



**CITY OF CORNING  
PLANNING COMMISSION AGENDA**

**TUESDAY, MAY 17, 2011  
CITY COUNCIL CHAMBERS  
794 THIRD STREET  
CORNING, CA 96021**

**A. CALL TO ORDER: 6:30 p.m.**

**B. ROLL CALL:**

**Commissioners: Reilly  
Hatley  
Barron  
Poisson  
Chairman: Robertson**

**C. MINUTES:**

**1. Waive the Reading and Approve the Minutes of the March 15, 2011 Planning Commission Meeting with any necessary corrections.**

**D. BUSINESS FROM THE FLOOR: If there is anyone in the audience wishing to speak on items not already set on the Agenda, please come to the podium, and briefly identify the matter you wish to have placed on the Agenda. The Commission will then determine if such matter will be placed on the Agenda for this meeting, scheduled for a subsequent meeting, or recommend other appropriate action. If the matter is placed on tonight's Agenda, you will have the opportunity later in the meeting to return to the podium to discuss the issue. The law prohibits the Commission from taking formal action on the issue, however, unless it is placed on the Agenda for a later meeting so that interested members of the public will have a chance to appear and speak on the subject.**

**E. PUBLIC HEARINGS AND MEETINGS: Any person may speak on items scheduled for hearing at the time the Chairman declares the Hearing open. ALL LEGAL NOTICES PUBLISHED IN ACCORDANCE WITH LAW.**

**2. Ordinance No. 645, Medical Marijuana Dispensaries: Make recommendation to the City Council on an Ordinance that would define and prohibit the establishment of Medical Marijuana Dispensaries in the City of Corning.**

**F. REGULAR AGENDA: All items listed below are in the order which we believe are of most interest to the public at this meeting. However, if anyone in the audience wishes to have the order of the Agenda changed, please come to the podium, and explain the reason you are asking for the order of the Agenda to be changed.**

**G. ITEMS PLACED ON THE AGENDA FROM THE FLOOR:**

**H. ADJOURNMENT:**

**POSTED: THURSDAY, MAY 12, 2011**



**CITY OF CORNING  
PLANNING COMMISSION MINUTES**

**TUESDAY, MARCH 15, 2011  
CITY COUNCIL CHAMBERS  
794 THIRD STREET  
CORNING, CA 96021**

**A. CALL TO ORDER: 6:30 p.m.**

**B. ROLL CALL:**

**Commissioners: Robertson  
Reilly  
Hatley  
Barron  
Poisson  
Chairman: Vacant**

All members of the Commission were present.

**C. MINUTES:**

**1. Waive the Reading and Approve the Minutes of the February 15, 2011 Planning Commission Meeting with any necessary corrections.**

Commissioner Hatley moved to approve the Minutes as written and Commissioner Reilly seconded the motion. **Ayes: Robertson, Reilly, Hatley, Barron and Poisson. Opposed: None. Absent/Abstain: None. Motion was approved by a vote of 5-0.**

**D. BUSINESS FROM THE FLOOR:** Planning Director John Stoufer informed Commission Members that the Medical Marijuana issue will be coming before them and the Council for a zoning determination soon. The Council had appointed an ad-hoc committee which now has two vacancies, one being former Commissioner Jesse Lopez and the other, former Councilwoman Becky Hill. If anyone on the Commission is interested in serving on this Ad-Hoc Committee, please contact City Clerk Lisa Linnet or John Stoufer and they will inform the Council. Currently Mayor Strack and Commissioner Reilly are both on this Committee. Due to Brown Act regulations no more than two of the Council and two members of the Planning Commission can serve.

**E. PUBLIC HEARINGS AND MEETINGS:** Any person may speak on items scheduled for hearing at the time the Chairman declares the Hearing open. **ALL LEGAL NOTICES PUBLISHED IN ACCORDANCE WITH LAW.**

**2. Use Permit 2011-261 - Immaculate Conception Church: To construct a 3,150 sq. ft. building to be used for office space and classrooms for church associated activities. The building will be located adjacent to the church Rector Building on a vacant parcel at the northeast corner of the Solano Street/1<sup>st</sup> Street intersection. Parcel is zoned R-1, Single Family Residential. Location: 818 Solano Street, APN: 73-065-03.**

Commissioner Robertson introduced this item by title and Planning Director Stoufer further briefed the Commission on all aspects of the Use Permit request and stated that surrounding neighbors had been sent notification as required by law. To date the City has received no negative responses to this notification. Commissioner Robertson then opened the Public Hearing.

Commissioner Barron asked if this discussion concerned a one or two story building; he was informed that it would be a one story building.

A member of the audience asked if the zoning were to be changed, would it change the set backs. Mr. Stoufer responded stating possibly no, it probably would be standard for commercial properties.

