ORDINANCE NO. 2007-02

AN ORDINANCE OF THE CITY OF WILLITS DELETING CHAPTER 17.86 AND ENACTING A NEW CHAPTER 17.86 ENTITLED “MARIJUANA CULTIVATION” TO THE WILLITS MUNICIPAL CODE

The City Council of the City of Willits hereby amends WMC Ch. 17.86 as follows:

Section 1. Findings


2. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to use it without fear of criminal prosecution under limited, specified circumstances. The act further provides that “nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes.”

3. The State enacted SB 420 in 2004 (codified as Health and Safety Code Sections 11362.7 et seq.) to clarify the scope of the Compassionate Use Act of 1996 and to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420.

4. Pursuant to SB 420 qualified patients and their qualified caregivers are allowed to possess up to six mature or twelve immature marijuana plants and up to eight ounces of dried, processed marijuana without criminal prosecution under state law.

5. Proposition 215 and SB 420 are in conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841. Under the Controlled Substances Act the use, possession and cultivation of marijuana is unlawful and subject to federal prosecution without regard to a claimed medical need.

6. Following the enactment of the Compassionate Use Act of 1996, 47 persons with residence addresses in the City of Willits have been issued medical marijuana identification cards by the Mendocino County Sheriff’s Department. Since that time the number of outdoor marijuana gardens within the City has steadily grown. The City estimates there were approximately 29 outdoor marijuana gardens within the city limits during the 2004 growing season.

7. Marijuana plants as they begin to flower and for a period of two months or more during the growing season (August – October) produce an extremely strong odor, offensive to many people, and detectable far beyond property boundaries. One popular
strain of marijuana is called “Skunk” or “Super Skunk” and has a strong odor that resembles the smell of a skunk.

8. During the 2004 growing season, the City received numerous complaints of odor related to the growing of marijuana in residential neighborhoods. The Mendocino County Air Quality Management District (MCAQMD) reports an accelerating increase in formal air quality complaints associated with the growing of marijuana in residential neighborhoods within inland Mendocino County including the City of Willits.

9. The Drug Enforcement Administration reports that various types of cannabis plants under various planting conditions may yield averages of 236 grams, or about one half pound, to 846 grams, or nearly two pounds. A weighted average results in an average domestic plant yield of 448 grams, or approximately 1 pound per plant.

10. Medical marijuana has been offered for sale at dispensaries operating within inland Mendocino County at prices of up to $350 per ounce. Pound prices for domestically produced high-grade marijuana sold illegally within Northern California can reach $2,000 to $5,000 (National Drug Intelligence Center, California Northern and Eastern Districts Drug Threat Assessment, January, 2001). Accordingly, a single, mature domestic plant may produce marijuana with a market value of more than $2,000. A medical marijuana garden consisting of six mature plants as authorized by SB 420 may have a potential market value in excess of $12,000.

11. Medical marijuana gardens within Mendocino County often exceed the limitations imposed by SB 420 because the District Attorney has established a policy of not prosecuting persons unless they are cultivating more plants than can be grown within a 100 square foot area, or possess more than 2 pounds of dried, processed marijuana. Furthermore, the 100 square foot prosecution threshold allows persons qualified as a “primary caregiver” pursuant to Health and Safety Code Section 11362.7 to grow that quantity of plants for each of their “qualified patients” without fear of local prosecution. Accordingly, in either the case of multiple qualified patients who are in possession or control of the same parcel of property, or in the case of caregiver growing, literally hundreds of marijuana plants may be grown at the same location within Mendocino County without prosecution under state law.

12. The strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery and armed robbery.

13. There have been several marijuana cultivation related incidents, some including acts of violence, in the City of Willits resulting in police response. In October of 2002 the Willits Police Department responded to a home invasion robbery on Franklin Street where the intended target was an outside marijuana garden. The incident resulted in a near fatal shooting. In October of 2004 another home invasion robbery occurred where suspects entered a home where home-grown medical marijuana was kept. The victim in this case contended that he had been robbed at gun point of his medical...
marijuana. The Willits Police Department has also received numerous reports of thefts of outside grown marijuana from neighborhoods within the City.

14. The City of Willits is a relatively small city with a population of approximately 5000 persons. It has one full time planner and one building inspector. It has limited resources available to engage in extensive regulation of marijuana cultivation.

15. Pursuant to the authority of California Government Code Section 38771, the City Council may declare what constitutes a nuisance. Due to the complaints of odor and the public safety concerns described herein, the City Council finds that the outdoor cultivation of marijuana within the City limits constitutes a public nuisance.

