

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, OCTOBER 16, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, October 16, 2012, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Receive Information and Discuss Options for Regulating the Cultivation of Medical Marijuana in the City of Lodi (CA)

City Manager Rad Bartlam briefly introduced the subject matter of regulating the cultivation of medical marijuana in the City.

Deputy City Attorney Janice Magdich provided a PowerPoint presentation regarding the options for regulating the cultivation of medical marijuana in the City of Lodi. Specific topics of discussion included application of the Lodi Municipal Code, federal law governing marijuana, California's medical marijuana laws, Compassionate Use Act (CUA), limitations of the CUA, purpose of the Medical Marijuana Program Act (MMPA), California Attorney General's guidelines for medical use, qualified patients, primary caregivers, cultivation of medical marijuana under California law, adverse impacts associated with cultivation, survey results, regulatory alternatives, impacts of a ban on cultivation of medical marijuana, and options associated with the same.

In response to Council Member Hansen, Ms. Magdich stated serious illness is defined under the statute and there is a catch-all phrase for almost any medical condition that a doctor believes can be helped by the use of marijuana.

In response to Mayor Pro Tempore Nakanishi, Mr. Bartlam stated some jurisdictions do have a 24-hour notice requirement for inspections, which is not the case right now for the City of Lodi because there are no inspections occurring currently.

A brief discussion ensued between Mayor Pro Tempore Nakanishi, Mr. Bartlam, Ms. Magdich, and City Attorney Schwabauer regarding the current cultivation in and around the City through caregivers and cooperatives, statutory prohibition against limiting the number of plants that can be cultivated, and the legislative body's ability to use its police power to limit the number of plants in a particular area based on health and safety concerns.

In response to Council Member Johnson, Ms. Magdich stated there is a pending lawsuit from Fresno County on the complete cultivation ban and California NORML is seeking plaintiffs for a variety of medical marijuana restriction cases.

In response to Mayor Pro Tempore Nakanishi, Ms. Magdich stated there are currently two cases in the California Supreme Court pertaining to dispensary bans and one case in the Court of Appeals on a cultivation ban.

In response to Council Member Hansen, Ms. Magdich stated the City Council previously deferred the discussion on cultivation when it was considering the ban on medical marijuana dispensaries. Mr. Schwabauer provided an overview of the Kelly case, stating a criminal case could be prosecuted for overgrowth on a case-by-case basis if an individual were growing more than what was reasonably necessary for medical purposes.

In response to Council Member Johnson, Police Chief Helms stated the department has had hundreds of cases over the last two years involving marijuana in one way or another, dozens of those cases involved medical marijuana, and several of those cases were also tied to other drugs and crimes such as burglary.

In response to Mayor Mounce, Sergeant Sierra Brucia stated from a law enforcement and officer perspective he preferred an outright ban, similar to the City of Tracy, based on the connection to other drug use, related crimes such as burglary, and limited police resources including staff time, which needs to be focused on more pressing concerns such as gangs. Mr. Bartlam stated the concerns apply to commercial and residential areas alike and the primary difference is the working environment instead of the living environment. Police Chief Helms stated he supports a ban from the law enforcement perspective, but understands the legal perspective which may necessitate some cultivation, and therefore would prefer a simple and easy-to-enforce ordinance if that is the direction.

In response to Mayor Mounce, Mr. Schwabauer stated there are some enforcement options through the nuisance abatement process that could apply to the option allowing cultivation without sight, smell, or other detection.

In response to Council Member Johnson, Electric Utility Director Elizabeth Kirkley stated there is an ability to track unusually high energy use. Sergeant Brucia confirmed electric usage monitoring is currently used as a tool to detect cultivation.

In response to Council Member Johnson, Mr. Schwabauer stated the City Attorney's office would prosecute medical marijuana ordinance violations and the penalties would similarly be controlled by the City. Chief Helms confirmed that the District Attorney continues to prosecute illegal marijuana cases.

City Manager Bartlam confirmed with the City Council the general direction to draft an ordinance permitting the cultivation of medical marijuana under a narrow set of circumstances whereby the rights of the qualified patient are balanced with the rights of neighbors. Mayor Pro Tempore Nakanishi stated he would also like to see an ordinance banning cultivation like the City of Tracy.

Wilma Bianchi spoke in support of a ban on cultivation or cultivation under a narrow set of circumstances based on her experience as a neighbor to an individual cultivating medical marijuana and the challenges associated with smell, sight, and crime. In response to Council Member Johnson and Mayor Mounce, Mr. Schwabauer stated he will research options, including a temporary moratorium, in an effort to provide immediate relief pending the final decision of the City Council on a cultivation ordinance.

Ed Miller spoke in support of a complete ban on cultivation based on his son's personal experience with drugs and the quality of life rights of neighbors and non-users.

Christine Albright spoke in support of a ban on cultivation under limited circumstances based on the comments provided by Wilma Bianchi above.

In response to Mayor Mounce, Mr. Bartlam stated a temporary moratorium ban could be considered by the City Council at the next meeting on November 7, 2012.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:45 a.m.

ATTEST:

Randi Johl
City Clerk

AGENDA ITEM



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Receive Information and Discuss Options for Regulating the Cultivation of Medical Marijuana in the City of Lodi.

MEETING DATE: October 16, 2012 - Shirtsleeve

PREPARED BY: Deputy City Attorney

RECOMMENDED ACTION: Receive information and discuss options for regulating the cultivation of medical marijuana in the City of Lodi.

BACKGROUND INFORMATION: Under both state and federal law, it is illegal to possess, distribute, or cultivate marijuana.

The Controlled Substance Act (CSA) was enacted in 1970 as part of the federal government's 'war on drugs'. Congress placed marijuana in Schedule I of the CSA. Under the CSA, it is illegal to manufacture, distribute or possess marijuana (21 U.S.C. §841 and §844). It is also illegal under the CSA to maintain any place for the purpose of manufacturing, distributing, or using any controlled substance, including marijuana (21 U.S.C. §856(a)(1)).

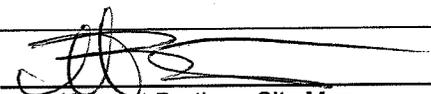
In 1996 California voters approved Proposition 215, known as the Compassionate Use Act (CUA), which provides that certain state law criminal provisions relating to the possession and cultivation of marijuana "shall not apply to a patient, or a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician." (Health & Safety Code §11362.5(d).) With the exception of possession and cultivation, the CUA did not change state criminal prohibitions concerning the transportation, possession for sale, or sale of marijuana.

In 2003, the state legislature enacted the Medical Marijuana Program Act (MMPA) to: (1) clarify the scope of the CUA, facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid their unnecessary arrest and prosecution, and provide guidance to law enforcement; (2) to promote uniform and consistent application of the CUA; and (3) to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects. (Health & Safety Code §§11362.7 – 11362.83.)

The MMPA expressly immunizes from criminal liability qualified patients, persons with identification cards, and primary caregivers who transport or process marijuana for the personal medical use of a qualified patient or person with an identification card (Health & Safety Code §11362.765(b)(1) and §11362.765(b)(2). The MMPA also created an affirmative defense to criminal liability for qualified patients, persons with identification cards, and primary caregivers who collectively or cooperatively cultivate marijuana (Health & Safety Code §11362.775).

Notwithstanding California law, marijuana, even if cultivated and used for medical purposes, remains a Schedule I drug under the CSA and is illegal under federal law. The U.S. Department of Justice has taken the position that although it will not focus its limited resources on seriously ill individuals who use

APPROVED:


Konrad Bartlam, City Manager

marijuana as part of a medically recommended treatment regimen in compliance with state law, it will enforce the CSA against individuals and organizations that participate in unlawful cultivation, manufacturing and distribution activities involving marijuana, even if permitted under state law.

In response to numerous requests from individuals seeking to establish store front medical marijuana dispensaries, the Council, under its land use and police power, enacted a moratorium in order for staff to research regulatory options. The moratorium was codified on March 2, 2011, when the Council adopted an ordinance banning the establishment and operation of medical marijuana dispensaries, including collectives and cooperatives, within the City of Lodi. (Lodi Municipal Code, Chapter 9.30.)

