



**RESOURCE
MANAGEMENT AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

CONNIE CONWAY
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: February 12, 2008

Public Hearing Required	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Published Notice Required	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Advertised Published Notice	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Resolution, Ordinance or Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>

CONTACT PERSON: Celeste Perez PHONE: 559-733-6291

SUBJECT: Extension of the Interim Zoning Ordinance No. 3353 prohibiting the establishment of Medical Marijuana Dispensaries

REQUEST(S):

That the Board of Supervisors:

1. Hold a public hearing on February 12, 2008, in accordance with Government Code §65858, pertaining to a proposed extension of Tulare County Ordinance No. 3353 (Interim Zoning Ordinance) for an additional period of ten (10) months and fifteen (15) days.
2. Receive, consider, approve and issue a written report from the Tulare County Resource Management Agency describing the measures taken to alleviate the condition which led to the adoption of Tulare County Ordinance No. 3353.
3. Adopt pursuant to Government Code §65858, the attached proposed ordinance extending Tulare County Ordinance No. 3353 for an additional period of ten (10) months and fifteen (15) days, commencing on February 22, 2008 and ending January 5, 2009. Adoption of this proposed ordinance requires a four-fifths vote.

SUBJECT: Extension of the Interim Zoning Ordinance No. 3353 prohibiting the establishment of Medical Marijuana Dispensaries

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4. Upon adoption of the proposed ordinance, approve the attached summary of the ordinance extending the Interim Zoning Ordinance and direct the Clerk of the Board to publish such summary within five (5) days and to post a certified copy of the complete ordinance within fifteen (15) days as required by law.

SUMMARY:

Your Board has expressed interest in amending the Tulare County Ordinance Code provision related to business licenses or the Tulare County Zoning Ordinance, No. 352, Section 15.3, to address the public health, safety and welfare concerns raised by Medical Marijuana Dispensary use. Existing zoning regulations may not adequately address the establishment of such dispensaries. Currently these dispensaries may be located in any of the designated zones and areas without a permit and notice to the County. Further, business licenses are not required for such uses.

On January 8, 2008, the Board of Supervisors was advised that the Resource Management Agency had learned of several Medical Marijuana Dispensaries opening within the County. There is concern that violations of Section 15.3 of the Zoning Ordinance are occurring. County staff suspects that at least three Medical Marijuana Dispensaries are in violation of the current zoning requirements.

As an urgency measure, at its January 8, 2008 regular meeting, the Board of Supervisors found that the described activity constituted an immediate and current threat to the public health, safety and welfare. As such, your Board adopted Tulare County Ordinance No. 3353, an Interim Zoning Ordinance, to prohibit the establishment of Medical Marijuana Dispensaries and similar activities until an amendment to the Tulare County Licensing Ordinance or Zoning Ordinance addressing these activities, can be adopted.

Several dispensaries currently exist in the County and the current number of dispensaries seem to be adequate to meet the needs of the number of medical marijuana users in the County. There is concern of an excessive concentration of dispensaries in the County. For the 2007 fiscal year, there were approximately 21 valid Medical Marijuana Program identification cards. Since the County provided zoning regulations for Medical Marijuana Dispensaries eight months ago, seven known dispensaries have opened and are currently operating.

Other public entities have reported that Medical Marijuana Dispensaries result in harmful secondary effects such as security, traffic congestion, parking problems, loitering, noise and other harmful secondary effects.^{1,2} The County is concerned that

¹ City of Davis staff report, report on Medical Marijuana Dispensaries Moratorium, August 27, 2004

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DATE: February 12, 2008

the concentration of dispensaries will increase these impacts. Copies of these studies have been provided to the Clerk of the Board of Supervisors for the Board's information.

In addition, the law remains unsettled regarding Medical Marijuana Dispensaries and use as there is an apparent conflict between federal and state law. It may be appropriate to limit further establishment of these dispensaries in the unincorporated areas until this conflict has been resolved.

As adopted under Government Code §65858, Ordinance No. 3353 will only remain in effect for forty-five (45) days unless extended. As such, Ordinance No. 3353, the Interim Zoning Ordinance, expires on February 22, 2008. After Notice, Public Hearing and Adoption, the attached proposed ordinance would extend the period of the original Interim Zoning Ordinance another ten (10) months and fifteen (15) days. In addition, at least ten (10) days prior to the expiration of the original Interim Zoning Ordinance, the Board of Supervisors must issue a report on the measures taken to alleviate the conditions which led to the adoption of such Ordinance. A report for this purpose is attached for your consideration and approval (see Attachment A).

