
Medical Marijuana

452.1 PURPOSE AND SCOPE

The purpose of this policy is to provide members of this department with guidelines for handling and distinguishing between claims of medical marijuana use under California's Compassionate Use Act (Health & Safety Code § 11362.5) and criminal narcotics violations.

452.2 ENFORCEMENT

Although federal law does not currently permit possession of marijuana for medical use, California has created a limited defense (i.e. no penalty) for certain qualified individuals possessing small quantities of marijuana for medical use under strict conditions.

- (a) Notwithstanding California Medical Marijuana laws:
 - 1. California does not provide any exception for individuals driving under the influence of marijuana. All such cases should be handled with appropriate enforcement action (e.g., Vehicle Code § 23152, et seq.).
 - 2. Medical marijuana may not be smoked outside of a residence within 1000 feet of a school, recreation center, youth center or in a vehicle or boat (Health & Safety Code § 11362.79).
 - 3. No probationer or parolee may possess medical marijuana unless such possession is authorized in writing by court order or parole conditions (Health & Safety Code § 11362.795).
- (b) Possession, cultivation and sales of marijuana in quantities beyond that which might reasonably be construed as for personal use should be handled as criminal cases with appropriate enforcement action taken pursuant to Health & Safety Code §§ 11357, 11358 and 11359.
 - 1. The amount of marijuana possessed must be consistent with the medical needs of the qualified patient or person with valid ID card.
 - 2. The quantity and form of marijuana must also be reasonably related to the patient's current medical needs.
 - (a) Absent a verifiable doctor's recommendation to exceed allotted quantities, a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient, or;
 - (b) Maintain no more than six mature, or twelve immature marijuana plants per qualified patient (Health & Safety Code § 11362.77(a)(b)).
- (c) In any case involving the possession or cultivation of marijuana, the handling officer should inquire whether the individual is claiming that the marijuana is for medicinal purposes.
 - 1. If no such claim is made, the officer should proceed with normal enforcement action.
 - 2. If a claim of medicinal use is made, the officer should proceed as outlined below.

Merced Police Department

Policy Manual

Medical Marijuana

452.3 MEDICINAL USE CLAIMS

In order to qualify for a medicinal marijuana defense, any individual making such a claim must affirmatively establish the following information. If the individual cannot or will not provide all of the required information, the officer should note such fact in any related report and proceed with appropriate enforcement action.

452.3.1 PATIENTS

- (a) An individual may establish his/her status as a qualified patient by presenting a current and valid state issued identification card issued by the Department of Health (Health & Safety Code § 11362.735). Such identification cards shall contain the following information:
1. A unique serial number.
 2. An expiration date.
 3. The name and telephone number of the county health department approving the application.
 4. A 24-hour toll-free number for law enforcement to verify the validity of the card (Verification can be checked at www.calmmp.ca.gov).
 5. A photograph of the cardholder.

No officer shall refuse to accept a properly issued identification card unless the officer has reasonable cause to believe that the information contained in the card is false or that the card is being used fraudulently (Health & Safety Code § 11362.78).

- (b) If the individual does not possess a valid state issued identification card, the individual claiming status as a qualified patient must minimally provide the following information:
1. Satisfactory identification establishing current residency in California.
 2. A current and valid medical marijuana ID card from a local governmental agency (e.g., county) or a current and verifiable, written recommendation for marijuana from a California licensed physician.
 3. In the absence of a valid identification card, the handling officer should also obtain a written waiver from the involved individual authorizing the release of all related medical records.

452.3.2 PRIMARY CAREGIVERS

Primary caregivers are subject to the following requirements (Health & Safety Code 11362.765):

- (a) A primary caregiver is not authorized to use, sell, or possess marijuana for sale.
- (b) A primary caregiver must provide sufficient proof that he/she is responsible for the patient's housing, health and/or safety.
- (c) A primary caregiver must provide sufficient proof of personal knowledge of the patient's medical needs and the details of the attending physician's recommendation.
- (d) Upon proof that a qualified primary caregiver is caring for more than one qualified patient, he/she may aggregate possession and cultivation limits. For example, a primary caregiver caring for three qualified patients may possess 24 ounces (eight ounces per patient) of marijuana (Health & Safety Code § 11362.7(d)(2)).
- (e) While qualified patients and primary caregivers may be permitted to collectively or cooperatively associate to cultivate medical marijuana, such individuals must strictly

Merced Police Department

Policy Manual

Medical Marijuana

adhere to all non-profit and local business requirements (Health & Safety Code § 11362.775).

