



# **SAFEGUARDING OUR COMMUNITIES**

## Local Regulation of Medical Marijuana Cultivation

**PREVIEW COPY**

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## Introduction

### WHY REGULATE MEDICAL MARIJUANA CULTIVATION AT THE MUNICIPAL LEVEL?

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

The state laws vary in terms of the conditions under which medical marijuana is allowed and the structures for obtaining and cultivating it. In California, medical marijuana patients (who must possess a “recommendation or approval” from a doctor) may cultivate up to six mature and 12 immature marijuana plants at any one time and are permitted to delegate their cultivation allowance to a caregiver.<sup>2</sup> A caregiver can grow marijuana for multiple patients and, under state law, may “bundle” the patients’ cultivation allowances.<sup>3</sup> Thus, one caregiver, with multiple patients, can grow hundreds of plants without violating state law. Once harvested, the marijuana crop must be used either by the patient or transferred to a cooperative or collective for use by their members, all of whom are required to be patients. The collectives/cooperatives are required to operate without realizing any profits (although not required to incorporate as nonprofit organizations).<sup>4</sup> The state has no additional statutory requirements affecting medical marijuana cultivation.



It has been nearly two decades since the passage of Proposition 215 (and subsequent enactment of state legislation and California Attorney General’s guidelines implementing the proposition). Some anecdotal reports and research suggest that marijuana may have the potential for relieving pain, controlling nausea, stimulating appetite and reducing anxiety, findings that are subject to debate and ongoing research.<sup>5</sup> Nevertheless, the state’s current regulatory structure for allowing medical marijuana cultivation has led to numerous problems, including:

1. The supply of medical marijuana outstrips the demand, resulting in unknown amounts of marijuana becoming available outside the medical marijuana structure. This result is predictable: the amount of marijuana available from 6 mature and 12 immature marijuana plants, the limit allowed for a medical marijuana patient, far exceeds the possible needs of that patient.<sup>4,6</sup>
2. The illegal diversion of medical marijuana into the black market has resulted in a profitable, illegal business. Law enforcement officials report that violence and disturbances of the peace are common.<sup>7</sup>
3. Marijuana cultivation can result in serious harm to the environment, including diversion of scarce water resources, use of toxic chemicals that pollute both the land and waterways, harm to wildlife, and erosion.<sup>4,8</sup>
4. Medical marijuana cultivation in urban areas has caused numerous problems, including hazardous use of electric power (putting residences and other buildings at fire risk), complaints from neighbors adversely affected by the strong odor of marijuana plants; robberies; and other disturbances of the peace.<sup>4,6</sup>

Despite the requirement that the medical marijuana infrastructure operate in a nonprofit manner, a large, legal (at least under state law) business has emerged to service the medical marijuana infrastructure. Medical marijuana lobbyists have gained increasing influence in the state capitol and are important economic stakeholders in many parts of the state.<sup>9</sup>

The potential impact of medical marijuana cultivation on youth raises an additional public health concern. Research to date has not established a link between state medical marijuana laws and increases in youth marijuana consumption, although the research is preliminary in nature and does not focus on the impact of increased marijuana cultivation.<sup>10</sup> Caution is advisable because laws that have minimal controls on marijuana cultivation may increase youth availability and decrease youth's perception of risk, which in turn have been shown to impact youth consumption.<sup>11</sup>

**...numerous California counties have enacted local ordinances to regulate medical marijuana cultivation...**

The state has limited its role in addressing these problems associated with medical marijuana cultivation, which manifest themselves at the community level. In response, numerous California counties have enacted local ordinances to regulate medical marijuana cultivation and distribution, using a variety of strategies for reducing problems while continuing to meet the needs of medical marijuana patients. This report has drawn from these local efforts, offering a comprehensive set of best practices for regulating medical marijuana cultivation.

## **THE LEGAL STRUCTURE FOR MUNICIPAL REGULATION OF MEDICAL MARIJUANA**

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

Proposition 215 and its implementing statutes and regulations do not directly challenge federal authority. Rather, it provides that the state will not prosecute medical marijuana patients or caregivers that adhere to the state's medical marijuana provisions. The California courts have held that this approach is not preempted by federal law because it simply removes the threat of state prosecution, without actually legalizing medical marijuana (which would be preempted because it conflicts with federal law).<sup>12</sup>

State law is explicit that local governments can enact local ordinances that place stricter requirements on medical marijuana cooperatives and collectives and have the authority to enact total bans on these entities.<sup>13</sup> Local governments can also enact other laws related to medical marijuana, including medical marijuana cultivation restrictions, so long as they do not conflict with the state provisions.<sup>14</sup> (For example, local governments cannot criminalize possession of medical marijuana by qualified patients, since this would conflict with state law.) But local governments have in the past run afoul of federal law. For example, at least two cities have, in the past, considered encouraging medical marijuana cultivation to increase local revenues only to be warned by federal law enforcement officials that such actions could lead to criminal prosecution.<sup>15</sup>

Many local governments have responded to this confusing and complex legal landscape by largely ignoring their legal authority to regulate medical marijuana cultivation. Local enforcement of the federal prohibition is difficult since the federal government has limited capacity to prosecute offenders and, as discussed above, state law places few restrictions on cultivation. The result for many communities has been increasing medical marijuana

cultivation with little or no oversight, leading to the problems noted above. Recent developments in Colorado and Washington, discussed below, provide more guidance to California cities and counties regarding how to regulate cultivation while avoiding potential conflicts with federal enforcement agencies.

