

**POLICY
REPORT**



SAFEGUARDING OUR COMMUNITIES

Municipal Regulation of Medical Marijuana Cultivation

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SAFEGUARDING OUR COMMUNITIES: Best Practices in Municipal Regulation of Medical Cannabis Cultivation

Introduction

A. MEDICAL CANNABIS CULTIVATION IN CALIFORNIA: BACKGROUND

1. PROPOSITION 215

With the passage of Proposition 215, “The Compassionate Use Act of 1996,” California voters initiated a bold experiment – establishing a framework for allowing medical patients to obtain cannabis for medicinal purposes. The first such law of its kind in the United States, 22 states and the District of Columbia have followed California’s lead and permit access to medical cannabis without fear of state prosecution.¹ This wave of state laws is a direct challenge to the legal authority of the federal government – under federal law, cannabis is treated as a controlled, illegal substance with no recognized medical exceptions.

The state laws vary in terms of the conditions under which medical cannabis is allowed and the structures for obtaining and cultivating it. Until October 2015, California had only minimal restrictions on cultivation. Medical cannabis patients (who must possess a “recommendation or approval” from a doctor) could cultivate up to six mature and 12 immature cannabis plants at any one time and were permitted to delegate their cultivation allowance to a caregiver.² A caregiver could grow cannabis for multiple patients and, under state law, could “bundle” the patients’ cultivation allowance.³ Once harvested, the cannabis crop had to be used either by the patient or transferred to a cooperative or collective for use by their members, all of whom are required to be patients. The collectives/cooperatives were required to operate without realizing any profits (although not required to incorporate as nonprofit organizations).⁴ The state had no additional statutory requirements affecting medical cannabis cultivation; instead, the state delegated to local governments the primary responsibility for regulating cultivation.

2. THE 2015 STATE LEGISLATION

Legislation that took effect October 5, 2015, established a new state regulatory framework for medical cannabis cultivation that is now being implemented by the relevant state agencies.⁵ (Full implementation is anticipated by January 1, 2018.) Cultivators will no longer be restricted to caregivers or patients, may be for-profit entities, will operate within a commercial market and will be required to obtain a state license.⁶ They will be required to operate within a tiered structure that includes manufacturers, distributors, testers, transporters and retail dispensaries, and will be required to establish systems for tracking all of their products, testing them to ensure that minimum state standards are met, and adhering to water conservation and pesticide use requirements.⁷

State cultivator licenses will be divided into four basic types: (1) specialty (5,000 square feet or less total canopy size on one premise or parcel or up



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to 50 mature plants on noncontiguous plots); (2) small (5,001 – 10,000 square feet); (3) medium (10,001 square feet to one acre for outdoor; 10,001 – 22,000 for indoor); and (4) nurseries (no limits on square footage). Each of the first three categories is further subdivided into outdoor, indoor, and mixed-light, for a total of ten license types. Small cultivators, manufacturers, and a Type 10A dispensaries (permitting up to three retail stores) are permitted to engage in at least two of the three tiers.⁶ A Type 10A dispensary licensee can hold both a manufacturer's and cultivator's license if the total canopy size of all its cultivation does not exceed four acres.⁶

B. WHY REGULATE MEDICAL CANNABIS CULTIVATION AT THE LOCAL LEVEL?

It has now been nearly two decades since California has permitted medical cannabis cultivation without threat of state prosecution. Some anecdotal reports and research suggest that cannabis may have the potential for relieving pain, controlling nausea, stimulating appetite and reducing anxiety, findings that are subject to debate and ongoing research.⁸ Nevertheless, medical cannabis cultivation has led to numerous problems, including:

1. The supply of medical cannabis outstrips the demand from patients, resulting in unknown amounts of cannabis becoming available outside the medical cannabis structure. Of particular concern is the increased access to cannabis among young people and risks associated with driving under the influence (DUI).^{8,9}
2. The illegal diversion of medical cannabis into the black market has resulted in a profitable, illegal business. Law enforcement officials report that violence and disturbances of the peace are common.¹⁰
3. Cannabis cultivation can result in serious harm to the environment, including diversion of scarce water resources, use of toxic chemicals that pollute both the land and waterways, harm to wildlife, and erosion. The purity of the product that reaches patients may be compromised, creating health risks to end users.^{8,11}
4. Medical cannabis cultivation in urban areas has caused numerous problems, including hazardous use of electric power (putting residences and other buildings at fire risk), complaints from neighbors adversely affected by the strong odor of cannabis plants, robberies, and other disturbances of the peace.^{8,9}

Of particular concern is increased access to cannabis among young people.

The new state legislation addresses these problems to some degree, particularly those related to environmental damage and product tracking (to deter diversion into the black market). This fits one of its primary purposes: establishing an orderly commercial medical cannabis structure for a legal industry to operate in. A for-profit cultivation industry is envisioned that will likely become highly profitable and dominated by a relatively small number of for-profit commercial companies.¹² As discussed by Mosher (2015), lessons from alcohol policy suggest that this development will likely have a negative impact on community health and safety.¹² Medical cannabis lobbyists have already gained substantial influence in the state capitol and are important economic stakeholders in many parts of the state.¹³ Their influence on state legislation will likely increase many fold, making efforts at the state level to protect public health that threaten profitability more difficult to enact and enforce.

Fortunately, the state legislation has delegated substantial authority to regulate the medical cannabis market, including cultivation, to local jurisdictions. Local governments are permitted to ban commercial cultivation altogether or enact stricter controls on the industry's structure and operations than those required by the state.¹⁴

Exercising this authority is particularly important in light of the state law's lack of attention to many public health and safety issues. Numerous California cities and counties have already enacted local ordinances to ban medical cannabis cultivation and distribution. Other local jurisdiction have developed

Local governments are permitted to enact stricter controls.

regulatory strategies that permit cultivation while seeking to minimize problems and meeting the needs of medical cannabis patients.

This report has drawn from these local efforts, offering a comprehensive set of best practices for regulating medical cannabis cultivation should a California city or county wish to allow cultivation within its boundaries. **It does not take a position on whether it should be banned or regulated, a decision that must be made in light of the particular circumstances of the jurisdiction involved. Rather, it is intended as a resource, designed to provide a foundation for addressing marijuana cultivation if the regulatory option is being considered or implemented.**

C. THE LEGAL STRUCTURE FOR MUNICIPAL REGULATION OF MEDICAL CANNABIS IN CALIFORNIA

1. THE IMPACT OF FEDERAL LAW

Municipal regulation of medical cannabis has been among the most complex legal issues facing public health and public safety professionals. As noted above, cannabis is a controlled substance under federal law with no recognized medical uses. Cultivation, distribution and use are all federal crimes subject to potentially severe penalties. Federal agencies have been explicit that state medical cannabis laws have no impact on their authority to enforce federal law. In fact, the federal Drug Enforcement Agency has in the past engaged in numerous enforcement activities against the medical cannabis industry in California since the passage for Proposition 215. However, the federal government has tacitly acknowledged that it will not allocate the resources that would be necessary to shut down California's medical cannabis infrastructure. (As discussed below, this acknowledgement was made more explicit in Colorado and Washington, after these two states passed state-level voter initiatives legalizing the non-medical use of cannabis.)

