

ORDINANCE NO. 006-17

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF YUBA CITY
ENACTING REGULATIONS REGARDING THE CULTIVATION
OF RECREATIONAL AND MEDICAL MARIJUANA, FOR A PERIOD
OF 10 MONTHS AND 15 DAYS PURSUANT TO
GOVERNMENT CODE SECTION 65858**

WHEREAS, the City previously adopted an ordinance on May 21, 2013 adding Article 54, Chapter 5, Title 8 to the City's Municipal Code regarding the cultivation of medical marijuana as permitted by the Compassionate Use Act (Health and Safety Code §11362.5); and

WHEREAS, prior to the adoption of Interim Urgency Ordinance No. 005-17 on April 18, 2017, the City ordinance prohibited all outside cultivation of medical marijuana and permitted the indoor cultivation of medical marijuana provided that certain regulations were followed; and

WHEREAS, on November 8, 2016, Proposition 64, the Control Regulate and Tax Adult Use of Marijuana Act ("AUMA"), was approved at the statewide general election which, among other things, legalized the use and possession of recreational marijuana by adults over 21 years of age; and

WHEREAS, AUMA authorizes cities to completely prohibit outdoor cultivation of marijuana; and

WHEREAS, AUMA authorizes cities to "reasonably regulate" without completely prohibiting cultivation of marijuana inside a private residence; and

WHEREAS, the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, outdoor cultivation of marijuana can adversely affect the health, safety and welfare of the citizens of the City by an increase in criminal activity and the offensive odor of marijuana plants; and

WHEREAS, indoor cultivation of marijuana with the use of high wattage grow lights and increased use of electricity increases the chances of fire and can be hazardous if not adequately regulated; and

WHEREAS, nothing under existing State law regarding marijuana provides the right to create or maintain a public nuisance; and

WHEREAS, the City intends to continue a review and consideration of a more comprehensive regulatory scheme and to develop a revised ordinance that most effectively regulates all facets of marijuana activities; and

WHEREAS, pursuant to Section 65858 of the California Government Code, to protect the public safety, health, and welfare, a City Council may adopt as an urgency measure an interim ordinance prohibiting land uses that may be in conflict with a contemplated General Plan, Specific Plan, or Zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and

WHEREAS, the City Council of the City of Yuba City wishes to implement new development standards and restrictions for the cultivation of non-medical marijuana to ensure compatibility between this use and surrounding properties within the City so that the public health, safety, or welfare, is protected; and

WHEREAS, On April 18, 2017, the City Council adopted Urgency Ordinance No. 005-17 pertaining to the cultivation of medical and recreational marijuana; and

WHEREAS, Government Code Section 65858 provides that urgency ordinances shall expire and be of no force and effect 45 days from the date of adoption; and

WHEREAS, The urgency ordinance process temporarily allows the City to ensure that no new outdoor marijuana grows are established and that all future grows are done in accordance with the proposed standards and restrictions to reduce the conflicts associated with the cultivation of marijuana; and

WHEREAS, the purpose of the Urgency Ordinance is to provide the City with ample time to study the issues related to medical and non-medical marijuana and possible amendments to the City's Municipal Code (Code); and

WHEREAS, pursuant to the provisions of Government Code Section 65858, the City may extend an Urgency Ordinance after a noticed public hearing, to prohibit uses of land which may conflict with a contemplated General Plan, Specific Plan, or Zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and

WHEREAS, the Government Code provides that prior to the expiration of an urgency ordinance, the City may extend an urgency ordinance for an additional 10 months and 15 days upon issuing a written report describing the measures taken to alleviate the condition which led to the adoption of the urgency ordinance; and

WHEREAS, on May 16, 2017, the City Council issued a written report describing the measures taken by the City to alleviate the circumstances and conditions which led to the adoption of Urgency Ordinance No. 005-17; and

WHEREAS, the City Council seeks to extend Urgency Ordinance No. 005-17 to provide additional time to establish a permanent ordinance and to help ensure that the cultivation of marijuana is regulated in a way that protects the community and complies with applicable law; and

WHEREAS, the purpose for extending Urgency Ordinance No. 005-17 is to avoid the potentially significant adverse impacts to the public's health, safety, and welfare described in Urgency Ordinance No. 005-17; and

WHEREAS, the City Council has determined that there is a need to extend the Urgency Ordinance No. 005-17 for an additional 10 months and 15 days as authorized under Section 65858 of the Government Code; and

WHEREAS, public notice as required by the Government Code for an extension of Urgency Ordinance No. 005-17 has been provided.