**The City of Corning is an Equal Opportunity Employer**

Commissioner Reilly moved to close the Public Hearing and Commissioner Hatley seconded the motion. **Ayes: Robertson, Reilly, Hatley, Barron and Poisson. Opposed: None. Absent/Abstain: None. Motion was approved by a vote of 5-0.**

Commissioner Barron moved to adopt the 4 Subfindings and Findings as presented in the Staff Report for Use Permit 2011-261. Commissioner Hatley seconded the motion. **Ayes: Robertson, Reilly, Hatley, Barron and Poisson. Opposed: None. Absent/Abstain: None. Motion was approved by a vote of 5-0.**

Commissioner Barron moved to approve Use Permit 2011-261 subject to the three Conditions as recommended by Staff, these Conditions are:

1. **Condition No. 1 - Agency Compliance:** The applicant must comply with all local, State and Federal Agencies Regulations, especially those imposed by the City of Corning building & Fire Departments.
2. **Condition No. 2 – Handicapped Parking:** The applicant must designate, appropriately mark, and maintain, as approved by the Building Official, a handicapped parking space.
3. **Condition No. 3 – Sign Regulations:** The business must comply with the City of Corning sign regulations established by Resolution No. 10-25-05-01.

Commissioner Hatley seconded the motion. **Ayes: Robertson, Reilly, Hatley, Barron and Poisson. Opposed: None. Absent/Abstain: None. Motion was approved by a vote of 5-0.**

**F. REGULAR AGENDA:** All items listed below are in the order which we believe are of most interest to the public at this meeting. However, if anyone in the audience wishes to have the order of the Agenda changed, please come to the podium, and explain the reason you are asking for the order of the Agenda to be changed.

**3. Selection of New Commission Chairperson.**

Commissioner Reilly moved to appoint Commissioner Robertson as the Commission Chairperson and Commissioner Barron seconded the motion. **Ayes: Robertson, Reilly, Hatley, Barron and Poisson. Opposed: None. Absent/Abstain: None. Motion was approved by a vote of 5-0.**

**G. ITEMS PLACED ON THE AGENDA FROM THE FLOOR: None.**

**H. ADJOURNMENT: 6:45 p.m.**

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Lisa M. Linnet, City Clerk

**ITEM NO. E-2  
ORDINANCE NO. 645; MEDICAL MARIJUANA  
DISPENSARIES; AN ORDINANCE OF THE CITY OF  
CORNING ADDING A CHAPTER TO TITLE 17 OF  
THE CORNING MUNICIPAL CODE THAT WOULD  
DEFINE AND PROHIBIT THE ESTABLISHMENT OF  
MEDICAL MARIJUANA DISPENSARIES IN THE  
CITY OF CORNING.**

**MAY 17, 2011**

**TO: PLANNING COMMISSION OF THE CITY OF CORNING**  
**FROM: JOHN STOUFER, PLANNING DIRECTOR**

**BACKGROUND:**

California Government Code Section 65858(a) allows the adoption of an "Urgency measure": interim zoning ordinance without having to follow the procedures otherwise required prior to the adoption of a zoning ordinance. The urgency measure requires a four-fifths vote of the legislative body and will take effective immediately for a period of 45 days. In addition, Section 65858(a) states: "*After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.*"

On August 11, 2009 the Corning City Council unanimously voted to adopt Interim Ordinance #637 pursuant to Ca. Gov. Code Section 65858 (c). The ordinance contained legislative findings that there was a current and immediate threat to public safety due to the operation of medical marijuana dispensaries, collectives, and cooperatives and banned them from being established within any zoning district within the City.

On September 22, 2009, prior to the expiration of the 45 days and at a duly noticed public hearing, the Council extended Interim Ordinance No. 637 for 10 months and 15 days until August 6, 2010. On July 22, 2010 and at a duly noticed public hearing the Council extended Interim Ordinance No. 637 for 1 year until August 6, 2011. This is the last extension possible for Interim Ordinance #637 pursuant to Ca. Gov. Code Section 65858(a).

At the September 22, 2009 Council meeting an ad-hoc committee was formed to work with staff to collectively prepare an ordinance regarding the cultivation and distribution of medical marijuana, that complies with existing state and federal laws, protects the health, safety and welfare of the citizens of Corning, and respects the rights of medical marijuana users pursuant to the Compassionate Use Act and Senate Bill 420. On February 9, 2010 the City Council adopted Ordinance #639, the ordinance that added Chapter 17.64, Cultivation of Medical Marijuana, to Title 17 of the Corning Municipal Code. This ordinance regulated the cultivation of medical marijuana but did not address the distribution of medical marijuana.

