



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 10/9/2012

Report Type: Staff/Discussion

Title: Policy Discussion on Items Related to Medical Marijuana

Report ID: 2012-00754

Continued from 10-9-12

Location: Citywide

Recommendation: 1) Discuss the policy implications in amending the City Code to modify regulations regarding the location of medical marijuana dispensaries in relation to sensitive uses and prohibit the outdoor cultivation of medical marijuana in residential areas; and 2) pass a motion to direct staff to prepare an ordinance prohibiting the outdoor cultivation of medical marijuana in residential areas.

Contact: Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department

Presenter: Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department

Department: Community Development Dept

Division: Zoning

Dept ID: 21001224

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Map of Current Radius Restrictions on Dispensaries
- 4-Correspondence Cultivation

City Attorney Review

Approved as to Form
GMartinez
10/3/2012 4:35:00 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
9/4/2012 2:33:40 PM

Approvals/Acknowledgements

Department Director or Designee: Max Fernandez - 9/14/2012 2:57:07 PM 9

Description/Analysis

Issue: At the Law and Legislation Committee meeting of July 24, 2012, the Committee discussed modifying regulations found in Title 17 of the City Code (the Zoning Code) regarding the location and relocation of medical marijuana dispensaries in relation to the City's sensitive use criteria. The Committee also discussed potentially modifying Title 8 of the City Code (the Nuisance Code) to address the outdoor cultivation of medical marijuana for personal use in residential areas. The Committee was split, two ayes to two noes, as to whether or not to direct the City Manager to prepare ordinances for review on these items. These two items are being brought forward to the City Council with no recommendation from the Committee. The City Council will need to determine whether or not ordinances amending the City Code should be prepared on these two items. If the City Council directs the City Manager to prepare one or both ordinances, the items will be scheduled for future hearings before the Planning Commission, Law and Legislation Committee, and City Council.

Policy Considerations: The Sacramento City Council found in adopting the location criteria in November 2010 that it was appropriate for a medical marijuana dispensary to be located a minimum distance from sensitive uses. These distance requirements were developed after substantial staff research and public input. Nothing in the operation of the dispensaries has changed to indicate that a dispensary proposing to relocate to a different site should be permitted to locate closer to one of the sensitive uses listed in the ordinance. The only change has been the level of federal enforcement on marijuana dispensaries, causing owners of existing dispensaries to look for new locations.

Currently, the Sacramento City Code does not address the topic of indoor or outdoor cultivation. If an ordinance restricting the outdoor cultivation of medical marijuana in residential areas was adopted, patients or their caregivers would still be permitted to grow medical marijuana inside a structure in residential areas, but the ordinance would also ensure that the growing of the plants would not become an attractive nuisance (anything on a premises that might attract children or entice visitors or trespassers into danger or harm).

Economic Impacts: None.

Environmental Considerations: Because this report concerns general policy and procedure making, California Environmental Quality Act (CEQA) does not apply per Section 15378(b)(3), which states that continuing administrative or maintenance activities, which are not conducted in conjunction with a project subject to CEQA review, are not considered to be "projects" and are therefore exempt from CEQA.

Sustainability Considerations: None.

Commission/Committee Action: On July 24, 2012, the Law and Legislation Committee discussed two issues related to medical marijuana. A motion was made to direct the City Manager to prepare an ordinance to modify and lessen the distance requirement between existing registered medical marijuana dispensaries that may want to relocate. The vote was two in favor and two opposed. On the outdoor cultivation restriction issue, a motion was made to prepare an ordinance to restrict the outdoor cultivation of medical marijuana in residential areas. Again, the vote was two in favor and

two opposed. The committee was unable to make a recommendation on these items; therefore, the items are being brought forward to the City Council with no Committee recommendation.

Rationale for Recommendation: The existing Zoning Code's location criteria for sensitive uses are consistent with the City Council's policy of protecting children from exposure to historically adult oriented uses. In furtherance of this policy, the Law and Legislation Committee did recommend that an ordinance be prepared modifying the criteria expanding the distance of dispensaries from parks and schools from 600 feet to 1000 feet. Staff recommends no other modifications to the sensitive use criteria be made at this time.

With respect to outdoor cultivation of medical marijuana, amending the Sacramento City Code would assist in regulating what has become an attractive nuisance in residential zones and would be beneficial to both the occupants of a residence and adjacent residential neighbors. Staff recommends that the City Council direct the City Manager to prepare an amendment restricting the cultivation of medical marijuana in residential areas to indoors only.

Financial Considerations: None.

Emerging Small Business Development (ESBD): None.

