



**COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

950 Maidu Avenue, Suite 170 Nevada City, CA 95959-8617
(530) 265-1222 FAX (530)265-9851 www.mynevadacounty.com/cda

Steven L. DeCamp
Community Development Agency
Director

Jory Stewart, AICP
Planning Director

June 30, 2011

Honorable Board of Supervisors
Eric Rood Administrative Center
950 Maidu Avenue
Nevada City, CA 95959

RECEIVED

JUN 30 2011

NEVADA COUNTY
BOARD SUPERVISORS

DATE OF HEARING: July 12, 2011

SUBJECT: Public hearing, to review and consider the adoption of an Ordinance that will amend the Nevada County Land Use and Development Code, Zoning Regulations Section L-II 6.1 Definitions, to add a definition of "Medical Marijuana Dispensary" and to amend Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.5.D to show medical marijuana dispensaries as a Not Permitted (NP) use in all zoning districts pursuant to Board Order BO-10-09 and as recommended by the Nevada County Planning Commission by a 3-0 vote (2 absent) at a special meeting held on June 23, 2011.

ACTIONS REQUESTED:

- I. Find the project exempt from environmental review pursuant to Title 14, Chapter 3 of the California Code of Regulations (CEQA Guidelines) §15060(c)(2) (the activity will not result in a direct or unforeseeable indirect physical change to the environment) and §15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly.
- II. Adopt the attached Ordinance, *Attachment A*, amending the Nevada County Land Use and Development Code Zoning Regulations Section L-II 6.1 Definitions, to add a definition of "Medical Marijuana Dispensary" and amending Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.5.D to show medical marijuana dispensaries as a Not Permitted (NP) use in all zoning districts pursuant to Board Order BO-10-09, making findings A-B.
- III. Close Board Order BO-10-09.

ATTACHMENTS:

- A. Proposed Ordinance.
 - B. Draft June 23, 2011 Planning Commission Meeting Minutes
 - C. June 23, 2011 Planning Commission Staff Report with attachments.
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BACKGROUND:

As a result of direction of the Board of Supervisors, pursuant to Board Order BO-10-09, the Nevada County Planning Commission held a special meeting and public hearing on June 23, 2011 to consider amendments to the Nevada County Land Use and Development Code Section L-II Zoning Regulations to: 1) define Medical Marijuana Dispensaries; and 2) amend the "Allowable Uses and Permit Requirements" tables for all zoning districts to show medical marijuana dispensaries as a Not Permitted (NP) use. After taking public testimony, the Planning Commission voted 3-0 (2 absent) to recommend that the Board of Supervisors find the project exempt from environmental review and to adopt the proposed amendments to the LUDC placing a permanent ban on medical marijuana dispensaries in the unincorporated area of Nevada County as shown in *Attachment A*. For additional information regarding the basis for adopting a permanent ban and background that supports the Planning Commission's June 23, 2011 recommendation and the proposed Board action, please see *Attachments B and C*.

SUMMARY

Beginning in 2009, the Board adopted and extended Urgency Ordinances placing a temporary moratorium on the establishment and operation of medical marijuana dispensaries in the unincorporated area of Nevada County, for an effective period of two-years pursuant to Government Code Section 65858. When taking action on the final extension of the Urgency Ordinance, the Board issued Board Order BO-10-09, which directed staff to amend the Land Use and Development Code to place a permanent ban on the establishment and operation of medical marijuana dispensaries in the unincorporated area of Nevada County. By taking the actions recommended by the Planning Commission below, the Board will implement BO-10-09 to protect the public health, safety and welfare of the citizens of Nevada County.

ACTIONS FOR CONSIDERATION:

After conducting a public hearing, staff recommends that the Board of Supervisors take the following actions as recommended by the Nevada County Planning Commission:

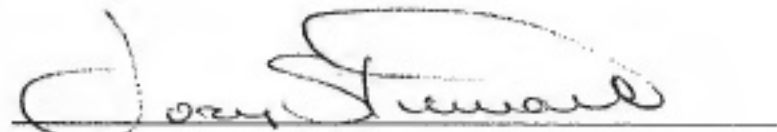
- I. Find the project exempt from environmental review pursuant to Title 14, Chapter 3 of the California Code of Regulations (CEQA Guidelines) §15060(c)(2) (the activity will not result in a direct or unforeseeable indirect physical change to the environment) and §15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly.
- II. Adopt the attached Ordinance, *Attachment A*, amending the Nevada County Land Use and Development Code Zoning Regulations Section L-II 6.1 Definitions, to add a definition

of "Medical Marijuana Dispensary" and amending Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.5.D to show medical marijuana dispensaries as a Not Permitted (NP) use in all zoning districts pursuant to Board Order BO-10-09, making findings A-B.

