

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 and adding Section 6-535 of the)
Lafayette Municipal Code to provide standards)
for indoor cultivation of cannabis for personal)
use, to prohibit outdoor cannabis cultivation)
for personal use, and to prohibit all)
commercial cannabis activities, as defined,)
except for cannabis deliveries originating)
outside of the City)

Ordinance No. 660

WHEREAS, in 1996, the voters of the State of California approved the Compassionate Use Act of 1996 (“CUA”) (codified as Health and Safety Code, § 11362.5 et seq.) to enable seriously ill Californians to legally possess, use, and cultivate marijuana for personal medical use free from prosecution under enumerated provisions of state law; and

WHEREAS, in 2003, the California Legislature adopted the Medical Marijuana Program (“MMP”) (codified as Health and Safety Code, § 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 state law; and

WHEREAS, in 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 nothing in the CUA or MMP preempted cities’ authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, in 2015, the California Legislature enacted the Medical Cannabis Regulation and Safety Act (MCRSA), which for the first time in the State’s history adopted comprehensive regulations and licensing for medical marijuana businesses; and

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the non-medical use of marijuana by adults over 21 years of age, and provides for state licensing of adult-use marijuana businesses; and

WHEREAS, Senate Bill 94 (“SB 94”), signed by the Governor on June 27, 2017 to take effect immediately, repealed the MCRSA, and amended AUMA to consolidate the state licensing scheme applicable to both medical and adult-use commercial cannabis activity under a new law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA); and

WHEREAS, AUMA, as amended by MAUCRSA, recognizes, preserves and does not supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that regulate licensed cannabis businesses, including, but not limited to, completely prohibiting the establishment or operation of one or more types of businesses licensed under MAUCRSA within the local jurisdiction (Business and Professions Code, § 26200); and

WHEREAS, under the federal Controlled Substances Act (codified in 21 U.S.C. § 801 et seq.), the use, possession, and cultivation of marijuana/cannabis are unlawful and subject to federal prosecution without regard to medical need. As a result, access to banking services for commercial cannabis businesses remains limited; and

WHEREAS, commercial cannabis land uses pose certain threats to public health, safety and welfare. In particular, cannabis businesses largely operate on a cash basis because of their inability to obtain banking services. This characteristic makes cannabis businesses unusually attractive for robbery, burglary, and other theft offenses; and

WHEREAS, permitting the establishment of commercial cannabis businesses within the city may increase cannabis consumption and availability within the city, and may increase youth exposure to and use of cannabis; and

WHEREAS, allowing deliveries from licensed cannabis retailers located outside of city limits to retail customers within the city balances individuals' access to cannabis, particularly for medical use by seriously ill residents of Lafayette, with the public health and safety concerns of the City posed by commercial cannabis businesses; and

WHEREAS, AUMA, as amended by MAUCRSA, legalizes cultivation of not more than six living cannabis plants by persons 21 years of age or older for personal use; and

WHEREAS, AUMA, as amended by MAUCRSA, provides that a city shall not completely prohibit personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure, but that a city may completely prohibit personal cultivation of cannabis outdoors (Health and Safety Code, § 11362.2); and

WHEREAS, this ordinance appropriately and adequately mitigates and minimizes potential adverse impacts related to safety and offensive odors resulting from cultivation of cannabis for personal use by imposing reasonable regulations on indoor cultivation and completely prohibiting outdoor cultivation; and

WHEREAS, outdoor cannabis cultivation poses additional threats to public health, safety, and welfare, including strong odors, the risk of criminal activity due to the "attractive nuisance" characteristics of cannabis (which may be visible from neighboring properties or recognizable from public spaces due to odors), and the risk of fires and environmental degradation; and

WHEREAS, this ordinance effects reasonable land use regulations by imposing standards for the personal cultivation of cannabis by residents of Lafayette, as contemplated by Health and Safety Code, Section 11362.2; and

WHEREAS, in accordance with Business and Professions Code, Section 26200, this ordinance effects zoning limitations that prohibit the physical establishment and operation of all commercial medicinal and adult-use cannabis businesses within Lafayette, including all commercial cultivators, manufacturers, testing laboratories, retailers, distributors and microbusinesses that are or will be licensed by the state of California pursuant to the MAUCRSA, with the exception that cannabis retailers legally established and located outside of the City of Lafayette may provide delivery services to retail customers in Lafayette, subject to the reasonable regulations stated herein; and

WHEREAS, on October 2, 2017, the Planning Commission of the City of Lafayette conducted a duly noticed public hearing pursuant to Government Code section 65854, at which time all persons wishing to testify in connection with the proposed regulations were heard and the matter was fully studied; and

WHEREAS, on October 2, 2017, the Planning Commission recommended adoption of a modified version of the ordinance which included a definition for “secure”; and

WHEREAS, on October 23, 2017, the City Council of the City of Lafayette introduced Ordinance 660 and conducted a duly noticed public hearing pursuant to Government Code 65854, at which time all persons wishing to testify in connection with these proposed regulations were heard and the matter was fully studied and the Council directed staff to make amendments to the ordinance; and

WHEREAS, on November 13, 2017, the City Council of the City of Lafayette conducted a duly noticed public hearing pursuant to Government Code section 65854 of the amended ordinance as described, at which time all persons wishing to testify in connection with the proposed regulations were heard and the matter was fully studied, and the ordinance was reintroduced; and

WHEREAS, on November 27, 2017, the City Council of the City of Lafayette conducted a duly noticed public hearing pursuant to Government Code section 65854 of the amended ordinance as described, at which time all persons wishing to testify in connection with the proposed regulations were heard and the matter was fully studied, and adopted the ordinance; and

WHEREAS, the City Council desires to amend the Sections 6-429.5 and 6-528, and add Section 6-535 of the Lafayette Municipal Code to provide standards for indoor cultivation of cannabis for personal use, to prohibit outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities, as defined, except for cannabis delivery originating outside of the City; and

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

6-429.5 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 includes marijuana as defined by Section 11018 of the Health and Safety Code. Cannabis includes “cannabis” as

defined in Business and Professions Code, Section 26001, as may be amended from time to time.

