

ORDINANCE NO. 3498

AN INTERIM ORDINANCE EXTENDING TULARE COUNTY ORDINANCE NO. 3497 AMENDING PART 95 OF THE SUPPLEMENTARY ZONING MAP OF THE COUNTY OF TULARE PROHIBITING THE ESTABLISHMENT OF NEW OR EXPANSION OF EXISTING MEDICAL MARIJUANA ENTITIES, INCLUDING COLLECTIVES, COOPERATIVES, BUSINESSES, OR OTHER ENTITIES ENGAGED IN COMMERCIAL CANNABIS ACTIVITY IN THE UNINCORPORATED AREAS OF THE COUNTY FOR AN ADDITIONAL PERIOD OF TWENTY-TWO (22) MONTHS AND FIFTEEN (15) DAYS.

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

Section 1. On August 16, 2016, the Board of Supervisors, pursuant to Government Code section 65858 adopted, as an urgency measure, Tulare County Ordinance No. 3497 which prohibited the establishment of new or expansion of existing medical marijuana entities, including collectives, cooperatives, businesses, or other entities engaged in commercial cannabis activity in the unincorporated areas of Tulare County for a period of 45 days. Ordinance No. 3497 expires on September 30, 2016, unless further extended. The designated areas were legally described in Part 95 of the Supplementary Zoning Map of the County of Tulare.

Section 2. To protect the public health, safety and welfare, the Board of Supervisors hereby extends Tulare County Ordinance No. 3497 such that the establishment of new or expansion of existing medical marijuana entities, including collectives, cooperatives, businesses, or other entities engaged in commercial cannabis activity in the unincorporated areas of Tulare County is prohibited, and no building permit, occupancy permit, or other land use entitlement for such use shall be issued by the County of Tulare in any area within Part 95 of the Supplementary Zoning Map of the County of Tulare for an additional period of twenty-two (22) months and fifteen (15) days from September 30, 2016, so that such interim ordinance remains in continuous effect without interruption through the initial forty-five (45) day period. A true and correct copy of said Supplementary Map is attached as Exhibit "A" and incorporated by reference herein.

Section 3. For purposes of this ordinance, the following definitions apply:

(a) "Commercial cannabis activity" shall have the same meaning as Business and Professions Code section 19300.5(k), as amended.

(b) "Medical marijuana collective" or "collective" means an entity, facility or location, at a fixed, immobile location, at which two (2) or more qualified patients, persons with an identification card, and the designated primary care givers of qualified patients and persons with an identification card, combined, associate within the unincorporated area of the County of Tulare in order to jointly own and operate the business, facility or location and to collectively cultivate marijuana for medical purposes, as provided in Health & Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code §11362.81, as amended.

(c) "Medical marijuana cooperative" or "cooperative" means an entity at a fixed, immobile location, properly organized, registered and operated as such a corporation pursuant to

Corporations Code Section 12200 *et seq.* or Food and Agricultural Code Section 54001 *et seq.*, as amended, so that qualified patients, persons with an identification card, and the designated primary caregivers of qualified patients and persons with an identification card may cultivate marijuana for medical purposes pursuant to Health and Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code §11362.81, as amended.

(d) “Medical marijuana entities” include individuals and other entities engaged in commercial cannabis activity, as well as medical marijuana collectives or cooperatives. The term “Medical marijuana entities” does not include: (1) a qualified patient or a person with an identification card who cultivates, transports or processes marijuana for his or her own personal medical use, in accordance with state law and County regulations; or (2) a designated primary caregiver who cultivates, transports, processes, administers, delivers, or gives away marijuana for medical purposes to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver, in accordance with state law and County regulations.

Section 4. This extended interim ordinance is an urgency measure within 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 safety, health, and welfare within the unincorporated areas of Tulare County. Based upon the extensive evidence submitted to the Board of Supervisors at its regularly-scheduled meeting on August 16, 2016, and contained in Ordinance No. 3497, and the testimony and other evidence presented at the public hearing to consider the extension of the interim ordinance on September 20, 2016, the Board finds and determines the following:

(a) Unregulated or inadequately regulated cultivation and distribution of medical marijuana, or other commercial cannabis activities, adversely affects the health, safety, and well-being of the County and its residents. Comprehensive civil regulation of the premises used for medical marijuana cultivation, distribution, manufacturing, or other commercial cannabis activities is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation and distribution.

