

ARTICLE III. - MEDICAL MARIJUANA

Sec. 130.14.250. - Distribution.

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 § 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 medical purposes to obtain and use marijuana under limited, specified circumstances. The CUA provides a limited exception from criminal prosecution under State law for specific crimes involving 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 the proliferation of medical marijuana dispensaries and large-scale 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 of 1996. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.
- E. The MMPA included a list of facilities that could qualify as "primary caregivers" and dispense marijuana to qualified patients. The only facilities the Legislature authorized to serve as "primary caregivers" are licensed clinics, health care facilities, residential care facilities, home health facilities and hospices which provide medical care and medical support services to qualified patients (Health and Safety Code § 11362.7(d)(1)).
- F. On June 5, 2005, the United States Supreme Court issued its decision in *Gonzales v. Raich* (2005) 125 S.Ct. 2195, which held that Congress, under the Commerce Clause of the United States Constitution, has the authority and power to prohibit local cultivation and use of marijuana even if the cultivation or use complied with California law.
- G. In August 2011, the State Legislature adopted AB 1300, which amended California Health and Safety Code § 11362.83 to read: "Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following:
 - (a) Adopting local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective.
 - (b) The civil and criminal enforcement of local ordinance described in Subdivision (a).
 - (c) Enacting other laws consistent with this article."

Such local regulatory authority over medical marijuana distribution facilities has been affirmed by the California Supreme Court. (See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729.)

- H. Citizens and law enforcement officers have reported an increase in crimes, such as loitering, and an increase in traffic, odor and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries.

- I. Law enforcement officials have indicated that they could more effectively prosecute the illegal operation of dispensaries if the prohibition on medical marijuana dispensaries was more clearly stated in the zoning ordinance contained in this title.

2. *Facilities.*

- A. *Purpose.* The purpose of this section is to clearly set forth the prohibition on medical marijuana dispensaries which conforms with recent State and Federal case law.
- B. *Medical marijuana distribution facility defined.* Except where the context otherwise requires, a "medical marijuana distribution facility" means any medical marijuana dispensary, collective, or cooperative, in any facility or location, whether fixed or mobile, and whether or not the facility is operated for profit, where medical marijuana, in any form, is made available, sold, transferred, given, or otherwise provided to three or more qualified patients, primary caregivers, or patients with an identification card, as defined in California Health and Safety Code § 11362.5 et seq.
- C. *Exception.* A "medical marijuana distribution facility" shall not include dispensing by primary caregivers to qualified parties in the following locations, so long as the location is otherwise permitted by this title and applicable State laws:
 1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
 2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
 3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
 4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;
 5. A residential hospice licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code; or
 6. A home health agency licensed pursuant to Chapter 8 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code § 11362.5 et seq.
- D. *Medical marijuana distribution facilities prohibited.* The establishment, maintenance, or operation of any medical marijuana distribution facility shall be prohibited, and no use permit, variance, building permit, or any other applicable entitlement for use, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a medical marijuana distribution facility. The County, however, shall not enforce the provisions of this section with respect to medical marijuana distribution facilities existing as of the effective date of the ordinance from which this section is derived and, within 60 days of the effective date of the ordinance from which this section is derived, submitting documentation to the County Planning Division demonstrating all of the following:
 1. Location within a commercial zone district;
 2. Continuous operation for a period of at least six months prior to October 30, 2011; and
 3. Compliance with State law, including, but not limited to, the Medical Marijuana Program Act.

Such documentation shall also include a detailed description of the full operations of the facility, including the hours of operation and the number of employees. Those operations submitting documentation that the County finds satisfactory will be allowed to continue to operate at the same level of intensity with the same square footage without any expansion subject to reasonable conditions on time of use as may be established by the County, subject to the County's regulations on nonconforming uses.

- E. *Zoning; shared facilities.* A medical marijuana distribution facility as defined in Subsection 2.B of this section shall not be established, operated or maintained at any location in any zone district in the unincorporated areas of the County, even if the medical marijuana distribution facility is located within, or operated with one or more additional otherwise permitted use, including, but not limited to: a health food store, bakery, tobacco shop, other retail store, health education facility, health spa, fitness facility, wellness center, or a health facility other than a licensed facility identified in Subsection 2.C of this section.
- F. *Penalties.*
1. Any person, firm, partnership, association, corporation or other entity whether as principal agent, employee or otherwise, who owns the property upon which a medical marijuana distribution facility is located or owns or operates a medical marijuana distribution facility, or otherwise violates any of the provisions of this section shall be guilty of a misdemeanor or infraction at the discretion of the district attorney.
 2. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed \$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 \$100.00 for the first violation, \$250.00 for the second violation within one year, and \$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.
 3. In addition to the above, enforcement of this section shall be subject to the provisions of Chapters 130.12 and 9.02
 4. Primary responsibility for enforcement of this section shall vest with the County Sheriff and his or her sworn officers. All other County officers with authority to enforce this Code shall also have the authority to enforce this section.
 5. In addition to the foregoing, any violation of this section 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.
- G. *Section declarative of existing law.* Except as otherwise provided herein, nothing in this section shall be construed to legalize any existing dispensaries, collectives, cooperatives or other facilities currently operating in the County, whether they are operating with or without a business license.

