

ORDINANCE NO. 345

AN ORDINANCE OF THE CITY OF PORTOLA, COUNTY OF PLUMAS,
STATE OF CALIFORNIA, AMENDING CHAPTER 17.65 OF THE PORTOLA MUNICIPAL
CODE TO REGULATE THE PERSONAL CULTIVATION OF MARIJUANA AND
DELIVERY OF MARIJUANA, PROHIBIT THE COMMERCIAL CULTIVATION OF
MARIJUANA, THE PROCESSING OF MARIJUANA AND ALL ASSOCIATED BUSINESS
AND OPERATIONAL ACTIVITIES, AS BUSINESSES WITHIN THE CITY OF PORTOLA

WHEREAS, Congress passed the Federal Controlled Substances Act (CSA) in 1970, which prohibits the manufacture, cultivation, distribution and possession of marijuana and classifies it as a Schedule 1 drug meaning it has no accepted medical value in treatment; and

WHEREAS, California law generally makes it a crime to possess and cultivate marijuana under Health and Safety (H&S) Code Sections 11357 and 11358, respectively; and

WHEREAS, California voters approved Proposition 215 (Health and Safety Code Sections 1362.5 et seq.), entitled the Compassionate Use Act (CUA), in 1996, for which the intent was to ensure that seriously ill individuals have the right to obtain and use marijuana for medical purposes when recommended by a physician. The CUA also exempted patients and their primary caregivers from criminal prosecution or sanctions under H&S Code Sections 11357 and 11358; and

WHEREAS, the California Legislature passed Senate Bill 420 (H&S Code Sections 11362.7 et eq.) in 2003 to create the Medical Marijuana Program (MMPA), which established a voluntary program for the issuance of medical marijuana identification cards for qualified patients; set limits on the amount of marijuana any individual could possess; and provided an exemption from State criminal liability for persons “who associate within the State of California in order to collectively or cooperatively cultivate marijuana for medical purposes”; and

WHEREAS, although State law creates a limited affirmative defense to criminal prosecution for qualified patients and their primary caregivers, the operation of medical marijuana dispensaries as for profit is expressly prohibited, and it is difficult to determine whether or not a dispensary is operating for profit; and

WHEREAS, the United States Supreme Court has continuously held that marijuana, including medical marijuana, violates Federal law under the CSA. In 2001, the Court held in *United States v. Oakland Cannabis Buyers Cooperative, et al.* that there was no “medical necessity” defense under the CSA, and therefore a medical marijuana dispensary could be enjoined from distribution and manufacturing. In 2005, the Court held in *Gonzalez v. Raich* that the Commerce Clause authorizes Congress to prohibit the cultivation or use of marijuana for medical purposes permitted by California law. The significance of the *Raich* decision is that Federal law enforcement agents may continue to enforce Federal drug laws against Californians who cultivate or use marijuana for medical purposes; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which went into effect on January 1, 2016, and established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643; and

WHEREAS, according to the provisions of the MMRSA, unless local agencies have a land use ordinance in place by March 1, 2016 that expressly regulates or prohibits the cultivation of marijuana and/or the delivery of medical marijuana within their jurisdictions, these activities will be permitted and regulated by the State under the MMRSA; and

WHEREAS, in 2011, the City added Chapter 17.65 to the Portola Municipal Code (PMC) to prohibit the establishment and/or operation of medical marijuana dispensaries in all areas within the City's jurisdictional limits; and

WHEREAS, prohibiting the commercial cultivation of marijuana, the delivery of marijuana, and the processing of marijuana within the City as business activities and uses is necessary to protect the health, safety and welfare of the community, and to prevent adverse impacts that such activities may have on nearby properties and residents; and

WHEREAS, the City desires to delete Chapter 17.65 of the PMC in its entirety and to add Chapter 17.79 to the PMC to prohibit marijuana dispensaries, to prohibit the commercial cultivation of marijuana in all zones within the City's jurisdictional boundaries, to prohibit the processing of marijuana and to regulate the delivery of marijuana and the personal cultivation of marijuana and any and all associated services, operational activities and businesses, as businesses within the City.

NOW, THEREFORE, the City Council of the City of Portola does ordain as follows:

Section 1. The Portola Municipal Code is hereby amended to read as follows:

**CHAPTER 17.79
MARIJUANA**

SECTIONS:

- 17.79.010 Purpose and Intent**
- 17.79.020 Definitions**
- 17.79.030 Marijuana Dispensaries as a Prohibited Use and/or Activity**
- 17.79.040 Commercial Cannabis Activity, Including Cultivation of Marijuana, as a Prohibited Use and/or Activity**
- 17.79.050 Processing of Marijuana as a Prohibited Use and/or Activity**
- 17.79.060 Delivery of Marijuana**
- 17.79.070 Non-Commercial Cultivation, Possession and Use of Marijuana**
- 17.79.080 Enforcement**

17.79.010 Purpose and Intent

- A. It is the purpose and intent of this Chapter for the City Council to exercise its police powers derived from Section 7 of Article XI of the California Constitution and state law to promote the health, safety, and general welfare of the residents and businesses of the City of Portola by prohibiting the cultivation, manufacturing and distribution, and to regulate the personal cultivation of marijuana and delivery of marijuana within the City’s jurisdictional limits, unless preempted by federal or state law, and except as provided in this Chapter.
- B. Nothing in this Chapter is intended to impair any defenses available under the applicable state law. Nothing in this section is intended to authorize any use, possession, cultivation, manufacture, transportation, or distribution of marijuana in violation of state law.

17.79.020 Definitions

- A. **“Accessory Structure”** means a completely enclosed structure which is exempt from the permit requirements of the California Building Code, as adopted by the City (“CBC”), is on the same parcel of land as a private residence and is physically detached from the private residence.
- B. **“Commercial Cannabis Activity”** means any activity defined in California Business and Professions Code Sections 19300, et seq., as amended.
- C. **“Certificate of Compliance”** means a self-completed form available from City hall or online on the City’s website.
- D. **“Fully enclosed and secure structure”** means a structure that complies with the CBC 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. In order to qualify as a fully enclosed and secure structure, the 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. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials.
- E. **“Greenhouse”** means a completely enclosed structure whose structural members are made of pre- formed, rigid construction materials that can reasonably be expected to maintain its integrity while exposed to harsh weather conditions. The walls, roof, and ends are typically covered using a transparent material that is fixed in place, which allows solar radiation to penetrate the surface and affect the growing environment of the plants inside.
- F. **“Indoors”** means within a private residence, accessory structure, greenhouse or a fully enclosed and secure structure on the same property of a private residence.

- G. “Marijuana”** means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not, the seeds thereof, the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or other ingestible or consumable product containing marijuana. The term “marijuana” shall also include “medical marijuana” as defined in California Health and Safety Code section 11362.5 and “medical cannabis”, “medical cannabis product” and “cannabis product” as defined in Business and Professions Code section 19300.5(ag), or as may be amended.
- H. “Medical Marijuana Dispensary”, “Marijuana Dispensary” or “Dispensary”** means any business, office, store, facility, location, retail storefront, or wholesale component of any establishment, cooperative or collective that delivers (as defined in California Business and Professions Code section 19300.5(m), or as may be amended) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the purposes set forth in California Health and Safety Code section 11362.5, or as may be amended.
- I. “Marijuana Cultivation” or “Cultivation”** means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of marijuana.
- J. “Marijuana Delivery” or “Delivery”** means the commercial delivery, transfer or transport, or arranging for the delivery, transfer or transport, or the use of any technology platform to arrange for or facilitate the commercial delivery, transfer or transport of marijuana, marijuana edibles, and/or any marijuana products to or from any location within the jurisdictional limits of the City, and any and all associated business and/or operational activities.
- K. “Marijuana Processing” or “Processing”** means any method used to prepare marijuana, marijuana edibles and/or marijuana byproducts for commercial retail and/or wholesale sales, including, but not limited to: cleaning, curing, preparation, laboratory testing, manufacturing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.
- L. “Outdoor”** means any location within the City, on private grounds, that is exposed to the open air not within an accessory structure, greenhouse, enclosed and secure structure or private residence.
- M. “Primary caregiver”** shall have the same meaning as set forth in California Business and Professions Code section 19300.5(h), as may be amended, as that section now appears, or may hereafter be amended or renumbered.
- N. “Private residence”** means a house, an apartment unit, a mobile home, or other similar dwelling unit.
- O. “Property”** means a parcel of land upon which is built or placed a private residence.

