

# ATTACHEMENT A



## AGENDA REQUEST FORM BOARD OF SUPERVISORS COUNTY OF INYO

For Clerk's Use Only:  
AGENDA NUMBER

- Consent     Departmental     Correspondence Action     Public Hearing  
 Scheduled Time for     Closed Session     Informational

**FROM:** Planning Department, Sheriff's Office, District Attorney's Office

**FOR THE BOARD MEETING OF:** May 12, 2015

**SUBJECT:** Medical Marijuana Dispensaries and Cultivation Workshop

**DEPARTMENTAL RECOMMENDATION:** Request the Board of Supervisors hold a workshop to consider options for regulating or prohibiting medical marijuana cultivation and/or dispensary, collective or cooperative operation in unincorporated Inyo County, including zoning regulations and other regulations.

**SUMMARY DISCUSSION:** Inyo County does not have an ordinance regulating medical marijuana dispensary operation or cultivation in unincorporated Inyo County. The purpose of this workshop is to give the Board an opportunity to consider whether and how the County will regulate medical marijuana dispensaries or cultivation, and to provide direction to staff regarding the drafting of a proposed regulatory ordinance for future consideration.

The County's past practice regarding regulating medical marijuana/cultivation through zoning is that such activity has been prohibited by ICC Section 18.78.020, which states "Nothing in this title shall establish rules and regulations where in conflict with state or federal law." Through the Zoning Code update process, the Planning Commission and Board affirmed this approach. However, this issue is being brought before your Board of Supervisors again for consideration in response to recent interest in dispensaries and cultivation in Inyo County. For instance, a lease was pursued to open and operate a medical marijuana dispensary in unincorporated Inyo County, although the lease was ultimately not approved. There has also been interest expressed elsewhere in the County to develop medical marijuana cultivation facilities, including potential consideration by Native American tribes to cultivate marijuana on sovereign tribal lands.

As a result of recent interest in medical marijuana sales and cultivation, the Planning Department, in consultation with the Sheriff and the District Attorney, has prepared this information to assist the Board's consideration of these issues. Staff is requesting the Board provide direction to develop a draft ordinance consistent with the Board's guidance, which staff will bring forward for further consideration and possible action at a later time.

### **STATUTORY BACKGROUND**

In 1996, California voters adopted Proposition 215, known as the Compassionate Use Act (CUA), which intended to ensure that seriously ill Californians had the right to obtain and use marijuana for medical purposes, to ensure that patients and their primary caregivers who used medical marijuana were not subject to prosecution, and to encourage federal and state government to provide for the safe and affordable distribution of medical marijuana to patients. The CUA did not create a right to use marijuana, but provided an affirmative defense to criminal prosecution.

In 2003, the Legislature added the Medical Marijuana Program Act (MMPA), which was intended to enhance patient and caregiver access to medical marijuana by protecting patients from prosecution for transportation, processing, administering, or giving away marijuana to qualified persons for medical use. The

legislation included a provision allowing for local governments to adopt additional ordinances to regulate medical marijuana through zoning, licensing, and other reasonable requirements.

In 2010, the Legislation added section 11362.768 to the MMPA restricting the location of medical marijuana cooperatives, collectives or dispensaries to locations more than 600 feet from schools. This section does not prohibit local governments from further restricting the location of medical marijuana facilities. The MMPA was further amended in 2011 to specify that local governments had the authority to adopt and enforce ordinances governing the location, operation and establishment of medical marijuana facilities.

Local governments' powers to regulate and ban medical marijuana dispensaries were again affirmed in 2013 when the California Supreme Court upheld the City of Riverside's ban on dispensaries and collectives. The Court specified that the issue involved a total ban with respect to dispensaries, not a total ban on access. Also in 2013, the Third District Court of Appeals upheld the City of Live Oak's authority to ban medical marijuana cultivation through an ordinance prohibiting all medical marijuana collectives, cooperatives and dispensaries within the city limits. In 2014, the Fresno County Board of Supervisors voted to ban all cultivation of medical marijuana, and to date, the ban has prevailed against legal challenges.

In summary, Inyo County may regulate medical marijuana dispensaries, collectives, cooperatives, grow sites or mobile dispensaries through zoning and land use regulations. Regulation may range from minor restrictions to a total ban. The following provides an overview of some of the major points for the Board to consider regarding regulation of medical marijuana dispensaries. This list of considerations and options is not exclusive, and does not preclude the Board, staff, or the public from proposing alternatives. If dispensaries are permitted by the County, the dispensary operators (and participants) would be responsible for complying with state *in addition* to the County's regulations.

## **AREAS OF CONCERN**

Areas of concerns associated with permitting medical marijuana cultivation and/or dispensaries, collectives or cooperatives include criminal activity, and environmental consequences. Medical marijuana dispensaries and cultivation sites are often targets for robberies, home invasions or even attempted murder for persons seeking either marijuana or cash kept onsite. Certain communities have also had issues involving loitering and distribution to minors associated with medical marijuana dispensaries. Medical marijuana dispensaries and cultivation are also associated with organized criminal activities such as money laundering and gang activity. Medical marijuana cultivation can cause detrimental environmental consequences such as intensive water use and diversion, habitat destruction, and contamination through introduction of pesticides and herbicides.

