

Chapter 9.61 MEDICAL MARIJUANA PROCESSING AND CULTIVATION

Sections:

- 9.61.010 Findings.
- 9.61.020 Purpose and intent.
- 9.61.030 Definitions.
- 9.61.040 Prohibited activities.
- 9.61.050 Prohibited activities declared a public nuisance.
- 9.61.060 Penalties for violation.
- 9.61.070 Severability.

9.61.010 Findings.

The city council of the city makes the following findings:

- A. In 1996, the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act (CUA), codified at California Health and Safety Code Section 11362.5 et seq.
- B. On January 1, 2004, S.B. 240, known as the "Medical Marijuana Program" (MMP) (codified at Health and Safety Code Sections 11362.7 through 11362.83) went into effect to clarify the scope of the CUA.
- C. The CUA is limited in scope in that it only provides a defense from criminal prosecution for possession and cultivation of marijuana to qualified patients and their primary caregivers. The MMP is also limited in scope in that it establishes a statewide identification program and affords qualified patients, persons with identification cards and their primary caregivers an affirmative defense to certain enumerated criminal sanctions that would otherwise apply to transporting, processing, administering or distributing marijuana.
- D. Neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments, such as the city of Capitola, to allow, authorize or sanction the establishment and the operation of facilities cultivating or processing medical marijuana within its jurisdiction.
- E. The CUA expressly anticipates the enactment of additional local legislation, providing: "[n]othing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of

marijuana for non-medical purposes.” (California Health and Safety Code, Section 11362.5(b)(2).)

F. On May 6, 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, holding that cities have the authority to ban medical marijuana uses within their boundaries and prohibit any use that constitutes a violation of state or federal law.

G. Marijuana remains an illegal substance under the Federal Controlled Substances Act, 21 U.S.C. 801 et seq., which makes it unlawful for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana. The Federal Controlled Substances Act contains no statutory exemption for the cultivation of marijuana for medical purposes. In addition, the possession, possession for sale, cultivation, processing, transportation, importation, and distribution of marijuana generally still constitutes a crime in California pursuant to California Health and Safety Code Sections 11357 through 11361.

H. On June 6, 2005, the United States Supreme Court held, in *Gonzales v. Raich*, that Congress has the authority under the Commerce Clause of the United States Constitution, and has the power under the Federal Controlled Substances Act, to prohibit local cultivation, processing and use of marijuana even though it would be in compliance with California law.

I. Some of the documented problems with the cultivation and processing of marijuana include offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent encounters between growers and persons attempting to steal plants, fire hazards and problems associated with mold, fungus, and pests. In a small (1.676 square miles), densely developed city such as the city of Capitola, comprised for the most part of small parcels with minimum setbacks, a proportionally significant number of mobile home spaces, and industrial, commercial, public facility and residential land uses in extremely close proximity to one another with few buffer areas of separation, the nuisance impacts of the type herein delineated would be substantially intensified to the detriment of the city’s residents, workers, businesses and visitors.

J. The city has experienced firsthand the secondary impacts associated with marijuana cultivation and processing when, in September 2004, the Capitola police department investigated an attempted murder which included a robbery and an assault on a person with a firearm over a large amount of processed marijuana and marijuana under cultivation found within a city residence. Most recently, on December 27, 2013, the city experienced impacts associated with marijuana cultivation and distribution when the

Capitola police department investigated an attempted murder with a firearm during a marijuana sale on Capitola Road. During that incident, a noncity resident, who was apparently attempting to sell marijuana, was shot twice and transported by helicopter to a hospital.

K. Due to the city's small size and the proximity of various uses to one another, any public nuisance within the city has the potential to adversely impact the entire community regardless of where the nuisance occurs.

L. On December 16, 2013, a building permit application was submitted on behalf of the 200 Kennedy Drive property owner seeking city authorization to proceed with structural, electrical and plumbing improvements to a warehouse building on those premises intended to facilitate the warehouse's use as an industrial/commercial medical marijuana cultivation, processing and warehouse facility which the property owner contends is a principally permitted agricultural use of the warehouse in the industrial zone in which the warehouse is located. For the reasons set forth in the foregoing findings the proposed medical marijuana-related use of the warehouse is both illegal and a public nuisance. The city council finds that the public nuisance threatened by that proposed use is particularly accentuated in this instance in light of the fact that Cabrillo Mobile Home Estates, a tightly compacted mobile home community, comprised of over fifty mobile home residences, directly abuts the 200 Kennedy Drive property and the community's numerous residents would be immediately and adversely impacted by the public nuisance posed by this particular cultivation/processing/warehouse use. In December 20, 2013, correspondence with the property owner as well as in other verbal communications with the property owner, community development department staff members have advised the property owner that the proposed medical marijuana-related use is prohibited by the city's municipal code. The property owner, in response, contends, based upon his consultation with legal counsel, that the proposed use is sanctioned by both the city's municipal code and state law and that accordingly he intends to proceed with his intended use of the property.