NOW, THEREFORE, the City Council of the City of Yuba City does hereby ordain as follows:

Section 1. Recitals.

The above recitals are hereby found to be true and accurate and are incorporated into this Ordinance by this reference.

Section 2. Findings.

The City Council hereby incorporates by reference the Findings set forth in Urgency Ordinance No. 005-17, adopting interim standards for medical and recreational marijuana cultivation in the City. Moreover, the City Council of the City of Yuba City hereby finds and declares that because absent Ordinance No. 005-17, the City would not have any regulations governing the cultivation of non-medical marijuana, there is a need to enact an urgency interim ordinance prohibiting all outdoor non-medical marijuana cultivation uses in all zoning districts in the City and to require all indoor cultivation to be subject to the City's current minimum standards for indoor cultivation of medical marijuana subject to the findings and conditions contained in this Ordinance. The City Council specifically hereby makes the following findings:

- A. Personal outdoor cultivation of non-medical marijuana would conflict with, and defeat the purpose and intent of the current zoning requirements that prohibit personal outdoor cultivation of medical marijuana due to nuisance, crime, and other factors.
- B. If marijuana uses, beyond those already established and permitted in the City's Code, are allowed to proceed while the City is studying zoning ordinances and regulations for marijuana uses, establishment or development of such uses would defeat the purpose of studying and considering zoning proposals to regulate and/or prohibit certain uses of marijuana.
- C. Failure to enact this urgency ordinance may result in significant irreversible changes to neighborhood and community character and may ultimately conflict with new City ordinances and regulations.
- D. This urgency ordinance will provide the City with time to study personal marijuana cultivation uses and potential impacts such land uses may have on the public health, safety, and welfare. It is in the interest of the City, its residents, and its lawfully permitted businesses and uses that City staff undertake a study to consider zoning, zoning ordinance amendments, and/or other measures to regulate recreational cultivation of marijuana.

Section 3. Urgent Need.

Based on the foregoing recitals and findings, all of which are deemed true and correct, this interim Ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare. Imposition of this urgency ordinance will allow the City sufficient time to conclude the preparation and enactment of a comprehensive ordinance for the regulation of personal cultivation of marijuana.

Section 4. Extension of the Urgency Ordinance.

- A. The City Council finds and determines that the Findings set forth in Section 2 are true and correct and are incorporated herein by reference.
- B. In accordance with the authority granted pursuant to Government Code Section 65858, Urgency Ordinance No. 005-17 shall be extended for a period of 10 months and 15 days from and after the expiration of Urgency Ordinance No. 005-17.

Section 5.

In light of the passage of Proposition 64 allowing the cultivation of non-medical marijuana, in order for the City to regulate the cultivation of non-medical marijuana, the existing Article 54, Chapter 5, Title 8 of the Yuba City Municipal Code is repealed and Article 54, Chapter 5, Title 8 is re-enacted and hereby added to the Yuba City Municipal Code to read as follows:

ARTICLE 54

MARIJUANA CULTIVATION

Sections:

8-5.5405	Purpose and Intent
8-5.5410	Definitions
8-5.5415	Cultivation of Marijuana Regulations
8-5.5420	Cultivation Registration
8-5.5425	Violation
8-5.5430	Enforcement
8-5.5435	Remedies and penalties not exclusive

8-5.5405 Purpose and Intent.

