

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

MEETING MINUTES

2016-08-30

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 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 - Will Scarab

County Matters

Board of Supervisors

- 1.01** Introduced, waived the reading of and enacted, as amended, urgency Ordinance No. 315-816 amending Zoning Ordinance No. 315 to create commercial medical marijuana cultivation regulation.


Received comments from County Counsel Margaret Long, Senior Planner Carson Anderson, Bob Cunningham (Attachment A), Debbie Lono, Joseph Bower, Martha Wofford, Tom Walz, Larry Glass, Liz McIntosh, unknown, Clarence Rose, Terry Mines, Dick Morris, Michael Vang, Adam, Dee Potter, Scott Morris, John Letton, Matthew Delgado, John Ward, Tom Ballanco, Thomas Shannock, Kyle Mattingly, Sean Trainor, Mai Vue, Talina Vang, Patrick Kahn, Matthew Kim, Jeff Morris, Tim Wright, Samuel and Mike Weir. Board of Supervisors correspondence received subsequent to posting of the agenda enclosed as Attachment B.

Motion: Morris **Second:** Fenley

Vote: Fenley, Morris, Groves, Burton and Fisher - AYE

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 Genette*
Deputy

Naomi, for The B.O.D. Members.

8/30/16
item 1.01
Bob Cunningham
corrected

I am Bob Cunningham, a Chemist and Professional Engineer with over 50 years of practice in water treatment, water quality, waste water abatement/treatment, and plant sanitation.

I speak on behalf of the non-marijuana growing residents of our county.

Your rights stop where ours begin! We have a right to clean, water, to the enjoyment of wildlife, to freedom from generator noise, noxious odors, dangerous dogs, and aggressive growers. Our kids have a right to grow up in a healthy, clean society, not in a drug and crime ridden one.

Many of you growers think that your rights are superior to ours, and that you are going to be our economic savior. We've heard it all before from unregulated miners, timber barons, and cattle grazers. We still live with the long lasting legacy of toxins from improper mining. You don't want setbacks, security fencing, noise regulations, and ordinances covering your marketing and distribution activities, and we don't want you!

Welcome to California, the most regulated state in the Union!

Many of my clients are required to conduct their production only in proper buildings with positive air over-pressure. They are rodent and insect proof. The air escaping the building is collected and treated through large bio-filters to remove any odor and air pollutants before discharge. Rodenticides/pesticides may be applied only by licensed applicators. Federal inspectors are routinely present, and stop production and issue fines for violations.

These restrictions are a necessary cost of doing business, and you have absolutely no right to be "free" of them!

If you can eliminate these issues through cooperation with responsible regulation, then I can see a potential benefit to such a closely regulated medical marijuana operation in our county.

If you can rid yourselves of all of the crime and the filth ridden "gangstas" that you've brought with you and if you also want to see your kids grow up in a place where these values are important, then we are willing to work with you. Anything less is unacceptable and will result in long lasting devastation of our county. We will fight you every step of the way, and we will win!

Thank you for your time!

Attachment B



Board of Supervisor correspondence received
subsequent to posting of the agenda

BOS Meeting 8/30/16

Item 1.01

Hezekiah Allen

Received 8/29/16



Information * Community * Advocacy
www.calgrowersassociation.org

August 28, 2016

To: Trinity County Board of Supervisors

RE: Urgency Ordinance Enacting Section 32(O) of the Zoning Ordinance No. 315 to Create Commercial Medical Marijuana Cultivation Regulation

Dear Chairman Fischer, Supervisor Morris and Esteemed members of the Board,

I am writing today on behalf of the California Growers Association. Cal Growers is a statewide membership organization working to protect and promote the independent farms and businesses in the cannabis industry.

Our organization played an instrumental role in developing and supporting the breakthrough Medical Cannabis Regulatory and Safety Act last year. We are committed to successful implementation of this regulatory framework in communities throughout the state.

On behalf of our members and community in Trinity County, I would like to thank you for your efforts to develop regulations for commercial cultivation. Local permits are the first step on the pathway to compliance and it is important that Trinity farmers be able to participate.

Until very recently it was practically impossible for cannabis growers to engage actively in public policy dialogue. The absence of statewide regulations left cultivators in a particularly vulnerable position. Your success in regulating this activity in your county will be directly correlated to your ability to work collaboratively with the regulated community and the state agencies.

I would like to recognize and honor the hard work and collaboration that has gotten us to this point. Thanks to the hard work and effective collaboration between the county government and local farmers, Trinity County is on the verge of a historic breakthrough.

Trinity County Growers want to comply with state regulations but without a permit they will be prohibited from participating in the regulated market place. Any grower that is not included in the local regulatory program will be forced to remain in the criminal marketplace. The urgency ordinance being considered today provides a first step for local farmers to take on the pathway to compliance.

For these reasons, Cal Growers supports passage of an inclusive urgency ordinance as a temporary measure to provide immediate relief to watersheds, neighborhoods and farmers.

California Growers Association
915 L Street C 413
Sacramento CA 95814
Page 1 of 4

In passing this I encourage you to open the door to as many growers as possible. Once growers have registered with the county it will be easier to follow up over time and ensure compliance with increasingly robust and comprehensive regulations. Encouraging widespread participation in the NCRWQCB wastewater discharge waiver program will provide significant positive impact.

In addition, an inclusive urgency ordinance will provide the added benefit of giving the county the ability to locate, identify and verify substantially more growers. This information will be critical to the increasing the effectiveness of limited enforcement resources. It will be very difficult for a grower to change their mind and return to the black market after they take this initial step toward regulation.

Recommendations:

- **Allow all growers who have filed a Notice of Intent with the regional water board to participate.**

Many growers have only recently become aware of the water board program. The urgency ordinance should reward good faith efforts to comply. The threshold for participation in the registry should be of a Notice of Intent.

The urgency ordinance should not punish growers for being “in process.” This approach will encourage widespread participation in the water board program. This program is only the first step as several other regulatory programs are currently being developed by state agencies and all farmers permitted under this urgency ordinance (or any future ordinance) will be required to comply with all requirements to receive a state license.

- **Remove the cap on the number of permits.**

Limiting the number of permits to be issued is a well intended restriction, likely meant to prevent a rush of new development and impacts in the county. However, the success of this urgency ordinance will be gauged by the number of growers who take this critical first step on the pathway to compliance. Limiting the success of the program by applying a cap on the number of growers that will be allowed to participate is counter productive.

Participating in the registry is a grower making a commitment that they intend to comply with all forthcoming local and state requirements. The more growers that make this commitment, the better the outcomes will be for the county.

- **Add a moratorium on new development.**

A moratorium on new development can effectively limit the scope of the urgency ordinance and prevent a land rush in Trinity County. A moratorium will ensure local farmers have the first opportunity to be permitted in Trinity County. Publicly available satellite imagery shall be considered evidence of existing operations. Participation could be limited to applicants who can prove that their crops were already planted at the time the ordinance is enacted.

