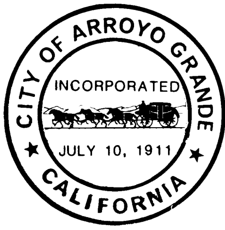


# MEMORANDUM

**TO:** PLANNING COMMISSION

**FROM:** TERESA MCCLISH, COMMUNITY DEVELOPMENT DIRECTOR
DAVID HIRSCH, ASSISTANT CITY ATTORNEY
STEVEN ANNIBALI, POLICE CHIEF

**SUBJECT:** CONSIDERATION OF DEVELOPMENT CODE AMENDMENT CASE NO. 15-003; REGARDING MEDICAL MARIJUANA; LOCATION – CITYWIDE; APPLICANT – CITY OF ARROYO GRANDE

**DATE:** DECEMBER 1, 2015

## RECOMMENDATION:

It is recommended that the Planning Commission adopt a Resolution recommending that the City Council adopt an ordinance adding chapter 16.62 to Title 16 of the Arroyo Grande Municipal Code relating to medical marijuana dispensaries, cooperatives and collectives, cultivation of medical marijuana, and deliveries of medical marijuana or medical cannabis products.

## FINANCIAL IMPACT:

There is no identified direct impact to financial and personnel resources. Depending on the direction provided by the City Council, there may be implications regarding staff resources relating to enforcement of regulations. This item is not identified in the Critical Needs Action Plan.

## BACKGROUND:

In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA), which decriminalized marijuana use for medical purposes. In 2003, the Medical Marijuana Program Act (MMP) clarified the CUA — which includes issuing identification cards for qualified patients and allowing patients and their primary caregivers to collectively or cooperatively cultivate medical marijuana. Neither law regulated or restricted local zoning requirements for medical marijuana dispensaries. However, uncertainty remained as federal law continued to categorize marijuana as a controlled substance. On May 27, 2008, the City Council adopted Ordinance 599 that prohibited the establishment of medical marijuana dispensaries in the City. On October 9, 2012, the City Council adopted Ordinance 647, relating to the definition of medical marijuana dispensaries to include mobile dispensaries. In 2013, the California Supreme Court unanimously ruled that local governments have the power to ban medical marijuana dispensaries (City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.). Also in 2013 the State Court of Appeals decided a case that held that cities have authority to prohibit cultivation of all medical marijuana city-wide (Maral v. City of Live

Oak). In both cases, the courts similarly found that the Proposition 215 and the MMP do not preempt a city's regulatory authority to prohibit all cultivation in the city, if the city so chooses.

On October 9, 2015, Gov. Jerry Brown signed a comprehensive package of bills to establish a regulatory structure for medical marijuana. Together, AB 266, AB 243, and SB 643 comprise the Medical Marijuana Regulation & Safety Act (MMRSA). For a summary of each bill please refer to Attachment 1.

On November 24, the City Council considered implications of the MMRSA regarding local control and directed Staff prepare an ordinance prohibiting cultivation, delivery and all commercial medical marijuana uses.

**ANALYSIS OF ISSUES:**
MMRSA expressly preserves the authority of cities with regard to their zoning powers and local actions taken in accordance with the police power under the State Constitution. MMRSA includes extensive provisions relating to cultivation and contains language that provides that if a city does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana by March 1, 2016, either expressly or otherwise under the principles of permissive zoning, then the State will become the sole licensing authority. Permissive zoning prohibits uses for which it does not expressly allow by a list of permitted uses. On November 24, 2015, the City Council directed Staff to develop an ordinance rather than rely on permissive zoning that ultimately may lead to ambiguities in interpretation over time.

