



## **CITY OF LAKEPORT COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT**

**DATE:** October 11, 2017

**FILE NO:** ZC 16-02 /CE 16-14

**APPLICANT:** City of Lakeport  
225 Park Avenue  
Lakeport, CA 95453

**LOCATION:** Citywide

**GENERAL PLAN:** Residential, High Density Residential & Resort Residential

**ZONING:** R-1, Low Density Residential; R-2, Medium Density Residential; R-3, High Density Residential; & R-5, Resort/High Density Residential

**STAFF CONTACT:** Daniel D. Chance, Associate Planner

**REQUESTED ACTION:** Per the adopted minute order of the Planning Commission on February 8, 2017, Community Development Department (CDD) Staff has prepared a draft ordinance that includes amendments to the Lakeport Zoning Ordinance Chapter 17.38 concerning the regulation of Medical Marijuana Cultivation to include cultivation of cannabis for personal use. The amendments reflect recommendations of the Planning Commission on February 8, 2017, and follow-up review by the City's Cannabis Working Group.

Amendments reflect state regulations associated with the recent passage of Proposition 64, the Adult Use of Marijuana Act (AMUA) in 2016, the 2015 passage of the Medical Marijuana Regulation and Safety Act (MMRSA); and SB 94 adopted in June of 2017 developing regulations for the personal use and cultivation of cannabis. (This amendment is limited to the procedures associated with the cultivation of cannabis for non-commercial use. It does not include commercial cannabis cultivation, processing or retail sales).

**GENERAL PLAN AND ZONING DISTRICT:** Affected properties are designated Residential, High Density Residential and Resort Residential according to the City of Lakeport General Plan Land Use Map and R-1, Low Density Residential; R-2, Medium Density Residential; R-3, High Density Residential and R-5, Resort/High Density Residential zoning districts according to the City Zoning Map. Adoption of this amendment would not allow personal cannabis cultivation in the commercial and industrial land use designations. Adoption of the amendment to Chapter 17.38 would allow personal

cannabis cultivation in those residential districts, and is consistent with the intent of the General Plan and Zoning Ordinance.

**BACKGROUND/DISCUSSION:** In response to the adoption of AUMA by the California voters and recent amendments made by the State Legislature, commonly referred to as SB 94, the City of Lakeport formed a Working Group consisting of two City Council Members, the City Manager, the City Attorney, the Police Chief, and the Community Development Director to begin to formulate regulations pertaining to both personal cannabis cultivation and commercial cannabis uses. The proposed Zoning Ordinance amendments presented as a part of this staff report are limited to personal cannabis cultivation regulations. Issues pertaining to commercial cannabis related used are a separate action item.

The legalization of marijuana for recreational use, and particularly the allowance for the possession of six or less marijuana plants under AMUA, changes the use from a criminal activity (Police) to a land use activity (Community Development Department), and requires a review of the City's existing ordinance which currently only permits the cultivation of marijuana for prescribed medical use.

On February 8, 2017, the Planning Commission reviewed recommendations from the City's Cannabis Working Group for possible amendments related to the cultivation of cannabis for non-commercial, personal use on residential parcels. During that discussion the Planning Commission made the determination that the existing medical marijuana regulations are working well and have generated very little in the way of compliance related issues and complaints. As a result the Planning Commission made the recommendation that efforts be made to incorporate personal cultivation of cannabis into the existing framework already provided for medical marijuana cultivation as best possible. The Planning Commission's recommendations concerning personal cannabis cultivation included:

- *Number of Plants:* Keep consistent with existing medical marijuana cultivation standards of allowing a maximum of 80-square feet.
- *Outdoor Cultivation:* Prohibit outdoor cultivation consistent with existing regulations provided for medical marijuana cultivation.
- *Indoor Cultivation:* Apply existing regulations already in place for medical marijuana cultivation to personal cultivation—requiring cultivation activities within a detached enclosed structure and not in the primary residence. Current City standards require:
  - All marijuana plants shall be located within a detached enclosed structure.
  - No cultivation shall take place within three hundred-feet of any school, child care facility, park or playground.
  - Any cultivation shall not reduce the required parking for the property.
  - The enclosed structure shall be located in side and rear yard, with a ten-foot setback from side and rear property lines.
  - All structures, electrical and plumbing associated with cultivation shall require all clearance and permits from Building Department and Fire Department.
  - Flammable gas products or generators shall not be used.

- All structures used for marijuana cultivation shall have a ventilation and filtration systems that prevent odors.
- *Buffer from Sensitive Receptors:* SB 94 identifies a setback of 600-feet for all commercial cannabis related uses and 1,000-feet for consumption and ingestion of cannabis (does not include consumption within a residence). SB 94 does not contain specific provisions related to setbacks for personal cultivation; however, it does allow individual jurisdictions to set their own setbacks. For the ease of compliance, the Planning Commission recommended applying the existing 300-foot setback from schools, child care centers, and parks and/or playgrounds in place for medical marijuana cultivation to personal cannabis cultivation as well.
- *Permitting Process:* Cultivation of cannabis for personal use would remain a permitted use, the same as it was with medical marijuana cultivation.