## **THE IMPACT OF THE COLORADO AND WASHINGTON LEGALIZATION EXPERIMENTS ON REGULATION OF MEDICAL MARIJUANA BY CALIFORNIA MUNICIPALITIES**

Colorado and Washington have passed voter initiatives to legalize non-medical marijuana cultivation, sale and use.<sup>16</sup> On their face, the initiatives appear to conflict with federal law and would likely be held to be invalid if challenged by the federal government. This has not occurred. Instead, the U.S. Department of Justice issued a memorandum stating that it would use its prosecutorial discretion and not prosecute those involved in the marijuana trade in these two states so long as the state deploys and executes a robust regulatory structure. To avoid federal prosecutorial action, the regulations must ensure that at least the following conditions are met regarding the protection of public health and safety:

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

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

The federal government's actions suggest that California municipalities may have more discretion to take proactive steps to regulate marijuana cultivation than previously thought. Specifically, Colorado and Washington have developed a comprehensive regulatory structure that includes both license fees and taxes. The fact that the Department of Justice memorandum did not object to the state gaining revenue from the marijuana trade suggests that California municipalities can address the public health and safety problems associated with medical marijuana cultivation, including imposition of revenue-generating fees and taxes to help offset the cost of regulation and enforcement.

Establishing a local structure for regulating medical marijuana cultivation can serve an additional purpose: building a foundation for regulating non-medical marijuana cultivation should California follow Washington and Colorado's example and enact a marijuana legalization voter initiative in the future. One recent poll found that a majority of Californians would support such an initiative, which may well be on the ballot in the statewide November 2016 elections.<sup>18</sup>

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## CONDITIONAL USE PERMITS: THE FOUNDATION FOR LOCAL REGULATION OF MEDICAL MARIJUANA CULTIVATION

Conditional Use Permits (CUPs) are a basic tool for regulating land uses at the local level, and all California cities and counties have established an infrastructure for issuing permits, monitoring compliance, and enforcing the requirements. They are a flexible regulatory tool that can be adapted to the specific needs associated with a given land use. Typically, the jurisdiction has a standardized application process and procedures for considering an application. These may include a public hearing before the planning commission and/or the city council or board of supervisors. The hearing provides the applicant, public officials, neighbors, and other interested parties the opportunity to present evidence regarding whether the application should be granted and, if so, with what conditions. The CUP ordinance provides basic guidelines for making these determinations and can include mandatory or discretionary rules and conditions. Permit fees may also be required to defray costs associated with issuing the CUP and monitoring and enforcing the requirements. Public nuisance abatement ordinances work hand in hand with CUPs to control problematic activities on properties within the local jurisdiction's boundaries. The best practices proposed below use the CUP process and public nuisance abatement requirements as the foundation for regulating medical marijuana cultivation.<sup>19</sup>

### HIGHLIGHTS OF THE MODEL MEDICAL MARIJUANA CULTIVATION ORDINANCE

- Provides a comprehensive list of findings, purposes, and definitions that establish the rationale for the ordinance. These can be augmented and tailored with provisions specific to the local jurisdiction adopting an ordinance.
- Explicitly states that medical marijuana cultivation is illegal under federal law and constitutes a public nuisance, while granting immunity to local prosecution if the provisions of the ordinance are adhered to. The provisions are designed to minimize the likelihood that the ordinance is found by any court to be preempted by or in conflict with state or federal law.
- Requires strict adherence to state guidelines for medical marijuana cultivation and distribution.
- Distinguishes between cultivation for personal use from cultivation for distribution, with stricter controls on cultivation for distribution.
- Exempts cultivation for personal use from the permitting requirements so long as the qualified patient or his/her caregiver cultivates no more than one mature and one immature plant on a single parcel.
- Establishes annual permit fee schedule, with lower fees assessed for personal use cultivation than for cultivation for distribution.
- Provides that all funds collected from the fees shall be used exclusively for administration, inspections, and enforcement of the ordinance.
- Requires medical marijuana growers to apply for and obtain a Conditional Use Permit, establishing guidelines for the application and review process. The provisions include opportunity for public input.
- Establishes limits on the amount of medical marijuana that may be grown at a given location and places restrictions on permissible cultivation locations. The restrictions are designed to enhance public health and safety, protect the environment, and minimize risks of public nuisance activities.
- Establishes limitations on both indoor and outdoor cultivation, with public health and safety requirements for the maintenance of buildings, fencing, and security.
- Prohibits cultivation near sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries.
- Requires those growing medical marijuana for distribution to maintain records regarding cultivation and distribution activities that must be made available on demand to inspectors and enforcement officers.
- Establishes product purity standards that require that only certified organic residual pesticides, herbicides, and fungicides and disclosure of all contaminants and additives.

# Model Medical Marijuana Cultivation Ordinance

## 1. Findings

- (a) California Government Code, Section 65850 (c) (4) provides the authority for (City/County) to regulate, by ordinance, the intensity of land use.
- (b) The State of California approved Proposition 215 “The Compassionate Use Act of 1996” (Health and Safety Code Section 11362.5), which has as its primary purposes to ensure that: (1) “[S]eriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief”; and (2) patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
- (c) The State of California also enacted SB 420 in 2004 (Health and Safety Code Section 11362.7 et seq.) to clarify the scope of the Compassionate Use Act to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420 and Proposition 215.
- (d) The California Department of Justice issued a document entitled: *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* in August 2008.
- (e) Under the Federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., the use, possession and cultivation of medical marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need.
- (f) Marijuana plants, as they begin to flower and for a period of two months or more during the growing season (August through October for outdoor cultivation), produce an extremely strong odor that is detectable far beyond property boundaries and that can adversely impact the peace and enjoyment of nearby properties.
- (g) The (City/County) has received numerous complaints of odor related to the growing of medical marijuana.
- (h) In the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of a primary caregiver growing for numerous patients, a very large number of plants can currently be grown on the same legal parcel, or parcels, within the (City/County).
- (i) Cultivation of marijuana has negative environmental effects. Cultivation sites can adversely affect wildlife, vegetation, water, soil, and other natural resources through the use of chemicals, fertilizers, terracing, and poaching and can have other negative environmental impacts include but not limited to: alteration of watersheds; diversion of natural water courses; elimination of native vegetation; wildfire hazards; poaching of wildlife; and disposal of garbage, non-biodegradable materials, and human waste.
- (j) The possession and cultivation of large quantities of marijuana has resulted in armed robberies of residents living in nearby communities and residential areas surrounding the (City/County).
- (k) The strong smell of marijuana may alert persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery in the nearby communities.
- (l) The potential adverse secondary effects of allowing the cultivation of medical marijuana presents a clear and present danger to the immediate preservation of the public peace, health, and safety in (City/County) because currently the (City/County) has no rules or regulations governing the cultivation of medical marijuana.

