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**CITY OF ARCATA**  
**ZONING STANDARDS FOR MEDICAL MARIJUANA:**  
**An example of comprehensive regulation**

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**1. INTRODUCTION**

Since the adoption of the Compassionate Use Act (Proposition 215, Health and Safety Code § 11362.5, “CUA”), communities throughout California have seen a proliferation of marijuana grow houses and dispensaries. In November 2008, after a full year’s planning effort, the City of Arcata adopted comprehensive zoning standards in an attempt to address many of the neighborhood and community problems associated with unregulated medical marijuana cultivation and use. The standards were meticulously crafted to address specific problems arising in residential zoning districts from grow houses, as well as unregulated medical marijuana cultivation and distribution activities in non-residential zoning districts. The following provides a brief overview of the standards.

**2. AUTHORITY TO REGULATE MEDICAL MARIJUANA CULTIVATION, PROCESSING AND DISTRIBUTION THROUGH LOCAL ZONING STANDARDS**

The CUA allows for seriously ill patients and their primary caregivers to obtain and use marijuana for medical purposes upon a physician’s recommendation, without being subject to criminal prosecution. California judicial authority informs us that the CUA and its companion Legislative implementation, the Medical Marijuana Program Act (Health and Safety Code § 11362.7 *et seq.*, “MMP”) do not conflict with the federal prohibition against cultivation, possession and use of marijuana found in the Controlled Substances Act (U.S.C. § 801 *et seq.*, “CSA”). (*County of San Diego v. San Diego NORML* (2008) 165 Cal. App.4<sup>th</sup> 798, *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal. App.4<sup>th</sup> 355, 371-373, 381-382.) The state medical marijuana laws do not conflict because these laws do not “legalize” medical marijuana, but instead exercise the state’s reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (*Id.*, *see also* Edmund G. Brown, Jr. *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, August 2008, “Attorney General Guidelines”.)

Additionally, the California appellate decisions in *Corona v. Naulls* (2008) 166 Cal.App.4<sup>th</sup> 618, and *Claremont v. Kruse* (2009) 177 Cal.App.4<sup>th</sup> 1153 have settled that a city holds police power authority to develop, implement and enforce zoning standards specific to medical marijuana cultivation, processing and distribution. In particular, the *Kruse* Court states, “The CUA accordingly did not expressly preempt the City’s enactment of the moratorium *or the enforcement of local zoning* and business license requirements.” (*Kruse, supra*, 177 Cal.App.4<sup>th</sup> at 1175, *emphasis added.*)

Confusion may exist as to whether local zoning that allows for medical marijuana use as opposed to a complete ban can be reconciled with Government Code § 37100 (“The legislative body may pass ordinances not in conflict with the Constitution and laws of the State or the United States”) and the CSA marijuana prohibition. These provisions can be reconciled, however, by recognizing that, similar to the CUA and MMP, zoning standards do not *legalize* marijuana cultivation, possession or use. Rather, such standards utilize a city’s inherent police powers to protect public health, safety and welfare. (Cal. Const. art. XI § 7; *Candid Enters., Inc. v. Grossmont Union High School District* (1985) 39 Cal.3d 878, 885.) Regulation of medical marijuana cultivation and distribution to protect a city’s character, stability and soul through zoning standards is a quintessential exercise of this power. (E.g., *Berman v. Parker* (1954) 348 U.S. 26, 32-33; *Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 861; *Ewing v. City of Carmel-by-the-Sea* (1991) 234 Cal.App.3d 1579.)

### **3. ZONING STANDARDS**

#### **A. Individual Qualified Patients: Residential Standards**

Grow houses have become an unfortunate byproduct of the CUA. While there is no formalized definition of “grow house,” the term has become generally synonymous with a home devoted entirely to marijuana cultivation and processing, resulting in the conversion of residential uses into marijuana cultivation and processing facilities. Grow houses remove valuable housing stock from the City, degrade neighborhood aesthetics, and undermine neighborhood character and unity. They present a serious risk of fire hazard due to illegal electrical installations, and can ruin entire houses due to high levels of moisture and mold.

These problems were first made evident to Arcata’s elected officials through individuals and a community organized effort named “Nip It in the Bud,” who brought testimony, pictures and petitions to the attention of the City Council describing the problems and perceptions of neighborhood deterioration. This evidence described, for example, shuttered-up homes, offensive odors, increased nighttime traffic, friendly neighborhoods that were now filled with reclusive strangers, damaged rentals, gated driveways, motion sensor “water squirters,” and parents no longer comfortable with their children playing outside.

Grow house operators often seek to justify their operations by claiming to be qualified patients and primary caregivers who associate “cooperatively or collectively” to cultivate medical marijuana (*see* Health and Safety Code § 11362.775.) As a result, the primary zoning standard used in Arcata to curb the proliferation of grow houses in residential areas is to prohibit all medical marijuana cooperatives and collectives (often termed “dispensaries”) from operating within residential zoning districts. Under the Arcata zoning standards, an individual qualified patient may still grow medical marijuana for

his/her own medical need in his/her residence, but not in any other residential location. In addition, a primary caregiver who wants to grow medical marijuana may do so, but only in the home of the patient under his/her care.

