



AGENDA
CITY OF GUSTINE
PLANNING COMMISSION
COUNCIL CHAMBERS, CITY HALL
352 5th STREET GUSTINE, CALIFORNIA
FEBRUARY 10, 2016 – 7:00 P.M.

CALL TO ORDER - PLEDGE OF ALLEGIANCE

ROLL CALL

Commission Members: Martens, Oliveira, Hasness, Vice-Chairperson Marsigli,
Chairperson Gandy & Ex-Officio Anderson

PRESENTATIONS

ORAL COMMUNICATIONS

At this time, any person may comment on an item, which is not on the agenda. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD. Members of the public, who have questions regarding a specific agenda item, may comment on that item before consideration of that item by the Planning Commission, when recognized to do so by the Chairman.

CONSENT CALENDAR

- 1. Minutes, Planning Commission Meeting of January 13, 2016**
 - 1. Recommendation: Review and approve.*

ADMINISTRATIVE AGENDA

- 2. PUBLIC HEARINGS – Consider Resolution Approving Use Permit and Variance Requests; Auto Parts Sales Use**
 - 1. Receive Staff Report*
 - 2. Open the public hearing for Use Permit and two separate Variance requests*
 - 3. Receive public comment*
 - 4. Close the public hearing*
 - 5. Consider a motion to approve the resolution declaring this project exempt from CEQA and approving the Use Permit for an auto parts sales use*
 - 6. Consider a motion to approve the variance request for parking lot landscape setback*
 - 7. Consider a motion to approve the variance request for parking stall dimension size*

3. WORKSHOP - Discuss and Provide Direction on Medical Marijuana Personal Cultivation and Public Use and Consumption

1. Receive staff report
2. Receive public comment
3. Provide staff with direction on how to proceed

CITY PLANNER REPORT

PLANNING COMMISSION REPORTS

ADJOURNMENT

Note:

1. In compliance with the Americans with Disabilities Act, a disabled person requesting a disability-related modification or accommodation to participate in this meeting, must contact City Hall at (209) 854-6471 or (209) 854-2127(fax). Requests must be made as early as possible, preferably one-full business day before the start of the meeting.
2. Any document provided to a majority of the Planning Commission regarding any open session item on this agenda is available for public inspection during normal business hours at the front counter of City Hall located at 352 5TH Street, Gustine, CA. Documents or writings received after the general distribution of the agenda are also available for inspection.

CERTIFICATION

I, Melanie Correa, Deputy City Clerk, do hereby declare under penalty of perjury that the foregoing agenda was posted on the outdoor bulletin board at the Gustine City Hall, 352 5th Street, Gustine CA and made available for public review on this 2nd day of February, 2016, at or before 5:00 p.m.



Melanie Correa

**MINUTES OF
PLANNING COMMISSION MEETING
JANUARY 13, 2016**

CALL TO ORDER - PLEDGE OF ALLEGIANCE

Chair Mike Gandy called the meeting to order at 7:00 P.M. and conducted the pledge of allegiance.

ROLL CALL

Commission Members: Martens, Oliveira, Hasness, Chairperson Gandy

Staff Present: City Manager Sean Scully and Public Works Director Kathryn Reyes

PRESENTATIONS

ORAL COMMUNICATIONS

There was no oral communications.

CONSENT CALENDAR

- 1. Minutes, Planning Commission Meeting of October 14, 2015**
 - 1. Recommendation: Review and approve.*
- 2. Minutes, Planning Commission Special Meeting of December 2, 2015**
 - 1. Recommendation: Review and approve.*

Chairman Gandy introduced the consent calendar. Commissioner Hasness moved to approve the consent calendar. The motion was seconded by Commissioner Oliveira and carried 4-0 with Vice Chair Marsigli absent.

ADMINISTRATIVE AGENDA

- 3. Commission Reorganization: Election of Planning Commission Chairperson and Vice-Chairperson**
 - 1. Receive staff report.*
 - 2. Receive public comment*
 - 3. Nominate and elect a Chairperson and a Vice-Chairperson*

City Manager Scully presented the staff report. Commissioner Martens made a nomination of Commissioner Marsigli for Vice Chair and Commissioner Gandy for Chairperson. The motion was seconded by Commissioner Hasness, and carried 4-0 with Vice Chair Marsigli absent.

