

ORDINANCE NO. 2016-01

**AN ORDINANCE OF THE CITY OF ORLAND
ADDING CHAPTER 17.16 (MARIJUANA CULTIVATION),
AMENDING TITLE 8 (NUISANCE) AND AMENDING TITLE 14
(ENFORCEMENT/NUISANCE ABATEMENT) OF THE ORLAND MUNICIPAL CODE
REGARDING MARIJUANA CULTIVATION**

WHEREAS, the City Council of the City of Orland, pursuant to Chapter 17.17 of the Orland Municipal Code, hereby intends to and does establish a land use regulation prohibiting the cultivation of marijuana within the City of Orland; and,

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, codified at California Health and Safety Code Section 11362.5, and entitled “The Compassionate Use Act of 1996” (“the Compassionate Use Act” or “CUA”); and,

WHEREAS, the intent of the Compassionate Use Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes; and,

WHEREAS, on January 1, 2004, Senate Bill 420, codified at California Health and Safety Code Sections 11362.7 et seq. and entitled “The Medical Marijuana Program” (“MMP”), became effective to clarify the scope of the Compassionate Use Act; and,

WHEREAS, the MMP provides that specific immunities extend to those who cultivate marijuana for medical purposes; specifically, such individuals “shall not be subject, on that sole basis, to criminal liability” under Health and Safety Code sections 11357 [possession], 11358 [cultivation], 11359 [possession for sale], 11366 [maintaining location for selling, giving away or using controlled substances], 11366.5 [managing location for manufacture or storage of controlled substance], or 11570 [“drug den” abatement law] (Health and Safety Code section 11362.765(a).); and,

WHEREAS, neither the CUA nor the MMP provide the right to cultivate medical marijuana (City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal.4th 729) and local governments have the authority to prohibit cultivation of all marijuana, including medical marijuana (Maral v. City of Live Oak (2013) 221 Cal. App. 4th 975); and,

WHEREAS, the City of Orland has adopted a land use regulation Zoning Plan identified as Title 17 (Zoning) of the City of Orland Municipal Code; and,

WHEREAS, the City of Orland is authorized under state law to prohibit the cultivation of all marijuana (Health and Safety Code sections 11362.777(b)(3) and 1362.777(c)(4)); and,

WHEREAS, the City of Orland Police Department, City residents and other public entities have reported adverse impacts from marijuana and medical marijuana cultivation, including disagreeable odors; increased risk of burglary and other property crimes, and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes; and,

WHEREAS, the creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime; and,

WHEREAS, the indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation; and,

WHEREAS, children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including schools, parks, and other similar locations; and,

WHEREAS, the City Council finds and determines that the enactment of this Ordinance is exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3) in that there is nothing in this Ordinance or its implementation that could have a foreseeable significant effect on the environment; and,

WHEREAS, the City held a duly noticed public hearing on this Ordinance on December 21, 2105.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORLAND DOES ORDAIN AS FOLLOWS:

Section 1. The above-listed findings and statements of intent are true and correct.

Section 2. Section 8.24.020 of the Orland Municipal Code is amended as follows:

8.24.020 - Definitions.

The following definitions shall apply in this chapter:

~~“Cultivation” means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.~~

“Marijuana Cultivation” means the planting, growing, harvesting, drying, or processing of all Marijuana, including Medical Marijuana.

“Medical Marijuana” means ~~medical m~~ 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.

~~“Primary Caregiver” shall have the same definition as California Health and Safety Code Section 11362.7(d), as may be amended.~~

~~“Qualified Patient” shall have the same definition as California Health and Safety Code Sections 11362.7 (e) and (f), as may be amended.~~

Section 3. Section 8.24.025 of the Orland Municipal Code is deleted in its entirety.