(Ord. No. 4999, §§ 1, 2(17.14.250), 9-24-2013)

Sec. 130.14.260. - Outdoor medical marijuana.

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 § 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 County zoning ordinance contained in this title 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 contained in this title 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, 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.

2. *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:

Child care center means any licensed child care center, daycare center, or childcare home, or any preschool.

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

Cultivation means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof.

Legal parcel means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Government Code § 66410) of Title 7 of the Government Code).

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 § 11362.775.

Outdoor cultivation means 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 section, cultivation within a greenhouse shall be considered outdoor cultivation.

Premises means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this section.

Primary caregiver means 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.

Qualified patient shall have the meaning set forth in Proposition 215 and Senate Bill 420.

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.

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 Vehicle Code § 233, or school pupil activity buses, as defined in Vehicle Code § 546.

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 2.D of this section.

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.

The cultivation of more than 200 square feet shall only be allowed as collective cultivation as provided in Subsection 2.E of this section. 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. *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 minimum six-foot high solid wood or chain link fence with locked gates built in compliance with building and zoning codes.

4. *Distance from youth-oriented facilities.* The outdoor cultivation of medical marijuana shall be located a minimum of 1,000 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 Subsection 2.D.1.a or b of this section, 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 Subsection 2.D.1.c of this section, the distance shall be measured in a straight line from the fence required in Subsection 2.D.2 of this section to the boundary of the premises on which the school, school bus stop, church, park or youth oriented facility is located.
5. *Setbacks.* The cultivation area set forth in Subsection 2.D.1 of this section shall be set back from all property lines 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.
6. *Residency.* 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 as provided in Subsection 2.E of this section, 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.
7. *Property owner authorization.* If the person planting, cultivating and/or harvesting medical marijuana on any legal parcel is/are not the legal owner of the parcel, such person shall obtain the written permission (including notarized signatures) of the legal owner consenting to the cultivation and/or harvesting of medical marijuana on the parcel.
8. *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,
 3. Not 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 a 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.

9. Disposal of waste material. Marijuana waste material shall be disposed of lawfully. Burning of medical marijuana waste material is prohibited.
 10. *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.
 11. *Odor.* The outdoor cultivation of medical marijuana shall not adversely affect the health, safety, or enjoyment of property of persons residing near the property on which medical marijuana is cultivated due to dust, noise, smoke, or odors which are disturbing to people of normal sensitivity.
- E. *Collective cultivation.* Notwithstanding the restrictions on the establishment of a medical marijuana distribution facility provided in Section 130.14.250, not more than three persons may collectively cultivate medical marijuana provided such cultivation is conducted consistent with the standards set forth in Subsection 2.D of this section, and as provided below:
1. The area of cultivation permitted in Subsection 2.D.1 of this section 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. All persons participating in the collective cultivation shall be residents of the 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 130.13 and any other provision in this 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 is a tenant upon the property upon which medical marijuana is cultivated outdoors, except as provided in Subsection 2.D of this section, or owns the medical marijuana that is cultivated outdoors or otherwise violates any of the provisions of this section can be charged with a misdemeanor or infraction at the discretion of the District Attorney.
 2. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed \$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 \$100.00 for the first violation, \$250.00 for the second violation within one year, and \$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.
 3. In addition to the above, enforcement of this section shall be subject to the provisions of Chapters 130.12 and 9.02
 4. Primary responsibility for enforcement of this section shall vest with the County Sheriff and his or her sworn officers. All other County officers with authority to enforce this Code shall also have the authority to enforce this section.
 5. In addition to the foregoing, any violation of this section 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 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 130.22.220 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 section, no provision of this section 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 section shall be construed as imposing on the Sheriff, the District Attorney, or the County any duty to abate any unlawful marijuana cultivation, to prosecute a violation of this section, nor to take any other action with regard to any unlawful marijuana cultivation. Furthermore, neither the Sheriff, the District Attorney, nor the County shall be held liable for failure to abate any unlawful marijuana cultivation, to prosecute a violation of this section, nor to take any other action with regard to any unlawful marijuana cultivation.

(Ord. No. 5000, §§ 1, 2(17.14.260), 9-24-2013)