




TRINITY COUNTY

Board of Supervisors

P.O. BOX 1613, WEAVERVILLE, CALIFORNIA 96093
PHONE (530) 623-1217 FAX (530) 623-8365

TO: The Honorable Elizabeth Johnson
Presiding Judge of the Superior Court

FROM: Trinity County Board of Supervisors 

CC: Wendy G. Tyler, Clerk of the Board of Supervisors

SUBJECT: Response to Recommendations of 2013/2014
Grand Jury Development and Environment Committee Final Report
Re: DAR-2013-2014-010 Growing Issues of Marijuana Cultivation in Trinity
County

DATE: August 28, 2014

The Grand Jury Development and Environment Committee has requested a written response to their final report on the Growing Issues of Marijuana Cultivation in Trinity County.

The response of the Trinity County Board of Supervisors is as follows:

Finding #1: *M growing in TC is a large industry, but TC does not have adequate regulations, practices, and taxes to manage and benefit from the enterprise.*

Response: Agree that cannabis is a large illegal industry in Trinity County. Disagree because Trinity County does have more than adequate and very specific regulations (ordinances) to deal with cannabis cultivation and support a pristine future for Trinity County. Trinity County Ordinance Number 315-797 was put in place on June 5th, 2012 and was not listed as part of your research material. Through compliance, our land use ordinance brings into balance the amount of water used via the number of plants allowed and the square footage used. We specifically encourage you to review the declarative statements in Section 1 (a) paragraphs (3), (4), (5) and (6). A copy of our ordinance is included for reference (attachment A). The ordinance also references the California Health and Safety Code, section 11362 and section 11357, reiterating some of the state codes, along with enhancing state codes for explicit uses geared to Trinity County. Trinity County Sheriff's Office and Code Enforcement do not have the funding to criminally enforce or civilly abate the current level of cultivation or transportation. Trinity County cannot legally collect fees or taxes specific to the sale or cultivation of an illegal product or action. To do so is unethical and criminal.

JUDY PFLUEGER
DISTRICT 1

JUDY MORRIS
DISTRICT 2

KARL FISHER
DISTRICT 3

DEBRA CHAPMAN
DISTRICT 4

JOHN FENLEY
DISTRICT 5

Finding #2: *DA has insufficient staff to prosecute all M cases within TC.*

Response: We agree with this finding. There are not enough county general fund dollars for the district attorney to prosecute all criminal cannabis cases in Trinity County.

Finding #3: *Other counties, such as Humboldt, have implemented regulations and best practices to manage legitimate M grows.*

Response: We disagree. Attached is Humboldt County's cannabis regulation (attachment B). It pales in comparison to the comprehensive ordinance that Trinity County staff and the Trinity County Planning Commission produced. We have not found a published endorsement regarding the best practices to grow cannabis provided by the County of Humboldt. There are no federal or state "best practices" regarding cannabis cultivation such as those for corn, almonds or other legitimate crops for the county to enforce or interrupt. The county would be placed in jeopardy if the Board of Supervisors recklessly passed recommendations or ordinances contrary to federal and state laws.

Finding #4: *No plan exists to manage illegal M growing and transport of M within TC.*

Response: We disagree. Trinity County Sheriff's Office and Code Enforcement do not have the funding to criminally enforce or civilly abate the current levels of illegal cannabis cultivation or the illegal transportation of cannabis.

Finding #5: *The BOS establish and publish a policy regulating excavation on both public and private lands. Because there is no regulation growers are free to put in roads, culverts and make wholesale changes in creeks.*

Response: We agree and disagree. Referring to the issue of grading, the county does have a very specific ordinance, Chapter 12.12 on private lands. In general, the excavation regulations are covered in Title 15, BUILDINGS AND CONSTRUCTION that can be found at the county website's link to Municode. These issues will be updated in our next General Plan. As far as regulation for grading and excavation on public lands, Trinity County does not have this authority.

Finding #6: *The citizens of TC must familiarize themselves with the "Water Rights" of private citizens before they find they have none. In 2013 there were less than 10 well permits issued for the Southern Trinity, Trinity Pines area. So far in 2014 over 75 permits have been applied for. The water table and the aquifers that supply the water do not have an unlimited supply of water.*

Response: We agree there is not an unlimited supply of water in Trinity County's aquifers. To bring this specifically into the perspective of cultivating cannabis in the Trinity Pines area: Trinity County's Land Use Ordinance 315-797 already presents a viable solution by taking into consideration the parcel size which limits the number of plants cultivated, thus endeavoring to control excessive water use. Trinity County strives to follow California law regarding water wells and has ordinance enhancements specific to Trinity County that can be

Judge Johnson
DAR 2013-2014-010
September 23, 2014

found at the county website's link to Municode: Chapter 16.48 SUBDIVISION IMPROVEMENTS and Chapter 15.20 WATER WELLS.