Over the last few months it has been my pleasure to be introduced to the Hmong Community in Trinity County. This community is a unique socio-cultural challenge and opportunity that Trinity

County must be mindful of; care must be taken to avoid creating barriers for this vulnerable community.

Cal Growers strongly supports nascent efforts to organize this segment of the community and I urge the Board of Supervisors to embrace this opportunity for collaboration. Building bridges between all residents and the county government will help expedite the transition to a well regulated cannabis industry in Trinity County.

Clear communication, process and guidelines will be tremendously valuable to the regulated community and the Hmong community specifically. Given the unique makeup of Trinity counties emerging cannabis community I urge your Board to be as specific as possible in the urgency ordinance.

Recommendations:

- **Clarify “immediate threat to the public health or safety.”**

The county should prescribe, in the ordinance, a checklist of conditions that—if met—will protect a grower from summary abatement. The urgency ordinance should clearly specify what conditions pose an immediate threat to public health or public safety.

Clarify that the presence of cultivation activities alone does not present an immediate threat to public health and safety. Cal Growers supports suggestions to adopt the Wildlife Fish and Game’s enforcement strategy, focusing enforcement on unauthorized diversions, discharge of waste to surface and groundwater caused by marijuana cultivation.

- **Streamlined and clear process for “standard variance” from setback requirements.**

The county should prescribe, in the ordinance, a checklist of conditions that—if met—qualify an operator for a “standard variance” from setbacks. There should be a standard form and the planning commission should review the projects before issuing a variance.

- **Remove or clarify residency requirements.**

Residency requirements are well intended provisions to ensure local farmers have the first opportunity to be regulated in the county and to prevent a rush of new development and impacts.

However, I continue to hear mixed interpretations of the legality and constitutionality of these provisions. It is safe to say these requirements are of dubious legal merit. It seems likely that these provisions—if included in the urgency ordinance—will be challenged and potentially result in costly litigation. Cal Growers wishes to avoid this outcome and accordingly I recommend that the residency requirements be removed, particularly as the intent of these provisions can be better achieved through a moratorium on new development.

Alternatively, the residency requirement could be expanded to include residents (as defined) as well as legal entities formed in Trinity County. This change would ensure the ordinance

would include local residents who have—for any number of valid reasons—failed to establish legal residency but have formed their business locally.

Residency requirements are problematic but local ownership requirements are not.

Thank you for the opportunity to comment and for your careful consideration of our input. We applaud your attention to this matter and look forward to strengthening collaborative relationships between your board and our membership in Trinity County. Please feel free to contact me with any questions, ideas or discussion.

Sincerely,



Hezekiah D. Allen

Executive Director

916 879 5063

hezekiah@cagrowers.org

BOS Meeting 8/30/16

Item 1.01

Mai Vue

Received 8/29/16

August 28, 2016

To: Trinity County Board of Supervisors

**From: Conscious Cannabis Resources
Trinity Cannabis Alliance
Trinity Hmong Community**

Subject: Urgency Ordinance to Create Commercial Medical Marijuana Cultivation Regulation

Dear Board Member Fischer and Esteemed members of the Board,

Please include this letter in the official staff report to be read prior to the August 30th meeting.

As members of this community, we would first like to thank the Board of Supervisors for coming together and bringing to the table a temporary pilot program to regulate and control the growth of medical marijuana in Trinity County. We would like to commend the Board for adopting the NCRWQCB order to control the exponential growth of unregulated medical marijuana being grown in Trinity County.

It is estimated that there are over 1750 licensee opportunities in the greater Trinity County. There are roughly 3500 estimated farms currently operating in Trinity County, many of which would not fit into the minimum requirements established by the State Water Board Guidelines. We are encouraged to see the County has recognized the future of cannabis – regulated, for-profit with environmental controls. We hope that the Board and the Community members can collaboratively fine tune the Urgency Ordinance to be more of a roadmap to compliance for the many residents that have chosen to live and enjoy Trinity County. As you know, the 2014 Census report indicates that Trinity County has more than 25% of its residents living at or below the poverty line. We feel with the adoption of the following items Trinity County Residents can have the opportunity to continue to enjoy their land and financial benefits at the same time responsibly addressing environmental concerns. We would like to see our Farmers focused on following the rules and guidelines and using their resources to better their lives and properties instead of fighting to be included in the County's plans. We want an industry of proper ethics, compliance and stewardship of the land.

Based upon the feedback of over 850 farmers, we feel it is imperative these items are addressed coupled with the recommendations from our Board members. Items are listed in the order of their importance to the farming community:

1. (8) Enforcement

(b) Summary Abatement

- i. Notwithstanding any other provision of this Chapter, when any unlawful medical marijuana cultivation constitutes an immediate threat to the public health or safety, and where there is insufficient time to 1) obtain an inspection warrant; and 2) comply with the abatement procedures set out in Chapter 8.64 of the Trinity County Code, to mitigate that threat, the Enforcement Official may direct any officer or employee of the County to summarily abate the nuisance.*

Concerns: Still has to go through due-process based on current County ordinance sections 8.64 and 8.90. Per County Counsel's advice to the BOS at the August 10, 2016 special meeting, the County already has a summary abatement authority under the County Code. Accordingly, these provisions are unnecessary.

Solution: County Counsel should adopt the Wildlife Fish and Game's enforcement strategy of unauthorized diversions, discharge of waste to surface and groundwater caused by marijuana cultivation. "Trespass Grows" or National Forest Grows should also be clarified as immediate threats to the health and safety of the public under the summary abatement provision as well. The Members of CCR, TCA and THC do not and will not support such activity. It is imperative that the imminent threat of such actions be addressed immediately and we will wholeheartedly support the County and decisions to eradicate such activity.

2. *(e) "Intent to Comply" means submission of a notice of intent (NOI) form to the North Coast Regional Water Quality Control Board (NCRWQCB) or an approved third party, requesting a receives authorization to discharge pursuant to Order # R1-2015-0023*

Concerns: CCR, TCA and THC members have started the process of filing NOI's with the NCRWQCB after the August 10th special meeting. Many of our members have filed the NOI's and/or have set up appointments through a third party. The third party is now booked for the next 3 weeks. Farmers who want to be compliant must be afforded the opportunity to comply without prejudice or possible abatement proceedings by the County. Because this is an urgency ordinance and will be in effect for 45 days, farmers should not be disenfranchised based on the County's inability to accommodate the hundreds of farmers that will take this first leap of faith in becoming compliant.

Solution: Keep the original verbiage from the draft on 8/10/16 on sections pertaining to Water Board requirements and any other items related to "NOI"

3. **Setbacks**

Concerns: 350 feet setback will affect a majority of the small farms. This negatively impacts roughly 7/8th of the farms in Trinity County based on the most current parcel maps.