- A. The proposed amendment is consistent with and furthers the goals, objectives, policies, and implementation measures of the General Plan and the provisions of the Land Use and Development Code;
- B. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.

III. Close Board Order BO-10-09.

Respectfully submitted,



Jory Stewart, AICP
Planning Director



ORDINANCE No. _____

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

AN ORDINANCE AMENDING THE NEVADA COUNTY LAND USE AND DEVELOPMENT CODE, ZONING REGULATIONS SECTION L-II 6.1 TO ADD A DEFINITION OF "MEDICAL MARIJUANA DISPENSARY" AND TO AMEND TABLES L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, AND 2.5.D TO SHOW MEDICAL MARIJUANA DISPENSARIES AS A NOT PERMITTED (NP) USE IN ALL ZONING DISTRICTS

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I: Findings

- A. The Board of Supervisors hereby finds and determines that this ordinance is necessary to preserve the public peace, health, safety and welfare for the reasons set forth in this Section I; and
- B. In 1970, the Controlled Substances Act ("CSA") established a federal regulatory system to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense or possess any controlled substance. Accordingly, the manufacture, distribution or possession of marijuana is a federal criminal offense.
- C. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, et seq, known as the Compassionate Use Act ("the Act")). The Act decriminalized otherwise unlawful possession and cultivation of marijuana for certain medical purposes under certain limited, specified conditions.
- D. Despite voter approval of the Act, various problems and uncertainties in the Act impeded the ability of law enforcement to interpret and enforce the law. The Act hindered persons eligible to use marijuana for medical purposes from doing so, while many took advantage of the Act to use marijuana for recreational purposes.

- E. In 2003, the State legislature enacted Senate Bill 420 (codified as California Health and Safety Code Section 11362.7, et seq), creating the Medical Marijuana Program (MMP). The MMP created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. The bill also authorized counties to adopt and enforce rules and regulations consistent with the MMP.
- F. The United States Supreme Court ruled in U.S. v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483 (2001) that, notwithstanding California law, the CSA continues to prohibit marijuana use, distribution and possession and that no medical necessity exception exists to these prohibitions.
- G. The incongruity between state and federal law has given rise to understandable confusion, but no legal conflict exists merely because state and federal law treat marijuana differently. California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition.
- H. While the MMP was intended to clarify the scope of the Act, neither the Federal nor the State government has to date implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving unanswered numerous questions as to how the Act and MMP should be implemented, particularly in regard to the distribution of medical marijuana through facilities commonly referred to as medical marijuana dispensaries.
- I. Facilities purportedly dispensing marijuana for medicinal purposes are commonly referred to as medical marijuana dispensaries, medical marijuana cooperatives or medical marijuana collectives ("MMDs"). However, medical dispensaries, collectives and cooperatives are neither defined in the Act nor the MMP. Specifically, nothing in the Act or the MMP authorizes the operation or the establishment of medical marijuana dispensing facilities.
- J. There are known to be increased incidences of crime-related secondary impacts associated with the locations of medical marijuana dispensaries and collectives, including burglaries, robberies and sales of illegal drugs in the areas immediately surrounding such MMDs. Furthermore, the United States Department of Justice's California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "care givers" to obtain and sell marijuana thus increasing the likelihood that

such persons would traffic in illegal drugs in the County, thereby endangering the public health, safety and welfare. Such incidences burden the County's law enforcement resources, in that law enforcement assistance is often required to respond to various criminal activities associated with MMDs.

- K. The unmonitored and untested distribution of marijuana within edibles sold at MMDs poses serious health and safety concerns.
- L. More than 100 cities and 9 counties have banned medical marijuana dispensaries, including neighboring Placer County. Nearly equal numbers of cities and counties have moratoriums in place. It is unfair for our County unincorporated residents and business-owners to shoulder the burdens and impacts of MMDs when surrounding counties and the City of Nevada City and the City of Grass Valley have taken steps to ban the use of MMDs within their jurisdictions by ordinance and the Town of Truckee has made a Director's Determination that their zoning regulations does not specifically allow medical marijuana dispensaries nor does it allow similar other uses and therefore the use is prohibited.
- M. That this ordinance is consistent with the General Plan in that the General Plan, its objectives, policies and goals, protect the public's health, safety and welfare.

