

SCC NO. _____

AN ORDINANCE RELATING TO OUTDOOR MARIJUANA CULTIVATION.

The Board of Supervisors of the County of Sacramento, State of California,
ordains as follows:

SECTION 1. Chapter 6.88, Sections 6.88.010 through 6.88.080, is added to Title
6, of the Sacramento County Code to read as follows:

6.88.010 Purpose and Findings.

A. It is the purpose and intent of this Article to regulate the cultivation of medical marijuana in a manner that is consistent with State and Federal law and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Sacramento and prevents adverse impacts which such activities may have on nearby properties and residents, without interfering with any rights qualified patients and their primary caregivers may have pursuant to the state Compassionate Use Act and Medical Marijuana Program.

B. The Board of Supervisors finds that the cultivation of medical marijuana in the unincorporated area of Sacramento County can adversely affect the health, safety and well-being of the County and its residents. Medical marijuana cultivation increases the risk of criminal activity, degradation of the natural environment, excessive use of electricity which may overload standard electrical systems, and damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, increased risk of fire and fire-related hazards, inadequate ventilation, increased occurrences of home-invasion robberies and similar crimes. Medical marijuana cultivation also creates increased nuisance impacts to neighboring properties because of the strong, malodorous, and potentially noxious odors which come from the plants. Further, the indoor and outdoor cultivation of medical marijuana in or near residential zones increases the risk of such activity and intrudes upon residential uses.

C. In 1996, the voters of the State of California approved Proposition 215, codified as California Health and Safety Code section 11362.5 and entitled "The Compassionate Use Act of 1996" (CUA). The CUA is limited in scope, in that it only provides a limited immunity and defense from criminal prosecution for certain crimes related to the possession and cultivation of marijuana by qualified patients and their primary caregivers. The CUA does not address the land use or other impacts that are caused by the cultivation of medical marijuana and it does not create a constitutional right to obtain marijuana.

D. In 2003, the Legislature enacted Senate Bill 420 also known as the Medical Marijuana Program (MMP) which was codified in the California Health and Safety Code commencing with section 11362.7. That legislation was enacted to clarify the scope of Proposition 215 and to provide qualified patients and primary caregivers

who cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.

E. Neither the CUA nor MMP confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose. Further, neither the CUA nor MMP require or impose an affirmative duty or mandate upon local governments, such as the County of Sacramento, to allow, authorize or sanction marijuana cultivation or the operation and establishment of facilities dispensing medical marijuana within its jurisdiction. Health and Safety Code 11362.5(b)(2) provides that the CUA does not supersede any legislation intended to prohibit conduct that endangers others. Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420.

F. Health and Safety Code 11362.81(d) authorizes the Attorney General to “develop and adopt appropriate guidelines to ensure the security and non-diversion of marijuana grown for medical use by patients qualified under” the CUA. On August 25, 2008, California Attorney General Edmund G. Brown issued “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use” (“the Attorney General Guidelines”), which established regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients. Nothing in the Guidelines imposes an affirmative mandate or duty upon local governments, such as the County of Sacramento, to allow, sanction or permit the establishment or the operation of facilities cultivating or dispensing medical marijuana within their jurisdictional limits.

G. As recognized by the Attorney General Guidelines, the cultivation 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.

H. Marijuana remains an illegal substance under the federal Controlled Substances Act (21 USC §§ 801 et seq.) and it is classified as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, transport, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act does not exempt the cultivation, manufacture, distribution, dispensation, transportation, or possession of marijuana for medical purposes.

I. Marijuana plants grown outdoors, as they begin to flower and for a period of two months or more during the growing season, produce an extremely strong odor that is offensive to many people and detectable far beyond property boundaries. This strong smell may create an attractive nuisance, alerting persons to the location of the marijuana plants, thereby creating a risk of burglary, robbery, armed robbery, assault, attempted murder, and murder.

J. Fertilizers and pesticides, both legal and illegal, used when marijuana is grown outdoors may unreasonably increase the concentration of such chemicals in storm water runoff thereby impacting local creeks, streams and rivers. Such pollution

may negatively affect water quality for downstream users, harm ecosystems, and impact threatened or endangered species.

K. Water for marijuana grown outdoors may be illegally diverted from local creeks, streams, and rivers, thereby unreasonably depriving downstream users of beneficial water sources. Such diversions may also impact water supply, harm ecosystems, and negatively affect threatened or endangered species.

L. Pursuant to the County of Sacramento's police powers authorized in Article XI, Section 7 of the California Constitution, as well as under the County Code, the County has the power to regulate permissible land uses throughout the County and to enact regulations for the preservation of public health, safety and welfare of its residents and community. Further, pursuant to Government Code sections 25845 and 38771, municipalities also have the power through the Board of Supervisors to declare actions and activities that constitute a public nuisance.

