

**STAFF REPORT TO AMADOR COUNTY PLANNING COMMISSION
FOR MEETING OF TUESDAY, FEBRUARY 14, 2012**

**ITEM NO. 2 - REVIEW AND CONSIDERATION OF AMENDING TITLE 19 (ZONING) OF
THE AMADOR COUNTY CODE TO INCLUDE REGULATIONS PERTAINING TO THE
CULTIVATION OF MEDICAL MARIJUANA**

BACKGROUND: In response to complaints received related to the growing of medical marijuana plants at several locations throughout the County (allowed by State law SB 420 – Health and Safety Code Section 11362.7 et seq.) the Board of Supervisors placed the matter on their November 22, 2011 agenda. At that meeting they adopted an interim urgency ordinance prohibiting the outdoor cultivation of medical marijuana plants and also adopted a Resolution of Intention (attached) directing staff to initiate proceedings to amend the county code relative to the cultivation of medical marijuana.

The Board's Land Use Committee subsequently held two public workshops on December 19th and 27th. Those workshops provided information concerning a variety of topics and issues related to the growing of medical marijuana (see attached Land Use Committee minutes). At the last workshop the Land Use Committee directed staff to develop a draft ordinance to bring to the Planning Commission on February 14, 2012 for their review and recommendations to the Board of Supervisors. The Land Use Committee further established the goal of having an ordinance adopted prior to the outdoor growing season.

Staff took the information received at the workshops and reviewed other jurisdictions' ordinances related to the cultivation of medical marijuana. Through the workshop discussions of setbacks, quantities of plants, and sensitivities of neighbors, Staff concluded that small medical marijuana grows have much less impact than large grows. The draft ordinance (attached) was developed for consideration based upon a successful ordinance adopted by Kern County. The proposed ordinance prohibits the outdoor cultivation of medical marijuana plants with the exception that this restriction does not apply to the growing of 12 or fewer plants. No other restrictions, such as setbacks specific to parcel sizes are proposed. This draft is simple and easily understood and meets the goals outlined by the Board of Supervisors; those being, protecting adjacent landowners from the impacts of outdoor cultivation while providing patients the ability to grow their medicine. The Kern County ordinance has also withstood legal challenge.

PLANNING COMMISSION ACTION: The Planning Commission's task is to take public comment on the proposed ordinance and make recommendations to the Board of Supervisors. The Board of Supervisors will then hold a public hearing at a future date. At that hearing the Board will take additional public comment and consider the Planning Commission's recommendations before taking final action on the proposed ordinance.

FINDING: The adoption of this ordinance is regulatory in nature and is not subject to CEQA pursuant to section 15060(s)(2) and 15061(b)(3) in that the ordinance establishes further regulations for a use allowed by state statute. A Categorical Exemption is hereby adopted and shall be filed with the County Recorder.

ORDINANCE NO. _____

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, 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. "Marijuana" shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended.
- C. "Medical Marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code sections 11362.7 et seq.
- D. "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.
- E. "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.
- F. "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.

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 cultivation of twelve (12) or fewer Medical Marijuana plants, mature or immature, on any legal parcel of record.

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 _____ day of _____ 2012, by the following vote:

AYES:

NOES:

ABSENT:

Chairman, Board of Supervisors

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

DRAFT

Correspondence

Planning Dept.

FEB - 7 2012

PLANNING DEPARTMENT

After having read the proposed ordinance which allows 12 plants on any parcel I am concerned on several points

1. No protection for landlords; under this ordinance a landlord would have no say in growing even though the property could be seized by the federal govt. as a result.

2. No setbacks or location restrictions; under this ordinance marijuana could be grown along fence lines or roadways, or across from parks or school bus stops.

3. No security or fences; Nothing to keep juveniles or wildlife out or marijuana in.

4. No way to mitigate a nuisance grow; even small grows can have numerous problems associated with them (odor, dust, threat of robbery or invasion, or outdoor consumption of marijuana). I have attached a copy of Shasta Lake's code 17.83.070 as a model of how these things may be addressed.

