

CITY OF WINTERS SPECIAL PLANNING COMMISSION AGENDA

Tuesday, February 2, 2016 @ 8:00 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](mailto:jenna.moser@cityofwinters.org)

Chairman: Bill Biasi  
Vice Chairman: Kate Frazier  
Commissioners: Dave Adams, Lisa Baker,  
Paul Myer, Frank Neal, Patrick Riley  
City Manager: John W. Donlevy, Jr.  
Mgmt. Analyst, Planning: 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

V STAFF/COMMISSION REPORTS

VI DISCUSSION ITEMS:

- A. Public Hearing and consideration by the Winters Planning Commission of an Urgency Ordinance amending Chapter 17.04 of the Winters Municipal Code Related to Medical Marijuana Cultivation

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 JANUARY 28, 2016



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



**PLANNING COMMISSION  
STAFF REPORT**

**TO:** Board Chair and Members of the Planning Commission  
**DATE:** February 2, 2016  
**FROM:** John W. Donlevy, Jr., City Manager  
Ethan Walsh, City Attorney  
**SUBJECT:** Public Hearing and consideration by the Winters Planning Commission of an Urgency Ordinance amending Chapter 17.04 of the Winters Municipal Code Related to Medical Marijuana Cultivation

---

**STAFF RECOMMENDATIONS:**

Staff recommends the Planning Commission:

1. Receive a Staff Report on the Urgency Ordinance and identical Regular Ordinance which will amend Chapter 17.04 City of Winters Municipal Code to clarify certain regulations regarding cultivation of medical marijuana; and
2. Conduct a Public Hearing to consider comments on the proposed Ordinances; and
3. Recommend that the City Council:
  - A. Adopt the attached Urgency Ordinance of the City Council of the City of Winters Amending Chapter 17.04 of the City of Winters Municipal Code Related to Medical Marijuana Cultivation; and
  - B. Adopt the attached Ordinance of the City Council of the City of Winters Amending Chapter 17.04 of the City of Winters Municipal Code Related to Medical Marijuana Cultivation.

**BACKGROUND:**

In 1996, the voters of California approved Proposition 215, which was codified as Health & Safety Code section 11362.5 *et seq.* and entitled the Compassionate Use Act

of 1996 (the “CUA”). The CUA decriminalized the use of marijuana for medical purposes. In 2003 the California Legislature adopted Senate Bill No. 420, entitled the Medical Marijuana Program (“MMP”), codified as Health and Safety Code section 11362.7 *et seq.*, which further permitted qualified patients and primary caregivers to associate collectively or cooperative to cultivate marijuana for medical purposes without being subjected to criminal prosecution. The California Supreme Court has held that neither the CUA nor the MMP preempt local land use authority regarding medical marijuana, leaving cities with the authority to “allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana.” (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 762.)

The City’s Zoning Code currently regulates medical marijuana activities in the City through restrictions that are imposed on “medical marijuana dispensaries,” which are defined in part as “any place, location, building or establishment where medical cannabis is traded, exchanged, sold, distributed or cultivated which would otherwise require a business license, home occupation permit or any other use permit to conduct similar type activities.” (Winters Municipal Code §17.04.140 [emphasis added].) The Zoning Code further provides that medical marijuana dispensaries are prohibited within any zone in the City of Winters until such time that both federal and state law change to allow the operation of medical marijuana dispensaries, at which point dispensaries, as defined in the Zoning Code, would only be allowed in a zone designated for medical offices. This restriction on medical marijuana dispensaries prohibits the cultivation medical marijuana for commercial purposes, but does not restrict the cultivation of medical marijuana for qualified users and primary caregivers as permitted under the CUA and the MMP.

In the last legislative session the California Legislature enacted three separate bills that are collectively referred to as “The Medical Marijuana Regulation and Safety Act (“MMRSA”). The MMRSA establishes a framework for the state-wide regulation and licensing of a commercial medical marijuana industry, including cultivation, testing laboratories, manufacturers of medical marijuana products, sale and delivery. The MMRSA does affirm that cities and counties retain local land use, regulatory and enforcement activity, and contemplates that cities and counties may adopt local licensing requirements for medical marijuana sale, cultivation and similar activities, or restrict such activities altogether.

However, Health and Safety Code Section 11362.777, adopted as part of the MMRSA, places a limitation on cities’ ability to adopt local licensing programs for medical marijuana cultivation. Section 11362 provides that the State Department of Food and Agriculture will establish a state-wide licensing program for the cultivation of medical marijuana, and that no one can cultivate medical marijuana without first obtaining both a license, permit or other entitlement permitting cultivation from the city or county in which the cultivation will occur, and a state license from the Department of Food and Agriculture. However, Section 11362.777 also provides that if a city does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, or

chooses not to administer a permit program, then commencing on March 1, 2016, the Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation. This means that if a city does not have land use regulations in place regulating the cultivation of marijuana before March 1, 2016, then those cities will lose their ability to establish a licensing program for medical marijuana cultivation in their jurisdiction, and cannot adopt a licensing or regulatory program for medical marijuana cultivation in the future.

### **DISCUSSION:**

As noted above, the City's Zoning Code already regulates medical marijuana dispensaries, and includes as part of the definition of medical marijuana dispensaries, locations where "cultivation" will occur for commercial uses that would require a business license or home occupation permit. As a result, the City already does have land use ordinances that regulate the cultivation of marijuana, and the City should not lose its ability to establish a licensing program due to the time limit imposed by Section 11362.777. However, the City's regulations on cultivation are not entirely consistent with the language and terminology adopted in the MMRSA. In order to be clear that the City is currently regulating medical marijuana cultivation, and therefore retains its ability to establish a local licensing or conditional permit program for medical marijuana cultivation as permitted under Section 11362.777, City staff is recommending that the enclosed ordinances be adopted by the City Council. Staff recommends that the ordinance be adopted as an urgency ordinance, based on the findings set forth in the text of the ordinance, in order to ensure that the ordinance goes into effect prior to March 1, 2016. Additionally, staff is recommending adoption of a regular ordinance with identical language, to ensure that the amendment goes into effect in the event there are any issues with the urgency ordinance.

