

**EFFECTIVE DATE
OF ORDINANCE**

February 25, 2016

ORDINANCE NO. 2563 N.C.S.

1 Introduced by

Seconded by

2
3
4 Chris Albertson

Mike Healy

5
6
7 **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA AMENDING CHAPTER 10.15,**
8 **"MEDICAL MARIJUANA" OF THE CITY OF PETALUMA MUNICIPAL CODE PROHIBITING**
9 **DISPENSARIES IN THE CITY TO ALSO PROHIBIT SPECIFIED COMMERCIAL CANNABIS ACTIVITY,**
10 **CULTIVATION AND DELIVERY OF MEDICAL MARIJUANA IN THE CITY OF PETALUMA**
11

12
13 **WHEREAS**, in 1996 the voters of the state of California approved Proposition 215 which
14 was codified as Health and Safety Code Section 11362.5, *et seq.*, and entitled "The
15 Compassionate Use Act of 1996" ("**CUA**"); and
16

17 **WHEREAS**, the intent of the CUA was to enable persons who are in need of marijuana for
18 medical purposes to obtain and use it under limited, specific circumstances; and
19

20 **WHEREAS**, on January 1, 2004, Senate Bill 420, known as the "Medical Marijuana
21 Program" (codified at Health and Safety Code Sections 11362.7 through 11362.83) ("**MMP**")
22 became effective to clarify the scope of the CUA; and
23

24 **WHEREAS**, the CUA is limited in scope in that it provides a defense from criminal
25 prosecution under state law for possession and cultivation of marijuana for qualified patients
26 and their primary caregivers; establishes a statewide identification program and affords
27 qualified patients, persons with identification cards and their primary caregivers an affirmative
28 defense to certain enumerated criminal sanctions that would otherwise apply to transporting,
29 processing, administering or distributing marijuana; and
30

31 **WHEREAS**, neither the CUA nor the MMP requires or imposes an affirmative duty or
32 mandate upon local governments, such as the City of Petaluma, to allow, authorize or sanction
33 the establishment and the operation of facilities cultivating, distributing, or processing medical
34 marijuana within their boundaries; and
35

36 **WHEREAS**, on May 5, 2013, the California Supreme Court issued its opinion in *City of*
37 *Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, (2013) 56 Cal.4th 729, which
38 held that neither the CUA nor the MMP expressly or impliedly preempts the authority of California
39 cities and counties, under their traditional land use and police powers, to restrict, limit, or entirely

1 exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance
2 actions; and

3
4 **WHEREAS**, on November 26, 2013, the Third District Court of Appeal issued its opinion in
5 *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, which held that the CUA and the MMP do
6 not preempt a city's police power to prohibit the cultivation of all marijuana within that city; and
7

8 **WHEREAS**, during the 2014/2015 legislative session, the Legislature enacted three bills
9 regulating medical marijuana collectively entitled the "Medical Marijuana Regulation and
10 Safety Act" ("MMRSA"): AB-243, AB- 266, and SB-643; and
11

12 **WHEREAS**, Health and Safety Code Section 11362.777, which is part of the MMRSA,
13 provides in subdivision (b) that cultivation of medical marijuana prior to obtaining both a permit
14 from the city, county or city and county in which the cultivation will occur and a state license is
15 prohibited, and that if a city, county, or city and county does not have land use regulations or
16 ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise
17 under principles of permissive zoning, then commencing March 1, 2016 the state will be the sole
18 licensing authority for medical marijuana cultivation applicants in that city, county, or city and
19 county; and
20

21 **WHEREAS**, Health and Safety Code Section 11362.777 provides in subdivision (g) that that
22 section does not apply to qualified patients cultivating marijuana pursuant to Health and Safety
23 Code Section 11362.5 in cultivation areas that do not exceed 100 square feet for their personal
24 medical use and not for sale, distribution, donation, or provision to any other person or entity, or
25 to primary care givers cultivating marijuana pursuant to Health and Safety Code Section 11362.5
26 in cultivation areas that do not exceed 500 square feet exclusively for the personal medical use
27 of not more than five specified qualified patients for whom they are the primary caregiver within
28 the meaning of Health and Safety Code Section 11362.7 without compensation except in full
29 compliance with Health and Safety Code section 11362.765, subdivision (c); and
30

