

ORDINANCE NO. 210

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ETNA ADDING CHAPTERS 8.10: MEDICAL MARIJUANA AND CHAPTER 8.11: PUBLIC CONSUMPTION OF MARIJUANA

The City Council of the City of Etna does hereby ordain as follows:

Chapter 8.10

Medical Marijuana

Sections:

- 8.10.010 Purpose and intent
- 8.10.020 Definitions
- 8.10.030 Cultivation of medical marijuana
- 8.10.040 Cultivation Registration
- 8.10.050 Enforcement
- 8.10.060 Appeals

8.10.010 Purpose and intent.

It is the purpose and intent of this chapter to require that medical marijuana be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, 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. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of medical marijuana pursuant to the Compassionate Use Act (Health and Safety Code Section 11362.5) or the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et seq.) Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana for nonmedical purposes in violation of State or Federal law.

8.10.020 Definitions.

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply.

- A. "Bedroom" means a room inside a residential building being utilized by any person for sleeping purposes.
- B. "Child care center" means any licensed child care center, daycare center, or child care home, or any preschool.
- C. "Cultivation" means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof for medical use consistent with the Compassionate Use Act (Section 11362.5 of the Health and Safety Code) or the Medical Marijuana Program Act (Section 11362.7 et seq. of the Health and Safety Code).

- D. "Detached, fully enclosed and secure structure" means a building completely detached from a residence that complies with the Etna building code 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 (1) 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 (3/8") inch or thicker plywood or the equivalent. Exterior walls must be constructed with nontransparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
- E. "Indoors" means within a fully enclosed and secure building.
- F. "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Sections 66410 et seq. of the Government
- G. "Outdoor" means any location within the City that is not within a fully enclosed and secure structure.
- H. "Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this chapter.
- I. "Primary caregiver" means a "primary caregiver" as defined in Section 11362.7(d) of the Health and Safety Code.
- J. "Qualified patient" means a "qualified patient" as defined in Section 11362.7(f) of the Health and Safety Code.
- K. "Rear yard" means the rear open space portion of any premises, whether fenced or unfenced.
- L. "Residential structure" means any building or portion thereof legally existing which contain living facilities, including provisions for sleeping, eating, cooking and sanitation on a premises or legal parcel located within a residential or agricultural-residential zoning district.
- M. "School" means an institution of learning for persons under twenty-one (21) years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.
- N. "Solid fence" means a fence constructed of substantial material (such as wood) that prevents viewing the contents from one side to the other

08.10.030 Cultivation of medical marijuana.

The following regulations shall apply to the cultivation of medical marijuana within the City.

A. No person other than a qualified patient or primary caregiver may engage in cultivation of medical marijuana. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana except as provided for in this chapter.

B. Residency Requirement. Either a qualified patient or primary caregiver shall reside full-time on the premises where the marijuana cultivation occurs.

C. Outdoor Cultivation. It is unlawful and a public nuisance for any person owning, leasing, renting, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cause or allow such parcel or premises to be used for the outdoor cultivation of marijuana plants.

D. Residential Structure Cultivation. It is unlawful and a public nuisance for any person to cultivate medical marijuana inside any residential structure or building without a medical marijuana cultivation registration issued by the City.

E. Cultivation in Nonresidential Zones. Cultivation of medical marijuana is prohibited in all agricultural (except agricultural-residential), commercial, office, industrial, open space, special purpose, and overlay/combining zoning districts.

F. Proximity to Schools, Child Care Centers, and Parks. It is unlawful and a public nuisance to cultivate medical marijuana on any legal parcel or premises within one thousand (1,000' 00") feet of any school, child care center, or public park. The one thousand (1,000' 00") feet shall be measured from the closest property line of the school, child care center, or park to the closest property line of the cultivation parcel.

G. Cultivation Area. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, renting, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana, within a detached structure greater than one hundred twenty (120 ft³) square feet in size.

H. Indoor Cultivation in Residential Zones. The indoor cultivation of medical marijuana in a residential zone shall only be conducted within a detached, fully enclosed and secure structure no greater than one hundred twenty (120 ft³) square feet in size or within a residential structure conforming to the following minimum standards:

1. Any detached structure, regardless of square footage, constructed, altered or used for the cultivation of medical marijuana must have a valid building permit duly issued by the Building Official. The Building Official shall consult with the Planning Director and Chief of Police in consideration of any building permit application seeking a building permit for the construction or alteration of any structure to be used for medical marijuana cultivation.

2. Indoor grow lights shall not exceed one thousand two hundred (1,200 W) watts and shall comply with the California Building, Electrical and Fire Codes as adopted by the City. Gas products (including, without limitation, CO₂, butane, propane, and natural

gas), or generators shall not be used within any detached structure used for the cultivation of medical marijuana.

3. Any detached, fully enclosed and secure structure or residential structure used for the cultivation of medical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with the California Building Code Section 402.3, Mechanical Ventilation. The ventilation and filtration system must be approved by the Building Official and installed prior to commencing cultivation within the detached, fully enclosed and secure structure or residential structure.