- (m) The cultivation of marijuana within a residence may involve the excessive use of electricity, which may create an unreasonable risk of fire from the electrical grow lighting systems, creating a clear and present danger to the occupants and neighbors. It also has a potential for adversely affecting the structural integrity of the residence.
- (n) Cultivation of any amount of marijuana within 1,000 feet of youth-sensitive locations, including schools, parks, child care facilities, and libraries, put juveniles at heightened risk for health and safety problems, including non-medical consumption and exposure to and potential involvement in theft, violence and other criminal activities. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare and to the protection of the children and the person(s) cultivating the marijuana plants.
- (o) The California Department of Justice August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
- (p) This chapter is in compliance with the California Health & Safety Code Section 11362, and does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to Proposition 215 and Senate Bill 420.
- (q) The United States Department of Justice issued a Memorandum entitled "Guidance for Marijuana Enforcement" on August 29, 2013. The memorandum established eight guidelines for states regarding the federal priorities in determining whether federal enforcement should commence against those engaged in specific activities related to marijuana cultivation and distribution. This ordinance places the highest priority on meeting these guidelines, particularly those related to public safety and health, restrictions on availability to minors, and prevention of illegal trafficking and profiteering.
- (r) Nothing in this ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State law. No provision of this Chapter shall be deemed a defense or immunity to any action brought against any person by the [local District Attorney], Ventura County District Attorney, the Attorney General of State of California, or the United States of America for non-medical use of marijuana.

## II. Purpose and Intent

It is the purpose and intent of this ordinance to:

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

and their caregivers with the health, safety, morals and general welfare of the residents and businesses within the (City/County).

- (e) Require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

## COMMENT

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

## III. Definitions

- (a) “Collective or cooperative cultivation” means a collective or cooperative that engages in the “cultivation of medical marijuana.”
- (b) “Cultivation for personal use” means the growing of medical marijuana which is either grown by the qualified patient or delivered directly to the qualified patient by his/her primary caregiver.
- (c) “Cultivation for distribution” means the growing of medical marijuana for distribution to collectives or cooperatives.
- (d) “Cultivation of medical marijuana” and “medical marijuana cultivation” means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq., as amended.
- (e) “Detached fully enclosed structure” means a building completely detached from a residence that complies with the California Building Code, as adopted in the (City/County), and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two inch by four inch (2" x 4") or thicker studs overlaid with three-eighths inch (3/8") or thicker plywood or the equivalent. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
- (f) “Immature marijuana plant” means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.
- (g) “Legal parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2, commencing with Section 66410, of Title 7 of the Government Code).
- (h) “Mature marijuana plant” means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

- (i) "Medical marijuana" is marijuana as defined in Health and Safety Code §11018 as amended, used for personal medical purposes of a patient upon the written or oral recommendation or approval of a physician, in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq., as amended.
- (j) "Medical marijuana collective" or "collective" means an entity, facility or location, at a fixed, immobile location, at which two (2) or more qualified patients, persons with an identification card, and the designated primary care givers of qualified patients and persons with an identification card, combined, associate in order to operate the business, facility or location and to collectively cultivate marijuana for medical purposes, as provided in Health & Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code §11362.81, as amended.
- (k) "Medical marijuana cooperative" or "cooperative" means an entity at a fixed, immobile location, properly organized, registered and operated as such a corporation pursuant to Corporations Code Section 12200 et seq. or Food and Agricultural Code Section 54001 et. seq., as amended, so that qualified patients, persons with an identification card, and the designated primary caregivers of qualified patients and persons with an identification card may cultivate marijuana for medical purposes pursuant to Health and Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code §11362.81, as amended.
- (l) "Outdoor" means any location within [jurisdiction] that is not within a fully enclosed and secure structure.
- (m) "Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.
- (n) "Primary caregiver(s)" are defined in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq., as amended. Further, a "primary caregiver" must comply with the 2008 decision in *People v. Mentch* (45 Cal.4th 274), unless subsequently superseded or overturned, and be able to prove, in addition to other requirements by law, that he or she consistently assumed responsibility for the housing, health, or safety of that patient independent of any assistance in taking medical marijuana at or before the time he or she assumed responsibility for assisting with medical marijuana.
- (o) "Qualified patient(s)" and "person(s) with an identification card" are defined in strict accordance with California Health and Safety Code Section 11362.7 et seq., as amended.
- (p) "School" means an institution of learning for minors, whether public or private, offering regular course of instruction for children attending kindergarten, elementary school, middle or junior high school or senior high school. A residence that provides home schooling and preschool or daycare centers are not included in this definition.
- (q) "Sensitive land use" means any areas and facilities primarily devoted to use by children and families and the general public.
- (r) "Solid fence" means an eight foot high structure, constructed with material approved by the Building Official that prevents viewing the contents from one side to the other. For the purposes of this Chapter, "solid fence" does not include tarpaulins, scrap material, bushes or hedgerows.

## COMMENT

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

## IV. Prohibited Business Activities; Limited Immunity from Local Prosecution

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

### COMMENT

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

## V. General Provisions

- (a) Medical marijuana cultivators must be qualified under State law.
  - 1. Cultivation of marijuana shall only be conducted by verifiable qualified patients or primary caregivers as defined in the California Health and Safety Code.
- (b) Cultivation of marijuana for sale is prohibited pursuant to Health and Safety Code §11362.765(c). Medical marijuana may not be sold for profit pursuant to Health and Safety Code Cultivation §11362.765(a).
- (c) Cultivation of marijuana for distribution for medical purposes may be:
  - 1. Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
  - 2. Provided in exchange for services rendered to the entity;
  - 3. Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
  - 4. Any combination of the above.
- (d) Exterior signage related to marijuana cultivation is prohibited at any cultivation location permitted pursuant to this Chapter.
- (e) All electricity associated with the cultivation of marijuana shall be grid connected and compliant with existing electrical code.
  - 1. Use of generators for production of electricity for marijuana production is prohibited.

