

"Placerville, a Unique Historical Past Forging into a Golden Future"



City Manager's Report
December 8, 2015, City Council Meeting
Prepared By: John Driscoll, City Attorney
Item#: 10.1


Subject: Waive the Second Reading of an Ordinance Amending Title 5, Chapter 25, of the City Municipal Code Relating to Medical Marijuana, then Adopt Said Ordinance.

Background: This ordinance was introduced for the first reading at the City Council meeting of November 24, 2015.

Recommendation: Waive the Second Reading of an Ordinance Amending Title 5, Chapter 25, of the City Municipal Code Relating to Medical Marijuana, then Adopt Said Ordinance.



John Driscoll, City Attorney



M. Cleve Morris, City Manager

Attachments:

- 1. Ordinance*
- 2. Staff Report from November 24, 2015, City Council Regular Meeting*

**CITY OF PLACERVILLE
ORDINANCE NO. _____**

**AN ORDINANCE OF THE CITY OF PLACERVILLE AMENDING
TITLE 5, CHAPTER 25, PROHIBITING MEDICAL MARIJUANA DISPENSARIES,
DELIVERY OF MEDICAL MARIJUANA AND CULTIVATION OF MEDICAL
MARIJUANA**

The People of the City of Placerville do ordain as follows: Title 5, Chapter 25, is hereby amended as follows:

MEDICAL MARIJUANA

5-25-1: PURPOSE:

5-25-2: RELATIONSHIP TO OTHER LAWS:

5-25-3: DEFINITIONS:

5-25-4: MEDICAL MARIJUANA DISPENSARIES PROHIBITED:

5-25-5: MEDICAL MARIJUANA CULTIVATION PROHIBITED:

5-25-6: DELIVERY OF MEDICAL MARIJUANA PROHIBITED:

**5-25-7: ESTABLISHMENT OR MAINTENANCE OF MEDICAL MARIJUANA
DISPENSARIES, CULTIVATION OF MEDICAL MARIJUANA AND DELIVERY OF
MEDICAL MARIJUANA DECLARED A PUBLIC NUISANCE:**

5-25-8: PENALTIES FOR VIOLATION:

5-25-1: PURPOSE:

The purpose of this chapter is to prohibit the cultivation, distribution and dispensing of medical marijuana in the City of Placerville and to prohibit medical marijuana dispensaries from locating in the City of Placerville. The City Council may adopt by resolution any regulations or policies that will further the purpose of this chapter, and that do not conflict with the provisions herein. (Ord. 1644, 11-22-2011)

5-25-2: RELATIONSHIP TO OTHER LAWS:

This chapter is not intended to, nor shall it be, construed or given effect in a manner that causes it to apply to any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the City Council that this chapter shall be interpreted to be compatible with federal, county and state enactments, and in the furtherance of the public purposes which those enactments express. Nothing in this chapter is intended to supersede any other provisions of this code. (Ord. 1644, 11-22-2011)

5-25-3: DEFINITIONS:

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

CITY: The City of Placerville.

COLLECTIVE: The planting, growing, harvesting, drying, processing, or storage of one or more medical marijuana plants or any part thereof in any location on behalf of more than one qualified patient.

COMPASSIONATE USE ACT OF 1996: California Health and Safety Code sections 11362.5 and 11362.7 et seq., as those sections are amended from time to time, including, without limitation, those amendments contained in SB 420. Marijuana shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended.

DELIVERY: The commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

DISPENSARY: A facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

DISTRIBUTION: The procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

DISTRIBUTOR: A person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

MARIJUANA PLANT: Any mature or immature marijuana plant, or any marijuana seedling, with or without roots, unless otherwise specifically provided herein.

MEDICAL MARIJUANA: Marijuana used for medical purposes in accordance with California Health and Safety Code Sections 11362.7 et seq. as it now reads or as amended.

MEDICAL MARIJUANA CULTIVATION: The planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof, for medicinal purposes in accordance with California Health and Safety Code Sections 11362.7 et seq. as it now reads or as amended.

MEDICAL MARIJUANA DISPENSARY: Any facility or location where medical marijuana is made available to and/or distributed by or to two (2) or more of the following: a qualified patient, a person with an identification card, and/or a primary caregiver. A "medical marijuana dispensary" shall not include qualified patients, persons with an identification card and/or primary caregivers who associate within the state of California in order to collectively or cooperatively cultivate marijuana for medical purposes. A primary caregiver of a qualified patient or person with an identification card may deliver, administer or

provide medical marijuana at the primary residence of the qualified patient or person with an identification card without violating this chapter.

PERSON WITH AN IDENTIFICATION CARD: Has the same meaning as defined in the compassionate use act of 1996, California Health And Safety Code sections 11362.5 and 11362.7 et seq., as those sections are amended from time to time.

PRIMARY CAREGIVER: An individual that (1) consistently assumes responsibility for the house, health, or safety of the medical marijuana patient, (2) satisfies the criteria as expressed in California Supreme Court Case *People v. Mentch* (2008) 45 Cal. 4th 274, 283, which are that the person (i) consistently provides caregiving to the medical marijuana patient, (ii) provided that caregiving independent of any assistance in taking medical marijuana, (iii) provided that caregiving at or before the time they assumed responsibility for assisting with medical marijuana; and (3) holds a valid State of California, California Medical Marijuana Identification Card designating them as a primary caregiver.

QUALIFIED PATIENT: A person with a doctor's recommendation for medical marijuana/cannabis and holds a valid State of California, California Medical Marijuana Identification Card designating them as a patient.

5-25-4: MEDICAL MARIJUANA DISPENSARIES PROHIBITED:

The establishment and/or operation of medical marijuana dispensaries shall be prohibited in all areas of the City of Placerville. No permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a medical marijuana dispensary within the city limits of the City of Placerville. (Ord. 1644, 11-22-2011)

5-25-5: MEDICAL MARIJUANA CULTIVATION PROHIBITED:

Medical marijuana cultivation by any person, including but not limited to a qualified patient or primary care giver as individuals or in a cooperative or collective, is prohibited within the city limits of the City of Placerville.

5-25-6: DELIVERY OF MEDICAL MARIJUANA PROHIBITED:

The delivery of medical marijuana is prohibited within the city limits of the City of Placerville.

5-25-7: ESTABLISHMENT OR MAINTENANCE OF MEDICAL MARIJUANA DISPENSARIES, CULTIVATION AND DELIVERY OF MEDICAL MARIJUANA DECLARED A PUBLIC NUISANCE:

The establishment, maintenance, or operation of a "medical marijuana dispensary", the cultivation of medical marijuana and the delivery of medical marijuana, individually and collectively, as defined in this chapter within the city limits of the City of Placerville, is declared to be a public nuisance. (Ord. 1644, 11-22-2011)

5-25-8: PENALTIES FOR VIOLATION:

(A) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both such fine and imprisonment. In the event any civil suit or action is brought by the City to enforce the provisions of

this chapter, the person responsible for such violation shall be liable to the City for the City's costs of the suit, including, but not limited to, attorney fees, expert fees, and other costs of the suit.

