

MEDICAL MARIJUANA - DRAFT ORDINANCE CONCERNING CULTIVATION AND DISPENSARIES; REQUEST TO SET PUBLIC HEARING

SOURCE: CITY ATTORNEY/COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: At the March 18, 2014, Council Meeting, the Community Development Department and City Attorney provided a report on options for developing Medical Cannabis/Marijuana regulations in the city. At the meeting, the City Council reviewed several potential options, which are summarized:

- 1) Continue with City's current regulations
- 2) Prohibit the cultivation/distribution
- 3) Prohibit cultivation but permit (limited) dispensaries
- 4) Allow indoor cultivation
- 5) Allow indoor cultivation but require an accessory structure
- 6) Allow outdoor cultivation

Per the last direction from the Council, a draft ordinance has been prepared containing a combination of Alternatives 4 through 6, which would allow cultivation Indoor, Indoor within an Accessory Structure, and Outdoor Cultivation, up to a total of 16 plants, with a maximum of four plants within a primary structure.

The key points of the ordinance language are provided below and contain much more detail as they represent staff's understanding of the options discussed by the City Council at the December 17, 2013, Council meeting and further confirmed/clarified at the March 18, 2014, Council meeting. The specific regulations seek to address concerns raised by the Council, community residents, advocates and public safety providers as well as to balance out these interests with the results of recent case law and statutes.

CULTIVATION GENERALLY (This applies to all alternatives)

A qualified patient shall be allowed to cultivate medical cannabis solely for their own personal use. No cooperative or collective cultivation is allowed. Cultivation of medical cannabis for said use shall be in conformance with the following standards:

1. No more than one medical cannabis cultivation area shall be permitted on a legal parcel, regardless of the number of dwelling units on the parcel;
2. Medical cannabis cultivation areas shall be located no closer than 600 feet from one another;

dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes pursuant to the standards contained in Chapter 306 of this Code;

15. Medical cannabis cultivation lighting shall not exceed 1,200 watts;
16. The accessory structure(s) shall at all times meet the requirements of the latest adopted version of the California Building, Fire, Mechanical, Electrical and Plumbing Codes (collectively California Codes);
17. All electrical equipment used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired and permits obtained pursuant to the California Building, Electrical, Mechanical, Plumbing or other state or local laws rules and regulations;
18. Prior to performing any work on electrical wiring/rewiring the applicant shall first obtain a building, mechanical and/or electrical permit from the Building Division;
19. If required by California Building or Fire Code, the wall(s) adjacent to the cultivation area shall be constructed with 5/8-inch Type X moisture-resistant drywall; and
20. Indoor medical cannabis cultivation areas shall be secured by a functioning audible alarm at all times during growing seasons;
21. The growing of medical cannabis outdoors shall comply with the setback requirements for the primary residence on the property subject to the zoning classification of the property;
22. Medical cannabis plants shall be grown in an area enclosed with a solid view obscuring fence, secured with self-closing and locking gates, and the plants shall not exceed a maximum height of five (5) feet for properties with a six (6) foot tall fence. In the alternative, plants may grow to a maximum height of seven (7) feet if the area is fenced and screened to eight (8) feet in compliance with applicable Development Ordinance and California Building Code standards; and
23. Areas for cultivation of medical cannabis shall be secured, locked, and fully enclosed and rendered inaccessible to minors.

PREPARATION (This applies to all alternatives)

A qualified patient shall be allowed to prepare for personal use medical cannabis cultivated on the property or within his or her private residence or accessory structure. Preparation of medical cannabis cultivated at the residence shall be in conformance with the following standards:

1. Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be prepared for use at the residence;
2. The primary use of a dwelling unit shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis preparation shall remain at all times accessory to the residential use of the property;
3. The medical cannabis preparation shall be in compliance with the current adopted edition of the California Codes;
4. The use of gas products (e.g., CO<sub>2</sub>, butane, etc.) for medical cannabis preparation is prohibited;
5. The preparation of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes pursuant to the standards contained in Chapter 306 of this Code; and
6. Cultivation of medical cannabis for personal use shall not displace required off-street parking, or violate any other provisions of the Porterville Municipal Code.
7. Medical cannabis preparation is prohibited as a home occupation.

#### SALE AND DISTRIBUTION PROHIBITED.

1. No sale or distributing of medical cannabis processed for personal use shall be allowed.
2. Individual Distribution Prohibited. Medical cannabis cultivated or processed for personal use as provided for in this chapter shall not be distributed to any person, cooperative or collective, unless as otherwise proscribed by this Article.

#### ENFORCEMENT

Any violation of this chapter is subject to any and all penalties as prescribed in the Porterville Municipal Code, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, nuisance abatement action, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies. This chapter is adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted strictly, enforced with an emphasis on public and community safety, and enforced rigorously in a manner such as to deter further violations.

