



- CITY OF BIGGS -
PLANNING DEPARTMENT STAFF REPORT

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DATE: January 23, 2012
TO: Honorable Mayor and Members of the City Council
FROM: Scott Friend, AICP City Planner
SUBJECT: Biggs Municipal Code Provisions regarding the Cultivation of Medical Marijuana

Report Summary:

Acting at the direction of the City Administrator and pursuant to a request by the Council, the Planning Department is bringing back for City Council discussion and further consideration the City's medical marijuana cultivation guidelines following completion of the 2011 outdoor growing season for medical marijuana. It is the intent of this report to facilitate a conversation between staff and the Council as to whether or not additional edits, additions or modifications to the City's existing Code provisions dealing with the cultivation of marijuana are necessary or desired.

Staff has not made a recommendation for action in this report except to request direction from the Council as to whether code amendments are warranted and/or desired by the Council.

Background:

Chapter 6 – Public Health and Safety; Section 6.25, Health and Safety and Nuisance Abatement of the Biggs Municipal Code (BMC) establishes the primary authority for the City's code enforcement efforts concerning the outdoor cultivation of marijuana. Specifically, Section 6.25.020.2.e and Sections 6.25.055-085 provide the details of the City's marijuana code requirements and detail the citation, enforcement, and nuisance fine program (see *Attachment A*). In addition to Section 6.25, Section 14.10 – Definitions of Chapter 14, Zoning of the BMC provides definitions for terms used in the enforcement of the provisions of Section 6.25.

The City's marijuana-related nuisance code provisions are based upon three concepts and primary citations:

1. The cultivation of medicinal marijuana is permitted in the City of Biggs subject to City requirements that the cultivation activity occur within a "fully enclosed and secured structure" (*BMC Section 6.25.020(9)*);
2. The storage of marijuana is permitted in the City of Biggs subject to City requirements that the storage of such occurs within a "fully enclosed and secured structure" from which no detectable odor can be determined from a public street, right-of-way or neighboring property (*BMC Section 6.25.055(1)*); and,
3. The cultivation or storage of marijuana is not permitted in a location which is visible from a public street or right-of-way or neighboring property, or the odor of which is detectable from a public street, right-of-way or neighboring property (*BMC Section 6.25.020.2(e)*).

As noted above, the City's adopted Ordinance is based upon the three basic

Discussion:

The City of Biggs adopted Ordinance 379 on December 15, 2008, in order to regulate the cultivation of medical marijuana consistent with Proposition 215 and Senate Bill 420. In the three years since adoption of the Ordinance the legal landscape surrounding medical marijuana has continued to evolve. Cities and counties throughout California have adopted increasingly refined ordinances that govern the cultivation of marijuana, some of which could be considered excessively permissive and others that are clearly aimed at challenging the ability of the patient and caregiver to legally grow at all. Over this period, legal challenges to some of the most restrictive ordinances have been filed by patients groups, the resolution of which has allowed other jurisdictions to better define the parameters for cultivation within their communities (see *Attachment B* for a summary of other agency ordinances). Some of the more noteworthy provisions included elsewhere, but absent from the City's ordinance include:

- Prohibition of cultivation activities inside residences;
- Establishment of a maximum cultivation area size;
- Establishment of distance requirements between grows and schools, parks or public areas;
- Parcel grow limits for qualified patients and/or primary caregivers (grow on one parcel only);
- Residency requirements (Qualified patient and/or primary caregiver must reside on parcel used for cultivation);
- Fully enclosed and secured structures must be equipped with an audible alarm system;
- Fully enclosed and secured structures must have an exhaust and odor filtration system;
- Cultivation shall not create an odor, humidity, or mold problem on the subject property or adjacent properties;
- Prohibition on the use of certain chemicals (No use of compressed gases, such as ozone);
- Regulations pertaining to indoor grow lighting (Grow lights may not exceed 1,200 watts);
- Registration requirements for growers (Growers must register with city or police department);

Each of the provisions identified above has been tested in court, either individually or as part of a more comprehensive marijuana cultivation ordinance, and determined to be enforceable if incorporated into a reasonable cultivation ordinance. Recently, a few cities have enacted outright bans on the cultivation of medical marijuana within their City limits. However, none of the recent prohibition actions has yet been fully tested through the legal system and, until such time as they have been fully adjudicated, it is questionable as to the probability that they will succeed if challenged.