- (f) All plumbing modifications associated with marijuana cultivation must be approved by the (City/ County) Planning Department.

## COMMENT

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

## VI. Medical Marijuana Cultivation Permit Required

- (a) Except as provided in subsection (k) of this Section, prior to commencing any medical marijuana cultivation, the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where medical marijuana cultivation is proposed to occur must obtain either a Medical Marijuana Cultivation for Personal Use Permit [*“Cultivation for Personal Use Permit”*] and/or a Medical Marijuana Cultivation for Distribution Permit [*“Cultivation for Distribution Permit”*] from the City Council/Board of Supervisors or their designee. The initial application for either type of permit and subsequent permit extensions shall be reviewed by the Planning Commission and shall include the following information:
  1. A notarized signature from the owner of the property consenting to the cultivation of marijuana at the premises on a form acceptable to the City;
  2. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where medical marijuana will be cultivated;
  3. The name of each qualified patient or primary caregiver who participates in the medical marijuana cultivation;
  4. The identification number and expiration date of the State of California Medical Marijuana Identification Card issued by the Public Health Department of [County] for each qualified patient or primary caregiver who participates in the medical marijuana cultivation;
  5. The number of marijuana plants that will be cultivated on the property;
  6. If applicable, a certification that all marijuana plants to be cultivated are for the personal use of the applicant;
  7. A certification that all marijuana cultivated pursuant to the permit will conform with product purity requirements of this Chapter;
  8. The physical site address of where the marijuana will be cultivated;
  9. A waste disposal plan that conforms to the requirements of this chapter;
  10. If applicable, a plan for transporting or delivering medical marijuana to a qualified patient, collective or cooperative that meets the requirements of Section XIII;

11. A signed consent form, acceptable to the (City/County), authorizing inspections by the Police Department or other (City/County) staff of the detached, fully enclosed and secure structure or area of the residence used for the cultivation of marijuana upon twenty-four (24) hours' notice;
  12. A certification that the minimum requirements required under this Chapter shall be adhered to.
- (b) Permits may be extended in 2 year increments.
  - (c) The (City/County law enforcement agency) shall conduct an initial review of the application and provide a recommendation to the Planning Commission regarding the risk of crime or violence associated with the location and operation of the proposed cultivation permit.
  - (d) The Planning Commission shall conduct a public hearing to review the application. It may, in its discretion, deny any application for a Cultivation Permit, or extension thereof, if the Commission finds that the issuance of such permit, or extension thereof, would be detrimental to the public health, safety, or welfare.
  - (e) The Planning Commission, after investigation and review, shall recommend to the (City Council/ Board of Supervisors) approval or denial of the application or extension. The Planning Commission can recommend additional conditions beyond those required by this chapter to ensure the security and safety and environmental protection of the surrounding neighborhood and (City/County).
  - (f) The (City Council/Board of Supervisors) shall make the final determination whether a permit should be approved or denied. It shall deny any application for a Cultivation for Personal Use Permit or Cultivation for Distribution Permit, or extension thereof, which does not demonstrate satisfaction of the minimum requirements of this chapter.
  - (g) **[OPTIONAL]** A Cultivation for Distribution License shall be issued at the same time that a Cultivation for Distribution Permit is approved and issued.
  - (h) The (City Council/Board of Supervisors) determination is subject to appeal by any aggrieved party pursuant to Chapter \_\_\_\_.
  - (i) In addition to any other penalties and remedies provided by law, including the provisions of this Chapter, the requirements described in this Chapter shall be deemed conditions of permit approval, and failure to comply with any such requirements during the term of the permit shall be grounds for revocation of any permit issued pursuant to this Chapter.
  - (j) The (City/County) reserves the right to require additional security and safety conditions, if necessary, upon investigation or receipt of new or revised building plans.
  - (k) Any qualified patient or his/her individual primary caregiver may cultivate up to one mature and one immature marijuana plant for the personal use of the qualified patient without obtaining a permit or license as specified in this Section. Such cultivation shall adhere to all other requirements of this Ordinance including the limitations on the number of plants in one location specified in Section IX.

## COMMENT

Section VI establishes the procedures for applying for and obtaining a Conditional Use Permit (CUP). There are two types of permits – personal use and distribution. The procedures for obtaining either type of permit are identical, although the requirements and restrictions vary by type, as provided in subsequent sections of the ordinance. The steps include law enforcement investigation, planning commission review, a public hearing, and final determination by the elected body of the jurisdiction. Additional conditions beyond those specified in subsequent sections may be imposed if found to be needed to protect public health and safety. These model provisions can be modified to conform to the jurisdiction's standard procedures for applying for and issuing CUPs.

Subsection (k) exempts cultivation of no more than one mature and one immature marijuana plant that is for the exclusive use of a qualified patient. In this case, the cultivator does not need to obtain a permit but must still adhere to other provisions of the ordinance. This subsection is designed to address concerns that individual patients not involved in distribution should be able to have a ready, small supply of medical marijuana without needing to engage in a permit or licensing process. Note that Section IX (e) provides that the patient or caregiver exercising this exemption may not cultivate more than one mature plant and one immature site at any single location. The limited benefits of engaging the permit process in these circumstances is outweighed by the costs to both the cultivator and the local jurisdiction.

More streamlined procedures can be considered for cultivation of larger numbers of marijuana plants for personal use (e.g., not requiring a public hearing or the elected body's approval unless a protest is lodged). However, it is recommended that personal use cultivation not be exempted altogether from the permit requirements of the ordinance if cultivation is planned for more than one mature and one immature plant on a single parcel.

The model ordinance includes an optional Cultivation for Distribution license [subsection (g)], which is issued at the same time the permit is issued. In general, CUPs address land use activities and licenses address business activities. While clearly overlapping functions, the two are conceptually distinct. The ordinance imposes all of its requirements and restrictions through the CUP structure, although these could alternatively be imposed through licensing provisions. There may be advantages to use licensing provisions, depending on the particular circumstances of the local jurisdiction. Having both in the ordinance may be important in the future in case the state preempts or otherwise restricts local control over one or the other regulatory options.

