

CITY OF WINTERS PLANNING COMMISSION AGENDA

Tuesday, May 26, 2015 @ 6:30 PM

City of Winters Council Chambers
318 First Street
Winters, CA 95694-1923
Community Development Department
Contact Phone Number (530) 794-6713
Email: jenna.moser@cityofwinters.org

Chairman: Bill Biasi
Vice Chairman: Kate Frazier
Commissioners: Dave Adams, Lisa Baker,
Paul Myer, Luis Reyes, Patrick Riley
City Manager: John W. Donlevy, Jr.
Mgmt. Analyst: Jenna Moser

I CALL TO ORDER

II ROLL CALL & PLEDGE OF ALLEGIANCE

III CITIZEN INPUT: Individuals or groups may address the Planning Commission on items which are not on the Agenda and which are within the jurisdiction of the Planning Commission. **NOTICE TO SPEAKERS:** Speaker cards are located on the first table by the main entrance; please complete a speaker's card and give it to the Planning Secretary at the beginning of the meeting. The Commission may impose time limits.

IV CONSENT ITEM

- A. Minutes of the January 27, 2015 and the February 24, 2015 Planning Commission meetings.

V STAFF/COMMISSION REPORTS

VI DISCUSSION ITEMS:

- A. Study Session
 1. Landscaping & Irrigation – Draft Ordinance updating landscaping requirements for new development.
 2. Home Occupations – Draft Zoning Ordinance amendment to address AB1616 (Cottage Food) and amendment to address special exceptions for Home Occupations that take appointments in the home.
 3. Marijuana Cultivation Ordinance – Draft Ordinance regulating the indoor and outdoor cultivation of marijuana.

VII COMMISSION/STAFF COMMENTS

VIII ADJOURNMENT

POSTING OF AGENDA: PURSUANT TO GOVERNMENT CODE § 54954.2, THE COMMUNITY DEVELOPMENT MANAGEMENT ANALYST POSTED THE AGENDA FOR THIS MEETING ON MAY 19, 2015.



JENNA MOSER, MANAGEMENT ANALYST, PLANNING – GIS

APPEALS: ANY PERSON DISSATISFIED WITH THE DECISION OF THE PLANNING COMMISSION MAY APPEAL THIS DECISION BY FILING A WRITTEN NOTICE OF APPEAL WITH THE CITY CLERK, NO LATER THAN TEN (10) CALENDAR DAYS AFTER THE DAY ON WHICH THE DECISION IS MADE.

PURSUANT TO SECTION 65009 (B) (2), OF THE STATE GOVERNMENT CODE "IF YOU CHALLENGE ANY OF THE ABOVE PROJECTS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING(S) DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE CITY PLANNING COMMISSION AT, OR PRIOR TO, THIS PUBLIC HEARING".

MINUTES: THE CITY DOES NOT TRANSCRIBE ITS PROCEEDINGS. ANYONE WHO DESIRES A VERBATIM RECORD OF THIS MEETING SHOULD ARRANGE FOR ATTENDANCE BY A COURT REPORTER OR FOR OTHER ACCEPTABLE MEANS OF RECORDATION. SUCH ARRANGEMENTS WILL BE AT THE SOLE EXPENSE OF THE INDIVIDUAL REQUESTING THE RECORDATION.

PUBLIC REVIEW OF AGENDA, AGENDA REPORTS, AND MATERIALS: PRIOR TO THE PLANNING COMMISSION MEETINGS, COPIES OF THE AGENDA, AGENDA REPORTS, AND OTHER MATERIAL ARE AVAILABLE DURING NORMAL WORKING HOURS FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT. IN ADDITION, A LIMITED SUPPLY OF COPIES OF THE AGENDA WILL BE AVAILABLE FOR THE PUBLIC AT THE MEETING. COPIES OF AGENDA, REPORTS AND OTHER MATERIAL WILL BE PROVIDED UPON REQUEST SUBMITTED TO THE COMMUNITY DEVELOPMENT DEPARTMENT. A COPY FEE OF 25 CENTS PER PAGE WILL BE CHARGED.

ANY MEMBER OF THE PUBLIC MAY SUBMIT A WRITTEN REQUEST FOR A COPY OF PLANNING COMMISSION AGENDAS TO BE MAILED TO THEM. REQUESTS MUST BE ACCOMPANIED BY A CHECK IN THE AMOUNT OF \$25.00 FOR A SINGLE PACKET AND \$250.00 FOR A YEARLY SUBSCRIPTION.

OPPORTUNITY TO SPEAK, AGENDA ITEMS: THE PLANNING COMMISSION WILL PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE COMMISSION ON ITEMS OF BUSINESS ON THE AGENDA; HOWEVER, TIME LIMITS MAY BE IMPOSED AS PROVIDED FOR UNDER THE ADOPTED RULES OF CONDUCT OF PLANNING COMMISSION MEETINGS.

REVIEW OF TAPE RECORDING OF MEETING: PLANNING COMMISSION MEETINGS ARE AUDIO TAPE RECORDED. TAPE RECORDINGS ARE AVAILABLE FOR PUBLIC REVIEW AT THE COMMUNITY DEVELOPMENT DEPARTMENT FOR 30 DAYS AFTER THE MEETING.

THE COUNCIL CHAMBER IS WHEELCHAIR ACCESSIBLE

**DRAFT MINUTES OF THE SPECIAL WINTERS PLANNING COMMISSION
MEETING HELD JANUARY 27, 2015**

***DISCLAIMER:** These minutes represent the interpretation of statements made and questions raised by participants in the meeting. They are not presented as verbatim transcriptions of the statements and questions, but as summaries of the point of the statement or question as understood by the note taker.*

Chair Bill Biasi called the meeting to order at 6:30 p.m.

PRESENT: Commissioners Adams, Baker, Frazier, Myer, Riley, Reyes and Chair Biasi

ABSENT: None

STAFF: City Manager John W. Donlevy, Jr., Housing Programs Manager Dan Maguire, Community Development Director Dave Dowswell, Management Analyst Jenna Moser

Niki Chapman led the Pledge of Allegiance.

CITIZEN INPUT: None at this meeting.

CONSENT ITEM:

- A. Minutes of the January 5, 2015 Special Planning Commission meeting

Baker noted typographical errors. Moser made modifications in the minutes to correct errors.

Myer moved, and Frazier seconded to approve with modifications the Minutes of the January 5, 2015 Special Planning Commission meeting.

AYES: Commissioners Adams, Baker, Frazier, Myer, Riley, Reyes and Chairman Biasi.

NOES: None

ABSTAIN: None

ABSENT: None

COMMISSION REPORTS: Chairman Biasi reported on the Putah Creek Committee related to the proposed improvements with the PG&E Gas Operations Technical Training Center.

STAFF REPORTS: None

DISCUSSION ITEM:

- A. **Consideration of an application for a Tentative Subdivision Map (18 lots) for parcel 003-391-005 & 003-392-001 near Apricot Avenue & Pear Place. Project applicant Joe & Karen Ogando seek to divide the existing two parcels totaling 4.21 acres into eighteen (18) new lots with an average size of approximately 6,000 square feet. The Planning Commission will make a recommendation to the City Council to take final action on the project at a future Public Hearing to be noticed separately.**

Management Analyst Moser provided an overview of the staff report. Commissioner Riley asked about the plan to relocate existing Olive Trees on site. Joe Ogando explained that he will preserve some existing orchard trees as “backyard” trees as appropriate, the larger Olive Trees will be located in the cul-du-sac, and

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in the walkway. Ogando explained the process for moving trees. Riley asked about the entrances/front doors of the residences that are along Hemenway. Ogando responded that the front doors will be on Hemenway, with garage access at the rear through the cul-du-sac. Commissioner Myer asked about addressing of the lots, and mailboxes. Moser responded that addressing and mailboxes would be addressed at Design Review. Commissioner Baker stated concerns about the relocated Olive Trees dying. Ogando responded that if one died, he would plant another. Myer asked about potential pricing for the homes. Ogando responded that he does not have prices specified yet. Myer asked about the application of park-in-leiu fees. Moser responded that fees would be paid based on current appraised residential land values.

At 7:00 Chairman Biasi opened the Public Hearing.

Joe Bristoe stated concerns with vicinity traffic, but supports the project.

Don Jordan stated he is happy with the potential traffic relief on Hemenway with the connection of Apricot Ave.

Hearing no other comments, at 7:10 Biasi closed the Public Hearing.

Commissioner Frazier asked about the potential application of speed bumps or speed control measures. Donlevy responded that speed bumps are not terribly effective, noting Jordan's comments about the measures on Hemenway.

Moser outlined the formula for calculating the density of the project. Discussion followed regarding density and zoning. Drainage for the flag lot was discussed.

Baker moved, and Myer seconded to recommended that the City Council approve the Tentative Subdivision Map (18 lots) for parcel 003-391-005 & 003-392-001 near Apricot Avenue & Pear Place with the added condition that the applicant will install broadband conduit within the project. Project applicant Joe & Karen Ogando seek to divide the existing two parcels totaling 4.21 acres into eighteen (18) new lots with an average size of approximately 6,000 square feet.

AYES: Commissioners Adams, Baker, Frazier, Myer, Riley, Reyes and Chairman Biasi.

NOES: None

ABSTAIN: None

ABSENT: None

- B. Consideration of an application for Site Plan/Design Review for 3 single-family residences near Mermod Road and Anderson Avenue. Project applicant Miguel Moreno – Next Generation Development, LLC seeks to construct 1 single-story and 2 two-story single-family homes with stone and brick accents, stucco exteriors, and distinctive garage doors. The Planning Commission will take final action on the project unless appealed to City Council.**

Moser provided an overview of the Staff Report. Miguel Moreno provided an overview of the home designs, noting that he is working with the school district in saving existing "dual purpose" trees along the southern boundary of the site.

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Biasi opened the Public Hearing at 7:15pm. Hearing no comments Biasi closed the public hearing at 7:15pm.

Baker asked about the landscaping plan. Moser responded that the applicant did not provide a landscaping plan, however the project has been conditioned to include water-conscious landscape and will be reviewed by staff prior to building permit issuance. Donlevy added that with the application of the California Green Code, the landscape will be “green”.

Myer asked about landscaping, location of HVAC, streetlighting, mailbox locations, and solar applicability. Moreno responded that the HVAC is located in the attic, mailboxes and addressing is being addressed currently, and that solar is not being considered at this time. Donlevy added that the California Green Code states that the project must be plumbed for solar and has certain roofing requirements.

Biasi asked about impact fees for parks. Moser responded that the applicant will be paying standard impact fees for parks. Biasi commented on the front-loaded garages, discouraging them. Baker suggested integrating “carriage” style garage doors. Moreno said he would explore more distinctive garage doors.

Myer moved, and Baker seconded to approve Design Review/Site Plan for 3 single-family residences near Mermod Road and Anderson Avenue.

AYES: Commissioners Adams, Baker, Frazier, Myer, Riley, Reyes and Chairman Biasi.

NOES: None

ABSTAIN: None

ABSENT: None

- C. Consideration of an application from Project applicant AKM Railroad LLC – Ken Patel or Mike Olivas for Site Plan/Design Review, Parcel Map, and Conditional Use Permit for construction of a 70-unit Hotel with banquet/conference center, and approximately 10,500 square feet of commercial space and meeting rooms. The project will be three stories and includes an approximately 7,500 square feet courtyard. The Parcel Map will reconfigure the existing 7 parcels {APN 003-204-002 (0.207 Acres), 03 (0.11 Acres), 04 (0.356 Acres), 05 (0.06 Acres), 06 (0.09 Acres), 07 (0.153 Acres) & 003-204-018 (0.138 Acres)} into 3 new parcels (Parcel 1, 0.32 Acres, Parcel 2, 0.768 Acres & Parcel 3, 0.027 Acres). A Conditional Use Permit will allow for Bar/Cocktail Lounge/Pub Use. The Planning Commission will take final action on the project unless appealed to the City Council.**

Moser provided an overview of the Staff Report. Mike Olivas introduced partners and designers and provided an overview of the site plan.

Biasi opened the Public Hearing at 7:55pm.

John Pickerel spoke in support of the project, and stated his parking concerns.

Matt Murphy spoke in support of the project, and stated his parking concerns.

Hearing no other comments, Biasi closed the Public Hearing at 8:00pm.