Following the February 8, 2017 hearing, Staff provided the Planning Commission’s recommendation to the Working Group. The Working Group supported the Planning Commission’s recommended amendments to Section 17.38 of the Zoning Ordinance to include development standards and permitting procedures for the cultivation of cannabis for non-commercial use on residential properties consistent with the provisions of Prop 64 and SB 94.

**ZONE CHANGE (TEXT AMENDMENTS) FINDINGS:** Section 17.32.010 spells out specific criteria and findings necessary for the approval of Zone Changes, including text amendments. The required four (4) findings for Zone Changes are outlined in the table below:

**Zoning Amendment Criteria  
(17.32.010 (B))**

1. The proposed amendment is in the public’s interest.
2. The proposed amendment is consistent with the Lakeport General Plan.
3. The proposed amendment will not be detrimental to the community’s health, safety, and welfare.
4. The proposed amendment complies with the California Environmental Quality Act.

This project does not involve the rezoning of any lands or a change in permitted uses. Proposed amendments pertain to permit processing procedures only. Staff analysis of each individual finding criteria is as follows:

**1. *The proposed Zone Change text amendment is in the public’s interest.***

Staff Analysis: As noted in the background/discussion section above, the revision to the Medical Marijuana Cultivation Ordinance to include personal use cultivation reflects State laws with Proposition 64 and SB 94 that allowed cultivation of up to six plants for personal use.

The amendment to allow personal use cultivation incorporates those same regulations originally adopted for medical marijuana cultivation. Those original regulations required all cultivation be located in the rear, fenced in yard within a detached structure. Those

regulations were originally established to limit potential impacts on neighboring properties. Over the past four years, it has been determined that the regulations have met the health and safety requirements, as set forth by the Medical Marijuana Cultivation Ordinance, and would remain the same with this proposed zoning amendment which allows personal use cultivation of cannabis. This proposed amendment adopts procedures for personal use cannabis cultivation consistent with the new State regulations associated with cannabis, while minimizing the impacts on the general public.

***2. The proposed Zone Change text amendment is consistent and compatible with the entire General Plan and any implementation programs that may be affected.***

Staff Analysis: The objective of the Land Use Development Element of the General Plan is to preserve and enhance existing residential neighborhoods (LU-1) and facilitate safe, quiet residential neighborhoods free of natural and manmade hazards (LU-1.4). The revision to the Medical Marijuana Cultivation Ordinance to include personal use cultivation reflects State laws with Proposition 64 and SB 94 that allowed cultivation of up to six plants for personal use.

The regulation requires all cannabis cultivation be located in the rear, fenced in yard within a detached structure, similar to what was adopted with the Medical Marijuana Cultivation Ordinance. Those regulations were established to limit potential impacts on neighboring properties. A key component of the proposed Zoning Ordinance revision is to eliminate the potential of outdoor cannabis grows in residential neighborhoods, but still allow cannabis cultivation located in detached enclosed structures. The amendment to allow cannabis cultivation for personal use is consistent with Objective LU 1 and Policy LU 1.4 of the Land Use Element of the General Plan, respectively.

***3. The potential impacts of the proposed Zone Change text amendment have been assessed and have been determined not to be detrimental to the public health, safety, and welfare.***

Staff Analysis: Proposed revisions to the text of the Zoning Ordinance does not involve the rezoning of any lands or the change in permitted land uses and thus will not result in any detrimental impacts to public health, safety or welfare.

***4. The proposed Zone Change text amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act.***

Staff Analysis: The proposed revision to the Zoning Ordinance is not a "project" as defined by the California Environmental Quality Act (CEQA). "Project" does not include "general policy and procedure making" or "[o]rganizations or administrative activities of governments that will not result in direct or indirect physical changes in the environment" pursuant to CEQA Guidelines § 15378(b).

**CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS:**

Finding 5: The project is categorically exempt of the California Environmental Quality Act. The proposed revisions to the Lakeport Zoning Ordinance are categorically

exempt from CEQA pursuant to CEQA Guidelines §15378(b)1 as the issuance of said permits will not result in the modification of any land uses or density pursuant to CEQA Guidelines §15378(b)1.

**CONCLUSION, RECOMMENDATION, AND CONDITIONS:** Based on the information provided by the City and the comments received from City staff, a finding is made that the amendments to the Lakeport Municipal Code Section 17.38 (Medical Marijuana Cultivation) to rename Section 17.38 (Personal Use Cannabis Cultivation). The proposed amendments reflect the State regulations Prop 64 and SB 94, concerning personal use cannabis cultivation and well as medical marijuana cultivation in the City of Lakeport. The proposed project has been determined to be exempt from the provisions of the California Environmental Quality Act according to Section 15378(b)1 of the 2016 CEQA guidelines. This section exempts small projects.