Observations / Considerations / Discussion Topics:

Based upon the desires of the City Council, staff is seeking discussion and direction from the City Council on the following issues:

1. Staff requests that the City Council provides direction regarding the Council's interpretation of the definition of a "fully enclosed and secured structure" and provide input to staff as to how the Council envisions the enforcement of this definition.
2. Staff requests that the City Council discuss and provide direction regarding potential amendments to the City's existing cultivation regulations in light of changes to the legal landscape since adoption of Ordinance 379?

Staff suggestions for discussion include the following:

- Separation distances between school, parks, govt. buildings, etc.;
- Standards addressing indoor grow lighting;
- Requirements for alarms;

- Enhanced requirements or definitions addressing air filtration and odor controls;
- Cultivation within a primary residential structure;
- Maximum square footage requirements for cultivation area.

As it is staff's goal to make sure that the City's codes reflect the intent of the City Council's vision for development within the City, staff is seeking discussion and direction, as necessary, from the Council on the City's medical marijuana cultivation standards.

Fiscal Impact:

Staff time for report preparation, presentation and discussion. No direct fiscal impacts to the City anticipated with this action at this time nor are any supplemental funds believed to be necessary..

Request:

Staff is requesting that the City Council acknowledge the receipt of this report and provide any necessary or desired direction on desired revisions to the City's existing standards related to the cultivation of medical marijuana.

Attachments:

- Attachment A - BMC Sections 6.25.020, Unlawful property nuisance – Private property and 6.25.055, Nuisance abatement – Visible/unsecured odiferous marijuana under cultivation.
- Attachment B - Medical marijuana cultivation ordinance summary table
- Attachment C - City Attorney proposed ordinance text

Chapter 6.25

HEALTH AND SAFETY AND NEIGHBORHOOD NUISANCE ABATEMENT

6.25.020 Unlawful Property Nuisance – Private Property.

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of private property in the city to maintain or to allow to be maintained such property in such manner that any of the following conditions which are visible from a public street or right-of-way and are found to exist thereon, except as may be allowed by this code:

(2) Landscaping/Vegetation.

(e) Marijuana plants, the cultivation of which is visible from a public street or right-of-way or neighboring property, or the odor of which is detectable from a public street, right-of-way or neighboring property.

6.25.055 Nuisance Abatement – Visible/Unsecured Odiferous Marijuana Cultivation.

(1) Marijuana Cultivation/Storage Nuisance Circumstances.

Notwithstanding any provision in this Chapter, the abatement measures set forth in subsection (2) of this section shall be utilized in the following nuisance circumstances: marijuana plants, or the cultivation of marijuana plants, visible from the street or neighboring property; the odor of marijuana detected from the street or neighboring property; or the presence, cultivation and/or storage of marijuana, except within a fully enclosed and secured structure.