All medical marijuana cultivation within residential zones is subject to the following standards:

- The residence must maintain a kitchen, bathroom and primary bedrooms for their intended uses and not for growing medical marijuana.
- Cultivation and sales are not allowed in residential zones as a Home Occupation or Accessory Use.
- The individual qualified patient may not sell or distribute the medical marijuana grown in his/her home, although it can be given to a properly permitted collective or cooperative.
- The cultivation area must not exceed 50 square feet, although the Zoning Administrator may authorize up to an additional 50 square feet under certain circumstances, and subject to additional safety standards.

Finally, residential neighborhood integrity is protected by requirements that cultivation not create dust, glare, noise, odors or exterior evidence of the cultivation activity.

## **B. Cooperatives and Collectives: Non-Residential Standards**

- 1) Overview. Consistent with Arcata’s policy decision that cooperative and collective medical marijuana cultivation and distribution is incompatible with residential use, the community generally supports consolidating medical marijuana cooperatives and collectives in more appropriate zoning districts subject to appropriate standards. At the time the standards were developed, four separate “dispensary” operations in Arcata had previously sought “legitimacy” by applying for building permits to renovate their buildings for combined cultivation and distribution activities. All four were located within the downtown business district, occupying approximately 5500 square feet of prime retail space. All four actively participated in the development of the standards.

Community concern was brought forward on the issue that the cooperatives and collectives have the potential to occupy valuable commercial and industrial space, introduce incompatible uses, and create opportunities for diversion of medical marijuana into illegal use. Additional concern focused on the frequent disregard by cooperatives and collectives of the City’s environmental standards, including, for example, storm water pollution prevention standards, wastewater pretreatment requirements, solid waste diversion requirements, greenhouse gas reduction, and energy efficiency programs.

As a conceptual starting point to address many of these concerns, the Arcata standards define the medical marijuana cultivation activities by cooperatives and collectives as a use that is different than the distribution of medical marijuana. Both uses are allowed in specific zoning districts, but only with use permits.

Other overarching concepts incorporated into the standards include a cap on the total number of permitted cooperatives and collectives at four, which decreases to two as the facilities cease to operate. The City settled on the initial cap of four after lengthy testimony as to the appropriate number of cooperatives and collectives in the City simply out of recognition of the number of existing operations. The existing cooperatives and collectives presented evidence as to their respective “patient loads,” and, ultimately, the community believed that four is too many. After much public testimony and discussion, the decreased cap of two total permitted cooperatives and collectives was decided by recognizing that two pharmacies exist in Arcata, and adequately serve the community’s wide spectrum pharmacological needs. Therefore, two cooperatives or collectives distributing a single type of “medical” product would adequately service the community’s medical marijuana needs.

Fundamental to the imposition of the decreasing cap is that the existing cooperatives and collectives are not grandfathered as legal non-conforming uses. Rather, all existing cooperatives and collectives must come into compliance with the zoning standards within one year of the effective date of the zoning ordinance, and are deemed a public nuisance if they fail to do so.

As a final overarching concept to the zoning treatment of cooperatives and collectives, the Arcata zoning standards follow the California Attorney General’s suggestion that cooperatives or collectives organized by medical marijuana patients and primary caregivers for the purpose of cultivating marijuana must satisfy California statutory business forms of cooperatives and collectives. (Edmund G. Brown, Jr. *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, August 2008.)

2) Cultivation and Processing of Medical Marijuana by Collectives and Cooperatives.

The standards define cultivation as an agricultural use, allowed only within Agricultural Exclusive and Industrial zoning districts, and only with a use permit. In addition, cultivation activities must meet the following standards:

- Cultivation must occur within a self-contained structure that is ventilated and contains a one-hour fire wall.
- Cultivation and processing must operate in conjunction with a properly permitted collective or cooperative.
- No on-site displays of plants or marijuana paraphernalia are allowed.

- The facility must comply with the City’s environmental regulations for storm water pollution, wastewater diversion, greenhouse gas reduction, and energy efficiency.

3) Distribution of Medical Marijuana by Cooperatives and Collectives. Dispensing activities by cooperatives or collectives are allowed only within the City’s Commercial, Industrial and Public Facility zoning districts, and only with a use permit. The use permit may allow for a limited amount of cultivation at the dispensary site (up to 25%), but the standards anticipate that primary cultivation activity will occur off-site in a properly permitted and otherwise legal cultivation and processing facility.

In developing standards for the cooperative or collective distribution use, one issue of primary concern was minimizing opportunities for diversion of the marijuana into illegal markets. Testimony indicated that “patients” who receive medical marijuana from a cooperative or collective immediately turn around and sell it on the street. The cooperatives and collectives testified that they retain specialized health care professionals to calibrate the amount of marijuana dispense to a patient’s individual need. Thus, in theory, limiting the number of daily distributions to a patient, could limit the excess marijuana that would be diverted. The cooperatives and collectives testified that in some situations, they need to dispense a certain type of marijuana in the morning, and a different type in the evening. Based on this, the Arcata standards settled on a dispensing limit to any one patient of no more than twice per day.

In addition, the cooperative or collective must operate in accordance with the following standards:

- Dispensing of medical marijuana is allowed only to individual qualified patients with valid physician recommendations.
- Marijuana use (smoking or ingesting) on or in the vicinity of the dispensary is not permitted unless specifically allowed by the use permit.
- Persons under 18 may not enter the facility unless they are qualified patients or under the supervision of parents or guardians.
- No on-site display of marijuana plants is allowed.
- The distribution of live plants or clones is allowed to qualified patients or their primary caregivers, only if permitted by the use permit.

