

ORDINANCE NO. _____

AN ORDINANCE ADDING SECTION 17.14.260 TO THE EL DORADO COUNTY CODE ESTABLISHING REGULATIONS FOR THE OUTDOOR CULTIVATION OF MEDICAL MARIJUANA.

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 specified medical purposes to obtain and use marijuana under limited, specified circumstances. The CUA provided a limited exception from criminal prosecution under state law for 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 marijuana 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. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.

E. The El Dorado County Zoning Ordinance currently does not make any distinction between the cultivation of medical marijuana and the cultivation of any other agricultural crop or landscaping; the Zoning Ordinance does not contain any explicit regulations governing the cultivation of medical marijuana. However, under state law, medical marijuana is not considered an agricultural crop.

F. Further, since state law does not consider medical marijuana an agricultural crop, there are no regulations governing the type or amounts of pesticides or fungicide used on marijuana plants. This poses a threat not only to the users of the marijuana, but to consumers of agricultural crops grown in proximity to the marijuana.

G. The cultivation of marijuana has the potential for increased crime, intimidation and threats. As marijuana plants mature, ~~they~~ certain varieties can develop a strong odor which creates an attractive nuisance by alerting people to the location of valuable marijuana plants; this creates an increased risk of crimes including burglary, trespassing, robbery and armed robbery. Law enforcement officers have reported an increase in calls from reported respiratory problems and allergic reactions to marijuana plants.

H. Unlimited area for marijuana cultivation exceed the amounts reasonably grown to serve as medical marijuana for residents of the land where the cultivation occurs, or patients under the care of the grower, and would likely be criminal operations.

I. The unregulated use of pesticides, fungicides, and fertilizers has the potential to contaminate or otherwise damage adjacent property and waterways. Unauthorized use of public and private water supplies, and a lack of adequate sanitation facilities further adversely impacts adjacent property and bodies of water.

J. Standards are necessary to protect adjacent property owners and residents who find the odor of mature marijuana plants offensive; the standards will limit incompatible uses on smaller lots and protect the public safety and welfare.

Section 2 Amendment of Title 17

Section 17.14.230~~xxx~~ of Chapter 14 of Title 17 of the El Dorado County Ordinance Code is hereby added as follows:

17.14.240~~xxx~~ Outdoor Medical Marijuana Cultivation

A. Purpose. The purpose of this section is to regulate with zoning standards the outdoor cultivation of medical marijuana by authorized individuals under the Compassionate Use Act of 1996 and the Medical Marijuana Program Act while protecting the health, safety and welfare of adjacent property owners, minimizing law enforcement effort, limiting availability of and exposure to marijuana by the youth of El Dorado County, and protecting the environment and public resources.

B. Definitions. As used in this section, the following terms and phrases shall have the meaning ascribed to them as follows, unless the context in which they are used clearly suggests otherwise:

1. ~~“Child care center” means any licensed child care center, daycare center, or childcare home, or any preschool.~~

2. ~~“Church” means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.~~

3. —“Cultivation” means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof.
42. “Legal parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).
53. “Medical marijuana” means marijuana grown for qualified patients, persons with a valid doctor’s recommendation, and the designated primary caregivers of qualified patients for medical purposes, as provided in Health and Safety Code Section 11362.775.
4. “Outdoor cultivation” shall mean cultivation activities that are not conducted within a fully enclosed, permitted building, constructed of solid materials, accessible only through one or more locking doors. For purposes of this ordinance, cultivation within a greenhouse shall be considered outdoor cultivation.
65. “Premises” shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership of control, such contiguous legal parcels shall be counted as a single “premises” for purposes of the Chapter.
76. “Primary caregiver” shall mean the individual designated by the patient who has consistently assumed responsibility for the housing, health, or safety of that person, and shall imply a caretaking relationship directed at the core survival needs of a seriously ill patient, as that meaning is set forth in Proposition 215 and Senate Bill 420.
87. “Qualified patient” shall have the meaning set forth in Proposition 215 and Senate Bill 420.
98. ~~“School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.~~
10. ~~“School bus stop” means any location designated in accordance with California code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.~~

~~11. “Youth oriented facility” means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment of predominantly minors.~~

C. Nuisance Declared. The outdoor cultivation of marijuana plants is hereby declared to be a public nuisance and is prohibited in all zone districts, except as provided in Subsection D.