Section 4. Section 8.24.030 of the Orland Municipal Code (Public nuisances designated) is amended as follows:

- Q. To maintain on the property 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.
- R. To cultivate, maintain, process or store Medical Marijuana ~~not in compliance with all of the provisions of section 8.24.025.~~

Section 5. Chapter 14.07 to the Orland Municipal Code is amended as follows:

Chapter 14.07 – ABATEMENT OF ~~MEDICAL~~ MARIJUANA

- 14.07.10 - Applicability.
- 14.07.20 - Abatement Procedure.
- 14.07.30 - Civil Penalties and Attorneys Fees.
- 14.07.40 - Violation as Criminal Offense
- 14.07.50 - Liability for costs of abatement.
- 14.07.60 - Nuisance abatement lien (Gov. Code Section 38773.1).
- 14.07.70 - Applicability of Other Laws.
- 14.07.80 - Remedies Not Exclusive.

14.07.10 - Applicability

This Chapter may be utilized in the following nuisance circumstances: ~~marijuana plants,~~ ~~or the cultivation of Mmarijuana plants, visible from to the public or neighboring~~ property; the odor of Mmarijuana detected ~~from~~ by any member of the public ~~or from~~

~~person upon neighboring property; or Marijuana, visible to any member of the public. presence, cultivation and/or storage of Medical Marijuana that is not in compliance with all of the provisions of 8.24.025.~~

Marijuana shall be defined as set forth in Chapter 8.24 and shall include Medical Marijuana.

14.07.70 – Applicability of Other Laws

~~The provisions of this Chapter and relevant portions of Chapter 8.24 shall not be construed to protect the property owner(s) of record for each legal parcel associated with the cultivation of Medical Marijuana, lessees, tenants, and other participants in the cultivation of Medical Marijuana, and members of collectives and/or cooperatives associated with the cultivation of Medical Marijuana, from prosecution pursuant to any laws that may prohibit the cultivation, sale, and/or possession of controlled substances. Moreover, cultivation, sale, possession, distribution, and use of marijuana remain violations of federal law as of the date of adoption of the ordinance creating this Section and this Section is not intended to, and does not protect any of the above described persons from arrest or prosecution under those federal laws. The property owner(s) of record for each legal parcel associated with the cultivation of Medical Marijuana, lessees, tenants, and other participants in the cultivation of Medical Marijuana, and members of collectives and/or cooperatives associated with the cultivation of Medical Marijuana, assume any and all risk and any and all liability that may arise or result under state and federal criminal laws from the cultivation of marijuana. Further, T~~to the fullest extent permitted by law, any actions taken under the provisions of this ~~Section~~ Chapter by any public officer or employee of the City of Orland or City of Orland itself, shall not become a personal liability of such person or the liability of the City of Orland.

Section 6. Chapter 17.16 to the Orland Municipal Code is added as follows:

Chapter 17.16 – MARIJUANA CULTIVATION

17.16.10 - Definitions.

17.16.20 - Marijuana Cultivation.

17.16.30 – Violations—Penalty.

17.16.010 - Definitions.

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

“Marijuana Cultivation” means the planting, growing, harvesting, drying, or processing of all Marijuana, including Medical Marijuana.

“Medical Marijuana” means 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.

17.16.020 - Marijuana cultivation.

Marijuana Cultivation by any person or entity is prohibited in all zone Districts within the City of Orland.

17.16.030 - Violations—Penalty.

- A. Any use or condition caused or permitted to exist in violation of any provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the city pursuant to the procedures set forth in this code.
- B. Each violation of this chapter and each day a violation of this chapter continues to exist shall be considered a separate and distinct violation.
- C. All means of enforcement authorized under this code may be used to address violations of this chapter, including but not limited to: Civil penalties, nuisance abatement, civil actions, and administrative citations.

Section 7. Severability.

If any section, subsection, phrase or clause of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 8. This Ordinance shall take effect thirty (30) days after passage and approval by the City Council.

Section 9. The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

I HEREBY CERTIFY that the above and foregoing Ordinance was duly and regularly introduced and read at a regular meeting held on the 21st day of December, 2015, and was passed and adopted by the City Council of the City of Orland at a regular meeting thereof duly held on the 4th day of January, 2016, by the following vote, to wit:

AYES: Councilmembers Gee, Edwards, Paschall, Vice Mayor Hoffman and Mayor Roundy

NOES: None

ABSTAIN: None

ABSENT: None

Bruce Roundy, Mayor

ATTEST:

APPROVED AS TO FORM:

Angela Crook, City Clerk

Gregory Einhorn,
City Attorney