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INTER-DEPARTMENTAL MEMORANDUM

DATE: October 3, 2011

TO: Butte County Planning Commission

FROM: Kathleen Kehoe Greeson, Deputy County Counsel

SUBJECT: Public Hearing regarding Draft Marijuana Dispensary Ordinance

Summary: On January 12, 2010, the Board of Supervisors approved an interim urgency ordinance placing a moratorium on marijuana dispensaries. On February 23, 2010, the Board of Supervisors extended the duration of the interim urgency ordinance for an additional 22 months and 15 days. The interim urgency ordinance will expire on January 10, 2012.

Background:

- The purpose of the interim urgency ordinance was to allow the County time to consider and study possible means of regulating or prohibiting marijuana dispensaries. Staff has studied the issue and believes that a prohibition of marijuana dispensaries is appropriate at this time.
- The interim urgency ordinance was also put in place to allow time for the resolution of litigation regarding local regulation of marijuana dispensaries. *Qualified Patients Assn. vs. City of Anaheim* was recently decided at the trial court level. That decision indicated that the City of Anaheim could prohibit marijuana dispensaries.¹ This decision will most likely be appealed to the 4th District Court of Appeal.
- *County of Los Angeles v. Hill*, held that the County could obtain a preliminary injunction prohibiting defendants from dispensing marijuana without obtaining the necessary licenses and permits required by County code.² The court clarified that the limited statutory immunity from prosecution under the “drug den” abatement law pursuant to Health & Safety Code section 11362.775 does not prevent a county from applying its nuisance laws to marijuana dispensaries that do not comply with valid ordinances.

¹ *Qualified Patients Assn. v. City of Anaheim*, Case No. G040077.

² *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861.

- The County of Los Angeles later implemented a comprehensive ban on marijuana dispensaries. In May 2011, Los Angeles County successfully applied for a preliminary injunction against an operating dispensary as a result of the ban.
- The California legislature recently enacted AB 1300, which amended California Health and Safety Code section 11362.83 to read that local agencies may adopt “local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective..” and to provide for civil or criminal enforcement of the same.

Based on the foregoing, it appears that there is additional support for the adoption of regulations regarding marijuana dispensaries by local agencies.

Recommendation:

Staff recommends that the Planning Commission adopt the attached resolution recommending approval of the ordinance to the Board of Supervisors.

RESOLUTION PC_____

**A RESOLUTION OF THE BUTTE COUNTY PLANNING COMMISSION
RECOMMENDING APPROVAL OF THE MARIJUANA DISPENSARIES
ORDINANCE AND THE ADDITION OF CHAPTER 34B TO BUTTE COUNTY CODE**

WHEREAS, the Board of Supervisors previously imposed an interim urgency ordinance prohibiting the establishment and operation of marijuana dispensaries and directed staff to study possible means to regulate or prohibit marijuana dispensaries; and

WHEREAS, it has been determined that the County has the authority to prohibit the establishment of marijuana dispensaries; and

WHEREAS, the Planning Commission has considered the proposed Marijuana Dispensaries Ordinance (the “Ordinance”), to prohibit the establishment of marijuana dispensaries within the unincorporated portions of Butte County; and

WHEREAS, certain general and categorical exemptions of the California Environmental Quality Act (CEQA) apply to this Ordinance; and

WHEREAS, a duly noticed public hearing was held on October 13, 2011; and

WHEREAS, the Planning Commission has considered public comments and a report from the Office of the County Counsel.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission recommends that the Board of Supervisors:

- I. Find the project is exempt from the requirements of the California Environmental Quality Act (CEQA).
- II. Approve the Marijuana Dispensaries Ordinance and create Chapter 34B to amend the Butte County Code relative to Marijuana Dispensaries.

DULY PASSED AND ADOPTED this 13th day of October, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Harold Wilson - Chair
Planning Commission
County of Butte, State of California

ATTEST:

Kim McMillan,
Planning Commission
County of Butte, State of California

**AN ORDINANCE OF THE COUNTY OF BUTTE ADDING ARTICLE I, ENTITLED
"MARIJUANA DISPENSARIES,"
OF CHAPTER 34B, ENTITLED "MARIJUANA DISPENSARIES," OF THE BUTTE
COUNTY CODE**

The Board of Supervisors of the County of Butte ordains as follows:

Section 1. Chapter 34B is added to the Butte County Code as follows:

CHAPTER 34B MARIJUANA DISPENSARIES

34B-1 Authority and Title. Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code sections 11362.83 and 11362.768, and Government Code section 65800 et seq., the Board of Supervisors does enact this Ordinance, which shall be known and may be cited as the "Butte County Marijuana Dispensary Ordinance."