The Interim Zoning Ordinance and the proposed ordinance extending its term are only temporary in nature and do not prohibit other beneficial uses of the properties affected. In order to adopt the proposed ordinance extending the original Interim Zoning Ordinance, the Board must find that there continues to be a current and immediate threat to the public health, safety or welfare.

A second extension to the Interim Zoning Ordinance is available pursuant to the procedure outlined in California Government Code §65858.

FISCAL IMPACT/FINANCING:

None

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The Medical Marijuana Dispensary Extended Interim Zoning Ordinance addresses the County Strategic Initiative #1 (Safety and Security) by providing a reasonable process for the locating of Medical Marijuana Dispensaries and mitigating impacts on sensitive land uses.

² City of Riverside Planning Department Proposed Resolution regarding Ordinance No. 449.224, amending and extending ordinance No. 449.223, an interim ordinance prohibiting the establishment of Medical Marijuana Dispensaries – Countywide (unincorporated areas)

SUBJECT: Extension of the Interim Zoning Ordinance No. 3353 prohibiting the establishment of Medical Marijuana Dispensaries
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ALTERNATIVES:


1. Your Board may decide not to adopt the proposed ordinance extending the period of Ordinance No. 3353, however this would allow MMDs to locate without a license or permit.
2. Your Board may decide to limit the areas covered by the Interim Zoning Ordinance extension to different and/or more specific zones in the County instead of applying it to all unincorporated areas. This would allow for MMDs to locate in specific areas as addressed.
3. Your Board may decide to limit the uses prohibited to specific types of medical marijuana dispensary uses for the period of the proposed extension. This would regulate specific uses and/or dispensaries from located within the extension timeline.
4. Your Board may decide to limit the uses prohibited to only those within a certain distance of the sensitive uses identified by the Board during the proposed extension. This would allow for MMDs to still locate within areas identified in Section 15.3 of the Tulare County Zoning Ordinance.

INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:

Tulare County CAO, Tulare Tax Collector, Tulare County Sheriff, Tulare County Health and Human Services Agency.

ADMINISTRATIVE SIGN-OFF:


George Finney
Assistant Director, Planning


Henry Hash
Director

cc: Auditor/Controller
County Counsel
County Administrative Office (2)

Attachment A: Report on the Measures Taken to Alleviate the Conditions

Attachment B: Ordinance Summary

Attachment C: Draft Extended Interim Zoning Ordinance

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF MEDICAL)
MARIJUANA DISPENSARIES)
LOCATING WITHIN THE)
UNINCORPORATED AREAS)
OF THE COUNTY)

RESOLUTION NO. _____

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD FEBRUARY 12,
2008, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Held a public hearing on February 12, 2008, in accordance with Government Code §65858, pertaining to a proposed extension of Tulare County Ordinance No. 3353 (Interim Zoning Ordinance) for an additional period of ten (10) months and fifteen (15) days.
2. Received, considered, approved and issued a written report from the Tulare County Resource Management Agency describing the measures taken to alleviate the condition which led to the adoption of Tulare County Ordinance No. 3353.
3. Adopted pursuant to Government Code §65858, the attached proposed ordinance extending Tulare County Ordinance No. 3353 for an additional period of ten (10) months and fifteen (15) days, commencing on February 22, 2008 and

ending January 5, 2009. Adoption of the proposed ordinance required a four-fifths vote.

4. Upon adoption of the proposed ordinance, approved the attached summary of the ordinance extending the Interim Zoning Ordinance and directed the Clerk of the Board to publish such summary within five (5) days and to post a certified copy of the complete ordinance within fifteen (15) days as required by law.

Attachment A

Report on Measures Taken by Tulare County to Alleviate the Condition Which Led to the Adoption of Tulare County Ordinance No. 3353

1. Request to Initiate Preparation of an Amendment to the Tulare County Ordinance Code, to Development a Medical Marijuana Dispensary Business License.