- 4. PUBLIC HEARING – Consider Resolution Making Recommendations to Council Regarding Medical Marijuana Commercial Cultivation and Transportation**
 - 1. Receive Staff Report*
 - 2. Open the public hearing*
 - 3. Receive public comment*
 - 4. Close the public hearing*
 - 5. Consider a motion to approve the resolution*

City Manager Scully presented the staff report. Chairman Gandy opened the public hearing at 7:14 P.M. Alan Boln inquired about the Commission reorganization item, to which the Commission provided clarification. Vic Andersen, 764 Linden Ave of Gustine, suggested that deliveries of medical marijuana be prohibited to residents who hold medical marijuana permits. There was a lengthy discussion in which the following recommendations were established: prohibition of all commercial cultivation and deliveries to be limited to private properties only, with the stipulation that delivery driver is to verify the address and possession of a valid medical marijuana card. The public hearing was closed at 7:32 P.M. Commissioner Martens made a motion to forward said recommendations to Council. The motion was seconded by Commissioner Hasness, and carried 4-0 with Vice Chair Marsigli absent.

CITY PLANNER REPORT

City Manager Sean Scully advised on the status of the O'Reilly's application, the progress being made by the formula project and the slow progress being made by the annexation. He also updated the Commission on the training of Public Works Director Reyes with the planning aspects of the City.

PLANNING COMMISSION REPORTS

Commissioner Martens advised that he had nothing to report.

Commissioner Hasness advised that he had nothing to report.

Chairperson Gandy inquired about the potential vacant building ordinance, to which City Manager Scully provided information.

Commissioner Oliveira advised that he had nothing to report.

ADJOURNMENT

Commissioner Oliveira made motion to adjourn the meeting at 7:38 P.M. The motion was seconded by Commissioner Hasness, and carried 4-0 with Vice Chair Marsigli absent.

ATTEST:

DEPUTY CITY CLERK



PLANNING COMMISSION AGENDA ITEM

FEBRUARY 10, 2016

PREPARED BY: Sean Scully, City Manager
Kathryn Reyes, Public Works Director

SUBJECT: Public Hearing: Use Permit and Variance Requests – O'Reilly's Auto Parts - Auto Parts Sales Use

BACKGROUND:

In December of 2015 O'Reilly's Auto Parts Enterprises, LLC submitted an application for a Use Permit and two variance approvals for Assessor's Parcel Numbers 020-046-030 and 020-046-031. The parcels are located on the Southeast corner of Highway 33/140 (4th St) and 3rd Ave. The subject property is located within the General Commercial (C-2) zoning district. The use permit requests approval of a "auto parts sales" (with no installation service use). The application also requests approval of two specific variances related to the site plan/site design. The first variance requests approval of a reduction of the parking landscape setbacks from the required 15 feet to 6 feet. The second variance request approval of a reduction in parking stall dimensions from the normal 10'X20' stall size to a 10'X18' stall size. Reasoning and analysis of the variance requests are discussed at length later in the variance section of this staff report.

The plan (exhibit b) includes the development of a .764 acre site (approximately 33,283 square feet). The development includes a 6,828 commercial structure, 34 off street parking spaces, associated landscaping, and off site curb, gutter and sidewalk improvements. The approximate height of the structure will be approximately 19 feet at the highest point. The building has been oriented to the far south east corner of the parcel in order to allow for maximum line of site for drivers crossing the train tracks on 3rd Avenue. The site plan also includes requested signage for O'Reilly's. As Planning Commission may recall this project has been in development/design for the past 18 months, starting with the lot merger and tentative maps considered by the commission on October 29th 2014.

The lot has traditionally been vacant, and is generally surrounded by industrial and commercial uses. Pusateri Nut Company is to the north of the designated site with Saputo to the East and Texas Burger to the South. Across the highway to

the west is Parreira Auto Repair.

USE PERMIT ANALYSIS:

The Gustine Municipal Code defines Auto Parts Sales (with no installation services as :

"**Auto Parts Sales.** Stores that sell new automobile parts, tires, and accessories. Establishments that provide installation services are instead included under "Vehicle Services - Repair and Maintenance - Minor." Does not include tire recapping establishments, which are found under "Vehicle Services" or businesses dealing exclusively in used parts, which are included under "Recycling - Scrap and Dismantling Yards."

In order to approve a conditional use permit the Planning Commission must make the following findings.

1. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning and Subdivision Code and the Municipal Code;
2. The proposed use is consistent with the General Plan and any applicable specific plan;
3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity;
4. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
5. Granting the permit would not be detrimental to the public comfort, convenience, health, interest, morals, safety, or welfare of the persons residing or working in the subject neighborhood, or materially detrimental or injurious to property or improvements in the vicinity and zoning district in which the property is located.

Staff has reviewed the application and proposal and has concluded that, in general, with the recommended conditions of approval it does not appear as though the proposal would create additional impacts to surrounding land uses beyond what was accounted for in the general plan and zoning ordinance. The zoning ordinance guidelines establish specific performance standards that avoid impacts that would be commonly associated with this use. Like any other land use, if approved, the project would have to comply with all applicable sections of the Gustine Municipal Code and Zoning Ordinance.

The design of the site has been developed in accordance with all applicable zoning rules aside from the two requested variance approvals which are discussed in the next section. The project has been referred to all appropriate consulting agencies (Cal Trans, Union Pacific Railroad, PG&E, Gilton Solid Waste, Air Resources Board, etc). In addition, the project has been noticed to all property owners within 300 feet as is required by the Gustine Municipal Code.

ANALYSIS - VARIANCE REQUEST #1 PARKING LOT LANDSCAPE SETBACK:

The Gustine Municipal Code does not have a required percentage of landscaped area in commercial district but does have requirements with regard to landscaping setbacks adjacent to parking lots and shade tree ratios per parking space. §4-43-040 of the Gustine Municipal Code requires 15 feet of landscaping setback in areas where a parking lot is adjacent to a street right of way and interior landscape minimums of 10 feet in width. The applicant is requesting a variance which would allow a parking landscape strip of 6' in certain areas along the Highway 33/140 and the northern portion of the parking lot.

There are a number of unique site characteristics that exist which have necessitated this variance request. Firstly, for a commercial property the site is unusually long and shallow which means that the design must incorporate appropriate building orientation in addition to parking requirements in a way that allows for satisfying a number of competing development criteria (landscaping, driveway widths, parking, trash access etc). In addition, the building orientation has been placed far to the south of the property (for line of sight safety reasons as discussed earlier) which means that more parking must be created on the North side of the parcel to meet minimum parking space requirements. In addition, driveway widths must be wide enough that vehicles can travel both ways, greater landscaping in the front of the property would mean shallower driveway widths within the interior of the parking lot.

O'Reilly's has planned for larger landscape areas along the corner of the property and in the area for the dedicated monument sign. In addition landscaping along the Northeastern corner of the property will be larger than standard. If authorized O'Reilly's will still have to comply with all other sections of the Gustine landscaping standards including providing a landscaping plan to be approved at time of building permit / encroachment permit approval.

ANALYSIS - VARIANCE REQUEST #2 PARKING STALL DIMENSION SIZE:

The Gustine Municipal Code notes that minimum stall size (for 90 degree parking stalls) shall be 10'W X 20'L. The applicant has requested a variance to a 10'W X 18'L stall. The applicant has requested this slight variance so that there is appropriate space for the required number of parking spaces, if kept to 10' X 20' less area would be available for landscaping as well as appropriately sized driveway widths.

The unique orientation of the character teamed with the unique location of the property (adjacent to a state highway on one side and railroad on the other) has created a variety of competing development standards. The Gustine engineering Standards and specs require a 9'X19' stall and as such this would only deviate by 1' while allowing for ample driveway widths for any overages. This variance would allow for the applicant to meet the 1:200 parking ratio

requirements set forth under retail uses by the Gustine Municipal Code. The ratio requires 34 parking spaces to be provided on site.

VARIANCE FINDINGS/REQUIREMENTS:

The Planning Commission may grant variances from development standards provided that:

1) **No special privileges.** A Variance shall not be granted that would have the effect of granting a special privilege(s) not shared by other property owners in the vicinity and under identical zoning districts.

2) **Does not extend to uses.**

a. The power to grant Variances does not extend to allowable land uses. In no case shall a Variance be granted to allow a use of land or structure not otherwise allowed in the zoning district in which the subject property is located.

b. The use of land or structure not in conformity with the regulations of the subject zoning district shall not be allowed by the granting of a Variance.

c. Flexibility in allowable land uses is provided in Section 4-52-050 (Use Permits).

3) **Does not extend to procedures.** A Variance shall not be granted to allow an adjustment to the procedural requirements of this Zoning and Subdivision Code.

