

SCC NO. ____

**AN ORDINANCE OF THE SACRAMENTO COUNTY CODE
RELATING TO MARIJUANA.**

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

SECTION 1. Section 6.87.020 of Chapter 6.87, Title 6, of the Sacramento County
Code is amended to read as follows:

6.87.020 Findings and Purposes.

A. 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 immunity and a defense from criminal prosecution for certain crimes related to the possession and cultivation of marijuana by qualified patients and their primary caregivers.

B. The Control, Regulate and Tax Adult Use of Marijuana Act ("the AUMA") was approved by California voters on November 8, 2016 and became effective the next day. The AUMA legalizes the possession, use, and cultivation of a limited quantity of non-medical marijuana for those who are 21 years of age or older.

C. The AUMA prohibits the smoking of marijuana: 1) in any public place unlicensed for such use; 2) where smoking tobacco is prohibited; 3) within 1,000 feet of a school, day care center, or youth center while children are present; and 4) while driving, or riding in a passenger seat of, any motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation. The AUMA further provides that a county may prohibit possession and smoking in buildings owned, leased, or occupied by the county, and that employers, including counties, may maintain a drug and alcohol free workplace by prohibiting the use, consumption, possession, transfer, transportation, sale, display or growth of marijuana in the workplace.

D. The use, cultivation and possession of marijuana remains illegal under federal law.

E. While recognizing the enactment of the CUA and the AUMA, the Board of Supervisors believes that the open and public use of marijuana, which might otherwise be permitted by that section (1) is injurious to public health in many of the same ways that tobacco consumption is injurious to the public health and (2) provides to a public, including minors, not privy to reasons for such use, a deleterious example regarding the consumption of otherwise illicit, controlled substances under federal law.

Therefore, the Board of Supervisors believes it necessary to balance the uses of marijuana authorized pursuant to state law with the public health and the recognition that possession and use of marijuana remains illegal under federal law.

SECTION 2. Section 6.87.030 of Chapter 6.87, Title 6, of the Sacramento County

Code is amended to read as follows:

6.87.030 Prohibition.

The consumption of marijuana otherwise permitted under state law is hereby prohibited anywhere smoking tobacco is prohibited, including, but not limited to, on any public property, in any facility or space to which members of the public have access, within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.

SECTION 3. Section 6.87.040 of Chapter 6.87, Title 6, of the Sacramento

County Code is amended to read as follows:

6.87.040 Penalty.

Violations of this chapter shall be an infraction, and punishment shall be pursuant to Health and Safety Code section 11362.4.

SECTION 4. Section 6.88.010 of Chapter 6.88, Title 6, of the Sacramento

County Code is amended to read as follows:

Chapter 6.88 MARIJUANA CULTIVATION

6.88.010 Purpose and Findings.

A. It is the purpose and intent of this Article to regulate the cultivation of 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 marijuana in the unincorporated area of Sacramento County can adversely affect the health, safety and well-being of the County and its residents. 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. 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 cultivation of 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. The Control, Regulate and Tax Adult Use of Marijuana Act (“the AUMA”) was approved by California voters on November 8, 2016 and became effective the next day. The AUMA legalizes the possession, use, and cultivation of limited quantities of non-medical marijuana for those who are 21 years of age or older. The AUMA allows for the cultivation of up to six (6) marijuana plants in or upon the grounds of a private residence. The plants and any marijuana produced by the plants in excess of 28.5

grams must: (1) be kept within the private residence, or upon the grounds of the private residence, (2) be kept in a locked space, and (3) not be visible by normal unaided vision from a public place.

I. 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.

J. Marijuana that is grown indoors may require excessive use of electricity which may overload standard electrical systems, thereby creating an unreasonable risk of fire. If indoor grow lighting systems are powered by diesel generators, the improper maintenance of generators and fuel lines and the improper storage and disposal of diesel fuel and waste oil may also create an unreasonable risk of fire and pollution. Further, the excessive use of electricity may also result in substantial increases in Greenhouse Gas (GHG) emissions, thereby unreasonably undermining the County of Sacramento's efforts to reduce GHG's and comply with Assembly Bill 32 and Senate Bill 375.

K. 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.

L. The Board of Supervisors finds that the CUA, MMP, and the AUMA do not 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 regulating the cultivation of marijuana within the County.

SECTION 5. Section 6.88.020 of Chapter 6.88, Title 6, of the Sacramento

County Code is amended to read as follows:

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, MMP, or the AUMA.