Recently, complaints have been received concerning the nuisance impacts associated with the outdoor cultivation of medical marijuana in residentially zoned areas. The primary nuisance impact of outdoor cultivation is the strong odor associated with mature marijuana plants. Also, citizens have raised concerns about the proximity of children to areas under cultivation, visibility of grows from the public right-of-way, and an increase in neighborhood crime resulting from the theft of marijuana plants from porches and backyards, in addition to measures taken by growers to protect their plants, primarily the installation of barbed wire fencing and guard dogs.

In the last five years approximately 40 cities and 25 counties in California have adopted ordinances regulating the cultivation of medical marijuana within their jurisdictions. Staff has reviewed many of these ordinances and the following summarizes the approaches to the cultivation of medical marijuana taken by cities within San Joaquin County, as well as cities in surrounding jurisdictions.

City of Tracy: Cultivation of medical marijuana is not allowed as a principal use, conditional use, special use, or accessory use in any zone within the City of Tracy. (Ord. No. 1170, adopted 6/19/2012.)

City of Ripon: In 2006 the City of Ripon adopted an ordinance allowing the cultivation of medical marijuana in secured, locked, and fully enclosed structures not visible to the public domain, and the collective cultivation of medical marijuana in non-residential districts. Outdoor cultivation is not permitted in the city. The ordinance also limits the number of plants that can be grown in accordance with Health & Safety Code §11362.77 for patient cultivation; and collective cultivation at 99 plants, whether mature or immature. The Manteca ordinance is one of the few ordinances to address the cultivation of medical marijuana by collectives or cooperatives. Collective cultivation is prohibited within any residential district or within 1000 feet of residential districts. In addition, collectives are subject to additional requirements, including registering with the Ripon Chief of Police, identifying all participating qualified patients and caregivers, providing a description of the proposed cultivation process, a diagram of the property, including location of the proposed area of cultivation and distance from property lines, and the number of plants to be grown. Any violation of the ordinance is declared a public nuisance and subject to summary abatement under Civil Code 731 and is subject to misdemeanor criminal penalties.

Cities of Stockton and Lathrop: Do not have ordinances which specifically address the cultivation of medical marijuana.

City of Manteca: Allows the cultivation of medical marijuana in secured enclosed structures, not visible from the public right-of-way, by qualified patients and caregivers (as defined in the Health & Safety Code). The structures must be fully enclosed by solid walls, a ceiling, roof or top. Also limits the number of plants that can be cultivated to six mature or twelve immature plants, or as otherwise recommended by a doctor in accordance with Health & Safety Code §11362.77. Cultivation by collectives or cooperatives is prohibited in all residential districts within the city or within 1000 feet of any residential district, school, recreation center, or youth center. In addition, collectives and cooperatives are subject to additional requirements, including registering with the Manteca Chief of Police, identifying all participating qualified patients and caregivers, providing a description of the proposed cultivation process, and diagram of the property, including location of the proposed area of cultivation and distance from property lines. As with the City of Ripon, violations of the ordinance are declared a public nuisance subject to summary abatement and misdemeanor criminal penalties.

City of Escalon: The City of Escalon bans medical marijuana dispensaries, but its municipal code does not address the cultivation of medical marijuana.

City of Modesto: Cultivation of marijuana is banned, unless the cultivating is by a primary caregiver as defined in the Health and Safety Code or by a qualified patient and complies strictly with Health and Safety Code §11362.5.

City of Elk Grove: The City of Elk Grove adopted an ordinance (effective March 23, 2012) banning the cultivation of medical marijuana in all agricultural (except agricultural-residential), commercial, office, industrial, open space, special purpose, and overlay/combining zoning districts. In addition, the ordinance bans outdoor or greenhouse cultivation in residential zones, but allows for cultivation inside a residence or in a detached structure (within residential zones) with a city issued marijuana cultivation permit, and if the property is not owner occupied, the written permission of the property owner. Only qualified patients and primary caregivers may engage in the cultivation of medical marijuana. In addition to complying with the city's building code, detached structures must be fully enclosed, have a complete roof, minimal wall thickness, and be secured against unauthorized entry through one locked door. The ordinance limits the grow area of the detached structure to no more than 120 square feet and requires the yard to be enclosed with a 6-foot high fence. Inside a residence, medical marijuana can be grown in an area of no more than 50-square feet, excluding the bathroom, kitchen, or bedrooms used for sleeping purposes. Grow lights cannot exceed 1200 watts and must comply with building, electrical and fire codes. The gas products (CO₂, butane, propane, and natural gas), as well as generators are prohibited for use in cultivation and processing. Cultivation is not permitted within 1,000 feet of any school, child care center or public park, and the growing area must not be accessible to anyone 17 years of age or younger. A ventilation and filtration system is required to be installed and must be approved by the city's building official. In addition, a mechanical or electronic security system must be installed and approved by the city building official and police chief. Any violation of the ordinance is declared a public nuisance and subject to abatement.

Cities of Willits, Ukiah (Mendocino County) and Gridley (Butte County): The cities of Willits, Ukiah and Gridley require cultivation of medical marijuana to take place only within a fully enclosed and secure structure, which may or may not be the residence of a qualified patient (as defined in the CUA) for personal use. Qualified structures are defined as having a permanent foundation, a complete roof, a minimal wall thickness and being accessible only through one or more locked doors. The use of indoor grow lights or air filtration systems must comply with all applicable building, electrical and fire codes. The Willits ordinance also requires that the structure be adequately sealed to significantly reduce the emission of odor associated with mature marijuana plants; and limits the number of plants which may be cultivated at one time to six. Ukiah and Gridley limit the number to 24 immature plants and 12 mature plants.

City of Chico (Butte County): Chico allows the outdoor, residential cultivation of 50 square feet per parcel by qualified patients or caregivers. Plants must be enclosed, screened and five feet from the property line. Indoor cultivation is also allowed in residential zones with written permission of the property owner, but the area used for cultivation must not exceed 50 square feet and grow lights cannot exceed 1200 watts. Any violation of the ordinance is declared a public nuisance and subject to abatement.

City of Sacramento: The Sacramento city council will meet on October 16, 2012, to consider the city manager's recommendation that an ordinance be drafted prohibiting the outdoor cultivation of medical marijuana in residential areas.

The foregoing ordinances provide a good overview of the various ways municipalities have sought to balance the rights of medical marijuana patients against the public nuisance and crime related concerns that are presented by the residential cultivation of medical marijuana.

Options for council to consider are:

1. Take no action regarding local regulation of medical marijuana. This would result in the Police Department and Code Enforcement continuing to address complaints on a case by case basis.
2. Prohibit the cultivation of medical marijuana in all zoning areas of the City. Since the law is still fluid as to whether a complete ban on cultivation violates the rights of qualified medical marijuana patients and caregivers under the Compassionate Use Act and the Medical Marijuana Program Act, staff does not recommend this approach.
3. Prohibit all outdoor cultivation within the City.
4. Prohibit outdoor cultivation in all zoning area within the City, but allow indoor cultivation in residential areas by qualified patients and caregivers under a permitting system, subject to prescribed building and safety requirements, similar to those adopted by the City of Elk Grove. Consideration could also be given to limiting the number of mature and immature plants that could be under cultivation at one time.
5. Prohibit outdoor cultivation in all zoning areas, but allow indoor cultivation of medical marijuana by qualified patients and caregivers in residential zones, subject to the area under cultivation being secured, locked, fully enclosed, and not visible to the public domain; and allow cultivation by collectives or cooperative in non-residential districts so long as they are not within 1000 feet of any residential district, school, recreation center, or youth center. Consideration could also be given to limiting the number of mature and immature plants that could be under cultivation at one time. This option would be similar to the ordinances adopted by the cities of Ripon and Manteca.
6. Allow outdoor and indoor cultivation in residential areas by qualified patients and caregivers subject to restrictions on the size of the area under cultivation. This option would be similar to the ordinance adopted by the City of Chico.

The above represent a few of the regulatory options available for Council discussion and consideration.

FISCAL IMPACT: None.

FUNDING: None.



Janice D. Magdich
Deputy City Attorney

Attachments: Lodi Municipal Code, Chapter 9.30
Ripon Municipal Code, Chapter 8.24
Manteca Municipal Code, Chapter 8.35
Elk Grove Municipal Code, Chapter 23.83
Willits Municipal Code, Chapter 17.86
Chico Municipal Code, Chapter 19.77

City of Lodi Municipal Code
Chapter 9.30

City of Lodi

Lodi, California, Code of Ordinances >> Title 9 - PUBLIC PEACE, MORALS AND WELFARE >> Chapter 9.30 - MEDICAL MARIJUANA DISPENSARIES >>

Chapter 9.30 - MEDICAL MARIJUANA DISPENSARIES

Sections:

9.30.010 - Definitions.