Solution: Create a specific Cannabis Setback Variance form to streamline the process of seeking this setback. A simple form pto check off requirements should suffice and/or letters of consent from the neighboring parcels to accompany such a form.

4. **Residency**

Concerns: One-year Residency is unconstitutional and exclusionary.

Solutions: We appreciate the intention of residency requirements to protect the local farmer as they will have the benefit of the first opportunity to be regulated in the county and to prevent a rush of new development and impacts.

Our concern is for the legality and constitutionality of these provisions. In the likely event they are challenged as they are structured today in the Emergency Ordinance the potential may result in costly litigation. We wish to avoid this outcome and accordingly suggest that the residency requirements be removed.

If the Board does decide to include a residency provision it may want to consider a requirement that those cultivating in Trinity County use a County address as their headquarters in the case of a corporate entity (domestic corporation or LLC). This could create an additional revenue stream in

the county. The County, also alternatively, could consider a moratorium on future gardens with a definition of what would constitute a current garden.

5. *2. Registration Phases: (a) The County will allow a total of 500 registrants to enroll into this Pre-Application Program, based on their sequence of their compliance with NCRWQCB Order#...*

Concerns: With an estimated 3,500 grows in Trinity county, putting a cap at 500 will likely not be beneficial for all parties as this will only cover 1/7 of the total estimated growers. This will encourage guerrilla growers to continue and force farmers who want to be compliant to go back into the shadows.

Solutions: The cap on registration should be in conjunction with the registration phases depending on the number of farmers who come forward to become compliant. Perhaps lift the number of registrants as data is collected through each phase of application.

We urge the Board of Supervisors to adopt the suggestions above in order to compel farmers to come forward and comply with local regulations. This will discourage gorilla growers and create a clear and attainable pathway to compliance for small local farmers who are already settled in Trinity County. We want to protect and educate those who wish to stay instead of discouraging compliance.

Thank you for your time, consideration and effort! CCR, TCA and THC hope to work closely with the community and Board of Supervisors and come to a consensus that will protect our community and environment.

Sincerely,

Mai Vue, Chairwoman
714.949.1530
Conscious Cannabis Resources

Tim Wright, Chair
707.656.8908
Trinity Cannabis Alliance

Adam Lee, Vice President
651.329.6088
Trinity Hmong Community

And Farming Members of the Community

ORDINANCE NO. XXXX

**AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF TRINITY
ENACTING SECTION 32(O) OF THE
ZONING ORDINANCE NO. 315 TO ~~CREATE TEMPORARILY~~
REGULATE MEDICAL MARIJUANA CULTIVATION REGULATION**

The Board of Supervisors of the County of Trinity, State of California, ordains as follows:

SECTION 1. This urgency ordinance is adopted pursuant to California Constitution, Article XI, Section 7, and Government Code Section 65858.

This urgency ordinance is necessary for the immediate preservation of the public peace, health and safety, by ~~bal-~~
~~ancing~~balancing the needs of medical patients and their caregivers with the needs of the community to be protected from public safety and nuisance issues associated with the cultivation of cannabis. Due to the passage of the Medical Marijuana Regulation and Safety Act (MMRSA) in California, there is a concern that if left unregulated, there will be a substantial increase of marijuana activity in the County. This pre-application process is necessary to provide for additional enforcement capability by the County and limit further degradation of the environment.

SECTION 2. Purposes.

The Board of Supervisors of the County of Trinity hereby ~~states~~ states that the ~~purpose~~ purposes of the Urgency Ordinance is as follows:

- (1) ~~The needs of~~enhance access by medical patients and their caregivers for ~~enhanced access to~~ medical marijuana;
- (2) ~~The needs of the~~protect neighbors and communities to be protected from public safety and nuisance impacts ~~sometimes associated with marijuana cultivation~~;
- (3) ~~The need to limit~~limit harmful environmental impacts that are sometimes associated with marijuana cultivation.

Nothing in this Chapter shall be construed to:

- (1) Allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein;
- (2) Allow the use or diversion of marijuana for non-medical purposes; or
- (3) Allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under California ~~State~~ law.
- (4) Allow any additional activity that would create significant negative impacts to the environment.

SECTION 3. Findings and Declarations

The Board of Supervisors of the County of Trinity hereby finds and declares the following:

- (1) The voters of the State of California approved Proposition 215 (codified as Health and Safety Code- section 11362.5 and entitled "The Compassionate Use Act of 1996").
- (2) The intent of Proposition 215 was to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician, and to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not thereby subject to criminal prosecution or sanction. The Act further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."

Comment [DR1]: As an urgency ordinance, the provisions regulating cultivation will be effective for 45 days, and then may be extended two times, first for 10 1/2 months (or less), then for an additional year (or less) The ordinance will last for no more than two years, assuming both extensions are adopted for the maximum length of time. Sup. Morris stated an intention that the urgency ordinance create a "pilot program" for regulating commercial cultivation.

Legal Concern: It is legally much safer to adopt an ordinance regulating cultivation following the regular process for adopting an ordinance regulating land use. Government Code Sec. 65858(a) authorizes the Board of Supervisors to, "[w]ithout following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, 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.*" (Italics added). Subsection (c) requires that the Board make specified legislative findings: "The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, *and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare.*" (Italics added).

Comment [DR2]: Adding citation to Gov Code 25123 does not remedy potential problems with adopting cultivation regulations by way of urgency ordinance. The more specific authorization to adopt zoning ordinance as an urgency ordinance under Gov. Code 65858 will govern over the more general provision for adoption of urgency legislation by a County Board of Supervisors under Section 25123.

Comment [DR3]: What "additional enforcement capability" is added by the "pre-application process" and why is it needed? According to County Counsel at the Aug. 10, 2016 meeting, the County Code already authorizes summary abatement in instances where there is an imminent threat to public health or safety, such as raw sewage or pesticides contaminating a stream. If that is correct, then there is no need to

Comment [DR4]: This Ordinance does not enhance access to MMJ.