During the initial meetings of the ad-hoc committee it was not clear whether local jurisdictions had the ability to ban dispensaries. The courts upheld temporary dispensary bans (*City of Claremont v. Kruse*), and the pending *Qualified Patients Association v. City of Anaheim* litigation was widely expected to clarify the validity of permanent bans. The *Qualified Patients* decision (issued in August 2010) ultimately declined to address the validity of a permanent ban under state law. However, since that time, the Legislature and the courts have acted to provide clarity regarding local government's authority to regulate medical marijuana uses.

Most notably, the Legislature has enacted Health and Safety Code section 11362.768 (A.B. 2650), which prohibits the establishment of any "medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana" within a 600-foot radius of a school. Of critical importance here, the new law expressly recognizes and affirms local governments' authority to establish more stringent land use regulations: "Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." (§ 11362.768, subd. (0).)

Further, in February 2011, the Court of Appeal issued a decision in *County of Los Angeles v. Hill* upholding local ordinances regulating the "manner and location" in which dispensaries are operated.

*The statute does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose. The County's constitutional authority to regulate the particular manner and location in which a business may operate (Cal. Const., art. XI, § 7) is unaffected by [the Medical Marijuana Program Act].*

Finally, the Tehama County Superior Court has likewise issued decisions upholding both Tehama County's marijuana cultivation ordinance (*Browne v. County of Tehama*, Case No. CI 63676) and the City of Corning's zoning restrictions on dispensaries (*People v. Prather*, Case No. SCR 30434). These decisions, like those of the appellate courts, have broadly affirmed the authority of cities and counties to regulate medical marijuana activities like any other land use.

Although there remain some areas of uncertainty in the law, the matter is considerably clearer than it was when the ad-hoc committee was formed. Further, as noted above, the City's moratorium ordinance finally expires in August of this year, making it imperative that the City move forward with developing its long-term approach to dispensary regulation.

## **DISCUSSION:**

Two of the original ad-hoc committee members are no longer on the City Council or Planning Commission. New members were appointed and the ad-hoc committee, with the expiration date of the interim ordinance approaching, has once again been meeting with staff to give them direction in preparing an ordinance. The critical issue in preparing an ordinance to regulate dispensaries is the definition of "dispensary." Under the Medical Marijuana Program Act (Senate Bill 420), most "storefront" dispensaries are organized as patient "collectives" or "cooperatives" in order to avoid criminal prosecution. However, "collective" medical marijuana activities can also include small groups of patients in private residences, which have different impacts, and can present very different practical and legal issues.

The ad-hoc committee has agreed on a conceptual definition of "dispensary" that captures both the manner and intensity criteria by defining "dispensary" as a medical marijuana collective, etc. that either (1) has a storefront or mobile outlet of the type that ordinarily requires a local business license," or (2) has four (4) or more members/patients/customers.

The ordinance before the Commission would define a dispensary as four (4) or more patients associating, cultivating and distributing medical marijuana between them. The ordinance would permit three (3) patients to associate, cultivate and distribute medical marijuana in compliance with the previously adopted cultivation ordinance.

#### **ENVIRONMENTAL:**

The California Environmental Quality Act (CEQA) Section 15061 (b) (3) states: "a project is exempt from CEQA if: The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA." Regulating the cultivation of medical marijuana will not have a significant effect on the environment.

This section is based on the idea that CEQA applies jurisdictionally to activities which have the potential for causing environmental effects. Where an activity has no possibility of causing a significant effect, the activity will not be subject to CEQA. This approach has been noted with approval in a number of appellate court decisions including the State Supreme Court opinion in *No Oil, Inc. v. City of Los Angeles*.

#### **FINDINGS:**

##### **1. CEQA**

###### **Factual Subfinding #1**

Adoption of Ordinance No. 645 will define and prohibit the operation of marijuana dispensaries in the City of Corning.

###### **Legal Finding #1**

Prohibiting the establishment of marijuana dispensaries does not have a potential for causing a significant effect on the environment, therefore, adoption of Ordinance No. 645 is statutorily exempt from CEQA pursuant to Section 15601 (b) (3).

## **CEQA ACTION**

Move to recommend that the City Council adopt Factual SubFinding and Legal Finding No. 1, that the adoption of Ordinance No. 645 is exempt from CEQA pursuant to Section 15601 (b) (3).

## **ORDINANCE ACTION**

After taking public comments staff recommends that the Planning Commission take one of the following actions:

- 1) Move to recommend that the City Council adopt Ordinance No. 645 as presented to the Commission in the staff report.
- 2) Move to recommend that the City Council adopt Ordinance No. 645 with changes as recommended by the Planning Commission.
- 3) Move to send Ordinance No. 645 back to the Ad-hoc Committee to consider making changes as recommended by the Planning Commission.
- 4) Move to recommend that the City Council deny adoption of Ordinance No. 645.

