



AMADOR COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

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MEMORANDUM

TO: Amador County Land Use and Community Development Committee

FROM: Michael W. Israel, Community Development Agency 

DATE: July 18, 2019

SUBJECT: Code Enforcement Direction

In 2012, county staff responded to complaints of numerous violations on a large parcel in the lone area. Several of the violations were not corrected and a Notice of Violation (NOV) was recorded in 2013. No further enforcement action was pursued on those violations. The recorded NOV cites occupied structures that lack appropriate permits from the Building department. No residential structure on the parcel has been permitted but the county has taxed this property based on assessed living space for the past 20+ years.

Staff are pursuing new complaints alleging several violations including a home occupation and an outdoor cannabis grow. Preliminary review by Counsel indicates that while County Code Section 19.48.125, Home Occupation Regulations, does not specifically state that a legal residence is a prerequisite for issuance of a use permit, such interpretation of the code is reasonable, particularly if this is consistent with past practice. Section 19.84.040.W states that "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling that complies with all applicable building codes. That chapter does not, however, clearly state that there must be such a private residence on the property for an outdoor grow.

Clarification is sought whether these two aspects of the investigation should be pursued as points of non-compliance due to the lack of required permits for any residential structure on the parcel.

19.48.125 Home occupation regulations.

Home occupations as defined in Section 19.08.335 in this title shall be allowed in the zone districts cited in this chapter; provided, however, that a use permit is obtained from the planning department; and further provided that the permittee must meet and follow the criteria and requirements set forth below in this section.

A. Prior to the establishment of a home occupation, any person who wishes to conduct a home occupation shall file an application with the planning department, and shall pay the required fee and provide a description of the occupation, the number of people to be engaged in the occupation, the hours of operation, parking arrangements, and a plot plan of the property showing the proposed location of the home occupation. The planning department shall hold the application for ten days after it is received and accepted as complete, and shall upon receipt of a complete application mail out a notice describing the proposed home occupation to all owners of property, as shown on the most recent available tax roll, within a distance of three hundred feet in all directions from the subject parcel. If the planning department receives opposition to the permit application within ten days after the mailout, or if the permit is considered by the planning director to be an activity which is not clearly subordinate and incidental to the residential use than that which should be permitted as a home occupation, the planning director may deny the permit. The applicant or any interested person may appeal the planning director's decision pursuant to Chapter 19.64 of this title within ten days after the planning director's determination on the permit application.

B. Home occupations shall be clearly incidental and subordinate to the residential use of the property and shall not occupy more than twenty-five percent of the floor area of the dwelling, and in no case more than two hundred fifty square feet. Home occupations may be conducted in an attached garage or detached building subject to the two hundred fifty square foot maximum floor area restriction. A detached accessory building used for a home occupation shall not be closer to the front property line than the dwelling unless:

1. The detached accessory building has been completed for at least one year prior to the permit application for the home occupation, and complies in all respects with the requirements of Title 16 of this code (building regulations);
2. Physical problems associated with the parcel exist that make such a requirement unfeasible; or
3. Circumstances unique to the parcel render such a requirement unnecessary.

C. No more than one employee shall be employed in the home occupation.

D. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation, other than one nonilluminated sign located within the boundaries of the parcel meeting the following criteria: on parcels 4.99 acres or smaller, the sign shall not exceed two square feet in area, and must be located within ten feet of the dwelling on the property. On parcels five acres or larger, the sign may be up to four square feet in area, and may be located at any place within the boundaries of the property.

E. There shall be no sale of products other than products which are hand-crafted by the proprietor(s) of the home occupation or which are directly related and incidental to a service provided.

F. No traffic shall be generated by the home occupation in greater volume than would normally be expected in a residential neighborhood. The home occupation may not use any on-street parking for its employee, customers or clients.

G. No equipment or process shall be used in such home occupation which creates excessive noise, vibration, glare, fumes, odors or electrical interference which may, in the judgment of the county, be objectionable to nearby residents.

H. Home occupations are allowed only in R1, R1A, RE, A, AG and X districts. (Ord. 1297 §2, 1992).

Chapter 19.84
RESTRICTIONS ON CANNABIS AND RELATED ACTIVITIES

Sections:

- 19.84.010 Findings.**
- 19.84.020 Purpose and intent.**
- 19.84.030 Relationship to other laws.**
- 19.84.040 Definitions.**
- 19.84.050 Cannabis cultivation and related activities prohibited.**
- 19.84.060 Exemptions.**
- 19.84.070 Prohibited cannabis cultivation and related activities declared a public nuisance.**
- 19.84.080 Enforcement.**
- 19.84.090 Penalties for violation and liability for costs.**
- 19.84.100 Severability.**