MEDICAL MARIJUANA CULTIVATION: CITY & COUNTY ORDINANCE SUMMARY

CITY	REGULATION SUMMARY	ENFORCEMENT
Lakeport	<p>Cultivation in General: The cultivation of medical marijuana is strictly prohibited within the city limits of the City of Lakeport, at any time, on any parcel of land, whether indoors, outdoors, or fully enclosed within a secure structure.</p>	<p>Penalty: Violation of this section is a misdemeanor, punishable by a \$500 fine and imprisonment for 6 months.</p>
Corning	<p>Outdoors: Outdoor cultivation is strictly prohibited.</p> <p>Residential Structures: Cultivation within any residential structure, occupied or not, is strictly prohibited.</p> <p>Multi-Family Residential Parcels: Cultivation on property containing two or more attached or detached residential structures is strictly prohibited.</p> <p>Detached Non-Residential Structures: A qualified patient or primary caregiver may cultivate up to 6 mature or 12 immature medical marijuana plants within a detached fully enclosed secure structure. Cultivation must conform with the following standards:</p> <ol style="list-style-type: none"> 1. Structures used for cultivation must not be located within 1000 feet of a school; 2. Structures used for cultivation must obtain a building permit; 3. Cultivation lighting shall not exceed 1200 watts; 4. The use of gas products for cultivation is prohibited; 5. Structures used for cultivation must be equipped with a ventilation system that prevents odors from exiting the structure in compliance with §402.3 of the California Building Code; 6. Ventilation systems installed in structures used for cultivation must be approved by the Building Official; 7. Structures used for cultivation must be located in the rear yard, and maintain a minimum 10 foot setback from any property line; 8. Structures used for cultivation must be enclosed by a 6-foot-high solid fence; 9. Structures used for cultivation must be equipped with a security system that has been approved by the Building Official; 10. Persons owning, leasing, or occupying a structure used for cultivation must register with the police department on an annual basis. The following information is required with registration: <ol style="list-style-type: none"> a. A notarized affidavit permitting cultivation on the property; b. The number of medical marijuana plants to be cultivated; c. The name of each person owning, leasing, occupying, or having charge of possession of the cultivation area; d. The name of each person participating in the cultivation; e. The valid medical marijuana card for each participant; f. The physical site address where the cultivation will occur; g. A signed consent form authorizing city staff to do a notified inspection of the structure used for cultivation. 	<p>Nuisance: Violation of this section constitutes a public nuisance, punishable by a daily civil penalty of up to \$500.</p> <p>Abatement: A violation of this section may be abated by issuing a notice which states:</p> <ol style="list-style-type: none"> 1. The date, location and nature of the violation; 2. The evidence relied upon; 3. The actions required to correct the violation; 4. The date that abatement must be completed; 5. That consent to inspection must be given; 6. That an appeal may be filed within 3 days; 7. That abatement is final if an appeal is not filed, or after an appeal hearing is conducted; 8. That final abatement carries a daily civil penalty of \$500; 9. That the prevailing party is entitled to attorney's fees. <p>Zoning Violation: Violation of this section constitutes a violation of the Zoning Code, punishable by a daily civil penalty of up to \$500.</p> <p>Nonexclusive Penalties: The penalties provided in this section are cumulative, alternative and nonexclusive.</p> <p>Non-Conforming Use: Any non-conforming cultivation that began before 3/12/2010 may continue until 12/31/2010.</p>

CITY	REGULATION SUMMARY	ENFORCEMENT
Anderson	<p>Outdoors: Outdoor cultivation is strictly prohibited.</p> <p>Detached Residential Accessory Structures: A qualified patient or primary caregiver may cultivate medical marijuana for up to 3 qualified patients within a detached residential accessory structure. Cultivation must conform with the following standards:</p> <ol style="list-style-type: none"> 1. There must not be any exterior evidence of the cultivation; 2. The qualified patient or primary caregiver must reside in the residence located on the property where the cultivation occurs; 3. The qualified patient or primary caregiver may not cultivate marijuana at any other location within the City of Anderson; 4. The residence located on the subject property must maintain a kitchen, bathrooms and bedrooms for their intended use; 5. Cultivation areas must not adversely affect the safety of other residents, or be hazardous due to use or storage of materials; 6. Structures used for cultivation must not exceed 120 sqf; 7. Structures used for cultivation must obtain a building permit; 8. Structures used for cultivation must obtain an electrical permit; 9. Structures used for cultivation must be equipped with locking doors and a security system that complies with AMC §9.68; 10. Structures used for cultivation must be ventilated with odor control filters; 11. Cultivation lighting shall not exceed 1200 watts; 12. Structures used for cultivation must be located in the rear yard, and maintain a minimum 5-foot setback from any property line; 13. Structures used for cultivation must be enclosed by a 6-foot-high solid fence equipped with a lockable gate; 14. Structures used for cultivation must not reduce the required parking required by AMC §17.46.040; 15. Persons who wish to cultivate medical marijuana must register with the city. The following is required with registration: <ol style="list-style-type: none"> a. A detailed floor plan identifying all cultivation areas; b. A description of all security facilities and practices; c. A detailed site/building plan showing: <ol style="list-style-type: none"> i. The location, dimensions and use of onsite buildings; ii. The location and dimensions of cultivation areas; iii. The location of fencing, screening and lockable gates; iv. The distance between public areas and cultivation areas; v. The existing and proposed electrical load calculations; vi. A description of the chemicals that will be used on site; d. A notarized affidavit permitting cultivation on the property; e. The name, address and telephone number of each participant; f. Written verification that each participant is a qualified patient or primary caregiver; g. Verification that the cultivation will comply this section; 16. A valid medical marijuana card and a copy of a valid city registration must be present at the cultivation site; 17. This section does not prohibit the City from abating any nuisance which may exist from the cultivation of medical marijuana. 	<p>Nuisance: Violation of this section constitutes a public nuisance, punishable by a daily civil penalty of up to \$500.</p> <p>Abatement: A violation of this section may be abated by issuing a notice which states:</p> <ol style="list-style-type: none"> 1. The date, location and nature of the violation; 2. The actions required to correct the violation; 3. The date that abatement must be completed; 4. That the property owner may be subject to the abatement procedures set forth in AMC Chapter 8.28. <p>H&S Violation: Violation of this section constitutes a violation of the Health and Safety Code, punishable by a daily civil penalty of up to \$500.</p> <p>Nonexclusive Penalties: These Penalties are cumulative, alternative and nonexclusive.</p>