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Myer asked how much the City will be spending on this project. Donlevy responded that the City will be responsible for demolition of the buildings and the sale of the property. Options for future addressing of parking concerns followed.

Baker asked about available bicycle parking. Olivas stated that bike parking would be provided on site. Baker asked about makeup of lower story materials and the upper story materials. Olivas responded that the materials for the uppermost areas of the hotel would be of a long-lasting material, anything that can be touched, seen closely, will be made of a higher quality material suitable for closer interaction. All windows will be operable in rooms.

Frazier asked if all rooms would be built immediately. Olivas responded that the project will be built in one phase but the number of rooms built may ramp up over time, not finished all at once.

Reyes asked about the rod rails and Olivas used the 3-D model to show detail.

Riley asked about how many hotel projects the applicant's architect has completed. Olivas responded that they stopped counting and have lost count.

Biasi asked about trash compaction. Olivas discussed the potential of a downtown solution working together using a compactor.

Frazier asked about a delivery entrance. Olivas responded that there would be alley-access for deliveries.

Baker moved, and Myer seconded to approve application from Project applicant AKM Railroad LLC – Ken Patel or Mike Olivas for Site Plan/Design Review, Parcel Map, and Conditional Use Permit for construction of a 70-unit Hotel with banquet/conference center, and approximately 10,500 square feet of commercial space and meeting rooms. The project will be three stories and includes an approximately 7,500 square feet courtyard. The Parcel Map will reconfigure the existing 7 parcels {APN 003-204-002 (0.207 Acres), 03 (0.11 Acres), 04 (0.356 Acres), 05 (0.06 Acres), 06 (0.09 Acres), 07 (0.153 Acres) & 003-204-018 (0.138 Acres)} into 3 new parcels (Parcel 1, 0.32 Acres, Parcel 2, 0.768 Acres & Parcel 3, 0.027 Acres). A Conditional Use Permit will allow for Bar/Cocktail Lounge/Pub Use.

AYES: Commissioners Adams, Baker, Frazier, Myer, Riley, Reyes and Chairman Biasi.

NOES: None

ABSTAIN: None

ABSENT: None

COMMISSIONER/STAFF COMMENTS: None

ADJOURNMENT: Chairman Biasi adjourned the meeting at 8:40pm.

ATTEST: _____

Jenna Moser, Management Analyst

Bill Biasi, Chairman

**DRAFT MINUTES OF THE WINTERS PLANNING COMMISSION
MEETING HELD FEBRUARY 24, 2015**

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Chair Bill Biasi called the meeting to order at 6:30 p.m.

PRESENT: Commissioners Baker, Frazier, Riley, Reyes and Chair Biasi

ABSENT: Adams, Myer

STAFF: City Manager John W. Donlevy, Jr., Housing Programs Manager Dan Maguire, Community Development Director Dave Dowswell, Management Analyst Jenna Moser

Chairman Biasi led the Pledge of Allegiance.

CITIZEN INPUT: None at this meeting.

CONSENT ITEM: None

COMMISSION REPORTS: None

STAFF REPORTS: None

DISCUSSION ITEM:

- A. **Consideration of an application from Project applicant Clyde Miles Construction Co. Inc. for Site Plan/Design Review for the 72 single family homes for the Hudson-Ogando Subdivision. Under review will be the 47 large-lot and 25 narrow-lot designs. The Planning Commission will take final action on the project unless appealed to the City Council.**

Commissioners Adams and Myer were absent due to proximity conflict with this project.

Community Development Director Dowswell provided an overview of the staff report. Dowswell reported that the applicant has made modifications to the project to address fencing, articulation, and shutters. All remaining questions on Conditions of Approval have been met, and the only remaining item unaddressed was the fence-post material. Commissioner Riley asked about the fence-post material. Dowswell confirmed the City Conditions require metal posts at this time. Riley stated his preference for metal over wood posts.

Richard Handlen, representing Clyde Miles Construction Co. Inc, provided an overview of the project and walked the commission through the various models.

At 6:40 Chairman Biasi opened the Public Hearing.

Hearing no comments, at 6:40 Biasi closed the Public Hearing.

Discussion followed on window sizes, shutters, and garage sizes. Commissioners concurred on metal fence-posts. Dowswell reported that the landscaping plans will be reviewed by City Staff with consideration to upcoming water restrictions. The applicant confirmed that there is no proposed homeowners association.

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MEETING HELD FEBRUARY 24, 2015**

Baker moved, and Frazier seconded to approve the application from Project applicant Clyde Miles Construction Co. Inc. for Site Plan/Design Review for the 72 single family homes for the Hudson-Ogando Subdivision with conditions as amended.

AYES: Commissioners Baker, Frazier, Riley, Reyes and Chairman Biasi.

NOES: None

ABSTAIN: None

ABSENT: Adams, Myer

Motion carried with Adams and Myer absent due to proximity conflict.

COMMISSIONER/STAFF COMMENTS: Chairman Biasi requested staff research on downtown parking options.

ADJOURNMENT: Chairman Biasi adjourned the meeting at 7:30pm.

ATTEST: _____

Jenna Moser, Management Analyst

Bill Biasi, Chairman



**PLANNING COMMISSION
STAFF REPORT**

TO: Chairmen and Planning Commissioners
DATE: May 26, 2015
THROUGH: John W. Donlevy, Jr., City Manager 
FROM: Martin Romero, Planning Intern
David Dowswell, Contract Planner
SUBJECT: 17.76 Landscaping and Irrigation (Study Session)

RECOMMENDATION: That the Planning Commission review the proposed amendments, ask questions, take comments from the public and give staff direction. Staff will update the draft ordinance and schedule for a public hearing.

BACKGROUND: During an internal staff meeting for the PG&E Training Facility project staff became aware that the City does not have minimum landscaping standards for each zoning district, including in the Form-Based Code, only for parking lots. Most cities do have minimum landscaping standards. The proposed changes to the Chapter 17.76 “Landscaping and Irrigation” standards (Attachment A) are in response to those concerns.

DISCUSSION: The proposed Zoning Ordinance amendments will affect all of the city’s zoning districts. In drafting the proposed changes to Winters landscaping standards Staff reviewed the City of Dixon’s landscaping standards and used them as a template. Using Dixon’s standards as a template staff prepared standards for each of Winters zoning districts.

The proposed landscaping standards do not amend subsections 17.76.040 A and B, which cover maintenance of plants and trees and placement of landscaping. The proposed changes to subsection 17.76.040C through F would combine the existing subsections C through F into a new subsection F and would create new subsections C through E. The new subsection C establishes minimum amounts of landscaping by zoning district needed for each new development. The new subsection establishes special regulations applicable to landscaping being placed along a scenic highway. The new subsection E establishes minimum standards for each type of landscaping. The proposed changes will add to/supplement the standards found in subsection 17.58.060G(1) of the Form Based Code.

ALTERNATIVES:

Take no action on the proposed changes.

RECOMMENDATION: That the Planning Commission review the proposed amendments, ask questions, take comments from the public and give staff direction. Staff will update the draft ordinance and schedule for a public hearing.

ATTACHMENTS:

- A. Draft ordinance

17.76.040 Standards

A and B. No change to existing language.

C. Required landscaping shall be installed and maintained in accordance with the regulations contained in this chapter

1. Neighborhood Commercial District
 - a. Boundary landscaping is required for a minimum depth of ten (10) feet along all property lines abutting streets (except for the area required for street openings) and/or other public right-of-way or publicly owned property.
 - b. Additional landscaping, equal to at least seven (7) percent of the total area of the building site, is required and a minimum of twenty-five (25) percent of such landscaping shall be located in the area devoted to parking. This is a minimum and does not replace or lower other requirements for landscaping for shade or other purposes pursuant to other sections of the code.
 - c. Trees shall be provided every thirty (30) feet on center within the required landscape area. Tree selection shall be from the city's adopted street tree list and as approved to the satisfaction of the community development director.
2. Business/ Industrial Park, Light Industrial, and Heavy Industrial.
 - a. Boundary landscaping is required for a minimum depth of eight (8) feet along all property lines abutting streets (except for the area required for street openings) and/or other public right-of-way or publicly owned property.
 - b. Not less than five (5) percent of any vehicle storage or parking area shall be landscaped; all vegetation and landscaping required by the zoning regulations shall employ drought resistant species. This is a minimum and does not replace or lower other requirements for landscaping for shade or other purposes pursuant to other sections of the code.
 - c. All portions of the building site, exclusive of structures, parking areas, recreational uses, driveway and walkways, shall be landscaped.
 - b. At least one (1) tree is required for each thirty (30) feet of landscaping or fraction thereof. Tree species are encouraged to be from the City's approved street tree list.
3. Highway Service Commercial and Office.
 - a. Where a vehicular easement is created parallel to a street, it shall be separated from such street by landscaping at least five (5) feet wide except for the area required for street openings.

- b. Where a vehicular easement is not created parallel to the street, landscaping at least ten (10) feet wide shall be installed along and adjacent to the ultimate right-of-way line of any abutting street (except for the area required for street openings) and/or other public right-of-way or publicly owned property.
 - c. At least two (2) trees are required for each fifty (50) feet of landscaping or fraction thereof. Tree species are encouraged to be from the City's approved street tree list.
- 4. Public Quasi Public (applies to properties not within the Form-Based Code, Chapter 17.58)
 - a. Boundary landscaping is required for a minimum depth of ten (10) feet along all property lines abutting streets (except for the area required for street openings) and/or other public right-of-way or publicly owned property.
 - b. Additional landscaping, equal to at least seven (7) percent of the total area of the building site, is required and a minimum of twenty-five (25) percent of such landscaping shall be located in the area devoted to parking. This is a minimum and does not replace or lower other requirements for landscaping for shade or other purposes pursuant to other sections of the code.
 - c. Trees shall be provided every thirty (30) feet on center within the required landscape area. Tree selection shall be from the city's adopted street tree list and as approved to the satisfaction of the community development director.
- 5. Single Family Residential (7,000) and Single Family Residential (6,000).
 - a. The front yard of all new single-family homes shall be xeriscaped or landscaped and irrigated (only drip irrigation or equivalent is allowed).
 - b. At least one (1) street tree is required for each fifty (50) feet of street frontage. Species shall be selected from the City's approved street tree list.
- 6. Multi-Family Residential and High Density Multi-Family Residential
 - a. The front yard of all multi-family homes shall be xeriscaped or landscaped and irrigated (only drip irrigation or equivalent is allowed).
 - b. At least one (1) street tree is required for each fifty (50) feet of street frontage. Species shall be selected from the City's approved street tree list.
- 7. Downtown A and Downtown B, PQP (applies to properties within the Form-Based Code).
Refer to the City of Winters Form-Based Code Chapter 17.58
- 8. Where nonresidential and multiple-family uses are located in residential zoning districts, landscaping shall be installed and maintained in accordance with the following provisions:

a. Landscaped areas shall comprise a minimum of twenty (20) percent of all building sites and shall include as a minimum:

1. A fifteen (15) foot wide area along all street frontages and/or public rights of way and/or publicly owned land; and
2. A ten (10) foot wide area along all interior property lines.

b. At least two (2) trees are required for each fifty (50) feet of landscaping or fraction thereof. Tree species are encouraged to be from the City's approved street tree list.

c. Landscaping of off-street parking areas shall include, but not be limited to, the following:

1. Ends of parking rows capped with a landscape planter to define rows;
2. A maximum distance of thirty-five (35) feet between planted areas located along parking rows.

9. Automotive and Equipment Use Types.

Notwithstanding the provisions of an applicable zoning district, on any building site with an automotive and equipment use the following landscaping shall be required in accordance with the regulations of Winters Form-Based Code. Boundary landscaping is required for a minimum depth of ten (10) feet along all property lines abutting streets except for the area required for street opening and the area within four (4) feet on either side of street openings.

D. Special regulations applicable to landscaping along designated scenic highway.

In reviewing landscape plans, the minimum landscaping requirements of Section 17.76.040C may be increased or otherwise modified by the planning commission in order to meet the following objectives:

1. Uses which by their nature will detract from the scenic qualities of a particular designated route should be screened as much as practicable.
2. Landscaping should not obstruct significant views.
3. Landscaping should harmonize with the natural landscaping of the site.

