

ACTION MINUTES

LAND USE & COMMUNITY DEVELOPMENT COMMITTEE

December 27, 2011

MEMBERS PRESENT: Richard Forster, Supervisor, District II
Louis Boitano, Supervisor, District IV

Supervisor Boitano called the workshop to order at 1:08 p.m.

STAFF PRESENT: Aaron Brusatori, CDA Director
Dr. Robert Hartmann, Health Officer
Chuck Iley, CAO
Greg Gillott, County Counsel
Jim Wegner, Sheriff's Office
Linda VanVleck, Code Enforcement
Mike Israel, Environmental Health
Rich Millar, Building Department
Randall Shrouf, Public Defender
Martin Ryan, Sheriff's Office

MEMBERS OF THE PUBLIC: Lauren Liberty
Tom Liberty
August Gonzaga
Jason Cole
David Dobbie
Marina Dobbie
Robert C. Allen
R. J. Nidever
Cathy Vanderford
Emerson W. Grant
Rebekah LaFrank
Craig E. Smith

ISSUES FOR REVIEW AND DISCUSSION TO MINIMIZE IMPACT OF MARIJUANA CULTIVATION ON ADJACENT PROPERTIES.

Comments, suggestions and points made during the discussion were as follows:

DEFINITIONS:

The definition of qualified patient and primary caregiver was provided as part of the agenda packet. See attached.

SECURITY:

A survey was also provided in the agenda packet (see attached) as a means to obtain the opinions of the public.

Occupied Land:

- Growing on rented land would include the rental of a home.
- It be required that a cultivator be a resident or landowner of Amador County.
- Don't want absentee owners.

Unoccupied Land:

- Portable toilet and trash pick should be required.
- Already have regulations in effect that address trailers and septic systems that should be rolled into regulations regarding medical marijuana.
- Trailers or RV should require a use permit. This would cut down on the sanitation issues and would only be during the grow.
- Use permits for trailers, RVs, temporary structures currently require a septic system, rather than a temporary tank, for long term occupancy. Therefore, trailers would need to be hooked up to an existing septic system or a new system installed.
- Limit the number of people per RV and for how long.
- Medical marijuana regulations would need to mirror existing ordinances in place.
- Big grows require to be watched and monitored 24/7. RV would be the equivalent to a guard shack.

Distance to Neighbor:

- Distance would depend on the number of plants or canopy size and type of neighborhood.
- Regulations will be for the unincorporated areas of the County. County has no jurisdiction within the city limits of incorporated areas.
- 20 sq feet of raised beds, 50 feet from property line, and 150 feet from closest neighbor's house has not been an issue. Neighbors do not know grow exists.
- 20' setback would eliminate 85% of the community of River Pines.
- Setback should only kick in if neighbors complain. This would be problematic.
- Size of yards and prime growing location in the yard sometimes eliminates a reasonable setback.
- The setback for livestock enclosures/pens/corrals is 25' or 30' from the property line and there is no setback for open pasture.
- Other Counties' ordinances usually start at 100 feet for a limited number of plants and goes up depending on the size of the grow.
- Property lines might be close but the home might be a long distance away.

Distance from Youth Oriented Facilities, Parks, Rehabilitation Centers and Schools:

- This should not apply to small gardens for individual patients living in neighborhoods. This has not been an issue in Calaveras County.
- Fencing should be such that it can't be climbed.

- 11362.768 talks about a 600' radius from a school for dispensaries, collectives, and cooperatives or a provider who possess, cultivates or distributes medical marijuana.
- 11362.79 talks specifically about smoking marijuana 1000' from a school, recreation center, youth center, school bus, etc.
- Law addresses many issues but does not specifically address the small medical marijuana cultivation site or individual grower for personal use. It is not known if this was intentional.
- May need a plant count or some other threshold where the ordinance will kick in before some of the issues that need to be can be addressed.
- Most ordinances seen in other jurisdictions do contain a setback to schools and other youth oriented activities and they apply to every use and do not make exceptions for small uses. Butte County's setback is 600' from any school.
- Should look at what *should* be done not what *can* be done and keep in mind the unintended consequences of what is decided.

Fencing:

- Fencing is expensive and many patients can't afford it. A 10' fence can cost \$8000.
- Fencing would be needed only under certain circumstances; i.e. if the grow is visible from a public space or in view of the neighbors.
- Fenced area can be eye catching and make a grow "more visible."
- Fence in some instances makes no sense when distance to neighbors is $\frac{1}{3}$ to $\frac{1}{2}$ miles away.
- Fence can help to provide protection.
- Fence may not need to be a regulation. A grower will put up a fence to meet their own needs.
- Fences provide security for both the grower and the neighbors.
- Fencing should be more substantial than brush or netting on poles.
- Fences protect against deer and other animals.
- Growing is hard work and fencing is needed for protection.

