

2011-2012 GRAND JURY

JUR-2011-2012-001

REPORT

Investigation into the Code
Enforcement System: Codes,
Cannabis and Confusion

GRAND JURY
FINAL REPORT

**TRINITY COUNTY GRAND JURY
2011-2012**

FILED

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**Judicial Committee
JUR2011/2012-001
Final Report**

**Investigation into the Code Enforcement System:
Codes, Cannabis and Confusion**

Approved 04/04/2012


**Patricia Zugg
Foreperson**

Disclaimer: This report is not an endorsement of the Code Enforcement System. It is solely a summary of a Grand Jury investigation into its effectiveness.

2011-2012 Trinity County Grand Jury

Judicial Committee

Investigation into the Code Enforcement System:

Codes, Cannabis and Confusion

Summary

The cultivation of marijuana for medical-or other-purposes is a controversial and hotly debated topic. The magnitude of difficulties emanating from conflicting marijuana laws and interpretations cannot be overstated. The Trinity County Board of Supervisors, in 2009-2011, enacted regulatory mechanisms and authorized the hiring of a Code Enforcement Officer to deal with associated and increasing problems.

After initial inquiry, the Grand Jury decided to investigate the new Code Enforcement System, with focus on its effectiveness. This was pursued by establishing several criteria to define what would be considered effective. The specific criteria include: Policies and procedures would be completed, documented and implemented; codes would be delineated as to violations, penalties and appeals process; there would be sufficient resources available to perform code enforcement; there would be a wide-swath Code Enforcement System performance tracking procedure; and, safety issues and professional standards for the Code Enforcement Personnel would be met.

It is recognized that currently the Code Enforcement System is a progressive work. Numerous competent, qualified and diligent persons, agencies and commissions are contributing to the development of the system.

Background

The effectiveness of the Code Enforcement System (henceforth referred as the "System") came to the attention of the Grand Jury through several newspaper articles, verbally conveyed citizen complaints, citizen inquires and interest from the Grand Jury.

After the enactment of Proposition 215 in November 1996, Trinity County has increasingly become a focal point for local, out-of-county and out-of-state marijuana growers. Property has been purchased, leased and simply "squatted" upon to grow larger and larger crops of marijuana. Initial efforts to limit the number of growers and the size of those crops were reasonably effective, but as the number of growers increased and the county's resources dwindled, law enforcement began "sweeping water uphill".

The position of Code Enforcement Officer (henceforth referred to as the "Officer") has been in use in California for many years. They work primarily out of the Planning and Building Departments. Some have police powers and some work under the same authority that the

building inspector would use. In 2010, the Trinity County Board of Supervisors, in response to public input, passed a moratorium on marijuana cultivation and authorized the hiring of an "Officer". The Planning Department hired a new chief planner with prior experience with code enforcement to help organize the system and work with the "Officer". The "Officer" was assigned to work jointly with the Sheriff's Office and Planning Department.

Currently, there are a number of people who might be described as code enforcement personnel (henceforth referred to as "Personnel"); therefore there is only one full time person designated as the "Officer". Beyond medical necessity, the Proposition 215 cultivation of marijuana does extend into the illegal realm. Thus the "Officer" position is a fully qualified peace officer.

This system should enhance compliance with rules and laws pertaining to protection of the environment; enhance the health, safety and benefit of the county's residents; enhance appropriate and constructive land use; and is intended to be efficient and cost-effective. The position of "Officer" is currently funded for three years through a vacant position in the Planning and Building Department. Implementation began in January 2011.

Method of Investigation

Information for this report was obtained from public county records, county counsel reports, county websites, internet searches on code enforcement topics and interviews with relevant county personnel.

Discussion

The issue of the effectiveness of the "System" is addressed by defining effectiveness-criteria and then investigating to assess whether or not they are being met. The Grand Jury defined the following criteria:

- 1) "System" policies and procedures are complete and adequately documented.
 - a) The "Officer" has a clear and concise job description
 - b) There is a clear definition of the chain of command for the "Officer"
 - c) The code-violation training for the "Officer" is adequate
 - d) The safety guidelines of all "Personnel" are adequate and they are adhered to
 - e) Procedures for processing code violations are clearly defined
 - f) There is a hearing system in place that adequately handles appeals
 - g) There is a process for collecting fines
- 2) The documented "System" policies and procedures are implemented.
- 3) The effectiveness of the "System" is being tracked by collecting information on such things as allocation of "Personnel" hours, the number of citations, violations processed, fines collected, follow up on compliance and assessment of increased compliance.
- 4) There are sufficient resources of time, money, equipment and personnel to efficiently and safely carry out code enforcement.
- 5) Code enforcement is continued to be done in a professional fashion.