## **ATTACHMENTS**

Exhibit "A" Draft copy of Ordinance No. 645, Marijuana Dispensaries

Exhibit "B" Copy of Ordinance No. 639, Cultivation of Medical Marijuana

Exhibit "A"

**DRAFT ORDINANCE APPLICABLE TO THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF CORNING**

**WHEREAS**, the State of California approved Proposition 215 "The Compassionate Use Act of 1996" (Health and Safety Code Section 11362.5), which was to enable persons who are in need of marijuana for medical purposes; and

**WHEREAS**, the State also enacted SB 420 in 2004 (Health and Safety Code Section 11362.7 et seq.) to clarify the scope of The Compassionate Use Act to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420; and

**WHEREAS**, State law has created a limited affirmative defense to criminal prosecution for qualifying persons who collectively gather to cultivate medical marijuana but there is no provision in State law which specifically authorizes or protects the establishment of a medical marijuana dispensary or other storefront or mobile distribution operation; and

**WHEREAS**, under the Controlled Substances Act, the use, possession, cultivation and distribution of medicinal marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

**WHEREAS**, To protect the public safety, health, and welfare of the citizens of Corning, and prevent the possibility of the cultivation or distribution of medical marijuana in violation of Health and Safety Code Section 11362.5, the City of Corning adopted Interim Ordinance No. 637 banning the establishment of a medical marijuana dispensary, collective or cooperative within any of the city zoning districts as either a permitted or a conditional use; and

**WHEREAS**, in California Cities that have allowed the establishment of Medical Marijuana Dispensaries issues and concerns have arisen related to their location in proximity to residential properties, schools and daycare facilities and some communities have reported adverse impacts that threaten public health, safety and welfare, including an increase in crimes such as loitering, illegal drug activity, burglaries, robberies and other criminal activity within and around dispensaries, as well as increased pedestrian and vehicle traffic, noise and parking violations, thereby generating a need for increased police response; and

**WHEREAS**, The establishment of a medical marijuana dispensary in the City of Corning created a zoning violation that required enforcement actions by city staff and court hearings to abate the use of a downtown building as a dispensary; and

**WHEREAS**, The City has recently received additional inquiries whether any of the zoning districts within the City Limits of Corning would allow a Medical Marijuana Dispensary to be established; and

**WHEREAS**, Adoption of Ordinance No. 645 complies with applicable State Law, as well as impose reasonable rules and regulations protecting the public health, safety and welfare of Corning residents and businesses; and

**WHEREAS**, it is the purpose and intent of this ordinance to implement state law by providing a means for regulating the distribution of medicinal marijuana in a manner that is consistent with state law and balances the needs of medical patients and their caregivers and promotes the health, safety, morals and general welfare of the residents and businesses within the City of Corning. Nothing in this ordinance shall be constructed to allow the use of marijuana (cannabis) for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal; and

**WHEREAS**, the potential adverse secondary effects of allowing the distribution of medicinal marijuana presents a clear and present danger to the immediate preservation of the public peace, health, and safety of the community and Interim Ordinance # 637 will expire on August 6, 2011, therefore, the City will have no rules or regulations governing the distribution of medical marijuana; and

**WHEREAS**, it is the purpose and intent of this ordinance is to ensure that marijuana distributed for medical purposes remains secure and does not find its way to non-patients or illicit markets; and

**WHEREAS**, it is the purpose and intent of this ordinance to help law enforcement agencies perform their duties effectively and in accordance with California law.

## **Chapter 17.65**

### **MARIJUANA DISPENSARIES**

#### **Sections:**

**17.65.010 Purpose and Intent.**

**17.65.020 Definitions.**

**17.65.030 Prohibition of Marijuana Dispensaries.**

**17.65.040 Enforcement.**

**17.65.010 Purpose and Intent.** It is the purpose and intent of this chapter to limit the distribution of medical marijuana to prevent adverse impacts to adjacent property owners, provide patient security, protect the health, safety and welfare of the public, and assure that medical marijuana does not find its way to non-patients or illicit markets.

This chapter is in compliance with the California Health & Safety Code Section 11362, and does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to Proposition 215 and Senate Bill 420.

**17.65.020 Definitions.**

Definitions: As used herein the following definitions shall apply:

- (A) "Facility" includes any facility, building, structure, premises, or location, whether fixed or mobile, permanent or temporary, and any type of delivery service.
- (B) "Mobile Outlet" The transportation for the purpose of distribution or delivery of medical marijuana by any means.
- (C) "Marijuana Dispensary" means any for-profit or not-for-profit facility meeting any or all of the following criteria:
  - (1) A facility where marijuana is made available, cultivated, sold, given, distributed, or otherwise provided by or to four (4) or more persons (including, but not limited to, any "primary caregiver(s)," "qualified patient(s)," or "person(s) with an identification card") pursuant to Health and Safety Code sections 11362.5 and/or 11362.7 et seq. or otherwise; and/or
  - (2) A facility where four (4) or more persons (including, but not limited to, any "primary caregiver(s)," "qualified patient(s)," or "person(s) with an identification card") meet or congregate to make available, cultivate, sell, give away, distribute, or otherwise provide marijuana for medicinal or other purposes; and/or
  - (3) A facility where any person operates a storefront or mobile outlet providing medical marijuana in any form to four (4) members of a collective or cooperative or to other members of the general public.

