

County Contract No.

Department

Board of Supervisors

# TRINITY COUNTY

Board Item Request Form

2016-08-10

# 1.01

Contact

Judy Morris

Phone

623-1217

Requested Agenda Location

County Matters

**Requested Board Action:**

Discuss and/or take action to introduce, waive the reading of and enact an urgency ordinance amending Zoning Ordinance No. 315 creating medical marijuana cultivation regulation.

**Fiscal Impact:**

No fiscal impact.

Motion:\_\_\_\_\_ Second\_\_\_\_\_ Roll Call: Ayes:\_\_\_\_\_ Nays:\_\_\_\_\_ Tabled To:\_\_\_\_\_

Action:

Notes:

## STAFF REPORT

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

Date: August 10, 2016

---

**ISSUE:** Should the Board of Supervisors adopt an Urgency Ordinance Enacting Section 32(O) of the Zoning Ordinance No. 315 To Create Medical Marijuana Cultivation Regulation.

This proposed urgency Ordinance is to establish a temporary pilot program to regulate and control the growth of medical marijuana in conjunction with recent legislation adopted by the State of California and the North Coast Regional Water Quality Control Board (“NCRWQCB”) order.

The significance of unregulated medical marijuana growing in Trinity County cannot be understated. We are all living in an uncertain and unregulated situation that continues to expand and impact our communities, neighborhoods, and environment, while also tarnishing the perception of well-meaning farming community members who are anxious for reasonable regulations to be put in place so that there are ground rules and standards for legitimate farming operations.

Many different groups have held meetings and distributed information to inform members of the community and the Board of Supervisors about their specific concerns and viewpoints. The Board of Supervisors has heard many concerns from all parties and this ordinance is trying to reflect as much of that feedback as possible in this Urgency Ordinance. While the Board of Supervisors has the ability to craft policy and local ordinances to start to control this currently unregulated market, it should be noted that ultimately it will be local, state and federal regulatory agencies and law enforcement that will continue to be on the front lines to ensure compliance. MMRSA’s adoption of a comprehensive statewide licensing and enforcement scheme for medial cannabis operations will allow for local jurisdictions to regulate, monitor and enforce, while also allowing local jurisdictions to implement permit fees to support the program.

### **Grand Jury Report**

The 2014-2015 Trinity County Grand Jury Report issued in July 2015 identified a number of concerns related to degradation of the Trinity County physical environment from unregulated marijuana cultivation.

These concerns included threats from:

- Water Diversion and Water Depletion
- Water Contamination
- Pesticides and Fertilizers
- Soil Contamination (by petroleum products etc.)
- (Illegal) Substandard Road Building/Grading
- (Illegal) Substandard Land Clearing

- Non-native soils
- General nuisance (predominantly odor, but also visual)

Many of the threats mentioned in the Grand Jury Report are addressed under the recent North Coast Water Quality Control Board Order.

*Water Quality* - The North Coast Regional Water Quality Control Board (“NCRWQCB”) issued Order No. 2015-0023 Waiver of Waste Discharge Requirements and General Water Quality Certification for Discharges of Wastes from Cannabis Cultivation and Associated Activities or Operations with Similar Environmental Effects (“Order”).

The Order lays out specific requirements for cannabis cultivation activities designed to mitigate any associated threats to water quality. In Section I.A., the Order establishes 12 Standard Conditions that must be achieved by all enrolled Dischargers based on implementation of 142 Best Management Practices (Order Appendix B).

These Standard Conditions address the most pressing environmental concerns raised by the Grand Jury Report and echoed by concerned citizens, environmental organizations and other state agencies throughout the region.

*Water Diversion and Water Deletion* - Standard Conditions I.A.3.d and I.A.5.a-f speak directly to problems associated with Water Diversion and Water Depletion.

*Water Contamination* - Standard Conditions I.A.1.a,d-f; I.A.3.a-d; I.A.4.a-c; I.A.6; I.A.7.a,c; I.A.10 and I.A.11.a &b address potential Water Contamination from irrigation runoff, sediment, Non-native soils and human wastes while I.A.7.a-c; I.A.8; I.A.9.a-e and Appendices E1 & E2 provide protection from contamination due to Pesticides, Herbicides, Fertilizers, petroleum products and related chemicals.

*Grading and Runoff* - In the absence of a county grading ordinance, Standard Conditions I.A.1.a-f, I.A.2.d-f, I.A.3.a-c, I.A.4.a-c and I.A.12 ensure grading and road building activities at enrolled cultivation sites are conducted in a manner protective of surface water flow and function. Importantly, Standard Condition I.A.12 addresses any necessary remediation or restoration activities required to bring sites into compliance with the other Standard Conditions.