452.3.3 CLAIM REQUIREMENTS MET

Once the handling officer is satisfied that the individual making a medicinal marijuana use claim meets the above requirements, the officer should proceed as follows:

- (a) A small sample of the involved marijuana should be seized and booked into evidence.
- (b) Any allowable amount of marijuana left in possession of a qualified individual for the limited purpose of medicinal use should be described and noted in the related report.
- (c) If the handling officer has already taken the individual into custody (vs. detention only) prior to establishing qualification for a potential medicinal use defense and there are no other criminal charges pending or being investigated, the individual should be released pursuant to Penal Code § 849(b).
- (d) If the individual remains in custody on any charge(s), the individual will not be permitted to use marijuana while being detained or held in jail or other law enforcement facility (Health & Safety Code § 11362.785(c)).
- (e) The handling officer shall complete a timely report which will be submitted to the District Attorney with all of the aforementioned documentation for a determination of whether the medicinal marijuana defense will apply.

452.3.4 RETURN OF MARIJUANA

Regardless of the prosecution status or disposition of any related criminal case, this department will not be responsible for the return of any marijuana seized as evidence except as may be required by a valid court order (Cal. Health and Safety Code § 11473.5 and 21 U.S.C. § 885(d)).

ORDINANCE NO. 2220

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTERS 20.04, "DEFINITIONS,"
20.24, "C-C DISTRICT," 20.54, "SPECIAL
PROVISIONS," 20.62, "EXCEPTIONS," AND 20.74,
"REVOCATION," OF THE MERCED MUNICIPAL
CODE DEALING WITH ZONING**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Section 20.04.150,
"Dwelling," of the Merced Municipal Code is hereby amended to read as follows:

"20.04.150 Dwelling.

'Dwelling' means any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, but not including a tent, cabin, or trailer. Arrangements that characterize apartment-like subunits in individual interior bedrooms within a Dwelling are prohibited, such as, for example, keyed locks or deadbolts on interior room doors; separate entrance or access from street, side yard, or back yard to interior bedrooms; separate cooking facilities in individual rooms including, but are not limited to, microwave, hotplate, cooking range, and oven."

SECTION 2. AMENDMENTS TO CODE. Sections 20.04.170, "Dwelling, Multiple-Family," 20.04.180, "Dwelling, Single-Family," 20.04.190, "Dwelling, Two-Family or Duplex," 20.04.200, "Family," of the Merced Municipal Code are hereby amended to read as follows:

"20.04.170 Dwelling, Multiple-Family.

'Multiple-family dwelling' means a building or portion thereof designed for or used by three or more Households with separate housekeeping facilities for each.

20.04.180 Dwelling, Single-Family.

‘Single-family dwelling’ means a building designed for or used exclusively for residential purposes by one Household.

20.04.190 Dwelling, Two-Family or Duplex.

‘Two-family dwelling’ or ‘duplex’ means a building designed for or used exclusively by two Households with separate housekeeping facilities for each.

20.04.200 Household.

‘Household’ means one or more persons, whether or not related by blood, marriage or adoption, sharing a dwelling unit and using a single common cooking facility in a living arrangement usually characterized by sharing living expenses, such as rent or mortgage payments, food costs and utilities, as well as maintaining a single lease or rental agreement for all members of the Household.”

SECTION 3. AMENDMENT TO CODE. Section 20.06.050, “Regulations - Application,” of the Merced Municipal Code is hereby amended to read as follows:

“The regulations set by this Title within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land and particularly, except as hereinafter provided:

A. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered, unless in conformity with all of the regulations specified in this Title for the district in which it is located.

B. No building or other structure shall hereafter be erected or altered:

1. To exceed the height;
2. To accommodate or house a greater number of families;
3. To occupy a greater percentage of lot area;
4. To have narrower or smaller rear yards, front yards, side yards, or other open spaces than required in this Title; or in any other manner be contrary to the provisions of this Title.

