

ORDINANCE NO. 719-2016

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF WILLOWS, CALIFORNIA ADDING CHAPTER 18.117
(MARIJUANA CULTIVATION), ADDING CHAPTER 9.20
(MEDICAL MARIJUANA) AND AMENDING CHAPTER 8.10
(NUISANCE) OF THE WILLOWS MUNICIPAL CODE
REGARDING MARIJUANA CULTIVATION**

WHEREAS, the City Council of the City of Willows, pursuant to Chapter 18.117 of the Willows Municipal Code, hereby intends to and does establish a land use regulation prohibiting the cultivation of marijuana with the City of Willows; and

WHEREAS, in 1996 the voters of the State of California approved Proposition 215, codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act" or "CUA"); and

WHEREAS, 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; and

WHEREAS, on January 1, 2004, Senate Bill 420, codified at California Health and Safety Code sections 11362.7, et seq., and entitled "The Medical Marijuana Program" ("MMP"), became effective to clarify the scope of the Compassionate Use Act; and

WHEREAS, the MMP provides that specific immunities extend to those who cultivate marijuana for medical purposes; specifically, such individuals "shall not be subject, on that sole basis, to criminal liability" under Health and Safety Code sections 11357 [possession], 11358 [cultivation], 11359 [possession for sale], 11366 [maintaining location for selling, giving away or using controlled substances], 11366.5 [managing location for manufacture or storage of controlled substance], or 1150 ["drug den" abatement law] (Health and Safe Code section 11362.765(a).); and

WHEREAS, neither the CUA nor the MPP provide the right to cultivate medical marijuana (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729) and local governments have the authority to prohibit cultivation of all marijuana, including medical marijuana (*Maral v. City of Live Oak* (2013) 221 Cal.App. 4th 975); and

WHEREAS, the City of Willows has adopted a land use regulation Zoning Plan identified as Title 18 (Zoning) of the City of Willows Municipal Code; and

WHEREAS, THE City of Willows is authorized under state law to prohibit the cultivation of all marijuana (Health and Safety Code sections 11362.777(b)(3) and 11362.777(c)(4)); and

WHEREAS, the City of Willows Police Department, City residents and other public entities have reported adverse impacts from marijuana and 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 residents' attempts to prevent such crimes; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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, parks, and other similar locations; and

WHEREAS, the City Council finds and determines that the enactment of this Ordinance is exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3) in that there is nothing in this Ordinance or its implementation that could have a foreseeable significant effect on the environment; and

WHEREAS, as required by state law, a municipality wishing to regulate the cultivation and delivery of marijuana must adopt a regulation or ordinance, with effect no later than March 1, 2016 or surrender the legal ability to so regulate (Health and Safety Code section 11362.777(c)(4)); and

WHEREAS, the City Council hereby declares the lack of an ordinance regulating the cultivation of marijuana presents a current and immediate threat to the public health, safety and welfare of the citizens of the City of Willows, and that adoption of this interim ordinance as an urgency measure necessary to preserve and protect the public health, safety and welfare of the citizens of the City of Willows; and

WHEREAS, the City held a duly noticed public hearing on this Ordinance on January 26, 2016,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WILLOWS does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this Ordinance.

SECTION 2. Section 8.10.010 of the Willows Municipal Code is amended as follows:

8.10.010 – Definitions

The following definitions shall apply in this chapter:

“Delivery” shall have the same meaning as that set forth in California Business and Professions Code section 19300.5(m).

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

“Marijuana Cultivation” means the planting, growing, harvesting, drying, curing, grading, trimming or processing of all Marijuana, including Medical Marijuana.

"Marijuana Dispensary" shall have the same meaning as “dispensary” set forth in California Business and Professions Code section 19300.5(n).

"Medical Marijuana" means Marijuana that has been recommended by a licensed physician in strict accordance with California Health and Safety Code Sections 11362.5 through Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

"Marijuana Processing" means any method used to prepare Marijuana or its by-products for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create Marijuana related products and concentrates.

"Primary Caregiver" shall have the same meaning as that set forth in Health and Safety Code section 11362.7(d).