P. “Qualified patient” means a patient that uses or ingests medical cannabis as that term is defined in California Business and Professions Code section 19300.5(ag) and who is entitled to the protections of California Health and Safety Code section 11362.5.

Q. “Solid fence” means a fence constructed in compliance with the PMC and is of substantial material, such as wood or metal that prevents viewing the contents from one side to the other side of the fence.

17.79.030 Marijuana Dispensaries as a Prohibited Use and/or Activity. A marijuana dispensary as defined in Section 17.79.020 is prohibited in all zones within the City’s jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such use.

17.79.040 Commercial Cannabis Activity, Including Cultivation of Marijuana, as a Prohibited Use and/or Activity. Commercial cannabis activity, including marijuana cultivation, by any person or entity, including, but not limited to, clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the City’s jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. Any cultivation that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance. Nothing in this Chapter is intended to, nor shall it be construed to, make legal any cultivation activity that is otherwise prohibited under California law. Nothing in this Chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting marijuana cultivation by its tenants.

17.79.050 Processing of Marijuana as a Prohibited Use and/or Activity. Marijuana processing by any person or entity, including, but not limited to, clinics, collectives, cooperatives and dispensaries, is prohibited in all zones within the City’s jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. Any processing that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance. Nothing in this Chapter is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting marijuana processing by its tenants.

17.79.060 Delivery of Marijuana. Marijuana delivery by any person or entity, including, but not limited to, clinics, collectives, cooperatives and dispensaries, is prohibited in the City except when such delivery occurs in accordance with the following reasonable regulations. Any delivery that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance. Nothing in this Chapter is intended to, nor shall it be construed to, make legal any delivery activity that is otherwise prohibited under California law.

A. Primary Caregivers. A primary caregiver, who is not subject to the MMRSA, engaged in the delivery of marijuana to a qualified patient is exempt from the prohibition prescribed in this Chapter.

B. Delivery by Marijuana Dispensary. It is unlawful for any marijuana dispensary to deliver, which includes, but is not limited to, dispense, distribute, exchange, transmit,

transport, sell or provide, marijuana to a qualified patient or a primary caregiver without a valid permit as specified herein.

1. Application. The form and content of the application for a permit shall be specified by the City Manager. The application shall be signed under the penalty of perjury, and the following standards constitute the minimum standards to qualify for a permit to deliver marijuana to a qualified patient or primary caregiver:
 - a. Name and address of the applicant; if the applicant is a corporation or limited liability company, the names and addresses of its directors or members respectively.
 - b. Certificate of insurance demonstrating ability to comply with the insurance requirements set forth in this Section in a form acceptable to the City.
 - c. Applicant's trade name and business address.
 - d. Copies of applicable authorizing state and local licenses and permits issued to applicant allowing it to operate a marijuana dispensary in a neighboring jurisdiction.
 - e. Listing of all vehicles and devices to be used for delivery of marijuana to a qualified patient or primary caregiver within the City, which includes the vehicle's make, model, year, license plate number and vehicle identification number.
 - f. Identifying all persons who will deliver marijuana on behalf of the dispensary to qualified patients or primary caregivers located in the City. Such individuals must be at least 21 years of age at the time of submittal of the application.
2. Review of Application. The City Manager shall consider the application, as well as the criminal records, if any, and personal references, if demanded by the City Manager, of individuals identified in the application, and any other results from investigation into the application as deemed necessary by the City Manager.
3. Disapproval of Application. If the City Manager disapproves an application, he or she shall notify the applicant in writing, stating the reasons for the disapproval. Notification of disapproval shall be delivered by first class mail to the applicant. No permit shall issue unless a successful appeal of the disapproval is made within the requisite time frame.
4. Appeal of Disapproval:
 - a. Within twenty (20) days after the City Manager serves notification of disapproval, an applicant may appeal the disapproval by notifying the City Clerk in writing of the appeal, the reasons for the appeal, and paying any applicable fees.
 - b. The City Clerk shall set a hearing on the appeal and shall fix a date and time certain, within forty-five (45) days after the receipt of the applicant's appeal, unless the City and the applicant agree to a longer time, to consider the appeal. The City Clerk shall provide notice of the date, time and place of hearing, at least ten (10) days prior to the date of the hearing.

