

BOARD OF SUPERVISORS
Yolo County, California

To: Co. Counsel ✓

CONSENT CALENDAR

Excerpt of Minute Order No. 16-38 Item No. 12, of the Board of Supervisors' meeting of March 22, 2016.

MOTION: Rexroad. SECOND: Chamberlain. AYES: Chamberlain, Villegas, Saylor, Rexroad, Provenza.

12.

Waive second reading and consider adoption of an ordinance adding Chapter 20 to Title 5 of the Yolo County Code regulating the outdoor cultivation of medical marijuana in the unincorporated areas of Yolo County. (No general fund impact) (Pogledich/Scarlata)

Approved **Ordinance No. 1467** on Consent.



County of Yolo

www.yolocounty.org

To: Supervisor Jim Provenza, Chair
and Members of the Board of Supervisors

Consent-General Government # 12.

Board of Supervisors

County Counsel

Meeting Date: 03/22/2016

Brief Title: Second Reading of Interim Medical Marijuana Ordinance

From: Philip J. Pogledich, County Counsel

Staff Contact: Carrie Scarlata, Assistant County Counsel, x8277

Subject

Waive second reading and consider adoption of an ordinance adding Chapter 20 to Title 5 of the Yolo County Code regulating the outdoor cultivation of medical marijuana in the unincorporated areas of Yolo County. (No general fund impact) (Pogledich/Scarlata)

Recommended Action

Waive second reading and consider adoption of an ordinance adding Chapter 20 to Title 5 of the Yolo County Code regulating the outdoor cultivation of medical marijuana in the unincorporated areas of Yolo County.

Strategic Plan Goal(s)

Safe Communities

Sustainable Environment

Reason for Recommended Action/Background

Background

On January 26, 2016, the Board received a staff presentation about the Medical Marijuana Regulation and Safety Act ("MMRSA") and its impact on local medical marijuana regulation. MMRSA, which became effective January 1, 2016, addresses all aspects of medical marijuana including cultivation, manufacture, transportation, testing, distributing, sale and taxation. In response to MMRSA, and to effect greater local control, the Board directed staff to continue review and development of a local medical marijuana licensing and regulatory program and a corresponding ordinance.

Purpose

Although MMRSA became operative on January 1, 2016, many of the new state standards will not take effect until January 1, 2018. Until those standards take effect, and while staff develops a local regulatory program, the Board requested an interim ordinance for consideration that addresses neighbor complaints about certain outdoor marijuana cultivation sites and to limit harmful environmental impacts that are sometimes associated with marijuana cultivation. This is that interim ordinance.

Key Provisions

The ordinance bans outdoor cultivation of medical marijuana unless the cultivation meets one of two conditions.

One, the ordinance carves out a personal exemption for a qualified patient cultivating marijuana outdoors, if the cultivation area does not exceed 100 square feet and the patient is cultivating marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity.

Two, the ordinance allows outdoor cultivation if the cultivation site complies with California Regional Water Quality Control Board ("CRQCB") Central Valley Region Order No. R5-2015-0133, which specifically addresses discharges of waste associated with medicinal marijuana cultivation activities to ensure that they do not impact water resources. The CRQCB's medical marijuana regulatory program provides a useful tool for separating legitimate medical marijuana businesses who desire to operate legally from the bad actors who generate neighborhood concerns. It is an existing regulatory and permitting program that includes an application process, fees, best management practices, inspections, compliance assistance and enforcement mechanisms.

Finally, notwithstanding compliance with either of the above conditions, the ordinance prohibits outdoor cultivation of medical marijuana that creates an odor nuisance.

The interim ordinance also contains limitations on the location of cultivation sites to protect the health, safety and well-being of the County and its residents. Those limitations include setbacks from schools, school bus-stops, churches and parks, from other occupied dwellings and parcels under separate ownership. The ordinance also requires the cultivation site to be fully enclosed by a fence with a locked gate.

Current Action

The Board reviewed and discussed the proposed ordinance at the March 8, 2016 Board meeting. Per the Board's direction, staff made the following changes to the ordinance for this second reading:

1. Expanded the personal cultivation exemption for those patients who can demonstrate that being limited to 100 square feet of outdoor cultivation makes it impossible or impracticable to meet their medical needs.

