

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of )  
Lafayette amending Sections 6-429.5 and 6-528 )  
of the Lafayette Municipal Code to )  
prohibit cannabis manufacturing and cannabis )  
testing in the City )

Ordinance No. 643

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"); and

**WHEREAS**, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

**WHEREAS**, neither the Compassionate Use Act ("CUA") nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

**WHEREAS**, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical marijuana land uses; and

**WHEREAS**, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

**WHEREAS**, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

**WHEREAS**, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of marijuana..." (Health and Safety Code §11362.777(c)(4)); and

**WHEREAS**, several California cities have reported negative impacts of marijuana cultivation, processing, and distribution uses, including offensive odors, illegal sales, and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

**WHEREAS**, the adverse effects of other marijuana uses also apply to the presence of cannabis testing laboratories, which also present the possibility of offensive odors, illegal sales, distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

**WHEREAS**, cannabis testing laboratories pose risks to the public health, safety, and welfare that must be mitigated by banning these uses within the City; and

**WHEREAS**, based on the findings above, the potential establishment of cannabis dispensaries, cultivation, and cannabis manufacturers uses in the City without regulation poses a current and immediate threat to the public health, safety and welfare in the City due to the negative land use and other impacts of such uses as described above; and

**WHEREAS**, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for cannabis dispensaries, cultivation, and cannabis manufacturers will result in the aforementioned threat to public health, safety, or welfare; and

**WHEREAS**, on December 7, 2015 and January 4, 2016, the Planning Commission of the City of Lafayette conducted duly noticed public hearings pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with ZT01-15 were heard and ZT01-15 was fully studied and the Commission adopted Resolution No. 2015-36, forwarding a recommendation of approval to the City Council; and

**WHEREAS**, on January 25, 2016 and February 8, 2016, the City Council of the City of Lafayette conducted duly noticed public hearings pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with ZT01-15 were heard and ZT01-15 was fully studied.

**WHEREAS**, all other legal prerequisites to the adoption of this Ordinance have occurred.

**THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:**

**Section 1. Incorporation of Recitals.** The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

**Section 2. CEQA.** The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment. The City Council directs staff to prepare and file a Notice of Exemption no more than ten (10) working days after adoption of the Ordinance.

**Section 3. Findings.** Pursuant to Lafayette Municipal Code Section 6-213 and based on the record before the City Council and all written and oral evidence presented to the Council, the City Council hereby makes and adopts the following findings:

A. The Amendment is compatible with the General Plan and all elements therein because:

1. Multiple California cities that have permitted the establishment of medical cannabis uses have found that such uses resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, homicides, attempted homicide, aggravated assault, fights, disturbing the peace, sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries, odor, excessive noise, fires, loitering around the dispensaries, and an increase in driving while under the influence of marijuana. Prohibiting medical cannabis uses will serve to discourage the aforementioned activities from occurring and help implement General Plan Goal LU-9 to “maintain the Downtown as a convenient and safe commercial area...”; and

2. Prohibiting medical cannabis uses will decrease the dependence upon the City’s police force by discouraging crime associated with medical marijuana dispensaries, thus serving to implement General Plan Policy S-7.1 to “review development proposals for their demand on police services and require mitigating measures...”

B. The Amendment is compatible with the uses authorized in, and the regulations prescribed for, the land use districts for which it is proposed and with the regulations for other land use districts. The prohibition of medical cannabis uses is universally applied amongst all land use (zoning) districts.

C. There is community need to amend Sections 6-429.5 and 6-528 of the Lafayette Municipal Code in an effort to maintain and protect the public, health, safety, and welfare of the citizens of Lafayette by preventing the aforementioned negative and harmful secondary effects of medical cannabis uses.

**Section 4. Amendment to Lafayette Municipal Code Section 6-429.5.** Lafayette Municipal Code Section 6-429.5 is hereby amended to read in its entirety as follows:

Medical cannabis uses.

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

A. “Cannabis” 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. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

B. “Cannabis dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

C. “Cannabis manufacturer” means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a

combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.

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

E. "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state; and

(2) Registered with the State Department of Public Health.

**Section 5. Amendment to Lafayette Municipal Code Section 6-528.** Lafayette Municipal Code Section 6-528 is hereby amended to read in its entirety as follows:

6-528 - Prohibited uses and activities.

The following uses and activities are prohibited in all land use classification (zoning) districts:

(a) Any use or activity which is prohibited by local, regional, state, or federal law;

(b) Construction or use of helicopter landing pads, heliports and all other helicopter facilities;

(c) Establishment or operation of medical cannabis dispensaries, as defined in Section 6-429.5; and

(d) Cultivation or production of medical cannabis, as defined in Section 6-429.5.

(e) Cannabis manufacturers, as defined in Section 6-429.5.

(f) Cannabis testing laboratories, as defined in Section 6-429.5, or other facilities that store or maintain marijuana as part of their operations, whether commercially or non-commercially.