16. The right of qualified patients and their primary caregivers under state law to cultivate marijuana plants for medical purposes does not confer upon them the right to create or maintain a public nuisance. By declaring outdoor marijuana growing within the City to be unlawful the City anticipates a significant reduction in the complaints of odor and the risks of crime described herein.

17. It is the City Council’s intention that nothing in this ordinance shall conflict with federal law as contained in the federal Controlled Substances Act, nor to otherwise permit any activity that is prohibited under that Act. It is also the City Council’s intention that nothing in this ordinance 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 non-medical purposes, or (3) allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal.

18. The City Council finds that cultivation of marijuana in greenhouse type structures, sheds and accessory buildings that are not subject to the requirements of the Uniform Building Code, which typically are not adequately sealed and which are often constructed with thin and flimsy plastic walls, are not secure and do not effectively contain the odors emanating from cultivation.

19. The City Council finds that the cultivation of more than six marijuana plants at any location within the city limits will likely result in an unreasonable risk of crime and will create offensive odors to persons living nearby notwithstanding the limitations on cultivation that are imposed within this chapter. The City Council further finds that the indoor cultivation of more than six plants at any single location may require excessive use of electricity which may create an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.

Section 2. Definitions. As used herein the following definitions shall apply:
1. “Cultivation” means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

2. “Outdoor” means any location within the City of Willits that is not within a “fully enclosed and secure structure” as defined herein.

3. “Fully enclosed and secure structure” or “structure(s)” as used within this chapter means no more than one space within a residential unit which is subject to the requirements of the Uniform Building Code; which has a complete roof enclosure supported by connecting walls extending from the ground to the roof; which is secure against unauthorized entry, and which is accessible only through one or more lockable doors; and which is attached to a permanent foundation. The exterior walls shall have a minimum thickness of four (4) inches and shall be sheathed with a minimum one-half inch nominal thickness boards, fiber board, composite wood panels or other material approved by code for residential building construction. The structure shall be adequately sealed to significantly reduce the emission of odor emanating from cultivation. The term “Fully enclosed and secure structure” shall not include any building, greenhouse, shed or accessory building which does not meet the requirements of this section.

4. “Primary caregiver” means a “primary caregiver” as defined in Health and Safety Code Section 11362.7(d).

5. “Qualified patient” means a “qualified patient” as defined in Health and Safety Code Section 11362.7(f).

6. “Parcel” means property assigned a separate parcel number by the Mendocino County Assessor.

Section 3. Outdoor Cultivation of Marijuana. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any premises within any zone of the City of Willits to cause or allow such premises to be used for the outdoor cultivation of marijuana plants as described herein or to cultivate or allow the cultivation of marijuana plants in excess of the limitations imposed within Section 4.

Nothing in this section shall be construed as a limitation on the City’s authority to abate any nuisance which may exist from the planting, growing, harvesting, drying, processing or storage of marijuana plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

Section 4. Limitation on Number of Plants.

The cultivation of more than six marijuana plants within any fully enclosed and secure structure within the City limits is a public nuisance. This limitation shall be
imposed regardless of the number of qualified patients residing at such location. Further, this limitation shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the caregivers for qualified patients.

Section 5. Enforcement. The violation of this ordinance may be abated by the City by the prosecution of a civil action including an action for injunctive relief. The remedy of injunctive relief may take the form of a court order, enforceable through civil contempt proceedings, prohibiting the maintenance of the violation of this ordinance or requiring compliance with other terms.

The City may also seek enforcement by abatement as a public nuisance. Such proceedings may include seeking warrants from the Mendocino County Superior Court to inspect property and for nuisance abatement by eradicating marijuana cultivated in violation of this ordinance. Nuisance abatement may, at the City’s election, be commenced in accordance with the procedures set forth within Chapter 1.12 et seq. of the Willits Municipal Code (WMC).

In any litigation concerning the enforcement of this ordinance the prevailing party shall be entitled to recover its reasonable attorney fees and costs of suit.

Section 6. Compliance with CEQA

The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions the following categorical exemptions apply, Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment), and 15321 (action by agency for enforcement of a law, general rule, standard, or objective administered or adopted by the agency, including by direct referral to the City Attorney as appropriate for judicial enforcement).

Section 7. Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.
Section 8. Effective Date

The City Clerk will publish this Ordinance as required by law. This Ordinance shall take effect thirty (30) days after passage. The foregoing Ordinance was introduced and read by title only at a regular meeting of the Willits City Council held on the April 25, 2007, and adopted on the 23rd day of May, 2007, by the following vote:

AYES: Kanne, Stranske, Oslund, Madrigal, Jorgensen
NOES: None
ABSENT: None
ABSTENTIONS: None

ATTEST:

Tami Jorgensen, Mayor

Marilyn Harden, City Clerk

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