

ORDINANCE NO. 3-2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING ELK GROVE MUNICIPAL CODE CHAPTER 23.83 CONCERNING THE CULTIVATION OF MEDICAL MARIJUANA

WHEREAS, with certain limited exceptions provided for under state law concerning marijuana used for medical purposes, the possession and cultivation of marijuana remains illegal under state and federal law; and

WHEREAS, improper medical marijuana cultivation poses an environmental health risk to the public and may create a public nuisance, including, without limitation, offensive and irritating odor, degradation of air quality, excessive noise, risk of criminal activity, improper and / or dangerous electrical alterations, and impairment of the general quality of life of property owners and occupants adjoining medical marijuana cultivation sites.

NOW, THEREFORE, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose and Authority.

This Ordinance is adopted consistent with the City's police power provided by Article XI, section 7 of the California Constitution. The purpose of this Ordinance is to require that medical marijuana be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of medical marijuana pursuant to 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.) Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana for non-medical purposes in violation of state or federal law.

Section 2: Addition of Elk Grove Municipal Code Chapter 23.83 titled "Marijuana Cultivation".

Elk Grove Municipal Code (EGMC) Chapter 23.83 titled "Marijuana Cultivation" is hereby added to EGMC Title 23 attached as Exhibit A.

Section 3: No Mandatory Duty of Care.

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

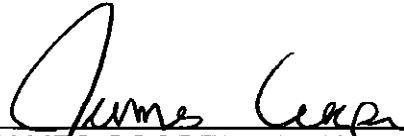
Section 5: Savings Clause.

The provisions of this Chapter shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 6: Effective Date and Publication.

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

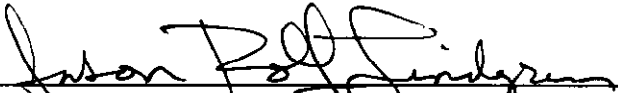
ORDINANCE: 3-2012
INTRODUCED: February 8, 2012
ADOPTED: February 22, 2012
EFFECTIVE: March 23, 2012



JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



JASON LINDGREN, CITY CLERK



JONATHAN HOBBS,
INTERIM CITY ATTORNEY

Date signed: February 24, 2012

EXHIBIT A

Chapter 23.83

MARIJUANA CULTIVATION

Sections:

- 23.83.010 Purpose and intent
- 23.83.020 Definitions
- 23.83.030 Cultivation of medical marijuana
- 23.83.040 Cultivation Permit.
- 23.83.050 Enforcement
- 23.83.060 Appeals

23.83.010 Purpose and intent

It is the purpose and intent of this chapter to require that medical marijuana be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of medical marijuana pursuant to 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.) Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana for non-medical purposes in violation of state or federal law.

23.83.020 Definitions

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply.

A. Reserved for future use.

B. "B" Definitions.

1. "Bedroom:" A room inside a residential building being utilized by any person for sleeping purposes.

C. "C" Definitions.

1. "Child Care Center:" Any licensed child care center, daycare center, or childcare home, or any preschool.
2. "Cultivation:" 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.).

D. "D" Definitions.

1. "Detached, fully-enclosed and secure structure:" A building completely detached from a residence that complies with the Elk Grove Building Code and has 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, is secure against unauthorized entry, and is 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 (2" x 4") or thicker studs overlaid with three-eighths (3/8") 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.

E. Reserved for future use.

F. Reserved for future use.

G. Reserved for future use.

H. Reserved for future use.

I. "I" Definitions.

1. "Indoors:" Within a fully enclosed and secure building.

J. Reserved for future use.

K. Reserved for future use.

L. "L" Definitions.

1. "Legal parcel:" Any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Gov't Code §§ 66410 et. seq.).

M. Reserved for future use.

N. Reserved for future use.

O. "O" Definitions.

1. "Outdoor:" Any location within the City that is not within a fully enclosed and secure structure.

P. "P" Definitions.

1. "Premises:" A single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this chapter.
2. "Primary caregiver:" A "primary caregiver" as defined in Health and Safety Code section 11362.7(d).

Q. "Q" Definitions.

1. "Qualified patient:" A "qualified patient" as defined in Health and Safety Code section 11362.7(f).

R. "R" Definitions.

1. "Rear yard:" The rear open space portion of any premises, whether fenced or unfenced.
2. "Residential structure:" 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.

S. "S" Definitions.

1. "School:" 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.
2. "Solid fence:" A fence constructed of substantial material (such as wood) that prevents viewing the contents from one side to the other.

T. Reserved for future use.

U. Reserved for future use.

V. Reserved for future use.

W. Reserved for future use.

X. Reserved for future use.

Y. Reserved for future use.

Z. Reserved for future use.

23.83.030 Cultivation of medical marijuana

The following regulations shall apply to the cultivation of medical marijuana within the City.