SECTION II:

Section L-II 6.1 of Article 6: Definitions, is hereby amended to add the following definition:

"MEDICAL MARIJUANA DISPENSARY - Any location, interior or exterior, structure, facility or vehicle, whether fixed or mobile, utilized in full or in part, as a place at or in which marijuana for medical purposes, as such is identified in Health and Safety Code section 11362.5(b)(1)(A), is located, stored, placed, processed, distributed, made available, sold, traded, exchanged or bartered for in any way, with or without consideration. For purposes of this definition, "distributed" includes the transportation of medical marijuana. A "medical marijuana dispensary" shall not include the following uses, provided that such uses comply with this Chapter and all other applicable provisions of the County Code and all other applicable laws, including but not limited to Health and Safety Code section 11362.5 et seq.: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of

the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.”

SECTION III:

Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.5.D, in Chapter II of the Land Use and Development Code of Nevada County, are hereby amended to read as set forth in Exhibit “A” attached hereto and incorporated herein by this reference.

SECTION IV:

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

SECTION V:

Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION VI:

This Ordinance shall take effect and be in force at the expiration of thirty (30) days from and after its passage, and shall become operative on the _____ day of _____, 2011, and, before the expiration of fifteen (15) days after its passage a summary shall be published once, with the names of the Supervisors voting for and against same in the Union, a newspaper of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the _____ day of _____, _____, by the following vote of said Board:

Ayes: Supervisors

Noes:

Absent:

Abstain:

ATTEST:

CATHY R. THOMPSON
Clerk of the Board of Supervisors

By: _____

_____ Chair

DATE	COPIES SENT TO

EXHIBIT "A"

Section L-II 2.2.1 Single-Family

Table L-II 2.2.1.B			
Single Family Districts Allowable Uses and Permit Requirements			
ALLOWABLE LAND USES (See Section L-II 1.4.D for Similar Uses)	RA	R1	L-II SECTIONS:
.....			
Commerical Uses			
.....			
Parking facilities not attached to a specific use	Varies	Varies	2.7.10
Medical Marijuana Dispensary	NP	NP	
Industrial Uses			

.....

Section L-II 2.2.2 Multi-Family

Table L-II 2.2.1.B			
Single Family Districts Allowable Uses and Permit Requirements			
ALLOWABLE LAND USES (See Section L-II 1.4.D for Similar Uses)	R2	R3	L-II SECTIONS:
.....			
Commerical Uses			
.....			
Medical clinics and medical support services, non-profit	UP	UP	
Medical Marijuana Dispensary	NP	NP	
Industrial Uses			

.....

Section L-II 2.3 Rural Districts

Table L-II 2.3.D					
Rural Districts Allowable Uses and Permit Requirements					
ALLOWABLE LAND USES (See Section L-II 1.4.D for Similar Uses)	AG	AE	FR	TPZ	L-II SECTIONS:
.....					
Commerical Uses					

.....					
Veterinary Hospitals and Clinics	UP	UP	UP	NP	
Medical Marijuana Dispensary	NP	NP	NP	NP	
Industrial Uses					

Section L-II 2.4 Commercial Districts

Table L-II 2.4.D						
Rural Districts Allowable Uses and Permit Requirements						
ALLOWABLE LAND USES (See Section L-II 1.4.D for Similar Uses)	C1	C2	C3	CH	OP	L-II SECTIONS:
Commerical Uses						
.....						
Veterinary Hospitals and Clinics	UP	UP	UP	NP	NP	
Medical Marijuana Dispensary	NP	NP	NP	NP	NP	
Industrial Uses						

Section L-II 2.5 Industrial Districts

Table L-II 2.5.D				
Rural Districts Allowable Uses and Permit Requirements				
ALLOWABLE LAND USES (See Section L-II 1.4.D for Similar Uses)	BP	M1	M2	L-II SECTIONS:
Commerical Uses				
.....				
Temporary Commerical Uses	A	A	A	3.23
Medical Marijuana Dispensary	NP	NP	NP	
Industrial Uses				

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**NEVADA COUNTY PLANNING COMMISSION
NEVADA COUNTY, CALIFORNIA**

MINUTES of the Special meeting of June 23, 2011, 1:30 PM, Board Chambers, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California

MEMBERS PRESENT: Chair Jensen, Commissioners Duncan and Donesky

MEMBERS ABSENT: Commissioners Poulter and Smith

STAFF PRESENT: Planning Director, Jory Stewart; Principal Planner, Brian Foss; Senior Planner, Tyler Barrington; Assistant County Counsel, Alison Barratt-Green; Secretary, Janet Hayes

TABLE OF CONTENTS:

PUBLIC HEARINGS:

1. ORD09-006

Page 2, Line 47

STANDING ORDERS: Salute to the Flag - Roll Call - Corrections to Agenda.