Finding #7: *The BOS must implement a plan to regulate the use of agricultural chemicals BEFORE the pristine drinking water we all take for granted is irreversibly damaged or destroyed.*

Response: We disagree. Agricultural chemical regulation falls under the state's domain, not the various counties. Trinity County endeavors to follow and enforce the state's constitution and all laws, regulations and codes therein. Trinity County has specifically produced Ordinance Number 8.60, which reiterates the importance of California Water Code Division 7 and all of Section 13000.

Recommendation #1, #3, #4, #5 and #7: *The BOS shall examine Ref. (1) and make a public report as to its applicability to TC. Then the BOS shall file its own report to clarify TC's stance on M growing within the county. This report shall include best agricultural practices, water restrictions, pesticides, land use requirements, trafficking requirements, collective requirements, taxation rules, and permits.*

Response: Trinity County strives to comply with all state and federal laws, regulations and codes. The county encourages all citizens to follow all state and federal laws, regulations and codes. It is the responsibility of each citizen to perform their due diligence as to the current laws, regulations and codes of the United States of America, the State of California, and the County of Trinity.

The Board of Supervisors has examined "Ref. (1)" and concurs with the findings, plus, some of the following Grand Jury requested replies are specifically covered in Trinity County Ordinance Number 315-797 put in place on June 5th, 2012, which was not listed in the Grand Jury's research materials. A copy is included for reference (attachment A). This county ordinance references the California Health and Safety Code, Section 11362 and Section 11357, also restating some of the state code, along with enhancing state code for explicit uses geared to Trinity County.

"best agricultural practices" - Any "best agricultural practices" are up to the individual property owners and the county encourages all to be followed as they comply with State and Federal regulations. Since cultivation of cannabis is illegal, there are no Federal or State guidelines for the county to administer.

"water restrictions" -. Again, "water restrictions" are up to individual property owners and are encouraged to be followed, as they observe state and federal regulations, plus any conditions applied by the California Water Boards. Since cultivation of cannabis is illegal, there are no federal or state guidelines. Any water diversion(s) to cultivate cannabis should be reported to California Water Boards and/or California Fish and Wildlife.

"pesticides" - Use of legal "pesticides" is up to the individual property owners and are encouraged to be followed as they comply with State and Federal regulations. "Trinity County's Herbicide/Pesticide Control Ordinance", no. 8.24, implemented in 1979, 1982, and

Judge Johnson
DAR 2013-2014-010
September 23, 2014

1983 was overridden, by state code, thus rendered moot. Since the cultivation of cannabis is illegal, there are no federal or state guidelines regarding the use of pesticides to cultivate cannabis.

“land use requirements” - Trinity County has an extensive zoning ordinance and we encourage citizens to work within the zoning parameters for their parcel(s).

“trafficking requirements” - The trafficking of cannabis is illegal per federal and state laws in the County of Trinity. The county will not violate federal or state laws and encourages all citizens to do the same.

“collective requirements” - Trinity County Board of Supervisors has no opinion other than fully complying with California Health and Safety Code section 11367 regarding the collective growing of cannabis.

“taxation rules” - Trinity County cannot collect or forgive taxes specific to the sale of an illegal product or action.

“permits” - The cultivation of cannabis, as referenced in this report, is illegal per federal and state laws in the County of Trinity. Trinity County cannot issue permits for an illegal action.

Recommendation #2: *The DA shall publish in the public record its policies toward enforcing M regulations within TC. The DA shall also recommend to the BOS a set of codes that will insure that legitimate growers meet environmental standards, including appropriate land use rules.*

Response: Per the District Attorney’s response, these items require further analysis.

Recommendation #3: *Refer to Recommendation #1, #3, #4, #5 and #7 above.*

Response: Refer to response regarding recommendation #1, #3, #4, #5 and #7 above.

Recommendation #4: *The BOS shall establish a working group that will study and recommend ways to not only control, but how TC can benefit from the illegal growers. These recommendations shall be published in the TC website and submitted to State and Federal representatives. The question of how illegality can be transformed into legality must be considered. Will the Washington/Colorado models work for TC? Would creative fining be a way to bring illegitimate growers into the community?]*

Response: This will not be implemented. The Board of Supervisors does not have general fund dollars to form a compliant working group as requested. Again, Trinity County cannot benefit from illegal activities. The Board of Supervisors suggests a private, or not-for-profit organization, not funded with tax dollars to pursue this item. Please review the attached letter from Deputy Attorney General James M. Cole (attachment C). “Creative fining” is unethical and illegal. Fining or taxing citizens into submission does not attract nor drive away “illegitimate growers into the community”. The absolute purpose to have a fine for

Judge Johnson
DAR 2013-2014-010
September 23, 2014

noncompliance of an ordinance is to give citizens a chance to come into compliance, and NOT collect a fine.

Recommendation #5: *Refer to Recommendation #1, #3, #4, #5 and #7 above.*

Response: Refer to response regarding recommendation #1, #3, #4, #5 and #7 above.