Proposition 215 and its implementing statutes and regulations do not directly challenge federal authority. Rather, it provides that the state will not prosecute medical cannabis patients or caregivers that adhere to the state's medical cannabis provisions. The California courts have held that this approach is not preempted by federal law because it simply removes the threat of state prosecution, without actually legalizing medical cannabis (which would be preempted because it conflicts with federal law).³ The new state legislation, which creates a commercial structure of cannabis cultivation, is implemented with the same legal structure.

Local governments have in the past run afoul of federal agencies despite the state's efforts to avoid conflict with federal law. For example, at least two cities have, in the past, considered encouraging medical cannabis cultivation to increase local revenues only to be warned by federal law enforcement officials that such actions could lead to criminal prosecution.¹⁵

Many local governments have responded to this confusing and complex legal landscape by largely ignoring their legal authority to regulate medical cannabis cultivation. Local enforcement of the federal prohibition is difficult since the federal government has limited capacity to prosecute offenders and, as discussed above, state law, until recently, has placed few restrictions on cultivation. The result for many communities has been increasing medical cannabis cultivation with little or no oversight, leading to the problems noted above. Recent developments associated with state initiatives legalizing non-medical cannabis cultivation and use, discussed below, appear to largely remove the threat of intervention by federal authorities so long as adequate controls on the industry are implemented and enforced.

2. THE IMPACT OF STATE LEGALIZATION EXPERIMENTS

Alaska, Colorado, Oregon, and Washington have passed voter initiatives to legalize non-medical cannabis cultivation, sale and use.¹⁶ On their face, the initiatives appear to conflict with federal law and might be held to be invalid if challenged by the federal government. Such a challenge, however, has not occurred.

Instead, the U.S. Department of Justice issued a memorandum following the enactment of the Colorado and Washington initiatives stating that it would use its prosecutorial discretion and not prosecute those involved in the cannabis trade in these two states so long as the state deploys and executes a robust regulatory structure. To avoid federal prosecutorial action, the regulations must ensure that at least the following conditions are met regarding the protection of public health and safety:

- Prevent the distribution of cannabis to minors;
- Prevent revenue from the sale of cannabis from going to criminal enterprises, gangs, and cartels;
- Prevent the diversion of cannabis from states where it is legal under state law in some form to other states;
- Prevent state-authorized cannabis activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activities;
- Prevent violence and the use of firearms in the cultivation and distribution of cannabis;
- Prevent drugged driving and the exacerbation of other adverse public health consequences associated with cannabis use;
- Prevent the growing of cannabis on public lands and the attendant public safety and environmental dangers posed by cannabis production on public lands; and
- Prevent cannabis possession or use on federal property.¹⁷

The memorandum is explicit that the federal government maintains its authority to enforce federal laws prohibiting cannabis cultivation and use without regard to state laws.

In response, the four states have developed or are developing comprehensive regulatory structures that include both license fees and taxes. The fact that the Department of Justice memorandum did not object to the states gaining revenue from the cannabis trade suggests that California municipalities can address the public health and safety problems associated with medical cannabis cultivation, including imposition of revenue-generating fees and taxes, to help offset the cost of regulation and enforcement.

Establishing a local structure for regulating medical cannabis cultivation can serve an additional purpose: building a foundation for regulating non-medical cannabis cultivation should California follow the lead of Alaska, Colorado, Oregon and Washington and enact a cannabis legalization voter initiative in the future. One recent poll found that a majority of Californians would support such an initiative, which is likely to be on the ballot in the statewide November 2016 elections.¹⁸

A local structure can build a regulatory foundation should California enact legalization in the future.

D. CONDITIONAL USE PERMITS: THE FOUNDATION FOR LOCAL REGULATION OF MEDICAL CANNABIS CULTIVATION

Conditional Use Permits (CUPs) are a basic tool for regulating land uses at the local level, and all California cities and counties have established an infrastructure for issuing permits, monitoring compliance, and enforcing the requirements. They are a flexible regulatory tool that can be adapted to the specific needs associated with a given land use. Typically, the jurisdiction has a standardized application process and procedures for considering an application. These may include a public hearing before the planning commission and/or the city council or board of supervisors. The hearing provides the applicant, public officials, neighbors, and other interested parties the opportunity to present evidence regarding whether the application should be granted and, if so, with what conditions. The CUP ordinance provides basic guidelines for making these determinations and can include mandatory or discretionary rules and conditions. Permit fees may also be

required to defray costs associated with issuing the CUP and monitoring and enforcing the requirements. Public nuisance abatement ordinances work hand in hand with CUPs to control problematic activities on properties within the local jurisdiction's boundaries. The best practices proposed below use the CUP process and public nuisance abatement requirements as the foundation for regulating medical cannabis cultivation.¹⁹

E. HIGHLIGHTS OF THE MODEL MEDICAL CANNABIS CULTIVATION ORDINANCE

- Designed to operate within the structure and requirements of the new state medical cannabis legislation.
- Provides an extensive list of findings, purposes, and definitions that establish the rationale for the ordinance. These can be augmented and tailored with provisions specific to the local jurisdiction adopting an ordinance.
- Explicitly states that medical cannabis cultivation is illegal under federal law and constitutes a public nuisance, while granting immunity to local prosecution if the provisions of the ordinance are adhered to. The provisions are designed to minimize the likelihood that the ordinance is found by any court to be preempted by or in conflict with state or federal law.
- Exempts cultivation by a patient or his/her caregiver for personal use from the permitting requirements.
- Establishes annual permit fee schedule.
- Provides that all funds collected from the fees shall be used exclusively for administration, inspections, and enforcement of the ordinance.
- Requires medical cannabis growers to apply for and obtain a Conditional Use Permit and/or a local license, establishing guidelines for the application and review process. The provisions include opportunity for public input.
- Establishes limits on the amount of medical cannabis that may be grown at a given location and places restrictions on permissible cultivation locations. The restrictions are designed to enhance public health and safety, protect the environment, and minimize risks of public nuisance activities.
- Establishes limitations on both indoor and outdoor cultivation, with public health and safety requirements for the maintenance of buildings, fencing, and security.
- Prohibits cultivation near sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries.
- Requires those growing medical cannabis for commercial purposes to maintain records regarding cultivation and distribution activities that must be made available on demand to inspectors and enforcement officers.
- Incorporates state requirements regarding the tracking of products (to deter a black market) and environmental protection and requires that organic farming methods be used.

