

ITEM V-B: ZONING ORDINANCE AMENDMENT – REGULATIONS RELATED TO MEDICAL MARIJUANA DISPENSARIES AND MARIJUANA CULTIVATION - FILE #PL16-0029

REQUEST

Staff requests that the Planning Commission consider, accept public testimony, and recommend the City Council amend Title 19 – Zoning, of the Roseville Municipal Code (RMC) to add Chapters 19.62 (Medical Marijuana Dispensaries) and 19.63 (Marijuana Cultivation). The proposed ordinance will amend the RMC to ensure compliance with the California Medical Marijuana Regulation and Safety Act (MMRSA) of 2015. Regulations related to marijuana cultivation, medical marijuana use, distribution, delivery, cultivation, transport, and processing and the definition of marijuana dispensaries are proposed to be modified by the ordinance.

SUMMARY RECOMMENDATION

The Planning Division recommends that the Planning Commission take the following actions:

- A. Recommend that the City Council amend Title 19 – Zoning, of the Roseville Municipal Code to add Chapters 19.62 (Medical Marijuana Dispensaries) and 19.63 (Marijuana Cultivation).

BACKGROUND

On October 9, 2015, Governor Brown signed into law three related bills pertaining to the regulation of marijuana; AB 243, AB 266, and SB 643. These bills are collectively known as the Medical Marijuana Regulation and Safety Act (MMRSA) of 2015. The MMRSA creates a joint regulation and permitting scheme comprised of state law and local ordinances. As described below, staff is proposing amendments to the Roseville Municipal Code (RMC) in order to update the City's regulations regarding medical marijuana dispensaries and marijuana cultivation to be consistent with the provisions of the MMRSA.

The City currently regulates Medical Marijuana Dispensaries and Marijuana Cultivation within Chapters 9.95 and 9.96, respectively of Title 9 – Health and Safety of the RMC. Chapter 9.95 of the RMC prohibits Medical Marijuana Dispensaries anywhere within the City limits. Chapter 9.96 of the RMC currently restricts the cultivation of marijuana to allow only those persons authorized by state law (i.e. persons with a Medical Marijuana Identification Card, Primary Caregivers, or Qualified Patients) to grow marijuana or engage in marijuana cultivation. Further, the RMC prohibits outdoor cultivation and only allows indoor cultivation within residential zones subject to strict standards and square footage limitations.

Proposed Ordinance Amendments (See Exhibit A for Redlined Ordinance)

The City's current regulatory structure regarding cultivation appears to meet the minimum requirements for local control outlined in the MMRSA. However, because the MMRSA states that cities can only regulate cultivation under land use and zoning principles, recent legal advice from the California League of Cities recommends the City move these regulations from Title 9 - Health and Safety to Title 19 – Zoning to ensure compliance with the MMRSA. This action will ensure the City's cultivation regulatory structure complies with the MMRSA.

In addition to moving the regulations to Title 19 – Zoning, changes are needed to the City’s current definitions to correspond with the MMRSA. While current cultivation regulations meet the minimum standard of the MMRSA (once moved to Title 19 - Zoning), minor changes to defined terms will ensure no ambiguity exists. Specifically, MMRSA has added new regulations and definitions for medical marijuana use, distribution, delivery, cultivation, transport, and processing. These new definitions include expanding the very definition of “marijuana” to include all products produced therefrom, as well as expanded definitions for dispensaries, processing facilities, delivery, and distribution. The City’s current regulations use older definitions that have been altered by these new MMRSA definitions and amending the City’s definitions to align with the MMRSA will prevent ambiguity or loopholes created by inconsistent definitions.

The most significant change requires cities to define and address the delivery of marijuana within their borders, which is not currently addressed in the RMC. The intent is for the City to retain the current position on medical marijuana use, distribution, and sale, and to ban all marijuana deliveries within the City, except for those personal deliveries from a “primary caregiver” to their “qualified patients” (as defined by the MMRSA). This approach is consistent with the City’s current approach of allowing medical marijuana use by a qualified patient. Cultivation by a primary caregiver and a qualified patient for personal use only is also permitted.