9.30.020 - Establishment and operation of medical marijuana dispensaries prohibited.

9.30.030 - Public nuisance.

9.30.040 - Civil penalties.

9.30.010 - Definitions.

For the purposes of this chapter, the following definitions shall apply:

- A. "Medical marijuana" is marijuana authorized in strict compliance with Health and Safety Code Section 11362.5, et seq.
- B. "Medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is cultivated or by any means made available to, distributed by, or distributed to two or more of the following: a qualified patient, a person with an identification card, or a primary caregiver in strict accordance with Health and Safety Code Sections 11362.5, et seq., and 11362.7, et seq.

A medical marijuana dispensary shall not include the following uses, so long as such uses comply with this code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

- 1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
- 2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
- 3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
- 4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
- 5. A hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.
- C. "Person with an identification card" shall have the meaning as set forth in Health and Safety Code Section 11362.7, and as may be amended.
- D. "Primary caregiver" shall have the meaning as set forth in Health and Safety Code Section 11362.7, and as may be amended.
- E. "Qualified patient" shall have the meaning as set forth in Health and Safety Code Section 11362.7, and as may be amended.

(Ord. No. 1843, § 1, 3-2-2011)

9.30.020 - Establishment and operation of medical marijuana dispensaries prohibited.

No person shall establish, operate, or permit the establishment or operation of a medical marijuana dispensary in or upon any premises in the city of Lodi.

(Ord. No. 1843, § 1, 3-2-2011)

9.30.030 - Public nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this chapter shall be; and hereby is declared to be a public nuisance and may be summarily abated by the city pursuant to Code of Civil Procedure Section 731.

(Ord. No. 1843, § 1, 3-2-2011)

9.30.040 - Civil penalties.

In addition to any other enforcement permitted by this chapter, the city attorney may bring a civil action for injunctive relief and civil penalties pursuant to Chapter 1.10 of this code against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

(Ord. No. 1843, § 1, 3-2-2011)

City of Ripon Municipal Code
Chapter 8.24

Chapter 8.24

**CULTIVATION AND POSSESSION OF
MEDICAL MARIJUANA**

Sections:

- 8.24.010 Findings.**
- 8.24.020 Purpose and Intent.**
- 8.24.030 Definitions.**
- 8.24.040 Cultivation Restrictions.**
- 8.24.050 Primary Caregiver Restrictions.**
- 8.24.060 Possession Restrictions.**
- 8.24.070 Public Nuisance.**
- 8.24.080 Criminal Penalties.**
- 8.24.090 Civil Injunction.**
- 8.24.100 Administrative remedies.**
- 8.24.110 Judicial Review.**

8.24.010 Findings.

The City Council adopts this Chapter based upon the following findings:

A. The voters of the State of California approved proposition 215 (codified as California Health and Safety Code §11362.5 et seq. and entitled "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. The State enacted SB 420 in 2004 to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.

D. To protect the public health, safety and welfare, it is the desire of the City Council to modify the Ripon Municipal Code consistent with SB 420, regarding amount of medical marijuana that may be cultivated and possessed as well as the locations and manners in which medical marijuana may be cultivated.

E. It is the City Council's intention that nothing in this ordinance shall be deemed to

conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.

F. It is the City Council's intention that 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 otherwise illegal.

G. Pursuant to California Health and Safety Code §11362.71 et seq., the State Department of Health is responsible for establishing and maintaining a voluntary identification card program.

H. California Health and Safety Code §11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the matter set forth in §11362.71 et seq.

I. This ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines §15061(b)(3).

J. It is the City Council's intention that nothing in this chapter shall be construed to conflict with Ripon Municipal Code §§ 9.10 or 16.111. (Ord. 739 § 1, 2006)

8.24.020 Purpose and Intent

A. It is the purpose and intent of this chapter to require that marijuana be cultivated in appropriately secured enclosed structures so as not to be visible to the public domain, to provide for the health, safety and welfare of the public. It is also the purpose and intent of this chapter to require that collective cultivation of marijuana be conducted in non-residential districts to provide for the health, safety and welfare of the public.

B. It is the purpose and intent of this chapter to limit cultivation and possession of medical marijuana to those limits established by California Health & Safety Code § 11362.77.

C. This ordinance, in compliance with California Health & Safety Code Section 11362, does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to state law. (Ord. 739 § 1, 2006)

8.24.030 Definitions

A. Whenever the word "City" is used in this Chapter, it shall mean the City of Ripon.

B. Whenever the words "qualified patient" are used in this Chapter, they shall have the same definition as set forth in California Health and Safety Code §11362.7, and as may be amended.

C. Whenever the words "person with an identification card" are used in this Chapter, they shall have the same definition as set forth in California Health and Safety Code §11362.7, and as may be amended.

D. Whenever the words "attending physician" are used in this Chapter, they shall have the same definition as set forth in California Health and Safety Code §11362.7, and as may be amended.

E. Whenever the words "primary caregiver" are used in this Chapter, they shall have the same definition as set forth in California Health and Safety Code §11362.7, and as may be amended.

F. Whenever the words "Medical Marijuana Collective" or "Collective" are used in this Chapter, they shall mean a location where marijuana is cultivated collectively by more than one Qualified Patient, Person with Identification Card or Primary Caregiver. (Ord. 739 § 1, 2006)

8.24.040 Cultivation Restrictions

A. Only Qualified Patients, Persons with Identification Cards and Primary Caregivers may cultivate Medical Marijuana.

B. Secure enclosed structure. The cultivation of medical marijuana shall at all times occur in a

secure, locked, and fully enclosed structure, including a ceiling, roof or top. No outdoor growing shall be permitted within the city.

C. Maximum of twenty-four (24) plants except where collective cultivation is allowed. The individual, collective, or cooperative cultivation of more than twenty-four (24) marijuana plants, whether mature or immature, shall occur only in zones where cooperative cultivation is permitted.

D. Patient cultivation. For qualified patients and persons with identification cards, the following shall apply: each qualified patient and person with an identification card may cultivate in any zone six (6) mature or twelve (12) immature marijuana plants, or as otherwise recommended by a doctor in accordance with Section 11362.77, subject to the limits specified in this section.

E. Primary caregiver cultivation. For primary caregivers, the following shall apply: each primary caregiver may cultivate in any zone six (6) mature or twelve (12) immature marijuana plants, or as otherwise recommended by a doctor, for each qualified patient in accordance with Section 11362.77, subject to the limits specified in this section and subject to the medical marijuana dispensary restrictions in Ripon Municipal Code §§ 9.10 and 16.111.

F. Maximum of ninety-nine (99) plants. The individual, collective, or cooperative cultivation of more than ninety-nine (99) marijuana plants, whether mature or immature, is a prohibited use in all zones of the City.

G. Collective or cooperative cultivation. For the collective or cooperative cultivation, such cultivation shall be prohibited within any residential districts as defined by Ripon Municipal Code § 16.16 or within 1000 feet of such districts. Collective or cooperative cultivation shall also be subject to the following additional requirements:

1. Record requirements. The owner or lessee of the property upon which the cooperative or collective growing occurs shall

provide the following information to the Police Department in a form and manner approved by the Police Department: (a) full name, address, and telephone number(s) of the owner or lessee, including all alias names used in the previous ten (10) years; (b) the address where correspondence is to be mailed; (c) a list of all qualified patients, persons with identification cards, and primary caregivers participating in the cultivation; (d) a copy of all participant physician recommendations, identification cards, and primary caregiver evidence; (e) a sketch or diagram showing the property with the location of the cultivation and all buildings on the property, including a statement showing the total area occupied by the cultivation and the distance from the property lines; (f) a statement setting forth the number of plants to be cultivated and demonstrating that the cultivation does not exceed the maximums set forth under State law or this article, namely patient maximums and the cap of ninety-nine (99) plants; (g) a statement identifying all persons who will be tending to the cultivation and describing the cultivation process; (h) such other information as the Police Department determines is necessary to ensure compliance with State law and this article. This information shall be provided prior to the commencement of the collective or cooperative cultivation, except that for existing collective or cooperative cultivation operations, the information shall be provided within ten (10) days of the effective date of the ordinance codified in this article. The information provided shall be updated upon any change within ten (10) days. The Police Department shall keep patient information confidential to the extent required by law.