M. The Board of Supervisors finds that neither the CUA nor the MMP preempt the County's exercise of its traditional police powers in enacting land use regulations, such as this ordinance, for preservation of public health, safety and welfare, by prohibiting the cultivation of marijuana within the County.

6.88.020 Application.

The provisions of this chapter shall apply generally to all property throughout the unincorporated territory of the County of Sacramento wherein any of the conditions herein specified are found to exist. However, nothing in this Chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution under the CUA or MMP.

6.88.030 Administration.

The Sheriff, or the Sheriff's designee and/or the Director of Community Development, or the Director's designee, are charged with the responsibility of administering this chapter and exercising the authority conferred thereby.

6.88.040 Definitions.

As used herein, the following definitions shall govern the construction of this chapter:

A. "Collective" or "Cooperative" means any association, cooperative, affiliation, group, or collective of persons organized or associated to cultivate, store and/or dispense marijuana for medical purposes pursuant to the CUA or MMP and as provided in Health and Safety Code section 11362.775.

B. "Cultivation" means the planting, growing, harvesting, drying, processing or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including a fully enclosed and secure building.

C. "Dispensary" means any facility, location, establishment or similar entity that cultivates, distributes, delivers, supplies or processes marijuana for medical purposes relating to a qualified patient or primary caregiver, pursuant to the CUA and MMP in accordance with Health and Safety Code sections 11362.5 et seq. A dispensary shall include a dispensing collective or cooperative.

D. "Habitable Structure" means that which is built, constructed or erected for living, sleeping, eating or cooking purposes.

E. "Marijuana" means all parts of the plant Genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin.

F. "Marijuana plant" means any mature or immature marijuana plant, or any marijuana seedling, unless otherwise specifically provided herein.

G. "Outdoors" means any location within the County of Sacramento that is not within a fully enclosed and secure structure which can only be entered through a locked door that requires a key or combination to open and which is secure against unauthorized entry.

For purposes of this section, in the Residential, Agricultural-Residential, and Agricultural land use zones, "outdoors" shall also include any non-habitable structures on the property including, but not limited to, sheds, greenhouses, barns, and garages.

H. "Primary caregiver" shall have the meaning set forth in Health and Safety Code section 11362.7(d).

I. "Qualified Patient" shall have the meaning set forth in Health and Safety Code section 11362.7(f).

6.88.050 Outdoor Cultivation Prohibited.

The cultivation of marijuana outdoors by any person, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, for any purpose is prohibited on any parcel in the unincorporated area of Sacramento County.

6.88.060 Penalty.

Any cultivation, processing or distribution of marijuana which takes place in violation of any provision of this chapter is unlawful, and is hereby declared a public nuisance and is subject to all enforcement actions pursuant to Title 16, Chapter 16.18 of this Code.

6.88.070 Severability.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, phrase, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

6.88.080 CEQA Exemption.

The Board of Supervisors finds pursuant to Title 14 of the California Code of Regulations, Sections 15060(c)(2) and 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

Further, in addition to the foregoing general exemptions, the categorical exemptions found in Sections 15308 and 15321 also apply.

SECTION 2. Section 16.18.401 of Chapter 16.18, Title 16, of the Sacramento County Code is amended to read as follows:

It is hereby declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in this County to maintain such premises in such a manner that any one or more of the conditions or activities described in the following subsections are found to exist:

A. The keeping, storage, depositing, or accumulation on the premises of any personal property, including, but not limited to, abandoned, neglected or broken equipment or machinery, abandoned, wrecked, dismantled or inoperative vehicles, automotive parts and equipment, appliances, furniture, containers, packing materials, scrap metal, wood, building materials, junk, rubbish, and debris, which is within the view of persons on adjacent or nearby real property or the public right-of-way and which constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to nearby property or property values; provided, however, that wood and building materials being used or to be used for a project of repair or renovation for which a building permit has been obtained may be stored for such a period of time as is necessary to expeditiously complete the project;

B. The keeping, storage, depositing or accumulation of dirt, sand, gravel, concrete or other similar materials, which constitutes blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to nearby property or property values;

C. Landscaping, or the lack thereof, that is detrimental to aesthetic and property values in the neighborhood or otherwise detrimental to the public welfare as evidenced by any one or more of the following conditions:

1. The accumulation of weeds, trees, debris or other vegetation that is overgrown onto a public right-of-way at least twelve (12) inches, or is completely dead, over twelve (12) inches in height, and covers more than fifty (50) percent of the front or side yard visible from any street; or

2. The failure to regularly maintain plant materials, including, but not limited to, irrigating, mowing, and trimming in a manner consistent with applicable Sacramento County Code requirements; or

3. The failure to remove and/or replace any overgrown, damaged, dead, diseased, or decaying plant materials likely to harbor vectors; or

4. The failure to keep irrigation systems in proper working order to provide water and coverage that is consistent with applicable Sacramento County Code requirements; or

5. The failure to comply with applicable County landscape design plan and permit requirements and development permit requirements for landscaping.