Recommendation #6: *The BOS shall publish in the TC website information regarding water rights within county. This publication shall reference rules and restrictions regarding installation of wells and pumping from local aquifers.*

Response: This will not be implemented. Private citizens' water rights do not fall under the purview of the county. California water rights are a complicated and litigious issue. The Board of Supervisors will not become embroiled in these issues at a private citizens' level. Please consult a water attorney and the California Water Board, or refer to the California Water Code. Trinity County strives to follow California law regarding water wells and has enhancements specific to Trinity County at the county websites link to Municode: Chapter 16.48 SUBDIVISION IMPROVEMENTS and Chapter 15.20 WATER WELLS.

Recommendation #7: *Refer to Recommendation #1, #3, #4, #5 and #7 above.*

Response: Refer to response regarding recommendation #1, #3, #4, #5 and #7 above.

Attached for reference:

Mendocino County eliminates reference 1. Mendocino County eliminates reference 2

ORDINANCE NO. 315-797
REPEALING AND RE-ENACTING SECTION 42 TO ORDINANCE 315,
THE TRINITY COUNTY ZONING CODE

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

SECTION I. The Board of Supervisors of the County of Trinity repeals Section 42 of Ordinance 315 (County Zoning Ordinance), and re-enacts such Section, to state as follows:

(a) Purpose and Intent

- (1) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances.
- (2) In 2004, the Legislature enacted the Medical Marijuana Program Act, "MMPA," Senate Bill 420 (codified as California Health and Safety Code Sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to specified State criminal statutes.
- (3) In recent years, Trinity County has seen a proliferation of large marijuana cultivation operations that falsely claim to be conducted in accordance with Proposition 215 and the MMPA. These operations grow marijuana not just for individuals living on the property where the marijuana is grown, but for numerous others—sometimes hundreds of persons—many of whom do not live in Trinity County, and whose status as qualified patients or primary caregivers is questionable.
- (4) The proliferation of marijuana cultivation operations within the County—particularly as pertains to operations intended to serve persons who are not Trinity County residents—poses serious threats to the health, safety, and well-being of the County and its residents. The deleterious impacts of such widespread cultivation include, but are not limited to: degradation of the natural environment associated with large marijuana grows, including diversion of, and discharges into, streams, creeks, and other natural watercourses; taking of endangered species, such as the Coho Salmon and Northern Spotted Owl; on-site grading without regarding to topography or erosion control, causing sedimentation of water bodies; erection of unpermitted and illegal buildings and structures; disposal of human waste without connection to sewage or septic systems; disposal of garbage and

rubbish directly onto the property of grow sites; and the abandonment of grow sites without remediation of the aforementioned impacts.

(5) The impact of such cultivation operations has been particularly acute in residential areas of the County. Property owners in these areas, many of whom have moved to the community very recently, have planted several marijuana plants—sometimes as many as hundreds—on their properties. These plants are often directly visible to surrounding properties and visible from public streets. Plants also are sometimes cultivated openly and visibly near public schools, day care facilities, parks, and other areas where children are present. Throughout the growing and processing seasons, and especially during and immediately following harvesting, noise, lighting, unpermitted structures, and vehicle traffic associated with the grow operations continue into late hours of night and early morning. As the marijuana plants bud, they also can produce a very distinct and annoying odor (sometimes described as “skunky”) that can often be smelled many hundreds of feet away from the property where they are grown and throughout the community.

(6) In light of the considerable and extensive public comments provided to the Planning Commission and Board of Supervisors, received during numerous meetings held over a period of three years, the Board of Supervisors concludes that the deleterious impacts of marijuana cultivation, as described above, are fully confirmed and supported by the great weight of evidence. The Board further concludes these impacts create significant public nuisances and that the failure to enact regulations to control such operations would be detrimental to the public health, safety, and welfare and would result in further and significant degradation of the environment.

(b) As used within, the following terms are defined as follows:

(1) “Primary caregiver,” as described in *People v. Mentch* (2008) 45 Cal.4th 274, is a person who (1) consistently provided caregiving to a qualified patient, (2) independent of any assistance in taking medical cannabis, (3) at or before the time he or she assumed responsibility for assisting with medical cannabis.

(2) “Qualified patient” means a person who is entitled to the protections of Health and Safety Code section 11362.5 (Proposition 215).

(3) “Marijuana” shall refer to any plant of the genus *Cannabis*.

(c) The cultivation, harvesting, processing, drying, or assembling of marijuana are expressly declared to be unauthorized land uses in any zoning district of the County. This declaration is considered to be declarative of existing law, as the County Zoning Code has never expressly or impliedly authorized any such activities in any zoning district, whether as permitted or conditional uses,

or under any provision of the code authorizing specific uses (including but not limited to Section 30.2, pertaining to home occupations and cottage industries).