31 **WHEREAS**, Health and Safety Code Section 11362.777 further provides in subdivision (g)
32 that the exemptions from the requirements of that section do not prevent a city, county or city
33 and county from regulating or banning the cultivation, storage, manufacture, transport,
34 provision or other activity by the exempt person, or impair the enforcement of that regulation or
35 ban; and
36

37 **WHEREAS**, Business and Professions Code Section 19340, which is part of the MMRSA,
38 provides in subdivision (a) that medical marijuana deliveries as defined can only be made by a
39 dispensary and in a city, county or city and county that does not explicitly prohibit it by a local
40 ordinance; and
41

42 **WHEREAS**, on December 1, 2015, the Fifth District Court of Appeal issued its opinion in
43 *Kirby v. County of Fresno*, (2015), which upheld a county ordinance banning medical marijuana

1 dispensaries, cultivation and storage, but invalidated the ordinance's classification of local
2 medical marijuana cultivation as a misdemeanor, holding that section 113662.71 of the MMP
3 preempts local criminalization of medical marijuana cultivation; and
4

5 **WHEREAS**, although the court in *Kirby v. County of Fresno* invalidated on preemption
6 grounds the local criminalization of medical marijuana cultivation as a misdemeanor, the court
7 noted that local prosecution of the failure to abate a public nuisance involving medical
8 marijuana cultivation is not preempted, because the Legislature recognizes the failure to abate
9 a public nuisance after notice as a separate crime; and
10

11 **WHEREAS**, in 2007 the Petaluma City Council adopted Chapter 10.15 of the Petaluma
12 Municipal Code prohibiting medical marijuana dispensaries in the City to promote the public
13 health, safety and welfare and protect citizens from impacts associated with medical marijuana
14 dispensaries, including, but not limited to, increased public consumption of marijuana and the
15 potential for increased marijuana DUIs, illegal resale of marijuana obtained at low cost from
16 dispensaries, loitering, fraud in obtaining or use of medical marijuana identification cards,
17 robbery, assaults and other crimes, and increased demands for police response resulting from
18 activities at medical marijuana dispensaries reducing the ability of the City's public safety
19 officers to respond to other calls for service; and
20

21 **WHEREAS**, marijuana remains an illegal substance under the Federal Controlled
22 Substances Act, 21 U.S.C. 801, *et seq.*, which makes it unlawful for any person to cultivate,
23 manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense
24 marijuana for any reason, even though state law decriminalizes under specified state laws
25 specified use of medical marijuana by specified persons; and
26

27 **WHEREAS**, the City of Petaluma Police Department, City residents and other public
28 entities have reported adverse impacts from the outdoor cultivation of marijuana within the City,
29 including offensive odors, increased risk of trespassing and burglary, and acts of violence in
30 connection with the commission of such crimes or the occupants' attempts to prevent such
31 crimes; and
32

33 **WHEREAS**, the strong odor of marijuana plants, which increases as the plants mature, is
34 offensive to many individuals and creates an attractive nuisance, alerting people to the
35 location of valuable marijuana plants and creating an increased risk of crime; and
36

37 **WHEREAS**, Petaluma has experienced structure fires and building damage threatening
38 the quality and safety of City neighborhoods as a result of indoor marijuana cultivation within the
39 City, with 7 such incidents occurring between December, 2010 and May, 2015, and a total of 33
40 structure fires within the Sonoma County area have been attributed to illegal indoor marijuana
41 cultivation operations; and
42

1 **WHEREAS**, Petaluma has experienced property loss valued at approximately \$344,000,
2 and the Sonoma County area has suffered property loss estimated at approximately \$1,693,000
3 as a result of commercial cannabis activity, due to such causes as substandard wiring and
4 electrical systems, grow lights, and use of butane to illegally extract hash oil; and
5