## VII. Medical Marijuana Cultivation Permit Fees

- (a) An annual Cultivation for Personal Use Permit fee of [\$50] shall be assessed and applied for marijuana cultivation that is for the exclusive, personal use of the grower/applicant, who is a Qualified Patient under State law.
- (b) An annual Cultivation for Distribution Permit fee of [\$100] per marijuana plant to be grown shall be assessed and applied for all marijuana cultivation that is other than for the exclusive, personal use of the grower under subsection (a). This fee shall apply for all plants when an applicant cultivates marijuana for both personal use and for distribution.
- (c) A Cultivation for Distribution Permit shall be required if any of the marijuana to be cultivated pursuant to the permit is to be distributed to a cooperative or collective.
- (d) Revenues from the fees shall be maintained in a separate account and shall be used exclusively for the following:
  - 1. Costs associated with the administration of this chapter;
  - 2. Regular inspections of permitted uses; and
  - 3. Enforcement of chapter provisions.
- (e) Growers shall annually certify the anticipated number of plants to be grown. Any change in the number of plants shall be reported to \_\_\_\_\_ as soon as known to the grower.

## COMMENT

Section VII establishes permit fees for each type of permit. Suggested fee amounts are provided, although they should be adjusted to cover the actual costs of administering the ordinance, including both inspections and enforcement. Careful consideration should be given to the resources needed to ensure conformance to the ordinance requirements as well as eradicating unpermitted and illegal cultivation sites. Having sufficient revenue to cover the cost of a dedicated law enforcement officer is highly recommended. The section requires that all funds be used for these purposes. Fees should not be diverted to the jurisdiction's general fund, which may be illegal pursuant to Proposition 26. In general, higher fees are justified for cultivation for distribution, since substantial revenues are likely to be gained by such cultivation.

## VIII. Medical Marijuana Cultivation for Distribution License Fees

- (a) Growers obtaining a Cultivation for Distribution permit must also apply for and obtain a Cultivation for Distribution License.
- (b) An annual license fee of [\$1,000] shall be paid by all individuals receiving a Cultivation for Marijuana Distribution License.
- (c) Revenues from the fees shall be maintained in a separate account and shall be used for the following:
  - 1. Costs associated with the administration of this chapter
  - 2. Regular inspections of permitted uses
  - 3. Enforcement of chapter provisions
- (d) The license granted under the provisions of this ordinance is not transferable and is in addition to the permit requirements in Article VI.
- (e) Cultivation pursuant to a Cultivation for Personal Use Permit is exempt from the requirements of this Article.

## COMMENT

The model ordinance includes both permit and license fees. If the requirement for a license is omitted from Section VI, then this section should also be omitted. See discussion in comment to Section VI. A suggested license amount is provided, although it should be adjusted based on costs associated with implementation, enforcement and administration of the ordinance, as noted above (including the cost of a dedicated law enforcement officer).

## IX. Allowable Cultivation

- (a) Individual qualified patients may cultivate no more than 6 mature plants, 12 immature plants, and 8 oz. dried processed marijuana per person.
- (b) Individual primary caregivers may cultivate no more than 6 mature plants, 12 immature plants, and 8 ounces of dried process marijuana per qualified patients.
- (c) Primary caregivers may cultivate for no more than five qualified patients.
- (d) Total cultivation shall not exceed more than [6-12] mature, [12-24] immature marijuana plants and 24 oz. dried processed marijuana on any parcel, subject to additional restrictions specified in this Chapter.
- (e) A qualified patient or his or her individual primary caregiver who exercises the exemption from obtaining a permit pursuant to Section VI (k) are limited to one mature and one immature plant on any parcel, subject to additional restrictions specified in this Chapter.
- (f) A maximum of five qualified patients or their primary caregivers may cultivate marijuana up to the limits specified in subsection (d) of this section.
- (g) The forgoing limitations shall be imposed regardless of the number of qualified patients or primary caregivers residing at the parcel or participating directly or indirectly in the cultivation. Furthermore, these limitations shall be imposed notwithstanding any assertion that the person(s) cultivating the marijuana are the primary caregivers for qualified patients or that such person(s) are collectively or cooperatively cultivation marijuana.

### COMMENT

The ordinance places strict overall limits on the total number of marijuana plants that are allowed on a single parcel whether for personal use or for distribution. Subsections (a) and (b) restate the limits provided in state law regarding how many plants may be cultivated by an individual qualified patient or a primary caregiver. Subsection (c) limits qualified caregivers to a maximum of five Qualified Patients. Subsection (d) limits the amount of cultivation on any one parcel, subject to additional restrictions within the ordinance. Subsection (e) prohibits cultivation of more than one mature and one immature plant on a single parcel if the cultivator is a qualified patient or his or her primary caregiver who is exercising the exemption from the permit process pursuant to Section VI (k). Subsection (f) permits up to five qualified patients or their primary caregivers to cultivate on any one parcel.

Subsection (c)'s limitation on the number of qualified patients that a primary caregiver can cultivate for is more restrictive than state law, which has no such limitations. Its purpose is to limit the total amount of cultivation by any one individual, thereby diversifying the number of growers and reducing any one individual's influence on the market. It has an indirect impact on land use, so is a permissible land-use based restriction using a CUP mechanism but may be more appropriately imposed as a license restriction if a license provision is included in the ordinance (see Section VI comment for discussion).

Subsection (d)'s limitation on the number of plants permitted on an individual parcel is based on local land use authority without conflicting with the state's limits for individual cultivation. The model ordinance recommends no more than 12 mature and 24 immature plants and encourages consideration of lower limits (as low as 6 mature and 12 immature plants, the same limits for individual cultivators). The limits on marijuana cultivation on particular parcels serve three important functions: (1) Reduces risk of environmental damage; (2) Reduces risk of theft and violence by making the crop less valuable and easier to secure and monitor; and (3) Reduces the

likelihood of diversion of portions of the crop to an illegal market, by keeping the total amount cultivated more closely aligned to the likely needs of the qualified patients involved. Jurisdictions may wish to maintain the lower limits for cultivation that is exclusively for personal use.