(see ATTACHMENT #1)

5. Allows 12 plants;

5. (cont.)

if a plant can produce 2-3 LBS of product (at a recent meeting one grower said he was getting 4) this means an average grow will produce 380-570 ounces of marijuana a year (by way of comparison an ounce of tea yields about 12 bags, an ounce of tobacco about 35 cigarettes). This allows the person the potential to grow more than they can consume and the surplus (@ \$100-\$200 per ounce) could easily go to the illegal drug market.

Thank You for your Consideration
in These Matters

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R. J. Nidene

17.83.070 - Public nuisance/enforcement.

- A. Medical marijuana cultivation shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
- B.

http://library.municode.com/HTML/16623/level2/TIT17ZO_CH17.83MEMACU.html

8/10/2011

Chapter 17.83 - MEDICAL MARIJUANA CULTIVATION

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It is hereby declared to be unlawful for any person owning, leasing, occupying or having charge or possession of any property within the City to create a public nuisance in the course of cultivating medical marijuana in any location. A public nuisance may also be deemed to exist if such activity is determined to be related to the cultivation of marijuana and produces:

1. Odors which are disturbing to people residing or present on adjacent or nearby property or areas open to the public;
 2. Repeated responses to the property from law enforcement officers (more than three times in a one-year period);
 3. Repeated disruption to the free passage of persons or vehicles in the neighborhood (more than three times in a one-year period) as reported to law enforcement officers or the city code enforcement officer;
 4. Excessive noise which is disturbing to people on adjacent or nearby property or areas open to the public; and
 5. Any other impacts which adversely affect the health, safety or general welfare of people on adjacent or nearby property or areas open to the public.
- C. The written affirmation by two persons, not related and having separate residences, stating that their peace and quiet is unreasonably disturbed as a direct result of cultivation activities shall be prima facie evidence of a violation of this section.
 - D. Nothing in this chapter shall be construed as a limitation on the city's authority to abate any nuisance which may exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.
 - E. All medical marijuana cultivation shall be subject to SLMC Chapter 8.12 (Summary Abatement-Immediately Dangerous Buildings and Conditions), Chapter 8.16 (Abatement of Dangerous Buildings, Substandard Buildings and Public Nuisances) and the State Housing Code (California Health and Safety Code), and other applicable provisions of local and state law.

(Ord. No. 10-215, § II, 12-21-2010)

Feb 4 2012

DEAR PLANNING DEPARTMENT,

AS REGARDING THE PROPOSED UPCOMING ORDINANCE ON MEDICAL MARIJUANA CULTIVATION - AND ALLOWING TWELVE PLANTS; A SKILLED GROWER CAN GET FOUR POUNDS OF MARIJUANA FROM ONE PLANT. THAT IS NEARLY FIFTY POUNDS PER PERSON.

THERE IS NO PROTECTION IN THE ORDINANCE FOR PEOPLE WHO DON'T WANT TO HAVE TO SEE IT AND SMELL IT; NO CONSIDERATION OF SET-BACK OR WIND DIRECTION, NO PROTECTION FOR WILDLIFE AND CHILDREN, I APPRECIATE THAT IT PROHIBITS LARGE GROWS, BUT THERE IS SO MUCH THAT IT DOES NOT TOUCH UPON.

HAVING LIVED THROUGH A HORRIBLE SUMMER WITH ALL THE WINDOWS CLOSED FROM JULY INTO NOVEMBER, AND STILL NOT BEING ABLE TO KEEP THE STENCH AND STICKY DUST OUT OF MY HOUSE; SLEEPING WITH A RESPIRATOR MASK ON MOST NIGHTS AND NEVER GETTING AWAY FROM THE SMELL FOR MONTHS ON END - I WAS HOPING THE PEOPLE

OF AMADOR COUNTY WOULD BE BETTER PROTECTED. THIS ORDINANCE IS WEAK AND LEAVES ALL KINDS OF ROOM FOR INCREDIBLE HUMAN SUFFERING, I AM UTTERLY DISAPPOINTED.

