CITY COUNCIL AGENDA: SEPTEMBER 2, 2014

TITLE: MEDICAL CANNABIS/MARIJUANA - DRAFT ORDINANCE CONCERNING CULTIVATION AND DISPENSARIES

SOURCE: CITY ATTORNEY/COMMUNITY DEVELOPMENT DEPARTMENT

BACKGROUND: In November 2007, in response to the approval of the "Compassionate Use Act" and "Medical Marijuana Program Act," the City Council approved regulations that effectively prohibited land uses that are inconsistent with local, state, and federal law, and provided for regulation of medical cannabis dispensaries in the event federal law changed.

In December 2011, in light of case law and legislative amendments, Staff brought forward the first draft of an ordinance to address medical cannabis/marijuana cultivation and dispensaries. Since that date, all Departments have worked together to address varying issues, and various changes to the draft have been presented to the Council. Based on previous direction, the draft ordinance does not accommodate medical cannabis dispensaries. However, if the Council so chooses, staff could further modify the ordinance to accommodate dispensaries within the city.

Providing further background, the first attachment to this report is a legal memorandum summarizing the status of medical cannabis laws as they relate to local government authority to regulate land uses.

CONCLUSION: The draft ordinance is a result of multiple compromises, where public safety, land use authority, and property owner rights are balanced with the needs of those who are authorized to use medical cannabis. In response to comments heard at previous City Council meetings, the proposed language includes options for those authorized by the State to use medical cannabis to grow their plants indoors, within an accessory structure, or outdoors. Specific requirements were defined for the various scenarios to advance public safety and security. The draft ordinance would provide opportunity to those medical cannabis users to cultivate it with less residual effects to neighboring property owners or the general public.

RECOMMENDATION: That the City Council:

1. Approve the proposed ordinance for medical cannabis cultivation and give first reading to the draft Ordinance; and
2. Waive further reading and order the Ordinance to print.

ATTACHMENTS:
1. Legal Memo regarding medical cannabis laws
2. Draft Ordinance

Dir JB Appropriated/Funded N/A CM

Item No. 10

Memorandum

McCormick, Kabot, Jenner & Lew
A Professional Corporation
1220 West Main Street
Visalia, CA 93291

Date: August 27, 2014

To: Porterville City Council

From: Julia M. Lew, City Attorney

Subject: Summary of California Medical Marijuana Law and Local Regulatory Ability

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The following is a summary of the history and status of California Medical Marijuana Law as it relates to local regulation.

California voters approved Proposition 215, which codified into the California Health and Safety Code the "Compassionate Use Act of 1996." The stated intent of the Proposition 215 was to enable people in need of marijuana for medical purposes the ability to obtain and use it without fear of criminal prosecution under limited, specific circumstances. However, pursuant to Federal law the use, possession, transpiration and distribution of marijuana are specifically illegal.

The Compassionate Use Act, along with the "Medical Marijuana Program Act" is codified as Division 10, Chapter 6, Article 2.5 of the California Health and Safety Code, Sections 11362.7 et seq. The state statutes provide, among other things, that qualified patients and their primary care givers have limited immunity from prosecution for violation of various violations of the Penal and Health and Safety Code related to marijuana. The laws also establish a State system for allowing possession and cultivation of marijuana for limited medical treatment purposes, subject to the procedural requirements under the Act. Medical cannabis or marijuana dispensaries appear to be an instance where advocates of the medical use or marijuana are using the statutory language of the Act to establish organizations (nonprofit – as state law prohibit the provision of medical marijuana "for profit" under the law) to distribute to those entitled to possess or use under the law. While dispensaries are not specifically addressed under the Act, a person providing the marijuana may be the "primary care giver" to persons located in the same city or county the primary care giver is located.

The Act does not directly require that cities and counties, in exercising their police power and land use regulatory authority, permit organizations or individuals to distribute medical marijuana. Cities *may* permit the uses under State law. However, and especially given the status of the most recent interpretation of the Federal Controlled Substances Act (CSA) as discussed further, cities may also arguably prohibit land uses that are inconsistent with any other law, including federal law.

ATTACHMENT
ITEM NO. 1

Pursuant to federal law the use, possession, transportation, and distribution of marijuana was, and still is, illegal.

In 2005, the U.S. Supreme Court issued its decision in *Gonzales v. Raich* (2005) 545 U.S. 1. The Respondents in the case, two women who cultivated, obtained, and/or processed cannabis for their own personal medical use, claimed that their individual activities (which would have been in compliance with State law and the Compassionate Use Act) were purely local activities beyond the reach of federal power. The Supreme Court overruled the 9th Circuit and found that Congress' Commerce Clause authority includes the power to prohibit the local cultivation and use of marijuana, even if said activities are in compliance with California law. While the Court did clearly provide that under the Supremacy clause of the U.S. Constitution the federal law would prevail over state law with regard to these activities, the Court was also careful to note that in this case, the parties did not assert that a particular statute or body of state law fell outside the federal commerce power. Rather, this case involved individual activities. Therefore, there was no express holding that the Compassionate Use Act was unlawful or unconstitutional.