2. No cultivation in conjunction with a business: No sales of goods or services. The cultivation shall not occur in conjunction with any business. No products or services shall be sold from the property where the cultivation occurs.

3. Required participation in the cultivation: No employees. All persons who associate together for the collective or cooperative

cultivation must participate in the cultivation and the cultivation must occur solely among members of the association. No employees, independent contractors, or other persons may be utilized for the cultivation.

4. No on-site consumption. No on-site consumption of medical marijuana shall occur except by qualified patients or persons with identification cards who live on the property as their principal place of residence.

5. Inspections. The collective cultivation operation shall be open for inspection by any law enforcement officer or City code enforcement officer between the hours of 8:00 a.m. and 9:00 p.m. seven (7) days a week, or at any time upon responding to a call for service related to the property where the cultivation is occurring.

6. Violations. In addition to the remedies provided in this article, if the collective or cooperative cultivation occurs in violation of this article or any other local or State law or regulation, the owner or lessee shall be prohibited from further collective or cooperative cultivation at any location within the City for a period of one year after notice by the City of the violation. Subsequent violations shall result in a three (3) year prohibition. (Ord. 739 § 1, 2006)

8.24.050 Primary Caregiver Restrictions

A. As it is reasonable that Primary Caregivers other than those listed in §11362.7(d)(1) are unable to consistently assume responsibility for the housing, health or safety of an unlimited number of persons, the number of Qualified Patients or Persons with Identification Cards to Primary Caregiver is limited to no more than ten (10) Qualified Patients or Persons with an Identification Card.

B. The Primary Caregiver must keep a list of his or her assigned Qualified Patients or Persons with an Identification Card; such a list must minimally contain those persons' contact information, such that it may be immediately provided to the Chief of Police upon request, for the purposes of determining the proper legal

amounts of cultivated and/or dried marijuana that may be possessed at the collective. (Ord. 739 § 1, 2006)

8.24.060 Possession Restrictions

A. Qualified Patients or Person with Identification Card: A qualified patient or person with identification card may possess no more than eight ounces of dried marijuana. If a qualified patient or Person with identification card has a doctor's recommendation that this quantity does not meet the qualified patient's or person with identification card's medical needs, the qualified patient or person with identification card may possess an amount of marijuana consistent with the patient's needs.

B. Primary Caregiver: A primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. If a qualified patient has a doctor's recommendation that this quantity does not meet his or her qualified patient's medical needs, the primary caregiver may possess an amount of marijuana consistent with his or her patient's needs.

C. Medical Marijuana Collective: A medical marijuana collective may possess no more than eight ounces of dried marijuana per qualified patient, person with identification card, or primary caregiver that is a member of the collective. If a qualified patient, person with identification card, or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the medical marijuana collective may possess an amount of marijuana consistent with the patient's needs.

D. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section. (Ord. 739 § 1, 2006)

8.24.070 Public Nuisance

Any use or condition caused, or permitted to exist, in violation of any of provision of this Chapter shall be, and hereby is, declared a public nuisance and may be summarily abated by the City pursuant to Section 731 of the California Code of Civil Procedure. (Ord. 739 § 1, 2006)

8.24.080 Criminal Penalties

Any person who violates, causes or permits another person to violate any provision of this Chapter commits a misdemeanor, and upon conviction thereof, shall be punished as provided in Chapter 1.08 of the Ripon Municipal Code. (Ord. 739 § 1, 2006)

8.24.090 Civil Injunction

The violation of any provision of this Chapter shall be, and hereby is, declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief. (Ord. 739 § 1, 2006)

8.24.100 Administrative Remedies

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies as set forth by City ordinance. (Ord. 739 § 1, 2006)

8.24.110 Judicial Review

Judicial review of a decision made under this article may be had by filing a petition for a writ of mandate with the San Joaquin County Superior Court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6, which shall be applicable for such actions. (Ord. 739 § 1, 2006)

City of Manteca Municipal Code
Chapter 8.35

Manteca**Manteca Municipal Code**

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Title 8 HEALTH AND SAFETY**Chapter 8.35 CULTIVATION AND POSSESSION OF MEDICAL MARIJUANA**

8.35.010 Purpose and findings.

- A. It is the purpose and intent of this chapter to require that medical marijuana be cultivated in appropriately secured enclosed structures so as not to be visible to the public domain, to provide for the health, safety and welfare of the public. It is also the purpose and intent of this chapter to require that collective cultivation of marijuana be conducted in a manner and location so as to provide for the health, safety and welfare of the public.
- B. It is the purpose and intent of this chapter to limit cultivation and possession of medical marijuana to those limits established by California Health and Safety Code Section 11362.77.
- C. It is the purpose and intent of this chapter to ban medical marijuana dispensaries in all areas within the city of Manteca.
- D. This chapter, in compliance with California Health and Safety Code Section 11362, does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to state law. (Ord. 1461 § 1, 2010)

8.35.020 Definitions.

The following words and phrases, when used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

“Attending physician” shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as may be amended.

“Medical marijuana collective,” “medical marijuana cooperative,” “collective,” or “cooperative” shall mean a location where medical marijuana is cultivated collectively or cooperatively by more than one qualified patient, person with an identification card or primary caregiver, as described in California Health and Safety Code Section 11362.775.

“Medical marijuana dispensary” or “dispensary” means any facility or location, other than for cultivation, where medical marijuana is made available to and/or distributed by or to two or more of the following: a primary caregiver, a qualified patient, or a person with an identification card.

“Person with an identification card” shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as may be amended.

“Primary caregiver” shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as may be amended.

“Qualified patient” shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as may be amended. (Ord. 1461 § 1, 2010)

8.35.030 Cultivation restrictions.

- A. Only qualified patients, persons with identification cards and primary caregivers may cultivate medical marijuana.
- B. Secure Enclosed Structure. The cultivation of medical marijuana shall at all times occur in a secure,

locked, and fully enclosed structure that includes solid walls, a ceiling, roof or top. No outdoor growing shall be permitted within the city.

C. **Maximum of Twelve Plants Except Where Collective Cultivation is Allowed.** Any individual, collective, or cooperative cultivation of more than twelve marijuana plants, whether mature or immature, shall occur only in areas where cooperative cultivation is permitted, as defined in subsection G.

D. **Patient Cultivation.** Each qualified patient or person with an identification card may cultivate up to six mature or twelve immature marijuana plants, or as otherwise recommended by a doctor in accordance with Health and Safety Code Section 11362.77, subject to the limits specified in this section.

E. **Primary Caregiver Cultivation.** Each primary caregiver may cultivate up to six mature or twelve immature marijuana plants, or as otherwise recommended by a doctor, for each qualified patient in accordance with Health and Safety Code Sections 11362.7 and 11362.77, subject to the limits specified in this section.

F. **Requirements for Collectives or Cooperatives.** A cooperative or collective must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. No business may call itself a cooperative or collective unless it is properly organized and registered as such a corporation under the Corporations or Food and Agriculture Code of California. Cooperatives or collectives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. Cooperative or collective corporations are democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons. They must be nonprofit operations. The cooperative or collective must not purchase marijuana from, or sell to, nonmembers; instead, it must only provide a means for facilitating or coordinating cultivation projects, including the allocation of costs between members.

