

ORDINANCE NO. 1745

AN INTERIM URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF AMADOR AMENDING CHAPTER 19.86 REGARDING CULTIVATION OF MEDICAL MARIJUANA WITHIN THE UNINCORPORATED AREA OF AMADOR COUNTY TO INCLUDE INDOOR CULTIVATION

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 cultivation of medical marijuana grown, except when such medical marijuana is grown “outdoor.” The potential has arisen for an extremely large and unregulated indoor medical marijuana cultivation facility to locate near a populated area of the unincorporated County. There is insufficient time for the County to adopt a regular, non-urgency ordinance applicable to any such large-scale indoor cultivation of medical marijuana. Unless adopted on an urgency basis, large-scale indoor cultivation of medical marijuana could begin 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 large-scale indoor 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 regarding the outdoor cultivation of medical marijuana to also address indoor cultivation.

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 of the Amador County Code is hereby amended to read as follows [deletions indicated by ~~strikethrough~~ and additions indicated by underline]:

**“CHAPTER 19.86  
MEDICAL MARIJUANA CULTIVATION**

**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 chapter is enacted, consistent with California 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 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.
- K. 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.
- L. This chapter is not subject to the California Environmental Quality Act pursuant to California Code of Regulations 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 Section 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 in 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 or fewer medical marijuana plants, mature or immature, per qualified patient or primary caregiver; not to exceed a maximum of twenty-four 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 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 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.
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 of this code, 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 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. 1745 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 August 26, 2014. The Clerk of the Board is hereby directed to

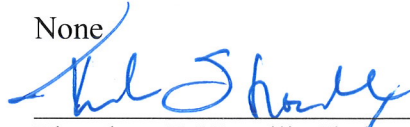
publish this Ordinance as required by law.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 26<sup>th</sup> day of August, 2014, by the following vote:

AYES: Theodore F. Novelli, Brian Oneto, John Plasse, Louis D. Boitano and Richard M. Forster

NOES: None

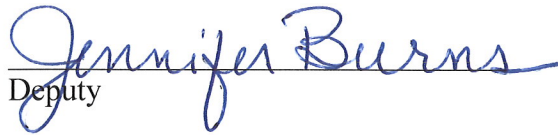
ABSENT: None



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Theodore F. Novelli, Chairman

ATTEST:

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

  
Deputy