

17.30.190 Medical marijuana regulations.

(1) Authority and Title. Pursuant to the authority granted by Article XI, Section 7 of the California Constitution, California Government Code Section [38773.5](#), and California Health and Safety Code Sections [11362.83](#) and [11362.768](#)(f), the City Council does hereby enact this section, which shall be known and may be cited as the “medical marijuana regulations.”

(2) Purpose and Intent. The purpose and intent of the medical marijuana regulations is to regulate the cultivation of medical marijuana for personal use in a residence and detached accessory buildings.

It is the intent of the City that the cultivation of medical marijuana for personal use be conducted in a manner that is consistent with state law and which promotes the health, safety, comfort, convenience, and general welfare of the residents and businesses within the incorporated area of the City of Rio Dell.

It is the intent of the City to balance: the needs of patients and their caregivers to have access to medical marijuana; the needs of residents, businesses, and communities to be protected from public health, safety, and nuisance impacts that can accompany the residential cultivation and processing of medical marijuana for an individual patient’s use; and the need to eliminate, or at least limit to the extent possible, the harmful environmental impacts that can accompany marijuana cultivation.

It is the intent of the City that the medical marijuana regulations not be construed to: allow persons to engage in conduct that endangers themselves or others, or causes a public nuisance as defined herein; allow the use or diversion of medical marijuana for nonmedical purposes; or allow any activity relating to the cultivation, processing, distribution, or consumption of marijuana that is otherwise illegal under the laws of the state of California. This section is not intended to criminalize any activity which is otherwise permitted under state law and it is not intended to authorize conduct that is otherwise prohibited by state law.

(3) Findings. The City Council hereby finds and declares the following:

(a) In 1996, California voters approved Proposition 215 (codified as Health and Safety Code Section [11362.5](#), and entitled “The Compassionate Use Act of 1996”).

(b) The intent of the Compassionate Use Act is to permit the cultivation and possession of medical marijuana for the personal use of a seriously ill patient without fear of criminal prosecution against the patient, the patient’s caregiver or the physician who recommended medical marijuana for the patient. The Act further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes.”

(c) In 2004, Senate Bill 420 (codified as Health and Safety Code Sections [11362.7](#) et seq. and known as the “Medical Marijuana Program Act” or “MMPA”) was enacted to clarify the scope of the Compassionate Use Act.

(d) The Compassionate Use Act (Section [11362.5](#), Health and Safety Code) expressly anticipates the enactment of local legislation. It provides: “Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, not to condone the diversion of marijuana for nonmedical purposes.”

(e) Neither the Compassionate Use Act nor the Medical Marijuana Program Act address land use or building code issues that may arise from the residential cultivation or processing of medical marijuana for personal use within the county.

(f) In February 2003, the Humboldt County district attorney’s office issued its prosecution guidelines regarding the cultivation, possession and use of medical marijuana.

(g) In August 2008, the California Attorney General issued Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use that were intended to further clarify California laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted for nonmedical purposes.

(h) The Federal Controlled Substances Act (codified as [21](#) U.S.C. Sections [801](#) et seq.) is a regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Act lists marijuana as a controlled substance, classifying it as a Schedule I drug, which is defined as a drug or other substance that has a high potential for abuse, which has no currently accepted medical use in treatment, and has not been accepted as safe for use under medical treatment.

(i) The United States Congress has provided that states are free to regulate in the areas of controlled substances, including marijuana, provided that state law does not positively conflict with the Controlled Substances Act (see [21](#) U.S.C. Section [903](#)). The California Attorney General, citing to California case law, has opined that neither the Compassionate Use Act nor the Medical Marijuana Program Act conflict with the Controlled Substances Act because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the state’s reserved powers to not punish certain marijuana offenses under state law.

(j) Due to the high monetary value placed upon marijuana, the county and local cities have experienced a number of home invasion robberies, thefts, and violent crimes, including homicides, related to marijuana cultivation. To defend against theft and armed robbery, some growers of marijuana have taken to arming themselves, which creates the potential for gunfire in the residential areas where indoor cultivation of marijuana is frequently occurring. The City has also experienced a number of residential fires from overloaded or improperly modified electrical systems used to power grow lights and exhaust fans for the cultivation of marijuana.

(k) Widespread indoor cultivation of marijuana in the county and cities has led to a decrease in needed rental housing stock, as rental homes are converted solely to structures to grow marijuana in, as well as excessive energy consumption to power the lights, fans, and other systems needed for a large indoor marijuana growing operation. As rental homes are converted to these grow structures, the character of the neighborhood around the grow structure deteriorates.