The Grand Jury gathered, analyzed and summarized information pertaining to each of the above criteria. The information obtained in the investigation process is summarized here and organized in accord with this list of criteria.

Criteria 1): *"System" policies and procedures are complete and adequately documented.*

- a) There is a three-page job description for the "Officer" that combines Deputy Sheriff I and general duties (see Appendix A). Additionally, it states the "Officer" is to enforce county codes and ordinances. The County website lists hundreds of codes and ordinances, some archived and decades old. Though this seems to be daunting, it is consistent with the function of peace officers throughout the state.
- b) The chain of command is not clearly defined. Currently, the Code Enforcement Officer's work is reviewed by one supervisor who reads the majority of the "Officer's" reports, yet does not oversee the daily work and cannot account for the "Officer's" time.
- c) The training requirements of the "Officer" (except for the peace officer component) are not documented. The only training to date for the current "Officer" was a two week ride-along with an Code Enforcement Officer from Shasta County—a county that may have different priorities than Trinity County. Though an "Officer" training seminar was scheduled, it was cancelled by the training organization due to insufficient number of enrollees. No further code violation training was provided.
- d) For safety and protection, uniformed Sheriff office personnel accompany the "Officer" whenever code violations involve marijuana cultivation. This practice involves ad hoc assignment, and dilutes the regular law-enforcement work force during code enforcement activity. The Sheriff or the Undersheriff often performed this backup function. The "Officer" is currently assigned an unmarked vehicle. This has the unintended consequence that code violators may interpret the visit as being from other than a peace officer and react inappropriately. This can increase the risk to the "Officer".
- e) A majority of interviewees expressed some degree of uncertainty regarding "civil" vs. "criminal" code violations, priorities, policies and procedures. The procedure under which they are handled can be classified as either civil or criminal, even though all code violations are by definition criminal. Application initially is a subjective judgment made on a case by case basis. The procedures are not yet in place that define how to process violations "civilly."
- f) There is a hearing process for appealing violations in place. The party making the appeal is required to pay a non-refundable fee of \$1,050 (even if the appeal is granted, this fee is not refunded). Hearing officers are drawn randomly from a pool of attorneys. At least one other county in California does not require that the hearing officers be attorneys, and any appeals can be resolved by a non-attorney hearing officer. No appeals have been filed in Trinity County.

g) The intention is to have fines paid at the Probation Department.
Criteria 2): *The documented "System" policies and procedures are implemented.*

The status of the documentation of the "System" procedures can be understood in the context of the three year goals for the "System":

- YEAR ONE: Create a code enforcement presence so that citizens are aware that code violations are being enforced and relieve planning department personnel of code compliance duties so they can return to their other duties.
- YEAR TWO: Streamline the Code Enforcement System and write "System" procedures.
- YEAR THREE: Current "System" funding is provided by the planning department, but it is intended that the "System" will be self-sustaining by the end of the third year.

The status of these goals is as follows:

- YEAR ONE: there is increased public awareness of an on-the-job "Officer" as indicated by the increased number of citations and the numbers of people who have come into voluntarily compliance. People in the planning department are reported to have more time for their other duties due to the new "System".
- YEAR TWO: the documentation of "System" procedures, however, is not complete.
- YEAR THREE: to date, no fines have been collected.

Even though formal "System" policies and procedures have not yet been documented, provisional practices have been implemented in the field. There are online forms available for people to file complaints regarding suspected code violations. These complaints are sent to the "Officer" (complaints become anonymous at that point) who in turn investigates the complaints and writes citations if appropriate. For safety during the growing season, the Sheriff or the Undersheriff has been accompanying the "Officer" as routine backup on potential marijuana code violations.

There were 17 issued citations for code violations this year stemming from about 70 complaints (see Appendix B). The code violations that are processed criminally go through the county District Attorney with monies collected going to the state (a percentage is later returned to the County). The code violations that are processed civilly go through the county system, and 100% of the fines go to the County. The procedures for the collection of fines from the civilly processed code violations have not yet been determined. The intention is to have fines paid at the Probation Department, but no fines from these 17 citations have been collected.

