




REPORT TO CITY COUNCIL

DATE: AUGUST 23, 2017

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: NATHAN HAMBURGER, ASSISTANT CITY MANAGER 
DOUG HOOPER, PLANNING DIRECTOR 

SUBJECT: ADOPTION OF ORDINANCE NO. 17-429; AMENDING DIVISION 10 (MEDICAL MARIJUANA DISPENSARIES PROHIBITED) OF PART 2 (SPECIAL REGULATIONS) OF CHAPTER 6 (REGULATORY PROVISIONS) OF ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE TO CLARIFY THAT ALL COMMERCIAL MARIJUANA ACTIVITY, FOR MEDICAL, NON-MEDICAL AND ANY OTHER PURPOSE, IS PROHIBITED IN ALL ZONES OF THE CITY, AND TO ALLOW LIMITED INDOOR MARIJUANA CULTIVATION CONSISTENT WITH STATE LAW, AND DELETING SECTION 4125 (COMPENSATION FOR MEDICAL MARIJUANA) OF THE AGOURA HILLS MUNICIPAL CODE, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CASE NO. ZOA-001326-2017) (CITY OF AGOURA HILLS, APPLICANT)

At the August 9, 2017, City Council meeting, on a 5-0 vote, the Council introduced, read by title only, and waived further reading of Ordinance No. 17-429.

The Ordinance amends the Municipal Code to clarify that all commercial marijuana activity is prohibited in all zones of the City. The Ordinance also allows limited indoor cultivation consistent with State law, and deletes Municipal Code Section 4125 (Compensation for Medical Marijuana).

Attached for reference is a copy of Ordinance No. 17-429.

RECOMMENDATION

Staff recommends the City Council adopt Ordinance No. 17-429.

Attachment: Ordinance No. 17-429

ORDINANCE NO. 17-429

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA AMENDING DIVISION 10 (MEDICAL MARIJUANA DISPENSARIES PROHIBITED) OF PART 2 (SPECIAL REGULATIONS) OF CHAPTER 6 (REGULATORY PROVISIONS) OF ARTICLE IX (ZONING) OF THE AGOURA HILLS MUNICIPAL CODE TO CLARIFY THAT ALL COMMERCIAL MARIJUANA ACTIVITY FOR MEDICAL, NON-MEDICAL, AND ANY OTHER PURPOSE, IS PROHIBITED IN ALL ZONES IN THE CITY, AND TO ALLOW LIMITED INDOOR MARIJUANA CULTIVATION CONSISTENT WITH STATE LAW, AND DELETING SECTION 4125 OF THE AGOURA HILLS MUNICIPAL CODE, AND MAKING A FINDING OF EXEMPTION FROM CEQA UNDER SECTION 15061(b)(3) OF THE CEQA GUIDELINES (CASE NO. ZOA-01326-2017)

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

SECTION 1. Findings and Purpose.

A. The City of Agoura Hills, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California.

B. On October 9, 2015, Governor Brown signed Assembly Bill 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively were known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA established a State regulatory and licensing scheme for commercial medical marijuana businesses.

C. On November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act ("AUMA"). The AUMA adds Section 11362.1 to the California Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams of marijuana in the form of concentrated cannabis. The AMUA also establishes a State regulatory and licensing scheme for commercial non-medical marijuana businesses. The provisions of the AUMA related to the possession, use, and cultivation of marijuana became effective on November 9, 2016.

D. On June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medical and non-medical marijuana known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether marijuana businesses could

operate in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a marijuana business if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority shall begin issuing licenses to marijuana businesses beginning January 1, 2018.

E. On July 9, 2017, the Planning Commission of the City of Agoura Hills held a public hearing on this proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity and did address the Planning Commission on these matters. Following the receipt of public testimony the Planning Commission closed the public hearing.

F. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission adopted Resolution No. 17-1195, recommending that the City Council adopt the proposed Ordinance to prohibit commercial marijuana activity and outdoor cultivation of marijuana, and to allow limited marijuana cultivation indoors, consistent with State law.

G. On August 9, 2017, the City Council of the City of Agoura Hills held a public hearing on the proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity and did address the City Council on these matters. Following the receipt of public testimony the City Council closed the public hearing.

H. All legal prerequisites to the adoption of this Ordinance have occurred.

SECTION 2. The City Council of the City of Agoura Hills hereby finds and determines that all of the above Recitals are true and correct and incorporates such Recitals into this Ordinance as if fully set forth herein.

SECTION 3. The City Council of the City of Agoura Hills hereby deletes Section 4125 (Compensation for medical marijuana.) of Chapter 1 (Prohibited Conduct; Offense) of the Agoura Hills Municipal Code in its entirety.

SECTION 4. The City Council of the City of Agoura Hills hereby amends Division 10 (Medical Marijuana Dispensaries Prohibited.) of Part 2 (Special Regulations) of Chapter 6 (Regulatory Provisions) of Article IX (Zoning) of the Agoura Hills Municipal Code in its entirety to read as follows:

"DIVISION 10 MARIJUANA

Section 9660 Purpose.

Section 9660.1	Definitions.
Section 9660.2	Prohibitions.
Section 9660.3	Exceptions.
Section 9660.4	Violation, penalty.

9660 Purpose.

A. The city council finds that federal law prohibits the possession, manufacture, distribution, and dispensing of marijuana, and in order to serve the public health, safety, and welfare of the residents and businesses within the city, the declared purpose of this division is to prohibit all commercial marijuana activity, both medical and non-medical, within the city, as provided in this section.