- c. The City Manager shall appoint a Hearing Officer to hear the appeal and determine the order of procedure, and rule on all objections to admissibility of evidence. The applicant and the City Manager shall each have the right to submit documents, call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions.
 - d. The Hearing Officer shall issue a written decision within twenty (20) days after the close of the hearing. The decision of the Hearing Officer shall be final.
5. Grounds for Denial, Revocation or Suspension of Permit. The granting of a permit or a renewal thereof may be denied and an existing permit revoked or suspended if the applicant or permittee, or any individual engaged by the applicant or permittee to deliver marijuana in the City:
- a. Has knowingly made a false statement in the application or in any reports or other documents furnished to the City.
 - b. Engages vehicles or devices for delivery that are neither maintained nor operated in a manner and in a condition required by law and applicable regulations.
 - c. Is required to register as a sex offender under Section 290 of the California Penal Code.
 - d. Has been convicted of any offense relating to the use, sale, possession or transportation of narcotics or habit-forming drugs.
 - e. Has been under suspension, revocation or probation by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle, or has been convicted of any of the following offenses: driving while under the influence, or reckless driving involving bodily injury, or who does not possess a valid driver's license.
 - f. Has been convicted of any offense punishable as a felony, or has been convicted within a five (5) year period immediately preceding the crime of theft in either degree.
 - g. Has been convicted of any offense involving moral turpitude.
 - h. Has been involved within the two years immediately preceding the application in any motor vehicle accident causing death or personal injury.
 - i. Has been in three or more motor vehicle accidents within the year immediately preceding the application.
 - j. Engages individuals to deliver marijuana who were not identified in the application.
 - k. Fails to pay required City fees and taxes.
 - l. Violates any provision of this Chapter.
6. Suspension and Revocation.
- a. If the City Manager deems continuation of the operation of delivery by the marijuana dispensary will cause a significant threat to the health, safety or

welfare of the public, the City Manager may suspend the permit and all rights and privileges thereunder until a Hearing Officer renders a written decision on the revocation of the permit.

- b. The City Manager shall give notice to a marijuana dispensary of his or her intent to revoke a permit in the same manner as notice of disapproval and provide the City Clerk with a copy of the notice.
- c. The hearing for the revocation of the permit shall be set and conducted in the same manner as an appeal of disapproval. The decision of the Hearing Officer shall be final.

7. Permittee's Obligations. Permittee's duties and obligations shall include all of the following:

- a. Comply with all applicable state and local laws.
- b. Obtain and maintain a business license from the City.
- c. Maintain at all times all licenses and permits as required by California state law and the laws of the local jurisdiction in which the permittee is located, and provide immediate notification to the City Manager if any license or permit is suspended or revoked.
- d. Package the marijuana to be delivered in compliance with California Business Professions Code section 19347 and any other regulations promulgated by the State Department of Public Health.
- e. Any person who delivers marijuana from a marijuana dispensary must have in possession a copy of the permit, which shall be made available upon request to law enforcement.
- f. Delivery vehicles shall not advertise any activity related to marijuana nor shall it advertise the name of the permittee.
- g. Delivery of the marijuana shall be directly to the residence or business address of the qualified patient or the qualified patient's primary caregiver; deliveries to any other location are prohibited.
- h. Deliveries of marijuana shall occur only between the hours of 9:00 a.m. and 5:00 p.m.
- i. No permittee shall transport or cause to be transported marijuana in excess of the limits established by the State Bureau of Medical Marijuana during the course of delivering marijuana; until the State Bureau of Medical Marijuana establishes the limit, the limit is eight (8) ounces of dried marijuana or its marijuana product equivalent within the City.
- j. All orders to be delivered shall be packaged by the names of the qualified patient or qualified patient and primary caregiver, if delivery is made to the primary caregiver, with a copy of the request for delivery with each package.
- k. Maintain at all times Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence

basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for suspension of the permit immediately, and ultimately, revocation.