C. No part of a yard or other open spaces or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Title shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.

D. No yard or lot existing at the time of passage of the Ordinance codified in this Title shall be reduced in dimension or area below the minimum requirements set forth in this Title. Yards or lots created after the effective date of the Ordinance codified in this Title shall meet at least the minimum requirements established by this Title.

E. No use that is prohibited, unlawful, violates or is inconsistent with Federal or State law, or any provision in this Code, shall be allowed or permitted in any district under this Title.

F. All territory which may hereafter be annexed to the City shall be classified as R-1-5, R-1-6 or as otherwise classified by the City.”

SECTION 4. ADDITIONS TO CODE. Sections 20.24.045, “Uses Subject to Site Plan Approval,” and 20.24.046, “Additional Conditions for Site Plan Approval,” are hereby added to Chapter 20.24, “C-C District,” of the Merced Municipal Code to read as follows:

“20.24.045 Uses Subject to Site Plan Approval.

The following uses are subject to Site Plan Approval pursuant to Chapter 20.68 of this Code:

Temporary warehouse and storage uses, but only within existing buildings or structures on properties with environmental issues, restrictions, or limitations identified by local, state, or federal agencies, subject to conditions in Section 20.24.046 hereof. While warehouse and storage uses are generally prohibited and discouraged in the C-C District, it is recognized by the City that environmental issues, restrictions, or limitations identified by local, state, or federal agencies may limit or prohibit the uses otherwise permitted or conditionally permitted in this District. The City further recognizes the substantial public and private investment made to both public and private properties in the C-C District and the need for property owners to have a source of funds to meet property expenses as well as to ensure that the public and private investments are protected by preventing these properties from falling into disrepair and becoming blighted. Temporary warehouse and storage use does not include traditional mini-storage where multiple tenants or customers rent or lease storage space from the property owner or mini-storage operator.

20.24.046 Additional Conditions for Site Plan Approval.

Other required conditions are that:

- A. When a Site Plan Approval is granted for any property within the C-C District with environmental issues, restrictions, or limitations identified by local,

state, or federal agencies, the use of the property shall have no more than the minimum number of employees for the minimal amount of time required for business operation in order to minimize human exposure.

B. The Site Plan Approval shall be valid and last only until remediation of the environmental issue, restriction, or limitation is complete and the environmental issue, restriction, or limitation is officially 'closed' by the local, state, or federal agency. The Site Plan Approval shall be reviewed at least every 3 years to determine if the need still exists for the restriction. If the need no longer exists, the property shall be brought into compliance with C-C District within 90 days after notice to the property owner.

C. The Site Plan Approval shall require that commercial activities occur that are observable through any window facing Main Street at the street and sidewalk level. It is the intent of this condition not to allow window displays of stacked boxes or merchandise. Examples of commercial activities encouraged hereunder shall include, but are not limited to, window display of art, goods, merchandise for sale at a different location by the warehouse or storage user, and public service notices and announcements, with such display shielding warehoused merchandise from any window facing Main Street.

D. The Site Plan Approval shall require that proper maintenance and upkeep of the appearance of the building and the property occur during the duration of the Site Plan Approval, including, but not limited to, weed abatement, graffiti abatement, and such other conditions as the Site Plan Approval Committee determines is appropriate.”

SECTION 5. ADDITION TO CODE. Section 20.54.340, “Underground Storage Tank,” is hereby added to Chapter 20.54, “Special Provisions,” of the Merced Municipal Code to read as follows:

“20.54.340 Underground Storage Tank.

No underground storage tank in any District under this Title shall be placed within 450 feet of any parcel containing water well within the City. Underground storage tanks existing prior to the adoption of this Section shall be exempt from the above requirements, except that when leakage is discovered from tanks located within 450 feet of any parcel with water well, then the leaking tank shall be removed immediately and relocated away from any water well site in accordance with this Section.”

SECTION 6. AMENDMENT TO CODE. Section 20.62.050, “Temporary Uses Outside Enclosed Building,” of the Merced Municipal Code is hereby amended to read as follows:

“20.62.050 Temporary Uses Outside Enclosed Building.

