



STAFF REPORT

PLANNING COMMISSION MEETING OF JANUARY 26, 2016

TO: Town Council

FROM: Rick Angelocci, Town Manager
Jeffrey Mitchell, Town Attorney

SUBJECT: Proposed Urgency ordinance of the Town of Loomis Enacting Chapter 13.46 of the Loomis Municipal Code Prohibiting the Cultivation of Marijuana.

DATE: January 16, 2016

STAFF RECOMMENDATION:

Staff recommends that the Planning Commission recommends that the Town Council adopt the proposed Urgency Ordinance enacting Chapter 13.46 of the Municipal Code Prohibiting the Cultivation of Marijuana.

BACKGROUND:

On October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" into law which became effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities. The Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless, on or before March 1, 2016, local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of Marijuana".

If by March 1, 2016, the Town does not have in place an ordinance prohibiting or regulating cultivation of marijuana, then the Town will be prohibited from adopting such an ordinance and the only regulations that will apply will be those adopted by the state. Technically the relevant statute says that the Town can regulate or ban if, by March 1, we have "land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principals of permissive zoning". The Town's zoning code would be viewed as one that is "permissive" because uses not permitted are prohibited.

CEQA:

Pursuant to section 15061(b)(3) of the California Environmental Quality Act ("CEQA") Guidelines, the proposed ordinance is exempt from environmental review under CEQA because it does not involve a particular physical project, application, or activity, and adoption of the ordinance will not have a significant impact on the environment.

FINANCIAL IMPLICATIONS:

None.

Attachments: Urgency Ordinance Prohibiting the Cultivation of Marijuana

ORDINANCE NO. ____

**AN URGENCY ORDINANCE OF THE TOWN OF LOOMIS
ENACTING CHAPTER 13.46 OF THE LOOMIS MUNICIPAL CODE
PROHIBITING THE CULTIVATION OF MARIJUANA**

WHEREAS, the Town of Loomis re-affirms and confirms that it's zoning code is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the zoning code is prohibited; and

WHEREAS, California Health & Safety Code section 11362.777(b)(3) states that the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning and may only issue a license if local regulations have been complied with; and

WHEREAS, the establishment of dispensaries and deliveries of marijuana are prohibited within all zones, districts, properties and areas within the Town; and

WHEREAS, the Town wishes to impose land use regulations on cultivation; and

WHEREAS, the Town 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 Town 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, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

WHEREAS, the Act became effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

WHEREAS, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless, on or before March 1, 2016, local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of Marijuana..." (Health & Safety Code § 11362.777(c)(4)); and

WHEREAS, it is in the interest of the Town, its residents, and its lawfully permitted businesses that the Town prohibit the cultivation of medical marijuana; and

WHEREAS, on January 26, 2016, following a duly noticed public hearing, the Loomis Planning Commission recommended that the Town Council adopt this ordinance prohibiting the cultivation of medical marijuana within the Town of Loomis; and

WHEREAS, Government Code Section 36934 expressly authorizes the Town Council to adopt an urgency ordinance for the immediate preservation of the public health, safety, or welfare.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOOMIS HEREBY ORDAINS AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby incorporated by reference. Additionally, the Town Council finds as follows:

1. The cultivation of marijuana poses several risks to the health, safety, and welfare of both the individual and the people of the Town of Loomis at-large and can cause adverse secondary effects, including, but not limited to, increased crime in the vicinity of marijuana cultivations. Marijuana cultivation can also lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors. The Town Council is concerned that cultivating medical marijuana in the Town will result in an increase in crime and other negative secondary effects.

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. 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 cultivation of marijuana in the Town of Loomis can adversely affect the health, safety, and well-being of the Town and its residents. Comprehensive civil regulation of 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 marijuana cultivation.

6. 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 increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

7. It is the purpose and intent of this chapter to prohibit the cultivation of marijuana be cultivated to provide for the health, safety and welfare of the public. 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 in violation of state or federal law.

8. There is a current and immediate threat to the public health, safety and welfare of the Town and its community, thereby necessitating the immediate enactment of this urgency ordinance in order to ensure that these regulations are effective before March 1, 2016.

Section 2. Authority. Based on the foregoing recitals and findings which are all deemed true and correct, this interim ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare. This urgency ordinance is enacted pursuant to the authority conferred upon the Town Council of the Town of Loomis by Government Code section 36934, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the Town Council.

Section 3. Enactment. Chapter 13.46 of the Town of Loomis Municipal Code is hereby added, to read as follows:

Chapter 14.44

MARIJUANA CULTIVATION

13.46.020 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. "Marijuana" shall have the same meaning as the definition of that word in California Health and Safety Code section 11018.

B. "Medical Marijuana Cultivation" means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

13.46.040 Cultivation of medical marijuana.

No person may engage in the cultivation of medical marijuana in the Town of Loomis. 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 Town to cultivate medical marijuana.

13.46.060 Enforcement.

Violations of this chapter shall constitute a public nuisance and may be enforced pursuant to the provisions of Chapters 1.20 and 7.04 of the Loomis Municipal Code, or any other applicable law.

Section 4. Severability. The provisions of Chapter 13.46 are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of Chapter 13.46, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not result in the invalidity of the entire chapter which can be given effect without the invalid provision or application. The Loomis Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 5. CEQA. The Town 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 Town 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).

Section 6. Effective Date and Justification of Urgency. This Ordinance shall take effect immediately upon its adoption as an Urgency Ordinance. A statement of the reason for its urgency is that unless adopted, the public's health and safety may be at risk because the Medical Marijuana Regulation and Safety Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of Marijuana..." and local agencies must have regulations in effect not later than March 1, 2016. If this Ordinance was not immediately effective, the Town would not be able to regulate the cultivation of medical marijuana. Therefore, its immediate effect is necessary for the preservation of the public health, safety and welfare.

Section 7: Posting The Town Clerk shall cause this Ordinance to be published in the Loomis News and to be posted at three (3) locations within fifteen (15) days after its passage; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification to be entered in the Book of Ordinances of the Town of Loomis.

The foregoing Ordinance was **ADOPTED AND ORDERED** published and posted by a 4/5 vote at a meeting of the Council held on the ____ day of _____, 2016, by the following roll call vote:

AYES: _____
NOES: _____
ABSENT: _____

By: _____
Brian Baker, Mayor

ATTEST:

By: _____
Crickett Strock, Town Clerk