



CITY OF HUGHSON
REGULARLY SCHEDULED (RESCHEDULED)
PLANNING COMMISSION MEETING
City Hall Council Chambers
7018 Pine Street, Hughson, CA

AGENDA
TUESDAY, JANUARY 5, 2016 – 6:00 P.M.

CALL TO ORDER: Chair Julie Ann Strain

ROLL CALL: Chair Julie Ann Strain
Vice Chair Mark Fontana
Commissioner Karen Minyard
Commissioner Ken Sartain
Commissioner Alan McFadon

Staff to be Present: Jaylen French, Community Development Director
Dominique Spinale Romo, Assistant to the CM/City Clerk
Monica Streeter, Deputy City Attorney

FLAG SALUTE: Chair Julie Ann Strain

RULES FOR ADDRESSING THE PLANNING COMMISSION

*Members of the audience who wish to address the Planning Commission are requested to complete one of the forms located on the table at the entrance of the Council Chambers and submit it to the City Clerk. **Filling out the card is voluntary.***

1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken):

Members of the Audience may address the Planning Commission on any item of interest to the public pertaining to the City and may step to the podium, State their name and City of Residence for the record (requirement of Name and City of Residence is optional) and make their presentation. Please limit presentations to five minutes. Since the Planning Commission cannot take action on matters not on the Agenda, unless the action is authorized by Section 54954.2 of the Government Code, items of concern which are not urgent in nature can be resolved more expeditiously by completing and submitting to the City Clerk a "Citizen Request Form" which may be obtained from the City Clerk.

2. PRESENTATIONS: NONE.

3. NEW BUSINESS:

- 3.1: Nominate a Chair and Vice Chair from amongst the Commission for the Year 2016.
- 3.2: Approve the Minutes of the Regularly Scheduled Meeting of November 17, 2015.

4. PUBLIC HEARING TO CONSIDER THE FOLLOWING:

- 4.1: Review and Find that Proposed Ordinance No. 2016-01 amending Section 17.02.004.F.3 of Hughson Municipal Chapter 17.02 – Zoning District is consistent with the Hughson General Plan and Recommend that the City Council adopt Ordinance No. 2016-01.
- 4.2: Recommend that the City Council adopt Ordinance No. 2016-02, adding Chapter 15.16 – Small Residential Rooftop Solar Energy Systems to Title 15 of the Hughson Municipal Code.
- 4.3: Recommend that the City Council adopt Ordinance No. 2016-03, adding Chapter 15.12 – Flood Damage Prevention to Title 15 of the Hughson Municipal Code.

5. INFORMATIONAL ITEMS: NONE.

6. CORRESPONDENCE: NONE.

7. COMMENTS:

- 7.1: Staff Reports and Comments: (Information Only – No Action)

Community Development Director:

City Clerk:

City Attorney:

- 7.2: Commissioner Comments: (Information Only – No Action)

ADJOURNMENT:

WAIVER WARNING

If you challenge a decision/direction of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at a public hearing(s) described in this Agenda, or in written correspondence delivered to the City of Hughson at or prior to, the public hearing(s).

UPCOMING EVENTS:

January 11, 2016	▪ City Council Meeting, City Hall Chambers, 7:00pm
January 19, 2016	▪ Planning Commission Meeting, City Hall Chambers, 6:00pm
January 25, 2016	▪ Veterans Advisory Committee, Odd Fellows Hall, 5:30pm
January 25, 2016	▪ Economic Development Committee, City Hall Chambers,
January 25, 2016	▪ City Council Meeting, City Hall Chambers, 7:00pm

**AMERICANS WITH DISABILITIES ACT/CALIFORNIA BROWN ACT
NOTIFICATION FOR THE CITY OF HUGHSON**

This Agenda shall be made available upon request in alternative formats to persons with a disability; as required by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132) and the Ralph M. Brown Act (California Government Code Section 54954.2).

Disabled or Special needs Accommodation: In compliance with the Americans with Disabilities Act, persons requesting a disability related modification or accommodation in order to participate in the meeting and/or if you need assistance to attend or participate in a Planning Commission meeting, please contact the City Clerk's office at (209) 883-4054. Notification at least 48-hours prior to the meeting will assist the City Clerk in assuring that reasonable accommodations are made to provide accessibility to the meeting.

Notice Regarding Non-English Speakers:

Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Hughson Planning Commission shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

AFFIDAVIT OF POSTING

DATE: December 30, 2015 **TIME:** 6:00pm
NAME: Dominique Spinale Romo **TITLE:** City Clerk

General Information: The Hughson Planning Commission meets in the Council Chambers on the *third Tuesday* of each month at 6:00 p.m., unless otherwise noticed.

PC Agendas: The Planning Commission Agenda is now available for public review at the City's website at www.hughson.org and City Clerk's Office, 7018 Pine Street, Hughson, California on the Friday, prior to the scheduled meeting. Copies and/or subscriptions can be purchased for a nominal fee through the City Clerk's Office.

Questions: Contact the City Clerk at (209) 883-4054.



**PLANNING COMMISSION
AGENDA ITEM NO. 3.1
SECTION 3: NEW BUSINESS**

Meeting Date: January 5, 2016
Subject: 2016 Nominations for Chair and Vice-Chair
Presented By: Jaylen French, Community Development Director

Recommendation:

Recommend that the Hughson Planning Commission nominate a Chair and Vice Chair from amongst the Commission for the year 2016.

Background and Overview:

According to Section 2.12.09 – Organization of the Hughson Municipal Code, “Immediately following their appointment and thereafter as soon as practicable following the first day of January of each year, the planning commission shall meet, organize, and elect one of its members to serve as the presiding officer, to be known as chairman, to serve at the pleasure of the commission. It shall also elect a vice-chairman from its membership...”



CITY OF HUGHSON
PLANNING COMMISSION MEETING

CITY HALL COUNCIL CHAMBERS
7018 Pine Street, Hughson, CA

MINUTES

TUESDAY, NOVEMBER 17, 2015 – 6:00 P.M.

CALL TO ORDER: Chair Julie Ann Strain

ROLL CALL:

Present: Chair Julie Ann Strain
Vice Chair Mark Fontana
Commissioner Karen Minyard
Commissioner Ken Sartain

Staff Present: Jaylen French, Community Development Director
Monica Streeter, Deputy City Attorney

FLAG SALUTE: Chair Julie Ann Strain

1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken):

No Public Comments.

2. PRESENTATIONS: NONE.

3. NEW BUSINESS:

3.1: Approve the Minutes of the Regular Meeting of October 20, 2015.

MINYARD/FONTANA 4-0 motion passes to approve the Minutes as presented.

4. PUBLIC HEARING TO CONSIDER THE FOLLOWING:

- 4.1:** Consider Certification of the Negative Declaration and a Recommendation to the Hughson City Council to Amend the Hughson General Plan Pertaining to a Housing Element Update.