B. California Business and Professions Code section 26055(d) provides that a State licensing authority shall not approve an application for a State license for a marijuana business if approval of the State license will violate the provisions of any local ordinance or regulation. California Business and Professions Code section 26200 authorizes a city to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more marijuana businesses licensed under the State, within that city.

C. The city council finds that a prohibition on all commercial marijuana activity, for medical, non-medical, or any other purpose, is necessary for the preservation and protection of the public health, safety, and welfare for the city and its community. The city council's prohibition of such activity is within the authority conferred upon the city council by State law and is an exercise of its police powers to enact and enforce regulations for the public benefit, safety, and welfare of the city and its community.

9660.1 Definitions.

For purposes of this division, the following definitions shall apply.

A. "Commercial marijuana activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, packaging, transportation, delivery or sale of marijuana and marijuana products, and includes the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any other provision of State law that regulates the licensing of marijuana businesses.

B. "Concentrated cannabis" means cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate.

C. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

D. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer.

E. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities licensed under Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

F. "Fully enclosed and secure structure" means a space within a building, greenhouse, or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

G. "Indoors" means within a fully enclosed and secure structure.

H. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

I. "Marijuana" 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. "Marijuana" also means the separated resin, whether crude or purified, obtained from marijuana, and any product containing marijuana. "Marijuana" includes marijuana that is used for medical, non-medical, or other purposes.

"Marijuana" does not include the mature stalk of the plant, fiber produced from the stalks, oil or cake made from seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" also does not include industrial hemp, as defined in California Health and Safety Code section 11018.5, as the same may be amended from time to time.

J. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

K. "Marijuana product" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

L. "MAUCRSA" means the Medical and Adult-Use Cannabis Regulation and Safety Act, as codified in Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

M. "Outdoors" means any location that is not within a fully enclosed and secure structure.

N. "Person" means any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, collective, cooperative, club, society, organization, non-profit, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

O. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling, that is lawfully used as a residence.

9660.2 Prohibitions.

A. Commercial marijuana activity, whether or not for profit, is not a permitted use anywhere in the city. The city shall not approve any application for a building permit, conditional use permit, business license, or any other entitlement authorizing the establishment, operation, maintenance, development, or construction of any use that allows for commercial marijuana activity. This section shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time.

B. It shall be unlawful for any person to own, manage, establish, conduct, or operate, or to participate as a landlord, owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in any commercial marijuana activity in the city.

C. To the extent not already prohibited by subsection A above, all Deliveries of marijuana or marijuana products to or from any location in the city are expressly prohibited. No person shall conduct or perform any delivery of any marijuana or marijuana products, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting marijuana through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

D. All outdoor marijuana cultivation is prohibited in the city. Indoor marijuana cultivation is prohibited except as specified in section 9660.3(A)(5).

9660.3 Exceptions.

A. To the extent that the following activities are permitted by State law, nothing in this division shall prohibit a person 21 years of age or older from:

1. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of marijuana not in the form of concentrated cannabis;

2. Possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, up to eight grams of marijuana in the form of concentrated cannabis;

3. Smoking or ingesting marijuana or marijuana products in a manner consistent with California Health and Safety Code section 11362.3, as the same may be amended from time to time;

4. Possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away marijuana accessories to persons 21 years of age or older without compensation whatsoever; or

5. Engaging in the indoor cultivation of six (6) or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence that is fully enclosed and secured, to the extent such cultivation is authorized by California Health and Safety Code sections 11362.1 and 11362.2, as the same may be amended from time to time.”

B. This division shall also not prohibit any commercial marijuana activity that the city is required by State law to permit within its jurisdiction pursuant to the MAUCRSA.

9660.4 Violation, penalty

Violations of this section are subject to the general penalty provisions set forth in section 1200. In any civil action brought pursuant to this division, a court of competent jurisdiction may award reasonable attorneys’ fees and costs to the prevailing party. Notwithstanding the penalties set forth in section 1200 of the Agoura Hills Municipal Code, this division does not authorize a criminal prosecution, arrest or penalty inconsistent with or prohibited by Health and Safety Code Section 11362.71 *et seq.* or Section 11362.1 *et seq.*, as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under section 1200 of the Agoura Hills Municipal Code and any penalties set forth in state law, the maximum penalties allowable under state law shall govern.”

SECTION 5. Planning Department staff has determined that the proposed Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) and the City’s CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed Project to prohibit commercial marijuana activity and outdoor marijuana cultivation will have a significant effect on the environment. Placing such a restriction on the use of property will not result in a permanent alteration of property, nor the construction of any new or expanded structures. The City Council has reviewed Planning Department Staff’s determination of exemption, and based on its own independent judgment, concurs with Staff’s determination of exemption. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Los Angeles in accordance with CEQA Guidelines.

SECTION 6. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, for any reason, is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. Neither the adoption of this Ordinance nor the repeal of any other Ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any penalty or the penal provisions applicable to any violation thereof.

SECTION 8. This Ordinance shall take effect thirty (30) days after its final passage and adoption. A summary of this Ordinance shall be published, and a certified copy of the full text of this proposed Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which this proposed Ordinance is to be adopted. Within fifteen (15) days after adoption of this Ordinance, the City Clerk is instructed to publish a summary of this Ordinance with the names of those City Council members voting for and against this Ordinance, and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance, along with the names of those City Council members voting for and against this Ordinance or amendment, at least until the day of such publication.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2017, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

Denis Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney