

ORDINANCE NO. 190

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEHAMA AMENDING
CHAPTER 17.32 OF THE TEHAMA MUNICIPAL CODE PERTAINING TO
MARIJUANA CULTIVATION**

THE CITY COUNCIL OF THE CITY OF TEHAMA ORDAINS AS FOLLOWS:

SECTION 1. Section 17.32.005 is hereby added to the Tehama Municipal Code to read:

17.32.005 - Authority and title.

Pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code sections 11362.2, subdivision (b), 11362.777, subdivision (g), and 11362.83, and Government Code sections 25845 and 53069.4, the city council does enact this Chapter, which shall be known and may be cited as the “City of Tehama Marijuana Cultivation Ordinance.”

SECTION 2. Section 17.32.010 of the Tehama Municipal Code is hereby repealed.

SECTION 3. Section 17.32.010 is hereby added to the Tehama Municipal Code to read:

17.32.010 – Findings, purpose and intent.

A. California's medical marijuana laws, the Compassionate Use Act (California Health and Safety Code section 11362.5), the Medical Marijuana Program (California Health and Safety Code sections 11362.7 et seq.), and the Medical Cannabis Regulation and Safety Act (California Business and Professions Code sections 19300 et seq.), each recognize and preserve the authority of cities and counties under Section 7 of Article XI of the California Constitution to regulate the cultivation of marijuana.

B. The Adult Use of Marijuana Act (California Health and Safety Code sections 11362.1 et seq. and California Business and Professions Code section 26000 et seq.) likewise recognizes and preserves the authority of cities and counties to enact and enforce reasonable regulations for the cultivation of marijuana.

C. The City of Tehama’s geographic and climatic conditions provide conditions that are favorable to marijuana cultivation. Marijuana growers can achieve a high per-plant yield because of the city's favorable growing conditions.

D. The unregulated cultivation of medical or non-medical marijuana in the incorporated area of City of Tehama can adversely affect the health, safety, and well-being of the City and its residents. Comprehensive regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the cultivation occurs outdoors, or if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

E. The cultivation of marijuana outdoors, where it is often readily observable by neighbors and the general public, increases the risk of trespassing and burglary, and acts of violence in connection with the commission of such crimes or the occupants’ attempts to prevent such crimes. Outdoor cultivation further makes the premises more prone to act as an attractive nuisance for children, and increases the likelihood of offensive odors traveling off the premises. Additionally, experience in City of Tehama and elsewhere demonstrates that outdoor cultivation of marijuana is often associated with violations of local, state, and federal environmental laws and pesticide regulations, threatening harm to local waterways and groundwater quality, and endangering the public health, safety, and welfare. To adequately protect the public health, safety, and welfare, it is proper and necessary to prohibit the outdoor cultivation of marijuana within the incorporated area of City of Tehama.

F. The indoor cultivation of marijuana within a residence or other structure used or intended for human occupancy presents potential health and safety risks to those living in the

residence or otherwise occupying the structure, especially to children, including, but not limited to, increased risk of fire from grow light systems, exposure to fertilizers, pesticides, anti-fungus/mold agents, and exposure to potential property crimes. To adequately address these risks, it is proper and necessary that requests to cultivate marijuana within a residence or other structure used or intended for human occupancy be considered on a case-by-case basis through a Waiver process administered by the City of Tehama.

G. Cultivation of any amount of marijuana at locations or premises within one thousand feet of schools, school bus stops, school evacuation sites, churches, parks, child care centers, or youth-oriented facilities creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public health, safety, and welfare, and to the protection of children and the person(s) cultivating the marijuana plants. To adequately address these risks, it is proper and necessary that requests to cultivate marijuana in such locations be considered on a case-by-case basis through a Waiver process administered by the City of Tehama.

H. The cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

I. The cultivation of marijuana upon vacant lots (i.e., premises without a permitted residential use) presents a heightened risk of the harms that Chapter 17.32 was designed to prevent, including criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards, due to the absence of an onsite caretaker eligible to cultivate marijuana in accordance with state law. Marijuana cultivation upon vacant lots is more likely to violate the registration, setback, plant limit, security, and location requirements of this Chapter than marijuana cultivated accessory to a permitted residential use, is more likely to be diverted to unlawful use, and is less likely to serve the legitimate needs of persons cultivating marijuana in accordance with state law. Limiting the cultivation of marijuana to premises that contain a permitted residential use is proper and necessary to avoid the aforementioned harms, and to protect the health, safety, and welfare of the residents and businesses within the incorporated area of the City of Tehama.