4. A detached, fully enclosed and secure structure used for the cultivation of marijuana shall be located in the rear yard area of a legal parcel or premises, maintain a minimum ten (10'00") foot setback from any property line, and the area surrounding the structure must be enclosed by a solid fence at least six (6'00") feet in height.

5. Adequate mechanical or electronic security systems approved by the Building Official and Chief of Police must be installed in and around the detached structure or the residential structure prior to the commencement of cultivation.

6. Marijuana cultivation occurring within a residence shall be in an area no larger than fifty (50 ft.) square feet, regardless of how many qualified patients or primary caregivers are residing at the premises.

7. Cultivation of marijuana shall not take place in the kitchen, bathrooms, or bedrooms of any building.

8. Cultivation of marijuana for sale is prohibited.

9. Medical marijuana cultivation may not occur in both a detached structure and inside a residence on the same parcel.

10. Medical Marijuana cultivation areas, whether in a detached building or inside a residence, shall not be accessible to persons under eighteen (18) years of age.

08.10.040 Cultivation Registration.

A. Prior to commencing any medical marijuana cultivation, the person(s) owning, leasing, renting, occupying, or having charge or possession of any legal parcel or premises where medical marijuana cultivation is proposed to occur must register for medical marijuana cultivation with the city. The following information will be required with the initial registration application and subsequent registration extensions:

1. 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. A copy of a current valid medical recommendation or county-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver.

5. The physical site address of where the marijuana will be cultivated.

6. A signed consent form, acceptable to the City, authorizing City staff, including the Police Department authority, to conduct an inspection 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.

7. The initial registration shall be valid for no more than two (2) years and may be extended in increments of two (2) years.

8. To the extent permitted by law, any personal or medical information submitted with a medical marijuana cultivation registration application or registration extension shall be kept confidential and shall only be used for purposes of administering this chapter.

9. The Chief of Police, or his or her designee, may, in his or her discretion, deny any application for a medical marijuana cultivation registration, or extension thereof, where he or she finds, based on articulated facts, that the issuance of such registration, or extension thereof, would be detrimental to the public health, safety, or welfare. The Chief of Police shall deny an application for a medical marijuana cultivation registration, or extension thereof that does not demonstrate satisfaction of the minimum requirements of this chapter. The denial of any registration application, or registration extension, shall be subject to appeal by Etna City Council.

10. The City Council may establish a fee or fees required to be paid upon filing of an application for registration(s) as provided by this chapter, which fees shall not exceed the reasonable cost of administering this chapter.

08.10.050 Enforcement.

Violations of this chapter shall constitute a public nuisance and may be enforced as a misdemeanor.

08.10.060 Appeals.

Any person aggrieved by any of the requirements of this section may appeal in so far as such appeals are allowed by Etna City Council.

Chapter 8.11

Public Consumption of Marijuana

08.11.010	Title
08.11.020	Findings and Purposes
08.11.030	Prohibition
08.11.040	Penalty

08.11.010 Title.

This chapter shall be known as the public consumption of marijuana ordinance.

08.11.020 Findings and purposes.

A. On November 5, 1996, the voters of the State of California approved Proposition 215 enacting Section 11362.5 of the Health and Safety Code. That section permits, for purposes of State law, the limited use, cultivation and possession of marijuana for specified medical purposes.

B. However, the use, cultivation and possession of marijuana for other purposes remains illegal within this State and is presently illegal under Federal laws. Additionally, the use of marijuana by minors has been demonstrated to be a gateway to the use of other illicit substances.

C. While recognizing the enactment of Section 11362.5 of the Health and Safety Code, the City Council believes that the open and public use of marijuana, which might otherwise be permitted by that section, A) is injurious to public health in many of the same ways that tobacco consumption is injurious to the public health and B) provides to a public, including minors, not privy to reasons for such use, a deleterious example regarding the consumption of otherwise illicit, controlled substances.

D. Therefore, the City Council believes it necessary to balance the uses of marijuana permitted by Section 11362.5, the public health and the need to recognize that possession and use of marijuana for other purposes remains illegal.

08.11.030 Prohibition.

The Consumption of marijuana otherwise permitted by Section 11362.5 of the California Health and Safety Code is hereby prohibited on any public property or in any facility or space to which members of the public have access.

08.11.040 Penalty

Violations of this chapter shall be a misdemeanor punishable by a fine not exceeding One Thousand and no/100^{ths} (\$1,000.00) Dollars, imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

The foregoing ordinance was introduced at a regular meeting held on October 6, 2014 and adopted at a regular meeting of the City Council of the City of Etna held on October 20, 2014 by the following vote:

AYES: Callahan, Fleck, Prather and Seward

NOES: None

ABSTAIN: None

ABSENT: Stein

ATTEST:

Bob Prather
Mayor, City of Etna

Pamela Russell
City Clerk, City of Etna