

ORDINANCE 1717

INTERIM URGENCY ORDINANCE NO. 1716 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF AMADOR ADDING CHAPTER 19.86 PROHIBITING THE OUTDOOR CULTIVATION OF MEDICAL MARIJUANA WITHIN THE UNINCORPORATED AREA OF AMADOR COUNTY IS HEREBY EXTENDED

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 explicit rules or regulations governing the outdoor cultivation of medical marijuana. A number of outdoor medical marijuana cultivation sites have been established in the unincorporated areas of the County. There is insufficient time for the County to adopt a regular, non-urgency ordinance applicable to the outdoor cultivation of medical marijuana. Unless adopted on an urgency basis, cultivation could continue without any specific regulation applicable to it and could create inconsistent and incompatible land use. Cultivation of medical marijuana requires careful consideration and regulation of the location and manner in which it is to occur so as to prevent impacts on nearby residents and businesses. Federal law prohibits the use of marijuana, regardless of the reason for such use; while state law allows the use of medical marijuana on limited terms and conditions. This Ordinance both complies with applicable state law, as well as imposes 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 also 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 marijuana 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. The Board finds that there is a current and immediate threat to the public health, safety and welfare posed by the location and outdoor cultivation of medical marijuana. 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 outdoor cultivation of medical marijuana.

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 marijuana for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under California law.

D. Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with SB 420.

E. The Federal Controlled Substances Act (21 USC §§ 801 et seq.) 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.

F. Medical marijuana cultivation, without certain safeguards, increases the risk of criminal activity, degradation of the natural environment and malodorous smells, particularly if substantial amounts of medical marijuana are concentrated in one place. The cultivation of medical marijuana in or near residential zones increases the risk of such activity and intrudes upon residential uses.

G. 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 at such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of marijuana at such locations or premises is especially hazardous to public safety and welfare, and to the protection of juveniles and the person(s) cultivating the marijuana plants.

H. 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.

I. 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. As recognized by the Attorney General's August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

K. 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.

L. Nothing in this Ordinance shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of marijuana that is otherwise illegal under state law. No provision of this Ordinance shall be deemed a defense or immunity to any action brought against any person by the Amador County District Attorney's Office, the Attorney General of the State of California, or the United States of America.

M. This Ordinance is not subject to the California Environmental Quality Act pursuant to sections 15060(c)(2) and 15061(b)(3). In addition to the foregoing general exemptions, the following categorical exemptions apply: sections 15308 and 15321.

SECTION 3. Chapter 19.86 is hereby added to the Amador County Code to read as follows:

“CHAPTER 19.86
OUTDOOR CULTIVATION OF MEDICAL MARIJUANA PROHIBITED

19.86.010 Outdoor cultivation of medical marijuana prohibited.

The outdoor cultivation of medical marijuana shall be prohibited in any zoning district in the unincorporated area of Amador County pending the development of more comprehensive standards and regulations. For the purposes of this section, cultivation shall mean the planting, growing, harvesting, drying, processing or storage of one or more marijuana plants or any part thereof.

SECTION 4. EFFECTIVE DATE.

This ordinance is an urgency measure to prevent a current and immediate threat to the public health, safety, and welfare for the reasons stated herein, adopted pursuant to Section 65858 of the California Government Code, and is effective immediately upon adoption and shall remain in effect for ten months and 15 days from the date of expiration of the 45 day temporary moratorium established by Ordinance No. 1716 unless extended pursuant to California Government Code Section 65858. Unless extended, this ordinance shall have no further force and effect after 11:59 p.m. on November 21, 2012. The Clerk of the Board is hereby directed to publish this Ordinance as required by law.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Amador at a special meeting thereof, held on the 27th day of December 2011, by the following vote:

AYES: Supervisors Oneto, Plasse, Novelli, Boitano and Forster

NOES:

ABSENT:


Chairman, Board of Supervisors

ATTEST:

JENNIFER BURNS, Clerk of the
Board of Supervisors, Amador County,
California