

ORDINANCE NO. 15-351

**ORDINANCE ADDING CHAPTER 8.44 TO TITLE 8 "HEALTH AND SAFETY"
OF THE LATHROP MUNICIPAL CODE
PROHIBITING THE CULTIVATION OF MARIJUANA**

THE CITY COUNCIL OF THE CITY OF LATHROP DOES ORDAIN AS FOLLOWS:

TITLE 8, CHAPTER 8.44 – MARIJUANA CULTIVATION

8.44.010 - Findings.

The City Council of the City of Lathrop finds and declares as follows:

- 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").
- 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.
- 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.
- 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 a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.
- E. The Supreme Court of California held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 753 ("*Inland Empire*") that the objectives of the Compassionate Use Act of 1996 and Medical Marijuana Program Act were modest and that those acts did not create a broad right to access medical marijuana.
- F. *Inland Empire* states that neither the Compassionate Use Act of 1996 nor the Medical Marijuana Program Act "expressly or impliedly preempts the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude" the distribution of medical marijuana. (*Id.* at p. 762.)

- G. The Court of Appeal of California, Third Appellate District, held in *Browne v. County of Tehama* (2013) 213 Cal. App. 4th 704 upheld a Tehama County ordinance regulating the cultivation of medical marijuana based on the Court's finding that "[n]either the Compassionate Use Act of 1996 nor the Medical Marijuana Program grants petitioners, or anyone for that matter, an *unfettered* right to cultivate marijuana for medical purposes. Accordingly, the regulation of cultivation of medical marijuana does not conflict with either statute." (*Id.* at p. 711, original italics.)
- H. The Court of Appeal of California, Third Appellate District, held in *James Maral, et al. v. City of Live Oak* (2013) 221 Cal. App. 4th 975, that the reasoning of *Inland Empire* applies to the cultivation of medical marijuana as well as its distribution, as both are addressed in the Compassionate Use Act of 1996 and Medical Marijuana Program Act. Accordingly, the Court of Appeal of California held that Compassionate Use Act of 1996 and Medical Marijuana Program Act do not preempt a municipality's police power to prohibit the cultivation of all marijuana within that municipality.
- I. This chapter is enacted, consistent with the provisions of Health and Safety Code Section 11362.7 *et seq.*, the Medical Marijuana Program Act, to protect the public health, safety, and welfare of City residents in relation to the legal operation and location of medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.
- J. Marijuana cultivation creates offensive and irritating odor, especially when the plants are flowering.
- K. Grows often use chemicals and pesticides, many of which are illegal and extremely toxic to people and wildlife and which may pollute soil, ground water, and/or nearby water sources.
- L. Investigations of marijuana grows are time consuming and dangerous for Lathrop Police Services.
- M. Marijuana cultivation attracts crime and associated violence; in this City has been a magnet for thefts, robberies, illegal firearms, shootings, and homicides.
- N. Cultivation is very visible and may be easily accessible to the public, including children and youths.
- O. Marijuana cultivation requires large amounts of water, which is sometimes illegally diverted from farms, homes, or waterways.

- P. Marijuana cultivation requires extensive energy consumption, which is often illegally consumed and/or wired in an improper and dangerous manner.
- Q. Marijuana cultivation sites may contain armed guards and/or booby trap devices that threaten severe bodily harm or death to those who attempt to access them. Such devices may be a threat to any person that enters the area of the grow, but are often designed specifically to injure law enforcement personnel. Especially during harvest and processing season there is an immediate threat of violent crime depending on the size, location, gang/drug trafficker involvement, and monetary value of these medical marijuana grows.
- R. Eradication of marijuana grows may be dangerous and labor intensive for law enforcement officials because of the potential of armed suspects, booby traps, and varying conditions of the grow.
- S. Marijuana cultivation creates an increased likelihood of criminal activity.
- T. Marijuana cultivation is harmful to the welfare of residents, creates a nuisance, and threatens the safety and premises of nearby land owners and their families.
- U. Marijuana cultivation poses an urgent and immediate threat to the public peace, health, and safety.
- V. If marijuana cultivation is not banned then large quantities of marijuana may be introduced into the local market and will bring with it increasing threats to public peace, health, and safety.
- W. The City of Lathrop has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, in preventing the establishment of nuisances, while also allowing the consumption of medical marijuana for ill residents pursuant to Compassionate Use Act of 1996 and the Medical Marijuana Program Act.
- X. Nothing in this chapter 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 the act except as mandated by state law.
- Y. The Federal Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, classifies marijuana 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, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for medical purposes.

8.44.020 - Purpose and intent.