(b) Marijuana-related activities continue to present criminal and other hazards for the people of Tulare County, and there is a current and immediate threat to the public safety, health and welfare caused by the proliferation of unregulated marijuana activity being conducted by medical marijuana entities

(c) The Medical Marijuana Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code) (“MMRSA”) has generated new and increased interest in commercial cannabis activities in Tulare County, and that there is a disconnect between the state’s nascent licensing system and the County’s current regulatory structure.

(d) These recent legal developments, coupled with the possibility that California may decriminalize the recreational use of marijuana in November 2016, will likely

lead to an increase in entities engaged in unregulated marijuana and/or commercial cannabis activities in the County.

(e) The approval of use permits, variances, building permits, or any other applicable entitlement for use that might be needed for a medical marijuana entity to comply with the Tulare County Zoning Ordinance would result in that threat to public safety, health, and welfare.

(f) Uses prohibited by this ordinance may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the Board of Supervisors and Tulare County Resource Management Agency is considering or studying or intends to study within a reasonable time in light of the enactment of MMRSA, as well as ballot initiative(s) to legalize recreational marijuana anticipated to appear on the November 2016 general election.

Section 5. As authorized by subsection (b) of Government Code section 65858, this interim ordinance may be adopted after notice and public hearing, and will become effective on September 30, 2016, and remain in effect for twenty-two (22) months and fifteen days, expiring on August 14, 2018. No additional extensions of this ordinance are permitted. Ten (10) days prior to the expiration of this extension, the Board shall issue a written report describing the measures taken to alleviate the conditions which lead to the adoption of Ordinance No. 3497 and this extension.

Section 6. The following facts and findings supported the adoption of Ordinance No. 3497, and continue to support the adoption of this extension:

(a) Pursuant to Article XI, section 7 of the California Constitution, the County may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety and welfare of its citizens.

(b) In accordance with its general police powers, the Board of Supervisors has enacted several ordinances to protect its residents from the threats presented by unregulated medical marijuana activities. On May 1, 2007, the Board of Supervisors adopted Ordinance 3342, amending Section 352 of the Tulare County Zoning Ordinance by adding Section 15.3 to regulate "Medical Marijuana Dispensaries." In December 1, 2009, the Board of Supervisors repealed Section 15.3 and replaced it with a new Section 15.3 to regulate zoning for "Medical Marijuana Collectives and Cooperatives" and to eliminate zoning for dispensaries. In November 2009, the Board of Supervisors also added Part V, Chapter 11 and Part VI, Chapter 21 of the Ordinance Code to regulate the possession, consumption, distribution, transportation, cultivation, and growing of medical marijuana, and to implement licensing requirements for collectives and cooperatives.

(c) By early 2013, County departments were growing increasingly concerned as to whether the County's land use and other regulations were adequately addressing the dangers associated with marijuana cultivation and associated activities. Additionally, in the years leading up to 2013, several important legal challenges were brought in jurisdictions across the state which had the potential to undermine Tulare County's medical marijuana regulations. For these reasons, and to address the threats that medical marijuana-related land use posed to the

health, safety, and welfare of the County's population, on March 19, 2013, the County enacted an interim ordinance pursuant to its authority under Government Code section 65858 to prohibit the establishment of new medical marijuana collectives or cooperatives, and the expansion of existing collectives and cooperatives until the County could evaluate whether to make changes to its land use regulations. On April 23, 2013, after notice and public hearing, the County extended the interim ordinance for 22 months and 15 days.

(d) Before the 2013 interim ordinance expired, County staff presented a report pursuant to subsection (d) of Government Code section 65858 describing the measures taken to address the threats identified in the 2013 interim ordinance. Staff evaluated its enforcement activities while the interim ordinance was in effect, and determined that the County would likely be able to address the public health and safety threats posed by unregulated or improperly regulated medical marijuana activities through the enforcement of its existing ordinances.

(e) Since the County's 2013 interim ordinance expired on March 18, 2015, state medical marijuana law has changed substantially. On October 9, 2015, the Governor signed MMRSA and related provisions into law. These changes became effective on January 1, 2016. MMRSA completely transforms the medical marijuana regulatory landscape in California. MMRSA established the Bureau of Medical Marijuana Regulation, and mandates that certain specified agencies develop and adopt administrative regulations to implement the new regulatory scheme over the next few years. MMRSA authorizes commercial cannabis "for-profit" activities under state law, creating 17 different state licenses to regulate cultivation, distribution, manufacturing, testing, transportation, storage, and sale of medical cannabis. At the same time, MMRSA also codifies the common law principles of local control over medical marijuana activities. As the new licensing system is implemented over the next few years, cities and counties need to determine which of the commercial cannabis activities outlined in the state regulations should be permitted and/or regulated in their local jurisdictions, and revise or adopt zoning ordinances and other regulations accordingly.