G. **Collective or Cooperative Cultivation.** For the collective or cooperative cultivation of marijuana, such cultivation shall be prohibited within any residential districts as defined by the Manteca Municipal Code or within one thousand feet of any residential district, school, recreation center, or youth center. Collective or cooperative cultivation shall also be subject to the following additional requirements:

1. **Record Requirements.** The owner, renter, lessee or person otherwise in charge of the property upon which the cooperative or collective growing occurs shall provide the following information to the Manteca police department in a form and manner approved by the chief of police:
 - a. Full name, address, and telephone number(s) of the owner or lessee, including all alias names used in the previous ten years;
 - b. The address where correspondence is to be mailed;
 - c. A list of all qualified patients, persons with identification cards, and primary caregivers participating in the cultivation and the contact information of those individuals;
 - d. A copy of all participant physician recommendations, identification cards, and primary caregiver evidence;
 - e. A sketch or diagram showing the property with the location of the cultivation and all buildings on the property, including a statement showing the total area occupied by the cultivation and the distance from the property lines;
 - f. A statement setting forth the number of plants to be cultivated and demonstrating that the cultivation does not exceed the maximums set forth under state law or this chapter;
 - g. A statement identifying all persons who will be tending to the cultivation and describing the cultivation process;

- h. Such other information as the police department determines is necessary to ensure compliance with state law and this chapter. This information shall be provided prior to the commencement of the collective or cooperative cultivation, except that for existing collective or cooperative cultivation operations, the information shall be provided within ten days of the effective date of the ordinance codified in this chapter. The information provided shall be updated upon any change within ten days. The police department shall keep patient information confidential to the extent required by law.
2. The cultivation shall not occur in conjunction with any for profit business. The cultivation shall only occur in conjunction with a nonprofit business if said business is licensed and use permitted by the city, incorporated within the state, and not contrary to federal, state or local laws or ordinances. No profit shall be derived from any collective or cooperative cultivation.
 3. No collective or cooperative shall maintain or keep any location or facility for the purpose of storing, selling, buying, dispensing, trading, processing or for any activity related to medical marijuana other than cultivation, unless specifically permitted and licensed by the city.
 4. All persons who associate together for the collective or cooperative cultivation must participate in the cultivation and the cultivation must occur solely among members of the association. No employees, independent contractors, or other persons may be utilized for the cultivation.
 5. No on-site consumption of medical marijuana shall occur except by qualified patients or persons with identification cards who live on the property as their principal place of residence.
 6. No smoking of medical marijuana shall occur:
 - a. In any place where smoking is prohibited by law;
 - b. In or within one thousand feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence;
 - c. On a school bus;
 - d. While in a motor vehicle that is being operated;
 - e. While operating a boat.
 7. Excess Quantities. Any quantities of marijuana that are cultivated, collected or possessed beyond the limits set forth in this chapter are considered contraband and shall be immediately released to the Manteca police department for destruction.
 8. Inspections. The collective cultivation operation shall be open for inspection by any law enforcement officer or city code enforcement officer between the hours of eight a.m. and nine p.m. seven days a week, or at any time upon responding to a call for service related to the property where the cultivation is occurring.
 9. Violations. In addition to the remedies provided in this chapter, if the collective or cooperative cultivation occurs in violation of this chapter or any other local or state law or regulation, the owner or lessee shall be prohibited from further collective or cooperative cultivation at any location within the city for a period of one year after notice by the city of the violation. Subsequent violations shall result in a three year prohibition. (Ord. 1461 § 1, 2010)

8.35.040 Primary caregiver restrictions.

- A. As it is reasonable that primary caregivers other than those listed in Health and Safety Code Section 11362.7(d)(1) are unable to consistently assume responsibility for the housing, health or safety of an unlimited number of persons, the number of qualified patients or persons with identification cards associated with a single primary caregiver shall be restricted as follows. A primary caregiver may not have

more qualified patients or persons with an identification card than the primary caregiver can reasonably assume responsibility for the housing, health, or safety of that patient or person on a consistent basis, taking into consideration the primary caregiver's health, employment responsibilities, familial responsibilities, income, resources, and any other relevant factor pertaining to their situation and circumstances of life.

1. If a primary caregiver is designated by more than one qualified patient or person with an identification card then every qualified patient or person with an identification card must reside in the same city or county as the primary caregiver.

2. A primary caregiver may be designated by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver only if the primary caregiver has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

B. To be a primary caregiver, an individual must show that he or she: (1) consistently provided caregiving, (2) independent of any assistance in taking medical marijuana, (3) at or before the time he or she assumed responsibility for assisting with medical marijuana. A person does not qualify as a primary caregiver merely by having a patient designate him or her as such or by the provision of medical marijuana itself. The person must show a caretaking relationship directed at the core survival needs of a seriously ill patient, not just one single pharmaceutical need.

C. The primary caregiver must keep a list of his or her assigned qualified patients or persons with an identification card; such a list must minimally contain those persons' contact information, such that it may be immediately provided to the chief of police or designee upon request, for the purposes of determining the proper legal amounts of cultivated and/or dried marijuana that may be possessed. (Ord. 1461 § 1, 2010)

8.35.050 Possession restrictions.

A. **Qualified Patients or Person with Identification Card.** A qualified patient or person with identification card may possess no more than eight ounces of dried marijuana. If a qualified patient or person with identification card has a doctor's recommendation that this quantity does not meet the qualified patient's or person with identification card's medical needs, the qualified patient or person with identification card may possess an amount of marijuana consistent with the patient's needs (Health and Safety Code, Section 11362.77).

B. **Primary Caregiver.** A primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient assigned to them. If a qualified patient has a doctor's recommendation that this quantity does not meet his or her qualified patient's medical needs, the primary caregiver may possess an amount of marijuana consistent with his or her patient's needs (Health and Safety Code, Section 11362.77).

C. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section (Health and Safety Code, Section 11362.77). (Ord. 1461 § 1, 2010)

8.35.060 Dispensary ban.

It is unlawful and a misdemeanor for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city of Manteca, the operation of a medical marijuana dispensary. (Ord. 1461 § 1, 2010)

8.35.070 Public nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this chapter shall be, and hereby is, declared a public nuisance and may be summarily abated by the city pursuant to Section 731 of the California Code of Civil Procedure. (Ord. 1461 § 1, 2010)

8.35.080 Criminal penalties.

Any person who violates, causes or permits another person to violate any provision of this chapter is guilty of a misdemeanor. (Ord. 1461 § 1, 2010)

8.35.090 Safety violation enforcement and fines.

- A. Any violation of this chapter may result in any or all of the following actions and/or fines:
1. A misdemeanor punishable by either six months in jail and/or a fine not to exceed one thousand dollars;
 2. Institution of a civil action by the city attorney, or designee, as set forth in Chapter 1.10;
 3. Issuance of administrative citation(s) and/or an order to abate the safety violation(s) with a fine up to five hundred dollars, plus any administrative expenses incurred in the enforcement of this chapter.
- B. Each day a safety violation(s) occurs shall be deemed a new violation subject to additional citations, penalties, and fines.
- C. Violations of any section of this chapter may be filed as an infraction or a misdemeanor at the discretion of the city attorney. (Ord. 1461 § 1, 2010)

8.35.100 Civil penalties.

- A. In addition to the enforcement and fines described herein, the city attorney may bring a civil action for injunctive relief and civil penalties pursuant to Chapter 1.10 of the Manteca Municipal Code against any owner who violates this chapter. In any civil action brought pursuant to this chapter, the court may award reasonable attorneys' fees and costs to the prevailing party.
- B. The city may pursue any other legal remedy to enforce or collect any fines or amounts owed as set forth herein. (Ord. 1461 § 1, 2010)

8.35.110 Right to a hearing.

- A. The cited entity may appeal administrative citations issued pursuant to this chapter, pursuant to the procedures set forth in Chapter 1.10 of this code.
- B. The hearing shall be scheduled and conducted pursuant to Chapter 1.10 of the Manteca Municipal Code. (Ord. 1461 § 1, 2010)

City of Elk Grove Municipal Code
Chapter 23.83

(47 hits)

Chapter 23.83 MARIJUANA CULTIVATION

Sections:

- 23.83.010 Purpose and intent.
- 23.83.020 Definitions.
- 23.83.030 Cultivation of medical marijuana.
- 23.83.040 Cultivation permit.
- 23.83.050 Enforcement.
- 23.83.060 Appeals.

23.83.010 Purpose and intent.

It is the purpose and intent of this chapter to require that medical marijuana be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to nonpatients or illicit markets. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of medical marijuana pursuant to the Compassionate Use Act (Health and Safety Code Section 11362.5) or the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et seq.) Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana for nonmedical purposes in violation of State or Federal law. [Ord. 3-2012 §2(Exh. A), eff. 3-23-2012]

23.83.020 Definitions.

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply.

A. Reserved for future use.

B. "B" Definitions.

1. "Bedroom" means a room inside a residential building being utilized by any person for sleeping purposes.

C. "C" Definitions.

1. "Child care center" means any licensed child care center, daycare center, or child care home, or any preschool.
2. "Cultivation" means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof for medical use consistent with the Compassionate Use Act (Section 11362.5 of the Health and Safety Code) or the Medical Marijuana Program Act (Section 11362.7 et seq. of the Health and Safety Code).