The proposed ordinances establish a definition for "Commercial Marijuana Cultivation" that references the language and definitions used in the MMRSA, and clarifies that such cultivation is not currently permitted in the City. This will clarify the existing requirements of the City's Municipal Code, maintain the City's current approach to medical marijuana activities, and preserve the City's ability to establish a more specific or comprehensive licensing program in the future.

The incredibly short time frame imposed by Section 11362.777 is fairly unprecedented and has sent local governments throughout the state in a rush to address this very complicated and nuanced issue with little time for any meaningful dialogue. This time limit for action was apparently an error, and one of the authors of the MMRSA has sponsored legislation (Assembly Bill 21 (Bonta)) to remove the March 1, 2016 deadline. This bill is moving its way through the Legislature, but there is no way at this point to predict its passage with any certainty. As a result, City staff is recommending adoption of the proposed ordinance as a precaution to preserve its options moving forward.

The City may, in the future, want to adopt a more comprehensive licensing program for cultivation of medical marijuana, or it may want to amend its restriction on medical marijuana cultivation after the State's licensing program is adopted. The purpose of this ordinance is simply to clarify the City's existing restrictions to avoid confusion after March 1, 2016, and to preserve the City's options to regulate medical marijuana cultivation moving forward.

**ATTACHMENTS:**

- A. Ordinance No. 2016-03
- B. Ordinance No. 2016-04
- C. League of California Cities Briefing (January 13, 2016)

**ORDINANCE NO. 2016-03**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF WINTERS AMENDING CHAPTER 17.04 OF  
THE CITY OF WINTERS MUNICIPAL CODE RELATED  
TO MEDICAL MARIJUANA CULTIVATION**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq. and entitled the Compassionate Use Act of 1996 (“CUA”), decriminalizing the use of marijuana for medical purposes; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program (“MMP”), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subjected to criminal prosecution; and

**WHEREAS**, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within their jurisdictions; and

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law; and

**WHEREAS**, the Act became effective January 1, 2016, and contains provisions which allow for local governments to regulate and license marijuana cultivation uses and sites; and

**WHEREAS**, the Act states that, commencing March 1, 2016, the State shall become the sole licensing authority for commercial marijuana cultivation in those cities and counties that do not have land use regulations or ordinances that regulate or prohibit marijuana cultivation; and

**WHEREAS**, the City Council previously adopted Ordinance No. 2011-05 in order to regulate medical marijuana dispensaries which, for purposes of the City of Winters Municipal Code, is defined to include any place, location, building or establishment where medical cannabis is cultivated which would otherwise require a business license, home occupation permit or any other use permit to conduct similar type activities; and

**WHEREAS**, the City’s existing marijuana cultivation regulations prohibit medical marijuana dispensaries, which include cultivation activities for commercial purposes that would require a business license or home occupation permit from opening and operating within any zone in the City of Winters, until such time that the operation of such medical marijuana dispensaries, including commercial cultivation activities, are allowed under both federal and state law; and

**WHEREAS**, in the event that such marijuana dispensaries are allowed under federal and state law then such dispensaries shall then be allowed only in a zone district designated for medical offices and only if consistent with the applicable provisions of the Winters Municipal Code and federal and state law; and

**WHEREAS**, while medical marijuana dispensaries as defined in the Winters Municipal Code are allowed under state law, federal law classifies cannabis as an illegal controlled substance under the Controlled Substances Act (21 U.S.C. §811 *et seq.*) and does not allow cannabis for medical or recreational use, and therefore federal law still does not allow for medical marijuana dispensaries, including commercial cultivation; and

**WHEREAS**, do not expressly address commercial cultivation of medical marijuana as an activity separate from medical marijuana dispensaries, as is the case under portions of the Act, nor do they contemplate a local or state licensing scheme as established by the Act; and

**WHEREAS**, some California cities have reported negative impacts of marijuana cultivation, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, fire hazards, and problems associated with mold, fungus, and pests, which may be exacerbated by wide-scale commercial cultivation; and

**WHEREAS**, the City Council therefore desires to amend the Municipal Code to clarify the intent of the existing zoning restrictions on the cultivation of marijuana by prohibiting commercial cultivation of marijuana while continuing to allow limited personal cultivation by those qualified patients, primary caregivers exempt under the Act and medical marijuana cooperatives as defined in the Winters Municipal Code; and

**WHEREAS**, the City Council further desires to retain and maintain its control and regulation of medical marijuana uses within its boundaries by expressly reserving its ability to enact a future local licensing scheme as granted by the Act; and

**WHEREAS**, the City Council desires to enact this Urgency Ordinance pursuant to Government Code section 36937 in order to ensure that the City's local land use authority or authority to adopt a local licensing program for medical marijuana cultivation is not preempted by the State as of March 1, 2016; and

**WHEREAS**, for all of the reasons stated above, the adoption of this Urgency Ordinance is therefore necessary for the immediate preservation of the public peace, health and safety.

**NOW, THEREFORE**, the City Council of the City of Winters does hereby ordain as follows:

**Section 1. Recitals.** The above recitals are hereby found to be true and accurate and are incorporated into this Ordinance by this reference.

