

ORDINANCE NO. 1772

AN EXTENSION OF THE INTERIM URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF AMADOR PROHIBITING COMMERCIAL NONMEDICAL MARIJUANA ACTIVITES AND OUTDOOR CULTIVATION OF NONMEDICAL MARIJUANA WITHIN UNINCORPORATED AMADOR COUNTY The

Board of Supervisors of the County of Amador ("County") ordains as follows:

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

A. On November 8, 2016, California voters passed Proposition 64, the "Adult Use of Marijuana Act" ("AUMA"), which establishes a comprehensive regulatory scheme to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing and sale of non-medical marijuana for use by adults 21 years and older.

B. The AUMA creates a state licensing system which will authorize businesses to legally cultivate, manufacture, process, store, distribute, transport and sell nonmedical marijuana and marijuana products with such licenses to be issued by the state no later than January 1, 2018, unless it violates the provisions of any local ordinances or regulations.

c. The AUMA permits 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.

D. Significant concerns regarding the negative effects to the health, safety, and welfare of the public from unregulated medical and nonmedical marijuana activities include increased crime and associated violence, the nuisance presented by the strong odor of marijuana plants as they begin to flower to neighboring properties and the risk of burglary or robbery posed by the smell which can alert persons to the location of the valuable plants, as well as, the adverse environmental impacts from cultivation practices. In 2014, there was a robbery and attempted murder associated with a marijuana processing operation in Plymouth and in 2016, there was a marijuana related home invasion robbery. In neighboring Calaveras County, there has been a substantial increase in marijuana related crimes since the adoption of their 2016 urgency ordinance which allowed commercial medical marijuana cultivation and other uses.

E. There is an immediate need to prevent unregulated nonmedical marijuana grows and activities in the County, which has the potential to impact the health, safety, aesthetic, and community welfare of residents and businesses and this interim ordinance is necessary to prevent the potential for nonmedical outdoor marijuana cultivation to be grandfathered in the unincorporated areas of the County.

F. Regarding medical marijuana, Chapters 19.84 and 19.86 of the Amador County Code already prohibit medical marijuana dispensaries and commercial marijuana activities including cultivation, distribution, manufacture, nurseries, and laboratories, respectively.

G. 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.

H. The California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentrations of marijuana in locations without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

1. On February 28, 2017, the Board of Supervisors enacted a temporary 45-day interim urgency ordinance prohibiting commercial nonmedical marijuana activities and outdoor cultivation of nonmedical marijuana following the passage of the AUMA. On April 11, 2017 and following a duly-noticed public hearing, the Board of Supervisors unanimously voted to extend the interim urgency ordinance for ten months and fifteen days. The urgency ordinance will expire on February 26, 2018 unless extended pursuant to Government Code section 65858.

J. Since the County's adoption of its interim urgency ordinance, on June 27, 2017, California passed the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") to implement the AUMA and harmonize it with the Medical Marijuana Regulation and Safety Act ("MMRSA"), which was enacted in 2015 and later amended and renamed the Medical Cannabis Regulation and Safety Act ("MCRSA") to establish a state regulatory framework for medical cannabis. MAUCRSA preserved the authority of local jurisdictions to regulate cannabis. MAUCRSA also revised references to "marijuana" in existing law to instead refer to "cannabis". In order to be consistent with current state law, the term "marijuana" as used in the County's interim urgency ordinance shall have the same meaning as "cannabis" and those terms shall be used interchangeably herein.

K. On November 16, 2017, the California Department of Food & Agriculture released its emergency regulations regarding cannabis cultivation and the Department of Public Health's Manufactured Cannabis Safety Branch released its emergency regulations governing the standards and licensing procedures for manufacturing of commercial cannabis products. On December 7, 2017, the Bureau of Cannabis Control released its emergency proposed administrative regulations regarding testing labs, distributors, dispensaries and microbusinesses. These agencies began issuing commercial cannabis licenses on January 1, 2018.

