

TRINITY COUNTY
BOARD OF SUPERVISORS
Trinity County Library
Conference Room
Weaverville, CA

SPECIAL MEETING MINUTES

2016-08-10

Chairman

Supervisor Karl Fisher - District 3

Vice Chairman

Supervisor John Fenley - District 5

Supervisor Keith Groves - District 1

Supervisor Judy Morris - District 2

Supervisor Bill Burton - District 4

VACANT - County Administrative Officer

Margaret E. Long - County Counsel/Clerk of the Board

Naomi Merwin - Deputy Clerk of the Board

Meeting called to order in open session at 9:00 AM.

Pledge of Allegiance - Supervisor Morris

Public Comment - Patrick Kahn, Martha Wofford, unknown and Mike Weir.

County Matters

Board of Supervisors

- 1.01** Continued to August 30, 2016 at 6:00 p.m.; discuss and/or take action to introduce, waive the reading of and enact an urgency ordinance amending Zoning Ordinance No. 315 creating medical marijuana cultivation regulation.

Received comments from County Counsel Margaret Long, Director of Transportation Rick Tippet, Stanley Watrous, Keith Cope, Patrick Kahn, Clarence Rose, Susie Torpi, Heidi Harris, Jeremy Brown, unknown, Joseph Bower, Debra Lono, Ashley Toms, John Letton (Exhibit A), John Ward, Paul Hauser, Tonio Isq/Gil Sardenia, Terry Mines, Chris Schaefer, Adrien Keys, Karla Avila, Tom Ballanco, Martha Wofford, Brian Sims, Dorji Roberts, Mai Vue, Tim Wright, Susan Bower, Erik Anderson, Kent Cox, Dee Potter and Jose Acosta.

Motion: Morris Second: Groves Carried Vote: 5-0

ADJOURN

TRINITY COUNTY BOARD OF SUPERVISORS



L. KARL FISHER, CHAIRMAN
Board of Supervisors, County of
Trinity, State of California

Attest:

MARGARET E. LONG
Clerk of the Board of Supervisors

By: Naomi Laulette
Deputy

8/10/16
Item 1.01
John Letton



**GREENFIRE
LAW, PC**

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August 10, 2016

By Hand Delivery

Trinity County Board of Supervisors

RE: Proposed Urgency Ordinance Amending Zoning Ordinance No. 315 Creating Medical Marijuana Cultivation Regulation

Dear Trinity County Supervisors:

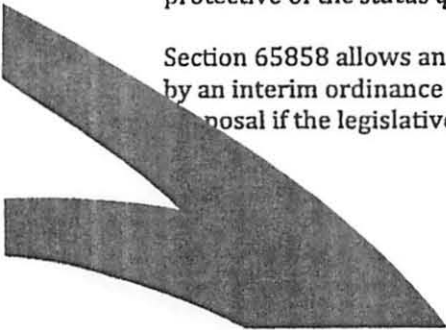
This letter is submitted on behalf of Trinity Action Alliance. The County's proposed "urgency ordinance amending Zoning Ordinance No. 315 creating medical marijuana cultivation regulation" is problematic for at least three major reasons.

Ordinance Not Authorized by Section 65858

The proposed ordinance is not authorized by Government Code section 65858, upon which it relies. Section 65858 allows that a County "may adopt as an urgency measure an interim ordinance **prohibiting** any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time." (Gov't Code s 65858 (a), emphasis added.) The purpose of a Section 65858 interim urgency ordinances is "to preserve the status quo pending preparation of zoning plans." (*CEEEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 314.) They protect and promote the planning process by, among other things, *prohibiting* the introduction of potentially nonconforming land uses that could defeat a later adopted general plan or zoning ordinance. (*216 Sutter Bay Associates v. County of Sutter* (1997) 58 Cal.App.4th 860, 869; *Silvera v. South Lake Tahoe* (1970) 3 Cal.App.3d 554, 556 (invalidating ostensible interim ordinances which "do not prohibit; they authorize".))

In Trinity County the *status quo* is that "[t]he cultivation, harvesting, processing, drying, or assembling of marijuana are expressly declared to be unauthorized land uses in any zoning district of the County," except in extremely limited amount (at most 8 plants or 400 square meters, and then only on parcels of ten acres or greater). (Trinity County Ordinance No. 315-797, section 1(c) and (g).) Furthermore, in Trinity County it is presently illegal to grow marijuana at all except for personal use of qualified patients, and the "[s]ale of marijuana in any form, by any means, and for any consideration. . . is not authorized." (*Id.* at Section 1(e).) The proposed ordinance would allow *commercial* cultivation of up to 10,000 square feet by as many as 500 permittees. Thus, the proposed ordinance greatly *expands* both the area and type of cultivation allowed; it is not prohibitory or protective of the *status quo*, which it would eviscerate, and so is not authorized by Section 65858.

