

SUBJECT: RESPONSE TO GRAND JURY REPORT – MEDICAL MARIJUANA CITY ORDINANCES

SOURCE: Administration

COMMENT: Due to controversies between Federal Regulations and California Health and Safety Codes, the 2012-2013 Tulare County Grand Jury decided to investigate and report on Medical Marijuana Cultivation (farming) within the county's incorporated cities. The Grand Jury recently issued their report of findings, conclusion, and recommendations (attached). The report was delivered to the City on March 7, 2013. Pursuant to California Penal Code §933(c), a written response to the report is required to be filed by the City Council by no later than June 7, 2013.

The response of the City Council is attached for consideration and approval.

RECOMMENDATION: That the Council:

1. Consider the draft "Response to the Grand Jury" letter regarding the 2012-2013 Report on Medical Marijuana City Ordinances; and
2. Authorize the Mayor to sign the Response letter.

ATTACHMENT: 1. Draft Response Letter
2. Grand Jury Report



C/M

Item No. 16



June 4, 2013

Tulare County

Grand Jury

5963 South Mooney Blvd.

Visalia, CA 93277

The Honorable Gary Paden

County Civic Center, Room 303

221 South Mooney Blvd.

Visalia, CA 93291

Tulare County

Board of Supervisors

2404 W. Burrel Ave.

Visalia, CA 93291

Re: City of Porterville Medical Marijuana City Ordinances

To the Honorable Gary Paden, Grand Jury Members and Board of Supervisors:

The following are submitted on behalf of the Porterville City Council in response to inquiries received from the Tulare County Grand Jury relating to Medical Marijuana City Ordinances:

FINDINGS

Respondents agree in part with the findings as stated, as the City does not specifically address medical marijuana cultivation in its local regulations. It should be noted, however that pursuant to Porterville Municipal Code Sections 100.04.C.1, 614.03.A and 614.03.C, land uses that are not consistent with local, state, and federal laws are not permitted. Additionally, land uses are prohibited unless specifically permitted under the City's Development Code. Finally, in 2007 the City adopted an ordinance addressing regulation medical marijuana dispensaries (Municipal Code Chapter 15, Article VII), which would go into effect only upon a change in federal law that would expressly permit the legal operation of such facilities. These regulations address cultivation as part of the facilities' activities.

RECOMMENDATIONS

1. *All of the incorporated cities within the county need a permit requirement and an ordinance covering medical marijuana cultivation.*

As noted above the City does have a regulation that indirectly affects certain activities related to the cultivation, processing and distribution of medical marijuana. That stated, over the past several years the City Council has from time to time revisited whether to revise its current regulations to more specifically address the proliferation of marijuana cultivation activities occurring within its boundaries. The numerous and varied appellate court opinions in this area have made the legal navigation of this area difficult, however. For example, the Court of Appeals for the 2nd District, in *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070, found that Long Beach's medical marijuana ordinance, which authorized (via a permit system) collective cultivation/processing and distribution, was preempted by federal law. Although this case seemed to be helpful for cities that wished

to ban collectives altogether, it muddled the waters as to whether cities could legally implement a permitting system for various types of medical marijuana activities, including cultivation. There are other cases on file with inconsistent rulings, and there are at least three California State Supreme Court cases pending with decisions due soon that will affect the extent to which cities may regulate various medical marijuana uses. An opinion has just been filed in one of those cases, *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) S198638.

In the *Riverside* case, the Court, in a unanimous opinion filed May 6, has just held that cities may regulate or even completely ban collective/cooperative cultivation and/or distribution activities. The Court found that cities have broad authority under the local police powers provisions of Article XI, Sec. 7 of the California Constitution to determine the appropriate uses of land within its jurisdictional borders, and that this power to restrict, or even prohibit, these activities is not preempted by the Compassionate Use Act or the Medical Marijuana Program act. The opinion is so broad that it could be interpreted to allow restrictions or prohibitions on individual cultivation of medical marijuana as well, though individual cultivation was not at issue in the case.

This decision provides greater clarity and guidance to an appropriate regulatory scheme. The City Council had already directed that the City's Community Development and Public Safety Departments, along with the City Attorney bring forward options, in light of the decisions in these pending actions, concerning a comprehensive regulatory process addressing medical marijuana activities within the City limits.