CALL MEETING TO ORDER: Due to a lack of quorum the chair announced that the 9:00 a.m. item ORD09-006 would be held until 10:00 a.m.

Commissioner Duncan arrived at 9:55 a.m. making a quorum.

The meeting was called to order at 10:00 A.M. Roll Call was taken. Commissioners Poulter and Smith were absent.

CHANGES TO AGENDA: No changes.

PUBLIC COMMENT: Members of the public shall be allowed to address the Planning Commission on items not appearing on the agenda which are of interest to the public and are within the subject matter jurisdiction of the Planning Commission, provided that no action shall be taken unless otherwise authorized by Subdivision (6) of Section 54954.2 of the Government Code. **None.**

COMMISSION BUSINESS:

CONSENT ITEMS:

1. Approval of Minutes for April 28, 2011
Motion carried by voice vote, 3/0 (Commissioners Poulter and Smith Absent).

47 **PUBLIC HEARINGS:**

- 48
- 49 1. ORD09-006 Consideration of a recommendation to the Board of Supervisors regarding
50 adoption of an ordinance prohibiting medical marijuana dispensaries in all zoning districts
51 within the unincorporated area of Nevada County, as directed by the Board of Supervisors,
52 pursuant to Board Order BO-10-09 **LOCATION:** Unincorporated area of Nevada County
53 **RECOMMENDED ENVIRONMENTAL DETERMINATION:** Exempt pursuant to
54 sections 15060(c)(2) and 15061(c)(3) of CEQA guidelines **PLANNER:** Tyler Barrington,
55 Senior Planner

56

57 Senior Planner, Tyler Barrington presented the staff report to the Commission. He provided
58 background that included Attorney General Guidelines regarding storefront dispensaries. He
59 noted that the dispensaries are not recognized under the law. He referenced the impacts on
60 public health and safety that had been noted in memos from Nevada County Sheriff, Keith Royal
61 and District Attorney Cliff Newell. The definition of medical marijuana dispensary was
62 projected on the overhead screen and reviewed by Planner Barrington.

63

64 Planning Commission Chair Jensen opened the public comment period at 10:08 a.m.

65

66 Al Vaccaro stated that he was not in favor of allowing dispensaries because of the problems the
67 dispensaries would cause for the County.

68

69 Brad Peceimer-Glasse suggested the County allow a specific number of dispensaries based on
70 population that would work under the guidelines of law enforcement.

71

72 Patricia Smith Medical Marijuana consultant said seriously ill senior citizens currently have to
73 drive to Sacramento or the Bay area to have access to medical marijuana. She felt it was
74 important to work with the growers for a safe product and the medicine should be tested for
75 potency. Ms. Smith noted that most of the objections are due to confusion with recreational use.
76 She said at the very least the option should be put on the ballot to let the people decide.

77

78 Ariel Lovett spoke on behalf of Drug Free Nevada County in support of staff's recommendation
79 to ban medical marijuana dispensaries in Nevada County. She said the increased normalization
80 of marijuana use has detrimental effects in multiple social and health ramifications for our youth.

81

82 Gary Bryant said he was definitely against the prohibition of marijuana dispensaries. He said the
83 prohibition allows people in the County to profit from the prohibition. He felt marijuana use was
84 less harmful than alcohol. He said the regulations for marijuana should be similar to those
85 placed on wine.

86

87 Donn Coenen said the voters of California have approved the use of medical marijuana. He said
88 the sick people in Nevada County should not have to travel to Sacramento to obtain medical
89 grade marijuana that is pesticide free. There are crime issues with many types of prescribed
90 drugs not just marijuana. Mr. Coenen said standards should be developed and adopted by this
91 County so people don't have to leave the County to get their medical needs met.

93 Randy XXX referenced the regulations imposed by the State of Utah and said he didn't feel it
94 stopped illegal drug use. He felt that marijuana has provided positive results for pain
95 management in cancer patients.

96
97 Sheriff Keith Royal stated his support on the ban of the dispensaries noting the crime issues
98 associated with the dispensaries. He felt the dispensaries would cause trouble in the community
99 and Nevada County does not need that type of trouble. Sheriff Royal said the dispensaries are a
100 source of big business and would give our large illegal growers a place to conduct business.

101
102 Sergeant Bill Smethers from the Nevada County Narcotics Task force said Proposition 215 was
103 enacted for HIV, Aids, and cancer patients. He explained that several jurisdictions have
104 investigated these types of businesses and because medical use of marijuana is legal in California
105 it has become big business. Investigations of medical marijuana locations in Butte County and
106 Sacramento found illegal bookkeeping practices and the patient age groups were often 18 to 28
107 years old. Deputies assigned to Nevada County schools are finding that students caught with
108 marijuana at school often have taken it from their parents.