MY HUSBAND AND I LIVE ON NINE ACRES, YET GROWERS WERE ABLE TO HAVE PLANTS WITHIN 200 FEET OF OUR HOUSE (AND WE ARE DOWNWIND BESIDES). I RITY THE FOLKS WHO JUST LIVE ON LOTS AND HAVE NEIGHBORS WHO GROW. MANY PEOPLE WILL NO DOUBT HAVE ALOT OF PROBLEMS WITH THE LACK OF PROTECTION FROM THE SEVERE NUISANCE AND NEGATIVE IMPACT THAT MARIJUANA GROWING CAN HAVE,

Sincerely,
Syan Nidever
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RECEIVED
 Amador County
 FEB - 6 2012
 PLANNING DEPARTMENT

Background

**BEFORE THE BOARD OF SUPERVISORS OF THE
COUNTY OF AMADOR, STATE OF CALIFORNIA**

IN THE MATTER OF:

RESOLUTION OF INTENTION TO INITIATE)	
PROCEEDINGS TO AMEND THE AMADOR COUNTY)	
CODE AS IT RELATES TO MEDICAL MARIJUANA)	RESOLUTION NO. 11-138
CULTIVATION)	

WHEREAS, the Amador County Board of Supervisors finds that Amador County has no rules or regulations governing the cultivation of medical marijuana; and

WHEREAS, the cultivation of medical marijuana has resulted in impacts to area residents due to the odor emitted by the plants, poor sanitary conditions resulting from illegal camping, increased traffic and safety concerns; and

WHEREAS, several medical marijuana "grows" have recently emerged in Amador County, which are visible and easily accessible to the public, including children and youths; and

WHEREAS, during the current harvest and processing season there has been violent crime associated with these mature medical marijuana grows due to their size, location, and monetary value; and

WHEREAS, the Amador County Board of Supervisors finds regulations are necessary to address the location and manner in which medical marijuana may be cultivated to protect the public's health, safety, and welfare.

NOW, THEREFORE, BE IT HEREBY RESOLVED the Board of Supervisors of the County of Amador, State of California, does hereby adopt a Resolution of Intention to initiate proceedings to consider amending Amador County Code to include regulations pertaining to the cultivation of medical marijuana.

The foregoing resolution was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 22nd day of November, 2011 by the following vote:

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

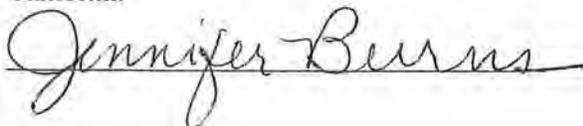
NOES: None

ABSENT: None



 CHAIRMAN, Board of Supervisors

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



(RESOLUTION NO. 11-138)

(11/22/11)

ACTION MINUTES

LAND USE & COMMUNITY DEVELOPMENT COMMITTEE

December 27, 2011

MEMBERS PRESENT: Richard Forster, Supervisor, District II
Louis Boitano, Supervisor, District IV

Supervisor Boitano called the workshop to order at 1:08 p.m.

STAFF PRESENT: Aaron Brusatori, CDA Director
Dr. Robert Hartmann, Health Officer
Chuck Iley, CAO
Greg Gillott, County Counsel
Jim Wegner, Sheriff's Office
Linda VanVleck, Code Enforcement
Mike Israel, Environmental Health
Rich Millar, Building Department
Randall ShROUT, Public Defender
Martin Ryan, Sheriff's Office

MEMBERS OF THE PUBLIC: Lauren Liberty
Tom Liberty
August Gonzaga
Jason Cole
David Dobbie
Marina Dobbie
Robert C. Allen
R. J. Nidever
Cathy Vanderford
Emerson W. Grant
Rebekah LaFrank
Craig E. Smith

ISSUES FOR REVIEW AND DISCUSSION TO MINIMIZE IMPACT OF MARIJUANA CULTIVATION ON ADJACENT PROPERTIES.

Comments, suggestions and points made during the discussion were as follows:

DEFINITIONS:

The definition of qualified patient and primary caregiver was provided as part of the agenda packet. See attached.

SECURITY:

A survey was also provided in the agenda packet (see attached) as a means to obtain the opinions of the public.

Occupied Land:

- Growing on rented land would include the rental of a home.
- It be required that a cultivator be a resident or landowner of Amador County.
- Don't want absentee owners.