- (3) The State Legislature enacted SB 420 in 2004, known as the Medical Marijuana Program Act (codified as Health and Safety Code section 11362.7 *et seq.*) to clarify the scope of The Compassionate Use Act of 1996, facilitate the prompt identification of qualified patients and primary caregivers, avoid unnecessary arrest and prosecution of these individuals, provide needed guidance to law enforcement officers, promote uniform and consistent application of the Act, and enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects and to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420.
- (4) The Medical Marijuana Program Act defines "primary caregiver" as an individual who is designated by a qualified patient or person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person.
- (5) The right of qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer upon them the right to create or maintain a public nuisance.
- (6) Marijuana plants, whether grown indoors or outdoors, especially as they mature prior to harvest, may produce a distinctive odor that may be detectable far beyond property boundaries.
- (7) The strong smell of marijuana has been deemed a nuisance and can alert persons to the location of the valuable plants, creating a risk of burglary, robbery and armed robbery.
- (8) In recent years there has been an increased number of marijuana related incidents of burglary, robbery and armed robbery, some including acts of violence resulting in injury or death.
- (9) Marijuana that is grown indoors may require excessive use of electricity which may overload standard electrical systems creating an unreasonable risk of fire. If indoor grow lighting systems are powered by diesel generators, improper maintenance of the generators and fuel lines and the improper storage and disposal of diesel fuel and waste oil may create an unreasonable risk of fire and pollution.
- (10) The County also revised the definition of legal parcel for the purpose of this Chapter from defining an unlimited number of contiguous parcels under common ownership or control as one parcel eligible for a single exemption, to defining any portion of a parcel with a separate Assessor's Parcel number as a separate parcel, resulting in an individual owner of multiple contiguous parcels (P). Trinity County's geographic and climatic conditions; low population density; availability of resource lands previously utilized for forestry and grazing; and history and reputation as a cannabis producing region; have attracted a steady influx of individuals for the purpose of participating in cannabis activity, whether for medical or commercial reasons.
- (11) The State Water Resources Control Board ("SWRCB"), the North Coast Regional Water Quality Control Board ("NCRWQCB"), and the State Department of Fish and Wildlife ("SDFW") have documented a dramatic increase in the number of marijuana cultivation sites, corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash and human waste. These impacts result from the widespread-unpermitted, unmitigated, and unregulated impacts of land grading, road development, vegetation removal, timber clearance, erosion of disturbed surfaces and stream banks, stream diversion for irrigation, temporary human occupancy without proper sanitary or waste disposal facilities and threaten the survival of endangered fish species. In addition, the actions of some marijuana growers, either directly or through irresponsible practices, result in the killing of wildlife, including the endangering of other endangered or threatened species such as the Pacific Fisher and Coho Salmon.
- (12) California Regional Water Control Board, North Coast Region Order #2015-0023 (Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Waste Resulting from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects in the North Coast Region), was passed on August 13, 2015. The purpose of this order is to provide a water quality structure to prevent and address poor water quality conditions and adverse impacts to water resources associated with cannabis cultivation on private land.

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Comment [DR5]: Have there been murders that occurred during a robbery of marijuana in the county?

Comment [DR6]: First sentence of finding #10 is not a finding or declaration

Comment [DR7]: Why is increasing the population of Trinity County to engage in lawful farming a bad thing?

- (13) Trinity County is negatively impacted and vulnerable to numerous large scale trespass commercial marijuana cultivation operations on public and private lands, yet law enforcement consistently estimates that each year they eradicate only a small fraction of these operations.
- (14) Effective enforcement is further hampered by conflicting local, state and federal laws which create ambiguity in determining which marijuana cultivation operations are legal or not, and whether those that are non-compliant ought to be subject to civil or criminal enforcement.
- (15) On September 11, 2015, the State enacted the Medical Marijuana Regulation and Safety Act (MMRSA), which took effect January 1, 2016, and which mandated a comprehensive state licensure and regulatory framework for cultivation, manufacturing, distribution, transportation, testing, and dispensing of medical marijuana on a commercial basis, but implementing regulations have yet to be written and state licenses will not be available until 2018.
- (16) Previous landmark marijuana legislation, including the Compassionate Use Act and the Medical Marijuana Program Act, have precipitated a "green rush" with individuals moving to Trinity County to grow marijuana; with some seeking to capitalize on ambiguities in the law, while others lack an awareness of community and environmental consciousness.
- (17) Since the adoption of MMRSA, numerous sources, including law enforcement, elected officials, county administrators, neighbors and marijuana cultivators have reported numerous inquiries from individuals and entities, both from within and without Trinity County, who seek to expand their current cultivation operations, or start new ones.
- (18) In the absence of a formal regulatory framework, marijuana cultivators are less likely to learn of, or implement, guidelines that are protective of the public peace, health, safety and the environment; while law enforcement has been deprived of a clear means of distinguishing legally compliant marijuana cultivators from those who threaten the public peace, health, safety and the environment.
- (19) The County finds that in the absence of a formal regulatory framework, the negative impacts frequently associated with marijuana cultivation are expected to increase, resulting in an unregulated, unstudied and potentially significant negative impact on the environment and upon the public peace, health and safety.

Comment [DR8]: Are there "numerous large scale trespass commercial" grows on private lands? Are most trespass grows on public lands?

Comment [DR9]: Nothing in the prior findings re: hampering effective enforcement, so remove "further"

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SECTION IV. In order to protect the public health, safety and welfare of the residents of the County of Trinity from a current and immediate threat, the County hereby enacts the following as enacting section 32(o) of the Trinity County Zoning Ordinance No. 315:

Sections:

- (1) Definitions
- (2) Pre-Application
- (3) Pre-Application Registration Requirements
- (4) Registration Phases
- (5) Limitation on Location to Cultivate Marijuana
- (6) Performance Standards of Cultivation of Marijuana ~~Denial of Pre-Application Process~~
- (7) Denial/Recession of Pre-Application
- (8) Enforcement
- (9) Fees

(1) Definitions:

As used herein the following definitions shall apply:

- (a) "Agricultural Commissioner" or "Agricultural Commissioner's Office" means the Trinity County Agricultural Commissioner's Office or the authorized representatives thereof.
- (b) "Attorney General's Guidelines" means Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the Attorney General in August 2008.

- (c) "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- (d) "Cultivation" means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.
- (e) "Intent to Comply" means submission of a notice of intent (NOI) form to the North Coast Regional Water Quality Control Board ("NCRWQCB") or an approved third party, ~~requesting a receives authorization to discharge pursuant to Order # R1-2015-0023.~~
- (f) "Legal Parcel" means a parcel with a distinct and separate Assessor's Parcel Number. Where contiguous legal parcels are under identical ownership by an individual or an entity, such legal parcels shall be counted as a single parcel for purposes of this Chapter.
- (g) "Marijuana" and "Cannabis" are used interchangeably and means any plant of the genus Cannabis, as defined by section 11018 of the Health and Safety Code.
- (h) "Mixed light" means ~~"light deprivation"~~ cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the Department of Food and Agriculture.
- (i) "Outdoors" or "outdoor cultivation" means cultivation in any location or by any means that is not "indoors" within a fully enclosed and secure structure as defined herein.
- (j) "Primary caregiver" means a "primary caregiver" as defined in Health and Safety Code section 11362.7(d).
- (k) ~~"Proof of residency" shall mean proof of residing in Trinity County for a period one year prior to application.~~ "Indoors" means within a fully enclosed and secure structure that complies with the California Building Code (CBC), as adopted by the County of Trinity, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached.
- (l) Documentation of taxes paid to the State Board of Equalization no later than for the cultivation operation on the site at issue.
- (m) "Qualified patient" means a "qualified patient" as defined in Health and Safety Code section 11362.7(f).
- (n) "Residential Treatment Facility" means a facility providing for treatment of drug and alcohol dependency.
- (o) "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any licensed preschool or child day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but does not include any private school in which education is primarily conducted in private homes.
- (p) "Wildlife Exclusionary Fencing" means fencing designed and installed to prevent the entry of wildlife into the enclosed area, such as cyclone or field game fencing a minimum of six feet high measured from grade. This must include a lockable gate and the gate opening must include a solid step or apron installed into the ground.
- (q) "Youth-oriented facility" means public park, school authorized bus stop and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