## **SAMPLE MOTIONS**

### **Categorical Exemption:**

Move that the Planning Commission find that the proposed Zone Change text amendment (ZC 16-02) is not a project as defined by the California Environmental Quality Act per CEQA Guidelines Section 15378(b)1 and is categorically exempt from the California Environmental Quality Act pursuant to CEQA.

### **Zone Change:**

Move that the Planning Commission recommend that the City Council approve a Lakeport Zoning Ordinance text amendment Chapter 17.38 (ZC 16-02) as applied for by the City of Lakeport, subject to the findings listed in the staff report dated October 11, 2017.

- Attachment 1: Proposed Zoning Ordinance Revisions to Chapter 17.38
- Attachment 2: Existing Chapter 17.38, Medical Marijuana Cultivation
- Attachment 3: February 8, 2017 Minute Order of the Planning Commission

**Attachment 1:  
Proposed Zoning Ordinance  
Revisions to Chapter 17.38**

## **Chapter 17.38 CANNABIS CULTIVATION**

Sections:

**17.38.010 Intent.**

**17.38.020 Applicability.**

**17.38.030 Definitions.**

**17.38.040 Regulation of location.**

**17.38.050 Development and operational standards.**

**17.38.060 Enforcement.**

**17.38.070 Liability.**

### **17.38.010 Intent.**

A. The city council of the city of Lakeport, pursuant to this chapter, hereby intends to regulate the personal cultivation of cannabis, including but not limited to regulations as to location of the cultivation, size of the area used for cultivation, and the use of fencing or other screening and security structures, and in furtherance of the public necessity, convenience and general welfare.

B. This chapter is established to regulate personal cannabis cultivation in a manner that mitigates potential impacts on surrounding properties and persons, and that is in conformance with the provisions of the Compassionate Use Act of 1996 (Proposition 215) and the Adult Use of Marijuana Act (Proposition 64).

C. It is the intent of the city of Lakeport to enforce the provisions of this chapter primarily on the basis of legitimate and verified complaints received from the public related to nuisance conditions and/or other public safety issues.

### **17.38.020 Applicability.**

The provisions of this chapter shall apply to all persons described herein whether the activities described herein were established before or after the effective date of this chapter. Chapter [17.36](#), Nonconforming Uses, Structures, and Lots, shall not apply to preexisting land or building uses inconsistent with the provisions of this chapter. (Ord. 889 §1(part), 2013)

### **17.38.030 Definitions.**

“Cannabis,” or “marijuana,” shall include the definition of “cannabis” as set forth in Business and Professions Code section 26001, subdivision (f), and Health and Safety Code section 11018, as each may be amended from time to time, and shall be used interchangeably and shall mean all parts of the plant Cannabis sativa linnaeus, Cannabis indica, or Cannabis ruderalis, whether for a medical purpose or

a non-medical purpose, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. This includes the separated resin, whether crude or purified, obtained from marijuana. This definition does not mean “industrial hemp” as defined by California Food and Agricultural Code section 81000, as may be amended, or California Health and Safety Code section 11018.5, as may be amended.

““Canopy” means the total combined canopy area for all locations on a property where cannabis/ medical marijuana is being cultivated, including indoor areas, as measured by the horizontal extent of the plant or combination of plants at the widest point and measured in a straight line.

“Child care center” means any licensed child care center, daycare center, or childcare home, or any preschool.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and/or marijuana.

“Detached, fully enclosed and secure structure” is a building completely detached from a residence that complies with the California Building Standards Code, as adopted by the city, or if exempt from the permit requirements of the California Building Standards Code, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, is secure against unauthorized entry, and is accessible only through one or more lockable doors.

“Indoors” means within a fully enclosed and secure structure.

“Medical cannabis,” or “medical marijuana” means cannabis or marijuana that has been recommended by a licensed physician in strict accordance with Health and Safety Code Sections 11362.5 through 11362.9, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

“Outdoor” means any location within the city that is not within a fully enclosed and secure structure.

“Qualified primary caregiver” shall have the same definition as Health and Safety Code Section [11362.7\(d\)](#), as may be amended.

“Qualified patient” shall have the same definition as Health and Safety Code Sections [11362.7\(c\)](#) and (f), as may be amended.

“Rear yard” is the rear open space portion of any premises, whether fenced or unfenced.



“Residential structure” is any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking and sanitation on a premises or legal parcel located within a residential or agricultural-residential zoning district.

“School” means an institution of learning for persons under twenty-one years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.

“Solid fence” means a fence constructed of substantial material (such as wood) that prevents viewing the contents from one side to the other. “Solid fence” does not include tarpaulins, cloth material, scrap material, bushes, or hedgerows.

#### **17.38.040 Regulation of location.**

A. Cannabis cultivation shall be prohibited on any parcel within the city except as an accessory use to a legally established residential structure within a legal accessory structure on a legal parcel within the R-1, R-2, R-3, R-5 and UR zoning districts.

B. No cannabis cultivation is permitted within three hundred feet of any school, child care center, park or playground. The distance between any cannabis cultivation and any school, child care center, park or playground shall be measured in a straight line, without regard to intervening structures, from the closest exterior wall of the detached accessory structure in which the cannabis cultivation is occurring to the closest property line where the other building or activity is conducted.