**Section 6. Severability.** 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. Publication.** The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on January 25, 2016, and adopted and ordered published at a meeting of the City Council held on February 8, 2016, by the following vote:

AYES: Mitchell, M. Anderson, B. Andersson, Reilly and Tatzin

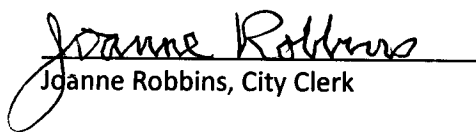
NOES: None

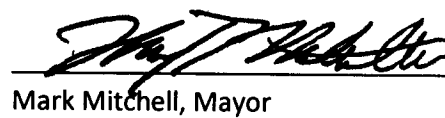
ABSTAIN: None

ABSENT: None

ATTEST:

APPROVED:

  
Joanne Robbins, City Clerk

  
Mark Mitchell, Mayor

# Contra Costa Times

175 Lennon Lane, Suite 100  
Walnut Creek, CA 94598  
925-943-8019

2010502

LAFAYETTE, CITY OF  
ATTN: ACCOUNTS PAYABLE  
3675 MT. DIABLO BLVD., #210  
LAFAYETTE, CA 94549-3793

## PROOF OF PUBLICATION

**FILE NO. Ord 643 (ZT01-15) 2/8/16**

In the matter of

### Contra Costa Times

I am a citizen of the United States. I am over the age of eighteen years and I am not a party to or interested in the above entitled matter. I am the Legal Advertising Clerk of the printer and publisher of the Contra Costa Times, a newspaper published in the English language in the City of Walnut Creek, County of Contra Costa, State of California.

I declare that the Contra Costa Times is a newspaper of general circulation as defined by the laws of the State of California as determined by court decree dated October 22, 1934, Case Number 19764. Said decree states that the Contra Costa Times is adjudged to be a newspaper of general circulation for the City of Walnut Creek, County of Contra Costa and State of California. Said order has not been revoked.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

**02/03/2016**

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.  
On this 3rd day of February, 2016.

Signature



Legal No.

**0005662397**

### NOTICE AND SUMMARY OF PROPOSED AMENDMENTS TO THE LAFAYETTE MUNICIPAL CODE CONSISTING OF ORDINANCE 643 AMENDING SECTIONS 6-429.5 & 6-528 OF THE LAFAYETTE MUNICIPAL CODE

Notice is given that on **Monday, February 8, 2016** the City Council of the City of Lafayette will consider adopting Ordinance 643 at **7:00 p.m.** in the **Community Hall at the Lafayette Library & Learning Center, 3491 Mt. Diablo Blvd.** Ordinance 643 (ZT01-15), if adopted, will include the following amendments to Chapter 6-5 of the Lafayette Municipal Code:

1. Define "Medical Cannabis Uses".
2. Add "cannabis manufacturers" and "cannabis testing laboratories" as prohibited uses and activities in Lafayette.

Note: The above is a summary of the major highlights of the ordinance. A reading of the entire ordinance is necessary to obtain a full understanding of the ordinance. Certified copies of the full text of the ordinance are posted in the City Clerk's office at 3675 Mt. Diablo Boulevard, Lafayette, California 94549. A copy may be obtained from that office upon payment of the fee based on the City's actual cost of providing the copy.

Joanne Robbins  
City Clerk

**CCT #5662397; Feb. 3, 2016**

**Contra Costa Times**

175 Lennon Lane, Suite 100  
Walnut Creek, CA 94598  
925-943-8019

2010502

LAFAYETTE, CITY OF  
ATTN: ACCOUNTS PAYABLE  
3675 MT. DIABLO BLVD., #210  
LAFAYETTE, CA 94549-3793

**PROOF OF PUBLICATION  
FILE NO. Ord 643 (ZT01-15)**

In the matter of

**Contra Costa Times**

I am a citizen of the United States. I am over the age of eighteen years and I am not a party to or interested in the above entitled matter. I am the Legal Advertising Clerk of the printer and publisher of the Contra Costa Times, a newspaper published in the English language in the City of Walnut Creek, County of Contra Costa, State of California.

I declare that the Contra Costa Times is a newspaper of general circulation as defined by the laws of the State of California as determined by court decree dated October 22, 1934, Case Number 19764. Said decree states that the Contra Costa Times is adjudged to be a newspaper of general circulation for the City of Walnut Creek, County of Contra Costa and State of California. Said order has not been revoked.

I declare that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

**02/12/2016**

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Executed at Walnut Creek, California.  
On this 12th day of February, 2016.

\_\_\_\_\_  
Signature

Legal No. **0005670208**

**NOTICE OF ADOPTION ORDINANCE 643  
OF THE CITY COUNCIL OF THE CITY OF  
LAFAYETTE AMENDING SECTIONS 6-429.5 AND  
6-528 OF THE LAFAYETTE MUNICIPAL CODE**

Notice is given that on Monday, February 8, 2016, the City Council of the City of Lafayette adopted Ordinance 643. The recorded vote of the City Council was as follows:  
**AYES:** Mitchell, M. Anderson, B. Andersson, Reilly and Tatzin  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

The following is a summary of Ordinance 643 (ZT01-15) amending Sections 6-429.5 and 6-528 of the Lafayette Municipal Code:  
1. Define "Medical Cannabis Uses".  
2. Add "cannabis manufacturers" and "cannabis testing laboratories" as prohibited uses and activities in Lafayette.

Note: The above is a summary of the major highlights of the ordinance. A reading of the entire ordinance is necessary to obtain a full understanding of the ordinance. Certified copies of the full text of the ordinance are posted in the City Clerk's office at 3675 Mt. Diablo Boulevard, Lafayette, California 94549. A copy may be obtained from that office upon payment of the fee based on the City's actual cost of providing the copy.

Joanne Robbins  
City Clerk

**CCT #5670208; Feb. 12, 2016**