It is the purpose and intent of this Article to regulate the cultivation of medical marijuana pursuant to the Compassionate Use Act (Health and Safety Code § 11362.5 (“CUA”) or the Medical Marijuana Program Act (Health and Safety Code § 11362.7 et. seq.) (“MMPA”) and the cultivation of non-medical marijuana pursuant to Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), in a manner that protects the health, safety and welfare of the public. This Article is intended to implement reasonable regulations to regulate the cultivation of medical and non-medical marijuana in a manner that protects the health, safety and welfare of the public consistent with the CUA, MMPA and AUMA. Nothing in this Article is intended to authorize the cultivation, possession or use of medical or non-medical marijuana in a manner in violation of State or Federal Law.

8-5.5410 Definitions.

As used in this article:

(a) “Bedroom” shall mean a room inside a residential building being utilized by any person for sleeping purposes.

(b) “Cultivation” shall mean the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

(c) “Detached, fully-enclosed and secure structure” shall mean a building completely detached from a residence that complies with the Yuba City 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 or more lockable doors.

(d) “Indoors” shall mean within a fully enclosed and secure building.

(e) "Marijuana" shall have the same meaning as defined in California Health and Safety Code Section 11018.

(f) "Outdoor" shall mean any location within the City that is not within a fully enclosed and secure structure.

(g) "Primary caregiver" shall mean a "primary caregiver" as defined in Health and Safety Code § 11362.7(d).

(h) "Qualified patient" shall mean a "qualified patient" as defined in Health and Safety Code § 11362.7(f).

(i) "Rear yard" shall mean the rear open space portion of any premises, whether fenced or unfenced.

(j) "Residential structure" or "residence" or "private residence" shall mean any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, and includes a house, an apartment unit, a mobile home, or other similar dwelling.

(k) "Solid fence" shall mean a fence constructed of substantial material (such as wood) that prevents viewing the contents from one side to the other.

8-5.5415 Cultivation of Marijuana Regulations.

The following regulations shall apply to the cultivation of medical and non-medical marijuana within the City:

(a) **Marijuana Cultivation.** It is hereby declared to be unlawful and a public nuisance for any person to cultivate medical or non-medical marijuana within the City limits, except as provided in this Article.

(b) **Residency Requirement.** Either a qualified patient or primary caregiver shall reside full-time in the residence where the medical marijuana cultivation occurs. A person cultivating non-medical marijuana shall reside full-time in the residence where the non-medical marijuana cultivation occurs.

(c) **Outdoor Cultivation.** It is unlawful and a public nuisance for any person to cause or allow any property within the City limits 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 marijuana inside any residential structure or building without registering with the City for medical or non-medical marijuana cultivation; issued by the Development Services Director or his or her designee, as provided herein.

(e) **Indoor Cultivation.** The indoor cultivation of marijuana shall only be conducted within a detached, fully-enclosed and secure structure or within a residential structure conforming to the following minimum standards:

- (1) The registration of any detached structure, regardless of square footage, constructed, altered or used for the cultivation of marijuana must be issued by the Development Services Director.

- (2) Indoor grow lights shall not exceed 1,200 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 or non-medical marijuana.
- (3) Any detached, fully-enclosed and secure structure or residential structure used for the cultivation of medical or non-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 foot setback from the rear yard property line and a side yard setback that is equal to the same side yard setback required for the residential lot on which the home sits, and the area surrounding the structure or back yard must be enclosed by a solid fence at least six feet in height.
- (5) Marijuana cultivation occurring within a residence and detached structure shall be in a cumulative area totaling no larger than 75 square feet.
- (6) Cultivation of marijuana within a residence and detached structure shall not exceed a total of 6 marijuana plants at any one time.
- (7) Cultivation of marijuana shall not inhibit the occupancy of the residence or take place in the kitchen or bathrooms of any building.
- (8) Cultivation of marijuana shall not take place on any carpeted surface.
- (9) Marijuana cultivation for sale is prohibited.
- (10) Marijuana cultivation areas, whether in a detached building or inside a residence, shall not be conducted by or be accessible to persons under twenty one (21) years of age. No person other than a qualified patient or primary caregiver may engage in cultivation of medical marijuana.
- (11) From a public right-of-way, there shall be no exterior evidence of marijuana cultivation occurring at the property.