On a date to be determined, the Tulare County Board of Supervisors will consider a request to initiate preparation of an amendment to the Tulare County Ordinance Code, pertaining to medical marijuana dispensary uses, to address the public health, safety and welfare concerns raised by medical marijuana dispensary uses. As Section 15.3 of the Zoning Ordinance, Ordinance No. 352, is currently written, the County cannot track the locations of Medical Marijuana Dispensaries (MMD). A Medical Marijuana Dispensary Business Licensing Ordinance would help to identify where these uses are located. County staff suspects that at least three MMD's are in violation of the current zoning requirements.

Such an ordinance is necessary to address specific concerns pertaining to security, hours of operation, and the amount of dispensaries necessary. This would allow for the protection of certain sensitive land uses while ensuring that there are reasonable sites zoned within the County in which such uses can locate.

California Code §11362.5, Subsection C encourages governmental agencies to implement local plans to provide for safe and affordable distribution of medical marijuana consistent with the Compassionate Act of 1996 (S.B. 420 or California Code 11362.5). Supporting documentation and substantial studies from other jurisdictions may be used to clarify the need for such an ordinance intended to protect sensitive land uses from MMD's in accordance with state law. This research has been initiated by RMA staff and County Counsel. Studies have shown that MMD's can have several negative impacts on surrounding land uses, including a significant increase in crime rates, thus contributing to neighborhood deterioration. While drafting Ordinance No. 3342, the Medical Marijuana Dispensary Zone Ordinance, the Planning Commission recommended to the Board of Supervisors that a Medical Marijuana Dispensary Business license be initiated to ensure these impacts could be mitigated or prevented.

By adopting an amendment to the Tulare County Ordinance Code, it is the intent of the County of Tulare to facilitate and expand the control over how MMD's operate and how many can locate within the County.

Attachment B

ORDINANCE NO. ____

PURSUANT TO GOVERNMENT CODE SECTION 25124(b)(1), THE FOLLOWING IS A SUMMARY OF AN ORDINANCE EXTENDING TULARE COUNTY ORDINANCE NO. 3353 ADDING PART 95 OF THE SUPPLEMENTARY ZONING MAP OF THE COUNTY OF TULARE PERTAINING TO THE LIMITATION OF ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARY USES FOR AN INTERIM PERIOD OF TIME IN DESIGNATED AREAS OF THE COUNTY FOR AN ADDITIONAL PERIOD OF TEN (10) MONTHS, FIFTEEN (15) DAYS.

SUMMARY OF PROPOSED ORDINANCE

On January 8, 2008, the Tulare County Board of Supervisors adopted, as an urgency measure pursuant to California Government Code section 65858, Tulare County Ordinance No. 3353, an interim ordinance prohibiting the establishment of Medical Marijuana Dispensary uses within the unincorporated areas of Tulare County for a period of forty-five (days). The Tulare County Board of Supervisors adopted Tulare County Ordinance No. _____, the ordinance herein summarized, on February 12, 2008. Tulare County Ordinance No. _____ extends the effective period of Tulare County Ordinance No. 3353, and the prohibitions contained therein, for an additional period of ten (10) months, fifteen (15) days and provides certain, limited exemptions from such prohibitions.

The ordinance herein summarized was adopted by the Tulare County Board of Supervisors on February 12, 2008, at a regular meeting of said Board, according to the following vote:

Ayes:

Noes:

Absent:

Within fifteen (15) days of adoption, a certified copy of the full text of the ordinance shall be posted in the office of the Clerk of the Board of Supervisors and shall be available for public inspection at that location.

COUNTY OF TULARE

By _____
Connie Conway, Chairman, Board of
Supervisors

ATTEST: JEAN ROUSSEAU
County Administrative Officer/
Clerk of the Board of Supervisor of
Tulare County

By _____
Deputy

EXHIBIT C

ORDINANCE NO. _____

AN URGENCY ORDINANCE ADDING PART 95 OF THE SUPPLEMENTARY ZONING MAP OF THE COUNTY OF TULARE PERTAINING TO THE LIMITATION OF DEVELOPMENT OF MEDICAL MARIJUANA DISPENSARIES FOR AN INTERIM PERIOD OF TIME IN DESIGNATED AREAS OF THE COUNTY AS DESCRIBED HEREIN FOR AN ADDITIONAL PERIOD OF TEN (10) MONTHS, FIFTEEN (15) DAYS.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. On January 8, 2008, the Board of Supervisors, pursuant to Government Code section 65858 adopted, as an urgency measure, Tulare County Ordinance No. 3353 which limited the establishment of Medical Marijuana Dispensary uses for a period of forty-five (45) days in the unincorporated areas of the County, which period of forty-five (45) days would expire on February 22, 2008. The designated areas were legally described in a new Part 95 of the Supplementary Zoning Map of the County of Tulare.