Since the passage of Prop. 215, subsequent case law has managed to muddle the interplay between the federal and state regulatory schemes. That stated, several cases have provided some further guidance, and the State Attorney General and U.S Attorney have both issued policy statements and/or guidelines concerning these issues, the effect of which has resulted in allowance of a certain level of cultivation and usage by individuals who have complied with the State law.

In *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, the Court upheld the lower court's determination that operation of a dispensary was a nuisance per se in violation of the City's municipal code, finding that the Compassionate Use Act does not authorize the operation of a medical marijuana dispensary, nor does it prohibit local governments from regulating dispensaries. The Court also found that the State laws do not compel the establishment of local regulations to accommodate medical marijuana dispensaries.

Cities as well as medical marijuana advocates hoped that *Qualified Patients Association v. City of Anaheim* (2010) 187 Cal.App.4th 734, would provide a definitive answer to the federal versus state law question. The Court did find that the lower court had erred in concluding, as a matter of law, that federal regulations (Controlled Substances Act) preempt the Compassionate Use Act. However, the Anaheim decision pertained to statutes that imposed purely criminal penalties for operation of a medical marijuana dispensary, and the Court did not address zoning and land use restrictions.

As of January 1, 2011, the Legislature enacted Health and Safety Code Section 11362.768, which provides (per subsection (f)) "Nothing in this section shall prohibit a city, county or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." In *County of Los Angeles v. Martin Hill* (2011) Cal. Court of Appeal (2nd Dist.) No. B216432, the Court found that state law does not confer on qualified patients and care givers an unfettered right to cultivate or dispense marijuana anywhere they choose,

During this period, several cases indicated that the Courts were not inclined to find a conflict between federal and state law with regard to cultivation of medical marijuana. This changed,

however, with Pack *v. Superior Court (City of Long Beach)* (2011) 199 Cal.App.4th 1070. In October 2011 the Court of Appeals for the Second District found that the City of Long Beach's medical marijuana ordinance, which authorized and permitted but regulated medical marijuana collectives, was preempted by federal law. Although this case appeared to be initially helpful for cities that might wish to ban all collective/cooperative uses, it muddied the water concerning whether cities may institute a permit process for other uses, such as individual cultivation. Given this particular opinion's diversion from many other previously decided cases (especially with regard to the Federal preemption issue as well as cities' abilities to permit and regulate various activities), when the California Supreme Court granted review we believed we might finally obtain definitive higher court opinion concerning these issues. However, the Supreme Court has since dismissed its grant of review, and the case remains de-published.

Notwithstanding the status of the *Pack* decision, there is a possibility that federal preemption issues remain in play and that cities should be cautious about "permitting" ordinances. However, as discussed further below, more recent cases have tended to support local government regulation as consistent with *state* law, which arguably could include a permit requirement.

In 2013 the Supreme Court issued a key decision concerning local regulation of medical marijuana. The Supreme Court issued its long-awaited 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.

Additionally, in February 2013, the California Appellate Court (3rd District) found in *Browne v. County of Tehama* 153 Cal.Rptr. 3d 62, that the State legislature had not granted anyone an unfettered right to cultivate medical marijuana for medical purposes; therefore the County's regulation of the cultivation of medical marijuana did not conflict with the statutes. The County's

ordinance regulated the number of plants that could be located at a property (no more than 12 mature plants or 24 plants total on premises of 20 acres or less), prohibited the cultivation within 1000 feet of sensitive uses, required registration and submission of valid medical marijuana recommendations or state issued cards, required consent from the property owner, and required fencing and substantial setback requirements.

In November 26, 2013, the California Appellate Court (3rd 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 have been the first city to completely ban cultivation (by virtue of the contentions of the plaintiffs in the case). Live Oak also has a conditional regulation that would have required zoning clearance and compliance with additional conditions for cultivation in the event the prohibition was found invalid.

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

ATTACHMENT ITEM NO. 2

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 Aubomobile 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
<u>301.23 Medical Cannabis Cultivation</u>

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., CO2, 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_2, 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, of 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 2nd day of September, 2014.

By: _____
Milt Stowe, Mayor

ATTEST:
John D. Lollis, City Clerk

By: _____
Patrice Hildreth, Chief Deputy City Clerk