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915 I Street, 1st Floor, Sacramento

Published by the Office of the City Clerk

(916) 808-7200

SUPPLEMENTAL ITEM

Description: The following supplemental agenda item is added to the June 27, 2023 Agenda.

For the Meeting of: Tuesday, June 27, 2023, at 5:00 p.m.

Agenda Item: Discussion Item 43

43. Ordinance Amending Sections 8.132.030, 8.132.040, and 8.132.050.C.2 of the Sacramento

File ID: 2023-00752

Location: Citywide

Recommendation: Adopt an Ordinance amending sections 8.132.030, 8.132.040, and 8.132.050.C.2 relating to cannabis cultivation to be published in its entirety in lieu of pass for publication per City Charter section 32(d).

Contact: Davina Smith, Manager, (916) 808-4772, dssmith@cityofsacramento.org, Office of Cannabis Management; Zarah Cruz, Program Specialist, (916) 808-8925, zcruz@cityofsacramento.org, Office of Cannabis Management; Office of the City Manager; Captain Bryce Heinlein, (916) 808-4504, bheinlein@sacpd.org, Sacramento Police Department Metro Division

File ID: 2023-00752

6/27/2023

Discussion Item 43.

Ordinance Amending Sections 8.132.030, 8.132.040, and 8.132.050.C.2 of the Sacramento City Code Relating to Cannabis Cultivation

File ID: 2023-00752

Location: Citywide

Recommendation: Adopt an **Ordinance** amending sections 8.132.030, 8.132.040, and 8.132.050.C.2 relating to cannabis cultivation to be published in its entirety in lieu of pass for publication per City Charter section 32(d).

Contact: Davina Smith, Manager, (916) 808-4772, dssmith@cityofsacramento.org, Office of Cannabis Management; Zarah Cruz, Program Specialist, (916) 808-8925, zcruz@cityofsacramento.org, Office of Cannabis Management; Office of the City Manager; Captain Bryce Heinlein, (916) 808-4504, bheinlein@sacpd.org, Sacramento Police Department Metro Division

Presenter: Davina Smith, Manager, (916) 808-4772, dssmith@cityofsacramento.org, Office of Cannabis Management; Office of the City Manager; Captain Bryce Heinlein, (916) 808-4504, bheinlein@sacpd.org, Sacramento Police Department Metro Division

Attachments:

- 1-Description/Analysis
- 2-Ordinance (Clean)
- 3-Ordinance (Redline)

Additional Description/Analysis

Issue Detail: Currently, the Sacramento City Code allows the City to impose administrative penalties, among other remedies, in the amount of \$500 per cannabis plant in excess of the six allowable plants on residential properties. (City Code section 8.132.050.C.2) However, the City Code does not provide a similar enforcement remedy against the cultivation of cannabis without a valid cannabis business permit, which includes illegal cannabis cultivation on commercial properties and vacant lots (“non-residential properties”), (“non-residential illegal cannabis cultivation”).

The continuing presence of illegal cannabis cultivation in or upon non-residential properties hurts

regulated cannabis businesses and helps the illicit market thrive. The competition provided by the illicit market, by far, is the biggest obstacle to a legally operating cannabis business. The illicit market also hurts consumers as these cannabis plants and products do not undergo testing and other regulatory requirements to guarantee that they are safe.

In response to the large numbers of illegal residential cultivation within the city, the Sacramento Police Department established a Marijuana Compliance Team (“MCT”). The MCT, which has been responsible for enforcing chapter 8.132 over the last four-and-a-half years, has seen a noticeable decline in the numbers of illegal residential cultivation and associated crimes as shown in the following MCT statistics.