#### INDOOR CULTIVATION – PRIMARY OR ACCESSORY STRUCTURE

After discussion at the March 18, 2014, Council meeting, a maximum medical cannabis indoor cultivation area size was not specified. If an accessory structure is used, it must be in compliance with all applicable Building Codes. All electrical equipment used in cultivation must be plugged directly into a wall outlet or otherwise hardwired and proper Building/Electrical permits obtained. Lighting for cultivation shall not exceed 1,200 watts. The maximum number of plants allowed indoors shall be limited to four (4) plants. The area must be secured by a functioning audible alarm at all times during growing seasons.

#### OUTDOOR CULTIVATION

As already noted, there shall be no exterior evidence of medical cannabis cultivation from the public right-of-way. Cultivation shall comply with the setback requirements for the primary residence on the property subject to the zoning classification of the property. Medical cannabis plants shall be grown in an area enclosed with a solid view obscuring fence, secured with self-closing and locking gates, and the plants shall not exceed a maximum height of five (5) feet for properties with a six (6) foot tall fence. In the alternative, plants may grow to a maximum height of seven (7) feet if the area is fenced and screened to eight (8) feet in compliance with applicable Development Ordinance and California Building Code standards. The area must be secured by a functioning audible alarm at all times during growing seasons.

#### CULTIVATION PERMIT

Prior to commencing cultivation, the person(s) owning or occupying a legal parcel or premises must obtain a proper permit from the Community Development Department. The applicant would be required to provide consent from the legal owner of the parcel, the names of those legally owning/occupying the premises, the name of the qualified patient or primary caregiver participating in the cultivation, a copy of the current medical recommendation or county-issued card for the patient, the physical site address, and a signed consent form authorizing the City to conduct inspections without notice. The initial permit would be valid for no more than two (2) years and may be extended increments of two (2) years. To the extent permitted by law, medical information submitted would be kept confidential and would only be used for purposes of administering the City's

medical cannabis regulations. The permit application/extension could be denied if based on articulated facts that the issuance would be detrimental to the public health, safety or welfare, and would be denied if the minimum requirements for issuance were not met. Failure to comply with requirements twice within a permitting period constitutes grounds for permit revocation and serves as a basis for denial of any new application or extension. Fees may be established to cover the cost of administering the regulations and application process.

**CONCLUSION:**

The draft ordinance has been developed with significant input from the police department and fire department as they are experiencing the effects of the existing regulations and have identified provisions that would generally mitigate significant challenges they face when responding to calls for service at cultivation sites (residences). Two new members have been seated on the City Council since this item was last discussed; consequently several prior staff reports have been included concerning the ever-changing legal landscape addressing Medical Marijuana and local control/regulation. The Pros and Cons for each of the three primary alternatives, provided at the March 18, 2014, Council meeting, are also attached to this report.

**RECOMMENDATION:** That the City Council review the draft ordinance and provide direction to staff on any additional modifications, and, if appropriate, set a public hearing to consider approval of the ordinance.

**ATTACHMENTS:**

1. Alternatives Pros and Cons
2. Draft Ordinance
3. Prior City Council Meeting Staff Reports

ALTERNATIVES PROS AND CONS

<b>Alt.4: Indoor Cultivation</b>	
<b>Pros</b>	<b>Cons</b>
Not visible from surrounding properties	More susceptible to home invasion robberies. More likely to go for product indoors if that's where growing and processing occurs.
Indoor cultivation reduces outside odors	Advocates believe this does not allow enough production to satisfy need.
Cultivation area could be secured from access by minors.	More likelihood of electrical theft and resulting unsafe conditions due to non-compliance with electrical codes.
Limits the growing area to less square footage than outdoor cultivation due to size of house and need to maintain residency on property.	Higher cost of cultivation may promote energy theft.
<b>Alt 5: Indoor - Accessory Building</b>	
<b>Pros</b>	<b>Cons</b>
Limits visibility from surrounding properties and streets.	More susceptible to robberies entering residential accessory structures.
Reduces outside odors.	Advocates believe this does not allow enough production to satisfy need.
Locating cultivation area in detached accessory building limits risk of home invasion robberies.	Extends risk of illegal and unsafe access to electrical service.
Limits risk of a fire damaging sleeping quarters and catching residents off guard.	
Limits square footage which reduces odors and treatment of larger quantities associated with unrestricted outdoor cultivation.	
Provides more growth area than Alternative 1 by placing in detached accessory structure.	
A property constructed structure would reduce reliance on electricity as in Alt. 1	

<b>Alt. 6: Outdoor Cultivation</b>	
<b>Pros</b>	<b>Cons</b>
Allows patients to grow more as advocates say plants grown outdoors produce more product.	Increased visibility leads to more potential for theft and access by juveniles. Neighborhood concerns with regard to smell increased presence of criminals.
Reduces likelihood for illegal and unsafe access to electrical service.	Reduced area will likely not satisfy advocates.
Lower cultivation cost to patients.	

