

**CHAPTER 17.67  
MEDICAL MARIJUANA**

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**Section 17.67.010 Findings.**

The Board of Supervisors of the County of Tuolumne finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996").

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.

C. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code section 11362.7 et seq. and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996. The Medical Marijuana Program Act allows counties to adopt and enforce rules and regulations consistent with its provisions.

D. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768). This law affirms that counties can adopt ordinances that restrict the location and establishment of medical marijuana collectives and cooperatives.

E. In 2015, Assembly Bills 243 and 266 and Senate Bill 643 were enacted (codified as California Business and Professions Code section 19300 et seq. and titled the "Medical Cannabis Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical marijuana.

F. In 2016, the voters of the State of California approved Proposition 64 (codified as California Health and Safety Code section 11362.1 et seq. and California Business and Professions Code section 26000 et seq. and titled the "Adult Use of Marijuana Act").

G. The purpose of the Adult Use of Marijuana Act was to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and

sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana.

H. Pursuant to California Business and Professions Code section 19315(a), nothing in the Medical Cannabis Regulation and Safety Act shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

I. Pursuant to California Business and Professions Code section 26200(a), nothing in the Adult Use of Marijuana Act shall be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to completely prohibit the establishment or operation of one or more types of businesses licensed under the Adult Use of Marijuana Act within the local jurisdiction.

J. This Chapter is enacted, consistent with the Compassionate Use Act of 1996, The Medical Marijuana Program Act, the Medical Cannabis Regulation and Safety Act and the Adult Use of Marijuana Act to protect the public health, safety, and welfare of County of Tuolumne residents in relation to the cultivation, processing, manufacture, distribution, testing, and sale of marijuana.

K. In *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the appellate court held that neither the Compassionate Use Act nor the Medical Marijuana Program Act preempt a local jurisdiction's police power to prohibit the cultivation of marijuana within its jurisdiction.

L. Although banned in Tuolumne County under the principles of permissive zoning, marijuana grows have been operating in the County of Tuolumne for several years and have been the subject of home invasions, armed robberies with shots fired, incidents with juveniles and young adults, and closure and arrests of operators for violation of both state and federal laws, including seizure of illegal firearms. Other public

entities have documented violence related to operation of marijuana grows. Marijuana cultivation attracts crime and associated violence and results in loitering, increased traffic, noise, and a loss of trade for other business located nearby. Marijuana grows have proliferated in the County of Tuolumne resulting in numerous complaints by the public to the Sheriff and members of the Board of Supervisors of prevalent malodorous conditions and safety concerns.

M. The claim of many marijuana cultivations as being designed to assist authorized medical marijuana users fails to consider the fact many cultivations have simply served as avenues for the exportation and distribution of marijuana for illegal use. Further, marijuana cultivations have been shown to involve avoidance of environmental laws and regulations and resulted in the pollution of waters and navigable waterways in the County of Tuolumne and beyond. Marijuana cultivations are harmful to the welfare of the surrounding community and its residents and constitute a public nuisance. All of these problems seem to worsen as the cultivations become larger. Marijuana grows have been found in Tuolumne County to be of extraordinary size, measured in multiple acres or otherwise in quantity far in excess of what might be cultivated for medicinal use.

N. The federal Drug Enforcement Administration reports that various types of marijuana plants under various planting conditions may yield averages of 236 grams, or about ½ pound, to 846 grams, or nearly two pounds. The “street value” of a single cannabis plant is substantial. Pound prices for domestically produced high grade cannabis sold illegally within Northern California can range from \$1,500 to \$3,000. A single marijuana plant can easily yield \$4,000 or more in salable marijuana. One pound can yield 908 marijuana cigarettes.

O. Investigation of cultivations has revealed that some property owners claim not to know of marijuana cultivations on their property or ignore cultivations, all to the prejudice of the people in the surrounding areas, and demonstrating the need for owner responsibility for activities on their properties.