A. Notwithstanding any other provision contained in this Title, the following temporary outdoor display and sales may be conducted outside an enclosed building with a Temporary Use Permit issued hereunder for a period of not more than 30 consecutive days at the same location or on the same premises, subject to the conditions in Subsections (C), (D)(1), (D)(4), (E), (F), and (G):

1. Christmas tree retail sales;
2. Pumpkin retail sales;
3. Fireworks sales;
4. Farmers’ Market;

5. Seasonal, holiday, or periodic fundraising activities by federally recognized non-profit organizations with evidence of tax-exemption under Section 501(c) of the Internal Revenue Code that do not involve vehicle sales.

B. Temporary Use Permits for all other temporary outdoor display and sales conducted outside an enclosed building under this Title shall be limited to the actual owner or tenant of the premises, and must be for the existing use being conducted in enclosed building on the premises by the owner or tenant thereof. Except as expressly provided in this Section, no other temporary outdoor display and sales activity shall be permitted.

C. Temporary Use Permits for temporary outdoor display and sales under this Section, if the applicant otherwise meets all qualifications and requirements, shall be issued no more than 4 times in any calendar year for any property.

D. Each Temporary Use Permitted shall:

1. Be described in a permit therefor issued by the Director of Development Services prior to commencement. The permit shall also include all other licenses, permits, or approvals otherwise required by this Code;

2. Not continue for more than 7 consecutive days at the same location or on the same premises;

3. Not be allowed or conducted at the same location or on the same premises if the same or similar temporary use has been allowed or conducted thereon within the previous 30 days;

4. Be discontinued at the expiration of the time period for which it is allowed and any signs, stands,

poles, electrical wiring, or any other fixtures and appurtenances or equipment connected therewith shall be removed from the location or premises.

E. The Director of Development Services may, in issuing permits for temporary uses, attach such conditions which he or she determines to be reasonably necessary in connection with the temporary use, including, but not limited to, hours of operation, maintenance of accessibility for the disabled, protection of fire lanes and access, preservation of adequate onsite circulation, cleanup of the location or premises, use of lights or lighting or other means of illumination, or operation of any loudspeaker or sound amplification in order to prevent the creation of any nuisance or annoyance to the occupants of or commercial visitors to adjacent buildings or premises. In addition to any other conditions imposed, the Director may require the posting of a cash bond in an amount sufficient to guarantee the removal of any fixtures, equipment, or stands and the cleanup of the location or premises immediately upon the expiration of any such temporary use.

F. Any person aggrieved by the action of the Director of Development Services in issuing, refusing to issue, or conditioning such a permit may appeal such action to the Planning Commission within 3 calendar days of the date of any such action. Such appeal shall be in writing stating the grounds therefor and shall be accompanied by a fee as set by Resolution of the City Council. The Planning Commission shall give notice of such appeal, and the date upon which it shall be heard, in writing to the applicant for such permit. Upon the hearing of such matter, the Planning Commission, upon a majority vote of its members, may:

1. Grant the permit as requested or as changed or modified when deemed to be in the public interest; or

2. Deny the permit as requested when such denial is deemed to be in the public interest.

G. There shall be no appeal from the action of the Planning Commission.”

SECTION 7. AMENDMENT TO CODE. Section 20.74.010, “Conditional Use Permit/Variance-Expiration,” of the Merced Municipal Code is hereby amended to read as follows:

“20.74.010 Conditional Use Permit/Variance-Expiration.

Any Conditional Use Permit or Variance granted in accordance with the terms of this Title may be revoked by the Planning Commission following public hearing under Section 20.74.030 if said Permit or Variance is not used within one (1) year from the date of approval unless extended for a period or periods not to exceed one additional year by action(s) of the Site Approval Committee or the Planning Commission.”

SECTION 8. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 9. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the 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 adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 10. PUBLICATION. The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the 21st day of November, 2005, and was passed and adopted at a regular meeting of said City Council held on the 5th day of December, 2005, by the following called vote:

AYES: Council Members: SANDERS, CORTEZ, SPRIGGS, GABRIALT-ACOSTA, WOOTEN

NOES: Council Members: NONE

ABSTAIN: Council Members: NONE

ABSENT: Council Members: OSORIO, 1 vacancy

APPROVED:



Mayor

ATTEST:
JAMES G. MARSHALL, CITY CLERK

BY: 

Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:



City Attorney

