

ORDINANCE NO. 425-2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEED
REGULATING MEDICAL MARIJUANA CULTIVATION

The City Council of the City of Weed does ordain as follows:

Section 1. Chapter 18.60 of the Weed Municipal Code is hereby adopted, to read in its entirety as follows:

"CHAPTER 18.60
MEDICAL MARIJUANA CULTIVATION.

Sections:

18.60.010	Purpose
18.60.015	Zones
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18.60.130	Medical marijuana cultivation use permit
18.60.140	Inspections
18.60.150	Violations; Penalties: Injunction

18.60.010 Purpose. The purpose of this chapter is to regulate the cultivation of medical marijuana for personal use in a manner that protects the health, safety, and welfare of the community and minimizes or eliminates the potential nuisances associated with marijuana cultivation in a manner which is consistent with applicable state and federal laws and regulations.

18.60.015 Zones. This chapter shall be applicable to all zoning districts within the city.

18.60.020 Conflicts with other laws. This chapter shall be interpreted and applied in such a manner so as to not be in conflict with any state or federal law or regulation. This chapter shall not be deemed to permit any activity that is prohibited by any state or federal law or regulation. In particular, this chapter is not intended to interfere with a patient's right to use or possess medical marijuana as provided in California *Health & Safety Code* §11362.5, et seq. If

any portion of this chapter is determined to be in conflict with any state or federal law, that portion of this chapter shall be deemed null and void.

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

A. Business entity means a corporation, unincorporated association, limited liability company, partnership, limited partnership, limited liability partnership, professional corporation, or similar organization.

B. Canopy area means the straight- line width of the foliage of a particular marijuana plant as measured horizontally at the widest point. If the foliage of two or more plants overlaps, the measurement shall be made at the widest point from the outside edge of the plant at one end to the corresponding outside edge of the plant at the other end of the straight line.

C. City means the City of Weed, California.

D. City administrator means the city administrator of the city.

E. City clerk means the city clerk of the city, or his or her designee.

F. City council means the city council of the city.

G. Code means the municipal code of the city.

H. Cultivation means the planting, growing, harvesting, drying, processing, storage, or distribution of medical marijuana.

I. Legal parcel means a parcel of real property that may be separately sold in compliance with the California "Subdivision Map Act".

J. Medical marijuana means any plant(s) or part(s) thereof of the genus cannabis that has been recommended by an authorized person in accordance with California *Health & Safety Code* §11362.5 through §11362.83, inclusive, commonly known as the "Compassionate Use Act" and the "Medical Marijuana Program".

K. Medical recommendation means a current recommendation from a person authorized by law that recommends to another specific person, in writing, the consumption or other use of medical marijuana for medicinal or therapeutic purposes, and the possession by the latter person of a current and otherwise valid medical marijuana identification card ("MMIC"), issued by the Siskiyou County Department of Health and photo identification of that person issued by the California Department of Motor Vehicles or other photo identification of that person issued by a state or federal governmental agency.

L. Outdoors means any location within the city that is not fully enclosed and secure structure consisting of a roof and walls.

M. Person means an individual adult human being.

N. Playground means public facilities such as slides, swings, and climbing apparatus intended for use by young children.

O. Primary caregiver is a person defined by *Health & Safety Code* §11362.7(d), as interpreted by the courts of this state (see, for example, *People v. Mentch* (2008)) who has been designated as such, in writing by a qualified patient.

P. Property means a single, legal parcel of land where a qualified patient or primary caregiver resides. If the property consists of contiguous parcels owned by the same person or business entity, it shall be considered to be a single parcel for purposes of this chapter.

Q. Qualified patient is a person defined by *Health & Safety Code* §11362.7, who also possesses a medical recommendation, described hereinabove.

R. Residence means the property on which a qualified caregiver may legally reside in compliance with all applicable laws, ordinances, and regulations, and who is doing so at the time he or she is engaged in medical marijuana cultivation. Such a residence may not be, or include, a school, preschool, or daycare facility.