(f) MMRSA will directly impact the County's current regulation of medical marijuana activities once all of the provisions of the law are fully in effect. Currently, collectives or cooperatives are the only entities permitted to cultivate medical marijuana in the unincorporated areas of the County in excess of the amount permitted for a single qualified patient or person with an identification card. County ordinances permit distribution of medical marijuana to individuals only, and only from and within a collective or cooperative (as defined by Health & Safety Code section 11362.775, and as further authorized by Part V, Chapter 11 and Part VI, Chapter 21 of the Ordinance Code). Furthermore, collectives or cooperatives are permitted to operate only in specific commercial and manufacturing zones, and distribution within a collective or cooperative cannot be for profit. MMRSA undermines this collective and cooperative model in several ways. Once state authorities begin issuing licenses, MMRSA will repeal Health and Safety Code section 11362.775, thereby abolishing collectives and cooperatives. The state licensing system also permits "commercial" cannabis activity (i.e. for profit). As the County's existing land use and zoning regulations do not align with the new conduct permitted under MMRSA, the County will need to evaluate what type of regulations, including land use regulations, might be appropriate to regulate medical marijuana activities once collectives and cooperatives are abolished.

(g) On June 27, 2016, the Secretary of State certified that Initiative No. 1762 to “legalize” recreational use of marijuana will be eligible for the November 2016 ballot. It is difficult to predict exactly how the ballot initiative to decriminalize the recreational use of marijuana for adults in California may affect the implementation of MMRSA or local regulation of medical marijuana activities.

(h) Though MMRSA has yet to be fully implemented, County staff has noted new and expanded interest in “commercial cannabis” activities throughout the County during this transitional period:

1) Since the enactment of MMRSA, at least 36 different individuals have contacted the Tulare County Resource Management Agency (RMA) to inquire about one or more commercial cannabis license(s). People making inquiries often mention the new state law. Collectively, they have expressed interest in licenses for cultivation, dispensing, manufacturing [including cannabidiol (CBD) manufacturing, specifically], and transportation activities.

2) Since MMRSA was enacted, RMA has determined that at least two different buildings being remodeled without permits were intended for marijuana activities currently prohibited by County ordinance. In each instance, the person who was conducting the remodel admitted to code enforcement officials that the premises was intended to be either a marijuana “dispensary,” a collective cultivation site, or some combination of the two. At this time, no areas in the County are currently zoned for dispensaries.

3) County staff is also aware of several individuals, collectives/cooperatives, or even purported “businesses” already ramping up for or engaging in “commercial” cannabis activities in contravention to County ordinances. For instance, the County has evidence that some of the collectives/cooperatives have recently attempted to expand their activities into dispensing manufactured cannabis products, in contravention to County ordinances. In addition, the Agricultural Commissioner was recently contacted by two sets of investors looking to purchase agricultural land for marijuana cultivation; at least one of these investors was referred by a real estate agent in Southern California who is apparently marketing Tulare County agricultural property for marijuana cultivation.

(i) Additionally, the Tulare County Sheriff’s Department has continued to see an increase in the illegal cultivation of marijuana and other crimes associated with marijuana. The following evidence supporting this conclusion is particularly noteworthy:

1) In 2015, the Tulare County Sheriff’s Department received over 350 calls, emails, texts, and other referrals regarding complaints of marijuana cultivation.

2) Although the amount of marijuana seized and the number of plants eradicated varies from year to year, the total number of marijuana grow sites eradicated by the Sheriff’s Department has been continuously increasing each fiscal year since at least 2012, both on the Valley floor and in the mountain areas. Furthermore, the Sheriff’s Department has evidence that large, sophisticated Drug Trafficking Organizations (DTO’s)—most notably the Zetas and the Gulf Cartels—are increasing operations in the Central Valley under the guise of California’s medical marijuana laws. The Sheriff’s Department’s investigations suggest that

these DTOs are responsible for most large valley grows, and that they coordinate sophisticated networks of backyard and indoor grows, involving multiple grow sites with different recommendation holders at each site.