Director French presented the Staff Report on this item and discussed the Housing Element requirements and then reviewed the regional housing needs assessment for the City of Hughson. He also reviewed and discussed the major housing issues and their potential solutions with the Commission.

MINYARD/SARTAIN 4-0 motion passes in favor of the Certification of the Negative Declaration and to make a Recommendation to the Hughson City Council to Amend the Hughson General Plan Pertaining to a Housing Element Update.

5. INFORMATION ITEMS:

- 5.1:** National Flood Insurance Program.

Director French discussed this item with the Planning Commission. No action was taken.

- 5.2:** Construction Projects Update.

Director French updated the Planning Commission on the city's current projects. No action was taken.

6. CORRESPONDENCE: NONE.

ADJOURNMENT:

Chair Strain adjourned the meeting at 6:35 P.M.

JULIE STRAIN, Chair

DOMINIQUE SPINALE ROMO, City Clerk



**PLANNING COMMISSION
AGENDA ITEM NO. 4.1
SECTION 4: PUBLIC HEARING**

Meeting Date: January 5, 2016
Subject: Find That Proposed Ordinance No. 2016-01 Amending Section 17.02.004.F.3 of Hughson Municipal Chapter 17.02 – Zoning District is Consistent with the Hughson General Plan and Recommend that the City Council Adopt Ordinance No. 2016-01
Enclosures: Draft Ordinance No. 2016-01 Information Briefing (Powerpoint Presentation); Frequently Asked Questions; and New Legislation's Impact to Cultivation and Delivery.
Presented By: Jaylen French, Community Development Director

Recommendation:

1. Find that Proposed Ordinance No. 2016-01 amending Section 17.02.004.F.3 of Hughson Municipal Chapter 17.02 – Zoning District is consistent with the Hughson General Plan; and
2. Recommend that the City Council adopt Ordinance No. 2016-01.

Background and Overview:

Governor Jerry Brown Signs New Medical Marijuana Legislation

In October 2015, Governor Jerry Brown signed three bills that mark the State's first move towards regulating the medical marijuana industry.

In signing AB 243, AB 266, and SB 643 (hereinafter "Marijuana Regulations"), the Governor marked the establishing of "a long-overdue comprehensive regulatory framework for the production, transportation, and sale of medical marijuana," Brown said in his statement on what is being called Medical Marijuana Regulation and Safety Act.

"This new structure will make sure patients have access to medical marijuana, while ensuring a robust tracking system," said Brown. "This sends a clear and certain signal to our federal counterparts that California is implementing robust controls not only on paper, but in practice."

Although Proposition 215, which voters passed in 1996, legalized cannabis for patients in the State of California, Federal laws do not recognize medical marijuana laws in individual states since Federal Law preempts states laws. Next year's State ballot will also likely see at least one measure to legalize recreational use.

Cities across the State have begun efforts to better understand the local impact of the new legislation. A critical component of the recently enacted Marijuana Regulations is that local jurisdictions are still entitled to limit or prohibit cultivation and transportation of marijuana within their jurisdiction as long as they do so by March of 2016. In addition, the League of California Cities has prepared a series of informational forums to help municipalities with this process and to determine what steps, if necessary, to take locally to prepare for the future.

Understanding the Medical Marijuana Regulation and Safety Act

The League of California Cities has hosted a series of informational webinars following the Governor's signing of the Medical Marijuana Regulation and Safety Act. It has also prepared several educational pieces to assist cities (elected officials and staff alike) better understand the new legislation. The main documents include the following that have been attached for reference.

- A. Information Briefing (Powerpoint Presentation);
- B. Frequently Asked Questions; and
- C. New Legislation's Impact to Cultivation and Delivery.

The focus of this education and outreach effort has been to review the details of what each bill does, explain how the new legislation protects local control, highlight specific regulatory issues that require immediate attention from local governments and discuss timelines for implementation.

Although this is covered in greater detail in the attached documents, the following are some of the highlights in summary form.

The Medical Marijuana Regulation and Safety Act consists of three discrete pieces of legislation:

- AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood) – Establishes dual licensing structure requiring state license and a local license or permit. Department of Consumer Affairs heads overall regulatory structure establishing minimum health and safety and testing standards.
- AB 243 (Wood) – Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- SB 643 (McGuire) – Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.

This legislation protects local control in the following ways:

- Dual licensing: A requirement in statute that all marijuana businesses must have both a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- Effect of local revocation of a permit or license: Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- Enforcement: Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- State law penalties for unauthorized activity: Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply. With certain exceptions, expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.

There are two areas that require immediate attention from local governments:

- Deliveries and mobile dispensaries: Delivery is permitted with a State license unless a city adopts an express prohibition on delivery (AB 266).
- Cultivation ordinances: Cities must adopt an ordinance prohibiting or regulating cultivation prior to March 1, 2016. Otherwise the State will be sole licensing authority.

Timeline for Implementation

According to the League of California Cities, none of the bills that comprise the Medical Marijuana Regulation and Safety Act explicitly specify a timeline for implementation. This is believed to be partly due to various State departments being at different stages in terms of their readiness. The rough timeline cities have been given for state licensing to begin is January 2018. The more immediate timeline for locals to bear in mind is March 2016 regarding respective cultivation ordinances.

Taking a Look at the City of Hughson Municipal Code

Chapter 17 of the Hughson Municipal Code consists of zoning districts and explicitly states:

"It shall be unlawful for any person or entity to own, manage, conduct or operate any medicinal marijuana dispensary in any zone or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any medical marijuana dispensary in the city of Hughson."

Preliminary discussions have occurred at the staff level and with members of the City Council regarding potential changes to the Hughson Municipal Code in light of the Medical Marijuana Regulation and Safety Act. Additionally, at the County level, the City Managers and the Chief Executive Officer have had several discussions regarding a regional approach and model ordinance for consistency and effectiveness. The City Attorney has begun looking into an ordinance amendment in light of the new legislation. The City Attorney has also reviewed examples of ordinances already in place in other jurisdictions (Waterford, Escalon, etc.) and has been in recent contact with his counterparts from other local jurisdictions in the County to discuss this issue collectively.

Discussion:

On November 11, 2015, City staff took an informational item to the City Council to seek direction on if and how to proceed with regulating medical marijuana within the City. While the council agreed that those who truly needed medical marijuana should have access, they directed staff to prepare a series of Ordinances, restricting the cultivation, delivery and commercial/retail operations of medical marijuana.

This item—one of the ordinances—seeks to regulate the cultivation of marijuana in the City by amending Section 17.02.004.F.3 of the Hughson Municipal Code (HMC) to expressly make clear that cultivation of cannabis is prohibited in all zones, planned developments, specific and master plan areas throughout the City and thus not entitled to a business license or permit from the City.

This item seeks a finding from the Hughson Planning Commission that the proposed Ordinance No. 2016-01, amending the HMC, is consistent with the City's General Plan. Additionally, this item seeks a recommendation from the Planning Commission to the City Council to adopt Ordinance No. 2016-01.

