Title: Ordinance Amending Chapter 8.132 of the Sacramento City Code Relating to the Cultivation of Cannabis (Passed for Publication March 27, 2018; Published March 30, 2018)

Location: Citywide

Recommendation: Pass a Motion to adopt Ordinance amending Chapter 8.132 of the Sacramento City Code relating to the cultivation of cannabis.

Contact: Joe Devlin, Chief, (916) 808-4772; Zarah Cruz, Program Specialist, (916) 808-8925, Office of Cannabis Policy and Enforcement Department of Finance

Presenter: Joe Devlin, Chief, (916) 808-4772, Office of Cannabis Policy and Enforcement

Attachments:
1-Description/Analysis
2-Ordinance (Redline)
3-Ordinance (Clean)
Description/Analysis

Issue Detail: On August 29, 2017, the City Council adopted Ordinance 2017-0047 (Attachment 2) reducing the amount of cannabis that could be cultivated on residential premises from 400 square feet to six plants. The ordinance also imposed an administrative penalty of $500 per plant in excess of the six allowed per residential premises, regardless of whether they are being grown for medical or recreational purposes.

To date the City has levied a total of $12.8 million in penalties against 45 properties for illegal residential cultivation. Currently, the administrative penalty of $500 per plant does not apply to illegal cultivation of cannabis on commercial property. This ordinance would extend the $500 per plant penalty to any property on which cannabis is being cultivated illegally.

Specifically, the proposed amendment to Chapter 8.132 would do the following:

1. Change the references to “residential premises” to “private residence” in accordance with state law; and

2. Expand the scope of the cultivation regulations to apply to all types of property, including both residential and commercial properties. The proposed amendment would prohibit the cultivation of cannabis anywhere in the city, unless it is done in accordance with cannabis business regulations in Chapter 5.160 or with the six-plant rule for private residences.

3. Impose an administrative penalty of $500 per plant in excess of the number allowed, if any, whether they are grown on a residential property, commercial property, or otherwise.

Policy Considerations: Chapter 8.132 currently allows residential cultivation of up to six plants per residential premises. An administrative penalty of $500 per plant in excess of the six allowed is currently imposed for violations. The proposed ordinance would extend this penalty to any property where cannabis is cultivated.

Economic Impacts: Not applicable

Environmental Considerations: This action is not a project that is subject to CEQA because it does not have the potential for causing a significant effect on the environment. (CEQA Guidelines §15061(b)(3).)

Sustainability: Not applicable
Commission/Committee Action: At the February 27, 2018 meeting, the Law and Legislation Committee approved the proposed ordinance and recommended its submission to the City Council for approval.

Rationale for Recommendation: Illegal cultivation, whether in residential homes or in commercial warehouses, is a key public safety concern and a major nuisance in Sacramento. The ordinance adopted on August 29, 2017, limiting residential grows to six plants and creating a penalty of $500 per plant in excess the limit, has provided the City with an effective means to address the growing problem of illegal residential grows in Sacramento’s residential neighborhoods.

However, issues related to illegal cultivation on commercial properties exist, including fire hazards, substandard building construction, offensive odors, an increase in crime, and health hazards caused by the presence of molds and pesticide residues in the immediate environment. Approval of the proposed amendment will allow the City to impose the same penalties on other forms of illegal cultivation, including those that take place in commercial properties without a conditional use permit and a business operating permit.

Financial Considerations: The fines imposed for violations will provide the City with needed resources to cover the cost of backfilling the overtime positions in the Sacramento Police Department dedicated to enforcing illegal cultivation in the City.

Local Business Enterprise (LBE): None.
ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 5.150.530, SECTION 8.04.100, AND CHAPTER 8.132 OF THE SACRAMENTO CITY CODE RELATING TO THE CULTIVATION OF CANNABIS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 5.150.530 of the Sacramento City Code is amended to read as follows:

5.150.530 Cannabis cultivation permit required.

A. No person shall operate a cannabis cultivation business without a valid cannabis cultivation permit issued pursuant to this article.

B. The types of cannabis cultivation permits issued pursuant to this article include:

1. Class A, for indoor cultivation of less than or equal to 5,000 square feet of total canopy size on one cultivation site.

