

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



Agenda of: August 22, 2013
Item No.: 9
Staff: Peter Maurer

ORDINANCE

FILE NUMBER: OR13-0001/Medical Marijuana Distribution Facility

APPLICANT: El Dorado County

REQUEST: Amendment to the Zoning Code (Title 17) to prohibit medical marijuana distribution facilities.

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 prohibiting medical marijuana distribution facilities 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).

ADMINISTRATIVE NOTE

The Zoning Ordinance amendment requires Board of Supervisors approval and goes into effect 30 days later. It is of critical importance 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 22, 2013, the next Planning Commission hearing is September 12, 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 22, 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.

Medical Marijuana Distribution Facilities

In 2004, shortly after the Supreme Court decision, the County removed the word "dispensary" from the Zoning Code. The intent was to make it clear that medical marijuana distribution facilities were

not permitted. However, there were pending court cases in other jurisdictions challenging local governments' authority to prohibit dispensaries.

A recent court case in California upheld a general prohibition of dispensaries by local government. The proposed ordinance to prohibit distribution facilities has been designed to include provision of the successful ordinance that survived the legal challenge and prohibit medical marijuana distribution facilities.

The County's urgency ordinances (4969, 4971, and 4987) made clear that new distribution facilities were not permitted in the County. This left open a question regarding existing facilities, even though the County's position is that distribution facilities have not been permitted since adoption of the ordinance revision in 2004. The proposed ordinance eliminates the word "new" so that all distribution facilities would be prohibited. At least two distribution facilities are currently operating in the County and they would not be able to continue to operate unless they could demonstrate that they were legal non-conforming uses.

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 Distribution Facility Ordinance (Section 17.14.250)

Exhibit A.....Resolution No. 066-2013