

PFF/LBG:
MarijCultUrg.ord2
12/20/11



ORDINANCE NO. 4970

**AN INTERIM ORDINANCE MAKING FINDINGS AND ESTABLISHING A
TEMPORARY MORATORIUM ON THE OUTDOOR CULTIVATION OF
MEDICAL MARIJUANA TO BECOME EFFECTIVE IMMEDIATELY**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES
ORDAIN AS FOLLOWS:**

Section 1. Findings

A. In 1970, Congress enacted the Controlled Substances Act ("CSA") which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.

B. In 1996, the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code section 11362.5 et. seq. and entitled "The Compassionate Use Act of 1996" ("CUA").

C. The intent of the CUA was to enable seriously ill persons who need medical marijuana for specified medical purposes to obtain and use marijuana under limited, specified circumstances. The CUA provided a limited exception from criminal prosecution under state law for the cultivation, possession, and use of marijuana for specified medical purposes. The CUA does not address land use, zoning or building code impacts or issues that arise from marijuana cultivation within local jurisdictions.

D. On January 1, 2004, SB 420 the Medical Marijuana Program Act ("MMPA") went into effect. The MMPA was enacted by the State Legislature to clarify the scope of the Compassionate Use Act. The MMPA allows cities, counties, and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA.

E. The El Dorado County Zoning Ordinance currently does not make any distinction between the cultivation of medical marijuana and the cultivation of any other agricultural crop or landscaping; the Zoning Ordinance does not contain any explicit regulations governing the cultivation of medical marijuana. However, under state law, medical marijuana is not considered an agricultural crop.

F. Recently, citizens and law enforcement officers have reported numerous problems arising throughout the County from the cultivation of marijuana, including increased crime, intimidation and threats. As marijuana plants mature, they develop a strong odor which is offensive to many individuals and which creates an attractive nuisance by alerting people to the location of valuable marijuana plants; this creates an increased risk of crimes including burglary, trespassing, robbery and armed robbery. Many of the cultivation operations throughout the County are quite large; they appear to be criminal operations far exceeding the amounts reasonably grown to serve as medical marijuana for residents of the land where the cultivation occurs, or patients under the care of the grower.

G. The El Dorado County Sheriff's Office has received an increase of complaints and reported crimes that are directly related to the cultivation of marijuana. These include minor complaints such as increased noise, heavy vehicle and foot traffic as well as medical marijuana users smoking in open view of families. The crimes reported include fourteen robberies, the use of force or fear to steal from another, from citizens at their residences. Of these fourteen robberies, seven have occurred in the past three years. Eight were home invasions in which suspects forcibly entered another person's house and stole marijuana. In thirteen of the cases, the suspects were reported to have guns, whether real or fake. One of these cases resulted in a homicide. From 2007 to 2011, twenty-four cases of theft of marijuana cases were reported; nineteen of these were reported in the past three years. In many of these cases, it was also reported that other items, including cash, had been stolen. Over the past few years, the Sheriff's Office has also located and eradicated several large indoor grows. In many of the cases, the growers had medical marijuana cards but were growing well beyond what was reasonable for their doctor's recommendation. During the investigation of these marijuana grows, Sheriff's Office investigators frequently discovered that the growers had been stealing electrical power by rerouting power lines around the utility meter, resulting in hundreds of thousands of dollars in revenue loss for PG&E.

H. Further, since state law does not consider medical marijuana an agricultural crop, there are no regulations governing the type or amounts of pesticides or fungicide used on marijuana plants. This poses a threat not only to the users of the marijuana, but to consumers of agricultural crops grown in proximity to the marijuana.

I. Based on the foregoing, the Board of Supervisors finds that an urgency ordinance prohibiting the outdoor cultivation of marijuana is necessary to avoid a current and immediate threat to the public health, safety and welfare.

Section 2. Imposition of Moratorium

A. In accordance with the authority granted the County of El Dorado under Section 65858, from and after the date of adoption of this ordinance, all outdoor planting, cultivation and/or harvesting of marijuana plants shall be prohibited in all zone districts in the unincorporated areas of the County except as set forth in Section 2 (B) below.

