



# COUNTY OF EL DORADO PLANNING COMMISSION

Building C Hearing Room  
2850 Fairlane Court, Placerville, CA 95667  
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Dave Pratt, Chair, District 2  
Walter Mathews, First Vice-Chair, District 4  
Tom Heflin, Second Vice-Chair, District 3  
Rich Stewart, District 1  
Brian Shinault, District 5

Char Tim .....Clerk of the Planning Commission

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## MINUTES

**Regular Meeting  
August 22, 2013 – 8:30 A.M.**

### 1. CALL TO ORDER

Meeting was called to order at 8:35 a.m. Present: Commissioners Stewart, Pratt, Mathews, and Shinault; David Livingston-County Counsel; and Char Tim-Clerk of the Planning Commission.

### 2. ADOPTION OF AGENDA AND ADDENDUM

Chair Pratt recommended changing the sequence of items on the agenda and addendum as follows: Item 8, Item 10, Item 9b, and Item 9a.

**Motion: Commissioner Pratt moved, seconded by Commissioner Stewart, and carried (4-0), to adopt the agenda and addendum and hear agenda items in the new order as provided.**

**AYES: Mathews, Shinault, Stewart, Pratt**

**NOES: None**

**ABSENT: Heflin**

### 3. PLEDGE OF ALLEGIANCE

4. **CONSENT CALENDAR** (All items on the Consent Calendar are to be approved by one motion unless a Commission member requests separate action on a specific item.)

- a. **Minutes:** August 8, 2013

**Staff Recommendation:** Approve meeting minutes as presented

**Motion: Commissioner Mathews moved, seconded by Commissioner Stewart, and carried (3-0), to approve the meeting minutes as presented.**

**AYES:** Stewart, Mathews, Pratt

**NOES:** None

**ABSENT:** Heflin

**ABSTAIN:** Shinault

- b. **Minutes:** July 11, 2013

**Staff Recommendation:** Approve meeting minutes as presented

There was not a quorum of those present at the July 11, 2013 meeting in order to take action.

**Motion: Commissioner Mathews moved, seconded by Commissioner Shinault, and carried (4-0), to continue the item to the September 12, 2013 meeting.**

**AYES:** Stewart, Shinault, Mathews, Pratt

**NOES:** None

**ABSENT:** Heflin

#### **END OF CONSENT CALENDAR**

5. **DEPARTMENTAL REPORTS AND COMMUNICATIONS**  
(Development Services, Transportation, County Counsel)

Peter Maurer/Planning notified the Commission that their approval of PD09-0005/Macauley Construction Headquarters had been appealed to the Board of Supervisors by a member of the public. The Board had denied the appeal, in part.

6. **COMMISSIONERS' REPORTS**

Chair Pratt stated that the Buck's Bar Bridge project has re-emerged and was displeased at how it was announced. It was posted in the Pioneer Fire Department's newsletter, but the information on the County website was not current. He also announced that roadwork was now being done in the South County and cautioned everyone that since fire resources are constrained, everyone needs to be alert to fire danger.

In response to Commissioner Stewart's inquiry on any updates to the Travel Demand Model, Eileen Crawford/Transportation stated that it is in a "testing" mode and is considered a "draft".

**9:00 A.M. – TIME ALLOCATION**

**7. PUBLIC FORUM/PUBLIC COMMENT**

Paul Raveling spoke on the Travel Demand Model and the need for micro-analysis on Green Valley Road and its intersections with Francisco and Salmon Falls.

**8. PLANNED DEVELOPMENT (Public Hearing)**

**PD12-0003/Green Valley Convenience Center** submitted by STRAUCH COMPANIES (Agent: Barghausen Consulting Engineers, Inc.) for the following: 1. Development Plan to allow the construction of a gas station, convenience store, drive-through fast-food restaurant, single-bay self-service carwash; and 2. Finding of Consistency with General Plan Policy 7.3.3.4 to allow a reduction of the wetland setback from 50 feet to 10 feet. The property, identified by Assessor's Parcel Number 124-301-46, consisting of 2.12 acres, is located on the southeast corner of the intersection of Green Valley Road and Sophia Parkway, in the El Dorado Hills area, Supervisorial District 1. [*Project Planner: Tom Dougherty*] (Mitigated Negative Declaration prepared)\* [*continued from 7/11/13 meeting*]

Tom Dougherty informed the Commission that the applicant had submitted a supplemental noise study that identified potential new significant impacts due to the car wash. As a result, the revised environmental document had to be re-circulated and staff was requesting that this item be continued to the September 12, 2013 meeting in order to allow the public comment period to end.