Background Information

Procedural History: The City Council, on the advice of the City Attorney's Office, has adopted amendments to the City's medical marijuana ordinance to extend application deadlines and allow time for the uncertain state of the law to settle before issuing medical marijuana dispensary permits. The administrative hold expires on November 12, 2013 (Ordinance No. 1012-013) when the applicants must file their phase 2 applications. Since November 2011, the City has not processed dispensary applications and no Title 5 dispensary permits have been issued.

In November 2011, the U. S. Attorney's Office in Sacramento and in other districts of California commenced federal enforcement action against owners of properties that leased to dispensary tenants or operated dispensaries themselves. City staff is aware of at least 16 dispensaries within the City limits that have closed down after the U.S. Attorney's Office announced its enforcement action. Staff has also been informed that the property owners of many of the remaining dispensaries have received enforcement letters from the U. S. Attorney demanding that they stop all medical marijuana distribution from their properties or face criminal and/or civil sanctions, including the forfeiture of property. It is unknown whether the remaining dispensaries will close down as a result.

Location of dispensaries in relation to sensitive use criteria

Several of the dispensaries have chosen to attempt to relocate if they receive a letter from the U.S. Attorney at their current location. The location criteria adopted by the City Council in November 2010 requires that a dispensary meet the following:

1. No dispensary shall be established or located within 1,000 feet of any other medical marijuana dispensary.
2. No dispensary shall be established or located within 300 feet of any existing residential zone or residential use.
3. No dispensary shall be established or located within 600 feet of any park, school (public or private K-12), child care center, child care-family day care home (large or small), youth-oriented facility, church/faith congregation, substance abuse center, movie theater/cinema, or tobacco store.

Under the Zoning Code, a registered medical marijuana dispensary on the City's list may not meet these criteria and apply for the required special permit as long as they have operated in the same location since October 26, 2010. However, if the dispensary chooses to relocate for any reason, they must meet the location criteria listed above. Dispensaries contemplating relocation because they received a letter from the U.S. Attorney have indicated that they are having difficulties finding locations in the City that meet the criteria.

At the July 24, 2012 Law and Legislation Committee meeting, the Committee was split on whether or not to amend the location criteria in order to make it easier for an existing dispensary to find a new location if it decided to move. However, the Committee did direct the City Manager to prepare a Zoning Code amendment that would require the

minimum distance between a marijuana dispensary and a park and/or a school to be increased from 600 feet to 1000 feet.

In order to modify the location criteria and allow existing dispensaries to relocate closer to sensitive uses, the City Council would need to amend the Zoning Code. Staff does not recommend that the Council take this action. The existing location criteria ensure that dispensaries are an adequate distance from the sensitive uses listed above. Because nothing has changed since the ordinance was adopted in 2010, it continues to remain appropriate for a dispensary to comply with the Council's original findings and direction that dispensaries be located a sufficient distance from sensitive uses.

Cultivation of medical marijuana in residential areas: Councilmember Sandy Sheedy requested City staff prepare a Law and Legislation Committee report on this item at the September 27, 2011 City Council meeting. Outdoor cultivation of medical marijuana has posed an attractive nuisance in her district as the plant has a distinct and strong odor during the harvesting season and, when visible outside the cultivation site, the homes where it is grown have in some cases been a target for burglaries and crime.