8-5.5420 Cultivation Registration.

- (a) Prior to commencing any medical or non-medical marijuana cultivation the person(s) owning, leasing, occupying, or having charge or possession of any property where marijuana cultivation is proposed to occur must be registered with the City for medical or non-medical marijuana cultivation from the Community Development Director or his/her designee. The following information will be required with the initial registration application and subsequent extensions:

- (1) The owner of the property acknowledges the cultivation of marijuana at the premises on a form provided by the City.
 - (2) The name of each person, owning, leasing, occupying, or having charge of any property where medical or non-medical marijuana will be cultivated.
 - (3) The name of each qualified patient or primary caregiver who participates in the medical marijuana cultivation. The name of each person who participates in the non-medical marijuana cultivation.
 - (4) A copy of a current valid medical recommendation or County-issued medical marijuana card (if available) 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 and a description of the growing area(s).
 - (6) A signed consent right to entry form, acceptable to the City, authorizing City staff, including the police/planning 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 24 hours' notice.
- (b) The initial registration shall be valid for no more than two years and may be extended in increments of two years.
 - (c) To the extent permitted by law, any personal or medical information submitted for medical marijuana or non-medical cultivation registration or extension shall be kept confidential and shall only be used for purposes of administering this Article.
 - (d) The Development Services Director, or his/her designee, may, in his or her discretion deny any application for a medical or non-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 Development Services Director shall deny the registration for a medical or non-medical marijuana cultivation, or extension thereof, that does not demonstrate satisfaction of the minimum requirements of this Article. The denial of any registration, or extension, may within ten days after such action, be appealed to the City Manager or his/her designee. Said appeal shall be filed with the City Clerk.
 - (e) The Finance Director may establish a fee or fees required to be paid upon filing of registration(s) as provided by this Article, which fees shall not exceed the reasonable cost of administering this Article.

8-5.5425 Violation.

Cultivation of marijuana that does not comply with this Article constitutes a violation of this Article and is subject to the civil penalties and enforcement as provided in this Article.

8-5.5430 Enforcement.

- (a) Public Nuisance. The violation of this Article is hereby declared to be a public nuisance.

(b) Abatement. A violation of this Article may be abated by the City Attorney by the prosecution of a civil action for injunctive relief and by the summary abatement procedure set forth in subsection (c) of this section.

(c) Summary Abatement Procedure.

- (1) The enforcement official is hereby authorized to order the abatement of any violation of this Article by issuing a notice and order to abate which shall:
 - i. Describe the location of and the specific conditions which represent a violation of this Article and the actions required to abate the violation.
 - ii. Describe the evidence relied upon to determine that a violation exists, provided that the enforcement official may withhold the identity of a witness to protect the witness from injury or harassment, if such action is reasonable under the circumstances.
 - iii. State the date and time by which the required abatement actions must be completed.
 - iv. State that to avoid the civil penalty provided in subsection (c)(4) of this section and further enforcement action, the enforcement official must receive consent to inspect the premises where the violation exists to verify that the violation has been abated by the established deadline.
 - v. State that the owner or occupant of the property where the violation is located has a right to appeal the notice to abate by filing a written notice of appeal with the City Clerk no later than five business days from the service of the notice. The notice of appeal must include an address, telephone number, fax number, if available, and e-mail address, if available.. The City may rely on any of these for service or notice purposes. If an adequate written appeal is timely filed, the owner or occupant will be entitled to a hearing as provided in subsection (c)(3) of this section.
 - vi. State that the order to abate the violation becomes final if a timely appeal is not filed or upon the issuance of a written decision after the appeal hearing is conducted in accordance with subsection (c)(3) of this section.
 - vii. State that a final order of abatement may be enforced by application to the superior court for an inspection and/or abatement warrant or other court order.
 - viii. State that a final order to abate the nuisance will subject the property owner and the occupant to a civil penalty of two hundred and fifty dollars for each day that the violation continues after the date by which the violation must be abated as specified in the notice and order to abate. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.
- (2) The notice described in subsection (c)(1) of this section shall be served in the same manner as a summons in a civil action in accordance with Civil Procedure Code Part 2, Title 5, Chapter 4, Article 3 (§ 415.10 et. seq.), or by certified mail, return receipt requested, at the option of the City. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of not less than ten days and publication thereof in a newspaper of general circulation pursuant to Government Code § 6062.