CITY	REGULATION SUMMARY	ENFORCEMENT
Redding	<p>Outdoors: A qualified patient or primary caregiver may cultivate medical marijuana for up to 3 qualified patients outdoors. Outdoor cultivation must conform with the following standards:</p> <ol style="list-style-type: none"> 1. Outdoor cultivation areas must not exceed 100 sqf; 2. Outdoor cultivation areas must be located in the rear yard; 3. Outdoor cultivation areas must not be located within 300 feet of a library, public park, school, or youth-orientated facility; 4. Outdoor Cultivation areas must be enclosed by a non-climbable 6-foot-high fence equipped with a lockable gate; 5. Outdoor cultivation areas must not be visible from any public area, except where property conditions prevent screening; 6. Medical marijuana plants cultivated outdoors must not exceed a maximum height of 8 feet; 7. Outdoor cultivation areas located in a street side yard must maintain minimum setback of 15 feet; 8. Outdoor cultivation areas located in an interior side or rear yard must maintain a minimum setback of 10 feet; 9. All outdoor cultivation areas must maintain a minimum setback of 10 feet from the nearest residence located on another parcel; <p>Residential and Detached Accessory Structures: A qualified patient or primary caregiver may cultivate medical marijuana for up to 3 qualified patients within their residence or an accessory structure. Indoor cultivation must conform with the following standards:</p> <ol style="list-style-type: none"> 1. Indoor cultivation areas must not exceed 100 sqf; 2. Cultivation lighting shall not exceed 1200 watts, unless additional lighting meets the requirements of the California Electrical Code; 3. The use of gas products for cultivation is prohibited; 4. A qualified patient must reside in the residence where the cultivation occurs; 5. Residence kitchen, bathrooms, and primary bedrooms may not be used primarily for cultivation purposes; 6. Indoor cultivation areas must be equipped with a permitted ventilation system that prevents humidity and odor problems; <p>General Requirements: Both indoor and outdoor cultivation must conform with the following standards;</p> <ol style="list-style-type: none"> 1. Cultivation is prohibited as a home occupation; 2. Cultivation areas must not adversely affect the safety of other residents, or be hazardous due to use or storage of materials. <p>Exceptions: The Planning Director may grant the following:</p> <ol style="list-style-type: none"> 1. An increase of the maximum cultivation area of up to 20 percent, based on evidence that a larger cultivation area is needed; 2. A decrease in a minimum required setback of up to 20 percent, based on evidence that the deviation is necessary due to: <ol style="list-style-type: none"> a. The size, shape or topography of the property; b. The location of the residence relative to existing lot lines; c. The location of improvements on the property. 	<p>Nuisance: Violation of this section constitutes a public nuisance, punishable by a daily civil penalty of up to \$2,500.</p> <p>Abatement: A violation of this section may be abated by issuing a notice which states:</p> <ol style="list-style-type: none"> 1. The date, location and nature of the violation; 2. The actions required to correct the violation; 3. The date that abatement must be completed; 4. An explanation of the hearing and appeal processes; 5. The consequences of noncompliance. <p>Zoning Violation: Violation of this section constitutes a violation of the Zoning Code, punishable by a daily civil penalty of up to \$2,500.</p> <p>Nonexclusive Penalties: The penalties provided in this section are cumulative, alternative and nonexclusive.</p>

