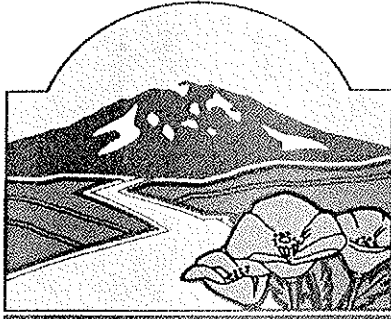


CITY OF  
ANDERSON



# AGENDA ITEM

**June 1, 2010 City Council Meeting**

**Approved for Submittal By:**

Dana Shigley,  
City Manager

A handwritten signature in black ink, appearing to read "Dana Shigley".

**To Be Presented By:**

John Stokes,  
Development Services Director

A handwritten signature in black ink, appearing to read "John Stokes".

To: Honorable Mayor and Members of the Anderson City Council

Through: Dana Shigley, City Manager  
Telephone 378-6646

From: John Stokes, Development Services Director  
Telephone 378-6636

Date: June 1, 2010

**SUBJECT**

**Regulation concerning the cultivation of medical marijuana in the City of Anderson**

**RECOMMENDATION**

The Development Services Director recommends that the City Council:

**Direct staff to utilize our currently adopted nuisance abatement codes and procedures to pursue enforcement of marijuana-related neighborhood nuisances and to return to the Council with recommendations regarding imposition of administrative fees and penalties for code enforcement actions.**

**FISCAL IMPACT**

If the Council acts to adopt the attached Ordinance 765, additional staff time will be spent administering the registration program. However, the proposed \$100 administrative fee would help offset these costs. Regardless of the approach taken, there will be costs for law enforcement and code enforcement officers to investigate and enforce the City's proposed and existing regulations.

## **DISCUSSION and BACKGROUND**

Health and Safety Code Section 11362.5 et. seq., known as the "Compassionate Use Act of 1996," (CUA) allows a person to use marijuana for medical purposes with a doctor's recommendation without violating state criminal laws concerning the use, possession or cultivation of marijuana. Health and Safety Code Section 11362.7 et. seq., known as the "Medical Marijuana Program Act," (MMPA) offered some clarification on the scope of the Compassionate Use Act of 1996 and allowed cities and other governing bodies to adopt and enforce rules and regulations related to medical marijuana.

The proliferation of medical marijuana "dispensaries" and home cultivation has caused health and safety concerns and local governments throughout the state are attempting to find ways to protect their citizens while affording legitimate medical marijuana users their rights under the CUA and MMPA. The regulation of medical marijuana remains mired in legal ambiguity, although recent court cases have provided some support to local government regulation.

In addition, an initiative has qualified for the November ballot (see attachment) that would further reduce local government's ability to prosecute individuals for marijuana possession and cultivation. However, the measure does authorize local governments to regulate cultivation, processing, distribution, transportation, sale, and consumption of marijuana, as well as impose taxes and fees on these activities. It does not repeal the CUA nor MMPA, so presumably those laws would remain in effect. If the measure passes, it will significantly change relevant laws and our approach to enforcement of marijuana restrictions may also change.

### **Dispensaries**

Although neither the CUA nor the MMPA address "dispensaries," the MMPA does address that qualified patients may cultivate marijuana cooperatively or collectively for their mutual benefit. As a result, dispensaries have opened up around the state to provide an access point for cooperative and collective members to obtain marijuana. As noted, the law is silent on the specific matter of local regulation of medical marijuana dispensaries.

Because a major State Appellate Court case (Anaheim), has not been resolved, it is unclear whether it is legal for a City to ban dispensaries. In addition, the ballot measure noted above could significantly reframe the issue.

The City of Anderson currently has a moratorium in place prohibiting the establishment of medical marijuana "dispensaries." The moratorium expires on April 3, 2011.

Because of the very tenuous status of regulation and court action in California, staff is recommending no changes to the current moratorium until the law is more definitive as to local government's ability to ban dispensaries entirely. In the meantime, because of the moratorium, no additional dispensaries will be established.

## Cultivation

Pursuant to Council direction, the Planning Commission held a workshop on December 14, 2009 to discuss dispensaries, collectives, cooperatives and medical marijuana cultivation. The primary focus of the workshop was on regulation of cultivation. On February 22, 2010 the Planning Commission held a public hearing and, based on the workshop discussion and the testimony at the public hearing, recommended that the City Council adopt an ordinance regulating medical marijuana cultivation and extend the moratorium on dispensaries, cooperatives and collectives for one-year.

As noted earlier, in considering our legal options, there is a difference between dispensaries and cultivation. There is no mention of dispensaries in the CUA, so our ability to ban or regulate them remains unclear. However cultivation is specifically mentioned as allowed for medical purposes. In addition, a recent California Supreme Court ruling found that state or a local jurisdiction cannot limit the amount of medical marijuana that a qualifying individual may possess beyond that which has been recommended by a physician. This ruling seems to clarify that a local jurisdiction must be careful to not deny activity specifically allowed in the CUA. However, the courts have long since allowed local governments flexibility to regulate land uses in the interest of health and safety and the establishment of guidelines for cultivation is appropriate.

The primary concern that has been raised in the community is that the growing of marijuana in residential neighborhoods, even for medical purposes, may cause negative impacts on the neighborhoods. These negative impacts include offensive odor from the growing plants, the potential for crime/break-ins, marijuana serving as an attractive nuisance for children, degradation of the quality of our housing stock with mold and other cultivation by-products, activity that may accompany illegal marijuana cultivation (excessive traffic, etc.), and others. Three potential techniques to tackle these concerns are:

1. Prohibit the cultivation of marijuana in residential neighborhoods and allow larger-scale growing in appropriate zoning districts (industrial or agricultural districts, for example).

As noted above, the CUA specifically allows that patients may cultivate marijuana for their own use as recommended by a doctor. We are not aware of any local government that has attempted to *prohibit* home cultivation under these circumstances and believe that such a prohibition would be successfully stopped in court.

Larger-scale cultivation operations could also violate the CUA. The CUA only exempts from prosecution qualified patients or their primary caregiver when they are possessing, using or cultivating an amount of marijuana they need as recommended by a doctor. Thus, anyone operating large-scale or commercial marijuana growing operations would be cultivating and possessing far more than they need for their own use and would violate the CUA. This would be subject to prosecution under existing state and federal laws.

If a *legal* cooperative wanted to establish a cooperative growing location and could demonstrate that their members cooperatively participated in the cultivation, it is possible that this would be consistent with the CUA. However, currently no legal cooperatives exist

in Anderson and locating a cooperative growing site would be a violation of our moratorium and would not be permitted in Anderson.

## 2. Adopt Specific Zoning Guidelines

Another approach is to adopt stringent guidelines under which residents may cultivate marijuana for medical purposes. This approach was considered by the Planning Commission in February and they recommended adopting Ordinance 765 (attached).

In general, the consensus from the Planning Commission is that cultivation should only be allowed in detached accessory buildings on residential lots. The Commission expressed a reluctance to allow larger grow operations conducted by cooperatives and collectives. Several of the Commissioners expressed a desire to prohibit cultivation altogether. The Planning Commission did not express support for larger scale cultivation by collectives and cooperatives.