D. Cultivation Standards.

1. Size of Outdoor Cultivation Area. ~~Notwithstanding the limits set forth below, no person may cultivate more than 200 square feet of medical marijuana.~~ The maximum area that may be used for the outdoor cultivation of medical marijuana shall be as follows:

- a. Lots zoned R1, ~~R20,000~~, R1A, R2A and R3A, 200 square feet;
- b. Lots zoned RE-5, RE-10, A and SA10, 400 square feet;
- c. Lots zoned RA-20, RA-40, RA-80, RA-160, PA, ~~AP~~ and AE, 600 square feet.

Notwithstanding the foregoing, the cultivation of more than 200 square feet shall only be allowed as collective cultivation as provided in Subsection E. The area of cultivation shall be measured from the outside edge of the stems of the plants on the perimeter of the cultivation area and shall include the space between the plants. The minimum width of the cultivation areas shall be five feet.

2. ~~Fencing. Areas where medical marijuana is planted, cultivated and/or harvested shall be enclosed on all sides by either a solid fence or a chain link fence combined with opaque fabric to fully shield any view of the crop from the outside of the fence. The fence around the cultivation area must be a minimum of six feet in height and built in compliance with building and zoning codes.~~

Screening. Areas where medical marijuana is cultivated shall be screened from public view adjacent to the premises by fencing, structures or vegetation.

3. Security. Areas where medical marijuana is cultivated, the property on which medical marijuana is cultivated, or a portion thereof which includes the cultivation area shall be secured by a fence with locked gates.

~~3. Distance from Youth Oriented Facilities. The outdoor cultivation of medical marijuana shall be located a minimum of 1000 feet from any school, school bus stop, church, park, child care center, or youth oriented facility.~~

- a. ~~If the premises on which medical marijuana is cultivated is in a zone listed in Subparagraph D.1.a or D.1.b, the distance shall be measured in a straight line from the boundary of the premises on which the medical marijuana is cultivated to the boundary of the premises on which the~~

- ~~school, school bus stop, church, park or youth-oriented facility is located.~~
- b. ~~If the premises on which medical marijuana is cultivated is in a zone listed in Subparagraph D.1.c, the distance shall be measured in a straight line from the fence required in Paragraph D.2 to the boundary of the premises on which the school, school bus stop, church, park or youth-oriented facility is located.~~
4. Setbacks. The ~~fencing required in Paragraph D.2~~ cultivation area set forth in Paragraph D.1 shall be set back from all property lines ~~as follows~~ no less than the following:
- a. Lots zoned R1, ~~R20,000~~, R1A, R2A and R3A – 50 feet;
 - b. Lots zoned RE-5, RE-10, A, SA10, RA-20, RA-40, RA-80, RA-160, PA, AP and AE – 100 feet.
5. Residency. The ~~principal~~ primary place of residence for persons engaging in the outdoor cultivation of medical marijuana shall be the premises on which the medical marijuana is cultivated. For collective cultivation as provided in Paragraph E, the premises on which the medical marijuana is cultivated shall be the ~~principal~~ primary residence of at least one of the persons for whom the medical marijuana is being cultivated. Only those premises with a permitted dwelling unit shall be used for the outdoor cultivation of medical marijuana.
6. Property Owner Authorization. If the person(s) planting, cultivating and/or harvesting medical marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall obtain the written permission (including notarized signatures) of the legal owner(s) consenting to the cultivation and/or harvesting of medical marijuana on the parcel.
7. Environmental Requirements. a. All persons engaging in the cultivation of medical marijuana shall:
- 1. have a legal water source on the premises,
 - 2. not engage in unlawful or unpermitted surface drawing of water for such cultivation, ~~and~~
 - 3. not ~~permit illegal~~ allow illicit discharges of irrigation or stormwater from the premises.
 - 4. not allow the off-site drift or discharge of chemicals, and
 - 5. not allow the discharge of sediment from the site or the degradation of water quality of any water body.
- b. The premises where the cultivation of medical marijuana takes place shall either be connected to a public sewer system or have an El Dorado County inspected and approved sewage disposal system.
- c. Persons engaging in the cultivation and/or harvest of medical marijuana shall use, dispose and store chemicals used in such cultivation pursuant to applicable laws and labeling requirements.