NUMBER OF PLANTS OR CANOPY AREA:

- No regulation under a certain canopy size seems like the most reasonable solution.
- There should be a threshold on plant count vs. canopy size.
- Canopy.
- Start regulating at 40 plants.
- When determining the number of plant allowable, the loss of plants and inexperienced growers, needs to be taken into consideration and allowance made.
- Twenty-nine plants just makes it for two people.
- Recommend 10 plants.
- No regulations except for over 50 plants.
- Regulation is needed to curb the abuses. Regulated doesn't necessarily mean fees and costs.
- Use a square footage of cultivatable area.
- Number of plants would be easier to regulate.

- There are people who are physically impaired and can't cultivate their own marijuana; therefore 100 plant maximum.
- Regulations should not start until a certain number of plants or a canopy size is reached.
- No more than two recommendations can be grown at a location.
- Plant size can't be controlled and can vary greatly.
- Variables that affect the number of plants needed are growing conditions; is it being grown indoors or outdoors; is it being smoked or is it being used in cooking?
- A plant can produce anywhere from 17 lbs. to ¼ oz. of marijuana.
- A number of plants be used as a trigger for regulation; possibly 12 plants.
- There is nothing but fear of getting caught that prohibits someone with a "script" from using it in more than one county.
- One acre or more can have 50 plants.
- Odor from plants may be more of an issue than view of plants.
- Would the amount allowed be by parcel or by patient?

OPEN DISCUSSION:

Numerous County departments would be involved in enforcement and be complaint driven.

Caregivers need a way to lease or use land belonging to someone else.

Limit the number of recommendations per parcel to discourage the criminal element.

A use permit would entail a public hearing with notification of neighbors. A use permit process isn't the best idea in that locations of grows would be publicized and they are time consuming and costly.

Community gardens allow people to grow and keep it away from their children. With community grows, the increase in traffic needs to be considered. Tehama County has an ordinance that addresses cooperative grows that could be used as a model. Regulations that create limitations increase the need for community gardens so it may be beneficial to increase the number of recommendations per parcel to 4 patients.

Limits can be placed on the property whether it be plants or grow area. The size of what is allowed on a particular parcel is within the authority of the local agency.

DIRECTION TO STAFF:

Draft an ordinance addresses the following:

- No more than two scripts per parcel properly zoned.
- Would need to be an Amador County resident or as a renter have permission from the property owner to grow.
- Have a certain number of plants that triggers the ordinance.
- Setbacks may be needed for larger parcels.

The decision needs to be made as to the number of plants or canopy area, or a number of plants within a certain square footage of area. All other ordinances shall remain in full force and effect. Planning Commission will need to define immediate family member.

This matter is to be put on the January Planning Commission agenda as a public matter to give staff an opportunity to review the information generated to date with the Planning Commission. The draft ordinance and public hearing will be scheduled for the February Planning Commission meeting.

The meeting adjourned at 2:41 p.m.

NOTE: *A CD of the recording of this workshop can be obtained from the Planning Department upon request.*

MEDICAL MARIJUANA DEFINITIONS

CALIFORNIA CODES
HEALTH AND SAFETY CODE
SECTION 11362.7

QUALIFIED PATIENT AND PRIMARY CAREGIVER

11362.7. For purposes of this article, the following definitions shall apply:

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

CALIFORNIA CODES
HEALTH AND SAFETY CODE
SECTION 11362.775

COLLECTIVE/COOPERATIVE

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

SURVEY

OCCUPIED LAND

Only when owner occupies the land
Renters with agreements from landowner

UNOCCUPIED LAND

Allow grows (landowner agreement if leased/rented)
Allow grows when the operation can be monitored 24/7 (permit to occupy
land / i.e. permit to camp, septic, water supply and power?)
Do not allow grows on unoccupied land

DISTANCE TO NEIGHBOR

No closer than 50 feet to property line
No closer than 75 feet to property line
No closer than 100 feet to property line
No closer than ____ feet to property line

DISTANCE TO SENSITIVE RECEPTORS (Schools, churches, parks, etc.)

No closer than 500 feet to property line of sensitive receptor
No closer than 750 feet to property line of sensitive receptor
No closer than 1000 feet to property line of sensitive receptor
No closer than ____ feet to property line of sensitive receptor

FENCING

Minimum 6 ft high
only a visual barrier (i.e. thick brush, terrain)
Solid fencing (i.e. wood, masonry)
Any material that obstructs vision (e.g. plastic, tarp, corrugated tin, etc.)

REGULATION OF PLANT NUMBERS OR CANOPY AREA

Do not regulate fewer than 10 plants
Do not regulate fewer than 15 plants
Do not regulate fewer than ____ plants

Do not regulate less than 100 SF (10'x10')
Do not regulate less than 150 SF (10'x15')
Do not regulate less than 200 SF (10'x20')