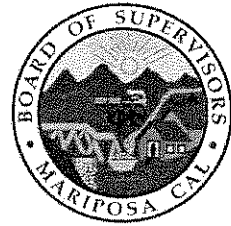




# MARIPOSA COUNTY

Planning • 209-966-5151



## **RESOLUTION - ACTION REQUESTED 2013-461**

MEETING: October 15, 2013

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

**MINUTE ORDER ATTACHED**

RE: Resolution of Intention-Regulation of Medical Marijuana Cultivation

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### **RECOMMENDATION AND JUSTIFICATION:**

Adopt a resolution of intention to initiate an ordinance regulating the cultivation of medical marijuana. This will allow the Planning Department to process an ordinance that will strengthen Mariposa County's ability to regulate medical marijuana cultivation. In turn, the ordinance will help curb the negative impacts associated with large marijuana grows by creating limits and a more efficient enforcement process.

During the summer, the Sheriff and the District Attorney approached the Planning Department requesting assistance to enact regulations for the cultivation of medical marijuana. Previously, Mariposa County had adopted some zoning regulations concerning marijuana dispensaries and the cultivation of medical marijuana, however over time it has become apparent that more specific and effective regulations are necessary. Since Mariposa County last adopted regulations regarding medical marijuana, the authority to regulate grows has become clearer through some court cases and state law.

### **BACKGROUND AND HISTORY OF BOARD ACTIONS:**

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The processing of an ordinance to regulate the cultivation of medical marijuana would not occur.

### **FINANCIAL IMPACT:**

**No financial impact. The resolution authorizes the Planning Department to process the proposed ordinance.**

### **ATTACHMENTS:**

**Staff Report-Regulation of Medical Marijuana Cultivation (PDF)**

**Draft Resolution of Intention to Initiate Amendment (DOC)**

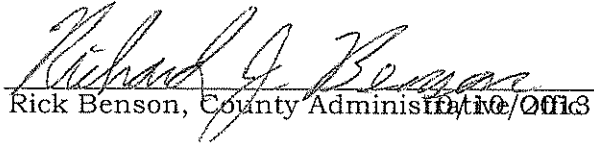
**Draft Regulation of Medical Marijuana Cultivation Ordinance (PDF)**

**Merced County-Regulation of Medical Marijuana Cultivation Ordinance (PDF)**

Tehama County-Marijuana Cultivation Regulations (PDF)  
Tehama County-Amendment to Marijuana Cultivation Ordinance (PDF)

**CAO RECOMMENDATION**

Requested Action Recommended

  
Rick Benson, County Administrator/Office

**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Kevin Cann, District IV Supervisor  
**SECONDER:** Janet Bibby, District III Supervisor  
**AYES:** Stetson, Jones, Bibby, Cann, Carrier

STATE OF CALIFORNIA  
COUNTY OF MARIPOSA  
BOARD OF SUPERVISORS

Resolution  
No 2013-461

**A Resolution of Intention to initiate an ordinance for regulation  
of medical marijuana cultivation**

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**WHEREAS**, the Mariposa County Code is adopted by ordinance; and

**WHEREAS**, Mariposa County Code, does not contain sufficient regulations for the cultivation of medical marijuana; and

**WHEREAS**, the cultivation of medical marijuana has resulted in impacts to area residents due to safety concerns associated with marijuana grows; and

**WHEREAS**, the Sherriff and District Attorney have expressed concern with regards to the influx of growers coming to this county due to the less stringent regulations compared to other counties in California; and

**WHEREAS**, there is an interest in more tightly regulating the cultivation of medical marijuana in order to reduce the impacts to safety, the environment, traffic, and the general public welfare associated with the large medical marijuana grows that have been increasing in the county.

**NOW BE IT THEREFORE RESOLVED THAT** the Board of Supervisors of the County of Mariposa does hereby initiate an amendment to Mariposa County Code, to include regulations pertaining to the cultivation of medical marijuana as shown in Exhibit A and directs the Planning Department to process the amendment.

**BE IT THEREFORE FINALLY RESOLVED THAT** the amendments are not limited to the above or Exhibit A if other changes or amendments are found to be needed through the processing of the amendment or the public hearing process in order to appropriately define and regulate medical marijuana cultivation.