S. School means a qualified and legally operating institution of learning, whether public or private, offering a regular course of instruction to children at the kindergarten, elementary school, middle school, or high school levels. Residences in which home schooling, preschool, or daycare facilities exist are not included, nor are facilities providing instruction solely in religion, performing or visual arts, recreation, or other limited curriculum.

18.60.040 Allowable cultivation. Qualified patients and designated primary caregivers shall be allowed to cultivate medical marijuana at their private residences in accordance with applicable state law and their medical recommendation. Cultivation shall be at a scale that is consistent with the standards established by law and this chapter, whichever is less. If a primary caregiver is cultivating medical marijuana for a qualified patient, the latter may not also cultivate medical marijuana at his or her own residence. If a qualified patient cultivates medical marijuana at the residence of the qualified patient, the qualified patient may not also designate a primary caregiver to cultivate medical marijuana for the qualified patient.

18.60.050 Conditions. A. No cultivation shall take place within a residence, provided, however, that seedling up to eight (8) inches in height may be grown therein.

B. Structure. The cultivation may take place only within a structure which is not the residence, permissible structures to include a detached garage, greenhouse, or other outbuilding. The roof and walls of the structure may be wood, metal, plastic, translucent plastic sheeting, glass, or any other material, and the design shall be such as will help to both confine the odors of the plants within the structure and shield the plants from being viewed from locations off the Property, it being recognized that most structures will not accomplish this objective completely.

C. Electrical lines and fixtures need not be Code compliant, but must not constitute a safety hazard.

D. Heating equipment must not constitute a safety hazard.

18.60.060 Cultivation area. A maximum of eighty (80) square feet of canopy area, or twelve (12) plants, whichever is greater, may be under cultivation on the property. If a primary caregiver is engaged in medical marijuana cultivation for a qualified patient at the primary caregiver's residence, medical marijuana may be cultivated there for no more than two (2) qualified patients, including the primary caregiver. In no event shall more than six (6) plants per qualified patient be under cultivation.

18.60.070 Primary residence only. A qualified patient and/or designated primary caregiver must reside on the property where the cultivation of medical marijuana occurs. Neither the

qualified patient, nor its primary caregiver may cultivate medical marijuana on more than one (1) property within the city.

18.60.080 Screening; security. The owner or occupant of property where medical marijuana is being cultivated shall:

(a) screen or fence it with solid materials in such a manner that the medical marijuana which is being cultivated shall not be visible from any viewpoint which is up to six (6) feet above ground level on any adjacent public or private right-of-way, or adjacent public or private property; and

(b) use reasonable means to prevent access to the plants by the public.

18.60.090 Parks. The outdoor cultivation of medical marijuana is prohibited within three hundred (300) feet of any public city park playground, school, or public library.

18.60.100 Lot line setbacks. Cultivation of medical marijuana is prohibited within five (5) feet of any property boundary line, that is, the leaves of any plant may not project closer than five (5) feet to the boundary line.

18.60.110 Home occupation. Cultivation of medical marijuana is prohibited as a home occupation business activity within the city.

18.60.120 Public health and safety; nuisance. A. Conditions. The cultivation of medical marijuana shall not adversely affect the health or safety of any nearby resident, nor cause physical annoyance or discomfort to any nearby resident in any manner, whether by the creation or release of noxious gas, smoke, noise, or odor, nor be hazardous to the public due to the use or storage of materials, processes, products, or wastes.

B. Violation. A violation of this section constitutes a public nuisance for which the city or any adversely affected member of the public may seek relief through the courts, in addition to such penalties as may be specified in this chapter.

18.60.130 Medical marijuana cultivation use permit. A. Permit required. a qualified patient or primary caregiver who desires to cultivate medical marijuana may do so only in accordance with the regulations of this chapter by applying for a medical marijuana cultivation use permit under this section, and shall be subject to the other terms and conditions of this chapter.