During the discussion at the March 8, 2016 meeting, some Board members, in response to a public comment, expressed concern that not all patients would be able to meet their medical needs if limited to 100 square feet of outdoor cultivation. The Board directed that the ordinance be revised to include a hardship exemption allowing outdoor cultivation on an area larger than 100 square feet upon demonstrated need. The attached ordinance reflects that revision.

Collaborations (including Board advisory groups and external partner agencies)

Department of Agriculture, County Counsel, County Administrator's Office, Sheriff, District Attorney, and community stakeholders

Fiscal Information

No Fiscal Impact

Fiscal Impact of this Expenditure

Total cost of recommended action	\$0
Amount budgeted for expenditure	\$0
Additional expenditure authority needed	\$0
On-going commitment (annual cost)	

Source of Funds for this Expenditure

General Fund	\$0
--------------	-----

Attachments

Att. A. Ordinance

Form Review

Inbox	Reviewed By	Date
Phil Pogledich	Phil Pogledich	03/11/2016 10:01 AM
Phil Pogledich	Phil Pogledich	03/16/2016 03:58 PM
County Counsel	Phil Pogledich	03/17/2016 09:53 AM
Form Started By: Carrie Scarlata		Started On: 03/09/2016 04:53 PM
Final Approval Date: 03/17/2016		

CLERK OF THE BOARD
BY Lupita Ramirez
DEPUTY

ORDINANCE NO. 1467

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF YOLO ADDING
CHAPTER 20 TO TITLE 5 OF THE YOLO COUNTY CODE REGARDING
OUTDOOR MEDICAL MARIJUANA CULTIVATION

The Board of Supervisors of the County of Yolo hereby ordains as follows:

SECTION 1. Background and Findings.

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"); and

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances; and

C. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code section 11362.7 et seq. and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions; and

D. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical marijuana collectives and cooperatives; and

E. On October 9, 2015 Governor Brown signed into law the Medical Marijuana Regulation and Safety Act (MMRSA). The MMRSA is a package of three separate bills (AB 243, AB 266 and SB 643), enacted by the legislature on September 11, 2015 that established a comprehensive regulatory framework for the cultivation, production, transportation, testing, sale and taxation of medical marijuana in California; and

F. Pursuant to California Business and Professions Code section 19315(a), nothing in the Medical Marijuana Regulation and Safety Act shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements; and

G. This Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and the Medical Marijuana Regulation and Safety Act to protect the public health, safety, and welfare of Yolo County residents in relation to the cultivation of medical marijuana; and

H. Marijuana cultivation has been shown to involve avoidance of environmental laws and regulations and resulted in the pollution of waters and navigable waterways in the State of

California. Unregulated marijuana cultivation can be harmful to the welfare of the surrounding community and its residents and constitute a public nuisance; and

I. Unregulated marijuana cultivation in the unincorporated areas of Yolo County can adversely affect the health, safety and well-being of the County, its residents and environment. The regulating of the cultivation of marijuana is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment and offensive odor that may result from unregulated medicinal marijuana cultivation; and

J. The rights of qualified patients under State law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the County will achieve a reduction in the harms caused or threatened by unregulated cultivation of marijuana in the unincorporated area of Yolo County; and

K. It is the purpose and intent of this Ordinance to implement State law by providing a means for regulating the cultivation of medicinal marijuana that is consistent with State Law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses within the unincorporated area of Yolo County. This Ordinance is intended to prohibit the cultivation of marijuana by anyone for any purpose other than allowed within the strict compliance with local ordinances and applicable State law. This Chapter is not intended to prohibit persons from exercising any right otherwise granted by State law, including Proposition 215 and Senate Bill 420. Rather, the intent and purpose of this Chapter is to establish reasonable regulations upon the manner in which marijuana for medicinal purposes may be cultivated, in order to protect the public health, safety and environment in Yolo County; and

L. The County of Yolo intends to continue review and consideration of a more comprehensive medical marijuana licensing and regulatory program and to accordingly develop a revised ordinance that most effectively regulates and licenses all facets of medical marijuana activities; and

M. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under said Act except as mandated by State law; and

N. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of marijuana for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law;

SECTION 2. Chapter 20 is added to Title 5 of the Yolo County Code to read:

"OUTDOOR MEDICAL MARIJUANA CULTIVATION"

Section 5-20.01 Purpose and Intent.

It is the purpose and intent of this Chapter to regulate medical marijuana in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses within the unincorporated territory of the County of Yolo by balancing: (1) the needs of medical patients and their caregivers for enhanced access to medical marijuana; (2) the needs of neighbors and communities to be protected from public safety and nuisance impacts; and (3) the need to limit harmful environmental impacts that are sometimes associated with marijuana cultivation. Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance as defined in this Chapter; (2) allow the use or diversion of marijuana for nonmedical purposes; or (3) allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under California law.

Section 5-20.02 Relationship to Other Laws

This Chapter is not intended to apply to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this Chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. This Chapter shall be interpreted to be compatible and consistent with federal, state, and county enactments and in furtherance of the public purposes which those enactments express. The provisions of this Chapter will supersede any other provisions of this Code found to be in conflict.

Section 5-20.03 Definitions.

As used in this ordinance the following definitions shall apply:

- A. "Caregiver" or "primary caregiver" shall have the same definition as set forth in California Health and Safety Code section 11362.7(d) as it now reads or as amended.
- B. "Cultivate" or "cultivation" shall have the same definition as set forth in California Business and Professions Code section 19300.5(l) as it now reads or as amended.
- C. "Garden canopy" means the net vegetative growth area measured by the combined diameters of individual cannabis plants.
- D. "Indoor" or "Indoors" means within a fully enclosed and secure structure that complies with the California Building Code (CBC), as adopted by the County of Yolo, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot

easily be broken through, such as 2" x 4" or thicker studs overlain with 3/8" or thicker plywood or equivalent materials. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

- E. "Marijuana" shall have the same definition as "cannabis" as set forth in California Business and Professions Code section 19300.5(f) as it now reads or as amended.
- F. "Medical marijuana" shall have the same definition as "medical cannabis" and "medical cannabis product" as set forth in California Business and Professions Code section 19300.5(ag) as it now reads or as amended.
- G. "Outdoor" or "Outdoors"" means any location that is not "indoors" within a fully enclosed and secure structure as defined in this Chapter.
- H. "Qualified patient" shall have the same definition as set forth in California Health and Safety Code section 11362.7(f) as it now reads or as amended.

Section 5-20.04 Prohibited activities.

- A. The outdoor cultivation of medical marijuana, in any amount or quantity, upon any premises, is declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless one of the following conditions is satisfied:
 - 1. Cultivation is by a qualified patient cultivating marijuana pursuant to Section 11362.5 of the Health & Safety Code if the area he or she uses to cultivate marijuana does not exceed 100 square feet, unless the patient can demonstrate that being limited to 100 square feet of outdoor cultivation makes it impossible or impracticable to meet the patient's medical needs, and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. For purposes of this subsection, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises.
 - 2. Cultivation is in compliance with California Regional Water Quality Control Board Central Valley Region Order No. R5-2015-0133. All medical marijuana cultivation sites cultivating pursuant to this subsection shall provide to the Yolo County Department of Agriculture a copy of a submitted Notice of Intent to obtain regulatory coverage by the Central Valley Water Board as a Tier 1, 2 or 3 cultivator, Monitoring Self-Certification and other documents filed with the Central Valley Regional Water Quality Control Board demonstrating compliance with Order No. R5-2015-0133, or any substantially equivalent rule that may be subsequently adopted by the County of Yolo or other responsible agency. Notwithstanding the foregoing, the garden canopy must be between 1,000 square feet and 43,560 square feet.
- B. Notwithstanding compliance with subsection A of this section 5-20.04, outdoor cultivation of medical marijuana, in any amount or quantity, upon any premises, that

discharges from any source whatsoever such quantities of air contaminants, odor or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public or which endanger the comfort, repose, health, or safety of any such persons or the public or which cause to have a natural tendency to cause injury or damage to business or property.

- C. No person owning, leasing, occupying, or having charge or possession of any parcel within the County shall cause, or allow such premises to be used for the cultivation of cannabis in violation of this Chapter.

Section 5-20.05 Limitation on Location to Cultivate Marijuana.

- A. The cultivation of medical marijuana, in any amount or quantity, shall not be allowed in the following areas:
 - 1. Within 1,000 feet of a youth-oriented facility, a school, a school-bus stop, a park or a church.
 - a. Such distance shall be measured in a straight line from the boundary line of the premises upon which marijuana is cultivated to the boundary line of the premises upon which the youth-oriented facility, school, school bus stop, park, church or residential treatment facility is located.
 - 2. Outdoors within 75 feet of any occupied legal residential structure located on a separate parcel.
 - 3. In any location not fully enclosed by an opaque fence at least six feet in height. The fence must be adequately secured by a locked gate to prevent unauthorized entry. Evidence of cultivation shall not be visible from a public right-of-way or publicly traveled private roads.

Section 5-20.06 Permission of Property Owner

If the person(s) cultivating marijuana on any parcel is/are not the legal owner(s) of the parcel, such person(s) shall obtain the written permission (including notarized signatures) of the legal owner(s) consenting to the cultivation of marijuana on the parcel.

Section 5-20.07 Cultivation of Marijuana.

- A. It is declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel of land within any unincorporated area of the County to cause or allow such parcel of land to be used for the outdoor cultivation of marijuana in violation of the requirements and limitations imposed by Section 5-20.04 or in violation of the limitations on location imposed by Section 5-20.05.

- B. The use of light assistance for the outdoor cultivation of marijuana shall not exceed a maximum of 600 watts of lighting capacity per 100 square feet of growing area.
- C. All lights used for the cultivation of marijuana shall be shielded and downcast or otherwise positioned in a manner that will not shine light or allow light glare to exceed the boundaries of the parcel upon which they are placed.
- D. The outdoor cultivation of marijuana shall not utilize water that has been or is illegally diverted from any stream, creek, or river.
- E. All buildings where marijuana is stored shall be properly secured to prevent unauthorized entry.
- F. Nothing in this Section shall be construed as a limitation on the County's authority to abate any violation of any applicable law, federal, state or local, which may exist from the cultivation of marijuana plants or any part thereof from any location, indoor or outdoor.

Section 5-20.08 Enforcement

- A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Violations of this Chapter are subject to a penalty of \$500 for each violation of this Chapter per day.
- C. Any violation of this Chapter is hereby declared to be a misdemeanor. Violations of this Chapter may, in the discretion of the district attorney, be prosecuted as infractions or misdemeanors.
- D. Violations of this Chapter are hereby declared to be public nuisances and may be enforced pursuant to the procedure in sections 10-6.201- 10-6.218 of this Code.
- E. Any person that violates this chapter shall be guilty of a separate offense for each and every day during any portion of which such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

Section 5-20.09 Severability

If any clause, sentence, paragraph, subdivision, section or part of this Chapter or the application thereof is for any reason held to be unconstitutional by any final court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter.

SECTION 3. The Board of Supervisors hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines

sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Board of Supervisors further finds that the Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment). The County Counsel is hereby directed to file a Notice of Exemption.

SECTION 4. The Clerk of the Board will publish the Ordinance codified in this Chapter as required by law. The Ordinance codified in this Chapter shall take effect 30 days after passage.

PASSED AND ADOPTED by the Yolo County Board of Supervisors at its regular meeting on March 22, 2016, by the following vote:

AYES: **Chamberlain, Villegas, Saylor, Rexroad, Provenza.**
NOES: **None.**
ABSENT: **None.**
ABSTENTION: **None.**



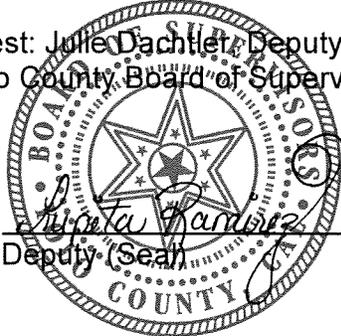
Jim Provenza, Chair
Yolo County Board of Supervisors