(2) Pre-Application

- (a) Pre-Application grants provisional permission to cultivate marijuana plants within the guidelines of this chapter and state law. Applicants who cultivate pursuant to guidelines of this chapter and applicable state law will be exempt from the plant count restrictions in the existing Trinity County personal grow ordinance. Instead, Pre-Applicants will be subject the square footage provisions in Type I and Type II of MMRSA.

Comment [DR10]: The one-year durational residency requirement is unconstitutional. See, Shapiro v. Thompson, 394 U.S. 618, 634 (1969); Graham v. Richardson, 403 U.S. 365, 375-76 (1971); Saenz v. Roe, 526 U.S. 489, 502-03 (1999). Under the right to travel guaranteed by the United States Constitution and cases analyzing durational residency requirements under well-established principles of equal protection and, more recently, rights protected under the privileges and immunities clause of the 14th Amendment, the one year residency requirement to be eligible for pre-application registration is invalid because persons who have moved to Trinity County recently, even for the purpose of cultivating, have exercised a right protected by the Constitution of the United States, and the durational residency classification either deters the exercise of the right or penalizes those who have exercised the right. Shapiro v. Thompson, 394 U.S. 618, 629-31, 638 (1969); Dunn v. Blumstein, 405 U.S. 330, 338-42 (1972); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Jones v. Helms, 452 U.S. 412, 420-21 (1981). See also Oregon v. Mitchell, 400 U.S. 112, 236-39 (1970) (Justices Brennan, White, and Marshall), and id. at 285-92 (Justices Stewart and Blackmun and Chief Justice Burger). Any such classification is invalid "unless shown to be necessary to promote a compelling governmental interest." Shapiro v. Thompson, 394 U.S. 618, 634 (1969) (emphasis by Court); Graham v. Richardson, 403 U.S. 365, 375-76 (1971).

Comment [DR11]: There is no definition of "Indoors" from which to define "Outdoors" per subsection (i).

Comment [DR12]: Subsection (l) is not a definition.

- (b) Applicants shall be entitled to priority processing for future permit applications. The Order of priority for processing permanent license will be determined by date of enrollment in NCRWQCB.
 - (c) Any permitting required under the future land use ordinance will require enrollment in the NCRWQCB Order # 2015-0023 and applicant must have been compliant with this requirement during the provisional Pre-Application period to develop a record of environmental compliance.
 - (d) This Pre-Application does not guarantee that the Registrant will be considered compliant with any future land use ordinance.
 - (e) This Pre-Application does not give the Registrant any property rights, and it is not a permit or a guarantee that a permit will be issued. Pre-Application Registration will be used to apply for permitting under the permanent land use ordinance or for variance if permitting under the ordinance is not possible. Registration does not equate to Non-conforming entitlement under any future land use ordinance and the registration is non-transferrable.
 - (f) Registrants are ensured that their applications will be considered prior to any new application under the future land use ordinance.
 - (g) Medical marijuana is not recognized under Federal law and registration does not grant any right to violate federal law.
 - (h) Should the State begin issuing medical cannabis cultivation licenses under MMRSA before a permanent medical cannabis cultivation ordinance has been enacted in Trinity County, a cultivator of medical cannabis who is registered pursuant to this Chapter and who can otherwise demonstrate consistent compliance with this Chapter, the County Code and all other relevant laws and regulations, may request from the Planning Department a validation stamp on his/her registration certificate so that such document may be used as evidence of local compliance for the purposes of Business and Professions Code §19322(a)(2). The County does not intend any medical cannabis registration document or certificate without a validation stamp to suffice as adequate documentation of local compliance for the purpose of applying for a State license under Business and Professions Code §19322(a)(2).
 - (i) Notwithstanding any other provision of this Chapter, should the State begin issuing medical cannabis cultivation licenses under MMRSA before a permanent medical cannabis ordinance has been enacted in Trinity County, the cultivator must file a complete application for the appropriate state license with the appropriate State licensing authority on or before January 1, 2018.
 - (j) Notwithstanding any other provision of this Chapter, a cultivator of medical cannabis who is registered pursuant to this Chapter, but who applies for and is denied a State license before a permanent medical cannabis cultivation ordinance has been enacted in the County, must immediately cease all medical cannabis cultivation within the County until he/she successfully obtains the proper State cultivation license(s) under MMRSA.
- (3) Pre-Application Registration Requirements**
- (a) Within sixty (60) days of adoption of this ordinance any person or entity cultivating commercial medical marijuana within Trinity County may register with the Trinity County Planning Department. Registration shall be on a form provided by the Trinity County Planning Department and, at a minimum, shall require the name and mailing address of the registrant; the location address, Assessor's Parcel Number and site map of the cultivation location.
 - (b) All Registrants will be required to comply and the following:
 - i. Proof of intent to comply with all County setback requirements.
 - ii. Proof of enrollment in good standing with NCRWQCB Order # 2015-0023.
 - iii. Identify their intended commercial cultivation license:
 - 1. Type 1 – up 5,000 sq. ft.,
 - 2. Type 2 – up to 10,000 sq. ft. "Outdoor" or "Mixed Light."
 - 3. Type 3 License of MMRSA – Not allowed at this time by the County of Trinity.
 - iv. Apply for and obtain a BOE Seller's permit.

Comment [DR13]: The Order of Priority for processing future permits based on water board enrollment dates should apply only once a complete application is received. Shouldn't hold up processing of complete applications just because person with earlier enrollment date with NCRWQCB does not have a complete application submitted.

Comment [DR14]: Same comment. Does not make sense to delay or refuse to process new application if person who would otherwise enjoy preference has failed to submit a complete application

Comment [DR15]: Is this requirement met by submitting a site plan showing area used for cultivation are far enough away from residential structure?