Staff is also proposing to expand the City’s definition of “dispensary” to include “mobile dispensaries”, which have become a recent trend and are addressed in the MMRSA. Staff is proposing that mobile dispensaries and temporary dispensaries be included in the outright ban on medical marijuana dispensaries. This approach aligns the City with the MMRSA.

Finally, the MMRSA provides a new definition for “processing facility” which includes those facilities which produce, prepare, propagate, process, or compound marijuana and marijuana products for sale and distribution by others. Again this is a new concept that has evolved outside of the current “dispensary” definition. The City would be defining these “processing facilities” and banning them in the same fashion as dispensaries.

CONCLUSION

The proposed modifications to the City’s Medical Marijuana Dispensaries and Marijuana Cultivation regulations do not significantly change the existing structure and enforcement, but rather update the definitions and scope to include the realities of the industry and the new regulations of the MMRSA. These modifications are meant to maintain local regulatory control rather than ceding it to the State. Staff’s proposal allows the same very limited cultivation by those permitted to do so, while also maintaining a City ban on sale, delivery, and distribution.

ENVIRONMENTAL DETERMINATION

This action is not a project subject to the California Environmental Quality Act (CEQA) because it involves only general policy and procedure making and does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (CEQA Guidelines, sections 15002(d), 15378, 15061(b)(3)).

RECOMMENDATION

The Planning Division recommends that the Planning Commission:

- A. Recommend that the City Council adopt the Zoning Ordinance Amendment to Repeal Chapters 9.95 and 9.96 of Title 9 of the Roseville Municipal Code and add Chapters 19.62 and 19.63 to Title 19 of the Roseville Municipal Code regarding Medical Marijuana Cultivation and Dispensaries.

EXHIBIT

- A. Proposed Ordinance Repealing Chapters 9.95 and 9.96 of Title 9 of the Roseville Municipal Code and adding Chapters 19.62 and 19.63 to Title 19 of the Roseville Municipal Code regarding Medical Marijuana Cultivation and Dispensaries

ORDINANCE NO. ____

ORDINANCE OF THE COUNCIL OF THE CITY OF ROSEVILLE REPEALING CHAPTERS
9.95 AND 9.96 OF TITLE 9 OF THE ROSEVILLE MUNICIPAL CODE AND ADDING
CHAPTERS 19.62 AND 19.63 TO TITLE 19 OF THE ROSEVILLE MUNICIPAL CODE
REGARDING MEDICAL MARIJUANA CULTIVATION AND DISPENSARIES

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1. Chapter 9.95 of Title 9 of the Roseville Municipal Code is hereby repealed
in its entirety.

SECTION 2. Chapter 9.96 of Title 9 of the Roseville Municipal Code is hereby repealed
in its entirety.

SECTION 3. Chapter 19.62 of Title 19 of the Roseville Municipal Code is hereby added
to read as follows:

Chapter 19.62 MEDICAL MARIJUANA DISPENSARIES

19.62.010 Findings.

The city council adopts this chapter based upon the following findings:

A. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq., and entitled, “The Compassionate Use Act of 1996”).

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to be able to obtain and use it without fear of state criminal prosecution under limited, specified circumstances.

C. The State enacted SB 420 in 2004 to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.

D. The State further enacted SB 643, SB 266, and AB 243 in 2015 to further clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations, consistent with State law, for regulating marijuana distribution, cultivation, delivery, and transportation within their cities.