#### **4. CONCLUSION**

In Arcata, the zoning standards provide only one of several methods for minimizing collateral problems associated with unregulated medical marijuana cultivation and distribution. Other methods include active code enforcement. For example, when the Building Official becomes aware of building code violations associated with grow houses, the house is immediately declared a public nuisance and the electric meter is pulled pending abatement of the building violations. Additionally, the City works closely with law enforcement to locate and eliminate criminal activities. Future judicial interpretations of the CUA and MMP will continue to improve our understanding of options available to local governments to address community-specific issues associated with medical marijuana.

Attachment:

Arcata Medical Marijuana Zoning Standards, Ordinance 1382.

**ORDINANCE NO. 1382**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE  
ARCATA MUNICIPAL CODE, TITLE IX, THE LAND USE CODE BY ADDING  
§9.42.105 – MEDICAL MARIJUANA: CULTIVATION AND DISPENSING  
AS A NEW STANDARD FOR SPECIFIC LAND USE; AND ASSOCIATED REVISIONS TO:  
ALLOWABLE LAND USES AND PERMIT REQUIREMENT TABLES 2-1, 2-4, and 2-10;  
ADD ASSOCIATED DEFINITIONS TO ARTICLE 10 – GLOSSARY;  
AND REVISE TEXT OF §9.42.040 – ACCESSORY USES,  
AND §9.42.090 – HOME OCCUPATIONS**

The City Council of the City of Arcata does hereby ordain as follows:

**SECTION 1. Amendment of the 2008 City of Arcata Land Use Code**

Title IX of the Arcata Municipal Code is hereby amended as follows:

1. Add §9.42.105 – Medical Marijuana: Cultivation and Dispensing as attached as Exhibit 1;
2. Revise Tables 2-1, 2-4, and 2-10: Allowable Land Uses and Permit Requirement as attached as Exhibits 2, 3, 4;
3. Add definitions to Article 10 – Glossary as attached as Exhibit 5;
4. Revise text of §9.42.040 – Accessory Uses as attached as Exhibit 6;
5. Revise text of §9.42.090 - Home Occupations as attached as Exhibit 7.

**SECTION 2. Findings of Approval**

Based upon information received in the public hearing, including the Arcata Planning Commission Staff Reports and Resolution PC-08-14 the following findings are hereby adopted.

1. The proposed amendment is consistent with the General Plan in accordance with the California Government Code, Section 65860.
2. The public health, safety, and general welfare require the adoption of the proposed amendment.

**SECTION 3. Severability**

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.



**SECTION 4. Limitation of Actions**

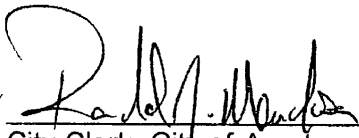
Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

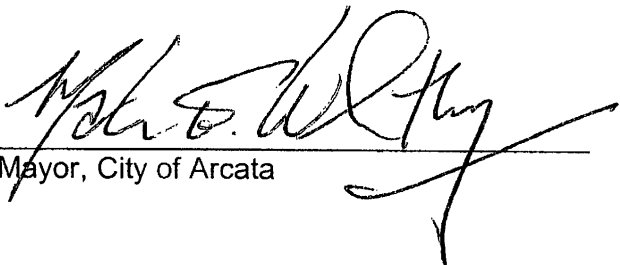
**SECTION 5. Effective Date**

This ordinance shall take effect thirty (30) days after its adoption by the City Council.

DATED: November 19, 2008

ATTEST:

*Acting*   
\_\_\_\_\_  
City Clerk, City of Arcata

  
\_\_\_\_\_  
Mayor, City of Arcata

**CLERK'S CERTIFICATE**

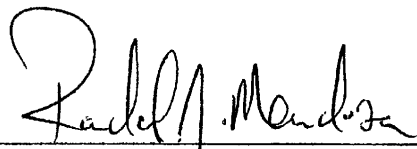
I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1382**, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, on the 19<sup>th</sup> day of November, 2008, by the following vote:

AYES: **WHEETLEY, STILLMAN, MACHI, GROVES, PITINO**

NOES: **NONE**

ABSENT: **NONE**

ABSTENTIONS: **NONE**

*Acting*   
\_\_\_\_\_  
City Clerk, City of Arcata

### 9.42.105 – Medical Marijuana: Cultivation and Dispensing

- A. **Purpose.** The purpose and intent of this section is to regulate the cultivation and dispensing of medical marijuana in a manner that protects the health, safety and welfare of the community. This section is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law.
- 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. §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, processing and dispensing of medical marijuana in the City of Arcata is controlled by the provisions of this section of the Land Use Code. Accessory uses and home occupations, where medical marijuana is involved shall be governed by the provisions of this section.
- C. **Release of Liability and Hold Harmless.** The owner and permittee of a medical marijuana cooperative, collective or cultivation facility shall release the City of Arcata, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of cooperative or collective or cultivation owners, operators, employees, or clients for violation of state or federal laws in a form satisfactory to the Director. In addition, the owner and permittee of each medical marijuana cooperative, collective or cultivation facility shall indemnify and hold harmless the City of Arcata and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cooperative, collective or cultivation facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution, cultivation and/or on- or off-site use of medical marijuana provided at the cooperative, collective or cultivation facility in a form satisfactory to the Director.
- D. **Medical Marijuana for Personal Use.** An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient for whom he/she is the primary caregiver. Medical marijuana for personal use shall be in conformance with the following standards:
1. The medical marijuana cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height per residence;
    - a. Medical marijuana cultivation lighting shall not exceed 1200 watts;
    - b. The use of gas products (CO<sub>2</sub>, butane, etc.) for medical marijuana cultivation or processing is prohibited;
    - c. In accordance with Section 9.42.090.B.2., medical marijuana cultivation and sale is prohibited as a Home Occupation. Per Section 9.42.040, Accessory Uses, medical marijuana cultivation and sales is not considered an accessory use. No sale or dispensing of medical marijuana for personal use is allowed;
    - d. From a public right of way, there shall be no exterior evidence of medical marijuana cultivation either within or outside the residence;
    - e. The qualified patient shall reside in the residence where the medical marijuana cultivation occurs;

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- f. The qualified patient shall not participate in medical marijuana cultivation in any other residential location within the City of Arcata;
  - g. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana cultivation;
  - h. The medical marijuana cultivation area shall be in compliance with the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s)); and
  - i. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
2. Any proposed medical marijuana cultivation by an individual qualified patient or primary caregiver that does not meet the grow area standard of Section 9.42.105 D. 1. shall require a Zoning Administrator Interpretation of the need for additional cultivation area. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The request for Interpretation shall include written permission from the property owner. The Zoning Administrator shall review the submitted information and make an interpretation in accordance with Section 9.10.050. 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. Approved medical marijuana cultivation for personal use that exceeds 50 square feet shall conform to the following standards:
- a. Shall be in compliance with §9.42.105 D 1 a. – i. above; and
  - b. The medical marijuana cultivation area shall not exceed an additional 50 square feet for the total of 100 square feet and not exceed ten feet (10') in height per residence; and
  - c. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board; and
  - d. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.
- E. Permit requirements for Medical Marijuana Cooperatives or Collectives.** Medical marijuana cooperatives or collectives may be established only in those zoning districts listed in Table 2-10, "Allowable Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts." Medical marijuana cooperatives or collectives shall only be allowed with an approved Use Permit in conformance with Section 9.72.080 (Use Permit and Minor Use Permit). The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate a medical marijuana cooperative or collective. A medical marijuana cooperative or collective shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical marijuana.

Notwithstanding the provisions of Chapter 9 (Nonconforming Uses, Structures, and Parcels), an existing cooperative or collective in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

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1. Specific Regulations. The following specific regulations apply to medical marijuana cooperatives or collectives.
  - a. The total number of medical marijuana cooperatives or collectives within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the four (4) cooperatives or collectives ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2).
  - b. In addition to Section 9.72.080 F (Use Permit Findings and decision), the review authority should give special consideration to approving cooperatives or collectives located: within a 300 foot radius from any existing residential zoning district, within 500 feet of any other medical marijuana cooperative or collective as defined in the glossary which is located either inside or outside the jurisdiction of the City, or within 500 feet from any existing public park, playground, day care, or school.
  - c. Source of medical marijuana. A medical marijuana cooperative or collective shall only dispense marijuana from the following sources:
    - (1) Permitted Cooperative or Collective. If the Use Permit authorizes limited, on-site medical marijuana cultivation at the cooperative or collective, a permitted medical marijuana cooperatives' or collectives' on-site cultivation shall not exceed twenty-five (25) percent of the cooperatives' or collectives' total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
    - (2) Off-site Permitted Cultivation. The cooperative or collective cultivates medical marijuana in an off-site location in accordance with applicable zoning regulations from the jurisdiction in which it is located. Zoning compliance documentation from the applicable jurisdiction shall accompany the Use Permit application and be updated annually.
    - (3) Qualified Patients. In the case of a medical marijuana cooperative or collective, the medical marijuana is acquired from an individual qualified patient who cultivated the medical marijuana in accordance with the standards in Section 9.42.105.D., the qualified patient received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Pursuant to California Health and Safety Code §11362.765 (c) a collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
  - d. Notwithstanding Section 9.72.080 (Use Permit and Minor Use Permit) a medical marijuana cooperative or collective application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:
    - (1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;
    - (2) A description of the staff screening process including appropriate background checks;
    - (3) The hours and days of the week the medical marijuana cooperative or collective will be open;

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- (4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cooperative or collective. The material shall also show adjacent structures and land uses;
  - (5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;
  - (6) A description of the screening, registration and validation process for qualified patients;
  - (7) A description of qualified patient records acquisition and retention procedures;
  - (8) The process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources;
  - (9) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana;
  - (10) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and
  - (11) Other information required by the Community Development Director.
2. Operating Standards. Medical marijuana cooperatives or collectives shall comply with all of the following operating standards.
- a. No dispensing medical marijuana to an individual qualified patient or primary caregiver more than twice a day;
  - b. Medical marijuana cooperatives or collectives shall only dispense medical marijuana to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid;
  - c. Medical cooperatives or collectives shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the cooperative or collective. The client rules and/or regulations shall include, but not limited to:
    - (1) Each building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical marijuana on the premises or in the vicinity of the cooperative or collective is prohibited unless specifically authorized with the Use Permit.
    - (2) The building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are qualified patients and/or they are under the supervision of their parent or legal guardian.