Note: The fact that most of the regulatory provisions apply across the board to all three alternatives balances out some of the pros and cons. I think the biggest issues relate to safety of fire personnel for indoor grows and law enforcement and the public on outdoor grows.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
AMENDING ARTICLE I, SECTION 15-5.1 OF THE PORTERVILLE MUNICIPAL  
CODE, CONCERNING REFUSAL TO ISSUE LICENSES, REPEALING ARTICLE VII,  
SECTIONS 15-85 THROUGH 15-105, OF CHAPTER 15, AND ADDING SECTION  
301.23 OF THE PORTERVILLE MUNICIPAL CODE, CONCERNING MEDICAL  
MARIJUANA CULTIVATION**

WHEREAS, in November 2007, and in response to the implementation by the State of the Compassionate Use Act of 1996, the Medical Marijuana Program Act (2003) and subsequent case law, the City Council of the City of Porterville adopted Ordinance No. 1734, which amended the City's regulations concerning medical marijuana dispensaries, prohibiting the issuance of business licenses for the purpose of operating medical marijuana dispensaries, but allowing for their regulation in the event federal law changed; and

WHEREAS, the City Council of the City of Porterville, based on recent and ongoing problems related to the local cultivation of medical cannabis, hereby finds that the cultivation, preparation and distribution of medical cannabis in the city has caused and is causing ongoing impacts to the community. *These impacts are intensified by the activities of those who are abusing the current State statutory provisions for the cultivation, processing and distribution of cannabis for nonmedical, improper and illegal purposes.* These impacts include increased crime related to outdoor cultivation occurring on residential lots, damage to buildings containing indoor grows, increases in home invasion robberies and related crimes, and increases in response costs, including code enforcement, building, land use, fire, and police staff time and expenses; and

WHEREAS, the City finds that it is in the best interest of the community to regulate the use of land within the city limits for the purposes of collectively cultivating, preparing, or dispensing medical cannabis, and to continue to deny business licenses to applicants desiring to open a medical marijuana dispensary within city limits; and

WHEREAS, legislation and case law confirms that the City has the power to regulate individual cultivation and restrict and even prohibit dispensing of medical cannabis, as well as *regulate* the collective cultivation and preparation of medical cannabis.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES HEREBY ORDAIN as follows:

SECTION 1. The Porterville Municipal Code, Chapter 15, Article I, Section 15-5.1 is hereby amended as follows:

15-5.1: REFUSAL TO ISSUE LICENSE

- A. Nothing in this Section shall be deemed to prevent the City Council from refusing to grant to any person a license to carry on and conduct any business in the city, when it shall appear to



the City Council that such business is, or is reasonably certain to be, carried on in such manner as to be unlawful, immoral or a menace to the health, safety, peace or general welfare of the people of the city, or that the applicant is not a fit or proper person to carry on such business, or of such character and reputation as to render it reasonably certain that such business will be carried on by the applicant in an illegal or immoral manner, or in such manner as to constitute a menace to the health, safety, morals, peace or general welfare of the people of the city, or that the applicant has theretofore been convicted of any crime in connection with, or while engaged in the operation of a similar business in the city, or has been convicted of any crime affecting the moral character of such applicant.

- B. The City Council shall refuse to issue a business license to any applicant where it is apparent that the issuance of such license would allow for the practice, operation or carrying out of any activity that conflicts with any local, state or federal law.

SECTION 2. Chapter 15, Article VII, Sections 15-85 through 15-105, is hereby repealed.

SECTION 3. Series 300 : Additional Use and Development Regulations

301 Standards for Specific Uses and Activities

301.01 Accessory Uses and Structures

301.02 Alcoholic Beverage Sales

301.03 Animal Keeping

301.04 Automobile Vehicle Service and Repair, Major and Minor

301.05 Auto Service Stations and Car Washing

301.06 Crop Cultivation

301.07 Family Day Care Home, Large

301.08 Hazardous Waste Management Facilities

301.09 Home Occupations

301.10 Manufactured Homes

301.11 Mobile Home Parks

301.12 Outdoor Retail Sales

301.13 Personal Storage Facilities

301.14 Recycling Facilities

301.15 Residential Care Facilities, General

301.16 Second Dwelling Units

301.17 Sexually Oriented Facilities

301.18 Single Room Occupancy Hotels

301.19 Social Service Facilities

301.20 Telecommunication Facilities

301.21 Temporary Uses

301.22 Transitional and Supportive Housing

301.23 Medical Cannabis Cultivation

SECTION 4. Chapter 301.23 is hereby added to Article 21 (Porterville Development Ordinance) as follows :