In order to authorize a variance the Planning Commission must make the following findings (for each variance separately):

General findings.

a. There are special circumstances applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other conditions), so that the strict application of this Zoning and Subdivision Code denies the property owner privileges enjoyed by other property owners in the vicinity and within the same zoning district;

b. Granting the application is necessary for the preservation and enjoyment of substantial property rights enjoyed by other property owners in the same vicinity and zoning district and denied to the property owner for which the application is sought; and

c. The application is consistent with the General Plan and any applicable specific plan.

Based on the analysis and general site characteristics staff believes that the findings can be made in this case, especially when taking the unusual nature of the site and the allowances previously made for surrounding properties that have been developed in this general area in the past. In addition, these minor variances will allow for the site to be substantially compliant with the remaining sections of the municipal code.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Staff has determined that the proposed project is exempt from the provisions of CEQA under §15332 Infill Development Project.

RECOMENDATION:

The Planning Commission consider approval of the attached resolution (Exhibit A) declaring this project exempt from the provisions of CEQA and approving the Use

Permit for a auto parts sales use, and approving the variance requests relating to landscaping requirements and parking stall dimensions.

EXHIBIT

- A. Resolution 2016-XXXX
- B. Site Plan, Floor Plan, Project Location Map, Public Notice

RESOLUTION NO. 2016-XXX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GUSTINE APPROVING A USE PERMIT AND TWO VARIANCES FOR AN AUTO PART SALES USE LOCATED ON THE SOUTHEAST CORNER OF HIGHWAY 33/140 AND 3RD AVENUE (ASSESSORS PARCEL NUMBERS 020-046-030 & 020-046-031) AND FINDING THE PROJECT EXEMPT FROM THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

WHEREAS, the City of Gustine received an Use Permit application for an auto parts sales located at the Southeast corner of Highway 33/140 and 3rd Avenue (Assessor's Parcel Numbers 020-046-030 & 020-046-031); and

WHEREAS, if approved, this resolution shall act as the Planning Commission's written approval of the Use Permit; and

WHEREAS, §4-24-030 of the Gustine Zoning Ordinance requires a Use Permit for auto parts sales uses within the C-2 (General Commercial) zoning district; and

WHEREAS, the applicant has requested a variance from the zoning standards reducing certain areas of required landscape to be reduced from 15 feet to 6 feet; and

WHEREAS, the applicant has requested a second variance from the zoning standards reducing the parking stall dimensions from 10'X20' to 10'X18'; and

WHEREAS, in accordance with §4-78-020 the City Clerk caused the legal advertisement to be published as is required by law ten (10) days prior to the Planning Commission hearing date; and

WHEREAS, before making any findings or any consideration of the proposal on its merits, a Public Hearing was conducted in accordance with §4-78-020 of the Gustine Zoning Ordinance; and

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF GUSTINE, AS FOLLOWS:

A. USE PERMIT FINDINGS:

1. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning and Subdivision Code and the Municipal Code; and
2. The proposed use is consistent with the General Plan and any applicable specific plan; and
3. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and future land uses in the vicinity; and
4. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints; and
5. Granting the permit would not be detrimental to the public comfort, convenience, health, interest, morals, safety, or welfare of the persons residing or working in the subject neighborhood, or materially detrimental or injurious to property or improvements in the vicinity and zoning district in which the property is located.

B. VARIANCE FINDINGS

1. There are special circumstances applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other conditions), so that the strict application of this Zoning and Subdivision Code denies the property owner privileges enjoyed by other property owners in the vicinity and within the same zoning district;
2. Granting the application is necessary for the preservation and enjoyment of substantial property rights enjoyed by other property owners in the same vicinity and zoning district and denied to the property owner for which the application is sought; and
3. The application is consistent with the General Plan and any applicable specific plan.

C. CEQA EXEMPTION

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under § 15332 Infill Development Projects.