E. Standards applicable to required landscaping.

All required landscaping shall conform to the following requirements:

1. Required landscaping materials are defined as follows:
 - a. Shrubs, of one (1) gallon size or larger;

- b. Street trees, of fifteen (15) gallon size or larger, and double staked;
 - c. Ground cover from flats or larger; and
 - d. Decorative nonliving landscaping materials such as sand, stone, gravel, wood or water may be used to satisfy up to thirty (30) percent of required landscaped area when approved by the planning commission.
- 2. Any landscaped area shall be separated from an adjacent vehicular area by a wall or curb at least six (6) inches higher than the adjacent vehicular area.
 - 3. Every effort shall be made to incorporate on-site trees and shrubbery into the required landscaping.
 - 4. The planning commission may reduce these standards by not more than fifty (50) percent when adherence to these standards would be impractical due to:
 - a. Location of existing structure;
 - b. Special site organization requirements;
 - c. Topography; and
 - d. Novel or experimental techniques of design or land development.

F. Landscaping of parking lots shall comply with the following standards:

- 1. Provide for fifty (50) percent tree canopy coverage or shading of the entire lot within fifteen (15) years of tree installation.
- 2. The end of each row of parking stalls must be separated from an aisle or driveway by a landscaped planter, sidewalk or other means. A concrete curb must separate the landscaped area from the parking area.
- 3. A landscaped strip with a minimum two (2) foot width must be installed once every ten (10) adjoining parking stalls to provide visual relief in large parking lots.
- 4. A minimum of one (1) tree for each six (6) required spaces must be distributed throughout the parking lot.



**PLANNING COMMISSION
STAFF REPORT**

TO: Chairman and Planning Commissioners
DATE: May 26, 2015
THROUGH: John W. Donlevy, Jr., City Manager *JWD*
FROM: Jenna Moser, Management Analyst Planning-GIS *JM*
SUBJECT: 17.060.080 Home Occupations (Study Session)

RECOMMENDATION: The purpose of this study session is to bring the Planning Commission up to date on the issues surrounding Home Occupation permits in Winters, provide background information, and gain preliminary feedback on draft updates to 17.060.080, Home Occupations. Input is requested on updates to address Cottage Food AB 1616, and solicit discussion about businesses that take appointments at the home.

BACKGROUND: Increased interest from community members in starting home based cottage food businesses as well as citizen inquiry regarding those businesses that take customers at the home were the driving factors in bringing this item forward to the Planning Commission for discussion and to clarify the process and regulations for the public.

The City of Winters Municipal Code defines a Home Occupation as a use which is clearly incidental and secondary to the residential use of the dwelling.

Section 17.12 Planning Agency states that the Zoning Administrator may approve applications for home occupations in residential (R) zones.

Currently, Section 17.060.080 provides for conditional approval by the Zoning Administrator provided that:

- A. No more than one home occupation shall be permitted in any dwelling unit.
- B. Only the residents of the dwelling may be employed by the home occupation.
- C. No more than fifteen (15) percent of the dwelling's gross floor area, to a maximum of four hundred (400) square feet, may be used in connection with the home occupation.

- D. No mechanical or power-driven equipment other than that customarily used in dwellings shall be used in connection with a home occupation.
- E. No sign for the home occupation shall be displayed on the house or property.
- F. The home occupation may not create vehicular or pedestrian traffic above and beyond that normally generated by residential use of the dwelling unit. For the purposes of determining compliance with this regulation, a home occupation may have no more than an average of four customers and/or deliveries to the residence per day, not to exceed a maximum of six customers and/or deliveries to the residence on any one day.
- G. There shall be no visible exterior evidence of the conduct of a home occupation. A home occupation must be conducted wholly within the dwelling unit or an accessory structure.
- H. The following uses are not permitted as home occupations:
1. Those which do not meet the provisions above;
 2. Those which entail repair, manufacturing, or processing. However, this shall not include such home occupations as handicraft, millinery, and laundering;
 3. Those which entail food handling, processing, or packing;
 4. Those which entail the harboring, training, or raising of dogs, cats, birds, or other animals;
 5. Those which entail automobile and/or body and fender repairing;
 6. Barber shops, beauty parlors, music schools, dancing schools, business schools, or schools of any kind with organized classes;
 7. Any use which is hazardous to the public health and safety or which may create objectionable noise or odors. (Ord. 97-03 § 2 (part); prior code § 8-1.5308)

No public hearing shall be required, although notice of the application shall be provided to all contiguous property owners.

Section 5.04.380 Business License also states that any business having gross receipts for the tax year of less than \$1,000.00 shall not be required to pay license fees, but shall comply with the provisions of the municipal code. This exemption shall apply to the person's place of business, whether it is a fixed place of business or the individual's home.

DISCUSSION: Small businesses have played an important role in helping Winters economy prosper and grow though tough economic times. Data from the US Census Bureau confirms that smaller companies created more jobs than larger companies during 1992-2005 and encouraging the start of small business in Winters could drive economic development as those businesses grow and expand in the future.

COTTAGE FOOD

Recent legislation now mandates a local program to permit Cottage Food operations. A cottage food business is defined as: a business with less than \$50,000 in gross receipts in the calendar year, and not more than one (1) full-time equivalent cottage food employee (not including a family member). The use permit shall be granted if the cottage food operation complies with local ordinances, noting compliance with parking, noise, spacing and concentration of uses. **(Attachment A)**

The City has permitted two (2) cottage food operations since passage of AB 1616 in 2013, incorporating language into conditions of approval to address cottage food operations that our Home Occupations section does not address.

There have not been any complaints or comments regarding these permits. The proposed draft Zoning Ordinance Section addresses Cottage Food.

HOME OCCUPATION – APPOINTMENT BASED BUSINESS

Section 17.60.080 of the Winters Municipal Code provides specific restrictions and types of uses that cannot be approved as home occupation, but even those types of occupations that are not prohibited by that section can only be approved at the discretion of the zoning administrator. For the past 10 years the City has not approved home occupations that take appointments for clients to visit the residence if the residence is not accessible to people with disabilities, based on concerns that those businesses would not be in compliance with the ADA. Businesses were permitted with mobile services, or with a commercial business address.

The ADA, Title III, establishes requirements for public accommodations, including service establishments. If a home occupation is accepting clients to come to the residence, it would be a service establishment. Even in those cases where a new business is not undertaking any new construction or renovation of its property. Title III requires businesses to remove architectural barriers in existing buildings and make sure that newly built or altered facilities are constructed to be accessible to individuals with disabilities. Businesses are required to remove architectural barriers in existing facilities when it is "readily achievable" to do so. Readily achievable means "easily accomplishable without much difficulty or expense." This would include generally creating an accessible path and an accessible entrance to the facility, and a path to the service. If barrier removal is not readily achievable, the business should provide its services in another manner, if that is readily achievable.

After discussing this issue with the Building Department and City Attorney, City staff came to the conclusion that in those cases where an applicant requests approval for a home occupation where the homeowner is not undertaking any new construction on his or her property, the City could not in the position of making a determination of whether or not that the homeowner is complying with Title II of the ADA by removing architectural barriers, to the extent readily achievable. The City should instead focus on whether or not the proposed home occupation is in compliance with the specific requirements of the City's Municipal Code. The supplied Draft Zoning Ordinance language outlines a process for the Planning Commission to make special exceptions through a Public Hearing process.

Adoption of any revisions to 17.60.080 Home Occupations requires a Public Hearing, Ordinance, and review by the Planning Commission and approval by the City Council.

The proposed Draft Zoning Ordinance Section addresses Cottage Food, and those businesses that take appointments in the home with a process for the Planning Commission to consider special exceptions.

-Section begins next page-

PROPOSED DRAFT 17.060.080 (Revised to become Section 17.94):

**Chapter 17.94
HOME OCCUPATIONS**

Sections:

- 17.94.010 Purpose and intent**
- 17.94.020 Regulations**
- 17.94.030 Administration**
- 17.94.040 Exceptions**

17.94.010 Purpose and intent

The purpose of a home occupation permit is to insure that businesses allowed to be conducted from a home can be done so in a manner without changing the residential character of the neighborhood, subject to the regulations listed in Section 17.102.020.

17.94.020 Regulations.

Any of following regulations, including but not limited to those related to direct sales from a home and permitted employees, which conflict with at-home cottage food operations permitted under California Assembly Bill 1616 and the amendments to Health and Safety Code provisions and regulations and Government Code provisions made by such legislation, shall not be enforced by the City when processing a permit under this chapter for legal at-home cottage food operations with a permit from the Yolo County Health Department:

A use which is clearly incidental and secondary to the residential use of the dwelling may be conditionally approved by the zoning administrator, provided that:

- A. No more than one (1) home occupation shall be permitted in any dwelling unit.
- B. Only the residents of the dwelling may be employed by the home occupation.
- C. No more than fifteen (15) percent of the dwelling's gross floor area, to a maximum of four hundred (400) square feet, may be used in connection with the home occupation.
- D. No required parking shall be made unusable in connection with a home occupation.
- E. No mechanical or power-driven equipment other than that customarily used in dwellings shall be used in connection with a home occupation.
- F. No sign for the home occupation shall be displayed on the house or property.
- G. The home occupation may not create vehicular or pedestrian traffic above and beyond that normally generated by residential use of the dwelling unit. For the purposes of determining compliance with this regulation, a home occupation may have no more than an average of four customers and/or deliveries to the residence per day, not to exceed a maximum of six customers and/or deliveries to the residence on any one day.
- H. There shall be no visible exterior evidence of the conduct of a home occupation. A home occupation must be conducted wholly within the dwelling unit or an accessory structure.
- I. The following uses are not permitted as home occupations:
 - 1. Those which do not meet the provisions above;

2. Those which entail repair, manufacturing, or processing. However, this shall not include such home occupations as handicraft, millinery, and laundering;
3. Those which entail food handling, processing, or packing, except as permitted by State law;
4. Those which entail the harboring, training, or raising of dogs, cats, birds, or other animals;
5. Those which entail automobile and/or body and fender repairing;
6. Barber shops, beauty parlors, music schools, dancing schools, business schools, or schools of any kind with organized classes;
7. Any use which is hazardous to the public health, safety and welfare or which may create objectionable noise or odors.

17.94.030 Administration

- A. Home Occupation Permit Required. No person shall operate a home occupation business, as defined in Chapter 5.04 Business Licenses of the Winters Municipal Code, without first having a home occupation permit.
- B. Application. An applicant for a home occupation permit shall submit a completed application form, processing fee (as applicable) and any other information required by the community development director.
- C. Reviewing Body. Home occupation permits shall be reviewed by the zoning administrator subject to the provisions in Section 17.12.030D.2.

17.94.040 Exceptions

The City recognizes that special circumstances may exist which warrant granting a possible exception to some of the regulations. Exceptions to any of the regulations shall be considered by the planning commission at a noticed public hearing. In considering a request for an exception to any regulation the planning commission shall weigh the special circumstances against the potential impact to health, safety and welfare of the public. The following are exceptions the planning commission may consider:

- A. Allowing customers to come to the home where the business is being conducted if the business complies with all other regulations.
- B. Allowing a small semi-trailer, typically one used for hauling equipment or landscaping materials, to be kept on the site if it can be kept in a place where it is not visible from the street, such as behind a solid fence and the business complies with all of the other regulations.

In granting an exception, the planning commission shall make the following findings:

1. The business cannot easily be conducted where customers do not come to the home.
2. The business can be conducted in such a manner as not to adversely impact parking.
3. The business will not adversely impact the neighborhood.