P. Marijuana cultivation in the County of Tuolumne poses an urgent and immediate threat to the public peace, health, and safety. Several marijuana cultivations have recently emerged in the County of Tuolumne which are very visible to the public, and easily accessible by the public, including children and youths. Some of these cultivations contain hidden dangers that threaten severe bodily harm or death to those who attempt to access them. During the current harvest, and each harvest and processing season, there is an immediate

threat of violent crime due to the size, location, and monetary value of these mature marijuana cultivations.

Q. According to the Tuolumne County Sheriff, the U.S. Drug Enforcement Administration, and as shown in other counties, marijuana growers may go from county to county, based on how vigorously each locale may regulate grows, fostering large criminal enterprises and prepared to accept low risk in favor of large economic reward, all to the disadvantage of the health and welfare of the local population.

R. According to the Tuolumne County Sheriff, the U.S. Drug Enforcement Administration, and as shown in other counties, marijuana cultivations create a nuisance and threaten the safety and property of nearby land owners and their families. If marijuana grows are not immediately regulated, large quantities of illegal marijuana will be introduced into the local market in the near term.

S. Marijuana, alone or in combination with food products, may constitute a unique health hazard to the public because, unlike all other ingestibles, marijuana is not presently regulated, inspected, or analyzed for contamination by the state or federal government and likely contains harmful chemicals and contaminants from unapproved sources that could endanger the already poor health of ill persons and the good health of others.

T. Marijuana varies in quality, with significant variations in the concentration of the active ingredient tetrahydrocannabinol (THC). Consumers cannot accurately ascertain the strength of the drug when they buy it. Also, it cannot be assured that customers will be adequately warned that marijuana use impairs the user's fine motor skills and negatively affects the safe operation of motor vehicles.

U. The County of Tuolumne has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, in preserving the peace and quiet of the neighborhoods within the County and in providing access to medical marijuana for ill residents.

V. The adverse effects from marijuana cultivation and distribution may increase as the crop continues to grow, thereby requiring quick action to protect the public.

W. Other counties in California have encountered similar problems from the unregulated marijuana grows and have attempted to regulate them by ordinances after their respective boards of supervisors found such action to be necessary. Investigations have revealed that some growers

have come to this County because it does not have an express regulation to deal with grows.

X. Nothing in this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841 or to license any activity that is prohibited under said Act except as mandated by State law.

Y. Nothing in this Chapter shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of marijuana for nonmedical purposes in excess of that authorized by the Adult Use of Marijuana Act; or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state or federal law. (Ord. 3308 § 1, 2017)

#### **17.67.020 Purpose and intent.**

It is the purpose and intent of this Chapter to prohibit the commercial cultivation, processing, manufacture, distribution, testing, and sale of medical or nonmedical marijuana in order to protect the environment and preserve the public peace, health, safety, and general welfare of the citizens, residents and travelers through the County of Tuolumne. (Ord. 3308 § 2, 2017)

#### **17.67.030 Relationship to other laws.**

This Chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this Chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the Board that this Chapter shall be interpreted to be compatible and consistent with federal, state, and County enactments and in furtherance of the public purposes which those enactments express. It is the intention that the provisions of this Chapter will supersede any other provisions of this Code found to be in conflict.

#### **17.67.040 Definitions.**

For purposes of this Chapter, these words and phrases shall be defined as follows:

- A. "Marijuana" shall have the same definition as 'cannabis' as set forth in California Business and Professions Code section 19300.5(f) as it now reads or as amended.
- B. "Medical marijuana" shall have the same definition as 'medical cannabis' as set forth in California Business and Professions Code section 19300.5(ag) as it now reads or as amended.
- C. "Cultivate" or "cultivation" is the planting, growing, harvesting, drying, processing, or

storage of one or more marijuana plants or any part thereof in any location and shall include the definition as set forth in California Business and Professions Code section 19300.5(l) as it now reads or as amended.

- D. "Indoor" or "indoors" means within a fully enclosed and secure structure that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached. The structure must be secure against unauthorized entry, accessible only through one or more lockable doors, and constructed of solid materials that cannot easily be broken into. Glass or plastic sheeting, commonly used for greenhouses, does not satisfy this requirement. For purposes of this Chapter, cultivation within a detached structure accessory to the dwelling unit shall be considered indoor cultivation if the structure satisfies the requirements of this definition; otherwise, it shall be considered outdoor cultivation.
- E. "Outdoor" or "outdoors" means any location that is not "indoor" or "indoors" as defined in this Chapter.
- F. "Place of worship" means a structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.
- G. "Primary caregiver" shall have the same definition as in California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.
- H. "Qualified patient" shall have the same definition as California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.
- 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 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.
- K. "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.