D. THE PROJECT WILL BE SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL

1. The project will comply with all applicable section of the Gustine Municipal Code and Zoning Ordinance; and
2. An Encroachment Permit will be required from Caltrans for work done within the Department's right of way; and
3. An Encroachment Permit will be required from the City of Gustine for work done within the City's right of way; and
4. Development Impact Fees and Regional Transportation Impact Fees will be assessed at time of building permit issuance; and
5. The proposed driveway and the offsite improvement at the Southeast corner of SR-33/3rd Avenue should accommodate Caltrans ADA standards; and
6. Handicap accessible parking shall be provided in compliance with the provisions of the Americans with Disabilities Act (ADA); and
7. All signage must comply with the Gustine Sign Ordinance and requires a City of Gustine sign permit and building permit depending on electrical / mounting specifics; and
8. There shall be no prohibited signage as defined by § 4-38-040; and
9. Public improvements along Highway 33/140 and Third Avenue such as curb, gutter, sidewalk, driveway, lighting, etc., will be required; and
10. Water, Sewer, and Storm connections will be made in accordance with City of Gustine Improvement Standard Specifications and are subject to approval by the City Engineer; and
11. Minor changes to the site design may be made by the Community Development Director or the City Manager so long as it does not substantially change the character of the approved site plan and design; and

12. The applicant shall submit a detailed landscape plan prior to grading the site; and
13. Parking lot shade trees shall be installed on site pursuant to the Gustine Zoning
14. The applicant shall acquire all necessary approvals from other governmental jurisdictions as may be required, (if any); and
15. Any additional uses that may be proposed in the future will require separate planning review and approval prior to the commencement of those uses; and
16. This permit does not constitute approval of any proposed additional structures, such structures shall require separate building/planning permit review as is standard practice; and
17. Construction for this project shall take place in compliance with §4-030-050 which limits allowable hours of construction from 7:00AM to 7:00PM Monday through Friday and 8:00 AM to 7:00 PM on Saturday. If construction is desired to take place on Sunday this must be approved by Planning Commission or City Council; and
18. All outdoor lighting of the proposed development shall comply with §4-030-060; and
19. 1 year after issuance of the UP staff will review the operation of the use to ensure the business is in compliance with the conditions of approval listed above.

DECISION:

On the 10th Day of February 2016 based on the findings of fact and determinations, it was declared to approve the Use Permit for auto parts sales use at HWY 33/140 and Third Avenue, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

City Clerk

Planning Commission Chairman

FINISH LEGEND:

- FIELD BLOCK
- ACCENT BLOCK
- PIPS AROUND SIGN
- STOREFRONT

PAINTED SPLIT FACE CMU
 LIGHT SANDY WALLS
 LATEX 506108

PAINTED SPLIT FACE CMU
 COOL SANDY WALLS
 SOFTER TAN SWS 141

CUSTOM BEEB MADE BY DRIVEV
 FINISHING WITH BRONZE
 COLORANT (FACTORY ADDED ONLY)

KAWNEER
 "DARK IV"



1 WEST ELEVATION
 SCALE: 1/8" = 1'-0"

SCALE: 1/8" = 1'-0" O'REILLY AUTO PARTS (UPWARD)

2 SOUTH ELEVATION
 SCALE: 1/8" = 1'-0"

3 EAST ELEVATION
 SCALE: 1/8" = 1'-0"

4 NORTH ELEVATION
 SCALE: 1/8" = 1'-0"

THOMAS A. LUNDBERG
 ARCHITECT
 1739 IRL STREET, SUITE 113
 GUSTINE, CA 95325
 TEL: 925 292 8258
 FAX: 925 292 8258

O'Reilly AUTO PARTS

223 SOUTH PATTERSON
 BIRMINGHAM, AL 35204
 412 962-0244 (PHONE)

DATE: 10/10/10
 REVISION:
 DATE:

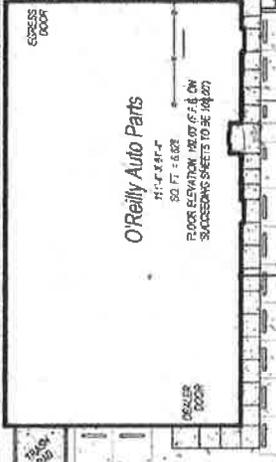
CE-1 of 1

NOT FOR CONSTRUCTION



UNION PACIFIC RAILROAD (60' WIDE)

S 17°40'35" E 266.33'



THIRD AVENUE (60' WIDE)
(AN ASPHALT PAVED PUBLIC ROAD)

N 72°54'00" E 124.94'

FOURTH STREET - STATE HIGHWAY 38 (60' WIDE)
(AN ASPHALT PAVED PUBLIC HIGHWAY)

N 17°40'35" E 266.33'

(GEN) AUTOTURN REVISION 01-08-16



PLANNING COMMISSION AGENDA ITEM

FEBRUARY 10, 2016

PREPARED BY: Sean Scully, City Manager

SUBJECT: Workshop - Personal Cultivation / Public Use and Consumption of Medical Marijuana

BACKGROUND/ DISCUSSION:

At the January 13th 2016 Planning Commission meeting, the Commission recommended changes to the municipal code to account for commercial cultivation and transportation of medical Marijuana. During that meeting, desire was expressed to have a workshop on personal cultivation guidelines as set forth by the Gustine Municipal Code. Staff has attached the relevant code section relating to both public use/consumption and personal cultivation of medical marijuana (see exhibit A).

