

Fort Bragg - Public Peace, Safety, and Morals

CHAPTER 9.32: MEDICAL MARIJUANA CULTIVATION

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§ 9.32.010 PURPOSE.

The purpose and intent of this Ordinance is to regulate the cultivation of medical marijuana in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City. It is not the intent of this ordinance to condone or legitimize the use of marijuana for non-medical purposes, or to create conflict or inconsistency between this Ordinance and (1) the Federal Controlled Substances Act; (2) the Compassionate Use Act; (3) the Constitutions of the United States or the State of California. (Ord. 880, § 2, passed 01-26-2009)

§ 9.32.015 DEFINITIONS.

For purposes of this chapter, the following words shall have the following meaning, unless the context clearly indicates otherwise.

ABATEMENT. The removal of marijuana plants and improvements that support marijuana cultivation which occupy an area or cubic feet in excess of the area and cubic feet that is allowed under this ordinance.

CULTIVATION. The planting, growing, harvesting, drying, or processing of marijuana plants, or any part thereof.

FULLY ENCLOSED AND SECURE STRUCTURE. A space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors.

INDOORS. Within a fully enclosed and secure structure.

OUTDOOR. Any location within the City of Fort Bragg that is not within a fully enclosed and secure structure.

PARCEL. Property assigned a separate parcel number by the Mendocino County Assessor.

PRIMARY CAREGIVER. The individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as more particularly as set forth in California Health and Safety Code §11362.7(d), as may be amended.

QUALIFIED PATIENT. A person who is entitled to the protections of Section 11362.5 of the California Health and Safety Code and who meets the definition of “qualified patient” as defined in the Health and Safety Code section 11362.7(f).

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MEDICAL MARIJUANA. Marijuana that is grown in accordance with state law.
(Ord. 880, § 2, passed 01-26-2009)

§ 9.32.020 CULTIVATION OF MEDICAL MARIJUANA.

A. Outdoor cultivation: It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the City of Fort Bragg to cause or allow such parcel to be used for the outdoor cultivation of marijuana plants.

B. Indoor cultivation of marijuana restricted to Qualified Patients and Primary Caregivers: It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel in the City of Fort Bragg to cause or allow such parcel to be used for the cultivation of marijuana plants within a fully enclosed and secure structure on the parcel, except as outlined below in Sections 9.32.020(C) and 9.32.020(D).

C. Medical Marijuana for Personal Use. Medical marijuana for personal use shall be cultivated within the City of Fort Bragg in conformance with the following standards:

1. An individual qualified patient shall be allowed to cultivate medical marijuana indoors on the parcel where the qualified patient resides.

2. A primary caregiver shall only cultivate medical marijuana for a qualified patient for whom he/she is the primary caregiver.

3. Medical marijuana cultivation is permitted only on parcels with residential units. Medical marijuana cultivation is permitted only within a residential unit, a garage, or a self-contained outside accessory building that is secured, locked, and fully enclosed. The Cultivation of Medical Marijuana within a residential unit in a multifamily structure shall require administrative review (through a Minor Use Permit process without implementation of public notice procedures) and shall meet specific criteria, as set forth in a) through c) below:

a. Inspection of the cultivation area by a building inspector to confirm that no health or safety concerns are present; and

b. Written permission from the property owner; and

c. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

4. Medical marijuana cultivation is prohibited on parcels adjacent to any school or public park.

5. The medical marijuana cultivation area shall not exceed 50 square feet per residence.

6. Medical marijuana cultivation shall occur only in a fully enclosed and secure structure.

7. Medical marijuana cultivation lighting shall not exceed 1200 watts.

8. The use of gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.

9. Medical marijuana cultivation for sale is prohibited.

10. From a public right of way, there shall be no exterior evidence of medical marijuana cultivation.

11. The qualified patient shall not participate in medical marijuana cultivation in any other location within the City of Fort Bragg.

12. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and these rooms shall not be used for medical marijuana cultivation.

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13. Any medical marijuana cultivation area located within a residence shall not create a humidity or mold problem.

14. The qualified patient shall obtain the written permission of the property owner for the cultivation of medical marijuana.

15. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products or wastes.

D. Medical Marijuana Cultivation In Excess of 50 Square Feet. Any proposed medical marijuana cultivation by an individual qualified patient or primary caregiver that does not meet the cultivation area standard maximum of 50 square feet per residence shall require administrative review (through a Minor Use Permit, without implementation of public notice procedures) and shall meet specific criteria, as set forth in a) through d) below:

- a) Documentation of medical need, such as a physician's recommendation or verification of more than one qualified patient living in the residence; and
- b) Inspection of the cultivation area by a building inspector to confirm that no health or safety concerns are present; and
- c) Written permission from the property owner; and
- d) The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

In addition to the standards 1 through 15 listed in subsection C above, approved medical marijuana cultivation uses that exceed 50 square feet shall conform to the following standards:

1. The cultivation area shall not exceed an additional 50 square feet, for a total of 100 square feet; and
2. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.

E. Public nuisance. It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel within the City of Fort Bragg to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location. A public nuisance may be deemed to exist, if such activity produces:

1. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public;
2. Repeated responses (more than three times in a one year time period) to the parcel from law enforcement officers;
3. Repeated disruption (more than three times in a one year time period) to the free passage of persons or vehicles in the neighborhood;
4. Excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public; or
5. Any other impacts on the neighborhood which are disruptive of normal activity in the area.

(Ord. 880, § 2, passed 01-26-2009)

§ 9.32.030 ENFORCEMENT.

A. The violation of this ordinance is hereby declared to be a public nuisance. Any person

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violating any provision of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00, by imprisonment in the County jail not to exceed six months, or by both a fine and imprisonment.

B. A violation of the ordinance may be abated by the City Attorney by the prosecution of a civil action for injunctive relief and by the abatement procedure set forth in Chapter 6.12 of the Municipal Code.

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C. Abatement procedure. The Code Enforcement Officer and/or the Chief of Police, or his or her designee (hereafter, the "Enforcement Official"), are hereby authorized to order the abatement of any violation of this Chapter by following the abatement procedure as defined in the Municipal Code chapter 6.12. In addition, the Code Enforcement Officer may require the property owner or tenant to personally abate/remove all medical marijuana plants and improvements to the property that exceed the limits set by this ordinance. (Ord. 880, § 2, passed 01-26-2009)

§ 9.32.040 PENALTY FOR VIOLATION.

Cultivation of marijuana on parcels within the City that does not comply with this Chapter is subject to the penalties and enforcement as provided in Chapter 1.12, Chapter 6.12, and Chapter 9.32.

The remedies and penalties provided herein are cumulative, alternative and non-exclusive. 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. (Ord. 880, § 2, passed 01-26-2009)