Unoccupied Land:

- Portable toilet and trash pick should be required.
- Already have regulations in effect that address trailers and septic systems that should be rolled into regulations regarding medical marijuana.
- Trailers or RV should require a use permit. This would cut down on the sanitation issues and would only be during the grow.
- Use permits for trailers, RVs, temporary structures currently require a septic system, rather than a temporary tank, for long term occupancy. Therefore, trailers would need to be hooked up to an existing septic system or a new system installed.
- Limit the number of people per RV and for how long.
- Medical marijuana regulations would need to mirror existing ordinances in place.
- Big grows require to be watched and monitored 24/7. RV would be the equivalent to a guard shack.

Distance to Neighbor:

- Distance would depend on the number of plants or canopy size and type of neighborhood.
- Regulations will be for the unincorporated areas of the County. County has no jurisdiction within the city limits of incorporated areas.
- 20 sq feet of raised beds, 50 feet from property line, and 150 feet from closest neighbor's house has not been an issue. Neighbors do not know grow exists.
- 20' setback would eliminate 85% of the community of River Pines.
- Setback should only kick in if neighbors complain. This would be problematic.
- Size of yards and prime growing location in the yard sometimes eliminates a reasonable setback.
- The setback for livestock enclosures/pens/corrals is 25' or 30' from the property line and there is no setback for open pasture.
- Other Counties' ordinances usually start at 100 feet for a limited number of plants and goes up depending on the size of the grow.
- Property lines might be close but the home might be a long distance away.

Distance from Youth Oriented Facilities, Parks, Rehabilitation Centers and Schools:

- This should not apply to small gardens for individual patients living in neighborhoods. This has not been an issue in Calaveras County.
- Fencing should be such that it can't be climbed.

- 11362.768 talks about a 600' radius from a school for dispensaries, collectives, and cooperatives or a provider who possess, cultivates or distributes medical marijuana.
- 11362.79 talks specifically about smoking marijuana 1000' from a school, recreation center, youth center, school bus, etc.
- Law addresses many issues but does not specifically address the small medical marijuana cultivation site or individual grower for personal use. It is not known if this was intentional.
- May need a plant count or some other threshold where the ordinance will kick in before some of the issues that need to be can be addressed.
- Most ordinances seen in other jurisdictions do contain a setback to schools and other youth oriented activities and they apply to every use and do not make exceptions for small uses. Butte County's setback is 600' from any school.
- Should look at what *should* be done not what *can* be done and keep in mind the unintended consequences of what is decided.

Fencing:

- Fencing is expensive and many patients can't afford it. A 10' fence can cost \$8000.
- Fencing would be needed only under certain circumstances; i.e. if the grow is visible from a public space or in view of the neighbors.
- Fenced area can be eye catching and make a grow "more visible."
- Fence in some instances makes no sense when distance to neighbors is $\frac{1}{3}$ to $\frac{1}{2}$ miles away.
- Fence can help to provide protection.
- Fence may not need to be a regulation. A grower will put up a fence to meet their own needs.
- Fences provide security for both the grower and the neighbors.
- Fencing should be more substantial than brush or netting on poles.
- Fences protect against deer and other animals.
- Growing is hard work and fencing is needed for protection.

NUMBER OF PLANTS OR CANOPY AREA:

- No regulation under a certain canopy size seems like the most reasonable solution.
- There should be a threshold on plant count vs. canopy size.
- Canopy.
- Start regulating at 40 plants.
- When determining the number of plant allowable, the loss of plants and inexperienced growers, needs to be taken into consideration and allowance made.
- Twenty-nine plants just makes it for two people.
- Recommend 10 plants.
- No regulations except for over 50 plants.
- Regulation is needed to curb the abuses. Regulated doesn't necessarily mean fees and costs.
- Use a square footage of cultivatable area.
- Number of plants would be easier to regulate.

- There are people who are physically impaired and can't cultivate their own marijuana; therefore 100 plant maximum.
- Regulations should not start until a certain number of plants or a canopy size is reached.
- No more than two recommendations can be grown at a location.
- Plant size can't be controlled and can vary greatly.
- Variables that affect the number of plants needed are growing conditions; is it being grown indoors or outdoors; is it being smoked or is it being used in cooking?
- A plant can produce anywhere from 17 lbs. to ¼ oz. of marijuana.
- A number of plants be used as a trigger for regulation; possibly 12 plants.
- There is nothing but fear of getting caught that prohibits someone with a "script" from using it in more than one county.
- One acre or more can have 50 plants.
- Odor from plants may be more of an issue than view of plants.
- Would the amount allowed be by parcel or by patient?

