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To: Planning Commission Agenda of: August 8, 2013

From: Peter N. Maurer, Principal Planner Item No.: 10

Date: August 2, 2013

Subject: **OR13-0002 Medical Marijuana Outdoor Cultivation; Recommended Revisions**

Staff has provided a revised draft of the Outdoor Cultivation ordinance based on further review by the Sheriff, County Counsel, and Building Services, along with public comment received to date. The revisions are shown in underline and strikeout in the attached ordinance draft. Below is a brief summary of the recommended changes, identified by the subsection number in the draft ordinance:

- A. A purpose statement has been added. It was inadvertently left out in the previous draft.
- D.1 This section, which identifies the amount of area that may be cultivated, has been clarified so that more than 200 sq. ft. is permitted only if part of a collective cultivation.
- D.2 Any fence over 6' in height requires a building permit. Since marijuana plants can grow to well over 8' in height, the maximum fence height has been removed, but a statement that any fence must meet building and zoning code requirements has been added.
- D.4 The setback requirement has been clarified so that the prescribed setback is the minimum. This issue is one that will be discussed during the hearing, as several individuals have commented that it is either too great or too small, depending on their perspective. It is intended to limit growing on smaller lots in the county and provide some relief from odors. Public testimony will assist in establishing an appropriate limit.
- D.5 The residency requirement has been clarified with regard to collective cultivation.
- D.8 Disposal of waste material has been modified because even the stems and other parts of the plants that are not harvested are considered a controlled substance, and cannot be put into green waste recycling bins for collection. Burning will still be prohibited.

G.1, 2 & 4 The abatement provisions have been modified to be consistent with other provisions of the County Code and clarify the responsibilities of the land owner, cultivators, and enforcement personnel.

G.3 Specific reference to the Development Services Code Enforcement personnel has been removed. The Building Official has expressed concerns that any reference to County staff other than sworn law enforcement officers may require that other County staff would have to be involved in abatement proceedings for illegal marijuana cultivation. The intent of this provision is that in some cases there may be other code violations, such as electrical connections, hazardous waste, grading, or sewage disposal. The primary responsibility rests with the Sheriff, but other personnel may need to become involved if the violations go beyond their area of expertise.

H. A minor change has been made to the administrative relief/appeal provisions to clarify that the provisions apply to the whole ordinance, not just subsection D. Several people have commented that public notice should be provided to adjacent property owners. This is contained in H.2 and H.3. The referenced code section spells out the public notice requirements.

A few other grammatical and typographical errors have been corrected, along with minor formatting changes. Other issues raised by the public and comments by individual commission members are that the separation from youth oriented facilities requirements are vague and do not cover all possible facilities, that provisions need to be added to address odor complaints, pesticide drift restrictions should be enhanced, and the size of the cultivation area should be reduced. These will be among the topics that should be discussed in the public hearing.

Attachment:

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

ATTACHMENT 1

ORDINANCE NO. _____

AN ORDINANCE ADDING SECTION 17.14.260 TO THE EL DORADO COUNTY CODE ESTABLISHING REGULATIONS FOR THE OUTDOOR CULTIVATION OF MEDICAL MARIJUANA.

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 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 section 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 El Dorado County Zoning Ordinance 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 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, they 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.

Section 2 Amendment of Title 17

Section 17.14.230 of Chapter 14 of Title 17 of the El Dorado County Ordinance Code is hereby added as follows:

17.14.240 Outdoor Medical Marijuana 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:

1. “Child care center” means any licensed child care center, daycare center, or childcare home, or any preschool.
2. “Church” means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
3. “Cultivation” means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof.

4. "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).
 5. "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 Section 11362.775.
 6. "Premises" shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership of control, such contiguous legal parcels shall be counted as a single "premises" for purposes of the Chapter.
 7. "Primary caregiver" shall mean 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.
 8. "Qualified patient" shall have the meaning set forth in Proposition 215 and Senate Bill 420.
 9. "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.
 10. "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 California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.
 11. "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 D.
- D. Cultivation Standards.
1. Size of Cultivation Area. Notwithstanding the limits set forth below, no person may cultivate more than 200 square feet of medical marijuana. The cultivation of

more than 200 square feet shall only be allowed as collective cultivation as provided in Subsection E. The maximum area that may be used for the outdoor cultivation of medical marijuana ~~for one to three persons~~ shall be as follows:

- a. Lots zoned R1, 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 and AE, 600 square feet.
2. Fencing. Areas where medical marijuana is planted, cultivated and/or harvested shall be enclosed on all sides by either a solid fence or a chain link fence combined with opaque fabric to fully shield any view of the crop from the outside of the fence. The fence around the cultivation area must be a minimum of six feet in height and ~~a maximum of eight feet in height~~ built in compliance with building and zoning codes.
3. Distance from Youth Oriented Facilities. The outdoor cultivation of medical marijuana shall be located a minimum of 1000 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 Subparagraph D.1.a or D.1.b, 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 Subparagraph D.1.c, the distance shall be measured in a straight line from the fence required in Paragraph D.2 to the boundary of the premises on which the school, school bus stop, church, park or youth oriented facility is located.
4. Setbacks. The fencing required in Paragraph D.2 shall be set back from all property lines ~~as follows~~ no less than the following:
- a. Lots zoned R1, R1A, R2A and R3A – 50 feet;
 - b. Lots zoned RE-5, RE-10, A, SA10, RA-20, RA-40, RA-80, RA-160, PA and AE – 100 feet.
5. Residency. The principal 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 Paragraph E, the premises on which the medical marijuana is cultivated shall be the principal residence of at least one of the ~~collective members~~ persons for whom the medical marijuana is being cultivated.
6. Property Owner Authorization. If the person(s) planting, cultivating and/or harvesting medical marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall obtain the written permission (including notarized signatures) of the legal owner(s) consenting to the cultivation and/or harvesting of medical marijuana on the parcel.

7. 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, and
 3. not permit illegal discharges of water from the premises.b. The premises where the cultivation of medical marijuana takes place shall either be connected to a public sewer system or have an El Dorado 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.
 8. Disposal of waste material. ~~Marijuana waste material, including but not limited to stems, seeds, shall be disposed of by composting or collected as green waste by the franchised waste hauler shall be disposed of lawfully.~~ Burning of medical marijuana waste material is prohibited
- E. Collective Cultivation. Notwithstanding the restrictions on the establishment of a medical marijuana distribution facility provided in Section 17.14.250, not more than three persons may collectively cultivate medical marijuana provided such cultivation is conducted consistent with the standards set forth in Paragraph D, and as provided below:
1. The area of cultivation permitted in paragraph D.1 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. The names, contact information, a doctor's recommendation for each person participating in the collective cultivation, and the doctor's name and contact information, along with the patient's identification number shall be posted or made available to law enforcement personnel.
 3. All persons participating in the collective cultivation shall be residents of El Dorado 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 17.13 of the Zoning Ordinance and any other provision in the County 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 leases the property upon which medical marijuana is cultivated outdoors, except as provided in Paragraph D, or owns the medical marijuana that is cultivated outdoors or otherwise violates any of the provisions of this ordinance can be charged with a misdemeanor or infraction at the discretion of the district attorney.

If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed One thousand Dollars (\$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 One Hundred Dollars (\$100.00) for the first violation, Two Hundred Dollars (\$250.00) for the second violation within one year, and Five Hundred Dollars (\$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.

2. ~~Except as provided~~ In addition to the above, enforcement of this ordinance shall be subject to the provisions of Chapter 17.02, Enforcement, and Chapter 9.02, Code Enforcement, of the El Dorado County Code.
 3. Primary responsibility for enforcement of this ordinance shall vest with the Sheriff of the County of El Dorado and his sworn officers. All other county officers with authority to enforce the County Code ~~including but not limited to, Development Services Code Enforcement personnel~~, shall also have the authority to enforce this ordinance.
 4. In addition to the foregoing, any violation of this ordinance 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 ~~in Paragraph D~~ 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, as provided in Section 17.22.200, together with notice that the action may be appealed.
3. An appeal of the Director's action may be filed as provided in Section 17.22.220 except that any appeal shall be heard by the Board of Supervisors.
4. The Director may refer the matter to the Board of Supervisors at his or her discretion.

Section 3. Compliance with California Environmental Quality Act

The Board of Supervisors finds that 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.

Section 4. Severability

If any provision of this ordinance, or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Effective Date

This ordinance shall become effective thirty (30) days following adoption hereof.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the ____ day of _____, 2012, by the following vote of said Board:

Attest
James S. Mitrison
Clerk of the Board of Supervisors

Ayes:
Noes:
Absent:

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By: _____
Deputy Clerk

_____ Chair, Board of Supervisors