(B) In addition to any other enforcement remedies available to the City under any applicable state or federal statute or pursuant to any other lawful power the City may possess, any violation of this chapter may be prosecuted or enforced as a nuisance pursuant to sections 7-8-1 through 7-8-5 of this code, as those sections may be amended from time to time. The City may also prosecute or enforce violations of this chapter as a criminal offense or by a civil court action, prosecuted by the city attorney or district attorney in the name of the City or in the name of the people of the state of California, by seeking the appointment of a receiver, or in any other manner provided by law. (Ord. 1644, 11-22-2011)

The above Ordinance was introduced at a regular meeting of the City Council of the City of Placerville on November 24, 2015, by Councilmember _____, and it was read for the first time. The Ordinance was read for the second time on _____, and Councilmember _____ moved its adoption. The motion was seconded by Councilmember _____.

A poll vote was taken which stood as follows:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Mayor Patty Borelli

ATTEST:

City Clerk Susan Zito, CMC

"Placerville, a Unique Historical Past Forging into a Golden Future "



City Manager's Report
November 24, 2015, City Council Meeting
Prepared By: John Driscoll, City Attorney
Item#: 10.3

Subject: Introduce an Ordinance Amending Title 5, Chapter 25, of the City Municipal Code Relating to Medical Marijuana; and (2) Waive the First Reading of Said Ordinance; and (3) Direct Staff to Initiate an Amendment to the City's Land Use Ordinance to Prohibit Medical Marijuana Dispensaries and the Cultivation and Delivery of Medical Marijuana in All Land Use Zones in the City of Placerville.

Discussion: At the City Council meeting on October 27, 2015, Councilmember Clerici requested that staff bring back a report summarizing recent legislation regarding medical marijuana. The purpose of this report is to summarize the new law and recommend amendments to the City's medical marijuana ordinance in accordance with the new law.

At the May 26, 2015 Council meeting, the Council was provided an in-depth background discussion of the history of medical marijuana dispensaries in the City. A copy of that staff report is attached to this report for the Council's reference. After that report was received by the Council, three bills, AB 266, AB 243, and SB 643 regulating medical marijuana were passed by the legislature and signed by the Governor. The three comprise the Medical Marijuana Regulation and Safety Act (MMRSA).

AB 266 establishes a dual licensing structure requiring that all marijuana businesses have both a state license and a local license or permit to operate legally in California. The bill creates four licensing categories: Dispensary, Distributor, Transport, and Special Dispensary Status for licensee who has a maximum of three dispensaries. The bill also specifies that patients and primary caregivers are exempt from the state licensing requirements.

AB 243 establishes a regulatory and licensing structure for cultivation sites under the Dept. of Food and Agriculture (DFA).

SB 643 establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.

These bills protect local control over medical marijuana by requiring both a state and local license for all marijuana businesses and continue to allow local jurisdictions to regulate or ban medical marijuana. Further, a revocation of a local license or permit will terminate the ability of a marijuana business to operate in that jurisdiction under its state license. However, there are two areas of the MMRSA that require immediate attention.

The first area involves deliveries and mobile dispensaries. Under AB 266, jurisdictions that wish to ban deliveries or mobile dispensaries need to have an ordinance in place that prohibits this activity. Similarly, AB 243 contains a provision that cities that do not have an ordinance regulating or prohibiting cultivation by March 1, 2016, will lose the authority to regulate or ban cultivation within their city limits and the state will become the sole licensing authority for this activity.

Current City ordinances contained in Title 5, Chapter 25 ban medical marijuana dispensaries but are silent with respect to deliveries of medical marijuana or mobile dispensaries as well as the cultivation of medical marijuana. Given the timing requirements to adopt or amend ordinances, the City needs to act promptly if the City desires to retain the ability to either regulate or ban the delivery or cultivation of medical marijuana in the future. The League of California Cities (the League) recommends that cities in this situation amend their ordinances accordingly prior to March 1, 2016.

In April, 2015, San Joaquin County adopted an ordinance prohibiting the cultivation of medical marijuana similar to the ordinance proposed in tonight's action. Some of the findings by the San Joaquin County Board of Supervisors in support of their action are as follows:

1. Medical marijuana cultivation creates offensive and irritating odor, especially when the plants are flowering.
2. According to the San Joaquin County Sheriff's Office, medical marijuana cultivation by individuals and collectives has been increasing in San Joaquin County for several years. In 2011 there were thirty-one thousand (31,000) illicit, non-medical marijuana plants discovered and eradicated by the San Joaquin County Sheriff's Office; in 2013 and 2014 those numbers were one hundred thirty-eight thousand five hundred nineteen (138,519) and one hundred thousand (100,000) plants respectively. In 2014 there were fifty-two (52) outdoor medical marijuana grows, and sixty-six (66) indoor medical marijuana grows. From 2008 to 2014 there was an average of one (1) homicide per year related to marijuana cultivation and in 2014 a San Joaquin County Sheriff's Officer was shot at while investigating an outdoor marijuana grow. Many of the people responsible for these grows did not have medical marijuana recommendations, while others either had recommendations for extremely large quantities (i.e., ninety-nine (99) plants, sixteen (16) pounds of processed) and/or were growing as a collective.
3. Outdoor grows often use chemicals and pesticides, many of which are illegal and extremely toxic to people and wildlife and which may pollute soil, ground water, and/or nearby water sources.
4. Investigations of medical marijuana grows are time consuming and dangerous for the San Joaquin County Sheriff's Office.
5. Medical marijuana cultivation attracts crime and associated violence; and cultivation has been a magnet for thefts, robberies, illegal firearms, shootings, and homicides.
6. Outdoor cultivation is very visible and may be easily accessible to the public, including children and youths.

7. Both outdoor and indoor grows require large amounts of water, which is sometimes illegally diverted from farms, homes, or waterways.
8. Indoor grows require extensive energy consumption, which is often illegally consumed and/or wired in an improper and dangerous manner.
9. Both outdoor and indoor grows may contain armed guards and/or booby trap devices that threaten severe bodily harm or death to those who attempt to access them. Such devices may be a threat to any person that enters the area of the grow, but are often designed specifically to injure law enforcement personnel. Especially during harvest and processing season, there is an immediate threat of violent crime depending on the size, location, gang/drug trafficker involvement, and monetary value of these medical marijuana grows.
10. Eradication of an illegal medical marijuana grow may be dangerous and labor intensive for law enforcement officials because of the potential of armed suspects, booby traps, and varying conditions of the grow.
11. Medical marijuana cultivation is harmful to the welfare of residents, creates a nuisance, and threatens the safety and premises of nearby land owners and their families.
12. Medical Marijuana cultivation poses an urgent and immediate threat to the public peace, health, and safety.
13. If medical marijuana cultivation is not banned, then large quantities of illegal marijuana may be introduced into the local market and will bring with it increasing threats to public peace, health, and safety.

Also attached is a chart of the regulations of local jurisdictions in the Northern California region with regard to medical marijuana. Although these findings were developed as part of a San Joaquin County Ordinance, staff feels the concerns are universal and justify the recommended action.