-end of section-

ALTERNATIVES:

1. No Action, or modification in whole or in part.

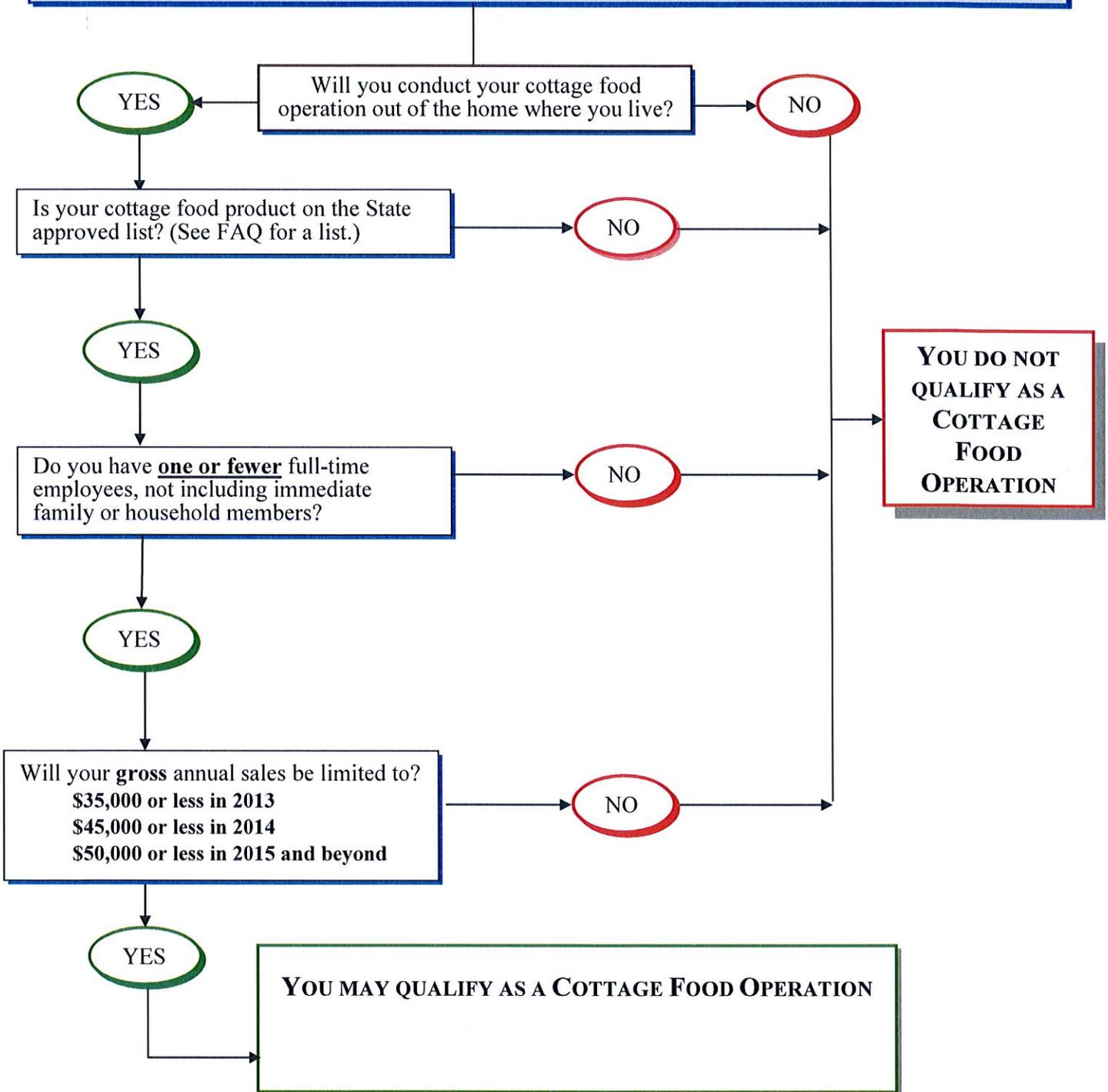
FISCAL IMPACT: A change to tracking or permitting of Home Occupation Permits would impact staff time in processing applications – potential to decrease or increase staff time.

ATTACHMENTS:

Cottage Food - AB1616 background

DOES YOUR BUSINESS QUALIFY AS A "COTTAGE FOOD OPERATION" ?

A Cottage Food Operation (CFO) is a business at a private home where low-risk ("non-potentially hazardous") food products are prepared or packaged for sale to consumers.



Note: This handout was adapted from a handout prepared by the California Conference of Directors of Environmental Health

From the Sustainable Economies Law Center:

Summary and Bill Language – AB1616

The information below is of general relevance throughout the state but each local agency may enforce the law slightly differently.

The law creates a new category of food production called a cottage food operation, which is the only type of food business that can use a home kitchen for *processing* food. The types of foods that a cottage food operation can sell are limited to “non-potentially hazardous foods,” which are foods that are unlikely to grow harmful bacteria or other toxic microorganisms at room temperature. The list of foods includes:

Baked goods, without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas.

Candy, such as brittle and toffee.

Chocolate-covered nonperishable foods, such as nuts and dried fruits.

Dried fruit.

Dried pasta.

Dry baking mixes.

Fruit pies, fruit empanadas, and fruit tamales.

Granola, cereals, and trail mixes.

Herb blends and dried mole paste.

Honey and sweet sorghum syrup.

Jams, jellies, preserves, and fruit butter that comply with the standard described in Part 150 of Title 21 of the Code of Federal Regulations.

Nut mixes and nut butters.

Popcorn.

Vinegar and mustard.

Roasted coffee and dried tea.

Waffle cones and pizelles.

Cotton candy.

Candied apples.

Confections such as salted caramel, fudge, marshmallow bars, chocolate covered marshmallow, nuts, and hard candy, or any

combination thereof.

Buttercream frosting, buttercream icing, buttercream fondant, and gum paste that do not contain eggs, cream, or cream cheese.

Dried or Dehydrated vegetables.

Dried vegetarian-based soup mixes.

Vegetable and potato chips.

Ground chocolate.

Seasoning salt.

Flat icing.

Marshmallows that do not contain eggs.

Popcorn balls.

Other foods can be added to the list by the California Department of Public Health (CDPH).

Requirements for a “cottage food operation”

- Register with your county health department (a small fee may be required), including filling out a self-inspection checklist that includes basic safe food handling practices if you plan to only do direct-to-consumer sales (including at festivals and events, farmers’ markets, through CSAs, from your home, etc.).
- Acquire a permit from your county health department that entails an annual inspection by a local health officer ONLY IF the cottage food operation will conduct indirect sales (meaning selling products through local shops, restaurants or other third parties that are not the producer or the consumer) and pay the permitting fee which varies by county (usually fees are annual).
- Take a class and pass an exam designed by the California Department of Public Health (CDPH). Currently the generic food handler card (the card that employees working in all

commercial food facilities in California must have) suffices to fulfill this requirement but CDPH may change the requirement in the future.

- Package and label all food products with the name of the product, ingredients (in order of their prevalence by weight), a list of allergens, net weight of contents (if selling by weight), county of production and registration or permit number issued by the local county health department. The address of the cottage food operation also must be on the label unless the address is in the phone book.
- Adhere to sanitary procedures outlined in the California Health and Safety Code, including washing, rinsing and sanitizing all surfaces and utensils before use in food preparation, washing hands before handling food, keeping all ingredients in sealed containers when not in use, and other such standard procedures.

Other Components of the Bill

- Cottage food products can be sold directly to consumers anywhere in California provided that the cottage food operator obtains the proper registration or permit and follows the safe food handling requirement specified in the law.
- Indirect sales (eg sales through local shops, cafes and restaurants) are generally going to be limited to within the county where the food was produced, however, individual county health departments may choose to coordinate with one another and allow for *indirect* sales of cottage food products across county lines. If you want to sell indirectly in another county, contact that county's environmental health department to inquire about their policy.
- Cottage food operations may not exceed a certain amount of gross annual revenue. In 2014 it will be \$45,000 and in 2015 and following years it will be \$50,000.
- In addition to help from family or household members, cottage food operations may also have up to one full time equivalent employee. NOTE: all regular employment laws apply to cottage food operations, like any food business.
- There are different interpretations of the law regarding whether cottage food operators can mail products to consumers.
- While preparing homemade food products for sale, small children and pets may not be in the kitchen (they can be elsewhere in the house). Smoking, other non-commercial meal preparation, washing clothes and other such household activities may not take place in the kitchen while “cottage food” products are being made.
- While cottage food operations are exempt from certain facility requirements in the California Health and Safety Code, cottage food operations are still generally subject to other laws affecting businesses, including tax, employment and other such laws. SELC has resources to assist cottage food operations and other small food businesses navigate many of these laws.



California
LEGISLATIVE INFORMATION

AB-1616 Food safety: cottage food operations. (2011-2012)

Assembly Bill No. 1616

CHAPTER 415

An act to add Chapter 6.1 (commencing with Section 51035) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Sections 109947, 110050, 110460, 111955, 113789, 113851, 114021, 114023, 114390, 114405, and 114409 of, to add Sections 113758 and 114088 to, and to add Chapter 11.5 (commencing with Section 114365) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

[Approved by Governor September 21, 2012. Filed with Secretary of State September 21, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1616, Gatto. Food safety: cottage food operations.

Existing law, the Sherman Food, Drug, and Cosmetic Law (Sherman Law), requires the State Department of Public Health to regulate the manufacture, sale, labeling, and advertising activities related to food, drugs, devices, and cosmetics in conformity with the Federal Food, Drug, and Cosmetic Act. The Sherman Law makes it unlawful to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. Food is misbranded if its labeling does not conform to specified federal labeling requirements regarding nutrition, nutrient content or health claims, and food allergens. Violation of this law is a misdemeanor.

The existing California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing the California Retail Food Code. That law exempts private homes from the definition of a food facility, and prohibits food stored or prepared in a private home from being used or offered for sale in a food facility. That law also requires food that is offered for human consumption to be honestly presented, as specified. A violation of these provisions is a misdemeanor.

This bill would include a cottage food operation, as defined, that is registered or has a permit within the private home exemption of the California Retail Food Code. The bill would also exclude a cottage food operation from specified food processing establishment and Sherman Law requirements. This bill would require a cottage food operation to meet specified requirements relating to training, sanitation, preparation, labeling, and permissible types of sales and would subject a cottage food operation to inspections under specified circumstances. The bill would require a food facility that serves a cottage food product without packaging or labeling to identify it as homemade. The bill would establish various zoning and permit requirements relating to cottage food operations.

This bill would incorporate additional changes in Section 113789 of the Health and Safety Code, proposed by AB 2297, to be operative only if AB 2297 and this bill are both chaptered and become effective January 1, 2013, and this bill is chaptered last.

By imposing duties on local officials and adding new crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Small businesses have played an important role in helping slow economies recover and prosper as an engine of job creation. During the 1990s, small businesses created the majority of new jobs and now account for 65 percent of United States employment.

(b) California, and the United States as a whole, are facing growing obesity and obesity-related disease epidemics.

(1) Two-thirds of American adults and nearly one-third of children and teens are obese or overweight, placing them at risk for developing chronic diseases such as diabetes, heart disease, and cancer.

(2) One in every nine California children, one in three teens, and over half of adults are already overweight or obese. This epidemic affects virtually all Californians.

(3) These health conditions are preventable and curable through lifestyle choices that include consumption of healthy fresh foods.

(c) For decades, low-income and rural communities have faced limited opportunities to purchase healthy foods. Often, without cars or convenient public transportation options, low-income residents in these areas must rely for much of their shopping on expensive, fatty, processed foods sold at convenience and corner stores.

(d) There is a growing movement in California to support community-based food production, sometimes referred to as "cottage food," "artisanal food," "slow food," "locally based food," or "urban agriculture" movements. These movements seek to connect food to local communities, small businesses, and environmental sustainability.

(e) Increased opportunities for entrepreneur development through microenterprises can help to supplement household incomes, prevent poverty and hunger, and strengthen local economies.

(f) At least 32 other states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare, for sale, foods that are not potentially hazardous.

(g) Even some bake sales are currently illegal in California.

(h) It is the intent of the Legislature to enact a homemade food act specifically designed to help address these challenges and opportunities.

SEC. 2. Chapter 6.1 (commencing with Section 51035) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.1. Cottage Food Operations

51035. (a) A city, county, or city and county shall not prohibit a cottage food operation, as defined in Section 113758 of the Health and Safety Code, in any residential dwellings, but shall do one of the following:

(1) Classify a cottage food operation as a permitted use of residential property for zoning purposes.

(2) Grant a nondiscretionary permit to use a residence as any cottage food operation that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and

concentration, traffic control, parking, and noise control relating to those homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, or if there is no zoning administrator, by the person or persons designated by the planning agency to grant these permits, upon the certification without a hearing.

(3) Require any cottage food operation to apply for a permit to use a residence for its operation. The zoning administrator, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits, shall review and decide the applications. The use permit shall be granted if the cottage food operation complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control relating to those homes. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan. The local government shall process any required permit as economically as possible. Fees charged for review shall not exceed the costs of the review and permit process. An applicant may request a verification of fees, and the city, county, or city and county shall provide the applicant with a written breakdown within 45 days of the request. The application form for cottage food operation permits shall include a statement of the applicant's right to request the written fee verification.