C. Except as provided in subsection D of this section, cannabis cultivation may be undertaken only by person(s) who occupy the residential structure on the parcel proposed for cultivation as their primary residence.

D. A qualified primary caregiver, as defined, may undertake cultivation of medical cannabis on behalf of his/her qualified patient(s), but only on a parcel containing the primary caregiver’s or qualified patient’s primary residence.

E. Cultivation shall only be permitted in a detached, fully enclosed and secure accessory structure and the cultivation area, including the plant canopy, shall be limited to 80 square feet per parcel or residence, whichever is less, or four (4) plants. The cultivated cannabis may not be sold to any other person or organization.

F. Consumption of cannabis and/or medical cannabis is prohibited as follows:

- (1) To smoke or ingest cannabis or cannabis products in a public place.

(2) To smoke cannabis or cannabis products in a location where smoking tobacco is prohibited.

(3) To smoke cannabis or cannabis products within 1,000 feet of a school, day care center, or youth center while children are present at the 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 the school, day care center, or youth center while children are present.

(4) To possess an open container or open package of cannabis or cannabis products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

(5) To possess, smoke, or ingest cannabis or cannabis products in or upon the grounds of a school, day care center, or youth center while children are present.

(6) To manufacture concentrated cannabis using a volatile solvent.

(7) To smoke or ingest cannabis or cannabis products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

(8) To smoke or ingest cannabis or cannabis products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

G. The use of a detached, fully enclosed and secure accessory structure for cultivation of cannabis shall not reduce the required parking required per Chapter [17.23](#).

H. 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.

I. Indoor cultivation within a residential structure 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.

**17.38.050 Development and operational standards.**

A. From a public right-of-way there shall be no exterior evidence of cannabis cultivation located inside a detached, fully enclosed and secure accessory structure.

B. Person(s) engaged in cultivation shall reside in the residence located on the parcel containing the detached, fully enclosed and secure accessory structure where the cannabis cultivation occurs, except as provided in subsection D of section 17.38.040.

C. Person(s) engaged in cultivation shall not cultivate cannabis in any other location within the city other than in the accessory structure located on the parcel containing his/her primary residence, except as provided in subsection D of section 17.38.040..

C. The qualifying residential structure located on the property containing the detached, fully enclosed and secure accessory structure in which cannabis is cultivated shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and shall not be used for cannabis cultivation.

D. Cannabis cultivation shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

E. Residential accessory structures used for cultivation shall meet the following criteria:

1. The structure shall be provided with a locking door or doors.
2. If a detached, fully enclosed, and secure structure is not feasible and the cultivation building is an unsecured structure then it shall additionally be surrounded by a secure solid six-foot-high fence located within ten feet of the unsecured structure and equipped with a lockable gate.
3. The structure shall be located in the rear yard portion of the lot and maintain a minimum of a ten-foot setback from the side and rear property lines and from any other building on the parcel.
4. Any accessory structure utilized for cultivation of cannabis shall be legally constructed with a building permit if it exceeds one hundred twenty square feet of size. No more than eighty square feet of floor area shall be used for the cultivation of cannabis. The plant canopy shall be contained within the eighty square feet of floor area. All electrical and plumbing fixtures shall be installed with a valid building 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, or a portion of an existing structure, for cultivation of cannabis, an inspection will be required to ensure compliance with this chapter.
5. Cannabis cultivation lighting shall comply with the California Building, Electrical and Fire Codes as adopted by the city.
6. Flammable or volatile gas products or generators shall not be used within any detached structure used for the cultivation of cannabis.

7. Any detached, fully enclosed and secure structure used for the cultivation of cannabis must have a ventilation and filtration system installed that shall prevent nuisance cannabis plant odors from exiting the interior of the structure. If a permanent, built-in ventilation and filtration system is installed, it shall be subject to the issuance of a building permit, approval by the building official and must be installed prior to commencing cultivation within the detached, fully enclosed and secure structure.

8. 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.

9. Other activities may occur within a detached fully enclosed and secure accessory structure where cannabis is cultivated; provided, that the cultivation area within the structure, including the plant canopy, does not exceed eighty square feet of floor area; and further provided, that the cultivation area is segregated from all other building uses by permitted walls and all other conditions of this chapter are satisfied.

G. Nothing in this chapter 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 cannabis plants or any part thereof from any location, indoor or outdoor, including from within a detached, fully enclosed and secure structure.

#### **17.38.060 Enforcement.**

A. Right of Entry. Persons designated by resolution as code enforcement officers of the city are authorized to enter upon and inspect private properties to ensure compliance with the provisions of this chapter. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the city may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.

B. Public Nuisance. The maintaining, cultivating or growing of cannabis upon private property within the city, unless in full compliance with the provisions of this chapter, is declared to be a public nuisance as defined in Section [370](#) of the Penal Code, Section 3480 of the Civil Code and Chapter [8.22](#) of the Lakeport Municipal Code.