- (d) Notwithstanding subsection (c), neither the County nor any of its officials, employees, or staff members shall take any action to enforce any provision of Ordinance 315 against any person who satisfies all the requirements of this Section. Persons who satisfy all such requirements shall be considered immune from enforcement of Ordinance 315 against them so long as their compliance with this Section continues.
- (e) Cultivation, harvesting, processing, drying, and assembling of marijuana shall meet the requirements of this Section only if such activities are undertaken for the personal use of qualified patients. Sale of marijuana in any form, by any means, and for any consideration (e.g., cash, in-kind transfer, exchange of services, barter) is not authorized under this Section.
- (f) Activities shall be considered to be conducted for personal use in accordance with subsection (e) only if they are conducted to provide for the medical needs of qualified patients living on the parcel, and/or up to no more than one qualified patient living off the parcel, and if the activities meet all the following standards:
 - (1) The activities are conducted exclusively on a legal parcel of property on which a single-family residence is located.
 - (2) Only qualified patients or qualified caregivers conduct the activities.
 - (3) If any person conducting the activities is not the lawful owner of the parcel, such person shall maintain a notarized letter from the legal owner(s) consenting to the cultivation, harvesting, processing, drying, or assembling of marijuana on the parcel.
 - (4) Each building or outdoor area in which marijuana is cultivated, harvested, processed, dried, or assembled shall be set back from the property boundaries at the farthest feasible location from neighboring residences, but at a minimum in accordance with the applicable zoning regulations, including setback limitations, for the district in which the property is located.
 - (5) Marijuana being cultivated, harvested, processed, dried, or assembled must be secured from public access, and must not be readily visible from off the parcel. All marijuana cultivated outdoors shall be located behind a fully enclosed opaque fence of at least six feet in height. The fence may not be constructed or covered with plastic or cloth, except that shade cloth may be used on the inside of the fence. Vegetative fences shall not constitute an adequate fence under paragraph. The fence must be

adequately secured to prevent unauthorized entry. All processed marijuana must be secured to deter theft.

- (6) Marijuana may not be cultivated, harvested, processed, dried, or assembled outdoors within 1,000 feet of any school, recreation center, youth center, church, library, child-care facilities, substance abuse center or other public gathering area, nor shall such activities be undertaken within 500 feet of any school bus stop.
- (7) The cultivation, harvesting, processing, drying, or assembling of marijuana shall comply with the all applicable building, zoning, and environmental regulations set forth in Ordinance 315 and all other provisions of the County Code and state law.
- (8) The power source for the activities shall comply with all appropriate building and fire code standards and permitting criteria. Should a generator be used, the fuel-storage facility shall be reviewed and approved by the appropriate agency. If public utilities are available the site must connect to those utilities. Noise impacts from generator use shall be limited to the hours of 8:00 am to 8:00 pm.
- (9) The use of butane to enhance or for additive purpose in processing marijuana is prohibited.
- (g) The marijuana grown on any parcel shall not exceed the following number of plants or square footage in size:
 - (1) For parcels of one acre or less, two marijuana plants or 50 square feet;
 - (2) For parcels between one acre and 2 ½ acres, four plants or 100 square feet;
 - (3) For parcels between 2 ½ and five acres, six plants or 200 square feet;
 - (4) For parcels between five and ten acres, six plants or 300 square feet;
 - (5) For parcels of ten acres or greater, eight plants or 400 square feet.

For purpose of these size restrictions, any stacked growing levels or stories shall be measured separately as part of the total area permitted. The term "area," as used in this section, shall also be considered contiguously (i.e., plants may not be grown in separate areas of the property and their respective square footages combined to calculate area.) No part of a plant's canopy shall extend beyond the perimeter of the permitted area.

- (h) An individual property may also cultivate additional marijuana plants so long as such plants are immature. An immature plant is one where no part of the plant is flowering or displaying its sex. The number of immature plants that may be cultivated, when combined with the number of mature plants, shall not

exceed twice the number of plants permitted for each size category stated in paragraph (g).

- (i) Indoor cultivation of mature marijuana plants shall be limited to the same maximum size standards as stated in paragraph (g). Such cultivation may be conducted only in an approved accessory structure appropriate for that purpose, as defined by the current California Building and Fire Code standards.
- (j) Should marijuana cultivation, harvesting processing, drying, or assembling activities generate any odor-related complaint from property owners or residents who reside within one-quarter mile (1,320 feet) from the location of the parcel on which the activities occur, and if such odor can be independently verified in the location by a designated County representative, the County may declare the creation of such odor a public nuisance and abate the same in accordance with Chapter 8.64 of the County Code or other applicable law.

(k) Other provisions

- (1) This Section shall be enforced only by means that are civil in nature. The County shall not commence or undertake any criminal proceedings to enforce this ordinance.
- (2) Any activities conducted under this Section must strictly comply with Proposition 215, the MMPA, and the California Attorney General's Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended.
- (3) Neither this Ordinance, nor any of its provisions, shall be deemed to provide a defense or immunity to any action brought against any person by the Trinity County District Attorney, the Attorney General of State of California, or other state law enforcement authority. Nor is this ordinance intended to alter or exempt any provision of federal law prohibiting the cultivation, processing, drying, assembly, or of cannabis, or the enforcement of federal law by federal authorities.

SECTION III. This ordinance is not a project under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) ("CEQA"), and accordingly is not subject to its provisions. Nevertheless, to the extent that this ordinance may be construed as a project, it is exempt from CEQA under the general rule that it can be seen with certainty that this Ordinance has no possibility of having a significant effect on the environment, as set forth in California Code of regulations, title 14, section 15061, subdivision (b)(3). Further, this ordinance extending 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.