(b) In connection with any action taken pursuant to paragraph (2) or (3) of subdivision (a), a city, county, or city and county shall do all of the following:

(1) Upon the request of an applicant, provide a list of the permits and fees that are required by the city, county, or city and county, including information about other permits that may be required by other departments in the city, county, or city and county, or by other public agencies. The city, county, or city and county shall, upon request of any applicant, also provide information about the anticipated length of time for reviewing and processing the permit application.

(2) Upon the request of an applicant, provide information on the breakdown of any individual fees charged in connection with the issuance of the permit.

(3) If a deposit is required to cover the cost of the permit, provide information to the applicant about the estimated final cost to the applicant of the permit, and procedures for receiving a refund from the portion of the deposit not used.

(c) Use of a residence for the purposes of a cottage food operation shall not constitute a change of occupancy for purposes of the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code), or for purposes of local building and fire codes.

(d) Cottage food operations shall be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes.

SEC. 3. Section 109947 of the Health and Safety Code is amended to read:

109947. "Food processing facility" means any facility operated for the purposes of manufacturing, packing, or holding processed food. Food processing facility does not include a food facility as defined in Section 113785, a cottage food operation that is registered or has a permit pursuant to Section 114365, or any facility exclusively storing, handling, or processing dried beans.

SEC. 4. Section 110050 of the Health and Safety Code is amended to read:

110050. The Food Safety Fund is hereby created as a special fund in the State Treasury. All moneys collected by the department under subdivision (c) of Section 110466 and Sections 110470, 110471, 110485, 114365, 114365.6, 111130, and 113717, and under Article 7 (commencing with Section 110810) of Chapter 5 shall be deposited in the fund, for use by the department, upon appropriation by the Legislature, for the purposes of providing funds necessary to carry out and implement the inspection provisions of this part relating to food, licensing, inspection, enforcement, and other provisions of Article 12 (commencing with Section 111070) relating to water, the provisions relating to education and training in the prevention of microbial contamination pursuant to Section 110485, and the registration provisions of Article 7 (commencing with Section 110810) of Chapter 5, and to carry out and implement the provisions of the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104).

SEC. 5. Section 110460 of the Health and Safety Code is amended to read:

110460. No person shall engage in the manufacture, packing, or holding of any processed food in this state unless the person has a valid registration from the department, except those engaged exclusively in the storing, handling, or processing of dried beans. The registration shall be valid for one calendar year from the date of issue, unless it is revoked. The registration shall not be transferable. This section shall not apply to a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 6. Section 111955 of the Health and Safety Code is amended to read:

111955. "Food processing establishment," as used in this chapter, shall mean any room, building, or place or portion thereof, maintained, used, or operated for the purpose of commercially storing, packaging, making, cooking, mixing, processing, bottling, canning, packing, slaughtering, or otherwise preparing or handling food except restaurants. "Food processing establishment" shall not include a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 7. Section 113758 is added to the Health and Safety Code, to read:

113758. (a) "Cottage food operation" means an enterprise that has not more than the amount in gross annual sales that is specified in this subdivision, is operated by a cottage food operator, and has not more than one full-time equivalent cottage food employee, not including a family member or household member of the cottage food operator, within the registered or permitted area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct, indirect, or direct and indirect sale to consumers pursuant to this part. In 2013, the enterprise shall not have more than thirty-five thousand dollar (\$35,000) in gross annual sales in the calendar year. In 2014, the enterprise shall not have more than forty-five thousand dollars (\$45,000) in gross annual sales in the calendar year. Commencing in 2015, and each subsequent year thereafter, the enterprise shall not have more than fifty thousand dollars (\$50,000) in gross annual sales in the calendar year. A cottage food operation includes both of the following:

(1) A "Class A" cottage food operation, which is a cottage food operation that may engage only in direct sales of cottage food products from the cottage food operation or other direct sales venues described in paragraph (4) of subdivision (b).

(2) A "Class B" cottage food operation, which is a cottage food operation that may engage in both direct sales and indirect sales of cottage food products from the cottage food operation, from direct sales venues described in paragraph (4) of subdivision (b), from offsite events, or from a third-party retail food facility described in paragraph (5) of subdivision (b).

(b) For purposes of this section, the following definitions shall apply:

(1) "Cottage food employee" means an individual, paid or volunteer, who is involved in the preparation, packaging, handling, and storage of a cottage food product, or otherwise works for the cottage food operation. An employee does not include an immediate family member or household member of the cottage food operator.

(2) "Cottage food operator" means an individual who operates a cottage food operation in his or her private home and is the owner of the cottage food operation.

(3) "Cottage food products" means nonpotentially hazardous foods, including foods that are described in Section 114365.5 and that are prepared for sale in the kitchen of a cottage food operation.

(4) "Direct sale" means a transaction between a cottage food operation operator and a consumer, where the consumer purchases the cottage food product directly from the cottage food operation. Direct sales include, but are not limited to, transactions at holiday bazaars or other temporary events, such as bake sales or food swaps, transactions at farm stands, certified farmers' markets, or through community-supported agriculture subscriptions, and transactions occurring in person in the cottage food operation.

(5) "Indirect sale" means an interaction between a cottage food operation, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the cottage food operation from a third-party retailer that holds a valid permit issued pursuant to Section 114381. Indirect sales include, but are not limited to, sales made to retail shops or to retail food facilities where food may be immediately consumed

on the premises.

(6) "Private home" means a dwelling, including an apartment or other leased space, where individuals reside.

(7) "Registered or permitted area" means the portion of a private home that contains the private home's kitchen used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, and attached rooms within the home that are used exclusively for storage.

SEC. 8. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities.

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

- (8) A child day care facility, as defined in Section 1596.750.
- (9) A community care facility, as defined in Section 1502.
- (10) A residential care facility for the elderly, as defined in Section 1569.2.
- (11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.
- (12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

SEC. 8.5. Section 113789 of the Health and Safety Code is amended to read:

113789. (a) "Food facility" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, including, but not limited to, the following:

(1) An operation where food is consumed on or off the premises, regardless of whether there is a charge for the food.

(2) Any place used in conjunction with the operations described in this subdivision, including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(b) "Food facility" includes permanent and nonpermanent food facilities, including, but not limited to, the following:

(1) Public and private school cafeterias.

(2) Restricted food service facilities.

(3) Licensed health care facilities, except as provided in paragraph (13) of subdivision (c).

(4) Commissaries.

(5) Mobile food facilities.

(6) Mobile support units.

(7) Temporary food facilities.

(8) Vending machines.

(9) Certified farmers' markets, for purposes of permitting and enforcement pursuant to Section 114370.

(10) Farm stands, for purposes of permitting and enforcement pursuant to Section 114375.

(c) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food.

(2) A private home, including a cottage food operation that is registered or has a permit pursuant to Section 114365.

(3) A church, private club, or other nonprofit association that gives or sells food to its members and guests, and not to the general public, at an event that occurs not more than three days in any 90-day period.

(4) A for-profit entity that gives or sells food at an event that occurs not more than three days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition from participating in an event.

(5) Premises set aside for wine tasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine

and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.

(6) Premises operated by a producer, selling or offering for sale only whole produce grown by the producer, or shell eggs, or both, provided the sales are conducted on premises controlled by the producer.

(7) A commercial food processing plant as defined in Section 111955.

(8) A child day care facility, as defined in Section 1596.750.

(9) A community care facility, as defined in Section 1502.

(10) A residential care facility for the elderly, as defined in Section 1569.2.

(11) A residential care facility for the chronically ill, which has the same meaning as a residential care facility, as defined in Section 1568.01.

(12) Premises set aside by a beer manufacturer, as defined in Section 25000.2 of the Business and Professions Code, that comply with Section 118375, for the purposes of beer tasting, regardless of whether there is a charge for the beer tasting, if no other beverage, except for beer and prepackaged nonpotentially hazardous beverages, is offered for sale for onsite consumption, and no food, except for crackers or pretzels, is served.

(13) (A) An intermediate care facility for the developmentally disabled, as defined in subdivisions (e), (h), and (m) of Section 1250, with a capacity of six beds or fewer.

(B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak to the local health department and to the State Department of Public Health within 24 hours of the illness or outbreak.

SEC. 9. Section 113851 of the Health and Safety Code is amended to read:

113851. (a) "Permit" means the document issued by the enforcement agency that authorizes a person to operate a food facility or cottage food operation.

(b) "Registration" shall have the same meaning as permit for purposes of implementation and enforcement of this part.

SEC. 10. Section 114021 of the Health and Safety Code is amended to read:

114021. (a) Food shall be obtained from sources that comply with all applicable laws.

(b) Food stored or prepared in a private home shall not be used or offered for sale in a food facility, unless that food is prepared by a cottage food operation that is registered or has a permit pursuant to Section 114365.

SEC. 11. Section 114023 of the Health and Safety Code is amended to read:

114023. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant, or from a cottage food operation that produces jams, jellies, and preserves and that is registered or has a permit pursuant to Section 114365.

SEC. 12. Section 114088 is added to the Health and Safety Code, to read:

114088. A cottage food product, as defined in Section 113758, that is served by a food facility without packaging or labeling, as described in Section 114365, shall be identified to the consumer as homemade on the menu, menu board, or other location that would reasonably inform a consumer of its homemade status.

SEC. 13. Chapter 11.5 (commencing with Section 114365) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 11.5. Cottage Food Operations

114365. (a) (1) (A) A "Class A" cottage food operation shall not be open for business unless it is registered with the local enforcement agency and has submitted a completed, self-certification checklist approved by the local

enforcement agency. The self-certification checklist shall verify that the cottage food operation conforms to this chapter, including the following requirements:

(i) No cottage food preparation, packaging, or handling may occur in the home kitchen concurrent with any other domestic activities, such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.

(ii) No infants, small children, or pets may be in the home kitchen during the preparation, packaging, or handling of any cottage food products.

(iii) Kitchen equipment and utensils used to produce cottage food products shall be clean and maintained in a good state of repair.

(iv) All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any cottage food products shall be washed, rinsed, and sanitized before each use.

(v) All food preparation and food and equipment storage areas shall be maintained free of rodents and insects.

(vi) Smoking shall be prohibited in the portion of a private home used for the preparation, packaging, storage, or handling of cottage food products and related ingredients or equipment, or both, while cottage food products are being prepared, packaged, stored, or handled.

(B) (i) The department shall post the requirements described in subparagraph (A) on its Internet Web site.

(ii) The local enforcement agency shall issue a registration number to a "Class A" cottage food operation that meets the requirements of subparagraph (A).

(C) (i) Except as provided in (ii), a "Class A" cottage food operation shall not be subject to initial or routine inspections.

(ii) For purposes of determining compliance with this chapter, a representative of a local enforcement agency may access, for inspection purposes, the registered area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation or that the cottage food operation has violated this chapter.

(iii) Access under this subparagraph is limited to the registered area and solely for the purpose of enforcing or administering this chapter.

(iv) A local enforcement agency may seek recovery from a "Class A" cottage food operation of an amount that does not exceed the local enforcement agency's reasonable costs of inspecting the "Class A" cottage food operation for compliance with this chapter, if the "Class A" cottage food operation is found to be in violation of this chapter.

(2) (A) A "Class B" cottage food operation shall not be open for business unless it obtains a permit from the local enforcement agency in a manner approved by the local enforcement agency to engage in the direct and indirect sale of cottage food products.

(B) (i) A "Class B" cottage food operation shall comply with the requirements described in clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (1) in addition to the other requirements of this chapter.

(ii) The local enforcement agency shall issue a permit number after an initial inspection has determined that the proposed "Class B" cottage food operation and its method of operation conform to this chapter.

(C) Except as provided in this subparagraph, a "Class B" cottage food operation shall not be subject to more than one inspection per year by the local enforcement agency.

(i) For purposes of determining compliance with this chapter, a representative of a local enforcement agency, for inspection purposes, may access the permitted area of a private home where a cottage food operation is located only if the representative has, on the basis of a consumer complaint, reason to suspect that adulterated or otherwise unsafe food has been produced by the cottage food operation, or that the cottage food operation has violated this chapter.

(ii) Access under this subparagraph is limited to the permitted area and solely for the purpose of enforcing or

administering this chapter.

