



# MEDICAL MARIJUANA

## TRINITY COUNTY

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**Strategies for Compliance**



# LEGAL OVERVIEW

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# California Law

Cultivation of marijuana is a felony under California Health and Safety Code section 11358.

The Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMP) have created limited immunity from criminal prosecution under specified state statutes for medical marijuana cultivation and possession:

- The amount a qualified patient or caregiver may possess or cultivate is that “amount reasonably related to [a patient’s] medical needs.”
- Possession or cultivation in excess of that amount is subject to criminal prosecution.

# REGULATION OF CULTIVATION AS LAND USE

The CUA and MMP do not preempt County's police power to regulate marijuana facilities or cultivation as land use.

*See City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal.4th 729; *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704.

The CUA and MMP do not confer on qualified patients and their caregivers the right to cultivate marijuana anywhere they choose.

*See Maral v. City of Live Oak* (2013) 221 Cal. App. 4th 975; *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861.

# ORDINANCE NO. 315-797

Enacted by Trinity County Board of Supervisors on June 5, 2012

- Established restrictions on the growing of marijuana within Trinity County;
- Declared violations of this ordinance a “public nuisance.”

# Citizen Complaint Process

- Complaints regarding marijuana cultivation may be made by:
  - Calling 530-623-1351;
  - Submit on Trinity County website and under “report violation” tab;
  - Complaints can be mailed to P.O. Box 2819, Weaverville, CA 96093.
- The process is kept confidential.
- Be careful and safe

# ENFORCEMENT

- Criminal
- Civil Penalties
- Civil Abatement

# Criminal

Trinity County District Attorney – 18-24 months

- Has filed approximately 250 cases related to marijuana.
- There is no threshold for filing.
- Law Enforcement can seize plants.



# Civil Penalties

Trinity County Municipal Code 8.90 – Any violations of County Code subject to Civil Assessment.

## Process:

- Inspection
  - Warrant requirement
- Issue a citation
  - Informs of 30 days to abate.
  - Informs of penalties of up to \$100/day;
  - Informs of right to appeal within 10 working days;
  - Informs of obligation to request a follow up inspection.
- Notice of Violation – (90 days)
- Lien against the parcel.
- Start the process over.
- This process does not provide for physical abatement of the nuisance by County personnel.

# Civil Citations in Trinity County

2014 - Approximately 10 citations for violation of the marijuana cultivation ordinance were forwarded to probation for collection;

Collected \$44,600.07

2015 – As of this date, approximately 14 citations have been issued for violation of the marijuana cultivation ordinance

# Civil Abatement

## Administrative

- Trinity County Municipal Code 8.64 allows for abatement;
- Can be done by Board of Supervisors or a Designated Hearings Officer (Government Code section 27720 *et seq.*)
- Designated Hearings Officer through Resolution 2011-056.
- Procedure under 8.64:
  - At least seven days notice to property owner;
  - Hearing before a neutral hearings officer;
  - Written decision;
  - Right to appeal (1094.5 and stay of execution);
  - County still required to go to Court for right to enter property and carry out order of hearings officer (*Allen v. Lake County*).
- County employee or contractor abate marijuana (Abatement Fund);
- Ability to recover cost of abatement pursuant to Trinity County Municipal Code section 8.64.100.

# Judicial Abatement

Trinity County Code 8.64 allows County to use all legal methods to procure abatement, including judicial abatement.

A civil lawsuit (request for injunction) may be filed to abate violations of a municipal code under two legal theories:

1. Nuisance Per Se
  - a valid ordinance identifying a nuisance; and
  - a violation of that ordinance.
2. Public Nuisance in Equity (Civil Code § 3479)

County has right to recover all costs involved in any code enforcement action:

1. Attorneys' fees;
2. Staff costs/investigative costs;
3. Costs of physical abatement; and
4. Incidental costs

# Which is Better?

Due Process Under Constitution:

1. Notice;
2. Disclosure of evidence;
3. Right to present witnesses and to confront adverse witnesses;
4. Right to be represented by counsel;
5. Fair and impartial decision maker; and
6. Written statement from fact finder listing evidence relied upon and reasons for determination made.

# Administrative Abatement

## Pros and Cons

Pros	Cons
<u>May</u> be less expensive	Adds another hearing, as still required to go to Court to abate
<u>May</u> be quicker	Has potential monetary liability for County
	Cannot do it without impartial hearings officers ( <i>Hass v. San Bernardino</i> )
	Taxing on staff time to set up hearing and preserve record
	Subject to one more level of review
	More work for County on appeal, as County has to prepare the record

# Judicial Abatement

## Pros and Cons

Pros	Cons
One less step required	Subject to availability of the Courts
Process has already been vetted	May require more attorney involvement
Utilizes Court vs. County time	
Less likely to be found conflicted	
Right to recover attorney fees and costs	
Puts liability onto Court	
Injunction stays for 18 months (summary abatement).	