6 **WHEREAS**, to protect the public health, safety, and welfare, it is the desire of the City
7 Council to add to existing provisions in the City of Petaluma Municipal Code prohibiting medical
8 marijuana dispensaries new provisions prohibiting cultivation, commercial cannabis activity, and
9 delivery of marijuana within the City, subject to specified exceptions; and
10

11 **WHEREAS**, it is the Council's intention that nothing in this chapter shall be deemed to
12 conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, by
13 permitting, or otherwise authorizing, any activity which is lawfully and constitutionally prohibited
14 under that law; and
15

16 **WHEREAS**, mindful of the fact that marijuana possession and use is prohibited under
17 federal law and partially decriminalized under state law, it is the Council's intention that nothing
18 in this chapter shall be construed, in any way, to expand the rights of anyone to use or possess
19 marijuana under state law; engage in any public nuisance; violate federal law, or engage in
20 any activity in relation to the cultivation, distribution, or consumption of marijuana that is
21 otherwise illegal;
22

23 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PETALUMA AS**
24 **FOLLOWS:**
25

26 **Section 1: Chapter 10.15, Medical Marijuana**, of the Petaluma Municipal Code is hereby
27 amended as follows:
28

29 **Section 10.15.010, Purpose**, is hereby amended to read as follows:
30

31 **Section 10.15.010 Purpose.**

32 The purpose of this chapter is to promote the public health, safety and welfare by:
33

34 A. Protecting citizens from the secondary impacts associated with medical
35 marijuana dispensaries and commercial cannabis activity, including, but not limited to,
36 increased public consumption of marijuana and the potential for increased marijuana
37 DUIs, illegal resale of marijuana obtained at low cost from dispensaries, loitering, fraud in
38 obtaining or use of medical marijuana identification cards, robbery, assaults, and other
39 crimes.
40

41 B. Protecting citizens from secondary impacts associated with commercial cannabis
42 activity such as medical marijuana cultivation, including, but not limited to, electrical fires
43 and ignition of chemical substances utilized in the cultivation process, crimes occurring

1 at grow sites, and neighborhood concerns regarding odors, late night traffic, and related
2 nuisances.

3
4 C. Protecting citizens from secondary impacts of medical marijuana delivery,
5 including, but not limited to, delivery for recreational use, delivery of quantities of
6 marijuana exceeding the reasonable requirements of qualified patients and primary
7 caregivers, delivery during nighttime hours, and delivery by minors.

8
9 D. Preventing increased demands for police response resulting from activities at
10 medical marijuana dispensaries and cultivation sites, commercial cannabis activity and
11 medical marijuana delivery and thereby avoiding reduction in the ability of the city's
12 public safety officers to respond to other calls for service.

13
14 **Section 10.15.020 Definitions** is hereby amended to read as follows:

15
16 "Commercial cannabis activity" means cultivation, possession, manufacture, processing,
17 storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a
18 medical cannabis product, except as set forth in California Business and Professions Code
19 Section 19319, related to qualifying patients and primary caregivers, in accordance with the
20 definition in California Business and Professions Code Section 19300.5, subdivision (k), as that
21 section and subdivision may be amended or interpreted by the California courts or
22 superseded by any successor statute.

23
24 "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing,
25 grading, or trimming of cannabis, in accordance with the definition in California Business and
26 Professions Code Section 19300.5, subdivision (l), as that section and subdivision may be
27 amended or interpreted by the California courts or superseded by any successor statute.

28
29 "Delivery" means the commercial transfer of medical cannabis or medical cannabis
30 products from a dispensary up to an amount determined by the Bureau of Medical
31 Marijuana Regulation to a primary caregiver or a qualified patient as defined in Section
32 11362.7 of the California Health and Safety Code , or a testing laboratory, in accordance
33 with the definition in California Business and Professions Code section 19300.5, subdivision
34 (m), as that section and subdivision may be amended or interpreted by the California courts
35 or superseded by any successor statute.