The Council heard testimony of concerns by residents regarding medical marijuana cultivation in the City by a group growing medical marijuana "collectively" (reference Health and Safety Code Sections 11362.5 et. seq.) The concerns expressed by residents include the potential public nuisances caused by medical marijuana cultivation, as well as safety concerns in their neighborhoods. While some cities have addressed the issue of cultivation by permitting very limited growing of marijuana, the City Council direction was to develop an ordinance that would provide for a complete prohibition. Council consideration included that although there are widely recognized benefits to medical marijuana, growing operations have demonstrated significant nuisance issues and in this respect, enforcement issues could become considerable if limited use was established due to matters of subjectivity.

Accordingly, to ensure clarity and consistency for purposes of enforcement, and to ensure local control in consideration of evolving legislation, the proposed ordinance would expressly make clear that cultivation and all commercial medical marijuana uses are prohibited on all parcels in the City. Enforcement of the Ordinance would be on a complaint basis through Neighborhood Services and the Police Department. In addition, the MMRSA also contains language that provides that in order to prohibit delivery of medical marijuana it must be explicitly prohibited by local ordinance. Since the City has previously prohibited mobile medical marijuana dispensaries, prohibition of

deliveries is also included in the proposed ordinance in order to satisfy the requirements of the new statute. The proposed ordinance also provides an opportunity to clean up definitions related to dispensaries that would include cooperatives and collectives, consistent with State law.

The Council discussed enforcement challenges regarding landlords and tenants. The proposed ordinance includes specifics for the prohibition of cultivation that allows a landlord to be accountable if such activities are allowed to occur on their property. The Council also discussed the need for law enforcement protocols to include education and efficiencies in enforcement. Although this is not proposed to be included in the ordinance, Staff will establish protocols and enforcement procedures to provide clarity on how the ordinance will ultimately be implemented.

**ALTERNATIVES:**
The following alternatives are provided for the Planning Commission's consideration:

1. Recommend to the City Council to adopt an ordinance that cultivation, delivery and all commercial medical marijuana uses are prohibited.
2. Modify and recommend to the City Council to adopt an ordinance that cultivation, delivery and all commercial medical marijuana uses are prohibited.
3. Provide other direction to Staff.

**ADVANTAGES:**
Adoption of an ordinance to expressly make clear that all cultivation and commercial medical marijuana uses are prohibited in all zones throughout the City will preserve the City's authority in local control as avoid ambiguity in enforcement matters. In addition, under the new statutes an express prohibition on delivery is necessary if such activities are to be prohibited.

**DISADVANTAGES:**
Implementation of an ordinance to expressly prohibit cultivation, delivery and all commercial medical marijuana uses will impact staff time and resources.

**ENVIRONMENTAL REVIEW:**
None required.

**PUBLIC NOTIFICATION:**
The Agenda was posted in front of City Hall, and the Agenda and report were posted on the City's website on Wednesday, November 25 2015.

Attachments:

1. Summary of AB 243, AB 266 and SB 643, passed by Governor Brown on October 9, 2015 to establish a regulatory structure for medical marijuana (provided by the League of California Cities).

**RESOLUTION NO.**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ARROYO GRANDE RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE ADDING CHAPTER 16.62 TO TITLE 16 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO MEDICAL MARIJUANA DISPENSARIES, COOPERATIVES AND COLLECTIVES, CULTIVATION OF MEDICAL MARIJUANA, AND DELIVERIES OF MEDICAL MARIJUANA OR MEDICAL CANNABIS PRODUCTS**

**WHEREAS,** in 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act of 1996" relating to medical marijuana, and in 2003, the Legislature enacted Senate Bill 420, also known as the Medical Marijuana Program (MMP). Neither Proposition 215 nor the MMP confer on qualified patients who use medical marijuana and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose. Nor do they require or impose an affirmative duty or mandate upon local governments, such as the City of Arroyo Grande, to allow, authorize or sanction marijuana cultivation or the operation and establishment of facilities dispensing medical marijuana within its jurisdiction; and

**WHEREAS,** in the case City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc., 56 Cal.4th 729 (2013), the California Supreme Court ruled unanimously that Proposition 215 and the MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries. In reaching this conclusion, the Supreme Court recognized that the local police power, which derives from California Constitution, article XI, Section 7, "includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders...." 56 Cal.4th at 738; and