CITY	REGULATION SUMMARY	ENFORCEMENT
Arcata	<p>Outdoors: Outdoor cultivation is strictly prohibited.</p> <p>Residential Structures: An individual qualified patient or primary caregiver may cultivate medical marijuana for personal use within the qualified patient's residence. Cultivation must conform with the following standards:</p> <ol style="list-style-type: none"> 1. The cultivation area shall not exceed 50 sqf. and 10 feet in height per residence. <ol style="list-style-type: none"> a. Cultivation lighting shall not exceed 1200 watts; b. The use of gas products for cultivation is prohibited; c. Cultivation is prohibited as a home occupation; d. There must not be any exterior evidence of the cultivation; e. A qualified patient must reside in the residence where the cultivation occurs; f. A qualified patient may not participate in cultivation in any other residence within the City of Arcata; g. Residence kitchen, bathrooms, and primary bedrooms may not be used primarily for cultivation purposes; h. The cultivation area shall comply with §§1203.4 or 402.3 of the California Building Code; i. Cultivation areas must not adversely affect the safety of other residents, or be hazardous due to use or storage of materials. 2. The City Zoning Administrator may approve a cultivation area that does not exceed 100 sqf. if the following standards are met: <ol style="list-style-type: none"> a. Qualified patients must provide documentation demonstrating why the 50 sqf. cultivation area is not feasible; b. Requests for additional cultivation area must include written permission from the property owner; c. The Building Official must inspect the proposed cultivation area for California Building and Fire Code compliance; d. The cultivation area must comply with standards a-i listed above; e. The cultivation area must be constructed with a minimum 1-hour firewall assembly of green board; f. The additional cultivation area is limited to detached single family properties, or to a garage or self-contained outside accessory building that is secured, locked and fully enclosed. 	<p>Nuisance: Violation of this section constitutes a public nuisance, punishable by a daily civil penalty of up to \$500.</p> <p>Abatement: A violation of this section may be abated by issuing a notice which states:</p> <ol style="list-style-type: none"> 1. The date, location and nature of the violation; 2. The actions required to correct the violation; 3. That abatement must be completed within 30 days; 4. An explanation of the hearing and appeal processes; 5. The consequences of noncompliance. <p>Zoning Violation: Violation of this section constitutes a violation of the Zoning Code, punishable by a daily civil penalty of up to \$500.</p> <p>Nonexclusive Penalties: The penalties provided in this section are cumulative, alternative and nonexclusive.</p>
Willits	<p>Outdoors: Outdoor cultivation is strictly prohibited.</p> <p>Indoors: An individual qualified patient or primary caregiver may cultivate up to 6 medical marijuana plants, within a fully enclosed secure structure. However, nothing in this section limits the City's authority to abate any nuisance which may exist from the planting, growing, drying, harvesting, processing or storage of medical marijuana plants or any part thereof from any location, indoor or outdoor, including from within a detached fully enclosed and secure building.</p>	<p>Nuisance: Violation of this section constitutes a public nuisance, punishable by a daily civil penalty of up to \$500.</p> <p>Abatement: Violations may be abated by issuing a notice that contains the information listed in the Corning notice. (15 days to appeal rather than 3 days)</p>

CITY	REGULATION SUMMARY	ENFORCEMENT
Tehama County	<p>Cultivation in General: A qualified patient or primary caregiver may participate in the indoor or outdoor cultivation of medical marijuana in conformance with the following standards:</p> <ol style="list-style-type: none"> 1. If the property is less than 20 acres in size, no more than 12 mature or 24 immature medical marijuana plants shall be cultivated on the property. If both mature and immature medical marijuana plants are cultivated on the property, there shall be no more than 12 mature plants and no more than 24 total plants; 2. If the property is greater than 20 acres but less than 160 acres in size, no more than 30 mature or 60 immature medical marijuana plants shall be cultivated on the property. If both mature and immature medical marijuana plants are cultivated on the property, there shall be no more than 30 mature plants and no more than 60 total plants; 3. If the property is greater than 160 acres in size, no more than 99 medical marijuana plants, whether mature or immature, shall be cultivated on the property. 4. If the property is less than 20 acres in size, each cultivation area must maintain a minimum setback of 100 feet, unless the enforcing officer or the Board of Supervisors reduces or waives this requirement based upon a finding of unusual hardship; 5. If the property is greater than 20 acres but less than 160 acres in size, each cultivation area must maintain a minimum setback of 300 feet; 6. If the property is greater than 160 acres in size, each cultivation area must maintain a minimum setback of 1000 feet; 7. Cultivation areas must not be located within 1000 feet of any school, school bus stop, school evacuation site, church, park, child care center or youth-orientated facility; 8. Outdoor cultivation areas must be enclosed by a 6-foot-high solid fence equipped with a lockable gate. 9. Fences used to enclose outdoor cultivation areas must not violate any other ordinance, code section or provision of law regarding height and location restrictions; 10. There must not be any exterior evidence of the cultivation; 11. Persons cultivating marijuana must notify the legal owners of the property upon which the cultivation area is located that cultivation will be occurring. Proof of such notice must be given to the County prior to the commencement of cultivation; 12. Persons owning, leasing, or occupying property used for cultivation must register with the Tehama County Health Services Agency. The following information is required with registration: <ol style="list-style-type: none"> a. The name of each person owning, leasing, occupying, or having charge of possession of the cultivation area; b. The name of each person participating in the cultivation; c. The valid medical marijuana card for each participant; d. The number of medical marijuana plants to be cultivated; e. Any other information the Agency determines is necessary to ensure compliance with State and County law. 	<p>Nuisance: Violation of this section constitutes a public nuisance.</p> <p>Abatement: A violation of this section may be abated by issuing a notice which states:</p> <ol style="list-style-type: none"> 1. The date, location and nature of the violation; 2. The property owners' names; 3. The actions required to correct the violation; 4. That an appeal may be filed within 10 days; 5. That abatement must be completed within 14 days; 6. That abatement is final if an appeal is not filed, or after an appeal hearing is conducted; 7. The consequences of noncompliance. <p>Liability for Costs: Any person found to be in violation of this section shall be liable for all costs incurred by the County, including attorney's fees.</p> <p>Nonexclusive Remedies: The remedies provided in this section are cumulative.</p>