Staff concurs with the League's recommendation and is recommending amending the City's current ordinance contained in Title 5, Chapter 25, of the code to include the prohibition of the delivery of medical marijuana as well as the cultivation of medical marijuana as set forth in the attached proposed amendment. It should be noted that the ban on cultivation would prohibit both outdoor and indoor cultivation as well as cultivation for personal use. Under the MMRSA, cultivation for personal use would not require a license from the state if the area used for cultivation does not exceed 100 square feet for an individual or 500 square feet for a primary caregiver with no more than 5 patients. However, if adopted, this type of cultivation would not be allowed within the City limits.

Staff is also recommending that the Council direct staff through a minute order to amend the City's zoning ordinance to prohibit medical marijuana dispensaries, the cultivation of medical marijuana, and the delivery of medical marijuana in all land use zones within the City. Currently, medical marijuana dispensaries are prohibited in Title 5 of the City code dealing with business regulations. The City's land use ordinances do not address medical marijuana.

While addressing the issue of medical marijuana in the City's business regulations may be sufficient, the League is recommending that regulations and prohibitions relating to the cultivation and delivery also be addressed in the Cities' land use ordinances. This can easily be accomplished by adding an ordinance to the City's land use ordinances prohibiting medical marijuana dispensaries, the cultivation of medical marijuana, and the delivery of medical marijuana in all land use zones within the City. In order to initiate such an amendment, the Council needs to direct the amendment by resolution or minute order.

Options:

1. Direct staff to bring back an amendment to the medical marijuana ordinances that would allow for any or all of the following, medical marijuana dispensaries, the delivery of marijuana and/or the cultivation of medical marijuana with certain regulations.
2. Take no action and allow the state to have sole control over the regulation of the delivery and cultivation of medical marijuana.
3. Introduce the Ordinance as recommended.

Fiscal Impact: There is no immediate fiscal impact other than the codifier's charges in amending the ordinance.

Recommendation: Introduce an Ordinance Amending Title 5, Chapter 25, of the City Municipal Code Relating to Medical Marijuana; and (2) Waive the First Reading of Said Ordinance; and (3) Direct Staff to Initiate an Amendment to the City's Land Use Ordinance to Prohibit Medical Marijuana Dispensaries and the Cultivation and Delivery of Medical Marijuana in All Land Use Zones in the City of Placerville.



John Driscoll, City Attorney



M. Cleve Morris, City Manager

Attachments:

1. *May 26, 2015, Staff Report: History of the Medical Marijuana Dispensary Ordinance*
2. *Chart: Select Northern California Municipalities Cultivation Regulations*
3. *Existing Ordinance*
4. *Proposed Ordinance*

"Placerville, a Unique Historical Past Forging into a Golden Future "



City Manager's Report
May 26, 2015, City Council Meeting
Prepared By: John Driscoll, City Attorney
Item#: 15.1

Subject: Receive and file this background report on medical marijuana dispensaries and related ordinances within the City of Placerville

Discussion:

History of the Medical Marijuana Dispensary Ordinance

In 1996, the People of the State of California passed Proposition 215, the Compassionate Use Act (CUA), with the stated intent of ensuring that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. This voter initiative exempts patients and their primary caregivers from prosecution under state laws that otherwise prohibit the cultivation or possession of marijuana.

In 2003, the state legislature passed SB 420, which established the Medical Marijuana Program. This legislation created a voluntary system for qualified patients and their caregivers to obtain identification cards which would insulate them from arrest for violations of state law relating to marijuana.

In June 2004, the City of Placerville adopted an ordinance allowing the operation of medical marijuana dispensaries (MMDs) in certain zones and under certain specified conditions. The Ordinance was adopted in response to several requests the City had received from potential operators of MMDs and, as the City had no ordinance in place to regulate MMDs, the Ordinance was adopted as an urgency measure. All applications for the operation of a MMD were processed through the Police Department.

Even though California passed the CUA in 1996, possession of marijuana remained illegal under the Federal Controlled Substances Act (CSA). In 2006, the U.S Supreme Court rendered its decision in *Gonzales v. Raich*, (2005) 125 S. Ct. 2201, wherein the conflict between the CSA and California's CUA was the focal point. In *Raich*, the Court held that despite the CUA, the federal government could continue to prohibit the possession of medical marijuana for medical purposes under the CSA.

As a result of the Supreme Court's decision, staff brought the MMD issue back to the Council at its January 10, 2006 meeting. Staff's recommendation at that time was to repeal the City's existing

ordinances allowing medical marijuana dispensaries and adopt an ordinance prohibiting such dispensaries within the City of Placerville. At that meeting, the Council heard testimony from many medical marijuana advocates, including a lengthy discussion regarding the conflict between federal law and California state law allowing and providing for medical marijuana dispensaries.

In response to the concern expressed over the prohibition of medical marijuana dispensaries in Placerville, Council tabled the matter and directed that staff and representative members of the audience meet and discuss options that would address both the City's and the medical marijuana dispensary proponents' concerns. Staff brought back to the Council amendments to the City's then existing ordinance regulating medical marijuana dispensaries, as well as the option of repealing the ordinance and banning the dispensaries. The Council adopted the amendments to the Ordinance, which had the effect of providing additional safeguards and controls for the operation of dispensaries, including limiting the number of dispensaries within the City to two.

The 2006 amendments to the MMD Ordinance, however, did not resolve the problems and uncertainties in regulating MMDs. Because of ongoing problems associated with the operation of an MMD (Mountain Meds), e.g., a total lack of financial records, failure to disclose employees and using employees not cleared by the Police Department, as well as additional case decisions, staff revisited the MMD Ordinance in February 2010, and recommended a temporary moratorium on MMDs. City Council agreed and a temporary moratorium was adopted on February 9, 2010. The moratorium was the product of difficulties and uncertainties in enforcing regulations and laws relating to the possession of marijuana, and in particular medical marijuana and MMDs. Ultimately, the moratorium culminated with the Council's action in 2011 repealing the MMD Ordinance and banning MMDs within the City. This action will be discussed further below.

Since the MMD Ordinance was adopted in 2004, two MMDs have operated in the City. Both operated at the same location, one after the other. The last MMD (Mountain Meds) ceased operations in April 2009, at which time it was denied renewal of its operating permit for numerous violations of the MMD Ordinance. That denial was upheld on appeal to the City Council. Since that MMD ceased operation, the Police Department received several applications for permits to operate MMDs. Three were processed, with two denied and one withdrawn. Because of limited staff resources and the extensive review required to process an MMD application, only one application could be processed at a time.

When the City Council adopted the Urgency Ordinance establishing a temporary moratorium on MMDs, the Police Department was processing an application and another application was pending review. The following discussion is intended to give an overview of some of the legal issues leading up to the temporary moratorium.

Legislation and Case Decisions Affecting Medical Marijuana Dispensaries

The Compassionate Use Act (CUA) was adopted by voter initiative in 1996 (Proposition 215). It permits patients and their primary caregivers to possess and cultivate marijuana for medical purposes where marijuana use has been recommended by a physician. However, the Federal Drug Enforcement Agency (DEA) has continued to enforce the Controlled Substances Act against dispensary operators and others who supply patients in California with medical marijuana. As previously mentioned, the U.S. Supreme Court has upheld the enforcement actions by the DEA, thus placing California state and local officials in the difficult position of implementing the CUA in direct opposition to federal law.

