



Legislation Text

File #: 11-1216, **Version:** 3

County Counsel and Development Services Department recommending the Board consider the following:

- 1) Adopt modified Ordinance **4986** extending the moratorium, adopted by the Board by Ordinance **4970**, on the outdoor cultivation of medical marijuana in the unincorporated areas of El Dorado County for one year;
- 2) Adopt Ordinance **4987** extending the moratorium, adopted by the Board by Ordinance **4971**, on the establishment of new medical marijuana distribution facilities, including all "dispensaries," "cooperatives" and "collectives" for a period of one year; and
- 3) Direct staff to work with the community advisory group on zoning and other appropriate permanent regulations governing the cultivation of medical marijuana and medical marijuana distribution facilities, and return to the Planning Commission and Board of Supervisors for consideration. (Refer 12/20/11, Item 24) (Est. Time: 1 Hr.)

Fiscal Impact/Change to Net County Cost: None

Reason for Recommendation for moratorium on outdoor cultivation:

Based on problems that law enforcement identified with outdoor cultivation in the fall of 2011, the Board considered a temporary moratorium to prohibit outdoor cultivation of marijuana until a permanent ordinance was adopted.

However, many people asked the Board to allow limited outdoor cultivation and the Board adopted a modified cultivation moratorium to allow a small area of 200 square feet with a solid fence on all sides to be exempt from the prohibition.

During the past year, law enforcement has found the moratorium on outdoor cultivation made the enforcement of illegal large scale grows easier, while meeting the intent of Proposition 215 to allow cultivation for medical purposes. There have generally been good efforts at compliance from the medical marijuana outdoor cultivation community.

County officials, including the Board subcommittee (Supervisors Knight and Briggs), the Sheriff, the District Attorney, Development Services and County Counsel, have held meetings to evaluate the effectiveness of the moratorium. The group met recently with the community advisory group for outdoor cultivation to get their input on how the moratorium is working. Through that discussion, it was discovered that outdoor cultivation requires light and air flow that is hindered by solid fencing. Fencing that is sturdy, such as chain link fencing, combined with agricultural fabrics, would allow adequate light and air flow but would still block visibility of the plants because the fabric is opaque. Staff recommends a new modification of the cultivation ordinance to allow alternative fencing to be allowed as a replacement for solid fence. The proposed moratorium makes allowance for these alternative fencing materials.

The moratorium on large outdoor cultivation of marijuana is meeting its goals. However, there are still ongoing neighborhood conflicts with compatibility between residential uses and any marijuana cultivation. Cultivation without regulation would exacerbate the conflicts between residential uses because of smells, public safety, and other neighborhood conflicts.

Now that the County has the experience of one year with a moratorium limiting outdoor cultivation to 200 square feet and that is fully fenced, it can better proceed with forming its permanent ordinance. Staff intends to quickly reach a resolution on the permanent regulations that will work for the County of El Dorado.

The County cannot return to the time period where it had no restrictions on outdoor cultivation, without significant conflict within residential areas and the problems enforcing laws. Because of these reasons, staff is recommending an extension of the modified moratorium limiting outdoor cultivation for one more year.

Reason for Recommendation to prohibit new marijuana distribution facilities:

Based on problems that law enforcement identified with marijuana distribution facilities in the fall of 2011, the Board considered a temporary moratorium to halt dispensaries until a permanent ordinance was adopted.

During the past year, a number of new dispensaries have attempted to become established but have been thwarted by the moratorium. Over the past few years, Code Enforcement has tracked about a dozen dispensaries in operation, but about half have since closed. The temporary moratorium ensures that the County Departments do not issue permits or business licenses for dispensaries.

Like the outdoor cultivation ordinance, the moratorium on dispensaries has lessened, but not eliminated the land use conflicts. Over the next year, staff will explore with the community whether there are any zone districts where it would be appropriate to allow new dispensaries, and if so, what standards and regulations would apply. Some jurisdictions have established standards to keep dispensaries away from schools, residential areas, and daycare centers.

The County cannot allow the temporary moratorium to expire because new dispensaries would be free to establish themselves in nearly all Commercial and Industrial zones in the County. There are significant unresolved public safety and law enforcement concerns with unregulated medical marijuana dispensaries.

Because of these reasons staff is recommending an extension of the moratorium prohibiting new medical marijuana dispensaries for one more year.

Conclusion and Recommendation:

Staff recommends the Board adopt the two urgency ordinances to extend for one year the modified moratoria on the large outdoor cultivation of marijuana and on new marijuana distribution facilities (e.g., dispensaries, cooperatives and collectives).

The issues surrounding the cultivation and distribution of marijuana have not yet been resolved by the state and federal courts, and local jurisdictions are still struggling to develop rational, fair

ordinances that balance the intent of Proposition 215 to allow limited cultivation, distribution and use of marijuana for medical purposes, with the interests of the community in not allowing large scale commercial distribution of this drug that is still illegal under federal law. The County intends to work on the best way to regulate the cultivation, distribution and use of marijuana within the County in a manner that is consistent with state and federal law and which balances the needs of medical patients and their caregivers with the protection of the health, safety and welfare of residents and businesses within the unincorporated areas of the County of El Dorado.

Any new dispensaries or large scale cultivation might conflict with the proposed new ordinance provisions, and if such uses are allowed to proceed, the uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana cultivation and distribution. Since there are many unanswered questions regarding these uses, staff recommends moratoria on large outdoor cultivation and all distribution facilities. This will give staff and the Board an opportunity to consider all aspects of this subject prior to imposing any new permanent regulations.

Pursuant to Government Code Section 65858, the Board may, by 4/5 vote, adopt urgency ordinances imposing moratoria on any uses that may be in conflict with zoning regulations the Board is currently considering, or will be considering in the near future. The initial moratoria (Ordinances 4968 and 4969) were effective for 45 days. Ordinances 4970 and 4971 extended the moratoria for an additional period of 10 months and 15 days. The proposed moratoria extension is the final extension allowed and would extend the moratoria for a period of one year.

The ordinances take effect immediately and will expire on October 30, 2013.

Action to be taken following Board approval:

Sheriff, District Attorney, County Counsel and Development Services personnel will develop zoning ordinance amendments and any other appropriate regulations to govern the cultivation and distribution of medical marijuana in the unincorporated areas of El Dorado County.

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