- v. Employ only persons who are at least twenty-one (21) years of age and comply with all applicable state and federal requirements relating to the payment of payroll taxes including federal and state income taxes, ~~and for~~ contributions for unemployment insurance, state worker's compensation, and liability laws.
 - vi. Registrant cannot have been convicted of serious felony conviction or Schedule I, II or III Felony, excluding a non-serious felony conviction for sale, transportation, or cultivation of marijuana, except if the conviction is on public lands. Registrants will have to declare this under penalty of perjury as part of their Pre-Application forms.
 - vii. ~~Verification of proof of residence in Trinity County for a period one year prior to application by providing current California Driver's License or identification Card along with Trinity County Solid Waste bills or Trinity County Public Utility District bills.~~
 - viii. Proof of at least one of the criteria described in (3)(b)(viii) 1-4:
 - 1. Documents of incorporation
 - 2. Documents of taxes paid to the State Board of Equalization
 - 3. Proof of contracts with dispensaries or bill of sale
 - 4. Receipt of a State seller's permit
 - ix. As a condition of registering any a medical cannabis cultivation site pursuant to this Chapter, the Registrant and, if different, the property owner shall execute an agreement to defend, indemnify and hold harmless the County of Trinity and its agents, officers, and employees from any claim, action, or proceeding brought against the county, its agencies, boards, planning commission or board of supervisors arising from the County's registration of the site. The indemnification shall apply to any damages, costs of suit, attorney fees or other ~~expense~~ expenses incurred by the county, its agents, officers and employees in connection with such action.
 - x. If using a permitted well, a copy of the Trinity County well permit must be provided.
- (c) Only one pre-application may be submitted per person or entity, per legal parcel.
 - (d) Pre-Applicants and Registrants consent to compliance inspections as part of their application and registration. Inspections will be conducted by county officials during regular business hours Monday-Friday, 9:00 a.m. – 5:00 p.m.. excluding holidays. Pre-Applicants and Registrants are permitted to participate in the information verification or monitoring. If possible, Trinity County will attempt to give 24-hour notice of the inspection by posting the notice and/or telephoning the number listed on the Pre-Application.
 - (e) All documents/plans/monitoring/inspections filed as part of enrollment become part of the County application.

Comment [DR16]: This is unconstitutional
See prior comment on durational residency requirement.

Comment [DR17]: Sales tax not owed by cultivators if not making retail sales and purchasers provide reseller's certificate

(4) Registration Phases

- (a) The County will allow a total of ~~500~~ _____ registrants to enrolled into this Pre-Application Program, based on their sequence of their compliance with NCRWQCB Order # 2015-0023 and as outlined below:
 - i. Phase I – Consists of persons or entities who have competed enrollment in the NCRWQCB Order # 2015-0023 in reference to a Trinity County based operation by ~~August 01, 2016~~ within 45 days of the effective date of this ordinance.
 - ii. Phase II – Consists of persons or entities to enroll in the NCRWQCB Order # 2015-0023 in reference to a Trinity County based operation by December 31, 2016.
 - iii. Phase III – Consists of persons or entities to enroll in the NCRWQCB Order # 2015-0023 in reference to a Trinity County based operation by March 01, 2017.
- (b) The County shall determine completed enrollment by receipt of a Proof of Order number.

Comment [DR18]: Too low. Leaving approximately 7/8ths of cultivators in the county out of pre-application registration, and therefore subject to low plant count limits under 315-797 (2, 4, 6 or 8 plant maximum depending on parcel size) will undermine goal of bringing cultivators under regulated system so as to protect environment.

(5) Limitation on Location to Cultivate Marijuana.

- (a) Pre-application will not be allowed for cultivation of marijuana in any amount or quantity, in the

following areas:

- i. Within one thousand (1,000) feet of a youth-oriented facility, a school, any church, or residential treatment facility as defined herein or within five hundred (500) feet of an authorized school bus stop.
 - ii. In any location where the marijuana plants are visible from the public right of way ~~or public-ly traveled private roads~~. Organic or landscape screening may be used to mitigate upon approval of the Planning Department.
 - iii. A legal parcel without a permitted housing structure, or without an active building permit.
 - iv. Within the Trinity County jurisdiction of the Whiskeytown-Shasta Trinity National Recreation Area.
 - v. No cultivation will be allowed in the Timber Production Zones (TPZ) with the exception made for qualified Phase I applicants.
- (b) Cultivation will not be allowed within 350 feet of a residential structure on any adjoining parcels. Applications for a variance from this provision will be granted ~~considered~~ by the Trinity County Planning Commission if the owner, or if leased, the tenant, of such residential structure consents in writing to cultivation closer than 350 feet from the structure.

Comment [DR19]: What criteria will be used by planning department?

Comment [DR20]: Will having a permitted house on a parcel that is contiguous and under common ownership satisfy this requirement?

(6) Performance Standards for Commercial Cultivation of Medical Marijuana

- (a) It is declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel of land within any unincorporated area of the County to cause or allow such parcel of land to be used for the outdoor or indoor cultivation of marijuana plants for medicinal purposes in excess of the limitations imposed by this section or personal grow section.
- (b) The cultivation of marijuana shall not exceed the noise level standards as set forth in the County General Plan: 55db from 7a.m. - 7p.m., 50db from 7p.m. - 7 a.m. except that generators associated with a commercial grow are not to be used between 10 p.m. and 7a.m.
- (c) Applicants must comply with all State Law regarding Surface water, including but not limited to, water used for the cultivation of marijuana needs to be sources on-site from a permitted well or diversion. If using a permitted well, a copy of the Trinity County well permit must be provided. The cultivation of marijuana shall not utilize water that has been or is illegally diverted from any stream, creek, or river or water source. If water is hauled it must be for emergencies, as defined as a sudden, unexpected occurrence, and a bill of sale must be kept on file from a Water District and legal water hauler.
- (d) The cultivation of marijuana shall not create erosion or result in contaminated runoff into any stream, creek, river or body of water. If property has more than a 35% slope, the Registrant will need to apply for Tier 2 of the NCRWQCB Order # 2015-0023.
- (e) All marijuana grown outdoors must be contained within wildlife exclusionary fencing that fully encloses the immediate garden area. The fence must include a lockable gate that is locked at all times when a qualified patient or caregiver is not in the immediate area. Said fence shall not violate any other ordinance, code section or provision of law regarding height and location restrictions and shall not be constructed or covered with plastic or cloth except shade cloth may be used on the inside of the fence.
- (f) All buildings where marijuana is cultivated or stored shall be properly secured to prevent ~~unauthorized~~ ~~unauthorized~~ - ized entry.
- (g) Any fuel, fertilizer, pesticide, fungicide, rodenticide, herbicide or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device. All uses of pesticide products shall be in compliance with State pesticide laws and regulations enforced by the County Agricultural Commissioner's Office and California Department of Pesticide Regulation.
- (h) Hazardous materials and wastes from agricultural businesses are regulated by the Trinity County Environmental Health Division, that administers these Hazardous Materials program as one of the Certified Unified Program Agencies (CUPA.)