A. Purpose and Intent

1. The City Council of the City of Porterville, based on evidence presented to it in the proceedings leading to the adoption of this chapter, hereby finds that the cultivation, preparation, and distribution of medical cannabis in the city has caused and is causing ongoing impacts to the community. These impacts are intensified by the activities of those who are abusing the current State statutory provisions for the cultivation, processing and distribution of cannabis for nonmedical, improper and illegal purposes. These impacts include increases in various types of crime due to outdoor grows, damage to buildings containing indoor grows, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and related crimes. Many of these impacts have fallen disproportionately on residential neighborhoods, but nonetheless also negatively impact properties in the commercial districts. These impacts have also created an increase in response costs, including code enforcement, building, land use, fire, and police staff time and expenses.
2. The City Council also acknowledges that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of medical cannabis for medical purposes under the Compassionate Use Act, but that the Compassionate Use Act does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the city.
3. The purpose and intent of this chapter is to regulate the cultivation, *preparation* and distribution of medical cannabis in a manner that protects the public health, safety, and welfare of the community and mitigates for the cost to the community of the oversight of these activities.

B. Interpretation and Applicability

1. No part of this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state, federal law, statute, rule or regulation. The cultivation, preparation, and distribution of medical cannabis in the city is controlled by the provisions of this chapter of the Porterville Development Ordinance.
2. Nothing in this chapter is intended to, nor shall it be construed to, preclude a landlord from limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants.
3. Nothing in this chapter is intended to, nor shall it be construed to, burden any defense to criminal prosecution otherwise afforded by California law.

4. Nothing in this chapter is intended to, nor shall it be construed to, exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.
  5. Nothing in this chapter is intended to, nor shall it be construed to, make legal any cultivation, transportation, sale or other use of cannabis that is otherwise prohibited under California law.
  6. All cultivation, preparation and distribution of medical cannabis within city limits shall be subject to the provisions of this chapter and other applicable provisions of this Code, regardless of whether cultivation, preparation, or distribution existed or occurred prior to adoption of this chapter.
- C. Definitions: For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:
1. Dwelling Unit. A room or suite of rooms including one (1) and only one (1) kitchen, and designed or occupied as separate living quarters for one (1) family.
  2. Medical Cannabis (also known as medical marijuana). Cannabis, including constituents of cannabis, THC and other cannabinoids, used as a physician-recommended form of medicine or herbal therapy.
  3. Medical Cannabis Cooperative or Collective. Any person, association, cooperative, affiliation, or collective of persons who provide education, referral, or network services, and/or facilitation or assistance in the cultivation, preparation or distribution of medical cannabis.
  4. Medical Cannabis Cultivation Area. The area allowed for the growing and preparation of medical cannabis.
  5. Medical Cannabis Cultivation Facility. A facility at which medical cannabis is grown and harvested for supply to a medical cannabis preparation facility and/or a medical cannabis distribution facility.
  6. Medical Cannabis Distribution. The supply to a qualified patient by any person, including a primary caregiver, cooperative or collective, of medical cannabis that is not grown in the qualified patient's residence.
  7. Medical Cannabis Distribution Facility/Dispensary. Any facility or location where the primary purpose is to distribute medical cannabis as a medication upon recommendation by a physician and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient in strict accordance with the Compassionate Use Act of 1996 (Cal. Health and Safety Code §§ 11362.5 et seq.).
  8. Medical Cannabis Preparation. Includes, but is not limited to: manicuring, drying, curing, pressing, cooking, baking, infusing, grinding, bagging, packaging, rolling.
  9. Medical Cannabis Preparation Facility. A facility at which medical cannabis is processed for supply to a medical cannabis distribution facility.

10. Qualified Patient. As defined in Cal. Health and Safety Code §§ 11362.7 et seq., and as it may be amended from time to time.

11. Residence. A legal dwelling unit.

D. Severability: If any part of this chapter is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

E. Cultivation Generally: A qualified patient shall be allowed to cultivate medical cannabis for their own personal use. Cultivation of medical cannabis for said use shall be in conformance with the following standards:

