

ORDINANCE NO. 315-797
REPEALING AND RE-ENACTING SECTION 42 TO ORDINANCE 315,
THE TRINITY COUNTY ZONING CODE

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

SECTION I. The Board of Supervisors of the County of Trinity repeals Section 42 of Ordinance 315 (County Zoning Ordinance), and re-enacts such Section, to state as follows:

(a) Purpose and Intent

- (1) 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"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances.
- (2) In 2004, the Legislature enacted the Medical Marijuana Program Act, "MMPA," Senate Bill 420 (codified as California Health and Safety Code Sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to specified State criminal statutes.
- (3) In recent years, Trinity County has seen a proliferation of large marijuana cultivation operations that falsely claim to be conducted in accordance with Proposition 215 and the MMPA. These operations grow marijuana not just for individuals living on the property where the marijuana is grown, but for numerous others—sometimes hundreds of persons—many of whom do not live in Trinity County, and whose status as qualified patients or primary caregivers is questionable.
- (4) The proliferation of marijuana cultivation operations within the County—particularly as pertains to operations intended to serve persons who are not Trinity County residents—poses serious threats to the health, safety, and well-being of the County and its residents. The deleterious impacts of such widespread cultivation include, but are not limited to: degradation of the natural environment associated with large marijuana grows, including diversion of, and discharges into, streams, creeks, and other natural watercourses; taking of endangered species, such as the Coho Salmon and Northern Spotted Owl; on-site grading without regarding to topography or erosion control, causing sedimentation of water bodies; erection of unpermitted and illegal buildings and structures; disposal of human waste without connection to sewage or septic systems; disposal of garbage and

rubbish directly onto the property of grow sites; and the abandonment of grow sites without remediation of the aforementioned impacts.

- (5) The impact of such cultivation operations has been particularly acute in residential areas of the County. Property owners in these areas, many of whom have moved to the community very recently, have planted several marijuana plants—sometimes as many as hundreds—on their properties. These plants are often directly visible to surrounding properties and visible from public streets. Plants also are sometimes cultivated openly and visibly near public schools, day care facilities, parks, and other areas where children are present. Throughout the growing and processing seasons, and especially during and immediately following harvesting, noise, lighting, unpermitted structures, and vehicle traffic associated with the grow operations continue into late hours of night and early morning. As the marijuana plants bud, they also can produce a very distinct and annoying odor (sometimes described as “skunky”) that can often be smelled many hundreds of feet away from the property where they are grown and throughout the community.
 - (6) In light of the considerable and extensive public comments provided to the Planning Commission and Board of Supervisors, received during numerous meetings held over a period of three years, the Board of Supervisors concludes that the deleterious impacts of marijuana cultivation, as described above, are fully confirmed and supported by the great weight of evidence. The Board further concludes these impacts create significant public nuisances and that the failure to enact regulations to control such operations would be detrimental to the public health, safety, and welfare and would result in further and significant degradation of the environment.
- (b) As used within, the following terms are defined as follows:
- (1) “Primary caregiver,” as described in *People v. Mentch* (2008) 45 Cal.4th 274, is a person who (1) consistently provided caregiving to a qualified patient, (2) independent of any assistance in taking medical cannabis, (3) at or before the time he or she assumed responsibility for assisting with medical cannabis.
 - (2) “Qualified patient” means a person who is entitled to the protections of Health and Safety Code section 11362.5 (Proposition 215).
 - (3) “Marijuana” shall refer to any plant of the genus *Cannabis*.
- (c) The cultivation, harvesting, processing, drying, or assembling of marijuana are expressly declared to be unauthorized land uses in any zoning district of the County. This declaration is considered to be declarative of existing law, as the County Zoning Code has never expressly or impliedly authorized any such activities in any zoning district, whether as permitted or conditional uses,

or under any provision of the code authorizing specific uses (including but not limited to Section 30.2, pertaining to home occupations and cottage industries).

- (d) Notwithstanding subsection (c), neither the County nor any of its officials, employees, or staff members shall take any action to enforce any provision of Ordinance 315 against any person who satisfies all the requirements of this Section. Persons who satisfy all such requirements shall be considered immune from enforcement of Ordinance 315 against them so long as their compliance with this Section continues.
- (e) Cultivation, harvesting, processing, drying, and assembling of marijuana shall meet the requirements of this Section only if such activities are undertaken for the personal use of qualified patients. Sale of marijuana in any form, by any means, and for any consideration (e.g., cash, in-kind transfer, exchange of services, barter) is not authorized under this Section.
- (f) Activities shall be considered to be conducted for personal use in accordance with subsection (e) only if they are conducted to provide for the medical needs of qualified patients living on the parcel, and/or up to no more than one qualified patient living off the parcel, and if the activities meet all the following standards:
 - (1) The activities are conducted exclusively on a legal parcel of property on which a single-family residence is located.
 - (2) Only qualified patients or qualified caregivers conduct the activities.
 - (3) If any person conducting the activities is not the lawful owner of the parcel, such person shall maintain a notarized letter from the legal owner(s) consenting to the cultivation, harvesting, processing, drying, or assembling of marijuana on the parcel.
 - (4) Each building or outdoor area in which marijuana is cultivated, harvested, processed, dried, or assembled shall be set back from the property boundaries at the farthest feasible location from neighboring residences, but at a minimum in accordance with the applicable zoning regulations, including setback limitations, for the district in which the property is located.
 - (5) Marijuana being cultivated, harvested, processed, dried, or assembled must be secured from public access, and must not be readily visible from off the parcel. All marijuana cultivated outdoors shall be located behind a fully enclosed opaque fence of at least six feet in height. The fence may not be constructed or covered with plastic or cloth, except that shade cloth may be used on the inside of the fence. Vegetative fences shall not constitute an adequate fence under paragraph. The fence must be

adequately secured to prevent unauthorized entry. All processed marijuana must be secured to deter theft.

