ORDINANCE NO. 2012-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMOORE ADDING CHAPTER 8 TO TITLE 4 AND AMENDING CHAPTER 4 OF TITLE 9 OF THE LEMOORE CITY CODE RELATING TO MEDICAL MARIJUANA

The City Council of the City of Lemoore does find that Sections 2 and 3 below related to the zoning amendment is consistent with the General Plan goals, policies, and implementation programs and does ordain as follows:

SECTION 1. Chapter 8 is added to Title 4 of the Lemoore City Code to read as follows:

"**CHAPTER 8**
MEDICAL MARIJUANA CULTIVATION

SECTION:

4-8-01: **Purpose and intent.**
4-8-02: **Effective Date.**
4-8-03: **Personal Use Cultivation**
4-8-04: **Collective or Cooperative Cultivation.**

4-8-01: PURPOSE AND INTENT: To the extent that the City is required to allow the cultivation of medical marijuana under state law, the rules set forth herein shall apply. Nothing in this section shall be interpreted to permit medical marijuana dispensaries, as defined by section 9-4A-5 of this Code.

4-8-02: EFFECTIVE DATE: 30 DAYS AFTER PASSAGE: This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption. Within fifteen (15) days after its adoption, the ordinance, or a summary of the ordinance, shall be published once in a newspaper of general circulation.

GRACE PERIOD: Notwithstanding the foregoing, those qualified patients and persons with identification cards, and primary caregivers, who were cultivating marijuana in the City as of the date this ordinance was introduced by the City Council in strict compliance with the medical marijuana cultivation regulations then in effect, and remain in strict compliance with those regulations, shall have a period of six (6) months from the effective date to comply with the amended regulations set forth in this ordinance. For purposes of this grace period, cultivating marijuana shall mean actual growing plants. No new plantings or seedlings are allowed.

4-8-03: PERSONAL USE CULTIVATION: An individual qualified patient or person with an identification card shall be allowed to cultivate marijuana within his/her private residence, in an attached garage, or in an accessory building if the property is a detached single family residence. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient or person with an identification card for whom he/she is the primary caregiver. Medical marijuana cultivation for personal use shall be subject to the following requirements:

A. Area: The medical marijuana cultivation area shall not exceed thirty two (32) square feet measured by the canopy and not exceed ten feet (10') in height per residence. This limit applies regardless of the number of qualified patients or persons with an identification card residing in the residence. The cultivation area shall be a single designated area.

B. Lighting: Medical marijuana cultivation lighting shall not exceed a total of 1200 watts.

C. Building Code Requirements: Any alterations or additions to the residence, including garages and accessory buildings, shall be subject to applicable building and fire codes, including plumbing and electrical, and all applicable zoning codes, including lot coverage, set back, height requirements, and parking requirements.

D. Gas Products: The use of gas products (CO2, butane, etc.) for medical marijuana cultivation or processing is prohibited.

E. Evidence of Cultivation: from a public right of way, there shall be no exterior evidence of medical marijuana cultivation occurring on the site.

F. Residence: The qualified patient or person with an identification card shall reside in the residence where the medical marijuana cultivation occurs.

G. Cultivation Elsewhere in the City: The qualified patient or person with an identification card shall not participate in medical marijuana cultivation in any other location within the City of Lemoore.

H. Incidental Use: The residence shall maintain a kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana cultivation.

I. Ventilation: The medical marijuana cultivation area shall include a ventilation and filtration system designed to ensure that odors from the cultivation are not detectable beyond the residence, or the property line for detached single family residences, and designed to prevent mold and moisture and otherwise protect the health and safety of persons residing in the residence and cultivating the marijuana. This shall include, at a minimum, a system meeting the requirements of the current, adopted edition of the California Building Code §1203.4 Natural Ventilation of §402.3 Mechanical Ventilation (or its equivalent(s)).

J. Storage of Chemicals: Any chemicals used for medical marijuana cultivation shall be stored outside of the habitable areas of the residence and outside of public view from neighboring properties and public rights of way.

K. Nuisance: The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; and shall not be hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to the cultivation.

L. Property Owner Authorization: For rental property, the lessee shall obtain written authorization from the property owner or property management company to cultivate medical marijuana.

M. Notification: The owner and any lessee of the residence upon which cultivation will occur shall inform the police department of the intent to cultivate medical marijuana and pick up a handout setting forth the owner and lessee responsibilities under this section. This notification shall be provided prior to the commencement of the cultivation, except that for existing cultivation, the information shall be provided within ten (10) days of the effective date of this chapter. The police department may direct the owner and lessee to the Planning or Building Department for more information about building code and permit requirements that may be applicable if alterations or additions to the residence are contemplated. The police department and other involved Departments shall keep patient information confidential to the extent required by law.

