



**COUNTY OF EL DORADO  
COMMUNITY DEVELOPMENT AGENCY  
DEVELOPMENT SERVICES DIVISION**

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Date: April 8, 2014  
To: Board of Supervisors  
From: Roger Trout, Development Services Division Director  
**Subject: Ordinance 4999, Medical Marijuana Distribution Facility (OR13-0001), Six Month Update**

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**Introduction**

On September 24, 2013, the Board adopted Ordinance 4999 (Exhibits A and B), an ordinance adding Section 17.14.250 to the El Dorado County Code, prohibiting the establishment of medical marijuana distribution facilities. At that hearing, staff was directed to return with a six-month update on the progress of the Ordinance.

Only one issue has come to our attention. The issue is the application of “grandfathering” provision of 17.14.250.D.

**Criteria**

In December of 2013, staff received requests from five medical marijuana distribution facilities that were attempting to establish compliance with Ordinance 4999, and non-conforming status under Section 17.14.250.D of the County Code. Staff utilized the criteria from Section 17.14.250.D (summarized in Exhibit C) to review the information submitted by the following distribution facilities:

1. Pure Life Cannabis Collective, 537 Pleasant Valley Road, Diamond Springs, APN 054-391-18 (SPR13-0005);
2. Foothill Health and Wellness, 3830 Dividend Dr., Suite A, Shingle Springs, APN 109-420-18 (SPR13-0007);
3. Highlands Health and Wellness, 4020 Durock Road, Shingle Springs, APN 109-040-71 (SPR13-0008);
4. All Natural, Inc., 4151 South Shingle Road, Suite 2, Shingle Springs, APN 090-440-23 (SPR13-0009); and
5. Medical Marijuana Caregivers, 3031 Alhambra Drive, Cameron Park, APNs 083-420-01 to 14 (commercial condominium parcels), (SPR13-0010).

## **Conclusion**

All five facilities claim compliance with 17.14.250.D but staff determined that none of the five provided information that demonstrated continuous operation at their current location for a period of at least six months prior to October 30, 2011 (April 30, 2011), and up to the effective date of the ordinance. Additionally, one of the five was not submitted prior to the deadline of December 23, 2013. Accordingly, staff determined that no facilities qualified for “grandfathering” under the medical marijuana distribution facilities ordinance.

The operators of some of those facilities have questioned staff’s interpretation of the medical marijuana distribution facilities ordinance. They contend that prior operation of their business at different locations should establish compliance with the medical marijuana distribution facilities ordinance.

Though the medical marijuana distribution facilities ordinance does not create true non-conforming uses, staff referred to the nonconforming use chapter of the Zoning Code for interpretive guidance. Section 17.20.020 states in part that a "nonconforming use" means the actual use or occupation of any land or structure. As the medical marijuana distribution facilities ordinance is a zoning provision, it is site specific. Thus, staff determined that the requirements for continuous operation apply to the existing site, not previous locations. Because none of the facilities could demonstrate continuous operation at their existing location for the requisite period, under staff’s interpretation, none of the five facilities demonstrated compliance with the medical marijuana distribution facilities ordinance.

If the Board believes that staff has misinterpreted the ordinance, it can provide staff with directions to address the issues as follows:

1. The Code could be amended to clarify the Board’s intent. The Board could direct staff to prepare a Resolution of Intention on the ordinance amendment, stating the intent of the amendment; or
2. The Board has some latitude to interpret the Code, and if appropriate, the Board could clarify that Section 17.14.250.D (2) is intended to apply to a business that may have moved during the six months prior to October 30, 2011, so long as it had been in operation at another location during the requisite time period.

Although there are other known dispensaries within the County, these were the only ones that submitted compliance determination requests. There are no other issues known.

## **Action Item**

Staff is seeking a determination that:

- A. The Board agrees with staff’s interpretation of the medical marijuana distribution facilities ordinance and its determination that no facility met the criteria for continued operation; or

- B. The Board does not agree with staff's interpretation and:
1. Direct staff to amend the code, or
  2. Interpret Section 17.14.250.D to apply to an "operation" that may have moved from one facility location to another.

**Attachments:**

- Exhibit A.....BOS 9-24-13 Final Minutes, Item 22
- Exhibit B.....Ordinance 4999
- Exhibit C.....Ordinance 4999 Compliance Worksheet Template
- Exhibit D.....Planning to Distribution Facility Letters