## **REGULATORY OPTIONS**

### **I. BAN ALL DISPENSARIES**

As described above, total bans on dispensaries, cooperatives and collectives have been upheld by the courts in numerous court cases to date. If the County decides to seek a total ban, it must be able to demonstrate that qualified patients have access to medical marijuana. The Planning Department has researched whether residents of Inyo County would be able to access medical marijuana and found there are two dispensaries in Mammoth Lakes, two dispensaries in Ridgecrest, one in California City, one in Tehachapi, and several in the Lancaster and Palmdale areas.

### **II. ALLOW AND REGULATE DISPENSARIES**

Cities and Counties that do not ban dispensaries frequently impose conditions on such facilities to mitigate any impacts on the local community. To avoid any suggestion that the City or County is aiding and abetting (or condoning) a violation of federal law, dispensary ordinances and permits typically include a condition requiring the operator comply with all applicable state laws. Should the Board be inclined to allow and regulate dispensaries in Inyo County, staff recommends that any such regulation include this condition.

Other dispensary regulations for the Board's consideration include:

1) Location Regulations

- a) Restrict dispensaries only to locations in existing commercial and/or industrial zones; and/or
- b) Establish a new "MJ" overlay zone specifically defining where dispensaries are permitted; and/or
- c) Prohibit dispensaries in specified locations (such as within 1,000 feet of a school, church, daycare, hospital, etc); and/or,
- d) Require special parcel line setbacks for dispensaries, and/or prohibit dispensaries from sharing a common wall with another business or structure; and/or,
- e) De-concentration – require a specified minimum distance between dispensaries; and/or,
- f) Establish different location regulations based on the size of the dispensary.

2) Permitting

- a) Require dispensaries to obtain a conditional use permit (either a traditional conditional use permit issued by the Planning Commission, or a special permit issued by another County office or body such as the Sheriff's Department, or both); and/or,
- b) Limit the term of the any dispensary use permit to one year (or other time period), and require the operator to apply for periodic renewal; and/or,
- c) Permit dispensaries "by right" in specified zones; and/or,
- d) Limit the number of dispensaries countywide.

3) Size Restrictions

- a) Limit the amount of marijuana (number of plants and/or amount of dried marijuana) maintained on the dispensary premises at any given time subject to confirmation through inspection by the Sheriff; and/or,
- b) Limit the square footage of the dispensary premises.

4) Organization and Operation

- a) Require that the dispensary adhere to all provisions of Proposition 215, the MMPA, and the Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use; and/or,
- b) Require dispensaries to verify the authenticity of any recommendation before distributing marijuana to any person, and maintain records of such verification; and/or,
- c) Limit the dispensary's hours of operation (e.g., 8:00 a.m. to 5:00 p.m.) ; and/or,
- d) Require the dispensary to submit and comply with an operating plan specifying the manner in which operations will be managed and security provided, the number of members/participants/patients to be served, etc., subject to confirmation; and/or,

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- e) Require the dispensary operator to submit proof of landowner consent for the operation of the dispensary; and/or,
- f) Require that the dispensary operator post a bond or place money in escrow to indemnify the county from any liability relating to the dispensary; and/or,
- g) Prohibit transfer of the dispensary from one operator to another without prior County approval (such as an approved amendment to the dispensary permit, if any, issued by the County); and/or,
- h) Require the dispensary to obtain a sales tax seller's permit from the State Board of Equalization; and/or,
- i) Require the dispensary to identify an on-site contact person to respond to complaints from neighbors or law enforcement; and/or,
- j) Require the dispensary to procure and maintain adequate insurance.

## 5) Premises Regulations

- a) Prohibit on-site consumption of marijuana; and/or,
- b) Prohibit preparation/distribution/sale of edibles or permit edibles, subject to ordinary retail food permit requirements; and/or,
- c) Prohibit on-premises sale/distribution/consumption of alcoholic beverages and/or tobacco products; and/or,
- d) Prohibit distribution/sale of marijuana paraphernalia; and/or
- e) Require product labeling (e.g., name of dispensary and weight) for all marijuana distributed by the dispensary; and/or
- f) On-premises cultivation: prohibit, permit, or require; and/or,
- g) Prohibit persons under the age of 18 from being on the premises, unless accompanied by parent or guardian; and/or,
- h) Prohibit any person other than a qualified patient or primary caregiver from entering the dispensary premises; and/or,
- i) Require all persons entering the dispensary premises to present photo ID and doctor's recommendation; and/or,
- j) Require that the exterior appearance of the dispensary premises be compatible with surrounding structures and the neighborhood; and/or,
- k) Prohibit any displaying or advertising of marijuana that is visible from the exterior of the dispensary premises; limit exterior signs to site address and/or dispensary name only; and/or,
- l) Require that the exterior of the premises be maintained clean and litter-free; and/or,
- m) Require that the dispensary's windows remain unobstructed and provide clear visibility into the dispensary during operating hours; and/or,
- n) Require dispensaries to prohibit loitering on the premises; and/or,
- o) Require warning signs regarding state and/or federal law and/or the effects of marijuana to be posted in the dispensary; and/or,
- p) Require submission of a plot plan/diagram of the interior and exterior of the premises; and/or,
- q) Require compliance with specified accessibility (ADA), parking, and other routine development standards.

