



**COUNTY OF PLACER**  
**Community Development/ Resource Agency**

Michael J. Johnson, AICP  
Agency Director

**PLANNING**

**MEMORANDUM**

**TO:** Honorable Board of Supervisors

**FROM:** Michael J. Johnson, AICP  
CDRA Director

**DATE:** April 6, 2010

**SUBJECT:** Zoning Text Amendment (ZTA 20090393)  
Medical Marijuana Collectives, Cooperatives or Dispensaries

**ACTION REQUESTED:** The Planning Department brings forward the Planning Commission's recommendation that the Board of Supervisors amend Chapter 17, Article 17.04, Section 17.04.030 and Article 17.06, Section 17.06.050 to define and disallow medical marijuana collectives, cooperatives or dispensaries to operate in Placer County. In addition, the amendments will clarify that the production and composting of cannabis is not included in the definition of "Crop Production" or "Agricultural processing" within the existing County Code.

**BACKGROUND:** The permitting of medical marijuana collectives, cooperatives or dispensaries by local governments as a legal use or business is both a public policy issue and a contentious legal issue. Under federal law, marijuana use for any purpose is illegal. However, California, as well as a number of other states, has enacted medical marijuana legislation that allows for "seriously ill" residents of the State to have access to medical marijuana for medical purposes. To further complicate the legal medical marijuana issue between federal and state law, U.S. Attorney General Eric H. Holder Jr. stated on March 18, 2009 that the U.S. Justice Department will not prosecute medical marijuana dispensaries that are operating legally under existing state laws. The reaction of counties and municipalities to this situation has been decidedly mixed.

This report summarizes the conflict between federal and California law, discusses the issues pertaining to regulations in Placer County and provides a recommendation for a Zoning Text Amendment (ZTA) that would ban medical marijuana collectives, cooperatives or dispensaries as a land use within Placer County. In addition, the amendment would clarify that the production and composting of cannabis sativa L. is not included in the existing County definitions of "Crop Production" or "Agricultural processing". These amendments would not affect the County's existing local identification card program for medical marijuana qualified patients and primary caregivers.

## **Federal Legislation**

Under federal law (the Controlled Substances Act of 1970), marijuana is categorized as a Schedule I drug and is illegal to use for any purpose. Findings for Schedule I drugs under Chapter 13, Section 812 of the Controlled Substances Act include:

- (A) The drug or other substance has a high potential for abuse.
- (B) The drug or other substance has no currently accepted medical use in treatment in the United States.
- (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Under the federal Controlled Substances Act, possession of any marijuana is a misdemeanor, and cultivation is a felony. In addition, premises used to sell or cultivate marijuana for sale are subject to forfeiture.

## **State Legislation**

Federal law has not prevented a number of states from enacting medical marijuana legislation. These states include Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington. Ten states, plus the District of Columbia, have symbolic medical marijuana laws (laws that support medical marijuana but do not provide patients with legal protection under federal law). The District of Columbia approved a medical marijuana initiative by 69 percent, but Congress was able to nullify the vote results because the District of Columbia is a federal district and not a state.

## **California**

In 1996, California voters approved Proposition 215, the Compassionate Use Act as law. This law permits residents of the State who receive a doctor's recommendation to legally cultivate, and consume medical marijuana. The purposes of the Act are as follows:

- 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 who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. However, it is not enough to have one of these diseases to be automatically qualified for marijuana exemption under Proposition 215; a physician's recommendation is required.
- To ensure that patients who obtain and use marijuana for medical purposes or their primary caregivers obtain on their behalf, have a legal defense against unnecessary arrests and criminal sanctions to protect their right to use the drug.
- To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana

In 2004, SB 420, a legislative statute authored by Senator Vasconcellos, went into effect and this law is intended to clarify Proposition 215; allow patients to "collectively or cooperatively" cultivate for medical purposes; allow probationers, parolees, and prisoners to apply for permission to use medical marijuana; and sets limits on where marijuana may be smoked. The law also establishes a statewide, voluntary ID card system administered by county health departments. This program is commonly referred to as the Medical Marijuana Program (MMP). Placer County currently complies with the State law requirements by participating in the medical marijuana patient/primary caregiver identification card program.

### **California Attorney General's Guidelines**

In August 2008, the Attorney General produced a set of guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties and in accordance with California law; and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law (Attachment 2).

For purposes of local regulation, the Attorney General stated that a "properly organized" and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries which do not substantially comply with the guidelines are likely operating outside the law and are subject to arrest and criminal prosecution. As an example, the Attorney General cited dispensaries that merely require patients to complete a form summarily designating a business owner as their primary caregiver and/or offering marijuana in exchange for cash "donations" are likely unlawful.