109
110 District Attorney, Clifford Newell said the staff report was well researched and urged the
111 Commission to support staff's recommendation to prohibit marijuana dispensaries. He felt the
112 drug was readily available for those patients that could not grow it themselves. There is nothing
113 in the law that allows for us to set up a dispensary. The new Attorney General is developing a
114 new set of guidelines. District Attorney Newell agreed with Sheriff Royal that there is a
115 connection between medical marijuana dispensaries and an increase in crime.

116
117 Patricia Smith said the medical marijuana industry had come a long way. They have
118 sophisticated software to track the distribution. She noted that marijuana is a safe therapeutic
119 product and that no one has ever died from overdose and there is no physical addiction. Ms.
120 Smith felt the greatest danger is prohibition.

121
122 Chair Jensen closed the public comment period.

123
124 Commissioner Duncan felt there is a benefit for compassionate use and noted her concern
125 regarding the medical needs of the community. She also noted that reported violence associated
126 with growing marijuana in this community is horrendous. Commissioner Duncan questioned
127 whether this was the best that could be done from a planning perspective.

128
129 Planner Barrington referenced the comment by District Attorney Newell that the intention here is
130 not to limit what is protected by the law the intention is to not allow the storefront type of
131 dispensary as an allowable land use in Nevada County.

132
133 Commissioner Duncan felt information should be made available to patients that need to obtain
134 medical marijuana locally and safely.

135
136 Commissioner Donesky said to some degree we have heard the same debate for years regarding
137 the benefits and prohibitions of marijuana. He said the decision in front of the Commission
138 today is whether or not to allow storefront dispensaries in Nevada County. Commissioner

139 Donesky felt the difficulties associated with medical marijuana store front dispensaries
140 outweighed the difficulty of travel to Colfax. He felt comfortable with a ban in Nevada County.

141
142 Chair Jensen said the Board of Supervisors asked for an ordinance to be written to ban the
143 storefront sales; he feels the Commission is being asked to approve the ordinance based on
144 whether or not it follows our goals and zoning ordinances in Nevada County. He noted that at
145 the start of the meeting he pledged allegiance to the flag of the United States which says
146 marijuana is illegal, the State of California says it is legal. Chair Jensen said he would go with
147 the federal law and felt the ordinance was proper for Nevada County.

148
149 Commissioner Duncan asked Sheriff Royal if information is readily available to patients who
150 need to access medical marijuana.

151
152 Sheriff Royal said there are listings in the phonebook yellow pages, from prescribing physicians
153 and felt the information was available to patients.

154
155 **Motion** by Commissioner Donesky, **Second** by Commissioner Duncan to Recommend that the
156 Board of Supervisors find the project exempt from environmental review pursuant to Title 14,
157 Chapter 3 of the California Code of Regulations (CEQA Guidelines) §15060(c)(2) (the activity
158 will not result in a direct or unforeseeable indirect physical change to the environment) and
159 §15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential
160 for resulting in physical change to the environment, directly or indirectly.

161 **Motion carried on a roll call vote 3/0 (Commissioners Poulter and Smith Absent)**

162
163 **Motion** by Commissioner Donesky, **Second** by Commissioner Duncan to Recommend that the
164 Board of Supervisors adopt the attached Ordinance Amending Section L-II6.1 Definitions of the
165 Nevada County Land Use and Development Code (LUDC) to add a definition of "Medical
166 Marijuana Dispensary" and Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.5.D in LUDC Sec.
167 L-II Zoning Regulations to show medical marijuana dispensaries and a "Not Permitted (NP)" use
168 in all zoning districts.

169
170 **Motion carried on a roll call vote 3/0 (Commissioners Poulter and Smith Absent)**

- 171
172
1. **Discussion of upcoming Planning Commission meetings**
 2. **Announcements (Informational Items Only)**
Commission and staff members may make brief announcements or report on activities.
Commission members may also provide a reference to staff or other resources for factual
information, request staff to report back to the Commission at a subsequent meeting
concerning any matter, or take action to direct staff to place a matter of business on a
future agenda.

173 **Motion** by Commissioner Duncan, **Second** by Commissioner Donesky to adjourn.

174
175 There being no further business to come before the Commission, the meeting was adjourned at
176 10:39 a.m. to the next meeting to be held on July 07, 2011, in the Town of Truckee Council
177 Chambers, Truckee, CA.