2. *All of the cities need to establish a uniform medical marijuana ordinance.*

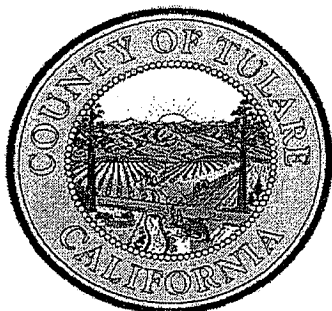
This recommendation has not been implemented but can be considered. However, individual cities may have concerns specific to the characteristics of their respective communities. This is expressly underscored in the *Riverside* decision. The Court noted (at page 27), "The presumption against preemption is additionally supported by the existence of significant local interests that may vary from jurisdiction to jurisdiction." That noted the City welcomes collaboration between the other cities in the region. It may be possible to develop certain standard regulations or criteria, if the cities were to determine that those regulations/criteria serve the common interests of their communities.

Please do not hesitate to contact the City of Porterville should you have any further questions regarding these matters.

Sincerely,

Virginia R. Gurrola, Mayor





TULARE COUNTY GRAND JURY

5963 S Mooney Boulevard

Visalia, CA 93277

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WEB: www.co.tulare.ca.us

ATTENTION: Mayor Virginia Gurrola

AGENCY: Porterville City Council

ADDRESS: 291 N Main, Porterville, CA 93257

California Penal Code §933.05 (f) mandates that the Tulare County Grand Jury provide a copy of the portion of the final Report that affects that agency or person of that agency two working days prior to its public release. Advance release or disclosure of a Grand Jury Report is prohibited prior to its public release.

Attached is a copy of your portion of the 2012-2013 Tulare County Grand Jury Final Report.

California Penal Code §933(c) requires a response to said document. Depending on the type of respondent you are, a written is required as follows:

- ❖ **PUBLIC AGENCY:** The governing body of any public agency that is required to respond must do so within NINETY (90) DAYS.
- ❖ **ELECTIVE OFFICER OR AGENCY HEAD:** All elected officers or heads of agencies that are required to respond must do so within SIXTY (60) DAYS.

YOU MUST SEND YOUR RESPONSE TO EACH OF THE FOLLOWING:

The Honorable Judge Gary Padon
County Civic Center, Room 303
221 S Mooney Blvd
Visalia, CA 93291

Tulare County Grand Jury
5963 S Mooney Blvd
Visalia, CA 93277

Tulare County Board of Supervisors
2800 W Burrell Ave
Visalia, CA 93291

Received by: 

Date: 3-7-13

Report Name: Medical Marijuana City Ordinances

Response Due by: 05/07/2013

Delivered by: 

Date and Time: 2:10 PM

Release Date: 03/13/2013

DAVID SERPA, Foreman 2012-2013 Tulare County Grand Jury

PREPARE A SEPARATE RESPONSE FOR EACH REPORT

California Penal Code §933.05 mandates the manner of how responses are to be answered.

See reverse for Penal Code §933.05 information.

§933.05. Response to Grand Jury Recommendations--Content Requirements; Personal Appearance by Responding Parry; Grand Jury Report to Affected Agency

(a) For purposes of subdivision (b) of §933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) For purposes of subdivision (b) of §933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore:

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the finding of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

MEDICAL MARIJUANA CITY ORDINANCES

BACKGROUND

In Nov. 1996, voters passed Prop 215, and it was codified¹ as California Health and Safety Code §11362.5.

Proposition 215 (Prop 215), the California Compassionate Use Act, allows a patient suffering from certain conditions, as well as his primary caregiver, the right to lawfully possess and grow marijuana if approved by a California physician. Approved conditions include cancer, glaucoma, migraines, chronic pain, arthritis, and AIDS.

Included in Prop 215 is a provision that protects physicians from punishment relating to the recommendation of marijuana use to patients for medical purposes. Also included is protection from prosecution for a patient or the patient's primary caregiver for possession and/or cultivation of medical marijuana.

To clear up certain implementation issues surrounding Prop 215 and formulate a voluntary system to protect patients from arrest, Senate Bill (SB) #420 was signed into law on October 13, 2003, became effective on January 1, 2004 and was codified.

California Health and Safety Code §11362.83 allows cities or other local governing boards to adopt and enforce ordinances that are consistent with Prop 215 and SB 420.

On October 2, 2011, a second SB #420 was signed into law and codified as Health and Safety Code §11357.5. Prior laws made possession of marijuana for sale a felony. This new law now states a person who sells, dispenses, distributes or offers to sell, dispense, or distribute marijuana is guilty of a misdemeanor punishable by county jail imprisonment up to six (6) months, or a fine not to exceed one thousand dollars (\$1,000), or both fine and imprisonment.