## 6) Security

- a) Require a centrally monitored alarm system; and/or,
- b) Require exterior lighting to deter crime on the dispensary premises; and/or,
- c) Require bars on the dispensary premises windows; and/or,

- d) Require additional security measures for the dispensary and/or any marijuana storage areas (e.g., minimum wall thickness, metal doors, deadbolt locks, etc.); and/or,
- e) Require security video cameras outside and/or inside the dispensary premises, and require that the footage be maintained for a specified period of time; and/or,
- f) Require regular security assessments by County Sheriffs.

## 7) Records and Monitoring

- a) Require the dispensary to maintain records identifying all members/participants/patients and other persons receiving marijuana, including a copy of each recommendation and the amount(s) of marijuana received, for at least three years; and/or,
- b) Require the dispensary to maintain accounting, banking, and financial records to allow verification that no profit is being made from marijuana distribution; and/or,
- c) Require that the dispensary allow the sheriff to inspect the premises at any reasonable time; and/or,
- d) Require that the dispensary allow the sheriff to inspect its non-medical records and security footage at during business hours without prior notice.

## 8) Employees/Volunteers

- a) Require that any dispensary operator/employee/volunteer be a qualified patient or primary caregiver; and/or,
- b) Prohibit dispensaries from employing any person with a felony conviction, or on felony probation; and/or,
- c) Require the dispensary to provide an annually updated list of all employees, volunteers or paid “in-kind” staff to the sheriff; and/or,
- d) Require background check of operator/employees/volunteers; and/or,
- e) Prohibit the employment of any persons under the age of 21.

### **III. BANNING AND REGULATING CULTIVATION**

Through land use regulation, the County may restrict cultivation by banning outdoor cultivation or restricting it by location, size, and manner of cultivation. Some counties ban any outdoor cultivation; other counties require a set back from property boundaries, limit cultivation within specified square feet or by number of plants, require security measures or screening to discourage criminal activity and to reduce the impacts of cultivation to the health, safety and welfare of surrounding uses. The following is a list of decision points the County may consider in banning or regulating medical marijuana cultivation:

#### 1) Outdoor Cultivation Standards

- a) Require the cultivation operator to submit proof of landowner consent for the cultivation of medical marijuana; and/or,
- b) Prohibit cultivation in specified locations (such as within 1,000 feet of a school, public library or park); and/or,
- c) Require setbacks for outdoor cultivation, including setbacks for enclosed accessory structures, and distance from nearest residences or neighboring uses; and/or,
- d) Limit the maximum cultivation area by number of plants or square footage; and/or,
- e) Require outdoor cultivation areas to be secure from unauthorized entry within a secure enclosure, such as a locked, non-climbable, six-foot fenced area; and/or,
- f) Require outdoor cultivation areas be screened from public streets, public parks, public schools, or other public areas.

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## 2) In-Residence Cultivation

- a) Require the cultivation operator to submit proof of landowner consent for the cultivation of medical marijuana; and/or,
- b) Limit the maximum cultivation area of the total floor area of a residence that may be used for cultivation; and/or,
- c) Limit the maximum electrical loads required for cultivation to ensure additional lighting loads meet the requirements of the currently adopted California Electrical Code subject to random inspection by County Building Inspector; and/or,
- d) Prohibit the use of gas products (CO2, butane, etc.) for medical marijuana cultivation; and/or
- e) Require that cultivation only be permitted in the residence of a qualified patient and/or a designated primary caregiver; and/or,
- f) Require that residences used for cultivation are maintained primarily for sleeping, bathing, and preparation of meals by requiring certain standards be maintained in the residence such as a fully functional kitchen, bathroom(s), and primary bedroom, and prohibiting these spaces from being used for cultivation; and/or,
- g) Requiring proper ventilation be provided as necessary to ensure that indoor medical marijuana cultivation area(s) will not create a humidity, mold, or odor problems.

## 3) Other Considerations

- a) Prohibiting medical marijuana cultivation as a home occupation.
- b) Prohibiting offensive smell associated with cultivation.

**OTHER AGENCY INVOLVEMENT:** n/a

**FINANCING:** There are minimal costs associated with conducting this workshop; however General Funds could be used for future development and consideration of a Medical Marijuana ordinance.

### **APPROVALS**

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>  Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>  Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i>  Approved: _____ Date _____

**DEPARTMENT HEAD SIGNATURE:**

(Not to be signed until all approvals are received) \_\_\_\_\_ Date: \_\_\_\_\_