

Chapter 9.95 MEDICAL MARIJUANA DISPENSARIES

9.95.010 Findings.

The city council adopts this chapter based upon the following findings:

- A. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq., and entitled, “The Compassionate Use Act of 1996”).
- 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 state criminal prosecution under limited, specified circumstances.
- C. The State enacted SB 420 in 2004 to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.
- D. Neither Proposition 215 nor SB 420 authorizes medical marijuana dispensaries.
- E. The federal Controlled Substances Act, 21 U.S.C. Section 841, makes it unlawful to manufacture, distribute, dispense, or possess marijuana.
- F. The United States Supreme Court in *Gonzales v. Raich*, 125 S. Ct. 2195 (2005), ruled that the Controlled Substances Act applies even in states such as California which have medical marijuana laws.
- G. Accordingly, medical marijuana dispensaries are illegal under federal law. (Ord. 4241 § 1, 2005.)

9.95.020 Definitions.

For the purposes of this chapter, the words and phrases shall have the same meanings respectively ascribed to them by this section:

- A. “Medical marijuana dispensary” or “dispensary” means any facility or location where medical marijuana is made available to and/or distributed by or to two or more of the following: a primary caregiver, a qualified patient, or a person with an identification card.
- B. “Person” means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.
- C. “Person with an identification card” shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., and as may be amended.
- D. “Primary caregiver” shall have the same definition as in

California Health and Safety Code Section 11362.5 et seq., and as may be amended.

E. “Qualified patient” shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., and as may be amended. (Ord. 4241 § 1, 2005.)

9.95.030 Medical marijuana dispensaries prohibited.

It is unlawful and a misdemeanor for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Roseville, the operation of a medical marijuana dispensary. (Ord. 4241 § 1, 2005.)

Chapter 9.96 MARIJUANA CULTIVATION

9.96.010 Purpose and applicability.

The city council adopts this chapter based on the following:

A. Purpose. The purpose and intent of this chapter is to regulate the cultivation of marijuana in a manner that protects the health, safety and welfare of the community. This chapter is not intended to interfere with a patient’s right to medical marijuana, as provided for in California Health and Safety Code Section 11362, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This chapter is not intended to give any person independent legal authority to grow marijuana; it is intended simply to impose zoning restrictions on the cultivation of marijuana when it is authorized by California state law for medical or other purposes.

B. Applicability. No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation of marijuana in the City of Roseville is controlled by the provisions of this chapter of the municipal code. (Ord. 5087 § 1, 2012.)

9.96.020 Definitions.

For the purposes of this chapter, the words and phrases shall have the same meaning respectively ascribed to them by this section:

A. “Authorized grower” means a person who is authorized by federal or state law to grow marijuana for personal use or medical use

in compliance with local, state or federal laws authorizing such marijuana cultivation.

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

C. “Enforcement officer” means the chief of police, City of Roseville code enforcement officer, or any designee of either of them.

D. “Fully enclosed and secure structure” means a space within a building that complies with the California Building Code, as adopted in the City of Roseville, or if exempt from the permit requirements of the California Building Code, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof; a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments; is secure against unauthorized entry; and is accessible through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily penetrated or breached, such as two-inch by four-inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California Building, Electrical, and Fire Codes as adopted in the City of Roseville.

E. “Immature marijuana plant” means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

F. “Indoors” means within a fully enclosed and secure structure as that structure is defined in subsection D.

G. “Mature marijuana plant” means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

H. “Outdoor” means any location within the City of Roseville that is not within a fully enclosed and secure structure.

I. “Parcel” means property assigned a separate parcel number by the Placer County assessor. (Ord. 5087 § 1, 2012.)

9.96.030 Outdoor cultivation.

It is hereby declared to be unlawful, a public nuisance, and a violation of this chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the City of Roseville to cause or allow such premises to be used for the

outdoor cultivation of marijuana plants. (Ord. 5087 § 1, 2012.)

9.96.040 Cultivation of marijuana—Regulations for residential zones.

A. When authorized by state law, an individual shall be allowed to cultivate marijuana in residential zones, subject to the following regulations:

1. The marijuana cultivation area shall not exceed 50 square feet and not exceed 10 feet in height per residence.
2. Marijuana cultivation lighting shall not exceed 1,200 watts total.
3. The use of gas products (CO₂, butane, etc.) for marijuana cultivation or processing is prohibited.
4. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation either within or outside the residence.
5. The residence where the marijuana cultivation occurs shall be the primary residence of the authorized grower.
6. The authorized grower shall not participate in marijuana cultivation in any other residential location within the City of Roseville.
7. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be primarily or exclusively for marijuana cultivation.
8. The marijuana cultivation area shall be in compliance with the current edition of the California Building Code Section 1203.4 Natural ventilation or Section 402.3 Mechanical ventilation (or its equivalent(s)), as adopted by the City of Roseville.
9. The building official may require additional specific standards to meet the California Building Code and Fire Code, including, but not limited to, installation of fire suppression sprinklers.
10. The marijuana cultivation area shall not adversely affect the health or safety of the occupants of other property by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, and shall not be maintained so as to constitute a hazard due to use or storage of materials, processes, products or wastes.

B. Any proposed marijuana cultivation by an authorized grower that does not meet the grow area standard of subsection (A)(1) shall require the prior written determination of the city manager, or designee, of the need for additional cultivation area.

1. Documentation, such as a physician's recommendation or

verification of more than one authorized grower living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible.

2. The request for determination shall include written permission from the record property owner and no determination and authorization for additional area of marijuana cultivation shall issue without the written permission of the record property owner.

3. An approved marijuana cultivation area that exceeds 50 square feet shall conform to the following standards:

a. It shall be in compliance with subsections (A)(1) through (10).

b. The marijuana cultivation area shall not exceed an additional 50 square feet for a total of 100 square feet per residence and shall not exceed 10 feet in height per residence.

4. Any written determination of the need for additional cultivation area shall be issued for a period not exceeding one year, but may be renewed upon review of a subsequent submittal of the required documentation. (Ord. 5087 § 1, 2012.)

9.96.050 Indoor cultivation of marijuana restricted to authorized grower.

It is hereby declared to be unlawful, a public nuisance and a violation of this chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City of Roseville to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana, and such authorized grower is complying with all requirements of this chapter. (Ord. 5087 § 1, 2012.)

9.96.060 Public nuisance prohibited.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City of Roseville to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

A. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.

B. Repeated responses to the parcel from law enforcement officers.

C. A repeated disruption to the free passage of persons or vehicles in the immediate neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

D. Any other impacts on the neighborhood which are disruptive of normal activity in the area. (Ord. 5087 § 1, 2012.)

9.96.070 Violation.

Cultivation of marijuana on any parcel within the city that does not comply with this chapter constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in Section 9.96.080 of this chapter. (Ord. 5087 § 1, 2012.)

9.96.080 Enforcement.

A. Public Nuisance. Violation of this section is hereby declared to be a public nuisance.

B. Abatement. A violation of this section may be abated by the city attorney by the prosecution of a civil action for injunctive relief and by the summary abatement procedure set forth in subsection C of this section.

C. Summary Abatement Procedure.

1. The enforcement official is hereby authorized to order the abatement of any violation of this section by issuing a notice and order to abate which shall:

a. Describe the location of and the specific conditions which represent a violation of this chapter and the actions required to abate the violation.

b. Describe the evidence relied upon to determine that a violation exists, provided that the enforcement official may withhold the identity of a witness to protect the witness from injury or harassment, if such action is reasonable under the circumstances.

c. State the date and time by which the required abatement actions must be completed.

d. State that to avoid the civil penalty provided in subsection (C)(4) of this section and further enforcement action, the enforcement official must receive consent to inspect the premises where the violation exists to verify that the violation has been abated by the established deadline.

e. State that the owner or occupant of the property where the violation is located has a right to appeal the notice to abate by filing a

written notice of appeal with the city clerk no later than seven calendar days from the service of the notice. The notice of appeal must include the appellant's address, telephone number, fax number (if available), and e-mail address (if available). The city may rely on any of these for service or notice purposes. If an adequate written appeal is timely filed, the owner or occupant will be entitled to a hearing as provided in subsection (C)(3) of this section.

f. State that the order to abate the violation becomes final if a timely appeal is not filed or upon the issuance of a written decision after the appeal hearing is conducted in accordance with subsection (C)(3) of this section.

g. State that a final order of abatement may be enforced by application to the superior court for an inspection and/or abatement warrant or other court order.

h. State that a final order to abate the nuisance will subject the property owner and the occupant to a civil penalty of \$500.00 for each day that the violation continues after the date by which the violation must be abated as specified in the notice and order to abate. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

2. The notice described in subsection (C)(1) of this section shall be served in the same manner as a summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, or by certified mail, return receipt requested, at the option of the city. If the owner of record cannot be found after diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of not less than 10 days and publication thereof in a newspaper of general circulation pursuant to Government Code Section 6062.

3. Not sooner than 10 calendar days after a notice of appeal is filed with the city clerk, a hearing shall be held before a hearing panel of the board of appeals in accordance with the procedures prescribed in Chapter 2.52. The appellant shall be given notice of the date, time and place of the hearing not less than five days in advance. The notice may be given by telephone, fax, email, or personal service or posting on the property and shall be effective when given. At the hearing, the enforcement official shall present evidence of the violation, which may include, but is not limited to, incident and police reports, witness

statements, photographs, and the testimony of witnesses. The property owner and the occupant of the property where the violation is alleged to exist shall have the right to present evidence and argument in their behalf and to examine and cross examine witnesses. The property owner and property occupant are entitled at their own expense to representation of their choice at their own expense. At the conclusion of the hearing, the hearing panel shall render a written decision which may be served by regular first class mail on the appellant.

4. A final notice and order to abate the nuisance will subject the property owner or owners and any occupant or occupants of the property who are cultivating marijuana in violation of this section to a civil penalty of \$500.00 for each day that the violation continues after the date by which the violation must be abated as specified in the final notice and order to abate.

5. The enforcement official or the hearing panel hearing an appeal pursuant to subsection (C)(3) of this section may reduce the daily rate of the civil penalty for good cause. The party subject to the civil penalty shall have the burden of establishing good cause, which may include, but is not limited to, a consideration of the nature and severity of the violation, whether it is a repeat offense, the public nuisance impacts caused by the violation, and the violator's ability to pay. The daily penalty shall continue until the violation is abated. The penalty may be recovered through an ordinary civil action, or in connection with application for an inspection or nuisance abatement warrant. (Ord. 5087 § 1, 2012.)

9.96.090 Penalties not exclusive.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Roseville Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Roseville Municipal Code shall prevent the city from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance. (Ord. 5087 § 1, 2012.)