Several other cities have adopted regulations similar to the proposed Ordinance 765. The intent of these ordinances is to allow personal cultivation of medical marijuana consistent with the CUA while minimizing or eliminating neighborhood nuisances. Ordinance 765 would restrict cultivation as follows:

- Medical marijuana cultivation shall be permitted only as an accessory use to a legally established residence within a legal detached accessory building on a legal parcel within the R-1, R-2, R-3, RE and AG zone district and said indoor cultivation shall be limited to 120 square feet. Outdoor cultivation, as well as cultivation within a residence, is unlawful.
- 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 or by a qualified caregiver.
- Residential accessory structures used for cultivation shall meet the following criteria:
  - The building must be provided with locking doors and have a working security system. The alarm shall be a standard audible residential alarm of at least 90 dBA but not exceeding 110 dBA and shall meet the requirements of 9.68 of the Municipal Code. Note that the code does not require a monitored alarm system.
  - If the building is a greenhouse then it must additionally be surrounded by a secure solid six (6) foot high fence located within ten (10) feet of the greenhouse and equipped with a lockable gate.
  - The structure must be located in the rear yard portion of the lot and maintain a minimum of a five (5) foot setback from the side and rear property lines and from any other building on the parcel.
  - The structure utilized for cultivation shall be legally constructed with a building permit. All electrical and plumbing must be permitted.

- The lighting for medical marijuana cultivation shall not exceed 1200 watts and shall conform to all applicable codes.
  - Cultivation areas shall be ventilated with odor control filters and shall not create an odor, humidity or mold problem.
- If the applicant is not the owner of the property, a notarized affidavit shall be submitted granting the applicant permission to cultivate medical marijuana on the subject property.
  - Wherever medical marijuana is grown, a copy of a current and valid, State-issued medical marijuana card, or a copy of a valid, City-approved CUA Registration for cultivation of medical marijuana, must be made available on request by a Code Enforcement Officer or Law Enforcement Officer.
  - Cultivation of medical marijuana requires sight specific registration by the qualified patient or caregiver and the payment of a \$100 registration fee. The registration is intended to ensure that the person wishing to cultivate medical marijuana is aware of, and complying with, the regulations in the ordinance. It includes a verification that the registrant has reviewed the regulations and will adhere to them; a notarized affidavit by the property owner granting the registrant permission to cultivate; a disclaimer warning that the property owners and cultivators may be subject to federal prosecution; and verification that the registrant and each participating individual is a qualified patient or primary caregiver. The registration fee is estimated to offset the cost of administration of the registration program. The registration program will be administered by the Development Services Department.

From a practical perspective, the City would enforce this ordinance only on a complaint basis. If someone is cultivating marijuana in their own home, is not violating any other laws and is not creating a nuisance for their neighbors, we won't enforce this code section because we won't know about the violation. We would enforce the code when we become aware that violations are occurring.

### 3. Utilize existing codes and laws to minimize nuisances

A copy of Chapter 8.28 of the City's current Municipal Code is attached. This code section defines numerous nuisances in Section 8.28.030, as well as procedures for abating these nuisances. The Code Enforcement Officer, in conjunction with law enforcement personnel, is charged with enforcing these codes.

Many of the common complaints we receive regarding marijuana cultivation can be addressed by these codes. For example, property owners can be cited for offensive odors, unsafe structures in their yards, and accumulated junk visible from the street. All residents, even those growing marijuana within the terms of the CUA, must meet our existing health and safety codes and Chapter 8.28 can be a useful tool to abate all types of similar nuisances. In addition, the buying and selling of marijuana remains illegal, and activity that may suggest that is happening (i.e., excessive traffic at odd hours of the night) would be subject to law enforcement investigation.

Enforcing these existing codes (as well as any additional, marijuana-specific codes) can be very time-consuming for staff. We will be asking the Council to consider a resolution in the coming weeks to impose administrative fees for code enforcement actions such as these to help offset costs and obtain the resources we need to properly enforce our laws.

### **Recommendation**

Cultivation: With growing season upon us, there will soon be opportunities for code enforcement. We recommend that Council direct staff to utilize the existing Nuisance Abatement code to assist in enforcing neighborhood nuisances as they arise. Alternately, the attached ordinance would implement regulations for the cultivation of medical marijuana as proposed in this staff report. The Council may conduct the first reading of this ordinance, amend it as desired, or provide other direction to staff.

Dispensaries: No action is recommended at this time.

### **ATTACHMENTS**

1. The Regulate, Control and Tax Cannabis Act of 2010
2. Proposed Medical Marijuana Cultivation Ordinance
3. Chapter 8.28 of the Anderson Municipal Code

# LAW OFFICES OF JAMES WHEATON

CALIFORNIA BUILDING  
1736 FRANKLIN STREET, 9TH FLOOR  
OAKLAND, CALIFORNIA 94612

TEL: 510/208-4554  
FAX: 510/208-4562  
WHEATON@WELL.COM

27 July 2009

09-0024

Amdt. #/S

The Honorable Jerry Brown  
Attorney General of California  
ATTN: Mr. Neil Amos  
Initiative Coordinator  
Office of the Attorney General  
1300 I Street, 17<sup>th</sup> floor  
Sacramento, CA 95814  
916/445-4752

**RECEIVED**

AUG 04 2009

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

By Overnight courier

Re: Initiative Measure 09-0024: "Regulate, Control, Tax Cannabis"

Dear Mr. Amos:

Please find enclosed an amendment package for this proposed initiative measure.

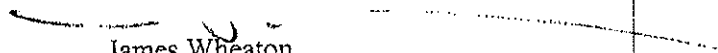
The amendments are technical and nonsubstantive. They do not change the chief purposes or points of the measure.

For your convenience, a redlined copy showing the amendments is attached as Exhibit A. They are limited to pages 2, 3 and 5.

In addition, the complete text of the initiative as amended is attached as Exhibit B to this letter.

Last, I attach original signatures of the proponents approving and explaining the precise amendments. as Exhibit C.

Sincerely,

  
James Wheaton

Enclosures: as noted

**The Regulate, Control and Tax Cannabis Act of 2010**

Section 1: Name

This Act shall be known as the "Regulate, Control and Tax Cannabis Act of 2010."

09 - 0024

Amdt. #1S

Section 2: Findings, Intent and Purposes

This Act, adopted by the People of the State of California, makes the following Findings and Statement of Intent and Purpose:

A. Findings

1. California's laws criminalizing cannabis (marijuana) have failed and need to be reformed. Despite spending decades arresting millions of non-violent cannabis consumers, we have failed to control cannabis or reduce its availability.
2. According to surveys, roughly 100 million Americans (around 1/3 of the country's population) acknowledge that they have used cannabis, 15 million of those Americans having consumed cannabis in the last month. Cannabis consumption is simply a fact of life for a large percentage of Americans.
3. Despite having some of the strictest cannabis laws in the world, the United States has the largest number of cannabis consumers. The percentage of our citizens who consume cannabis is double that of the percentage of people who consume cannabis in the Netherlands, a country where the selling and adult possession of cannabis is allowed.
4. According to The National Research Council's recent study of the 11 U.S. states where cannabis is currently decriminalized, there is little apparent relationship between severity of sanctions and the rate of consumption.
5. Cannabis has fewer harmful effects than either alcohol or cigarettes, which are both legal for adult consumption. Cannabis is not physically addictive, does not have long term toxic effects on the body, and does not cause its consumers to become violent.
6. There is an estimated \$15 billion in illegal cannabis transactions in California each year. Taxing and regulating cannabis, like we do with alcohol and cigarettes, will generate

billions of dollars in annual revenues for California to fund what matters most to Californians: jobs, health care, schools and libraries, roads, and more.

