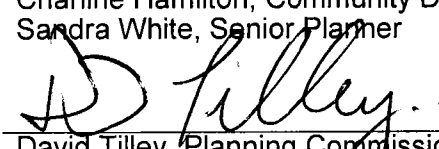


MEETING DATE: December 5, 2013		ITEM # 1
SUBJECT: PUBLIC HEARING AND CONSIDERATION OF RESOLUTION 13-8PC RECOMMENDING CITY COUNCIL ADOPTION OF ORDINANCE 14-1 REGULATING THE OUTDOOR CULTIVATION OF MEDICAL MARIJUANA		
INITIATED OR REQUESTED BY:		REPORT COORDINATED OR PREPARED BY:
<input checked="" type="checkbox"/> Council <input type="checkbox"/> Staff <input type="checkbox"/> Other		Charline Hamilton, Community Development Director Sandra White, Senior Planner  David Tilley, Planning Commission Secretary Community Development Department
ATTACHMENT	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Information <input type="checkbox"/> Direction <input checked="" type="checkbox"/> Action

OBJECTIVE

The objective of this item is to present draft Ordinance 14-1 regulating the outdoor cultivation of medical marijuana for Planning Commission's recommendation to the City Council.

RECOMMENDED ACTION

It is respectfully recommended that the Planning Commission:

1. Conduct the public hearing; and,
2. Approve Resolution 13-8PC, recommending that the City Council adopt Ordinance 14-1.

BACKGROUND

After considerable monitoring of legal actions and public meetings between 2009 and 2011, the City Council adopted Ordinance 11-2 on January 19, 2011, which amended the Zoning Ordinance prohibiting medical marijuana dispensaries as a land use in the City. The current ordinance prohibits cultivation associated with a dispensary (three or more persons) but does not regulate cultivation for personal use. Over the last two years, staff has experienced a considerable rise in the number of complaints and incidents associated with the cultivation of medical marijuana.

The Compassionate Use Act (CUA) was adopted by voter initiative in 1996 (Proposition 215). It permits patients and their primary caregivers to possess and cultivate marijuana for medical purposes where medical use has been recommended by a physician. Although the initial goal of the CUA was to encourage cooperation between state and federal officials, the federal Drug Enforcement Agency (DEA) has enforced the Controlled Substances Act (CSA) against dispensary operators and others who help supply patients in California with medical marijuana. CSA states that the manufacture (including cultivation), distribution, and dispensing of marijuana are illegal for any purposes, including medical use.

The State of California also adopted additional legislation in 2004 (Senate Bill 420) known as the Medical Marijuana Program Act (MMP). The MMP deals with many issues that were not addressed in the CUA. Most importantly for this discussion, it allows cities to consider rules consistent with the CUA including parameters for cultivation of medical marijuana.

ANALYSIS

The majority of complaints and incidents received by staff have been related to the outdoor cultivation of medical marijuana. The outdoor cultivation of medical marijuana is posing a nuisance in the City as the plant has a distinct strong odor that permeates surrounding properties and in some cases, where easily visible, the plants and/or premises have become a target for burglaries and crime. In other cases, neighbors have complained of being deprived the use and enjoyment of their backyards because the odor of adjacent properties growing marijuana has been too overwhelming.

The following are statistics obtained from West Sacramento Police Department, Yolo Narcotic Enforcement Team, and Community Development Department Code Enforcement Division:

West Sacramento Police Department	2008	2009	2010	2011	2012	2013¹
Narcotics Complaints/Marijuana Related Complaints	168/22	266/20	298/33	280/60	260/112	272/92
Cultivation Related Calls for Service	6	7	10	13	25	27
Cultivation Crime Related Calls for Service	0	2	3	3	5	5

¹ January 1 through October 27

Code Enforcement	2012	2013²
Marijuana Cultivation Related Complaint ¹	4	4

¹ Only 4 cases each year handled by Code Enforcement. Many more cases were referred to YONET immediately due to perceived criminal activity

² January 1 through October 27

Yolo Narcotic Enforcement Team (YONET)	2012	2013¹
Pounds of Marijuana Seized in West Sacramento	520	216
Number of Plants Seized in West Sacramento	72	72

¹ January 1 through October 27

The total number of narcotic complaints shows a peak in 2010, decreasing slightly thereafter, and then a slight rise this last year. However, the number of those complaints that specifically identify marijuana has doubled every year to 2012, with 2013 slightly below. Approximately 33-43% of the narcotics complaints are associated with marijuana. A similar trend is noted with the cultivation of marijuana. The calls for service and crimes (plant theft, residential burglaries) related to cultivation of marijuana have doubled since 2010.