(l) Marijuana that is grown indoors can lead to mold, mildew, and moisture damage to the building in which it is grown. Landlords who thought they were renting a home for people to live in later find that their property was turned into a structure to grow marijuana and extensively damaged by that use, requiring new flooring, walls, ceiling, electrical and plumbing work to return the home to a habitable state. Growing marijuana is susceptible to plant diseases, mold, mildew, and insect damage and may be treated with insecticides and herbicides that may harm human health when applied or when the chemical is disposed of in the trash or in the sewage disposal system.

(m) Cultivation of marijuana may also result in private or public nuisances. Whether grown indoors or outdoors, marijuana plants, particularly as they mature, produce a distinctive odor that is often detectable far beyond property boundaries. This strong, distinctive odor can interfere with neighboring owners' use and enjoyment of their property. In addition, this odor of growing or "green" marijuana may alert malefactors to the location where marijuana is grown and thereby create the risk of burglary and robbery at that location.

(n) The right of qualified patients and their primary caregivers under state law to possess and cultivate marijuana for personal medical purposes does not confer upon them a right to create or maintain a nuisance. By adopting this section, which regulates the land use aspects of indoor residential cultivation of medical marijuana for personal use, the City anticipates a significant reduction in complaints regarding medical marijuana-related odors and residential mold and moisture issues affecting rental housing stocks, as well as a decrease in crime and fires related to the cultivation and processing of medical marijuana.

(o) The City finds that while the need for qualified patients and/or their caregivers to use and cultivate marijuana is authorized by state law, the potential land use impacts to the environment and to public health, safety and welfare as identified necessitate that the City create regulations, such as this section, to govern the cultivation of medical marijuana for personal use in a residence, detached accessory buildings.

(p) The City finds that the indoor cultivation of more than 50 square feet of medical marijuana that is more than 10 feet tall per residence or detached accessory building, as defined herein, within the City will result in an unreasonable risk of crime, fire, and other nuisance-related impacts such as odors offensive to people living or working or recreating nearby, as well as resulting in the deterioration of the neighborhood character, decrease in rental housing stock, and excessive energy consumption and carbon dioxide emissions. Therefore, the indoor cultivation of more than 50 square feet of medical marijuana that is more than 10 feet tall per residence or detached accessory building is hereby found and declared to be unlawful and a public nuisance.

(q) The City further finds that the indoor cultivation of 50 square feet or less of medical marijuana that is 10 feet tall or less per residence or detached accessory building is subordinate, incidental, and accessory to the residential use, within the City will achieve the goals of allowing qualified patients the ability to cultivate medical marijuana in or at their residence for their personal use, while minimizing, to the extent possible, the negative impacts on the neighbors, the neighborhood, local businesses, and the community from a qualified patient's medical marijuana cultivation and processing.

(4) Applicability and Interpretation.

(a) The cultivation and processing of medical marijuana for personal use in a residence or detached accessory building or outdoors within the jurisdiction of the City shall be controlled by the provisions of this section, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this section.

(b) Nothing in this section is intended, nor shall it be construed, to exempt any cultivation of medical marijuana for personal use, from compliance with the City of Rio Dell's zoning and land use regulations, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable provisions of the Rio Dell Municipal Code, or any other applicable state or federal laws.

(c) Nothing in this section is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.

(d) The definitions in this section are intended to apply to the medical marijuana regulations. Applicable definitions in the Rio Dell Municipal Code may also apply to this section.

(5) Definitions. Except where the context otherwise requires, the following definitions shall govern the construction of this section:

“Cultivation of medical marijuana for personal use” means cultivation and processing of medical marijuana indoors in a residence or detached accessory structure by a qualified patient, or the primary caregiver on behalf of a qualified patient, which does not exceed 50 square feet or 10 feet in height.

“Detached accessory building – residential” means a building which is (a) incidental and subordinate to the residence or residential use, (b) located on the same parcel, and (c) does not share at least 10 feet of common wall with the residence or other accessory building. A greenhouse may be considered a detached accessory building if it is a fully enclosed, secure and lockable structure that has a roof supported by connecting walls extending continuously to a perimeter foundation or equivalent base to which the connecting walls are securely attached.

“Indoor(s)” means within a fully enclosed and secure structure that has a roof supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached.

“Medical marijuana” means marijuana, including concentrated cannabis or hashish, that has been recommended to an individual by a licensed physician for the treatment of an illness or disease pursuant to California Health and Safety Code Section [11362.5](#) et seq.