1. No more than one medical cannabis cultivation area shall be permitted on a legal parcel, regardless of the number of dwelling units on the parcel;
2. Medical cannabis cultivation areas shall be located no closer than 600 feet from one another;
3. No medical cannabis cultivation site shall be located within 1000 feet of a sensitive use “use, sensitive” as defined in Chapter 700;
4. The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation shall remain at all times accessory to the residential use of the property;
5. The qualified patient shall reside at the residence where the medical cannabis cultivation occurs;
6. Cultivation of medical cannabis for personal use shall occur only on the parcel occupied by a qualified patient and shall be for the exclusive use of the qualified patient and otherwise in conformance with this chapter (i.e. no collectives or cooperatives);
7. Cultivation of medical cannabis for personal use shall not displace required off-street parking, or violate any other provisions of the Porterville Municipal Code;
8. Qualified patients shall have no more than the number of plants the patient is permitted under State law to have, provided that in no case shall any parcel/dwelling have more than 16 plants; with not more than four (4) cultivated indoors and twelve (12) cultivated outdoors;
9. The use of gas products (e.g., CO<sub>2</sub>, butane, etc.) for medical cannabis cultivation is prohibited;
10. There shall be no exterior evidence of medical cannabis cultivation occurring at the property, from a public right-of-way;
11. Medical cannabis cultivation is prohibited as a home occupation;
12. No distribution of medical cannabis cultivated for personal use shall be allowed other than as otherwise authorized by this Code;
13. Medical cannabis cultivation shall be an accessory use to a primary residential use on a property within residential zones, or at a single-family residence within the RS-3 or

RS-4 Zones. Medical cannabis cultivation is not allowed in multi-family developments or in mobile home parks;

14. The cultivation of medical cannabis shall not adversely affect the health or safety of the residents of the property on which it is cultivated, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes pursuant to the standards contained in Chapter 306 of this Code;
15. Medical cannabis cultivation lighting shall not exceed 1,200 watts;
16. The accessory structure(s) shall at all times meet the requirements of the latest adopted version of the California Building, Fire, Mechanical, Electrical and Plumbing Codes (collectively California Codes);
17. All electrical equipment used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired and permits obtained pursuant to the California Building, Electrical, Mechanical, Plumbing or other state or local laws rules and regulations;
18. Prior to performing any work on electrical wiring/rewiring the applicant shall first obtain a building, mechanical and/or electrical permit from the Building Division;
19. If required by California Building or Fire Code, the wall(s) adjacent to the cultivation area shall be constructed with 5/8-inch Type X moisture-resistant drywall;
20. Medical cannabis cultivation areas shall be secured by a functioning audible alarm at all times during growing seasons;
21. The growing of medical cannabis outdoors shall comply with the setback requirements for the primary residence on the property subject to the zoning classification of the property;
22. Medical Cannabis plants shall be grown in an area enclosed with a solid view obscuring fence, secured with self-closing and locking gates, and shall not exceed a maximum height of five (5) feet for properties with a six (6) foot tall fence. In the alternative, plants may grow to a maximum height of seven (7) feet if the area is fenced and screened to eight (8) feet in compliance with applicable Development Ordinance and California Building Code standards; and
23. Areas for cultivation of medical cannabis shall be secured, locked, and fully enclosed and rendered inaccessible to minors.

#### F. Preparation

A qualified patient shall be allowed to prepare for personal use medical cannabis cultivated on the property or within his or her private residence or accessory structure. Preparation of medical cannabis cultivated at the residence shall be in conformance with the following standards:

1. Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be prepared for use at the residence;
2. The primary use of a dwelling unit shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis preparation shall remain at all times accessory to the residential use of the property;
3. The medical cannabis preparation shall be in compliance with the current adopted edition of the California Codes;
4. The use of gas products (e.g., CO<sub>2</sub>, butane, etc.) for medical cannabis preparation is prohibited;
5. The preparation of medical cannabis shall not adversely affect the health or safety of the residents, residence or accessory building in which it is processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes pursuant to the standards contained in Chapter 306 of this Code; and
6. Cultivation of medical cannabis for personal use shall not displace required off-street parking, or violate any other provisions of the Porterville Municipal Code.

G. Medical cannabis preparation is prohibited as a home occupation.

H. No sale or distributing of medical cannabis processed for personal use shall be allowed.

I. Individual Distribution Prohibited. Medical cannabis cultivated or processed for personal use as provided for in this chapter shall not be distributed to any person, cooperative or collective, unless as otherwise proscribed by this Article.

J. Cultivation Permit:

1. 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 from the Community Development Director or his or her designee. The following information will be required with the initial permit application and subsequent permit extensions:
  - a. 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.
  - b. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where medical cannabis will be cultivated.
  - c. The name of each qualified patient or primary caregiver who participates in the medical cannabis cultivation.
  - d. A copy of the 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.
  - e. The physical site address of where the marijuana will be cultivated.