CITY	REGULATION SUMMARY	ENFORCEMENT
Gridley	<p>Outdoors: Outdoor cultivation is strictly prohibited.</p> <p>Structures in Residential Zoning Districts: A qualified patient or primary caregiver may cultivate up to 12 mature or 24 immature medical marijuana plants, within a fully enclosed secure structure. However, a public nuisance may exist if the cultivation produces:</p> <ol style="list-style-type: none"> 1. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; 2. Repeated responses to the property from law enforcement officers; 3. Repeated disruptions to the free passage of persons or vehicles in the neighborhood; 4. Excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public; or 5. Any other impacts on the neighborhood which disrupt the normal activity in the area. 	<p>Nuisance: Violation of this section constitutes a public nuisance, punishable by a daily civil penalty of up to \$500.</p> <p>Abatement: Violations may be abated by issuing a notice that contains the information listed in the Corning notice.</p> <p>Zoning Violation: Violation of this section constitutes a violation of the Zoning Code, punishable by a daily civil penalty of up to \$500.</p> <p>Nonexclusive Penalties: These Penalties are cumulative, alternative and nonexclusive.</p>
Ukiah	<p>Outdoors: Outdoor cultivation is strictly prohibited.</p> <p>Structures in Residential Zoning Districts: A qualified patient or primary caregiver may cultivate up to 12 mature or 24 immature medical marijuana plants, within a fully enclosed secure structure. However, a public nuisance may exist if the cultivation produces:</p> <ol style="list-style-type: none"> 1. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; 2. Repeated responses to the property from law enforcement officers; 3. Repeated disruptions to the free passage of persons or vehicles in the neighborhood; 4. Excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public; or 5. Any other impacts on the neighborhood which disrupt the normal activity in the area. 	<p>Nuisance: Violation of this section constitutes a public nuisance, punishable by a daily civil penalty of up to \$500.</p> <p>Abatement: Violations may be abated by issuing a notice that contains the information listed in the Corning notice.</p> <p>Zoning Violation: Violation of this section is a violation of the Zoning Code, punishable by a fine of up to \$500 and/or imprisonment for 6 months.</p> <p>Nonexclusive Penalties: These Penalties are cumulative, alternative and nonexclusive.</p>

MEMORANDUM

TO: City Council

FROM: Gregory P. Einhorn, City Attorney

SUBJECT: **Review of Potential Amendments to BMC Provisions Regarding Abatement of Nuisance: Medical Marijuana**

DATE: January 18, 2012

1. Background

The current BMC prohibits the cultivation of Medical Marijuana (MM) where visible and odiferous. The BMC also prohibits MM cultivation, except in a “fully enclosed and secure structure.” Council has requested proposed amendments to the BMC making the regulation of cultivation more clear and explicit.

