

ATTACHMENT 1

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.”
- 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 it would be easier to 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 and 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.
- E. 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.

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:

By: _____
Deputy Clerk

Chair, Board of Supervisors