

**COUNTY OF EL DORADO DEVELOPMENT SERVICES
PLANNING COMMISSION
STAFF REPORT**



Agenda of: August 8, 2013
Item No.: 10
Staff: Peter Maurer

ORDINANCE

FILE NUMBER: OR13-0002/Medical Marijuana Outdoor Cultivation

APPLICANT: El Dorado County

REQUEST: Amendment to the Zoning Code (Title 17) to adopt regulations for outdoor cultivation of medical marijuana

ENVIRONMENTAL DOCUMENT: Statutorily Exempt from CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines

RECOMMENDATION: Staff recommends that the Planning Commission forward a recommendation to the Board of Supervisors to take the following actions:

1. Find that the adoption of the proposed ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines; and
2. Adopt an amendment to Title 17 of the County Code regulating medical marijuana outdoor cultivation based on the Findings listed in Attachment 1.

BACKGROUND

On November 15, 2011 the Board adopted urgency Ordinances 4968 and 4969 imposing a moratorium on the outdoor cultivation of medical marijuana and establishment of new medical marijuana dispensaries. Ordinances 4970 and 4971 extended the moratorium on dispensaries and established interim standards for outdoor cultivation. These ordinances were further extended through Ordinances 4986 and 4987 which are due to expire on October 30, 2013.

On June 11, 2013 the Board of Supervisors adopted Resolution No. 066-2013, a resolution of intention to initiate the permanent ordinance amendment (Exhibit A). The Board provided additional direction regarding the cultivation ordinance including: setbacks; separation from youth oriented facilities; collective cultivation on larger lots; an appeal process; smoke and odor; residency and owner authorization requirements; pesticide and fertilizer use; and providing for public notice of appeal and administrative relief.

ADMINISTRATIVE NOTE

The Zoning Ordinance amendment requires Board of Supervisors approval and goes into effect 30 days later. It is of critical importance for the ordinance to be approved by the Board of Supervisors prior to the urgency ordinance expiration on October 30, 2013. The last Board hearing available to meet this timeframe is September 24, 2013. Should the Planning Commission not take action on August 8, 2013, the next Planning Commission hearing is August 22, 2013, which may not allow sufficient time to make the September 24, 2013 Board agenda. It is strongly encouraged that the Planning Commission forward a recommendation to the Board at the August 8, 2013 Planning Commission hearing.

STAFF ANALYSIS

Two separate ordinances have been prepared, one to address distribution facilities (OR13-0001) and the other addressing outdoor cultivation (OR13-0002). These ordinances do not address indoor medical marijuana cultivation. The ordinances are modeled after the existing urgency ordinances, but are formatted to fit within the existing Zoning Code (Title 17) rather than be un-codified ordinances.

Medical marijuana is a controversial and complex issue. The provisions of Proposition 215, the "Compassionate Use Act of 1996" conflicts with the Federal Controlled Substances Act which makes it illegal to import, manufacture, distribute, possess, or use marijuana. The U.S. Supreme Court ruled in 2004 that the regulation of marijuana is properly held with the Federal government. The State Legislature attempted to provide guidance with SB 420, the Medical Marijuana Program Act, enacted in 2004. All of this puts local jurisdictions in a difficult position between inconsistent State and Federal laws, the needs of medical marijuana users, and the local community's safety and welfare.

Outdoor Cultivation of Medical Marijuana

The outdoor cultivation restrictions have been in place for nearly two years and have worked reasonably well for legitimate medical marijuana growers and law enforcement. The proposed ordinance is based on those regulations and has been modified after similar ordinances in other counties that have withstood legal challenges. The courts have ruled that there is not an unfettered right to cultivate medical marijuana and the proposed ordinance provides reasonable restrictions to protect the interests of adjacent property owners.