"Marijuana Dispensary" includes any medical marijuana collective or cooperative that meets any or all of the foregoing criteria. "Marijuana Dispensary" shall not include the following uses, as long as the location of such uses is otherwise regulated by the Corning Municipal Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety

Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice; or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code sections 11362.5 et seq. and 11362.7 et seq. and the City of Corning Zoning Code (Title 17 of the Corning Municipal Code).

**17.65.030 Prohibition of Marijuana Dispensaries.** Notwithstanding any other provision of this Code, the establishment, development, construction, maintenance, or operation of a Marijuana Dispensary is hereby prohibited, and is not a permitted or conditionally permitted use in any zoning district, even if located within an otherwise permitted use. No person shall establish, develop, construct, maintain, or operate a Marijuana Dispensary, and no application for a building permit, use permit, variance, or any other entitlement authorizing the establishment, development, construction, maintenance, or operation of any Marijuana Dispensary shall be approved by the City of Corning or any officer or employee thereof.

**17.65.040 Enforcement.**

A. Public Nuisance: The violation of this section is hereby declared to be a public nuisance.

B. Abatement: A violation of this section may be abated by the city attorney by the prosecution of a civil action for injunctive relief and by the summary abatement procedure set forth in subsection C of this section.

C. Summary Abatement Procedure:

a. The Chief of Police, Building Official, Planning Director, or a designee (hereafter, the "enforcement official"), are hereby authorized to order the abatement of any violation of this section by issuing a notice to abate. The notice shall:

(1) Describe the location of and the specific conditions which represent a violation of this section and the actions required to abate the violation.

(2) Describe the evidence relied upon to determine that a violation exists, provided that the enforcement official may withhold the identity of a witness to protect the witness from injury or harassment, if such action is reasonable under the circumstances.

(3) State the date and time by which the required abatement actions must be completed.

(4) State that to avoid the civil penalty provided in subsection C.a.(8) of this section and further enforcement action, the enforcement official must receive consent to inspect the premises where the violation exists to verify that the violation has been abated by the established deadline.

(5) State that the owner or occupant of the property where the violation is located has a right to appeal the notice by filing a written notice of appeal with the city clerk by no later than three (3) business days from the service of the notice. The notice of appeal must include an address, telephone number, fax number, if available, and e-mail address, if available. The city may rely on any of these for service or notice purposes. If an adequate written appeal is timely filed, the owner or occupant will be entitled to a hearing as provided in subsection E. of this section.

(6) State that the order to abate the violation becomes final if a timely appeal is not filed or upon the issuance of a written decision after the appeal hearing is conducted in accordance with subsection E. of this section.

(7) State that a final order of abatement may be enforced by application to the superior court for an inspection and/or abatement warrant or other court order.

(8) State that a final order to abate the nuisance will subject the property owner and the occupant to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

(9) State that in any administrative or court proceeding to enforce the abatement order the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the city elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the city in the action or proceeding.

D. The notice described in subsection C.a. of this section shall be served in the same manner as summons in a civil action in accordance with article 3 (commencing with section 415.10) of chapter 4 of title 5 of part 2 of the Code of Civil Procedure, or by certified mail, return receipt requested, at the option of the city. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation pursuant to Government Code section 6062.

E. Not sooner than five (5) business days after a notice of appeal is filed with the city clerk, a hearing shall be held before the city manager or a hearing officer designated by the city manager to hear such appeals. The appellant shall be given notice of the date, time and

place of the hearing not less than five (5) days in advance. The notice may be given by telephone, fax, e-mail, personal service or posting on the property. At the hearing, the enforcement official shall present evidence of the violation, which may include, but is not limited to, incident and police reports, witness statements, photographs, and the testimony of witnesses. The property owner and the occupant of the property where the violation is alleged to exist shall have the right to present evidence and argument in their behalf and to examine and cross examine witnesses. The property owner and property occupant are entitled at their own expense to representation of their choice. At the conclusion of the hearing, the city manager or hearing officer shall render a written decision which may be served by regular first class mail on the appellants.