Personal use cultivation by a patient/caregiver is exempt from permitting requirements.

Prohibits cultivation near sensitive land uses, including parks and schools

Model Medical Marijuana Cultivation Ordinance

I. Findings

- (a) California Government Code, Section 65850 (c) (4) provides the authority for (City/County) to regulate, by ordinance, the intensity of land use.
- (b) California Business & Profession Code, Section 19316 provides the authority for (City/County) to establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity.
- (c) The State of California approved Proposition 215 “The Compassionate Use Act of 1996” (Health and Safety Code Section 11362.5), which has as its primary purposes to ensure that: (1) “[S]eriously ill Californians have the right to obtain and use cannabis for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which cannabis provides relief”; and (2) patients and their primary caregivers who obtain and use cannabis for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
- (d) The State of California also enacted SB 420 in 2004 (Health and Safety Code Section 11362.7 et seq.) to clarify the scope of the Compassionate Use Act to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420 and Proposition 215.
- (e) The State of California enacted AB 243, AB 266, and SB 643 in 2015 establishing a framework for regulating medical cannabis.
- (f) Under the Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., the use, possession and cultivation of medical cannabis are unlawful and subject to federal prosecution without regard to a claimed medical need.
- (g) Cannabis plants, as they begin to flower and for a period of two months or more during the growing season (August through October for outdoor cultivation), produce an extremely strong odor that is detectable far beyond property boundaries and that can adversely impact the peace and enjoyment of nearby properties.
- (h) The (City/County) has received numerous complaints of odor related to the growing of medical cannabis.
- (i) Cultivation of cannabis has negative environmental effects. Cultivation sites can adversely affect wildlife, vegetation, water, soil, and other natural resources through the use of chemicals, fertilizers, terracing, and poaching and can have other negative environmental impacts include but not limited to: alteration of watersheds; diversion of natural water courses; elimination of native vegetation; wildfire hazards; poaching of wildlife; and disposal of garbage, non-biodegradable materials, and human waste.
- (j) Law enforcement officials report that violence and public nuisance activities are commonly associated with the cultivation and possession of large quantities of cannabis.
- (k) The strong smell of cannabis may alert persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery in the nearby communities.
- (l) The potential adverse secondary effects of allowing the cultivation of medical cannabis presents a clear and present danger to the immediate preservation of the public peace, health, and safety in (City/County) [because currently the (City/County) has no rules or regulations governing the cultivation of medical cannabis].

- (m) The cultivation of cannabis within a residence may involve the excessive use of electricity, which may create an unreasonable risk of fire from the electrical grow lighting systems, creating a clear and present danger to the occupants and neighbors. It also has a potential for adversely affecting the structural integrity of the residence.
- (n) Cultivation of any amount of cannabis within 1,000 feet of youth-sensitive locations, including schools, parks, child care facilities, and libraries, puts juveniles at heightened risk for health and safety problems, including non-medical consumption and exposure to and potential involvement in theft, violence and other criminal activities. Therefore, cultivation of any amount of cannabis in such locations or premises is especially hazardous to public safety and welfare and to the protection of the children and the person(s) cultivating the cannabis plants.
- (o) The cultivation or other concentration of cannabis in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- (p) This chapter is in compliance with the California Health & Safety Code Section 11362.5, and does not interfere with a patient's right to medical cannabis provided by Proposition 215 and its implementing state statutes.
- (q) This chapter does not infringe on a medical cannabis patients right under Proposition 215 and the California Supreme Court's decision in *People v. Kelly* to possess and cultivate the amount of cannabis required to meet the patient's medical need. The purpose of the chapter's land use restrictions is to both protect community health and safety and ensure adequate availability of cultivation locations to meet the patients' needs.
- (r) The United States Department of Justice issued a Memorandum entitled "Guidance for Cannabis Enforcement" on August 29, 2013. The memorandum established eight guidelines for states regarding the federal priorities in determining whether federal enforcement should commence against those engaged in specific activities related to cannabis cultivation and distribution. This ordinance places the highest priority on meeting these guidelines, particularly those related to public safety and health, restrictions on availability to minors, and prevention of illegal trafficking and profiteering.
- (s) Nothing in this ordinance shall be construed to allow the use of cannabis for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal under State law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the [local District Attorney], the Attorney General of State of California, or the United States of America for non-medical use of cannabis.

II. Purpose and Intent

It is the purpose and intent of this ordinance to:

- (a) Assist law enforcement agencies in performing their duties effectively and in accordance with California law.
- (b) Acknowledge that the cultivation of medical cannabis is illegal under federal law while granting limited immunity from local prosecution to those medical cannabis cultivation activities that do not violate the restrictions and limitations set forth in this ordinance.
- (c) Ensure that cannabis grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.
- (d) Implement state law by providing an equitable approach for regulating the cultivation of medical

cannabis in a manner that is consistent with state law and balances the needs of medical patients and their caregivers with the health, safety, morals and general welfare of the residents and businesses within the (City/County).

- (e) Require that medical cannabis be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by cannabis plants from impacting adjacent properties, and to ensure that cannabis grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.
- (f) In accordance with Health & Safety § 11362.777(c)(4), reserve local authority to regulate or prohibit the cultivation of cannabis, and to license cannabis cultivation applicants.

COMMENT

The findings and purposes provide guidance to courts interpreting legislative intent and publicly explain the goals and objectives of a local legislative body in enacting the ordinance. They are particularly important in this instance because of the complex legal landscape of local regulation of medical cannabis cultivation, as discussed in the introduction. Jurisdictions should consider adding findings and purposes that address the specific circumstances in the jurisdiction that have prompted local action.