**CITY OF HUGHSON
CITY COUNCIL
ORDINANCE NO. 2016 - 01**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUGHSON AMENDING
SECTION 17.02.004.F.3 OF THE CITY OF HUGHSON MUNICIPAL CODE
CHAPTER 17.02 – ZONING DISTRICTS**

WHEREAS, The City Council of the City of Hughson desires to enact this ordinance to expressly make clear that cultivation of cannabis is prohibited in all zones, planned developments, specific and master plan areas throughout the City and thus not entitled to a business license or permit from the City.

WHEREAS, The City Council held a duly noticed public hearing on this Ordinance on January 11, 2016, at which time it considered all evidence presented, both written and oral.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF HUGHSON DOES ORDAIN AS FOLLOWS:

Section 1.

Section 17.02.004.F.3 of Chapter 17.02 of Title 17 of the Hughson Municipal Code is amended to read as follows:

“3. It shall be unlawful for any person or entity to own, manage, conduct or operate any medicinal marijuana dispensary, or cultivate marijuana in any zone or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any of these prohibited marijuana activities in the City of Hughson.”

Section 2. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The city council hereby declares that it would have adopted this ordinance irrespective of the validity of any particular portion thereof.

Section 4. This ordinance shall become effective thirty (30) days after its final passage.

Section 5. Within fifteen (15) days after its final passage, the City Clerk shall cause this ordinance to be posted in full accordance with Section 36933 of the Government Code.

The foregoing ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Hughson held on _____, and by a unanimous vote of the council members present, further reading was waived.

On motion of councilperson_____, seconded by councilperson _____, the second reading of the foregoing ordinance was waived and this ordinance was duly passed by the City Council of the Hughson City Council at a regular meeting thereof held on _____, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MATT BEEKMAN, Mayor

ATTEST:

DOMINIQUE SPINALE ROMO, City Clerk

Informational Briefing:

Medical Marijuana Regulation and Safety Act

- This briefing is designed to educate our members on the three bills comprising the Medical Marijuana Regulation and Safety Act (MMRSA). Its goals are to:
 - Explain how this legislation protects local control;
 - Review the details of what each bill does;
 - Highlight specific regulatory issues that require immediate attention from local governments;
 - Discuss timelines for implementation
 - Field your questions

Note: Some of the provisions of the new laws discussed in this briefing are not included in the Medical Marijuana Regulation and Safety Act.

Medical Marijuana Regulation and Safety Act

- The Medical Marijuana Regulation and Safety Act consists of three discrete pieces of legislation:
- **AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood)** – Establishes dual licensing structure requiring state license *and* a local license or permit. Department of Consumer Affairs heads overall regulatory structure establishing minimum health and safety and testing standards.
- **AB 243 (Wood)**– Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- **SB 643 (McGuire)** - Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.

Medical Marijuana Regulation and Safety Act

- This legislation protects local control in the following ways:
- **Dual licensing**: A requirement in statute that all marijuana businesses must have **both** a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- **Effect of Local Revocation of a Permit or License**: Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- **Enforcement**: Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- **State law penalties for unauthorized activity**: Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply.
- With certain exceptions, expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.

Medical Marijuana Regulation and Safety Act

- This legislation protects public safety in the following ways:
- **SB 643**: Establishes a track and trace program for all marijuana.
- **AB 266**:
 - Limits vertical integration by requiring third party distribution, transportation and testing.
 - Requires the development of a study that identifies the impact and impairing effect that marijuana has on motor skills.
 - Establishes uniform security requirements at dispensaries as well as for transporters.

Key State Medical Marijuana Laws

- Medical Marijuana Regulation and Safety Act (Business and Profession Code section 19300 through 19360). Governs the licensing and control of all medical marijuana businesses in the state and provides criminal immunity for licensees.
- Compassionate Use Act of 1996 (Health and Safety Code section 11362.5). Criminal violations relating to possession and cultivation of marijuana do not apply to patients and primary caregivers for possession and cultivation of marijuana for personal medical use with doctor's approval.
- Medical Marijuana Program (Health and Safety Code section 11362.7 through 11362.9). Establishes voluntary program for identification cards issued by county for qualified patients and primary caregivers and provides criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana.

Medical Marijuana Regulation and Safety Act

Two areas will require immediate attention from local governments:

- **Deliveries and mobile dispensaries:** Delivery is permitted with a State license unless a city adopts an express prohibition on delivery (AB 266).
- **Cultivation ordinances:** Cities must adopt an ordinance prohibiting or regulating cultivation prior to March 1, 2016. Otherwise the State will be sole licensing authority.

Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**
 - Establishes a statewide regulatory scheme administered by the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA).
 - Provides for dual licensing: both a state license, and a local permit or license, *issued according to local ordinances*, are required.
 - Caps total cultivation for a single licensee at 4 acres statewide, subject to local ordinances.
 - Creates four licensing categories: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
 - Limits cross-licensing: Operators may hold one state license in up to two separate license categories. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.

Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**
- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and it was enacted on or before July 1, 2015. Requires businesses to operate in compliance with local ordinances, and to have been engaged in all the specified activities on July 1, 2015.
- Requires establishment of uniform state minimum health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product. Product testing is mandatory.
- Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.

Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**
 - Labor Peace: Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.
 - Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.
 - Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun. Thereafter license will be required.

Medical Marijuana Regulation and Safety Act

- **AB 243 Medical Marijuana – what the bill does:**
- Places the Dept. of Food and Agriculture (DFA) in charge of State licensing and regulation of indoor and outdoor cultivation sites.
- Mandates the Dept. of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Dept. of Public Health to develop standards for production and labelling of all edible medical cannabis products.
- Assigns joint responsibility to DFA, Dept. of Fish and Wildlife, and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.

Medical Marijuana Regulation and Safety Act

- **AB 243 Medical Marijuana – what the bill does:**
- Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.
- Specifies various types of cultivation licenses.
- Directs the multi-agency task force headed by the Dept. of Fish and Wildlife and the SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.

Medical Marijuana Regulation and Safety Act

- **SB 643 Medical Marijuana – what the bill does:**
- Directs California Medical Board to prioritize investigation of excessive recommendations by physicians;
- Imposes fines (\$5000.00) vs. physicians for violating prohibition against having a financial interest in a marijuana business;
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct;
- Imposes restrictions on advertising for physician recommendations;

Medical Marijuana Regulation and Safety Act

- **SB 643 Medical Marijuana – what the bill does:**
- Places Dept. of Food and Agriculture in charge of cultivation regulations and licensing, and requires a track and trace program;
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure;
- Places DPR in charge of pesticide regulation; DPH in charge of production and labelling of edibles;
- Authorizes counties to tax – declaratory of existing law.

Medical Marijuana Regulation and Safety Act

- **SB 643: Disqualifying felony convictions for licensure**
 - These include felony narcotics convictions, violent felony convictions, serious felony convictions, and felony convictions involving fraud, deceit or embezzlement.
 - Applications cannot be denied if the denial is based solely on the applicant's conviction of a crime for which the applicant was subsequently granted a certificate of rehabilitation, or if the applicant's conviction was subsequently dismissed.

Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- “Delivery” means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health & Safety Code, or a testing laboratory.
- “Delivery” also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed under this chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products. (Business & Professions Code 19300.5(m))

Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- *“Deliveries” can only be made by a dispensary and in a city, county, or city and county that does not **explicitly prohibit** it by local ordinance. Business & Professions Code 19340(a). See also Section 19340(b)(1).*
- Therefore, if your city wishes to prohibit delivery of medical marijuana within your city, an ordinance must be adopted to explicitly prohibit deliveries.
- Timing: State licenses are expected to be issued starting January 1, 2018. A facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements may continue its operations until its application for licensure is approved or denied effective January 1, 2018 (Business & Professions 19321(c)).
- Ordinance explicitly prohibiting deliveries should include (1) an amendment to the zoning code prohibiting “delivery” (as defined in AB 266) in any zoning district; or (2) an amendment to the Municipal Code relating to business operations prohibiting “delivery” of ‘medical marijuana’ and “medical cannabis products” (as defined in AB 266) as a business within the city.

Medical Marijuana Regulation and Safety Act

● Cultivation (AB 243)

- AB 243 (Wood) prohibits cultivation of medical marijuana without first obtaining both a local license/permit/other entitlement for use and a state license. A person may not apply for a state license without first receiving a local license/permit/other entitlement for use.
- A person may not submit an application for a state license if proposed cultivation will violate provisions of local ordinance or regulation or if medical marijuana is prohibited by city, county, or city and county either expressly or otherwise under principles of permissive zoning (Health & Safety 11372.777(b)).

Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243)**

- **However...** If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles or permissive zoning*, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the state is the sole licensing authority for medical marijuana cultivation applicants (Health & Safety 11372.777(c)(4)). [March 1, 2016 deadline does not apply to cultivation for personal medical use within 100 square foot area/500 square foot area for primary care-taker].
- Under a “permissive” zoning code, “any use not enumerated in the code is presumptively prohibited.” *City of Corona v. Naulis* (2008) 166 Cal.App.4th 418, 425 cited in *County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, FN. 3

Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- City #1: Municipal Code that expressly prohibits cultivation of marijuana: No need to take any action.
- City #2: Municipal Code that expressly regulates (requires a permit or license or other entitlement) the cultivation of medical marijuana: No need to take any action.
- City #3: Municipal Code that does not expressly prohibit or expressly regulate (requires a permit or license or other entitlement) to cultivate medical marijuana and is not a “permissive zoning” code. ***Need to take action (see next slide)***
- City #4: Municipal Code that is a “permissive zoning” code and does not enumerate cultivation of medical marijuana as a permitted or conditional use: ***Need to take action (see second slide following)***.

Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- **City #3 : What needs to be done before March 1, 2016?**
- **City #3: Enact an ordinance. The Department of Food and Agriculture will be the sole licensing authority for the cultivation of medical marijuana within City #3 *if City #3 does not have an ordinance either expressly prohibiting or expressly regulating the cultivation of medical marijuana before March 1, 2016.* (Health & Safety Code 11362.777(c)(4). Second reading of an ordinance must occur by January 29, 2016 or a city may consider adopting an urgency ordinance pursuant to Government Code 36937).**

Medical Marijuana Regulation and Safety Act

- Cultivation (AB 243) – Examples:
- City #4 : What needs to be done before March 1, 2016?
- City #4: If City #4 prohibits the cultivation of medical marijuana “under principles of permissive zoning,” then the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within City #4. (Health & Safety Code 11362.777(b)(3)). ***However, the city still needs take action (see next slide).***

Medical Marijuana Regulation and Safety Act

- **Cultivation - General Guidelines for Cities**
- Check and confirm that your city's zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #3.
- If confirmed that your city's zoning code is adopted and implemented under the principles of permissive zoning: Adopt a resolution that includes the following provisions:
 - (1) States that H & S 11362.777(b)(3) states that Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
 - (2) Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
 - (3) States this means that cultivation of marijuana is not allowed within City #4 because it is not expressly permitted and,
 - (4) Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #4.

Medical Marijuana Regulation and Safety Act

- Timeline for Implementation
 - None of the bills specify a timeline for implementation
 - This is partly due to various departments being at different stages in terms of their readiness
 - The rough timeline we have been given for state licensing to begin is January 2018
 - The more immediate timeline for locals to bear in mind is March 2016 regarding your cultivation ordinances

Medical Marijuana Regulation and Safety Act

- Questions?

Frequently Asked Questions (FAQs)

Medical Marijuana Regulation and Safety Act¹

Topic #1: Cultivation

*The State will be the sole licensing authority for the commercial cultivation of medical marijuana unless a city adopts land use regulations or ordinances regulating or prohibiting the cultivation of marijuana -- either expressly or otherwise under the principles of permissive zoning -- prior to **March 1, 2016.***²

1. **Question:** If a city wants to enact a total ban on cultivation, can the ban include cultivation for personal use?

Answer: Yes. Under *Live Oak*³, a city can ban all marijuana cultivation -- even cultivation of small amounts by qualified patients. The *Live Oak* ban had no exceptions for personal use by a qualified patient. The new legislation does not change the law in this regard.

2. **Question:** Must a city's ordinance prohibiting cultivation make an exception for personal medical marijuana cultivation of up to 6 mature or 12 immature plants?⁴

Answer: No. In the *Live Oak* case, the California Court of Appeal upheld the city's total ban on all marijuana cultivation. That authority is preserved under the new legislation.

3. **Question:** Is a person who cultivates marijuana for his or her personal medical use required to get a cultivation license from the State?

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016. Please consult your City Attorney before taking action to implement the MMRSA. The answers to these FAQs may be different in your city based upon your municipal code, regulations, and policies. The answers do not constitute legal advice from the League of California Cities®.

² Health & Safety 11362.777(c).

³ *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975.

⁴ Health & Safety Code 11362.77 allows a qualified patient to cultivate 6 mature or 12 immature plants without criminal liability.

Answer: No, if the area used for cultivation does not exceed 100 square feet, or 500 square feet for a primary caregiver with no more than five patients.⁵ If the areas exceed these limits, then a State license is required. The exemption from the State licensing requirements does not prevent a city from regulating or banning cultivation by persons exempt from State licensing requirements.⁶

4. **Question:** Can a city prevent the State from becoming the sole licensing authority for cultivation by adopting an ordinance that permits the cultivation of six plants per residence prior to March 1, 2016?

Answer: Yes. The State becomes the sole licensing authority for cultivation as of March 1, 2016 if a city does not have a land use regulation or ordinance “regulating or prohibiting the cultivation of marijuana.” An ordinance permitting cultivation under certain specific conditions (not more than six plants per residence) is an ordinance “regulating” marijuana cultivation and therefore qualifies. However, in order to be completely clear, the City Attorney may wish to determine whether it is advisable to prohibit all other types of cultivation as part of the ordinance.