Criteria 3): *The effectiveness of the "System" is being tracked by collecting information on such things as allocation of "Personnel" hours, the number of citations, violations processed, fines collected, follow up on compliance and assessment of increased compliance.*

Some of this information is being gathered but an integrated and complete tracking system is not yet in place. All complaints of possible code violations and citations are accumulated. There is no method in place to assess the effectiveness of the "System" to increase compliance.

Criteria 4): *There are sufficient resources of time, money, equipment and personnel to efficiently and safely carry out code enforcement.*

It can take up to two hours to measure the marijuana canopies. The measurements can be delayed because there are occasions when the "Officer" is called to higher priority tasks in the middle of the measurement process. When a peace officer is not available to back-up the "Officer", investigations of code violations involving marijuana are delayed. The "System" does not have sufficient funding for training and supplies (including but not limited to a marked vehicle and a dedicated laptop).

Criteria 5): *Code enforcement is continued to be done in a professional fashion.*

The only processing of code violations this year came from complaints. All code violation complaints received were investigated by the "Officer" this year so no prioritization was necessary. Complaints were first grouped according to geographical proximity for the sake of efficiency. The current "Officer" has sufficient training and experience to provide professional peace officer service, but the "Officer" only had two weeks of ride-along Code Enforcement training.

Findings/Recommendations

Finding 1:

Complete documentation of policies and procedures for the "System" does not exist. It is recognized, however, that concepts are being evaluated and that there was mention of creating such a document.

Recommendation 1:

The Planning Department in cooperation with the Sheriff's Office should develop "System" policy and procedures documentation including at a minimum:

- a) concise "Officer" job description.
- b) clear definition of the chain of command for the "Officer".
- c) requirements for initial and ongoing "Personnel" training.
- d) "Personnel" safety procedures (including officer backup requirements and equipment checklist).
- e) processing procedures for code violations that define the progression from increasing fines and to prosecution by the District Attorney in the event of non-compliance.
- f) definition of a hearing system that handles appeals.
- g) procedures for collecting fines.

Finding 2:

Although implementation of documented "System" policies and procedures is incomplete, there are provisional practices in place for code enforcement.

Recommendation 2:

The Planning Department should:

- a) implement the process for collecting fines.
- b) enroll the "Officer" in code enforcement training.
- c) eliminate the inequity in the non-refundable \$1,050 appeals filing fee policy by refunding a substantial percent of this fee if the appeal is granted.
- d) evaluate cost effectiveness and improved impartiality of using non-attorney officers for the code violation protest hearings.

Finding 3:

The procedure to track the effectiveness of the "System" is incomplete.

Recommendation 3:

The Planning Department should establish a "System" assessment procedure that tracks at a minimum:

- a) costs
- b) fines collected
- c) code violation types (e.g., health, building, marijuana)
- d) compliance
- e) "Personnel" time-logs
- f) compliance follow-up visits

Finding 4:

There are not sufficient resources of time, money, equipment and personnel to efficiently carry out safe code enforcement. The safety of the "Officer" was enhanced by providing trained backup peace officers. It is recognized that due to lack of personnel, the Sheriff and Undersheriff served as backup in 2011. The "Officer" uses an unmarked vehicle.

Recommendation 4:

In the future, it would be more efficient to rely on less senior peace officers for backup support. The safety of the "Officer" can be enhanced by using a marked vehicle. The Sheriff's office in cooperation with the Planning Department should budget funds to provide

- a) a marked vehicle to substantially enhance safety
- b) additional equipment (e.g., laptop computer, efficient measuring devices)
- c) cost effective and time efficient support for the "Officer" by assigning 1-2 peace officers whose priority is to accompany the "Officer" on visits during the months of marijuana harvest season. A pool of peace officers could be provided by part-time retired peace officers or reserve deputies.

Finding 5:

The current "Officer" has pioneered a new position in an admirable fashion. The code enforcement training provided to the "Officer" was insufficient.

Recommendation 5:

The current "Officer" should be recognized for the "Officer's" pioneering effort. Provide the "Officer" ongoing code enforcement training consistent with other law enforcement agencies in the state.

Responses Required

In accordance with the California Penal Code 933.05, a response is required as indicated below:

Respondent	Findings/Recommendations	Due Date*
Head of Planning Department	1,2,3,4,5	60 days
Sheriff's Office	1,4,5	60 days

* Number of days after filing date of this Grand Jury report.

The governing bodies indicated above should be aware that comment or response of the governing body must be conducted subject to the notice, agenda, and open meeting requirements of the Brown act.