C. Citable Offense. Every person who, in violation of the provisions of this chapter, maintains, permits or allows cannabis to be grown upon his or her property or premises, and every person occupying, renting

or leasing the property or premises of another who maintains, permits or allows cannabis to be grown thereon in violation of this chapter, is guilty of an infraction punishable as set forth in [Section 1.08.010](#). After written notice is provided to any such person of such violation, the continued existence of such violation for each and every day after the service of such notice shall be deemed a separate and distinct offense.

D. Issuance of Citations. All persons designated by resolution as code enforcement officers of the city are authorized to issue citations to persons deemed to be in violation of the provisions of this chapter. Such citations shall be expeditiously processed through use of the administrative citation process or where appropriate through filing an infraction in the appropriate court of law.

E. Remedies Nonexclusive. The remedies provided herein shall not be the exclusive means of enforcing the provisions of this chapter nor the exclusive means available to the city to address problems associated with the cultivation of cannabis, whether for medical or other purposes. The city shall continue to have available to it the ability to pursue abatement of nuisances and other problems related to cannabis cultivation under Penal Code Sections [372](#) and [373a, Civil Code Section 3491](#) and other applicable provisions of law. The city is also entitled to recover its abatement costs, including attorney fees if any, in the manner provided by the Lakeport Municipal Code.

#### **17.38.070 Liability.**

The provisions of this chapter shall not be construed to protect the record property owner(s) of a legal parcel associated with the cultivation of cannabis, his or her lessees, tenants, and other participants in the cultivation of cannabis, and/or members of collectives and/or cooperatives associated with the cultivation of cannabis, 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 cannabis remain violations of federal law as of the date of adoption of the ordinance creating this chapter and this chapter is not intended to, and does not, protect any of the above described persons from arrest or prosecution under those federal laws. The record property owner(s) of a legal parcel associated with the cultivation of cannabis, his or her lessees, tenants, and other participants in the cultivation of cannabis, and/or members of collectives and/or cooperatives associated with the cultivation of cannabis, 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 cannabis. Further, to the fullest extent permitted by law, any actions taken under the provisions of this chapter by any public officer or employee of the city or the city itself shall not become a personal liability of such person or the liability of the city.

**Attachment 2:  
Existing Chapter 17.38, Medical  
Marijuana Cultivation**

## Chapter 17.38 MEDICAL MARIJUANA CULTIVATION

Sections:

- 17.38.010 Legislative findings.**
- 17.38.020 Intent.**
- 17.38.030 Applicability.**
- 17.38.040 Definitions.**
- 17.38.050 Regulation of location.**
- 17.38.060 Development and operational standards.**
- 17.38.070 Enforcement.**
- 17.38.080 Liability.**

### **17.38.010 Legislative findings.**

The city council finds as follows:

- A. In 1996, the voters of the state of California approved Proposition 215 which was codified as California Health and Safety Code Section [11362.5](#) and entitled "The Compassionate Use Act of 1996" ("the Compassionate Use Act" or "CUA").
- B. 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.
- C. On January 1, 2004, Senate Bill 420, codified as California Health and Safety Code Section [11362.7](#) et seq. and entitled "The Medical Marijuana Program," ("MMP") became effective to clarify the scope of the Compassionate Use Act.
- D. California Health and Safety Code Section [11362.83](#) expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420.
- E. The city of Lakeport has adopted a zoning ordinance identified as Title [17](#) (Zoning) of the city of Lakeport Municipal Code.
- F. Prior to the enactment of this chapter, there were no regulations addressing cultivation of medical marijuana in the zoning ordinance.

G. The city of Lakeport with a population of 4,622 (January 1, 2012) is a small town with a high percentage of nonowner-occupied residential units. Landlords have complained of damage caused by unauthorized cultivation activities in their rental properties.

H. The city of Lakeport police department, city residents and other public entities have reported adverse impacts from 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.

I. 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.

J. 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.

K. 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, child care centers, parks, and other similar locations.

L. The city council finds and determines that the enactment of this chapter is exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3) in that there is nothing in this chapter or its implementation that could have a foreseeable significant effect on the environment. (Ord. 889 §1(part), 2013)

**17.38.020 Intent.**

A. The city council of the city of Lakeport, pursuant to this chapter, hereby intends to regulate the cultivation of marijuana for medical purposes, including but not limited to regulations as to location of the cultivation, size of the area used for cultivation, and the use of fencing or other screening and security structures, to accommodate the needs of qualified patients and their caregivers, and in furtherance of the public necessity, convenience and general welfare. Nothing in this chapter shall be construed to authorize any use, possession, cultivation, or distribution of marijuana for nonmedical purposes.

B. This chapter is established to regulate medical marijuana cultivation in a manner that mitigates potential impacts on surrounding properties and persons, and that is in conformance with the provisions of California Health and Safety Code Sections [11362.5](#) through [11362.83](#).