5. **Question:** Must the cultivation prohibition be adopted as part of a city’s zoning code? Could it be adopted instead under the city’s business licenses and regulations?

Answer: It’s not possible to answer “yes” or “no.” AB 243 requires a “land use regulation or ordinance.” Whether the phrase “land use” requires a zoning ordinance is a question for the city attorney to answer based on the particular language of the city’s municipal code.

6. **Question:** Can a city ban large growers but still allow qualified patients to cultivate a small amount of medical marijuana in their private residences?

Answer: Yes. There’s nothing in the legislation that requires a total ban. The most important consideration is to clearly identify cultivation that is prohibited and cultivation that is allowed and to do so before March 1, 2016.

7. **Question:** Is a temporary land use moratorium (under Government Code section 65858) on medical marijuana cultivation that is effective in a city by March 1, 2016 sufficient to prevent the State from having sole licensing authority under the new law for medical marijuana cultivation applicants in that city?

⁵ Business & Professions Code 19319; Health & Safety 11362.777(g).

⁶ Health & Safety Code 11362.777(g).

Answer: Probably not. The new law requires a land use regulation or ordinance that prohibits or regulates cultivation. Because a moratorium adopted under Government Code 65858 would only temporarily prohibit cultivation, it may not qualify as a land use ordinance that “prohibits” cultivation.

8. **Question:** Can a local medical marijuana cultivation ordinance be enacted on an urgency basis in order to comply with the March 1, 2016 deadline in the new legislation?

Answer: Yes, with urgency findings relating to the statutory deadline.

Topic #2: Delivery

Deliveries of medical marijuana can only be made by a State-licensed dispensary in a city that does not explicitly prohibit deliveries by local ordinance. If a city wants to prevent deliveries within its jurisdiction, it must adopt an ordinance expressly prohibiting them.⁷

9. **Question:** Is there a deadline for adopting an ordinance explicitly prohibiting deliveries?

Answer: There is no deadline in the new law. However, best practice would be to adopt the ordinance prior to the date the State begins issuing licenses allowing deliveries so as to reduce the risk of confusion and to avoid the process of requesting the State to terminate the operations of a dispensary making deliveries within the city. The legislation does not specify a deadline for the State to begin issuing any category of license. The State is generally expected to begin issuing licenses on January 1, 2018, but it could begin sooner.

10. **Question:** What are the quantities that delivery services will be authorized to transport?

Answer: The amount that local delivery services will be authorized to carry will be determined by the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs. The determination will be based on security considerations, cash value, and other factors. The amount will be a statewide threshold, authorized for delivery primarily to patients, primary caregivers, and testing labs. Larger amounts will not be considered “delivery” but rather “transport” triggering heightened security requirements while the product is being moved.

⁷ Health & Safety 19340.

Topic 3: Dispensaries and Retail Operations

11. **Question:** Will cities still be able to ban dispensaries?

Answer: Yes. Cities currently have the ability to enact bans on dispensaries and other marijuana retail operations. The new law will not change that, and in fact requires a local permit and a State license before a marijuana business can begin operations within a specific jurisdiction. Cities will retain the discretion to deny permits or licenses to marijuana dispensaries.

12. **Question:** Can a city allow dispensaries and prohibit delivery services?

Answer: Yes. But cities should be aware that if they wish to prohibit delivery services, an ordinance prohibiting delivery services is required.

Topic #4: Other Questions

13. **Question:** Does the new legislation make any distinction between “not-for-profit” and “for profit” medical marijuana businesses?

Answer: No. There is no distinction in the new legislation between medical marijuana businesses that operate “for profit” and those that operate on a “not-for-profit” basis. The new law does not mandate that dispensaries or other businesses operate under either business model.

14. **Question:** Are marijuana edibles covered under the new legislation? Is there a separate designation for them under the new law, with additional State regulatory requirements?

Answer: The new legislation directs the State Department of Public Health (DPH) to develop standards for the production and labeling of all edible medical cannabis products (Business & Professions Code section 19332(c)). A license is required from DPH to “manufacture” edibles. The DPH standards are “minimum standards.” A city may adopt additional stricter standards, requirements and regulations regarding “edibles” (Business & Professions Code section 19316(a)). Cities also retain their ability to license and regulate edible sales or distribution.

15. **Question:** The new law says: "upon approval of the state, cities may enforce state law". If an existing medical marijuana dispensary does not have both licenses (State and city), then must a city wait for the State to approve shutting the dispensary down

before a city can cite the dispensary or otherwise seek to shut it down under the city's ordinances and regulations?

Answer: No. A city may enforce its own ordinances and regulations against the dispensary since a medical marijuana dispensary cannot operate lawfully unless it complies with all local ordinances and regulations.

16. **Question:** Does a P.O. Box qualify as a medical marijuana business location? Is that considered a "use" in a city?

Answer: The answer to this question depends upon a city's municipal code. The State law prohibits a person from engaging in commercial cannabis activity without possessing both a State license and a local permit, license or other authorization. A State licensee may not commence activity under the authority of a State license until the applicant has complied with all requirements of the applicable local ordinance (Business & Professions Code section 19320). A city's municipal code will determine whether a "use" includes a post office box.

17. **Question:** Does the new law address extraction of THC, butane or other substances from marijuana?

Answer: The new law does not specifically address the issue of extraction at all – other than to acknowledge very generally that extraction falls within the definition of manufacturing, and that medical marijuana or a product derived from it may contain extracts.

18. **Question:** Since patients and primary caregivers are exempt from the licensing requirement under specified circumstances, how will that work if they are also owners of a dispensary or cultivation site?

Answer: A primary caregiver or qualified patient who seeks to operate a dispensary or cultivation site is subject to the same State licensing requirements and local permitting requirements as any other person.

19. **Question:** What types of medical marijuana businesses require a State license?

Answer: The new law creates six State licensing categories: Dispensary, Distributor, Transport, Cultivation, Manufacturing, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Any person or entity wishing to operate under a State license must also comply with all local requirements.

20. **Question:** Several initiative measures to legalize recreational marijuana have been filed with the Attorney General in advance of the November 2016 ballot. Should a city be considering prohibiting or regulating recreational marijuana at this time?

Answer: No. The new law does not address recreational use of marijuana. It adds a licensing structure for businesses that wish to serve those qualified patients and primary caregivers who use medical marijuana for their personal use. The League of California Cities is following the various recreational marijuana initiative measures that have been filed with the Attorney General. There is no need for a city to take any action at this time. If a city is interested in following these measures, more information can be found at: <https://www.oag.ca.gov/initiatives/active-measures>.

21. **Question:** Does the new law protect the privacy of patients and primary caregivers?

Answer: Yes. Patient and primary caregiver information is confidential and not subject to disclosure under the California Public Records Act, except as necessary for employees of the State or any city to perform official duties.