19.84.010 Findings.

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

- A. In 2015, Assembly Bill 266, Senate Bill 643, and Assembly Bill 243 were enacted to create the "Medical Marijuana Regulation and Safety Act" ("MMRSA"). These bills created new regulatory and licensing schemes for medical marijuana at both the state and local levels effective January 1, 2016. Nothing in the MMRSA was interpreted to supersede or limit existing local authority to enact or enforce local regulations governing medical marijuana. The MMRSA was later changed in June 2016 to the "Medical Cannabis Regulation and Safety Act" ("MCRSA").
- B. On November 8, 2016, California voters passed Proposition 64, the "Adult Use of Marijuana Act" ("AUMA"), which established a comprehensive regulatory scheme to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana for use by adults twenty-one years and older. The AUMA permitted a county to enforce reasonable regulations for the cultivation of nonmedical marijuana for personal use, including prohibiting outdoor cultivation and banning nonmedical commercial marijuana activities.
- C. On June 27, 2017, California enacted SB 94, the "Medicinal and Adult-Use Cannabis Regulation and Safety Act" ("MAUCRSA") to harmonize the recreational and medicinal marijuana regulatory schemes into one framework. Previously, the MCRSA created a regulatory and licensing structure for medical cannabis only, but upon passage of Proposition 64, MAUCRSA was adopted and largely relied on the regulatory structure outlined in Proposition 64. MAUCRSA repealed the MCRSA and changed references in the law from "marijuana" to "cannabis" among other changes.
- D. MAUCRSA, codified at Business and Professions Code Sections 26000 et seq., sets forth a licensing scheme with respect to both commercial medicinal and recreational cannabis, but still allows local

jurisdictions to retain control to completely ban or prohibit commercial cultivation and related activities and to reasonably regulate personal cultivation of cannabis through its local zoning and land use requirements.

E. Pursuant to Article XI, Section 7 of the California Constitution, the county may adopt and enforce ordinances and regulations not in conflict with general laws.

F. 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 its neighborhoods, and in protecting the quality of life and environment from the negative effects of cannabis cultivation, storage, processing, testing, manufacturing, sale, and distribution.

G. Large-scale medical cannabis cultivation increases the risk of criminal activity, degradation of the natural environment, and malodorous smells. As cannabis 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 cannabis 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.

H. The monetary value of large-scale cannabis cultivation and related activities attracts crime and associated violence in this and other neighboring counties. In 2014, there was a robbery and attempted murder associated with a cannabis processing operation in Plymouth and in 2016, there was a cannabis-related home invasion robbery. In Calaveras County, there has been a substantial increase in cannabis-related crimes since the adoption of a 2016 urgency ordinance which temporarily allowed commercial medical cannabis cultivation.

I. The indoor cultivation of substantial amounts of cannabis 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.

J. The cultivation of cannabis 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 cannabis 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 cannabis in the proximity of such locations poses heightened risks that juveniles will be involved or endangered.

K. Amador County's location, geography, and climate are favorable to cannabis cultivation given the County's rural areas including heavily vegetated and sparsely populated areas.

L. The Federal Controlled Substances Act (21 U.S.C. 801 et seq.) still classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, transport, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substance Act does not exempt the cultivation, manufacture, distribution, dispensation, transportation, or possession of marijuana for medical purposes.

M. 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. (Ord. 1780 §2 (part), 2019).

19.84.020 Purpose and intent.

It is the purpose and intent of this chapter to update the Amador County Code to address changes in state law regarding cannabis and to prohibit commercial medical and recreational cultivation, manufacture, testing, distribution, or sales of cannabis in order to preserve the public peace, health, safety, and general welfare of the residents of Amador County. (Ord. 1780 §2 (part), 2019).

19.84.030 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 of supervisors 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. 1780 §2 (part), 2019).

19.84.040 Definitions.

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

- A. "Adult-use cannabis" means cannabis or cannabis products that are intended for adults twenty-one years of age or older and who do not possess a physician's recommendation.
- B. "Cannabis" shall have the same definition as in California Business and Professions Code Section 26001 and shall also include "cannabis concentrate," "cannabis products," and "edible cannabis product" as defined in California Business and Professions Code Section 26001. Cannabis shall also include "marijuana."
- C. "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- D. "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.
- E. "County" means the county of Amador or the unincorporated area of the county of Amador as required by the context.
- F. "Cultivate" or "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- G. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform for the commercial transfer of cannabis or cannabis products to a customer.
- H. "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between licensees.
- I. "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.

- J. "Fully enclosed and secure" means a space within a building that complies with the California Building Code, as adopted by the county, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more locked doors, and constructed of solid materials that cannot be easily broken through. The cultivation of cannabis which occurs in a greenhouse, hoop house, or similar structure is considered "outdoor" cultivation for purposes of this chapter.
- K. "Immature plant" means a cannabis plant which has a first true leaf measuring greater than one-half-inch long from base to tip (if started from seed) or a mass of roots measuring greater than one-half-inch wide at its widest point (if vegetatively propagated), but which is not flowering.
- L. "Indoor(s)" means cultivation of cannabis within a private residence or fully enclosed and secure structure using artificial light.
- M. "Live" or "living plant" means living cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.
- N. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.
- O. "Mature plant" means a cannabis plant that is flowering.
- P. "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be cultivated, processed, or sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.
- Q. "Outdoor(s)" means any location not within a fully enclosed and secure structure.
- R. "Owner" means the person(s) identified as the owner on the recorded deed for the parcel.
- S. "Parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code).
- T. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
- U. "Physician's recommendation" means a recommendation by a physician and surgeon that a patient use cannabis in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.
- V. "Primary caregiver" shall have the same definition as in Section 11362.7 of the Health and Safety Code.
- W. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling that complies with all applicable building codes.
- X. "Qualified patient" shall have the same definition as in Section 11362.7 of the Health and Safety Code.
- Y. "Residential treatment facility" means a facility providing treatment of drug and alcohol dependency.