**WHEREAS,** The City Council of the City of Arroyo Grande has previously adopted Chapter 9.26 of the Arroyo Grande Municipal Code prohibiting medical marijuana dispensaries in the City, including mobile facilities; and

**WHEREAS,** concerns have recently been expressed by residents regarding medical marijuana cultivation in the City by a group growing medical marijuana “collectively” (reference Health and Safety Code Sections 11362.5 et. seq.) The concerns expressed by residents include the potential public nuisances caused by medical marijuana cultivation, as well as safety concerns in their neighborhoods; and

**WHEREAS,** on November 26, 2013 the Court of Appeal decided and published Maral v. City of Live Oak, 221 Cal.App.4th 975 (2013), and on March 26, 2014 the State Supreme Court denied review of that decision. Maral held that cities have authority to prohibit cultivation of all medical marijuana city-wide. Like the Supreme Court’s decision in the City of Riverside case, the Maral court similarly found that the Proposition 215

and the MMP do not preempt a city's regulatory authority to prohibit all cultivation in the city, if the city so chooses; and

**WHEREAS,** the Planning Commission of the City of Arroyo Grande hereby makes the following findings regarding the cultivation of medical marijuana within the boundaries of the City:

A. The cultivation of medical marijuana can adversely affect the health, safety and well-being of the City and its residents. Medical marijuana cultivation increases the risk of criminal activity, degradation of the natural environment, excessive use of electricity which may overload standard electrical systems, and damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, increased risk of fire and fire-related hazards, inadequate ventilation, increased occurrences of home-invasion robberies and similar crimes. Medical marijuana cultivation also creates increased nuisance impacts to neighboring properties because of the strong, malodorous, and potentially noxious odors which come from the plants. Further, the indoor and outdoor cultivation of medical marijuana in or near residential zones increases the risk of such activity and intrudes upon residential uses.

B. Marijuana plants grown outdoors, as they begin to flower and for a period of two (2) months or more during the growing season, produce an extremely strong odor that is offensive to many people and detectable far beyond property boundaries. This strong smell may create an attractive nuisance, alerting persons to the location of the marijuana plants, thereby creating a risk of burglary, robbery, armed robbery, assault, attempted murder, and murder.

C. Fertilizers and pesticides, both legal and illegal, used when marijuana is grown outdoors may unreasonably increase the concentration of such chemicals in storm water runoff thereby impacting local creeks, streams and rivers. Such pollution may negatively affect water quality for downstream users, harm ecosystems, and impact threatened or endangered species.

D. Water for marijuana grown outdoors may be illegally diverted from local creeks, streams, and rivers, thereby unreasonably depriving downstream users of beneficial water sources. Such diversions may also impact water supply, harm ecosystems, and negatively affect threatened or endangered species.

**WHEREAS,** three bills have recently been enacted by the State of California Legislature and were signed by the Governor on October 9, 2015, that comprise the Medical Marijuana Regulation and Safety Act (MMRSA): AB 243 (Chapter 688, Statutes of 2015); AB 266 (Chapter 689, Statutes of 2015); and SB 643 (Chapter 719, Statures of 2015); and

**WHEREAS,** the MMRSA expressly preserves the authority of cities with regard to their zoning powers and local actions taken in accordance with the police power under the State Constitution; and

**WHEREAS**, The MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to whether the City must prohibit other types of commercial medical marijuana activities.