F. A final order to abate the nuisance will subject the property owner or owners and any occupant or occupants of the property who are cultivating marijuana in violation of this section to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The enforcement official or the city manager or hearing officer hearing an appeal pursuant to subsection C.a.(5) of this section may reduce the daily rate of the civil penalty for good cause. The party subject to the civil penalty shall have the burden of establishing good cause, which may include, but is not limited to, a consideration of the nature and severity of the violation, whether it is a repeat offense, the public nuisance impacts caused by the violation, and the violator's ability to pay. The daily penalty shall continue until the violation is abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

G. Violation: Cultivation of marijuana on parcels within the city that does not comply with this section constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in subsections C.a.(8) and F. of this chapter.

H. Penalties Not Exclusive: The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the city from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

\* \* \* \* \*

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Corning, held on \_\_\_\_\_ and adopted at a regular meeting of the City Council of the City of Corning, held \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

Abstain:

It shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of Council persons voting for and against the same, in a newspaper of general circulation in the County of Tehama.

\_\_\_\_\_  
Gary R. Strack, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Linnet, City Clerk

PUBLISH: \_\_\_\_\_

# Exhibit "B"

## ORDINANCE NO. 639 CULTIVATION OF MEDICAL MARIJUANA WITHIN THE CITY OF CORNING

**WHEREAS**, California Government Code, Section 65850 (c) (4) provides the authority for the City of Corning to regulate, by ordinance, the intensity of land use; and

**WHEREAS**, the State of California approved Proposition 215 "The Compassionate Use Act of 1996" (Health and Safety Code Section 11362.5), which was to enable persons who are in need of marijuana for medical purposes; and

**WHEREAS**, the State also enacted SB 420 in 2004 (Health and Safety Code Section 11362.7 et seq.) to clarify the scope of The Compassionate Use Act to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420; and

**WHEREAS**, under the Controlled Substances Act, the use, possession and cultivation of medicinal marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

**WHEREAS**, marijuana plants, as they begin to flower and for a period of two months or more during the growing season (August through October for outdoor cultivation), produce an extremely strong odor, offensive to many people, and detectable far beyond property boundaries; and

**WHEREAS**, the City has continually received complaints of odor related to the growing of medicinal marijuana; and

**WHEREAS**, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of a caregiver growing for numerous patients, a very large number of plants could be grown on the same legal parcel, or parcels, within the City of Corning; and

**WHEREAS**, the possession and cultivation of large quantities of marijuana has resulted in the armed robberies of residents living in nearby communities and residential areas surrounding the City of Corning; and

**WHEREAS**, 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 or armed robbery, and the death of a man in the nearby community of Los Molinos; and

**WHEREAS**, it is the purpose and intent of this ordinance to implement state law by providing a means for regulating the cultivation of medicinal marijuana in a manner that is consistent with state law and balances the needs of medical patients and their caregivers and promotes the health, safety, morals and general welfare of the residents and businesses within the City of Corning. Nothing in this ordinance shall be constructed to allow the use of marijuana

(cannabis) for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal; and

**WHEREAS**, the potential adverse secondary effects of allowing the cultivation of medicinal marijuana presents a clear and present danger to the immediate preservation of the public peace, health, and safety of the community because currently the City has no rules or regulations governing the cultivation of medical marijuana; and

**WHEREAS**, it is the purpose and intent of this ordinance is to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets; and

**WHEREAS**, it is the purpose and intent of this ordinance to help law enforcement agencies perform their duties effectively and in accordance with California law; and

**WHEREAS**, the cultivation of marijuana within a residence has potential adverse affects to the structural integrity of the residence and the use of high wattage grow lights within a residence increases the chances of a fire which presents a clear and present danger to the occupants; and

**WHEREAS**, The indoor cultivation of substantial amounts of marijuana also requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation; and

**WHEREAS**, Areas surrounding schools attract large numbers of juveniles and the cultivation of any amount of marijuana at locations or premises within 1,000 feet of a school makes the site 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; and

**WHEREAS**, The Attorney General's August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* recognizes that 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; and

**WHEREAS**, The City of Corning Planning Commission held a public hearing on December 15, 2009 and recommended by a 4 : 0 vote that the City Council adopt Ordinance No. 639 regulating the cultivation of medical marijuana within the City of Corning.

**Chapter 17.64**  
**Cultivation of Medical Marijuana**

**Sections:**

- 17.64.010 Purpose and Intent**
- 17.64.020 Definitions**
- 17.64.030 Cultivation of Medical Marijuana**
- 17.64.040 Non-Conforming Use**
- 17.64.050 Enforcement**

**17.64.010. Purpose and Intent:** It is the purpose and intent of this chapter to require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

This chapter is in compliance with the California Health & Safety Code Section 11362, and does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to Proposition 215 and Senate Bill 420.