### **Proposed Amendments Summary**

The proposed Zoning Text Amendment has been drafted as a result of conflicting Federal and State legislation related to Medical Marijuana and because of public safety issues that have been known to exist related to Medical Marijuana dispensaries. It is staff's determination that the proposed Zoning Text Amendment banning such facilities is consistent with the County's broad authority to impose zoning regulations under its "police power"; and that by doing so the County will be reducing the potential increased demand for law enforcement response in Placer County that results from increased criminal activity associated with Medical Marijuana dispensaries.

The proposed Zoning Text Amendments language is provided in Attachment 1 and is presented below. The Zoning Ordinance language proposed to be amended is shown as underlined; deleted text is shown as ~~strikeout~~.

**"Agricultural processing"** (land use) means the processing of crops after harvest, to prepare them for on-site marketing or processing and packaging elsewhere, including but not limited to the following; provided, that any of the activities performed in the field with mobile equipment not involving permanent buildings are included under "Crop production." Agricultural Processing does not include the process of composting or the processing of Cannabis sativa L. (Ord. 5179-B)

1. Alfalfa cubing;
2. Alcohol fuel production; (Ord. 5526-B)
3. Corn shelling;
4. Cotton ginning;
5. Custom milling of flour, feed and grain;
6. Custom grist mills;
7. Dairies (but not feedlots, see instead "Animal sales yards, feedlots, stockyards");
8. Drying of corn, rice, hay, fruits and vegetables;
9. Grain cleaning and custom grinding;
10. Hay baling and cubing;
11. Pre-cooling and packaging of fresh or farm-dried fruits and vegetables;
12. Sorting, grading and packing of fruits and vegetables;
13. Taxidermy;
14. Tree nut hulling and shelling;

15. Wineries and associated uses. See definition for "Winery" and Section 17.56.330 for specific use requirements applicable to wineries and associated uses. (Ord. 5526-B) (SIC: 0723, 0724)

**"Crop Production"** (land use) means agricultural and horticultural uses including but not limited to production of grains, field crops, vegetables, fruits, nut trees, herbs, flowers and seed production, nursery stock and ornamental plant production (including those plants, trees, shrubs, and ground covers grown in containers, green houses [See Section 17.56.180(C)(3) for applicable regulations] shade structures, under cover and in the ground [Plant Production Nurseries, that is the production of all types of nursery stock and ornamental plants, are subject to separate requirements and permits], tree and sod farms, associated crop preparation services and harvesting activities including, but not limited to, mechanical soil preparation, irrigation system construction, spraying, crop processing and sales of the agricultural crop only (See Section 17.56.165). (Ord. 5304-B, 5126-B). Crop Production does not include the production of Cannabis sativa L.

**"Medical Marijuana Collective, Cooperative or Dispensary"**. Any location, interior or exterior, structure, facility or vehicle, whether fixed or mobile, utilized in full or in part, as a place at or in which marijuana for medical purposes, as such is identified in Health and Safety Code section 11362.5(b)(1)(A), is located, stored, placed, cultivated, processed, distributed, made available, sold, traded, exchanged or bartered for in any way, with or without consideration. For purposes of this definition, "distributed" includes the transportation of medical marijuana. A "medical marijuana collective, cooperative or dispensary" shall not include the following uses, provided that such uses comply with this chapter and all other applicable provisions of the County Code and all other applicable laws, including but not limited to Health and Safety Code section 11362.5 et seq.: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

## **DISCUSSION OF ISSUES**

### **Conflict between State and Federal Law**

With both the California's Compassionate Use Act and the Medical Marijuana Program Act in place, there is a conflict between state and federal law on the subject of medical marijuana. That is, under federal law, marijuana is illegal to use for any purpose, while California law permits residents of the State who receive a doctor's recommendation to legally cultivate, purchase and consume medical marijuana. This conflict has created a dilemma for local governments and their law enforcement agencies, particularly with regard to medical marijuana dispensaries.

A "dispensary" is a facility where the primary purpose is to dispense medical marijuana to specific individuals (i.e., qualified patients) that have a recommendation from a physician for medical purposes. For the reasons set forth above, these dispensaries violate Federal law. Dispensaries are also not explicitly authorized by California state law. Nonetheless, the original adoption of Proposition 215 and the subsequent enactment of SB 420 have created increased interest in the establishment of medical marijuana dispensaries throughout the State even though neither Proposition 215 nor SB 420 even mention medicinal marijuana dispensaries.

Although Proposition 215 has been in effect for almost nine years, there is no indication of any imminent resolution of the clear conflict between state and federal law. The California Attorney General's August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use," indicates that although medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law. This situation forces local governments in California to consider adopting local ordinances designed to either regulate or prohibit medical marijuana dispensaries.