“Outdoor(s)” means not enclosed or covered by a roof; exposed to the elements.

“Personal medical marijuana” means medical marijuana that is cultivated, processed, or stored for a single qualified patient's use.

“Primary caregiver” means an individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of that patient pursuant to statutory and case law.

“Qualified patient” means a person who has a recommendation for medical marijuana by a California-licensed physician, and who is entitled to the protections offered by California Health and Safety Code Section [11362.5](#), and who may or may not have an identification card issued by the state Department of Public Health identifying the individual as a person authorized to engage in the use of medical marijuana.

“Residence” means any structure designed or used for residential occupancy, regardless of whether it is located in a residential zone.

“Residential cultivation” means the growing of 50 square feet or less that is 10 feet or less in height of medical marijuana indoors within a residence or detached accessory structure of medical marijuana as defined herein. Such cultivation shall be for a qualified patient’s personal use and must be subordinate, incidental, and accessory to the residential use.

(6) Residential Cultivation for Personal Use. The City shall not interfere with a qualified patient’s residential cultivation of medical marijuana for that patient’s personal use, so long as the cultivation is in conformance with this section and state law.

In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, residential medical marijuana cultivation and processing for personal use shall be in conformance with the following standards:

(a) Indoor medical marijuana cultivation in a residence shall not exceed 50 square feet or exceed 10 feet in height per residence on a parcel; and

(b) Indoor medical marijuana cultivation in detached accessory buildings shall not exceed 50 square feet or exceed 10 feet in height per residence on a parcel; and

(c) A total of 50 square feet of indoor medical marijuana cultivation for personal use, which does not exceed 10 feet in height, is permitted for each residence on a parcel, regardless of whether the cultivation occurs in a residence or in a detached accessory building. In no case shall a residence or a detached accessory building have a total of more than 50 square feet or more than 10 feet in height of medical marijuana cultivation area per residence on the parcel, regardless of the number of qualified patients or primary caregivers residing at the residence or participating directly or indirectly in the cultivation; and

(d) The medical marijuana cultivation and processing area in the residence or detached accessory building shall be indoors, as defined herein, posted with a legible copy of the individual patient’s medical marijuana recommendation, secured against unauthorized entry, and maintained for the exclusive use of the qualified patient; and

(e) Grow lights for medical marijuana cultivation for personal use in a residence or a detached accessory building shall not exceed 1,200 watts total; and

(f) All electrical equipment used in the indoor cultivation of medical marijuana in a residence or a detached accessory building shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment used in the residential cultivation of medical marijuana is prohibited; and

(g) The use of gas products (CO₂, butane, etc.) for indoor medical marijuana cultivation or processing in a residence or a detached accessory building is prohibited; and

(h) No toxic or flammable fumigant shall be used for indoor cultivation of medical marijuana in a residence or a detached accessory building unless the requirements of Section 1703 of the California Fire Code have been met; and

(i) No odor of medical marijuana shall be detectable from the property boundaries by a person of ordinary senses. To achieve this, the medical marijuana cultivation area shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to noncultivation residential uses; and

(j) From a public right-of-way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of medical marijuana cultivation at the residence or detached accessory building that is detectable by a person of ordinary senses; and

(k) Medical marijuana cultivation, processing, or transfers in a residence or detached accessory building are prohibited as a home occupation; and

(l) No sale, trading, or dispensing of medical marijuana is allowed on a parcel where residential cultivation of medical marijuana occurs; and

(m) The qualified patient shall not cultivate medical marijuana for his or her personal use in more than one residence or detached accessory building within the City jurisdiction; and

(n) The residence where medical marijuana is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for medical marijuana cultivation; and

(o) No effluent, including but not limited to waste products, chemical fertilizers or pesticides, shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers and streams as a result of the cultivation of medical marijuana; and

(p) The residential cultivation of medical marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses 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 associated with the cultivation of medical marijuana; and

(q) The indoor residential cultivation of medical marijuana must comply with all applicable state and county laws, including fire and building codes; and

(r) A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor of the indoor cultivation area from water damage.

(7) Penalties. All of the remedies provided for in this section shall be cumulative and not exclusive for violations of this section.

Any violation of this section shall be, and the same hereby is declared to be, unlawful and a public nuisance and shall be subject to injunction, abatement or any other remedy available to the City under the applicable state and county laws, including the City's abatement and administrative penalty procedures. [Ord. 325 § 1, 2014; Ord. 299 §§ 1, 2, 2013. Formerly 17.30.155.]

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