- f. A signed consent form, acceptable to the City, authorizing City staff, including the Police Department authority, to conduct an inspection of the cultivation area without notice.
  2. The initial permit shall be valid for no more than two (2) years and may be extended in increments of two (2) years.
  3. To the extent permitted by law, any personal or medical information submitted with a medical cannabis cultivation permit application or permit extension shall be kept confidential and shall only be used for purposes of administering this chapter.
  4. The Community Development Director, or his or her designee, may, in his or her discretion, deny any application for a medical cannabis 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 Community Development Director shall deny any application for a medical cannabis permit, or extension thereof, which does not demonstrate satisfaction of the minimum requirements of this chapter. Failure to comply with requirements twice within a permitting period constitutes grounds for permit revocation and serves as a basis for denial of any new application or extension. The denial of any permit application, or permit extension, shall be subject to appeal pursuant to \_\_\_\_\_.
  5. The City may establish a fee or fees required to be paid upon filing of any application for permit(s) as provided by this Chapter, which fees shall not exceed the reasonable cost of administering this chapter, including but not limited to review of applications for permits, monitoring and inspections, and enforcement costs. Said fee or fees shall be established by Resolution of the City Council.
- K. Medical Cannabis Cultivation or Distribution Facility/Dispensary. Medical cannabis distributing facilities or dispensaries are not a permitted use and are prohibited in any and all zoning designations or districts within the city limits.
- L. Enforcement. Any violation of this chapter is subject to any and all penalties as prescribed in the Porterville Municipal Code, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, nuisance abatement action, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies. This chapter is adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted strictly, enforced with an emphasis on public and community safety, and enforced rigorously in a manner such as to deter further violations.
- M. Appeals. Any person aggrieved by any of the requirements of this section may appeal in so far as such appeals are allowed pursuant to Section \_\_\_ of the Porterville Municipal Code.

SECTION 5. Series 700: General Terms, Chapter 700.02 is hereby amended to add in alphabetical order "Use, Sensitive" to definitions to read as follows:

Use, Sensitive. Any cemetery/religious institution; school; public building regularly frequented by children; public park; or boys' and girls' club, or similar youth organizations.

SECTION 6: This ordinance shall be in full force and effect not sooner than thirty (30) days from and after the ordinance's publication and passage.

PASSED, APPROVED AND ADOPTED this 19<sup>th</sup> day of August, 2014.

By: \_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk



TITLE: MEDICAL MARIJUANA - DRAFT - SAMPLE PROVISIONS CONCERNING CULTIVATION AND DISPENSARIES; REQUEST FOR FURTHER DIRECTION

SOURCE: CITY ATTORNEY/COMMUNITY DEVELOPMENT

COMMENT: On December 17, 2013, the City Attorney provided an update to the Council regarding the status of pending lawsuits and requested direction from the Council on developing alternatives and standards for cultivation and/or sales of medical marijuana (cannabis). Per direction given by the City Council this past December, this office, the City Manager, and staff from the Community Development, Police, and Fire Departments have met to discuss and develop potential legislative options regulating the cultivation or distribution of medical marijuana. In its discussions, staff discussed several potential options (which are by no means exhaustive and could be exclusive of each other or combined with one or more of the other options):

- 1) Continue with City's current regulations;
- 2) Prohibit the cultivation/distribution;
- 3) Prohibit cultivation but permit (limited) dispensaries;
- 4) Allow indoor cultivation;
- 5) Allow indoor cultivation but require an accessory structure;
- 6) Allow outdoor cultivation.

ALTERNATIVE 1: Continue Current Provisions:

Under current provisions a person with a "recommend card" can cultivate cannabis for personal use. This does not allow for sale or distribution either individually or through a co-op. Many of the grow sites become sources of complaints by neighbors and attractive to individuals that may see the grow site due to visibility of typical conditions or unobstructed views of the plants themselves. Typical conditions may include shade material or other haphazardly erected materials on top of fences, or temporary shade structures over the top of gardens to screen the views. When called, the police department will typically check quantities and make sure the appropriate recommend cards are on site that warrant the growth of the cannabis. These provisions do not allow for the establishment or operation of a cooperative or dispensary unless the federal government legalizes cannabis.

ALTERNATIVE 2: Fully Restrict the Cultivation and Distribution of Cannabis

This alternative would completely ban the growth and distribution in the city of Porterville. Growth would likely continue around the city outside its boundaries and

medical patients would have to join with someone outside the City to cultivate plants for their use or find a co-op or dispensary where they could purchase cannabis.

ALTERNATIVE 3: Fully Restrict the Cultivation but allow for a Dispensary(ies)

This alternative would still preclude the cultivation of cannabis within the city limits but would establish a methodology to allow for one or more dispensaries based on a population ratio or other formula. The current provisions contained in the Municipal Code would allow one dispensary per 25,000 population; however, as previously stated, dispensaries are currently in conflict with federal law and not clearly addressed by State law either. The ratio is contained in the Code to regulate the number of dispensaries if federal law changes.

As requested at the prior Council meeting, the City Attorney's office has reviewed several cities' policies and ordinances concerning potential alternatives for allowing one or more dispensaries to operate in the city, with or without also restricting/prohibiting cultivation. Cities' dispensary regulations vary greatly. The following are some examples:

Berkeley (pop. 112,580): permits 3 dispensaries (but allows any dispensaries existing at the time to continue in their current locations); otherwise places a 1,000-foot distance restriction regarding cemeteries, middle or high schools, and other dispensaries.