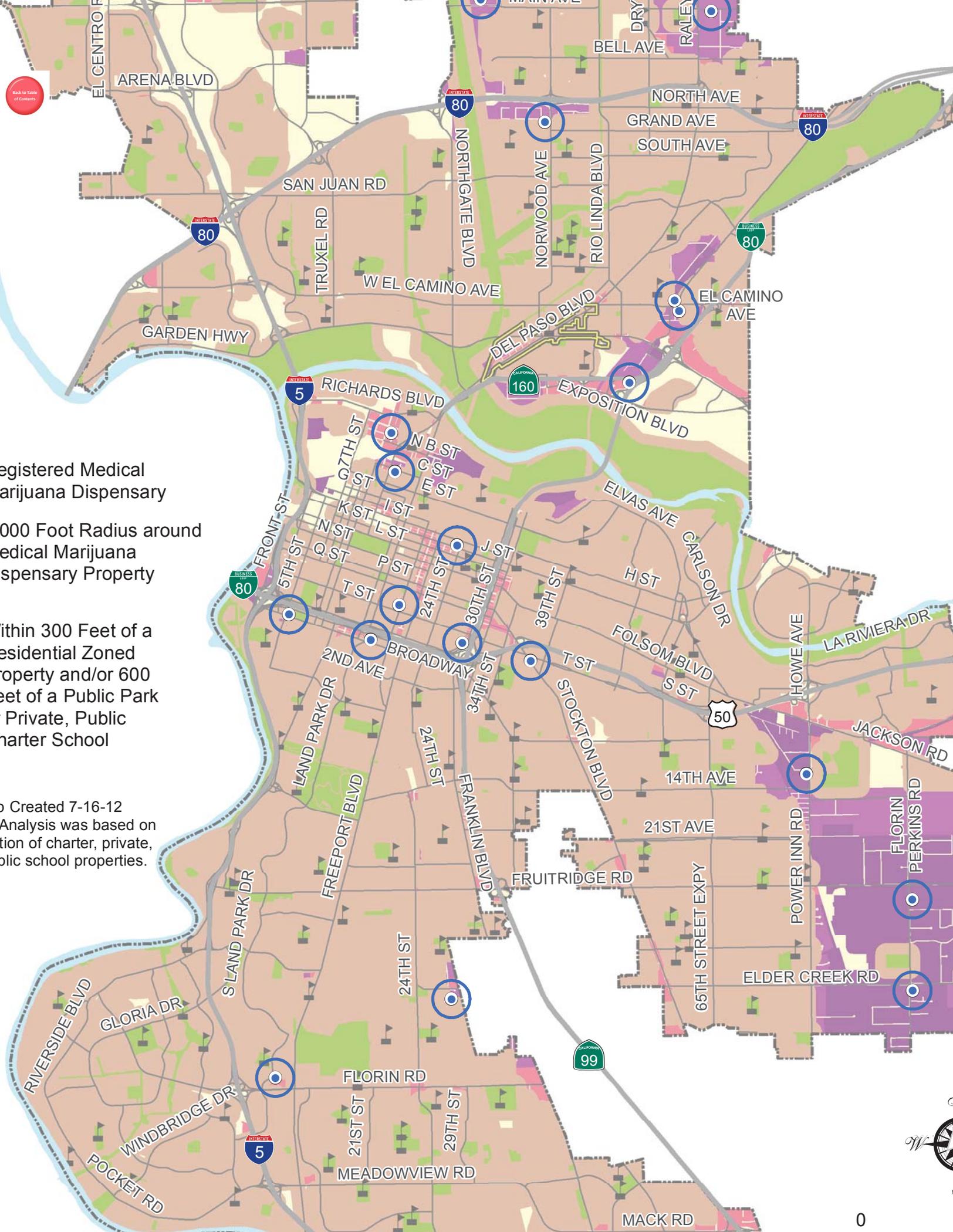
Several jurisdictions in California limit the growing of marijuana to indoor locations including Moraga, San Mateo, Biggs, Elk Grove, Gridley, and Corning. Nevada County provides for outdoor cultivation in limited amounts. The San Mateo code states the following:

7.46.110 (Health, Sanitation & Public Nuisances)

Marijuana Produced for Individual Residential On-site Consumption

- (a) Nothing in this chapter shall be deemed to make unlawful an individual's cultivation of medical marijuana at their own residence for their own use, or for the use by another person regularly residing at such residence, if such cultivation, possession or use is lawful under Health and Safety Code sections 11362.7 through 11362.77.
- (b) Marijuana cultivated and possessed at a private residence must not be visible from adjacent public areas or neighboring properties, and must be secured within structures consisting of at least four walls and a roof with standard locks.

In order to modify the location criteria the City Council would need to amend Title 8, the Nuisance Code, of the Sacramento City Code. If the City Council chooses to amend the Code, staff recommends that the ordinance become effective in January 2013 to give the owners of plants currently growing time to harvest their outdoor medicinal plants this fall. Staff recommends that the City Council direct the City Manager to prepare an amendment restricting the cultivation of medical marijuana in residential areas to indoors only.



Registered Medical Marijuana Dispensary

3000 Foot Radius around Registered Medical Marijuana Dispensary Property

Within 300 Feet of a Residential Zoned Property and/or 600 Feet of a Public Park or Private, Public Charter School

Map Created 7-16-12
 Analysis was based on location of charter, private, public school properties.



September 20, 2012

Council members
Sacramento City Council
915 I Street
Sacramento, CA 95814

Dear Council members

Re: CULTIVATION OF MEDICAL MARIJUANA

While researching whether The City of Sacramento regulated the outside cultivation of medical marijuana, I was informed by the staff of the Sacramento Community Development Department that the City did not, but the City Council, at their meeting on October 9th, would be considering whether or not to direct staff to prepare an ordinance to address this problem.