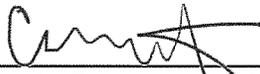
Attest: Julie Dachtler, Deputy Clerk
Yolo County Board of Supervisors

Approved as to Form:
Philip J. Pogledich, County Counsel

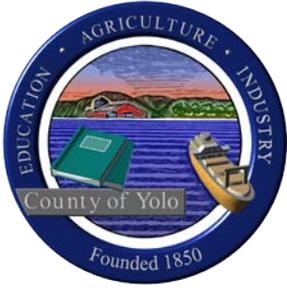
By: 

Deputy (Sean)



By: 

Carrie Scarlata, Asst. County Counsel



COUNTY OF YOLO

Board of Supervisors

District 1, **Oscar Villegas**
District 2, **Don Saylor**
District 3, **Matt Rexroad**
District 4, **Jim Provenza**
District 5, **Duane Chamberlain**

625 Court Street, Room 204 • Woodland, CA 95695
(530) 666-8195 • FAX (530) 666-8193
www.yolocounty.org

County Administrator, **Patrick S. Blacklock**
Deputy Clerk of the Board, **Julie Dachtler**

PUBLIC NOTICE

ADOPTED ORDINANCE NO. 1467

NOTICE is hereby given that at its regularly scheduled meeting of March 22, 2016 the Yolo County Board of Supervisors adopted Ordinance No. 1467 adding Chapter 20 to Title 5 of the Yolo County Code regarding outdoor medical marijuana cultivation.

The Ordinance was adopted by the following vote:

AYES: Chamberlain, Villegas, Saylor, Rexroad, Provenza.

NOES: None.

ABSENT: None.

ABSTAIN: None.

Copies of the full text of the Ordinance are available at the Office of the Clerk of the Board of Supervisors, 625 Court Street, Room 204, Woodland, CA 95695.

Dated: April 3, 2016

Lupita Ramirez, Deputy Clerk
Yolo County Board of Supervisors

(2015.5 C.C.P.)

Filing Stamp

STATE OF CALIFORNIA
County of Yolo

I am a citizen of the United States and a resident of the county aforesaid. I am over the age of eighteen years and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of

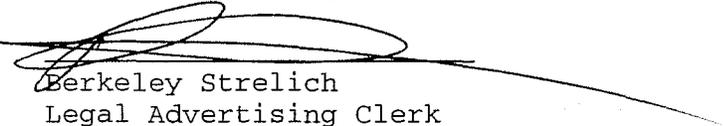
THE DAVIS ENTERPRISE
315 G STREET

printed and published Tuesday through Friday and Sunday in the city of Davis, County of Yolo, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Yolo, State of California, under the date of July 14, 1952, Case Number 12680. That the notice, of which the annexed is a printed copy (set in type not smaller than non-pareil), has been issue of said newspaper and not in any supplement thereof on the following dates to-wit:

April 3
All in the year(s) 2016

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at Davis, California,
This 3rd day of April, 2016.


Berkeley Strelch
Legal Advertising Clerk

FILED

APR 07 2016

BY Lupita Ramirez
DEPUTY CLERK OF THE BOARD

Proof of Publication
DE206703
Ordinance

Public Notices	Public Notices
PUBLIC NOTICE ADOPTED ORDINANCE NO. 1467	
NOTICE is hereby given that at its regularly scheduled meeting of March 22, 2016 the Yolo County Board of Supervisors adopted Ordinance No. 1467 adding Chapter 20 to Title 5 of the Yolo County Code regarding outdoor medical marijuana cultivation.	
The Ordinance was adopted by the following vote:	
AYES:	Chamberlain, Villegas, Saylor, Rexroad, Provenza.
NOES:	None.
ABSENT:	None.
ABSTAIN:	None.
Copies of the full text of the Ordinance are available at the Office of the Clerk of the Board of Supervisors, 625 Court Street, Room 204, Woodland, CA 95695.	
Dated: April 3, 2016	
Lupita Ramirez, Deputy Clerk Yolo County Board of Supervisors	
DE206703	April 3, 2016