**Ability to Regulate**

The County has the broad authority to impose zoning regulations under its "police power." "Police power" regulations are those designed to protect and promote the public's health, safety and welfare. Regulations aimed at medical marijuana dispensaries certainly fall within this category. As discussed in the "White Paper on Marijuana Dispensaries" which was prepared by the California Police Chiefs Association's Task Force on Marijuana Dispensaries, there is a legitimate public safety dimension reported by other local agencies that allow dispensaries. For example, in local agencies where dispensaries are allowed there are reports of increases of illegal drug activity, illegal drug sales, robbery of persons within and leaving dispensaries, loitering around dispensaries, falsely obtained identification cards, and other increases in criminal activity. Therefore, the operation of medical marijuana dispensaries could result in increased demands for law enforcement response in Placer County, thereby negatively impacting the Sheriff Department's ability to respond to other calls for service (refer to Attachment 3 for more detailed analysis of this issue).

Staff has researched medical marijuana dispensary regulations in the State. In California, approximately 120 cities and 8 counties have banned dispensaries altogether, while approximately 30 cities and 9 counties have adopted dispensary regulatory ordinances. Others agencies have adopted moratoriums to allow for further review and consideration of the issues. Based upon data gathered from California cities in which dispensaries have been operated, it is clear the establishment of medical marijuana dispensaries has the potential to negatively impact the health, safety, and welfare of the community. In addition, the establishment of such facilities could compromise the working relationship between Placer County law enforcement agencies and the federal Drug Enforcement Agency (DEA), which is the federal agency responsible for enforcing the federal drug laws.

Attached to this staff report is a White Paper on Marijuana Dispensaries prepared by California Police Chiefs Association (Attachment 3), which provides background on medical marijuana dispensaries and describes the impacts that could occur by allowing medical marijuana dispensaries to operate within the County of Placer. In order to avoid impacts from the establishment of dispensary facilities, the Planning Commission adopted a motion to recommend that the Board adopt the proposed Zoning Text Amendment to ban medical marijuana collectives, cooperatives or dispensaries within Placer County.

**PLANNING COMMISSION HEARING:** At its January 28, 2010 meeting, the Planning Commission considered the proposed Zoning Text Amendment for medical marijuana collectives, cooperatives or dispensaries. At that hearing, the Planning Commission discussed the nature of marijuana collectives, cooperatives or dispensaries as a land use in the County. In addition, six individuals provided public testimony, five opposing the amendments and one in favor of the proposed amendments. The Planning Commission adopted a motion (5:1, with Commissioner Gray voting no and Commissioner Brentnall absent) to recommend approval of

the proposed zoning text amendment to the Board of Supervisors. Commissioner Gray voted against the proposal stating his consideration for regulating such land uses.

**MUNICIPAL ADVISORY COUNCIL REVIEW:** Following the Planning Commission hearing it was requested that the proposed Zoning Text Amendment be presented to the District 5 advisory councils for their consideration. In addition, staff contacted the other advisory councils within the County to provide opportunity for their consideration on the proposed Zoning Text Amendment. The Granite Bay and West Placer MACs did not request the Zoning Text Amendment be presented, and the North Auburn and Horseshoe Bar MAC meetings were cancelled for March. At the time of preparation of this report, the proposed Zoning Text Amendment has been presented to four Advisory Councils. A summary of the Advisory Council's recommendations are provided below, and letters from these Councils are provided in Attachment 4. Additional Council recommendations will be presented as part of the staff presentation to the Board of Supervisors.

<b>Advisory Council</b>	<b>Summary Action</b>
<b>Sheridan</b>	No formal action.
<b>NTRAC</b>	Recommend the Board disallow the staff report because a staff directive predetermined the results. Further, recommend that the Board reject the Planning Commission report based on "the above-mentioned skewed report". Recommend that staff be directed to start over on researching the Medical Marijuana Collectives, Cooperatives, or Dispensaries, beginning with inclusive community comment, proper research, and comparative studies of like-businesses and come back through the proper channels of the Municipal Advisory Councils for further discussion.
<b>Newcastle/ Ophir</b>	Support staff report recommendation.
<b>Meadow Vista</b>	Recommend the Board disallow the staff report because a staff directive predetermined the results. Further, recommend that the Board reject the Planning Commission report based on "the above-mentioned skewed report". Recommend that staff be directed to start over on researching the Medical Marijuana Collectives, Cooperatives, or Dispensaries, beginning with inclusive community comment, proper research, and comparative studies of like-businesses and come back through the proper channels of the Municipal Advisory Councils for further discussion.

**Survey of Other Jurisdictions' Experiences:**

At the request of the North Tahoe Regional and Meadow Vista Advisory Councils, staff has continued to research how other local governments have approached the issue of medical marijuana dispensaries. Some jurisdictions have adopted ordinances which establish regulations governing the number, location or operating standards for these businesses. Attachment 5 provides the report from Americans For Safe Access, entitled Medical Cannabis Dispensing Collectives and Local Regulation. This report describes the community benefits from regulated dispensaries. In addition, the report provides a List of City and County Ordinances (Appendix A) although recent changes to the City of Los Angeles ordinance illustrate that this list and the content of the ordinances are in flux.

Several cities have adopted zoning moratoriums which prevent establishment of these facilities pending further study. Some jurisdictions have allowed these businesses to proliferate with no attempt at regulation. Attachment 6 provides a list by California jurisdiction of marijuana dispensaries ordinances, moratoriums and bans. Within Placer County, the incorporated cities of Auburn, Colfax, Lincoln, Rocklin, and Roseville have bans on dispensaries and Loomis has a moratorium in place. The Town of Loomis is currently working on an ordinance to ban dispensaries.

In 2004, the City of Colfax approved a business license for a dispensary. At that time, the City's Planning Department determined that such a use was similar to a commercial retail business, such as the selling of food, hardware, dry goods, drug, furniture and similar related stores and shops, which are considered to be a permitted use in a commercial zoning district. However, in 2009 the City of Colfax adopted an ordinance prohibiting new medical marijuana dispensaries, citing potential impacts on sensitive neighborhoods, such as traffic, parking and loitering.

**FISCAL IMPACT:** According to the State Board of Equalization, the sale of marijuana is taxable. Therefore, some advocates argue that permitting medical marijuana dispensaries to operate in Placer County could raise sales taxes revenues for the County. However, such revenues would likely be offset by the increased costs in regulating, licensing and processing background checks on operators and employees of medical marijuana dispensaries, as well as an increased demand for law enforcement calls for service as identified in the reports included in this analysis.

**CEQA COMPLIANCE:** Under the California Environmental Quality Act (CEQA) guidelines, when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA review. In this instance, the proposed zoning text amendment bans land use resulting in no impact to the physical environment, (CEQA Section 15061(b); Placer County Environmental Review Ordinance Section 18.36.010(B)(3).

**PUBLIC NOTICES AND REFERRAL FOR COMMENTS:** A legal notice was published in the *Sacramento Bee* and *Sierra Sun* newspaper. All of the Municipal Advisory Councils (MACs) received notice of the amendments and were transmitted copies of this staff report prior to this meeting.

**RECOMMENDATION:** The Planning Department forwards the Planning Commission's recommendation that the Board of Supervisors approve the Zoning Text Amendment relating to marijuana collectives, cooperatives or dispensaries, as set forth in Attachment 1, subject to the following findings:

1. Medical marijuana dispensaries, collectives, cooperatives should be prohibited in the County of Placer because the presence of such dispensaries causes adverse secondary impacts that are detrimental to the health, safety, and welfare of the community. The adverse secondary impacts associated with medical marijuana dispensaries include, but are not limited to the substantial likelihood for increase in criminal activity, illegal drug activity, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtained identification cards, and burglaries at dispensaries.

2. These amendments are consistent with state law because the prohibition of medical marijuana dispensaries, collectives, cooperatives does not affect an individual's right to cultivate and possess medical marijuana and does not prevent a patient's primary health care provider from dispensing medical marijuana to their patient, as provided under California law.
3. These amendments are consistent with federal law because federal law prohibits the cultivation, possession, or distribution of marijuana.

Respectfully submitted,



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MICHAEL J. JOHNSON, AICP  
Director of Planning

Attached to this report for the Board's information/consideration are:

**ATTACHMENTS:**

- Attachment 1: Proposed Zoning Text Amendments
- Attachment 2: The California Attorney General's August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use"
- Attachment 3: White Paper on Marijuana Dispensaries by California Police Chiefs Association
- Attachment 4: Advisory Council Recommendation Letter From:
  - Sheridan Municipal Advisory Council, February 12, 2010
  - North Tahoe Regional Advisory Council, February 16 2010
  - Newcastle/Ophir Municipal Advisory Council, February 19, 2010
  - Meadow Vista Municipal Advisory Council, dated March 11, 2010
- Attachment 5: Medical Cannabis Dispensing Collectives and Local Regulation from Americans For Safe Access January 2010.
- Attachment 6: List by California jurisdiction of marijuana dispensaries ordinances, moratoriums and bans.
- Attachment 7: Correspondence Received

cc:

Paul Thompson- Deputy Planning Director  
Loren Clark - Deputy Planning Director  
Jennifer Dzakowic - Senior Planner  
Scott Finley - County Counsel  
Karin Schwab - County Counsel  
Richard Eiri - Engineering and Surveying Division  
Jill Pahl - Environmental Health Services

Tim Wegner- Chief Building Official  
Bob Eicholtz - Emergency Services  
Sherriff's Department  
Air Pollution Control District  
Redevelopment Agency  
Alf MAC's  
Subject/chrono files