**Section 2. Findings.** The City Council hereby makes the following findings:

A. Pursuant to Winters Municipal Code section 17.28.010, the City Council hereby finds that the text amendments to the zoning code contained in this Urgency Ordinance are required for the public necessity, convenience and general welfare. This Urgency Ordinance balances the interests of existing medical marijuana patients and caregivers with the health and safety concerns associated with commercial cultivation. As such, this Urgency Ordinance preserves and clarifies the City's existing zoning restrictions regarding medical marijuana cultivation. The City Council further finds, based upon Planning Commission recommendation, that this Urgency Ordinance conforms to the City's general plan.

B. Pursuant to Government Code section 36937, the City Council hereby finds that this Urgency Ordinance is necessary for the immediate preservation of the public peace, health and safety. This Urgency Ordinance makes reasonable and necessary clarifying changes to the existing medical marijuana ordinance in order to avoid potential adverse impacts associated with commercial cultivation, such as illegal sales and distribution of marijuana, trespassing, theft, and problems associated with mold, fungus, and pests. This Urgency Ordinance is additionally necessary in order to avoid possible State preemption regarding licensing of cultivation of medical marijuana, which takes effect March 1, 2016.

**Section 3. Amendments to Section 17.04.40.** Section 17.04.140 of Chapter 17.04 or Title 17 of the City of Winters Municipal Code is hereby amended as follows:

A. The following paragraph is hereby inserted in Subsection B of Section 17.140 in between the paragraph entitled "Carport" and the paragraph entitled "Community Development Director":

"Commercial Marijuana Cultivation" means cultivation of medical marijuana licensed by the State of California in accordance with the Medical Marijuana Regulation and Safety Act, California Business and Professions Code Section 19300 et seq., and contemplated by the definition of "commercial cannabis activity" set forth in California Business and Professions Code Section 19300.5(k), as amended. Commercial Marijuana Cultivation is prohibited in the City. Pursuant to Section 11362.777 of the California Health and Safety Code, effective January 1, 2016, this paragraph is intended to regulate the cultivation of medical marijuana by prohibiting Commercial Marijuana Cultivation within the City, and thereby expressly reserving any future local licensing authority granted to the city by that Section. This paragraph shall not restrict cultivation of medical marijuana by a "primary caregiver" or "qualified patient," as those terms are defined by Health and Safety Code Section 11362.7, or by a "medical marijuana cooperative," as defined herein subject to the restrictions set forth in this Section 17.04.140.

B. The following paragraph is hereby inserted in Subsection B of Section 17.04.140 in between the paragraph entitled "Counter audit" and the paragraph entitled "Deemed withdrawn":

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana or any part thereof.

C. The following paragraph is hereby inserted in Subsection B of Section 17.04.140 in between the paragraph entitled “Massage” and the paragraph entitled “Medical marijuana cooperative”:

“Medical marijuana” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. Cannabis as used in this paragraph shall have the meaning as set forth in Subsection (f) of Section 19300.5 of the Business and Professions Code.

D. The paragraph entitled “Medical marijuana dispensary” set forth in Subsection B of Section 17.04.140 is hereby amended to read as follows:

“Medical marijuana dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code Section 11362.5 et seq. A medical marijuana dispensary is further defined as any place, location, building or establishment where medical cannabis is traded, exchanged, sold, or distributed ~~or cultivated~~ which would otherwise require a business license, home occupation permit or any other use permit to conduct similar type activities. Unless otherwise regulated by this code or applicable law, a “medical marijuana dispensary” shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with both applicable federal or state law, including, but not limited to, Health and Safety Code Section 11362.5 et seq. Currently, medical marijuana dispensaries are prohibited from opening and operating within any zone in the City of Winters. At such time as both federal and state law change to allow the operation of medical marijuana dispensaries, such dispensaries shall be then allowed only in a zone district designated for medical offices and only if consistent with the applicable provisions of this code and federal and state law.

**Section 4. Severability.** If any provision of this Urgency Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Urgency Ordinance irrespective of the invalidity

of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

**Section 6. Effective Date.** The City Clerk shall certify to the adoption of this Urgency Ordinance, and the City Clerk shall cause this Urgency Ordinance to be published within 15 days as required by law. This Ordinance shall take effect immediately upon its adoption by a four-fifths vote of the City Council pursuant to Government Code sections 36934 and 36937.

**PASSED AND ADOPTED** this \_\_\_ day of February, 2016, by the following vote:

**AYES:**

**NOTES:**

**ABSENT:**

**ABSTAIN:**

---

Cecilia Aguiar Curry  
Mayor

**ATTEST:**

---

Nanci G. Mills  
City Clerk

**APPROVED AS TO FORM:**

---

Ethan Walsh  
City Attorney

**ORDINANCE NO. 2016-04**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS AMENDING  
CHAPTER 17.04 OF TITLE 17 OF THE CITY OF WINTERS MUNICIPAL CODE  
RELATED TO MEDICAL MARIJUANA CULTIVATION**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq. and entitled the Compassionate Use Act of 1996 (“CUA”), decriminalizing the use of marijuana for medical purposes; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program (“MMP”), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subjected to criminal prosecution; and

**WHEREAS**, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within their jurisdictions; and

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law; and

**WHEREAS**, the Act became effective January 1, 2016, and contains provisions which allow for local governments to regulate and license marijuana cultivation uses and sites; and

**WHEREAS**, the Act states that, commencing March 1, 2016, the State shall become the sole licensing authority for commercial marijuana cultivation in those cities and counties that do not have land use regulations or ordinances that regulate or prohibit marijuana cultivation; and

**WHEREAS**, the City Council previously adopted Ordinance No. 2011-05 in order to regulate medical marijuana dispensaries which, for purposes of the City of Winters Municipal Code, is defined to include any place, location, building or establishment where medical cannabis is cultivated which would otherwise require a business license, home occupation permit or any other use permit to conduct similar type activities; and