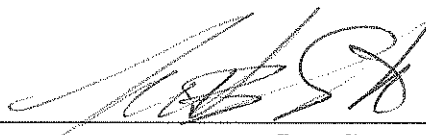
**ON MOTION BY** Supervisor Cann, seconded by Supervisor Bibby, this resolution to initiate the amendment for processing is duly passed and adopted this 15<sup>th</sup> day of October, 2013 by the following vote:

AYES: STETSON, JONES, BIBBY, CANN, CARRIER

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE



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Lee Stetson, Chairman  
Mariposa County Board of Supervisors

Attest:



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Rene' LaRoche  
Clerk of the Board of Supervisors

Approved as to Form:



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Steven W. Dahlem  
County Counsel

**Exhibit A**

DRAFT FOR INITIATION

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ESTABLISHING THE REGULATION OF  
MEDICAL MARIJUANA CULTIVATION ADDING A NEW  
ARTICLE TO THE MARIPOSA COUNTY CODE  
(ADDS CHAPTER 8.56 TO TITLE 8 OF THE MARIPOSA COUNTY CODE)**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIPOSA, STATE OF  
CALIFORNIA, ORDAINS AS FOLLOWS:**

**SECTION 1:** Chapter 8.56 of Title 8 of the Mariposa County Code, for the "Medical Marijuana Cultivation" is added as follows:

CHAPTER 8.56  
MEDICAL MARIJUANA CULTIVATION

- 8.56.010 Findings.
- 8.56.020 Purpose and Intent.
- 8.56.030 Relationship to Other Laws.
- 8.56.040 Definitions.
- 8.56.050 Medical Marijuana Cultivation Prohibited.
- 8.56.060 Prohibited Medical Marijuana Cultivation Declared a Public Nuisance.
- 8.56.070 Penalties for Violation.
- 8.56.080 Abatement.
- 8.56.090 Investigation.
- 8.56.100 Keeping Premises Free From Creating a Public Nuisance.
- 8.56.110 Notice to Abate and Penalties for Unlawful Marijuana Cultivation.
- 8.56.120 Contents of Notice.
- 8.56.130 Service of Notice.
- 8.56.140 Administrative Appeal.
- 8.56.150 Liability for Costs.
- 8.56.160 Abatement by Owner or Occupant.
- 8.56.170 Enforcement.
- 8.56.180 Accounting.
- 8.56.190 Notice of Hearing on Accounting; Waiver by Payment.
- 8.56.200 Hearing on Accounting.
- 8.56.210 Modifications.
- 8.56.220 Special Assessment and Lien.
- 8.56.230 Enforcement by Civil Action.
- 8.56.240 Summary Abatement.
- 8.56.250 Administrative Penalty and Purposes.
- 8.56.260 Administrative Penalty.
- 8.56.270 Procedures.
- 8.56.280 Request for Appeal of Administrative Penalties.
- 8.56.290 Advance Deposit Hardship Waiver.

DRAFT FOR INITIATION

- 8.56.300 Right to Petition for Writ.
- 8.56.310 Board of Supervisors Hearing to Establish Civil Penalties.
- 8.56.320 Amount of Administrative Penalty.
- 8.56.330 Payment and Collection.
- 8.56.340 Administrative Hearing Fees
- 8.56.350 Remedies Cumulative.
- 8.56.360 No Duty to Enforce.
- 8.56.370 Supplementation, Clarification or Modification of Procedural Rules for Hearings.

**8.56.010 Findings.**

The Board of Supervisors of the County of Mariposa finds and declares as follows:

**A.** In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996").

**B.** The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances. This Chapter is intended to be consistent with Proposition 215 and subsequent state statutes.

**C.** In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code section 11362.7 et seq. and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.

**D.** In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of Medical Marijuana Collectives.

**E.** As recognized by the California Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as littering or crime against persons or property.

**F.** This ordinance is enacted, consistent with California Health and Safety Code section 11362.7 et seq., to protect the public health, safety, and welfare of County of Mariposa residents in relation to the legal operation and location of medical marijuana collectives and the cultivation of medical marijuana. The ordinance is enacted to establish reasonable regulations which balance the needs of medical patients and their caregivers with the rest of the public and promote the health, safety, and welfare of citizens, residents, visitors and businesses of the County of Mariposa.