REASON FOR INVESTIGATION

Due to controversies between Federal Regulations and California Health and Safety Codes, the 2012-2013 Tulare County Grand Jury decided to investigate and report on Medical Marijuana Cultivation (farming) within the county's incorporated cities that are as follows:

Dinuba	Porterville
Exeter	Tulare
Farmersville	Visalia
Lindsay	Woodlake

¹ Codified: to reduce (laws) to a code

PROCEDURES FOLLOWED

1. Reviewed relevant documentation
2. Interviewed relevant witnesses

FACTS

1. The following information has been provided by the cities listed.
2. DINUBA:
 - a. Does have an ordinance for Medical Marijuana (MM)
 - b. Does not have a permit process
 - c. Allows persons with a medical card to cultivate MM
 - d. Persons in any residential zone may cultivate six (6) mature plants or twelve (12) immature plants or, if recommended by a physician, up to twenty-four (24) plants, whether mature or immature for MM.
 - e. The number of persons cultivating MM within the city is unknown.
3. EXETER:
 - f. Does not have an ordinance allowing MM cultivation
 - g. Does not have a permit process
 - h. Does not know of any MM cultivation within its city
 - i. Refers all MM related issues that are in violation of local, state, or federal regulation to its Zoning Department.
4. FARMERSVILLE:
 - a. Has an ordinance allowing MM cultivation
 - b. Has a permit application process
 - c. Does not permit more than eighteen (18) plants
5. LINDSAY:
 - a. Has an ordinance for MM cultivation
 - b. Does not have a permit process
 - c. Is aware of one MM cultivation within its city limits and found it to be in compliance with the recommended issue
 - d. Prohibits the use of any land within city limits from being used in any manner that is a violation of state, federal or local regulations per Municipal Code §18.01.090.
6. PORTERVILLE:
 - a. Does not have an ordinance for MM cultivation
 - b. Does not have a permit process
 - c. Reports approximately seventy-five (75) residences cultivating or farming MM within its city limits
 - d. Most of these residences have between ten (10) and twenty (20) plants. However there are some with as many as ninety-nine (99) plants.

7. TULARE:
 - a. Does not have an ordinance for MM cultivation
 - b. Does not have a permit process
 - c. Is not aware of any such cultivation or farms within its city limits
 - d. Zoning ordinances would need to be amended to allow the growing of such crops and would be restricted to agriculture-industrial zoning districts.
8. VISALIA:
 - a. Has an ordinance for MM cultivation
 - b. Does not have a permit process
 - c. Has identified locations where marijuana is being cultivated under the auspice of MM cultivation.
 - d. Approximately one hundred (100) locations were identified as being in violation of the city ordinance. These violations included cultivation outside an enclosed structure, exceeding the one hundred (100) square footage allowance or both structure and footage allowances.
 - e. Notices of violation were sent to those out of compliance with the city ordinance and approximately eighty (80) have corrected the violations.
9. WOODLAKE:
 - a. Has an ordinance for MM cultivation;
 - b. Has a permit process
 - c. Allows the cultivation of up to twelve (12) plants
 - d. There are sixteen (16) identified MM cultivations; seven (7) have been issued notices of violations.

FINDINGS/CONCLUSIONS

1. Farmersville and Woodlake are the only cities to have both an ordinance for MM cultivation and a permit requirement.
2. Dinuba and Visalia are the only cities to have an ordinance only for MM cultivation.
3. The cities of Exeter, Lindsay and Porterville do not have a MM ordinance.
4. The cities of Dinuba, Exeter, Porterville, and Visalia do not have a MM permit requirement.
5. Dinuba is unaware of the number of MM cultivations within its city. Without this knowledge, it is impossible to track those who are cultivating marijuana legally from those who are not.

6. Regardless of whether a city has an ordinance for MM cultivations, California Health and Safety Code §11362.5, allows patients and their caregivers to possess and grow Medical Marijuana.
7. Without a MM permit requirement and an MM cultivation ordinance, it is impossible for the cities to keep track of legal MM cultivations.

RECOMMENDATIONS

1. All of the incorporated cities within the county need a permit requirement and an ordinance covering MM cultivation.
2. All of the cities need to establish a uniform MM cultivation ordinance.

RESPONSES REQUIRED

- ❖ Dinuba City Council
- ❖ Exeter City Council
- ❖ Farmerville City Council
- ❖ Lindsay City Council
- ❖ Porterville City Council
- ❖ Tulare City Council
- ❖ Visalia City Council
- ❖ Woodlake City Council