

ORDINANCE NO. 1598

ADDING CHAPTER 19.84 TO THE AMADOR COUNTY CODE REGARDING THE OPERATION OF MEDICAL CANNABIS DISPENSARIES WITHIN THE UNINCORPORATED AREA OF AMADOR COUNTY TO BE IMMEDIATELY EFFECTIVE AS AN URGENCY ORDINANCE

The Board of Supervisors of the County of Amador ordains as follows:

SECTION 1. FINDINGS RELATED TO URGENCY. The Board of Supervisors finds as follows:

Currently, the County has no rules or regulations governing medical cannabis or dispensaries of medical cannabis. The County has received information that prospective operators of such dispensaries plan to open such a dispensary in the unincorporated area of the County. There is insufficient time for the County to adopt a regular, non-urgency ordinance applicable to such dispensaries. Unless adopted on an urgency basis, such a dispensary may open without any regulation applicable to it and thereafter be “grandfathered” in its operation. Such dispensaries require careful consideration and regulation of the location and manner in which they are to operate so as to prevent impacts on nearby residents and businesses. Federal law prohibits such dispensaries and use of cannabis, regardless of the reason for such use; while state law allows the use of medical cannabis on limited terms and conditions. This Ordinance both complies with applicable state law, as well as imposing reasonable rules and regulations protecting the public health, safety, and welfare of the residents and businesses within the unincorporated area of Amador County.

SECTION 2. ADDITIONAL FINDINGS RELATING TO NEED FOR REGULATION, INTENT AND CEQA. The Board of Supervisors finds as follows:

A. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 *et seq.* and entitled “The Compassionate Use Act of 1996”). The intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances. Further, effective January 1, 2004 the State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act of 1996 and to allow counties and other governing bodies to adopt and enforce rules and regulations laws consistent with SB 420.

B. To protect the public health, safety, and welfare, it is the desire of the Board of Supervisors to modify the Amador County Code consistent with SB 420, regarding the location and operation of medical cannabis dispensaries.

C. It is the Board of Supervisors’ intention that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, nor to otherwise permit any activity that is prohibited under that Act. It is further the Board of Supervisors’ intention that nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of cannabis for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

D. Pursuant to Health and Safety Code Section 11362.7 et seq., the State Department of Health is responsible for establishing and maintaining a voluntary identification card program; and Health and Safety Code Section 11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the manner set forth in Section 11362.71 et seq.; and

E. This Ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3).

SECTION 3. Chapter 19.84 is hereby added to the Amador County Code to read as follows:

“CHAPTER 19.84
MEDICAL CANNABIS REGULATIONS

19.84.010 Purpose and Intent.

It is the purpose and intent of this Chapter to regulate availability and/or the distribution, by whatever means, of medical cannabis within the unincorporated area of Amador County.

19.84.020 Definitions.

The following words and phrases, when used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

A. ‘Medical Cannabis Dispensary’ or ‘Dispensary’ means any facility or location where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with Health and Safety Code Section 11362.5 et seq., including but not limited to Health & Safety Code section 11362.(d)(2) and (3). The terms ‘primary caregiver’, ‘qualified patient’, and ‘person with an identification card’ shall be as defined in Health and Safety Code Section 11362.5 et seq. A ‘medical cannabis dispensary’ shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.

19.84.030 Enforcement of Chapter.

The Planning Director shall have the responsibility and duty of enforcement of this

Chapter.

19.84.040 Medical Cannabis Dispensary Use Permit.

A. Prior to initiating operations, and as a continuing prerequisite to conducting legally valid operations, any person or entity wishing to operate a medical cannabis dispensary shall apply with the Planning Department and receive from the County a medical cannabis dispensary use permit on the terms and conditions set forth in this Chapter.

B. The applicant for a medical cannabis dispensary permit shall submit to the Planning Department an application for a medical cannabis dispensary use permit. The application shall be received and processed as any other application for a use permit as set forth in Chapter 19.56 of this Code. The County may impose reasonable terms and conditions on the proposed operations, consistent with Health & Safety Code Section 11362.5 *et seq.* and with public health, safety, and welfare. Such terms and conditions may include, but not be limited to, requirements as to parking, adequate lighting, hours of operation, and adequate security.

C. A medical cannabis dispensary use permit shall be valid for one year. An operator of a medical cannabis dispensary may re-apply for a permit for subsequent year(s).

D. The Planning Director, in consultation with the Sheriff of Amador County, shall conduct a background check of any applicant for a dispensary permit use permit or employee thereof and, based on that and other relevant information, provide that information to the Planning Commission or Board of Supervisors to use in determining whether to issue a medical cannabis dispensary use permit.