M. Because the potential risks posed by the proposed medical marijuana-related use to the health, safety and welfare of city residents, especially those residents in the mobile homes located in the adjacent Cabrillo Mobile Home Estates mobile home park, are so great, current and immediate, the city council finds that there is an urgent need to adopt an ordinance which will go into effect immediately and which will unequivocally and clearly provide that medical marijuana cultivation and processing in the city in the manner here proposed by the property owner, already generally prohibited as illegal

activity and a public nuisance, is also specifically and explicitly prohibited in the city of Capitola. (Ord. 989 § 1 (part), 2014)

9.61.020 Purpose and intent.

A. It is the purpose and intent of this chapter to promote the health, safety, and general welfare of the residents and businesses within the city by regulating the cultivation and processing of medical marijuana.

B. Nothing in this chapter shall be construed to:

1. Allow persons to engage in conduct that endangers others or causes a public nuisance;
2. Allow the use or cultivation of marijuana for nonmedical purposes; or
3. Allow any activity relating to the cultivation, processing, or distribution of marijuana that is illegal under state or federal law. (Ord. 989 § 1 (part), 2014)

9.61.030 Definitions.

For purposes of this chapter, the following definitions shall apply:

A. "Collective or cooperative cultivation" means the association within California of qualified patients, persons with valid identification cards, and designated primary caregivers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code Sections 11362.5 et seq.

B. "Cultivate" or "cultivation" is the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.

C. "Medical marijuana" is defined in strict accordance with California Health and Safety Code Sections 11362.5 et seq.

D. "Processing" is defined as any method used to prepare marijuana or its byproducts for commercial sale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

E. "Primary caregiver" is defined in strict accordance with California Health and Safety Code Section 11362.5 et seq. (Ord. 989 § 1 (part), 2014)

9.61.040 Prohibited activities.

A. Indoor and outdoor cultivation of medical marijuana is prohibited in all areas of the city, except as outlined below in subsection (A)(1) of this section.

1. Medical marijuana for personal use may be cultivated in conformance with the following standards:

- a. An individual qualified patient may cultivate medical marijuana indoors on the parcel where the qualified patient resides. Outdoor cultivation is prohibited.
- b. A primary caregiver may cultivate medical marijuana indoors for a qualified patient for whom he/she is the primary caregiver. Outdoor cultivation is prohibited.
- c. Medical marijuana cultivation is permitted only on parcels with residential units. Medical marijuana cultivation is permitted only within a residential unit, a garage, or a self-contained outside accessory building that is secured, locked, and fully enclosed.
- d. The medical marijuana cultivation area shall not exceed fifty square feet per residence.
- e. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
- f. Medical marijuana cultivation for sale is prohibited. Notwithstanding this prohibition, a primary caregiver may recover from his or her qualified patient the actual costs incurred by the primary caregiver in cultivating the medical marijuana he or she delivers to the qualified patient.
- g. From the public right-of-way, there shall be no exterior evidence of medical marijuana cultivation.
- h. The qualified patient and/or primary caregiver shall not participate in medical marijuana cultivation in any other location within the city.
- i. The residence shall maintain kitchens, bathrooms, and primary bedrooms for their intended use and these rooms shall not be used for medical marijuana cultivation.
- j. Any medical marijuana cultivation area located within a residence shall not create a humidity, mold or other nuisance condition.
- k. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, excessive light, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, and

shall not be hazardous due to use or storage of materials, processes, products or wastes.

B. Processing marijuana for commercial sale is prohibited in all areas of the city. (Ord. 989 § 1 (part), 2014)

9.61.050 Prohibited activities declared a public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the city or subject to any available legal remedies, including but not limited to civil injunctions. (Ord. 989 § 1 (part), 2014)

9.61.060 Penalties for violation.

A. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and subject to a maximum penalty of six months imprisonment in county jail, or a fine of one thousand dollars. Violators shall be subject 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.

B. Each day a violation is allowed to continue and every violation of this chapter shall constitute a separate violation and shall be subject to all remedies.

C. In the event any civil suit or action is brought by the city to enforce the provisions of this chapter, the prevailing party shall be entitled to recover the amount of its reasonable costs incurred in the action or proceeding, including, but not limited to, attorney's fees. (Ord. 989 § 1 (part), 2014)

9.61.070 Severability.

If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter. (Ord. 989 § 1 (part), 2014)