22. **Question:** Is there a provision in the new law giving business operators priority for State licensing if they can show that they are in compliance with local ordinances? If so, what is the purpose of this provision?

Answer: Yes. The State licensing authority is required to prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016. This provision is intended as an incentive for business operators to be in compliance with local ordinances, to ease any difficulties local governments may have in launching their local regulatory structures, and to help expedite the initial phase of issuing state licenses.

23. **Question:** Does the new law address food trucks that sell marijuana edibles?

Answer: No. The operation of food trucks are within the control and regulation of cities and county health departments.

PLEASE NOTE: This document will be updated periodically, as needed, and will remain available at www.cacities.org. As noted above, each city should consult with its city attorney on all of these issues. The answers to these FAQs do not constitute legal advice from the League of California Cities®.

MEDICAL MARIJUANA REGULATION AND SAFETY ACT¹

What Cities Need to Know About the New Law and Cultivation

OVERVIEW

Here's what you need to know:

- **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, transport or distribution – must have a State license².
- **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State and permission from the city (“dual licensing”).
- **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

CULTIVATION

Here's what you need to know:

If your city does **not** have a land use ordinance in place regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles of permissive zoning*, or chooses not to administer a conditional permit program, then commencing **March 1, 2016**, the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applicants.

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

² The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.

October 27, 2015

CULTIVATION

Here's what you need to do:

Determine if your city fits within City #1 or City #2 as described below:

- **City #1:** Municipal Code that does not expressly prohibit nor expressly regulate cultivation of medical marijuana and is not a “permissive zoning” code. **Need to take action.**

ACTION REQUIRED: Adopt a land use ordinance regulating or prohibiting the cultivation of medical marijuana. The ordinance must be effective by February 28, 2016. The ordinance may be adopted as an “urgency ordinance,” or second reading must occur on or before January 29, 2016.

- **City #2:** Municipal Code that is a “permissive zoning” code and does not enumerate cultivation of medical marijuana as a permitted or conditional use. **Need to take action.**

ACTION REQUIRED: (1) Check and confirm that your city’s zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #1. (2) If confirmed, adopt a resolution that includes the following provisions:

- States that Health & Safety Code section 11362.777(b)(3) provides that the Department of Food and Agriculture may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
- Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
- States this means that cultivation of marijuana is not allowed within City #2 because it is not expressly permitted; and
- Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #2.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.



MEDICAL MARIJUANA REGULATION AND SAFETY ACT¹

What Cities Need to Know About the New Law and Delivery Services

OVERVIEW

Here's what you need to know:

- **Local prohibition or regulation:** Cities may prohibit or regulate medical marijuana businesses within their jurisdictions. **Local authority remains intact under the new law.**
- **State license required:** All medical marijuana businesses – dispensary sales, delivery service, cultivation, or transport – must have a State license².
- **State license not enough:** A medical marijuana business in any city may only operate if it has permission from the State **and** permission from the city (“dual licensing”).
- **Enforcement:** Revocation of local permission to operate means a medical marijuana business must terminate operation because the new law requires dual licensing. Upon approval of the State, a city may enforce State law.
- **State law penalties for unlicensed activity:** There are civil penalties and criminal penalties for operating without a State license.

DELIVERY

Here's what you need to know:

If a city does not expressly prohibit the delivery of medical marijuana within its jurisdiction, delivery will be allowed (with a State dispensary license). This means that if your city wishes to prohibit the delivery of medical marijuana within its jurisdiction, the city must adopt an ordinance expressly prohibiting delivery services and mobile dispensaries.

DELIVERY

Here's what you need to do:

- Determine whether your city currently bans delivery services for medical marijuana.
- If you have a ban, determine whether it is an express ban, or a ban enacted via permissive zoning (i.e., it is not listed in your zoning or other codes as a permitted activity within the city limits).
- If you have an express ban specifically identifying marijuana deliveries as a prohibited activity, you do not need to take further action.
- If you wish to prohibit delivery services but do not have an express ban, **you need to take further action.**

ACTION REQUIRED: Adopt an ordinance expressly banning deliveries within your jurisdiction. If you do not adopt an express ban ordinance before the State begins issuing any State licenses, a State-licensed dispensary will be able to deliver medical marijuana within your jurisdiction. You may adopt an ordinance expressly banning deliveries after the State begins to issue licenses. However, it may be difficult to terminate the State licensee's deliveries at that time. Therefore, best practice is for an ordinance to be in place before the State begins issuing State licenses. The State currently estimates that it will begin issuing dispensary licenses in January 2018, but that could certainly happen sooner.

- A ban enacted via permissive zoning is not an express ban.

Be sure to consult with your city attorney before taking any of the actions recommended in this document.

¹ AB 266 (Bonta, Cooley, Jones-Sawyer, Lack, Wood); AB 243 (Wood); and SB 643 (McGuire). Effective 1/1/2016.

² The Department of Consumer Affairs estimates it will begin issuing State licenses in January 2018. The Department of Food and Agriculture and the Department of Public Health also have licensing authority under the new law. Businesses operating in compliance with local ordinances will get priority in the State licensing application process.



**PLANNING COMMISSION
AGENDA ITEM NO. 4.2
SECTION 4: PUBLIC HEARING**

Meeting Date: January 5, 2016
Subject: Recommend that the City Council Adopt Ordinance No. 2016-02 Adding Chapter 15.16 – Small Residential Rooftop Solar Energy Systems to Title 15 of the Hughson Municipal Code
Enclosures: Draft Ordinance No. 2016-02
Presented By: Jaylen French, Community Development Director

Recommendation:

Recommend that the City Council adopt Ordinance No. 2016-02, adding Chapter 15.16 – Small Residential Rooftop Solar Energy Systems to Title 15 of the Hughson Municipal Code.

Background and Overview:

In 2014, the state passed a new law, Assembly Bill (AB) 2188, Expedited Solar Permitting Act, which modifies the existing Solar Rights Act and requires each city or county to adopt an ordinance that creates an expedited solar permitting ordinance by September 30, 2015.

While the City is late in adopting this ordinance, the City has met the intent and the specific review time requirements of the Bill since long before the legislation was passed. The City is looking to now formalize this process through the adoption of an ordinance detailing the requirements per the legislation.

According to the State, Solar energy is a key component of California state and local government goals to achieve climate action plans and generate economic development. Generally, current solar permitting requirements create a barrier to low-cost, rapid deployment of solar energy. Streamlined permitting will result in reduced processing times and increased output for local governments and make more efficient use of resources.

Discussion:

The City seeks to implement AB 2188, through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems.

As previously stated, the City currently has a very timely review turn-around for solar projects. Further, as outlined by the State, the City does not want to hinder the production of low cost, reliable energy, nor the creation of jobs and economic opportunities; the passing of this ordinance is further support of the City's desire to review solar projects—and all projects—in a timely manner and to eliminate the ambiguity and unknowns which are at times associated with the permitting process.