Section 2. On February 12, 2008, this Board, after giving due notice, held a public hearing on extending said urgency ordinance, Tulare County Ordinance No. 3353, for an additional ten (10) months and fifteen (15) days, expiring on January 5, 2009. In support of this extended urgency ordinance, the Board received oral testimony and documentary evidence from representatives of the County Resource Management Agency and other public and private entities in Tulare County. Such testimony and evidence supported the urgency to protect the public health, safety and welfare immediately and in the future. The Board also provided the public with the opportunity to be heard on the ordinance and related matters.

Section 3. This ordinance is an urgency ordinance with in the meaning of Government Code section 65858 in that the adoption of this ordinance is necessary for the immediate and future protection of the public health, safety and welfare within Tulare County. Based upon the information provided to the Board of Supervisors at its regularly scheduled meeting on January 8, 2008, the uses prohibited may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the Board of Supervisors, Planning Commission and Tulare County Resource Management Agency is considering or studying or intends to study within a reasonable time.

Section 4. As authorized by Government Code section 65858, this urgency ordinance to extend Tulare County Ordinance No. 3353 may be adopted after completing a noticed public hearing and with only one reading. It will become effective immediately and remain in effect for ten (10) months, fifteen (15) days past the original effective period of Tulare County Ordinance No. 3353. A four-fifths vote of the Board of Supervisors is required for the adoption of this extended ordinance. Ten (10) days prior to the expiration of this extended ordinance and any

authorized extension thereof, the Board shall issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the interim ordinance.

Section 5. The facts supporting the urgency to protect the public hearing, safety and welfare are summarized as follows:

(a) Existing zoning regulations may not adequately address the establishment of medical marijuana dispensaries. Currently these dispensaries may be located in any of the designated zones and areas without a permit and notice to the County.

(b) As Section 15.3 of the Zoning Ordinance is currently written, the County can not track violations to the zoning ordinance. There is concern that zoning violations will occur. County staff suspects that at least three of these dispensaries is in violation of the current zoning requirements.

(c) Several dispensaries currently exist in the County and the current number of dispensaries seems to be adequate to meet the need of the number of medical marijuana users in the County. There is concern of an excessive concentration of dispensaries in the County. For the 2007 fiscal year, there are approximately 21 valid Medical Marijuana Program identification cards. Since the County provided zoning regulations for medical marijuana dispensaries eight months ago, seven known dispensaries have opened and are currently operating.

(d) Other public entities have reported that medical marijuana dispensaries result in harmful secondary effects such as security issues, traffic congestion, parking problems, loitering, noise and other harmful secondary effects. The County is concerned that the concentration of dispensaries will increase these impacts.

(e) Further, the law remains unsettled regarding medical marijuana use and dispensaries as there is an apparent conflict between federal and state law. The County would like to limit further establishment of these dispensaries in the unincorporated areas until this conflict has been resolved.

(f) At such time, the County of Tulare may not have adequate regulations that appropriately regulate and locate medical marijuana dispensary businesses within unincorporated areas. It is appropriate under law to provide or establish such restrictions. Therefore, allowing development at this time would hinder the effectiveness of this process. The Tulare County Resource Management Agency is currently studying these concerns and is in the process of developing proposals and alternatives for Planning Commission and Board of Supervisors consideration.

Section 6. The foregoing ordinance shall take effect immediately upon passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a summary shall be published once in the Visalia Times Delta, a newspaper printed and published in the County of Tulare, State of California, together with the names of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the ____ day of _____, 2008 at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Chairman, Board of Supervisors

ATTEST: JEAN ROUSSEAU
County Administrative Officer/
Clerk of the Board of Supervisors
of the County of Tulare

By: _____
Deputy