178

NEVADA COUNTY PLANNING COMMISSION
STAFF REPORT

APPLICANT/OWNER: Nevada County

HEARING DATE: June 23, 2011

OWNER(s): n/a

FILE NO: ORD09-006

PROJECT: Recommendation to the Board of Supervisors to adopt an ordinance prohibiting medical marijuana dispensaries in all zoning districts within the unincorporated area of Nevada County, as directed by the Board of Supervisors pursuant to Board Order BO-10-09.

LOCATION: Unincorporated Area of Nevada County

PROJECT PLANNER: Tyler Barrington, Senior Planner

ATTACHMENTS:

1. Final July 13, 2010 Urgency Ordinance (Ordinance No. 2322) extending the moratorium on the establishment and operation of medical marijuana dispensaries.
2. Board Staff Reports (Aug. 11, 2009, Sept. 8, 2009 and July 13, 2010).
3. Board Minutes (Aug. 11, 2009, Sept. 8, 2009 and July 13, 2010).
4. Board Order BO-10-09.
5. Health and Safety Code Section 11362.5 and SB420.
6. California Attorney General 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use.
7. Memorandums from Sheriff Keith Royal and District Attorney Cliff Newell, dated July 21, 2009 and July 15, 2009 and June 10, 2010.
8. Coalition for a Drug Free California: California City and County Listing of Illegal Store Front Ordinances.
9. White Paper on Marijuana Dispensaries by the California Police Chiefs Association's Task Force on Medical Marijuana Dispensaries.
10. Newspaper Articles regarding other County regulations for medical marijuana dispensaries.
11. ~~Proposed Ordinance~~: Shown as Attachment A in the July 12, 2011 Board Staff Report

STAFF RECOMMENDATIONS:

- I. Environmental Action: Recommend that the Board of Supervisors find the project exempt from environmental review pursuant to Title 14, Chapter 3 of the California Code of Regulations (CEQA Guidelines) §15060(c)(2) (the activity will not result in a direct or unforeseeable indirect physical change to the environment) and §15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly.

- II. Project Action: Recommend that the Board of Supervisors adopt the attached Ordinance Amending Section L-II 6.1 Definitions of the Nevada County Land Use and Development Code (LUDC) to add a definition of "Medical Marijuana Dispensary" and Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.5.D in LUDC Sec. L-II Zoning Regulations to show medical marijuana dispensaries as a "Not Permitted (NP)" use in all zoning districts.

BACKGROUND:

The permitting of medical marijuana collectives, cooperatives or dispensaries by local governments as a legal use or business is both a public policy issue and a contentious legal issue. Under federal law, marijuana use for any purpose is illegal. However, California, as well as a number of other states, has enacted medical marijuana legislation that allows for "seriously ill" residents of the State to have access to medical marijuana for medical purposes. To further complicate the legal medical marijuana issue between federal and state law, U.S. Attorney General Eric H. Holder Jr. stated on March 18, 2009 that the U.S. Justice Department will not prosecute medical marijuana dispensaries that are operating legally under existing state laws. The reaction of counties and municipalities to this situation has been decidedly mixed. This staff report summarizes the conflict between federal and California law, discusses the issues pertaining to regulations in Nevada County and provides a recommendation for a Zoning Ordinance Amendment that would ban medical marijuana collectives, cooperatives or dispensaries as a land use within Nevada County. These amendments would not affect the County's existing local identification card program for medical marijuana qualified patients and primary caregivers, which approximately 40 Nevada County residents have participated in since the commencement of the program.

Beginning on August 11, 2009, the Nevada County Board of Supervisors enacted a temporary forty-five day moratorium on the establishment and operation of medical marijuana dispensaries in the unincorporated area of Nevada County by adopting an Interim Urgency Ordinance pursuant to Government Code Section 65858. Subsequently, the Board extended the aforementioned temporary moratorium on September 8, 2009 for a period of ten-months and fifteen-days and again for an additional year on July 13, 2010. Due to the relative similarity of each Urgency Ordinance, staff has attached only the final July 13, 2010 Ordinance to save on the overall number of pages of this Planning Commission Staff Report (*Attachment 1*). The Board's actions were based on evidence presented by Planning staff, the Nevada County Sheriff and the Nevada County District Attorney outlining the secondary adverse impacts associated with medical marijuana dispensaries and reflect the independent judgment of each Supervisor. In addition, medical marijuana dispensaries as defined are illegal under both state and federal law

Staff has included the Board staff reports and the Board meeting minutes as a part of this public record for your review and consideration (*Attachments 2 and 3*). After extending the temporary moratorium at the July 13, 2010 Board of Supervisor's meeting, the Board also directed staff, through Board Order, to prepare a permanent Ordinance that prohibited medical marijuana dispensaries in the unincorporated area of Nevada County (*Attachments 4*); finding that this action was necessary to protect the public health, welfare and safety of the citizens of Nevada County.