- (6) Marijuana may not be cultivated, harvested, processed, dried, or assembled outdoors within 1,000 feet of any school, recreation center, youth center, church, library, child-care facilities, substance abuse center or other public gathering area, nor shall such activities be undertaken within 500 feet of any school bus stop.
 - (7) The cultivation, harvesting, processing, drying, or assembling of marijuana shall comply with the all applicable building, zoning, and environmental regulations set forth in Ordinance 315 and all other provisions of the County Code and state law.
 - (8) The power source for the activities shall comply with all appropriate building and fire code standards and permitting criteria. Should a generator be used, the fuel-storage facility shall be reviewed and approved by the appropriate agency. If public utilities are available the site must connect to those utilities. Noise impacts from generator use shall be limited to the hours of 8:00 am to 8:00 pm.
 - (9) The use of butane to enhance or for additive purpose in processing marijuana is prohibited.
- (g) The marijuana grown on any parcel shall not exceed the following number of plants or square footage in size:
- (1) For parcels of one acre or less, two marijuana plants or 50 square feet;
 - (2) For parcels between one acre and 2 ½ acres, four plants or 100 square feet;
 - (3) For parcels between 2 ½ and five acres, six plants or 200 square feet;
 - (4) For parcels between five and ten acres, six plants or 300 square feet;
 - (5) For parcels of ten acres or greater, eight plants or 400 square feet.

For purpose of these size restrictions, any stacked growing levels or stories shall be measured separately as part of the total area permitted. The term "area," as used in this section, shall also be considered contiguously (i.e., plants may not be grown in separate areas of the property and their respective square footages combined to calculate area.) No part of a plant's canopy shall extend beyond the perimeter of the permitted area.

- (h) An individual property may also cultivate additional marijuana plants so long as such plants are immature. An immature plant is one where no part of the plant is flowering or displaying its sex. The number of immature plants that may be cultivated, when combined with the number of mature plants, shall not

exceed twice the number of plants permitted for each size category stated in paragraph (g).

- (i) Indoor cultivation of mature marijuana plants shall be limited to the same maximum size standards as stated in paragraph (g). Such cultivation may be conducted only in an approved accessory structure appropriate for that purpose, as defined by the current California Building and Fire Code standards.
- (j) Should marijuana cultivation, harvesting processing, drying, or assembling activities generate any odor-related complaint from property owners or residents who reside within one-quarter mile (1,320 feet) from the location of the parcel on which the activities occur, and if such odor can be independently verified in the location by a designated County representative, the County may declare the creation of such odor a public nuisance and abate the same in accordance with Chapter 8.64 of the County Code or other applicable law.

(k) Other provisions

- (1) This Section shall be enforced only by means that are civil in nature. The County shall not commence or undertake any criminal proceedings to enforce this ordinance.
- (2) Any activities conducted under this Section must strictly comply with Proposition 215, the MMPA, and the California Attorney General's Guidelines for Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended.
- (3) Neither this Ordinance, nor any of its provisions, shall be deemed to provide a defense or immunity to any action brought against any person by the Trinity County District Attorney, the Attorney General of State of California, or other state law enforcement authority. Nor is this ordinance intended to alter or exempt any provision of federal law prohibiting the cultivation, processing, drying, assembly, or of cannabis, or the enforcement of federal law by federal authorities.

SECTION III. This ordinance is not a project under the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) ("CEQA"), and accordingly is not subject to its provisions. Nevertheless, to the extent that this ordinance may be construed as a project, it is exempt from CEQA under the general rule that it can be seen with certainty that this Ordinance has no possibility of having a significant effect on the environment, as set forth in California Code of regulations, title 14, section 15061, subdivision (b)(3). Further, this ordinance extending 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.

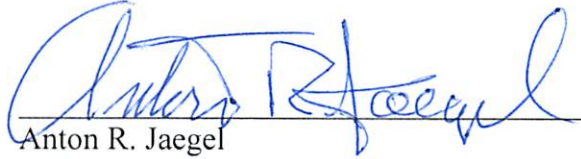
Presented to the Planning Commission of the County of Trinity on May 16, 2012, and passed and adopted by the Board of Supervisors of the County of Trinity on June 5, 2012, by the following roll call vote, to-wit:

AYES: Supervisors Pflueger, Chapman, Morris and Jaegel

NOES: Supervisor Otto

ABSENT: None

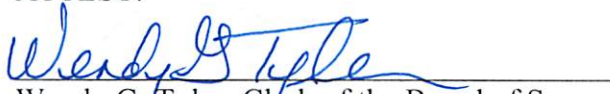
ABSTAINING: None



Anton R. Jaegel

Chairman of the Board of Supervisors
of the County of Trinity, State of California

ATTEST:



Wendy G. Tyler, Clerk of the Board of Supervisors
County of Trinity, State of California