~~D. Neither Proposition 215 nor SB 420 authorizes medical marijuana dispensaries.~~

~~E. The federal Controlled Substances Act, 21 U.S.C. Section 841, makes it unlawful to manufacture, distribute, dispense, or possess marijuana.~~

~~F. The United States Supreme Court in *Gonzales v. Raich*, 125 S. Ct. 2195 (2005), ruled that the Controlled Substances Act applies even in states such as California which have medical marijuana laws.~~

~~G. Accordingly, medical marijuana dispensaries are illegal under federal law.~~

19.62.020 Definitions.

For the purposes of this chapter, the words and phrases shall have the same meanings respectively ascribed to them by this section:

A. “Cannabis”, “marijuana”, “medical cannabis”, and/or “medical marijuana” shall be used interchangeably and means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. This includes the separated resin, whether crude or purified, obtained from marijuana and as defined by California Health and Safety Code Section 11018, as may be amended. This section does not mean “industrial hemp” as defined by California Food and Agricultural Code Section 81000, as may be amended, or California Health and Safety Code Section 11018, as may be amended.

B. “Delivery” or “deliver” shall mean any transfer of marijuana or marijuana products, whether for compensation or otherwise.

C. “Distribution” means the procurement, sale, transfer, and/or transport of marijuana and/or products made from marijuana.

D. “Medical marijuana dispensary” or “dispensary” means a facility or location, whether permanent, temporary, or mobile, where marijuana, products made from marijuana, or devices for the use of marijuana or products made from marijuana are offered, either individually

or in any combination, for sale, use, transportation, distribution, and/or delivery, whether for compensation or otherwise, means any facility or location where medical marijuana is made available to and/or distributed by or to (1) another dispensary or processing facility, or (2) two or more of the following: a primary caregiver, a qualified patient, or a person with an identification card.

E. “Processing facility” means any facility or location, whether permanent, temporary, or mobile, that produces, prepares, propagates, processes, or compounds marijuana or products made from marijuana, directly or indirectly, by any method, for delivery, for compensation or otherwise. Processing facility does not mean any facility or location manufacturing “industrial hemp” as defined by California Food and Agricultural Code Section 81000, as may be amended, or California Health and Safety Code Section 11018, as may be amended.

FB. “Person” means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

GE. “Person with an identification card” shall have the same definition as California Health and Safety Code Section 11362.5 et seq., ~~and~~ as may be amended, California Business and Professions Code Section 19300 et seq., as may be amended, and as may be amended by California Department of Public Health’s “Medical Marijuana Program”.

HD. “Primary caregiver” shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., ~~and~~ as may be amended, and California Business and Professions Code Section 19300 et seq., as may be amended.

IE. “Qualified patient” shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., ~~and~~ as may be amended.

19.62.030 Medical marijuana dispensaries- and processing facilities prohibited.

It is unlawful and a misdemeanor for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises or location within any zoning district -in the City of Roseville, the operation of a medical marijuana dispensary and/or processing facility.

19.62.040 Delivery of marijuana prohibited.

Delivery of marijuana or products made from marijuana to or from any person, business, or location in the City of Roseville is prohibited. Notwithstanding the foregoing, a primary caregiver may personally deliver medical marijuana or products made from marijuana to a qualified patient or person with an identification card, for whom he or she is the primary caregiver.

19.62.050 Enforcement.

A. It is unlawful and a public nuisance to violate any of the provisions of this chapter and city shall have the authority to cause the abatement and removal thereof in accordance with the procedure prescribed in Chapter 2.52 of this code.

B. Violation of this chapter may be charged as either an infraction or a misdemeanor in the discretion of the city attorney.

C. The violation of any provision of this chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of city, create a cause of action for injunctive relief.

D. In addition to the civil remedies and criminal penalties set forth herein, any person that violates the provisions of this chapter may be subject to administrative remedies, as set forth by city ordinance.

E. Unless otherwise expressly provided, the remedies, procedures and penalties provided by this chapter are cumulative to each other and to any others available under state law or other city ordinances.

19.62.060 Severability.

The provisions of this chapter are hereby declared to be severable. If any section, sentence, clause, phrase, word, portion or provision of the ordinance codified in this title is held

invalid, or unconstitutional, or unenforceable, by any court of competent jurisdiction, such holding shall not affect, impair, or invalidate any other section, sentence, clause, phrase, word, portion, or provision of said ordinance which can be given effect without the invalid portion. In adopting said ordinance, the city council affirmatively declares that it would have approved and adopted said ordinance even without any portion which may be held invalid or unenforceable.