F. A medical cannabis dispensary shall be located only in the following zoning districts: M—Manufacturing District, LM—Light Manufacturing District, or MM—Medium Manufacturing District.

19.84.050 Operating Restrictions.

A medical cannabis dispensary, once permitted by the County, shall meet the following operating standards for the duration of the use:

A. A medical cannabis dispensary may possess no more than 8 ounces of dried cannabis per qualified patient or caregiver, and maintain no more than 6 mature and 12 immature cannabis plants per qualified patient. However, if a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of cannabis consistent with the patient's needs.

B. No cannabis shall be smoked, ingested or otherwise consumed on the premises of the Dispensary. The term 'premises' includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings.

C. Persons under the age of 18 shall not be allowed on the dispensary's premises

unless they are a qualified patient or a primary caregiver.

D. No Dispensary shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

E. No Dispensary shall conduct or engage in the commercial sale of any product, good or service. The term 'commercial sale' does not include the provision of medical cannabis on terms and conditions consistent with this Code and applicable law.

F. Each Dispensary shall allow the County to have access to the Dispensary's books, records, accounts, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data will be produced no later than 24 hours after receipt of the County's written request(s).

G. The Dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft, as approved by the Sheriff.

H. The Dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the County to insure that the operations of the Dispensary are consistent with protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

I. The building in which the Dispensary is located shall comply with all applicable local, state and federal rules, regulations, and laws including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the County Building Official

J. A Dispensary shall not cultivate or distribute medical cannabis for profit. A Dispensary may receive compensation for its actual expenses, including reasonable compensation for services provided, or for payment of out-of-pocket expenses incurred in providing those services. However, any such Dispensary must pay applicable sales tax on such sales or services and maintain the applicable sellers permit or similar permit from the State Franchise Tax Board or other applicable agency.

K. No cannabis may be cultivated on the premises.

L. A Dispensary that provides cannabis in the form of food or other comestibles shall obtain and maintain the appropriate licenses from the County Health Department for the provision of food or other comestibles.

M. A Dispensary shall provide to the Planning Director, upon request, written evidence to the Planning Director's reasonable satisfaction, that the Dispensary is not engaged in interstate commerce.

19.84.060 Minimum Requirements for Issuing Medical Cannabis Dispensary Use Permits

A. Purpose. The purpose of this section is to establish requirements and standards for the location and operation of Medical Cannabis Dispensaries, which shall be applicable regardless of in which zone such uses are located.

B. Mandatory Locational Standard. A Medical Cannabis Dispensary may be located only in one of the allowed zoning districts and not

1. within 1,000 feet of any residence;
2. within 1,000 feet of another Medical Cannabis Dispensary, an elementary school, middle school, high school, public library, or public park; or
3. within 1,000 feet of a youth-oriented establishment characterized by either or both of the following: (a) the establishment advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors; or (b) the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

The uses and zones set forth in this subsection shall be collectively known as “sensitive uses.” The distance between a Medical Cannabis Dispensary and a “sensitive use” shall be measured in a straight line, without regard to the intervening structures or objects, from the closest exterior wall of the building or structure, or a portion of the building or structure, in which the Medical Cannabis Dispensary is located to the boundary of the property on which the building or structure, or portion of the building or structure, in which the “sensitive use” occurs or is located.

C. Accessory Use. A Medical Cannabis Dispensary is not and may not be approved as an accessory use to any other use permitted by this Code.”

19.84.070 Fees.

The County may impose such reasonable fees on both the application for, and the issuance of a permit for, a Dispensary to recoup the County’s cost in administering and implementing the provisions relating thereto, including but not limited to the costs for background checks or charges by either the Sheriff or the Planning Department.

19.84.080 Violations.

Violations of the terms and conditions of the Dispensary’s permit, of this Code, or of applicable local, state, and federal rules, regulations, and laws shall be unlawful, and shall also be grounds for revocation of the permit or for nonrenewal. The penalty for any violation of this Chapter shall be a misdemeanor, punishable by a fine of \$500 and/or six months imprisonment

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

SECTION 5. ORDINANCE IMMEDIATELY EFFECTIVE. This Ordinance shall become effective immediately as an urgency ordinance upon its adoption by the Board of Supervisors.

SECTION 6. PUBLICATION. The Clerk of the Board is hereby directed to publish this Ordinance within fifteen (15) days after its passage at least once in a newspaper of general circulation published in the County of Amador.

The foregoing ordinance resolution was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 15th day of June 2004, by the following vote:

AYES: Mario Biagi, Richard M. Forster, Rich F. Escamilla, and Louis D. Boitano

NOES: None

ABSENT: Richard P. Vinson


Chairman, Board of Supervisors

ATTEST:

MARDELL ANDERSON, Clerk of the
Board of Supervisors, Amador County,
California


Deputy