324.020.A.3 and 17.326.020.A.3 as follows:

Prohibited uses:

All uses listed in Section 17.334.055 of the Mariposa County Code and uses not listed as permitted or conditional shall be prohibited.

Section VI: Amend Chapter 17.108 Supplementary Standards by adding Section 17.108.200 Uses prohibited in all zones as follows:

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.

Section VII: Amend Chapter 17.334 Supplementary Use Standards by adding Section 17.334.055 Uses prohibited in all zones as follows:

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.

Section VIII: Amend Chapter 17.148 Definitions by adding additional definitions to Section 17.148.010 as follows:

Medical Marijuana:

Defined in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq.

Medical Marijuana Dispensary:

Any facility or location, whether fixed or mobile, where medical marijuana or items containing medical marijuana (e.g. food or drink products) is made available to, and or/exchanged with, and/or distributed or sold to one (1) or more of the following: a qualified patient, a person with an identification card, or a primary caregiver as those terms are defined in California Health and Safety Code Section 11362.5 and 11362.7 et seq. Unless otherwise regulated by this Code or applicable law, a "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7 et seq.

Collective or cooperative cultivation of marijuana:

The association within California of qualified patients, persons with valid identification cards, and/or designated primary care givers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7 et seq.

Section IX: This ordinance shall become effective thirty (30) days after final passage pursuant to Government Code Section 25123.

BE IT FINALLY ORDAINED, this action is based on the findings mandated by Section 17.128.050 of the Mariposa County Zoning Ordinance as follows:

Finding No. 1: *The amendment is in the general public interest, and will not have a significant adverse effect on the general public health, safety, peace, and welfare. (Section 17.128.050, Zoning Ordinance.)*

The amendment is in the general public interest because it establishes specific regulations that address medical marijuana dispensaries and the cultivation of medical marijuana. Regulations are needed to protect the public health, safety, and welfare of residents, children, and businesses from harmful secondary effect of medical marijuana dispensaries and the unregulated cultivation of medical marijuana. The amendment will not have any adverse effect on the general public health, safety, peace and welfare, but will protect them.

Finding No. 2: *The amendment is desirable for the purpose of improving the Mariposa County general plan with respect to providing a long term guide for county development and a short term basis for day-to-day decision making. (Section 17.128.050, Zoning Ordinance.)*

One of the stated goals of the Mariposa County General Plan is to insure that the rural character of Mariposa County is maintained (Goal 5-1). This amendment provides land use regulations that are complementary to the concept of rural character, by establishing regulations for medical marijuana dispensaries and medical marijuana cultivation that will regulate increased traffic, noise, lights, and degradation of the natural environment associated with medical marijuana dispensaries and medical marijuana cultivation. The amendment will improve the Mariposa County general plan, as the amendment addresses potential impacts associated with the unregulated establishment of medical marijuana dispensaries and the unregulated cultivation of medical marijuana. This amendment will enable Mariposa County to properly protect its residents from the risk of criminal activity, degradation of the natural environment, marijuana related odors, and the potential for increased marijuana distribution. The amendment will enable better day-to-day decision making, as it will provide clear regulations for medical marijuana dispensaries and cultivation of medical marijuana. The amendment will minimize negative impacts on residential properties.

Finding No. 3: *The amendment conforms to the requirements of state law and county policy. (Section 17.128.050, Zoning Ordinance)*

The application has been processed in accordance with all applicable requirements of state law and county policy.

Finding No. 4: *The amendment is consistent with other guiding policies, goals, policies, and standards of the Mariposa County general plan. (Section 17.128.050, Zoning Ordinance.)*

The amendment will insure that the rural character of Mariposa County is maintained (Goal 5-1, Mariposa County General Plan). The amendment carries out Implementation Measure 5-1a(3) as the project establishes land use regulations (thresholds) to ensure future uses are complementary to the concept of rural character. The regulation of medical marijuana dispensaries and medical marijuana cultivation also has the effect of regulating the increased traffic, noise, lights and degradation of the natural environment that is associated with large unsupervised marijuana cultivation and medical marijuana dispensaries. The amendment implements Policy 10-1c and Implementation Measure 10-1c(1) as it ensures that future uses in the Agriculture/Working Landscape are compatible with agriculture. The amendment establishes clearly defined uses and limits to uses associated with medical marijuana.

Finding No. 5: *The subject parcels are physically suitable (including, but not limited to access, provision of utilities and infrastructure, compatibility with adjoining land uses, and absence of physical constraints) for the requested land use designated and the anticipated land use development. (Section 17.128.050, Zoning Ordinance.)*

This finding is not applicable to General Plan/Zoning Amendment No. 2011-170.


Finding No. 6: *The proposed zoning is logical and desirable to provide expanded employment opportunities, or basic services to the immediate residential population or touring public. (Section 17.128.050, Zoning Ordinance.)*

This finding is not applicable to General Plan/Zoning Amendment No. 2011-170.

Finding No. 7: Any existing operations, as of the effective date of this resolution, involving cooperative or collective cultivation of medical marijuana are not recognized by Mariposa County as legally established uses, as these uses are not listed or identified as permitted uses in Title 17 (Zoning Ordinance) of Mariposa County Code.

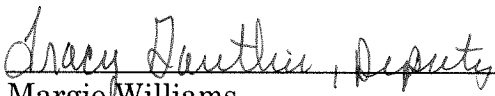
PASSED AND ADOPTED on this 20th day of December, 2011 by the following vote. This ordinance will become effective 30 days after adoption:

AYES: TURPIN, BIBBY, CANN, ALLEN
NOES: STETSON
EXCUSED: NONE
ABSTAIN: NONE




Jim Allen, Chair
Mariposa County Board of Supervisors

ATTEST:



Margie Williams
Clerk of the Board of Supervisors

APPROVED AS TO FORM:



Steven W. Dahlem
County Counsel