Let me be the first to say that I totally support the Council directing staff to undertake such a task as soon as possible. Once staff has reported back, I implore the Council to move this item to the top of the agenda so that we may have an enacted ordinance that is as restrictive as possible by January 2013. In order to understand why I feel so strongly about the need for such a City ordinance, one has only to read about my situation. I suspect that other residents of the City have stories similar to mine and I fear that it will get worse unless the outside cultivation of medical marijuana is regulated.

My wife and I are both retired and have owned our home in the South Natomas area (District 3) for the last 33 years and we are, of course, home on most days. We both worked hard to ensure that we would be able to enjoy our home during our retirement, and that was the case, with the exception of a few barking dogs, up until about one year ago when a renter moved in next door, and promptly began growing marijuana in plant pots and smoking marijuana, along with some of his "sick" friends, on his back patio. Due to the closeness of our properties, this has caused us many problems to include suffering the loss of fully enjoying our home, especially the back patio and garden area, increased financial burden, suffering from the beginning of health related issues, and lastly, the possibility of mistakenly falling victims to a criminal attempt to steal his marijuana.

The first major problem is the **STENCH of the marijuana plants**. It is overbearing. It migrates onto our property and surrounds our house, even out to the sidewalk. It smells as if a skunk is constantly spraying. For some reason, the intensity of the smell has increased so much over the last 3-4 months that working or walking around the outside of our home for any length of time during all periods of the day is practically impossible. The pleasures of sitting out on our back patio or working in my backyard rose garden have been taken away because of the over- powering smell. Even while washing my car in the driveway, I am surrounded by this awful smell. In the beginning, I did the neighborly thing and approached the renter and asked if he could curtail his outside marijuana smoking and if he would move his plants pots to the opposite side of his house away from the fence line between his house and mine. When that failed, I had a lawyer send an official letter of complaint. No response.

The second problem is that due to the stench, I have been forced to close my windows and doors and use the air conditioner during periods of the day when I would normally open my windows and patio doors and operate the whole-house fan to cool my home. Operating the whole-house fan has ceased to

be an option because the fan draws the smell into the house which only makes matters worst by contaminating the inside of the house. Consequently, our electrical bill has increased about 10%. This angers me because I have spent years making improvements to my home in order to make it more energy efficient, I.e. installing double pane windows, lighter colored roof, more efficient air conditioner, etc..

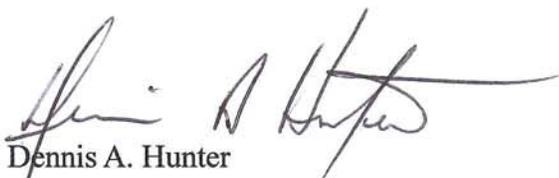
Thirdly, I don't smoke; therefore, I am extremely sensitive to the marijuana smell. In fact, I am beginning to find that if I have to be outside for any length of time when the smell is present, I feel a burning sensation in the upper inside of my nose. Seeking medical attention would be futile, because the cause of the irritation would still be there.

Lastly, accidentally becoming a victim, or having our property damaged during a criminal attempt to steal the marijuana is a real possibility. There have been several newspaper reports of incidences of attempted theft of medical marijuana grows whereby violence has erupted. As I stated earlier, the stench of the marijuana is so strong it reaches out to the sidewalk and I'm sure it's just a matter of time before the criminal element within the community become aware that there is a marijuana grow in the area.

I'm sure that when this matter is discussed in open session by the council, that there will be many who will testify how medical marijuana has helped them and any attempt to regulate the outside growth is an attempt to get around Proposition 215. Let me say that my wife and I have nothing against any individual who chooses this form of treatment for their illness, However, we are keenly aware of how easy it is to obtain a medical marijuana card. My major concern is that I feel that me and my wife's right to enjoy our home is being violated by having to endure this nuisance and will continue to be violated until a city ordinance is passed protecting those rights. I shutter to think what the quality of our lives would be like if our other neighbors obtained medical marijuana cards and began cultivating their own marijuana outdoors. It also concerned that if the outside growth of marijuana is not regulated and enforced, family oriented, closely compacted neighborhoods such as mine could easily become giant "pot" farms.

Again, I urge the Council to give this issue serious consideration and implement a strict City Ordinance regulating the outdoor cultivation of medical marijuana so that our city neighborhoods can be kept free of this public and private nuisance.

Sincerely,



Dennis A. Hunter
2995 Seminole Way
Sacramento, CA 95833
(916) 920-8019
Wenderi@sbcglobal.net

P.S.: For me, the City of Elk Grove's Ordinance 3-2012, Cultivation of Medical Marijuana, is perfect.