(D) (i) A "Class B" cottage food operation shall be authorized to engage in the indirect sales of cottage food products within the county in which the "Class B" cottage food operation is permitted.

(ii) A county may agree to allow a "Class B" cottage food operation permitted in another county to engage in the indirect sales of cottage food products in the county.

(b) A registration or permit, once issued, is nontransferable. A registration or permit shall be valid only for the person, location, type of food sales, and distribution activity specified by that registration or permit, and, unless suspended or revoked for cause, for the time period indicated.

114365.2. A cottage food operation that is registered or has a permit issued pursuant to Section 114365 shall be considered a restricted food service facility for purposes of, and subject to, Sections 113953.3, 114259.5, 114285, and 114286. A cottage food operation that is registered or has a permit also shall be subject to Sections 113967, 113973, 113980, 114259.5, 114405, 114407, 114409, 114411, and 114413, and to all of the following requirements:

(a) A person with a contagious illness shall refrain from work in the registered or permitted area of the cottage food operation.

(b) A person involved in the preparation or packaging of cottage food products shall keep his or her hands and exposed portions of his or her arms clean and shall wash his or her hands before any food preparation or packaging activity in a cottage food operation.

(c) Water used during the preparation of cottage food products shall meet the potable drinking water standards described in Section 113869, except that a cottage food operation shall not be required to have an indirect sewer connection. Water used during the preparation of cottage food products includes all of the following:

(1) The washing, sanitizing, and drying of any equipment used in the preparation of a cottage food product.

(2) The washing, sanitizing, and drying of hands and arms.

(3) Water used as an ingredient.

(d) A person who prepares or packages cottage food products shall complete a food processor course instructed by the department to protect the public health within three months of becoming registered. The course shall not exceed four hours in length. The department shall work with the local enforcement agency to ensure that cottage food operators are properly notified of the location, date, and time of the classes offered.

(e) A cottage food operation shall properly label all cottage food products in compliance with the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343 et seq.). Additionally, to the extent permitted by federal law, the label shall include, but is not limited to, all of the following:

(1) The words "Made in a Home Kitchen" in 12-point type on the cottage food product's primary display panel.

(2) The name commonly used for the food product or an adequately descriptive name.

(3) The name of the cottage food operation which produced the cottage food product.

(4) The registration or permit number of the "Class A" or "Class B" cottage food operation, respectively, which produced the cottage food product and, in the case of a "Class B" cottage food operation, the name of the county of the local enforcement agency that issued the permit number.

(5) The ingredients of the cottage food product, in descending order of predominance by weight, if the product contains two or more ingredients.

114365.5. (a) The department shall adopt and post on its Internet Web site a list of not potentially hazardous foods and their ethnic variations that are approved for sale by a cottage food operation. A cottage food product shall not be potentially hazardous food, as defined in Section 113871.

(b) This list of nonpotentially hazardous foods shall include, but not be limited to, all of the following:

- (1) Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, and tortillas.
- (2) Candy, such as brittle and toffee.
- (3) Chocolate-covered nonperishable foods, such as nuts and dried fruit.
- (4) Dried fruit.
- (5) Dried pasta.
- (6) Dry baking mixes.
- (7) Fruit pies, fruit empanadas, and fruit tamales.
- (8) Granola, cereals, and trail mixes.
- (9) Herb blends and dried mole paste.
- (10) Honey and sweet sorghum syrup.
- (11) Jams, jellies, preserves, and fruit butter that comply with the standard described in Part 150 of Title 21 of the Code of Federal Regulations.
- (12) Nut mixes and nut butters.
- (13) Popcorn.
- (14) Vinegar and mustard.
- (15) Roasted coffee and dried tea.
- (16) Waffle cones and pizelles.

(c) (1) The State Public Health Officer may add or delete food products to or from the list described in subdivision (b), which shall be known as the approved food products list. Notice of any change to the approved food products list shall be posted on the department's cottage food program Internet Web site, to also be known as the program Internet Web site for purposes of this chapter. Any change to the approved food products list shall become effective 30 days after the notice is posted. The notice shall state the reason for the change, the authority for the change, and the nature of the change. The notice will provide an opportunity for written comment by indicating the address to which to submit the comment and the deadline by which the comment is required to be received by the department. The address to which the comment is to be submitted may be an electronic site. The notice shall allow at least 20 calendar days for comments to be submitted. The department shall consider all comments submitted before the due date. The department may withdraw the proposed change at any time by notification on the program Internet Web site or through notification by other electronic means. The approved food products list described in subdivision (b), and any updates to the list, shall not be subject to the administrative rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The State Public Health Officer shall not remove any items from the approved food products list unless the State Public Health Officer also posts information on the program Internet Web site explaining the basis upon which the removed food item has been determined to be potentially hazardous.

114365.6. (a) The State Public Health Officer shall provide technical assistance, and develop, maintain, and deliver commodity-specific training related to the safe processing and packaging of cottage food products to local enforcement agencies.

(b) Local enforcement agencies may collect a surcharge fee in addition to any permit fees collected for "Class B" cottage food operations. The surcharge fee shall not exceed the reasonable costs that the department incurs through the administration of the training described in subdivision (a) to protect the public health. The surcharge fees collected shall be transmitted to the department in a manner established by the department to be deposited in the Food Safety Fund. The department shall use the surcharge fees only to develop and deliver the training described in subdivision (a) to local enforcement agency personnel on an ongoing basis.

SEC. 14. Section 114390 of the Health and Safety Code is amended to read:

114390. (a) Enforcement officers shall enforce this part and all regulations adopted pursuant to this part.

(b) (1) For purposes of enforcement, any authorized enforcement officer may, during the facility's hours of operation and other reasonable times, enter, inspect, issue citations to, and secure any sample, photographs, or other evidence from a food facility, cottage food operation, or any facility suspected of being a food facility or cottage food operation, or a vehicle transporting food to or from a retail food facility, when the vehicle is stationary at an agricultural inspection station, a border crossing, or at any food facility under the jurisdiction of the enforcement agency, or upon the request of an incident commander.

(2) If a food facility is operating under an HACCP plan, the enforcement officer may, for the purpose of determining compliance with the plan, secure as evidence any documents, or copies of documents, relating to the facility's adherence to the HACCP plan. Inspection may, for the purpose of determining compliance with this part, include any record, file, paper, process, HACCP plan, invoice, or receipt bearing on whether food, equipment, or utensils are in violation of this part.

(c) Notwithstanding subdivision (a), an employee may refuse entry to an enforcement officer who is unable to present official identification showing the enforcement officer's picture and enforcement agency name. In the absence of the identification card, a business card showing the enforcement agency's name plus a picture identification card such as a driver's license shall meet this requirement.

(d) It is a violation of this part for any person to refuse to permit entry or inspection, the taking of samples or other evidence, access to copy any record as authorized by this part, to conceal any samples or evidence, withhold evidence concerning them, or interfere with the performance of the duties of an enforcement officer, including making verbal or physical threats or sexual or discriminatory harassment.

(e) A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 15. Section 114405 of the Health and Safety Code is amended to read:

114405. (a) A permit may be suspended or revoked by a local enforcement officer for a violation of this part. Any food facility or cottage food operation for which the permit has been suspended shall close and remain closed until the permit has been reinstated. Any food facility or cottage food operation for which the permit has been revoked shall close and remain closed until a new permit has been issued.

(b) Whenever a local enforcement officer finds that a food facility or cottage food operation is not in compliance with the requirements of this part, a written notice to comply shall be issued to the permitholder. If the permitholder fails to comply, the local enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, and informing him or her of a right to a hearing, if requested, to show cause why the permit should not be suspended or revoked. A written request for a hearing shall be made by the permitholder within 15 calendar days after receipt of the notice. A failure to request a hearing within 15 calendar days after receipt of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the hearing officer may order a hearing at any reasonable time within this 15-day period to expedite the permit suspension or revocation process.

(c) The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. Upon written request of the permitholder, the hearing officer may postpone any hearing date, if circumstances warrant the action.

SEC. 16. Section 114409 of the Health and Safety Code is amended to read:

114409. (a) If any imminent health hazard is found, unless the hazard is immediately corrected, an enforcement officer may temporarily suspend the permit and order the food facility or cottage food operation immediately closed.

(b) Whenever a permit is suspended as the result of an imminent health hazard, the enforcement officer shall issue to the permitholder a notice setting forth the acts or omissions with which the permitholder is charged, specifying the pertinent code section, and informing the permitholder of the right to a hearing.

(c) At any time within 15 calendar days after service of a notice pursuant to subdivision (b), the permit holder may request in writing a hearing before a hearing officer to show cause why the permit suspension is not warranted. The hearing shall be held within 15 calendar days of the receipt of a request for a hearing. A failure to request a hearing within 15 calendar days shall be deemed a waiver of the right to a hearing.

SEC. 17. Section 8.5 of this bill incorporates amendments to Section 113789 of the Health and Safety Code proposed by both this bill and Assembly Bill 2297. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 113789 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 2297, in which case Section 8 of this bill shall not become operative.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



**PLANNING COMMISSION
STAFF REPORT**

TO: Chairman and Planning Commissioners
DATE: May 26, 2015
THROUGH: John W. Donlevy, Jr., City Manager
FROM: Jenna Moser, Management Analyst Planning-GIS JM
SUBJECT: Medical Marijuana Cultivation (Study Session)

RECOMMENDATION: The purpose of this study session is to bring the Planning Commission up to date on the issues surrounding Marijuana Cultivation in Winters, provide background information, and gain preliminary feedback on policy.

BACKGROUND: Increased calls to Winters Police as well as neighborhood and community concern about criminal activity and nuisance odors were the driving factors in developing an ordinance regulating the cultivation of medical marijuana. There is known outdoor and indoor cultivation currently in Winters and neighbors have complained of being deprived of the use and enjoyment of their backyards because odors from adjacent properties cultivating marijuana has been too overwhelming.

Sergeant Jose Ramirez of the Winters Police Department reports that County and State Law Enforcement are not pursuing these types of cases. Local jurisdictions may enact regulations enabling the local Police Department to issue citations with consequences, and respond to community concerns. The answer to how many plants a qualified medical marijuana patient can cultivate has no definite answer – many factors come into play. Ramirez has witnessed properties with dozens of plants to some with one or two plants. Proposed language limits the size of the cultivation area - not the number of plants.

The Federal Controlled Substances Act classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under Federal Law, for any person to cultivate, manufacture, distribute or dispense, transport, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act does not

exempt the cultivation, manufacture, distribution, dispensation, transportation, or possession of marijuana for medical purposes.

The voters of the State of California approved Proposition 215 “The Compassionate Use Act of 1996”. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances. The State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.

DISCUSSION: Medical marijuana cultivation, without certain regulatory measures, increases the risk of nuisance odors and criminal activity, particularly if large amounts of medical marijuana are concentrated in once place.

As marijuana plants begin to flower, and for a period of approximately two months or more during the growing season, plants produce an extremely strong odor that is offensive to many people and is detectable well beyond property boundaries and into the neighborhood. The strong odor of marijuana can create an “attractive nuisance”, alerting individuals to the location of plants, thereby creating the risk of potential crime. The cultivation of medical marijuana in or near residential zones increases the risk of such activity and intrudes upon residential uses.

As recognized by the California Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime. Unregulated marijuana cultivation can bring with it clandestine security measures such as multiple “guard dogs” or other measures of property security not usually found at this scale in a neighborhood.

The cultivation of medical marijuana at locations in the vicinity of schools creates unique risks that the marijuana plants may be observed by juveniles, and thereby be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with the cultivation or distribution of medical marijuana at such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of marijuana at such locations or premises is especially hazardous to public safety and welfare, and to the protection of juveniles and the person cultivating the marijuana plants.

The use of high wattage grow lights for indoor cultivation of marijuana within a residence has the potential for adverse effects on the structural integrity of the residence and increases the chances of a fire which presents a clear and present danger to the occupants. Indoor cultivation of substantial amounts of marijuana also requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation. There is potential for the installation of unpermitted, illegal, and unmonitored electrical connections and illegal upgrades to service.

Both indoor and outdoor cultivation of marijuana by their very nature require substantial use of water, supplemental nutrients, fertilizers, and pesticides that could potentially enter the City’s storm drain or sewer system, or contribute to illegal and unmonitored water service connections.