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- f. Medical marijuana cooperatives or collectives shall not permit the on-site display of marijuana plants except for approved signs according to Chapter 9.38 (Signs);
  - g. Medical marijuana cooperatives or collectives shall only permit the distribution of live plants, starts and clones as allowed by the approved Use Permit. Such distribution shall be limited to qualified patients or primary caregiver;
  - h. Medical marijuana cooperatives or collectives shall only permit the on-site display or sale of marijuana paraphernalia used for the consumption of medical marijuana as allowed by the approved Use Permit;
  - i. Medical marijuana cooperatives or collectives shall comply with other conditions as outlined in the Use Permit;
  - j. Medical marijuana cooperatives or collectives shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
  - k. Medical marijuana cooperatives or collectives shall implement procedures as outlined in their approved Operations Manual;
  - l. Medical marijuana cooperatives or collectives shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual"; and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and dispensing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
3. Permit Revocation or Modification. A use permit may be revoked or modified according to Section 9.96.070 (Permit Revocation or Modification). Use Permit revocation proceedings may occur for non-compliance with one or more of the items 2.a. through l. above.
  4. Transfer of Use Permit. The rights of an approved Use Permit to operate a medical marijuana cooperative or collective may be transferred to another cooperative or collective as a Use Permit modification according to Section 9.96.070 (Permit Revocation or Modification).

- F. **Medical Marijuana Cultivation for Cooperative or Collective.** Except as permitted in Section 9.42.105 E. 1. c. (1) medical marijuana cultivation and processing for medical marijuana cooperatives or collectives is considered an agricultural use and may be established only in those zoning districts listed in Table 2-1 "Allowable Land Uses and Permit Requirements for Agricultural and Resource Zoning Districts" and 2-10, "Allowable Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts." Medical marijuana cultivation and processing for a medical marijuana cooperative or collective shall only be allowed with an approved Use Permit in conformance with Section 9.72.080 (Use Permit and Minor Use Permit). The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate medical marijuana cultivation or processing facility.

Notwithstanding the provisions of Chapter 9 (Nonconforming Uses, Structures, and Parcels), an existing medical marijuana cultivation and processing structure or use in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

1. **Specific Regulations.** The following specific regulations apply to medical marijuana cultivation and processing.
  - a. The total number of medical marijuana cultivation and processing facilities within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the cultivation and processing facilities ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2). If a medical marijuana cooperative or collective allows for marijuana cultivation and processing pursuant to Section 9.42.105 E. 1. c. (1), the cooperative or collective shall be counted as one of the four (4) (or three (3), or two (2) as noted above) allowed marijuana cultivation and processing facilities.
  - b. The grow area shall be within a self-contained structure, with a 1-hour firewall assembly made of green board, shall be ventilated with odor control, and shall not create a humidity or mold problem;
  - c. The medical marijuana cultivation and processing facility shall not adversely affect the health or safety of the nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes;
  - d. The medical marijuana cultivation and processing facility must be permitted in conjunction with an associated medical marijuana cooperative or collective in accordance to applicable zoning regulations from the jurisdiction in which it is located;
  - e. The medical marijuana cultivation and processing facility shall comply with stormwater, wastewater, and applicable greenhouse gas reduction requirements;
  - f. The size and scale of the cultivation shall be proportional to the qualified patient load of an associated medical marijuana cooperative or collective in accordance to applicable zoning regulations from the jurisdiction in which it is located;
  - g. Medical marijuana cultivation and processing facilities shall not permit the on-site display of marijuana plants except for approved signs according to Chapter 9.38 (Signs);
  - h. Medical marijuana cultivation and processing facilities shall not permit the on-site display or sale of paraphernalia used for the use or consumption of medical marijuana;

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Standards for Specific Land Use

9.42.105

- i. Medical marijuana cultivation and processing facilities shall comply with other conditions as outlined in the Use Permit;
- j. Medical marijuana cultivation and processing facilities shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cultivation and processing facilities shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
- k. Notwithstanding Section 9.72.080 (Use Permit and Minor Use Permit) a medical marijuana cultivation and processing application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:
  - (1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;
  - (2) A description of the staff screening process including appropriate background checks;
  - (3) The hours and days of the week the medical marijuana cultivation and processing facility will be open;
  - (4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cultivation and processing facility. The material shall also show adjacent structures and land uses;
  - (5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;
  - (6) The process for tracking medical marijuana quantities and inventory controls;
  - (7) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana;
  - (8) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and
  - (9) Other information required by the Community Development Director.
- n. Medical marijuana cultivation and processing facilities shall implement procedures as outlined in their approved Operations Manual;
- o. Medical marijuana cultivation and processing facilities shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual"; and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and processing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.