There are many concerns about outdoor cultivation from law enforcement and neighborhood representatives: the odor is offensive and can make people sick; it can be an attractive nuisance; there is an increase in reported crimes from theft; and increased risk of violence as growers try to protect their crops. The potential for abuse by others who are not authorized medical marijuana users is high. The proposed ordinance provides new regulations to address these concerns which are discussed below:

Setbacks (17.14.240.D.4) – One of the biggest complaints the County has received associated with the cultivation of medical marijuana is the smell from the mature plants. Staff is proposing a 50-foot setback on lots zoned for less than five acres and a 100-foot setback on those zoned five acres and larger. The setback should reduce the odor impact, but would also limit outdoor cultivation entirely on smaller lots. To offset this, staff is proposing the ability to collectively cultivate medical marijuana on larger lots. The intent is to move the cultivation from higher density residential areas to more rural areas. See the discussion below on Section D.1 and E.

Separation from youth oriented facilities (17.14.240.D.3) – The proposed ordinance requires cultivation to be located a minimum of 1,000 feet from schools, churches, bus stops, and other youth oriented facilities. Marijuana plants at maturity can be an attractive nuisance. Providing a separation from where children and adolescents congregate is intended to reduce the potential for theft, minimize odor impacts, and limit the exposure to young people.

Collective cultivation on larger lots (17.14.240.D.1 and E) – Not all medical marijuana users have the ability to grow on their own property. With the new 50 foot setback provisions in the proposed ordinance, many smaller lots will not be permitted for outdoor cultivation. Medical marijuana advocates have recommended that the ordinance provide an ability to collectively cultivate on larger parcels. This will reduce some of impacts associated with cultivation on smaller lots and provide an opportunity for those who have the larger parcels. The existing limitation of 200 square feet of cultivation area would be enlarged to 400 or 600 square feet for lots zoned for larger than 5 acres and 20 acres, respectively.

Staff recommends the use of zoning rather than parcel size for ease of enforcement. Zoning is documented and verifiable, while some lots are not surveyed and a sheriff deputy in the field would not be able to easily ascertain the size of the parcel.

The Sheriff's Office has recommended that collective cultivation be limited to three persons, with certain restrictions imposed to ensure that this provision is not abused. These include that all persons participating in the collective cultivation be County residents, that it is limited to the 600 square feet maximum permitted on larger parcels, and that each person participating have documented doctor's recommendations that can be verified.

Appeal process and public notice (17.14.240.H) – An appeal process is important to provide relief for unique circumstances. This was a primary reason that Tehama County's ordinance withstood legal challenge. The proposed ordinance includes an administrative process where undue hardship can be addressed. To ensure that the neighboring public also has redress, the proposed ordinance requires public notification of any administrative relief. An appeal to the Board of Supervisors is also available.

Smoke and odor (17.14.240.D.8) – Provisions have been included that would prohibit the burning of waste material to reduce impacts from offensive odors. This and the setback requirements from outdoor cultivation are intended to reduce the impact from offensive odors. The Air Quality Management has suggested that language be added consistent with the California Health and Safety Code regarding odor complaints. Since that language is already a part of law, and odor complaints can be acted upon already, Planning staff recommends that duplication of those same standards in this ordinance is unnecessary, but the Planning Commission should consider this as an option.

Residency and owner authorization (17.14.240.D.5) – To limit illegal cultivation activity and to ensure oversight of the cultivation by the grower, a residency requirement has been included. The person cultivating medical marijuana must live on the site it is grown on. An owner's authorization is required where tenants are cultivating medical marijuana.

Pesticide and fertilizer use (17.14.240.D.7) – A section entitled "Environmental requirements" has been included to ensure that growers properly use and store any fertilizer and pesticides. Although there are no approved standards for application of pesticides on marijuana as a crop type, general handling requirements of any pesticides or fertilizer would be applied. This section also requires connection to a public water and sewer system, or utilization of an approved well and septic system. The residency requirement is also intended to minimize the unauthorized use of water and illegal dumping of sewage and refuse on the property.

ENVIRONMENTAL REVIEW

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.

SUPPORT INFORMATION

Attachments:

Attachment 1Draft Medical Marijuana Outdoor Cultivation
Ordinance (Section 17.14.260)

Exhibit AResolution No. 066-2013