AB 2188 modifies specific statutes that compose the Solar Rights Act. California cities and counties must adopt an ordinance that creates a streamlined, expedited permitting process for small residential rooftop solar energy systems by September 30, 2015. The new law requires cities and counties to substantially conform their expedited, streamlined permitting process to recommendations contained in the current version of the California Solar Permitting Guidebook.

AB 2188 requires:

- Adoption of a checklist of all requirements for a system to be eligible for expedited review.
- Approval of an application where the jurisdiction determines that the application is complete and meets all prescribed requirements.
- The use of electronic signatures on relevant permitting documents unless a jurisdiction is unable to process them.
- Allows for electronic submittal of the expedited permit documents.
- A single inspection, subject to certain exceptions, that must be performed in a timely manner.
- Changes the definition of “significantly” in reference to determining whether a reasonable restriction significantly increases a cost or decreases efficiency for solar water heating systems and photovoltaic systems with regard to covenants, conditions or restrictions imposed by a common interest development (i.e., a homeowners association).

This item seeks a recommendation from the Hughson Planning Commission to the City Council to adopt Ordinance No. 2016-02, which will formalize the City's permitting process for residential rooftop solar systems.

**CITY OF HUGHSON
CITY COUNCIL
ORDINANCE NO. 2016 – 02**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUGHSON ADDING CHAPTER 15.16 TO TITLE 15 "BUILDINGS AND CONSTRUCTION" OF THE CITY OF HUGHSON MUNICIPAL CODE TO CREATE A STREAMLINED PERMITTING PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR ENERGY SYSTEMS

WHEREAS, the City Council of the City of Hughson seeks to implement Assembly Bill 2188, Section 65850.5(a) of the California Government Code, through the creation of an expedited, streamlined permitting process for small residential rooftop solar energy systems; and

WHEREAS, the City Council of the City of Hughson recognizes that rooftop solar energy provides reliable energy and pricing for its residents and businesses; and

WHEREAS, solar energy creates local jobs and economic opportunities; and

WHEREAS, on January 11, 2016, the City Council of the City of Hughson held a public hearing on this proposed ordinance for an expedited, streamlined permit process for solar energy systems as set forth in Assembly Bill 2188.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HUGHSON DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 15.16 Added. Chapter 15.16 is added to the City of Hughson Municipal Code to read in full as follows:

“Chapter 15.16

Small Residential Rooftop Solar Energy Systems

Sections:

- 15.16.010 Authority; Purpose; Applicability
- 15.16.020 Definitions
- 15.16.030 Requirements for Expedited Permitting

15.16.010 Authority; Purpose; Applicability

A. **Authority.** This chapter is adopted under the authority of Government Code Section 65850.5.

B. **Purpose.** The purpose of this chapter is to adopt an expedited, streamlined solar permitting process for small residential rooftop solar energy systems.

C. **Applicability.** This chapter applies to the permitting of a small residential rooftop solar energy system.

15.16.020 Definitions

The following words and phrases as used in this section are defined as follows:

"Electronic submittal" means the utilization of one or more of the following:

1. E-mail,
2. The internet,
3. Facsimile.

"Small residential rooftop solar energy system" means all of the following:

1. A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
2. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the City and paragraph (iii) of subdivision (c) of Section 714 of the Civil Code, as such section or subdivision may be amended, renumbered, or redesignated from time to time.
3. A solar energy system that is installed on a single or duplex family dwelling.
4. A solar panel or module array that does not exceed the maximum legal building height as defined by the authority having jurisdiction.

"Solar Energy System" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code, as such section or subdivision may be amended, renumbered, or redesignated from time to time."

15.16.030 Requirements for Expedited Permitting

A. **Application.** An applicant for a small residential rooftop solar energy system shall submit a building permit application on the form provided by the city, accompanied by each item of information listed in the city's small residential rooftop solar energy checklist. Both the application form and the checklist shall be available online.

The applicant may submit the permit application and associated documentation to the City's building division by personal or electronic submittal together with any required permit processing and inspection fees. In the case of electronic submittal, the electronic signature of the applicant on all forms, applications and other documentation may be used in lieu of a wet signature.

An application that satisfies the information requirements in the checklist, as determined by the building official, shall be deemed complete. Upon receipt of an incomplete application, the building official shall issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.

Upon confirmation by the building official of the application and supporting documentation being complete and meeting the requirements of the checklist, the building official shall administratively approve the application and issue all required permits or authorizations within 1 to 3 business days of receipt of application.

Such approval does not authorize an applicant to connect the small residential rooftop energy system to the local utility provider's electricity grid. The applicant is responsible for obtaining such approval or permission from the local utility provider.

B. Inspection. When a building permit is issued for a small residential rooftop solar energy system, the city will require only one inspection (which may be a consolidated inspection by the building official). If a small residential rooftop solar energy system fails inspection, the city may perform one or more subsequent inspections.

Section 2. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 3. This ordinance shall take effect thirty (30) days after passage thereof.

Section 4. Within fifteen (15) days after its passage, the City Clerk shall cause this ordinance to be posted in full accordance with Section 36933 of the Government Code.

The foregoing ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Hughson held on January 11, 2016, and by a unanimous vote of the council members present, further reading was waived.

On motion of councilperson _____, seconded by councilperson _____, the second reading of the foregoing ordinance was waived and this ordinance was duly passed by the City Council of the City of Hughson at a regular meeting thereof held on January 25, 2015, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MATT BEEKMAN, Mayor

ATTEST:

DOMINIQUE SPINALE ROMO City Clerk



PLANNING COMMISSION
AGENDA ITEM NO. 4.3
SECTION 4: PUBLIC HEARING

Meeting Date: January 5, 2016
Subject: Recommend that the City Council Adopt Ordinance No. 2016-03 Adding Chapter 15.12 – Flood Damage Prevention to Title 15 of the Hughson Municipal Code
Enclosures: Draft Ordinance No. 2016-03
Presented By: Jaylen French, Community Development Director

Recommendation:

Recommend that the City Council adopt Ordinance No. 2016-03, adding Chapter 15.12 – Flood Damage Prevention to Title 15 of the Hughson Municipal Code.

Background and Overview:

The Nation Flood Insurance Program (NFIP) was established with the passage of the National Flood Insurance Act of 1968. The NFIP is a Federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for State and community floodplain management regulations that reduce future flood damages.

As of 2005, over 20,000 communities participated in the program.

Discussion:

Participation in the program is completely voluntary. A benefit to those that participate is the ability to purchase flood insurance program. However, communities that are in 'flood prone' areas are required to participate in the program. The City of Hughson is not in a flood prone area.

The Federal Emergency Management Agency (FEMA) is required by law to identify and map the Nation's flood prone areas. The identification of flood hazards serves many important purposes—it creates awareness of the hazard, especially for those who live and work in flood prone areas. Maps provide the State and communities with the information needed for land use planning and to reduce flood risk to floodplain development and implement other health and safety requirements

through codes and regulations. State and communities can also use the information for emergency management.