SECTION 4. Chapter 19.63 of Title 19 of the Roseville Municipal Code is hereby added to read as follows:

Chapter 19.63 MARIJUANA CULTIVATION

19.63.010 Purpose and applicability.

The city council adopts this chapter based on the following:

A. Purpose. The purpose and intent of this chapter is to regulate the cultivation of marijuana in a manner that protects the health, safety and welfare of the community. This chapter is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health and Safety Code Section 11362 and California Business and Professions Code Section 19300 et seq., as may be amended, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law. This chapter is not intended to give any person independent legal authority to grow marijuana; it is intended simply to impose zoning restrictions on the cultivation of marijuana when it is authorized by California state law for medical or other purposes.

B. Applicability. No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation of marijuana in the City of Roseville is controlled by the provisions of this chapter of the municipal code.

19.63.020 Definitions.

For the purposes of this chapter, the words and phrases shall have the same meanings respectively ascribed to them by this section:

A. “Authorized grower” means a person with an identification card, primary caregiver, or qualified patient~~person~~ who is authorized by federal or state law to grow marijuana for personal ~~use or~~ medical use in compliance with local, state or federal laws authorizing such marijuana cultivation.

B. “Cannabis”, “marijuana”, “medical cannabis”, and/or “medical marijuana” shall be used interchangeably and means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, including marijuana as defined by California Health and Safety Code Section 11018, as may be amended. This section does not mean “industrial hemp” as defined by California Food and Agricultural Code Section 81000, as may be amended, or California Health and Safety Code Section 11018, as may be amended.

CB. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana plants.~~means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.~~

DE. “Enforcement officer” means the chief of police, City of Roseville code enforcement officer, or any designee of either of them.

ED. “Fully enclosed and secure structure” means a space within a building that complies with the California Building Code, as adopted in the City of Roseville, or if exempt from the permit requirements of the California Building Code, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof; a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments; is secure against unauthorized entry; and is accessible through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily penetrated or breached, such as two-inch by four-inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California Building, Electrical, and Fire Codes as adopted in the City of Roseville.

EE. “Immature marijuana plant” means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

GF. “Indoors” means within a fully enclosed and secure structure as that structure is defined in subsection ED.

HG. “Mature marijuana plant” means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

IH. “Outdoor” means any location within the City of Roseville that is not within a fully enclosed and secure structure.

IJ. “Parcel” means property assigned a separate parcel number by the Placer County assessor.

K. “Person” means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

L. “Person with an identification card” shall have the same definition as California Health and Safety Code Section 11362.5 et seq., as may be amended, California Business and Professions Code Section 19300 et seq., as may be amended, and as may be amended by California Department of Public Health’s “Medical Marijuana Program”.

M. “Primary caregiver” shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., as may be amended, and California Business and Professions Code Section 19300 et seq., as may be amended.

N. “Qualified patient” shall have the same definition as in California Health and Safety Code Section 11362.5 et seq., as may be amended.

19.63.030 Outdoor cultivation.

It is hereby declared to be unlawful, a public nuisance, and a violation of this chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the City of Roseville to cause or allow such premises to be used for the outdoor cultivation of marijuana plants.

19.63.040 Cultivation of marijuana—Regulations for residential zones.

A. When authorized by state law, an ~~individual~~-authorized grower shall be allowed to cultivate marijuana indoors in residential zones, subject to the following regulations:

1. The marijuana cultivation area shall not exceed 50 square feet and not exceed 10 feet in height per residence.
2. Marijuana cultivation lighting shall not exceed 1,200 watts total.
3. The use of gas products (CO₂, butane, etc.) for marijuana cultivation or processing is prohibited.
4. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation either within or outside the residence.
5. The residence where the marijuana cultivation occurs shall be the primary residence of the authorized grower.

6. The authorized grower shall not participate in marijuana cultivation in any other residential location within the City of Roseville.

7. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be primarily or exclusively for marijuana cultivation.

8. The marijuana cultivation area shall be in compliance with the current edition of the California Building Code Section 1203.4 Natural ventilation or Section 402.3 Mechanical ventilation (or its equivalent(s)), as adopted by the City of Roseville.

9. The building official for the City of Roseville may require additional specific standards to meet the California Building Code and Fire Code, including, but not limited to, installation of fire suppression sprinklers.

10. The marijuana cultivation area shall not adversely affect the health or safety of the occupants of other property by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, and shall not be maintained so as to constitute a hazard due to use or storage of materials, processes, products or wastes.

B. Any proposed marijuana cultivation by an authorized grower that does not meet the grow area standard of subsection (A)(1) shall require the prior written determination of the city manager for the City of Roseville, or designee, of the need for additional cultivation area.

1. Documentation, such as a physician's recommendation or verification of more than one authorized grower living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible.

2. The request for determination shall include written permission from the record property owner and no determination and authorization for additional area of marijuana cultivation shall issue without the written permission of the record property owner.

3. An approved marijuana cultivation area that exceeds 50 square feet shall conform to the following standards:

a. It shall be in compliance with subsections (A)(1) through (10).

b. The marijuana cultivation area shall not exceed an additional ~~4950~~ square feet for a total of ~~99400~~ square feet per residence and shall not exceed 10 feet in height per residence.

4. Any written determination of the need for additional cultivation area shall be issued for a period not exceeding one year, but may be renewed upon review of a subsequent submittal of the required documentation.

19.63.050 Indoor cultivation of marijuana restricted to authorized grower.

It is hereby declared to be unlawful, a public nuisance and a violation of this chapter for any person owning, leasing, occupying, or having charge or possession of any parcel within the City of Roseville to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana, and such authorized grower is complying with all requirements of this chapter.

19.63.060 Public nuisance prohibited.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City of Roseville to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

- A. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public.
- B. Repeated responses to the parcel from law enforcement officers.
- C. A repeated disruption to the free passage of persons or vehicles in the immediate neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.
- D. Any other impacts on the neighborhood which are disruptive of normal activity in the area.

19.63.070 Violation.

Cultivation of marijuana on any parcel within the city that does not comply with this chapter constitutes a violation of ~~this~~ zoning ordinance and is subject to the penalties and enforcement as provided in Section ~~9-96-080~~19.63.080 of this chapter and 19.90 of this Title.

19.63.080 Enforcement.

A. Public Nuisance. Violation of this section is hereby declared to be a public nuisance.

B. Abatement. A violation of this section may be abated by the city attorney by the prosecution of a civil action for injunctive relief and by the summary abatement procedure set forth in subsection C of this section.

C. Summary Abatement Procedure.

1. The enforcement official is hereby authorized to order the abatement of any violation of this section by issuing a notice and order to abate which shall:

a. Describe the location of and the specific conditions which represent a violation of this chapter and the actions required to abate the violation.

b. Describe the evidence relied upon to determine that a violation exists, provided that the enforcement ~~official-officer~~ may withhold the identity of a witness to protect the witness from injury or harassment, if such action is reasonable under the circumstances.

c. State the date and time by which the required abatement actions must be completed.

d. State that to avoid the civil penalty provided in subsection (C)(4) of this section and further enforcement action, the enforcement ~~official-officer~~ must receive consent to inspect the

premises where the violation exists to verify that the violation has been abated by the established deadline.

e. State that the owner or occupant of the property where the violation is located has a right to appeal the notice to abate by filing a written notice of appeal with the city clerk no later than seven (7) calendar days from the service of the notice. The notice of appeal must include the appellant's address, telephone number, fax number (if available), and e-mail address (if available). The city may rely on any of these for service or notice purposes. If an adequate written appeal is timely filed, the owner or occupant will be entitled to a hearing as provided in subsection (C)(3) of this section.