J. It is the purpose and intent of this Chapter to implement State law by providing a means for regulating the cultivation of marijuana in a manner that is consistent with State law and which balances the interests of persons choosing to cultivate and use marijuana, and which promotes the health, safety, and welfare of the residents and businesses within the incorporated territory of the City of Tehama. This Chapter is intended to be consistent with California's medical marijuana laws and the Adult Use of Marijuana Act, and towards that end, is not intended to prohibit persons from individually or jointly exercising any right otherwise granted by State law. Rather, the intent and purpose of this Chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, including restrictions on the amount of marijuana that may be individually or jointly cultivated in any location or premises, in order to protect the public health, safety, and welfare in City of Tehama.

K. In order to ensure compliance with the regulations set forth in the Marijuana Cultivation Ordinance, facilitate enforcement in the event of non-compliance, and reduce hazards to emergency and other public agency personnel responding to premises where marijuana is cultivated, it is reasonable, proper, and necessary to require that all premises where marijuana is cultivated register annually with the City of Tehama.

L. Neither California's medical marijuana laws nor the Adult Use of Marijuana Act confer the right to create or maintain a public nuisance. By adopting the regulations contained in this Chapter, the City will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the incorporated area of City of Tehama.

M. Nothing in this Chapter shall be construed to allow the cultivation or use of marijuana for commercial purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under State or federal law. No provision of this Chapter deemed a defense or immunity to any action brought against any person by the City of Tehama District Attorney, the Attorney General of State of California, or the United States of America.

SECTION 4. Section 17.32.020 of the Tehama Municipal Code is hereby repealed.

SECTION 5. Section 17.32.020 is hereby added to the Tehama Municipal Code to read:

17.32.020 - Definitions.

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

- A. “Child care center” means any licensed child care center, daycare center, or childcare home, or any preschool.
- B. “Church” means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- C. “Cultivation” means the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location, indoor or outdoor, including from within a fully enclosed and secure building.
- D. “Enforcing officer” means the health officer or the sheriff, or the authorized deputies or designees of either, or any person employed by the City of Tehama and appointed to the position of code enforcement officer, as established by City of Tehama Resolution Number 125-1991, each of whom is independently authorized to enforce this Chapter.
- E. “Legal parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2 (commencing with Section 66410 of Title 7 of the Government Code)).
- F. “Marijuana plant” means any mature or immature marijuana plant, or any marijuana seedling.
- G. “Outdoor cultivation” shall mean any cultivation of marijuana that is not conducted within a detached fully enclosed secure accessory structure conforming to the requirements of Section 17.32.030, subdivision (E)(1). Outdoor cultivation includes, without limitation, cultivation of marijuana within a greenhouse or “hoop house” or similar facility.
- H. “Premises” shall mean a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single “premises” for purposes of this Chapter.
- I. “School” means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a home school, vocational or professional institution of higher education, including a community or junior college, college, or university.
- J. “School bus stop” means any location designated in accordance with California Code of Regulations, Title 13, section 1238, to receive school buses, as defined in California Vehicle Code section 233, or school pupil activity buses, as defined in Vehicle Code section 546.
- K. “School evacuation site” means any location designated by formal action of the governing body, superintendent, or principal of any school as a location to which juveniles are to be evacuated to, or are to assemble at, in the event of an emergency or other incident at the school.
- L. “Youth-oriented facility” means any facility that caters to or provides services primarily intended for minors, or the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

SECTION 6. Section 17.32.030 of the Tehama Municipal Code is hereby repealed.

SECTION 7. Section 17.32.030 is hereby added to the Tehama Municipal Code to read:

17.32.030 - Marijuana cultivation.

Ordinance Amending Tehama Municipal Code Chapter 17.32 (Marijuana Cultivation)

The following regulations shall apply to premises used for marijuana cultivation in the incorporated area of City of Tehama:

A. The outdoor cultivation of marijuana, in any amount or quantity, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter or with any other applicable provision of this Code or with State or federal law.

B. The cultivation of more than six marijuana plants on any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter. The foregoing limitation shall be imposed regardless of the number of persons residing at the premises or participating directly or indirectly in the cultivation. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.

C. Except as provided in a Waiver granted in accordance with subdivision (F), the cultivation of marijuana, in any amount or quantity, upon any premises located within one thousand feet of any school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

1. Except as provided in subdivision (C)(2), such distance shall be measured in a straight line from the boundary line of the premises upon which marijuana is cultivated to the boundary line of the premises upon which the school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility is located.

2. If the premises is twenty acres or greater in size, then such distance shall be measured in a straight line from the detached fully enclosed secure accessory structure in which the marijuana is cultivated required by subdivision (E)(1) to the boundary line of the premises upon which the school, school bus stop, school evacuation site, church, park, child care center, or youth-oriented facility is located.