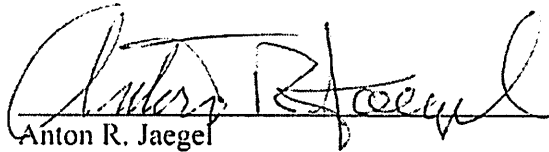
Presented to the Planning Commission of the County of Trinity on May 16, 2012,
and passed and adopted by the Board of Supervisors of the County of Trinity on June 5,
2012, by the following roll call vote, to-wit:

AYES: Supervisors Pflueger, Chapman, Morris and Jaegel

NOES: Supervisor Otto

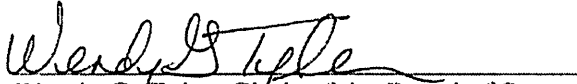
ABSENT: None

ABSTAINING: None



Anton R. Jaegel
Chairman of the Board of Supervisors
of the County of Trinity, State of California

ATTEST:



Wendy G. Tyler, Clerk of the Board of Supervisors
County of Trinity, State of California

attachment B

TITLE V - HEALTH & SAFETY

DIVISION 8

MEDICAL MARIJUANA

Chapter 1 - Medical Marijuana

- § 581-1. Findings and Purpose.
- § 581-2. Definitions
- § 581-3. Application.
- § 581-4. Suggested Implementation.
- § 581-5. Severability.

TITLE V - HEALTH & SAFETY

DIVISION 8

MEDICAL MARIJUANA

CHAPTER 1

GUIDELINES FOR THE IMPLEMENTATION OF PROPOSITION 215 [California Health and Safety Code section 11361.5 et. seq.] AND CALIFORNIA SENATE BILL 420 [California Health and Safety Code section 11362.7 et seq.]. (Ord. 2328, § 1, 08/17/2004)

581-1. FINDINGS AND PURPOSE.

(a) In 1996, the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act of 1996, creating California Health and Safety Code section 11362.5. (Ord. 2328, § 1, 08/17/2004)

(b) California Health and Safety Code section 11362.5(d) states: "Section 11357, relating to the possession of marijuana [cannabis], and section 11358, relating to the cultivation of marijuana, shall not apply to a patient or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." (Ord. 2328, § 1, 08/17/2004)

(c) For the purposes of this ordinance, the Humboldt County Board of Supervisors determines that three (3) pounds of dried cannabis bud per year is a reasonable amount for medical marijuana patients to cultivate, possess and consume their medicine, absent a demonstrated medically prescribed need for a greater amount than three (3) pounds. (Ord. 2328, § 1, 08/17/2004)

(d) For the purposes of this ordinance, the Humboldt County Board of Supervisors determines that a one-hundred (100) square foot canopy of mature female cannabis plants, typically will yield three(3) pounds of dried and processed cannabis bud per year, outdoor, regardless of the number of marijuana plants. (Ord. 2328, § 1, 08/17/2004)

(e) The Humboldt County Board of Supervisors through this ordinance exercises its authority under California Health and Safety Code section 11362.77(c) to enact medical marijuana guidelines which allow qualified medical marijuana patients or their primary caregivers to exceed the default threshold of the State of California of eight (8) ounces of dried female cannabis flowers in addition to six (6) mature or twelve (12) immature plants per qualified patient. (Ord. 2328, § 1, 08/17/2004)

(f) The Humboldt County Board of Supervisors through this ordinance set a simple, reasonable and efficient guideline for law enforcement officers to use in evaluating individual and collective patient medical marijuana gardens and on-hand supplies. (Ord. 2328, § 1, 08/17/2004)

(g) This ordinance does not prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or security of the facility. (Ord. 2328, § 1, 08/17/2004)

This ordinance does not require any accomodation of any medical use of marijuana on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained. (Ord. 2328, § 1, 08/17/2004)

(h) This ordinance does not address the enforcement of federal law. (Ord. 2328, § 1, 08/17/2004)

(i) This ordinance does not address, nor is it intended to limit or restrict, the enforcement of any law, ordinance, or regulation (1) within the boundaries of any Indian reservation or incorporated city, (2) on any property owned or leased by either the federal or state government, or (3) by any federal, state, tribal, or city officers or employees. (Ord. 2328, § 1, 08/17/2004)

(j) This ordinance does not address, nor is it intended to limit or restrict, the enforcement of any state or federal law or ordinance, policy, regulation, or rule adopted by any school, community college district, university or any other local public agency whose governing body is not the Humboldt County Board of Supervisors. (Ord. 2328, § 1, 08/17/2004)

(k) This ordinance does not address, nor is it intended to require, any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment. (Ord. 2328, § 1, 08/17/2004)

(l) This ordinance does not authorize a qualified patient or person with an identification card to engage in the possession of medical marijuana under any of the following circumstances: (Ord. 2328, § 1, 08/17/2004)

1. In any place where smoking is prohibited by law. (Ord. 2328, § 1, 08/17/2004)

2. In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence. (Ord. 2328, § 1, 08/17/2004)

3. On a school bus. (Ord. 2328, § 1, 08/17/2004)

4. While in a motor vehicle that is being operated. (Ord. 2328, § 1, 08/17/2004)

5. While operating a boat. (Ord. 2328, § 1, 08/17/2004)

581-2. DEFINITIONS.