C. It is the intent of the city of Lakeport to enforce the provisions of this chapter primarily on the basis of legitimate and verified complaints received from the public related to nuisance conditions and/or other public safety issues. (Ord. 889 §1(part), 2013)

**17.38.030 Applicability.**

The provisions of this chapter shall apply to all persons and businesses described herein whether the activities described herein were established before or after the effective date of this chapter. Chapter [17.36](#), Nonconforming Uses, Structures, and Lots, shall not apply to preexisting land or building uses inconsistent with the provisions of this chapter. (Ord. 889 §1(part), 2013)

**17.38.040 Definitions.**

"Canopy" means the total combined canopy area for all locations on a property where medical marijuana is being cultivated, including indoor areas, as measured by the horizontal extent of the plant or combination of plants at the widest point and measured in a straight line.

"Child care center" means any licensed child care center, daycare center, or childcare home, or any preschool.

"Cultivation" means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof for medical use consistent with the Compassionate Use Act (Health and Safety Code Section [11362.5](#)) or the Medical Marijuana Program Act (Health and Safety Code Section [11362.7](#) et seq.).

"Detached, fully enclosed and secure structure" is a building completely detached from a residence that complies with the city of Lakeport building and zoning codes and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and is secure against unauthorized entry, and is accessible only through one or more lockable doors.

"Indoors" means within a fully enclosed and secure structure.

"Marijuana" shall have the same meaning as that set forth in California Health and Safety Code Section [11018](#).

"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 [11362.83](#), inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

"Outdoor" means any location within the city that is not within a fully enclosed and secure structure.

"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\(c\)](#) and (f), as may be amended.

"Rear yard" is the rear open space portion of any premises, whether fenced or unfenced.

"Residential structure" is any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking and sanitation on a premises or legal parcel located within a residential or agricultural-residential zoning district.

"School" means an institution of learning for persons under twenty-one years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.

"Solid fence" means a fence constructed of substantial material (such as wood) that prevents viewing the contents from one side to the other. (Ord. 889 §1(part), 2013)

#### **17.38.050 Regulation of location.**

A. Medical Marijuana cultivation shall be prohibited on any parcel within the incorporated area of the city of Lakeport except as an accessory use to a legally established residence within a legal accessory structure on a legal parcel within the R-1, R-2, R-3, R-5 and UR zoning districts.

B. No medical marijuana cultivation is permitted within three hundred feet of any school, child care center, park or playground. The distance between any marijuana cultivation and any school, child care center, park or playground 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.

C. Except as provided in subsection D of this section, 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.

D. A qualified primary caregiver, as defined, may undertake cultivation of medical marijuana on behalf of his/her qualified patient(s), but only in a detached, fully enclosed and secure accessory structure located on a parcel containing the primary caregiver's or qualified patient's primary residence.

E. Cultivation shall only be permitted in a detached, fully enclosed and secure accessory structure and said cultivation area, including the plant canopy, shall be limited to 80 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.

F. The use of a detached, fully enclosed and secure accessory structure for cultivation of medical marijuana shall not reduce the required parking required per Chapter [17.23](#).

G. 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 Lakeport.

H. 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 Lakeport. (Ord. 889 §1(part), 2013)

**17.38.060 Development and operational standards.**

A. From a public right-of-way there shall be no exterior evidence of medical marijuana cultivation located inside a detached, fully enclosed and secure accessory structure.

B. The qualified patient or primary caregiver shall reside in the residence located on the parcel containing the detached, fully enclosed and secure accessory structure where the medical marijuana cultivation occurs.

C. The qualified patient or primary caregiver shall not cultivate medical marijuana in any other location within the incorporated city of Lakeport other than in the accessory structure located on the parcel containing his/her primary residence.

D. The qualifying residence located on the property containing the detached, fully enclosed and secure accessory structure 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.

E. Medical marijuana cultivation shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

F. Residential accessory structures used for cultivation shall meet the following criteria:

1. The structure shall be provided with a locking door or doors.

2. If a secure structure is not feasible and the cultivation building is an unsecured structure then it shall additionally be surrounded by a secure solid six-foot-high fence located within ten feet of the unsecured structure and equipped with a lockable gate.
3. The structure shall be located in the rear yard portion of the lot and maintain a minimum of a ten-foot setback from the side and rear property lines and from any other building on the parcel.
4. Any accessory structure utilized for cultivation of marijuana shall be legally constructed with a building permit if it exceeds one hundred twenty square feet of size. No more than eighty square feet of floor area shall be used for the cultivation of marijuana. The plant canopy shall be contained within the eighty square feet of floor area. All electrical and plumbing fixtures shall be installed with a valid building 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, or a portion of an existing structure, for cultivation of marijuana, an inspection will be required to ensure compliance with this chapter.
5. Medical marijuana cultivation lighting shall comply with the California Building, Electrical and Fire Codes as adopted by the city.
6. Flammable or volatile gas products or generators shall not be used within any detached structure used for the cultivation of medical marijuana.
7. Any detached, fully enclosed and secure structure used for the cultivation of medical marijuana must have a ventilation and filtration system installed that shall prevent nuisance marijuana plant odors from exiting the interior of the structure. If a permanent, built-in ventilation and filtration system is installed, it shall be subject to the issuance of a building permit, approval by the building official and must be installed prior to commencing cultivation within the detached, fully enclosed and secure structure.
8. 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.
9. Other activities may occur within a detached fully enclosed and secure accessory structure where medical marijuana is cultivated; provided, that the cultivation area within the structure, including the plant canopy, does not exceed eighty square feet of floor area; and further provided, that the cultivation area is segregated from all other building uses by permitted walls and all other conditions of this chapter are satisfied.