- (3) Not sooner than five business days after a notice of appeal is filed with the City Clerk, a hearing shall be held before the City Manager or a hearing officer designated by the City Manager to hear such appeals. The appellant shall be given notice of the date, time and place of the hearing not less than five days in advance. The notice may be given by telephone, fax, e-mail, personal service or posting on the property. At the hearing, the enforcement official shall present evidence of the violation, which may include, but is not limited to, incident and police reports, witness statements, photographs, and the testimony of witnesses. The property owner and the occupant of the property where the violation is alleged to exist shall have the right to present evidence and argument in their behalf and to examine and cross examine witnesses. The property owner and property occupant are entitled at their own expense to representation of their choice. At the conclusion of the hearing, the City Manager or hearing officer shall render a written decision which may be served by regular first class mail on the appellants.
- (4) A final notice and order to abate the nuisance will subject the property owner or owners and any occupant or occupants of the property who are cultivating marijuana in violation of this Article to a civil penalty of \$250 for each day that the violation continues after the date by which the violation must be abated as specified in the final notice and order to abate.
- (5) The enforcement official or the City Manager or hearing officer hearing an appeal pursuant to subsection (c)(3) of this section may reduce the daily rate of the civil penalty for good cause. The party subject to the civil penalty shall have the burden of establishing good cause, which may include, but is not limited to, a consideration of the nature and severity of the violation, whether it is a repeat offense, the public nuisance impacts caused by the violation, and the violator's ability to pay. The daily penalty shall continue until the violation is abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

8-5.5435 Remedies and Penalties Not Exclusive.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other civil, or administrative remedy or penalty authorized by, or set forth in, the Yuba City Municipal Code. None of the penalties or remedies authorized by, or set forth in the Yuba City Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this Article or to abate a public nuisance.

Section 6. Severability.

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 7. CEQA.

The City Council hereby determines that this ordinance is exempt from environmental review under the California Environmental Quality Act because it can be seen with certainty it will not have a significant effect on the environment. (CEQA Guideline 15061(b)(3).)

Section 8. Effective Date.

This Ordinance is hereby declared an urgency ordinance measure for the immediate preservation of the public health, safety and welfare and shall go into effect immediately at the time of adoption and within fifteen (15) days of the adoption of this ordinance, a copy shall be published once in the Appeal Democrat, a newspaper of general circulation in the City of Yuba City.

Section 9. Term of Ordinance.

Pursuant to Government Code Section 65858, this ordinance shall become effective immediately upon adoption, if passed and adopted by at least a four-fifths vote of the City Council, and shall extend the date that Urgency Ordinance No. 005-17 would have otherwise expired for a period of 10 months and 15 days. This ordinance will terminate upon a determination by the City Council supported by substantial evidence that the threat to the public health, safety, and welfare described in Section 2 of this ordinance has been ameliorated, or by the adoption of ordinance or amendments extending or superseding this ordinance.

Passed and adopted this 16th day of May, 2017, by the following vote:

AYES: Councilmembers Buckland, Cardoza, Didbal, Harris and Mayor Cleveland

NOES: None

ABSENT: None

Stanley Cleveland, Jr., MAYOR

ATTEST:

Patricia Buckland, City Clerk

Approved as to form:

Tim Hayes, City Attorney