OPEN DISCUSSION:

Numerous County departments would be involved in enforcement and be complaint driven.

Caregivers need a way to lease or use land belonging to someone else.

Limit the number of recommendations per parcel to discourage the criminal element.

A use permit would entail a public hearing with notification of neighbors. A use permit process isn't the best idea in that locations of grows would be publicized and they are time consuming and costly.

Community gardens allow people to grow and keep it away from their children. With community grows, the increase in traffic needs to be considered. Tehama County has an ordinance that addresses cooperative grows that could be used as a model. Regulations that create limitations increase the need for community gardens so it may be beneficial to increase the number of recommendations per parcel to 4 patients.

Limits can be placed on the property whether it be plants or grow area. The size of what is allowed on a particular parcel is within the authority of the local agency.

DIRECTION TO STAFF:

Draft an ordinance addresses the following:

- No more than two scripts per parcel properly zoned.
- Would need to be an Amador County resident or as a renter have permission from the property owner to grow.
- Have a certain number of plants that triggers the ordinance.
- Setbacks may be needed for larger parcels.

The decision needs to be made as to the number of plants or canopy area, or a number of plants within a certain square footage of area. All other ordinances shall remain in full force and effect. Planning Commission will need to define immediate family member.

This matter is to be put on the January Planning Commission agenda as a public matter to give staff an opportunity to review the information generated to date with the Planning Commission. The draft ordinance and public hearing will be scheduled for the February Planning Commission meeting.

The meeting adjourned at 2:41 p.m.

NOTE: *A CD of the recording of this workshop can be obtained from the Planning Department upon request.*

H. INFORMATION ITEM: UPCOMING PUBLIC HEARING ON PROPOSED ORDINANCE REGULATING OUTDOOR CULTIVATION OF MEDICAL MARIJUANA

Amador County staff has been receiving complaints related to the growing of medical marijuana plants (allowed by State law SB420 – Health and Safety Code Section 11362.7 et seq.) at several locations throughout the County. Recently the county has adopted Urgency Ordinance # 1716 which prohibits cultivating of all outdoor medical marijuana. The Land Use Committee discussed this matter and recommended the Board of Supervisors adopt a resolution of intention concerning cultivation of marijuana.

November 22, 2011, the Board of Supervisors adopted a resolution of intention to initiate proceeding to amend the Amador County Codes as it relates to Medical Marijuana Cultivation. The Board found the County has no rules or regulations governing the cultivation of medical marijuana which impacts area residents due to odor emitted by the plant, poor sanitary conditions resulting from illegal camping, increased traffic and safety concerns, easy accessibility to the public, including children and youths, violent crimes associated with these mature medical marijuana grows due to their size, location, and monetary value.

Additionally, during the November 22, 2011 Board of Supervisors meeting the Board adopted an urgency measure and interim ordinance pursuant to California Government Code 65858 prohibiting the cultivation of medical marijuana until such time an ordinance can be put in place.

December 27, 2011, the Board of Supervisors adopted to extend Ordinance No. 1716 prohibiting Outdoor Cultivation of Medical Marijuana within the unincorporated area of Amador County for a period of up to 10 month and 15 days. Adoption could extend the ordinance until November 22, 2012.

Since the adoption of the interim ordinance, staff has held two workshops (December 19, 2011 and December 27, 2011). The workshops were productive in providing information that will be used to make recommendations to the Planning Commission. The two workshops were publically noticed and received a good attendance and participation. Among the goals established by the Land Use Committee is to have an ordinance adopted prior to the outdoor growing season.

At the last workshop the Land Use Committee directed staff to develop a draft ordinance to bring to the Commission at the February 14, 2012 meeting for review and recommendation to the Board of Supervisors. Tonight is just to provide you with the background and information we have at this time to give you ample time to review the matter prior to the public hearing at the February 14th meeting.

No action can be taken tonight.