**WHEREAS**, the City’s existing marijuana cultivation regulations prohibit medical marijuana dispensaries, which include cultivation activities for commercial purposes that would require a business license or home occupation permit from opening and operating within any zone in the City of Winters, until such time that the operation of such medical marijuana dispensaries, including commercial cultivation activities, are allowed under both federal and state law; and

**WHEREAS**, in the event that such marijuana dispensaries are allowed under federal and state law then such dispensaries shall then be allowed only in a zone district designated for

medical offices and only if consistent with the applicable provisions of the Winters Municipal Code and federal and state law; and

**WHEREAS**, while medical marijuana dispensaries as defined in the Winters Municipal Code are allowed under state law, federal law classifies cannabis as an illegal controlled substance under the Controlled Substances Act (21 U.S.C. §811 *et seq.*) and does not allow cannabis for medical or recreational use, and therefore federal law still does not allow for medical marijuana dispensaries, including commercial cultivation; and

**WHEREAS**, do not expressly address commercial cultivation of medical marijuana as an activity separate from medical marijuana dispensaries, as is the case under portions of the Act, nor do they contemplate a local or state licensing scheme as established by the Act; and

**WHEREAS**, some California cities have reported negative impacts of marijuana cultivation, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, fire hazards, and problems associated with mold, fungus, and pests, which may be exacerbated by wide-scale commercial cultivation; and

**WHEREAS**, the City Council therefore desires to amend the Municipal Code to clarify the intent of the existing zoning restrictions on the cultivation of marijuana by prohibiting commercial cultivation of marijuana while continuing to allow limited personal cultivation by those qualified patients, primary caregivers exempt under the Act and medical marijuana cooperatives as defined in the Winters Municipal Code; and

**WHEREAS**, the City Council further desires to retain and maintain its control and regulation of medical marijuana uses within its boundaries by expressly reserving its ability to enact a future local licensing scheme as granted by the Act.

**NOW, THEREFORE**, the City Council of the City of Winters does hereby ordain as follows:

**Section 1. Recitals.** The above recitals are hereby found to be true and accurate and are incorporated into this Ordinance by this reference.

**Section 2. Findings.** The City Council hereby makes the following findings:

A. Pursuant to Winters Municipal Code section 17.28.010, the City Council hereby finds that the text amendments to the zoning code contained in this Ordinance are required for the public necessity, convenience and general welfare. This Ordinance balances the interests of existing medical marijuana patients and caregivers with the health and safety concerns associated with commercial cultivation. As such, this Ordinance preserves and clarifies the City's existing zoning restrictions regarding medical marijuana cultivation. The City Council further finds, based upon Planning Commission recommendation, that this Ordinance conforms to the City's general plan.

**Section 3. Amendments to Section 17.04.40.** Section 17.04.140 of Chapter 17.04 or Title 17 of the City of Winters Municipal Code is hereby amended as follows:

A. The following paragraph is hereby inserted in Subsection B of Section 17.140 in between the paragraph entitled “Carport” and the paragraph entitled “Community Development Director”:

“Commercial Marijuana Cultivation” means cultivation of medical marijuana licensed by the State of California in accordance with the Medical Marijuana Regulation and Safety Act, California Business and Professions Code Section 19300 et seq., and contemplated by the definition of “commercial cannabis activity” set forth in California Business and Professions Code Section 19300.5(k), as amended. Commercial Marijuana Cultivation is prohibited in the City. Pursuant to Section 11362.777 of the California Health and Safety Code, effective January 1, 2016, this paragraph is intended to regulate the cultivation of medical marijuana by prohibiting Commercial Marijuana Cultivation within the City, and thereby expressly reserving any future local licensing authority granted to the city by that Section. This paragraph shall not restrict cultivation of medical marijuana by a “primary caregiver” or “qualified patient,” as those terms are defined by Health and Safety Code Section 11362.7, or by a “medical marijuana cooperative,” as defined herein subject to the restrictions set forth in this Section 17.04.140.

B. The following paragraph is hereby inserted in Subsection B of Section 17.04.140 in between the paragraph entitled “Counter audit” and the paragraph entitled “Deemed withdrawn”:

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming or processing of marijuana or any part thereof.

C. The following paragraph is hereby inserted in Subsection B of Section 17.04.140 in between the paragraph entitled “Massage” and the paragraph entitled “Medical marijuana cooperative”:

“Medical marijuana” means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. Cannabis as used in this paragraph shall have the meaning as set forth in Subsection (f) of Section 19300.5 of the Business and Professions Code.

D. The paragraph entitled “Medical marijuana dispensary” set forth in Subsection B of Section 17.04.140 is hereby amended to read as follows:

“Medical marijuana dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with

California Health and Safety Code Section 11362.5 et seq. A medical marijuana dispensary is further defined as any place, location, building or establishment where medical cannabis is traded, exchanged, sold, or distributed ~~or cultivated~~ which would otherwise require a business license, home occupation permit or any other use permit to conduct similar type activities. Unless otherwise regulated by this code or applicable law, a “medical marijuana dispensary” shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with both applicable federal or state law, including, but not limited to, Health and Safety Code Section 11362.5 et seq. Currently, medical marijuana dispensaries are prohibited from opening and operating within any zone in the City of Winters. At such time as both federal and state law change to allow the operation of medical marijuana dispensaries, such dispensaries shall be then allowed only in a zone district designated for medical offices and only if consistent with the applicable provisions of this code and federal and state law.

**Section 4.** CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly, as it is simply a clarification of existing restrictions as currently set forth in the City of Winters Municipal Code. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Yolo in accordance with CEQA Guidelines.

**Section 5.** Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk’s office located at 318 First Street, Winters, CA 95694. The custodian of these records is the City Clerk.

