



**Cultivation of Cannabis for Personal Use
Planning Commission – March 26, 2020
PROPOSED ORDINANCE AMENDMENTS**



Presentation Overview

- Overview of existing ordinance
- Overview of current State law
- Overview of proposed amendments
- What are other counties doing?

Multi-Department Collaboration

- Proposed amendments to the cultivation of cannabis personal use ordinance today are the result of a collaborative effort with input, review, and support by:
 - Planning and Building Department, which includes Code Enforcement Unit
 - Sheriff's Office
 - District Attorney's Office
 - Chief Administrative Office
 - County Counsel's Office

Existing County Ordinance

Section 130.14.260 (“Ordinance 5000”)

- Allows 200 square feet per patient for cultivation of medicinal cannabis for personal use.
- Depending on zone, up to 600 square feet with three medical cards (200 square feet per patient) as collective cultivation:
 - Lots zoned R1, R20,000, R1A, R2A, and R3A: 200 square feet
 - Lots zoned RE and RL: 400 square feet
 - Lots zoned AG, FR, LA, and PA: 600 square feet
- Enforcement efforts have confirmed significant abuse under current ordinance that is supplying the black market.
- Legitimate medical authorization and square footage allowances are not easily determined and significantly delay enforcement.

Existing State Law

Health and Safety Code section 11362.2

- Proposition 64: Allows cultivation of 6 plants indoors per residence. Per “residence,” not per person.
- County “shall not completely prohibit” the cultivation of 6 plants “inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.”
- County “may completely prohibit” outdoor cultivation.
- County may “enact and enforce reasonable regulations” for cultivation for personal use.



Existing State Law

Health and Safety Code section 11362.2 *cont.*

- “Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.”
- Existing ordinance conflicts with this 6 plant limit under state law, which was enacted after the existing ordinance.
- *What has changed since the County enacted its existing medicinal personal use ordinance?*
 - The state and County have implemented commercial cannabis programs and the legal regulated market cannot survive with the continued predominance of the black market.



Existing State Law

Health and Safety Code section 11362.77

- A “ qualified patient or primary caregiver may also maintain no more than six mature or 12 immature cannabis plants per qualified patient.”
- “Counties and cities may retain or enact medicinal cannabis guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).”
- Section 11362.77 is “not a guarantee but merely an outer limit on how much medical marijuana a qualified patient or caregiver may ordinarily possess without prosecution.” (*County of Tulare v. Nunes* (2013) 215 Cal.App.4th 1188, 1203; *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 968.)



Existing State Law

- Business and Professions Code section 26033(a) exempts cultivation by qualified patients for personal use from the state licensing requirements and cultivation by a primary caregiver for a maximum of 5 qualified patients.
- However, any person growing in excess of six plants without a state license is subject to criminal penalties pursuant to Health and Safety Code section 11358.
- **California Department of Food and Agriculture has stated that notwithstanding section 11362.77 and section 26033, any person cultivating more than 6 plants without a commercial license “is subject to criminal action.”**
- Benefit of a state commercial license is that the cannabis would be part of the track and trace system, thus would preclude cannabis grown for “personal use” from entering the black market.



Cost of State Commercial Licenses

- If the County continues with its existing ordinance, cultivation in excess of 6 plants could be subject to criminal prosecution unless the patient obtains a commercial license, which would subject the grower to the state regulations for commercial cultivation and significant costs:
 - Specialty Cottage Outdoor - An outdoor cultivation site with up to 25 mature plants. Application fee \$135 and License and Annual Renewal Fees \$1,205.
 - Specialty Cottage Indoor - An indoor cultivation site with up to 500 square feet or less of total canopy. Application fee \$205 and License and Renewal Fees \$1,830.
 - Specialty Cottage Mixed-Light - A mixed-light cultivation site with 2,500 square feet or less of total canopy.
 - Tier 1 – Application fee \$340 and License and Renewal Fees \$3,035
 - Tier 2 – Application fee \$580 and License and Renewal Fees \$5,200



Benefits of Proposed Amendments

- Recognizes legitimate use of the existing ordinance by many individuals with medical needs by continuing to allow outdoor cultivation, which can allow for greater yield per plant than indoor cultivation.
- Aligns County ordinance with existing state law and prevents potential criminal prosecution of medical cannabis users who are relying on the existing County ordinance.
- Provides clarity to the public and enforcement officials as to what is legal.
- Simplifies regulation for easier access to medication in legitimate quantities.
- Avoids the need to impose a medical registration program and respects the privacy concerns of medical cannabis users.
- Allows enforcement officials to easily determine whether a personal cultivation grow is compliant with the County ordinance without the need to investigate or verify whether a particular grow is for legitimate medical use.
- Provides clear guidelines for the public, which allows for expedited enforcement before plants reach maturity.
- Provides an avenue to more effectively and safely combat the black market, which is necessary for the success of a legal market.