III. Definitions

- (a) Definitions found in California Business and Professions Code Section 19300.5 shall apply in this Chapter unless specifically modified in this Chapter.
- (b) “Detached fully enclosed structure” means a building completely detached from a residence that complies with the California Building Code, as adopted in the (City/County), 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 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 inch (3/8”) or thicker plywood or the equivalent. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
- (c) “Legal parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2, commencing with Section 66410, of Title 7 of the Government Code).
- (d) “Outdoor” means any location within [jurisdiction] that is not within a fully enclosed and secure structure.
- (e) “Premises” means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single “premises” for purposes of this chapter.
- (f) “Primary caregiver(s)” are defined in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq., as amended. Further, a “primary caregiver” must comply with the 2008 decision in *People v. Mentch* (45 Cal.4th 274), unless subsequently superseded or overturned, and be able to prove, in addition to other requirements by law, that he or she consistently assumed responsibility

for the housing, health, or safety of that patient independent of any assistance in taking medical cannabis at or before the time he or she assumed responsibility for assisting with medical cannabis.

- (g) “Qualified patient(s)” and “person(s) with an identification card” are defined in strict accordance with California Health and Safety Code Section 11362.7 et seq., as amended.
- (h) “School” means an institution of learning for minors, whether public or private, offering regular course of instruction for children attending kindergarten, elementary school, middle or junior high school or senior high school. A residence that provides home schooling and preschool or daycare centers are not included in this definition.
- (i) “Sensitive land use” means land use associated with youth and family activities, alcohol and other drug treatment, and other sensitive uses including but not limited to parks, schools, child care facilities, preschools, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries.
- (j) “Solid fence” means an eight-foot high structure, constructed with material approved by the Building Official that prevents viewing the contents from one side to the other. For the purposes of this Chapter, “solid fence” does not include tarpaulins, scrap material, bushes or hedgerows.

COMMENT

Section III provides definitions for the other sections of the ordinance, providing more certainty to the application of the ordinance. These should be reviewed after the ordinance has been adapted to local circumstances and revised and added to as necessary to address any potential ambiguities in the ordinance language. Note that the definitions used in the new state legislation are incorporated.

IV. Prohibited Business Activities; Limited Immunity from Local Prosecution

- (a) The cultivation of medical cannabis is illegal under federal law and shall constitute a public nuisance. This prohibition shall include renting, leasing or otherwise permitting the cultivation of medical cannabis at any location.
- (b) Notwithstanding the prohibition stated in subsection (a) of this section, a medical cannabis cultivation activity shall not be subject to prosecution pursuant to the (City/County) code and may assert an affirmative defense that he/she is immune from prosecution pursuant to this subsection if the defendant adheres to the requirements of this Chapter.

COMMENT

As noted in the introduction, this section is designed to minimize the likelihood that the ordinance will be deemed preempted by state law or found invalid under federal law. It provides that all medical cannabis cultivation is prohibited under federal law but that the ordinance provides limited immunity from local prosecution to those that adhere to the ordinance’s provision as well as relevant state provisions.

V. General Provisions

- (a) Medical cannabis cultivators must be qualified under State law.
- (b) Exterior signage related to cannabis cultivation is prohibited at any cultivation location permitted pursuant to this Chapter.
- (c) All electricity associated with the cultivation of cannabis shall be grid connected and compliant with existing electrical code. Use of generators for production of electricity for cannabis production is prohibited.
- (d) All plumbing modifications associated with cannabis cultivation must be approved by the (City/County) Planning Department.

COMMENT

The General Provisions found in Section V apply to all medical cannabis cultivation. They: (1) Require all medical cannabis cultivation comply with relevant state laws and regulations; (2) Prohibit signage related to cannabis cultivation at the cultivation site, to reduce likelihood of intruders and theft; and (3) Ensure proper electricity and water usage, to minimize risk of fire and environmental damage.

VI. Medical Cannabis Cultivation Permit Required

- (a) Except as provided in subsection (n) of this Section, prior to commencing any medical cannabis cultivation, the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where medical cannabis cultivation is proposed to occur must obtain a Medical Cannabis Cultivation Permit [*“Cultivation Permit”*] from the City Council/Board of Supervisors or their designee
- (b) Three types of Cultivation Permits are authorized, as defined in Section VII:
 - 1. Small cultivation permit;
 - 2. Medium cultivation permit;
 - 3. Large cultivation permit.
- (c) The initial application for the permit and subsequent permit extensions shall be reviewed by the Planning Commission and shall include the following information:
 - 1. A notarized signature from the owner of the property consenting to the cultivation of cannabis 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 cannabis will be cultivated;
 - 3. The exterior parcel size or interior square footage under cultivation;
 - 4. The physical site address of where the cannabis will be cultivated;
 - 5. A waste disposal plan that conforms to the requirements of this chapter;

6. If applicable, certification that the cultivation and delivery of medical cannabis will be in strict compliance with this Chapter and California state law
 7. A signed consent form, acceptable to the (City/County), authorizing inspections by the Police Department or other (City/County) staff of the detached, fully enclosed and secure structure or area of the residence used for the cultivation of cannabis upon twenty-four (24) hours' notice;
 8. A certification that the minimum requirements required under this Chapter shall be adhered to.
- (d) Permits may be extended in 2-year increments.
 - (e) An entity or individual may only apply for and obtain a single permit. Individuals are not permitted to hold a financial interest in more than one permit.
 - (f) The (City/County law enforcement agency) shall conduct an initial review of the application and provide a recommendation to the Planning Commission regarding the risk of crime or violence associated with the location and operation of the proposed cultivation permit.
 - (g) The Planning Commission shall conduct a public hearing to review the application. It may, in its discretion, deny any application for a Cultivation Permit, or extension thereof, if the Commission finds that the issuance of such permit, or extension thereof, would be detrimental to the public health, safety, or welfare.
 - (h) The Planning Commission, after investigation and review, shall recommend to the (City Council/ Board of Supervisors) approval or denial of the application or extension. The Planning Commission can recommend additional conditions beyond those required by this chapter to ensure the security and safety and environmental protection of the surrounding neighborhood and (City/County).
 - (i) The (City Council/Board of Supervisors) shall make the final determination whether a permit should be approved or denied. It shall deny any application for a Cultivation Permit, or extension thereof, which does not demonstrate satisfaction of the minimum requirements of this chapter.
 - (j) A Medical Cannabis Cultivation License shall be issued at the same time that a Cultivation Permit is approved and issued.
 - (k) The (City Council/Board of Supervisors) determination is subject to appeal by any aggrieved party pursuant to Chapter ____.
 - (l) In addition to any other penalties and remedies provided by law, including the provisions of this Chapter, the requirements described in this Chapter shall be deemed conditions of permit approval, and failure to comply with any such requirements during the term of the permit shall be grounds for revocation of any permit issued pursuant to this Chapter.
 - (m) The (City/County) reserves the right to require additional security and safety conditions, if necessary, upon investigation or receipt of new or revised building plans.
 - (n) Any qualified patient or his/her individual primary caregiver may cultivate up to 50 square feet for the personal use of the qualified patient without obtaining a permit or license as specified in this Section. The exemption is permitted provided that:
 1. The patient and caregiver do not sell, distribute, donate, or provide marijuana to any other person or entity;
 2. The caregiver receives no remuneration for engaging in the cultivation except for compensation provided in full compliance with subdivision (c) of California Health and Safety Code Section 11362.765;
 3. The cultivation adheres to all other requirements of this Chapter.