It is the purpose and intent of this chapter pursuant to Government Code Section 25123(d) to immediately prohibit medical marijuana cultivation to preserve the public peace, health, safety, and general welfare of the citizens of Lathrop.

8.44.030 - Relationship to other laws.

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

8.44.040 - Definitions.

Unless otherwise specified, the following definitions shall be applicable throughout this chapter:

- A. "City" means the City of Lathrop or the unincorporated area of the City of Lathrop as required by the context.
- B. "Collective" is the planting, growing, harvesting, drying, processing, or storage of one or more medical marijuana plants or any part thereof in any location on behalf of more than one qualified patient.
- C. "Marijuana" shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended and includes, but is not limited to, marijuana used for medical purposes in accordance with California Health and Safety Code Sections 11362.7 *et seq.* as it now reads or as amended.
- D. "Marijuana Cultivation" means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof, including cultivation for medicinal purposes in accordance with

California Health and Safety Code Sections 11362.7 *et seq.* as it now reads or as amended.

- E. "Marijuana plant" means any mature or immature marijuana plant, or any marijuana seedling, with or without roots, unless otherwise specifically provided herein.
- F. "Primary caregiver" shall be an individual that (1) consistently assumes responsibility for the house, health, or safety of the medical marijuana patient, (2) satisfies the criteria as expressed in California Supreme Court Case *People v. Mentch* (2008) 45 Cal. 4th 274, 283, which are that the person (i) consistently provides caregiving to the medical marijuana patient, (ii) provided that caregiving independent of any assistance in taking medical marijuana, (iii) provided that caregiving at or before the time they assumed responsibility for assisting with medical marijuana, and (3) holds a valid State of California, California Medical Marijuana Identification Card designating them as a Primary Caregiver.
- G. "Qualified patient" shall be a person with a doctor's recommendation for medical marijuana/cannabis and holds a valid State of California, California Medical Marijuana Identification Card designating them as a patient.

8.44.050 - Marijuana cultivation.

Marijuana cultivation by any person, including but not limited to a qualified patient or primary caregiver as individuals or in a cooperative or collective, is prohibited in the City.

8.44.060 - Prohibited marijuana cultivation declared a nuisance.

The establishment, maintenance, or operation of any marijuana cultivation within the City is declared to be a nuisance and each person or responsible party is subject to abatement, and/or penalties for misdemeanor infractions, and/or administrative penalties under this chapter.

8.44.070 - Penalties for violation.

- A. Illegal marijuana cultivation is an unlawful violation of this Code, a misdemeanor punishable by a fine of not more than five hundred dollars (\$500), imprisonment in the County Jail for no longer than six (6) months, or an alternative to detention, or by both such fine and imprisonment/alternative to detention, and/or any other enforcement remedies available to the City under any applicable state or federal statute or pursuant to any other lawful power the City may possess.

- B. Each day illegal marijuana cultivation continues shall constitute a separate violation and be subject to the maximum penalty and any other enforcement remedies available to the City under any applicable state or federal statute or pursuant to any other lawful power the City may possess.
- C. In addition to enforcement pursuant to this chapter, the City may bring a civil suit or action against the person responsible for such violation(s) and that person shall be liable to the City for costs of the suit, including, but not limited to, attorney's fees.

8.44.080 - Remedies cumulative.

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this chapter shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

8.44.090 – Severability.

If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter.

This ordinance shall take effect thirty (30) days after its adoption, and within fifteen (15) days after its passage shall be published at least once in a newspaper of general circulation, printed, and published in the County of San Joaquin.


THIS ORDINANCE was regularly introduced at a meeting of the City Council of the City of Lathrop on the 19th day of October, 2015, and was **PASSED AND ADOPTED** by the City Council of the City of Lathrop, State of California, this 16th of November, 2015, by the following vote of the City Council:

AYES: Akinjo, Dresser, Salcedo and Dhaliwal.

NOES: Ornelas.

ABSENT: None.

ABSTAIN: None.



Sonny Dhaliwal, Mayor

ATTEST:



Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador V. Navarrete, City Attorney

I, Teresa Vargas, City Clerk of the City of Lathrop, California, do hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 19th day of October, 2015, and that thereafter said ordinance was duly and regularly adopted at a regular meeting of the City Council on the 16th day of November, 2015, by the following vote, to wit:

AYES: Akinjo, Dresser, Salcedo and Dhaliwal.

NOES: Ornelas.

ABSENT: None.

ABSTAIN: None.

This ordinance was duly published in accordance with State law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Lathrop, California, on this 16th day of November, 2015.



CITY CLERK