

ORDINANCE NO 2013-03

AN ORDINANCE OF THE CITY OF FERNDALE PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND OUTDOOR CULTIVATION AND REGULATING INDOOR CULTIVATION OF MEDICAL MARIJUANA WITHIN THE CITY OF FERNDALE.

Table of Contents

Article 1.	Short Title, Findings, and Purpose	1
Article 2.	Statutory Authority.....	2
Article 3.	Applicability	2
Article 4.	Administration and Enforcement	2
Article 5.	Definitions	3
Article 6.	Medical Marijuana Requirements and Regulations	3
Article 7.	Non-Medical Use	5
Article 8.	Amendment.....	5
Article 9.	Enactment and Effective Date.....	5
Article 10.	Posting Requirement	5

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

ARTICLE 1. SHORT TITLE, FINDINGS, AND PURPOSE

Section 1.01 **Short Title.** This Ordinance shall be known and cited as the “Medical Marijuana Dispensary and Cultivation Ordinance” (hereinafter this “Ordinance”).

Section 1.02 **Findings.**

(a) The City Council of the City of Ferndale, based on evidence presented to it in the proceedings leading to the adoption of this Ordinance hereby finds that the cultivation, processing and distribution of medical cannabis has the potential to cause ongoing impacts to the community. Potential impacts include damage to buildings containing indoor grows, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes. Impacts associated with outdoor cultivation include increased crime rates, noxious odors and environmental concerns associated with water quality violations and use of herbicides and rodenticides. Many of these impacts may fall disproportionately on residential neighborhoods. These impacts may create an increase in response costs, including code enforcement, building, land use, fire, and police staff time and expenses.

(b) The City Council of the City of Ferndale also acknowledges that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of cannabis for medical purposes under the Compassionate Use Act, but that the Compassionate Use Act does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

Section 1.03 **Purpose.** The purpose and intent of this Ordinance is to regulate the cultivation and dispensing of medical marijuana in a manner that protects the health, safety and welfare of the community. This Ordinance 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.

ARTICLE 2. STATUTORY AUTHORITY

§2.1 The statutory authority for this Ordinance is California Health and Safety Code Section §11362.5 et seq., and California law recognizing the authority of municipalities to regulate land uses within its jurisdiction in order to protect the health, safety and welfare of the community.

ARTICLE 3. APPLICABILITY

§3.1 The provisions adopted in this Ordinance shall not be exclusive but shall be cumulative and complementary to any other provisions of City of Ferndale regulations and State and Federal laws. Nothing in this Ordinance shall be read, interpreted or construed so as to limit any existing right or power of the City.

§3.2 No part of this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation, processing and distribution of medical cannabis in the City of Ferndale is controlled by the provisions of this Ordinance. Accessory uses and home occupations, where medical cannabis is involved shall be governed by the provisions of this Ordinance.

§3.3 Nothing in this Ordinance is intended, nor shall it be construed, to burden any defense to criminal prosecution otherwise afforded by California law.

§3.4 Nothing in this Ordinance is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants.

§3.5 Nothing in this Ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

§3.6 Nothing in this Ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

§3.7 All cultivation, processing and distribution of medical cannabis within city limits shall be subject to the provisions of this Ordinance and its subparts, regardless if the cultivation, processing or distribution existed or occurred prior to adoption of this Ordinance.

ARTICLE 4. ADMINISTRATION AND ENFORCEMENT

§4.1 The Chief of Police of the City of Ferndale, or his/her designee, shall be responsible for the administration and enforcement of the provisions of this Ordinance.

§4.2 Any violation of this Ordinance is subject to administrative, civil, or criminal penalties, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, a nuisance abatement action, summary abatement of immediately hazardous conditions, and all other

applicable fines, penalties and remedies.

- §4.3 This is an Ordinance adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted and enforced with an emphasis on public and community safety, and enforced rigorously in a manner such as to deter further violations.

ARTICLE 5. DEFINITIONS

As used in this Ordinance, the following terms shall have the definitions assigned:

- §5.1 **Medical Marijuana Cultivation:** The planting, growing, harvesting, drying, or processing of marijuana plants, or any part thereof.
- §5.2 **Medical Marijuana Dispensary (“Dispensary”):** Any profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana for any purpose. A Dispensary includes a marijuana club as describe in *People v. Peron*, (1997) 59 Cal. App. 4th 1383, facilities of the type and nature described in *City of Riverside v. Inland Empire Patients Health and Wellness Center*, (2013) 56 Cal. 4th 729, and further includes medical marijuana cooperatives. A Dispensary shall not include the following uses, as long as the location of such uses are otherwise regulated by the City’s Municipal Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; a residential hospice; or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, California Health and Safety Code section 11362.5 et seq.