**December 27, 2011
Land Use Committee
Workshop**

AGENDA

Land Use Committee Workshop Regarding Medical Marijuana Cultivation

1:00 – 3:00 P.M.

Tuesday, December 27, 2011

Board of Supervisors Chambers

County Administration Center

810 Court Street

Jackson

INTRODUCTIONS:

ISSUES FOR REVIEW AND DISCUSSION TO MINIMIZE IMPACT OF MARIJUANA CULTIVATION ON ADJACENT PROPERTIES.

1. DEFINITIONS (1:10 p.m.- 1:30 p.m.)
 - a. Caregiver – What is required to be legally designated?
 - b. Qualified patient

2. SECURITY (Survey) (1:30 p.m. – 1:50 p.m.)
 - a. Occupied land (i.e., with permitted residence)
Setbacks /distances
 - b. Unoccupied land
Setbacks / distances
 - c. Neighbors
 - d. Distances from youth oriented facilities, parks, rehabilitation centers and schools.

3. NUMBER OF PLANTS OR CANOPY AREA (Survey) (1:50 p.m. - 2:10 p.m.)
 - a. Limited number of plants and/or canopy area
 - b. No regulations

4. OPEN DISCUSSION (2:10 P.M. – 2:30 P.M.)

5. DIRECTION TO STAFF

SURVEY RESULTS

9 SURVEYS

OCCUPIED LAND

Only when owner occupies the land	4 In favor
Renters with agreements from landowner	5 In favor

UNOCCUPIED LAND

Allow grows (landowner agreement if leased/rented)	2 In favor
Allow grows when the operation can be monitored 24/7 (permit to occupy land / i.e. permit to camp, septic, water supply and power?)	4 In favor
Do not allow grows on unoccupied land	0 In favor

DISTANCE TO NEIGHBOR

No closer than 50 feet to property line	1 In favor
No closer than 75 feet to property line	0 In favor
No closer than 100 feet to property line	1 In favor
No closer than ____ feet to property line	2 In favor of 20'; 1 In favor 10' & 1 in favor no distance given.

Comment: If put in place collective should be permitted.

DISTANCE TO SENSITIVE RECEPTORS (Schools, churches, parks, etc.)

No closer than 500 feet to property line of sensitive receptor	3 In favor
No closer than 750 feet to property line of sensitive receptor	0 In favor
No closer than 1000 feet to property line of sensitive receptor	3 In favor
No closer than <u>5'</u> feet to property line of sensitive receptor	1 In favor

Comment: If put in place then collectives should be permitted.

FENCING

Minimum 6 ft high	4 In favor
Only a visual barrier (i.e. thick brush, terrain)	0 In favor
Solid fencing (i.e. wood, masonry)	0 In favor
Any material that obstructs vision (e.g. plastic, tarp, corrugated tin, etc.)	1 In favor

REGULATION OF PLANT NUMBERS OR CANOPY AREA

Do not regulate fewer than 10 plants	0 In favor
Do not regulate fewer than 15 plants	2 In favor
Do not regulate fewer than ____ plants	1 In favor of 20; 2 In favor of 40; 1 In favor 45; 2 In favor of 50 and 1 In favor of 99.

Do not regulate less than 100 SF (10'x10') 0 In favor

Do not regulate less than 150 SF (10'x15') 0 In favor

Do not regulate less than 200 SF (10'x20') 3 In favor

Comment: 400 square feet

**December 19, 2011
Land Use Committee
Workshop**

AGENDA

Land Use Committee Workshop Regarding Medical Marijuana Cultivation
9:00 A.M.

Monday, December 19, 2011
Board of Supervisors Chambers
County Administration Center
810 Court Street
Jackson

INTRODUCTIONS: (9:00 a.m. – 9:10 a.m.)

ISSUES FOR REVIEW AND DISCUSSION TO MINIMIZE IMPACT OF MARIJUANA CULTIVATION ON ADJACENT PROPERTIES.

From observations made in this county we see these as the primary issues.

1. SECURITY (9:10 a.m. – 9:25 a.m.)
 - a. Occupied land (i.e., with permitted residence)
 - b. Unoccupied land
2. NUMBER OF PLANTS OR CANOPY AREA (9:25 a.m. – 9:40 a.m.)
3. DISTANCES FROM YOUTH ORIENTED FACILITIES (i.e., schools, school bus stops, churches, parks, childcare centers). (9:40 a.m. – 9:55 a.m.)