Subsection (e) addresses cultivation for personal use that is exempt from the permit process pursuant to Section VI (k). To avoid the permit process, no more than one mature and one immature plant may be cultivated on a single parcel. This will prevent a caregiver from “bundling” the personal exemptions of multiple qualified patients and cultivating large numbers of plants on a single parcel while avoiding the need for a permit.

Some jurisdictions have set limits on the amount of square footage allowed for cultivation. The model ordinance uses a plant-per-parcel formula because it provides a more certain limit on the total amount of medical marijuana that is cultivated.

Note that a qualified patient or primary caregiver is permitted to cultivate the limits found in state law but under the ordinance may need to use more than one parcel in order to conform to the limitations on the number of plants allowed on an individual parcel.

## X. Provisions for Cultivation of Medical Marijuana Pursuant to a Cultivation for Personal Use Permit

- (a) Marijuana cultivation pursuant to a Cultivation for Personal Use Permit is prohibited in retail, commercial or industrial zones.
- (b) A maximum of one mature and one immature marijuana plant may be grown indoors on any residential/rural/agricultural parcel pursuant to the exemption provided in Section VI (k) provided that all the structural requirements found in subsection (c)(1) and (3) are adhered except for subsection (c) (3)(ii) (pertaining to approved security systems) and provided that the structure used for cultivation maintains at least a [100] foot setback from the property line.
- (c) Indoor cultivation pursuant to a Cultivation for Personal Use Permit may only take place in residential, rural, and agricultural zones.
  - 1. Marijuana cultivation shall be permitted only in a detached, fully enclosed structure.
  - 2. Distance requirements:
    - i. Parcels shall maintain a minimum distance of 100 feet from any other permitted marijuana cultivation sites as measured from the parcel property line to property line.
    - ii. Structures used for cultivation shall maintain at least a 100 foot setback from neighboring property lines.
    - iii. Structures used for cultivation shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.

3. Structure requirements:
  - i. Grow light shall use bulbs with a maximum of 1,200 watts.
  - ii. A security system approved by the Sheriff and Building Official shall be in place at all times.
  - iii. No person under 18 may have access to the structure.
  - iv. Medical marijuana cultivation area shall be in compliance with the current adopted edition of the California Business Code Sec. 1203.4 Natural Ventilation or Sec. 402.3 Mechanical Ventilation (or their equivalents).
- (d) Outdoor cultivation pursuant to a Cultivation for Personal Use Permit may take place in residential and rural/agricultural zoned areas under the following conditions:
  1. A maximum of one mature and one immature marijuana plant may be grown outdoors on any residential/ rural/agricultural parcel pursuant to the exemption provided in Section VI (k) provided that the plants have a [100] foot setback from the property line.
  2. Except as provided in paragraph 1 of this subsection, marijuana shall not be grown outside in parcels less than one (1) acre.
  3. 1-5 acres parcels shall maintain a minimum distance of 100 feet from any other permitted marijuana cultivation sites as measured from the parcel property line to property line of the other permitted marijuana cultivation site.
  4. 1-5 acre parcels shall require a 100 foot setback from the property line.
  5. 5+ acre parcels shall maintain a minimum distance of 200 feet from any other permitted marijuana cultivation sites as measured from the parcel property line to property line.
  6. 5 + acre parcels shall require a 200 foot setback from the property line.
  7. The parcel shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.
  8. Cultivated marijuana must be enclosed by a minimum 8 foot solid fence.

## COMMENT

Section X establishes rules for cultivating medical marijuana for personal use, with separate rules for indoor and outdoor cultivation, which is only allowed in residential and rural/agricultural zones. Indoor cultivation must be located in a fully enclosed structure that is separate from a residence and meet setback and certain building requirements. Outdoor cultivation must adhere to more stringent setback requirements, based on parcel size. The setback, fencing and building requirements are designed to reduce risks of theft and violence, by making the plants less visible and more secure. The setback requirements also reduce offensive odors affecting adjacent properties. Distance requirements are general recommendations and may need to be adjusted to address specific local conditions.

The section includes special provisions for cultivation pursuant to the exemption from the permitting process found in Section VI (k).

## XI. Provisions for Cultivation of Medical Marijuana for Distribution

- (a) Marijuana cultivation pursuant to a Cultivation for Distribution Permit is prohibited in retail, commercial, and residential zones.
- (b) No on-site consumption, use or smoking of medical marijuana shall occur at premises where marijuana is cultivated for distribution. No consumption, use or smoking of marijuana in the parking areas, or in vehicles located at or near or under said facility, or under any circumstances in which the consumption, use, or smoking of marijuana is prohibited by law. No cooking, sale, distribution, preparation, manufacturing or consumption of marijuana-enhanced, edible or drinkable products, including but not limited to cookies, candy, drinks, brownies or baked goods, is allowed. No person under the age of eighteen (18) shall be allowed on any marijuana cultivation location unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian.
- (c) No person under the age of eighteen (18) shall be allowed on premises where marijuana is cultivated for distribution unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian.
- (d) Indoor cultivation pursuant to a Cultivation for Distribution Permit is permitted in industrial zones under the following conditions:
  - 1. Distance requirements:
    - a. Structures used for cultivation shall maintain at least a 100 foot setback from neighboring property lines.
    - b. Parcels shall maintain a minimum distance of 500 feet from any other permitted marijuana cultivation sites as measured from the parcel property line to property line.
    - c. Structures used for cultivation shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.
  - 2. Structure requirements:
    - a. Cultivation is permitted only in detached, fully enclosed structures.
    - b. Grow light shall use bulbs with a maximum of 1,200 watts.
    - c. A security system approved by the Sheriff and Building Official shall be in place at all times.
    - d. No person under 18 may have access to the structure.
    - e. Medical marijuana cultivation area shall be in compliance with the current adopted edition of the California Business Code Sec. 1203.4 Natural Ventilation or Sec. 402.3 Mechanical Ventilation (or their equivalents).
- (e) Indoor cultivation pursuant to a Cultivation for Distribution Permit is permitted in rural/agricultural zones under the following conditions:
  - 1. Distance requirements:
    - a. Parcels shall maintain a minimum distance of 250 feet from any other permitted marijuana cultivation sites as measured from the parcel property line to property line.
    - b. Structures used for cultivation shall maintain at least a 200 foot setback from neighboring property lines.