	SWs ¹	Plants ²	LBS ³	Guns ⁴	Arrests ⁵
2018	239	119,887	36,443	46	164
2019	170	54,396	31,884	61	120
2020	58	13,935	11,343	23	47
2021*	34	5,792	8,508	23	30
2022	66	11,957	10,140	30	54
2023**	7	2,731	583	1	8
TOTAL	574	208,698	98,901	184	423

*Citywide effective August 2021

**Through May 19, 2023

¹ Indoor/outdoor locations identified via SMUD data, community complaints, calls for service, referrals and/or investigative leads

² Number of plants found and seized during search warrants

³ Weight of plants found and seized during search warrants

⁴ Number of guns seized during search warrants

⁵ Number of arrests made during search warrants

As shown in the MCT statistics, the current code provided a mechanism to remove over 200,000 cannabis plants, almost 100,000 pounds of unregulated and untested cannabis, and 184 guns from homes that were being used as illicit grow facilities. The MCT believes that if this ordinance is adopted, they will be able to prevent more of this underground, untested product from impacting our local regulated cannabis businesses and our cannabis users.

The proposed ordinance allows the City to address non-residential illegal cannabis cultivation in a manner that is similar to how the City addresses the illegal cultivation of cannabis on residential properties, by authorizing the MCT to investigate and issue administrative penalty of \$500 per cannabis plant in excess of the allowable number of plants, in addition to the other remedies in

section 8.132.050. Additionally, the proposed ordinance would make cultivation of cannabis without a cannabis business permit pursuant to City Code chapter 5.150 a nuisance and subject to administrative penalties. Based on the experiences of the MCT with reducing unpermitted residential cultivation, it is expected that similar results could be achieved by applying these methods to non-residential unpermitted cultivation locations.

Specifically, section 1 of the proposed ordinance adds and removes language to provide clarity that there is a lawful way to cultivate cannabis on residential and non-residential properties by adding language to the title and subsection B. Section 2 of the ordinance largely rennumbers the section to add the cultivation of cannabis on non-residential properties without a valid cannabis business permit as a violation of chapter 8.132 and makes grammatical clarifications. Section 3 of the ordinance amends one subsection of 8.132.050.C.2 to make non-residential illegal cannabis cultivation subject to the same administrative penalty for illegal cannabis cultivation on residential properties (the other penalties in section 8.132.050 are also available for enforcement).

Policy Considerations: The proposed ordinance will clarify the City Code by identifying the specific situations in which cultivation of cannabis may occur and allows the City to address non-residential illegal cannabis cultivation as it does illegal cannabis cultivation on residential properties.

Economic Impacts: None.

Environmental Considerations: This action is exempt from the California Environmental Quality Act ("CEQA") because it is the adoption of an ordinance, rule, or regulation that requires discretionary review, including environmental review, and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity (CEQA Guidelines sections 15061(B)(1), California Business and Professions Code section 26055(h)) and because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines section 15061(b)(3)).

Sustainability: Not applicable.

Commission/Committee Action: On May 16, 2023, the Law and Legislation Committee voted to forward the proposed ordinance to Council for adoption.

Rationale for Recommendation: Illegal cultivation, whether in residential homes, on parcels without a residential structure, or in commercial properties, is occurring in the city and creating public health and safety concerns. These unpermitted activities undercut and thereby damage the regulated cannabis marketplace by introducing cannabis that is untested for herbicides, pesticides, mold, and other contaminants that can harm those who use it. Unregulated cultivation can create fire hazards through unpermitted electrical alterations to power lights, fans and air conditioners for the grow-room, and can create odors that impact neighbors and communities.

An ordinance adopted by Council in August 2017 limited residential cultivation to six plants and created a penalty of \$500 per plant in excess of that limit. Through the MCT, a significant amount of unregulated cannabis from residential properties that were used as illicit grow facilities has been removed in the last four-and-a-half years.

The adoption of the proposed ordinance will further identify and clarify the only situations in which cultivation of cannabis can occur within the city and it is believed the proposed ordinance will provide the tools to replicate the success of the MCT in deterring illegal cultivation in non-residential areas such as commercial properties and vacant lots.

Financial Considerations: Not applicable.

Local Business Enterprise (LBE): Not applicable.