ARTICLE 6. MEDICAL MARIJUANA REQUIREMENTS AND REGULATIONS

- §6.1 Medical Marijuana Dispensaries and outdoor Medical Marijuana Cultivation shall be prohibited in any zoning district of the City, even if located within an otherwise permitted use.
- §6.2 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:
- §6.2.1 Cultivation of medical cannabis for personal use shall occur only on the parcel either within the residence occupied by the qualified patient, or in a self-contained accessory building that is secured, locked, and fully enclosed and which is for the exclusive use of the qualified patient;
- §6.2.2 Cultivation of medical cannabis for personal use shall not displace required off-street parking;
- §6.2.3 The Medical Marijuana Cultivation area shall not exceed thirty-two (32) square feet measured by the canopy and not exceed ten feet (10') in height per residence. This limit applies regardless of the number of qualified patients or persons with an identification card residing in the residence. The cultivation area shall be a single designated area;
- §6.2.4 Medical Marijuana Cultivation lighting shall not exceed one thousand two hundred (1,200) watts;

- §6.2.5 The use of gas products (CO2, butane, etc.) for medical marijuana cultivation or processing is prohibited;
- §6.2.6 Medical Marijuana Cultivation and sale shall be prohibited as a home occupation;
- §6.2.7 Medical Marijuana Cultivation and sales shall not be considered a permitted accessory use of property;
- §6.2.8 The sale or dispensing of medical marijuana for personal use shall be prohibited;
- §6.2.9 From a public right of way, there shall be no exterior evidence of Medical Marijuana Cultivation either within or outside the residence;
- §6.2.10 The qualified patient shall not participate in Medical Marijuana Cultivation at any other location within the City of Ferndale;
- §6.2.11 The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for Medical Marijuana Cultivation;
- §6.2.12 A copy of a qualified patient physician recommendation or identification card shall be posted in a conspicuous place in the cultivation area for each patient residing in the residence that is cultivating medical marijuana. For rental properties, a copy of the owner's written authorization to cultivate marijuana shall be posted in the same manner (assuming cultivation is not precluded by the Landlord or property owner);
- §6.1.13 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
- §6.2.14 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.

§6.3 Any proposed Medical Marijuana Cultivation by an individual qualified patient or primary caregiver that does not meet the grow area standard of Section 6.2.3 shall require a Variance pursuant to this Section 6.3. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the Variance application showing why the cultivation area standard is not feasible. The application shall include written permission from the property owner, if the property owner is not the applicant. 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. An approved Variance for Medical Marijuana Cultivation for personal use that exceeds thirty-two (32) square feet shall conform to the following standards:

§6.3.1 The Medical Marijuana Cultivation area shall not exceed an additional fifty (50) square feet for the total of eighty-two square feet (82') and not exceed ten feet (10') in height per residence; and

§6.3.2 At a minimum, the Medical Marijuana Cultivation area shall be constructed with a 1-hour firewall assembly of green board; and

§6.3.3 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.

ARTICLE 7. NON-MEDICAL USE

§7.1 Personal use cultivation, processing, and distributing. The personal cultivation, processing and distributing of cannabis or marijuana for non-medical purposes, to the extent provided by law, shall comply with the Requirements and Regulations prescribed in this Ordinance.

ARTICLE 8. AMENDMENT

§8.1 This Ordinance may be amended from time to time by duly authorized action by the City Council for the City of Ferndale.

ARTICLE 9. ENACTMENT AND EFFECTIVE DATE

§9.1 Enactment. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this ordinance.

§9.2 Effective Date. This ordinance shall become effective 30 days after the date of its enactment.

ARTICLE 10. POSTING REQUIREMENT

§10.1 The City Clerk shall cause publication of this ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city, and posted in at least three public places in the city.

PASSED AND ADOPTED on this 7th day of November 2013 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Attest:

Christina Wile / Deputy City Clerk

Stuart Titus, Mayor

First Reading: October 3, 2013	Amended:	
Second Reading: November 7, 2013		
Enacted: November 7, 2013		