

Chapter 19.86 - MEDICAL MARIJUANA CULTIVATION AND RELATED ACTIVITIES

Sections:

- 19.86.010 Findings.
- 19.86.020 Purpose and intent.
- 19.86.030 Relationship to other laws.
- 19.86.040 Definitions.
- 19.86.050 Marijuana cultivation and related activities prohibited.
- 19.86.060 Prohibited marijuana cultivation and other activities declared a public nuisance.
- 19.86.070 Enforcement.
- 19.86.080 Penalties for violation and liability for costs.
- 19.86.090 Severability.

19.86.010 Findings.

The board of supervisors of the county of Amador finds and declares as follows:

- A. In 1996, the voters of the state of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and titled the "Compassionate Use Act of 1996").
- B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.
- C. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code Section 11362.7 et seq. and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.
- D. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code Section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical marijuana collectives.
- E. In 2015, Assembly Bill 266, Senate Bill 643, and Assembly Bill 243 were enacted to create the "Medical Marijuana Regulation and Safety Act" (codified as California Business and Professions Code Section 19300 et seq.). These bills create new regulatory and licensing schemes at both the state and local levels.
- F. Pursuant to subdivision (a) of Business and Professions Code Section 19315(a) and subdivision (c) of Business and Professions Code Section 19316, nothing in the Medical Marijuana Regulation and Safety Act is interpreted to supersede or limit existing local authority to enact or enforce local regulations governing medical marijuana.
- G. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court concluded that nothing in the Compassionate Use Act of 1996 nor the Medical Marijuana Program Act precludes a local jurisdiction from regulating or prohibiting facilities that distribute medical marijuana. In *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704 and in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal of California, Third Appellate District upheld local regulations governing the cultivation of medical marijuana.

H. This chapter is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act to protect the public health, safety, and welfare of Amador County residents.

I. Large-scale medical marijuana cultivation increases the risk of criminal activity, degradation of the natural environment, and malodorous smells. As marijuana plants begin to flower, and for a period of approximately two months or more during the growing season, they produce an extremely strong odor that is offensive to many people and detectable well beyond property boundaries upon which they are grown. The strong odor of marijuana may create an attractive nuisance, alerting individuals to the location of plants, thereby creating the risk of potential crimes such as burglary, robbery, armed robbery, assault, attempted murder, and murder.

J. The indoor cultivation of substantial amounts of medical marijuana poses potential health and safety risks to those living in the residence, especially to children, and includes the increased risks of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.

K. The Federal Drug Enforcement Administration reports that various types of cannabis plants under certain planting conditions may yield an average of between one-half pound to nearly two pounds of marijuana. The "street value" of domestically produced high-grade cannabis sold illegally in California is substantial and can range from two thousand dollars to five thousand dollars per pound.

L. Large-scale medical marijuana cultivation attracts crime and associated violence in this and other counties, and grows may involve armed guards and/or booby traps that threaten severe bodily harm or death to anyone who attempts to access the area of the grow. In 2011, there was an armed robbery and murder associated with an illegal grow in the county, and an apparent triple murder in neighboring Calaveras County in late 2015. Large-scale medical marijuana cultivation creates a nuisance and threatens the safety and property of nearby landowners and their families.

M. The cultivation of medical marijuana at locations or premises within the vicinity of schools, school bus stops, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities creates unique risks that the marijuana plants may be observed by juveniles, and therefore, be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with the cultivation or distribution of medical marijuana in the proximity of such locations poses heightened risks that juveniles will be involved or endangered.

N. Amador County has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which large-scale medical marijuana cultivation operations may exist, and in providing access to medical marijuana for ill residents.

O. The limited right of qualified patients and their primary caregivers under state law to cultivate marijuana for medical purposes does not confer upon them the right to create or maintain a public nuisance.

P. Nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. 841, or to license any activity that is prohibited under the Act except as mandated by state law.

Q. Nothing in this chapter shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of marijuana for nonmedical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law. (Ord. 1755 (1/26/16) §2 (part), 2016).

19.86.020 Purpose and intent.

It is the purpose and intent of this chapter to prohibit the large-scale cultivation, manufacture, and distribution of medical marijuana in order to preserve the public peace, health, safety, and general welfare of the citizens of Amador County. (Ord. 1755 (1/26/16) §2 (part), 2016).

19.86.030 Relationship to other laws.

This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the board that this chapter shall be interpreted to be compatible and consistent with federal, county, and state enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this chapter will supersede any other provisions of this code found to be in conflict. (Ord. 1755 (1/26/16) §2 (part), 2016).

19.86.040 Definitions.

For purposes of this chapter, these words and phrases shall be defined as follows:

- A. "County" or "county" means the county of Amador or the unincorporated area of the county of Amador as required by the context.
- B. "Cultivate" or "cultivation" is the planting, growing, harvesting, drying, curing, grading, trimming, processing, or storage of one or more marijuana plants or any part thereof in any location.
- C. "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- D. "Distribute" or "distribution" shall have the same definition as in Section 19300.5(p) of California Business and Professions Code as it now reads or as amended.
- E. "Enforcing officer" means any person employed by the county of Amador and appointed to the position of code enforcement officer, or the Sheriff or his authorized deputies or designees.
- F. "Manufacture" means the production, preparation, propagation, or compounding of marijuana by direct or indirect methods or by extraction methods, independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.
- G. "Marijuana" shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended, and shall also mean cannabis as defined in Section 19300.5(f) of California Business and Professions Code as it now reads or as amended and medical cannabis product as defined in Section 19300.5(ag) of California Business and Professions Code as it now reads or as amended.