ORDINANCE NO.

Adopted by the Sacramento City Council

[Date Adopted]

**AN ORDINANCE AMENDING SECTIONS 8.132.030, 8.132.040, AND 8.132.050.C.2 OF THE
SACRAMENTO CITY CODE, RELATING TO CANNABIS CULTIVATION**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 8.132.030 of the Sacramento City Code is hereby amended to read as follows:

8.132.030 Cultivation of cannabis prohibited – generally.

No person shall own, lease, occupy, or have charge or possession of any property upon which the person knows or, by exercising reasonable care or diligence, should know that cannabis is being cultivated, except in accordance with the following:

- A. Chapter 5.150 (cannabis businesses).
- B. Section 8.132.040 (permissible cultivation of cannabis).

SECTION 2.

Section 8.132.040 of the Sacramento City Code is hereby amended to read as follows:

8.132.040 Permissible cultivation of cannabis.

No person shall cultivate cannabis except as follows:

- A. Pursuant to, and in accordance with, a valid cannabis business permit issued pursuant to chapter 5.150; or
- B. Within a private residence or allowable structure on the same parcel as the private residence, in accordance with all of the following:
 - 1. All cultivation of cannabis must take place indoors within a single room of a private residence or an allowable structure, as defined in section 8.132.020.
 - 2. Regardless of how many people reside in a private residence, no more than six living cannabis plants may be cultivated within the private residence or allowable

structure on the same parcel as the private residence, pursuant to California Health and Safety Code section 11362.1.

3. All equipment used to cultivate cannabis, such as indoor grow lights, irrigation systems, and air filtration systems, must comply with the city building code and fire prevention code.

4. All alterations or improvements to any building or structure to accommodate cannabis cultivation must comply with the city building code and fire prevention code.

5. No cannabis, at any stage of growth or cultivation, and no evidence of cultivation occurring at the premises, may be visible from outside the room of the private residence or the allowable structure in which the cannabis is being cultivated.

6. All cannabis odors must be ventilated, treated, or filtered, such that the odor cannot be detected by a person of normal olfactory sensitivity outside of the private residence or the allowable structure in which the cannabis is being cultivated.

7. Cannabis cultivation must not create excessive dust, heat, light, noise, smoke, traffic, or other impacts that are disturbing to people of normal sensitivity residing or present on adjacent or nearby residences, properties, or areas open to the public; and must not be hazardous due to the use or storage of materials, processes, products, or wastes.

8. Cannabis cultivation areas, whether in a private residence or an allowable structure, must be kept locked when not occupied.

9. Cannabis cultivation must be conducted in compliance with all other applicable state and local laws.

SECTION 3.

A. Subsection 8.132.050.C.2 of the Sacramento City Code is hereby amended to read as follows:

2. Any person who violates sections 8.132.030, 8.132.040.A, or 8.132.040.B.2 is liable for civil penalties of an aggregate amount calculated at \$500 per cannabis plant in excess of the number of plants allowed on the property.

B. Except as amended by subsection A above, all provisions of section 8.132.050 remain unchanged and in full effect.

ORDINANCE NO.

Adopted by the Sacramento City Council

[Date Adopted]

**AN ORDINANCE AMENDING SECTIONS 8.132.030, 8.132.040, AND 8.132.050.C.2 OF THE
SACRAMENTO CITY CODE, RELATING TO CANNABIS CULTIVATION**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 8.132.030 of the Sacramento City Code is hereby amended to read as follows:

8.132.030 Cultivation of cannabis prohibited ~~– generally.~~

No person shall own, lease, occupy, or have charge or possession of any property upon which the person knows or, by exercising reasonable care or diligence, should know that cannabis is being cultivated, except in accordance with the following:

- A. Chapter 5.150 (cannabis businesses).
- B. Section 8.132.040 (~~residential-permissible~~ cultivation of cannabis).

SECTION 2.