3) Due to the value of the marijuana, firearms are commonly used to defend marijuana plants (and cash from the sale of marijuana) from theft. In FY 2014/2015, the Sheriff's Department seized 161 firearms located at or associated with marijuana grows in Tulare County. In FY 2015/2016, the Sheriff's Department seized 89 such firearms. Approximately one-third (1/3) of the weapons recovered in 2015 were reported lost/stolen. The Sheriff's Department is currently investigating a homicide that occurred in June 2016 that is believed to be related to the sale of marijuana.

4) The Tulare County Sheriff's Department has also seen an increase in honey oil (also known as hash oil) laboratories in the County. Hash oil is a concentrated form of cannabis, where a solvent (like butane) is used to chemically extract tetrahydrocannabinol (THC) from the marijuana plant material. The end product is potent and very valuable. Although the extraction process is relatively easy to learn, it is also dangerous. Most of the solvents employed to extract THC are flammable, and the manufacture of hash oil has led to explosions and other fire incidents. One Riverside County newspaper reported that in 2014, there were 49 confirmed explosions at marijuana extraction labs nationwide (31 of them in Colorado, 18 in other states). County Fire officials determined that an August 2015 fire in Badger was related to honey oil extraction. In 2015 the Tulare County Sheriff's Department investigated and found evidence of at least 6 honey oil labs. In 2016, the Sheriff's Department has already found evidence of 5 honey oil labs year-to-date.

5) The Sheriff's Department has found that marijuana cultivation and honey oil labs frequently occur in households where children are present. As discussed above, honey oil labs have the potential to cause explosions and fire, and thus may expose children living in households where such labs occur to great bodily injury or possibly death. Furthermore, the Sheriff's Department has found that children are sometimes exposed to highly toxic fertilizers and pesticides used in the cultivation of marijuana, either through access to treated plants or to the chemicals themselves. In 2015, the Tulare County Sheriff's Department investigated eighteen (18) separate incidents of child endangerment related to the cultivation, processing, manufacturing, and/or distribution of marijuana. In 2016, the Sheriff's Department has investigated at least 7 separate incidents of child endangerment related to the cultivation, processing, manufacturing, and/or distribution of marijuana year-to-date.

6) A majority of the marijuana grows investigated by the Tulare County Sheriff's Department have multiple marijuana recommendations posted and purport to be operating as a "collective." However, the Sheriff's Department has found that marijuana at these sites is generally being cultivated for profit and not for the benefit of the collective as outlined in Proposition 215, SB 420, the California Attorney General's Guidelines, and County Ordinances. Additionally, some "collectives" appear to be obtaining or using medical marijuana recommendations in a fraudulent or unlawful manner. The Sheriff's Department believes that some individuals are paid to use their personal information to obtain marijuana recommendations in order to support the number of marijuana plants grown at sites. Oftentimes, a subject whose marijuana recommendation is found at a site will not have any knowledge of or any involvement

with the marijuana grow after the marijuana recommendation is obtained. In at least one instance, the Sheriff's Department found copies of the same marijuana recommendation posted at multiple marijuana grow sites.

7) The Sheriff's office continues to doubt that either MMRSA or the decriminalization of the recreational use of marijuana in California will actually reduce the demand for black market cannabis products or the illegal cultivation of cannabis in the County. If the street price for marijuana increases substantially due to taxation or other regulatory pressures, some people will continue to purchase marijuana on the local black market. Furthermore, not all geographical regions are suited to cannabis cultivation; thus, even if the cannabis industry in California becomes fully-regulated, cannabis may still be illegally cultivated in Tulare County to meet the demand in markets outside of California.

(j) Illegal or unregulated marijuana cultivation also threatens the welfare of County residents by straining the County's natural and public resources.

1) Marijuana cultivators use a large amount of water to grow marijuana. On average, a single marijuana plant will use approximately 6 to 8 gallons of water per day in order to thrive. After four plus years of historic drought, at a time when many County residents are struggling to access clean drinking water, illegal or unregulated marijuana cultivation puts a strain on the County's scarce water resources. County code and law enforcement personnel have even discovered evidence that some marijuana cultivators have used bottled water from the County's emergency bottled water program to water their marijuana plants.

