

2011-2012 GRAND JURY

JUR-2011-2012-001

REPORT

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

**PLANNING
DEPARTMENT
RESPONSE**



TRINITY COUNTY

DEPARTMENT OF TRANSPORTATION

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*Reviewed
11/30/2012*

TO: James P. Woodward, Presiding Judge of Trinity Superior Court
FROM: Richard Tippet, Director
CC: Bruce Haney, County Sheriff
Wendy Tyler, County Administrative Officer/Clerk of the Board
DATE: November 26, 2012
RE: Response to Grand Jury Report

This is written in response to the April 9, 2012 Grand Jury, Judicial Committee's Final Report entitled, "Investigation into the Code Enforcement System, Codes, Cannabis, and Confusion," (Report). The Report provides an overview of the County's efforts to develop an effective code enforcement program, most specifically to deal with the local ramifications related to the influx of "medical marijuana" growers in the Community. As the Report notes, since the passage of Proposition 215 local agencies throughout the State have wrestled with interpretation of that law and how individuals who advantage themselves of its provisions have impacted local land use regulation. The continual state of flux the courts, law enforcement and community regulation is continuing to go through is not unique to Trinity County, however the County has taken a proactive approach to creating a set of rules that attempt to balance individual need of access to medicine and the realities of neighborhood compatibility.

Specific to the Findings and Recommendations within the Report, I offer the following comments:

Finding/Recommendation 1: The Report suggests that the County should "Complete documentation of policies and procedures for the "System." This includes recommendations for a more comprehensive job description for the Code Enforcement Officer, provision of a "chain of command" for the Officer, training for the Officer,

personnel safety procedures and a clear set of procedures for the Officer and the public follow in the application of the laws. To begin, it must be understood that, to date, not only has the County, but jurisdictions from around the entire State have struggled to develop simple but effective programs. I will respond to the recommendations in general.

As the report notes, the Code Enforcement program has a small budget and was created with the understanding that the specific standards, policies, and protocols would be created by evolution. It is important to note that the primary efforts related to the Code Enforcement Program has evolved to be a secondary or alternative enforcement tool to address concerns related to marijuana, which in turn has made the program highly dependent on development of the marijuana policy. Operating within this framework, the program had to contend with the political nature of the Proposition 215 "realities," in that significant time was spent providing public input into the development of the overall marijuana program, which continues to be an on-going process. While we did develop protocols and processes, they were put in place in an ever changing legal and real world environment.

While acknowledging the "system" could always be improved, general "rules of engagement" don't always adapt well to the marijuana cultivation issues. The standards that were in place under the cultivation moratorium (now ordinance) required a delay in enforcement action until the end of the grow season, and at the time, it was based on the size of the plant's canopy, tedious field work was necessary to access a grow site. The follow up of imposing and collecting fines was difficult as the rules under which government must operate, e.g. providing due process, enables violators of land use regulations to utilize the system to advantage themselves during the grow season. The appeal process was never ultimately needed as no individual cited ever appealed their fine or penalty. Growers that were cited for non-compliance with the regulations would simply "disappear" and move on, with properties being sold, transferred or foreclosed upon. It is common for growers to structure land purchase or lease that enables them to move onto a property with a certain investment and then to conduct their operations and simply move on with forfeiture of deposits/rents/etc and to simply view that as the cost of doing business. Similarly, some would consider a fee of \$100/day as a related business cost.

We have been fortunate to have an experience field Officer who has a good relationship with the community. As the County has wrestled with the overall issue, the County has devoted countless hours of Planning Commission and Board of Supervisor's time into developing a sound local program. Efforts have had to continually adapt to the changing legal environment we find ourselves in. While the interim ordinance was put in place a list of Frequently Asked Questions (FAQs), clarifying in simple terms, parameters for personal grow operations was developed and posted on the County's web site for public review. The new civil enforcement program, specifically intended to address land use violations was developed. This moratorium and new civil penalty program was in place by the middle of the 2011 grow season. Numerous citizen complaints were investigated, with some diverted to the criminal

justice system due the size or other factors related to the operation. However, we acknowledge that due to a variety of factors as noted above, the program could improve.

We do believe, although again acknowledging that more work is needed, that the new cultivation ordinance that replaced the moratorium, provides a better tool for enforcement. Plant count and/or simple area of cultivation is now the standard which should make intervention easier, quicker, and can be done earlier in the grow season. Further, under the direction of the Board of Supervisors, a Code Enforcement Committee is being formed that consist of two Supervisors, one Planning Commissioner, the Department Heads of Planning, Sheriff, Probation, District Attorney and Health and Human Services, along with appropriate staff to develop a clear criteria to deal with the many diverse issue found in the County. This Committee focus will be to develop the standardized policies and procedures for implementation as outlined in Recommendation 1 in which these procedures would be workable within the political realities of Trinity County.

Finding/Recommendation 2: This comment calls for the Department to implement the fine collection program, educate the Code Enforcement Officer in more training, eliminate any unjustified appeal fee, and to evaluate using non-attorneys as hearing officers as a means to improve effectiveness.