**17.64.020. Definitions:** Definitions: As used herein the following definitions shall apply:

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

B. DETACHED FULLY ENCLOSED AND SECURE STRUCTURE: A building completely detached from a residence that complies with the California Building Code, as adopted in the City of Corning, 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 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 inch (3/8") or thicker plywood or the equivalent. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

C. IMMATURE MARIJUANA PLANT: A marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

D. INDOORS: Within a fully enclosed and secure structure.

E. MATURE MARIJUANA PLANT: A marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

F. OUTDOOR: Any location within the City of Corning that is not within a fully enclosed and secure structure.

G. LEGAL PARCEL: Any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2, commencing with Section 66410, of Title 7 of the Government Code).

H. PREMISES. A single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.

I. REAR YARD. As defined in Section 17.06.560 of the Corning Municipal Code.

J. SOLID FENCE. A six foot high structure, constructed with material approved by the Building Official that prevents viewing the contents from one side to the other.

K. SCHOOL. An institution of learning for minors, whether public or private, offering regular course of instruction for children attending kindergarten, elementary school, middle or junior high school or senior high school. A residence that provides home schooling and preschool or daycare centers are not included in this definition.

L. PRIMARY CAREGIVER: A "primary caregiver" as defined in Health and Safety Code section 11362.7(d).

M. QUALIFIED PATIENT: A "qualified patient" as defined in Health and Safety Code section 11362.7(f).

N. RESIDENTIAL STRUCTURE: Any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation as required by the building code.

**17.64.030. Cultivation of Medical Marijuana:** The following regulations shall apply to the cultivation of medical marijuana as allowed pursuant to Proposition 215 and Senate Bill 420.

A. Cultivation of medical marijuana shall only be conducted by verifiable qualified patients or primary caregivers as defined in the California Health and Safety Code.

B. Outdoor Cultivation: It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City of Corning to cause or allow such parcel or premises to be used for the outdoor cultivation of marijuana plants.

C. Residential Structure Cultivation: It is hereby declared to be unlawful for any person to cultivate marijuana in any residential structure, occupied or not. It is hereby declared to be unlawful for any person to cultivate marijuana on any legal parcel or premises containing two or more attached or detached residential structures.

D. Cultivation in non-residential zones: Cultivation of medical marijuana on any parcel that is not zoned residential must obtain a conditional use permit approved by the Planning Commission prior to the commencement of cultivation.

E. Proximity to Schools: It is hereby declared to be unlawful to cultivate medical marijuana on any legal parcel or premises within 1000 feet of a school as defined in this chapter. The 1000 foot distance shall be measured from the closet property line of the school to the closet property line of the cultivation parcel.

F. Cultivation Area: It is hereby declared to be unlawful 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 of Corning to cultivate medical marijuana, within a detached structure that meets the requirements for cultivation as described in this chapter, an area or areas larger than 120 square feet in size.

G Indoor Cultivation in residential zones: The indoor cultivation of medical marijuana in a residential zone must be conducted within a detached fully enclosed secure structure and shall conform to the following standards:

- 1) Any detached structure, regardless of square footage, constructed, altered or used for the cultivation of medical marijuana must obtain a building permit from the Building Official. Cultivation within this detached structure may not commence without final approval of the Building Official, Planning Director and Chief of Police.
- 2) Indoor grow lights shall not exceed 1200 watts and comply with the California Building, Electrical and Fire Codes as adopted by the City of Corning. Gas products (CO<sub>2</sub>, Butane, Propane, Natural Gas, etc) or generators may not be used within a detached structure used for the cultivation of medical marijuana.
- 3) Any detached structure used for the cultivation of medical marijuana must install a ventilation system that will 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. The ventilation system must be approved by the Building Official and installed prior to commencing cultivation within the detached structure.
- 4) A detached structure used for the cultivation of marijuana must 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 six (6) foot high solid fence. If the entire rear yard area is fenced by a six foot high solid fence, and access from the side yards are fenced by a six foot high solid fence that will suffice for the fencing requirement.

- 5) Adequate mechanical or electronic security systems approved by the Building Official and Chief of Police must be installed in and around the detached structure prior to the commencement of cultivation.
- 6) Prior to commencing cultivation, and upon annual renewal of a qualified patients physicians recommendation, the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where a detached structure is used for the cultivation of marijuana must register with the Corning Planning Department. The following information will be required with the annual registration:
  - A. A notarized signature from the landowner consenting to the cultivation of marijuana within a detached structure on a legal parcel or premises. The City will supply the letter of consent for signature by the landowner.
  - B. The name of each person, owning, leasing, occupying, or having charge of any legal parcel or premises where marijuana will be cultivated.
  - C. The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana.
  - D. The original current valid medical recommendation or State 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.
  - E. The physical site address of where the marijuana will be cultivated.
  - F. A signed consent form authorizing city staff, including the police department, authority to do a notified inspection of the detached structure used for the cultivation of marijuana. The City will supply the letter of consent for signature.

The information contained within the registration material shall be received in confidence, and shall be used or disclosed only for purposes of administration of this ordinance or State law, or as otherwise required by law.

