

ORDINANCE NO. 1780

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF AMADOR COUNTY
REPEALING CHAPTERS 19.84 AND 19.86 OF THE AMADOR COUNTY CODE
RELATING TO MEDICAL MARIJUANA DISPENSARIES AND MEDICAL
MARIJUANA CULTIVATION AND ADDING NEW CHAPTER 19.84 PERTAINING TO
RESTRICTIONS ON CANNABIS AND RELATED ACTIVITIES**

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

SECTION 1: Amador County Code Chapter 19.84 regarding Medical Marijuana Dispensaries and Amador County Code Chapter 19.86 regarding Medical Marijuana Cultivation and Related Activities are repealed in their entirety.

SECTION 2: Amador County Code Chapter 19.84 is added to read as follows:

Chapter 19.84
RESTRICTIONS ON CANNABIS AND RELATED ACTIVITIES

Sections:

19.84.010	Findings
19.84.020	Purpose and intent
19.84.030	Relationship to other laws
19.84.040	Definitions
19.84.050	Cannabis cultivation and related activities prohibited
19.84.060	Exemptions
19.84.070	Prohibited cannabis cultivation and related activities declared a public nuisance
19.84.080	Enforcement
19.84.090	Penalties for violation and liability for costs
19.84.100	Severability

19.84.010 Findings

The Board of Supervisors of the County of Amador finds and declares as follows:

- A. In 2015, Assembly Bill 266, Senate Bill 643, and Assembly Bill 243 were enacted to create the "Medical Marijuana Regulation and Safety Act" ("MMRSA"). These bills created new regulatory and licensing schemes for medical marijuana at both the state and local levels effective January 1, 2016. Nothing in the MMRSA was

interpreted to supersede or limit existing local authority to enact or enforce local regulations governing medical marijuana. The MMRSA was later changed in June 2016 to the “Medical Cannabis Regulation and Safety Act” (“MCRSA”).

- B. On November 8, 2016, California voters passed Proposition 64, the “Adult Use of Marijuana Act” (“AUMA”), which established 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. The AUMA permitted 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.
- C. On June 27, 2017, California enacted SB 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) to harmonize the recreational and medicinal marijuana regulatory schemes into one framework. Previously, the MCRSA created a regulatory and licensing structure for medical cannabis only, but upon passage of Proposition 64, MAUCRSA was adopted and largely relied on the regulatory structure outlined in Proposition 64. MAUCRSA repealed the MCRSA and changed references in the law from “marijuana” to “cannabis” among other changes.
- D. MAUCRSA, codified at Business and Professions Code sections 26000 et seq., sets forth a licensing scheme with respect to both commercial medicinal and recreational cannabis, but still allows local jurisdictions to retain control to completely ban or prohibit commercial cultivation and related activities and to reasonably regulate personal cultivation of cannabis through its local zoning and land use requirements.
- E. Pursuant to Article XI, section 7 of the California Constitution, the County may adopt and enforce ordinances and regulations not in conflict with general laws.
- F. 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 its neighborhoods, and in protecting the quality of life and environment from the negative effects of cannabis cultivation, storage, processing, testing, manufacturing, sale, and distribution.
- G. Large-scale medical cannabis cultivation increases the risk of criminal activity, degradation of the natural environment, and malodorous smells. As cannabis 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. The strong odor of cannabis 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.

- H. The monetary value of large-scale cannabis cultivation and related activities attracts crime and associated violence in this and other neighboring counties. In 2014, there was a robbery and attempted murder associated with a cannabis processing operation in Plymouth and in 2016, there was a cannabis related home invasion robbery. In Calaveras County, there has been a substantial increase in cannabis related crimes since the adoption of a 2016 urgency ordinance which temporarily allowed commercial medical cannabis cultivation.
- I. The indoor cultivation of substantial amounts of cannabis poses potential health and safety risks to those living in the residence, especially to children, and includes the increased risks of fire from grow light systems, exposure to fertilizers pesticides, anti-fungus/mold agents, and exposure to potential property crimes targeting the residence.
- J. The cultivation of cannabis 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 cannabis 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 cannabis in the proximity of such locations poses heightened risks that juveniles will be involved or endangered.
- K. Amador County's location, geography, and climate are favorable to cannabis cultivation given the County's rural areas including heavily vegetated and sparsely populated areas.
- L. The Federal Controlled Substances Act (21 USC §§ 801 et seq.) still 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.

- M. 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.