The State of California adopted SB 420 in 2004, which is known as the Medical Marijuana Program Act (MMP). While the MMP deals with many issues that were not addressed in the CUA, the state did not give direction with respect to a city's role in regulating the dispensing of marijuana, the potential conflict between federal and state law, and concerns regarding the secondary impacts of dispensaries on communities.

As enacted, the CUA did not define how much marijuana a patient could legally possess or cultivate, and the definition of "primary caregiver" was vague, resulting in the creation of numerous marijuana dispensaries throughout the state of California operating with no standards or local control. The MMP, among other things, did the following: (1) redefined the definition of "primary caregiver"; and (2) set out a maximum amount of marijuana a patient or caregiver could possess and cultivate. California Supreme Court decisions, as well as State of California Attorney General Guidelines (Guidelines) have further clarified the definition of "primary caregiver," however, a subsequent California Supreme Court decision invalidated the provisions of MMP with respect to the maximum amount of marijuana a patient or caregiver could possess or cultivate.

On January 21, 2010, the California Supreme Court, in *People v. Kelly*, (2010) 47 Cal 4th 108 basically eliminated the restrictions on the amount of marijuana a qualified patient can possess. The Court ruled that the MMP, which limited the amount of marijuana that a "primary caregiver" or "qualified patient" can possess to no more than eight ounces of dried marijuana and no more than six mature or twelve immature plants, was unconstitutional. The Court found that the establishment of limitations on the amount of marijuana to be possessed and/or cultivated conflicted with the intent of Proposition 215, which set no such limits. Rather, the Court held that the only "limit" on how much marijuana a person falling under the CUA may possess is that it must be "reasonably related to the patient's current medical needs."

One of the difficulties with the *Kelly* case is how, from a practical perspective, law enforcement can be expected to know the amount of marijuana a qualified patient can possess. When is an arrest appropriate and when is it not? Each individual case will vary depending on the qualified patients' needs. This creates an impossible situation for law enforcement in any attempt to enforce operating requirements and restrictions for MMDs.

Kelly does, however, reinforce that marijuana is still illegal and that Proposition 215 and the MMP merely provide for a defense against criminal prosecution. Proposition 215 and the MMP did not make marijuana legal in California; rather, they just create an exemption from prosecution for those who can prove that they are qualified patients or primary caregivers, and that the amount of marijuana in their possession is justified under the law.

Another area of the law that makes enforcement of regulations for MMDs practically impossible involves the definition of a “primary caregiver.” While the MMP defines a “primary caregiver,” the California Supreme Court, in *Mentch v. Superior Court*, (2008) 45 Cal 4th 274, explained that definition in more detail. The Supreme Court held that the statutory definition has two parts: (1) a primary caregiver must have been designated as such by the medical marijuana patient; and (2) he or she must be a person who has consistently assumed responsibility for the housing, health or safety of the patient. The Court concluded that a defendant asserting primary caregiver status must prove at a minimum that he or she (1) consistently provided care giving, (2) independent of any assistance in taking medical marijuana, (3) at or before the time he or she assumed responsibility for assisting with medical marijuana. Primary caregiver status requires an existing established relationship. Someone who merely maintains a source of marijuana does not automatically become the party who has consistently assumed responsibility for the housing, health or safety of that purchaser.

The key word in the Court’s analysis is “consistently,” which suggests an ongoing relationship marked by regular and repeated actions over time. The Court then discussed “cannabis clubs,” where customers execute a pro forma designation of the club as their primary caregiver. The Court commented that these clubs would not qualify as a primary caregiver, stating that, “A person purchasing marijuana for medicinal purposes cannot simply designate seriatim, and on an ad hoc basis ... sales centers such as the Cannabis Buyers’ Club as the patient’s primary caregiver.”

The effect of this is that it will be very difficult for an MMD to qualify as a primary caregiver, and the enforcement of regulations for them to qualify as such even more difficult. How is a peace officer going to determine efficiently whether or not the supplier of medical marijuana consistently assumed responsibility for the housing, health or safety of the purchaser? Unfortunately, MMDs tend to take the form of “storefront operations” that generally require that patients merely complete a form summarily designating the business owner as their primary caregiver and offering marijuana in exchange for cash. It is the author’s opinion that this type of operation is not what the Court envisioned in the *Mentch* case. However, it should be noted this type of operation is commonplace in the significant number of jurisdictions that allow MMDs.

At the time the moratorium was adopted, the case of *Qualified Patients Association v. City of Anaheim*, was pending in the California Court of Appeals, 4th District. It was hoped that this case would rule on the issue of whether or not local governments could ban MMDs. On August 18, 2010, the Fourth District Court of Appeals rendered its position in *Qualified Patients Association v.*

City of Anaheim. Unfortunately, the Court did not decide the pivotal question as to whether a City could outright ban MMDs. Rather, the appellate court sustained the City's demurrer and remanded the case to the trial court. Since then, the trial court has rendered its decision upholding the City of Anaheim's ban on MMDs. This decision coincides with a number of trial court decisions upholding such a ban as well as an appellate court decision upholding a ban based on land use.

The right of cities and counties to ban MMDs was confirmed by the *California Supreme Court in City of Riverside v. Inland Empire Patients Health & Wellness Center*, (2013) 56 Cal 4th 729. In that case the Court held that local governments were not preempted by the CUA from declaring MMDs to be a prohibited use and a public nuisance.

The City Council's Action in November 2011

The moratorium was designed to allow the City time to determine if it wanted to prohibit MMDs altogether, or continue to allow them with amended operating rules based upon the *Kelly* and *Mentch* decisions, as well as the California Attorney General's Guidelines. Also, Proposition 19, which would have legalized the possession of limited quantities of marijuana, was before the voters for a vote in November 2010. That proposition was defeated by the voters.

As indicated above, the City Council, in November 2011, had three options:

1. Take no action, thereby allowing the moratorium to expire and the City's MMD Ordinances to become operative again on January 27, 2012;
2. Determine to prohibit MMDs and adopt an Ordinance banning the establishment and operation of MMDs within the City; or
3. Determine to allow MMDs and introduce an Ordinance revising the City's existing MMD Ordinances so that they conform to recent court decisions and the Attorney General's Guidelines.

The Council chose Option 2 and banned MMDs within the City. The Ordinance banning dispensaries does not prevent qualified patients from obtaining medical marijuana from a primary caregiver in circumstances other than a storefront dispensary operation. Nor does the Ordinance conflict with the CUA or SB 420 because it does not impact a qualified patient's or primary caregiver's right to cultivate or possess medical marijuana under state law. The ban simply prevents the storefront dispensing of medical marijuana.

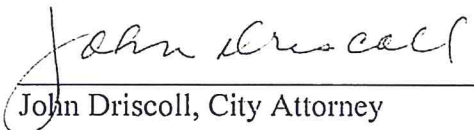
Potential Future Legislation

Presently, AB 266 is pending in the California legislature. The bill's author is Ken Cooley of Rancho Cordova, and the bill is sponsored by both the League of California Cities and the California Police Chiefs Association. The bill will provide a more comprehensive framework for the implementation of the CUA that provides local governments the authority to create and enforce

locally driven policies and ensure public safety. While the state would issue conditional licenses, the actual license to operate would be issued by local governments and local governments would retain control of suspension and revocation of licenses.