Health and Safety Code Section 11362.83 expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with SB 420. The limited right of qualified patients and their primary caregivers under state law to cultivate marijuana for medical purposes does not confer upon them the right to create or maintain a public nuisance or otherwise exempt these persons from local land use regulations.

ALTERNATIVES:

1. No Action
2. Outright prohibition of any cultivation
 - a. The Third District California Court of Appeals ruled in November 2013 that cities can ban medical marijuana cultivation. The court ruled that the Compassionate Use Act of 1996 (Prop 215) and the Medical Marijuana Program (SB 420) do not create a constitutional right to cultivate and possess marijuana and that Cities may prohibit cultivation of all marijuana including cultivation of marijuana for medical purposes.
3. Limited prohibition on cultivation; outdoor
4. Regulation of both indoor and outdoor cultivation (Draft Text)

DRAFT TEXT HIGHLIGHTS:

- A permit to cultivate must be processed through Community Development – similar process to business licensing
- The cultivator must reside on the property, and cultivation must not inhibit occupancy
- *Outdoor Cultivation* is not permitted within 600 feet of schools, child care centers, parks, and residential zones (see **Exhibit B, Maps**)
- *Indoor Cultivation* is restricted to an enclosed structure (primary residential structure, or detached structure in rear yard – building permit required for any project/structure used for cultivation due to electrical and water services to project/structure)
- Cultivation is limited to 50 square feet per property
- Other health and safety regulations such as maximum grow light wattage, required ventilation/filtration systems, prohibition on the use of carbon dioxide or other gasses, etc
- Renew every 2 years
- Citation or Misdemeanor for violation

ENVIRONMENTAL: The proposed Ordinance is not subject to review under CEQA pursuant to Section 15060 subdivision (c)(2) – the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment; Section 15061 subdivision (b)(3) – there is not possibility that the ordinance will have a significant effect on the environment. In addition, the ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption – the ordinance constitutes a regulatory activity to assure protection of the environment.

FISCAL IMPACT: This proposed Ordinance would require Community Development staff time to register persons owning, leasing, occupying, or having charge or possession of any structure where medical marijuana cultivation is proposed to occur. However, it is unknown at this time how many registrations City staff will receive. Further, City staff will be required to monitor compliance with the building and safety regulations as outlined in the ordinance. Enforcement of the ordinance will be complaint based and the extent of staff time to address and resolve each complaint will vary.

ATTACHMENTS:

Draft Proposed Marijuana Cultivation Text
Map Exhibits – Unenclosed/Enclosed
Photo Exhibits – Examples

Article X - Medical Marijuana Cultivation

Sec. X- Purpose.

The purpose and intent of this article is to regulate the cultivation of medical marijuana in a manner that protects the health, safety and welfare of the community. This article is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health and Safety Code Section 11362.5, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This article is not intended to give any person independent legal authority to grow marijuana; it is intended simply to impose zoning restrictions on the cultivation of marijuana when it is authorized by California state law for medical or other purposes.

Sec. X - Applicability.

- (a) Applicability. No part of this article shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.
- (b) Nothing in this article shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of marijuana that is otherwise illegal under local or state law. No provision of this article shall be deemed a defense or immunity to any action brought against any person by the Yolo County District Attorney's Office, the Attorney General of the State of California or the United States of America.

Sec. X - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section.

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

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

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

"Medical marijuana" means medical marijuana that: (i) has been grown by a "person with an identification card," "qualified patient," or "primary caregiver," as those terms are defined in California Health and Safety Code Section 11362.7; and (ii) is intended to be, and is, cultivated and distributed in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 through 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

"Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.7(d), as it may be amended.

"Qualified patient" shall mean a person identified in California Health and Safety Code Section 11362.7(c) or (f), as they may be amended.

Sec. X - Prohibited locations.

- (a) No person shall cultivate marijuana which is not medical marijuana at any location in the city of Winters. No person, including any qualified patient or primary caregiver, shall cultivate medical marijuana outdoors within:
 - (1) A six hundred-foot radius of any child care center, park, school or residential use; or
 - (2) Any residential zone.
- (b) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school or residential use to the closest property line of the lot on which the outdoor medical marijuana cultivation is located without regard to intervening structures.
- (c) No person, including any qualified patient or primary caregiver, shall cultivate medical marijuana indoors within any residential zone except within a detached, fully-enclosed and secure secondary structure or primary residential

structure that meets the requirements set forth in Section X and is registered with the city pursuant with to Section X

Sec. X. - Indoor cultivation.

The indoor cultivation of medical marijuana within a residential zone shall only be conducted within a detached, fully-enclosed and secure secondary structure or within a primary residential structure conforming to the following minimum standards:

- (1) Indoor grow lights in any structure shall not exceed an aggregate of one thousand two hundred watts and shall comply with all applicable building code regulations. Gas products (including, without limitation, CO₂, butane, propane, and natural gas), or generators shall not be used within any detached structure used for the cultivation of medical marijuana.
- (2) Any detached, fully-enclosed and secure structure or residential structure used for the cultivation of medical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with all applicable building code regulations, including obtaining all required permits and approvals. The ventilation and filtration system must be approved by the city and installed prior to commencing cultivation within the detached, fully-enclosed and secure structure or residential structure.
- (3) A detached, fully-enclosed and secure secondary structure used for the cultivation of marijuana shall be located in the rear yard area of a parcel, maintain a minimum ten-foot setback from the rear yard property line and a side yard setback that is equal to the same side yard setback required for the residential lot on which the home sits, and the area surrounding the structure or back yard must be enclosed by a solid fence at least six feet in height.
- (4) Marijuana cultivation occurring within a residence and detached structure shall be in a cumulative area totaling no larger than fifty square feet, regardless of how many qualified patients or primary caregivers are residing at the premises.
- (5) Cultivation of marijuana shall not inhibit the occupancy of the residence or take place in the kitchen or bathrooms of any building.
- (6) Cultivation of marijuana shall not take place on any carpeted surface.
- (7) Medical marijuana cultivation may occur in a detached structure and/or inside a residence on the same parcel but shall not exceed a cumulative marijuana growing area of fifty square feet total.
- (8) Medical marijuana cultivation areas, whether in a detached building or inside a residence, shall not be accessible to persons under eighteen years of age. Medical marijuana cultivation shall not be conducted by any person under eighteen years of age.
- (9) No exterior evidence of medical marijuana cultivation occurring at the property shall be visible from the public right of way.
- (10) Either a qualified patient or primary caregiver shall reside full-time on the premises where the marijuana cultivation occurs.

Sec. X. - Indoor cultivation registration.

- (a) Prior to commencing any medical marijuana cultivation the person(s) owning, leasing, occupying, or having charge or possession of any structure where medical marijuana cultivation is proposed to occur must be registered with the community development director or designee for medical marijuana cultivation. Any registration under this article does not legalize or authorize the cultivation of marijuana but merely exempts the holder from the general zoning prohibition on indoor cultivation in Section X and permits the city to monitor compliance with the building and safety regulations in Section X. The following information will be required with the initial registration application and subsequent renewals:
 - (1) The owner of the property acknowledges the cultivation of marijuana at the premises on a form provided by the city.

- (2) The name of each person, owning, leasing, occupying, or having charge of any legal parcel or premises where medical marijuana will be cultivated.
 - (3) The name of each qualified patient or primary caregiver who participates in the medical marijuana cultivation.
 - (4) A copy of a current valid medical recommendation or county issued medical marijuana card (if available) for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver.
 - (5) The physical site address of where the marijuana will be cultivated and a description of the growing area(s).
 - (6) A signed consent-to-enter form, acceptable to the city, authorizing city staff, including the police/planning department, to conduct an inspection of the detached, fully enclosed and secure secondary structure or area of the residence used for the cultivation of marijuana upon twenty-four hours' notice.
- (b) Any registration under this article is unique to both the holder(s) and location. In the event a property is sold, transferred or leased to a new tenant, the registration for that property shall expire upon such sale, transfer or lease. Moreover, if a qualified patient or primary caregiver moves to a new residence, he or she shall obtain a new registration for that residence. Every person shall renew his or her registration every two years.
 - (c) To the extent permitted by law, any personal or medical information submitted for medical marijuana cultivation registration or renewals shall be kept confidential and shall only be used for purposes of administering this article.
 - (d) The city council may adopt a fee or fees required to be paid upon filing of registration(s) as provided by this article, which fees shall not exceed the reasonable cost of administering this article. The city council may adopt and amend any fee by resolution.

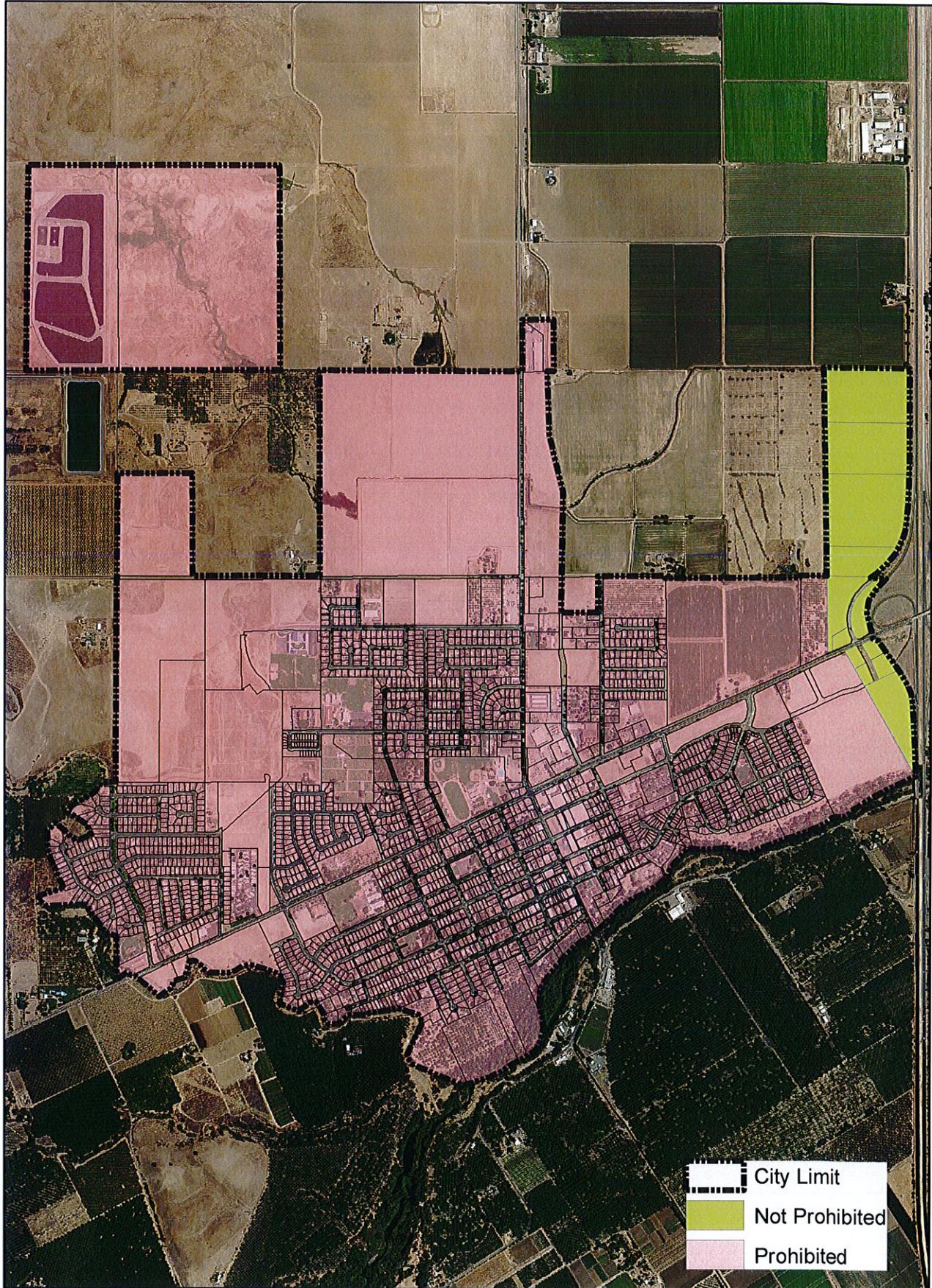
Sec. X - Public nuisance.