2. Class B, for indoor cultivation of between 5,001 and 10,000 square feet of total canopy size on one cultivation site.

3. Class C, for indoor cultivation of between 10,001 and 22,000 square feet of total canopy size on one cultivation site.

C. This article does not apply to the cultivation of cannabis in accordance with chapter 8.132 section 8.132.040 (residential cultivation of cannabis).

SECTION 2.

A. Subsection O of section 8.04.100 (nuisances generally) is amended to read as follows:

O. Any condition in violation of Chapter 8.132 (Residential Cultivation of Cannabis); and

B. Except as amended by subsection A above, all provisions of section 8.04.100 remain unchanged and in full effect.
SECTION 3.

Chapter 8.132 of the Sacramento City Code is amended to read as follows:

**Chapter 8.132 RESIDENTIAL CULTIVATION OF CANNABIS**

8.132.010 Purpose and intent.

It is the purpose and intent of the city council to implement state law by regulating the cultivation of cannabis and implement strong and effective regulatory and enforcement systems to protect the health, safety, and welfare of the residents of the city. The regulations in this chapter require that on residential property, cannabis may only be cultivated in secured, enclosed, and ventilated structures, so it is not visible to the public; to prevent odors created by cannabis plants from impacting adjacent properties; and to ensure that cannabis grown does not result in the diversion of cannabis into the illegal market. This chapter prohibits the cultivation of cannabis anywhere in the city, unless performed by a permitted cannabis business in accordance with chapter 5.150 or in a private residence in accordance with the provisions of this chapter. A violation of this prohibition is subject to increased administrative penalties in recognition of the high value of cannabis plants, which can be several thousands of dollars each, and the desired punitive effect required to deter future violations.

The regulations in this chapter do not interfere with any person’s right to obtain and use cannabis as authorized under state law, nor do they criminalize the possession of cannabis. It is neither the intent nor the effect of this chapter to condone or legitimize the illegal use, consumption, or cultivation of cannabis under federal, state, or local law.

8.132.020 Definitions.

As used in this chapter:

“Allowable structure” means a building or other structure that is fully-enclosed and secure; complies with the Sacramento City Building Code and Planning and Development Code; has a complete roof enclosure supported by connecting walls extending from the ground to the roof; has 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. Walls and roofs must be constructed of solid, non-transparent material, that cannot be easily breached, such as two-inch by four-inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting or similar products, regardless of gauge, do not satisfy this requirement.

“City manager” means the city manager or designee.
“Cultivation” means the planting, growing, harvesting, drying, or processing of one or more cannabis plants or any part thereof.

“Cannabis” has the same meaning as set forth in California Business and Professions Code section 26001.

“Cannabis plant” means any mature or immature cannabis plant, or any cannabis seedling.

“Outdoor” means any location that is not within an allowable structure.

“Premises” means a single parcel of property or contiguous parcels under common ownership or control.

“Private residence” means a house, apartment unit, mobile home, or other similar dwelling.

8.132.030 **Outdoor** cultivation of cannabis prohibited.

No person shall owning, leasing, occupying, or having charge or possession of any premises within a residential zone or used for residential purposes, shall cause, allow, or permit the outdoor cultivation of cannabis on the premises, property upon which cannabis is knowingly or unknowingly being cultivated, except in accordance with the following:

A. Chapter 5.150 (cannabis businesses).
B. Section 8.132.040 (residential cultivation of cannabis).

8.132.040 **Indoor** residential cultivation of cannabis.

No person owning, leasing, occupying, or having charge or possession of any premises within a residential zone or used for residential purposes, shall cause, allow, or permit the indoor cultivation of cannabis on the premises within a private residence or upon the grounds of a private residence, unless it is conducted in accordance with the following provisions: this section.

A. All cultivation of cannabis must take place indoors within a single room of an allowable structure, as defined in section 8.132.020.

B. Regardless of how many people reside at the premises in the private residence, no more than six living cannabis plants may be cultivated on the premises within the private residence or upon the grounds of the private residence, pursuant to California Health and Safety Code section 11362.1.
C. All equipment used to cultivate cannabis, such as indoor grow lighting system, irrigation systems, and air filtration systems, must:
   1. Not exceed 3,800 watts;
   2. Be shielded to confine light and glare to the interior of the structure;
   3. Comply with the city building code and fire prevention code.