8. Disposal of waste material. Marijuana waste material shall be disposed of lawfully. Burning of medical marijuana waste material is prohibited.
 9. Contact Information. The names, contact information, a doctor's recommendation for each person cultivating or participating in the cultivation of marijuana on the premises, and the doctor's name and contact information, along with the patient's identification number shall be posted at the site of cultivation and made available to law enforcement personnel at the time of inspection.
- E. Collective Cultivation. Notwithstanding the restrictions on the establishment of a medical marijuana distribution facility provided in Section 17.14.250, not more than three persons may collectively cultivate medical marijuana provided such cultivation is conducted consistent with the standards set forth in Paragraph D, and as provided below:
1. The area of cultivation permitted in paragraph D.1 shall not exceed 200 square feet per person participating in the collective cultivation activity. Each person's plants or area of planting shall be clearly marked to identify the individual who is responsible for those plants.
 2. ~~The names, contact information, a doctor's recommendation for each person participating in the collective cultivation, and the doctor's name and contact information, along with the patient's identification number shall be posted at the site of cultivation or made available to law enforcement personnel.~~
 3. All persons participating in the collective cultivation shall be residents of El Dorado County.
- F. "Right to Farm" Not Applicable. This prohibition on the outdoor cultivation of medical marijuana shall supersede the provisions of the "Right to Farm Ordinance" in Chapter 17.13 of the Zoning Ordinance and any other provision in the County Code that defines or allows cultivation of crops or agricultural products to the extent that those provisions can be read in a manner inconsistent with this prohibition.
- G. Abatement.
1. Any person, firm, partnership, association, corporation or other entity whether as principal agent, employee or otherwise, who owns or ~~leases~~ is a tenant upon the property upon which medical marijuana is cultivated outdoors, except as provided in Paragraph D, or owns the medical marijuana that is cultivated outdoors 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.
- 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, the violation shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) for the first violation, Two Hundred Fifty Dollars (\$250.00) for the second violation within one year, and Five Hundred Dollars (\$500.00) for each additional violation within one year. 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.

2. In addition to the above, enforcement of this ordinance shall be subject to the provisions of Chapter 17.02, Enforcement, and Chapter 9.02, Code Enforcement, of the El Dorado County Code.
3. 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 shall also have the authority to enforce this ordinance.
4. 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. To that end, the remedies provided herein are cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

H. Administrative Relief. Any person who, due to undue hardships and unique circumstances applying to the property on which outdoor medical marijuana is cultivated or is proposed to be cultivated, cannot comply with the provisions of this Section may apply for administrative relief. The relief process shall be as follows:

1. A written request for a finding of undue hardship shall be submitted to the Community Development Agency Director. The request shall include the reasons that the standards provided herein cannot be met and how that creates a hardship.
2. The Director or designee shall approve or disapprove the request for administrative relief and provide notice of the action, ~~as provided in Section 17.22.200~~ to the property owners immediately adjacent to the subject property and the County Sheriff, together with notice that the action may be appealed. The Director may expand the notice at his or her discretion based on the type of relief requested and the potential effects on nearby property.
3. An appeal of the Director's action may be filed as provided in Section 17.22.220 except that any appeal shall be heard by the Board of Supervisors and may be filed within one year of the Director's action.
4. The Director may refer the matter to the Board of Supervisors at his or her discretion.

5. The Director shall provide notice of the final decision on a request for administrative relief to the Sheriff. Additionally, should a request for administrative relief be granted, the applicant shall post documentation of such relief at the site of the cultivation and make such documentation available to law enforcement personnel at the time of inspection.
- I. No Defense or Immunity. Nothing herein shall confer on any person the right to maintain a public or private nuisance. Except for actions arising out of this chapter, no provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the District Attorney, the State of California, the United States, or any other person.
- J. No Duty to Enforce. Nothing in this chapter shall be construed as imposing on the Sheriff, the District Attorney, or the County of El Dorado any duty to abate any unlawful marijuana cultivation, to prosecute a violation of this chapter, nor to take any other action with regard to any unlawful marijuana cultivation. Furthermore, neither the Sheriff, the District Attorney, nor the County of El Dorado shall be held liable for failure to abate any unlawful marijuana cultivation, to prosecute a violation of this chapter, nor to take any other action with regard to any unlawful marijuana cultivation.

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. Effective Date

This ordinance shall become effective thirty (30) days following adoption hereof.