Section 65858 allows an interim land use ordinance upon a finding that the development prevented by an interim ordinance "would be inconsistent with a contemplated land use plan or zoning proposal if the legislative body, by a four-fifths vote, finds that such development would pose an



immediate threat to the public health, safety, or welfare. (Gov.Code, § 65858, subds. (a)-(c).)" (*Hoffman Street, LLC v. City of West Hollywood* (2009) 179 Cal.App.4th 754, 765.). But Trinity has made the opposite finding—that marijuana cultivation "poses serious threats to the health, safety, and well being of the County and its residents." (Trinity County Ordinance No. 315-797, section 1(a)(4).)

Finally, neither the proposed ordinance nor the staff report (which was in fact prepared by two Supervisors) identify what planning process is underway that would justify the need for an interim ordinance allowing for immediate considerable commercial cultivation where it had previously been prohibited. Neither provides any findings about any planning process which needs to be pursued and for which the ordinance is urgently needed. And, although the Staff Report characterizes the proposed ordinance as establishing a "temporary pilot program," the ordinance itself does none of that. It establishes an ongoing program, which by its own terms, authorizes registration past the 45 days in which the ordinance must expire or be extended. And then operations may continue.

This is a misuse of Government Code section 65858. The proposed urgency ordinance does not prohibit uses; instead, it authorizes uses which heretofore have been illegal under existing Ordinance No. 315-797. Section 65858 is supposed to provide a "time out" to allow for contemplation; the proposed ordinance is a "game on" with no obligation even for *post hoc* contemplation.

Ordinance Does Not Require Registration

A second concern is that the proposed ordinance does not actually require registration for commercial medical marijuana cultivation. Section IV (3) simply provides that "any person or entity cultivating commercial medical marijuana within Trinity County *may* register with the Trinity County Planning Department." (Emphasis added). In other words, it requires nothing of anyone who is currently growing marijuana illegally. Accordingly, in the absence of any requirement to register, there is no basis upon which to claim that the "immediate preservation of the public peace, health and safety" will occur. To the extent this proposed ordinance is intended to deal with a criminal element, there is nothing in the ordinance which requires registration. If a person or entity engaging in commercial marijuana cultivation chooses not to register, their operations remain illegal and subject to enforcement – all outside of the proposed ordinance. The proposed ordinance creates an entirely new class of regulation, which must be subject to full notice and review under the Government Code, rather than developed through an interim ordinance.

Ordinance Not Supported by Required Findings

Third, the proposed ordinance is arbitrary and without adequate findings supported by evidence. One notable example is the provision which states that the County "will allow a total of 500 registrants to be enrolled into this Pre-Application Program..." Section IV, (4). There are no findings or other evidence presented as to why this arbitrary limit to "500" is used. The findings themselves do not appear to be supported by any evidence; certainly the "staff report" does not cite to any evidence to support the findings. Whether the findings may be valid or not, they need to be supported by evidence. In addition, whereas the "Board Item Request Form 1.01" states there is "no fiscal impact" from this Board action, the "Staff Report" is clear that "there are potential impacts to the general fund." The County should not enter into regulation until it understands the costs of

TAA Comments
August 10, 2016
Page 3 of 3

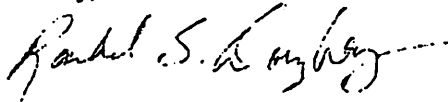
its actions; the permitting process will have a cost, as will the inspection process (Section IV, (3)(d).) The referenced "fee study" should be completed before the County proceeds to expand regulation to include commercial cultivation of marijuana.

Conclusion

With adequate time, we could provide detailed comments which identify other problems, including but not limited to: taxation questions, failure to define terms, ambiguous language, and typographical errors. And, given that this allows an expansion of a land use, we do not believe that a CEQA exemption is authorized or appropriate.

We urge the County to take the time to adopt a duly noticed ordinance.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel S. Doughty", with a horizontal line extending to the right.

Rachel S. Doughty
Attorneys for Trinity Action Association