D. The structure must have ventilation and filtration systems installed that prevent cannabis plant odors from exiting the interior of the structure. The ventilation and filtration system must be approved by the building official and installed prior to commencing cultivation within the allowable structure. All alterations or improvements to any building or structure to accommodate cannabis cultivation must comply with the city building code and fire prevention code.

E. No cannabis, at any stage of growth or cultivation must be concealed from public view at all stages of growth, and there shall be no exterior evidence of cultivation occurring at the premises, may be visible from a public right-of-way or from an adjacent parcel outside of the grounds of the private residence.

F. The cannabis cultivation must not create offensive odors; All cannabis odors must be ventilated, treated, or filtered, such that the odor cannot be detected by a reasonable person of normal sensitivity outside the of the grounds of the private residence.

G. Cannabis cultivation must not create excessive dust, heat, light, noise, smoke, traffic, or other impacts that are disturbing to people of normal sensitivity residing or present on adjacent or nearby residences, properties, or areas open to the public; and must not be hazardous due to the use or storage of materials, processes, products, or wastes.

GH. Cannabis cultivation areas, whether in a detached building or inside a residence, must be kept locked when not occupied.

I. Cannabis cultivation must be conducted in compliance with all other applicable state and local laws, including California Health and Safety Code sections 11362.1 through 11362.3, and the Compassionate Use Act of 1996 (California Health and Safety Code section 11362.5).

8.132.050 Violations.
A. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.

B. Violations of this chapter are declared to be a public nuisance.

C. Any person who violates a provision of this chapter is liable for civil penalties of not less than $250 or more than $25,000 for each day the violation continues.

D. Any person who violates any provision of this chapter is guilty of a misdemeanor.

E. Administrative penalties for violations of this chapter are governed by chapter 1.28, except for the following:

1. Notwithstanding the provisions of section 1.28.010.D.3, the amount of an administrative penalty to be imposed for a violation of sections 8.132.030 or 8.132.040.B is an aggregate amount calculated at $500 per plant that is in excess of the number of plants allowed.

2. For purposes of establishing the amount of the appeal fee in accordance with section 1.28.010.D.4.b, an administrative penalty imposed for a violation of sections 8.132.030 or 8.132.040.B is a Level B violation, regardless of the amount of the penalty.

F. All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy to enforce this chapter.

8.132.060 Abatement of illegal cannabis cultivation.

A. The Sacramento City Council finds that cannabis grown illegally in residences presents a real and imminent threat to the public health, safety, and welfare. The unregulated cultivation of a large number of cannabis plants in a residence on any property substantially increases the chance that violent criminal activity will occur upon the property. Crimes such as home invasion robbery, burglary, assault, and homicide happen substantially more frequently on and around residential properties where cannabis is being illegally grown. In addition, illegal cannabis cultivation often poses electrical and other building code dangers. Cannabis cultivation usually requires elevated electrical consumption that may cause transformers to fail. Unpermitted and substandard construction and electrical work performed to accommodate illegal cannabis cultivation poses a significant fire hazard to neighborhoods. And the hazardous
wastes and solvents resulting from illegal cultivation are a threat to the health and safety of nearby residents.

B. Any cannabis cultivation in violation of this chapter is a public nuisance and is subject to nuisance abatement pursuant to chapter 8.04, including the summary abatement provisions of article VII (commencing with section 8.04.330).

C. Any cannabis cultivation in violation of this chapter is also subject to the California Uniform Controlled Substances Act (Division 10 of the California Health and Safety Code), including the provisions of chapter 8 (commencing with section 11469) relating to the seizure, forfeiture, and destruction of property.
ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

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2. Class B, for indoor cultivation of between 5,001 and 10,000 square feet of total canopy size on one cultivation site.

3. Class C, for indoor cultivation of between 10,001 and 22,000 square feet of total canopy size on one cultivation site.

C. This article does not apply to the cultivation of cannabis in accordance with section 8.132.040 (residential cultivation of cannabis).

SECTION 2.