*TOPICS FOR NEXT MEETING (9:55 a.m. – 10:00 a.m.)

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ACTION MINUTES

LAND USE & COMMUNITY DEVELOPMENT COMMITTEE

December 19, 2011

MEMBERS PRESENT: Richard Forster, Supervisor, District II
Louis Boitano, Supervisor, District IV

Supervisor Boitano called the workshop to order at 9:07 a.m.

STAFF PRESENT: Aaron Brusatori, CDA Director
Anne Watts, Social Services
Dr. Robert Hartmann, Health Officer
Chuck Iley, CAO
Greg Gillott, County Counsel
Jim Rooney, Assessor
Jim Wegner, Sheriff's Office
Linda VanVleck, Code Enforcement
Mike Boitano, Agriculture Department
Mike Israel, Environmental Health
Rich Millar, Building Department
Randall ShROUT, Public Defender
Sarah Barron, District Attorney
Susan Grijalva, Planning Department
Todd Riebe, District Attorney

MEMBERS OF THE PUBLIC: Noele Richmond, Amador County Farm Bureau
Tom Liberty
Mark Bolger
August Gonzaga
Bobby Stanton
Jason Cole
David Dobbie
Marina Dobbie
Craig E. Smith
Robert C. Allen
R. J. Nidever
Cathy Vanderford
Emerson W. Grant

Aaron Brusatori, CDA, said the goal of the workshop is to discuss the concerns of the public with respect to the cultivation of medical marijuana and to provide information that will be used by the Land Use Committee in making a recommendation to the Planning Commission and the Board of Supervisors in developing the ordinance. The workshop was publicly noticed.

ISSUES FOR REVIEW AND DISCUSSION TO MINIMIZE IMPACT OF MARIJUANA CULTIVATION ON ADJACENT PROPERTIES.

Supervisor Forster said the goal is not to impact the quality of life and the property values of people that live near a grow while also preserving the right of those that use marijuana medicinally.

The issues discussed and the comments and points made during the discussion were as follows:

SECURITY:

Occupied lands:

- Want to be good neighbors.
- Keep plants discreet, behind a screen of brush, fenced, out of view, locked up and 150' away from neighbors.
- Discourage deer with 6' cyclone fence.
- Odor depends on air flow.
- Fencing attracts attention to gardens and makes them more obvious.
- Just because someone can smell the odor of a marijuana plant doesn't mean it should be a measure as to what is allowable.
- The plants only smell about 6 to 8 weeks out of the year and only under certain atmospheric conditions. Temperature, time of day, or the particular variety of plant all can affect the extent to which odors can be detected.
- Odor doesn't necessarily constitute a nuisance; there are many other activities that generate odor; i.e. livestock, vineyards, etc.
- Odor can affect the quality of life and property value.
- Limits need to be set on where it can be grown, what size parcels, and what setbacks can be applied.
- The ability to grow your own plants takes the criminal element out of getting medicine.
- Indoor grows are more secure and eliminates the odor issue.
- Outdoor grows are necessary because they can be larger and provide the opportunity for people who can't grow.
- Amador County is a right-to-farm county. It's not right to single out the odor of marijuana yet people are to put up with the side affect of farming; i.e. flies, smells from manure, etc.
- It could be made it less noticeable by creating setbacks.

Unoccupied lands:

- The lack of proper sanitation and camping becomes an issue when plants are being cultivated on unoccupied lands.
- Portable toilets could be used on unoccupied land as a solution to sanitation problems.
- Butte County allows for one-year agricultural leases under which medical marijuana can be grown.
- Farm labor quarters need a permit; could go through same type of permitting process.

- Need to have a better rapport with law enforcement to ensure things are being done properly and according to the “scripts.”
- It appears the larger grows, rather than the smaller ones, are the problem.
- Use a certain size or number of plants that triggers regulations.