As presented at the November 14, 2012 Council meeting, local jurisdictions in California are applying a range of regulations on the cultivation of medical marijuana. The following are the three general alternatives of regulation:

1. Outright prohibition of any cultivation
2. Limited prohibition on cultivation; typically outdoor
3. Regulation of both indoor and outdoor cultivation

Attachment 2 contains summaries of relevant past and present litigation. All five of the cases provide some assurance to the city that it can reasonably regulate medical marijuana within its borders through its land use authority. Based on the nuisance experiences in the City and litigation outcomes, the City Council directed staff to prepare a draft ordinance that prohibits outdoor cultivation and provides for permits and standards for indoor cultivation. The following summarizes the major components of draft Ordinance 14-1:

- Permit to cultivate processed through Community Development (similar to Business License process)
- Cultivator must reside on the property
- Restrict cultivation to an enclosed structure
- No cultivation allowed in nonresidential zones
- No cultivation within 600 feet of schools and child care centers
- Limit cultivation area to 120 square feet per property
- Detached cultivation structure must be setback from property lines at least 10 feet and be constructed of solid walls (non-transparent) and roof
- Other health and safety regulations such as maximum grow light wattage, required ventilation/filtration systems, prohibition on use of CO² or other gases, etc.

Strategic Plan Integration

The existing moratorium has allowed the City to continue to provide vibrant neighborhoods while limiting potential incompatible land uses that may affect public health and welfare.

Alternatives

The following alternatives are available to the Planning Commission:

1. Approve Resolution 13-8PC, recommending the adoption of Ordinance 14-1 as presented by staff;
2. The Planning Commission may choose recommend changes to the ordinance (changes need to be articulated); or,
3. The Planning Commission may choose not to conduct the public hearing at this time but at a later date.

Staff is prepared to implement Alternatives 1 and 2. Staff does not recommend Alternative 3 as the City Council has requested the draft regulations be brought to them in January 2014.

Coordination and Review

The preparation of this report has been coordinated with the Police Department, the City Manager's Office, and the Office of the City Attorney.

Budget/Cost Impact

To date, the budgetary impacts of this item are limited to staff's and city attorney's research and preparation of this agenda report.

ATTACHMENT(S)

1. Draft Ordinance 14-1
2. Litigation Summaries
3. Resolution 13-8PC

ORDINANCE 14-1

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST SACRAMENTO ADDING
CHAPTER 17.26 OF THE WEST SACRAMENTO MUNICIPAL CODE REGULATING
THE CULTIVATION OF MEDICAL MARIJUANA**

Recitals

WHEREAS, Section 17.62 of the West Sacramento Municipal Code provides for amendments to the West Sacramento Municipal Code by the City Council; and

WHEREAS, The California State Supreme Court, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729 held that cities, exercising their traditional and constitutional police powers, may prohibit medical marijuana dispensaries within their borders if they so choose; and,

WHEREAS, The Court of Appeal in *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, held that neither the Compassionate Use Act (CUA) nor the Medical Marijuana Program Act grants anyone “an unfettered right to cultivate marijuana for medical purposes” and that “restrictions on such cultivation do not conflict with the CUA;” and,

WHEREAS, the City desires to establish reasonable regulations under which marijuana is cultivated for medicinal purposes in any location or premise, in order to protect the public health, safety, and welfare; and,

WHEREAS, the land use regulation of medical marijuana cultivation is proper and necessary to avoid the risks of criminal activity, and degradation of the natural environmental, including but not limited to odors and fire hazards that may result from unregulated cultivation of marijuana; and,

WHEREAS, the City Council hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (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 City Council further finds that the Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment). The Community Development Director is hereby directed to file a Notice of Exemption; and

WHEREAS, the Planning Commission conducted a public hearing and took action to recommend the City Council approve the Ordinance, adding Chapter 17.26 to the West Sacramento Municipal Code regulating the cultivation of medical marijuana; and

WHEREAS, a public notice describing the proposed addition to the West Sacramento Municipal Code relative to the cultivation of medical marijuana was published in the News Ledger, a newspaper of general circulation, in accordance with section 6061 of the California Government Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST SACRAMENTO DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Authority. This ordinance is enacted pursuant to the authority granted to cities by State law.