- (j) Rodenticides that require a California Restricted Materials permit cannot be used, those that are designated as federally Restricted Use Products can only be used by certified applicator.
- (k) The following rodent repellents may be used in and around marijuana cultivation sites consistent with the label: ~~Capiscum~~Capsicum, Olcoresin, ~~Putrescent~~Putrescent Whole Egg Solids, and Garlic.
- (l) Any person who is not the legal owner of a parcel and who is cultivating commercial medical marijuana on such parcel shall provide written and notarized authorization from the legal owner of the parcel prior to commencing cultivation on such parcel.
- (m) All lighting associated with the operation shall be downcast, shielded and/or screened to keep light form emanating off site or into the sky.
- (n) The cultivation of marijuana must comply with Cal Fire, Fish and Wildlife and other resource agency having jurisdiction, including all activity but not limited to clearing of land, stream crossings, water diversions and riparian buffer zones.
- (o) Cultivators must obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 2009-0009-DWQ) for construction projects (individual or part of a common development) that disturb one of more acres of land surface, specifically for new site preparation and development.
- (p) The use of gas products butane is prohibited, consistent with Ordinance No. 315-797.
- (q) Nothing in this section shall be construed as a limitation on the County's authority to abate any violation which may exist from the cultivation of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.
- (r) All provisions of this Chapter shall apply regardless of whether the activities existed or occurred prior to the adoption of this Chapter.

(7) Denial/Rescession of Pre-Application

- (a) Registration's Pre-Application shall be denied or rescinded if the Trinity County becomes aware that:
 - i. The Registrant has provided materially false documents or testimony; or
 - ii. The Registrant has not complied fully with the provisions of this Chapter; or
 - iii. The operation as proposed by the Registrant, if permitted, would not have complied with all applicable laws, including, but not limited to, the Building, Planning, Housing, Fire, and Health Codes of the County, including the provisions of this Chapter and with all applicable laws including zoning and county ordinances.
- (b) Registrant shall be given seven (7) business days to correct any deficiencies identified by the Planning Department under Section (6)(b) prior to the issuance of a denial or recession.
- (c) Registrant shall have the right to appeal any denials or rescissions as prescribed in Chapter 8.90.130 of the Trinity County Municipal Code.
- (d) Any and all Pre-Registrants pursuant to this Chapter shall, without further notice, automatically terminate and be rendered invalid sixty (60) calendar days after a permanent medical cannabis cultivation ordinance takes effect in Trinity County, by which time all medical cannabis cultivation sites shall comply with the terms of such permanent ordinance.

(8) Enforcement:

- (a) Violation of this Chapter constitutes a nuisance and is subject to fines and abatement pursuant to Chapters 8.64 and 8.90 of the Trinity County Municipal Code.
- (b) ~~Summary Abatement~~
 - i. ~~Notwithstanding any other provision of this Chapter, when any unlawful medical marijuana cultivation constitutes an immediate threat to the public health or safety, and where there is insufficient time to 1) obtain an inspection warrant, and 2) comply with the abatement procedures set out in Chapter 8.64 of the Trinity County Code, to mitigate that threat, the En-~~

Comment [DR21]: Per County Counsel's advice to the Board of Supervisors at the August 10, 2016 special meeting, the county already has summary abatement authority under the County Code. Accordingly, these provisions are unnecessary.
Legal Concern: The proposed Summary Abatement provisions set forth in this subsection are not narrowly tailored, lack sufficient standards and procedural protections, and vest the County Enforcement with too much discretion re: (i) what constitutes an "immediate threat to public health or safety", (ii) what constitutes "reasonable efforts" to provide notice to the owner *and/or* alleged violator (should be both if owner is not the alleged violator, so use of "and/or" is inappropriate), and (iii) what constitutes "insufficient time" to obtain a warrant or follow procedures in Chapt. 8.64, to be a valid exception to the warrant requirement under the 4th & 14th Amendments.

~~enforcement Official may direct any officer or employee of the County to summarily abate the nuisance.~~

- ~~ii. The County Enforcement Official shall make reasonable efforts to notify the owner and/or the alleged violator.~~
- ~~iii. The County may recover its costs for summarily abating that nuisance in the manner set forth Chapter 8.64 and may include any costs on the property owner's tax bill.~~

(9) Fees:

- (a) The County shall collect from the registrant a regulatory program fee (hereinafter referred to as Fee) when an applicant applies for a registration of a medical cannabis cultivation site with the Planning Department pursuant to this Chapter.
- (b) Such fee shall fairly and proportionately generate sufficient revenue to cover the costs of administering, implementing, and enforcing this Chapter.
- (c) The Medical Cannabis Cultivation Program Fee is set at:
 - i. Type I MMRSA: \$ 4,000.00 plus \$ 1,000 towards general plan update.
 - ii. Type II MMRSA: \$ 5,000.00 plus \$ 1,000 towards general plan update
- (d) Fees shall be paid annually.
- (e) The above fee amounts are not anticipated to fully cover the cost of administering this Chapter; however, within twelve months of adoption of this urgency ordinance, the County may conduct a fee study to determine the total cost of administering this Chapter.
 - i. If, based on the results of the fee study, the Fee needs to be increased; the County may increase the fee by way of resolution for any new or renewal registrations.
 - ii. If, based on the results of the fee study, the Medical Cannabis Cultivation Program Fee exceeds the cost of administering this Chapter; the County shall decrease the Medical Marijuana Cultivation Fee by way of resolution and shall also reimburse applicants their proportional share of any overpayment.

- (10) As a condition of registering pursuant to this Chapter, the registrant and, if different, the property owner shall execute an agreement to defend, indemnify and hold harmless the County of Trinity and its agents, officers, and employees from any claim, action, or proceeding brought against the county, its agencies, boards, planning commission or board of supervisors arising from the County's registration of the site. The indemnification shall apply to any damages, costs of suit, attorney fees or other expenses incurred by the county, its agents, officers and employees in connection with such action.

SECTION IV. This ordinance is an interim ordinance adopted as an urgency measure pursuant to Government Code section 65858, and it shall be of no further force and effect ~~forty-five~~forty-five (45) days from its date of adoption, unless it is extended by further action of the Board of Supervisors, pursuant to Section 65858.

SECTION V. The County finds that this Chapter 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). In addition to the foregoing general exemptions, the following categorical exemptions apply: sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective ~~administered~~ administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

Comment [DR22]: There is significant legal risk with enacting this ordinance as an urgency ordinance under Government Code Section 65858.

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Further, this ordinance is an interim urgency ordinance is exempt from CEQA pursuant to the provisions of Public Resources Code section 21080, subdivision (b)(4) and California Code of regulations, title 14, sections 15307 and 15308.

SECTION VI. The Board of Supervisors declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion of it, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions of it be declared invalid or unconstitutional. If for any reason any portion of this ordinance is declared invalid or unconstitutional, then all other provisions of it shall remain valid and enforceable. Introduced at a special meeting of the Board of Supervisors held on the 10th day of August 2016, and passed and enacted this ~~10th~~ _____th day of August 2016, by the Board of Supervisors of the County of Trinity by motion, second (/), and the following vote:

AYES: Supervisors
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None

Comment [DR23]: How do we know it will be a unanimous vote?