**G.** In *Brown v. County of Tehama* (2013) Cal.App.4<sup>th</sup> 704, the Court specifically held that "[n]either the Compassionate Use Act nor the Medical Marijuana Program grants...anyone... an unfettered right to

DRAFT FOR INITIATION

cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4<sup>th</sup> 729, the California Supreme Court concurred that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land.."

**H.** Medical marijuana grows have been operating in the County of Mariposa for several years with minimal local regulation and have been the subject of armed robberies with shots fired, incidents with juveniles and young adults, and closure and arrests of operators for violation of both state and federal laws, including seizure of illegal firearms. Other public entities have documented violence related to operation of medical marijuana collectives. Medical marijuana cultivations attract crime and associated violence. They also result in loitering, increased traffic, noise, and a loss of trade for other business located nearby. Marijuana cultivations have proliferated in the County of Mariposa resulting in numerous complaints by the public to the Sheriff and members of the Board of Supervisors of prevalent malodorous conditions and safety concerns.

**I.** The claim of many marijuana cultivations as being designed to assist authorized medical marijuana users, many cultivations have simply served as avenues for the exportation and distribution of marijuana for illegal use. Further, marijuana cultivations have been shown to involve avoidance of environmental laws and regulations and resulted in the pollution of waters and navigable waterways in the County of Mariposa and beyond. Unregulated medical marijuana cultivations are harmful to the welfare of the surrounding community and its residents and constitute a public nuisance. All of these problems seem to worsen as the cultivations become larger. Marijuana grows have been found in Mariposa County to be of extraordinary size, measured in multiple acres or otherwise in quantity far in excess of what might be cultivated for medicinal use.

**J.** The federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about ½ pound, to 846 grams, or nearly two pounds. The "street value" of a single cannabis plant is substantial. Pound prices for domestically produced high grade cannabis sold illegally within Northern California can range from \$1,500 to \$3,000. A single marijuana plant can easily yield \$4,000 or more in salable marijuana. One pound can yield 908 doses.

**K.** Investigation of cultivations has revealed that some property owners claim not to know of large marijuana cultivations on their property or ignore cultivations, all to the prejudice of the people in the surrounding areas, and demonstrating the need for owner responsibility for activities on their properties.

**L.** Medical marijuana cultivation in the County of Mariposa poses an urgent and immediate threat to the public peace, health, and safety. Several medical marijuana cultivations, have recently emerged in the County of Mariposa which are very visible to the



public, and easily accessible by the public, including children and youths. Some of these cultivations contain booby-trap devices that threaten severe bodily harm or death to those who attempt to access them. During the current harvest, and each harvest and processing season, there is an immediate threat of violent crime due to the size, location, and monetary value of these mature medical marijuana cultivations.

**M.** According to the Mariposa County Sheriff, the U.S. Drug Enforcement Administration, and as shown in other counties, marijuana growers may go from county to county, based on how vigorously each locale may regulate grows, fostering large criminal enterprises and prepared to accept low risk in favor of large economic reward, all to the disadvantage of the health and welfare of the local population.

**N.** According to the Mariposa County Sheriff, the U.S. Drug Enforcement Administration, and as shown in other counties, medical marijuana cultivations create a nuisance and threaten the safety and property of nearby land owners and their families. If medical marijuana grows are not immediately regulated, large quantities of illegal marijuana will be introduced into the local market in the near term.

**O.** Medical marijuana, alone or in combination with food products, may constitute a unique health hazard to the public because, unlike all other ingestibles, marijuana is not presently regulated, inspected, or analyzed for contamination by the state or federal government and likely contains harmful chemicals and contaminants from unapproved sources that could endanger the already poor health of ill persons and the good health of others.

**P.** Marijuana varies in quality, with significant variations in the concentration of the active ingredient tetrahydrocannabinol (THC). Consumers cannot accurately ascertain the strength of the drug when they buy it. Also, it cannot be assured that customers will be adequately warned that marijuana use impairs the user's fine motor skills and negatively affects the safe operation of motor vehicles.