**Section 6.** Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council of the City of Winters hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 7.** Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

**Section 8.** Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Winters.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Winters, California, at a regular meeting of the City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2016.

**City of Winters**

\_\_\_\_\_  
By: Cecilia Aguilar-Curry, Mayor

**ATTEST:**

\_\_\_\_\_  
Nanci Mills, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ethan Walsh, City Attorney

# MEDICAL MARIJUANA REGULATION AND SAFETY ACT<sup>1</sup>

## What Cities Need to Know About the New Law and Cultivation

### OVERVIEW

#### Here's what you need to know:

- **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, transport or distribution – must have a State license<sup>2</sup>.
- **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State and permission from the city (“dual licensing”).
- **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

### CULTIVATION

#### Here's what you need to know:

If your city does **not** have a land use ordinance in place regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles of permissive zoning*, or chooses not to administer a conditional permit program, then commencing **March 1, 2016**, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants.

1 AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

2 The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.

October 27, 2015

### CULTIVATION

#### Here's what you need to do:

Determine if your city fits within City #1 or City #2 as described below:

- **City #1:** Municipal Code that does not expressly prohibit nor expressly regulate cultivation of medical marijuana and is not a “permissive zoning” code. **Need to take action.**  
**ACTION REQUIRED:** Adopt a land use ordinance regulating or prohibiting the cultivation of medical marijuana. The ordinance must be effective by February 28, 2016. The ordinance may be adopted as an “urgency ordinance,” or second reading must occur on or before January 29, 2016.
- **City #2:** Municipal Code that is a “permissive zoning” code and does not enumerate cultivation of medical marijuana as a permitted or conditional use. **Need to take action.**

**ACTION REQUIRED:** (1) Check and confirm that your city's zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #1. (2) If confirmed, adopt a resolution that includes the following provisions:

- States that Health & Safety Code section 11362.777(b)(3) provides that the Department of Food and Agriculture may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
- Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
- States this means that cultivation of marijuana is not allowed within City #2 because it is not expressly permitted; and
- Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #2.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.





## Frequently Asked Questions (FAQs)

### Medical Marijuana Regulation and Safety Act<sup>1</sup>

#### Topic #1: Cultivation

*The State will be the sole licensing authority for the commercial cultivation of medical marijuana unless a city adopts a land use regulation or ordinance regulating or prohibiting the cultivation of marijuana — either expressly or otherwise under the principles of permissive zoning. The land use regulation or ordinance must take effect before **March 1, 2016.**<sup>2</sup>*

**Question:** If a city wants to enact a total ban on cultivation, can the ban include cultivation for personal use?

**Answer:** Yes. Under *Live Oak*<sup>3</sup>, a city can ban all marijuana cultivation — even cultivation of small amounts by qualified patients. The *Live Oak* ban had no exceptions for personal use by a qualified patient. The new legislation does not change the law in this regard.

**Question:** Must a city's ordinance prohibiting cultivation make an exception for personal medical marijuana cultivation of up to 6 mature or 12 immature plants?<sup>4</sup>

**Answer:** No. In the *Live Oak* case, the California Court of Appeal upheld the city's total ban on all marijuana cultivation. That authority is preserved under the new legislation.

**Question:** Is a person who cultivates marijuana for his or her personal medical use required to get a cultivation license from the State?

---

<sup>1</sup> AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016. Please consult your City Attorney before taking action to implement the MMRSA. The answers to these FAQs may be different in your city based upon your municipal code, regulations, and policies. The answers do not constitute legal advice from the League of California Cities®.

<sup>2</sup> Health & Safety 11362.777(c).

<sup>3</sup> *Maral v. City of Live Oak* (2013) 221 Cal.App.4<sup>th</sup> 975.

<sup>4</sup> Health & Safety Code 11362.77 allows a qualified patient to cultivate 6 mature or 12 immature plants without criminal liability.

December 16, 2015

**Answer:** No, if the area used for cultivation does not exceed 100 square feet, or 500 square feet for a primary caregiver with no more than five patients.<sup>5</sup> If the areas exceed these limits, then a State license is required. The exemption from the State licensing requirements does not prevent a city from regulating or banning cultivation by persons exempt from State licensing requirements.<sup>6</sup>

**Question:** Can a city prevent the State from becoming the sole licensing authority for cultivation by adopting an ordinance (that takes effect before March 1, 2016) that permits the cultivation of six plants per residence?

**Answer:** Yes. The State becomes the sole licensing authority for cultivation as of March 1, 2016 if a city does not have a land use regulation or ordinance "regulating or prohibiting the cultivation of marijuana" that has taken effect before March 1. An ordinance permitting cultivation under certain specific conditions (not more than six plants per residence) is an ordinance "regulating" marijuana cultivation and therefore qualifies. However, in order to be completely clear, the City Attorney may wish to determine whether it is advisable to prohibit all other types of cultivation as part of the ordinance.

**Question:** Must the cultivation prohibition be adopted as part of a city's zoning code? Could it be adopted instead under the city's business licenses and regulations?

**Answer:** It is not possible to answer "yes" or "no." AB 243 requires a "land use regulation or ordinance." Whether the phrase "land use" requires a zoning ordinance is a question for the city attorney to answer based on the particular language of the city's municipal code.

**Question:** Can a city ban large growers but still allow qualified patients to cultivate a small amount of medical marijuana in their private residences?

**Answer:** Yes. There's nothing in the legislation that requires a total ban. The most important consideration is to clearly identify cultivation that is prohibited and cultivation that is allowed and to do so with an ordinance that takes effect before March 1, 2016.

**Question:** Is a temporary land use moratorium (under Government Code section 65858) on medical marijuana cultivation that is effective before March 1, 2016 sufficient to prevent the State from having sole licensing authority under the new law for medical marijuana cultivation applicants in that city?