Federal Legislation

Under the Controlled Substances Act (CSA), enacted by congress in 1970, marijuana is classified as a Schedule 1 controlled substance. This classification is based on a determination that marijuana: 1) has a high potential for abuse; 2) has no currently accepted use for medical treatment; and 3) is not accepted as safe, even when used under medical supervision. The federal law makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States.

State Legislation

Federal law has not prevented a number of states from enacting medical marijuana legislation. These states include Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington. Ten states, plus the District of Columbia, have symbolic medical marijuana laws (laws that support medical marijuana but do not provide patients with legal protection under federal law). The District of Columbia approved a medical marijuana initiative by 69 percent, but Congress was able to nullify the vote results because the District of Columbia is a federal district and not a state.

California

California, along with several other states, has implemented programs that allow people with certain conditions to use marijuana for medicinal purposes. Specifically, California's Compassionate Use Act of 1996 ("the Act") (approved as Proposition 215 and codified as Health and Safety Code Section 11362.5) permits the use and cultivation of marijuana for medicinal purposes, while the Medical Marijuana Program (SB 420) established a voluntary medical marijuana identification card program and allows cities and counties to adopt and enforce regulations consistent with SB 420 and the Compassionate Use Act (*See Attachment 5*). The purposes of the Act are as follows:

- To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. However, it is not enough to have one of these diseases to be automatically qualified for marijuana exemption under Proposition 215; a physician's recommendation is required.
- To ensure that patients who obtain and use marijuana for medical purposes or their primary caregivers obtain on their behalf, have a legal defense against unnecessary arrests and criminal sanctions to protect their right to use the drug.
- To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana

California Attorney General's Guidelines

In August 2008, the Attorney General produced a set of guidelines to: 1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets; 2) help law enforcement agencies perform their duties and in accordance with

California law; and 3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law (*Attachment 6*). For purposes of local regulation, the Attorney General stated that a "properly organized" and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries which do not substantially comply with the guidelines are likely operating outside the law and are subject to arrest and criminal prosecution. As an example, the Attorney General cited dispensaries that merely require patients to complete a form summarily designating a business owner as their primary caregiver and/or offering marijuana in exchange for cash "donations" are likely unlawful.

Conflict between State and Federal Law

With both the California's Compassionate Use Act and the Medical Marijuana Program Act in place, there is a conflict between state and federal law on the subject of medical marijuana. That is, under federal law, marijuana is illegal to use for any purpose, while California law permits residents of the State who receive a doctor's recommendation to legally cultivate, purchase and consume medical marijuana. This conflict has created a dilemma for local governments and their law enforcement agencies, particularly with regard to medical marijuana dispensaries. A "dispensary" is a facility where the primary purpose is to dispense medical marijuana to specific individuals (i.e., qualified patients) that have a recommendation from a physician for medical purposes.

For the reasons set forth above, these dispensaries violate federal law. Dispensaries are also not explicitly authorized by California state law. Nonetheless, the original adoption of Proposition 215 and the subsequent enactment of SB 420 have created increased interest in the establishment of medical marijuana dispensaries throughout the State even though neither Proposition 215 nor SB 420 even mention medicinal marijuana dispensaries. Although Proposition 215 has been in effect for several, there is no indication of any imminent resolution of the clear conflict between state and federal law. The California Attorney General's August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use," indicates that although medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law. This situation forces local government in California to consider adopting local ordinances designed to either regulate or prohibit medical marijuana dispensaries. The conflict between federal and state law has created a dilemma for local governmental and their law enforcement agencies, particularly with respect to medical marijuana dispensaries.

In many communities in which medical marijuana dispensaries have been established, law enforcement agencies have documented the serious and adverse impacts associated with such dispensaries. These communities, the media and medical marijuana advocates have reported increased crime, including burglaries, robberies, violence and illegal sales of marijuana to and use of marijuana by minors and others without medical need in the areas immediately surrounding such medical marijuana dispensaries. While there are no known medical marijuana dispensaries in Nevada County, Sheriff Keith Royal has provided local crime statistics related to medical and non-medical marijuana, which his office has dealt with over the past few years. Additionally, District Attorney Cliff Newell has also provided a memo outlining the potential issues related to allowing medical marijuana dispensaries in Nevada County (*Attachment 7*). The

County reasonably could anticipate experiencing similar adverse impacts and effects outlined above and within both the Sheriff's and District Attorney's memos should a dispensary be allowed in our community.