Section 2. Purpose and Findings.

A. In addition to the recitals described above, the City Council of the City of West Sacramento hereby finds and declares the following:

1. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996").
2. The intent of proposition was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."
3. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes.
4. Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420.
5. The federal Controlled Substances Act, 21 U.S.C. §§ 801 et seq., classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession marijuana for medical purposes.
6. Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the attorney general's August 2008 Guidelines for the Security and Non-Diversion of marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provides comprehensive civil regulation of premises used for marijuana cultivation. The unregulated cultivation of marijuana in the City of West Sacramento can adversely affect the health, safety, and well-being of the City and its residents. Comprehensive civil regulation of premises used for marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.
7. Cultivation of any amount of marijuana at locations or premises within one thousand feet of schools, child care centers, or parks creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore,

cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

8. As recognized by the Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.
9. It is the purpose and intent of this chapter to require that medical marijuana be cultivated only in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of medical marijuana pursuant to the Compassionate Use Act (Health and Safety Code Section 11362.5) or the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et seq.) Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana for nonmedical purposes in violation of State or Federal law.
10. It is the purpose and intent of this chapter to implement state law by providing a means for regulating the cultivation of medical marijuana in a manner that is consistent with state law and which balances the needs of medical patients and their caregivers and promotes the health, safety, and welfare of the residents and businesses in the City of West Sacramento. This chapter is intended to be consistent with Proposition 215 and Senate Bill 420, and towards that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by state law. Rather, the intent and purpose of this chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, or cooperatively cultivated in any location or premises, in order to protect the public health, safety, and welfare in the City of West Sacramento.
11. The limited right of qualified patients and their primary caregivers under state law to cultivate marijuana plants for medical purposes does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this chapter, the City of West Sacramento will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the City.
12. Nothing in this ordinance shall be construed to allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal under state or federal law. No provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the Yolo County District Attorney, the Attorney General of the State of California, or the United States of America.

Section 2. Enactment. Chapter 17.26 to the City of West Sacramento Municipal Code is hereby added to read as follows:

Chapter 17.26 MARIJUANA CULTIVATION

17.26.010 Definitions.

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply.

- A. "Bedroom" means a room inside a residential building being utilized by any person for sleeping purposes.
- B. "Child care center" means any licensed child care center, daycare center, or any preschool. This definition does not include family day care homes.
- C. "Cultivation" means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof for medical use consistent with the Compassionate Use Act (Section 11362.5 of the Health and Safety Code) or the Medical Marijuana Program Act (Section 11362.7 et seq. of the Health and Safety Code).
- D. "Detached, fully enclosed and secure structure" means a building completely detached from a residence that complies with the West Sacramento building code and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, 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 (1) or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch (2" x 4") or thicker studs overlaid with three-eighths (3/8") inch or thicker plywood or the equivalent. Exterior walls must be constructed with nontransparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
- E. "Indoors" means within a fully enclosed and secure building.
- F. "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Sections 66410 et seq. of the Government Code).
- G. "Outdoor" means any location within the City that is not within a fully enclosed and secure structure.
- H. "Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this chapter.
- I. "Primary caregiver" means a "primary caregiver" as defined in Section 11362.7(d) of the Health and Safety Code.
- J. "Qualified patient" means a "qualified patient" as defined in Section 11362.7(f) of the Health and Safety Code.
- K. "Rear yard" means the rear open space portion of any premises, whether fenced or unfenced.
- L. "Residential structure" means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking and sanitation on a premises or legal parcel located within a residential zoning district.

- M. "School" means an institution of learning for persons under twenty-one (21) years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.
- N. "Solid fence" means a fence constructed of substantial material (such as wood) that prevents viewing the contents from one side to the other.