1. We continually desire to educate staff, however and candidly, if the concern is specific to code enforcement for marijuana related concerns, there is little opportunity to seek such education other than the field. As there is no unifying marijuana laws, and the laws that do exist are constantly changing throughout the State, let alone Country wide, an individual with solid police training is likely best equipped for dealing with this issue. Code Enforcement education typically deals with educating non-POST (Peace Officer's Standards and Training) certified individuals with law enforcement protocols and practices. Issue specific training for issues such as abandoned vehicles or substandard housing is offered to deal with what may be of issue within a specific jurisdiction. Zoning and land use law, within which the marijuana regulations are now being enforced, due stem from the "police powers" of the constitution. So while absolutely not denying the need for training, finding good, situation applicable, and cost efficient training for the Officer is not as easy to find. But, we have been able to send the Officer to standard Code Enforcement Training in Sacramento within the last year. This week long course was offered by the California Association of Code Enforcement Officers, in which the County is a member.
2. The appeal fee has not been an issue to date. It is quite common to have appeal fees in land use/zoning issues and some jurisdictions due have protocols for refunds if there are some unique circumstances found. However, in the instant situation, there would likely be little room for argument if a person had more than the now permitted maximum number of plants to reasonably appeal,

other than to seek relief from full enforcement penalty fee costs. As the system is designed, the hearing officer would be able to reduce the maximum fees as they saw appropriate to a given situation. Further, this issue has been fully vetted by the Board of Supervisors, in which the cost of appeals was fully disclosed and discussed. The Board to no action to revise the procedures that were approved

3. Using an non-attorney was investigated however County Counsel advised that in his opinion, given the legal issues involved in interpreting the state of the law surrounding marijuana cultivation, that a licensed attorney would be the optimum standard.

Finding/Recommendation 3: This issue is that the Jury believes that the "system" is incomplete and needs a better means to assess costs, monitor violation, insure compliance, keep time logs, etc.

We do not disagree however note in general the following:

- There is a limited budget.
- There are limited personnel
- Because this process is done by law enforcement (criminal system), procedures relate to report are different than what would be expected by a process that is administered by the Planning or Building Department (civil system). Criminal system report is limited to location, violation, and was a citation issued. Marijuana is cited as a civil citation, where as code violations are currently cited criminally. But again, all are reported the same, in which confidentiality of details is required for due process rights. These violations are tracked, but not necessarily subject to full public disclosure.
- There is an ever changing list of priorities due to the nature of code enforcement activities related to marijuana.
- We have been working on developing other means to approach the non-compliant grower, such as new regulations regarding appropriate living standards for properties. This includes new standards for use of RVs, camping and other temporary uses of land.
- That the civil enforcement of marijuana related activities are also balanced by ongoing criminal aspects of this industry which the Sheriff's Office continues to work on. This is evident when proceeding forward with an investigation. The Planning Department has observed that the Code Enforcement Office will typically require additional assistance, see Finding 4.

- We have developed a code enforcement log sheet for use by planning, building, environment health, and the Code Enforcement Officers, which we are currently working to develop a computer based tracking and monitoring system

We acknowledge that enforcement of land use laws is a difficult and frustrating process. In making this statement, we are referring to "traditional" code enforcement of dealing with building without a permit or having too much "junk" on your property. In a difficult economy, it is exacerbated by the economic and social realities of living in a poorer, rural area. Whereas, Trinity County has a strong property rights orientation wherein government's or the community's authority to dictate land use standards are highly questioned.

Finding/Recommendation 4: This deals with the provision of resources to assist the Code Enforcement Officer with a safe and efficient means to operate.

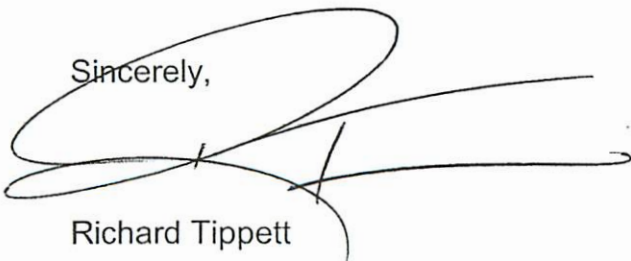
The hiring of support enforcement personnel, and the purchase of a new vehicle is something we recognize and need to develop via an overall budget enhancement, which is subject to Board of Supervisor's authorization. In doing so with existing resources, there are times when the Code Enforcement officer works on other duties to make the funding resources available to draw additional staff when needed for enforcement actions.

Finding/Recommendation 5: The current "Officer" is to be recognized and provided with better training.

Efforts made by the Officer, and support staff (Senior Planning Staff) for the overall program is commendable considering that this programs was developed from scratch and as situations have developed. Code Enforcement for Trinity County has many similarities to other programs, but the unique social, fundamentalist perspective, and economic realities set the County apart from the other 57 counties in California. Balancing all interest in the community is an ongoing task.

As noted in response 3 above, there is an acknowledged need for enhances training, but finding something that is truly applicable, if the issue is marijuana related code enforcement activities, is difficult to find, if not impossible. General training of the Officer for land use law training is something the County will continue to see

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Richard Tippet', is written over the word 'Sincerely,' and extends across the line for the name.

Richard Tippet
Planning Director