7. California wastes millions of dollars a year targeting, arresting, trying, convicting, and imprisoning non-violent citizens for cannabis related offenses. This money would be better used to combat violent crimes and gangs.
8. The illegality of cannabis enables for the continuation of an out-of-control criminal market, which in turn spawns other illegal and often violent activities. Establishing legal, regulated sales outlets would put dangerous street dealers out of business.

B. Purposes

1. Reform California's cannabis laws in a way that will benefit our state.
2. Regulate cannabis like we do alcohol: Allow adults to possess and consume small amounts of cannabis.
3. Implement a legal regulatory framework to give California more control over the cultivation, processing, transportation, distribution, and sales of cannabis.
4. Implement a legal regulatory framework to better police and prevent access to and consumption of cannabis by minors in California.
5. Put dangerous, underground street dealers out of business, so their influence in our communities will fade.
6. Provide easier, safer access for patients who need cannabis for medical purposes.
7. Ensure that if a city decides not to tax and regulate the sale of cannabis, that buying and selling cannabis within that city's limits remain illegal, but that the city's citizens still have the right to possess and consume small amounts, except as permitted under Health and Safety Sections 11362.5 and 11362.7 through 11362.9.
8. Ensure that if a city decides it does want to tax and regulate the buying and selling of cannabis (to and from adults only), that a strictly controlled legal system is implemented to oversee and regulate cultivation, distribution, and sales, and that the city will have control over how and how much cannabis can be bought and sold, except as permitted

under Health and Safety Sections 11362.5 and 11362.7 through 11362.9.

9. Tax and regulate cannabis to generate billions of dollars for our state and local governments to fund what matters most: jobs, healthcare, schools and libraries, parks, roads, transportation, and more.
10. Stop arresting thousands of non-violent cannabis consumers, freeing up police resources and saving millions of dollars each year, which could be used for apprehending truly dangerous criminals and keeping them locked up, and for other essential state needs that lack funding.
11. Allow the Legislature to adopt a statewide regulatory system for a commercial cannabis industry.
12. Make cannabis available for scientific, medical, industrial, and research purposes.
13. Permit California to fulfill the state's obligations under the United States Constitution to enact laws concerning health, morals, public welfare and safety within the State.
14. Permit the cultivation of small amounts of cannabis for personal consumption.

C. Intent

1. This Act is intended to limit the application and enforcement of state and local laws relating to possession, transportation, cultivation, consumption and sale of cannabis, including but not limited to the following, whether now existing or adopted in the future: Health and Safety Code sections 11014.5 and 11364.5 [relating to drug paraphernalia]; 11054 [relating to cannabis or tetrahydrocannabinols]; 11357 [relating to possession]; 11358 [relating to cultivation]; 11359 [possession for sale]; 11360 [relating to transportation and sales]; 11366 [relating to maintenance of places]; 11366.5 [relating to use of property]; 11370 [relating to punishment]; 11470 [relating to forfeiture]; 11479 [relating to seizure and destruction]; 11703 [relating to definitions regarding illegal substances]; 11705 [actions for use of illegal controlled substance]; Vehicle Code sections 23222 and 40000.15 [relating to possession].
2. This Act is not intended to affect the application or enforcement of the following state

laws relating to public health and safety or protection of children and others: Health and Safety Code sections 11357 [relating to possession on school grounds]; 11361 [relating to minors as amended herein]; 11379.6 [relating to chemical production]; 11532 [relating to loitering to commit a crime or acts not authorized by law]; Vehicle Code section 23152 [relating to driving while under the influence]; Penal Code section 272 [relating to contributing to the delinquency of a minor]; nor any law prohibiting use of controlled substances in the workplace or by specific persons whose jobs involve public safety.

### Section 3: Lawful Activities

Article 5 of Chapter 5 of Division 10 of the Health and Safety Code, commencing with section 11300 is added to read:

#### Section 11300: Personal Regulation and Controls

- (a) Notwithstanding any other provision of law, it is lawful and shall not be a public offense under California law for any person 21 years of age or older to:
- (i) Personally possess, process, share, or transport not more than one ounce of cannabis, solely for that individual's personal consumption, and not for sale.
  - (ii) Cultivate, on private property by the owner, lawful occupant, or other lawful resident or guest of the private property owner or lawful occupant, cannabis plants for personal consumption only, in an area of not more than twenty-five square feet per private residence or, in the absence of any residence, the parcel. Cultivation on leased or rented property may be subject to approval from the owner of the property. Provided that, nothing in this section shall permit unlawful or unlicensed cultivation of cannabis on any public lands.
  - (iii) Possess on the premises where grown the living and harvested plants and results of any harvest and processing of plants lawfully cultivated pursuant to section 11300(a)(ii), for personal consumption.
  - (iv) Possess objects, items, tools, equipment, products and materials associated with

activities permitted under this subsection.

- (b) "Personal consumption" shall include but is not limited to possession and consumption, in any form, of cannabis in a residence or other non-public place, and shall include licensed premises open to the public authorized to permit on-premises consumption of cannabis by a local government pursuant to section 11301.
- (c) "Personal consumption" shall not include, and nothing in this Act shall permit cannabis:
  - (i) possession for sale regardless of amount, except by a person who is licensed or permitted to do so under the terms of an ordinance adopted pursuant to section 11301;
  - (ii) consumption in public or in a public place;
  - (iii) consumption by the operator of any vehicle, boat or aircraft while it is being operated, or that impairs the operator;
  - (iv) smoking cannabis in any space while minors are present.

#### Section 11301: Commercial Regulations and Controls

Notwithstanding any other provision of state or local law, a local government may adopt ordinances, regulations, or other acts having the force of law to control, license, regulate, permit or otherwise authorize, with conditions, the following:

- (a) cultivation, processing, distribution, the safe and secure transportation, sale and possession for sale of cannabis, but only by persons and in amounts lawfully authorized;
- (b) retail sale of not more than one ounce per transaction, in licensed premises, to persons 21 years or older, for personal consumption and not for resale;
- (c) appropriate controls on cultivation, transportation, sales, and consumption of cannabis to strictly prohibit access to cannabis by persons under the age of 21;
- (d) age limits and controls to ensure that all persons present in, employed by, or in any way involved in the operation of, any such licensed premises are 21 or older;
- (e) consumption of cannabis within licensed premises;

- (f) safe and secure transportation of cannabis from a licensed premises for cultivation or processing, to a licensed premises for sale or on-premises consumption of cannabis;
- (g) prohibit and punish through civil fines or other remedies the possession, sale, possession for sale, cultivation, processing, or transportation of cannabis that was not obtained lawfully from a person pursuant to this section or section 11300;
- (h) appropriate controls on licensed premises for sale, cultivation, processing, or sale and on-premises consumption, of cannabis, including limits on zoning and land use, locations, size, hours of operation, occupancy, protection of adjoining and nearby properties and persons from unwanted exposure, advertising, signs and displays, and other controls necessary for protection of the public health and welfare;
- (i) appropriate environmental and public health controls to ensure that any licensed premises minimizes any harm to the environment, adjoining and nearby landowners, and persons passing by;
- (j) appropriate controls to restrict public displays, or public consumption of cannabis;
- (k) appropriate taxes or fees pursuant to section 11302;
- (l) such larger amounts as the local authority deems appropriate and proper under local circumstances, than those established under section 11300(a) for personal possession and cultivation, or under this section for commercial cultivation, processing, transportation and sale by persons authorized to do so under this section;
- (m) any other appropriate controls necessary for protection of the public health and welfare.