Paul Raveling stated that if this project was approved, it would be the best possible proposal for that site due to the developer's efforts.

Chair Prattt closed public comment.

There was no further discussion.

**Motion: Commissioner Stewart moved, seconded by Commissioner Shinault, and carried (4-0), to continue the item to the September 12, 2013 meeting in order to recirculate the Mitigated Negative Declaration pursuant to Section 15073.5(a) of the CEQA Guidelines.**

**AYES: Mathews, Shinault, Stewart, Pratt**  
**NOES: None**  
**ABSENT: Heflin**

9. **ORDINANCE** (Public Hearing)

a. **OR13-0001/Medical Marijuana Distribution Facility** initiated by EL DORADO COUNTY. The proposed amendment to County Ordinance, Title 17, will prohibit medical marijuana distribution facilities, including dispensaries, collectives and cooperatives in all zone districts in the unincorporated areas of the County of El Dorado. The Planning Commission proposes to find that adoption of the ordinance 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). *[Project Planner: Peter Maurer]*

Peter Maurer presented the item to the Commission with a recommendation of approval to the Board of Supervisors. He referenced edits to pages 2 and 3 as shown on the handout provided to the Commission and audience.

Chair Pratt announced that he had done a site visit to two of the collectives and had been impressed and felt that there were multiple levels of opportunity. Chair Pratt requested clear direction from staff as to what their options were due to the timing issue if they chose to not recommend prohibition.

Kavai Floyd, All Natural, referenced the packet of materials they provided to the Commission prior to the start of the hearing and made the following comments:

- She is an activist and a patient;
- Cannot grow at her residence;
- Helps run a cooperative
- If cooperatives are banned, then there will be no safe access for patients to obtain their medicine; and
- Presented video on ABC's Bob Woodruff interview with Jeff Landay.

Jeff Landay made the following comments:

- Has had 44 operations and only wanted to take organic medications;
- Originally was against medical marijuana until he researched it; and
- Medical marijuana allows him to function normally (i.e., speak, read, sleep).

Lindy Williams made the following comments:

- Requested legal non-conforming for current established cooperatives;
- If dispensaries are banned, growers will need to cultivate more;
- Public needs safe access to obtain medication;
- Provided informational binder to Commission; and
- Having established dispensaries keeps out the criminal element.

Mike Post made the following comments:

- Cancer patient;
- Has been smoking since 19; and

- If he has to go out of the County to obtain his medication, he will more than likely shop there, too.

Don Lamb made the following comments:

- Vietnam veteran and was exposed to Agent Orange;
- Lost eye sight 4 years ago and medication costs \$400/month but the medical marijuana, which works better, costs only \$100/month at the collective; and
- Collectives are very safe.

Tiffany Padrosa made the following comments:

- Medical marijuana patient;
- Doctors can't do anything for her except to offer anti-seizure medications, but she is allergic to opiates;
- Couldn't function as a wife, mother and student without her medication;
- Medical marijuana does wonders for her and doesn't know where she would go if the collectives were closed;
- Has been put in a precarious position;
- Collectives provide her support; and
- Doesn't want to be labeled as a criminal in order to get her medication.

Kent Davis made the following comments:

- Medical marijuana patient;
- Moved 2,000 miles to live in an area where it was legal; and
- Legal access is crucial.

Karen Bartholomew made the following comments:

- Medical marijuana patient;
- Can't take pain pills or high blood pressure pills but medical marijuana helps;
- Medical marijuana is a miracle drug; and
- Has been to 6 dispensaries and all of them verify your authorization.