2) Indoor marijuana grows also require electric lights to grow plants, and this can be extremely expensive. The Sheriff's department has received several reports regarding marijuana cultivators stealing power for their marijuana activities by tapping into the electricity before the meter. In fact, in 2016, the majority of indoor grows investigated by the Sheriff's Department were later determined to be stealing electric power. Final usages are still pending verification, but it is estimated that in the first half of 2016 alone, over \$300,000 in unreported power usage is attributable to these indoor marijuana grows. These activities place an undue burden on both the County's electrical resources and on the County's law-abiding rate payers.

3) The adoption of MMRSA was also a legislative acknowledgement of the potential negative impacts that marijuana cultivation and commercial cannabis activities might have on the environment, including land conversion, electricity usage, water usage, water quality, and agricultural discharge issues. MMRSA's extensive regulatory scheme was intended to mitigate some of these negative environmental impacts. (See Legislative Counsel's Digests for AB 243 and SB 643; See also, Bus. & Prof. Code §§ 19302-19304, 19316(a), 19331, 19332(d), 19332(e)(2); Fish & Game Code §§ 12029(a), (c); Health & Saf. Code §§ 11362.769, 11362.777.). The County needs to determine how best to address such threats to the public welfare and the environment in light of the new MMRSA standards.

(k) Taken together, the fact that medical marijuana continues to present criminal and other hazards to the people of Tulare County, MMRSA appears to have generated

new interest in commercial cannabis activities in Tulare County, and there exists a disconnect between the state's nascent licensing system and the County's current regulatory structure, these items threaten the health, safety and welfare of County residents. This disconnect between state and local law will likely lead to an increase in unregulated medical marijuana entities engaged in activities that could cause harmful effects to the public.

(1) The Board of Supervisors (through the activities of the Resource Management Agency, the Sheriff's Department, and any other affected County agencies or departments) intends to study which regulatory framework will be most appropriate for the County in light of MMRSA and any ballot measure related to the decriminalization of the recreational use of marijuana that may succeed in the 2016 general election. This interim ordinance will allow the County to maintain the status quo while it determines what kind of commercial cannabis activity, if any, it wishes to authorize under the new state regulatory framework.

Section 7. The current regulations in the County Ordinance Code regarding the individual, collective, or cooperative cultivation of medical marijuana not in conflict with this ordinance, shall remain in effect.

Section 8. Any violation of this ordinance shall be deemed a public nuisance and shall be subject to abatement as provided in Chapter 1 of Part IV of the Tulare County Ordinance Code and may be subject to administrative fines under Chapter 23 of Part 1 of the Tulare County Ordinance Code. The enforcement procedures provided for in this ordinance is in addition to any other provided by statute, ordinance, or law.

Section 9. Any person or entity who claims they were operating in lawful compliance with local regulations and state law prior to the effective date of this ordinance, and should therefore not be considered a public nuisance, shall bear the burden of proof regarding such fact. Such proof shall include, but not be limited to, photographs of the subject site, witness testimony, and documentary evidence.

Section 10. If any section, subsection, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 11. The foregoing ordinance shall take effect on September 30, 2016, and will expire on August 14, 2018. Within 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.

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THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the 20th day of September, 2016 at a regular meeting of said Board duly and regularly convened on said day by the following vote:

Mike Ennis

Mike Ennis
Chairman, Board of Supervisors

ATTEST: MICHAEL C. SPATA
County Administrative Officer/
Clerk, Board of Supervisors

By: *Danise A. Ybarra*
Deputy Clerk



STATE OF CALIFORNIA
COUNTY OF TULARE
BOARD OF SUPERVISORS

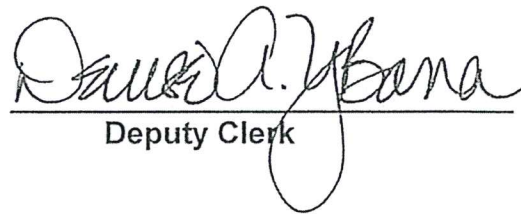
Ordinance No. 3498

I, Michael C. Spata, Clerk of the Board of Supervisors do hereby certify the attached to be a full, true and correct copy of an original Ordinance made and entered by said Board on September 20, 2016, as the same appears of record and county file in my office. Witness my hand and seal of said Board of Supervisors this 20th day of September 2016.

ATTEST: MICHAEL C. SPATA
County Administrative Officer/
Clerk, Board of Supervisors



BY:


Deputy Clerk