# County Counsel Recommendations

## 1. Fines and Fees:

- Options:
  - Increase fines (Government 25132)
  - Administrative Fees
  - Modify to allow each plant to be separate violation
  - ✓ Stack fines



# County Counsel Recommendations

## 2. Reduce the time to Comply

### Options:

- Keep at a minimum of 30 days
- Reduce to a minimum 10 days
- ✓ Reduce to a minimum of 5 days

Must be done by Ordinance, a proposal of which is on the agenda to follow.

# County Counsel Recommendations

## 3. Provide Direction Regarding Abatement

Options:

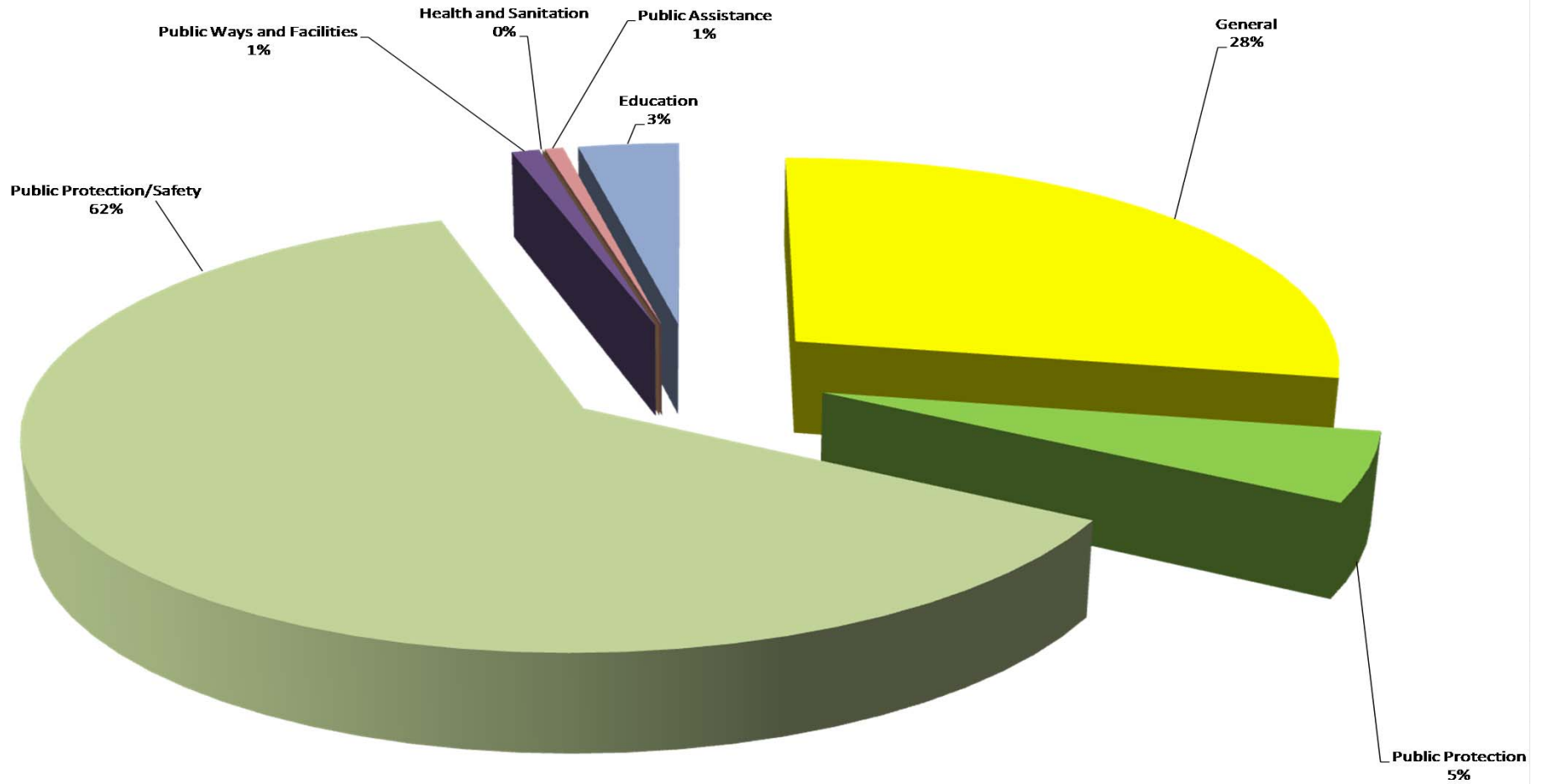
- Judicial Abatement
- Administrative Abatement
- No Abatement
- ✓ Try both Judicial and Administrative Abatement



# CAO Recommendations

1. County Budget and Process
2. Financial Implications of Abatement Options

## FY 2014/15 GENERAL FUND CONTRIBUTION/DISCRETIONARY BY FUNCTION CAO RECOMMENDED BUDGET



DA	\$ 760,582
Coroner	\$ 59,883
Public Defender	\$ 656,073
Sheriff	\$2,010,286
Jail	\$1,936,487
Animal Control	\$ 26,117
Probation	\$ 284,723
Juvenile Hall	\$ 278,324
Fire Protection	\$ 18,189
<b>TOTAL</b>	<b>\$6,030,664</b>

## Public Protection/Safety