L. On January 4, 2018, the United States Attorney General issued a Memorandum regarding Marijuana Enforcement rescinding previous memoranda issued by the Office of Attorney General, including the 2009 Memorandum issued by Deputy Attorney General David W. Ogden concerning medical marijuana enforcement and the 2011, 2013, and 2014 Memoranda issued by Deputy Attorney General James Cole regarding the enforcement of marijuana related crimes under the Federal Controlled Substances Act. Although the full implications of this change are yet unknown, it has the potential to create uncertainty as it relates to commercial medical and recreational marijuana activities.

M. Due to the conflict between state and federal laws, and in light of the rapidly changing regulatory landscape, the Board of Supervisors finds that nonmedical marijuana activities continue to present a current and immediate threat to the public health, safety, or welfare of Amador County residents until additional staff review has been completed and any necessary local regulations or code revisions have been adopted and made effective. It is the intent of this Ordinance to prohibit nonmedical marijuana activities to the fullest extent permitted by State law.

SECTION 2. DEFINITIONS.

For purposes of this Ordinance, the following words and phrases have the following meanings:

A. "Indoor cultivation" shall mean cultivation inside a private residence or inside a fully enclosed and secure accessory structure to a private residence in accordance with Health and Safety Code section 11362.2(b)(2).

B. "Marijuana" shall mean "cannabis" as defined in Health and Safety Code section 11018 and in Business and Professions Code section 26001 (f) and shall also include "cannabis products" as defined in Health and Safety Code section 11018.1 and "cannabis concentrate" as defined in Business and Professions Code section 26001 (h).

c. "Medical marijuana" shall mean marijuana used for medical purposes in accordance with Health and Safety Code section 11362.7 et seq.

1). "Nonmedical" or "recreational" marijuana shall mean marijuana not used for medical purposes in accordance with Health and Safety Code section 11362.7 et seq.

E. "Outdoor cultivation" shall mean any cultivation that is not defined as indoor cultivation in Health and Safety Code section 11362.2(b)(2).

F. "Private residence" shall mean "private residence" as defined in Health and Safety Code section 11362.2(b)(5).

SECTION 3. PROHIBITED USES.

A. Any commercial or industrial use involving marijuana including but not limited to manufacture, processing, laboratory testing, labeling, storing, wholesale, distribution, and retail sales and deliveries, is prohibited in all zoning districts in unincorporated Amador County.

B. Outdoor and indoor planting, cultivating, harvesting, drying, curing, or processing of marijuana plants for nonmedical use, except as expressly allowed below, is prohibited in all zoning districts in unincorporated Amador County.

SECTION 4. EXEMPTIONS.

A. Indoor planting, cultivation, harvesting, drying, or processing of marijuana plants for nonmedical use is limited to six (6) or fewer plants per private residence at one time and must be entirely for the personal use of a resident who is twenty-one (21) years of age or older.

B. This Ordinance does not affect the rights of individuals as established by State law to possess or use medical marijuana subject to a valid doctor's recommendation.

c. It is not a violation of this Ordinance for any person employed by a licensed marijuana delivery service to travel on public roads within unincorporated areas of the County for the purpose of delivering marijuana to persons located in a city or county where the delivery of marijuana is not prohibited.

SECTION 5. STATEMENT OF URGENCY

The Amador County Board of Supervisors finds that there is a current and immediate threat to the public safety, health and welfare of the County that requires the enactment of a prohibition on nonmedical marijuana activities as set forth in Section 1 of this Ordinance.

SECTION 6. SEVERABILITY

If any provision of this Ordinance is declared to be invalid, unlawful or unconstitutional by a court of competent jurisdiction, such invalidity, unlawfulness, or unconstitutionality shall not affect other ordinance provisions provided that they can be implemented without the invalid provision and severed from the remaining provisions of this Ordinance.

SECTION 7. CEQA.

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

SECTION 8. EFFECTIVE DATE


This Ordinance shall take effect immediately upon passage by a four-fifths vote of the Board of Supervisors based upon the findings that this Ordinance is adopted pursuant to California Government Code section 65858 for the protection of the public safety, health, and welfare and shall remain in effect for one year, or until February 13, 2019. 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 13th day of February 2018, by the following vote:

AYES: Lynn A. Morgan, Brian Oneto, Richard M. Forster, Patrick Crew and Frank U. Axe


NOES: None

ABSENT: None



LYNN A. MORGAN
Chairperson, Board of Supervisors

ATTEST:



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