



# Medical Cultivation for Personal Use Civil Code Compliance Process

Medical Marijuana Advisory Committee  
Recommendation  
10/24/17



# Presentation Overview

---

- Recap on the process to date
- The County's current cultivation ordinances
  - Personal outdoor and indoor
- Brief update on State law
- What other counties and local cities are doing
- Overview of recommended changes to Ordinance 5000 and the civil code enforcement process
- Next steps in the process



# Recap on the Process to Date

- The Medical Marijuana Advisory Committee was created in March 2016 and has met seven times
  - In addition to two Board of Supervisors Meetings on the topic
- The Medical Marijuana Advisory Committee has meet on topics ranging from cultivation to niche businesses to taxation and code compliance
  - Information was obtained from consultants, public, and 20 benchmark communities
- The Medical Marijuana Advisory Committee with feedback from the public and conceptual approval from the Board of Supervisors to move to a civil process



# County's Cultivation Ordinance

- Personal outdoor cultivation – Ordinance 5000 allows cultivation of 200-600 square feet depending on the number of patients, parcel size, and zone district of the parcel
  - Many other conditions must be met as well (e.g. residency, environmental, etc.)
- Personal indoor cultivation – Proposition 64 allows six plants per residence
- Large cultivation - Ordinance does not allow for cultivation amounts more than stated above – indoor or outdoor



# Medicinal and Adult-Use Cannabis Regulation and Safety Act

- On June 27, 2017 as part of trailer bill legislation, the State passed the Medicinal and Adult-Use Cannabis Regulation and Safety Act (S.B. 94).
  - Act streamlined the State's regulation and licensing of medicinal and recreational cultivation, use, and sale of cannabis.
- On September 16, 2017, the State made further amendments with A.B. 133.
- The Bureau of Cannabis Control had released regulations, but pulled them after S.B. 94. It still plans to adopt regulations before it begins issuing licenses on January 1, 2018.
- S.B. 94 retains local control over any cannabis decisions other than what is protected under state law. State will not issue commercial licenses if activity is not authorized by County.



# State Commercial Licenses

- Under Business and Professions Code section 26033, a commercial state license will not be required for:
  - “A qualified patient . . . who cultivates . . . cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person . . . .”
  - “A primary caregiver who cultivates . . . cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver . . . . but who does not receive remuneration for these activities . . . .”



# Collective Cultivation Under State Law

- Ordinance 5000 provides for up to 600 feet only through a collective grow of 3 patients in certain zones.
- Under Health and Safety Code section 11362.775, the state currently authorizes “collective or cooperative cultivation.”
- Under subsection (d) of that statute, the State’s authorization for “collective or cooperative cultivation” is set to expire one year after the Bureau of Cannabis Control posts notice on its website that the licensing authorities have commenced issuing licenses under the Medicinal and Adult-Use Cannabis Regulation and Safety Act.
- Although not entirely clear at this point, it appears collective cultivation will be treated as commercial activity under state law after section 11362.775 sunsets and require a state commercial license.



# What Are Other Counties/Cities Doing

- Looked at 18 California counties and 2 cities in El Dorado County for personal medical cultivation
- Personal medical cultivation – above 6 plants
  - Allow - 11
  - Does not allow - 8
  - Allows with restrictions -1 (caregiver only)
- Personal medical cultivation outdoors – above 6 plants
  - Allow – 7
  - Does not allow - 12
  - Allow with restrictions -1 (caregiver only)





# What Are Other Counties/Cities Doing

- Personal medical cultivation outdoors – 200 square feet on Ordinance 5000 equivalent lots – above 6 plants
  - Allow – 1
  - Does not allow – 18
  - Allow with restrictions – 1 (caregiver only)
- Personal medical cultivation outdoors – 400 square feet on Ordinance 5000 equivalent lots – above 6 plants
  - Allow – 1
  - Does not allow – 17
  - Allow with restrictions - 2 (caregiver and rural w/ plant limit)



# What Are Other Counties/Cities Doing

- Personal medical cultivation outdoors – 600 square feet on Ordinance 5000 equivalent lots – above 6 plants
  - Allow – 1 (12 plants max)
  - Does not allow – 17
  - Allow with restrictions - 2 (caregiver and rural w/ plant limit)



# Recommended Changes to Ordinance 5000

- Update history to reflect current state of the law and replace “marijuana” with “cannabis.” No substantive effect.
- Update zoning designations (name) to reflect current zones in County General Plan and definitions to be consistent with current state law. No substantive effect.
- Screening: In response to complaints, make screening requirement clearer in that “no part of a plant” can be seen. Include a preference for cultivation in greenhouses or hoop houses.



# Recommended Changes to Ordinance 5000

- Odor: In response to complaints, add an objective means of measuring odor and require that cultivation satisfy this objective standard. Mitigation measures for odor may include use of a greenhouse with filtration or hoop house, growing a low odor strain cannabis, reducing the number of plants, increasing the setback, etc.
- Require that drying, curing, processing, and storing of cannabis be in a greenhouse, hoop house, shed, garage, residence, or other fully enclosed structure.



# Recommended Changes to Civil Code Enforcement Process

- Addition of a Registration Requirement
  - Allows County to know the individuals who are cultivating under Ordinance 5000 and striving to be in compliance.
  - Allows County to quickly differentiate between legitimate and illegal grows when complaints are received.
  - Prevents fraudulent use of a medical cannabis identification card at multiple addresses.
  - Registrant will receive packet with regulations and enforcement procedures and receipt of packet will be confirmed.
  - Information received through registration will be received in confidence and used only for purposes of administering enforcement or as otherwise required by law.



# Recommended Changes to Civil Code Enforcement Process

- Recommend use of existing code enforcement ordinance (Chapter 9.02) and amend Ordinance 5000 to address unique aspects of cannabis.
- Code Enforcement will be used for all aspects of Ordinance 5000 (too many plants, failure to register, unacceptable odor, insufficient screening, etc.)
- Generally, process includes an opportunity to correct the violation and, after the failure to do so, the assessment of fines and correction/abatement of the violation by the County.
- Individual is entitled to request a hearing at each step.



# Recommended Changes to Civil Code Enforcement Process

- Expedited enforcement given the mobility of cannabis plants and the short duration of the grow season.
  - Generally, will be given 72 hours to correct a violation.
  - Hearing must be requested within 72 hours and held within 5 days.
  - If not corrected within 72 hours, fines will be assessed and a Notice to Abate will be issued, meaning the County will remove the plants in violation if not corrected.
  - For abatement based on cannabis plants that are above the allowable square footage, individual will be given an opportunity to decide which plants will remain.



# Recommended Changes to Civil Code Enforcement Process

- Increased Fines due to the commercial value of cannabis:
  - If violation not corrected after 72 hours, fine is \$500 per day, per plant in violation.
  - Once to Notice to Abate is issued, fine increases to \$1,000 per day, per plant in violation.
  - Second violation in same 12-month period results in \$2,500 fine per day, per plant in violation.
  - Third violation in same 12-month period results in \$5,000 fine per day, per plant in violation and County may reject registration for 12 months from third violation.
- Goal is not to fine, but to bring illegal grows back into compliance.
  - Fining is one tool to bring people into compliance.





# Next Steps

---

- Recommendation is to approve the revisions to the two ordinances
- Ordinance second reading is scheduled to go to the Board on the following date:
  - November 7<sup>th</sup>
- Return to the Board with registration fee with other Community Development Services fees in December