



Legislation Text

File #: 13-1175, **Version:** 2

Supervisor Briggs recommending the Board consider the following:

- 1) Adopt Resolution of Intention **233-2014** initiating an amendment to the El Dorado County Code to repeal Section 17.14.260 of Chapter 14 of Title 17 of the El Dorado County Ordinance Code pertaining to Outdoor Cultivation of Medical Marijuana;
- 2) Find that adoption of the Resolution of Intention is not subject to the provisions of the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations); and
- 3) Direct staff to initiate the process to repeal the Ordinance. (Est. Time: 2 Hr.)

Background

On September 24, 2013, the Board adopted Ordinance 5000 to add Section 17.14.260 to the El Dorado County Code establishing regulations for the outdoor cultivation of medical marijuana in all zone districts in the unincorporated areas of the County of El Dorado.

The Ordinance provides for the regulation of the outdoor cultivation of medical marijuana by setting standards and regulations for: the maximum size area for cultivation; fencing; separation from youth oriented facilities; setbacks from property lines; limitations on smoke and odor; residency requirements or owner authorization; environmental requirements (water quality, sewage disposal, and use of chemicals); disposal of waste material; collective cultivation on larger lots; abatement and code enforcement; administrative relief provisions and appeal process, including providing for public notice of administrative relief and appeal requests.

The Board's legislative history of actions related to the regulation of the outdoor cultivation of medical marijuana was initiated in response to numerous complaints from law enforcement and local residents that the unregulated cultivation of medical marijuana in the unincorporated areas of the County were adversely affecting the safety, health, and well-being of the County, its residents and environment.

At the direction of the Board, county staff initiated the process to develop guidelines that would seek to regulate the impacts and related activities and consequences that may result from the unregulated cultivation of medical marijuana, including: adverse effects to neighboring properties and businesses, degradation of the natural environment, malodorous smells and increased criminal activity.

The County sought input through an extensive public hearing process and from the Medical Marijuana Advisory Committee, comprised of two members of the Board of Supervisors, the Sheriff, the District Attorney, County Counsel and Community Development Agency staff and members of the community including residents concerned about impacts from cultivation as well as medical marijuana advocates.

Ordinance 5000 was the result of over three years of collaborative effort that included law

enforcement, planning staff, and community input to develop guidelines for the outdoor cultivation of medical marijuana that sought to balance the intent of the Compassionate Use Act and provide for the protection of the public and the environment.

Law enforcement reports that in the last year, the outdoor cultivation of marijuana throughout the County of El Dorado has increased significantly with very few cultivation sites attempting to adhere to the guidelines established per Ordinance 5000. Additionally, the proliferation of illegal grows has reached an epidemic proportion. The size and sophistication of the cultivation operations as well as the activities occurring at most of these cultivation sites far exceed the guidelines within the current ordinance and the types of violations typically and appropriately addressed through the county's nuisance abatement process.

An increase in the number and size of cultivation sites increases the visibility of marijuana in our community and its accessibility by the public, including children and youth. Some cultivation sites are heavily guarded with the intent and threat of bodily harm or death to those who attempt to access them.

Marijuana plants produce a strong odor that is offensive to many people and can cause respiratory problems and allergic reaction in some individuals. The odor is powerful and can be detected from a great distance, creating a public nuisance and alerting persons to garden locations.

Due to the value of the product, medical marijuana gardens are becoming an increasing and frequent target for burglaries, robberies, assaults and greater forms of associated violence; putting the surrounding community at increased risk.

The fertilizers, rodenticides, and pesticides, both legal and illegal, found at outdoor cultivation sites can cause long term detrimental effects to the environment, especially in cases where they are over applied, misused and/or are not properly stored. Fertilizers, rodenticides, pesticides, fuel, garbage and human waste in the run-off from cultivation sites can impact surface and ground water, potentially impacting water supplies for domestic, agricultural, and recreational uses locally and throughout the region.

The grading, deforestation, and terracing practices that are used to prepare land for cultivation are performed without permits and without mitigation efforts to prevent erosion and impacts to the environment and surrounding properties.

The problem is so severe that the State Water Resources Control Board, beginning in 2015, will conduct an aggressive civil enforcement campaign against marijuana growers who are affecting water quality in Northern California.