D. The operation of a junkyard or automobile dismantling yard, except in an industrial zone pursuant to a special use permit;

- E. Any abandoned drive-in enterprise;
- F. Any dangerous, unsightly, or blighted condition which is detrimental to the health, safety or welfare of the public;
- G. Any devices, signs, decorations, designs, and/or fences which are visible from the public right-of-way or neighboring properties that are in a state of disrepair and/or create a health or safety hazard;
- H. Any condition in violation of Title 4 of the Sacramento County Code (Business License);
- I. Any condition in violation of Chapter 6.120 of the Sacramento County Code (Graffiti);
- J. Any condition in violation of Chapter 6.20 of the Sacramento County Code (Solid Waste);
- K. Any condition in violation of Chapter 6.68 of the Sacramento County Code (Noise);
- L. Any condition in violation of Chapter 6.96 or 6.98 of the Sacramento County Code (Hazardous Materials);
- M. Any condition in violation of Title 8 of the Sacramento County Code (Animal Control Law);
- N. Any condition in violation of Chapter 16.02, 16.04, 16.20 or 16.22 of the Sacramento County Code (Building Code), including, but not limited to, buildings or structures which are abandoned, partially destroyed, or permitted to remain in a state of partial construction or partial demolition; and unpainted buildings causing dry rot, warping and lack of weather protection;
- O. Any condition in violation of Chapters 17.04 and 17.12 of the Sacramento County Code (Fire Protection);
- P. Any condition in violation of Chapter 6.28 of the Sacramento County Code (Wells and Pumps);
- Q. Any condition in violation of Chapter 6.32 of the Sacramento County Code (Sanitary Sewage Systems);
- R. Any condition in violation of Health and Safety Code Section 115700, including abandoned excavations, septic tanks and swimming pools;
- S. Any condition in violation of the Sacramento County Zoning Code (Zoning Code);
- T. Any condition in violation of Chapter 16.36 of the Sacramento County Code (Swimming Pools);
- U. Any condition in violation of Chapter 16.38 of the Sacramento County Code (Sign Code);
- V. Any condition in violation of Chapter 16.44 of the Sacramento County Code (Land Grading and Erosion Control);
- W. Any condition in violation of Chapter 17.12 of the Sacramento County Code (Weed Control) including, but not limited to, overgrown, dead, dry, decayed, diseased or hazardous trees, weeds, and other vegetation, brush or weeds likely to cause a fire hazard to adjacent or nearby improved property or to the public, or which are noxious, dangerous or which cause a health hazard;
- X. Any condition recognized in law or in equity as constituting a public nuisance;

Y. The failure to maintain and monitor any vacant building or property so as to constitute a condition detrimental to property values in the neighborhood or otherwise detrimental to the public welfare.

The existence of any one or more of the following property conditions constitutes a violation of this subsection:

1. The property contains overgrown, diseased, dead or decayed trees, weeds or other vegetation that:
 - i. Constitutes a fire hazard or other condition that is dangerous to the public health, safety, welfare, or
 - ii. Creates the potential for the harboring of rats, vermin, vector, or other similar nuisances, or
 - iii. Substantially detracts from the aesthetic and property values of neighboring properties, or
 - iv. Is overgrown onto a public right-of-way at least twelve (12) inches, or
 - v. Is completely dead, over twelve (12) inches in height, and covers more than fifty (50) percent of the front or side yard visible from any street,
2. The property fails to comply with applicable development permit requirements with respect to any landscaping requirements,
3. The property contains exterior trash, debris, junk, or graffiti not regularly removed,
4. The property and all building entry points including doorways, windows or other openings are not closed, maintained or secured to prevent entry into the property and building by persons or animals,
5. Criminal activity is occurring on the premises, including, but not limited to, use and sale of controlled substances, prostitution, criminal street gang activity, loitering or trespassing.

Except as modified by this subdivision, all enforcement and cost recovery provisions of this chapter shall be applicable to violations of this subsection;

Z. Any unimproved real property which has become a dumping ground for litter, garbage, junk, debris, or discarded vehicles, vehicle parts and/or vehicle hulks, and which real property has been subject to abatement on one or more occasions by the County;

AA. Any conditions in violation of Chapter 15.12 (Stormwater Management and Discharge Control). Once proceedings have been commenced pursuant to this chapter to declare a property to be a public nuisance under this subsection, no such property shall be deemed to be in compliance with this chapter solely because such property thereafter becomes occupied- ;

BB. Any condition in violation of Chapter 6.88 of the Sacramento County Code (Marijuana Cultivation Outdoors).

SECTION 3. This ordinance was introduced and the title thereof read at the regular meeting of the Board of Supervisors on _____ and on _____ further reading was waived by the unanimous vote of the Supervisors present.

This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Sacramento.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, this ____ day of _____, 2014, by the following vote:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

ABSTAIN: Supervisors,

Chair of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____
Clerk, Board of Supervisors