RECOMENDATION:

Planning Commission to discuss the current code section and to direct staff on any desired changes. Desired changes will be brought back for consideration when formulated.

EXHIBITS:

- A) Chapter 7 Article 6 Gustine Municipal Code

ARTICLE 6. - PUBLIC USE/CONSUMPTION AND PERSONAL CULTIVATION OF MEDICAL MARIJUANA

FOOTNOTE(S):

--- (3) ---

Cross reference— Medical marijuana dispensaries, Tit. 5, Ch. 8.

Sec. 7-7-270. - Purpose and intent.

It is the purpose of this chapter to promote the health, safety, morals, general welfare and enjoyment of private property of the residents within the city by restricting the public use and consumption of marijuana for medical purposes and by regulating the individual cultivation of medical marijuana.

(Ord. No. 463, 11-20-2012)

Sec. 7-7-271. - Definitions.

All definitions set forth in California Health and Safety Code §§ 11362.5 and 11362.7 et seq., as may be amended, including but not limited to the terms "person with an identification card," "primary caregiver," "qualified patient," and "identification card," shall apply under this chapter in addition to the definitions set forth as follows:

Cultivation of medical marijuana means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code §§ 11362.5 and 11362.7 et seq.

Medical marijuana. In strict accordance with California Health and Safety Code §§ 11362.5 and 11362.7 et seq.

(Ord. No. 463, 11-20-2012)

Sec. 7-7-272. - Regulations applicable to public use/consumption of medical marijuana.

No person shall smoke, ingest or otherwise consume medical marijuana in the city unless the following conditions are met:

- (1) Such smoking, ingesting or consumption occurs entirely inside a private residence; and
- (2) No smoke or odor resulting from such smoking, ingesting or consumption may be detected from any neighboring property or residence.

(Ord. No. 463, 11-20-2012)

Sec. 7-7-273. - Regulations applicable to individual cultivation.

To the extent that the city is required to allow the cultivation of medical marijuana under state law, the rules set forth in this chapter shall apply. Nothing in this section shall be interpreted to permit medical marijuana dispensaries otherwise prohibited by this chapter.

- (1) Secure enclosed structure. The cultivation of medical marijuana shall at all times only occur within a fully enclosed and adequately secured building having at least four solid walls and roof of masonry, metal, or wood, and standard locks, but not within any portion of a building or structure dedicated to living space.

- (2) The building within which cultivation of medical marijuana occurs, and any improvements within such building, shall meet all applicable building and zoning requirements (including but not limited to required setbacks, height limitations and fire sprinkler requirements), and the structure and improvements themselves shall have been properly and inspected.
- (3) The total area dedicated to cultivation of medical marijuana shall be limited to a total of 120 square feet per parcel.
- (4) Any person responsible for cultivation of medical marijuana shall maintain evidence of qualification to use and cultivate medical marijuana as required by state law.
- (5) 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 cultivation occurs.
- (6) Cultivation may only be conducted by the property owner of the subject property or a resident of the subject property with written permission of the property owner of the subject property to conduct cultivation.

(Ord. No. 463, 11-20-2012)

Sec. 7-7-274. - Penalties.

- (a) Any person who violates any provisions of this chapter shall be guilty of a misdemeanor, subject to a penalty of imprisonment in the county jail for a period of time not to exceed six months, or by a fine not to exceed \$500.00, or both, for each violation. Notwithstanding the classification of a violation of this chapter as a misdemeanor, at the time an action is commenced to enforce the provisions of this chapter, the trial court, upon recommendation of the prosecuting attorney, may reduce the charged offense from a misdemeanor to an infraction.
- (b) Any person convicted of an infraction under this chapter shall be punished by:
 - (1) A fine not exceeding \$150.00 for a first violation;
 - (2) A fine not exceeding \$250.00 for each additional violation of this chapter within one year.

(Ord. No. 463, 11-20-2012)