**17.67.050 Medical marijuana cultivation prohibited.**

- A. A qualified patient or primary caregiver residing on a parcel may cultivate up to twelve (12) marijuana plants outdoors or may cultivate up to twenty-four (24) marijuana plants indoors within one (1) area that is no larger than fifty (50) contiguous square feet per parcel. If two or more qualified patients or primary caregivers reside on a parcel, up to twenty-four (24) marijuana plants may be cultivated outdoors or up to twenty-four (24) marijuana plants may be cultivated indoors within one (1) area that is no larger than fifty (50) contiguous square feet per parcel. The cultivation of medical marijuana not in conformance with this section is prohibited.
- B. The outdoor cultivation of marijuana, in any amount or quantity, within one thousand (1,000) feet of any school, school evacuation site, place of worship, public park, licensed family day care home/day care center, or youth-oriented facility is prohibited. The distance shall be measured in a straight line from the boundary line of the parcel upon which marijuana is cultivated to the boundary line of the parcel upon which the school, school evacuation site, place of worship, public park, licensed family day care home/day care center or youth-oriented facility is located. If the parcel on which the marijuana is being cultivated is twenty (20) acres or greater in size, the distance shall be measured from the fenced area in which the marijuana is cultivated.
- C. The cultivation of marijuana, in any amount or quantity, either indoors or outdoors, upon any premises is hereby prohibited, unless all of the following conditions are satisfied:
  - 1. If the person(s) cultivating marijuana on any parcel is/are not the legal owner(s) of the parcel, such person(s) shall obtain and provide a notarized letter upon request by an enforcing officer from the legal owner(s) consenting to the cultivation of marijuana on the parcel.
  - 2. All marijuana grown outdoors shall be fully enclosed by an opaque fence at least six (6) feet in height. The fence must provide adequate security to prevent unauthorized access. Landscaping, plastic sheeting, or cloth material (tarpaulins) shall not constitute an adequate fence for the purposes of this subsection. Fences greater than seven (7) feet in height may require a building permit. Fences are

subject to all other applicable development standards established by this Code.

- 3. Each outdoor area in which the marijuana is cultivated shall be set back at least twenty-five (25) feet from the boundaries of the parcel upon which the cultivation is located. Any building in which marijuana is cultivated must meet all uniform building code and zoning code requirements.
- 4. The primary caregiver(s) or qualified patient(s) cultivating marijuana must reside on the property where cultivation occurs on a permanent basis.

**17.67.060 Prohibited cultivation of medical marijuana declared a public nuisance.**

The establishment, maintenance, or operation of any prohibited cultivation of medical marijuana, as defined in this Chapter, within the unincorporated areas of the County of Tuolumne is declared to be a public nuisance and each property owner or other responsible person is subject to abatement and administrative penalties as provided for by this Code.

**17.67.065 Commercial marijuana activities requiring a state license prohibited.**

The establishment, maintenance, or operation of any commercial marijuana activity, including, but not limited to, cultivation, processing, manufacture, distribution, testing, and sale, which would require a state license to be issued pursuant to the Medical Cannabis Regulation and Safety Act or the Adult Use of Marijuana Act is prohibited within the unincorporated areas of the County of Tuolumne and declared to be a public nuisance and each property owner or other responsible person is subject to abatement and administrative penalties as provided for by this Code. (Ord. 3308 § 3, 2017)

**17.67.070 Enforcement responsibility.**

Notwithstanding Section 17.72.060, this Chapter shall be enforced as provided for in Chapter 1.10 of this Code by the Code Compliance Officer and the Tuolumne County Sheriff and/or their designees. The Sheriff's primary role shall be to ensure safety and provide technical support. (Ord. 3294 § 1, 2016)