G. Wherever medical marijuana is grown, a copy of a current and valid state-issued medical marijuana card or a current and valid physician's recommendation for medical marijuana must be kept available to immediately present to officers of the city and law enforcement officers upon request.

H. Nothing in this chapter 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 detached, fully enclosed and secure structure. (Ord. 889 §1(part), 2013)

**17.38.070 Enforcement.**

A. Right of Entry. Persons designated by resolution as code enforcement officers of the city are authorized to enter upon and inspect private properties to ensure compliance with the provisions of this chapter. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the city may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.

B. Public Nuisance. The maintaining, cultivating or growing of marijuana upon private property within the city of Lakeport, unless in full compliance with the provisions of this chapter, is declared to be a public nuisance as defined in Section [370](#) of the California Penal Code and Chapter [8.22](#) of the Lakeport Municipal Code.

C. Citable Offense. Every person who, in violation of the provisions of this chapter, maintains, permits or allows marijuana to be grown upon his or her property or premises, and every person occupying, renting or leasing the property or premises of another who maintains, permits or allows marijuana to be grown thereon in violation of this chapter, is guilty of an infraction punishable as set forth in Section [1.08.010](#). After written notice is provided to any such person of such violation, the continued existence of such violation for each and every day after the service of such notice shall be deemed a separate and distinct offense.

D. Issuance of Citations. All persons designated by resolution as code enforcement officers of the city are authorized to issue citations to persons deemed to be in violation of the provisions of this chapter. Such citations shall be expeditiously processed through use of the administrative citation process or where appropriate through filing an infraction in the appropriate court of law.

E. Remedies Nonexclusive. The remedies provided herein shall not be the exclusive means of enforcing the provisions of this chapter nor the exclusive means available to the city to address problems associated with the cultivation of marijuana, whether for medical or other purposes. The city shall continue to have available to it the ability to pursue abatement of nuisances and other problems related to marijuana cultivation under California Penal Code Sections [372](#) and [373a](#) and other applicable provisions of law. The city may also pursue the recovery of its abatement costs in the manner provided by the Lakeport Municipal Code. (Ord. 889 §1(part), 2013)

**17.38.080 Liability.**

The provisions of this chapter 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 chapter and this chapter 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, to the fullest extent permitted by law, any actions taken under the provisions of this chapter by any public officer or employee of the city of Lakeport or city of Lakeport itself shall not become a personal liability of such person or the liability of the city of Lakeport. (Ord. 889 §1(part), 2013)

**Attachment 3:  
February 8, 2017 Minute Order of  
the Planning Commission**



March 1, 2017

**MINUTE ORDER  
LAKEPORT PLANNING COMMISSION  
REGULAR MEETING  
(February 8, 2017)**

**PUBLIC HEARING TO REVIEW PROPOSED ZONING ORDINANCE AMENDMENTS TO  
CHAPTER 17.38, MEDICAL MARIJUANA CULTIVATION TO PERMIT PERSONAL  
CULTIVATION OF CANNABIS.**

Community Development Director, Kevin Ingram briefed the Planning Commission on the working group which recommended amendments to the Zoning Ordinance as it relates to cultivation of marijuana for non-commercial personal use.

Associate Planner, Dan Chance presented the Planning Commission with a Power Point Presentation regarding the discussion of cultivation of marijuana for non-commercial personal use.

Commissioner Wicks advised there needs to be a process in place that can validate whatever is decided so that the General Plan's Sensitive Receptors Policy C 3.2 is adhered to.

Commissioner Green provided a handout to the Planning Commission of his comments to Chapter 17.38 of the Lakeport Municipal Code.

Commissioner Froio expressed his concerns regarding grows near schools and daycare centers. He also expressed his concern about people having landlord permission.

Public hearing opened at 5:48 p.m. Howard Hultz, Lakeport citizen spoke.

Chief Rasmussen advised there haven't been any major problems to speak of with the current Medical Marijuana Cultivation Ordinance. He stated there has been a handful of complaints, but any major issues that we've had haven't been related to medical cultivation.

Public hearing closed at 5:55 p.m.

Commissioner Russell was concerned regarding a property owner's rights to refuse a tenant to grown on their property. She asked what requirements, if any, would be needed for a building permit for lighting for indoor grows.

Commissioner Green stated the City of Sacramento's current ordinance allows up to 3800 watts, compared to 1200 in current.