*Water Resource Protection Plan Requirement* - In addition to requiring that all enrolled cannabis cultivation sites establish and maintain the Standard Conditions, those activities that present an “elevated threat to water quality” are required to develop and implement a Water Resource Protection Plan that details site-specific conditions and establishes a monitoring protocol, complete with photographic documentation, that becomes part of the enrollment packet.

It is these detailed, site-specific, science-based protocols that allow the Order to conclude in Section III.C. that, “Compliance with Order conditions will ensure that no significant environmental impact to water quality occurs from an activity covered under this Order.”

*Conclusion* - This is why it is imperative that any county land use ordinance related to cannabis cultivation be tied directly to the environmental protocols and protections established in the NCRWQCB Order.

## History

**In 1996, the voters of the State of California approved Proposition 215. “The Compassion Use Act”** which was intended to decriminalize cultivation and possess of medical marijuana by a seriously ill patient, or the patient’s primary caregiver, for the patient’s personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana. The Act also required the State to develop a legal framework to give further structure which was partially developed through the enactment of **SB 420 in 2004**, the “Medical Marijuana Program Act”, expanding and clarifying the scope of the Compassionate Use Act (CUPA) of 1996.

**In August 2015**, responding to the dramatic increase in the number of marijuana gardens and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, trash, and human waste, the **North Coast Regional Water Quality Control Board adopted Region Order #2105-0023**. According to a joint statement from the California Environment Protection Agency and State Water Resources Control Board is meant to protect the environment from the waste that cannabis cultivation releases. The new regulations are meant to address issues that included water storage, erosion control and spoils management on private land. As of February 2016, cultivators were able to enroll in a 3-tier system under this Order.

**September 11, 2015 - The State enacted the Medical Marijuana Regulation and Safety Act (MMRSA) (SB 643, AB 266 and AB 243)** instituting a comprehensive state level licensure and regulatory scheme for cultivation, manufacturing, distribution, transportation, laboratory testing and dispensing of medical marijuana through numbers changes and addition to the Business & Professional code and the Health and Safety Code. MMRSA legalizes and regulates for-profit commercial activity related to medical marijuana in California, twenty years after the passage of Proposition 215.

## Federal Government Policy and Response

The position of the federal government to states that are in the midst of enacting regulatory structures has evolved over the last several years. The Obama administration has struggled with the legalization of medical marijuana in several states. Justice Department Officials had instructed federal prosecutors across the country not to focus federal resources on individuals who were complying with state laws regarding the use of medical marijuana. But the U.S. attorneys in several states that had legalized medical marijuana rebelled, and what was known as the Ogden memo faced stiff resistance from career prosecutors.

“That’s just not what they do,” one former Justice official stated in an interview, “They prosecute people.”

As a result of the internal pushback at DOJ, a new memo was issued by Deputy Attorney General James Cole in 2011 that gave U.S. attorneys more cover to go after medical marijuana distributors. Federal prosecutors began threatening local government officials with prosecution if they went forward with legislation regulating medical cannabis.

After recreational marijuana initiatives passed in Washington and Colorado in November, President Barack Obama said the federal government had “bigger fish to fry” and would not make going after marijuana users a priority.

In August 2013, Deputy Attorney General James Cole also issued a three-and-a-half page memo to U.S. attorneys across the country. “The Department’s guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems the federal government will defer to them to enforce those systems. With the exception to federal activity to trafficking to children, trafficking and financing by street gangs, drug cartels, cultivation on public lands and trafficking across state and international lines.

### **Current Trinity County Personal Grow Ordinance**

The proposed Urgency Ordinance will not repeal or negate the County’s current personal grow ordinance, which currently limits personal grows to up to 8 plants, among other provisions.

The Board can do the following:

1. Adopt Urgency Ordinance ordinance.
2. Keep County Code the same.
3. Direct staff to revise Urgency Ordinance.

**Fiscal Impact:** It is the goal of the ordinance to adopt fees to cover the fiscal impact, however, until a fee study is done, there are potential impacts to the general fund.