**WHEREAS,** on November 24, 2015, while the City Council believes that cultivation and all commercial medical marijuana uses are prohibited under the City's permissive zoning regulations, it directed the development of an ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

**WHEREAS**, the Planning Commission has considered the proposed Ordinance approving Development Code Amendment 15-003 at a duly noticed public hearing on December 1; and

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Arroyo Grande hereby recommends the City Council adopt an Ordinance approving Development Code Amendment No. 15-003, amending portions of Title 16 of the AGMC regarding medical marijuana, a copy of which is attached hereto as Exhibit 'A' and incorporated herein by this reference;

On a motion by Commissioner _______, seconded by Commissioner _______ and by the following roll call vote to wit:

**AYES:**
**NOES:**
**ABSENT:**

the foregoing Resolution was adopted this 1st day of December 2015.

**ATTEST:**

| ______________________________ | ______________________________ |
| --- | --- |
| **DEBBIE WEICHINGER** | **LAN GEORGE, CHAIR** |
| **SECRETARY TO THE COMMISSION** | |

**AS TO CONTENT:**

__________________________________

**TERESA McCLISH**
**DIRECTOR OF COMMUNITY DEVELOPMENT**

**EXHIBIT "A"**

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE ADDING CHAPTER 16.62 TO TITLE 16 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO MEDICAL MARIJUANA DISPENSARIES, COOPERATIVES AND COLLECTIVES, CULTIVATION OF MEDICAL MARIJUANA, AND DELIVERIES OF MEDICAL MARIJUANA OR MEDICAL CANNABIS PRODUCTS**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, "The Compassionate Use Act of 1996" relating to medical marijuana, and in 2003, the Legislature enacted Senate Bill 420, also known as the Medical Marijuana Program (MMP). Neither Proposition 215 nor the MMP confer on qualified patients who use medical marijuana and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose. Nor do they require or impose an affirmative duty or mandate upon local governments, such as the City of Arroyo Grande, to allow, authorize or sanction marijuana cultivation or the operation and establishment of facilities dispensing medical marijuana within its jurisdiction; and

**WHEREAS,** in the case City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc., 56 Cal.4th 729 (2013), the California Supreme Court ruled unanimously that Proposition 215 and the MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries. In reaching this conclusion, the Supreme Court recognized that the local police power, which derives from California Constitution, article XI, Section 7, "includes broad authority to determine, for purposes of public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders...." 56 Cal.4th at 738; and

**WHEREAS,** The City Council of the City of Arroyo Grande has previously adopted Chapter 9.26 of the Arroyo Grande Municipal Code prohibiting medical marijuana dispensaries in the City, including mobile facilities; and

**WHEREAS,** concerns have recently been expressed by residents regarding medical marijuana cultivation in the City by a group growing medical marijuana "collectively" (reference Health and Safety Code Sections 11362.5 et. seq.) The concerns expressed by residents include the potential public nuisances caused by medical marijuana cultivation, as well as safety concerns in their neighborhoods; and

**WHEREAS,** on November 26, 2013 the Court of Appeal decided and published Maral v. City of Live Oak, 221 Cal.App.4th 975 (2013), and on March 26, 2014 the State Supreme Court denied review of that decision. Maral held that cities have authority to prohibit cultivation of all medical marijuana city-wide. Like the Supreme Court's decision in the City of Riverside case, the Maral court similarly found that the Proposition 215 and the MMP do not preempt a city's regulatory authority to prohibit all cultivation in the city, if the city so chooses; and

**WHEREAS,** the City Council of the City of Arroyo Grande hereby makes the following findings regarding the cultivation of medical marijuana within the boundaries of the City:

A. The cultivation of medical marijuana can adversely affect the health, safety and well-being of the City and its residents. Medical marijuana cultivation increases the risk of criminal activity, degradation of the natural environment, excessive use of electricity which may overload standard electrical systems, and damage to buildings in which cultivation occurs, including improper and dangerous electrical alterations and use, increased risk of fire and fire-related hazards, inadequate ventilation, increased occurrences of home-invasion robberies and similar crimes. Medical marijuana cultivation also creates increased nuisance impacts to neighboring properties because of the strong, malodorous, and potentially noxious odors which come from the plants. Further, the indoor and outdoor cultivation of medical marijuana in or near residential zones increases the risk of such activity and intrudes upon residential uses.