---

<sup>5</sup> Business & Professions Code 19319; Health & Safety 11362.777(g).

<sup>6</sup> Health & Safety Code 11362.777(g)

December 16, 2015

**Answer:** Probably not. Some attorneys think that a temporary land use moratorium is not sufficient because the new law requires a land use regulation or ordinance that prohibits or regulates cultivation. Because a moratorium adopted under Government Code 65858 would only temporarily prohibit cultivation, it may not qualify as a land use ordinance that "prohibits" cultivation. Be sure to consult your city attorney on this question.

**Question:** Can a local medical marijuana cultivation ordinance be enacted on an urgency basis in order to comply with the March 1, 2016 deadline in the new legislation?

**Answer:** Probably so. The special findings required for an urgency ordinance adopted under Government Code 36937 could be based upon the March 1 statutory deadline. Some attorneys think that this type of urgency ordinance cannot be used to adopt a land use ordinance. Be sure to consult your city attorney on this question.

## Topic #2: Delivery

*Deliveries of medical marijuana can only be made by a State-licensed dispensary in a city that does not explicitly prohibit deliveries by local ordinance. If a city wants to prevent deliveries within its jurisdiction, it must adopt an ordinance expressly prohibiting them.*<sup>7</sup>

**Question:** Is there a deadline for adopting an ordinance explicitly prohibiting deliveries?

**Answer:** There is no deadline in the new law. However, best practice would be to adopt the ordinance prior to the date the State begins issuing licenses allowing deliveries so as to reduce the risk of confusion and to avoid the process of requesting the State to terminate the operations of a dispensary making deliveries within the city.

The legislation does not specify a deadline for the State to begin issuing any category of license. The State is generally expected to begin issuing licenses on January 1, 2018, but it could begin sooner.

**Question:** What are the quantities that delivery services will be authorized to transport?

**Answer:** The amount that local delivery services will be authorized to carry will be determined by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. The determination will be based on security considerations, cash value, and other factors. The amount will be a statewide threshold, authorized for delivery primarily to patients, primary caregivers, and testing labs. Larger amounts will not be considered "delivery" but rather "transport" triggering heightened security requirements while the product is being moved.

---

<sup>7</sup> Health & Safety 19340.

December 16, 2015

### **Topic #3: Dispensaries and Retail Operations**

**Question:** Will cities still be able to ban dispensaries?

**Answer:** Yes. Cities currently have the ability to enact bans on dispensaries and other marijuana retail operations. The new law will not change that, and in fact requires a local permit and a State license before a marijuana business can begin operations within a specific jurisdiction. Cities will retain the discretion to deny permits or licenses to marijuana dispensaries.

**Question:** Can a city allow dispensaries and prohibit delivery services?

**Answer:** Yes. But cities should be aware that if they wish to prohibit delivery services, an ordinance prohibiting delivery services is required.

### **Topic #4: Other Questions**

**Question:** Does the new legislation make any distinction between "not-for-profit" and "for profit" medical marijuana businesses?

**Answer:** No. There is no distinction in the new legislation between medical marijuana businesses that operate "for profit" and those that operate on a "not-for-profit" basis. The new law does not mandate that dispensaries or other businesses operate under either business model.

**Question:** Are marijuana edibles covered under the new legislation? Is there a separate designation for them under the new law, with additional State regulatory requirements?

**Answer:** The new legislation directs the State Department of Public Health (DPH) to develop standards for the production and labeling of all edible medical cannabis products (Business & Professions Code section 19332(c)). A license is required from DPH to "manufacture" edibles. The DPH standards are "minimum standards." A city may adopt additional stricter standards, requirements and regulations regarding "edibles" (Business & Professions Code section 19316(a)). Cities also retain their ability to license and regulate edible sales or distribution.

**Question:** The new law says: "upon approval of the state, cities may enforce state law". If an existing medical marijuana dispensary does not have both licenses (State and city), then must a city wait for the State to approve shutting the dispensary down before a city can cite the dispensary or otherwise seek to shut it down under the city's ordinances and regulations?

**Answer:** No. A city may enforce its own ordinances and regulations against the dispensary since a medical marijuana dispensary cannot operate lawfully unless it complies with all local ordinances and regulations.

**Question:** Does a P.O. Box qualify as a medical marijuana business location? Is that considered a "use" in a city?

December 16, 2015

**Answer:** The answer to this question depends upon a city's municipal code. The State law prohibits a person from engaging in commercial cannabis activity without possessing both a State license and a local permit, license or other authorization. A State licensee may not commence activity under the authority of a State license until the applicant has complied with all requirements of the applicable local ordinance (Business & Professions Code section 19320). A city's municipal code will determine whether a "use" includes a post office box.

**Question:** Does the new law address extraction of THC, butane or other substances from marijuana?

**Answer:** The new law does not specifically address the issue of extraction at all — other than to acknowledge very generally that extraction falls within the definition of manufacturing, and that medical marijuana or a product derived from it may contain extracts.

**Question:** Since patients and primary caregivers are exempt from the licensing requirement under specified circumstances, how will that work if they are also owners of a dispensary or cultivation site?

**Answer:** A primary caregiver or qualified patient who seeks to operate a dispensary or cultivation site is subject to the same State licensing requirements and local permitting requirements as any other person.

**Question:** What types of medical marijuana businesses require a State license?

**Answer:** The new law creates six State licensing categories: Dispensary, Distributor, Transport, Cultivation, Manufacturing, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Any person or entity wishing to operate under a State license must also comply with all local requirements.

**Question:** Several initiative measures to legalize recreational marijuana have been filed with the Attorney General in advance of the November 2016 ballot. Should a city be considering prohibiting or regulating recreational marijuana at this time?