COMMENT

Section VI establishes a Medical Cannabis Cultivation Permit and the procedures for obtaining it. The permit can be for a small, medium or large cultivation site.

The steps for obtaining a Cultivation Permit include law enforcement investigation, planning commission review, a public hearing, and final determination by the elected body of the jurisdiction. Additional conditions beyond those specified in subsequent sections may be imposed if found to be needed to protect public health and safety. These model provisions can be modified to conform to the jurisdiction's standard procedures for applying for and issuing CUPs.

Subsection (n) recommends an exemption for personal cultivation for the exclusive use of a qualified patient. The exemption allows up to 50 square feet of cultivation. In this case, the cultivator does not need to obtain a permit but must still adhere to other provisions of the ordinance. This subsection is designed to address concerns that individual patients not involved in distribution should be able to have a ready, small supply of medical cannabis without needing to engage in a permit or licensing process. The limited benefits of engaging the permit process in these circumstances is outweighed by the costs to both the cultivator and the local jurisdiction.

The new state legislation permits patients to cultivate up to 100 square feet and caregivers to cultivate up to 500 square feet for no more than five patients. The legislation does not limit local government authority to further regulate or ban such cultivation. A 50 square foot limit is recommended because the amount of cannabis that can be cultivated in 100 square foot will in almost all cases far exceed the medical needs of a single patient.⁷ Consideration can be given to establishing an even lower limit or conforming to the state law exemption.

The model ordinance includes a Medical Cannabis Cultivation license [subsection (g)], which is issued at the same time the permit is issued. In general, CUPs address land use activities and licenses address business activities. While clearly overlapping functions, the two are conceptually distinct. The ordinance imposes all of its requirements and restrictions through the CUP structure, although these could alternatively be imposed through licensing provisions. The CUP process is recommended in most cases because it typically provides a process for community input, at least one public hearing, and a regulatory structure that has experience with the land use issues likely to arise with cannabis cultivation. See the introduction for further discussion. There may be advantages to use licensing provisions, depending on the particular circumstances of the local jurisdiction. If a licensing system is chosen, establishing a process for community input and oversight (elements not always included in a licensing system) is recommended. Having both in the ordinance is important in case the state preempts or otherwise restricts local control over one or the other regulatory options.

VII. Allowable Cultivation

- (a) Small cultivation permit holders are permitted to cultivate up to 100 square feet of medical cannabis [500 square feet].
- (b) Medium cultivation permit holders are permitted to cultivate up to 250 square feet of medical cannabis [500-1,000 square feet].
- (c) Large cultivation permit holders are permitted to cultivate up to 500 square feet of medical cannabis [1,000 – 2,000 square feet].

- (d) Individual patients and their caregivers are permitted to cultivate up to 50 square feet of medical cannabis pursuant to Section VI (n).
- (e) Cultivation site sizes shall be measured from the outermost part of cannabis plants within the site.

COMMENT

The ordinance places strict limits on the size of cultivation sites. Two sets of size limits are provided. The 100/250/500 square foot limits are designed for jurisdictions that do not currently have a legal cultivation industry and may wish to take an initial step toward legalization. Limiting the size of the cultivation sites is advisable to promote compliance and enforcement and to initiate and test the application and monitoring procedures. The 500/1,000/2,000 square foot limits (found in brackets) are designed for jurisdictions with an existing, mature legal cultivation industry.

The limits on cannabis cultivation on particular parcels serve at least four important functions: (1) Reduces risk of environmental damage; (2) Reduces risk of theft and violence by making the crop less valuable and easier to secure and monitor; (3) Reduces likelihood of neighborhood disruption and public nuisance activities; and (4) Reduces likelihood that there will be consolidation of the industry into a small number of large entities. As discussed in the introduction, such consolidation creates risks for public health and safety.

Note that these proposed limitations on cultivation size are substantially smaller than permitted under state law. The new state legislation provides for multiple license types that can be as large as one acre for outdoors and 22,000 square feet for indoor, with no limitations for the size of nurseries. It also allows an individual or entity to hold multiple licenses. The model ordinance, by contrast, imposes strict space limitations that apply to all cultivation sites regardless of the state license that is obtained and prohibits individuals and entities from holding more than one permit. As noted above, authorizing large cultivation sites, and permitting single entities to operate multiple sites, sets the stage for consolidation of the industry into a small number of large, economically and politically powerful, firms, a result the model ordinance seeks to avoid.

Unlike the state law, the model ordinance does not distinguish between outdoor and indoor cultivation sites for purposes of size limits. Each type of cultivation brings potential benefits and risks. Outdoor operations have relatively low startup costs, have less yield (since only one crop per year is possible), and have less impact on the environment. Some users consider outdoor harvests to be superior quality to indoor harvests. Indoor operations can more easily control odors and provide security. They can produce multiple harvests, have higher startup costs, and use more energy, but organic farming practices are more difficult to implement. They are more appropriate than outdoor cultivation in more populated areas and in industrial zones. Some local jurisdictions (for example, Siskiyou and Shasta Counties) have banned outdoor operations citing in particular the lower risk of crime and violence. Other jurisdictions may wish to consider similar bans; the model ordinance does not take a position on this possibility.

The model ordinance measures cultivation site size from the outside edge of the marijuana plants. Some ordinances are based on canopy sizes, a difficult basis for measurement. Square footage of the area where cultivation is occurring provides a more certain measure for insuring compliance.