D. "D" Definitions.

1. "Detached, fully enclosed and secure structure" means a building completely detached from a residence that complies with the Elk Grove building code and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one (1) or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch (2" x 4") or thicker studs overlaid with three-eighths (3/8") inch or thicker plywood or the equivalent. Exterior walls must be constructed with nontransparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

E. Reserved for future use.

F. Reserved for future use.

G. Reserved for future use.

H. Reserved for future use.

I. "I" Definitions.

1. "Indoors" means within a fully enclosed and secure building.

J. Reserved for future use.

K. Reserved for future use.

L. "L" Definitions.

1. "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Sections 66410 et seq. of the Government Code).

M. Reserved for future use.

N. Reserved for future use.

O. "O" Definitions.

1. "Outdoor" means any location within the City that is not within a fully enclosed and secure structure.

P. "P" Definitions.

1. "Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this chapter.

2. "Primary caregiver" means a "primary caregiver" as defined in Section 11362.7(d) of the Health and Safety Code.

Q. "Q" Definitions.

1. "Qualified patient" means a "qualified patient" as defined in Section 11362.7(f) of the Health and Safety Code.

R. "R" Definitions.

1. "Rear yard" means the rear open space portion of any premises, whether fenced or unfenced.
2. "Residential structure" means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking and sanitation on a premises or legal parcel located within a residential or agricultural-residential zoning district.

S. "S" Definitions.

1. "School" means an institution of learning for persons under twenty-one (21) years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.
2. "Solid fence" means a fence constructed of substantial material (such as wood) that prevents viewing the contents from one side to the other.

T. Reserved for future use.

U. Reserved for future use.

V. Reserved for future use.

W. Reserved for future use.

X. Reserved for future use.

Y. Reserved for future use.

Z. Reserved for future use. [Ord. 3-2012 §2(Exh. A), eff. 3-23-2012]

23.83.030 Cultivation of medical marijuana.

The following regulations shall apply to the cultivation of medical marijuana within the City.

A. No person other than a qualified patient or primary caregiver may engage in cultivation of medical marijuana. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana except as provided for in this chapter.

B. Residency Requirement. Either a qualified patient or primary caregiver shall reside full-time on the premises where the marijuana cultivation occurs.

C. Outdoor Cultivation. It is unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cause or allow such parcel or premises to be used for the outdoor cultivation of marijuana plants.

D. Residential Structure Cultivation. It is unlawful and a public nuisance for any person to cultivate medical marijuana inside any residential structure or building without a medical marijuana cultivation permit issued by the City Chief of Police or his or her designee, as provided herein.

E. Cultivation in Nonresidential Zones. Cultivation of medical marijuana is prohibited in all agricultural (except agricultural-residential), commercial, office, industrial, open space, special purpose, and overlay/combining zoning districts.

F. Proximity to Schools, Child Care Centers, and Parks. It is unlawful and a public nuisance to cultivate medical marijuana on any legal parcel or premises within one thousand (1,000' 00") feet of any school, child care center, or public park. The one thousand (1,000' 00") feet shall be measured from the closest property line of the school, child care center, or park to the closest property line of the cultivation parcel.

G. Cultivation Area. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana, within a detached structure greater than one hundred twenty (120 ft²) square feet in size.

H. Indoor Cultivation in Residential Zones. The indoor cultivation of medical marijuana in a residential zone shall only be conducted within a detached, fully enclosed and secure structure no greater than one hundred twenty (120 ft²) square feet in size or within a residential structure conforming to the following minimum standards:

1. Any detached structure, regardless of square footage, constructed, altered or used for the cultivation of medical marijuana must have a valid building permit duly issued by the Building Official. The Building Official shall consult with the Planning Director and Chief of Police in consideration of any building permit application seeking a building permit for the construction or alteration of any structure to be used for medical marijuana cultivation.
2. Indoor grow lights shall not exceed one thousand two hundred (1,200 W) watts and shall comply with the California Building, Electrical and Fire Codes as adopted by the City. Gas products (including, without limitation, CO₂, butane, propane, and natural gas), or generators shall not be used within any detached structure used for the cultivation of medical marijuana.
3. Any detached, fully enclosed and secure structure or residential structure used for the cultivation of medical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with the California Building Code Section 402.3, Mechanical Ventilation. The ventilation and filtration system must be approved by the Building Official and installed prior to commencing cultivation within the detached, fully enclosed and secure structure or residential structure.
4. A detached, fully enclosed and secure structure used for the cultivation of marijuana shall be located in the rear yard area of a legal parcel or premises, maintain a minimum ten (10' 00") foot setback from any property line, and the area surrounding the structure must be enclosed by a solid fence at least six (6' 00") feet in height.
5. Adequate mechanical or electronic security systems approved by the Building Official and Chief of Police must be installed in and around the detached structure or the residential structure prior to the commencement of cultivation.
6. Marijuana cultivation occurring within a residence shall be in an area no larger than fifty (50 ft²) square feet, regardless of how many qualified patients or primary caregivers are residing at the premises.

7. Cultivation of marijuana shall not take place in the kitchen, bathrooms, or bedrooms of any building.
8. Cultivation of marijuana shall not take place on any carpeted surface.
9. Medical marijuana cultivation for sale is prohibited.
10. Medical marijuana cultivation may not occur in both a detached structure and inside a residence on the same parcel.
11. Medical marijuana cultivation areas, whether in a detached building or inside a residence, shall not be accessible to persons under eighteen (18) years of age. [Ord. 3-2012 §2(Exh. A), eff. 3-23-2012]

23.83.040 Cultivation permit.

A. Prior to commencing any medical marijuana cultivation, the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where medical marijuana cultivation is proposed to occur must obtain a medical marijuana cultivation permit from the Chief of Police or his or her designee. The following information will be required with the initial permit application and subsequent permit extensions:

1. A notarized signature from the owner of the property consenting to the cultivation of marijuana at the premises on a form acceptable to the City.
2. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where medical marijuana will be cultivated.
3. The name of each qualified patient or primary caregiver who participates in the medical marijuana cultivation.
4. A copy of a current valid medical recommendation or county-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver.
5. The physical site address of where the marijuana will be cultivated.
6. A signed consent form, acceptable to the City, authorizing City staff, including the Police Department authority, to conduct an inspection of the detached, fully enclosed and secure structure or area of the residence used for the cultivation of marijuana upon twenty-four (24) hours' notice.

B. The initial permit shall be valid for no more than two (2) years and may be extended in increments of two (2) years.

C. To the extent permitted by law, any personal or medical information submitted with a medical marijuana cultivation permit application or permit extension shall be kept confidential and shall only be used for purposes of administering this chapter.

D. The Chief of Police, or his or her designee, may, in his or her discretion, deny any application for a medical marijuana cultivation permit, or extension thereof, where he or she finds, based on articulated facts, that the issuance of such permit, or extension thereof, would be detrimental to the public health, safety, or welfare. The Chief of Police shall deny an application for a medical marijuana cultivation permit, or extension thereof, that does not

demonstrate satisfaction of the minimum requirements of this chapter. The denial of any permit application, or permit extension, shall be subject to appeal pursuant to EGMC Chapter 1.11.

E. The Finance Director may establish a fee or fees required to be paid upon filing of an application for permit(s) as provided by this chapter, which fees shall not exceed the reasonable cost of administering this chapter. [Ord. 3-2012 §2(Exh. A), eff. 3-23-2012]

23.83.050 Enforcement.

Violations of this chapter shall constitute a public nuisance and may be enforced pursuant to the provisions of EGMC Chapters 1.12 and 16.18. [Ord. 3-2012 §2(Exh. A), eff. 3-23-2012]

23.83.060 Appeals.

Any person aggrieved by any of the requirements of this section may appeal in so far as such appeals are allowed pursuant to EGMC Chapter 1.11. [Ord. 3-2012 §2(Exh. A), eff. 3-23-2012]

This page of the Elk Grove Municipal Code is current through Ordinance 17-2012, passed July 25, 2012.

Disclaimer: The City Clerk's Office has the official version of the Elk Grove Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.elkgrovecity.org>
(<http://www.elkgrovecity.org>)

City Telephone: (916) 691-2489

Code Publishing Company
(<http://www.codepublishing.com/>)

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(<http://www.codepublishing.com/elibrary.html>)

City of Willits Municipal Code
Chapter 17.86

Willits

Willits, California, Code of Ordinances >> Title 17 - ZONING >> Chapter 17.86 - MARIJUANA CULTIVATION >>

Chapter 17.86 - MARIJUANA CULTIVATION

Sections:

17.86.010 - Definitions.