Kyle Speakman stated he had many genetic disorders and read an article to the Commission.

Kelly Chiusana, Pure Life Collective, made the following comments:

- Questioned the timing on why the Commission had such a short time to consider the Ordinance;
- Referenced his written comments submitted earlier;
- Need to continue to provide safe access;
- Clients are required to have valid California ID and a membership agreement;
- Information is validated with the doctor's office;
- Environment is similar to a doctor's office;
- Patient selects their own medications, but is always under surveillance;
- They are a non-profit organization;
- There are daytime and nighttime medications;

- Medications are sealed, labeled, and put in a second sealed bag;
- Members that are also growers are allowed to drop off extra medications on a consignment basis and they are provided 1099 forms;
- Provides testing of medications for members;
- Employs 9 staff; and
- They were established prior to the Urgency Ordinance.

Patrick Eule made the following comments:

- Was arrested and put in the Mountain Democrat labeled as a user because he was growing;
- Is a cancer patient;
- Patients need safe access to medication; and
- Better selection/screening process is needed to identify the “greedy” persons and attract the more compassionate people.

Matt Vaughn, Medical Marijuana Caregivers Association of El Dorado County, made the following comments:

- Spoke on due process and referenced his submitted written comment;
- There had been no noticing when the County had removed the word “dispensaries” a few years back;
- Spoke on the Compassionate Use Act; and
- There will be undue hardship if they are banned.

Mitch Fadel, American Alliance for Medical Cannabis, read into the record various laws and codes. He spoke on safe and affordable access.

Mark Frost, representing his wife who was diagnosed with MS 10 years ago, made the following comments:

- Medical marijuana is a miracle;
- Allow reasonable dispensing of medication; and
- Not capable of having a grow.

Jeff Patterson, Sacramento County resident, made the following comments:

- Has suffered through many collectives having to close;
- Shouldn't have to drive over 20 miles to obtain medication; and
- Questioned why the County wanted to be more restrictive than State law.

Aneka Rodriguez, All Natural, made the following comments:

- Had invited the Board, the Commission, and the Sheriff's Department to have a conversation with them;
- Has attended public group meeting to discuss issue;
- They are not going to go away;
- Asked what they were supposed to tell the patients if they are banned;
- Requested that they be told what they need to do;

- Has 9 volunteers;
- Everything is tested; and
- They are also an educational center.

Chair Pratt closed public comment.

Significant discussion ensued between staff and the Commission on what their options were, particularly since the Board had indicated that they wanted a ban on the distribution facilities.

Commissioner Stewart made the following comments:

- Keyword is “medical”;
- Struggling on how to separate out the medical from the recreational; and
- Considering adding collectives to Section 7.c.

Commissioner Mathews stated that it was hypocritical to allow outdoor cultivation but ban the distribution facilities.

Commissioner Shinault made the following comments:

- There is a need for medical marijuana;
- Questioned how to keep the doors open;
- Today’s public testimony is different from public perception; and
- No matter what the Commission does, the Board will take their own action.

Chair Pratt made the following comments:

- Today was the first time they had discussions with the Sheriff’s Department and have had no conversations with the District Attorney’s Office; and
- The Commission needs to relay to the Board that they don’t want to ban but instead allow the distribution facilities which are allowed by State law.

Chair Pratt invited the representatives from the three collectives to the podium for further discussion.

Mr. Maurer wanted to clarify that the Board did not leave this issue to the last minute as staff had been aware of this since last year and due to other priorities had not started the process until later. He also stated that the directive from the Board and law enforcement was that any distribution of marijuana is illegal under the Federal law.

Chair Pratt commented that there was no way they could finesse the Ordinance so they would have to recommend the moratorium lapse.

Mr. Maurer suggested that the most effective way to get their feelings to the Board would be to add the word “new” into the Ordinance and provide the Board their intent.

Commissioner Mathews was comfortable with capping the number of collectives to those established now.

Discussion ensued between the Commission and County Counsel David Livingston if Section 2.G should be removed if the word "new" was added.

