

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;

H. 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 \_\_\_ (see alternatives 4 – 6 below) plants;

I. The use of gas products (e.g., CO<sub>2</sub>, butane, etc.) for medical cannabis cultivation is prohibited;

J. From a public right-of-way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property;

K. Medical cannabis cultivation is prohibited as a home occupation;

L. No distribution of medical cannabis cultivated for personal use shall be allowed other than as otherwise authorized by this Code;

M. Medical cannabis cultivation shall be an accessory use to a primary residential use on a property within the AC, RR, RS-1, RS-2 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;

N. 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;

O. Medical cannabis cultivation lighting shall not exceed 1,200 watts;

P. The 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);

Q. 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;

R. 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;

S. 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

T. Medical cannabis cultivation areas shall be secured by a functioning audible alarm at all times during growing seasons.

## PREPARATION

A. 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; and
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.

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

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

## 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 prescribed 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.

## ALTERNATIVE 4: INDOOR CULTIVATION – PRIMARY OR ACCESSORY STRUCTURE

- A. Medical cannabis indoor cultivation area shall not exceed 50 square feet and shall not exceed ten (10) feet in height per residence; and
- B. The maximum number of plants per parcel or residence, whichever is less, shall be limited to six (6) mature plants.

## ALTERNATIVE 5: INDOOR CULTIVATION – ACCESSORY BUILDING

- A. A medical cannabis indoor cultivation area shall be located in an accessory structure, either 1) built for, or 2) legally adapted to horticultural use and shall not exceed 120 square feet in area;
- B. The accessory structure shall be detached from any legally developed habitable building area;
- C. The cultivation area shall not exceed ten feet in height, regardless of the height of the accessory building; and
- D. The maximum number of plants shall be limited to 12 mature plants.

## ALTERNATIVE 6: OUTDOOR CULTIVATION

- A. The site area devoted to growing medical cannabis shall not exceed 120 square feet;

- B. 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; and
- C.. 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.

### CONCLUSION

Pros and cons for each of the three primary alternatives are attached to this report. The alternatives have 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).

Keep in mind that no matter what options are pursued, the City Council will need to fully consider to what extent the City should set up permitting mechanisms to regulate these areas. The City can impose a variety of requirements and restrictions; however the effectiveness of any enforcement will depend the type of accountability/reporting/permitting systems that are put in place. Additionally, the cost of implementing these regulations will also vary with the requirements and type and extent of enforcement activities.

**RECOMMENDATION:** That the City Council review the alternatives provided by staff and provide direction to staff on developing an ordinance for consideration at a public hearing.

**ATTACHMENT:** Alternatives Pros and Cons



ALTERNATIVES PROS AND CONS

<b>Alt. 4: (Indoor Cultivation)</b>	
Pros	Cons
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>	
Pros	Cons
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>	
Pros	Cons
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.