Appendices

Appendix A: Code Enforcement Officer Job Description

Appendix B: Table of Code Violation Citations for 2011

Trinity County

Date Last Revised: 11/10
FLSA: Covered
EEO: 4

DEPUTY SHERIFF/CODE ENFORCEMENT OFFICER

DEFINITION

Under general supervision, to perform law and code enforcement and crime prevention work, including patrol, investigations, and special assignments; to investigate incidents and perform criminal identification work; and interprets and enforces County and regulatory codes; administers, manages and responds to citizen inquiries and complaints concerning potential code violations; duties and assignments may overlap depending on the operational needs of the department and staffing levels; and to do related work as required.

DISTINGUISHING CHARACTERISTICS

This is the journey level classification in the Deputy Sheriff series. This class is the entry and training level where incumbents are expected to learn and perform a broad scope of assignments. Incumbents rotate through various assignments and are expected to perform the full range of duties as required.

REPORTS TO

Sheriff Sergeant, Undersheriff and coordinates work with the Building Official and Environmental Health Official.

CLASSIFICATIONS SUPERVISED

None

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES (The following is used as a partial description and is not restrictive as to duties required.)

Enforce County and regulatory codes and ordinances, assist the residential, commercial and industrial community in compliance with County codes; schedule and conduct field inspections for code violations, take photographs for evidence, prepare and process letters to persons with violations, prepare appropriate follow-up procedures, maintain accurate investigative records; perform legal investigation and preparation regarding code violation issues, gather evidence and interview witnesses, assist the District Attorney's Office in preparing court actions, testify in court as needed; receive and respond to citizen inquiries and complaints concerning alleged code violations, respond to requests and collaborate with other departments/agencies for case resolutions; establish and maintain various logs for code enforcement programs, cases and equipment, research parcel and zoning maps, historical records, and permit information, assist in the coordination and preparation of ordinance revisions as necessary; operate and maintain a variety of code enforcement equipment including portable and mobile radios, cellular phones, digital cameras and County vehicles; attend meetings and conferences regarding code enforcement issues as needed, present code enforcement issues to compliance staff; as necessary, provide cross training in methods, procedures, and techniques for Code Enforcement; performs patrol of assigned areas and answers calls for protection of life and property; uses investigation and interrogation methods and techniques; while on patrol: stops drivers operating vehicles in violation of laws, warning drivers of unlawful practices and issues citations, making arrests as necessary; prepares reports of arrests made, investigations conducted and unusual incidents observed; administers first aid in emergency situations; serves warrant/civil papers; gathers evidence and takes statements in connection with suspected criminal activities; substantiates findings of fact in court;

DEPUTY SHERIFF/CODE ENFORCEMENT OFFICER - 2

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES (continued)

performs accident investigations; assists and cooperates with other law enforcement agencies; may be assigned to perform criminal identification work, including fingerprinting and finger print identification work; takes pictures and/or makes sketches at crime scenes; may lift latent prints and prepare plaster casts; searches files for information; keeps firearms and equipment in good working order; prepares detailed reports of activities and incidents

TYPICAL PHYSICAL REQUIREMENTS

Sit for extended periods; frequently stand and walk; climb stairs and ladders; walk on sloped, slippery, and/or uneven surfaces; ability to stoop, kneel, and bend over; sufficient manual dexterity and eye-hand coordination; lift and move objects weighing up to 100 lbs with assistance; crawl through various areas on hands and knees; physical ability to sustain extra physical effort for a substantial period of time and restrain prisoners; corrected hearing and vision to normal range; verbal communication; use of office equipment, including computer, telephone, calculator, copiers, and FAX; use of firearms, batons, various vehicles depending on assignment.

TYPICAL WORKING CONDITIONS

Work is performed in an office and outdoor environments; work is performed in a variety of temperatures and weather conditions; unusual exposure to life threatening situations; exposure to body fluids, infectious agents including blood borne viruses; continuous contact with other staff and the public.

DESIRABLE QUALIFICATIONS

Knowledge of:

Modern law enforcement methods, practices, and procedures, including patrol, crime prevention, traffic control, and investigations.
Familiarity with laws of apprehension, arrest, and custody of persons accused of felonies and misdemeanors.
Rules of evidence and basic criminal law.
Techniques of criminal investigations.
The general geography and topography of Trinity County.
Good public relations techniques.
Use and care of Department authorized equipment and firearms.
First aid methods and techniques.
Principles and practices of County codes and regulations.
Methods and techniques of code enforcement.
Principles and practices of court procedures and legal actions.
Methods and techniques of field inspections and investigation.
Principles and practices of research, analysis and report preparation.
Modern office procedures, methods and equipment including computers and related software applications.
Operational characteristics of compliance equipment and tools.
Occupational hazards and standard safety practices.
Pertinent federal, state and local laws, codes and regulations.