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who as taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who had conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana which exceeds the amount contained in sections A. and B. of section 3 of this Chapter is indicated. (Ord. 2328, § 1, 08/17/2004)

(b) As defined in California Health and Safety Code, section 11362.5, "Primary caregiver means the individual designated by the person exempted under this act that has consistently assumed responsibility for the housing, health or safety of that person." (Ord. 2328, § 1, 08/17/2004)

(c) The definitions contained in California Health and Safety Code section 11362.7 shall apply to this Chapter of the Humboldt County Code. (Ord. 2328, § 1, 08/17/2004)

581-3. APPLICATION.

(a) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana up to three (3) pounds of dried cannabis bud or conversion per medical marijuana patient. (Ord. 2328, § 1, 08/17/2004)

(b) To produce three (3) pounds of dried cannabis bud or conversion per medical marijuana patient, such persons may cultivate cannabis in an amount per qualified patient not to exceed more than 100 square feet of total garden canopy, as measured by the combined vegetative growth area. (Ord. 2328, § 1, 08/17/2004)

(c) Qualified medical marijuana patients, and caregivers who collectively or cooperatively cultivate marijuana for medical purposes shall not exceed the standards set forth in Section 3., Subsections A and B or this Chapter. (Ord. 2328, § 1, 08/17/2004)

(d) If a qualified medical marijuana patient or primary caregiver has an attending physician's written, dated, and signed recommendation that the quality described in Section three, subdivision A. and B. Of this Chapter are not sufficient to meet the medical marijuana patient's needs, said patient or caregiver may possess an amount of marijuana consistent with the attending physician's written recommendation. (Ord. 2328, § 1, 08/17/2004)

(e) A primary caregiver shall include a competent adult, over the age of 18, designated as such in writing by a qualified or card-holding, medical marijuana patient, in the interests of their personal health and safety, subject to the rebuttal by credible evidence to the contrary. (Ord. 2328, § 1, 08/17/2004)

(f) The primary caregiver's designation shall be posted at the garden site or be in the possession of the caregiver. The primary caregiver must also have in their possession a copy of the attending physician's document concerning the medical marijuana patient they are caregiving for. (Ord. 2328, § 1, 08/17/2004)

581-4. SUGGESTED IMPLEMENTATION.

(a) The Humboldt County Board of Supervisors desires that law enforcement personnel not arrest and leave unmolested qualified patients, persons holding a valid identification card, the designated primary caregiver, and any compliant gardens and supplies of medical marijuana in the amounts set forth in subdivisions A. and B. of Section 3 of this Chapter, unless a court of competent jurisdiction has issued an order contrary to this position. (Ord. 2328, § 1, 08/17/2004)

(b) The Humboldt County Board of Supervisors further desires that law enforcement personnel compensate person(s) qualified under this ordinance for any amount of medical marijuana which is seized, and then subsequently ordered returned by a court of competent jurisdiction. (Ord. 2328, § 1, 08/17/2004)

581-5. SEVERABILITY.

If any provisions of this Chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application; and to this end, the provisions or application of this Chapter are severable. (Ord. 2328, § 1, 08/17/2004)

reference 1

Mendocino County eliminates pot-growing permits

Kevin Fagan, Chronicle Staff Writer

Published 4:00 am, Sunday, January 29, 2012

Mendocino County, a national epicenter of all things marijuana, crumpled under pressure from Uncle Sam last week and stripped itself of more than a half-million dollars in annual pot income.

The Board of Supervisors voted to cancel its novel medical marijuana permit program on Tuesday, saying federal prosecutors had threatened to sue the county if the program stayed on the books.

Under the 2-year-old program, the most comprehensive in the state, Mendocino County issued permits to cannabis collectives, allowing them to grow as many as 99 plants at a time, and the sheriff performed monthly inspections on their zip-tied bundles of pot.

Sheriff Tom Allman's office collected \$663,230 last year in fees for the inspections, which certified that the marijuana was grown for medicinal purposes only.

County law now reverts to a limit of 12 cannabis plants per individual.

U.S. Attorney Melinda Haag in San Francisco, whose office's jurisdiction includes the North Coast, declined to comment. She and other federal prosecutors in California have been cracking down on medical marijuana operators and overseers since October, threatening scores with lawsuits or jail if they don't shut down.

Prosecutors say the goal of their crackdown is to eliminate cannabis operations that have no connection to medical uses, or are too close to schools or parks. The cultivation and sale of marijuana for medical use is legal under a 1996 California law, but it remains illegal in the eyes of the federal government.

Allman said that despite the loss of revenue, he has no plans to lay off deputies. The revenue loss is not expected to affect other county departments, officials said.