2. Current Definition of Fully Enclosed and Secure Structure

6.05.210 Fully enclosed and secure structure.

“Fully enclosed and secure structure” means a space within a building that complies with the California Building Code, as adopted in the city, or, if exempt from permit requirements, that 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 and accessible only to a primary caregiver or a qualified patient. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch-by-four-inch or thicker studs overlaid with three-eighths-inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California Building, Electrical, and Fire Codes as adopted in the city.

3. For Consideration: More Explicit Regulation

Section 6.05.210 would be stricken; instead, the regulation of MM cultivation would be governed by a new BMC section as follows:

6.25.035 - Regulation of Location, Development, and Operation of Medical Marijuana Cultivation

A. Regulation of Location.

1. Medical Marijuana cultivation shall be prohibited on any parcel within the incorporated area of the City of Biggs except as an accessory use to a legally established residence within a legal accessory building on a legal parcel.
2. No Medical Marijuana cultivation is permitted within three hundred feet of any hospital, school, church, park or playground or in other areas where large numbers of minors regularly travel or congregate. The distance between any Medical Marijuana cultivation and any hospital, school, church, park or playground or other areas where large numbers of minors regularly travel or congregate shall be measured in a straight line, without regard to intervening structures, from the closest exterior wall of the detached accessory building in which the marijuana cultivation is occurring to the closest property line where the other building or activity is conducted.
3. Except as provided in Section 6.25.035(A)(4), Medical Marijuana cultivation may be undertaken only by a qualified patient who must occupy the residence on the parcel proposed for cultivation as their primary residence.
4. A qualified primary caregiver, as defined in Section 6.25.255, may undertake cultivation of Medical Marijuana on behalf of his/her qualified patient(s), but only in an accessory structure located on a parcel containing the primary caregiver's or qualified patient's primary residence.
5. Cultivation shall only be permitted in a detached accessory building and said cultivation area shall be limited to 50 square feet per parcel or residence, whichever is less. The cultivated marijuana may be used only by the qualified patient and not distributed, sold, given or transferred in any way to any other person or organization.
6. Outdoor cultivation shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge for possession of any parcel within any zoning district in the City of Biggs.
7. Indoor cultivation within a residence shall be unlawful and a public nuisance with regard to any person owning, leasing, occupying or having

charge for possession of any parcel within any zoning district in the City of Biggs.

B. Development and Operational Standards.

1. From a public right-of-way, there shall be no exterior evidence of Medical Marijuana cultivation located inside an accessory building.
2. The qualified patient or primary caregiver shall reside in the residence located on the parcel containing the accessory structure where the Medical Marijuana cultivation occurs.
3. The qualified patient or primary caregiver shall not cultivate Medical Marijuana in any other location within the City of Biggs other than in the accessory structure located on the parcel containing his/her primary residence.
4. The qualifying residence located on the property containing the detached accessory building in which Medical Marijuana is cultivated shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and shall not be used for Medical Marijuana cultivation.
5. Medical Marijuana cultivation shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
6. Residential accessory structures used for cultivation shall meet the following criteria:
 - a. The building shall be provided with locking doors and have a working security system. The alarm shall be a standard audible residential alarm of at least 90 dBA but not exceeding 110 dBA.
 - b. If the building is a greenhouse, it shall additionally be surrounded by a secure solid six (6) foot high fence located within ten (10) feet of the greenhouse and equipped with a lockable gate.
 - c. The structure shall be located in the rear yard portion of the lot and shall, to the extent physically possible, maintain a minimum of a

ten (10) foot setback from the side and rear property lines and from any other building on the parcel.

- d. Any accessory structure, of any size, utilized for cultivation of marijuana shall be legally constructed with a building permit to the extent required. All electrical and plumbing shall be installed with a valid electrical and plumbing permit from the City. Such building permits will only be issued to the owner of the property. If the resident is proposing to convert an existing accessory structure for cultivation of marijuana, an inspection will be required to ensure compliance with the ordinance.
 - e. Medical Marijuana cultivation lighting shall not exceed 1200 watts and shall conform to all applicable codes.
 - f. Accessory structures utilized for cultivation shall be ventilated with odor control filters, and shall not create an odor, humidity or mold problem on the subject property or adjacent properties.
 - g. Other activities may occur within a detached accessory structure where medical marijuana is cultivated provided that the cultivation area itself within the structure does not exceed 50 square feet and further provided that the cultivation area is segregated from all other building uses by permitted walls and all other conditions of this Section are satisfied.
7. Wherever Medical Marijuana is grown, a copy of a current and valid, State-issued Medical Marijuana card must be kept available to immediately present to City employees, including, but not limited to law enforcement officers, upon request.
8. Nothing in this Section shall be construed as a limitation on the City's authority to abate any nuisance which may exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

4. Addition BMC Amendments to Implement MM Regulation

A. Additional Definitions

6.05.235 "Marijuana" shall have the same meaning as that set forth in California Health and Safety Code Section 11018.