Section 19.84.020 Purpose and intent

It is the purpose and intent of this chapter to update the Amador County Code to address changes in state law regarding cannabis and to prohibit commercial medical and recreational cultivation, manufacture, testing, distribution, or sales of cannabis in order to preserve the public peace, health, safety, and general welfare of the residents of Amador County.

Section 19.84.030 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 of Supervisors 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.

Section 19.84.040 Definitions

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

- A. "Adult-use cannabis" means cannabis or cannabis products that are intended for adults 21 years of age or older and who do not possess a physician's recommendation.
- B. "Cannabis" shall have the same definition as in Business & Professions Code section 26001 and shall also include "cannabis concentrate", "cannabis products", and "edible cannabis product" as defined in Business & Professions Code section 26001. Cannabis shall also include "marijuana".
- C. "Church" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

- D. "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.
- E. "County" means the County of Amador or the unincorporated area of the County of Amador as required by the context.
- F. "Cultivate" or "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- G. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform for the commercial transfer of cannabis or cannabis products to a customer.
- H. "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between licensees.
- I. "Enforcing Officer" means any person employed by the County of Amador and appointed to the position of code enforcement officer, or, the Sheriff or his authorized deputies or designees.
- J. "Fully enclosed and secure" means a space within a building that complies with the California Building Code, as adopted by the County, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessibly only through one or more locked doors, and constructed of solid materials that cannot be easily broken through. The cultivation of cannabis which occurs in a greenhouse, hoop house, or similar structure is considered "outdoor" cultivation for purposes of this Chapter.
- K. "Immature plant" means a cannabis plant which has a first true leaf measuring greater than one half inch long from base to tip (if started from seed) or a mass of roots measuring greater than one half inch wide at its widest point (if vegetatively propagated), but which is not flowering.
- L. "Indoor(s)" means cultivation of cannabis within a private residence or fully enclosed and secure structure using artificial light.

- M. "Live" or "living plant" means living cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.
- N. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.
- O. "Mature plant" means a cannabis plant that is flowering.
- P. "Medicinal cannabis" or "medicinal cannabis product" means cannabis or a cannabis product, respectively, intended to be cultivated, processed, or sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician's recommendation.
- Q. "Outdoor(s)" means any location not within a fully enclosed and secure structure.
- R. "Owner" means the person(s) identified as the owner on the recorded deed for the parcel.
- S. "Parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (commencing with Section 66410 of the Government Code).
- T. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
- U. "Physician's recommendation" means a recommendation by a physician and surgeon that a patient use cannabis in accordance with the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.
- V. "Primary caregiver" shall have the same definition as in Section 11362.7 of the Health and Safety Code.
- W. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling that complies with all applicable building codes.
- X. "Qualified patient" shall have the same definition as in Section 11362.7 of the

Health and Safety Code.

- Y. “Residential treatment facility” means a facility providing treatment of drug and alcohol dependency.
- Z. “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.
- AA. “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.

Section 19.84.050 Cannabis cultivation and related activities prohibited

- A. Indoor and outdoor planting, cultivation, harvesting, drying, curing, grading, trimming of cannabis are prohibited in all zoning districts in unincorporated Amador County, subject to the exemptions set forth in Section 19.84.060. This Section shall not affect the right to use or possess cannabis as authorized by state law.
- B. All commercial or industrial cannabis activity including but not limited to manufacture, distribution, processing, storing, packaging, labeling, laboratory testing, transportation, deliveries, and sales are prohibited in all zoning districts in unincorporated Amador County.

Section 19.84.060 Exemptions

- A. Indoor cultivation of adult-use cannabis by a person 21 years of age or older is limited to no more than six (6) living cannabis plants at one time within a single private residence or upon the private residence in an accessory structure to the private residence that is fully enclosed and secure. The limit of six plants per private residence shall apply regardless of the number of individuals who reside at the private residence.