CITY OF ARCATA MUNICIPAL CODE - TITLE 9 - LAND USE CODE

Agricultural and Resource Zoning Districts

9.22.030

TABLE 2-1 Allowed Land Uses and Permit Requirements for Agricultural and Resource Zoning Districts	P	Permitted Use, Zoning Clearance required				
	MUP	Minor Use Permit required				
	UP	Use Permit required				
	S	Permit determined by specific use regulations Use not allowed				
LAND USE (1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	AE	AE-CZ	AR	NR-TP	NR-PT	

AGRICULTURAL & OPEN SPACE USES

Agricultural accessory structure, 4,000 sf or less	P	P	MUP	MUP	MUP	9.22.060, 9.42.030
Agricultural accessory structure, larger than 4,000 sf	MUP	MUP	MUP	MUP	MUP	
Agricultural cultivation - medical marijuana	UP	UP	—	—	—	9.42.105
Agricultural processing - Very low impact	P	P	P	P	P	
Agricultural processing - Low impact	MUP	MUP	MUP	MUP	MUP	
Agricultural Processing - Moderate impact	UP	UP	UP	—	—	
Animal keeping	S	S	S	S	S	9.22.060, 9.42.050
Aquaculture - Ocean dependent	—	MUP	—	MUP	MUP	
Commercial greenhouse - Perimeter foundation, 1,000 sf or less	P	MUP	MUP	—	—	
Commercial greenhouse - Perimeter foundation, larger than 1,000 sf	MUP	MUP	MUP	—	—	
Commercial greenhouse - Slab foundation	UP	—	UP	—	—	
Commercial greenhouse - Soil dependent, 1,000 sf or less	P	P	P	—	—	9.22.060
Commercial greenhouse - Soil dependent, larger than 1,000 sf	MUP	MUP	MUP	—	—	
Crop production, horticulture, orchard, vineyard	P(2)	P(2)	P(2)	P(2)	P(2)	9.22.060
Forestry	MUP	—	MUP	P(2)	—	
Nature preserves, habitat and wetland restoration	P(2)	P(2)	P(2)	P(2)	P(2)	9.22.060
Winery	UP	UP	UP	—	—	

RECREATION, EDUCATION & PUBLIC ASSEMBLY USES

Boat launching facility	—	MUP	—	—	UP	9.22.060
Coastal access trail	P	P	P	—	P	9.22.060
Equestrian facility, maintaining 8 or fewer horses	P	MUP	UP	—	—	9.42.050
Equestrian facility, maintaining 9 or more horses	MUP	MUP	UP	—	—	9.42.050
Interpretive center	—	—	—	UP	UP	9.22.060
Non-vehicular recreation	P	P	P	P	P	9.22.060
Meeting facility, public or private	—	—	UP	UP	UP	
Parks and playgrounds	—	—	MUP	UP	UP	

Key to Zoning District Symbols

AE	Agriculture - Exclusive	NR-TP	Natural Resource - Timber Production
AE-CZ	Agriculture - Exclusive - Coastal Zone	NR-PT	Natural Resource - Public Trust
AR	Agriculture - Residential		

Notes:

- (1) - See Article 10 for land use definitions.
- (2) Zoning Clearance not required.

CITY OF ARCATA MUNICIPAL CODE - TITLE 9 - LAND USE CODE

Residential Zoning Districts

9.24.030

<b>TABLE 2.4</b> <b>Allowed Land Uses and Permit Requirements</b> <b>for Residential Zoning Districts</b>	P	Permitted Use, Zoning Clearance required			
	MUP	Minor Use Permit required			
	UP	Use Permit required			
	S	Permit determined by specific use regulations			
	—	Use not allowed			
<b>LAND USE: (1)</b>	<b>PERMIT REQUIRED BY DISTRICT</b>				<b>Specific Use Regulations</b>
	RVL	RL	RM	RH	

**AGRICULTURAL & OPEN SPACE USES**

Agricultural accessory structure	MUP	UP	UP	UP	9.42.030
Agricultural cultivation - medical marijuana	—	—	—	—	9.42.105
Animal keeping	S	S	S	S	9.42.050
Crop production, horticulture, orchard, vineyard	MUP	MUP	MUP	MUP	
Greenhouse and nursery structures, 300 sf or less	UP	UP	—	—	
Greenhouse and nursery structures, larger than 300 sf	—	—	—	—	
Produce stand, 1,000 sf maximum	MUP	MUP	MUP	MUP	9.42.140F

**RECREATION, EDUCATION & PUBLIC ASSEMBLY USES**

Equestrian facility	UP	—	—	—	9.42.050
Meeting facility, public or private	MUP	MUP	MUP	MUP	
Parks and playgrounds, public	P	P	P	P	
Private residential recreation facility	—	MUP	MUP	MUP	
School - Public or private, elementary or secondary	MUP	MUP	MUP	MUP	

**RESIDENTIAL USES**

Home occupation	P	P	P	P	9.42.090
Mobile home - Outside of mobile home park	P	P	P	P	9.42.120
Mobile home park, including individual mobile homes	UP	UP	UP	UP	9.42.120
Multi-family housing, 2 units	—	P	P	P	9.42.130
Multi-family housing, 3 to 9 units	—	MUP(2)	P	P	9.42.130
Multi-family housing, 10 or more units	—	—	P	P	9.42.130
Organizational house (sorority, monastery, religious, etc.)	UP	UP	UP	UP	
Residential accessory use or structure	P	P	P	P	9.42.030
Residential care facility, 6 or fewer clients	P	P	P	P	
Residential care facility, 7 or more clients	UP	UP	UP	UP	
Rooming or boarding house	—	UP	P	P	
Second dwelling unit	P	P	P	P	9.42.170
Single-family dwelling	P	P	P	P	
Transitional housing	UP	UP	UP	UP	

**Key to Zoning District Symbols**

RVL	Residential - Very Low Density	RM	Residential - Medium Density
RL	Residential - Low Density	RH	Residential - High Density

**Notes:**

- (1) See Article 10 (Glossary) for land use definitions.
- (2) Allowed only in compliance with Section 9.24.060.B (RL Alternative Development Option).