D. Except as provided in a Waiver granted in accordance with subdivision (F), the cultivation of marijuana, in any amount or quantity, within a residence or any other structure used or intended for human occupancy is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

E. Except as provided in a Waiver granted in accordance with subdivision (F), the cultivation of marijuana, in any amount or quantity, upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless all of the following conditions are satisfied:

1. The cultivation of marijuana must be conducted within a detached fully enclosed secure accessory structure conforming to the following standards:

a. The structure shall be a building completely detached from any residence or other structure used or intended for human occupancy. The structure shall comply with Title 15 of the Tehama Municipal Code, and have a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments. The structure shall be secure against unauthorized entry, and accessible only through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two inch by four inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

b. Any structure, regardless of square footage, constructed, altered or used for the cultivation of marijuana must obtain a building permit from the building official. The intended use of the structure for marijuana cultivation shall be disclosed in the application for a building permit, and the structure shall be inspected for compliance with this Chapter prior to the commencement of any cultivation. The conversion of any existing accessory structure, or portion thereof, for cultivation of marijuana shall be subject to these same permit requirements, and must be inspected by the building official for compliance with this Chapter prior to the commencement of any cultivation. Cultivation within any structure may not commence without final approval of the building official.

c. The maximum electrical panel for the structure shall be fifty amps. Except for temporary use in case of emergency power loss, the use of generators to supply power to any system or activity associated with marijuana cultivation is prohibited.

d. Light systems utilized in connection with marijuana cultivation shall not exceed one thousand two hundred watts, shall comply with all applicable provisions of Title 15 of the Tehama Municipal Code, and shall be shielded, including adequate coverings on windows, so as to confine light and glare to the interior of the structure.

e. The structure shall be equipped with odor control filtration and ventilation system(s) adequate to prevent marijuana plant odors from exiting the interior of the structure.

f. The structure shall have locking doors and a working security system which shall consist of a standard audible residential alarm of at least ninety dB A, but not exceeding one hundred ten dB A.

g. Such structure shall be accessory to a permitted residential use in accordance with subdivision (G) of this section.

2. Each structure in which the marijuana is cultivated shall be set back at least ten feet from all boundaries of the premises. Such setback distance shall be measured in a straight line from the structure in which the marijuana is cultivated to the boundary line of the premises.

F. The cultivation of marijuana, in any amount or quantity, upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless the person(s) owning, leasing, occupying, or having charge or possession of any premises have submitted the required annual registration for the premises to the City of Tehama, and provided all of the following current information and documentation to the City:

1. The name of each person, owning, leasing, occupying, or having charge or possession of the premises;

2. The name of each person who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana;

3. The number of marijuana plants cultivated on the premises; and

4. Such other information and documentation as the City determines is necessary to ensure compliance with state law and this Chapter.

5. If the person(s) cultivating marijuana on any legal parcel is/are not the legal owner(s) of the parcel, such person(s) shall submit a notarized letter from the legal owner(s) consenting to the cultivation of marijuana on the parcel. This letter shall be examined by City, and shall then be returned to the submitter. The City shall prescribe forms for such letters.

This information and documentation shall be received in confidence, and shall be used or disclosed only for purposes of administration or enforcement of this Chapter or state law, or as otherwise required by law.

The City of Tehama may refuse to accept a registration for any premises upon which marijuana cultivation is being conducted, or is proposed to be conducted, in violation of this Chapter. The acceptance of a registration pursuant to this Chapter shall not be deemed or construed to be a permit for or approval of any violation of this Chapter. The acceptance of a registration shall not prevent the enforcing officer from thereafter requiring correction of violations or from preventing marijuana cultivation being carried out thereunder when in violation of this Chapter.

The City Council may, by resolution, establish a fee for such annual registration in accordance with all applicable legal requirements.

Every registration under this Chapter shall be valid for no more than one calendar year and shall expire on December 31st of that year. An expired registration shall be renewed in the same

manner as an initial registration hereunder. In the event that the registration of any premises for any calendar year is submitted after March 1st of that year, the registrant shall pay a late registration penalty equal to fifty percent of the applicable registration fee. The City may waive the late registration penalty if the failure to timely register was due to reasonable cause and not due to willful neglect.