There was no further discussion.

**MOTION #1**

**Motion: Commissioner Pratt moved, seconded by Commissioner Mathews, and carried (3-1), to recommend the Board of Supervisors 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 prohibiting medical marijuana distribution facilities based on the Findings as modified: (a) Add the word "new" before medical marijuana distribution facility in Section 2.D; (b) Delete Section 2.G; and (c) Incorporate staff's recommended changes submitted at today's hearing.**

**AYES: Shinault, Mathews, Pratt**  
**NOES: Stewart**  
**ABSENT: Heflin**

**MOTION #2**

**Motion: Commissioner Mathews moved, seconded by Commissioner Stewart, and carried (4-0), to recommend the Board of Supervisors upon adoption of the ordinance (OR13-0001) that they further adopt a Resolution of Intention to amend the ordinance to address the following items: (a) Allow safe access; (b) Establish limitations on new dispensaries; (c) Processing of product; and (d) Capitalize on economic opportunities.**

**AYES: Shinault, Stewart, Mathews, Pratt**  
**NOES: None**  
**ABSENT: Heflin**

**ATTACHMENT 1**  
**As Revised by Planning Commission 8/22/13**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ADDING SECTION 17.14.250 TO THE EL DORADO  
COUNTY CODE PROHIBITING THE ESTABLISHMENT OF MEDICAL  
MARIJUANA DISTRIBUTION FACILITIES**

**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 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 (Cal. Health & Saf. 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 section 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.4<sup>th</sup> 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.

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:

17.14.250 Medical Marijuana Distribution 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 (3) or more qualified patients, primary caregivers, or patients with an identification card, as defined in California Health and Safety Code section 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 California 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 section 11362.5 et. seq.
- D. Medical Marijuana Distribution Facilities Prohibited. The establishment, maintenance, or operation of any new 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.
- E. Zoning; Shared Facilities. A medical marijuana distribution facility as defined in Section B above 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(s), 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 Section C above.
- 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 ordinance shall be guilty of 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. 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 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.

~~G. Ordinance Declarative of Existing Law. Medical marijuana dispensaries have been prohibited in all zone districts in the County since August 24, 2004. Nothing in this ordinance 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; these existing operations continue to violate the County's existing zoning ordinance and are subject to all penalties contained therein.~~

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.

**b. OR13-0002/Medical Marijuana Outdoor Cultivation** initiated by EL DORADO COUNTY. The proposed amendment to County Ordinance, Title 17, will regulate the outdoor cultivation of medical marijuana in all zone districts in the unincorporated areas of the County of El Dorado. The Ordinance proposes to regulate 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 Planning Commission proposes to find that adoption of the ordinance 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). *[Project Planner: Peter Maurer] [Continued from 08/08/13 meeting]*

Peter Maurer presented the item and referenced the Revised Attachment 1 – Planning Commission/August 22, 2013. He went through each of the revisions. Mr. Maurer also referenced Attachment 2-Alternative Text. This had been referenced in the text of the Staff Memo dated August 15, 2013, but had inadvertently not been included in the list of attachments. Copies were made available to the Commission and the audience.

County Counsel David Livingston informed the Commission that Items I & J were added to the revised Ordinance as they were deemed necessary by staff.

Captain Andy Wishart, El Dorado County Sheriff's Department, made the following comments:

- They have been working closely with staff on the preparation of this Ordinance;
- Public Safety aspect is their #1 concern;
- Current revised Ordinance has addressed many concerns they had in the beginning of the process;
- Separation is a big issue;
- Recommended using the proposed alternate language for D.3;
- It is important to define what outdoor cultivation is in the Ordinance and supported the current definition;
- Whether plants are being measured from stalks or canopy to determine the area of the planting is not a concern for them;
- They have same concern as the Commission in regards to fencing and security;
- Setbacks are very important for the smaller lots due to the pungent smell that comes from the varieties that are grown in this County;
- Residency needs to be more defined as they do not want out-of-County or out-of-State people coming to El Dorado County just to grow marijuana;
- Very important to have a permitted dwelling on the lot;
- Having the names/contacts posted and legible is very important to them as it reduces time and decreases problems/issues;
- Would like to have a well-worded Ordinance that is practical for all parties;
- Would like wording added to the Administrative Relief section (H.2) that would include a courtesy notice being sent to the Sheriff's Department;
- Sheriff's Department has a vested interest in this Ordinance as they are the primary for enforcing; and

- Don't discount aromatics of the plants because there are people, including himself, that are allergic to them.

