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12/20/11



ORDINANCE NO. 4971

**AN INTERIM ORDINANCE MAKING FINDINGS AND ESTABLISHING A
TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION
OF NEW MEDICAL MARIJUANA DISTRIBUTION FACILITIES, TO BECOME
EFFECTIVE IMMEDIATELY**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES
ORDAIN AS FOLLOWS:**

Section 1. Findings

A. In 1970, Congress enacted the Controlled Substances Act ("CSA") which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.

B. In 1996, the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code section 11362.5 et. seq. and entitled "The Compassionate Use Act of 1996" ("CUA").

C. The intent of the CUA was to enable seriously ill persons who need medical marijuana for medical purposes to obtain and use marijuana under limited, specified circumstances. The CUA provides a limited exception from criminal prosecution under state law for specific crimes involving the cultivation, possession and use of marijuana for specified medical purposes. The CUA does not address land use, zoning or building code impacts or issues that arise from the proliferation of medical marijuana dispensaries and large scale cultivation within local jurisdictions.

D. On January 1, 2004, SB 420, the Medical Marijuana Program Act ("MMPA"), went into effect. The MMPA was enacted by the State Legislature to clarify the scope of the Compassionate Use Act of 1996. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.

E. The MMPA included a list of facilities that could qualify as “primary caregivers” and dispense marijuana to qualified patients. The only facilities the Legislature authorized to serve as “primary caregivers” are licensed clinics, health care facilities, residential care facilities, home health facilities and hospices which provide medical care and medical support services to qualified patients (Cal. Health & Saf. Code § 11362.7 (d)(1)).

F. At the time the MMPA took effect in 2004, the El Dorado County General Plan and zoning ordinance did not expressly address the regulation of medical marijuana dispensaries but did allow “dispensaries” (which was not defined) in certain districts. After the MMPA took effect, the County of El Dorado and other jurisdictions around the state began receiving numerous inquiries regarding the permitting and establishment of medical marijuana dispensaries within the County.

G. On August 24, 2004, in order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, the County of El Dorado adopted a temporary moratorium on medical marijuana dispensaries while the County studied the potential impacts such facilities might have on the public health, safety and welfare.

H. On March 29, 2005, the Board adopted Ordinance 4667, extending the temporary moratorium.

I. On June 5, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich* (2005) 125 S.Ct. 2195, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and power to prohibit local cultivation and use of marijuana even if the cultivation or use complied with California law.

J. On September 20, 2005, the Board adopted Ordinance 4683, permanently prohibiting medical marijuana dispensaries in all zone districts in the unincorporated areas of the County by deleting the word “dispensary” from the zoning ordinance in each zone district in which it appeared. The Board’s intent was to prohibit any entity from dispensing marijuana throughout the unincorporated areas of the County.

K. Between 2005 and 2011, several marijuana distribution facilities began operating in El Dorado County, in violation of the County’s prohibition on dispensaries. In their application for business licenses, many of the businesses identified themselves as “collectives” “wellness centers” or “health facilities” or other descriptions that did not include the word “marijuana” or “dispensary” in an attempt to circumvent the County’s prohibition on medical marijuana dispensaries.

L. In August 2008, the California Attorney General adopted guidelines for the interpretation and implementation of the state’s marijuana laws entitled “Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use.” The Attorney General stated in the Guidelines that “[a]lthough medical marijuana ‘dispensaries’ have been operating in

California for years, dispensaries, as such, are not recognized under the law.” The Guidelines show that in the Attorney General’s opinion, medical marijuana dispensaries do not qualify as “primary caregiver” facilities, since they do not “consistently assume responsibility for the housing, health or safety of a patient” over time.

M. In August 2011, the State Legislature adopted AB 1300, which amended California Health and Safety Code section 11362.83 to read “Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:

- (a) Adopting local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective.
- (b) The civil and criminal enforcement of local ordinance described in subdivision (a).
- (c) Enacting other laws consistent with this article.”

N. Governor Brown stated “I have signed AB 1300 that gave cities and counties authority to regulate medical marijuana dispensaries – an authority I believe they already had. . . . Decisions of this kind are best made in cities and counties, not the State Capitol.”

O. The Board of Supervisors takes legislative notice of the fact that many California cities and counties which have permitted the establishment of medical marijuana distribution facilities or “dispensaries” have experienced serious adverse impacts associated with and resulting from such uses. According to widely reported news stories, medical marijuana facilities have resulted in and/or caused an increase in crime including burglaries, robberies, loitering, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas surrounding medical marijuana distribution facilities.

P. The Board further takes legislative notice that the experience of other jurisdictions has been that most, if not all, medical marijuana distribution facilities do not operate as true cooperatives or collectives in compliance with the MMPA and the Attorney General Guidelines, and thus these businesses are engaged in the cultivation, distribution and sale of marijuana in a manner that violates both California and federal law.

Q. Citizens and law enforcement officers have reported an increase in crimes, such as loitering, and an increase in traffic, odor and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries.

R. Law enforcement officials have indicated that it would be easier to prosecute the illegal operation of dispensaries if the prohibition on medical marijuana dispensaries was more clearly stated in the zoning ordinance.

S. The Board of Supervisors finds that it is necessary to study the possible adoption of amendments to the County's Zoning Code in order to adopt legislation which more clearly sets forth the existing prohibition on medical marijuana dispensaries, which includes a clear prohibition on "collectives and cooperatives" and which conforms with recent state and federal case law.

T. Based on the foregoing, the Board of Supervisors finds that issuing any permits, business licenses or other entitlements for the establishment and/or operation of medical marijuana facilities poses a current and immediate threat to the public health, safety, and welfare, and that therefore a temporary moratorium on the issuance of such permits and licenses for medical marijuana facilities is necessary.