Ability to Regulate

Information from the Coalition for a Drug Free California last updated in August 2010 indicate that there were ten (10) counties with a moratoria, including Nevada County, nine (9) counties that banned dispensaries, eighty-one (81) cities with a moratoria and one-hundred eighty nine (189) cities with a ban in California. The Coalition's list is provided in *Attachment 8*. In October 2010, staff queried the 9 counties with a ban to determine if they have had a legal challenge to their outright ban of dispensaries. Only five counties responded, all of which indicated that they had not had a legal challenge to their ban. Staff has also been following the actions of other counties by reviewing local newspaper articles addressing the use and actions of those jurisdictions. A small cross section of some of the most recent articles is provided in *Attachment 9* for your review.

The County has the broad authority to impose zoning regulations under its "police power." "Police power" regulations are those designed to protect and promote the public's health, safety and welfare. Regulations aimed at medical marijuana dispensaries certainly fall within this category. As discussed in the "White Paper on Marijuana Dispensaries" which was prepared by the California Police Chiefs Association's Task Force on Marijuana Dispensaries, there is a legitimate public safety dilemma reported by other local agencies that allow dispensaries (*Attachment 10*). For example, in local agencies where dispensaries are allowed there are reports of increases of illegal drug activity, illegal drug sales, robbery of persons within and leaving dispensaries, loitering around dispensaries, falsely obtained identification cards, and other increases in criminal activity. Therefore, the operation of medical marijuana dispensaries could result in increased demands for law enforcement response in Nevada County, thereby negatively impacting the Sheriff Department's ability to respond to other calls for service (*see Attachment 7 for more detailed analysis of this issue*).

The aforementioned White Paper on Marijuana Dispensaries prepared by California Police Chiefs Association, provides background on medical marijuana dispensaries and describes the impacts that could occur by allowing medical marijuana dispensaries to operate within the Nevada County. This is further supported by the memorandums provided to Planning by the Nevada County Sheriff and District Attorney. Therefore, based on the potential for the negative impacts to the public health and safety if the County were to allow medical marijuana dispensaries, the Board has directed staff to prepare a permanent ordinance that will ban dispensaries in the unincorporated area of Nevada County. This can be achieved by taking the actions recommended below.

Proposed LUDC Amendments (Attachment 11):

To implement the direction of the Nevada County Board of Supervisors, per Board Order BO-10-09, the following amendments to the Nevada County LUDC are required:

1. Add a definition of "Medical Marijuana Dispensary" to LUDC Section L-II 6.1 Definitions.

2. Show medical marijuana dispensaries as a "Not Permitted" (NP) use in all zoning districts by amending Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.5.D of the LUDC.

Environmental Review:

The adoption of a permanent Ordinance that prohibits medical marijuana dispensaries in all zoning districts within the unincorporated area of Nevada County, consistent with direction from the Board of Supervisors is not considered a project pursuant to the California Environmental Quality Act Guidelines Sections 15060(c)(2) and 15061(c)(3).

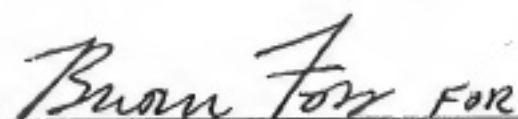
SUMMARY:

Medical marijuana dispensaries are currently not allowed to establish and operate in the unincorporated area of Nevada County as a result of actions taken by the Board of Supervisors on August 11, 2009, September 8, 2009 and July 13, 2010. Subsequently, the Board of Supervisors directed staff to prepare a permanent Ordinance that prohibits medical marijuana dispensaries in the unincorporated area of Nevada County. Before you today, is the consideration of the requisite amendments to the Nevada County LUDC necessary to implement the Board's direction for this land use.

ACTIONS FOR CONSIDERATION: Staff recommends the Planning Commission take the following actions:

- I. **Environmental Action:** Recommend that the Board of Supervisors find the project exempt from environmental review pursuant to Title 14, Chapter 3 of the California Code of Regulations (CEQA Guidelines) §15060(c)(2) (the activity will not result in a direct or unforeseeable indirect physical change to the environment) and §15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly.
- II. **Project Action:** Recommend that the Board of Supervisors adopt the attached Ordinance Amending Section L-II 6.1 Definitions of the Nevada County Land Use and Development Code (LUDC) to add a definition of "Medical Marijuana Dispensary" and Tables L-II 2.2.1.B, 2.2.2.B, 2.3.D, 2.4.D, and 2.5.D in LUDC Sec. L-II Zoning Regulations to show medical marijuana dispensaries as a "Not Permitted (NP)" use in all zoning districts.

Respectfully submitted,



Jory Stewart, AICP
Planning Director