17.26.020 Cultivation of medical marijuana.

The following regulations shall apply to the cultivation of medical marijuana within the City.

- A. No person other than a qualified patient or primary caregiver may engage in cultivation of medical marijuana. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana except as provided for in this chapter.
- B. Residency Requirement. Either a qualified patient or primary caregiver shall reside full-time on the premises where the marijuana cultivation occurs.
- C. Outdoor Cultivation. It is unlawful and a public nuisance for any person to cause, or allow, or participate in the outdoor cultivation of marijuana plants within any zoning district in the City.
- D. Cultivation in Nonresidential Zones. Cultivation of medical marijuana is prohibited in all zones within the City except the following residential zones: R-1-A and R-1-B (Residential One Family), R-2 (Residential One Family or Multi-family), R-3 (Multi-family Residential), RRA (Rural Residential), RE (Rural Estate), and A-1 (Agricultural General). Cultivation of medical marijuana is permitted in residential zones only if authorized by a permit issued pursuant to this Chapter.
- E. Proximity to Schools and Child Care Centers. It is unlawful and a public nuisance for a Primary Caregiver to cultivate medical marijuana on any legal parcel or premises within six hundred (600) feet of any school or child care center. The six hundred (600) feet shall be measured from the closest property line of the school or the child care center.
- F. Cultivation Area. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cultivate medical marijuana, within a detached structure greater than one hundred twenty (120) square feet in size.
- G. Indoor Cultivation in Residential Zones. It is unlawful and a public nuisance for any person to cultivate medical marijuana inside any residential structure or building without a medical marijuana cultivation permit issued by the Community Development Director or designee, as provided herein. The indoor cultivation of medical marijuana in a residential zone shall only be conducted within a detached, fully enclosed and secure structure no greater than one hundred twenty (120) square feet in size or within a residential structure conforming to the following minimum standards:
 - 1. Any detached structure, regardless of square footage, constructed, altered or used for the cultivation of medical marijuana must have a valid building permit duly issued by the Building Official. The Building Official shall consult with the Director of Community Development, or designee, in consideration of any building permit application seeking a building permit for the construction or alteration of any structure to be used for medical marijuana cultivation.

2. Indoor grow lights shall not exceed one thousand two hundred (1,200) watts each and shall comply with the California Building, Electrical and Fire Codes as adopted by the City. Gas products (including, without limitation, CO₂, butane, propane, and natural gas), or generators shall not be used within any detached structure used for the cultivation of medical marijuana.
3. Any detached, fully enclosed and secure structure or residential structure used for the cultivation of medical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with the California Building Code Section 402.3, Mechanical Ventilation, as now existing or hereafter amended. The ventilation and filtration system must be approved by the Building Official and installed prior to commencing cultivation within the detached, fully enclosed and secure structure or residential structure.
4. A detached, fully enclosed and secure structure used for the cultivation of marijuana shall be located in the rear yard area of a legal parcel or premises, maintain a minimum ten (10) foot setback from any property line, and the area surrounding the structure must be enclosed by a solid fence at least six (6) feet in height.
5. Adequate mechanical or electronic security systems approved by the Building Official must be installed in and around the detached structure or the residential structure prior to the commencement of cultivation.
6. Marijuana cultivation occurring within a residence shall be in an area no larger than one hundred and twenty (120) square feet, regardless of how many qualified patients or primary caregivers are residing at the premises.
7. Cultivation of marijuana shall not take place in the kitchen, bathrooms, or bedrooms of any building.
8. Cultivation of marijuana shall not take place on any carpeted surface.
9. Medical marijuana cultivation for sale is prohibited.
10. Medical marijuana cultivation may not occur in both a detached structure and inside a residence on the same parcel.
11. Medical marijuana cultivation areas, whether in a detached building or inside a residence, shall not be accessible to persons under eighteen (18) years of age.

17.26.030 Cultivation permit.

- A. Prior to commencing any medical marijuana cultivation, the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where medical marijuana cultivation is proposed to occur must obtain a medical marijuana cultivation permit from the Community Development Director, or designee. The following information will be required with the initial permit application and subsequent permit extensions:
 1. A notarized signature from the owner of the property consenting to the cultivation of marijuana at the premises on a form acceptable to the City.
 2. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where medical marijuana will be cultivated.