- l. By accepting the permit, each permittee agrees to indemnify, defend and hold harmless to the fullest extent permitted by law, the City, its officers, agents and employees from and against any all actual and alleged damages, claims, liabilities, costs (including attorney's fees), suits or other expenses resulting from and arising out of or in connection with permittee's operations, except such liability causes by the active negligence, sole negligence of willful misconduct of City, its officers, agents and employees.
 - m. Maintain for a minimum of three (3) years, a written accounting or ledger of all cash, receipts, credit card transactions, and reimbursements (including any in-kind contributions) as well as records of all operational expenditures and costs incurred by the permittee in accordance with generally accepted accounting practices and standards typically applicable to business records, which shall be made available to the City during business hours for inspection upon reasonable notice by the City Manager.
8. Fees. Applicants and permittees shall pay all applicable fees as set forth in the City's Master Fee Schedule adopted by resolution. Applicants and permittees also shall pay the amount as prescribed by the Department of Justice of the State of California for the processing of applicant's fingerprints. None of the above fees shall be prorated, or refunded in the event of a denial, suspension or revocation of the permit.
 9. Term. All permits issued pursuant to this section shall be for a period of one (1) year from the date of issuance. Permit holders shall submit an application for renewal of the permit at least sixty (60) days prior to the expiration of the permit. The renewal of the permit shall be processed in the same manner as the initial application.
 10. City Manager or Designee. Any action required by the City Manager under this Section may be fulfilled by the City Manager's designee.

17.79.070 Non-Commercial, Personal Cultivation, Possession and Use of Marijuana.

- A. Personal Cultivation.** Cultivation of marijuana is prohibited in all zoning districts of the City and no owner, renter or occupant may use or permit the use of any property owned by or under its control within the City's jurisdictional limits in violation of this Chapter, except when such cultivation occurs on property with a private residence and in accordance with the following reasonable regulations:

1. A self-completed certificate of compliance shall be completed, executed and returned to the City within sixty (60) days of the effective date of this Ordinance or prior to any cultivation and/or construction of any accessory structure, green house, or fully enclosed and secure structure used for growing marijuana.
2. There shall be no more than six (6) plants of personal cannabis cultivation per residence, regardless of the number of people who reside at the residence.
3. The marijuana cultivation shall be for non-commercial purposes only. No sale, trade, or other commercial exchange of marijuana or marijuana products shall occur.
4. Marijuana cultivation is permitted only on a property with a private residence. The primary purpose of the property on which the cultivation occurs shall be as a private residence and cultivation must remain at all times a secondary or accessory use to the residential use of the property.
5. The marijuana cultivation shall not be upon any property containing a school, day care center or youth center, unless the marijuana plants and cultivation area are separate, secure and non-detectable from areas used for the school, day care center or youth center.
6. Cultivation shall not exceed one hundred (100) square feet in cumulative area and shall not displace any space for on-site parking.
7. Lights, heaters, fans, generators, or other mechanical equipment that cause a nuisance to neighbors shall be prohibited.
8. Volatile solvents (solvents that are or produce a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures), including but not limited to butane, propane, hexane and ethanol, are strictly prohibited and may not be used for the cultivation or processing of marijuana.
9. Only chemicals or substances approved for agricultural use in the State of California may be used or applied for the cultivation of marijuana or stored at any property where marijuana is cultivated.
10. Outdoor cultivation of marijuana is prohibited in all zoning districts of the City and no owner, renter or occupant may use or permit the use of any property owned by or under its control for the cultivation of marijuana.
11. Cultivation must fully comply with all provisions of the PMC, including its building code and fire code, as well as, the State's building code set forth in Title 24 of the California Code of Regulations.