A similar bill was introduced in 2014 in the California Senate, SB 1262. There are, however, some distinct differences between the two bills. The primary difference is in the area of local control. Specifically, SB 1262 places control over licensing with the state, not local government. At this point, it is unclear as to what will happen with either of these two bills. It also should be noted that it is anticipated that an initiative for the legalization of marijuana will appear on the November 2016 ballot. Suffice to say that the future is unclear at this time.

Since this report is for informational purposes, there are no alternatives, budget impacts or recommendations presented. Although somewhat related to budget matters, it should be pointed out that cities that have adopted ordinances allowing MMDs have also adopted a form of business operations tax on MMDs. As an example, the City of Sacramento imposes a business operations tax on MMDs equal to four percent (4%) of each dollar of gross receipts from the sale of medicinal marijuana and related products.



John Driscoll, City Attorney



M. Cleve Morris, City Manager

Chart of Select Northern California Municipalities' Medical Marijuana Cultivation Regulations

County/City	Ordinance re Medical Marijuana Cultivation	Plants/ Growth Permitted	Indoor/ Outdoor and Cultivation Requirements	Registration, fees or other requirements	Party Responsible for/Manner of Enforcement
Alameda County	No ordinance re personal cultivation; only an ordinance regulating dispensaries.	State limit - 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a)	No	No	Not specified.
Amador County	Yes	No more than 12 plants or as many as two patients for a maximum of 24 plants	Outdoor or indoor allowed	No	Not specified.
Calaveras County	No ordinance re personal cultivation; only an ordinance re dispensary cultivation.	State limit - 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a)	Dispensary ordinance allows dispensaries to cultivate no more than six mature and twelve immature plants per qualified patient on the dispensary premises in an indoor secured site acceptable to the county sheriff that is neither visible to nor accessible by the public.	Dispensary fee	Violation of dispensary ordinance results in misdemeanor.
Contra Costa County	No ordinance re personal cultivation; only an ordinance prohibiting medical marijuana dispensaries.	State limit- 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a)	No	No	Not specified.

County/City	Ordinance re Medical Marijuana Cultivation	Plants/ Growth Permitted	Indoor/ Outdoor and Cultivation Requirements	Registration, fees or other requirements	Party Responsible for/Manner of Enforcement
El Dorado County	Yes (Note, on December 2, 2014, the Board of Supervisors voted to establish a committee for the purposes of further evaluation of the whether to repeal the current ordinance allowing outdoor medical marijuana cultivation.)	Only outdoor cultivation out of public view by an individual on no more than 200 sq. ft. of property and by a collective on no more than 600 sq. ft.	Indoor prohibited; Outdoor must be screened from public view, secured behind a minimum six-foot high solid wood or chain link fence with locked gates, 1000 feet from a youth oriented facility, be the primary residence of at least one of the growers, with property owner permission, post patient contact and medical marijuana recommendation information on-site, and meet environmental standards.	No.	The County Sheriff.
Elk Grove	Yes	Only indoor cultivation of no more than 50 sq. feet with a cultivation permit.	Outdoor prohibited; Indoor only inside a home or in a detached building outside in with grow area no more than 120 square feet. A 6-foot fence must surround the site. Grow lights cannot exceed 1,200 watts; and use of gas products is prohibited. Cultivation is barred within 1,000 feet of any school, child care center or public park, and can't be accessible to anyone 17 or younger. A ventilation/ filtration/ security system are required.	Cultivation permit required.	Unknown.
Escalon City	No ordinance re personal cultivation; only an ordinance prohibiting medical marijuana dispensaries.	State limit – 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a)	No	No	Not specified.
Fresno County	Yes	None- outright ban on all marijuana cultivation.	No	No	Not specified.

County/City	Ordinance re Medical Marijuana Cultivation	Plants/ Growth Permitted	Indoor/ Outdoor and Cultivation Requirements	Registration, fees or other requirements	Party Responsible for/Manner of Enforcement
Fresno City	Yes	None- outright ban on all marijuana cultivation.	No	No	Not specified.
Kern County	Yes	12 plant limit (not specified as to indoor/outdoor)	No	No	Misdemeanor violation, with a possible 6 mos. or \$1000 fine per plant, in addition to nuisance abatement costs.
Lathrop City	No	State limit – 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a)	No	No	Not specified.
Lodi City	No (Lodi had a moratorium on cultivation in place through 11/14 that banned outdoor cultivation and any indoor cultivation that created a public nuisance. The moratorium has expired and no new ordinance passed.)	None during moratorium, otherwise state limit – 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a).	During the moratorium outdoor cultivation was banned and indoor cultivation was allow but only if it did not create a nuisance resulting from visibility, odor, etc.	No	Not specified.
Manteca City	Yes	6 mature and 12 immature plants for personal cultivation and maximum of 12 plants per patient if grown in collective or cooperative.	Outdoor prohibited; Indoor allowed only in a secured, fully enclosed structure.	Only for collectives or cooperatives.	Not specified.

County/City	Ordinance re Medical Marijuana Cultivation	Plants/ Growth Permitted	Indoor/ Outdoor and Cultivation Requirements	Registration, fees or other requirements	Party Responsible for/Manner of Enforcement
Merced County	Yes	12 or fewer plants	Outdoor or indoor allowed.	No	Director of Community and Economic Development, building official, fire chief, sheriff, health officer or any of their designees may issue notice to abate.
Ripon City	Yes	6 immature/12 mature plants for individuals or as specified by Dr. recommendation but not more than 24 for individuals/99 for collectives where allowed	Outdoor prohibited; Indoor only in a residential zone within a detached, fully enclosed and secure structure no greater than 120 sq. ft. in size or within a residential structure.	Medical Marijuana Card	Code enforcement officers and Ripon Police Officers
Sacramento City	Yes	400 sq. ft. cultivation area allowed	Outdoor prohibited; Indoor only allowed in a secured, odor-free, sight obstructing structure.	No	Sacramento City SWAT team; notice to abate given before formal law enforcement case is opened.
Sacramento County	Yes	Outright ban on all outdoor marijuana cultivation; allows indoor cultivation of 9 plants.	Outright prohibited; Indoor only of 9 plants in single-family, detached homes, not in apartments.	No	Not specified.