A. Subsection O of section 8.04.100 (nuisances generally) is amended to read as follows:

O. Any condition in violation of chapter 8.132 (Cultivation of Cannabis); and

B. Except as amended by subsection A above, all provisions of section 8.04.100 remain unchanged and in full effect.

SECTION 3.
Chapter 8.132 of the Sacramento City Code is amended to read as follows:

**Chapter 8.132 CULTIVATION OF CANNABIS**

8.132.010 Purpose and intent.

It is the purpose and intent of the city council to implement state law by regulating the cultivation of cannabis and implement strong and effective regulatory and enforcement systems to protect the health, safety, and welfare of the residents of the city. This chapter prohibits the cultivation of cannabis anywhere in the city, unless performed by a permitted cannabis business in accordance with chapter 5.150 or in a private residence in accordance with the provisions of this chapter. A violation of this prohibition is subject to increased administrative penalties in recognition of the high value of cannabis plants, which can be several thousands of dollars each, and the desired punitive effect required to deter future violations.

The regulations in this chapter do not interfere with any person’s right to obtain and use cannabis as authorized under state law, nor do they criminalize the possession of cannabis. It is neither the intent nor the effect of this chapter to condone or legitimize the illegal use, consumption, or cultivation of cannabis under federal, state, or local law.

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“Cannabis plant” means any mature or immature cannabis plant, or any cannabis seedling.

“Outdoor” means any location that is not within an allowable structure.

“Private residence” means a house, apartment unit, mobile home, or other similar dwelling.

8.132.030 Cultivation of cannabis prohibited.

No person shall own, lease, occupy, or have charge or possession of any property upon which cannabis is knowingly or unknowingly being cultivated, except in accordance with the following:

A. Chapter 5.150 (cannabis businesses).
B. Section 8.132.040 (residential cultivation of cannabis).

8.132.040 Residential cultivation of cannabis.

No person shall cultivate cannabis within a private residence or upon the grounds of a private residence, unless it is conducted in accordance with this section.

A. All cultivation of cannabis must take place indoors within a single room of an allowable structure, as defined in section 8.132.020.

B. Regardless of how many people reside in the private residence, no more than six living cannabis plants may be cultivated within the private residence or upon the grounds of the private residence, pursuant to California Health and Safety Code section 11362.1.

C. All equipment used to cultivate cannabis, such as indoor grow lights, irrigation systems, and air filtration systems, must comply with the city building code and fire prevention code.

D. All alterations or improvements to any building or structure to accommodate cannabis cultivation must comply with the city building code and fire prevention code.

E. No cannabis, at any stage of growth or cultivation, and no evidence of cultivation occurring at the premises, may be visible from outside of the grounds of the private residence.
F. All cannabis odors must be ventilated, treated, or filtered, such that the odor cannot be detected by a reasonable person of normal sensitivity outside the of the grounds of the private residence.

G. Cannabis cultivation must not create excessive dust, heat, light, noise, smoke, traffic, or other impacts that are disturbing to people of normal sensitivity residing or present on adjacent or nearby residences, properties or areas open to the public; and must not be hazardous due to the use or storage of materials, processes, products, or wastes.

H. Cannabis cultivation areas, whether in a detached building or inside a residence, must be kept locked when not occupied.

I. Cannabis cultivation must be conducted in compliance with all other applicable state and local laws, including California Health and Safety Code sections 11362.1 through 11362.3, and the Compassionate Use Act of 1996 (California Health and Safety Code section 11362.5).

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1. Notwithstanding the provisions of section 1.28.010.D.3, the amount of an administrative penalty to be imposed for a violation of sections 8.132.030 or 8.132.040 is an aggregate amount calculated at $500 per plant that is in excess of the number of plants allowed.

2. For purposes of establishing the amount of the appeal fee in accordance with section 1.28.010.D.4.b, an administrative penalty imposed for a violation of
sections 8.132.030 or 8.132.040 is a Level B violation, regardless of the amount of the penalty.

F. All remedies prescribed under this chapter are cumulative and the election of one or more remedies does not bar the city from the pursuit of any other remedy to enforce this chapter.

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B. Any cannabis cultivation in violation of this chapter is a public nuisance and is subject to nuisance abatement pursuant to chapter 8.04, including the summary abatement provisions of article VII (commencing with section 8.04.330).

C. Any cannabis cultivation in violation of this chapter is also subject to the California Uniform Controlled Substances Act (Division 10 of the California Health and Safety Code), including the provisions of chapter 8 (commencing with section 11469) relating to the seizure, forfeiture, and destruction of property.