#### **17.64.040 Non-Conforming Use**

Non-Conforming Cultivation : Any parcel or premises that was used for the cultivation of medical marijuana by a qualified patient or caregiver and had marijuana plants established and growing by March 12, 2010 and does not meet the requirements of this section shall be allowed to continue cultivation activities as established in accordance with regulations for non-conforming land uses in Section 17.52.010 of the Corning Municipal Code until December 31, 2010 at which time Section 17.52.010 will no longer be applicable and any non-conforming cultivation must cease and future cultivation of medical marijuana must comply with this chapter.

**17.64.050 Enforcement:**

A. Public Nuisance: The violation of this section is hereby declared to be a public nuisance.

B. Abatement: A violation of this section may be abated by the city attorney by the prosecution of a civil action for injunctive relief and by the summary abatement procedure set forth in subsection C of this section.

C. Summary Abatement Procedure:

a. The Chief of Police, Building Official, Planning Director, or a designee (hereafter, the "enforcement official"), are hereby authorized to order the abatement of any violation of this section by issuing a notice to abate. The notice shall:

Describe the location of and the specific conditions which represent a violation of this section and the actions required to abate the violation.

(2) Describe the evidence relied upon to determine that a violation exists, provided that the enforcement official may withhold the identity of a witness to protect the witness from injury or harassment, if such action is reasonable under the circumstances.

(3) State the date and time by which the required abatement actions must be completed.

(4) State that to avoid the civil penalty provided in subsection C.a.(8) of this section and further enforcement action, the enforcement official must receive consent to inspect the premises where the violation exists to verify that the violation has been abated by the established deadline.

(5) State that the owner or occupant of the property where the violation is located has a right to appeal the notice by filing a written notice of appeal with the city clerk by no later than three (3) business days from the service of the notice. The notice of appeal must include an address, telephone number, fax number, if available, and e-mail address, if available. The city may rely on any of these for service or notice purposes. If an adequate written appeal is timely filed, the owner or occupant will be entitled to a hearing as provided in subsection E. of this section.

(6) State that the order to abate the violation becomes final if a timely appeal is not filed or upon the issuance of a written decision after the appeal hearing is conducted in accordance with subsection E. of this section.

(7) State that a final order of abatement may be enforced by application to the superior court for an inspection and/or abatement warrant or other court order.

(8) State that a final order to abate the nuisance will subject the property owner and the occupant to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

(9) State that in any administrative or court proceeding to enforce the abatement order the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the city elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the city in the action or proceeding.

D. The notice described in subsection C.a. of this section shall be served in the same manner as summons in a civil action in accordance with article 3 (commencing with section 415.10) of chapter 4 of title 5 of part 2 of the Code of Civil Procedure, or by certified mail, return receipt requested, at the option of the city. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation pursuant to Government Code section 6062.

E. Not sooner than five (5) business days after a notice of appeal is filed with the city clerk, a hearing shall be held before the city administrator or a hearing officer designated by the city administrator to hear such appeals. The appellant shall be given notice of the date, time and place of the hearing not less than five (5) days in advance. The notice may be given by telephone, fax, e-mail, personal service or posting on the property. At the hearing, the enforcement official shall present evidence of the violation, which may include, but is not limited to, incident and police reports, witness statements, photographs, and the testimony of witnesses. The property owner and the occupant of the property where the violation is alleged to exist shall have the right to present evidence and argument in their behalf and to examine and cross examine witnesses. The property owner and property occupant are entitled at their own expense to representation of their choice. At the conclusion of the hearing, the city administrator or hearing officer shall render a written decision which may be served by regular first class mail on the appellants.

F. A final order to abate the nuisance will subject the property owner or owners and any occupant or occupants of the property who are cultivating marijuana in violation of this section to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The enforcement official or the city administrator or hearing officer hearing an appeal pursuant to subsection C.a.(5) of this section may reduce the daily rate of the civil penalty for good cause. The party subject to the civil penalty shall have the burden of establishing good cause, which may include, but is not limited to, a consideration of the nature and severity of the violation, whether it is a repeat offense, the public nuisance impacts caused by the violation, and the violator's ability to pay. The daily penalty shall continue until the violation is abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

G. Violation: Cultivation of marijuana on parcels within the city that does not comply with this section constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in subsections C.a.(8) and F. of this chapter.

H. Penalties Not Exclusive: The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the city from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

\* \* \* \* \*

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Corning, held on \_\_\_\_\_ and adopted at a regular meeting of the City Council of the City of Corning, held \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

Abstain:

It shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of Council persons voting for and against the same, in a newspaper of general circulation in the County of Tehama.

\_\_\_\_\_  
Gary R. Strack, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Linnet, City Clerk

PUBLISH: \_\_\_\_\_