The rodenticides and poisons used and stored at cultivation sites directly impact wildlife. In order to protect marijuana plants from wildlife, growers treat plants and lace bait with rodenticides and other vegetative poisons, killing the animals that initially consume the poison as well as additional animals within the natural food chain. Poaching wildlife for food or to keep wildlife out of marijuana gardens is prevalent.

The cultivation of marijuana plants requires a significant amount of water. On average, one adult marijuana plant requires between one to six gallons of water per day throughout its lifecycle. The El

Dorado County Sheriff's Narcotics Unit estimates that on average, there are between 300,000 and 1 million marijuana plants at some stage of cultivation each day in the county. Water sources for cultivation include wells and public water supply systems as well as illegal diversions from local creeks, streams and rivers. Diversion practices include the use of pumps and manmade dams to pull, divert and store water from water sources.

Reason

The growing demand for marijuana throughout the state and the country, combined with the adoption of ordinances that ban the cultivation of medical marijuana in neighboring jurisdictions, has resulted in an increase in the demand for land and water to cultivate medical marijuana for profit. The criminal penalties that are applicable for violations of the County's Ordinance 5000 serve as little or no deterrent to those seeking to grow marijuana, under the guise of the Compassionate Use Act, for profit.

Ordinance 5000 clearly states that the purpose of the Ordinance 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.

The Ordinance requires that the 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 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 and that all persons participating in the collective cultivation shall be residents of El Dorado County.

The Sheriff's Narcotics Unit reports that there is a significant increase within the last year in the number of individuals and groups from other counties and states actively associated in some manner with marijuana cultivation operations in our county.

The intent of Ordinance 5000 was to allow El Dorado County residents authorized under the Compassionate Use Act to cultivate medical marijuana outdoors for their personal medical use and not to provide for the mass cultivation of marijuana for individuals in other counties and states.

Due to the increasing threat to the overall safety of the general public and damage to the environment, Supervisor Briggs recommends the Board consider the adoption of a Resolution of Intention to repeal Ordinance 5000.

Pursuant to Board of Supervisors Policy A-3 and Section 17.10.010 of the County Code, a resolution of intention to amend the ordinance code must be adopted by either the Planning Commission or the Board of Supervisors prior to commencement of work on the ordinance by staff.

History

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.

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”). 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.

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. MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.

On November 15, 2011, (File #11-1216) the Board adopted Ordinance 4968 imposing a 45-day moratorium on the outdoor cultivation of medical marijuana in the unincorporated areas of El Dorado County.

On December 20, 2011, (File #11-1216) the Board adopted Ordinance 4970 extending the 45-day moratorium on the outdoor cultivation of medical marijuana in the unincorporated areas of the County of El Dorado for ten months and fifteen days with amendments that included an exemption for outdoor cultivation within a 100 square foot area surrounded by a six to eight foot fence for personal medical purposes.

On October 30, 2012, (File #11-1216) the Board adopted modified Ordinance 4986 extending the moratorium on the outdoor cultivation of medical marijuana in the unincorporated areas of El Dorado County for one year.

On June 11, 2013, (File #13-0524) the Board adopted Resolution of Intention 066-2013 initiating an amendment to the El Dorado County Code to adopt an ordinance regulating the outdoor cultivation of medical marijuana and prohibiting medical marijuana dispensaries, authorizing staff to proceed with the process to prepare for the public hearing to consider said amendment.

The Planning Commission conducted public hearings on August 8, 2013, and August 22, 2013, to consider Ordinance OR13-0002/Medical Marijuana Outdoor Cultivation proposing to regulate the outdoor cultivation of medical marijuana in all zone districts in the unincorporated areas of the County of El Dorado.

On August 22, 2013, the Planning Commission recommended (4-0) the Board of Supervisors adopt an amendment to Title 17 of the County Code regulating medical marijuana outdoor cultivation as provided by the identified modifications included from the Commission’s hearing.

On September 24, 2013, (File #13-1175) the Board conducted a public hearing to consider the recommendation of the Planning Commission on Ordinance OR13-0002, and adopted Ordinance 5000 to add Section 17.14.260 to the El Dorado County Code establishing regulations for the outdoor cultivation of medical marijuana.