**Section 11302: Imposition and Collection of Taxes and Fees**

- (a) Any ordinance, regulation or other act adopted pursuant to section 11301 may include imposition of appropriate general, special or excise, transfer or transaction taxes, benefit assessments, or fees, on any activity authorized pursuant to such enactment, in order to permit the local government to raise revenue, or to recoup any direct or indirect costs associated with the authorized activity, or the permitting or licensing scheme, including

without limitation: administration; applications and issuance of licenses or permits; inspection of licensed premises and other enforcement of ordinances adopted under section 11301, including enforcement against unauthorized activities.

- (b) Any licensed premises shall be responsible for paying all federal, state and local taxes, fees, fines, penalties or other financial responsibility imposed on all or similarly situated businesses, facilities or premises, including without limitation income taxes, business taxes, license fees, and property taxes, without regard to or identification of the business or items or services sold.

#### Section 11303: Seizure

- (a) Notwithstanding sections 11470 and 11479 of the Health and Safety Code or any other provision of law, no state or local law enforcement agency or official shall attempt to, threaten to, or in fact seize or destroy any cannabis plant, cannabis seeds or cannabis that is lawfully cultivated, processed, transported, possessed, possessed for sale, sold or used in compliance with this Act or any local government ordinance, law or regulation adopted pursuant to this Act.

#### Section 11304: Effect of Act and Definitions

- (a) This Act shall not be construed to affect, limit or amend any statute that forbids impairment while engaging in dangerous activities such as driving, or that penalizes bringing cannabis to a school enrolling pupils in any grade from kindergarten through 12, inclusive.
- (b) Nothing in this Act shall be construed or interpreted to permit interstate or international transportation of cannabis. This Act shall be construed to permit a person to transport cannabis in a safe and secure manner from a licensed premises in one city or county to a licensed premises in another city or county pursuant to any ordinances adopted in such cities or counties, notwithstanding any other state law or the lack of any such ordinance

in the intervening cities or counties.

- (c) No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to Section 11301 of this Act. Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected.

(d) Definitions

For purposes of this Act:

- (i) "Marijuana" and "cannabis" are interchangeable terms that mean all parts of the plant Genus Cannabis, whether growing or not; the resin extracted from any part of the plant; concentrated cannabis; edible products containing same; and every active compound, manufacture, derivative, or preparation of the plant, or resin.
- (ii) "One ounce" means 28.5 grams.
- (iii) For purposes of section 11300(a)(ii) "cannabis plant" means all parts of a living Cannabis plant.
- (iv) In determining whether an amount of cannabis is or is not in excess of the amounts permitted by this Act, the following shall apply:
  - (a) only the active amount of the cannabis in an edible cannabis product shall be included;
  - (b) living and harvested cannabis plants shall be assessed by square footage, not by weight in determining the amounts set forth in section 11300(a);
  - (c) in a criminal proceeding a person accused of violating a limitation in this Act shall have the right to an affirmative defense that the cannabis was reasonably related to his or her personal consumption.
- (v) "residence" means a dwelling or structure, whether permanent or temporary, on private or public property, intended for occupation by a person or persons for residential purposes, and includes that portion of any structure intended for both

commercial and residential purposes.

- (vi) "local government" means a city, county, or city and county.
- (vii) "licensed premises" is any commercial business, facility, building, land or area that has a license, permit or is otherwise authorized to cultivate, process, transport, sell, or permit on-premises consumption, of cannabis pursuant to any ordinance or regulation adopted by a local government pursuant to section 11301, or any subsequently enacted state statute or regulation.

#### Section 4: Prohibition on Furnishing Marijuana to Minors

Section 11361 of the Health and Safety Code is amended to read:

##### Prohibition on Furnishing Marijuana to Minors

(a) Every person 18 years of age or over who hires, employs, or uses a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

(c) Every person 21 years of age or over who knowingly furnishes, administers, or gives, or offers to furnish, administer or give, any marijuana to a person aged 18 years or older, but younger than 21 years of age, shall be punished by imprisonment in the county jail for a period of up to six months and be fined up to \$1,000 for each offense.

(d) In addition to the penalties above, any person who is licensed, permitted or authorized to perform any act pursuant to Section 11301, who while so licensed, permitted or authorized, negligently furnishes, administers, gives or sells, or offers to furnish, administer, give or sell, any

marijuana to any person younger than 21 years of age shall not be permitted to own, operate, be employed by, assist or enter any licensed premises authorized under Section 11301 for a period of one year.

#### Section 5: Amendment

Pursuant to Article 2, section 10(c) of the California Constitution, this Act may be amended either by a subsequent measure submitted to a vote of the People at a statewide election; or by statute validly passed by the Legislature and signed by the Governor, but only to further the purposes of the Act. Such permitted amendments include but are not limited to:

- (a) Amendments to the limitations in section 11300, which limitations are minimum thresholds and the Legislature may adopt less restrictive limitations.
- (b) Statutes and authorize regulations to further the purposes of the Act to establish a statewide regulatory system for a commercial cannabis industry that addresses some or all of the items referenced in Sections 11301 and 11302.
- (c) Laws to authorize the production of hemp or non-active cannabis for horticultural and industrial purposes.

#### Section 6: Severability

If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

**ORDINANCE NO. 765****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANDERSON ENACTING SECTION 17.65 OF THE ANDERSON MUNICIPAL CODE, REGARDING MEDICAL MARIJUANA CULTIVATION**

The City Council of the City of Anderson ordains as follows:

**SECTION I.**

Add Sections 17.65 Medical Marijuana Cultivation to the City of Anderson Municipal Code to read in its entirety as follows:

**17.65 Medical Marijuana Cultivation****A. Legislative Findings.**

The City Council finds as follows:

1. 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").
2. 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.
3. On January 1, 2004, Senate Bill 420, codified as California Health and Safety Code Sections 11362.7 *et seq.* and entitled "The Medical Marijuana Program," became effective to clarify the scope of the Compassionate Use Act.
4. 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.
5. The City of Anderson has adopted a Zoning Plan identified as Title 17 (Zoning) of the City of Anderson Municipal Code.
6. Prior to the enactment of this Section, there were no regulations addressing Cultivation of Medical Marijuana in the Zoning Plan.
7. The City of Anderson with a population of 10,579 (January 1, 2009) is a small town with a high percentage of non-owner occupied residential units. Landlords have complained of damage caused by unauthorized cultivation activities in their rental properties.
8. The City of Anderson 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.
9. 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.

Ordinance No. 765

June 1, 2010

10. 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.
11. A CUA registration is necessary to inform persons intending to cultivate medical marijuana of the City regulations.
12. It is necessary for the City to charge a fee to cover the cost of administration of the CUA registration, including copy costs, staff time to answer inquiries and for the creation and maintenance of records.
13. The City Council finds and determines that the enactment of this Section is exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3) in that there is nothing in this Section or its implementation that could have a foreseeable significant effect on the environment.

**B. Intent.**

1. The City Council of the City of Anderson, pursuant to Chapter 17.54 of the Anderson Municipal Code, 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 Section shall be construed to authorize any use, possession, cultivation, or distribution of marijuana for non-medical purposes.
2. This Section 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 Section 11362.5 through 11362.83.