Section 2. Imposition of Moratorium on Medical Marijuana Distribution Facilities

A. In accordance with the authority granted the County of El Dorado under Government Code section 65858, from and after the date of this ordinance, the establishment and operation of any new medical marijuana distribution facility shall be prohibited, and no use permit, variance, building permit, or any other applicable entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of a medical marijuana distribution facility for a period of 45 days.

B. For purposes of this ordinance, "medical marijuana distribution facility" includes any medical marijuana dispensary, collective, or cooperative, in any facility or location, whether fixed or mobile, and whether or not the facility is operated for profit, where (a) medical marijuana, in any form, is made available, sold, transferred, given, or otherwise provided to three (3) or more qualified patients, primary caregivers, or patients with an identification card, as defined in California Health and Safety Code section 11362.5 et seq.

C. For purposes of this ordinance, a "medical marijuana distribution facility" shall not include dispensing by primary caregivers to qualified parties in the following locations, so long as the location is otherwise permitted by the El Dorado County Zoning Ordinance and applicable state laws:

- (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
- (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
- (3) a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
- (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;
- (5) a residential hospice licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code; or
- (6) a home health agency licensed pursuant to Chapter 8 of the Health and Safety Code,

as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code section 11362.5 et. seq.

D. A medical marijuana distribution facility as defined in Section B above shall not be established, operated or maintained at any location in any zone district in the unincorporated areas of the County, even if the medical marijuana distribution facility is located within, or operated with one or more additional otherwise permitted use(s), including but not limited to: a health food store, bakery, tobacco shop, other retail store, health education facility, health spa, fitness facility, wellness center, or a health facility other than a licensed facility identified in Section C above.

E. This ordinance is an interim ordinance adopted as an urgency measure pursuant to the authority granted the County of El Dorado under Government Code section 65858 and is for the immediate preservation of the public safety, health and welfare. The facts constituting the urgency are: California jurisdictions which have permitted the establishment of medical marijuana dispensaries have recognized that doing so has resulted in the creation of negative secondary effects such as an increase in crime, including burglary, robbery and the sale of illegal drugs, in the areas immediately surrounding medical marijuana dispensaries. The County of El Dorado currently prohibits dispensaries in all zone districts in the County. Operators have, nonetheless, opened numerous dispensaries, resulting in secondary effects and many complaints to law enforcement. Absent the adoption of this urgency ordinance, the establishment and operation of additional medical marijuana dispensaries in the County would result in increases to the harmful secondary effects identified above. As a result of the harmful secondary effects associated with medical marijuana facilities and the current and immediate threat such secondary effects pose to the public health, safety and welfare, it is necessary to, in accordance with Government Code section 65858, temporarily establish a 45-day moratorium on the establishment and operation of any new medical marijuana facilities in the County pending the completion of the amendments to the County's Zoning Ordinance.

Section 3. Compliance with California Environmental Quality Act

The Board of Supervisors finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) since it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 4. Severability

If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force

and effect. To this end, provisions of this ordinance are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Penalties

A. Any person, firm, partnership, association, corporation or other entity whether as principal agent, employee or otherwise, who owns the property upon which a medical marijuana facility is located or owns or operates a medical marijuana facility, or otherwise violates any of the provisions of this ordinance can be charged with a misdemeanor or infraction at the discretion of the district attorney.

B. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding six months or by both such fine and imprisonment; if charged as an infraction, it shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) for the first violation, Two Hundred Dollars (\$200.00) for a second violation within one year and Five Hundred Dollars (\$500.00) for each additional violation within one year.

C. Such person, firm, partnership, association, corporation or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.

D. Primary responsibility for enforcement of this ordinance shall vest with the Sheriff of the County of El Dorado and his sworn officers. All other county officers with authority to enforce the County Code including but not limited to, Development Services Code Enforcement personnel, shall also have the authority to enforce this ordinance.

E. In addition to the foregoing, any violation of this ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

Section 6. Ordinance Declarative of Existing Law

Medical marijuana dispensaries have been prohibited in all zone districts in the County since August 24, 2004. Nothing in this ordinance shall be construed to legalize any existing dispensaries, collectives, cooperatives or other facilities currently operating in the County, whether they are operating with or without a business license; these existing operations continue to violate the County's existing zoning ordinance and are subject to all penalties contained therein.

Section 7. Effective Date

This ordinance shall become effective immediately upon adoption, if adopted by at least four-fifths vote of the County Board of Supervisors. It shall be in effect for 10 months and 15 days from the date of adoption, unless extended by the County Board of Supervisors as provided for in Government Code section 65858. Unless extended, this ordinance shall have no further force and effect after 11:59 p.m. on November 6, 2012.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the 20 day of December, 2011, by the following vote of said Board:

Ayes: Raymond J. Nutting, James R. Sweeney
Ron Briggs, Norma Santiago


ATTEST
SUZANNE ALLEN DE SANCHEZ
Clerk of the Board of Supervisors

By


Deputy Clerk

Noes: John R. Knight
Absent: none

First Vice


Chairman, Board of Supervisors
John R. Knight

APPROVED AS TO FORM
LOUIS B. GREEN
COUNTY COUNSEL

By


PAULA F. FRANTZ
Deputy County Counsel

I CERTIFY THAT:
THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

Date _____

ATTEST: SUZANNE ALLEN DE SANCHEZ, Clerk of the Board of Supervisors
of the County of El Dorado, State of California.

By _____

Deputy Clerk