Citrus Heights (pop. 83,301): permits 1 dispensary. A CUP is required. Places a 1,000-foot distance restriction regarding sensitive uses and other dispensaries; prohibited in residential zone; cannot be an accessory use.

Clearlake (pop. 15,250): permits 3 dispensaries, to be increased to 4 when the population reaches 20,000. Zoning restrictions to certain commercial zones, with a 1,200 sq. ft. overall size restriction. Places a 600-foot distance restriction to sensitive uses. Specified a process for competing applications – had an initial 90-day period where applications are processed in the order received and deemed complete. Existing dispensaries were given 30 days to comply. Mandates a public hearing with required criteria to consider.

Cotati (pop. 7,310): 1 dispensary license allowed, with a maximum of 1,000 patients per month. 1,000-1,200 sq.ft. overall size allowance. Places 500-foot distance restriction regarding sensitive uses, and only allowed in the commercial district. Extensive use and operating restrictions.

Dunsmuir (pop. 1,650): no number limitation on dispensaries. Must be in the C-2 district, with additional specific location restrictions. Places a 100-foot distance requirement from residential districts. A CUP is required.

Eureka (pop. 27,191): has an extensive regulatory scheme. Allows cultivation for personal use. With regard to any “co-operative/collectives,” only allows 4 cultivation/processing facilities, and then allows 1 distribution facility for each cultivation/processing facility, along with extensive regulatory requirements. Richmond (pop. 103,701): allows 3 permits for “collectives.” Distance requirement from high schools of 1,500 feet. Distance requirement from sensitive uses of 500 feet.

Richmond (pop. 103,701): allows 3 permits for “collectives.” Places a distance requirement of 1,500 feet from high schools, and 500 feet from sensitive uses.

Oakland (pop. 400,740): allows 8 permits for dispensaries (recently increased in 2010 from 4 permits per 2004 ordinance); location restrictions; product safety and testing standards. The voters of Oakland passed a taxation measure on dispensaries in 2009. Additionally, the City has applied the following fees: one time cultivation application fee of \$5,000 and annual permit fee of \$211,000; for dispensaries one-time application fee of \$5,000 and annual fee of \$60,000. These fees are in addition to any tax revenue received and are based on the costs of regulating and enforcing the City’s requirements. The City also requires that cultivation have a “closed loop connection” to the permitted dispensaries.

Napa (pop. 76,915): Requires a permit for medical marijuana dispensaries or “Aggregated Cultivation Facilities” (any collective or co-operative cultivation). No more than two permitted dispensaries allowed, with a one-year lag required between application processes and the need for more than one dispensary has been determined by the City Council. Only one aggregated cultivation facility allowed for each dispensary. Cultivation allowed only if permitted as such or if conducted at a qualified patient’s residence for their sole use. A CUP is required for dispensaries; restricted to certain zones. Must be operated adjacent to, but separately from, the accessory aggregated cultivation facility. 1,000 foot distance requirement from other dispensaries and 500 foot from youth-oriented uses. A competitive application process is set up for considering permit requests.

As is evident from comparison of these cities, dispensary regulations vary greatly. However, if the City Council wishes to pursue allowing one or more dispensaries, the City Council should also consider whether it wishes to permit collective/co-operative cultivation as well, and determine whether to require such cultivation to establish a direct relationship with the dispensary(ies). If collective cultivation is not allowed, then the City should consider whether it wishes to have additional requirements related to the dispensary’s source of the cannabis.

If the City Council opts to not allow dispensaries in the City at this time, the City Attorney recommends that the provisional dispensary regulations (that would go into

effect in the event federal law changes) be revisited and updated in conjunction with any changes regarding cultivation and other requirements.

#### ALTERNATIVES 4 – 6: Indoor, Indoor (Accessory Structure), Outdoor Cultivation

The remaining three alternatives are provided below and contain much more detail as they represent staff's understanding of alternatives outlined by the City Council at their December 17, 2013, meeting. Any or all of the three alternatives would be subject to the provisions contained under the headings Cultivation Generally, Preparation, Individual Distribution Prohibited, and Enforcement that precede them. The specific regulations in each alternative seek to address concerns raised by the Council, community residents, advocates, and public safety providers as well as to balance out these interests with the results of recent case law and statutes.