<b>TABLE 2-10</b> <b>Allowed Land Uses and Permit Requirements</b> <b>for Commercial, Industrial, And Public Facility</b> <b>Zoning Districts</b>	P	Permitted Use, Zoning Clearance required					
	MUP	Minor Use Permit required					
	UP	Use Permit required (2)					
	S	Permit determined by specific use regulations					
	—	Use not allowed					
LAND USE (1)	PERMIT REQUIRED BY DISTRICT						Specific Use Regulations
	CC	GG	CV	CM	IL	IG	

**INDUSTRY, MANUFACTURING & PROCESSING, WHOLESALING**

Agricultural cultivation - medical marijuana	—	—	—	—	UP	UP	—	9.42.105
Agricultural processing - Very low impact	—	—	—	—	P	P	—	
Agricultural processing - Low impact	MUP(4)	MUP(4)	—	—	P	P	—	
Biodiesel production	—	—	—	—	UP	UP	—	
Composting	—	—	—	—	MUP	MUP	—	
Construction contractors	—	—	—	—	P	P	—	
Furniture and fixtures manufacturing, cabinet shop	—	UP	—	—	P	P	—	
Laboratory - Medical, analytical, R&D	—	P	—	—	P	P	—	
Laundry, dry cleaning plant	—	UP	—	UP	P	P	—	
Manufacturing/processing - Low impact	MUP(4)	MUP(4)	—	—	P	P	—	
Manufacturing/processing - Moderate impact	—	—	—	—	MUP	MUP	—	
Manufacturing/processing - High impact	—	—	—	—	—	UP	—	
Media production	P	P	—	—	P	P	—	
Printing and publishing	P	P	—	—	P	P	—	
Recycling - Processing facility	—	—	—	—	MUP	P	—	9.42.160
Recycling - Reverse vending machines	—	P	P	—	P	P	—	9.42.160
Recycling - Scrap and dismantling yards	—	—	—	—	—	MUP	—	9.42.160
Recycling - Small collection facility	—	MUP	—	—	MUP	P	P	9.42.160
Solid waste disposal transfer station	—	—	—	—	UP	UP	—	
Storage - Business records	MUP	MUP	—	—	MUP	MUP	—	
Storage - Outdoor	MUP	MUP	MUP	MUP	P	P	P	9.42.150
Storage - Personal storage facility (mini-storage)	—	UP	—	—	P	P	—	
Storage - Warehouse, indoor storage	—	UP	—	—	P	P	—	
Wholesaling and distribution	—	P	—	—	P	P	—	

**Key to Zoning District Symbols**

CC	Commercial - Central	IL	Industrial - Limited
GG	Commercial - General	IG	Industrial - General
CV	Commercial - Visitor Serving	PF	Public Facility
CM	Commercial - Mixed Use Center		

**Notes:**

- (1) See Article 10 (Glossary) for land use definitions.
- (2) Use Permit required for any proposed retail use with either: (a) a floor greater than 30,000 sf; or (b) physical alteration of eight or more acres; or (c) generation of 1,000 or more vehicle trips per day. See also Section 9.26.060.
- (3) Residential units should only be located above nonresidential uses or at ground level behind the street-fronting nonresidential uses pursuant to Section 9.42.110.
- (4) Allowed only in conjunction with the on-site retail sale of products produced on the site.

The following definitions will be added to **Article 10 Glossary**

**Marijuana.** "Marijuana" means all parts of the plant *Cannabis sativa* L., 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. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of the plant which is incapable of germination.

**Medical Marijuana.** Means marijuana used in strict accordance with the Compassionate Use Act of 1996 (Health and Safety Code §11362.5 et seq) and The Medical Marijuana Program (Health and Safety Code §11362.7 et seq.).

**Medical Marijuana Identification Card.** A document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any as per California Health and Safety Code §11362.7, and as may be amended.

**Medical Marijuana Cooperative or Collective.**

"Medical Marijuana Cooperative or Collective " means an affiliation or association of individuals whose collective intent is to provide education, referral or network services and to assist in the lawful acquisition and distribution of medical marijuana in a safe and affordable manner between primary caregivers and qualified patients as permitted in accordance with the Compassionate Use Act of 1996.

**Person with an Identification Card.** Means an individual who is a qualified patient who has applied for and received a valid identification card as per the California Health and Safety Code §11362.7, and as may be amended.

**Primary caregiver.** Means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as more particularly as set forth in California Health and Safety Code §11362.7, and as may be amended.

**Qualified patient.** Means a person who has a physician's recommendation and is entitled to the protections of Section 11362.5 of the California Health and Safety Code, but who does not have an identification card issued as set forth in California Health and Safety Code §11362.7, and as may be amended.

9.42.040 - Accessory Uses

\* In addition to the uses expressly permitted in each zoning district by Article 2 (Zoning Districts and Allowable Land Uses), the following accessory uses are also permitted in compliance with this Section. See also Section 9.42.020 (Accessory Retail and Service Uses). These do not include uses covered in Section 9.42.105 (Medical Marijuana).