Any violation of this article is declared to a public nuisance and may be abated by the city pursuant to Chapter X of this code.

Sec. X. - Penalty.

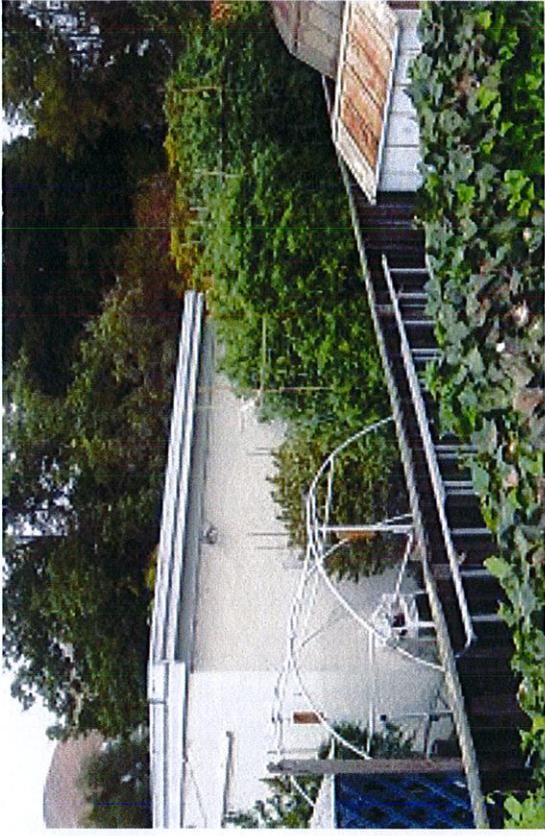
A violation of this article shall either be a misdemeanor or an infraction at the discretion of the prosecuting attorney. However, notwithstanding anything in this code to the contrary, persons violating this article shall not be subject to criminal liability under this code solely to the extent such conduct or condition is immune from criminal liability pursuant to the Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5) and/or the Medical Marijuana Program (Health and Safety Code Section 11362.7 et seq.) as they may be amended. This section does not prohibit the city from abating violations of this article by any administrative, civil or other non-criminal means. In such cases, a violation of this article may be considered the civil or administrative equivalent of an infraction or misdemeanor as applicable.

Unenclosed Outdoor Cultivation

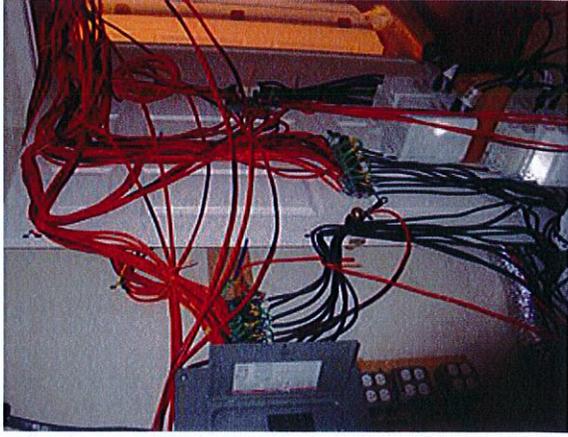
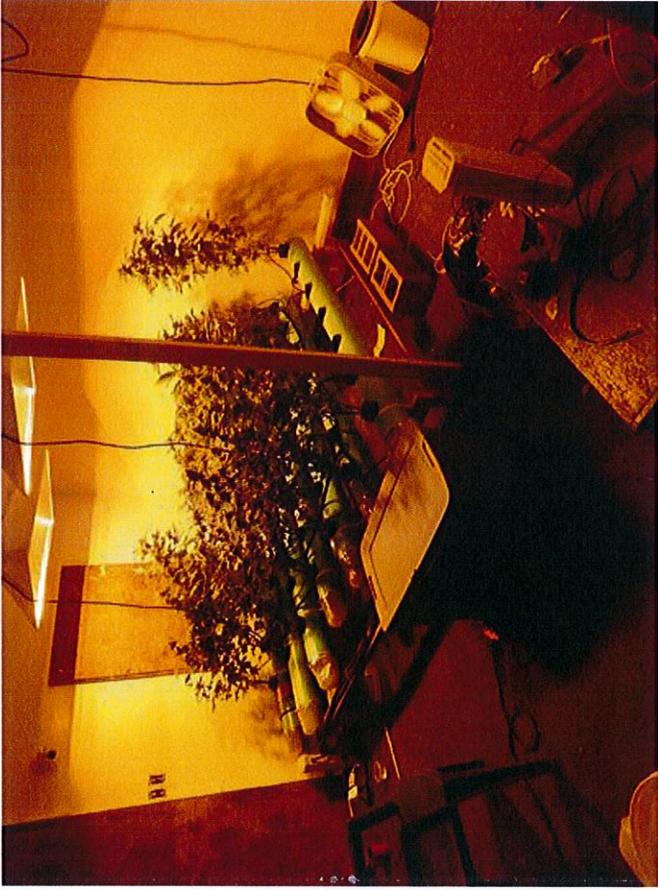


Criteria: 600 feet from any child care center, school, park, or residential zone.

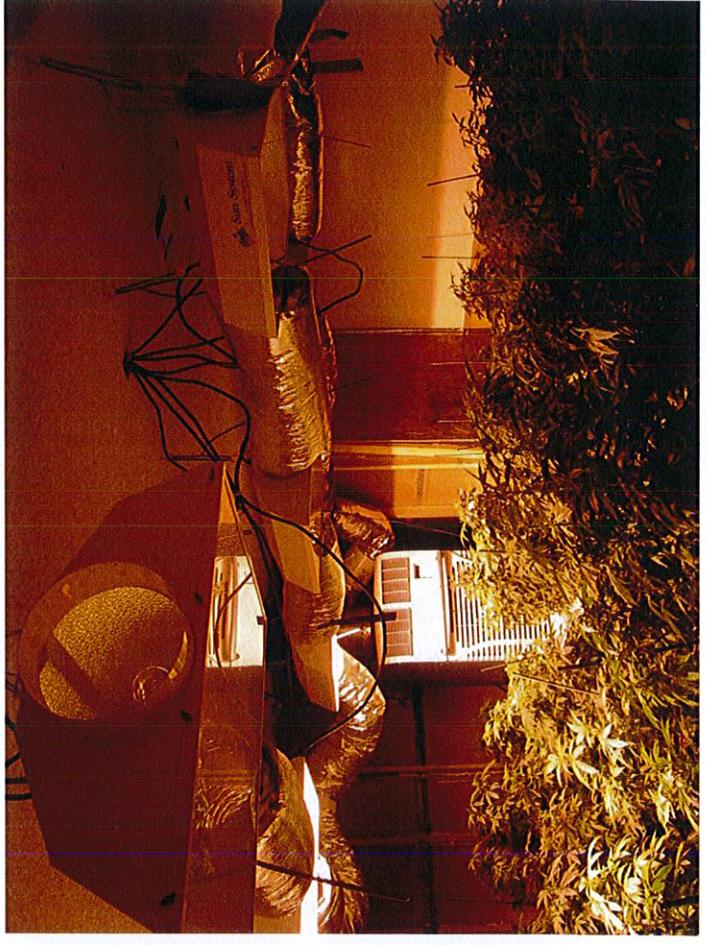
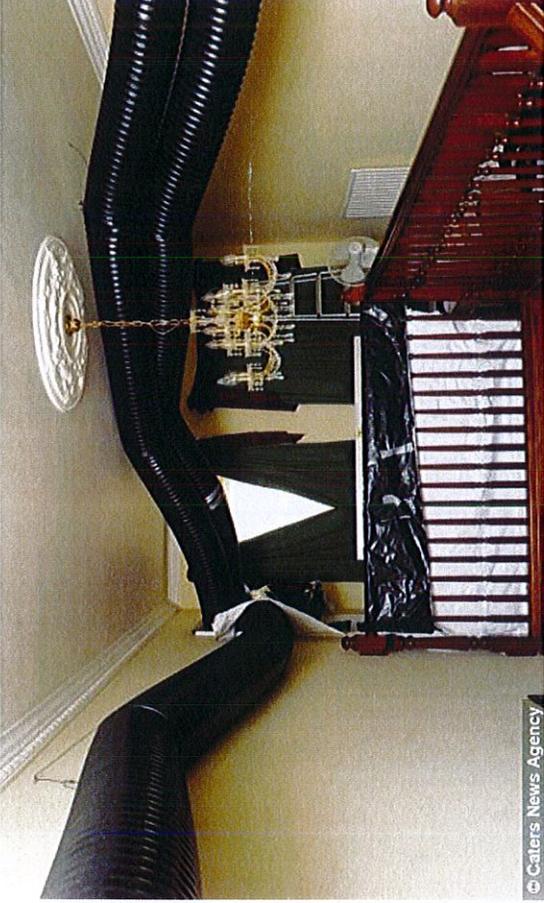
*Note - If the PG&E Training Center & the Dog Park are considered, prohibited area increases.



Examples of Unenclosed Outdoor Residential Marijuana Cultivation



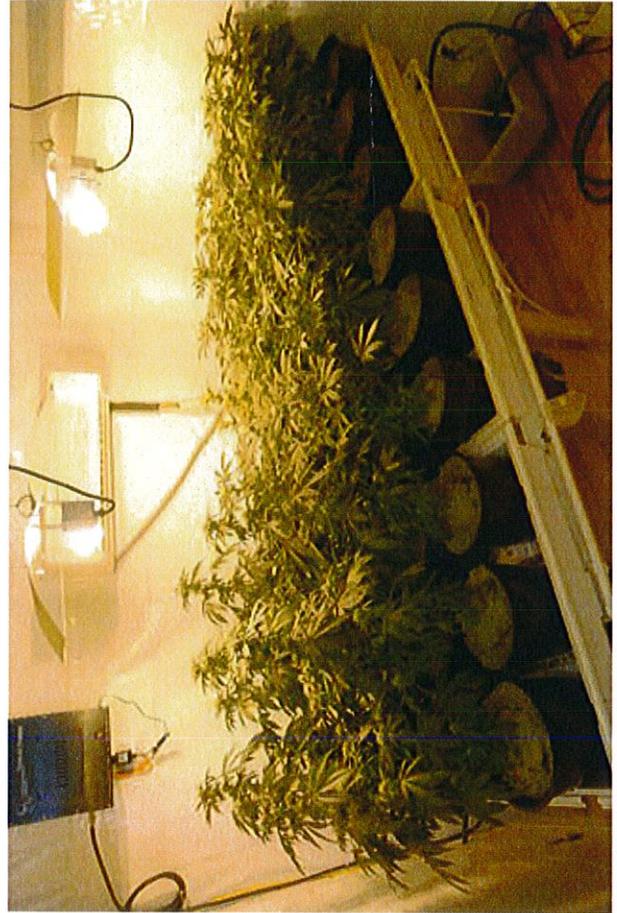
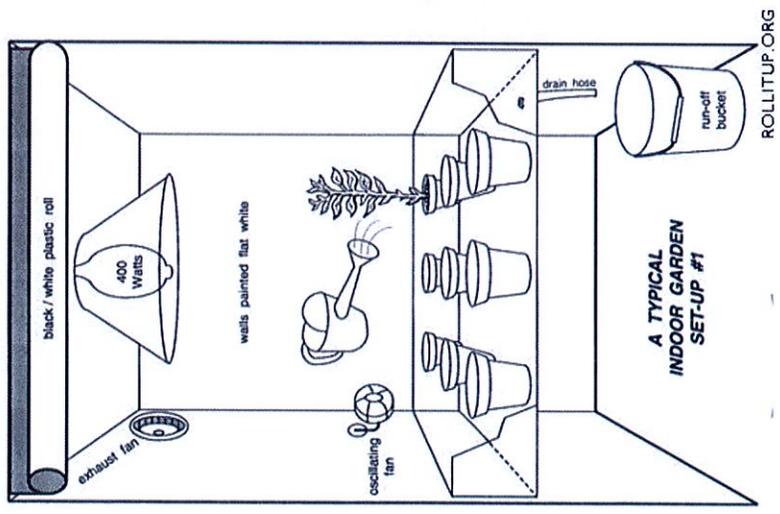
Examples of Unpermitted Indoor Residential Marijuana Cultivation





Examples of
50 Square Foot Structure

Examples of Permitted Indoor Cultivation



Grow Room Set-up