SECTION 6. Section 6.88.030 of Chapter 6.88, Title 6, of the Sacramento

County Code is amended to read as follows:

6.88.030 Administration.

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

SECTION 7. Section 6.88.040 of Chapter 6.88, Title 6, of the Sacramento

County Code is amended to read as follows:

6.88.040 Definitions.

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply. All citations to State law shall refer to the act, statute, or regulations as may be amended from time to time.

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" shall have the same meaning as that set forth in Business and Professions Code sections 19300.5 and 26001, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

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. "Fully enclosed and secure structure" means a space within a building that complies with the California Building Code, as adopted by the County, 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 securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken through, such as two-inch by four-inch nominal or thicker studs overlain with three-eighths-inch or thicker plywood or equivalent materials. The cultivation of marijuana which occurs in a greenhouse, hoop house, or similar structure is considered "outdoor" cultivation for purposes of this chapter.

E. "Indoors" means within a fully enclosed and secure structure as defined herein.

F. "Marijuana" shall have the same meaning as set forth in Health and Safety Code section 11018, and the same meaning as "cannabis" as defined in Business and Professions Code section 19300.5(f).

G. "Outdoors" means any location that is not within a fully enclosed and secure structure as defined herein.

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

I. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling, and as provided in Health and Safety Code section 11362.2.

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

SECTION 8. Section 6.88.050 of Chapter 6.88, Title 6, of the Sacramento

County Code is amended to read as follows:

6.88.050 Personal Cultivation Restrictions.

The personal cultivation of a maximum of nine (9) marijuana plants, whether immature or mature, is permitted in the unincorporated area of Sacramento County to the extent such cultivation is authorized by State law if it is in strict compliance with all of the requirements set forth below:

A. The cultivation occurs either: 1) within a single private residence; or 2) inside a fully enclosed and secure structure located upon the grounds of a private residence. Outdoor cultivation on any parcel is prohibited. Cultivation for commercial use is also prohibited.

B. The cultivation is contained within a fully enclosed structure secured by lock and key or other security device which prevents unauthorized entry and is inaccessible to minors.

C. The cultivation areas are not visible from the public right of way.

D. The cultivation areas, including any lighting, plumbing, or electrical components used, comply with Title 16 (Building and Construction) and Title 17 (Fire Prevention) of this Code. The cultivation areas must be properly ventilated so as not create humidity, mold, or other related problems. Lighting shall not exceed 1,000 watts per light. The use of gas products (CO₂, butane, etc.) or CO₂ and ozone generators for marijuana cultivation is prohibited.

E. Cultivation is not conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if the cultivation produces light, glare, heat, noise, odor, or vibration that is or whose effect is either detrimental to public health, safety, or welfare or interferes with the reasonable enjoyment of life or property.

F. The primary use of the property remains at all times as a residence, with legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. No room shall be used for marijuana cultivation where such cultivation will impair or prevent the primary uses of cooking of meals, sleeping, and bathing.

G. Written consent of the property owner is obtained prior to any cultivation commencing. Said consent must be evidenced by a signed and notarized statement from the property owner permitting cultivation on the affected parcel.

SECTION 9. Section 6.88.060 of Chapter 6.88, Title 6, of the Sacramento

County Code is amended to read as follows:

6.88.060 Penalty.

A violation 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. Notwithstanding the foregoing, this Chapter does not authorize a criminal prosecution, arrest, or penalty inconsistent with or prohibited by Health and Safety Code section 11362.7 et seq. In the event of any conflict between the penalties set forth in Title 16, Chapter 16.18 of this Code and any penalties set forth in state law, the maximum penalties allowable under state law shall govern.

SECTION 10. Section 6.88.080 of Chapter 6.88, Title 6, of the Sacramento

County Code is repealed in its entirety.

SECTION 11. Chapter 6.89, Title 6, of the Sacramento County Code is repealed in its entirety.

SECTION 12. 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.

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);

CC. Any condition in violation of Chapter 6.130 of the Sacramento County Code (Reduction of Single Use Plastic and Paper Bags).

SECTION 13. The Board of Supervisors finds pursuant to Title 14 of the California Code of Regulations, section 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.

SECTION 14. This ordinance was introduced and the title thereof read at the regular meeting of the Board of Supervisors on _____, 2017, and on _____, 2017, 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 _____, 2017, by the following vote:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

ABSTAIN: Supervisors,

RECUSAL: Supervisors,
(PER POLITICAL REFORM ACT (§ 18702.5.))

Chair of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____
Clerk, Board of Supervisors

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