- A. Administrative office. The administrative office for an approved primary use on the same lot.
- B. Parking. Off-street parking and loading serving a primary use, located, designed, and constructed in compliance with Chapter 9.36 (Parking and Loading), but only if the parking is reserved for the residents, employees, patrons, or other persons participating in the primary activity on the site.
- C. Production of goods. The production of goods for sale by a firm engaged in an approved primary commercial use on the same lot, if:
  - 1. All goods produced are sold at retail by the same firm either on the same or other lots; and
  - 2. Production does not occupy more than 50 percent of the total floor area and open sales, display, storage, and service area occupied by the firm on the lot, or more than 3,000 square feet, whichever is less.
- D. Sales. Wholesale or retail sales to a buyer's custom order, of goods produced by an approved primary industrial use on the same lot.
- E. Storage. The storage of goods sold by an approved primary commercial use on the same lot, or used in or produced by an approved primary industrial use on the same lot.

### 9.42.090 - Home Occupations

The following standards for home occupations are intended to encourage reasonable opportunities for employment within the home, while avoiding changes to the residential character of a dwelling that accommodates a home occupation, or the surrounding neighborhood, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

- A. **Permit requirements.** A home occupation in compliance with this Section shall require a City Business License. A home occupation that does not comply with each applicable requirement of this Section may be authorized by Minor Use Permit, provided that the review authority first makes the following findings, in addition to those required by Section 9.72.080 for Minor Use Permits:
1. The operating characteristics of the business will be such that it will have no significant adverse impact on the owners or occupants of neighboring properties; and
  2. The specific location, building type, orientation, access characteristics or other features of the subject property warrant the approval of the proposed use although it would not typically conform to zoning limitations.

Before receiving a City business license for a home occupation, all applicants shall sign an affidavit attesting that they have read, understand, and will comply with the standards and requirements of this Section, and that they agree to pay for all City costs incurred in the enforcement of these provisions, including attorneys' fees, if they are subsequently found to be operating a business in violation of the Municipal Code or other City ordinance.

- B. **Limitations on use.** The following are examples of business activities that may be approved as home occupations, and uses that are prohibited as home occupations.
1. **Uses allowed as home occupations.** The following and other uses determined by the Director to be similar may be approved by the Director in compliance with this Section.
    - a. Art and craft work (ceramics, painting, photography, sculpture, etc.);
    - b. Tailors, sewing;
    - c. Office-only uses, including an office for an architect, attorney, consultant, counselor, doctor, insurance agent, planner, tutor, writer, and electronic commerce; and
    - d. Personal trainers and licensed massage therapy and physical therapy.

- \* |
2. **Uses prohibited as home occupations.** Businesses with operating characteristics that have significant adverse impacts on the owners or occupants of the neighboring residential properties shall be prohibited as home occupations. Examples of such operating characteristics are: dust, glare, heat, noise, noxious gasses, odor, smoke, excessive traffic, vibration, use of explosives or highly combustible materials, and use of hazardous or toxic materials. The types of businesses that will be prohibited as home occupations include: vehicle repair, animal hospitals and boarding facilities, storage yards, medical clinics and laboratories, sex-oriented businesses, wood cutting businesses, welding and machine shop operations, and other similar businesses, and all uses covered in Section 9.42.105 (Medical Marijuana).

C. **Operating standards.** Home occupations shall comply with all of the following operating standards.

1. **Accessory use.** The home occupation shall be clearly secondary to the full-time use of the property as a residence.
2. **Visibility.** The use shall not require any exterior modification to the structure not customarily found in a dwelling, nor shall the home occupation activity be visible from a public right-of-way, or from neighboring residential properties.
3. **Signs.** There shall be no signs, other than one name plate, not exceeding two square feet in area, and only if attached flush to a wall of the structure. Hand lettered or magnetic door vehicle signs identifying the business are allowed; however, no vehicle sign shall be used to direct clients to the home occupation from off the site, pursuant to Section 9.38, Signs.
4. **Safety.** Activities conducted and equipment or material used shall not change the fire safety or occupancy classifications of the premises. The use shall not employ the storage of explosive, flammable, or hazardous materials beyond those normally associated with a residential use.
5. **Off-site effects.** No home occupation activity shall create dust, electrical interference, fumes, gas, glare, light, noise, odor, smoke, toxic/hazardous materials, vibration, or other hazards or nuisances as determined by the Director.
6. **Outdoor display or storage.** There shall be no window display or outdoor storage or display of equipment, materials, or supplies associated with the home occupation.
7. **Employees.** A home occupation shall have no on-site employees other than full-time residents of the dwelling, unless a Minor Use Permit is obtained that would allow on-site employees.
8. **Client/customer visits.** The home occupation shall be operated so as to not require more than 12 vehicle trips per day of clients, customers, and/or visitors to the residence. On-site presence of clients or customers shall be limited to one client or family at a time, and only between the hours of 9:00 a.m. and 8:00 p.m.
9. **Deliveries.** The home occupation shall not involve the use of commercial vehicles for delivery of materials to or from the premises in a manner different from normal residential usage, except for FedEx, UPS, or USPS-type home pick-ups and deliveries.
10. **Utility service modifications.** No electric or gas utility service to the dwelling shall be modified solely to accommodate a home occupation, other than as required for normal residential use.