

Adopted by Lakeport City Council  
on June 18, 2013  
Effective Date: July 18, 2013

## ORDINANCE NO. 889 (2013)

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT ENACTING CHAPTER 17.38 OF THE LAKEPORT MUNICIPAL CODE, REGARDING MEDICAL MARIJUANA CULTIVATION

**WHEREAS**, the City of Lakeport Municipal Code establishes rules and regulations for living and doing business within city limits, and;

**WHEREAS**, Health and Safety Code Section 11362.5 et. seq., known as the “Compassionate Use Act of 1996,” (CUA), adopted by the voters in the State of California, allows a person to use marijuana for medical purposes with a doctor’s recommendation without violating state criminal laws concerning the use, possession or cultivation of marijuana, and;

**WHEREAS**, Health and Safety Code Section 11362.7 et. seq., known as the “Medical Marijuana Program Act,” (MMPA), was adopted by our state legislature and offers some clarification on the scope of the Compassionate Use Act of 1996 and allowed cities and other governing bodies to adopt and enforce rules and regulations related to medical marijuana, and;

**WHEREAS**, the City may impose regulations to ensure the safety of our residents, being careful not to unreasonably limit the rights of qualified patients under the CUA and MMPA, and;

**WHEREAS**, numerous locations in the city have had reports of thefts or attempted thefts of medical marijuana, and;

**WHEREAS**, cultivation of medical marijuana inside of residences and attached garages create the potential for risk of fire related to the improper use or modification of electrical systems, and;

**WHEREAS**, medical marijuana growth can pose significant safety risks for surrounding neighbors, and can cause nuisances associated with the odor of the marijuana plants and public safety issues concerning theft of plants, and;

#### **NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:**

**Section 1.** The City Council of the City of Lakeport does hereby add the following Chapter to the Municipal Code:

#### **Chapter 17.38 Medical Marijuana Cultivation**

##### **A. Legislative Findings.**

The City Council finds as follows:

1. In 1996, the voters of the State of California approved Proposition 215 which was codified as California Health and Safety Code Chapter 11362.5, and entitled "The Compassionate Use Act of 1996" ("the Compassionate Use Act" or "CUA").
2. The intent of the Compassionate Use Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific

circumstances, without being subject to criminal prosecution under certain state statutes.

3. On January 1, 2004, Senate Bill 420, codified as California Health and Safety Code Chapters 11362.7 *et seq.* and entitled “The Medical Marijuana Program,” (“MMP”) became effective to clarify the scope of the Compassionate Use Act.
4. California Health and Safety Code Chapter 11362.83 expressly allows Cities and Counties to adopt and enforce ordinances that are consistent with Senate Bill 420.
5. The City of LAKEPORT has adopted a Zoning Ordinance identified as Title 17 (Zoning) of the City of LAKEPORT Municipal Code.
6. Prior to the enactment of this Chapter, there were no regulations addressing Cultivation of Medical Marijuana in the Zoning Ordinance.
7. The City of LAKEPORT with a population of 4,622 (January 1, 2012) is a small town with a high percentage of non-owner occupied residential units. Landlords have complained of damage caused by unauthorized cultivation activities in their rental properties.
8. The City of LAKEPORT Police Department, City residents and other public entities have reported adverse impacts from Medical Marijuana cultivation, including disagreeable odors; increased risk of burglary and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants’ attempts to prevent such crimes.
9. The creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime.
10. The indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.
11. Children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including schools, child care centers, parks, and other similar locations.
12. The City Council finds and determines that the enactment of this Chapter is exempt from environmental review pursuant to California Environmental Quality Act Guidelines Chapter 15061(b)(3) in that there is nothing in this Chapter or its implementation that could have a foreseeable significant effect on the environment.

**B. Intent.**

1. The City Council of the City of LAKEPORT, pursuant to Chapter 17.38 of the LAKEPORT Municipal Code, hereby intends to regulate the cultivation of marijuana for medical purposes, including but not limited to, regulations as to location of the cultivation, size of the area used for cultivation, and the use of fencing or other screening and security structures, to accommodate the needs of qualified patients and their caregivers, and in furtherance of the public necessity, convenience and general welfare. Nothing in this Chapter shall be construed to authorize any use, possession, cultivation, or distribution of marijuana for non-medical purposes.

2. This Chapter is established to regulate Medical Marijuana cultivation in a manner that mitigates potential impacts on surrounding properties and persons, and that is in conformance with the provisions of California Health and Safety Code Chapter 11362.5 through 11362.83.
3. It is the intent of the City of LAKEPORT to enforce the provisions of this Chapter primarily on the basis of legitimate and verified complaints received from the public related to nuisance conditions and/or other public safety issues.

**C. Applicability.** The provisions of this Chapter shall apply to all persons and businesses described herein whether the activities described herein were established before or after the effective date of this Chapter. Title 17, Chapter 17.36 of the Municipal Code, Nonconforming Uses, shall not apply to preexisting land or building uses inconsistent with the provisions of this Chapter.

**D. Definitions.**

**“Canopy”** means the total combined canopy area for all locations on a property where medical marijuana is being cultivated, including indoor areas, as measured by the horizontal extent of the plant or combination of plants at the widest point and measured in a straight line.

**“Child care center”** means any licensed child care center, daycare center, or childcare home, or any preschool.

**“Cultivation”** means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof for medical use consistent with the Compassionate Use Act (Health and Safety Code Section 11362.5) or the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et. seq.).

**“Detached, fully-enclosed and secure structure”** is a building completely detached from a residence that complies with the City of Lakeport Building and Zoning Codes and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and is secure against unauthorized entry, and is accessible only through one or more lockable doors.

**“Indoors”** means within a fully enclosed and secure structure.

**“Marijuana”** shall have the same meaning as that set forth in California Health and Safety Code Chapter 11018.

**“Medical Marijuana”** means medical marijuana that has been recommended by a licensed physician in strict accordance with California Health and Safety Code Chapters 11362.5 through Chapter 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

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

**“Primary Caregiver”** shall have the same definition as California Health and Safety Code Chapter 11362.7(d), as may be amended.

**“Qualified Patient”** shall have the same definition as California Health and Safety Code Chapters 11362.7 (c) and (f), as may be amended.

**“Rear yard”** is the rear open space portion of any premises, whether fenced or unfenced.

**“Residential structure”** is any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking and sanitation on a premises or legal parcel located within a residential or agricultural-residential zoning district.

**“School”** means an institution of learning for persons under twenty-one (21) years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.

**“Solid fence”** means a fence constructed of substantial material (such as wood) that prevents viewing the contents from one side to the other.

**E. Regulation of Location.**

1. Medical Marijuana cultivation shall be prohibited on any parcel within the incorporated area of the City of LAKEPORT except as an accessory use to a legally established residence within a legal accessory structure on a legal parcel within the R-1, R-2, R-3, R-5 and UR zoning districts.
2. No medical marijuana cultivation is permitted within three hundred feet of any school, child care center, park or playground. The distance between any marijuana cultivation and any school, child care center, park or playground shall be measured in a straight line, without regard to intervening structures, from the closest exterior wall of the detached accessory building in which the marijuana cultivation is occurring to the closest property line where the other building or activity is conducted.
3. Except as provided in Chapter 17.38(E)(4), Medical Marijuana cultivation may be undertaken only by a qualified patient who must occupy the residence on the parcel proposed for cultivation as their primary residence.
4. A qualified primary caregiver, as defined, may undertake cultivation of Medical Marijuana on behalf of his/her qualified patient(s), but only in a detached, fully-enclosed and secure accessory structure located on a parcel containing the primary caregiver’s or qualified patient’s primary residence.
5. Cultivation shall only be permitted in a detached, fully-enclosed and secure accessory structure and said cultivation area, including the plant canopy, shall be limited to 80 square feet per parcel or residence, whichever is less. The cultivated marijuana may be used only by the qualified patient and not distributed, sold, given or transferred in any way to any other person or organization.
6. The use of a detached, fully-enclosed and secure accessory structure for cultivation of Medical Marijuana shall not reduce the required parking required per Lakeport Municipal Code Chapter 17.23..
7. Outdoor cultivation shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge for possession of any parcel within any zoning district in the City of LAKEPORT.
8. Indoor Cultivation within a residence shall be unlawful and a public nuisance with regard to any person owning, leasing, occupying or having charge for possession of any parcel within any zoning district in the City of LAKEPORT.

