

ORDINANCE NO. 1720

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF AMADOR, STATE OF CALIFORNIA, AMENDING CHAPTER 19.86 PERTAINING TO OUTDOOR CULTIVATION OF MEDICAL MARIJUANA

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

SECTION 1. Chapter 19.86 of the Amador County Code, relating to Outdoor Cultivation of Medical Marijuana, which was passed as an urgency ordinance per Ordinance Numbers 1716 and 1717, is repealed in its entirety and the following revised Chapter 19.86 is adopted and substituted in its place:

**CHAPTER 19.86
MEDICAL MARIJUANA CULTIVATION**

- 19.86.010 Findings.**
- 19.86.020 Purpose and intent.**
- 19.86.030 Relationship to other laws.**
- 19.86.040 Definitions.**
- 19.86.050 Medical Marijuana cultivation prohibited.**
- 19.86.060 Medical Marijuana cultivation declared a public nuisance.**
- 19.86.070 Penalties for violation.**
- 19.86.080 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. This ordinance is enacted, consistent with Health and Safety Code section 11362.7 et seq., to protect the public health, safety, and welfare of Amador County residents.

F. Large scale Medical Marijuana cultivation increases the risk of criminal activity, degradation of the natural environment, and malodorous smells. 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.

G. Large scale Medical Marijuana cultivation has been occurring in Amador County and some operations have been the subject of criminal activity, including an apparent armed robbery and murder. Large scale Medical Marijuana cultivation creates a nuisance and threatens the safety and property of nearby land owners and their families.

H. 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.

I. 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.

J. Nothing in this ordinance 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.

K. 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 State or Federal law.

L. This Ordinance is not subject to the California Environmental Quality Act pursuant to sections 15060(c)(2) and 15061(b)(3).

19.86.020 Purpose and intent.

It is the purpose and intent of this Chapter to prohibit the large-scale cultivation of Medical Marijuana in order to preserve the public peace, health, safety, and general welfare of the citizens of Amador County.

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.

19.86.040 Definitions.

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

A. "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, 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. "Marijuana" shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended.

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

F. "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.

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

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

I. "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.

J. "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.

19.86.050 Medical Marijuana cultivation prohibited.

A. Outdoor cultivation of Medical Marijuana is prohibited in all areas of the County.

B. This section shall not apply to outdoor cultivation of twelve (12) or fewer Medical Marijuana plants, mature or immature, per qualified patient or primary caregiver; not to exceed a maximum of twenty-four (24) plants on any legal parcel of record if the area(s) of the parcel where medical marijuana is being cultivated meet all of the following conditions:

1. Is not within six hundred (600) feet of a youth-oriented facility, a school, a park, or any church or residential treatment facility as defined herein.

2. Is not visible from the public right-of-way or publicly traveled roads.

3. Is a minimum of one hundred (100) feet from any occupied legal residential structure located on a separate parcel and a minimum of fifty (50) 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.

4. If the grower is not the landowner, written permission from the landowner must be obtained prior to planting and provided to the County upon request.

5. 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.

6. The cultivation of marijuana shall not subject residents of neighboring parcels who are of normal sensitivity to objectionable odors.

19.86.060 Prohibited Medical Marijuana cultivation declared a public nuisance.

The establishment, maintenance, or operation of any prohibited cultivation of Medical Marijuana, as defined in this Chapter, within the County is declared to be a public nuisance.

19.86.070 Penalties for violation.

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

B. In the event the County brings and prevails in any civil suit or action to enforce the provisions of this Chapter, the person(s) or entity(ies) responsible for such violation shall be liable to the County for costs of the suit, including, but not limited to, attorney's fees.

19.86.080 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.

SECTION 2. This ordinance or a summary thereof shall be published within fifteen days after the date hereof in a newspaper of general circulation printed and published in the County of Amador, State of California, and shall become effective thirty days after the date hereof.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 27th day of March 2012, by the following vote:

AYES: Supervisors Louis D. Boitano, Theodore F. Novelli,
John Plasse & Brian Oneto

NOES: None

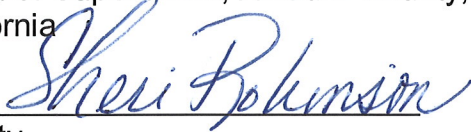
ABSENT: Supervisor Richard M. Forster



Louis D. Boitano, Chairman
Board of Supervisors

ATTEST:

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



Sheri Robinson
Deputy