- c. Structures used for cultivation shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.
2. Structure requirements:
- a. Cultivation is permitted only in detached, fully enclosed structures.
  - b. Grow light shall use bulbs with a maximum of 1,200 watts.
  - c. A security system approved by the Sheriff and Building Official shall be in place at all times.
  - d. No person under 18 may have access to the structure.
  - e. Medical marijuana cultivation area shall be in compliance with the current adopted edition of the California Business Code Sec. 1203.4 Natural Ventilation or Sec. 402.3 Mechanical Ventilation (or their equivalents).
- (f) Outdoor cultivation pursuant to a Cultivation for Distribution Permit may take place in rural/agricultural zoned areas under the following conditions:
1. Marijuana shall not be grown outside in parcels less than one (1) acre.
  2. 1–5 acres parcels shall maintain a minimum distance of 250 feet from any other permitted marijuana cultivation sites as measured from the parcel property line to property line of the other permitted marijuana cultivation site.
  3. 1-5 acre parcels shall require a 150 foot setback from the property line.
  4. 5+ acre parcels shall maintain a minimum distance of 250 feet from any other permitted marijuana cultivation sites as measured from the parcel property line to property line.
  5. 5+ acre parcels shall require a 500 foot setback from the property line.
  6. The parcel shall be at least 1,000 feet from sensitive land uses, including parks, schools, child care facilities, adult residential care facilities, alcohol and other drug treatment facilities, homeless shelters, and libraries as measured from the parcel property line to the property line of the sensitive land use.
  7. Cultivated marijuana must be enclosed by a minimum 8 foot solid fence.

## COMMENT

Section XI addresses cultivation of medical marijuana for distribution and establishes rules that are distinct and generally stricter than those applicable to personal use cultivation. The model ordinance recommends that cultivation for distribution be allowed in industrial and rural/agricultural zones and not in residential zones. This facilitates monitoring and enforcement and ensures that residential neighborhoods are not adversely affected by the larger number of plants generally associated with marijuana for distribution cultivation sites and the resulting higher risks of violence and public nuisance activities.

Distance requirements for both indoor and outdoor cultivation for distribution are generally stricter than the requirements applied to cultivation for personal use. Distance requirements are general recommendations and may need to be adjusted to meet specific local conditions. Structure requirements for indoor cultivation are the same for both cultivation for distribution and cultivation for personal use.

## XII. Public Nuisance Declared

- (a) A Public Nuisance shall be declared and shall not be immune from prosecution pursuant to Section IV(b) if any of the following exist:
1. Violation(s) of any portion of this ordinance.
  2. Causing any adverse effects on health, safety or general welfare of persons at the cultivation site or at nearby locations by the creation of heat, glare, noxious gasses, odor, smoke, traffic or vibration or by use or storage of hazardous materials, products or wastes.
  3. Any other impacts on surrounding parcels which are disruptive of normal activity.
  4. Excessive noise disturbing to people on nearby property or areas open to public.
  5. Repeated responses (more than 2x/year) to the parcel from law enforcement, code enforcement officer or fire department official.

### COMMENT

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

## XIII. Tracking of and Transporting Marijuana Grown Pursuant to a Cultivation for Distribution Permit

- (a) Medical marijuana growers receiving a Cultivation for Distribution Permit may only distribute marijuana to collectives and cooperatives in which they are constituent members, as required by California Attorney General Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, Cooperative and Collective Guideline #4.
- (b) Permittees shall maintain documentation of the amount of marijuana grown, amount transported and/or delivered to qualified patients, collectives and cooperatives and the amount disposed. The following shall be included in documentation:
1. The permit number and location;
  2. The name, location, and date of all deliveries;
  3. The batch number;
  4. A net weight statement;
  5. THC potency and the potency of such other cannabinoids or other chemicals;
  6. A list of the nonorganic pesticides, fungicides, herbicides and solvents use during the cultivation process, if any;

7. Solvents used in the extraction process;
8. A list of ingredients and possible allergens for medical marijuana products;
9. Recommended use by or expiration date for medical marijuana products.

## COMMENT

Key to ensuring that medical marijuana cultivation is not diverted to illegal markets is tracking what actually happens to the marijuana that is grown. This section addresses this issue by requiring permit holders to maintain documentation of the amount cultivated, where it is delivered, as well as the ingredients and chemicals used during the cultivation process.

## XIV. Product Purity and Potency

- (a) All cultivated marijuana shall use only certified organic residual pesticides, herbicides, and fungicides.
- (b) All cultivated marijuana provided to collectives or cooperatives shall have clearly documented records of residual pesticides, herbicides, fungicides, solvents, mold, and bacteria found in the product as well as any other additives.
- (c) All cultivated marijuana provided to collectives or cooperatives shall have clearly documented records of THC potency and the potency of such other cannabinoids or other chemicals.

## COMMENT

Product purity is a significant issue in medical marijuana cultivation. Pesticides, herbicides and fungicides are frequent contaminants that can create health hazards for end users and environmental damage at cultivation sites. The model ordinance requires that only organic materials be used and that records are kept to facilitate monitoring and enforcement.

Product purity standards for most consumer ingestible or inhaled products (e.g., alcoholic beverages, tobacco, food additives) are typically developed and administered at the federal and state level. Such standards are not currently available for medical marijuana. An alternative approach for insuring product purity is to require or encourage the use of a third-party certification program. The organization Americans for Safe Access (ASA) launched the Patient Focused Certification program in December 2013 that might serve this purpose.<sup>20</sup> It has certified a limited number of medical marijuana dispensaries<sup>21</sup>

Local jurisdictions may wish to consider relying on a third party certification program to ensure product purity. This option is not included in the model ordinance because of the limited experience and assessment of the programs currently available. Given the relatively small number of plants permitted on any one cultivation site, it may be more practical and cost-effective to institute such a program at the dispensary location.