To participate in the NFIP, a community must adopt and enforce floodplain management regulations that meet or exceed the minimum requirements of the Program. These requirements are intended to prevent loss of life and property and reduce tax payer's costs for disaster relief, as well as minimize economic and social hardships that result from flooding.

It should be noted that homeowner's insurance policies generally do not cover the flood losses and while Hughson is not a flood prone area, there are residents that do desire flood insurance.

This item is to recommend that the City Council adopt Ordinance 2016-XX adding chapter 15.12 to the Hughson Municipal Code to establish flood plain management regulations that will allow citizens of the City to participate in FEMA's flood insurance program. The Ordinance shall act as the City's statement of Intent to participate in the National Flood Insurance Program as required by the program.

**CITY OF HUGHSON
CITY COUNCIL
ORDINANCE NO. 2016 - 03**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUGHSON ADDING
MUNICIPAL CODE CHAPTER 15.12 – FLOOD DAMAGE PREVENTION TO TITLE 15
“BUILDINGS AND CONSTRUCTION” TO THE CITY MUNICIPAL CODE**

WHEREAS, the City Council of the City of Hughson desires to establish floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry and to minimize public and private losses due to flood conditions; and

WHEREAS, the City Council of the City of Hughson also desires to adopt floodplain management regulations that will allow citizens of the City of Hughson to participate in the Federal Emergency Management Agency’s flood insurance program to further protect their property from damage caused by certain types of flooding set forth in said program; and

WHEREAS, Title 15 of the Hughson Municipal Code currently does not contain flood management regulations that it desires to enact; and

WHEREAS, the City of Hughson desires to amend Title 15 of the Hughson Municipal Code by adding Chapter 15.12 containing floodplain management regulations.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF HUGHSON DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 15.12 is added to Title 15 of the Hughson Municipal Code which read as follows:

“Article 1. General Provisions

15.12.010 Statutory Authorization. The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Hughson does hereby adopt the following floodplain management regulations.

15.12.020 Statement of Purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Article 2. Definitions

15.12.100. Definitions. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

A. **"Area of special flood hazard"** - means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

B. **"Base flood"** means a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.

C. **"Building"** - see **"Structure"**.

D. **"Development"** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

E. **"Flood or flooding"** means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; or mudslides (i.e., mudflows) which are proximately caused by flooding as defined herein and are akin to a river of liquid & flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water & deposited along the path of the current.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusual and unforeseeable event which results in flooding as defined in this definition.

F. "**Floodplain or flood-prone area**" means any land area susceptible to being inundated by water from any source - see "**Flooding**".

G. "**Floodplain Administrator**" is the individual appointed to administer and enforce the floodplain management regulations.

H. "**Floodplain management**" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

I. "**Floodplain management regulations**" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

J. "**Governing body**" is the local governing unit, i.e. county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

K. "**Historic structure**" means any structure that is

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a

district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states with approved programs.

L. **"Manufactured home"** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

M. **"Manufactured home park or subdivision"** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

N. **"New construction"**, for floodplain management purposes, means structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by this community, and includes any subsequent improvements to such structures.

O. **"One-hundred-year flood" or "100-year flood"** - see **"Base flood."**

P. **"Recreational vehicle"** means a vehicle which is

1. Built on a single chassis;

2. 400 square feet or less when measured at the largest horizontal projection;

3. Designed to be self-propelled or permanently towable by a light-duty truck; and

4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Q. **"Start of construction"** includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of

columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

R. **"Structure"** means a walled and roofed building that is principally above ground: this includes a gas or liquid storage tank or a manufactured home.

S. **"Substantial damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

T. **"Substantial improvement"** means any reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure".

Article 3. General Provisions

15.12.200. Lands to which this ordinance applies. This ordinance shall apply to all areas identified as flood-prone within the jurisdiction of the City of Hughson.

15.12.210. Basis for establishing flood prone areas. The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood data available from other Federal or state agencies or other source to identify flood-prone areas within the jurisdiction of City of Hughson. This data will be on file at the City of Hughson, City Hall, 7018 Pine Street, Hughson, California, 95326.

15.12.220. Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the term of this ordinance and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation.

15.12.230. Abrogation and greater restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

15.12.240. Interpretation. In the interpretation and application of this ordinance, all provisions shall be considered as minimum requirements, liberally construed in favor of the governing body, and deemed neither to limit nor repeal any other powers granted under state statutes.

15.12.250. Warning and disclaimer of liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City Council, City of Hughson, any officer or employee thereof, the State of California, or the Federal Insurance Administration, Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

15.12.260 Severability. This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

Article 4. Administration

15.12.300. Permit. Prior to issuance of any permit obtained for all proposed construction or other development in the community, including the placement of manufactured homes, a determination shall be made as to whether such construction or other development is within flood-prone areas.

15.12.310. Designation of the Floodplain Administrator. The Community Development Director, as the Floodplain Administrator, is hereby appointed to administer, implement, and enforce this chapter by granting or denying development permits in accord with its provisions.

15.12.320. Duties and responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include, but not be limited to the following:

A. Permit Review. Review all development permit applications to determine:

1. Permit requirements of this ordinance have been satisfied;
2. All other required state and federal permits have been obtained;
and
3. The site is reasonably safe from flooding.

B. Review and Use of Any Other Base Flood Data. The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood data available from other Federal or state agency or other source.

Article 5. Provisions for Flood Hazard Reduction

15.12.400. Standards of construction. If a proposed building site is in a flood-prone area, all new construction and substantial improvements, including manufactured homes, shall:

A. Be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

B. Be constructed:

1. With materials and utility equipment resistant to flood damage;
2. Using methods and practices that minimize flood damage;
3. With electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

15.12.410. Standards for subdivisions or other proposed new development. If a subdivision proposal or other proposed new development, including manufactured home parks or subdivisions, is in a flood-prone area, any such proposals shall be reviewed to assure that:

- A. All such proposals are consistent with the need to minimize flood damage within the floodprone area;
- B. All public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
- C. Adequate drainage is provided to reduce exposure to flood hazards.

15.12.420. Standards for utilities.

- A. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
 - 1. Infiltration of flood waters into the systems, and
 - 2. Discharge from the systems into flood waters.
- B. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.”

Section 2. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The city council hereby declares that it would have adopted this ordinance irrespective of the validity of any particular portion thereof.

Section 4. This ordinance shall become effective thirty (30) days after its final passage.

Section 5. Within fifteen (15) days after its final passage, the City Clerk shall cause this ordinance to be posted in full accordance with Section 36933 of the Government Code.

The foregoing ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Hughson held on _____, and by a unanimous vote of the council members present, further reading was waived.

On motion of councilperson_____, seconded by councilperson _____, the second reading of the foregoing ordinance was waived and this ordinance was duly passed by the City Council of the City of Hughson at a regular meeting thereof held on _____, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MATT BEEKMAN, Mayor

ATTEST:

DOMINIQUE SPINALE ROMO, City Clerk