3. The name of each qualified patient or primary caregiver who participates in the medical marijuana cultivation.
 4. A copy of a current valid medical recommendation or county-issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver.
 5. The physical site address of where the marijuana will be cultivated.
 6. A signed consent form, acceptable to the City, authorizing City staff, including the Police Department authority, to conduct an inspection of the detached, fully enclosed and secure structure or area of the residence used for the cultivation of marijuana upon twenty-four (24) hours' notice.
- B. The initial permit shall be valid for no more than two (2) years and may be extended in increments of two (2) years.
- C. To the extent permitted by law, any personal or medical information submitted with a medical marijuana cultivation permit application or permit extension shall be kept confidential and shall only be used for purposes of administering this chapter.
- D. The Community Development Director, which includes his or her designee for purposes of this chapter, may, in his or her discretion, deny any application for a medical marijuana cultivation permit, or extension thereof, where he or she finds, based on articulated facts, that the issuance of such permit, or extension thereof, would be detrimental to the public health, safety, or welfare. The Community Development Director shall deny an application for a medical marijuana cultivation permit, or extension thereof that does not demonstrate satisfaction of the minimum requirements of this chapter. The denial of any permit application, or permit extension, shall be subject to appeal pursuant to Chapter 1.08 of the Municipal Code.
- E. The City Council may establish a fee or fees required to be paid upon filing of an application for permit(s) as provided by this chapter, which fees shall not exceed the reasonable cost of administering this chapter.

17.26.040 Enforcement.

Violations of this chapter shall constitute a public nuisance and may be enforced pursuant to the provisions of Chapter 19 of the Municipal Code.

17.26.050 Appeals.

Any person aggrieved by any of the requirements of this section may appeal in so far as such appeals are allowed pursuant to Chapter 1.08 of the Municipal Code.

Section 3. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this chapter and the ordinance to which it is a part, or any part thereof is held for any reason to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, the remaining section, subsections, paragraphs, sentences, clauses, and phrases shall not be affected thereby. The City Council hereby declares that it would have adopted this chapter and the ordinance to which it is a part regardless of the fact that one or more sections, subsections, paragraphs, sentences, clauses, or phrases may be determined to be unconstitutional, invalid, or ineffective.

Section 4. Effective Date and Publication. This Ordinance shall take effect 30 days after its adoption, and pursuant to Resolution 99-46, published in summary format prior to

adoption and within 15 days after adoption in a newspaper of general circulation published and circulated within the City of West Sacramento.

Section 5. CEQA. A Categorical Exemption has been prepared for this ordinance in compliance with the provisions of the California Environmental Quality Act.

Section 6. Publication After Adoption. Within fifteen (15) days of its passage, this Ordinance shall be published once in the News Ledger, a newspaper of general circulation within the City.

PASSED, APPROVED AND ADOPTED by the City Council of the City of West Sacramento on this ____ day of _____, 2014, by the following roll call vote:

AYES:
NOES:
ABSENT:

Christopher L. Cabaldon, Mayor

ATTEST:

Approved as to form:

Kryss Rankin, City Clerk

Jeffrey Mitchell, City Attorney

CODIFY XX UNCODIFY ____

Court of Appeal Upholds Ordinance Regulating Medical Marijuana Collectives

The trial court enjoined enforcement of a City of Los Angeles ordinance that regulates the number and geographic distribution of medical marijuana collectives. The court of appeal reversed the trial court's order finding that the collectives and their members who challenged the ordinance failed to demonstrate a likelihood of prevailing on the merits of their challenge to the ordinance. (*420 Caregivers, LLC v. City of Los Angeles* (--- P.3d ----, Cal., September 25, 2013).)