Public hearing reopened at 6:18 p.m. Lakeport Citizen Howard Holtz spoke in favor of City's efforts and proposals. Public hearing closed at 6:20 p.m.



Commissioner Green asked if it is a not permitted structure and they want to run electricity for filtration, what permits would be required. He also asked if the proposed ordinance would require a special cannabis permit or would they only pull an electrical permit.

Community Development Director Ingram stated in reading Eureka's ordinance it appears they have a specific cannabis permit process. He advised this process may be the easiest way to go to ensure, through inspections, that the setup meets all the public and safety requirements.

Public hearing opened at 06:35 p.m. Citizens Howard Holts and Ken Syphax spoke. Public hearing closed at 6:50 p.m.

The Planning Commissioners decided on the following:

Number of Plants: Agreed upon by consensus (5-0)

AUMA allows six marijuana plants to be grown onsite (residential property). The City's Medical Marijuana Cultivation allows 80-square feet, the Working Group supported continuing that criteria. Example: This would allow the potential for six mature plants, six seedlings...

Outdoor Cultivation: Agreed upon by consensus (5-0)

The City's current Medical Marijuana Cultivation ordinance does not allow for outdoor cultivation; the Working Group recommends not allowing outdoor grows.

Indoor Cultivation: AUMA allows cultivation inside the primary residence as a use by right.

Commissioner Wicks suggested a possible dedicated space within a residence based on a reasonable square footage footprint of the structure. Allowing the home owner to have ability to use one room that is reasonable not to exceed the 80 square foot.

Commissioner Wicks suggested maybe allowing an as-built insert instead of altering the footprint of the structure. Commissioner Green advised there commercially available grow kits that are made to be self-contained with venting and electrical.

Commissioner Green advised he has seen ordinances which state you either have to go through the process of adding wall covering requirements that controls moisture and mold or use a commercially available kit that would mitigate a lot of impacts.

Commissioners requests the Working Group come back with some recommendations on what would be allowed inside a primary residence in regards to indoor cultivations of marijuana.

Commissioner Green advised for the attorney, request a reasonable exception would be that all marijuana plants be located within a detached and **fully** enclosed structure.

He also advised regarding the condition which reads "All structures used for marijuana cultivation shall have a ventilation and filtration systems that prevent odors." to add the allowance of the use of a commercial kit that has these self-mitigated factors included.

Commissioner Green suggested there may be consensus on the Commission that they like the current approach for the current Medical Marijuana Ordinance that allows detached structures for cultivation. He

stated he believed what the Commission was being tasked with was additional provision for indoor cultivation that is not allowed under the current ordinance which is a use by right under proposition 64. He believes that the suggestions the working group made are a good starting point.

Commissioner Green suggested the following:

- They like where there at regarding the detached structures with the additional criteria for green houses.
- They would also need criteria for Indoor cultivation that would include two types one converting a room in the residence to include wall covering requirements that controls moisture and mold. The second would be to include the use of commercial or pop up cultivation kits, however more research will be needed.

Agreed upon by consensus. (5-0)

Permitting Process:

Commissioner Wicks asked staff what the consensus of the working group was on why they felt a permit process was necessary. Ingram advised to know where these locations are as we don't have record of where they are located. Ingram stated the other aspect was, as we allow these indoor grow areas there is a greater risk.

Chief Rasmussen stated from a police standpoint, the permitting process will allow them to ensure people were following the proper regulations, the rules were being followed, and that there were no health and safety issues in the home.

Ingram stated the easiest way would be if the person would get an electrical or building permit and then an inspection would be done to ensure the safety of the operation. However, if staff has to inspect specific site plans that detail the grow operation it would have to be done through the Land Use permit process.

Chance advised that an option could be that the Commission could adopt the existing process and in two years down the road to come back and see whether we want to incorporate a permit process. Since marijuana compliance is complaint driven. If we get several complaints in that time we can reevaluate the permit process.

Commissioner Green stated he understand the goals of what we want to accomplish, however there is a disconnect between the permit process and the cost benefit analysis. He stated the City of Clearlake has a cannabis specific permit process in place and he would open to meeting with them to discuss it.

Commissioner Russell asked if the medical marijuana structure guidelines currently on the City's website could be modified to include safety information regarding electrical requirements. Commissioner Wicks suggested also adding what could happen administratively if the guidelines aren't followed.

Ingram advised he will contact both the building official to see how difficult it would be to amend our current hand out and see if we can make a best management practice sheet for cultivation within a home. He stated he will also consult with the City attorney to get some clarification on the information the Commission has provided.

Commissioner Wicks stated that the motion suggested in the staff report should be amended because there was no definitive format agreed upon.

**Commissioner Green moved to initiate, through a minute order the Planning Commission, recommended amendments to Section 17.38 of the Zoning Ordinance to include possible development standards and permitting procedures for the cultivation of cannabis for non-commercial use on residential properties consistent with provisions of AUMA and MCRSA. Motion seconded by Commissioner Russell and carried by voice vote. (5-0)**

Respectfully submitted,



Kevin M. Ingram  
Community Development Director