12. All marijuana plants shall be reasonably secured to prevent access by minors or theft, to a standard satisfactory to an officer of law enforcement, or responsible health and welfare agency.
13. All grow lighting systems and fixtures shall be shielded to confine light and glare to the interior of the residence, fully enclosed and secure accessory structure, or greenhouse, comply with the City building code and fire prevention code, as well as the State's building code set forth in Title 24 of the California Code of Regulations, and are subject to inspection. Total wattage of grow lighting may not exceed 600 watts.
14. The residence, fully enclosed and secure structure, accessory structure, or greenhouse used for marijuana cultivation must install a filtered ventilation and filtration system that will prevent marijuana plant odors from exiting the interior of the structure. The filtered ventilation system must be in compliance with the State's building code set forth in Title 24 of the California Code of Regulations, approved by the City building official and installed prior to commencing cultivation.
15. The marijuana cultivation shall not create offensive odors; create excessive dust, heat, noise, smoke, traffic, or other impacts that are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; or be hazardous due to use or storage of materials, processes, products, or wastes.
16. Marijuana cultivation shall be concealed from public view at all stages of growth and there shall be no exterior evidence of cultivation occurring at the premises from a public right-of-way or from an adjacent parcel. If the accessory structure has windows, they must be made of translucent material. Greenhouses used for cultivation must be surrounded by a solid fence at least six-feet high with a lockable gate. The fully enclosed and secure structure, accessory structure or residence may compromise a portion of the fence. The fence is not required to extend to the property boundary.
17. Marijuana cultivation areas, whether in a fully enclosed and secure structure, accessory structure, greenhouse, or inside a residence, shall not be accessible to juveniles who are not qualified patients or primary caregivers
18. A portable fire extinguisher, that complies with the regulations and standards adopted by the California State Fire Marshal and other applicable law, shall be kept in the area of cultivation at all times in a location that is easily accessible.
19. Accessory structures or greenhouses used for cultivation of marijuana shall also adhere to the following:

- a. Not be located in the front yard of the property and be located behind the plane of the front of the residence.
- b. Maintain a minimum setback from all side and rear property lines of at least five (5) feet. Setback distance shall be measured in a straight line from the nearest exterior wall of the accessory structure, or, if a greenhouse, from the nearest fence surrounding the greenhouse, to the nearest property line.
- c. Made of durable construction materials and designed to ensure the security of the interior space equal to or better than the security of the residence.

B. Restriction on Possession or Use.

1. It shall be unlawful for any individuals under 21 years of age to possess, process, transport, purchase, obtain or give away marijuana or marijuana products.
2. Individuals 21 years of age or older may possess, process, transport, purchase, obtain or give away 28.5 grams (approximately one ounce) or less of non-concentrated marijuana and eight grams or less of concentrated marijuana, subject to compliance with all provisions of this section and all provisions of state law, as may be amended.
3. Smoking or ingesting of marijuana shall not be permitted within any public place within the City, or within 1,000 feet of a school or in any location where tobacco is prohibited.

17.79.080 Enforcement.

- A. Public Nuisance.** The violation of this section or the use or permission to use any property by the owner, renter or occupant in violation of this section is hereby declared to be a public nuisance and may be enforced pursuant to the provisions of Chapter 17.103 or Title 18 of the PMC or any applicable provision of State law.
- B. Right of Entry.** The code enforcement officer, building official, planning director, sheriff, fire inspector, or a designee is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this section. 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.
- C. Abatement.** The City Attorney, in the name of and on behalf of the City and/or the people of the City, may bring a civil action in a court of competent jurisdiction to enforce any provision of this section, or to restrain or abate any violation of the provisions of this section as a public nuisance pursuant to the procedures set forth in Chapter 17.103 or Title 18 of the PMC or any applicable provision of State law.

D. Violation. Cultivation of marijuana that does not comply with this section constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in Chapter 17.103 or Title 18 of the PMC or any applicable provision of State law.

E. Penalties Not Exclusive. The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the City from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

Section 2. The foregoing recitals are true and correct.

Section 3. Chapter 17.65 of the Portola Municipal Code is hereby repealed in its entirety.

Section 4. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 5. The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

Section 6. This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance, or the title thereof, as a summary as required by state law.

Section 7. The City Clerk shall certify to the passage of this Ordinance and cause the same to be published in accordance with the provisions of state law in a newspaper of general circulation designated for legal notices publication in the City of Portola.

INTRODUCED and the second reading waived at a regular meeting of the City Council of the City of Portola held on the 25th day of October, 2017; and

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Portola, on _____ 2017, by the following vote:

AYES:

NOES:
ABSTAIN:
ABSENT:

MAYOR, Pat Morton

ATTEST:

Melissa Klundby, City Clerk

I, Melissa Klundby, City Clerk of the City of Portola, do hereby certify that the above and foregoing Ordinance was duly passed and adopted by the City Council of the City of Portola at a meeting thereof held on _____, 2017.

Melissa Klundby, City Clerk