DEPUTY SHERIFF/CODE ENFORCEMENT OFFICER – 3

DESIRABLE QUALIFICATIONS (continued)

Ability to:

Perform a wide variety of professional law enforcement work.
 Read, understand, and interpret laws and regulations regarding arrest, rules of evidence, and the apprehension, retention, and treatment of suspects.
 Carefully observe incidents and situations, accurately remembering names, faces, numbers, circumstances, and places.
 Gather and organize data and information.
 Interview and secure information from witnesses and suspects.
 Make independent judgments and adopt quick, effective, and responsible courses of action during emergencies.
 Prepare clear, comprehensive reports to submit to the District Attorney for review.
 Meet standards of adequate physical stature, endurance, and agility.
 Demonstrate technical and tactical proficiency in the use and care of firearms.
 Operate code enforcement equipment and motor vehicle under normal, critical and unusual conditions.
 Perform code enforcement.
 Plan and prioritize caseload.
 Interpret and explain various codes to the public.
 Cross train compliance staff.
 Work independently in the absence of supervision.
 Understand and follow oral and written instructions.
 Communicate clearly and concisely, both orally and in writing.
 Work with computerized law enforcement information systems.
 Effectively, tactfully, and courteously represent the Sheriff Department and the County of Trinity with the public and other law enforcement agencies.
 Establish and maintain cooperative working relationships within the course of work.

Training and Experience:

Any combination of training and experience which would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the required knowledge and abilities would be:

One (1) year of previous professional law enforcement work experience.

Education:

Graduation from a California POST certified academy.

Special Requirements:

Possession a Basic Post Certificate or possession of a certificate of graduation from a California POST Certified Academy.

Ability to obtain a California Association of Code Enforcement Officers Certification within one year of initial employment.

Possession of, or ability to obtain, an appropriate California Driver's License.

The contents of this class specification shall not be construed to constitute any expressed or implied warranty or guarantee, nor shall it constitute a contract of employment. The County of Trinity assumes no responsibility beyond the general accuracy of the document, nor does it assume responsibility for any errors or omissions in the information contained herein. The contents of this specification may be modified or revised without notice. Terms and conditions of employment are determined through a "meet and confer" process and are subject to the Memorandum of Understanding currently in effect.

Appendix B: Table of Code Violation Citations for 2011

#	Complaint Date	Citation Date	Location	Sex	Age	Plants	Actual Canopy SF	Legal Canopy SF	Acres	Reason Given
1	7/11/11	8/2/11	HFK*	M	30	97	1869	100	2.2	Claimed Co-op
2	5/6/11	8/12/11	HFK	M	32	67	1245	100	3.19	Claimed Co-op
3	5/2/11	8/12/11	HFK	F	34	15	367	50	0.48	Self
4	5/4/11	8/18/11	DC*	M	23	33	933	100	1.43	Self
5	5/4/11	8/24/11	DC	M	24	86	656	100	3	Self
6	5/12/11	8/29/11	DC	M	58	12	320	100	1.39	rechecked OK
7	7/18/11	9/6/11	HFK	M	35	65	1070	100	2.05	Self/Others
8	7/18/11	9/6/11	HFK	M	31	156	3010	100	1.83	Self/Others
9	7/31/11	9/7/11	HFK	M	58	104	1606	100	1.52	Claimed Co-op
10	6/27/11	9/7/11	HFK	M	54			2500	30+	Set back violation
11	9/8/11	9/20/11	HFK	M	38	47	839	50	0.66	Self
12	9/8/11	9/20/11	HFK	M	52	12	543	50	0.61	rechecked OK
13	7/21/11	9/20/11	HFK	F	52	169	1153	50	1	rechecked OK
14	6/21/11	9/21/11	WVL*	M	21	23	384	50	0.32	rechecked OK
15	8/31/11	9/21/11	WVL	M	22	56	1056	100	1.19	Self/Others
16	8/18/11	9/21/11	WVL	M	73	73	1245	250	5.07	rechecked OK
17	9/19/11	9/23/11	HFK	M	45	124	1660	100	2.5	Self/Others

* WVL: Weaverville, HFK: Hayfork, DC: Douglas City