B. On any legal parcel in any zone district, it shall not violate this ordinance to use an area no greater than 200 square feet for the outdoor planting, cultivation and/or harvesting of medical marijuana if the area of the parcel where medical marijuana is being planted, cultivated and/or harvested outdoors is fully enclosed by a solid, opaque fence that is a minimum of 6 (six) and a maximum of 8 (eight) feet in height

C. For purposes of this ordinance, "cultivation of medical marijuana" means the growing of marijuana for personal medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7, as those sections may be amended from time to time.

D. For purposes of this ordinance, "outdoor planting, cultivation, and/or harvesting of marijuana" shall include any activities that are not conducted within a fully enclosed, permitted building, constructed of solid materials, accessible only through one or more locking doors. The building must be constructed and maintained in such a manner that any marijuana contained inside is not visible from any neighboring property or public right of way.

E. This prohibition on the outdoor cultivation of medical marijuana shall supersede the provisions of the "Right to Farm Ordinance" in Chapter 17.13 of the Zoning Ordinance and any other provision in the County Code that defines or allows cultivation of crops or agricultural products to the extent that those provisions can be read in a manner inconsistent with this prohibition.

Section 3. Compliance with California Environmental Quality Act

The Board of Supervisors finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA"), pursuant to Section 15060(c)(2) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) since it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 4. Severability

If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Penalties

A. Any person, firm, partnership, association, corporation or other entity whether as principal agent, employee or otherwise, who owns or leases property upon which medical marijuana is planted, cultivated and/or harvested outdoors in an area which exceeds 200 square feet and/or which is not fully enclosed by a solid, opaque fence that is a minimum of 6 (six) and a maximum of 8 (eight) feet in height, or owns the medical marijuana that is so planted, cultivated and/or harvested outdoors or otherwise violates any of the provisions of this ordinance can be charged with a misdemeanor or infraction at the discretion of the district attorney.

B. If charged as a misdemeanor, the violation shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not exceeding six months or by both such fine and imprisonment; if charged as an infraction, it shall be punishable by a fine not exceeding One Hundred Dollars (\$100.00) for the first violation, Two Hundred Dollars (\$200.00) for a second violation within one year and Five Hundred Dollars (\$500.00) for each additional violation within one year.

C. Such person, firm, partnership, association, corporation or other entity may be charged with a separate offense for each and every day, or portion of a day, that a violation exists.

D. Primary responsibility for enforcement of this ordinance shall vest with the Sheriff of the County of El Dorado and his sworn officers. All other county officers with authority to enforce the County Code including but not limited to, Development Services Code Enforcement personnel, shall also have the authority to enforce this ordinance.

E. In addition to the foregoing, any violation of this ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

Section 6. Effective Date

This ordinance shall become effective immediately upon adoption if adopted by at least four-fifths vote of the County Board of Supervisors. It shall be in effect for 10 months and 15 days from the date of adoption, unless extended by the County Board of Supervisors as provided for in Government Code section 65858. Unless extended, this ordinance shall have no further force and effect after 11:59 p.m on November 6, 2012.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the 20 day of December, 2011, by the following vote of said Board:

Ayes: Raymond J. Nutting, James R. Sweeney
Ron Briggs, Norma Santiago

ATTEST
SUZANNE ALLEN DE SANCHEZ
Clerk of the Board of Supervisors

Noes: John R. Knight
Absent:

By [Signature]
Deputy Clerk

First Vice [Signature]
Chairman, Board of Supervisors
John R. Knight

APPROVED AS TO FORM
LOUIS B. GREEN
COUNTY COUNSEL

By [Signature]
PAULA F. FRANTZ
Deputy County Counsel

I CERTIFY THAT:
THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

Date _____
ATTEST: SUZANNE ALLEN DE SANCHEZ, Clerk of the Board of Supervisors
of the County of El Dorado, State of California.

By _____
Deputy Clerk