Z. "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.

AA. "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. 1780 §2 (part), 2019).

19.84.050 Cannabis cultivation and related activities prohibited.

A. Indoor and outdoor planting, cultivation, harvesting, drying, curing, grading and trimming of cannabis are prohibited in all zoning districts in unincorporated Amador County, subject to the exemptions set forth in Section 19.84.060. This section shall not affect the right to use or possess cannabis as authorized by state law.

B. All commercial or industrial cannabis activity including but not limited to manufacture, distribution, processing, storing, packaging, labeling, laboratory testing, transportation, deliveries, and sales are prohibited in all zoning districts in unincorporated Amador County. (Ord. 1780 §2 (part), 2019).

19.84.060 Exemptions.

A. Indoor cultivation of adult-use cannabis by a person twenty-one years of age or older is limited to no more than six living cannabis plants at one time within a single private residence or upon the private residence in an accessory structure to the private residence that is fully enclosed and secure. The limit of six plants per private residence shall apply regardless of the number of individuals who reside at the private residence.

B. Indoor or outdoor cultivation of medicinal cannabis by a qualified patient or primary caregiver is limited to no more than twelve mature or immature plants per parcel. The limit of twelve plants shall apply regardless of the number of qualified patients or primary caregivers.

C. Notwithstanding the separate cultivation limits set forth above, in no event shall the combined total number of mature or immature plants, whether cultivated indoor or outdoor pursuant to either subsection A or B of this section, exceed twelve plants.

D. All cultivation must comply with the following conditions:

1. Cultivation is not visible from the public right-of-way or publicly traveled roads.
2. If the person cultivating the cannabis is not the owner of the private residence and/or parcel, written permission from the owner must be obtained prior to cultivation and shall be provided to the county upon the request of any enforcing officer.
3. Cultivation shall not subject residents or inhabitants of neighboring properties who are of normal sensitivity to objectionable odors.
4. Grow lights shall comply with the California Building, Electrical, Mechanical, and Fire Codes as adopted by the county.
5. There shall be no light pollution or glare caused by artificial lights that exceed the boundaries of the parcel upon which they are placed.

6. The cultivation area shall be watered by:
 - a. A legal water source on the parcel;
 - b. Without engaging in unlawful or unpermitted surface drawing of water for such cultivation; and
 - c. Without allowing any illicit discharges of water or chemicals from the property.
7. Soil and mulch, amendments, pesticides, herbicides, rodenticides, fungicides, fertilizers and other hazardous materials shall be used, stored, and disposed of in full compliance with federal, state, and local laws.
8. No cultivation is permitted within the common areas of a multifamily dwelling, residential development, apartment complex, mobile home park, or other similar residential housing.
9. All indoor cultivation of cannabis and the structures in which the cultivation occurs must be in compliance with Amador County Code, any other applicable state or local law, ordinance or regulation, including any and all building, fire, electrical, mechanical, and plumbing codes adopted by the county. The cultivation areas must be properly ventilated to prevent humidity, mold, or other hazardous or harmful conditions.
10. Outdoor cultivation of medicinal cannabis shall be subject to the following requirements:
 - a. There shall be 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. Tarps or plastic sheeting shall not be acceptable screening.
 - b. There shall be no outdoor cultivation within six hundred feet of a youth-oriented facility, school, park, church, or residential treatment facility.
 - c. Cannabis plants may not exceed a maximum height of six feet. (Ord. 1780 §2 (part), 2019).

19.84.070 Prohibited cannabis cultivation and related activities declared a public nuisance.

The establishment, maintenance, or operation of any prohibited cultivation, manufacture, or distribution of cannabis or other commercial cannabis activity, 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. 1780 §2 (part), 2019).

19.84.080 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 cannabis cultivation, manufacture, or any other cannabis activity prohibited by this chapter 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 any available legal or equitable remedies available under the law. The county may recover its costs for abating the nuisance in the manner described in Section 19.84.090. (Ord. 1780 §2 (part), 2019).

19.84.090 Penalties for violation and liability for costs.

A. Any person that owns or leases the property upon which cannabis 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, manufacture, or distribution of cannabis or other commercial cannabis activity to exist shall be liable for all actual costs incurred by the county, including, but not limited to, all administrative and investigative 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.

C. The remedies in this chapter are cumulative and nothing shall prevent the county from pursuing any civil, criminal, or administrative remedy deemed necessary or appropriate to gain compliance with state law and this code. (Ord. 1780 §2 (part), 2019).

19.84.100 Severability.

If any part 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. 1780 §2 (part), 2019).

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