Richard Ross distributed a handout and made the following comments:

- Inquired as to where the marijuana is stored after it is harvested;
- Inquired if indoor cultivation was legal in the County;
- Inquired on Section D.5;
- Questioned the legal means of disposing marijuana waste;
- Photo identification should be available and linked to a credible database source that the Sheriff's Department has access to;
- When applying for Administrative Relief, efforts to resolve it should be shown; and
- Specific neighborhoods should be noticed when request/action is being done on a property.

Drew Woodall stated that in regards to youth-oriented facilities, the Boys and Girls Club, legitimate and established licensed daycares, and teen centers should be added. He also stated that bus stop locations could be a problem, as well as Charter Schools, and recommended that they error on the side of the youth.

Valerie Zentner, El Dorado County Farm Bureau, made the following comments:

- Spoke on the ag neighboring parcels;
- Liked the outdoor cultivation definition;
- AP zoning was not listed in Sections D.1 and D.4; and
- Clarification and language modification were needed in Section D.7.

Peter Schultz made the following comments:

- Believed it was a mute issue on people being allergic to marijuana;
- Growers are already securing their property and the Commission shouldn't focus on these small issues; and
- The patients/users are being affected by this.

Karen Bartholomew made the following comments:

- Odor is over-rated;
- A 50 foot setback for 1 acre is harsh;
- Setbacks for bus stop locations should be lower; and
- Questioned why half-acre lots couldn't be allowed to grow 1-2 plants.

Kyle Speaker stated that odor is a ridiculous issue.

Paula Morgan said that she needs to have medical marijuana to control her asthma and it would be a problem if she doesn't have access to grow it.

Kent Davis made the following comments:

- Cannabis is a medicine;

- Felt special consideration should be made for those in his situation in which he owns 2 contiguous lots (11 acres of vacant land and 1.5 acres with a house), but the vacant lot is the only piece of land he could grow on, but would be in violation as there is no dwelling on it;
- This should remain complaint-driven and not have to notify Sheriff's Department of their existence; and
- There is no accurate way to measure canopies because they grow.

Discussion ensued between the Commission and Mr. Davis on the definition of 200 square feet. County Counsel Livingston stated that other jurisdictions' regulations are based on plant count, however, the Board, based on input from the Sheriff's Department, was requesting square footage be used as its easier.

Mitch Fadel provided background on why square footage is used and spoke on a study indicating how much cannabis a patient would need.

Chair Pratt closed public comment.

During testimony, Chair Pratt commented that fluidity was an issue as school bus stop locations can move each year and could re-locate near an established grow.

The Commission deliberated on the Ordinance wording by reviewing each section and provided revisions to be included in the document being recommended to the Board of Supervisors.

There was no further discussion.

**Motion: Commissioner Mathews moved, seconded by Commissioner Shinault, and carried (4-0), to recommend the Board of Supervisors 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 as provided with the identified modifications included from today's hearing.**

**AYES: Stewart, Shinault, Mathews, Pratt  
NOES: None  
ABSENT: Heflin**

## **ATTACHMENT 1**

**As Recommended by the Planning Commission/August 22, 2013**

**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 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.

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.~~
42. “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).
53. “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.

4. “Outdoor cultivation” shall mean 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 ordinance, cultivation within a greenhouse shall be considered outdoor cultivation.
  65. “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.
  76. “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.
  87. “Qualified patient” shall have the meaning set forth in Proposition 215 and Senate Bill 420.
  - ~~98. “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 Outdoor Cultivation Area. Notwithstanding the limits set forth below, no person may cultivate more than 200 square feet of medical marijuana. The