36
37 "Dispensary" means a facility where medical cannabis, medical cannabis products, or
38 devices for the use of medical cannabis or medical cannabis products are offered, either
39 individually, or in any combination, for retail sale, including an establishment that delivers,
40 pursuant to express authorization by local ordinance, medical cannabis and medical
41 cannabis products as part of a retail sale, in accordance with the definition in California
42 Business and Professions Code Section 19300.5, subdivision (n), as that section and
43 subdivision may be amended or interpreted by the California courts or superseded by any

1 successor statute. Dispensary does not include the following uses, so long as the location of
2 such uses is otherwise regulated by and strictly complies with this code and other applicable
3 law, including California Health and Safety Code Sections 11362.5 and 11362.7, *et seq*, as
4 such sections may be amended from time to time:

- 5
- 6 A. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
- 7 B. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and
8 Safety Code.
- 9 C. A residential care facility for persons with chronic life-threatening illness licensed pursuant
10 to Chapter 3.01 of Division 2 of the Health and Safety Code.
- 11 D. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of
12 the Health and Safety Code.
- 13 E. The delivery, administration or provision of medical marijuana by a designated primary
14 caregiver to the qualified patient of the primary caregiver or to the person with an
15 identification card who has designated the individual as a primary caregiver at the
16 primary residence of the qualified patient or person with an identification card who has
17 designated the individual as a primary caregiver.

18
19 "Fully enclosed and secure structure" means a code compliant space within a building,
20 greenhouse or other structure which has a complete roof enclosure supported by
21 connecting walls extending from the ground to the roof, which is secure against
22 unauthorized entry, provides complete visual screening, and which is accessible only
23 through one or more locking doors.

24
25 "Mature plant" means a plant that has flowers, or is more than 12 inches wide, or more than
26 12 inches tall.

27
28 "Primary caregiver" shall have the same definition as set forth in California Health and Safety
29 Code Section 11362.7, as it may be amended or superseded by any successor statute,
30 and as interpreted by the California courts, including but not limited to the California
31 Supreme Court case of *People v. Mentch* (2008) 45 Cal. 4th 274.

32
33 "Qualified patient" shall have the same definition as set forth in California Health and Safety
34 Code Section 11362.7, as it may be amended or superseded by any successor statute,
35 and as interpreted by the California courts.

36
37 "Residence" means a legal dwelling unit and all detached structures such as garages,
38 sheds, greenhouses, and other structures on the same legal parcel(s) as the dwelling unit.

39
40 **Section 10.15.030, Prohibition of medical marijuana dispensaries**, is hereby amended to read
41 as follows:
42

1 **10.15.030 Prohibition of Medical Marijuana Dispensaries and Commercial Cannabis**
2 **Activity**

3 It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be
4 engaged in, conducted or carried on, in the City of Petaluma, the operation of a
5 dispensary or commercial cannabis activity except as otherwise expressly provided in this
6 chapter.

7
8 **Section 10.15.040, Establishment or maintenance of medical marijuana dispensaries**
9 **declared a public nuisance, is hereby repealed in its entirety and replaced with:**

10
11 **10.15.040 Prohibition of Medical Marijuana Cultivation**

12 It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be
13 engaged in, conducted or carried on, in the City of Petaluma, the cultivation of
14 marijuana other than:

15
16 1. Indoor cultivation that is solely for the personal use of one qualified patient and
17 that at all times remains an accessory use to the primary residence of either the qualified
18 patient or his or her primary caregiver; where the cultivation area does not exceed 50%
19 or 100 square feet of the non-living or garage area of the residence, or a lesser amount
20 in accordance with paragraph 2 of this section, whichever is less; that does not displace
21 any required on-site parking; that is within a fully-enclosed and secure structure with no
22 visual or olfactory evidence of cultivation detectable from the public right of way or
23 other private property; that does not utilize lighting that exceeds 1,200 watts; that does
24 not require the use of an electric generator; and that does not use gas products (CO2,
25 butane, etc.); and

26
27 2. Outdoor cultivation that is solely for the personal use of one qualified patient that
28 at all times remains an accessory use to the primary residence of either the qualified
29 patient or his or her primary caregiver; where the cultivation area does not exceed 100
30 square feet, or a lesser amount so that the total cultivation area pursuant to this section
31 including indoor and outdoor cultivation at the residence does not exceed a combined
32 total of 100 square feet; that does not exceed three (3) mature plants, with no visual or
33 olfactory evidence of cultivation detectable from the public right of way or other private
34 property; that does not utilize lighting that exceeds 1,200 watts; that does not require the
35 use of an electric generator; and that does not use gas products (CO2, butane, etc.).