17.86.020 - Outdoor cultivation of marijuana.

17.86.030 - Limitation on number of plants.

17.86.040 - Enforcement.

17.86.050 - Compliance with CEQA.

17.86.010 - Definitions.

As used herein, the following definitions shall apply:

"Cultivation" means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

"Fully enclosed and secure structure" or "structure(s)," as used within this chapter, means no more than one space within a residential unit which is subject to the requirements of the Uniform Commercial Code; which has a complete roof enclosure supported by connecting walls extending from the ground to the roof; which is secure against unauthorized entry, and which is accessible only through one or more lockable doors; and which is attached to a permanent foundation. The exterior walls shall have a minimum thickness of four inches and shall be sheathed with a minimum one-half inch nominal thickness boards, fiber board, composite wood panels or other material approved by code for residential building construction. The structure shall be adequately sealed to significantly reduce the emission of odor emanating from cultivation. The term "fully enclosed and secure structure" shall not include any building, greenhouse, shed or accessory building which does not meet the requirements of this section.

"Outdoor" means any location within the city of Willits that is not within a "fully enclosed and secure structure" as defined herein.

"Parcel" means property assigned a separate parcel number by the Mendocino County Assessor.

"Primary caregiver" means a "primary caregiver" as defined in Health and Safety Code Section 11362.7(d).

"Qualified patient" means a "qualified patient" as defined in Health and Safety Code Section 11362.7(f).

(Ord. 07-02 § 2).

17.86.020 - Outdoor cultivation of marijuana.

It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any premises within any zone of the city of Willits to cause or allow such premises to be used for the outdoor cultivation of marijuana plants as described herein or to cultivate or allow the cultivation of marijuana plants in excess of the limitations imposed within Section 17.86.030.

Nothing in this section 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.

(Ord. 07-02 § 3).

17.86.030 - Limitation on number of plants.

The cultivation of more than six marijuana plants within any fully enclosed and secure structure within the city limits is a public nuisance. This limitation shall be imposed regardless of the number of qualified patients residing at such location. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the caregivers for qualified patients.

(Ord. 07-02 § 4).

17.86.040 - Enforcement.

The violation of this chapter may be abated by the city by the prosecution of a civil action including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this chapter or requiring compliance with other terms.

The city may also seek enforcement by abatement as a public nuisance. Such proceedings may include seeking warrants from the Mendocino County Superior Court to inspect property and for nuisance abatement by eradicating marijuana cultivated in violation of this chapter. Nuisance abatement may, at the city's election, be commenced in accordance with the procedures set forth within Chapter 1.12 et seq. of the Willits Municipal Code (WMC).

In any litigation concerning the enforcement of this chapter, the prevailing party shall be entitled to recover its reasonable attorney fees and costs of suit.

(Ord. 07-02 § 5).

17.86.050 - Compliance with CEQA.

The city council finds that this chapter is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply, Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment), and 15321 (action by agency for enforcement of a law, general rule, standard, or objective administered or adopted by the agency, including by direct referral to the city attorney as appropriate for judicial enforcement).

(Ord. 07-02 § 6).

City of Chico Municipal Code
Chapter 19.77

Chico**Chapter 19.77****CULTIVATION OF MEDICAL MARIJUANA****Section:**

- 19.77.010 Findings and purpose.**
19.77.020 Applicability.
19.77.030 Definitions.
19.77.040 Cultivation in residential zoning districts for personal use.
19.77.050 Appeal of permit denial.
19.77.060 Permit revocation.
19.77.070 Nuisance.

19.77.010 Findings and purpose.

- A. The city council hereby finds that the cultivation of medical marijuana impacts, or has the potential to impact, the community. These impacts include damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, inadequate ventilation, increased occurrences of home-invasion robberies and similar crimes, and nuisance impacts to neighboring properties from the strong and potentially noxious odors from the plants and increased crime.
- B. It is acknowledged that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of marijuana for medical purposes through the adoption of the Compassionate Use Act, but that the Compassionate Use Act does not address the land use or other impacts that are caused by the cultivation of medical marijuana.
- C. The purpose of this chapter is to adopt rules consistent with the Compassionate Use Act, the Medical Marijuana Program Act and the Guidelines issued by the California Attorney General, to regulate the cultivation of medical marijuana in a manner that protects the public health, safety and welfare of the community and prevents the adverse impacts which such activities may have on nearby properties and residents, without interfering with the rights of qualified patients and their primary caregivers to possess or cultivate medical marijuana pursuant to state law.

(Ord. 2426)

19.77.020 Applicability.

- A. Nothing in this chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution under the Compassionate Use Act.
- B. Nothing in this chapter is intended, nor shall it be construed, to make legal any cultivation, sale, or other use of medical marijuana that is otherwise prohibited under California law.
- C. Nothing in this chapter is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting medical marijuana cultivation or other related activities by tenants.
- D. Nothing in this chapter is intended, nor shall it be construed, to exempt any activity related to the cultivation or use of medical marijuana from any applicable electrical, plumbing, land use, or other building or land use standards or permitting requirements.

E. All cultivation of medical marijuana within the city shall be subject to the provisions of this chapter.

(Ord. 2426)

19.77.030 Definitions.

- A. "Medical marijuana" means marijuana used for medical purposes in accordance with California Health & Safety Code section 11362.5.
- B. "Primary caregiver" means a primary caregiver as defined in Health & Safety Code section 11362.7.
- C. "Qualified patient" means a qualified patient as defined in Health & Safety Code section 11362.7.

(Ord. 2426)

19.77.040 Cultivation in residential zoning districts for personal use.

It is unlawful for anyone to cultivate medical marijuana in the city of Chico except that medical marijuana may be cultivated in residential zoning districts as follows:

- A. Outdoor Cultivation. Medical marijuana may be cultivated outdoors on residentially zoned property by a qualified patient or primary caregiver subject to the following conditions:
 - 1. The location of the plants is at least 5 feet from the property line and takes place within an enclosed side or back yard.
 - 2. An area of no more than fifty square feet is devoted to the cultivation of the marijuana. This restriction applies regardless of how many qualified patients are living on the property.
 - 3. The plants are located and screened so that they are not visible from any adjacent public or private property.
- B. Indoor Cultivation. It is unlawful for any person to cultivate medical marijuana inside any residence or other building on residentially zoned property without an indoor cultivation permit issued by the director.
 - 1. An application for an indoor cultivation permit shall be filed in the office of the director on a form prescribed by the director and accompanied by an application fee as adopted by the city council.
 - 2. An indoor cultivation permit may only be issued if the director makes both the following findings:
 - a. It is not feasible for a qualified patient to cultivate marijuana outdoors on the property on which the patient resides either because cultivation cannot take place in a manner that complies with all of the conditions set forth in paragraph A., above, or that outdoor cultivation, even though conducted in compliance with the standards set forth in Paragraph A, above, adversely affects neighboring property by creating dust, glare, noise, odors or other impacts; and
 - b. The owner of the residence or building, if other than the applicant, has consented in writing to the issuing of the permit.
 - 3. Any permit issued to allow indoor cultivation shall be subject to the following conditions:
 - a. An area no larger than 50 square feet may be devoted to the cultivation of the marijuana. This restriction applies regardless of how many qualified patients

- are living on the property.
 - b. The lighting used for the cultivation shall not exceed 1200 watts.
 - c. There shall be no exterior evidence of the marijuana cultivation from any public right of way.
 - d. The cultivation of marijuana shall not take place in the kitchen, bathrooms or primary bedrooms of a residence.
 - e. The use of flammable or combustible products, including but not limited to, CO₂ and butane, for cultivation and processing is prohibited.
- C. All medical marijuana cultivated pursuant to this section, whether outdoor or indoor, shall be for the personal use only of a qualified patient residing on the property and may not be distributed to any other person, collective, or cooperative.
- D. Notwithstanding that cultivation which is otherwise in compliance with the standards set forth in paragraph A., above, or a permit issued pursuant to paragraph B, above, the cultivation of medical marijuana is not permitted if the cultivation activity adversely affects the health or safety of the residents or nearby properties through the creation of mold, mildew, dust, glare, heat, noise, odor, or other impacts.
- E. The cultivation and/or processing of medical marijuana shall not be an allowed home occupation.