6.05.240 "Medical Marijuana" means medical marijuana that has been recommended by a licensed physician in strict accordance with California Health and Safety Code Sections 11362.5 through Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

B. Defining Nuisance as Public Visibility, Odor, or Non-Compliance with New Regulatory Provisions

(1) Current Definitions

6.25.020 Unlawful property nuisance – Private property.

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of private property in the city to maintain or to allow to be maintained such property in such manner that any of the following conditions which are visible from a public street or right-of-way and are found to exist thereon, except as may be allowed by this code:

(1) Unlawful Outdoor Storage

(e) Marijuana plants, the cultivation of which is visible from a public street or right-of-way or neighboring property, or the odor of which is detectable from a public street, right-of-way or neighboring property.

(9) Cultivation of Marijuana. The cultivation and/or storage of marijuana within the city of Biggs is hereby declared to be unlawful and a public nuisance; provided, however, that a qualified patient or primary caregiver may cultivate and/or store marijuana but only if such storage and/or cultivation is confined and limited to and within a fully enclosed and secured structure.

(2) Proposed Definitions

(9) Medical Marijuana plants, products and/or the cultivation of Medical Marijuana, either visible to the public or neighboring property, or to permit the odor of which is detected by any member of the public, or to cultivate, process or store Medical Marijuana not in compliance with all of the provisions of section 6.25.035.

C. Amendments to MM Nuisance Abatement Process

6.25.055 Nuisance abatement – Visible/unsecured odiferous Medical Marijuana ~~marijuana~~ under cultivation.

- (1) Medical Marijuana Cultivation/Storage Nuisance Circumstances.

Notwithstanding any provision in this chapter, the abatement measures set forth in subsection (2) of this section shall be utilized in the following nuisance circumstances: Medical Marijuana ~~marijuana~~ plants, or the cultivation of Medical Marijuana ~~marijuana~~ plants, visible from the street or neighboring property; the odor of Medical Marijuana ~~marijuana~~ detected from the street or neighboring property; or the presence, cultivation, processing and/or storage of Medical Marijuana ~~marijuana~~, not in compliance with all of the provisions of section 6.25.035. except within a fully enclosed and secured structure.

D. Amendment to Abatement Lien: Attorneys Fees

6.25.080 Nuisance abatement lien (Gov. Code Section 38773.1).

(9) In any action, administrative proceeding or special proceeding to abate a nuisance in which the city elects, at the initiation of the action or proceeding, to seek recovery of its attorneys' fees, the prevailing party in the action or proceeding shall recover its attorneys' fees incurred in the action or proceeding. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding. "Prevailing party" shall not include a party who complies with a notice of violation issued by the city or an order in any action, administrative proceeding or special proceeding. Attorney fees shall include fees for the services of the city attorney or his or her assistant and deputies, calculated based on the effective hourly rate of such attorney.

E. Amendments to Fines

6.25.085 Nuisance abatement fines.

- (1) Issuance of the Declaration of Nuisance (BMC 6.25.050(2)).
- (a) \$0.00.
- (b) Frequent violator: \$100.00.

- (2) Issuance of Notice of Public Hearing (BMC 6.25.050(5)).
 - (a) \$100.00.
 - (b) Frequent violator: \$200.00.
- (3) After Mayor/Council Hearing (BMC 6.25.050(9)).
 - (a) Up to \$250.00.
 - (b) Frequent violator: up to \$500.00.
 - (c) In addition to the above: up to \$100 per day until abated.
- (4) Issuance of Fines for Visible/~~Unsecured~~Odiferous and/or Non-Regulatory Compliant Medical Marijuana Cultivation.
 - (a) Up to \$1,000 per day, upon expiration of time for abatement (BMC 6.25.055(3)(a)).
 - (b) Frequent violator: up to \$500, in addition to subsection (4)(a) of this section.

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