N. Additional Requirements for Garages and Accessory Buildings: The following additional requirements shall apply for personal use cultivation that occurs in a garage or accessory building: the garage or accessory building shall be secure, locked, and fully enclosed, with a ceiling, roof or top, and entirely opaque. The garage or building shall include a burglar alarm monitored by an alarm company or private security company. The garage or building, including all walls, doors, and the roof, shall be constructed with a firewall assembly of green board meeting the minimum building code requirements for residential structures and include material strong enough to prevent entry except through an open door. If the garage is to be structurally altered, the underlying zone district requirements for covered parking still apply, and must retain at least one covered space per residential dwelling unit.

O. Posting of Physician Recommendation or Identification Card; Posting of Owner Permission: A copy of a qualified patient physician recommendation or identification card shall be posted in a conspicuous place in the cultivation area for each patient residing in the residence who is cultivating medical marijuana. For rental properties, a copy of the owner's written authorization to cultivate marijuana shall be posted in the same manner.

4-8-04: COLLECTIVE OR COOPERATIVE CULTIVATION: For the collective or cooperative cultivation, such cultivation shall be confined to the ML (light industrial) zone district within the City and be subject to the restrictions of Health and Safety Code section 11362.768 and to the following requirements:

A. Secure enclosed structure; code compliance: The cultivation of medical marijuana shall at all times occur in a secure, locked, and fully enclosed structure, with a ceiling, roof or top, and entirely opaque. The security shall include a burglar alarm monitored by an alarm company or private security company. The structure shall meet all applicable building and fire codes, including plumbing and electrical, and all applicable zoning codes, including lot coverage, set back, height requirements, and parking requirements. At a minimum, the structure, including all walls, doors, and the roof, shall be constructed with a firewall assembly of green board meeting the minimum building code requirements for commercial structures and include material strong enough to prevent entry except through an open door.

B. Ventilation: The structure for cultivating medical marijuana shall include a ventilation and filtration system designed to ensure that odors from the cultivation are not detectable beyond the property line and designed to prevent mold and moisture and otherwise protect the health and safety of those persons participating in the cultivation. This shall include, at a minimum, a system meeting the requirements of the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s)).

C. Maximum of 99 plants: The maximum number of plants, whether mature or immature, shall not exceed 99 marijuana plants.

D. Signage and markings: There shall be no signage or markings on the property, structure, on any other building located on the property, or off-site, which in any way evidences that the collective or cooperative cultivation of medical marijuana is occurring on the property.

E. Required participation in the cultivation; no employees: All persons who associate together for the collective or cooperative cultivation must participate in the cultivation and the cultivation must occur solely among members of the association. No employees, independent contractors, or other persons may be utilized for the cultivation.

F. No compensation or sales: distribution only among members: No member may compensate any other member to cultivate on his/her behalf. All distribution of the cultivated marijuana shall be solely among members of the association and shall be without compensation of any kind. Nothing in this subsection shall be deemed to prevent a primary caregiver from subsequently providing the cultivated marijuana to one of his/her qualified patients.

G. No on-site consumption: No on-site consumption of medical marijuana shall occur.

H. No cultivation in conjunction with a business: no sales of goods or services: The cultivation shall not occur in conjunction with any business. No products or services shall be sold from the property where the cultivation occurs.

I. Record requirements: The owner and/or lessee of the property upon which the cooperative or collective grow occurs shall provide the following information to the police department in a form and manner approved by the police department: (a) full name, address, and telephone number(s) of the owner and lessee, including all alias names used in the previous 10 years; (b) the address where correspondence is to be mailed; (c) a list of all qualified patients, persons with identification cards, and primary caregivers participating in the cultivation (the list shall include each person's full name, alias names used, drivers license numbers, home and work addresses, and phone number(s)); (d) a copy of all participant physician recommendations, identification cards, and primary caregiver evidence; (e) a sketch or diagram showing the property with the location of the cultivation and all buildings on the property, including a statement showing the total area occupied by the cultivation and the distance from the property lines; (f) a statement setting forth the number of plants to be cultivated and demonstrating that the cultivation does not exceed the maximums set forth under state

law or this ordinance, namely patient maximums and the cap of 99 plants; (g) a statement identifying all persons who will be tending to the cultivation and describing the cultivation process; (h) for lessees, written evidence that the owner has consented to use of the property for medical marijuana cultivation; (i) such other information as the police department determines is necessary to ensure compliance with state law and this chapter. This information shall be provided prior to the commencement of the collective or cooperative cultivation except that for existing collective or cooperative cultivation operations, the information shall be provided within ten (10) days of the effective date of this chapter. The information provided shall be updated upon any change within ten (10) days. The police department shall keep patient information confidential to the extent required by law.

J. Inspections: The cultivation operation shall be open for inspection by any law enforcement officer or City code enforcement officer (including, but not limited to, a City building inspector and Fire Marshall) between the hours of 8:00 a.m. and 9:00 p.m. seven days a week, or at any time upon responding to a call for service related to the property where the cultivation is occurring.