**Q.** The County of Mariposa has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing access to medical marijuana for ill residents.

**R.** The adverse effects from medical marijuana cultivations may increase as the crop continues to grow, thereby requiring quick action to protect the public.

**S.** Other counties in California have encountered similar problems from the unregulated medical marijuana grows and have attempted to regulate them by ordinances after their respective boards of supervisors found such action to be necessary. Investigations have revealed that some growers have come to this county because it does not have a regulation to deal with large grows. The Board of Supervisors accepts the Sheriff's

recommendations that the ordinance hereby enacted can best accomplish the County of Mariposa's goals stated herein.

**T.** Nothing in this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under the Act except as mandated by State law.

**U.** Nothing in this ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of marijuana for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under State or Federal law.

**8.56.020 Purpose and Intent.**

It is the purpose and intent of this Chapter pursuant to California Government Code section 25123(d) to immediately prohibit and provide alternative enforcement and prevention mechanisms against the large-scale cultivation of medical marijuana in order to preserve the public peace, health, safety, and general welfare of the citizens, residents and travelers through the County of Mariposa.

**8.56.030 Relationship to Other Laws.**

This Chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this Chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the Board that this Chapter shall be interpreted to be compatible and consistent with federal, state, and county enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this Chapter will supersede any other provisions of this code found to be in conflict.

**8.56.040 Definitions.**

For purposes of this Chapter, these words and phrases shall be defined as follows:

- A.** "County" means the County of Mariposa.
- B.** "Marijuana" shall have the same definition as in California Health and Safety Code section 11018 as it now reads or as amended.
- C.** "Medical Marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code sections 11362.7 et seq.
- D.** "Cultivate" or "Cultivation" is the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.
- E.** "Primary caregiver" shall have the same definition as in California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.
- F.** "Qualified patient" shall have the same definition as California Health and Safety Code section 11362.7 et seq. as it now

reads or as amended.

G. "Person responsible" is each person, association, corporation, partnership, or business entity of any type who assisted, contributed to, caused, performed, directed, established, maintained, aided or abetted, or operated any prohibited cultivation and each person, association, corporation, partnership, or business entity whatsoever owning a property interest in any property on which the prohibited medical marijuana is cultivated, and knew, or in the exercise of reasonable care, would have known of a medical marijuana cultivation prohibited by this Chapter.

H. "Public nuisance" is a nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

I. "Parcel" means a tract, parcel, plot or lot identified as an individual Assessor's Parcel Number ("APN") issued by the Mariposa County Assessor/Recorder.

J. "Days" as used herein mean calendar days, unless otherwise stated. "Business Days" means days that the County of Mariposa is open for regular business.

K. "Property," as used herein, shall include property, structures and the abutting half of the street, and/or alley, between the sidelines thereof as extended.

L. "Enforcing officer," as used in this Chapter, shall mean a sheriff, a district attorney or any of their designees, each of whom may enforce this Chapter.

M. "Year," as used in this Chapter, shall mean three-hundred and sixty-five(365) days.

**8.56.050 Medical Marijuana Cultivation Prohibited.**

A. The cultivation of more than twelve (12) marijuana plants, either indoors or outdoors, on any parcel is prohibited in all areas of the County. The foregoing limitation shall be imposed regardless of the number of qualified patients or primary caregivers residing on the parcel or presiding or participating directly or indirectly in the cultivation.

B. The outdoor cultivation of marijuana, in any amount or quantity, within one thousand (1,000) feet of any school, school bus stop, school evacuation site, church, park, child care center/day care facility, or youth-oriented facility is prohibited. The distance shall be measured in a straight line from the boundary line of the parcel upon which marijuana is cultivated to the boundary line of the parcel upon which the school, school bus stop, school evacuation site, church, park, child care center or youth-oriented facility is located. If the parcel on which the marijuana is being cultivated is twenty (20) acres or greater in size the distance shall be measured from the building or fenced area in which the marijuana is cultivated.