"They didn't take away all of the tools in my toolbox," the sheriff said. "We'll still offer voluntary zip-tie permits for about \$25 apiece," down from \$50 under the canceled program. "Last year alone we raised \$60,000 with that.

"There is still time for more to happen between now and April, around the growing season, when we usually collect our fees," Allman said. "But I certainly see this as a step backward."

Mendocino County spars with feds over conflicting marijuana laws

Mendocino County is resisting demands by federal prosecutors for records on medical marijuana growers who registered for permits to cultivate up to 99 plants.

January 20, 2013 | By Joe Mozingo, Los Angeles Times

Mendocino County is fighting efforts by federal prosecutors to get records on medical marijuana growers who signed up for a program intended to sanction their businesses under state law.

The county's resistance creates a rare legal clash between local and federal authorities over conflicting marijuana laws. The U.S. Justice Department has been targeting growers and purveyors of medical cannabis, and threatening local or state officials who try to regulate the trade, saying all marijuana use is illegal under federal law.

Last March, Mendocino County officials bowed to such threats and stopped issuing permits to grow up to 99 plants. Now county attorneys are urging a federal judge in San Francisco to quash a federal subpoena issued in October demanding a wide range of information about the cultivation program, including applications of growers seeking permits.

Two marijuana advocacy groups seeking clearer laws in California filed briefs arguing that compliance with the subpoena would reveal confidential medical information and bank records and "undermine the county's considered and thoughtful attempts to regulate marijuana pursuant to state law."

"The message this sends to people across the state trying to comply in good faith with medical marijuana regulations is that they should operate below ground," said Adam Wolf, a San Francisco attorney representing the two groups, the Emerald Growers Assn. and Americans for Safe Access. "That's the last thing the government should do."

A spokesman for Melinda Haag, the U.S. attorney for Northern California, declined to comment on the case. The subpoena does not make clear what or who is being investigated. A hearing is set for Jan. 29.

Mendocino County instituted County Code 9.31 in 2010 to try to control a surge of marijuana cultivation. Robberies jumped as newcomers flooded in. And with no regulation, many growers illegally graded, logged and diverted creeks to produce huge, multimillion-dollar crops.

Some local growers wanted to "reintegrate into the county and not feel like outlaws," said county Supervisor John McCowen. Those who registered with the sheriff had to install security fencing and cameras, pay permitting fees up to \$6,450 a year and undergo inspections four times a year. Every plant was given a zip-tie with a sheriff's serial number on it.

Eighteen growers signed up the first year. Medical marijuana advocates hailed the zip-tie program as the first to create a clear, legal means for growers to supply the medical market.

George Unsworth, 60, was among those who participated. He loves to show photos from the day deputies first came to inspect his pot. "To be in a garden with them in a Mendocino forest, and not be in handcuffs facedown in the dirt, but to be shaking hands, it was beautiful," he said. "I take my hat off to Mendocino County."

The U.S. attorney was quick to show its disapproval. Drug Enforcement Administration agents raided the farm of the first person to register, Joy Greenfield. Still, 91 growers signed up the next year.

Agents then targeted Matt Cohen, the grower most vocal in advocating for the program and getting it set up.

Despite the raids, county officials planned to continue the program. It had paid for itself — generating an estimated \$600,000 — over two years and allowed the sheriff to focus on growers causing more problems.

"The program drew a clear line between those who were doing everything to be compliant with local and state laws and people who were outlaws," McCowen said. "The marijuana industry was completely out of control, and the permit program was an effort to bring order out of chaos, and it was working."

But county officials stopped the permitting and inspections in March after the U.S. attorney threatened them with legal action. The federal subpoena landed in October, demanding records of inspections, applications, internal county emails, notes, memos and bank account numbers.

McCowen said he can't understand why prosecutors are focusing on the county's registered growers. "When you've eliminated all those outlaw, trespass growers, then come talk to us about our legally compliant 99-plant growers."

Lawyers for the county and the marijuana groups argue that the subpoena should be quashed because it seeks privileged information and would gut attempts to regulate

medical marijuana. They say similar attempts by the federal government to undermine state and local marijuana laws were rejected in court.

Kristin Nevedal, chairwoman of the Emerald Growers Assn., said her members are very concerned about the subpoena. "All these folks who got involved in the zip-tie program really felt they were doing the right thing following state law."

Unsworth, who signed up for the program the first year, said he knew the demands by federal authorities were coming. An Air Force veteran with multiple sclerosis, he didn't care. He said he wanted to put his face on the medical marijuana movement and hopes the case goes to the Supreme Court.