**Answer:** No. The new law does not address recreational use of marijuana. It adds a licensing structure for businesses that wish to serve those qualified patients and primary caregivers who use medical marijuana for their personal use. The League of California Cities is following the various recreational marijuana initiative measures that have been filed with the Attorney General. There is no need for a city to take any action at this time. If a city is interested in following these measures, more information can be found at: <https://www.oag.ca.gov/initiatives/active-measures>.

**Question:** Does the new law protect the privacy of patients and primary caregivers?

**Answer:** Yes. Patient and primary caregiver information is confidential and not subject to disclosure under the California Public Records Act, except as necessary for employees of

December 16, 2015

the State or any city to perform official duties.

**Question:** Is there a provision in the new law giving business operators priority for State licensing if they can show that they are in compliance with local ordinances? If so, what is the purpose of this provision?

**Answer:** Yes. The State licensing authority is required to prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016. This provision is intended as an incentive for business operators to be in compliance with local ordinances, to ease any difficulties local governments may have in launching their local regulatory structures, and to help expedite the initial phase of issuing state licenses.

**Question:** Does the new law address food trucks that sell marijuana edibles?

**Answer:** No. The operation of food trucks are within the control and regulation of cities and county health departments.

**PLEASE NOTE:** This document will be updated periodically, as needed, and will remain available at [www.cacities.org](http://www.cacities.org). As noted above, each city should consult with its city attorney on all of these issues. The answers to these FAQs do not constitute legal advice from the League of California Cities®.

**Informational Briefing:**  
**Medical Marijuana Regulation and Safety Act**

- This briefing is designed to educate our members on the three bills comprising the Medical Marijuana Regulation and Safety Act (MMRSA). Its goals are to:
  - Explain how this legislation protects local control;
  - Review the details of what each bill does;
  - Highlight specific regulatory issues that require immediate attention from local governments;
  - Discuss timelines for implementation
  - Field your questions

Note: Some of the provisions of the new laws discussed in this briefing are not included in the Medical Marijuana Regulation and Safety Act.




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- **Presenters:**
  - Tim Cromartie, Legislative Representative, League of California Cities
  - Lauren Michaels, Legislative Affairs Manager, California Police Chiefs Association
  - Christopher Boyd, Citrus Heights Police Chief, California Police Chiefs Association
  - Ruthann G. Ziegler, City Attorney of Pittsburg & Citrus Heights, Meyers Nave




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- **Medical Marijuana: Schedule of Events**
- **Informational Briefings**
  - Tulare – Monday, January 25
  - Burbank- Wednesday, January 26
  - Riverside - Thursday, January 27
  - San Diego - Monday, February 8




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

- The Medical Marijuana Regulation and Safety Act consists of three discrete pieces of legislation:
- **AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood)** – Establishes dual licensing structure requiring state license *and* a local license or permit. Department of Consumer Affairs heads overall regulatory structure establishing minimum health and safety and testing standards.
- **AB 243 (Wood)**– Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- **SB 643 (McGuire)** - Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

- This legislation protects local control in the following ways:
- **Dual licensing:** A requirement in statute that all marijuana businesses must have *both* a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- **Effect of Local Revocation of a Permit or License:** Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- **Enforcement:** Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- **State law penalties for unauthorized activity:** Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply.
- With certain exceptions, expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

- This legislation protects public safety in the following ways:
- **SB 643:** Establishes a track and trace program for all marijuana.
- **AB 266:**
  - Limits vertical integration by requiring third party distribution, transportation and testing.
  - Requires the development of a study that identifies the impact and impairing effect that marijuana has on motor skills.
  - Establishes uniform security requirements at dispensaries as well as for transporters.




---

---

---

---

---

---

---

---

**Key State Medical Marijuana Laws**

- **Compassionate Use Act of 1996** (Health and Safety Code section 11362.5). Criminal violations relating to possession and cultivation of marijuana do not apply to patients and primary caregivers for possession and cultivation of marijuana for personal medical use with doctor's approval.
- **Medical Marijuana Program** (Health and Safety Code section 11362.7 through 11362.9). Establishes voluntary program for identification cards issued by county for qualified patients and primary caregivers and provides criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana.
- **Medical Marijuana Regulation and Safety Act** (Business and Profession Code section 19300 through 19360). Governs the licensing and control of all medical marijuana businesses in the state and provides criminal immunity for licensees.




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

Two areas will require immediate attention from local governments:

- **Deliveries and mobile dispensaries:** Delivery is permitted with a State license unless a city adopts an express prohibition on delivery (AB 266).
- **Cultivation ordinances:** Cities must adopt an ordinance prohibiting or regulating cultivation prior to March 1, 2016. Otherwise the State will be sole licensing authority.




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- **AB 266 Medical Marijuana – what the bill does:**
- Establishes a statewide regulatory scheme administered by the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA).
- Provides for dual licensing: both a state license, and a local permit or license, *issued according to local ordinances*, are required.
- Caps total cultivation for a single licensee at 4 acres statewide, subject to local ordinances.
- Creates four licensing categories: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
- Limits cross-licensing: Operators may hold one state license in up to two separate license categories. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

- AB 266 Medical Marijuana - what the bill does:
- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and it was enacted on or before July 1, 2015. Requires businesses to operate in compliance with local ordinances, and to have been engaged in all the specified activities on July 1, 2015
- Requires establishment of uniform state minimum health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product. Product testing is mandatory.
- Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

- AB 266 Medical Marijuana - what the bill does:
- Labor Peace: Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.
- Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.
- Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun. Thereafter license will be required.