34B-2 Findings and Purpose. The Board of Supervisors of the County of Butte hereby finds and declares the following:

(a) 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").

1 (b) The intent of Proposition 215 was to enable persons who
2 are in need of marijuana for medical purposes to use it without
3 fear of criminal prosecution under limited, specified
4 circumstances. The Proposition further provides that "nothing
5 in this section shall be construed to supersede legislation
6 prohibiting persons from engaging in conduct that endangers
7 others, or to condone the diversion of marijuana for non-medical
8 purposes."

9 (c) In 2004, the Legislature enacted Senate Bill 420 (codified
10 as California Health and Safety Code sections 11362.7 et seq.)
11 to clarify the scope of Proposition 215, and to provide
12 qualifying patients and primary caregivers who collectively or
13 cooperatively cultivate marijuana for medical purposes with a
14 limited defense to certain specified State criminal statutes.

15 (d) The Federal Controlled Substances Act, 21 U.S.C. §§ 801 et
16 seq., classifies marijuana as a Schedule I Drug, which is
17 defined as a drug or other substance that has a high potential
18 for abuse, that has no currently accepted medical use in
19 treatment in the United States, and that has not been accepted
20 as safe for use under medical supervision. The Federal
21 Controlled Substances Act makes it unlawful, under federal law,
22 for any person to cultivate, manufacture, distribute or
23 dispense, or possess with intent to manufacture, distribute or
24 dispense, marijuana. The Federal Controlled Substances Act
25 contains no exemption for the cultivation, manufacture,

1 distribution, dispensation, or possession of marijuana for
2 medical purposes.

3 (e) Proposition 215 and Senate Bill 420 primarily address
4 criminal law, providing qualifying patients and primary
5 caregivers with limited immunity from state criminal prosecution
6 under certain identified statutes. Neither Proposition 215 nor
7 Senate Bill 420, nor the Attorney General's August 2008
8 *Guidelines for the Security and Non-Diversion of Marijuana Grown*
9 *for Medical Use* adopted pursuant to Senate Bill 420, provides
10 comprehensive land use regulation of facilities and premises at
11 which marijuana is dispensed.

12 (f) Operating dispensaries in Butte County have contributed to a
13 higher concentration of marijuana in the area, as some persons
14 grow and process marijuana specifically with the intent to
15 provide the marijuana to dispensaries. Further, law enforcement
16 has made an arrest in an alleged attempted murder of a
17 dispensary operator. Organized crime has arrived in the County
18 with the intention of establishing a marijuana dispensary and
19 eliminating competition. Organized crime members have committed
20 home invasion robberies to steal marijuana for sale in a
21 marijuana dispensary. The County has experienced a significant
22 increase in arrests for marijuana-related crime and specifically
23 in arrests of juveniles for marijuana-related crime.

24 (g) Proposition 215 and Senate Bill 420 do not preempt local
25 zoning or nuisance regulations affecting marijuana-related land

1 uses; rather, Health and Safety Code Section 11362.83 was
2 recently amended to provide that local agencies may (1) enact
3 ordinances that regulate the location, operation or
4 establishment of a medical marijuana cooperative or collective,
5 (2) may enforce such local ordinances civilly and criminally and
6 (3) enact other laws consistent with the article. Local
7 regulatory authority over such land uses has been recognized and
8 affirmed in such cases as *City of Claremont v. Kruse* (2009) 177
9 Cal.App.4th 1153, *County of Los Angeles v. Hill* (2011) 192
10 Cal.App.4th 861 and *Qualified Patients Assoc. v. City of Anaheim*
11 (07CC09524).

12 (h) The Board of Supervisors hereby finds that marijuana
13 dispensaries are not substantially similar to other permitted,
14 conditional or accessory uses in any zone in the County and
15 therefore are prohibited in any zone consistent with Section 24-
16 65 of the Butte County Code. The Board of Supervisors further
17 finds that marijuana dispensaries previously established in this
18 County are unlawful and a public nuisance, and may be abated,
19 eliminated or enjoined as provided by the Butte County Code or
20 state law.

21 (i) Nothing in this Ordinance shall be construed to allow the
22 use of marijuana for non-medical purposes, or allow any activity
23 relating to the cultivation, distribution or consumption of
24 marijuana that is otherwise illegal under state or federal law.
25 No provision of this Ordinance shall be deemed a defense or

1 immunity to any action brought against any person by the Butte
2 County District Attorney, the Attorney General of State of
3 California, or the United States of America.

4 **34B-3 Definitions.**

5 Except where the context clearly indicates otherwise, the
6 following definitions shall govern the construction of the words
7 and phrases used in this Ordinance:

8 (a) "Facility" includes any facility, building, structure,
9 premises, storefront, or location, whether fixed or mobile,
10 permanent or temporary, and any delivery service.