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

ATTEST:

MARGARET E. LONG
Clerk of the Board of Supervisors

By : _____
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:

Margaret Long, County Counsel

Naomi Goulette

From: Robert Cunningham <rjc5225@gmail.com>
Sent: Tuesday, August 30, 2016 11:42 AM
To: Naomi Goulette
Cc: editor@trinityjournal.com
Subject: Comments to the Board Members, Trinity County Board of Supervisors
Attachments: RJC Comments Before the T.C. B.O.S. 160830.docx

TO: Members of the Trinity County Board of Supervisors, Mr. Karl Fisher, Chairman

Dear Mr. Chairman,

Attached please find a copy of my prepared remarks for presentation to the Board tonight at the scheduled Special Meeting @ the Performing Arts Center.

Regards,

Robert J. Cunningham
HC 2, Box 4014, Trinity Center, CA 96091

I am Bob Cunningham, a Chemist and Professional Engineer with over 50 years of practice in water treatment, water quality, waste water abatement/treatment, and plant sanitation.

I speak on behalf of the non-marijuana growing residents of our county.

Your rights stop where ours begin! We have a right to clean, water, to the enjoyment of wildlife, to freedom from generator noise, noxious odors, dangerous dogs, and aggressive growers. Our kids have a right to grow up in a healthy, clean society, not in a drug and crime ridden one.

Many of you growers think that your rights are superior to ours, and that you are going to be our economic savior. We've heard it all before from unregulated miners, timber barons, and cattle grazers. We still live with the long lasting legacy of toxins from improper mining. You don't want setbacks, security fencing, noise regulations, and ordinances covering your marketing and distribution activities, and we don't want you!

Welcome to California, the most regulated state in the Union!

Many of my clients are required to conduct their production only in proper buildings with positive air over-pressure. They are rodent and insect proof. The air escaping the building is collected and treated through large bio-filters to remove any odor and air pollutants before discharge. Rodenticides/pesticides may be applied only by licensed applicators. Federal inspectors are routinely present, and stop production and issue fines for violations.

These restrictions are a necessary cost of doing business, and you have absolutely no right to be "free" of them!

If you can eliminate these issues through cooperation with responsible regulation, then I can see a potential benefit to such a closely regulated medical marijuana operation in our county.

If you can rid yourselves of all of the crime and the filth ridden “gangstas” that you’ve brought with you and if you also want to see your kids grow up in a place where these values are important, then we are willing to work with you. Anything less is unacceptable and will result in long lasting devastation of our county. We will fight you every step of the way, and we will win!

Thank you for your time!

BOS Meeting 8/30/16

Item 1.01

Jason Browne

Received 8/30/16

Attention: Trinity County Board of Supervisors

From: Jason Browne (Expert Witness / Consultant)

Regarding: Cannabis Regulations being discussed at the Special Meeting tonight

Date: 8/30/2016

Greetings,

Please consider the following information tonight, as you proceed with the development of cannabis regulations in Trinity County. I have 20 years of legal experience in the cannabis industry, and I represent small businesses that are considering which communities to invest in, under the new opportunities posed by MCRSA. I see recent developments here being stymied, by old fears and misinformed policies that have no place in the heart of the Emerald Triangle, as California finally embraces cannabis regulations across the State.

So called "Urgency Ordinances" are de-facto prohibition, in disguise. Trinity County just spent almost 5 months in public discussion regarding cannabis regulations for 2018. This new ordinance completely sets aside that work, and is in clear violation of the democratic process. This alternative language was developed in private, and is obviously the work of hardline cannabis prohibitionists.

Every local jurisdiction has the same 2 year window to craft local guidelines, or simply to revert to the new State guidelines. With 16+ months remaining until the new laws even begin to take effect, and with the existing laws protecting Collectives until after the 2018 implementation, there is demonstrably no urgency in this matter that justifies negating the democratic process undertaken here for the last 5 months. The legality of an "Urgency Ordinance" is also unlikely at this time, considering this 2 year window. And the Sheriff's department has gone on record claiming they don't have the resources to implement local guidelines, which is arguably the job of other State and Local agencies now, anyway.

Demanding personal "residency" from any local businesses is equivalent to denying every business model available under the Corporations Code, except "individual proprietors" and "partnerships". Most, or all businesses applying for commercial licenses will be corporations, operating in more than one local jurisdiction, and having officers who live throughout California. There is no legal precedent supporting this requirement.

Denial of Type 3 Cultivation Licenses is short sighted and fiscally irresponsible. Humboldt County is developing those licenses, and every other north coast county should likewise consider the benefits of providing cannabis to the entire state market. Type 3 licenses will fetch a lot more in fees and taxes, as well as bolstering local employment. And the same exact environmental and legal standards apply to every licensed cultivator, regardless of the

BOS Meeting 8/30/16

Item 1.01

Jason Browne

Received 8/30/16

operation's size. There are no State prohibitions on developing local guidelines for Type 3 License Applicants.

Restricting the number of operations that can exist on a parcel should be based on acreage and zoning allowances, and State law allows more than one business from leasing space on the same property. It actually reduces the public impact to allow small consolidations, rather than spreading the operations to the maximum number of properties.

We strongly encourage you to vote "no" tonight, and to reopen the public process that has been undertaken for the past 5 months. If you want to include elements of your new ordinance language in this process, that would be more appropriate than ignoring a majority of your constituents, in favor of a vocal minority. I would be remiss if I failed to mention that at least 2 local Ballot Measures are being circulated, that will allow the voters of Trinity County to replace everything you do here, if you choose to view local regulations as a strategy to impede the cannabis industry, rather than as a tool to harness it for the benefit of The Public. I believe one of the measures is nearly ready to file, and the other one is being developed as we speak. I'm pretty sure both of them have representatives at the meeting tonight (at the Performing Arts Center). If you insist on forcing this minority opinion, you will force your constituents to act in the public interest, and you will have removed yourselves from the bargaining table in the process.

In closing, I encourage you to see the forest from the trees, and to re-open the public process of developing reasonable and beneficial guidelines for the commercial cannabis industry in Trinity County. A thriving and regulated cannabis industry will be a boon for this community, and will eliminate most of the problems currently associated with the unregulated nature of the industry today, contrary to the claims of prohibitionists. It is actually their own failed drug war policies and an overreliance on law enforcement as the only solution, which have created the situation we find ourselves in now. The environmental damages and increases in property crimes are a direct result of cannabis prohibition, and it's high time we try a different approach.

I thank you for your time and consideration in this matter.

Sincerely,

Jason Browne (Expert Witness / Consultant)

Red Bluff, California