**C. Applicability.** The provisions of this Section shall apply to all persons and businesses described herein whether the activities described herein were established before or after the effective date of this Section. Title 17 Chapter 17.56 of the Municipal Code, Nonconforming Uses, shall not apply to preexisting land or building uses inconsistent with the provisions of this Section.

**D. Definitions.**

**"Cultivation"** means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

**"CUA Registration"** means an administrative process administered by the Planning Director of the City of Anderson to ensure that qualifying persons intending to cultivate medical marijuana within the boundaries of the City of Anderson are aware of the City regulations.

**"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 Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

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

**"Qualified Patient"** shall have the same definition as California Health and Safety Code Sections 11362.7 (c) and (f), as may be amended.

**"Drug Paraphernalia"** shall have the same definition as California Health and Safety Code Section 11364.5, as may be amended.

**E. Registration Requirements.**

1. The cultivation of Medical Marijuana as specified in this ordinance within the R-1, R-2, R-3, R-E and AG zone districts within the incorporated area of the City of Anderson requires a CUA Registration in compliance with the requirements of Chapter 17.65 E. Registration is site specific and is not transferrable.
2. A nonrefundable fee of \$100.00 shall be paid to the City of Anderson to cover the costs associated with administration of this registration program.
3. The registrant for a CUA Registration for Medical Marijuana cultivation shall be a verifiable qualified patient or primary caregiver as defined by the California Health and Safety Code.
4. The following information shall accompany a CUA Registration application for Medical Marijuana:
  - a. A detailed floor plan shall be submitted identifying all areas to be used for growing, processing and related activities within the qualifying building.
  - b. A description of all proposed security facilities and practices.
  - c. A detailed site/building plan showing:
    - i. The location, approximate dimensions and use for all buildings and structures on the parcel.
    - ii. Location and dimensions of the indoor growing and processing areas.
    - iii. Location of fencing, screening, and lockable gate(s).
    - iv. Location of all public rights-of-way and approximate distance from the proposed grow area and processing area.
    - v. An electrical and plumbing plan showing existing and proposed service with electrical load calculations.
    - vi. Description of the chemicals and in what amounts used and stored on site.
    - vii. Other information as may be required by the Planning Director.
  - d. If the registrant is not the owner of the property, under penalty of perjury, a notarized affidavit shall be submitted granting the applicant permission to cultivate medical marijuana on the subject property.
  - e. The registrant, under penalty of perjury, shall provide his or her name, address, and telephone number, and the name, address and telephone number of each additional participant, along with written verification that each individual participating in the cultivation is a qualified patient or primary caregiver, by any of the following methods:

- i. A copy of a valid government-issued medical marijuana identification card for the registrant and each additional participant; or
  - ii. Written documentation establishing that the registrant has confirmed that he or she and each additional participant has a recommendation from a physician by making personal contact with the recommending physician (or his or her agent), verifying the recommending physician's (and if applicable, the recommending physician's agent's) name, address, and telephone number, and licensing status, and verifying that the physician has provided the necessary recommendation. If a physician recommendation is in writing, a copy of that recommendation will also be provided; or
  - iii. Written documentation that the registrant or additional participant is a primary caregiver by providing the name, address, telephone number and verification of status of each qualified patient for whom the primary caregiver is cultivating medical marijuana, and a statement from each qualified patient identifying the registrant or additional participant as their primary caregiver. Verification of qualified patient status shall be by providing the information described in Section 17.65 E (e)(i) or (ii) above.
- g. Verification that the registrant has reviewed and that the proposed operation will conform to all development and operational standards of this Section.
  - h. A Medical Marijuana warning and disclaimer shall be put on applications for Medical Marijuana CUA Registration, which shall include the following: 1) A warning that property owners, members of collectives and/or cooperatives associated with a Medical Marijuana Cultivation may be subject to prosecution under federal law; and 2) A disclaimer that the City of Anderson will not accept any liability in connection with any approval and/or subsequent cultivation of Medical Marijuana.
  - i. A signed release, on a form provided by the City of Anderson, from each qualified patient and primary caregiver involved in cultivation, that authorizes the registrant to submit verification that each participant is a qualified patient or primary caregiver, as defined, with the CUA Registration application.

**F. Regulation of Location.**

1. Medical Marijuana cultivation shall be prohibited on any parcel within the incorporated area of the City of Anderson except as an accessory use to a legally established residence within a legal accessory building on a legal parcel within the R-1, R-2, R-3, RE or AG zone district.
2. Except as provided in Section 17.65(F)(3), 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.
3. A qualified primary caregiver, as defined, may undertake cultivation of Medical Marijuana on behalf of his/her qualified patient(s), but only in an accessory structure located on a parcel containing the primary caregiver's or qualified patient's primary residence.
4. Cultivation shall only be permitted in a detached accessory building and said indoor cultivation shall be limited to 120 square feet.
5. The use of a detached accessory building for cultivation of Medical Marijuana shall not reduce the required parking required per Section 17.46.040.

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6. 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 Anderson.
7. Indoor Cultivation within a residence 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 Anderson.

**G. Development and Operational Standards:**

1. From a public right-of-way there shall be no exterior evidence of Medical Marijuana cultivation located inside an accessory building.
2. Except as provided in Section 17.65 (F)(3), the qualified patient or primary caregiver shall reside in the residence located on the parcel containing the accessory structure where the Medical Marijuana cultivation occurs.
3. Except as provided in Section 17.65 (F)(3), the qualified patient or primary caregiver shall not cultivate Medical Marijuana in any other location within the incorporated City of Anderson other than in the accessory structure located on the parcel containing his/her primary residence.
4. The qualifying residence located on the property containing the detached accessory building 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.
5. Medical Marijuana cultivation shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
6. Residential accessory structures used for cultivation shall meet the following criteria:
  - o The building shall be provided with locking doors and have a working security system. The alarm shall be a standard audible residential alarm of at least 90 dBA but not exceeding 110 dBA and shall meet the requirements of 9.68 of the Municipal Code.
  - o If the building is a greenhouse then it shall additionally be surrounded by a secure solid six (6) foot high fence located within ten (10) feet of the greenhouse and equipped with a lockable gate.
  - o The structure shall be located in the rear yard portion of the lot and maintain a minimum of a five (5) foot setback from the side and rear property lines and from any other building on the parcel.
  - o The structure utilized for cultivation shall be legally constructed with a building permit. All electrical and plumbing shall be installed with a valid electrical and plumbing permit from the City.
  - o Medical Marijuana cultivation lighting shall not exceed 1200 watts and shall conform to all applicable codes.
  - o 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.

- Cultivation within a larger detached accessory structure that otherwise meets applicable code sections is allowed, provided that the growing area is segregated from all other building uses by permitted walls and all other conditions of this code are met.
- 7. Wherever Medical Marijuana is grown, a copy of a current and valid, State-issued Medical Marijuana card, and a copy of a valid, City-issued CUA Registration for cultivation of Medical Marijuana, must be kept available to immediately present to officers of the City and law enforcement officers upon request.
- 8. Nothing in this Section 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 fully enclosed and secure building.

**H. Enforcement.**

All Medical Marijuana cultivation shall be subject to Chapter 8.28 (Nuisances) of the City of Anderson Municipal Code and California Health and Safety Code also known as the State Housing Code Section 17920 et. seq. and other applicable provisions of law, and all applicable laws.