Seizure and Destruction of Marijuana Was Lawful

Three individuals with physician recommendations for medical marijuana challenged a county's seizure and destruction of over 1,500 pounds of marijuana. The court of appeal held that the seizure was supported by probable cause, the county lawfully destroyed the seized marijuana, and the individuals failed to bring forth evidence of lawful possession. (*Littlefield v. County of Humboldt* (--- Cal.Rptr.3d ----, Cal.App. 1 Dist., June 28, 2013))

California Supreme Court: Cities Can Ban Facilities That Distribute Medical Marijuana

The California Supreme Court recently resolved the issue of whether a city could enact zoning ordinances prohibiting and banning medical marijuana dispensaries. The Supreme Court held that state medical marijuana laws do not preempt a local ban on medical marijuana dispensaries. (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (--- P.3d ---, 2013 WL 1859214 (Cal.)).) The Court concluded that cities, exercising their traditional and constitutional police powers, may prohibit medical marijuana dispensaries within their borders if they so choose.

Court Upholds Zoning Ordinance That Restricts Location of Medical Marijuana Collectives and Cooperatives

An owner of a medical marijuana collective challenged a county zoning ordinance that restricts the location of medical marijuana collectives and cooperatives to commercial and manufacturing zones. The court of appeals rejected the owner's challenge to the zoning ordinance finding that the ordinance represents a reasonable exercise of the power of the county to enact local legislation and that the owner failed to show that the ordinance conflicts with state law or constitutional principle. (*County of Tulare v. Nunes* (--- Cal.Rptr.3d ---, Cal.App 5 Dist., April 29, 2013).)

County May Regulate Cultivation of Medical Marijuana

A rural county passed an ordinance to regulate the cultivation of medical marijuana. A group of individuals who are "qualified patients" challenged the constitutionality of the ordinance. The court of appeal held that the ordinance does not conflict with the Compassion Use Act ("CUA") or the Medical Marijuana Program ("MMP") because neither statute gives anyone the unfettered right to cultivate marijuana for medical use. (*Browne v. County of Tehama* (--- Cal.Rptr.3d ---, Cal.App. 3 Dist., February 6, 2013).)

RESOLUTION 13-8PC

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF WEST SACRAMENTO RECOMMENDING APPROVAL OF ORDINANCE 14-1
ADDING CHAPTER 17.26 TO THE WEST SACRAMENTO MUNICIPAL CODE
REGULATING THE CULTIVATION OF MEDICAL MARIJUANA**

WHEREAS, Section 17.62 of the West Sacramento Municipal Code provides for amendments to the West Sacramento Municipal Code by the City Council; and

WHEREAS, The California State Supreme Court, in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729 held that cities, exercising their traditional and constitutional police powers, may prohibit medical marijuana dispensaries within their borders if they so choose; and,

WHEREAS, The Court of Appeal in *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, held that neither the Compassionate Use Act (CUA) nor the Medical Marijuana Program Act grants anyone "an unfettered right to cultivate marijuana for medical purposes" and that "restrictions on such cultivation do not conflict with the CUA;" and,

WHEREAS, the City desires to establish reasonable regulations under which marijuana is cultivated for medicinal purposes in any location or premise, in order to protect the public health, safety, and welfare; and,

WHEREAS, the land use regulation of medical marijuana cultivation is proper and necessary to avoid the risks of criminal activity, and degradation of the natural environmental, including but not limited to odors and fire hazards that may result from unregulated cultivation of marijuana; and,

WHEREAS, the Planning Commission finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (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 City Council further finds that the Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment). and

WHEREAS, the Planning Commission conducted a public hearing and took action to recommend that the City Council approve the Ordinance, adding Chapter 17.26 to the West Sacramento Municipal Code regulating the cultivation of medical marijuana; and

WHEREAS, a public notice describing the proposed addition to the West Sacramento Municipal Code relative to the cultivation of medical marijuana was published in the News Ledger, a newspaper of general circulation, in accordance with section 6061 of the California Government Code.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission recommends that the City Council take the following actions:

1. The Planning Commission recommends that the City Council find that the Categorical Exemption represents the independent judgment of the City and is the appropriate environmental document under CEQA.
2. The Planning Commission recommends that the City Council adopt the proposed ordinance as recommended by the Planning Commission.

PASSED AND ADOPTED by the Planning Commission of the City of West Sacramento
this 5th day of December 2013, by the following votes:

AYES:
NOES:
ABSENT:
ABSTAIN:

Joe Galvan, Chairperson

ATTEST:

David Tilley, Secretary