- A. No person other than a qualified patient or primary caregiver may engage in cultivation of medical marijuana. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana except as provided for in EGMC Chapter 23.83.
- B. Residency Requirement. Either a qualified patient or primary caregiver shall reside full-time on the premises where the marijuana cultivation occurs.
- C. Outdoor Cultivation. It is unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cause or allow such parcel or premises to be used for the outdoor cultivation of marijuana plants
- D. Residential Structure Cultivation. It is unlawful and a public nuisance for any person to cultivate medical marijuana inside any residential structure or building without a medical marijuana cultivation permit issued by the City Chief of Police or his or her designee, as provided herein.
- E. Cultivation in Non-Residential Zones. Cultivation of medical marijuana is prohibited in all agricultural (except agricultural-residential), commercial, office, industrial, open space, special purpose, and overlay / combining zoning districts.
- F. Proximity to Schools, Child Care Centers, and Parks. It is unlawful and a public nuisance to cultivate medical marijuana on any legal parcel or premises within one thousand (1,000' 00") feet of any school, child care center, or public park. The one thousand (1,000' 00") feet shall be measured from the closest property line of the school, child care center, or park to the closest property line of the cultivation parcel.
- G. Cultivation Area. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana, within a detached structure greater than one hundred twenty (120 ft²) square feet in size.
- H. Indoor Cultivation in Residential Zones. The indoor cultivation of medical marijuana in a residential zone shall only be conducted within a detached, fully-enclosed and secure structure no greater than one hundred twenty (120 ft²) square feet in size or within a Residential structure conforming to the following minimum standards:
 1. Any detached structure, regardless of square footage, constructed, altered or used for the cultivation of medical marijuana must have a valid building permit duly issued by the Building Official. The Building Official shall consult with the Planning Director and Chief of Police in consideration of any building permit application seeking a building permit for the construction or alteration of any structure to be used for medical marijuana cultivation.
 2. Indoor grow lights shall not exceed one thousand two hundred (1,200 W) watts and shall comply with the California Building, Electrical and Fire Codes as adopted by the City. Gas products (including, without limitation, CO₂, butane,

- propane, and natural gas), or generators shall not be used within any detached structure used for the cultivation of medical marijuana.
3. Any detached, fully-enclosed and secure structure or residential structure used for the cultivation of medical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with the California Building Code Section 402.3 Mechanical Ventilation. The ventilation and filtration system must be approved by the Building Official and installed prior to commencing cultivation within the detached, fully-enclosed and secure structure or residential structure.
 4. A detached, fully-enclosed and secure structure used for the cultivation of marijuana shall be located in the rear yard area of a legal parcel or premises, maintain a minimum ten (10' 00") foot setback from any property line, and the area surrounding the structure must be enclosed by a solid fence at least six (6' 00") feet in height.
 5. Adequate mechanical or electronic security systems approved by the Building Official and Chief of Police must be installed in and around the detached structure or the residential structure prior to the commencement of cultivation.
 6. Marijuana cultivation occurring within a residence shall be in an area no larger than fifty (50 ft²) square feet, regardless of how many qualified patients or primary caregivers are residing at the premises.
 7. Cultivation of marijuana shall not take place in the kitchen, bathrooms, or bedrooms of any building.
 8. Cultivation of marijuana shall not take place on any carpeted surface.
 9. Medical marijuana cultivation for sale is prohibited.
 10. Medical marijuana cultivation may not occur in both a detached structure and inside a residence on the same parcel.
 11. Medical marijuana cultivation areas, whether in a detached building or inside a residence, shall not be accessible to persons under eighteen (18) years of age.

23.83.040 Cultivation Permit

- A. Prior to commencing any medical marijuana cultivation the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where medical marijuana cultivation is proposed to occur must obtain a medical marijuana cultivation permit from the Chief of Police or his or her designee. The following information will be required with the initial permit application and subsequent permit extensions:
 1. A notarized signature from the owner of the property consenting to the cultivation of marijuana at the premises on a form acceptable to the City.
 2. The name of each person, owning, leasing, occupying, or having charge of any legal parcel or premises where medical marijuana will be cultivated.
 3. The name of each qualified patient or primary caregiver who participates in the medical marijuana cultivation.
 4. A copy of a current valid medical recommendation or county issued medical marijuana card for each qualified patient identified as required above, and for

each qualified patient for whom any person identified as required above is the primary caregiver.

5. The physical site address of where the marijuana will be cultivated.
 6. A signed consent form, acceptable to the City, authorizing City staff, including the police department, authority to conduct an inspection of the detached, fully-enclosed and secure structure or area of the residence used for the cultivation of marijuana upon twenty-four (24) hours' notice.
- B. The initial permit shall be valid for no more than two (2) years and may be extended in increments of two (2) years.
 - C. To the extent permitted by law, any personal or medical information submitted with a medical marijuana cultivation permit application or permit extension shall be kept confidential and shall only be used for purposes of administering this chapter.
 - D. The Chief of Police, or his or her designee, may, in his or her discretion deny any application for a medical marijuana cultivation permit, or extension thereof, where he or she finds, based on articulated facts, that the issuance of such permit, or extension thereof, would be detrimental to the public health, safety, or welfare. The Chief of Police shall deny an application for a medical marijuana cultivation permit, or extension thereof, that does not demonstrate satisfaction of the minimum requirements of this Chapter. The denial of any permit application, or permit extension, shall be subject to appeal pursuant to EGMC Chapter 1.11.
 - E. The Finance Director may establish a fee or fees required to be paid upon filing of an application for permit(s) as provided by this chapter, which fees shall not exceed the reasonable cost of administering this chapter.

23.83.050 Enforcement

Violations of this chapter shall constitute a public nuisance and may be enforced pursuant to the provisions of EGMC Chapters 1.12 and 16.18.

23.83.060 Appeals

Any person aggrieved by any of the requirements of this section may appeal in so far as such appeals are allowed pursuant to EGMC Chapter 1.11.

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 3-2012**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on February 8, 2012 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 22, 2012 by the following vote:

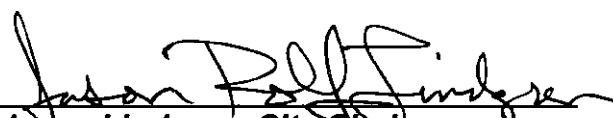
AYES : **COUNCILMEMBERS:** **Cooper, Hume, Detrick**

NOES: **COUNCILMEMBERS:** **Scherman**

ABSTAIN: **COUNCILMEMBERS:** **None**

ABSENT: **COUNCILMEMBERS:** **Davis**

A summary of the ordinance was published pursuant to GC 36933(c) (1).



**Jason Lindgren, City Clerk
City of Elk Grove, California**