**F. Development and Operational Standards:**

1. From a public right-of-way there shall be no exterior evidence of Medical Marijuana cultivation located inside a detached, fully-enclosed and secure accessory structure.

2. The qualified patient or primary caregiver shall reside in the residence located on the parcel containing the detached, fully-enclosed and secure accessory structure where the Medical Marijuana cultivation occurs.
3. The qualified patient or primary caregiver shall not cultivate Medical Marijuana in any other location within the incorporated City of LAKEPORT other than in the accessory structure located on the parcel containing his/her primary residence.
4. The qualifying residence located on the property containing the detached, fully-enclosed and secure accessory structure in which Medical Marijuana is cultivated shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and shall not be used for Medical Marijuana cultivation.
5. Medical Marijuana cultivation shall not adversely affect the health or safety of 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. Residential accessory structures used for cultivation shall meet the following criteria:
  - The structure shall be provided with a locking door or doors.
  - If a secure structure is not feasible and the cultivation building is an unsecured structure then it shall additionally be surrounded by a secure solid six (6) foot high fence located within ten (10) feet of the unsecured structure and equipped with a lockable gate.
  - The structure shall be located in the rear yard portion of the lot and maintain a minimum of a ten (10) foot setback from the side and rear property lines and from any other building on the parcel.
  - Any accessory structure utilized for cultivation of marijuana shall be legally constructed with a building permit if it exceeds 120 square feet of size. No more than 80 square feet of floor area shall be used for the cultivation of marijuana. The plant canopy shall be contained within the 80 square feet of floor area. All electrical and plumbing fixtures shall be installed with a valid building permit from the City. Such building permits will only be issued to the owner of the property. If the resident is proposing to convert an existing accessory structure, or a portion of an existing structure, for cultivation of marijuana, an inspection will be required to ensure compliance with the ordinance.
  - Medical Marijuana cultivation lighting shall comply with the California Building, Electrical and Fire Codes as adopted by the City.
  - Flammable or volatile gas products or generators shall not be used within any detached structure used for the cultivation of medical marijuana.
  - Any detached, fully-enclosed and secure structure used for the cultivation of medical marijuana must have a ventilation and filtration system installed that shall prevent nuisance marijuana plant odors from exiting the interior of the structure. If a permanent, built-in ventilation and filtration system is installed, it shall be subject to the issuance of a building permit, approval by the Building Official and must be installed prior to commencing cultivation within the detached, fully-enclosed and secure structure.

- Accessory structures utilized for cultivation shall be ventilated with odor control filters, and shall not create an odor, humidity or mold problem on the subject property or adjacent properties.
  - Other activities may occur within a detached fully-enclosed and secure accessory structure where medical marijuana is cultivated provided that the cultivation area within the structure, including the plant canopy, does not exceed 80 square feet of floor area and further provided that the cultivation area is segregated from all other building uses by permitted walls and all other conditions of this Chapter are satisfied.
7. Wherever Medical Marijuana is grown, a copy of a current and valid, State-issued medical marijuana card or a current and valid physician's recommendation for medical marijuana must be kept available to immediately present to officers of the City and law enforcement officers upon request.
  8. Nothing in this Chapter shall be construed as a limitation on the City's authority to abate any nuisance which may exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a detached, fully-enclosed and secure structure.

**G. Enforcement.**

1. Right of Entry: Persons designated by resolution as Code Enforcement Officers of the City are authorized to enter upon and inspect private properties to ensure compliance with the provisions of Chapter 17.38 of the LAKEPORT Municipal Code. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the City may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.
2. Public Nuisance. The maintaining, cultivating or growing of marijuana upon private property within the City of LAKEPORT, unless in full compliance with the provisions of Chapter 17.38 of the LAKEPORT Municipal Code, is declared to be a public nuisance as defined in Chapter 370 of the California Penal Code and Chapter 8.22 of the LAKEPORT Municipal Code.
3. Citable Offense: Every person who, in violation of the provisions of Chapter 17.38 of the LAKEPORT Municipal Code, maintains, permits or allows marijuana to be grown upon his or her property or premises, and every person occupying, renting or leasing the property or premises of another who maintains, permits or allows marijuana to be grown thereon in violation of this Chapter is guilty of an infraction punishable as set forth in Chapter 1.08.010 of the LAKEPORT Municipal Code. After written notice is provided to any such person of such violation, the continued existence of such violation for each and every day after the service of such notice shall be deemed a separate and distinct offense.
4. Issuance of Citations: All persons designated by resolution as Code Enforcement Officers of the City are authorized to issue citations to persons deemed to be in violation of the provisions of Chapter 17.38 of the LAKEPORT Municipal Code.

Such citations shall be expeditiously processed through use of the Administrative citation process or where appropriate through filing an infraction in the appropriate court of law.

5. Remedies Non-Exclusive. The remedies provided herein shall not be the exclusive means of enforcing the provisions of this Chapter nor the exclusive means available to the City to address problems associated with the cultivation of marijuana, whether for medical or other purposes. The City shall continue to have available to it the ability to pursue abatement of nuisances and other problems related to marijuana cultivation under California Penal Code Chapters 372 and 373a and other applicable provisions of law. The City may also pursue the recovery of its abatement costs in the manner provided by the LAKEPORT Municipal Code.

#### **H. Liability.**

The provisions of this Chapter shall not be construed to protect the property owner(s) of record for each legal parcel associated with the cultivation of Medical Marijuana, lessees, tenants, and other participants in the cultivation of Medical Marijuana, and members of collectives and/or cooperatives associated with the cultivation of Medical Marijuana, from prosecution pursuant to any laws that may prohibit the cultivation, sale, and/or possession of controlled substances. Moreover, cultivation, sale, possession, distribution, and use of marijuana remain violations of federal law as of the date of adoption of the ordinance creating this Chapter and this Chapter is not intended to, and does not protect any of the above described persons from arrest or prosecution under those federal laws. The property owner(s) of record for each legal parcel associated with the cultivation of Medical Marijuana, lessees, tenants, and other participants in the cultivation of Medical Marijuana, and members of collectives and/or cooperatives associated with the cultivation of Medical Marijuana, assume any and all risk and any and all liability that may arise or result under state and federal criminal laws from the cultivation of marijuana. Further, to the fullest extent permitted by law, any actions taken under the provisions of this Chapter by any public officer or employee of the City of LAKEPORT or City of LAKEPORT itself, shall not become a personal liability of such person or the liability of the City of LAKEPORT.

#### **Section 2.**

If any provisions of this ordinance or its application to any person or circumstance are held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

#### **Section 3.**

All former ordinances including but not limited to Chapter 9.24 and resolutions, or parts thereof, conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

#### **Section 4.**

This Ordinance shall be published in a newspaper of general circulation in the City of LAKEPORT, in the manner provided by Chapter 36933 of the Government Code of the State of California, and shall be effective 30 days after its passage.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of LAKEPORT held on May 21, 2013 and duly adopted at a regular meeting and public hearing of the City Council of the City of LAKEPORT held on June 18, 2013 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Thomas Engstrom, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
KELLY BUENDIA, Deputy Clerk

\_\_\_\_\_  
STEVEN J. BROOKES, City Attorney