- B. Indoor or outdoor cultivation of medicinal cannabis by a qualified patient or primary caregiver is limited to no more than twelve (12) mature or immature plants per parcel. The limit of twelve (12) plants shall apply regardless of the number of qualified patients or primary caregivers.
- C. Notwithstanding the separate cultivation limits set forth above, in no event shall the combined total number of mature or immature plants, whether cultivated indoor or outdoor pursuant to either subsection A. or B. above, exceed twelve (12) plants.
- D. All cultivation must comply with the following conditions:
1. Cultivation is not visible from the public right-of-way or publicly traveled roads.
 2. If the person cultivating the cannabis is not the owner of the private residence and/or parcel, written permission from the owner must be obtained prior to cultivation and shall be provided to the County upon the request of any Enforcing Officer.
 3. Cultivation shall not subject residents or inhabitants of neighboring properties who are of normal sensitivity to objectionable odors.
 4. Grow lights shall comply with the California Building, Electrical, Mechanical, and Fire Code as adopted by the County.
 5. There shall be no light pollution or glare caused by artificial lights that exceed the boundaries of the parcel upon which they are placed.
 6. The cultivation area shall be watered by:
 - a. A legal water source on the parcel.
 - b. Without engaging in unlawful or unpermitted surface drawing of water for such cultivation, and
 - c. Without allowing any illicit discharges of water or chemicals from the property.
 7. Soil and mulch, amendments, pesticides, herbicides, rodenticides, fungicides, fertilizers and other hazardous materials shall be used, stored, and disposed of in full compliance with federal, state, and local laws.

8. No cultivation is permitted within the common areas of a multi-family dwelling, residential development, apartment complex, mobile home park, or other similar residential housing.
9. All indoor cultivation of cannabis and the structures in which the cultivation occurs must be in compliance with Amador County Code, any other applicable state or local law, ordinance or regulation, including any and all building, fire, electrical, mechanical, and plumbing codes adopted by the County. The cultivation areas must be properly ventilated to prevent humidity, mold, or other hazardous or harmful conditions.
10. Outdoor cultivation of medicinal cannabis shall be subject to the following requirements:
 - a. There shall be 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. Tarps or plastic sheeting shall not be acceptable screening.
 - b. There shall be no outdoor cultivation within six hundred (600) feet of a youth-oriented facility, school, park, church, or residential treatment facility.
 - c. Cannabis plants may not exceed a maximum height of six (6) feet.

Section 19.84.070 Prohibited cannabis cultivation and related activities declared a public nuisance

The establishment, maintenance, or operation of any prohibited cultivation, manufacture, or distribution of cannabis or other commercial cannabis activity, as defined in this Chapter, within the unincorporated county is declared to be a public nuisance and subject to abatement as provided in this Chapter.

Section 19.84.080 Enforcement

- A. Whenever any Enforcing Officer determines that a public nuisance as described in this Chapter exists within the unincorporated county, he or she is authorized to issue an initial warning as provided in Chapter 2.06.

- B. Notwithstanding any other provision of this Chapter, when any unlawful cannabis cultivation, manufacture, or any other cannabis activity prohibited by this Chapter constitutes an immediate threat to public health or safety, and when the procedure set forth above in Section 19.84.080(A) would not result in abatement of that nuisance within a timely period to avoid a threat to health or safety, the Enforcing Officer may carry out any available legal or equitable remedies available under the law. The County may recover its costs for abating the nuisance in the manner described in Section 19.84.090.

Section 19.84.090 Penalties for violation and liability for costs

- A. Any person that owns or leases the property upon which cannabis is cultivated, manufactured, or distributed in violation of this chapter or otherwise violates any of the provisions of this Chapter can be subject to all of the civil and administrative remedies as provided in Chapter 2.06 of the Amador County Code, or any other remedy provided by law.
- B. In any enforcement action brought to enforce the provisions of this Chapter, each person who causes, permits, suffers, or maintains the unlawful cultivation, manufacture, or distribution of cannabis or other commercial cannabis activity to exist shall be liable for all actual costs incurred by the County, including, but not limited to, all administrative and investigative costs, including staff time and attorneys' fees, and abatement costs in the event the County brings and prevails in any administrative proceeding, civil suit, or other action to enforce the provisions of this Chapter.
- C. The remedies in this chapter are cumulative and nothing shall prevent the county from pursuing any civil, criminal, or administrative remedy deemed necessary or appropriate to gain compliance with state law and this code.

Section 19.84.100 Severability

If any part of this section 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 3: The Board of Supervisors finds that this ordinance is not a project under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15060(c)(3) and 15378, and is otherwise exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) and 15308.

SECTION 4: This ordinance, or a summary thereof, shall be published within fifteen (15) 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 8th day of January 2019, by the following vote:

AYES: Brian Oneto, Patrick Crew, Richard M. Forster, Jeffrey Brown, Frank U. Axe.

NOES: None

ABSENT: None



BRIAN ONETO
Chairman, Board of Supervisors

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