#### CULTIVATION GENERALLY (applies to all alternatives)

A qualified patient shall be allowed to cultivate medical cannabis for their own personal use. Cultivation of medical cannabis for said use shall be in conformance with the following standards:

- A. No more than one medical cannabis cultivation area shall be permitted on a legal parcel, regardless of the number of dwelling units on the parcel;
- B. Medical cannabis cultivation areas shall be located no closer than 600 feet from one another;
- C. No medical cannabis cultivation site shall be located within 1000 feet of a sensitive use as defined in Chapter 700 (P. 484 – “use, sensitive” – see below for definition);
- D. The residence shall remain at all times a residence with legal and functioning cooking, sleeping, and sanitation facilities. Medical cannabis cultivation shall remain at all times accessory to the residential use of the property;
- E. The qualified patient shall reside at the residence where the medical cannabis cultivation occurs;
- F. Cultivation of medical cannabis for personal use shall occur only on the parcel, occupied by a qualified patient, that is secured, locked, and fully enclosed and rendered inaccessible to minors, and which is for the exclusive use of the qualified patient and otherwise in conformance with this chapter.
- G. Cultivation of medical cannabis for personal use shall not displace required off-street parking, or violate any other provisions of the Porterville Municipal Code;

TITLE: MEDICAL MARIJUANA REGULATIONS AND LOCAL REGULATION –  
UPDATE CONCERNING STATUS OF STATE LAW AND REQUEST FOR  
DIRECTION

SOURCE: CITY ATTORNEY

COMMENT: As we discussed earlier this year, on May 6, 2013, the Supreme Court issued its opinion in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al.*, California Supreme Court Case No. S198638. The Court found that California's medical marijuana statutes **do not** preempt a local ban on facilities that collectively cultivate or distribute medical marijuana.

The City of Riverside specifically declared, by virtue of its zoning ordinances, that a "medical marijuana dispensary" is a prohibited use within the City and may be abated as a public nuisance. The City also bans and declares as nuisances any uses prohibited by federal or state law. In its Opinion the Supreme Court undertook a comprehensive review of the landmark cases addressing preemption and medical marijuana, and found that, contrary to defendant's allegations, the CUA/MMP do not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose. No part of the CUA/MMP explicitly guarantees the availability of locations where such activities may occur, restricts localities otherwise broad authority to regulate zone and land use planning within its borders, or requires local zoning and licensing laws to accommodate cooperative or collective cultivation or distribution. Rather than relying on portions of the MMP (specifically Health and Safety Code Sec. 11362.768), which have been argued by cities to expressly allow regulations and bans on such facilities, the Court instead relied on preexisting local police powers recognized by the California Constitution (Cal. Const. Art. XI, Sec. 7). The Court also noted that while some communities may be well-suited to accommodating the uses, others may come to a reasonable decision that such facilities, even if carefully sited, managed, and monitored would still present an unacceptable local risk and/or burden given the potential for increased crime, blight or drug abuse.

On November 26, 2013, the California Appellate Court (3<sup>rd</sup> District) took this analysis a step further in *Maral v. City of Live Oak*, C071822 (Cal.App. 11-26-1013). In this case, the Court upheld Live Oak's ordinance prohibiting the cultivation of marijuana for any purpose within the City, finding that a complete prohibition of cultivation also falls within a city's police powers, as set forth in the above *Inland Empire* case. It appears that Live Oak may be the first city to completely ban cultivation (by virtue of the contentions of the plaintiffs in the case). It is possible

this case will be appealed to the California Supreme Court. Live Oak also has a regulation that requires zoning clearance and compliance with additional conditions for cultivation in the event the prohibition is found invalid.

Prior to the issuance of these decisions, the City of Porterville had been developing regulations requiring and regulating indoor cultivation, restricting collective cultivation, and contemplating a registration component. City staff had also met several times with medical marijuana advocates who had concerns over indoor cultivation requirements but had been more amenable to registration and outdoor screening requirements. As the Council is aware, earlier this year Tulare County adopted a moratorium prohibiting the establishment of new or the expansion of existing collectives, cooperatives, and dispensaries until 2015. In October the Board of Supervisors voted to move ahead with a proposal to ban storefront and mobile dispensaries and collective grow sites, and restrict individual grow sites to indoor structures that are connected to the main structure. Recent efforts by State legislators to develop varying regulations covering medical or nonmedical cultivation and use of marijuana have been unsuccessful, but it is expected that a new bill will be introduced in the new legislative session. Additionally, at least one initiative has obtained the requisite signatures for placement on the November 2014 ballot.

This office, and the Community Development and Public Safety Departments, request direction from the City Council in light of the most recent developments and case law. The options include but are not limited to:

- 1) proposing a complete ban on cultivation for any purpose within the City limits (with or without a regulatory alternative in the event such a ban were to be found invalid),
- 2) proposing regulations that ban distribution and require cultivation to occur indoors (with other limitations), or
- 3) allowing but restricting outdoor cultivation

With direction as to how the Council wishes to proceed, staff intends to introduce draft regulations at the City Council Meeting on January 21, 2014.

**RECOMMENDATION:** That the City Council provide additional direction in light of the recent developments.