K. Violations: In addition to the remedies provided in this chapter, if the collective or cooperative cultivation occurs in violation of this chapter or any other local or state law or regulation, the owner or lessee shall be prohibited from further collective or cooperative cultivation at any location within the City for a period of one (1) year after notice by the City of the violation. Subsequent violations shall result in a three (3) year prohibition.

SECTION 2. Section 9-4A-5 Description of Land Uses of the Lemoore City Code is hereby amended by adding and modifying the following definitions:

Medical Marijuana Cultivation – Personal Use : The indoor growing and cultivating of marijuana within a private residence, in an attached garage, or in an accessory building if the property is a detached single family residence by an individual qualified patient or person with a medical marijuana identification card. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient or person with an identification card for whom he/she is the primary caregiver. Medical marijuana cultivation for personal use shall be subject to requirements of Chapter 8 of Title 4 of the Lemoore Municipal Code.

Medical Marijuana Cultivation – Collective or Cooperative: The indoor growing and cultivating of marijuana by a group of medical marijuana card holders or their caregivers, without any compensation being given to anyone, within an enclosed building in the Light Industrial zone district. All persons who associate together for the collective or cooperative cultivation must participate in the cultivation and the cultivation must occur solely among members of the association. No employees, independent contractors, or other persons may be utilized for the cultivation. No member may compensate any other member to cultivate on his/her behalf. This type of cultivation shall be subject to requirements of Chapter 8 of Title 4 of the Lemoore Municipal Code.

Medical Marijuana Dispensary: Any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to more than three (3) of the following: (1) a qualified patient, (2) a person with a medical marijuana identification card, or

(3) a primary caregiver. All three (3) of these terms are defined in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7, et seq. Unless otherwise regulated by this code or applicable law, a "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to chapter 1 of division 2 of the Health and Safety Code, a healthcare facility licensed pursuant to chapter 2 of division 2 of the Health and 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 and Safety Code, a residential care facility for the elderly licensed pursuant to chapter 3.2 of division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7, et seq. Prohibited uses: medical marijuana dispensaries where medical marijuana is distributed by, distributed to, or made available to any combination of three (3) or more qualified patients, persons with an identification card, or primary caregivers as defined by California Health and Safety Code section 11362.5, et seq., are prohibited in all zone districts.

SECTION 3. Table 9-4B-2 Allowed Uses and Required Entitlements for Base Zoning Districts shall be modified to add the following land use categories:

Medical Marijuana Cultivation – Personal Use

Table 9-4B-2: ALLOWED USES AND REQUIRED ENTITLEMENTS FOR BASE ZONING DISTRICTS

Land Use/ Zoning District	Residential Zoning Districts							Mixed Use Zoning Districts				Office, Commercial, and Industrial Zoning Districts					Special Purpose Zoning Districts			
	AR	RVLD	RLD	RN	RLMD	RMD	RHD	DMX-1	DMX-2	DMX-3	MU	NC	RC	PO	ML	MH	W	AG	PR	CF
Residential Uses																				
Medical Marijuana Cultivation – Personal Use	P[28]	P[28]	P[28]	P[28]	P[28]	P[28]	P[28]	N	N	N	N	N	N	N	N	N	N	N	N	N
Industrial, Manufacturing, and Processing Uses																				
Medical Marijuana Cultivation – Collective or Cooperative Cultivation; Dispensary	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P[28]	N	N	N	N	N

Notes

28. Must be in conformity with the land use definitions in this Chapter and Chapter 8 of Title 4 of the Lemoore Municipal Code as well as the Health and Safety Code section 11362.768 (which imposes additional requirements).

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SECTION 4. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 5. The City Clerk is authorized and directed to cause this Ordinance or a summary of this Ordinance to be published once in a newspaper of general circulation published and circulated in the City of Lemoore, within fifteen (15)days after its adoption. If a summary of this Ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed Ordinance to be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which the Ordinance is adopted and again after the meeting at which the Ordinance is adopted. The summaries shall be approved by the City Attorney. The City Clerk is further directed to cause this Ordinance to be codified after its adoption.

The foregoing Ordinance was introduced at a Regular Meeting of the City Council of the City of Lemoore held on the _____ day of _____, 2012, and was passed and adopted at a regular meeting of the City Council held on the _____ day of _____, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

_____
Willard Rodarmel, Mayor

ATTEST:

_____
Kristy Baley
City Clerk

CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF KINGS) ss.
CITY OF LEMOORE)

I, Kristy Baley, City Clerk of the City of Lemoore, do hereby certify the foregoing Ordinance was duly introduced at a Regular Meeting of the City Council of the City of Lemoore held on the _____ day of _____, 2012 and passed and adopted at a Regular Meeting of the City Council held on the _____ day of _____, 2012.

DATED: _____, 2012

_____
Kristy Baley, City Clerk