H. "Medical marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code Section 11362.7 et seq.

I. "Primary caregiver" shall have the same definition as in California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.

J. "Qualified patient" shall have the same definition as in California Health and Safety Code Section 11362.7 et seq. as it now reads or as amended.

K. "Residential treatment facility" means a facility providing treatment of drug and alcohol dependency.

L. "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any child or day care facility. This definition includes a preschool, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but does not include a vocational or professional institution of higher education.

M. "Youth-oriented facility" means elementary school, middle school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or the individuals who regularly patronize, congregate, or assemble at the establishment are predominantly minors. (Ord. 1755 (1/26/16) §2 (part), 2016).

19.86.050 Marijuana cultivation and related activities prohibited.

A. The cultivation, manufacture, and distribution of marijuana is prohibited in all unincorporated areas of the county, including, but not limited to, the following:

1. Indoor and outdoor cultivation of marijuana.
2. Marijuana distribution as defined by Section 19300.5 (p) of California Business and Professions Code as it now reads or as amended.
3. Marijuana manufacturing as defined by Section 19300.5(y) of California Business and Professions Code as it now reads or as amended.
4. Marijuana nurseries as defined by Section 19300.5(ah) of California Business and Professions Code as it now reads or as amended.
5. Marijuana testing laboratories as defined by Section 19300.5(z) of California Business and Professions Code as it now reads or as amended.

B. This section shall not apply to cultivation of medical marijuana by a qualified patient cultivating medical marijuana only for his or her own personal medical use and who does not sell, distribute, donate, or provide marijuana to any other person or entity, or by a primary caregiver cultivating medical marijuana only for the personal medical use of specified qualified patients for whom he or she is the primary caregiver within the meaning of Health and Safety Code Section 11362.7; provided, that cultivation of medical marijuana is in compliance with all the following conditions:

1. Cultivation is limited to an area measuring a maximum of one hundred square feet on any parcel, and in no event shall the total number of mature or immature plants on any parcel exceed twelve regardless of the number of qualified patients or caregivers. The area used to cultivate medical marijuana shall be measured from the outer edge of the marijuana plant canopy and includes the aggregate area, including the space between plants, whether indoor or outdoor.
2. Cultivation is not within six hundred feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility as defined herein.
3. Cultivation is not visible from the public right-of-way or publicly traveled roads.
4. Cultivation is a minimum of one hundred feet from any occupied legal residential structure located on a separate parcel and a minimum of fifty feet from a parcel under separate ownership. If either of these minimum distances cannot be met, the area under cultivation shall be screened to the extent feasible to ensure the plants are not readily visible to parcels under separate ownership.
5. If the individual cultivating medical marijuana is not the landowner, written permission from the landowner must be obtained prior to planting and shall be provided to the county upon request of any enforcing officer.
6. All lights used for the cultivation of medical marijuana shall be shielded or downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel upon which they are placed.
7. The cultivation of medical marijuana shall not subject residents of neighboring parcels who are of normal sensitivity to objectionable odors.
8. Cultivation may occur only on a parcel with a permitted dwelling unit that is permanently occupied by the qualified patient or the primary caregiver.
9. All persons engaging in the cultivation of medical marijuana shall:
 - a. Have a legal water source on the parcel;
 - b. Not engage in unlawful or unpermitted surface drawing of water for such cultivation; and
 - c. Not allow illicit discharges of water or chemicals from the property. (Ord. 1755 (1/26/16) §2 (part), 2016).

19.86.060 Prohibited marijuana cultivation and other activities declared a public nuisance.

The establishment, maintenance, or operation of any prohibited cultivation, manufacture, or distribution of marijuana, as defined in this chapter, within the unincorporated county is declared to be a public nuisance and subject to abatement as provided in this chapter. (Ord. 1755 (1/26/16) §2 (part), 2016).

19.86.070 Enforcement.

A. Whenever any enforcing officer determines that a public nuisance as described in this chapter exists within the unincorporated county, he or she is authorized to issue an initial warning as provided in Chapter 2.06 of this code.

B. Notwithstanding any other provision of this chapter, when any unlawful marijuana cultivation, manufacture, or distribution constitutes an immediate threat to public health or safety, and when the procedure set forth above in subsection A of this section would not result in abatement of that nuisance within a timely period to avoid a threat to health or safety, the enforcing officer may carry out summary abatement of the nuisance. The enforcing officer shall make reasonable efforts to notify the owner of the property, but the formal notice and hearing procedures set forth in Chapter 2.06 shall not apply. The county may recover its costs for abating the nuisance in the manner described in Section 19.86.080. (Ord. 1755 (1/26/16) §2 (part), 2016).

19.86.080 Penalties for violation and liability for costs.

A. Any person and/or entity that owns or leases the property upon which marijuana is cultivated, manufactured, or distributed in violation of this chapter or otherwise violates any of the provisions of this chapter can be subject to all of the civil and administrative remedies as provided in Chapter 2.06 of this code, or any other remedy provided by law.

B. In any enforcement action brought to enforce the provisions of this chapter, each person who causes, permits, suffers, or maintains the unlawful cultivation of marijuana to exist shall be liable for all actual costs incurred by the county, including, but not limited to, all administrative costs, including staff time and attorneys' fees, and abatement costs in the event the county brings and prevails in any administrative proceeding, civil suit, or other action to enforce the provisions of this chapter. (Ord. 1755 (1/26/16) §2 (part), 2016).

19.86.090 Severability.

If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter. (Ord. 1755 (1/26/16) §2 (part), 2016).