Proposed Amendments

- Updates the Findings in light of existing state law.
- Makes the Declaration of Facts explaining why the ordinance will become effective immediately upon final passage by the Board of Supervisors to protect the public peace, health, and safety:
 - Absent these findings, ordinance would become effective 30 days after final passage, which would likely prevent enforcement this grow season or delay enforcement until plants have reached maturity. Mature plants pose greater health risks to the public by increasing the use of crime to protect the plants, providing greater coverage for armed protection of the plants, and increasing health risks from asthma and other conditions.
- Current schedule at the Board of Supervisors:
 - First Reading: April 14, 2020
 - Second Reading and Final Passage: April 21, 2020



Proposed Amendments

- Removes limitation to medical use cannabis because existing state law allows for 6 plants for (1) medicinal use; or (2) recreational use by adults over the age of 21.
 - Ordinance will no longer require individuals to disclose whether they are growing for medicinal use and enforcement officials will not have to verify whether a medical card or prescription is valid or used in multiple locations.
- Still allows a primary caregiver to cultivate for a patient consistent with the limitations of state law and subject to the 6 plant limit.
- Updates definitions, including removing references to medical use cannabis.
- Maintains regulations for screening, setbacks, odor control, security, residency requirements, and property owner authorization.



Proposed Amendments

- Imposes state plant limit of 6 plants per residence.
- Limits the number of plants grown outdoors to 6 per parcel.
 - A single parcel with a secondary dwelling unit or accessory dwelling unit could have 6 plants per residence, but only 6 could be outdoors and the remaining plants must be indoors.
- Limits cultivation on multi-unit residential (RM) to indoors only.
- All other residentially zoned parcels can cultivate the 6 plants indoors or outdoors.
 - Consistent with state law, “indoor” cultivation includes “an accessory structure to a private residence . . . that is fully enclosed and secure.”
 - Outdoor cultivation includes the use of a greenhouse, hoop-house, glass house, conservatory, hothouse, or other similar structure.



Proposed Amendments

- Provides the opportunity for the County to implement registration for outdoor cultivation if continued black market grows thrive and significant County resources are required to ensure compliance.
 - “Any registration program shall not require an individual to disclose whether cannabis grown under this section is for medicinal use.”
- Provides that any violation of any other County Code or state regulation committed to facilitate cultivation of cannabis is a violation of this section.
- Increases opportunity to work with property owners to bring a property into compliance when a tenant cultivates cannabis without the property owner’s consent or knowledge.
- Allows abatement to begin 96 hours after first notice.
- Removes escalating fine and uses a set fine.
- Requires a remediation plan to bring a property back into pre-cultivation conditions, such as illegal grading and damage to water supply.



What Are Other Counties Doing

- Counties either allow for a certain plant count or square footage amount
 - Three counties allow for 200 sq. ft. or more for personal medical cultivation - all have to be on a parcel that is one acre or more
 - Five counties allow for more than six plants outdoors for personal medical cultivation
- The rest of the counties have moved to six plants or 100 sq. ft. outdoors or less or indoors.
- Tried to contact the counties allowing more
 - Counties contacted having the same discussions



What Are Other Counties Doing

- Few counties are continuing the true collective model outdoors (six counties)
 - Two counties allow for 500 sq. ft. (total) for five patients
 - Two counties allow for 24 plants (total) for two patients
 - One county allows for 72 plants (total) for four patients
 - One county allows for 200 sq. ft. (total) for two patients

- Instead a few counties allow for a total of XX plants period no matter the number of patients



What Are Other Counties Doing

- Where does this leave El Dorado County compared to the other counties for outdoor personal medical cultivation
 - No county allows for 600 sq. ft. No matter the amount of patients.
 - No county allows for 200 sq. ft. per patient for multiple patients in a collective model
 - Three counties allow for 200 sq. ft. or more for one patient (5% of the counties)
 - Five counties allow for more than six plants for one patient (8% of the counties)

- Currently, El Dorado County allows for more sq. ft. outdoors than any County – four counties allow for plant counts that could be larger
- The proposed rule changes would still put El Dorado County on the more lenient side only 13 counties allowing six plants outdoors and eight allowing more – a large majority allow only indoor growing



Senate Bill 34

- Beginning March 1, 2020, cannabis retailers may provide free cannabis or cannabis products to qualified medicinal patients or their primary caregivers. This change is due to the adoption of Senate Bill 34, which also exempts these donated items from excise, sales and use, and cultivation taxes.
- Licensed cultivators, manufacturers, distributors, retailers, or microbusinesses may designate cannabis or cannabis products that they hold in their inventory for donation. Items designated for donation may only be provided to a medicinal patient or primary caregiver through a licensed retailer.
- A main point of this free cannabis is that it has moved through the track and trace system. The end consumer knows what is in the cannabis and knows that it was not part of the black market.