**I. Release of the City of Anderson from liability.**

In a form satisfactory to the Planning Director the property owner(s) of record for each legal parcel, permittees, participants in the cultivation of Medical Marijuana, and members of collectives and/or cooperatives associated with the cultivation of Medical Marijuana, shall release and hold harmless the City of Anderson, and its agents, officers, elected officials, and employees from claims, injuries, damages, or liabilities of any kind that may result from the activities associated with the cultivation of Medical Marijuana including, but not limited to, any arrest or prosecution of owners, permittees, and/or the members of collectives and/or cooperatives associated with the cultivation of Medical Marijuana, for violation of state or federal laws.

**J. City of Anderson Indemnification.**

In a form satisfactory to the Planning Director the property owner(s) of record for each legal parcel, permittees, participants in the cultivation of Medical Marijuana, and collective/cooperative members associated with the cultivating of Medical Marijuana, shall release and hold harmless the City of Anderson, its agents, officers, elected officials, and employees for any claim, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the planting, growing, harvesting, drying, processing or storage of marijuana plants, and for any claims, damages, injuries, or liabilities of any kind that may arise out of the cultivation and/or on-site or off-site use of marijuana provided at the cultivation area.

**K. Liability.**

The provisions of this Section shall not be construed to protect the property owner(s) of record for each legal parcel associated with the cultivation of Medical Marijuana, permittees, participants in the cultivation of Medical Marijuana, and members of collectives and/or cooperatives associated with the cultivation of Medical Marijuana, from prosecution pursuant to any laws that may prohibit the cultivation, sale, and/or possession of controlled substances. Moreover, cultivation, sale, possession, distribution, and use of marijuana remain violations of federal law as of the date of adoption of the ordinance creating this Section and this Section is not intended to, and does not protect any of the above described persons from arrest or prosecution under those federal laws. The property owner(s) of record for each legal parcel associated with the cultivation of Medical Marijuana, permittees, 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

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Marijuana. Further, to the fullest extent permitted by law, any actions taken under the provisions of this Section by any public officer or employee of the City of Anderson or City of Anderson itself, shall not become a personal liability of such person or the liability of the City of Anderson.

**SECTION II.**

If any provisions of this ordinance or its application to any person or circumstance are held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**SECTION III.**

All former ordinances and resolutions, or parts thereof, conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

**SECTION IV.**

This ordinance shall take effect and be in full force and effect 30 days after its passage. The City Clerk shall cause this ordinance to be published as required by law.

**PASSED AND ADOPTED** by the City Council of the City of Anderson this 1st day of June, 2010, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Norma Cornick, Mayor of the City Anderson

ATTEST:

\_\_\_\_\_  
Juanita Barnett, City Clerk

Anderson, California, Code of Ordinances >> **Title 8 - HEALTH AND SAFETY** >> **Chapter 8.28 - NUISANCE ABATEMENT** >>

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**Chapter 8.28 - NUISANCE ABATEMENT**

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**Sections:**

- 8.28.010 - Purpose.
- 8.28.020 - Findings.
- 8.28.030 - Nuisance defined.
- 8.28.040 - Manner of serving notices.
- 8.28.050 - Request to abate nuisance.
- 8.28.060 - Nuisance abatement order—Initiation of proceedings on proposed order.
- 8.28.070 - Nuisance abatement order—Notice of hearing.
- 8.28.080 - Nuisance abatement order—Hearing on proposed order.
- 8.28.090 - Nuisance abatement order—Action on proposed order.
- 8.28.100 - Nuisance abatement work performed by or on behalf of the city.
- 8.28.110 - Assessment for city abatement costs—Initiation of assessment proceedings.
- 8.28.120 - Assessment for city abatement costs—Notice of hearing on assessment.
- 8.28.130 - Assessment for city abatement costs—Hearing on proposed assessment.
- 8.28.140 - Assessment for city abatement costs—Adoption of resolution levying assessment.
- 8.28.150 - Assessment for city abatement costs—Service of council resolution levying assessment.
- 8.28.160 - Collection of assessment by recordation of council resolution levying assessment—Recordation of council resolution.
- 8.28.170 - Collection of assessment by recordation of council resolution levying assessment—Commencement of foreclosure action.
- 8.28.180 - Collection of assessment by recordation of council resolution levying assessment—Release of assessment lien.
- 8.28.190 - Collection of assessment on county tax rolls—Requests for inclusion of assessment on county tax rolls.
- 8.28.200 - Collection of assessment on county tax rolls—Payment of assessment.
- 8.28.210 - Summary nuisance abatement.
- 8.28.220 - Civil action to abate nuisance.
- 8.28.230 - Penalty.

**8.28.010 - Purpose.**

This chapter is adopted for the purpose of defining those conditions of real property in the city which constitute nuisances; and for the further purpose of establishing procedures for ordering the abatement of a nuisance; authorizing city personnel to undertake the work necessary to abate such nuisance in the event of noncompliance with such abatement order; levying an assessment against the owner of the property on which such nuisance abatement work was performed in the amount of city's abatement costs; and either causing a lien to be recorded against such property in the amount of such assessment costs or causing such assessment to be added to the county assessment rolls and collected at the same time and in the same manner as property taxes.

*(Ord. 612 (part), 1993)*

**8.28.020 - Findings.**

The city council finds as follows:

- A. That there are numerous buildings, structures and other conditions on or pertaining to real property located in the city which constitute nuisances as defined in this chapter;
- B. That the continued existence of such nuisances is injurious to the public health, safety and welfare;
- C. That abatement of such nuisances in the manner provided by this chapter is a proper exercise of the city's police powers and is specifically authorized by Government Code (commencing with Section 38771); and
- D. That abatement of such nuisances in the manner provided by this chapter is reasonable and affords to the owner of the property on which the nuisance is located all of the due process rights guaranteed by the federal and state

constitutions.

*(Ord. 612 (part), 1993)*

### **8.28.030 - Nuisance defined.**

For purposes of this chapter, the term "nuisance" means any of the following:

A.

A condition of real property or a condition of a building, structure or other thing located on real property which violates any provision of this code, including, but not limited to:

1.

Real property which is developed and/or used in a manner which violates the land use regulations adopted by this code;

2.

A substandard building or a dangerous building or structure which is maintained in violation of the housing regulations or dangerous building regulations adopted by or pursuant to this code; and

3.

A building or structure which is constructed, maintained or used in violation of the building regulations or fire regulations adopted by or pursuant to this code.

B.

A condition of real property or a condition of a building, structure or other thing located on real property which endangers the public health, safety or welfare including, but not limited to:

1.

A tree which is subject to disease or insect infestation that is likely to spread or which is structurally unsound by reason of old age, disease, fire or other cause;

2.

A failing septic tank and/or leach field system; and

3.

An unprotected excavation and/or abandoned and uncovered well.

C.

A condition of real property or a condition of a building, structure or other thing located on real property which is unsightly and, by reason thereof, contributes to a diminution in the value of surrounding properties, including but not limited to:

1.

An accumulation of lumber, unused equipment, and/or junk which is visible from a public right-of-way and/or surrounding properties;

2.

An abandoned and dilapidated building or portion of a building; and

3.

Couches and dilapidated furniture placed in yards and/or on outside porches.

D.

A condition of real property or a condition of a building, structure or other thing located on real property which is an attractive nuisance (i.e., a dangerous or potentially dangerous condition of property that is likely to attract children and other curious people) including, but not limited to:

1.

An unfenced or otherwise unprotected swimming pool; and

2.

Unused refrigerators and ice boxes stored in an outside yard.

E.