County/City	Ordinance re Medical Marijuana Cultivation	Plants/ Growth Permitted	Indoor/ Outdoor and Cultivation Requirements	Registration, fees or other requirements	Party Responsible for/Manner of Enforcement
Santa Clara County	No ordinance re personal cultivation; only an ordinance prohibiting medical marijuana dispensaries. (But are currently exploring a cultivation ban.)	State limit – 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a)	No	No	Not specified.
Shasta County	Yes (On November 4, 214, the County voted to Adopt Measure A regarding medical marijuana cultivation.)	Outright ban on all outdoor marijuana cultivation; allows indoor cultivation of 12 plants	Outdoor prohibited; Indoor only of 12 plants within a detached structure accessory to a residence of a qualified medical marijuana patient or primary caregiver, with no unlawful surface drawing of water and unlawful discharges of water related to marijuana cultivation, permission of the property owner, 5) make any violation of the marijuana cultivation restrictions a misdemeanor.	No	Punishable as a misdemeanor.
Stockton City	No ordinance re personal cultivation; only an ordinance prohibiting medical marijuana dispensaries.	State limit – 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a)	No	No	Not specified.
Stanislaus County	No	State limit – 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a)	No	No	Not specified

County/City	Ordinance re Medical Marijuana Cultivation	Plants/ Growth Permitted	Indoor/ Outdoor and Cultivation Requirements	Registration, fees or other requirements	Party Responsible for/Manner of Enforcement
Sutter County	Yes	Square footage of cultivation allowed depending on parcel size with setback requirements; cultivation not permitted within 2,000 ft. of school, school bus stop, school evac. site, church, park, child care center, youth facility.	Outdoor or indoor allowed but outdoor grows must be within fully enclosed sight obscuring fence.	Registration required with name, persons on premises, patients, doctor recommendation, number of plants and other necessary information; if patient/caregiver is not owner of the parcel then notarized letter of permission required; Registration fee can be established by resolution	Development Services Director or Sheriff or their designees.
Tracy City	Yes	None- outright ban on all marijuana cultivation.	No	No	Punishable as misdemeanor.

County/City	Ordinance re Medical Marijuana Cultivation	Plants/ Growth Permitted	Indoor/ Outdoor and Cultivation Requirements	Registration, fees or other requirements	Party Responsible for/Manner of Enforcement
Tulare County	Yes (Note, on June 3, 2014, BOS directed staff to develop an ordinance <i>banning</i> all medical marijuana cultivation but the formal ordinance has yet to be adopted.)	Currently allows individual cultivation of up to 24 of up to 24 plants (6 mature/12 immature per patients with maximum of 2 patients) and collective cultivation of up to 99 plants.	Currently, outdoor cultivation banned; indoor allowed only in a secure, locked, and fully enclosed structure compatible with the exterior appearance of property structures with an alarm system and exterior lighting.		Violations are criminal misdemeanors.
Tuolumne County	No (Note, on February 4, 2014, the BOS tabled a proposed ban on outdoor cultivation and dispensaries to November 2014 to see about outcome of pending State Senate bills. No ordinance regarding cultivation/dispensaries has since been passed.)	State limit – 6 mature and 12 immature pursuant to Health & Safety Code 11362.77(a)	No	No	No

The following are examples of California municipalities with outright bans (outdoor and indoor) on cultivation:

Avenal

The Avenal Planning Commission passed an ordinance banning medical marijuana cultivation and distribution in the City of Avenal in March 2014.

Beaumont

On February 18, 2014 Beaumont city council voted to enact a total ban on medical marijuana cultivation.

California City

California City (Kern County) voted to enact a ban on dispensaries and cultivation on April 1, 2014.

Fresno City

Fresno City Council voted to enact a total ban on marijuana grows on March 20, 2014.

A lawsuit challenging the City of Fresno's 2011 temporary ban on the outdoor cultivation of medical cannabis was filed in May 2014, based on allegation that the City did not comply with CEQA.

Fresno County

On January 7, 2014, Fresno County voted to ban all medical marijuana cultivation in unincorporated areas of Fresno County. Violations are misdemeanor crimes, with daily fines, after an abatement order is sent to the property owner with a 15 day notice, or an "immediate threat" is determined.

Several lawsuits brought, mainly focused on the notice/fines (Judge put fines on hold in May 2014). Key complaint brought in spring 2014 on grounds that County failed to comply with CEQA. Fresno County maintains that the ban is defensible strictly on police power per City of Riverside v. Inland County and Maral v. Live Oak.

Tracy

Tracy municipal code section 10.08.3196 disallows all medical marijuana dispensaries and cultivation. Violations are punishable as misdemeanors and as otherwise set forth in chapter 1.04 of the Tracy Code (allows fines for infractions or misdemeanors). Each day of operation of a medical marijuana dispensary, or cultivation of medical marijuana, constitutes a separate offense.

San Pablo

In May 2014, San Pablo passed an ordinance banning all marijuana cultivation ("No person owning, renting, leasing, occupying, or having charge or possession of any parcel shall cause or allow such parcel to be used for the outdoor or indoor cultivation of marijuana plants.")

ORDINANCE NO. 1644

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLACERVILLE
BANNING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA
DISPENSARIES WITHIN THE CITY OF PLACERVILLE**

WHEREAS, in 1996, California voters enacted the Compassionate Use Act (CUA), which permits qualified patients and their primary caregivers to possess and cultivate marijuana for medical purposes where the medical use has been recommended by a physician; and

WHEREAS, the State enacted Senate Bill 420 to clarify the terms of the CUA, extend the scope of the CUA, and permit cities to adopt rules and regulations consistent with the CUA and Senate Bill 420; and

WHEREAS, SB 420 permits qualified patients and their primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes; it does not, however, address the role of dispensaries, nor does it require municipalities to provide for medical marijuana dispensaries (MMDs); and

WHEREAS, although an initial goal of the CUA was to encourage cooperation between state and federal officials, the federal Drug Enforcement Agency has enforced the Controlled Substances Act against dispensary operators and others who help supply patients in California with medical marijuana; and

WHEREAS, under the Controlled Substances Act, marijuana is a "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse, with no currently accepted medical use, and Section 841 of the Controlled Substances Act prohibits the manufacture, distribution or dispensing of marijuana; and

WHEREAS, the United States Supreme Court has held that the federal government has the authority to prohibit the manufacture, distribution and dispensing of marijuana under the Controlled Substances Act, regardless of whether these acts are done pursuant to the CUA; and

WHEREAS, on February 9, 2010, the City Council adopted an Urgency Ordinance imposing a 45-day moratorium on the establishment and operation of MMDs within the City; and

WHEREAS, on March 23, 2010, the City Council voted to extend the 45-day moratorium on MMDs for an additional 6 months, to September 23, 2010; and

WHEREAS, on August 24, 2010, the City Council extended the moratorium for an additional 16 months, to January 26, 2012, to allow City staff to monitor local, state and national developments with respect to MMDs; and

WHEREAS, during the period of the moratorium, City staff and the City Attorney have consulted with other jurisdictions, including those within El Dorado County, regarding issues relating to the establishment and operation of MMDs; and

WHEREAS, some communities with MMDs have reported adverse impacts on the health, safety and welfare of the community, such as criminal activity in and around the dispensaries, loitering, noise, traffic, complaints from neighbors regarding the smell, and inadequate property maintenance; and

WHEREAS, the operation of MMDs results in increased demands for police patrols and responses, which the City's Police Department is not adequately staffed to handle; and

WHEREAS, this Ordinance will not conflict with the CUA or SB 420 because it will not impact a qualified patient or primary caregiver's right to cultivate and possess medical marijuana under state law; and

WHEREAS, at the November 8, 2011 meeting, the City Council heard and considered a staff presentation by the Placerville Police Chief, as well as testimony and arguments of all persons desiring to be heard; and

WHEREAS, on November 8, 2011, the City Council accepted the recommendations of the Placerville Police Chief and directed staff to draft an Ordinance banning MMDs in the City,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLACERVILLE AS FOLLOWS:

Section 1: Findings.