36
37 **Section 10.15.050, Prohibition of Medical Marijuana Delivery, is hereby added to read as**
38 **follows:**

39
40 **10.15.050 Prohibition of Medical Marijuana Delivery**
41

1 It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be
2 engaged in, conducted or carried on, in the City of Petaluma, the delivery of medical
3 marijuana, except for delivery of medical marijuana:
4

5 From a dispensary outside the city that is operating in accordance with
6 applicable state and local law to a qualified patient or primary caregiver within the city
7 in accordance with the requirements of Health and Safety Code Section 19340, any
8 successor statute, and any regulations promulgated under California Health and Safety
9 Code Section 19340 or any successor statute, where:

- 10
- 11 1. Persons delivering medical marijuana in the city possess no more than 1 pound of
12 medical marijuana at any time while making medical marijuana deliveries in the city;
13 and
 - 14 2. The delivery is carried out by a person at least 18 years of age; and
 - 15 3. The delivery occurs between the hours of 8:00 a.m. and 8:00 p.m.
- 16
17
18

19 **Section 10.15.060, Prohibition of Medical Marijuana Entitlements** is hereby added to read as
20 follows:
21

22 **Section 10.15.060, Prohibition of Medical Marijuana Entitlements**

23
24 No medical marijuana dispensary, commercial cannabis activity, medical marijuana
25 cultivation operation, or medical marijuana delivery operation, however described by
26 the applicant, will eligible for or be issued any entitlement, license or permit to operate in
27 the city, or have any such entitlement renewed, including, but not limited to, any
28 business license or home occupation permit, and any such application shall be denied
29 citing this section.
30

31 **Section 10.15.0700, Public Nuisance**, is hereby added to read as follows:
32

33 **Section 10.15.070 Public Nuisance.** Any medical marijuana dispensary, commercial
34 cannabis activity, cultivation, delivery or other use or activity caused or permitted to exist
35 in the city in violation of any provision of this chapter shall be and is hereby declared a
36 public nuisance. Violations of this chapter may be enforced by any applicable laws or
37 ordinances, including, but not limited to, Chapter 1.10 of this code.
38

39 **Section 2:** The City Council finds that adoption of this ordinance is exempt from the
40 California Environmental Quality Act ("CEQA"), pursuant to Section 15061(b)(3) of the CEQA
41 Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because there is no
42 possibility that the activity may have a significant impact on the environment.
43

1 **Section 3:** If any section, subsection, sentence, clause, phrase or word of this ordinance is for
2 any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent
3 jurisdiction or preempted by state legislation, such decision or legislation shall not affect the
4 validity of the remaining portions of this ordinance. The City Council of the City of Petaluma
5 hereby declares that it would have passed and adopted this ordinance and each and all
6 provisions thereof irrespective of the fact that any one or more of said provisions be declared
7 unconstitutional, unlawful or otherwise invalid.
8

9 **Section 4:** The City Clerk is hereby directed to publish or post this ordinance or a synopsis for
10 the period and in the manner provided by the City Charter and any other applicable law.
11

12 **INTRODUCED** and ordered posted/published this 4th day of January, 2016.
13

14 **ADOPTED** this 25th day of January, 2016 by the following vote:
15

16 Ayes: Albertson, Healy, Kearney, Vice Mayor King, Miller
17 Noes: Barrett
18 Abstain: None
19 Absent: Mayor Glass
20

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22
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24 
25
26
27
28 Dave King, Vice Mayor

29 ATTEST:

APPROVED AS TO FORM:

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31 
32
33 Claire Cooper, City Clerk

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41
42
43 
Eric W. Danly, City Attorney