"Until we change the federal law, we're breaking the law. Period. We're lawbreakers."

joe.mozingo@latimes.com

Los Angeles Times

Copyright 2014 Los Angeles Times



TRINITY COUNTY
Office of the County Administrator
WENDY G. TYLER
County Administrative Officer
P.O. BOX 1613, WEAVERVILLE, CALIFORNIA 96093-1613
PHONE (530) 623-1382 FAX (530) 623-8365

TO: The Honorable Elizabeth Johnson,
Judge of the Superior Court

FROM: *WBT* Wendy G. Tyler, County Administrative Officer

CC: Clerk of the Board of Supervisors

SUBJECT: Response to Recommendations of 2013-14
Grand Jury Development and Environment Committee Final Report
DAR-2013-2014-010

DATE: August 25, 2014

The Grand Jury Development and Environment Committee has requested a written response to their final report referenced above. In my capacity as County Administrative Officer my response is as follows:

Finding #1: *M growing in TC is a large industry, but TC does not have adequate regulations, practices, and taxes to manage and benefit from the enterprise.*

Response: I agree in part with this finding. It is questionable as to whether the County should ever "benefit" from an illegal activity.

Finding #2: *DA has insufficient staff to prosecute all M cases within TC.*

Response: I agree in part with this finding. There is a backlog of cases in the DA's office due, in part, to the number of serious felony prosecutions currently underway.

Finding #3: *Other counties, such as Humboldt, have implemented regulations and best practices to manage legitimate M grows.*

Response: I agree with this finding. Other jurisdictions have implemented regulations concerning marijuana cultivation.

Finding #4: *No plans exist to manage illegal M growing and transport of M within TC.*

Response: I disagree with this finding. The County has established land use regulation as pertain to marijuana. Additionally, there are State and Federal statutes which govern cultivation and transportation.

Finding #5: *The BOS establish and publish a policy regulating excavation on both public and private lands. Because there is no regulation growers are free to put in roads, culverts and make wholesale changes in creeks.*

Response: May be implemented. The County will consider creation of a grading ordinance, which will regulate excavation, however the ordinance will not be limited to grading as it relates to cultivation. Additionally, there are already statutes and regulations (local, state and federal) pertaining to road construction and streambed alterations.

Finding #6: *The citizens of TC must familiarize themselves with the "Water Rights" of private citizens before they find they have none. In 2013 there were less than 10 well permits issues for the Southern Trinity, Trinity Pines area. So far in 2014 over 75 permits have been applied for. The water table and the aquifers that supply the water do not have an unlimited supply of water.*

Response: I agree with this finding.

Finding #7: *The BOS must implement a plan to regulate the use of agricultural chemicals BEFORE the pristine drinking water we all take for granted is irreversibly damaged or destroyed.*

Response: I disagree with this finding. Pursuant to the Food and Ag Code, copied below, the Board of Supervisors has no jurisdiction over the use or application of pesticides. However, further research is being done to determine what, if any, jurisdiction the Board has over other chemicals.

"California Food and Agriculture Code Section 11501.1.

11501.1. (a) This division and Division 7 (commencing with Section 12501) are of statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this code, no ordinance or regulation of local government, including, but not limited to, an action by a local governmental agency or department, a county board of supervisors or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of these ordinances, laws, or regulations are void and of no force or effect.

(b) If the director determines that an ordinance or regulation, on its face or in its application, is preempted by subdivision (a), the director shall notify the promulgating entity that it is preempted by state law. If the entity does not repeal its ordinance or regulation, the director shall maintain an action for

declaratory relief to have the ordinance or regulation declared void and of no force or effect, and shall also bring an action to enjoin enforcement of the ordinance or regulation.

(c) Neither this division nor Division 7 (commencing with Section 12501) is a limitation on the authority of a state agency or department to enforce or administer any law that the agency or department is authorized or required to enforce or administer.

(d) At the request of any state agency disseminating information on the pesticidal uses of any product, the director shall consult with, and provide technical assistance to, that agency to ensure that the dissemination is based on valid scientific information and consistent with state law.”

Recommendations 1, 3, 4, 5, and 7: *The BOS shall examine Ref. (1) and make a public report as to its applicability to TC. Then the BOS shall file its own report to clarify TC's stance on M growing within the county. This report shall include best agricultural practices, water restrictions, pesticides, land use requirements, trafficking requirements, collective requirements, taxation rules, and permits.*

Response: Requires further analysis. Given the Federal prohibition concerning marijuana cultivation and use, careful consideration must be given in setting policy.

Recommendation 2: *The DA shall publish in the public record its policies toward enforcing M regulations within TC. The DA shall also recommend to the BOS a set of codes that will insure that legitimate growers meet environmental standards, included appropriate land use rules.*

Response: This recommendation is not within the jurisdiction of the CAO nor the Board of Supervisors.

Recommendation 4: *The BOS shall establish a working group that will study and recommend ways to not only control, but how TC can benefit from the illegal growers. These recommendations shall be published in the TC website and submitted to State and Federal representatives. The question of how illegality can be transformed into legality must be considered. Will the Washington/Colorado models work for TC? Would creative fining be a way to bring illegitimate growers into the community?*

Response: Requires further analysis. Given the Federal prohibition concerning marijuana cultivation and use, careful consideration must be given in setting policy.

Recommendation 6: *The BOS shall publish in the TC website information regarding water rights within county. This publication shall reference rules and restrictions regarding installation of wells and pumping from local aquifers.*

Response: Has been implemented in part. Information concerning installation of wells can be found in the Trinity County Code, Chapter 15.20. The code is available on the County website.