f. State that the order to abate the violation becomes final if a timely appeal is not filed or upon the issuance of a written decision after the appeal hearing is conducted in accordance with subsection (C)(3) of this section.

g. State that a final order of abatement may be enforced by application to the superior court for an inspection and/or abatement warrant or other court order.

h. State that a final order to abate the nuisance will subject the property owner and the occupant to a civil penalty of \$500.00 for each day that the violation continues after the date by which the violation must be abated as specified in the notice and order to abate. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

2. The notice described in subsection (C)(1) of this section shall be served in the same manner as a summons in a civil action in accordance with Article 3 (commencing with Section

415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, or by certified mail, return receipt requested, at the option of the city. If the owner of record cannot be found after diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of not less than ten (10) days and publication thereof in a newspaper of general circulation pursuant to Government Code Section 6062, as may be amended.

3. Not sooner than ten (10) calendar days after a notice of appeal is filed with the city clerk, a hearing shall be held before a hearing panel of the board of appeals in accordance with the procedures prescribed in Chapter 2.52. The appellant shall be given notice of the date, time and place of the hearing not less than five (5) days in advance. The notice may be given by telephone, fax, email, or personal service or posting on the property and shall be effective when given. At the hearing, the enforcement ~~official-officer~~ shall present evidence of the violation, which may include, but is not limited to, incident and police reports, witness statements, photographs, and the testimony of witnesses. The property owner and the occupant of the property where the violation is alleged to exist shall have the right to present evidence and argument in their behalf and to examine and cross examine witnesses. The property owner and property occupant are entitled at their own expense to representation of their choice at their own expense. At the conclusion of the hearing, the hearing panel shall render a written decision which may be served by regular first class mail on the appellant.

4. A final notice and order to abate the nuisance will subject the property owner or owners and any occupant or occupants of the property who are cultivating marijuana in violation of this section to a civil penalty of \$500.00 for each day that the violation continues after the date by which the violation must be abated as specified in the final notice and order to abate.

5. The enforcement ~~official~~officer or the hearing panel hearing an appeal pursuant to subsection (C)(3) of this section may reduce the daily rate of the civil penalty for good cause. The party subject to the civil penalty shall have the burden of establishing good cause, which may include, but is not limited to, a consideration of the nature and severity of the violation, whether it is a repeat offense, the public nuisance impacts caused by the violation, and the violator's ability to pay. The daily penalty shall continue until the violation is abated. The penalty may be recovered through an ordinary civil action, or in connection with application for an inspection or nuisance abatement warrant.

19.63.090 Penalties not exclusive.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Roseville Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Roseville Municipal Code shall prevent the city from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance.

19.63.100 Severability.

The provisions of this chapter are hereby declared to be severable. If any section, sentence, clause, phrase, word, portion or provision of the ordinance codified in this title is held

invalid, or unconstitutional, or unenforceable, by any court of competent jurisdiction, such holding shall not affect, impair, or invalidate any other section, sentence, clause, phrase, word, portion, or provision of said ordinance which can be given effect without the invalid portion. In adopting said ordinance, the city council affirmatively declares that it would have approved and adopted said ordinance even without any portion which may be held invalid or unenforceable.

SECTION 5. This ordinance shall be effective at the expiration of thirty (30) days from the date of adoption.

SECTION 6. The City Clerk is hereby directed to cause this ordinance to be published in full at least once within fourteen (14) days after it is adopted in a newspaper of general circulation in the City, or shall within fourteen (14) days after its adoption cause this ordinance to be posted in full in at least three (3) public places in the City and enter in the Ordinance Book a certificate stating the time and place of said publication by posting.

PASSED AND ADOPTED by the Council of the City of Roseville this ____ day of _____, 20__, by the following vote on roll call:

AYES COUNCILMEMBERS:

NOES COUNCILMEMBERS:

ABSENT COUNCILMEMBERS:

MAYOR

ATTEST:

City Clerk