At the time of registration, the owner or occupant of the premises may submit a written request that the City waive the application of any provision of Subdivisions (C), (D), or (E) based upon a finding of unusual hardship or other good cause. Waiver requests shall not be unreasonably denied. In the event that the California Attorney General issues a determination under Health and Safety Code section 11362.2, subdivision (b)(4), the foregoing Waiver authority shall then also include Subdivision (A). The director shall grant or deny each Waiver request in writing, and may impose reasonable conditions upon any Waiver granted. If granted, the Waiver shall remain valid until expiration of the registration, at which time the Waiver shall also expire. Renewal of any such Waiver may be requested at the same time as renewal of registration. If the Waiver request is denied or conditioned, the owner or occupant may submit a written appeal to the city clerk of the council within ten (10) calendar days. If a hearing officer has been appointed, the appeal shall be heard by the hearing officer; otherwise the appeal shall be heard by the city council. The city council or hearing officer, as applicable, shall consider the matter de novo, and may affirm, reverse, or modify the determination of the administrator. The decision of the city council or hearing officer, as applicable, shall be final and conclusive.

G. The cultivation of marijuana, in any amount or quantity upon any premises is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter, unless the premises contains a permitted residential use. For purposes of this subdivision, "permitted residential use" shall mean actual residential use of the premises that is conducted in a residential structure or manufactured home on a permanent foundation for which a final certificate of occupancy has been issued in accordance with Title 15 of the Tehama Municipal Code.

H. The cultivation of marijuana, in any amount or quantity upon any premises, in connection with any "commercial cannabis activity," as defined in the Medical Cannabis Regulation and Safety Act, or any "commercial marijuana activity," as defined in the Adult Use of Marijuana Act, or by any licensee or person required to obtain a license under either statute, is hereby declared to be unlawful and a public nuisance that may be abated in accordance with this Chapter.

I. No person owning, leasing, occupying, or having charge or possession of any premises within the City shall cause, allow, suffer, or permit such premises to be used for the outdoor or indoor cultivation of marijuana plants in violation of this Chapter.

SECTION 8. Section 17.32.050 is hereby added to the Tehama Municipal Code to read:

17.32.050 - No criminal penalty. Notwithstanding any other provision of this Code, violation of this Chapter shall not be a misdemeanor or an infraction.

SECTION 9. Section 8.08.100 of the Tehama Municipal Code is hereby repealed.

SECTION 10. Section 8.08.100 is hereby added to the Tehama Municipal Code to read:

8.08.100 - Special assessment and lien.

The city council may order that all or any part of the cost of abating nuisances pursuant to this Code and the administrative costs as confirmed by the City be placed upon the premises as a nuisance abatement lien or as a special assessment against the respective parcels of land, or placed on the unsecured roll, pursuant to sections 38773 - 38773.5 of the Government Code; provided, however, that the cost of abatement and the cost of administration as finally determined shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The city council may also cause notices of abatement lien to be recorded against the respective parcels of real property pursuant to sections 38773 - 38773.5 of the Government Code.

SECTION 11. Section 8.08.105 is hereby added to the Tehama Municipal Code to read:

8.08.105- Abatement costs and administrative costs.

A. The term “Abatement Costs” means any costs or expenses reasonably related to the abatement of conditions which violate the Tehama Municipal Code, and shall include, but not be limited to, enforcement, investigation, attorneys’ fees, collection and administrative costs, and the costs associated with the removal or correction of the violation.

B. The term “Administrative Costs,” shall include the cost of City and Tehama County staff time reasonably related to enforcement, for items including, but not limited to, site inspections, travel time, investigations, telephone contacts and time spent preparing summaries, reports, notices, correspondence, warrants and hearing packets.

C. In any action, administrative proceeding, or special proceeding to abate a nuisance, attorney’ fees may be recovered by the prevailing party. In no action, administrative proceeding, or special proceeding shall an award of attorneys’ fees to a prevailing party exceed the number of reasonable attorneys’ fees incurred by the City in the action or proceeding.

D. Abatement and administrative penalties imposed pursuant to this section shall also constitute a personal obligation of each person who causes, permits, maintains, conducts or otherwise suffers or allows the nuisance to exist. .

SECTION 12. This ordinance shall take effect thirty (30) days from the date of its adoption, and prior to the expiration of fifteen (15) days from the adoption thereof shall be posted in three public places in the City of Tehama.

The foregoing ordinance was duly introduced by the City Council of the City of Tehama at a regular meeting of the City council on the 9th day of May, 2017, and duly passed and adopted by the City Council of the City of Tehama at a regular meeting of the City council on the 13th day of June, 2017 by the following vote:

AYES: Bacquet, Christison, Himes, Mitchell, Unsworth

NOES: None

ABSENT OR NOT VOTING: None

Mayor, Tehama City Council

STATE OF CALIFORNIA)
) ss
CITY OF TEHAMA)

I, CAROLYN, City Clerk of the City of Tehama, State of California, hereby certify the above and foregoing to be a full, true and correct copy of an ordinance adopted by said City council on the 13th day of June, 2017.

DATED: This 13th day of June, 2017.

Carolyn Steffan