(Ord. 2426)

19.77.050 Appeal of permit denial.

Any applicant for a permit authorized by this chapter who has had an application denied or a permit revoked, shall have the right to request administrative review by the city manager pursuant to the procedure set forth in section 19.12.040.

(Ord. 2426)

19.77.060 Permit revocation.

- A. Permit revocation or modification. The director may modify or revoke any permit issued pursuant to this chapter based upon the making of one or more of the following findings:
1. The permit was issued based on a material misrepresentation by, or on behalf of, the permittee or property owner, whether as a result of its content or omissions therefrom and regardless of whether the misrepresentation was intentional or negligent or otherwise inadvertent;
 2. One or more of the conditions of the permit has not been met or has been violated;
or
 3. Notwithstanding compliance with the conditions of the permit, the carrying out of the activities authorized by the permit adversely affects the health or safety of the residents or nearby properties through the creation of mold, mildew, dust, glare, heat, noise, odor, or other impacts.
- B. Notice. Prior to modifying or revoking any permit the director shall provide fifteen days written notice to the permittee of the intent to modify or revoke the permit. The notice shall include a brief statement of the grounds for the proposed modification or revocation and shall notify the Permittee of the opportunity to take any corrective actions necessary to remove the grounds for the modification or revocation.
- C. Opportunity to respond. Prior to the expiration of the fifteen days, the permittee may request a meeting with the director and/or submit documentation demonstrating that

- corrective action has been taken or documentation otherwise in response to the notice.
- D. Final decision. After the expiration of the fifteen days, the director shall issue a written notice indicating whether the permit is being maintained as originally granted, modified, or revoked. Any notice of modification or revocation shall include a statement of the reasons therefore.
- E. Appeal. The modification or revocation of a permit may be appealed by the filing of a request for administrative review by the city manager pursuant to the procedure set forth in section 19.12.040.

(Ord. 2426)

19.77.070 Nuisance.

Any violation of any provision of this chapter shall be, and is hereby declared, a public nuisance and may be abated by the city as such.

(Ord. 2426)

Options for Regulating the Cultivation of Medical Marijuana in the City of Lodi

October 16, 2012
Shirtsleeve Session

Lodi Municipal Code

Medical Marijuana Dispensaries are prohibited in the City of Lodi under LMC Chapter 9.30, adopted March 2, 2011.

The Lodi Municipal Code does not address the cultivation of medical marijuana.

Federal Law Governing Marijuana

- The Federal Controlled Substance Act of 1970 (CSA):
 - Marijuana is categorized as a 'Schedule I' drug under the CSA.
 - The CSA prohibits the use of marijuana for any purpose.
 - Enterprises engaged in the cultivation, manufacture, and sale of marijuana directly violate federal law.
- October 2009 United States Attorney General Memoranda
 - Commitment to enforcement of the CSA in all states.
 - Did not legalize marijuana or provide a defense to violations of federal law.
 - U.S. Attorney General will not prosecute legitimate medical marijuana users.

California's Medical Marijuana Laws

- Voters approved Proposition 215 –
 - “The Compassionate Use Act of 1996”
 - Health & Safety Code section 11362.5
- In 2004 Senate Bill 420 was enacted
 - “Medical Marijuana Program Act”
 - Health & Safety Code section 11362.7, et. seq.

Compassionate Use Act (CUA)

- Permits seriously ill Californians to use medical marijuana with a doctor's recommendation.
- Protects users of medical marijuana from criminal liability under state law.
- Encourages federal and state government implementation of the Act.

Limitations of the CUA

- Non-medical uses of marijuana are outside of the scope of the CUA.
- Possession, cultivation, sale and transportation of marijuana is still unlawful, but
 - The CUA provides an affirmative defense to criminal prosecution for possession.

Purpose of the MMPA

- Clarify the scope of the application of the CUA and facilitate identification of qualified patients and their designated caregivers.
- Promote uniform and consistent application of the CUA among the counties.
 - Immunity for arrest; and
 - Allows transport of medical marijuana
- Enhance access to patients and caregivers to medical marijuana by expressly allowing collective and cooperative cultivation of medical marijuana.

California Attorney General's Guidelines on Marijuana Grown for Medical Use

- MMPA required the Attorney General adopt 'guidelines to ensure the security and non-diversion of marijuana grown for medical use'
- Guidelines were issued in August 2008
 - Purpose
 - Ensure marijuana grown for medical purposes is secure and is not diverted to non-patients or illicit markets;
 - Help law enforcement to effectively perform their duties in accordance with California law; and
 - Help patients and their primary caregivers understand how to cultivate, transport, possess, and use medical marijuana under California law.
- Recognizes that the cultivation or concentration of marijuana without adequate security increases the risk of nuisance activities.

Who is a Qualified Patient?

- Health & Safety Code §11362.7(f) defines a Qualified Patient as:
 - A person whose physician has recommended the use of marijuana to treat a serious illness.

Who is a Primary Caregiver?

Health & Safety Code §11362.7(d) defines a Primary Caregiver as:

- An individual who has 'consistently assumed responsibility for the housing, health, or safety of a patient'.
- Includes: clinics, health care facilities, residential care facilities, hospices.
- A caregiver is not allowed to have more than one patient outside of their own city or county.

Cultivation of Medical Marijuana Under California Law

- Allows for cultivation by qualified patients or caregivers and collective or cooperative cultivation of Medical Marijuana.
- With the exception of how many plants a qualified patient may possess, the CUA and MMPA are silent as to how cultivation should be regulated in the state.
- The limitations on the amount of medical marijuana a qualified patient or caregiver can possess under the MMPA was struck down by the California Supreme Court in 2010 (*People v. Kelly*).
 - The court held that the CUA did not authorize a numerical amount of medical marijuana that was reasonably necessary to meet the current medical needs of a particular qualified patient.

Adverse Impacts Associated with the Cultivation of Medical Marijuana

- **Creates an Attractive Nuisance**
 - Odor associated with mature marijuana plants
 - Burglaries, robberies and thefts
 - Increase in violent crimes
 - Electrical Utility theft
- **Potential Hazards**
 - Use of CO₂ in growing process
 - Overload of electrical circuits
 - Chemical waste
 - Mold

Cultivation of Medical Marijuana in California - Survey Results

- Statewide

- As of September 2012

- Approx. 40 cities and 25 counties regulate cultivation
 - 2 cities and 2 counties have banned cultivation on the grounds that marijuana is illegal under Federal law
 - 3 lawsuits are currently pending

Source: California NORML and survey by the City Attorney's Office

Regulatory Alternatives

- No action.
- Ban cultivation.
- Ban outdoor cultivation.
- Ban outdoor cultivation in certain zones and/or over a certain size.
- Ban indoor cultivation.
- Ban indoor cultivation in certain zones over and/or over a certain size.
- Cultivation subject to building regulations and nuisance mitigation.

Impact of a Ban on the Cultivation of Medical Marijuana

- Cities historically exercise exclusive control over land use issues under police powers.
 - Protection of health, safety and welfare
- California law allows Qualified Patients and Caregivers to cultivate medical marijuana
- Bans have been challenged as violating the rights of Qualified Patients
 - The law is fluid and developing on the issue of total cultivation bans

Options for Regulating the Cultivation of Medical Marijuana in the City of Lodi

- Outdoor vs. Indoor cultivation
- Zoning
- Proximity to schools, parks, recreational areas
- Number of plants/Square footage under cultivation
- Odor control and Visibility from public-right-of-way
- Security
- Building, Fire and Electrical Code considerations
 - Type of structure, Filtration, Wattage of grow lights
- Use of CO2 or other of gases
- Methods of cultivation
- Permitting or Registration requirements

Staff Recommendation

- Avoid permissive regulation or the explicit permission to grow:
 - May run afoul of the Controlled Substance Act.
 - Inadequate staff resources to institute inspection requirements.
 - As an alternative consider banning those activities Council wants to explicitly disallow.
- Consider banning grows that can be seen, smelled or otherwise detected at the property line.
- Consider requiring notice be given to LPD of grows.
- Consider banning outdoor cultivation.
- Consider banning cultivation in certain zones.
- Consider banning grows over a specified square footage and in kitchens, bathrooms, living areas, garages, and bedrooms used for sleeping.

Comment, Discussion & Direction

- Public Comment
- Discussion and Questions of Council
- Direction to Staff

Council Action

- Based on Council direction the City Attorney's Office will draft an ordinance for Council to consider at a regularly scheduled meeting
 - The ordinance would be effective 30-days after the second reading