Judy Morris  
Judy Morris, Supervisor

Keith Groves  
Keith Groves, Supervisor

**ORDINANCE NO. XXXX**

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

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

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

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

**SECTION 2. Purpose.**

The Board of Supervisors of the County of Trinity hereby States the Purpose of the Urgency Ordinance is as following:

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

Nothing in this Chapter shall be construed to:

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

**SECTION 3. Findings and Declarations**

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

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

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

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

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

Sections:

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

**(1) Definitions:**

As used herein the following definitions shall apply:

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



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

## **(2) Pre-Application**

- (a) Pre-Application grants provisional permission to cultivate marijuana plants within the guidelines of this chapter and state law. Applicants who cultivate pursuant to guidelines of this chapter and applicable state law will be exempt from the plant count restrictions in the existing Trinity County personal grow ordinance. Instead, Pre-Applicants will be subject the square footage provisions in Type I and Type II of MMRSA.
- (b) Applicants shall be entitled to priority processing for future permit applications. The Order of priority for processing permanent license will be determined by date of enrollment in NCRWQCB.

- (c) Any permitting required under the future land use ordinance will require enrollment in the NCRWQCB Order # 2015-0023 and applicant must have been compliant with this requirement during the provisional Pre-Application period to develop a record of environmental compliance.
- (d) This Pre-Application does not guarantee that the Registrant will be considered compliant with any future land use ordinance.
- (e) This Pre-Application does not give the Registrant any property rights, and it is not a permit or a guarantee that a permit will be issued. Pre-Application Registration will be used to apply for permitting under the permanent land use ordinance or for variance if permitting under the ordinance is not possible. Registration does not equate to Non-conforming entitlement under any future land use ordinance and the registration is non-transferrable.
- (f) Registrants are ensured that their applications will be considered prior to any new application under the future land use ordinance.
- (g) Medical marijuana is not recognized under Federal law and registration does not grant any right to violate federal law.
- (h) Should the State begin issuing medical cannabis cultivation licenses under MMRSA before a permanent medical cannabis cultivation ordinance has been enacted in Trinity County, a cultivator of medical cannabis who is registered pursuant to this Chapter and who can otherwise demonstrate consistent compliance with this Chapter, the County Code and all other relevant laws and regulations, may request from the Planning Department a validation stamp on his/her registration certificate so that such document may be used as evidence of local compliance for the purposes of Business and Professions Code §19322(a)(2). The County does not intend any medical cannabis registration document or certificate without a validation stamp to suffice as adequate documentation of local compliance for the purpose of applying for a State license under Business and Professions Code §19322(a)(2).
- (i) Notwithstanding any other provision of this Chapter, should the State begin issuing medical cannabis cultivation licenses under MMRSA before a permanent medical cannabis ordinance has been enacted in Trinity County, the cultivator must file a complete application for the appropriate state license with the appropriate State licensing authority on or before January 1, 2018.
- (j) Notwithstanding any other provision of this Chapter, a cultivator of medical cannabis who is registered pursuant to this Chapter, but who applies for and is denied a State license before a permanent medical cannabis cultivation ordinance has been enacted in the County, must immediately cease all medical cannabis cultivation within the County until he/she successfully obtains the proper State cultivation license(s) under MMRSA.

**(3) Pre-Application Registration Requirements**

- (a) Within sixty (60) days of adoption of this ordinance any person or entity cultivating commercial medical marijuana within Trinity County may register with the Trinity County Planning Department. Registration shall be on a form provided by the Trinity County Planning Department and, at a minimum, shall require the name and mailing address of the registrant; the location address, Assessor's Parcel Number and site map of the cultivation location.
- (b) All Registrants will be required to comply and the following:
  - i. Proof of intent to comply with all County setback requirements.
  - ii. Proof of enrollment in good standing with NCRWQCB Order # 2015-0023.
  - iii. Identify their intended commercial cultivation license:
    - 1. Type 1 – up 5,000 sq. ft.,
    - 2. Type 2 – up to 10,000 sq. ft. “Outdoor” or “Mixed Light.”.
    - 3. Type 3 License of MMRSA – Not allowed at this time by the County of Trinity.
  - iv. Apply for and obtain a BOE Seller's permit.

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

**(4) Registration Phases**

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

**(5) Limitation on Location to Cultivate Marijuana.**

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

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

**(6) Performance Standards for Commercial Cultivation of Medical Marijuana**

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

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

**(7) Denial/Recession of Pre-Application**

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

**(8) Enforcement:**

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

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

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

**(9) Fees:**

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

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

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

**SECTION V.** The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

Ordinance No. XXXX

08/10/2016

Page 10 of 10

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

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

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

---

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

ATTEST:

MARGARET E. LONG  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:

---

Margaret Long, County Counsel