11 (b) "Marijuana Dispensary" means any facility meeting any or all
12 of the following criteria:

13 A facility where marijuana is made available for medical
14 purposes pursuant to Health and Safety Code sections 11362.5
15 and/or 11362.7 et seq. or otherwise; provided, however, that a
16 "Marijuana Dispensary" shall not include the following
17 facilities pursuant to the following provisions of Division 2 of
18 the Health and Safety Code:

19 a clinic licensed pursuant to Chapter 1; a health care facility
20 licensed pursuant to Chapter 2; a residential care facility for
21 persons with chronic life-threatening illness licensed pursuant
22 to Chapter 3.01; a residential care facility for the elderly
23 licensed pursuant to Chapter 3.2; or a home health agency
24 licensed pursuant to Chapter 8, as long as any such use complied
25 strictly with applicable law, including, but not limited to,

1 Health & Safety Code Sections 11362.5 et seq. and 11362.7 et
2 seq. and the Butte County Zoning Ordinance (Chapter 24 of the
3 Butte County Code).

4 "Marijuana Dispensary" includes any medical marijuana collective
5 or cooperative that meets any or all of the foregoing criteria.

6 This Ordinance shall in no way limit the right to possess, use
7 or cultivate marijuana for medicinal purposes as is presently
8 authorized by the laws of the State of California as set forth
9 in the Health and Safety Code.

10 **34B-4 Prohibition of Marijuana Dispensaries.** Notwithstanding
11 any other provision of this Code, the establishment,
12 development, construction, maintenance, or operation of a
13 Marijuana Dispensary is hereby prohibited, and is not a
14 permitted or conditionally permitted use in any zoning district,
15 even if located within an otherwise permitted use. No person
16 shall establish, develop, construct, maintain, or operate a
17 Marijuana Dispensary, and no application for a building permit,
18 use permit, variance, or any other entitlement authorizing the
19 establishment, development, construction, maintenance, or
20 operation of any Marijuana Dispensary shall be approved by the
21 County of Butte or any officer or employee thereof.

22 **34B-5 Enforcement.** When a person violates any provision of
23 this Ordinance, the County may use any and all remedies
24 available to it, including those set out in Butte County Code
25 Chapter 1 (General Provisions), Chapter 41 (Code Enforcement

1 Policies and Procedures), Chapter 24 (Zoning), Chapter 32A
2 (Property Maintenance and Abatement of Nuisances) and all other
3 applicable sections of the Butte County Code.

4 Section 2. The County finds that this Ordinance is not subject
5 to the California Environmental Quality Act (CEQA) pursuant to
6 Sections 15060(c)(2) (the activity will not result in a direct
7 or reasonably foreseeable indirect physical change in the
8 environment) and 15061(b)(3) (there is no possibility the
9 activity in question may have a significant effect on the
10 environment). In addition to the foregoing general exemptions,
11 the following categorical exemptions apply: Sections 15308
12 (actions taken as authorized by local ordinance to assure
13 protection of the environment) and 15321 (action by agency for
14 enforcement of a law, general rule, standard or objective
15 administered or adopted by the agency, including by direct
16 referral to the County Counsel as appropriate for judicial
17 enforcement).

18 Section 3. If any provision of this Ordinance or the
19 application thereof to any person or circumstances is for any
20 reason held to be invalid by a court of competent jurisdiction,
21 such provisions shall be deemed severable, and the invalidity
22 thereof shall not affect the remaining provisions or other
23 applications of the Ordinance which can be given effect without
24 the invalid provision or application thereof.

1 Section 4. This Ordinance shall take effect thirty (30) days
2 after the date of its passage. The Clerk of the Board of
3 Supervisors is authorized and directed to publish this ordinance
4 before the expiration of fifteen (15) days after its passage.
5 This Ordinance shall be published once, with the names of the
6 members of the Board of Supervisors voting for and against it,
7 in the Chico Enterprise Record, a newspaper of general
8 circulation published in the County of Butte, State of
9 California."

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1 PASSED AND ADOPTED by the Board of Supervisors of the County of
2 Butte, State of California, on the ____ day of ____ 2011, by
3 the following vote:

- 4
- 5 AYES:
- 6 NOES:
- 7 ABSENT:
- 8 NOT VOTING:
- 9

10 _____
11 STEVE LAMBERT, Chair of the
12 Butte County Board of Supervisors

12 ATTEST:
13 Paul Hahn,
14 Chief Administrative Officer and
15 Clerk of the Board

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17 By: _____
18 Deputy

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