"Qualified Patient" shall have the same definition as Health and Safety Code sections 11362.7(c) and (f).

Section 3. Section 8.10.020 of the Willows Municipal Code (Public nuisances designated) is amended as follows:

24. To cultivate, maintain, process or store on the property Medical Marijuana, or to permit the odor of which is detected by any member of the public.
25. To cultivate, maintain, process or store Marijuana on the property.

Section 4: Chapter 9.20 to the Willows Municipal Code is added as follows:

9.20.010 Legislative Findings and Statement of Purpose.

The City Council finds that the prohibitions on marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the City Council under State law as a general law city.

9.20.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

"Marijuana" shall have the same meaning as that set forth in California Health and Safety Code Section 11018.

"Marijuana Cultivation" means the planting, growing, harvesting, drying, curing, grading, trimming or processing of all Marijuana, including Medical Marijuana.

"Marijuana Dispensary" shall have the same meaning as "dispensary" set forth in California Business and Professions Code section 19300.5(n).

"Marijuana Processing" means any method used to prepare Marijuana or its by-products for commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create Marijuana related products and concentrates.

"Medical marijuana collective" or "cooperative or collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

9.20.030 Prohibited Activities.

Marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries shall be prohibited activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity. No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana delivery, or the establishment or operation of a marijuana dispensary in the City, and no person shall otherwise establish or conduct such activities in the City, except where the City is preempted by federal or state law from enacting a prohibition on any such activity for which the use permit, variance, building permit, or any other entitlement, license, or permit is sought.

9.20.040 Violations.

Violation of any provision of this section shall subject the violator to suit for either civil remedy, pursuant to WMC 18.117.030, or criminal penalty, pursuant to WMC 1.05.080, or both.

Section 5. Chapter 18.117 to the Willows Municipal Code is added as follows:

Chapter 18.117 — MARIJUANA CULTIVATION

18.117.10 - Definitions.

18.117.20 - Marijuana Cultivation.

18.117.30 - Violations—Penalty.

18.117.010 - Definitions.

"Marijuana" shall have the same meaning as that set forth in California Health and Safety Code Section 11018.

"Marijuana Cultivation" means the planting, growing, harvesting, drying, or processing of all Marijuana, including Medical Marijuana.

"Medical Marijuana" means Marijuana that has been recommended by a licensed physician in strict accordance with California Health and Safety Code Sections 11362.5 through Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

18.117.020 - Marijuana cultivation.

Marijuana Cultivation by any person or entity is prohibited in all zone Districts within the City of Willows.

18.117.030 - Violations—Penalty.

- A. Violation of the provisions of WMC 18.117 is declared to be a public nuisance per se, which shall be abated by way of civil abatement procedures.
- B. Each violation of this chapter and each day a violation of this chapter continues to exist shall be considered a separate and distinct violation.

- C. All means of enforcement authorized under this code may be used to address violations of this chapter, including but not limited to: Civil penalties, nuisance abatement, civil actions, and administrative citations.
- D. Nothing in this chapter is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any city of Willows ordinance or statute of the state of California regarding public nuisances, sexual conduct, lewdness, obscene or harmful matter, exhibition, or public display thereof. [Ord. 632-91 § 8.06, 10-22-91].

Section 6: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared, invalid or unconstitutional.

Section 7: This interim ordinance shall be in full force and effect, upon approval of four-fifths of the City Council, immediately, pursuant to California Government Code section 65858(a), and shall remain in effect for a period of forty-five (45) days, unless extended pursuant to California Government Code section 65890. The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause this ordinance, or a summary thereof, to be published pursuant to applicable state law.

This ordinance was introduced at a regular meeting of the City Council of the City of Willows, held on January 26, 2016, and adopted at a regular meeting of the City Council of Willows, held on the January 26th, 2016, by the following roll call vote, to wit:

AYES: Domenighini, Mello, Williams & Mayor Hansen
 NOES: None
 ABSENT: Yoder
 ABSTAIN: None


 GARY HANSEN, MAYOR

ATTEST:


 NATALIE BUTLER, CITY CLERK