Section 8.132.040 of the Sacramento City Code is hereby amended to read as follows:

8.132.040 ~~Residential~~Permissible cultivation of cannabis.

No person shall cultivate cannabis ~~within a private residence or upon the grounds of a private residence, unless it is conducted in accordance with this section except as follows:~~

- A. ~~All cultivation of cannabis must take place indoors within a single room of an allowable structure, as defined in section 8.132.020. Pursuant to, and in accordance with, a valid cannabis business permit issued pursuant to chapter 5.150; or~~
- B. ~~Regardless of how many people reside in the private residence, no more than six living cannabis plants may be cultivated within the private residence or upon the grounds of the private residence, pursuant to California Health and Safety Code section 11362.1. Within a private residence or allowable structure on the same parcel as the private residence, in accordance with all of the following:~~

1. All cultivation of cannabis must take place indoors within a single room of a private residence or an allowable structure, as defined in section 8.132.020.
2. Regardless of how many people reside in a private residence, no more than six living cannabis plants may be cultivated within the private residence or allowable structure on the same parcel as the private residence, pursuant to California Health and Safety Code section 11362.1.
3. All equipment used to cultivate cannabis, such as indoor grow lights, irrigation systems, and air filtration systems, must comply with the city building code and fire prevention code.
4. All alterations or improvements to any building or structure to accommodate cannabis cultivation must comply with the city building code and fire prevention code.
5. No cannabis, at any stage of growth or cultivation, and no evidence of cultivation occurring at the premises, may be visible from outside the room of the private residence or the allowable structure in which the cannabis is being cultivated.
6. All cannabis odors must be ventilated, treated, or filtered, such that the odor cannot be detected by a person of normal olfactory sensitivity outside of the private residence or the allowable structure in which the cannabis is being cultivated.
7. Cannabis cultivation must not create excessive dust, heat, light, noise, smoke, traffic, or other impacts that are disturbing to people of normal sensitivity residing or present on adjacent or nearby residences, properties, or areas open to the public; and must not be hazardous due to the use or storage of materials, processes, products, or wastes.
8. Cannabis cultivation areas, whether in a private residence or an allowable structure, must be kept locked when not occupied.
9. Cannabis cultivation must be conducted in compliance with all other applicable state and local laws.
- ~~C. All equipment used to cultivate cannabis, such as indoor grow lights, irrigation systems, and air filtration systems, must comply with the city building code and fire prevention code.~~
- ~~D. All alterations or improvements to any building or structure to accommodate cannabis cultivation must comply with the city building code and fire prevention code.~~

~~E. No cannabis, at any stage of growth or cultivation, and no evidence of cultivation occurring at the premises, may be visible from outside of the grounds of the private residence.~~

~~F. All cannabis odors must be ventilated, treated, or filtered, such that the odor cannot be detected by a reasonable person of normal sensitivity outside the of the grounds of the private residence.~~

~~G. Cannabis cultivation must not create excessive dust, heat, light, noise, smoke, traffic, or other impacts that are disturbing to people of normal sensitivity residing or present on adjacent or nearby residences, properties or areas open to the public; and must not be hazardous due to the use or storage of materials, processes, products, or wastes.~~

~~H. Cannabis cultivation areas, whether in a detached building or inside a residence, must be kept locked when not occupied.~~

~~I. Cannabis cultivation must be conducted in compliance with all other applicable state and local laws, including California Health and Safety Code sections 11362.1 through 11362.3, and the Compassionate Use Act of 1996 (California Health and Safety Code section 11362.5).~~

SECTION 3.

A. Subsection 8.132.050.C.2 of the Sacramento City Code is hereby amended to read as follows:

2. Any person who violates section 8.132.030, ~~or 8.132.040.BA,~~ or 8.132.040.B.2 is liable for civil penalties of an aggregate amount calculated at \$500 per cannabis plant in excess of the number of plants allowed on the property.

B. Except as amended by subsection A above, all provisions of section 8.132.050 remain unchanged and in full effect.