In adopting this Ordinance, the City Council finds as follows:

1. Section 841 of the Controlled Substances Act prohibits the manufacture, distribution or dispensing of marijuana, and the United States Supreme Court has held that the federal government has the authority to prohibit the manufacture, distribution and dispensing of marijuana under the Controlled Substances Act, regardless of whether these acts are done pursuant to the Compassionate Use Act.

2. State law permits qualified patients and their primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes, but neither the CUA nor SB 420 addresses the legality of MMDs.

3. The City's prohibition of MMDs is consistent with federal law because federal law expressly prohibits dispensing marijuana.

4. The City's prohibition of MMDs is also consistent with state law because state law does not specifically permit MMDs, and the Ordinance will not impact a qualified patient or primary caregiver's right to cultivate and possess medical marijuana pursuant to state law.

5. The secondary impacts associated with MMDs, such as increased crime in and around the dispensaries, loitering, excessive noise, noxious odors and increased traffic, adversely impact the health, safety and welfare of the community and will require increased police patrols that will place a heavy burden on the City's limited law enforcement resources.

6. Other facilities exist that can serve the needs of Placerville's medical marijuana patients, so there currently exists no need for MMDs in the City.

Section 2: Title 5, Chapter 25, Sections 1-6, "Medical Cannabis Dispensaries" of the City of Placerville Municipal Code are amended in their entirety to read and provide as follows:

"CHAPTER 25

MEDICAL CANNABIS DISPENSARIES

SECTION:

- 5-25-1: Purpose
- 5-25-2: Relationship to Other Laws
- 5-25-3: Definitions
- 5-25-4: Medical Marijuana Dispensaries Prohibited
- 5-25-5: Establishment or Maintenance of Medical Marijuana Dispensaries Declared a Public Nuisance
- 5-25-6: Penalties for Violation

5-25-1: **PURPOSE:** The purpose of Chapter 25 is to prohibit medical marijuana dispensaries from locating in the City of Placerville. The City Council may adopt by resolution any regulations or policies that will further the purpose of this chapter, and that do not conflict with the provisions herein.

5-25-2: **RELATIONSHIP TO OTHER LAWS:** This chapter is not intended to, nor shall it be, construed or given effect in a manner that causes it to apply to any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the City Council that this chapter shall be interpreted to be compatible with federal, county and state enactments, and in the furtherance of the public purposes which those enactments express. Nothing in this chapter is intended to supersede any other provisions of this code.

5-25-3: **DEFINITIONS:** For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

CITY: The City of Placerville.

COMPASSIONATE USE
ACT OF 1996:

California Health and Safety Code Sections 11362.5 and 11362.7, et seq., as those sections are amended from time to time, including, without limitation, those amendments contained in SB 420.

MEDICAL MARIJUANA
DISPENSARY:

Any facility or location where medical marijuana is made available to and/or distributed by or to two or more of the following: a qualified patient, a person with an identification card, and/or a primary caregiver. A “medical marijuana dispensary” shall not include qualified patients, persons with an identification card and/or primary caregivers who associate within the state of California in order to collectively or cooperatively cultivate marijuana for medical purposes. A primary caregiver of a qualified patient or person with an identification card may deliver, administer or provide medical marijuana at the primary residence of the qualified patient or person with an identification card without violating this chapter.

PERSON WITH AN
IDENTIFICATION CARD:

Shall have the same meaning as defined in the Compassionate Use Act of 1996, California Health and Safety Code Sections 11362.5 and 11362.7, et seq., as those sections are amended from time to time.

PRIMARY CAREGIVER:

Shall have the same meaning as defined in the Compassionate Use Act of 1996, California Health and Safety Code Sections 11362.5 and 11362.7, et seq., as those sections are amended from time to time.

QUALIFIED PATIENT:

A person who is entitled to use medical marijuana pursuant to the California Compassionate Use Act of 1996, California Health and Safety Code Sections 11362.5 and 11362.7, et seq., as those sections are amended from time to time.

5-25-4: **MEDICAL MARIJUANA DISPENSARIES PROHIBITED:** The establishment and/or operation of medical marijuana dispensaries shall be prohibited in all areas of the City of Placerville. No permit or any other applicable license or entitlement for use, including, but not limited to the issuance of a business license, shall be approved or issued for

the establishment or operation of a medical marijuana dispensary within the city limits of the City of Placerville.

5-25-5: ESTABLISHMENT OR MAINTENANCE OF MEDICAL MARIJUANA DISPENSARIES DECLARED A PUBLIC NUISANCE: The establishment, maintenance, or operation of a medical marijuana dispensary as defined in this chapter within the city limits of the City of Placerville is declared to be a public nuisance.

5-25- 6: PENALTIES FOR VIOLATION:

- (A) Any person violating any of the provisions of this article shall be guilty of a misdemeanor and shall be punishable therefore by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the County Jail for a period of not more than six (6) months or by both such fine and imprisonment. In the event any civil suit or action is brought by the City to enforce the provisions of this chapter, the person responsible for such violation shall be liable to the City for the City's costs of the suit, including, but not limited to attorneys' fees, expert fees, and other costs of the suit.
- (B) In addition to any other enforcement remedies available to the City under any applicable state or federal statute or pursuant to any other lawful power the City may possess, any violation of this chapter may be prosecuted or enforced as a nuisance pursuant to Placerville Municipal Code Section 7-8-1 through 7-8-5, as those sections may be amended from time to time. The City may also prosecute or enforce violations of this chapter as a criminal offense or by a civil court action, prosecuted by the City Attorney or District Attorney in the name of the City or in the name of the People of the State of California, by seeking the appointment of a receiver, or in any other manner provided by law."

Section 3: Compliance with California Environmental Quality Act.

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly, and it prevents changes in the environment pending the completion of the contemplated study.

Section 4: Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more section, subsection,

subdivision, paragraph, sentence, clause or phrase be held unconstitutional, invalid or unenforceable.

Section 5: Effective Date and Publication.

This Ordinance of the City of Placerville shall be effective thirty (30) days after the date of its passage. Before expiration of fifteen (15) days after its passage, this Ordinance or a summary thereof as provided in Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Placerville, along with the names of the City Council voting for and against its passage.

Section 6: Title 5, Chapter 25, Sections 7-25 of the City of Placerville Municipal Code are repealed in their entirety

Section 7: Title 10, Chapter 10 of the City of Placerville Municipal Code is repealed in its entirety.