B. Marijuana plants grown outdoors, as they begin to flower and for a period of two (2) months or more during the growing season, produce an extremely strong odor that is offensive to many people and detectable far beyond property boundaries. This strong smell may create an attractive nuisance, alerting persons to the location of the marijuana plants, thereby creating a risk of burglary, robbery, armed robbery, assault, attempted murder, and murder.

C. Fertilizers and pesticides, both legal and illegal, used when marijuana is grown outdoors may unreasonably increase the concentration of such chemicals in storm water runoff thereby impacting local creeks, streams and rivers. Such pollution may negatively affect water quality for downstream users, harm ecosystems, and impact threatened or endangered species.

D. Water for marijuana grown outdoors may be illegally diverted from local creeks, streams, and rivers, thereby unreasonably depriving downstream users of beneficial water sources. Such diversions may also impact water supply, harm ecosystems, and negatively affect threatened or endangered species.

**WHEREAS**, marijuana remains an illegal substance under the federal Controlled Substances Act (21 U.S.C. Section 801 et seq.) and it is classified 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; and

**WHEREAS,** three bills have recently been enacted by the State of California Legislature and were signed by the Governor on October 9, 2015, that comprise the Medical Marijuana Regulation and

Safety Act (MMRSA): AB 243 (Chapter 688, Statutes of 2015); AB 266 (Chapter 689, Statutes of 2015); and SB 643 (Chapter 719, Statures of 2015); and

**WHEREAS,** the MMRSA expressly preserves the authority of cities with regard to their zoning powers and local actions taken in accordance with the police power under the State Constitution; and

**WHEREAS,** The MMRSA contains language that requires the city to prohibit cultivation uses by March 1, 2016 either expressly or otherwise under the principles of permissive zoning, or the State will become the sole licensing authority. The MMRSA also contains language that requires delivery services to be expressly prohibited by local ordinance, if the City wishes to do so. The MMRSA is silent as to whether the City must prohibit other types of commercial medical marijuana activities.

**WHEREAS,** while the City Council believes that cultivation and all commercial medical marijuana uses are prohibited under the City's permissive zoning regulations, it desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the City.

**WHEREAS,** the Planning Commission held a duly noticed public hearing on November 17, 2015 at which time it considered all evidence presented, both written and oral and at the end of the hearing voted to adopt a resolution recommending that the City Council adopt this Ordinance.

**WHEREAS,** the City Council held a duly noticed public hearing on this Ordinance on December _____, 2015, at which time it considered all evidence presented, both written and oral.

**NOW THEREFORE**, THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals and findings are true and correct and are incorporated herein by this reference.

SECTION 2. Chapter 9.26 of the Arroyo Grande Municipal Code is hereby repealed.

SECTION 3. Chapter 16.62 is hereby added to Title 16 of the Arroyo Grande Municipal Code to read as follows:

"**16.62.010 Purpose and findings**.

A. It is the purpose and intent of this chapter to prohibit medical marijuana dispensaries, cooperatives and collectives, including mobile dispensaries, as well as prohibit delivery and cultivation of medical marijuana pursuant to the City of Arroyo Grande's authority under Section 7 of Article XI of the California Constitution, in order to promote the health, safety, and general welfare of the residents and businesses within the City of Arroyo Grande and prevent adverse impacts which such activities may have on nearby properties and residents, as recognized by the Courts (reference City of Riverside v. Inland Empire Patients Health & Wellness Center., Inc., 56 Cal.4th 729 (2013) and Maral v. City of Live Oak, 221 Cal.App.4th 975 (2013)) and as provided in the Medical Marijuana Regulation and Safety Act (AB 243 (Chapter 688, Statutes of 2015); AB 266 (Chapter 689, Statutes of 2015); and SB 643 (Chapter 719, Statures of 2015)).

B Pursuant to the City of Arroyo Grande's police powers authorized in Article XI, Section 7 of the California Constitution, the City has the power to regulate permissible land uses within its boundaries and to enact regulations for the preservation of public health, safety and welfare of its residents and community. Further, pursuant to Government Code Sections 38771 through 38775, municipalities also have the power through the City Council to declare actions and activities that constitute a public nuisance.

C. The City Council finds that Proposition 215, "The Compassionate Use Act of 1996", Senate Bill 420 enacted in 2003, also known as the Medical Marijuana Program and the Medical Marijuana Regulation and Safety Act (AB 243 (Chapter 688, Statutes of 2015); AB 266 (Chapter 689, Statutes of 2015); and SB 643 (Chapter 719, Statures of 2015) do not preempt the City's exercise of its traditional police powers in enacting land use regulations, such as this chapter, for preservation of public health, safety and welfare, by prohibiting medical marijuana dispensaries, cooperatives and collectives, and deliveries of medical marijuana, and the cultivation of marijuana within the City.

**16.62.020 Application.**

The provisions of this chapter shall apply generally to all property within the boundaries of the City wherein any of the conditions herein specified are found to exist. However, nothing in this chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution under the CUA or MMP.

**16.62.030 Administration.**

The Chief of Police, or the Chief's designee and/or the Director of Community Development, or the Director's designee, are charged with the responsibility of administering this chapter and exercising the authority conferred thereby.

**16.62.040 Definitions.**

As used herein, the following definitions shall govern the construction of this chapter:

"Collective" or "cooperative" means any association, cooperative, affiliation, group, or collective of persons organized or associated to cultivate, store and/or dispense marijuana for medical purposes pursuant to the CUA or MMP and as provided in Health and Safety Code Section 11362.775.

"Cultivation" shall have the meaning as set forth in Business and Professions Code Section19300.5 (l) and also means the planting, growing, harvesting, drying, processing or storage of one (1) or more marijuana plants or any part thereof in any location, indoor or outdoor, including a fully enclosed and secure building.

"Delivery" shall have the meaning as set forth in Business and Professions Code Section19300.5 (m).

"Dispensary" shall have the meaning as set forth in Business and Professions Code Section19300.5(n) and also means any facility, location, establishment or similar entity that cultivates,

distributes, delivers, supplies or processes marijuana for medical purposes relating to a qualified patient or primary caregiver, pursuant to the CUA and MMP in accordance with Health and Safety Code Section 11362.5 et seq. A dispensary shall include a dispensing collective or cooperative and shall include a mobile dispensary and delivery services.

“Marijuana” means all parts of the plant genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, and includes “cannabis”, “medical cannabis”, “cannabis product” and “medical cannabis product” as defined in Business and Professions Code Sections 19300.5(f) and (ag).

“Primary Caregiver”. This shall have the meaning set forth in Health and Safety Code Section 11362.7(d).

“Qualified Patient”. This shall have the meaning set forth in Health and Safety Code Section 11362.7(f).

**16.62.050 Cultivation prohibited.**

No person or persons owning, leasing, occupying, or having charge or possession of any parcel in the City of Arroyo, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, shall allow such parcel to be used for the cultivation of marijuana. Cultivation of marijuana within the City of Arroyo Grande for any purpose is prohibited, and is expressly declared to be a public nuisance.

The prohibition contained in this section is intended to constitute an express prohibition on cultivation as it relates to the provisions of Health and Safety Code Section 11362.777(b)(3), which provides that a person or entity shall not submit an application for a state license to cultivate marijuana under the Department of Food and Agriculture’s Medical Cannabis Cultivation Program if the proposed cultivation of marijuana will violate the provisions of a local ordinance or regulation, or if medical marijuana is prohibited by the city.

**16.62.060 Medical Marijuana Collectives, Cooperatives and Dispensaries Prohibited**

A. Medical marijuana collectives, cooperatives and dispensaries, including mobile dispensaries, are not permitted in or upon any premises in the City of Arroyo Grande.