B. Permit. A qualified patient who desires to cultivate medical marijuana for himself or herself, or a primary caregiver who desires to do so for another person, on particular property shall complete and file with the city clerk an application for a medical marijuana cultivation use permit, and therein provide such information as the city clerk shall then require, including but not limited to copies of the medical marijuana identification cards for the applicant(s), and written, notarized authorization of the cultivation by the property owner if the property is not owned of record by at least one of the applicant. Nothing herein shall require the disclosure to the city of the identity of any qualified patient other than the applicant. The city shall not inquire as to the medical or other condition of the applicant. the city maintain the

confidentiality of contents of any application made under this section and not produce or allow the inspection of the same by any person except in regard to the enforcement of this section or as may be required by law.

C. Issuance. The city administrator shall determine whether the permit shall issue, based upon whether it complies with this chapter, and shall issue written findings in the event a permit is denied. The city administrator may designate a person to exercise his or her authority under this subsection in his or her absence.

D. Appeal. Any applicant whose application is denied by the city administrator may appeal the decision to the city council by making a written request therefor.

E. Changes in information provided. If the information provided in any application filed under subpart b, above, becomes incorrect, the applicant, within thirty (30) days, shall file with the city clerk an amended application or such other form as the city clerk may then require.

F. Expiration. A use permit issued pursuant to this section shall expire one (1) year from its date of issuance, but may be renewed upon the filing of the required application to the city clerk. The city clerk may, but is not required, to give prior notice to the applicant of the expiration of the use permit.

G. Revocation. A use permit issued pursuant to this section may be revoked or suspended by the city council, upon prior notice to the issuee and an opportunity for the issuee to be heard. The hearing shall be in closed session if permitted by law.

H. Fees. The city council may, by resolution, establish fees to be paid by applicants to recover the cost of the processing of applications, renewals, appeals, and other procedures required or authorized by this chapter.

I. Existing cultivation. Medical marijuana cultivation which is already in existence within the city, but would be subject to a permit requirement under this chapter, shall be terminated not less than ninety (90) days after the effective date of this chapter.

18.60.140 Inspections. A Permit under this chapter shall not issue unless at least one (1) occupant of the property where the cultivation is to take place executes and delivers to the city, in a form acceptable to the city clerk, written irrevocable permission for law enforcement or other officials of the city to enter, inspect, and photograph the premises at reasonable times and intervals without the necessity of prior notice or probable cause to inspect the cultivation for compliance with this chapter and any other applicable code provisions and state laws. The permittee shall cooperate with the official in arranging for allowing the inspection. The said written permission shall remain in effect for 180 days following the expiration or revocation of the permit and shall be binding upon any persons who occupy the property during its effective period.

18.60.150 Violations; Penalties: Injunction. A. Criminal prosecution. Any person who violates any provision of this chapter shall, in the discretion of the city attorney, be guilty of either an infraction or a misdemeanor, and upon conviction shall be punished in the manner then specified by this code or state law. Alternatively, an administrative citation may be issued, as provided in this code.

B. Injunction. In addition to criminal penalties, the city may seek a court order to enjoin any activity prohibited by this chapter, or to require the performance of any activity mandated hereby.

C. Nuisance. A violation of this chapter is declared to be a public nuisance.”

Section 2. The city attorney is hereby authorized to prepare a summary of the ordinance as required by Government Code Section 36933.

Section 3. The city clerk is hereby authorized to publish the summary and post certified copies of the full text of the proposed and then adopted ordinances as required by Government Code Section 36933.

Section 4. This ordinance shall take effect and be in force thirty (30) days after its passage.

Section 5. This ordinance shall be published in the Weed Press, a newspaper of general circulation in the City of Weed, within fifteen (15) days after its passage.

I HEREBY CERTIFY that the foregoing ordinance was introduced for first reading at a regular meeting of the City Council of the City of Weed held on the 12th day of February, 2015, and thereafter adopted at a regular meeting of the said City Council held on the 12th day of March, 2015, by the following vote, to wit:

- AYES: Council Members Green, Greene, Hall, Palfini, and Sutton.
- NOES: None
- ABSENT: None

Bob Hall, Mayor

Attest:

Deborah Salvestrin, City Clerk

Approved as to form:

Robert Winston, City Attorney