Product potency is also a significant issue in medical marijuana cultivation. Since the model ordinance focuses only on cultivation, it does not address serving sizes, a significant issue for qualified patients, particularly when ingesting edible marijuana products.

## XV. Disposal of Marijuana Related Substances

- (a) All excess marijuana not provided to collectives or cooperatives must be disposed of in accordance with the applicable state and local statutes and regulations.
- (b) Marijuana solid and liquid waste must be stored, secured, managed and disposed of in accordance with the applicable state and local statutes and regulations.
- (c) Marijuana plant matter waste must be rendered unusable prior to leaving a permittee's premises. Allowable methods are by grinding and incorporating the marijuana waste with non-consumable, recycled solid waste so the resulting mixture is at least fifty percent non marijuana waste.

### COMMENT

Section XV requires appropriate disposal of excess marijuana and marijuana waste to avoid damage to the environment, public nuisance conditions, and diversion to illegal markets. Note that the section does not restrict the cultivator's ability to provide the usable portions of the cultivated marijuana plants to collectives and cooperatives.

## XVI. Enforcement

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

### COMMENT

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

## **XVII. Severability**

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

# Endnotes

- <sup>1</sup> National Conference of State Legislatures (2014). *State Medical Marijuana Laws, July 21, 2014* Available at: <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (accessed April 2, 2015).
- <sup>2</sup> California Health and Safety Code § 11362.77.
- <sup>3</sup> California State Department of Justice (2008). Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use. August 2008. Available at: [http://www.ag.ca.gov/cms\\_attachments/press/pdfs/n1601\\_medicalmarijuanaguidelines.pdf](http://www.ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf) (accessed April 2, 2015).
- <sup>4</sup> Id.
- <sup>5</sup> Hanstad, R. (2014). *Marijuana in Ventura County: A Gateway for Discussion*. Ventura, CA: Ventura County Behavioral Health Department. Available at: [http://venturacountylimits.org/resource\\_documents/VC\\_MJReport2014FNL\\_REV\\_lo.pdf](http://venturacountylimits.org/resource_documents/VC_MJReport2014FNL_REV_lo.pdf) (accessed April 2, 2015).
- <sup>6</sup> Coursey, C. (2011). *Marijuana: High Time We Talked About It*. Sonoma County Department of Health, November 2011.
- <sup>7</sup> CA Police Chiefs Association (2009). *White Paper on Marijuana Dispensaries*. CA Police Chiefs Association's Task Force on Marijuana Dispensaries. Available at: [http://www.csac.counties.org/sites/main/files/file-attachments/medi\\_marijuana\\_cpca\\_white\\_paper.pdf](http://www.csac.counties.org/sites/main/files/file-attachments/medi_marijuana_cpca_white_paper.pdf) (accessed April 2, 2015).
- <sup>8</sup> Harkinson, J. (2014). The landscape-scarring, energy-sucking, wildlife-killing reality of pot farming. *Mother Jones*. March/April 2014. Available at: <http://www.motherjones.com/environment/2014/03/marijuana-weed-pot-farming-environmental-impacts> (accessed April 2, 2015).
- <sup>9</sup> See, e.g., the California Cannabis Industry Association's website, <http://www.cacannabisindustry.org/news> (accessed April 2, 2015).
- <sup>10</sup> Lynne-Landsman, M., Livingston, M. Wagenaar, A. (2013). Effects of state medical marijuana laws on adolescent marijuana use. *American Journal of Public Health* 103(8): 1500-1506.
- <sup>11</sup> Joffe, A., Yancy, S., Committee on Substance Abuse and Committee on Adolescence (2004). Legalization of marijuana: Potential impact on youth: Technical report of the American Academy of Pediatrics. *Pediatrics* 113(6): e632-e638. Available at: <http://pediatrics.aappublications.org/content/113/6/e632.full.pdf+html> (accessed April 2, 2015).
- <sup>12</sup> California State Department of Justice, *supra*, n. 3.
- <sup>13</sup> CA Health and Safety Code § 11362.83; *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013).
- <sup>14</sup> Id.
- <sup>15</sup> Hecht, P. (2014). Boom and bust in California's medical marijuana industry. *Sacramento Bee*, March 16, 2014. Available at: <http://www.sacbee.com/2014/03/16/6235633/boom-and-bust-in-californias-medical.html> (accessed April 2, 2015).
- <sup>16</sup> Colorado Amendment 64 (2013); Washington State Initiative 502 (2013).
- <sup>17</sup> U.S. Department of Justice, Office of Deputy Attorney General (2013). Memorandum for all United States Attorneys re Guidance Regarding Marijuana Enforcement, August 29, 2013. Available at: <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (accessed April 2, 2015).

- <sup>18</sup> DiCamillo, M. and Field, M. (2013). Support legalizing the sale of marijuana in California. *The Field Poll* Release #2442, February 27, 2013. Available at: <http://field.com/fieldpollonline/subscribers/Rls2442.pdf> (accessed April 2, 2015).
- <sup>19</sup> For further discussion, see Mosher, J., Treffers, R. (2014). *Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms from Licensed Alcohol Outlets*. Ventura, CA: Ventura County Behavioral Health Department. Available at: [http://venturacountylimits.org/resource\\_documents/VC\\_BestPractAlcSales\\_Jan2014fnl.pdf](http://venturacountylimits.org/resource_documents/VC_BestPractAlcSales_Jan2014fnl.pdf) (accessed April 2, 2015).
- <sup>20</sup> American Herbal Products Association (2014). Patient Focused Certification Program. Available at: <http://safeaccess2.org/sites/patientfocusedcertification/> (accessed April 2, 2015).
- <sup>21</sup> Tril, C. (2014). Berkeley medical marijuana dispensary certified by nonprofit advocacy group. *Daily Californian*, February 23, 2014. Available at: <http://www.dailycal.org/2014/02/23/berkeley-marijuana-dispensary-certified-non-profit/> (accessed April 2, 2015).



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