Any other condition of real property or any building or structure located on real property which is declared to be a nuisance by any statute of the state of California, or has been recognized to be a public nuisance by the common law of this state.

*(Ord. 612 (part), 1993)*

### **8.28.040 - Manner of serving notices.**

Except as expressly otherwise provided by this chapter, any notice or other document required to be served on an owner of property pursuant to this chapter shall be deemed served when either personally delivered to such property owner or when deposited in the United States mail, certified and return receipt requested, addressed to the property owner at his or her address as it appears on the last equalized assessment roll or supplemental roll of the county, whichever is more current. Service by mail of a notice or other document in the manner provided for in this section shall be effective on the date of mailing, and the failure of any person to actually receive such notice shall not affect the validity of the notice.

*(Ord. 612 (part), 1993)*

**| 8.28.050 - Request to abate nuisance.**

A.

Where the city planning director or public works director or his or her designee determines that nuisance conditions exist on real property located within the city which are subject to the nuisance abatement provisions of this chapter, the city planning director or public works director or his or her designee shall cause the owner of such property to be served with a request to abate such nuisance prior to initiating any of the nuisance abatement proceedings provided for by this chapter.

B.

In such written request, the city planning director or public works director or his or her designee shall describe the nuisance to be abated, set forth a reasonable time within which work to abate the nuisance must be completed, and advise the property owner that the property owner may be subject to the nuisance abatement proceedings provided for by this chapter in the event the nuisance is not abated within the time prescribed in this chapter.

C.

However, where nuisance conditions arise out of a violation of the provisions of this code, the city planning director or public works director or his or her designee shall not be required to serve the owner of the property on which such nuisance exists with a separate request to abate the nuisance in any case in which a written notice of such violation has previously been served on such property owner by the city planning director or by any other individual.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

**| 8.28.060 - Nuisance abatement order—Initiation of proceedings on proposed order.**

A.

Upon determining that nuisance conditions exist on real property located in the city, the city planning director or public works director or his or her designee, with the approval of the city manager, may initiate proceedings before the council to abate such nuisance in the manner hereinafter provided by this chapter by preparing a proposed nuisance abatement order and transmitting such order to the city clerk who shall schedule the order for consideration by the council during a public hearing at the first regular or adjourned regular meeting of the city council following the twentieth day after receipt of the order.

B.

In the proposed nuisance abatement order, the city planning director or public works director or his or her designee shall describe the alleged nuisance with particularity; shall describe the property on which such nuisance is located by a legal description, assessor's parcel number and, where possible, by a street address; shall identify the owner of such property; and shall set forth a date by which the nuisance must be abated in accordance with the terms of such order. In addition, the city planning director or public works director or his or her designee shall affix to the order as an exhibit thereto a map depicting the property on which such nuisance is located.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

**| 8.28.070 - Nuisance abatement order—Notice of hearing.**

A.

At least ten days prior to the scheduled date of a public hearing before the council on a proposed nuisance abatement order, the city planning director or public works director or his or her designee shall cause notice of the time and place of such hearing and a copy of such order to be served on the owner of the property on which the alleged nuisance is located, and on any person known to the building official to be occupying all or any part of such property if such person or persons is someone other than the owner of the property.

B.

In addition, at least ten days prior to the date of a public hearing before the council on a proposed nuisance abatement order, the city planning director or public works director or his or her designee shall cause a notice which sets forth the time, date and place of the hearing on such order as well as a statement of the substance of the order to be posted in a conspicuous place on or near the property on which the alleged nuisance is located.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

**| 8.28.080 - Nuisance abatement order—Hearing on proposed order.**

A.

At the time and place set for the hearing on the proposed nuisance abatement order, the council shall consider a report of the city planning director or public works director or his or her designee on such order and all other relevant evidence bearing on the order, including, in particular, any objection to the order presented by the owner of the property upon which the alleged nuisance is located.

B.

At the conclusion of the hearing, the council, based on such evidence, shall determine whether any of the alleged nuisance conditions described in the proposed nuisance abatement order exists on the real property which is the subject of the order, whether such conditions constitute a nuisance within the meaning of this chapter, and if a nuisance is found to exist on the property which is the subject of the order, whether the time for abating the nuisance as set forth in the proposed order is appropriate, given all of the circumstances of the case.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

#### **8.28.090 - Nuisance abatement order—Action on proposed order.**

A.

If, after considering the proposed nuisance abatement order at a public hearing in the manner provided by this chapter, the council finds that a nuisance does exist on the property which is the subject of the such order, the council shall, by resolution, approve the order together with any modifications thereto which it deems appropriate.

B.

Following adoption of such order, the city clerk shall immediately transmit a certified copy of the order to the city planning director or public works director or his or her designee who shall promptly cause the same to be served on the owner of the property which is the subject of the order.

C.

If, on the other hand, the council should not find that a nuisance exists on the property which is the subject of the proposed nuisance abatement order, the proceedings on such order shall be deemed dismissed.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

#### **8.28.100 - Nuisance abatement work performed by or on behalf of the city.**

A.

Where a property owner has failed to abate a nuisance within the time prescribed by a nuisance abatement order approved by the council and served on such property owner in the manner provided for by this chapter, the city planning director or public works director or his or her designee shall cause the nuisance to be abated either by the use of city forces or, with approval of the city manager, by employing a private contractor to perform such work. However, the city planning director or public works director or his or her designee shall not enter upon or cause any other person to enter upon the property which is the subject of a nuisance abatement order for the purpose of performing abatement work thereon without the prior written consent of the property owner unless and until a warrant or other order has been obtained by the city attorney on behalf of the city from a court of competent jurisdiction which authorizes an entry on such property for such purpose.

B.

When undertaking work necessary to abate a nuisance following the failure of the owner of the property on which such nuisance is located to abate the nuisance within the time prescribed by a nuisance abatement order, the city planning director or public works director or his or her designee shall keep an accurate record of the nature of such work and all direct and indirect costs incurred in connection with the performance of such work. In those cases in which the city planning director or public works director or his or her designee has employed a private contractor to perform nuisance abatement work, such indirect costs shall include the cost of preparing plans and specifications for the work, the cost of preparing, bidding and awarding a contract for performance of the work, and the cost of inspecting the work.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

#### **8.28.110 - Assessment for city abatement costs—Initiation of assessment proceedings.**

A.

Upon completion of the work necessary to abate a nuisance following the failure of the owner of the property on which the nuisance is located to abate such nuisance within the time prescribed by a nuisance abatement order approved by the council and served on such property owner in the manner provided for by this chapter, the city planning director or public works director or his or her designee shall promptly transmit a copy of the record of any abatement costs prepared by the city planning director or public works director or his or her designee in connection with such work to the city clerk.

B.

Upon receipt of such record of abatement costs, the city clerk shall schedule a hearing before the council at the first regular meeting of the council following the twentieth day after receipt of such record for the purpose of confirming such abatement costs and levying an assessment in the amount of the abatement costs against the owner of the property upon which such abatement work was performed.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

#### **8.28.120 - Assessment for city abatement costs—Notice of hearing on assessment.**

At least ten days prior to the scheduled date of public hearing before the council on assessment for city abatement costs, the city planning director or public works director or his or her designee shall cause a notice of the time and place of such hearing and a copy of the record of abatement costs which was prepared by the city planning director or public works director or his or her designee to be served on the owner of the property on which abatement work was performed and for which such abatement costs were incurred.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

#### **8.28.130 - Assessment for city abatement costs—Hearing on proposed assessment.**

A. At the time and place set for the hearing on an assessment for city abatement costs, the council shall consider the record of city abatement costs prepared by the city planning director or public works director or his or her designee, as well as all relevant evidence bearing on the reasonableness of the city abatement costs, including, in particular, any protest to such abatement costs made by the owner of the property upon which abatement work was performed and for which such abatement costs were incurred.