C. The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any premises is hereby prohibited, unless all of the following conditions are satisfied:

1. If the person(s) cultivating marijuana on any parcel is/are not the legal owner(s) of the parcel, such person(s) shall obtain and provide a notarized letter upon request by an enforcing officer from the legal owner(s) consenting to the cultivation of marijuana on the parcel.

2. All marijuana grown outdoors shall be fully enclosed by an opaque fence at least six (6) feet in height. The fence must provide adequate security to prevent unauthorized access. Landscaping, plastic sheeting, or cloth material (tarpaulins) shall not constitute an adequate fence for the purposes of this Subdivision. Fences greater than six (6) feet in height may require a building permit. Fences are subject to all other applicable development standards established by County Code.

3. Each outdoor area in which the marijuana is cultivated shall be set back at least 50 feet from the boundaries of the parcel upon which the cultivation is located. The enforcing officer or the Board of Supervisors may reduce this setback upon a finding of unusual hardship. Any building in which marijuana is cultivated must meet all Uniform Building Code and Zoning Code requirements.

4. The person(s) cultivating marijuana must reside on the property on a permanent basis.

**8.56.060 Prohibited Medical Marijuana Cultivation Declared a Public Nuisance.**

The establishment, maintenance, or operation of any prohibited cultivation of medical marijuana, as defined in this Chapter, within the County of Mariposa is declared to be unlawful and a public nuisance and each person or responsible party is subject to abatement and administrative penalties under this Chapter.

**8.56.070 Penalties for Violation.**

**A.** Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor and subject to a maximum penalty of six (6) months imprisonment in county jail, or a fine of one-thousand dollars (\$1,000). Violators shall be subject to any other enforcement remedies available to the County under any applicable local, state or federal statute or pursuant to any other lawful power the County may possess.

**B.** Each day a violation is allowed to continue and every violation of the Chapter shall constitute a separate violation and shall be subject to all penalties and enforcement remedies.

**C.** In the event any civil suit or action is brought by the County to enforce the provisions of this Chapter, the person(s) responsible for such violation shall be liable to the County for costs of the suit, including, but not limited to, attorney's fees and expert costs.

**8.56.080 Abatement.**

Sections 8.56.80 through 8.56.96 are enacted pursuant to Government Section 25845 and comply with California Health and Safety Code

Section 17980. The procedures set out in this Chapter may be used in addition to, or as an alternative to, any other abatement procedure and any other penalty or fine provided by law.

**8.56.090 Investigation.**

The Enforcing Officer, upon receipt of information leading him/her to believe that a public nuisance of the type specified in this Chapter exists upon private property in the county, shall make a reasonable investigation of the facts and if possible inspect the property to determine whether or not a public nuisance exists. Inspections may include photographing the conditions or obtaining samples or other physical evidence. If an owner, occupant or agent refuses permission to enter or inspect, the enforcing officer may seek an inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure Sections 1822.50 through 1822.59.

**8.56.100 Keeping Premises Free From Creating a Public Nuisance.**

A. Every owner of property shall properly maintain their property in a manner such that it does not contain or become a public nuisance described by this Chapter and shall promptly abate any such public nuisance in accordance with this Chapter.

B. Violation of any provision of this Chapter shall subject the violator to criminal prosecution, abatement, administrative penalties, costs, and such other sanctions set forth in this Chapter and, without limitation, as otherwise provided by law.

**8.56.110 Notice to Abate and Penalties for Unlawful Marijuana Cultivation.**

Whenever the enforcing officer determines that a public nuisance as described in this Chapter exists on any property within Mariposa County, he or she is authorized to notify the owner(s) and/or occupant(s) of the property, through issuance of a "Notice to Abate and Penalties for Unlawful Marijuana Cultivation."

**8.56.120 Contents of Notice.**

The notice set forth in 8.56.110 shall be in writing and shall:

A. Identify the owner(s) of the property upon which the nuisance exists, as named in the records of the county assessor/recorder, and identify the occupant(s), if other than the owner(s), and if known or reasonably identifiable;

B. Describe the location of such property by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the property;

C. Identify such property by reference to the assessor's parcel number;

D. State that unlawful marijuana cultivation exists on the property and that it has been determined by the enforcing officer to be a public nuisance described in this Chapter;

E. Describe the unlawful marijuana cultivation that exists