NUMBER OF PLANTS OR CANOPY AREA:

- It is hard to grow enough medicine with a minimal number of plants.
- 6 plants per person is not enough; 10 plants recommended to provide enough medicine for a year.
- The use as a tincture requires more marijuana than smoking.
- 6 plants was the clinical limit.
- The amount of marijuana required by a patient varies tremendously. It depends on the condition of the patient, the means of ingestion whether it be eating, vaporizing, or smoking.
- The amount produced per plant depends on the skill of the cultivator as well as the variety of plant.
- The number of plants could be used as a limitation. Some jurisdictions use the square footage of the canopy.
- Yield depends on the variety of plant. Certain varieties are better for certain types of uses.
- The size of the area available to grow and cultivate varies from person to person. Some people own 5 acres where someone else may only own an acre. Everyone does not live on a parcel zoned AG.
- Plant count is difficult to quantify.
- The effectiveness of the method of use varies from person to person.
- The State has decided not to enforce the cultivation of marijuana criminally.
- Security and odor could be addressed allowing a canopy of 200 square feet, for example, without any permits.
- Number of plants in 200 square feet varies depending on the variety.
- Need to come up with a way for the police to regulate the gardens.
- A grower bought Febreeze and hung it on the fence to mask the odor. Neighbors have not complained.
- It is the mature plants that create the odor. Regulation of canopy size would allow more plants so cultivating immature plants would be feasible.
- Guidelines and restrictions are needed; however, any limit put on the number or size of plants will be challengeable in Court. The less restrictive the ordinance is, the less likely it will come under challenge.
- Odor is subjective.
- Law enforcement has broad latitude on deciding if what an individual patient is possessing or growing is reasonable. Proof is required as to what is reasonable for the patient’s particular medical condition.
- The County has the right to regulate land use for public health and safety which is covered under the zoning code. Limits can be created and areas can be designated.

DISTANCES FROM YOUTH ORIENTED FACILITIES:

- The distance of 1000' discussed applies to dispensaries.
- Calaveras County has grows adjacent to schools.

STAFF COMMENTS:

- Jim Wegner said most that has been said has been accurate. Laws provide for an affirmative defense for a certain class of people that grow and possess marijuana for medical purposes. In the State of California there is no plant count that is approved; it is up to the physician's recommendation. A State card is available through the County Public Health Department that carries with it certain immunities. Twenty to thirty cards have been issued in Amador County; however, there are many more medical recommendations throughout the County. He was not aware of fencing in other Counties drawing attention to the grow. A determination needs to be made as to the purpose of the fence before determining whether or not it will be effective. Odor is not controllable but it may be mitigated. The size of canopy could vary depending on parcel size, zoning, and/or how far away the neighbors are. Sanitation on occupied properties will be less of an issue than on unoccupied properties, leased land or public lands. Marijuana is a high priced commodity, a valuable target, and will be susceptible to crime. Law enforcement having more tools such as registering, permitting, selling tags would probably only have a limited benefit, be an added workload, and be a marginal source of revenue. A record of growers is beneficial when complaints are received. Federal funding can be withheld from the Counties that allow grows.
- Todd Riebe said these types of grows are attractive to the criminal element. When there are too many plants, the risk of Federal intervention increases.
- Mike Boitano said marijuana is not defined as an agricultural crop. There aren't any pesticides than can legally be used on marijuana due to the fact that it is not listed on the label.
- Dr. Hartmann said physicians in Amador County do not write scripts for a number of plants but rather for a period of time. The Health Officer recommended using canopy rather than the number of plants as a regulation. He also verified that there are approximately 30 cards issued in Amador County. The fee to register is substantial and the information is electronically transferred to the State. Dr. Hartmann recommended addressing the distance from the youth oriented facilities. There was discussion on whether or not 11362.79 which states 1000 feet from a school applies to marijuana cultivation. Mr. Wegner recommended that the ordinance start restricting the distance from a school with the number of plants

TOPICS FOR NEXT MEETING:

- The clarification of laws regarding distance from youth oriented facilities.
- Setbacks

- Canopy vs. number of plants.
- What constitutes a caregiver.

The next workshop was scheduled for December 27, 2011 from 1 to 3 p.m.

The meeting adjourned at 10:45 a.m.

NOTE: *A CD of the recording of this workshop can be obtained from the Planning Department upon request.*

DRAFT