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

- AB 243 Medical Marijuana - what the bill does:
- Places the Dept. of Food and Agriculture (DFA) in charge of State licensing and regulation of indoor and outdoor cultivation sites.
- Mandates the Dept. of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Dept. of Public Health to develop standards for production and labelling of all edible medical cannabis products.
- Assigns joint responsibility to DFA, Dept. of Fish and Wildlife, and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- **AB 243 Medical Marijuana – what the bill does:**
- Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.
- Specifies various types of cultivation licenses.
- Directs the multi-agency task force headed by the Dept. of Fish and Wildlife and the SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- **SB 643 Medical Marijuana – what the bill does:**
- Directs California Medical Board to prioritize investigation of excessive recommendations by physicians;
- Imposes fines (\$5000.00) vs. physicians for violating prohibition against having a financial interest in a marijuana business;
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct;
- Imposes restrictions on advertising for physician recommendations;




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- **SB 643 Medical Marijuana – what the bill does:**
- Places Dept. of Food and Agriculture in charge of cultivation regulations and licensing, and requires a track and trace program;
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure;
- Places DPR in charge of pesticide regulation; DPH in charge of production and labelling of edibles;
- Authorizes counties to tax – declaratory of existing law.




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

- **SB 643: Disqualifying felony convictions for licensure**
  - These include felony narcotics convictions, violent felony convictions, serious felony convictions, and felony convictions involving fraud, deceit or embezzlement.
  - Applications cannot be denied if the denial is based solely on the applicant's conviction of a crime for which the applicant was subsequently granted a certificate of rehabilitation, or if the applicant's conviction was subsequently dismissed.




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health & Safety Code, or a testing laboratory.
- "Delivery" also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed under this chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products. (Business & Professions Code 19300.5(m))




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- "Deliveries" can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance. Business & Professions Code 19340(a). See also Section 19340(b)(1).
- Therefore, if your city wishes to prohibit delivery of medical marijuana within your city, an ordinance must be adopted to explicitly prohibit deliveries.
- Timing: State licenses are expected to be issued starting January 1, 2018. A facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements may continue its operations until its application for licensure is approved or denied effective January 1, 2018 (Business & Professions 19321(c)).
- Ordinance explicitly prohibiting deliveries should include (1) an amendment to the zoning code prohibiting "delivery" (as defined in AB 266) in any zoning district; or (2) an amendment to the Municipal Code relating to business operations prohibiting "delivery" of "medical marijuana" and "medical cannabis products" (as defined in AB 266) as a business within the city.




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

#### • Cultivation (AB 243)

- AB 243 (Wood) prohibits cultivation of medical marijuana without first obtaining both a local license/permit/other entitlement for use and a state license. A person may not apply for a state license without first receiving a local license/permit/other entitlement for use.
- A person may not submit an application for a state license if proposed cultivation will violate provisions of local ordinance or regulation or if medical marijuana is prohibited by city, county, or city and county either expressly or otherwise under principles of permissive zoning (Health & Safety 11372.777(b)).




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

#### • Cultivation (AB 243)

- **However...** If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles or permissive zoning*, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the state is the sole licensing authority for medical marijuana cultivation applicants (Health & Safety 11372.777(c)(4)). [March 1, 2016 deadline does not apply to cultivation for personal medical use within 100 square foot area/500 square foot area for primary care-taker].
- Under a "permissive" zoning code, "any use not enumerated in the code is presumptively prohibited." *City of Corona v. Naulis* (2008) 166 Cal.App.4th 418, 425 cited in *County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, FN. 3




---

---

---

---

---

---

---

---

### Medical Marijuana Regulation and Safety Act

#### • Cultivation (AB 243) - Examples:

- City #1: Municipal Code that expressly prohibits cultivation of marijuana: No need to take any action.
- City #2: Municipal Code that expressly regulates (requires a permit or license or other entitlement) the cultivation of medical marijuana: No need to take any action.
- City #3: Municipal Code that does not expressly prohibit or expressly regulate (requires a permit or license or other entitlement) to cultivate medical marijuana and is not a "permissive zoning" code. **Need to take action (see next slide)**
- City #4: Municipal Code that is a "permissive zoning" code and does not enumerate cultivation of medical marijuana as a permitted or conditional use: **Need to take action (see second slide following).**




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- Cultivation (AB 243) – Examples:
- City #3: What needs to be done before March 1, 2016?
- City #3: Enact an ordinance. The Department of Food and Agriculture will be the sole licensing authority for the cultivation of medical marijuana within City #3 if City #3 does not have an ordinance either expressly prohibiting or expressly regulating the cultivation of medical marijuana before March 1, 2016. (Health & Safety Code 11362.777(c)(4). Second reading of an ordinance must occur by January 29, 2016 or a city may consider adopting an urgency ordinance pursuant to Government Code 36937).




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- Cultivation (AB 243) – Examples:
- City #4: What needs to be done before March 1, 2016?
- City #4: If City #4 prohibits the cultivation of medical marijuana “under principles of permissive zoning,” then the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within City #4. (Health & Safety Code 11362.777(b)(3)). *However, the city still needs take action (see next slide).*




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- Cultivation - General Guidelines for Cities
- Check and confirm that your city’s zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #3.
- If confirmed that your city’s zoning code is adopted and implemented under the principles of permissive zoning: Adopt a resolution that includes the following provisions:
  - (1) States that H & S 11362.777(b)(3) states that Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
  - (2) Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
  - (3) States this means that cultivation of marijuana is not allowed within City #4 because it is not expressly permitted and,
  - (4) Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #4.




---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

- Timeline for Implementation
  - None of the bills specify a timeline for implementation
  - This is partly due to various departments being at different stages in terms of their readiness
  - The rough timeline we have been given for state licensing to begin is January 2018
  - The more immediate timeline for locals to bear in mind is March 2016 regarding your cultivation ordinances



---

---

---

---

---

---

---

---

**Medical Marijuana Regulation and Safety Act**

• Questions?



---

---

---

---

---

---

---

---