VIII. Provisions for Cultivation of Medical Cannabis in Small Cultivation Sites and by Medical Patients and Their Caregivers

- (a) Cannabis cultivation is prohibited in retail and commercial zones.
- (b) A maximum of 50 square feet of cannabis cultivation may be grown indoors on any residential/rural/agricultural parcel pursuant to the exemption provided in Section VI (n) provided that all the distance and structural requirements found in subsections (d)(1), (d)(2), and (e) are adhered except for subsection (e)(2) (pertaining to approved security systems).
- (c) **[Optional]** A maximum of 50 square feet of cannabis cultivation may be grown outdoors on any residential/rural/agricultural parcel pursuant to the exemption provided in Section VI (n) provided that the cultivation meets the distance requirement established in subsection (f)(6) and is fenced as required in subsection (f)(7) and provided that the cultivation site maintains at least a [100] foot setback from the property line.
- (d) Indoor cultivation pursuant to a Cultivation Permit for small cultivation sites may take place in industrial, rural, and agricultural zones.
 - 1. Indoor cannabis cultivation shall be permitted only in a detached, fully enclosed structure.
 - 2. Distance requirements:
 - a. Parcels shall maintain a minimum distance of 100 feet from any other permitted cannabis cultivation sites as measured from the parcel property line to property line.
 - b. Structures used for cultivation shall maintain at least a 100 foot setback from neighboring property lines.
 - c. Structures used for cultivation shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.
- (e) Structure requirements:
 - 1. Grow light shall use bulbs with a maximum of 1,200 watts.
 - 2. A security system approved by the Sheriff and Building Official shall be in place at all times.
 - 3. No person under 18 may have access to the structure.
- (f) **[Optional]** Outdoor cultivation pursuant to a Cultivation Permit for small cultivation sites may take place in residential and rural/agricultural zoned areas under the following conditions:
 - 1. Cannabis shall not be grown outside in parcels less than one (1) acre.
 - 2. 1–5 acres parcels shall maintain a minimum distance of 100 feet from any other permitted cannabis cultivation sites as measured from the parcel property line to property line of the other permitted cannabis cultivation site.
 - 3. 1-5 acre parcels shall require a 100 foot setback from the property line.
 - 4. 5+ acre parcels shall maintain a minimum distance of 200 feet from any other permitted cannabis cultivation sites as measured from the parcel property line to property line.
 - 5. 5+ acre parcels shall require a 200 foot setback from the property line.
 - 6. The parcel shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.

7. Cultivated cannabis must be enclosed by a minimum eight-foot solid fence.
- (g) No on-site consumption, use or smoking of medical cannabis shall occur at commercial cannabis sites. No consumption, use or smoking of cannabis in the parking areas, or in vehicles located at or near or under said facility, or under any circumstances in which the consumption, use, or smoking of cannabis is prohibited by law. No cooking, sale, distribution, preparation, manufacturing or consumption of cannabis-enhanced, edible or drinkable products, including but not limited to cookies, candy, drinks, brownies or baked goods, is allowed.
 - (h) No person under the age of eighteen (18) shall be allowed on cultivation sites unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian.

COMMENT

Section VIII establishes rules for personal cultivation by patients and their caregivers and commercial cultivation on small sites. Cultivation is not permitted in retail and commercial zones. Personal cultivation is permitted indoors in residential, rural, and agricultural zones provided 100 foot property line setbacks are maintained and certain other requirements are met. Indoor commercial cultivation on small sites is not permitted in residential zones and must be located in a fully enclosed structure that is separate from a residence and meet setback and certain building requirements.

The model ordinance provides optional provisions for outdoor commercial cultivation. (See discussion above, Section VI Comment for discussion.) Personal cultivation is allowed in residential/rural/agricultural zones if adequate fencing and setbacks are adhered to. Outdoor commercial cultivation on small sites is permitted outdoors in rural and agricultural (and not residential) zones and must adhere to strict setback requirements, although less strict than those for medium and large cultivation sites (see Section IX).

A 1,000 foot distance requirement from sensitive land use areas is required in all cases. The setback, distance, fencing and building requirements are designed to reduce risks of theft and violence, by making the plants less visible and more secure. The setback requirements for outdoor cultivation also reduce offensive odors affecting adjacent properties. Distance recommendations and parcel size restrictions may need to be adjusted to address specific local conditions.

IX. Provisions for Cultivation of Medical Cannabis in Medium and Large Cultivation Site

- (a) Cannabis cultivation at medium and large cultivation sites is prohibited in retail, commercial, and residential zones.
- (b) Indoor cultivation at medium and large cultivation sites is permitted in industrial zones under the following conditions:
 - 1. Distance requirements:
 - a. Structures used for cultivation shall maintain at least a 100 foot setback from neighboring property lines.

- b. Parcels shall maintain a minimum distance of 500 feet from any other permitted cannabis cultivation sites as measured from the parcel property line to property line.
 - c. Structures used for cultivation shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.
2. Structure requirements:
- a. Cultivation is permitted only in detached, fully enclosed structures.
 - b. Grow light shall use bulbs with a maximum of 1,200 watts.
 - c. A security system approved by the Sheriff and Building Official shall be in place at all times.
 - d. No person under 18 may have access to the structure.
 - e. Medical cannabis cultivation area shall be in compliance with the current adopted edition of the California Business Code Sec. 1203.4 Natural Ventilation or Sec. 402.3 Mechanical Ventilation (or their equivalents).
- (c) Indoor cultivation at medium and large rural/agricultural zones under the following conditions:
1. Distance requirements:
- a. Parcels shall maintain a minimum distance of 250 feet from any other permitted cannabis cultivation sites as measured from the parcel property line to property line.
 - b. Structures used for cultivation shall maintain at least a 200 foot setback from neighboring property lines.
 - c. Structures used for cultivation shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.
2. Structure requirements:
- a. Cultivation is permitted only in detached, fully enclosed structures.
 - b. Grow light shall use bulbs with a maximum of 1,200 watts.
 - c. A security system approved by the Sheriff and Building Official shall be in place at all times.
 - d. No person under 18 may have access to the structure.
 - e. Medical cannabis cultivation area shall be in compliance with the current adopted edition of the California Business Code Sec. 1203.4 Natural Ventilation or Sec. 402.3 Mechanical Ventilation (or their equivalents).
- (d) **[Optional]** Outdoor cultivation at medium and large cultivation sites may take place in rural/agricultural zoned areas under the following conditions:
- 1. Cannabis shall not be grown outside in parcels less than one (1) acre.
 - 2. 1–5 acres parcels shall maintain a minimum distance of 250 feet from any other permitted cannabis cultivation sites as measured from the parcel property line to property line of the other permitted cannabis cultivation site.
 - 3. 1–5 acre parcels shall require a 150 foot setback from the property line.
 - 4. 5+ acre parcels shall maintain a minimum distance of 250 feet from any other permitted cannabis cultivation sites as measured from the parcel property line to property line.

5. 5+ acre parcels shall require a 500 foot setback from the property line.
6. The parcel shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.
7. Cultivated cannabis must be enclosed by a minimum 8 foot solid fence.

COMMENT

Section XI addresses commercial cultivation on medium and large sites and establishes rules that are distinct and generally stricter than those applicable to personal use cultivation and cultivation on small sites. The model ordinance recommends that medium and large sites be allowed in industrial and rural/agricultural zones and not in residential zones.

Distance requirements for both indoor and outdoor cultivation for distribution are generally stricter than the requirements applied to cultivation for personal use. Distance requirements are general recommendations and may need to be adjusted to meet specific local conditions. Structure requirements for indoor cultivation are the same for both cultivation for distribution and cultivation for personal use. Outdoor cultivation provisions are optional; see discussion Section IX Comment.

X. Medical Cannabis Cultivation Permit Fees

- (a) An annual Cultivation Permit fees to be paid by permit holders are as follows:
 1. Small cultivation sites: [[\$250-\$500, or as determined by local jurisdiction];
 2. Medium cultivation sites:[\$500-\$1,000, or as determined by local jurisdiction];
 3. Large cultivation sites: [\$750-\$1,500 or as determined by local jurisdiction].
- (b) Revenues from the fees shall be maintained in a separate account and shall be used exclusively for the following:
 1. Costs associated with the administration of this chapter;
 2. Regular inspections of permitted uses; and
 3. Enforcement of chapter provisions.
- (c) The permit granted under the provisions of this ordinance is not transferable and is in addition to the license requirements in Section XI.
- (d) Permit holders shall annually certify the square footage of its anticipated cultivation site. Any change in the size of the cultivation site shall be reported to _____ within one week of the time the cultivator becomes aware of the change.

COMMENT

Section X establishes Cultivation Permit fees. A suggested range is provided for each type of cultivation site, with higher fees suggested for larger sites. The increased fees for larger sites are not strictly proportional because the administration, inspection and enforcement costs are likely to be based in part on the existence of the cultivation site regardless of size.

The permit fees are in addition to the license fees found in Section XI. The combined permit and license fees should cover (but not exceed) the costs identified in subsection (b), for administration, inspections, and enforcement. The amount of these costs will vary by the particular circumstances found in each local jurisdiction. Caveats are therefore provided that the suggested fees should be used only as a guide. They will need to be adjusted based on a calculation of the anticipated costs and may need to be adjusted on an annual basis.

Careful consideration should be given to the resources needed to ensure conformance to the ordinance requirements as well as eradicating unpermitted and illegal cultivation sites. Having sufficient revenue to cover the cost of a dedicated law enforcement officer is highly recommended. The section requires that all funds be used for these purposes. Fees should not be diverted to the jurisdiction's general fund, which may be illegal pursuant to Proposition 26.

XI. Medical Cannabis Cultivation for Distribution License Fees

- (a) Cultivation Permit holders must also apply for and obtain a Cultivation License.
- (b) An annual Cultivation License fee to be paid by license holders are as follows:
 - 1. Small cultivation sites: [\$1,000-\$1,500 or as determined by local jurisdiction];
 - 2. Medium cultivation sites: [\$1,500-\$2,000 or as determined by local jurisdiction];
 - 3. Large cultivation sites: [\$2,000-\$3,000 or as determined by local jurisdiction].
- (c) Revenues from the fees shall be maintained in a separate account and shall be used for the following:
 - 1. Costs associated with the administration of this chapter;
 - 2. Regular inspections of permitted uses; and
 - 3. Enforcement of chapter provisions.
- (d) The license granted under the provisions of this ordinance is not transferable and is in addition to the permit requirements in Article VII.
- (e) License holders shall annually certify the square footage of its anticipated cultivation site. Any change in the size of the cultivation site shall be reported to _____ within one week of the time the cultivator becomes aware of the change.

COMMENT

The model ordinance includes both permit and license fees. If the requirement for a license is omitted from Section VI, then this section should also be omitted. See discussion in comment to Section VI. Suggested license fee amounts are provided, which need to be adjusted based on the revenues generated by the permit fees and on the calculation of costs that will vary by local jurisdiction. See comment to Section XI for further discussion.

XII. Public Nuisance Declared

- (a) A Public Nuisance shall be declared if any of the following exist:
1. Violation(s) of any portion of this ordinance.
 2. Causing any adverse effects on health, safety or general welfare of persons at the cultivation site or at nearby locations by the creation of heat, glare, noxious gasses, odor, smoke, traffic or vibration or by use or storage of hazardous materials, products or wastes.
 3. Any other impacts on surrounding parcels which are disruptive of normal activity.
 4. Excessive noise disturbing to people on nearby property or areas open to public.
 5. Repeated responses (more than 2x/year) to the parcel from law enforcement, code enforcement officer or fire department official.

COMMENT

This public nuisance section is designed to facilitate enforcement of the ordinance provisions through the local jurisdiction's procedures for abating public nuisances generally. Note that this provision augments the routine review of a permittee's cultivation activities that occurs every two years, the permit's renewal period. Less serious problems can be addressed and abated through the renewal process. Using the public nuisance abatement process can therefore be reserved for more serious problems, where the two-year time frame is not sufficiently timely.

XIII. Product Purity, Environmental Protection, Product Tracking, Product Testing, Labelling, Disposal of Cannabis Related Substances

- (a) All cultivated cannabis shall be organically grown in accordance with California certified organic farmers certification standards.
- (b) All cultivated cannabis shall meet or exceed all state and local standards related to environmental protection, protection of waterways, purity, potency regulation, establishment of unique identifiers for tracking purposes, and labelling.
- (c) All excess cultivated cannabis not provided to a delivery licensee must be disposed of in accordance with the applicable state and local statutes and regulations.
1. Cannabis solid and liquid waste must be stored, secured, managed and disposed of in accordance with the applicable state and local statutes and regulations.
 2. Cannabis plant matter waste must be rendered unusable prior to leaving a permittee's premises. Allowable methods are by grinding and incorporating the cannabis waste with non-consumable, recycled solid waste so the resulting mixture is at least fifty percent non cannabis waste.

COMMENT

Product purity is a significant issue in medical cannabis cultivation. Pesticides, herbicides and fungicides are frequent contaminants that can create health hazards for end users and environmental damage at cultivation sites. The model ordinance requires that cultivated cannabis be grown in accordance with California certified organic farmers certification program. This standard is drawn from the City of Santa Cruz ordinance, which establishes an Office of Compassionate Use for distributing medical cannabis to patients within the city and requires the OCU to distribute only organically grown cannabis.

The new state legislation directs the Department of Health to establish purity standards, which are in development, and it is not clear whether the state will require certified organic farming standards. State testing labs are required to determine the chemical profile of all medical cannabis and determine the residual levels of volatile organic compounds. The testing results will provide a basis for a local cultivator and local jurisdiction to determine whether the organic standards have been met.²⁰

The model ordinance relies on the local and state standards regarding product testing, product tracking, potency, labeling, environmental protection, and waste disposal. The state standards are either in place by statute or are being developed through regulation by various state agencies. The ordinance requires appropriate disposal of excess cannabis and cannabis waste to avoid damage the environment, public nuisance conditions, and diversion to illegal markets.

XIV. Enforcement

- (a) A violation of this ordinance is considered to be a public nuisance.
- (b) Whenever the Enforcing Officer determines that a public nuisance as described in this Article exists on any Premises within the (City/County), he or she is authorized to notify the owner(s) and/or occupant(s) of the Premises, through issuance of a “Notice to Abate Unlawful Cannabis Cultivation;”
- (c) Any (City/County) representative including but not limited to law enforcement, code enforcement or health department may inspect cultivation premises at any time during business hours stated on the premise’s use permit.

COMMENT

As discussed above (Commentary to Section VII) adequate monitoring and enforcement of the ordinance provisions are critical to preventing problems associated with medical cannabis cultivation. Permit and license fees provide the funding (see Sections VII and VIII). This section complements Section XII, which also declares any violation of the ordinance to be a public nuisance. It authorizes any appropriate local government representative to inspect cultivation premises during the business hours stated on the premise’s use permit and, where appropriate, to notify the owner or occupying of the cultivation site of public nuisance conditions.

XV. Severability

A judicial determination of the invalidity of any portion of the adoption set forth herein shall not apply to the remaining portion and the remaining portion shall be severed from the said judicially determined invalid portion.

Endnotes

- ¹ National Conference of State Legislatures (2015). *State Medical Marijuana Laws, November 9, 2015*. Available at: <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (accessed December 7, 2015).
- ² California Health and Safety Code § 11362.77. The California Supreme Court struck down these limits to the extent they modify Proposition 215, which allows possession and cultivation of any amount reasonably required for the patient's medical needs. The Court held that a patient could not be prosecuted for exceeding the limits. However, the Court did not invalidate the section. The limits can still be used for other purposes not related to criminal prosecution. See *People v. Kelly*, 47 Cal.4th 1008 (2010). The limits are informally relied on for determining allowable cultivation amounts. See California NORML (2015). *Local Medical Marijuana Cultivation and Possession Guidelines in California*. Available at: <http://www.canorml.org/medical-marijuana/local-growing-limits-in-california> (accessed December 9, 2015).
- ³ California State Department of Justice (2008). *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*. August 2008. Available at: http://www.ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf (accessed December 7, 2015).
- ⁴ Id.
- ⁵ California Legislature AB 243, AB 266, and SB 643. 2015-2016, Reg. Sess. (Cal. 2015). Available at: https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB243
https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB266
https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB643 (accessed on December 15, 2015).
- ⁶ See AB 266, 2015-2016, Reg. Sess., Bus. & Prof. §§ 19300.5(a), 19300.7; AB 243, 2015-2016, Reg. Sess., Bus. & Prof. § 19331 (Cal. 2015).
- ⁷ For a more detailed analysis of the new legislation, including the licensing provisions, see Mosher, J. and Treffers, R. (2015). *Issue Briefing: Medical Marijuana in California – An Analysis of the 2015 Legislation*. Ventura, CA: Ventura County Behavioral Health Department.
- ⁸ Hanstad, R. (2014). *Marijuana in Ventura County: A Gateway for Discussion*. Ventura, CA: Ventura County Behavioral Health Department. Available at: <http://www.venturacountylimits.org/en/resources/article/EC59BB/marijuana-in-ventura-county-a-gateway-for-discussion-copy>.
- ⁹ Coursey, C. (2011). *Marijuana: High Time We Talked About It*. Sonoma County Department of Health, November 2011.
- ¹⁰ CA Police Chiefs Association (2009). *White Paper on Marijuana Dispensaries*. CA Police Chiefs Association's Task Force on Marijuana Dispensaries. Available at: http://www.counties.org/sites/main/files/file-attachments/medi_marijuana_cpca_white_paper.pdf (accessed December 10, 2015).
- ¹¹ Harkinson, J. (2014). The landscape-scarring, energy-sucking, wildlife-killing reality of pot farming. *Mother Jones*. March/April 2014. Available at: <http://www.motherjones.com/environment/2014/03/marijuana-weed-pot-farming-environmental-impacts> (accessed December 10, 2015).
- ¹² Mosher, J. (2015). *Protecting our Youth: Options for Marijuana Regulation in California*. Ventura, CA: Ventura County Behavioral Health Department. November 2015. Available at: <http://www.venturacountylimits.org/en/resources/article/DFFA2C/protecting-our-youth>.
- ¹³ See, e.g., the California Cannabis Industry Association's website, <http://www.cacannabisindustry.org> (accessed December 10, 2015).
- ¹⁴ AB 266, 2015-2016, Reg. Sess., Bus. & Prof. § 19316 (Cal. 2015); AB 243, 2015-2016, Reg. Sess., Health & Safety § 11362.777(c)(1) (Cal. 2015); SB 643, 2015-2016, Reg. Sess., Health & Safety § 11362.777(c)(4) (Cal. 2015).
- ¹⁵ Hecht, P. (2014). Boom and bust in California's medical marijuana industry. *Sacramento Bee*, March 16, 2014. Available at: <http://www.sacbee.com/2014/03/16/6235633/boom-and-bust-in-californias-medical.html> (accessed December 15, 2015).
- ¹⁶ Alaska Ballot Measure 2 (2014); Colorado Amendment 64 (2013); Oregon State Initiative 91 (2014); Washington State Initiative 502 (2013).
- ¹⁷ U.S. Department of Justice, Office of Deputy Attorney General (2013). Memorandum for all United States Attorneys re: Guidance Regarding Marijuana Enforcement, August 29, 2013. Available at: <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (accessed December 10, 2015).
- ¹⁸ Public Policy Institute of California (2015). *Californians' Attitudes Toward Marijuana Legalization*. Available at: http://www.ppic.org/main/publication_show.asp?i=1150 (accessed December 7, 2015).
- ¹⁹ For further discussion, see Mosher, J., Treffers, R. (2014). *Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms from Licensed Alcohol Outlets*. Ventura, CA: Ventura County Behavioral Health Department. Available at: <http://www.venturacountylimits.org/resources/article/CF2D3B/policy-briefing-02-best-practices-in-municipal-regulation-to-reduce-alcoholrelated-harms-from-licensed-alcohol-outlets>.
- ²⁰ S.B. 643, 2015-2016, Reg. Sess., Health & Safety § 11362.777(g) (Cal. 2015).

For further information, go to www.venturacountylimits.org/mj.



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