B. A medical marijuana dispensary shall not include the following uses, so long as such uses comply with this code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.

2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

3. A residential care facility for persons with chronic life-threatening illness licensed

pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

5. A hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

**16.62.070 Deliveries Prohibited**

It shall be unlawful for any person to deliver medical marijuana or medical cannabis products or engage in activities that constitute delivery of medical marijuana or medical cannabis products anywhere within the boundaries of in the City of Arroyo Grande. This prohibition is intended to constitute an express prohibition on deliveries, as provided for in Business and Professions Code Section 19340.

**16.62.080 Violations and penalties**.

A. Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, licenses, or causes a violation thereof, and shall be punished accordingly.

B. Violation of any provision in this chapter is a misdemeanor unless the city attorney authorizes issuance of an infraction citation or files a complaint charging the offense as an infraction; or the court, upon the prosecutorial recommendation of the city attorney, determines that the offense is an infraction.

C. Violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief."

SECTION 4. This ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.

SECTION 5. A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

SECTION 6. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

SECTION 7. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

On motion by Council Member ______, seconded by Council Member _______, and by the following roll call vote to wit:

**AYES:**

**NOES:**

**ABSENT:**

**the foregoing Ordinance was adopted this ____ day of _______, 2015.**

______________________________________

**JIM HILL, MAYOR**

**ATTEST:**

______________________________________

**KELLY WETMORE, CITY CLERK**

**APPROVED AS TO CONTENT:**

______________________________________

**DIANNE THOMPSON, CITY MANAGER**

**APPROVED AS TO FORM:**

______________________________________

**HEATHER K. WHITHAM, CITY ATTORNEY**

## ATTACHMENT 1

Summary of bills passed by Governor Brown on October 9, 2015 to establish a regulatory structure for medical marijuana (provided by the League of California Cities):

**AB 243 (Wood) Medical Marijuana**

- Places the Department of Food and Agriculture (DFA) in charge of licensing and regulation of indoor and outdoor cultivation sites. Creates a Medical Cannabis Cultivation Program within the department.
- Mandates the Department of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Department of Public Health (DPH) to develop standards for production and labelling of all edible medical cannabis products.
- Assigns joint responsibility to DFA, Department of Fish and Wildlife (DFW), and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.
- 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 DFW and 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.

**AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) Medical Marijuana**

- Protects local control as it establishes a statewide regulatory scheme, headed by the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA).
- Provides for dual licensing: state will issue licenses, and local governments will issue permits or licenses to operate marijuana businesses, according to local ordinances. State licenses will be issued beginning in January 2018.
- Revocation of a local license or permit will unilaterally terminate the ability of the business to operate in that jurisdiction.

- Expressly protects local licensing practices, zoning ordinances, and local constitutional police power.
- Caps total cultivation for a single licensee at four acres statewide, subject to local ordinances.
- Requires local jurisdictions that wish to prevent delivery services from operating within their borders to enact an ordinance affirmatively banning this activity. No specific operative date for the ban is specified.
- Specifies that DCA will issue the following licenses: 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 to holding a single state license in up to two separate license categories, as specified. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.
- 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 was enacted on or before July 1, 2015. Also requires such businesses to have operated in compliance with local ordinances, and to have been engaged in all the covered activities on July 1, 2015.
- Requires establishment of uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product.
- 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.
- 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.
- Provides for civil penalties for unlicensed activity, and specifies that applicable criminal penalties under existing law will continue to apply.
- 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.
- Preserves enforcement authority of the city of Los Angeles with respect to Measure D, the local regulatory structure for medical marijuana within the city limits.

**SB 643 (McGuire) Medical Marijuana**

- Directs the California Medical Board to prioritize investigation of excessive recommendations by physicians.

- Imposes fines ($5000.00) against 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.
- Places DFA 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.
- Upholds local power to levy fees and taxes.