B. At the conclusion of the hearing, the council shall determine whether the abatement work performed by the city planning director or public works director or his or her designee was necessary to abate the nuisance required by the nuisance abatement order issued by the council served on the owner of the property upon which such nuisance was located in the manner provided for by this chapter, and whether the cost of such nuisance work was reasonable, given all of the circumstances of the case.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

#### **8.28.140 - Assessment for city abatement costs—Adoption of resolution levying assessment.**

A. After considering city abatement costs at a public hearing in the manner provided by this chapter, the council shall, by resolution, confirm such costs or any part thereof found by the council to be reasonable, and shall levy an assessment against the owner of the property on which the abatement work was performed in the amount of such costs.

B. In addition to levying an assessment against the owner of the property upon which city abatement work was performed in the amount of the city's abatement costs, the council resolution shall set forth the date of the nuisance abatement order and a brief description of the abatement work performed by or on behalf of the city; shall describe the property upon which such work was performed by legal description, assessor's parcel number, and where possible by a street address; shall contain the name and current address of the owner of such property; and shall state that payment of the assessment shall be due immediately upon service of the resolution on the owner of the property in the manner provided by this chapter.

C. Moreover, in its resolution the council shall provide for collection of the assessment in the event of nonpayment either by recordation of the council resolution in the manner provided for by Section 38773.1 of the California Government Code, or later amendments thereto, or by including the assessment on the county tax rolls in the manner provided for by Section 38773.5 of the Government Code. Following adoption of the council resolution, the city clerk shall immediately transmit two certified copies of the resolution to the city planning director or public works director or his or her designee.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

#### **8.28.150 - Assessment for city abatement costs—Service of council resolution levying**

**assessment.**

Following receipt of a council resolution levying an assessment for abatement costs, the city planning director or public works director or his or her designee shall cause the resolution to be served on the owner of the property upon which city abatement work was performed in the following manner:

A.

If the council resolution levying the assessment provided for collection of the assessment by recordation of the resolution against the property upon which city abatement work was performed, the city planning director or public works director or his or her designee shall cause a copy of the resolution to be served on the owner of such property in the same manner as required by law for the service of a summons in a civil action, as set forth in Article 3, Chapter 4, Title 5 of Part 2 of the Code of Civil Procedure (commencing with Section 415.10) or latter amendments thereto, provided, however, that in the event the owner of the property upon which the city abatement work was performed cannot be found after a diligent search, the city planning director shall serve the council resolution by posting a copy thereof in a conspicuous place on or next to such property for a period of ten days, and by publishing a copy of the resolution in a newspaper of general circulation in the county in the manner provided for by Section 6062 of the Government Code.

B.

If the council resolution levying the assessment provides for collection of the assessment by inclusion of the assessment on the county tax rolls, the city planning director or public works director or his or her designee shall cause a certified copy of the resolution to be served on the owner of the property upon which the abatement work was performed in the manner provided for by Section 8.28.040 of this chapter.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

**8.28.160 - Collection of assessment by recordation of council resolution levying assessment—Recordation of council resolution.**

A.

Where the council has adopted a resolution levying an assessment for city abatement costs and has provided in such resolution for the collection of such abatement costs by recording the resolution against the property on which the abatement work was performed, the city planning director or public works director or his or her designee, promptly after completing service of the council resolution in the manner required by this chapter, shall attach an affidavit or declaration attesting to such service to a certified copy of the resolution, and shall cause such certified copy of the resolution, with the declaration or affidavit attached, to be recorded in the official records of the county.

B.

After the date of such recordation, the assessment provided for by such resolution shall constitute a lien against the property upon which city abatement work was performed and shall have the same force, effect and priority as a judgment lien.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

**8.28.170 - Collection of assessment by recordation of council resolution levying assessment—Commencement of foreclosure action.**

When directed to do so by the city council, the city attorney shall commence an action in a court of appropriate jurisdiction to foreclose the assessment lien for city abatement work which was established by recordation of the council resolution levying the assessment for such abatement work in the manner provided by this chapter. In such action the city shall be entitled to recover any costs incurred for the purpose of processing, serving or recording such resolution.

*(Ord. 612 (part), 1993)*

**8.28.180 - Collection of assessment by recordation of council resolution levying assessment—Release of assessment lien.**

At such time as the lien created by recordation of the council resolution levying an assessment for city abatement costs is discharged or satisfied, either through payment of the lien, or by sale of the property encumbered by the lien at the conclusion of a foreclosure action, the city planning director or public works director or his or her designee shall promptly cause a release of the lien, in a form approved by the city attorney, to be recorded in the official records of the county.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

**8.28.190 - Collection of assessment on county tax rolls—Requests for inclusion of assessment on county tax rolls.**

Where the city council has adopted a resolution levying an assessment for city abatement costs and has provided in such resolution for the collection of such assessment on the county tax rolls, the city planning director or public works director or his or her designee, after serving the resolution in the manner required by this chapter, shall promptly transmit a certified copy of the resolution to the finance officer who shall immediately forward same to the county auditor with a request that the assessment levied by such a resolution be added to the county tax rolls in the manner laws applicable to the levy, collection and enforcement of property tax shall be applicable to such special assessment.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

**8.28.200 - Collection of assessment on county tax rolls—Payment of assessment.**

If the assessee should pay to the city the full amount of an assessment levied for city abatement costs, together with any interest or penalties thereon, after the date the assessment is added to the county tax rolls, the city finance officer shall promptly cause such assessment to be removed from the tax rolls.

*(Ord. 612 (part), 1993)*

**8.28.210 - Summary nuisance abatement.**

A.

Where the city planning director or public works director or his or her designee determines that nuisance conditions exist on real property located in the city, that the owner of such property is unavailable or has failed or refused to abate such nuisance after having been personally served with a request to abate same, that the nuisance constitutes a substantial and immediate threat to the public health or safety, and that any further delay in abating the nuisance would pose an unreasonable risk of harm to persons or property, the city planning director or public works director or his or her designee, with the approval of the manager, may cause the nuisance to be summarily abated in the manner provided by this chapter without a nuisance abatement order issued by the city council in the manner required by this chapter. In the event the city planning director or public works director or his or her designee causes a nuisance to be summarily abated in the manner authorized by this section, the city planning director or public works director or his or her designee shall prepare a written report setting forth the justification for such summary abatement procedures and forward such report to the city council for consideration along with the record of city abatement costs at the first regular meeting of the city council following the twentieth day after completion of abatement work.

*(Ord. 646 (part), 1996; Ord. 612 (part), 1993)*

**8.28.220 - Civil action to abate nuisance.**

Nothing in this chapter shall be deemed to preclude the city attorney from commencing a civil action to abate a nuisance in the manner provided for by the laws of this state as an alternative to the administrative nuisance abatement proceeding provided for by this chapter.

*(Ord. 612 (part), 1993)*

**8.28.230 - Penalty.**

Any person who removes or defaces a proposed nuisance abatement order or other notice which is posted in the manner provided for by this chapter shall be guilty of an infraction, punishable as set forth in Section 1.20.010 of this code.

*(Ord. 612 (part), 1993)*