The above Ordinance was introduced at a regular meeting of the City Council of the City of Placerville held on November 8, 2011, by Councilmember Hagen, and it was read for the first time. The Ordinance was read for the second time on November 22, 2011 and Councilmember Hagen moved its adoption. The motion was seconded by Councilmember Mattson. A poll vote was taken, which stood as follows:

AYES: Acuna, Borelli, Hagen, Machado, Mattson
NOES: None
ABSENT: None
ABSTAIN: None


Mark A. Acuna, Mayor Pro Tem

ATTEST:


Susan Zito, MMC, City Clerk

CITY OF PLACERVILLE
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLACERVILLE AMENDING
TITLE 5, CHAPTER 25, PROHIBITING MEDICAL MARIJUANA DISPENSARIES,
DELIVERY OF MEDICAL MARIJUANA AND CULTIVATION OF MEDICAL
MARIJUANA

The People of the City of Placerville do ordain as follows: Title 5, Chapter 25, is hereby amended as follows:

MEDICAL MARIJUANA

5-25-1: PURPOSE:

5-25-2: RELATIONSHIP TO OTHER LAWS:

5-25-3: DEFINITIONS:

5-25-4: MEDICAL MARIJUANA DISPENSARIES PROHIBITED:

5-25-5: MEDICAL MARIJUANA CULTIVATION PROHIBITED:

5-25-6: DELIVERY OF MEDICAL MARIJUANA PROHIBITED:

**5-25-7: ESTABLISHMENT OR MAINTENANCE OF MEDICAL MARIJUANA
DISPENSARIES, CULTIVATION OF MEDICAL MARIJUANA AND DELIVERY OF
MEDICAL MARIJUANA DECLARED A PUBLIC NUISANCE:**

5-25-8: PENALTIES FOR VIOLATION:

5-25-1: PURPOSE:

The purpose of this chapter is to prohibit the cultivation, distribution and dispensing of medical marijuana in the City of Placerville and to prohibit medical marijuana dispensaries from locating in the City of Placerville. The City Council may adopt by resolution any regulations or policies that will further the purpose of this chapter, and that do not conflict with the provisions herein. (Ord. 1644, 11-22-2011)

5-25-2: RELATIONSHIP TO OTHER LAWS:

This chapter is not intended to, nor shall it be, construed or given effect in a manner that causes it to apply to any activity that is regulated by federal or state law to the extent that application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the City Council that this chapter shall be interpreted to be compatible with federal, county and state enactments, and in the furtherance of the public purposes which those enactments express. Nothing in this chapter is intended to supersede any other provisions of this code. (Ord. 1644, 11-22-2011)

5-25-3: DEFINITIONS:

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

CITY: The City of Placerville.

COLLECTIVE: The planting, growing, harvesting, drying, processing, or storage of one or more medical marijuana plants or any part thereof in any location on behalf of more than one qualified patient.

COMPASSIONATE USE ACT OF 1996: California Health and Safety Code sections 11362.5 and 11362.7 et seq., as those sections are amended from time to time, including, without limitation, those amendments contained in SB 420. Marijuana shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended.

DELIVERY: The commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

DISPENSARY: A facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

DISTRIBUTION: The procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

DISTRIBUTOR: A person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

MARIJUANA PLANT: Any mature or immature marijuana plant, or any marijuana seedling, with or without roots, unless otherwise specifically provided herein.

MEDICAL MARIJUANA: Marijuana used for medical purposes in accordance with California Health and Safety Code Sections 11362.7 et seq. as it now reads or as amended.

MEDICAL MARIJUANA CULTIVATION: The planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof, for medicinal purposes in accordance with California Health and Safety Code Sections 11362.7 et seq. as it now reads or as amended.

MEDICAL MARIJUANA DISPENSARY: Any facility or location where medical marijuana is made available to and/or distributed by or to two (2) or more of the following: a qualified patient, a person with an identification card, and/or a primary caregiver. A "medical marijuana dispensary" shall not include qualified patients, persons with an identification card and/or primary caregivers who associate within the state of California in order to collectively or cooperatively cultivate marijuana for medical purposes. A primary caregiver of a qualified patient or person with an identification card may deliver, administer or provide medical marijuana at the primary residence of the qualified patient or person with an identification card without violating this chapter.

PERSON WITH AN IDENTIFICATION CARD: Has the same meaning as defined in the compassionate use act of 1996, California Health And Safety Code sections 11362.5 and 11362.7 et seq., as those sections are amended from time to time.

PRIMARY CAREGIVER: An individual that (1) consistently assumes responsibility for the house, health, or safety of the medical marijuana patient, (2) satisfies the criteria as expressed in California Supreme Court Case People v. Mentch (2008) 45 Cal. 4th 274, 283, which are that the person (i) consistently provides caregiving to the medical marijuana patient, (ii) provided that caregiving independent of any assistance in taking medical marijuana, (iii) provided that caregiving at or before the time they assumed responsibility for assisting with medical marijuana; and (3) holds a valid State of California, California Medical Marijuana Identification Card designating them as a primary caregiver.

QUALIFIED PATIENT: A person with a doctor's recommendation for medical marijuana/cannabis and holds a valid State of California, California Medical Marijuana Identification Card designating them as a patient.

5-25-4: MEDICAL MARIJUANA DISPENSARIES PROHIBITED:

The establishment and/or operation of medical marijuana dispensaries shall be prohibited in all areas of the City of Placerville. No permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, shall be approved or issued for the establishment or operation of a medical marijuana dispensary within the city limits of the City of Placerville. (Ord. 1644, 11-22-2011)

5-25-5: MEDICAL MARIJUANA CULTIVATION PROHIBITED:

Medical marijuana cultivation by any person, including but not limited to a qualified patient or primary care giver as individuals or in a cooperative or collective, is prohibited within the city limits of the City of Placerville.

5-25-6: DELIVERY OF MEDICAL MARIJUANA PROHIBITED:

The delivery of medical marijuana is prohibited within the city limits of the City of Placerville.

5-25-7: ESTABLISHMENT OR MAINTENANCE OF MEDICAL MARIJUANA DISPENSARIES, CULTIVATION AND DELIVERY OF MEDICAL MARIJUANA DECLARED A PUBLIC NUISANCE:

The establishment, maintenance, or operation of a "medical marijuana dispensary", the cultivation of medical marijuana and the delivery of medical marijuana, individually and collectively, as defined in this chapter within the city limits of the City of Placerville, is declared to be a public nuisance. (Ord. 1644, 11-22-2011)

5-25-8: PENALTIES FOR VIOLATION:

(A) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both such fine and imprisonment. In the event any civil suit or action is brought by the City to enforce the provisions of this chapter, the person responsible for such violation shall be liable to the City for the City's costs of the suit, including, but not limited to, attorney fees, expert fees, and other costs of the suit.

(B) In addition to any other enforcement remedies available to the City under any applicable state or federal statute or pursuant to any other lawful power the City may possess, any violation of this chapter may be prosecuted or enforced as a nuisance pursuant to sections 7-8-1 through 7-8-5 of this code, as those sections may be amended from time to time. The City may also prosecute or enforce violations of this chapter as a criminal offense or by a civil court action, prosecuted by the city attorney or district attorney in the name of the City or in the name of the people of the state of California, by seeking the appointment of a receiver, or in any other manner provided by law. (Ord. 1644, 11-22-2011)

The above Ordinance was introduced at a regular meeting of the City Council of the City of Placerville on November 24, 2015, by Councilmember _____, and it was read for the first time. The Ordinance was read for the second time on _____, and Councilmember _____ moved its adoption. The motion was seconded by Councilmember _____.

A poll vote was taken which stood as follows:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Patty Borelli

ATTEST:

City Clerk Susan Zito, CMC