- (b) "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- (c) "Cannabis delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- (d) "Cannabis distribution" means the procurement, sale, and transport of cannabis and cannabis products.
- (e) "Cannabis manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. Cannabis manufacture includes 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.
- (f) "Cannabis products" means cannabis 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 cannabis or concentrated cannabis and other ingredients. Cannabis products includes "cannabis products" as defined in Business and Professions Code, Section 26001, as may be amended from time to time.
- (g) "Cannabis retailer" means a facility where 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. For purposes of this code, cannabis retailer includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to operate, pursuant to the Compassionate Use Act and Health and Safety Code Section 11362.775.
- (h) "Cannabis testing laboratory" means a facility, entity, or site in the state that offers or performs tests of cannabis or 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 commercial cannabis activity in the state; and
 - (2) Licensed by the Bureau of Cannabis Control.
- (i) "Commercial cannabis uses" includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes "commercial cannabis activity" as defined in Business and Professions Code, Section 26001, as may be amended from time to time, and includes any activity that requires a license from a state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act, Business and Professions Code, Section 26000 et seq., as may be amended from time to time. Commercial cannabis activity does not include possession or cultivation of cannabis for personal

use that is not sold and in strict accordance with Health and Safety Code, Section 11362.1 et seq.

- (j) "Digital currency" means a digital representation of value that can be digitally traded and is used to facilitate the sale, purchase, and exchange of goods, services, or other digital representations of value. Sometimes referred to as virtual currency.
- (k) "Electronic payment method" means any kind of non-cash payment method, including but not limited to, credit cards, debit cards, electronic funds transfers, automated clearing house (ACH) networks or digital currency.
- (l) "Indoor" means any location that is totally contained within a fully enclosed and secure private residence or building.
- (m) "Outdoor" means any location that is not totally contained within a fully enclosed and secure accessory building or primary residence.
- (n) "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling occupied for residential purposes.
- (o) "Secure" means in a locked area or room, safe, or vault, and in a manner reasonably designed to prevent loss, and access or theft, particularly by persons under the age of 21 years.

Section 3. Amendment to Lafayette Municipal Code Section 6-528. Lafayette Municipal Code Section 6-528 is hereby amended and restated 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 unless expressly and affirmatively authorized by this code; and
- (b) Construction or use of helicopter landing pads, heliports and all other helicopter facilities.

Section 4. Lafayette Municipal Code Section 6-535 Added. Lafayette Municipal Code Section 6-535 is hereby added to read in its entirety as follows:

6-535 – Cannabis Uses.

- (a) Purpose. This section regulates the cultivation of cannabis in Lafayette for personal use in accordance with state law. In addition, this section prohibits all commercial cannabis uses from establishing or operating within the City of Lafayette, including all medical and adult-use cannabis business types licensed by state licensing authorities pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Section 26000 et seq.), except cannabis deliveries originating from outside of the City.

(b) Personal Cultivation Indoors. A person age 21 or older may cultivate and possess no more than six (6) living cannabis plants at any one time for his or her own personal use inside a private residence or inside an accessory structure to a private residence, so long as all of the following minimum standards are met.

- (1) All areas used for cannabis cultivation shall be located within a fully enclosed and secure structure.
- (2) Indoor grow lights shall not exceed a total of one thousand (1,000) watts or incandescence equivalent, and all lighting shall comply with the California Building, Electrical, and Fire Codes as adopted and amended by the City of Lafayette.
- (3) The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for cultivation of cannabis is prohibited. Use of gas products shall be limited to those allowed by the California Building, Electrical, and Fire Codes as adopted and amended by the City of Lafayette.
- (4) Any private residence or accessory building used for the cultivation of cannabis must have a ventilation and filtration system installed that shall prevent cannabis plant odors from exiting the building.
- (5) There shall be no exterior visibility or evidence of cannabis cultivation outside the private residence from the right-of-way, a public place, or any adjacent property including, but not limited to, any cannabis plants, equipment used in the growing and cultivation activities, and any light emanating from the structure due to cultivation lighting (grow lights).
- (6) The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident(s), and the premises shall not be used primarily or exclusively for cannabis cultivation.
- (7) The cannabis cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident(s) or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
- (8) No more than six cannabis plants, mature or immature, per residence are permitted for indoor personal cultivation, regardless of the number of individuals residing at the residence.
- (9) The living plants and any cannabis produced by plants in excess of 28.5 grams shall be kept in a locked space on the grounds of the private residence.

(c) Personal Cultivation Outdoors. Cultivation of cannabis outdoors in the City of Lafayette is prohibited.

(d) Commercial cannabis uses prohibited; exception.

- (1) All commercial cannabis uses are prohibited from establishing or operating within the City of Lafayette.
- (2) Exception for deliveries from licensed cannabis retailers. Cannabis retailers, microbusinesses and non-profits licensed pursuant to Business and Professions Code, Section 26070.5 (whether medical or adult-use) are prohibited in the City; however, delivery of cannabis and cannabis products from cannabis retailers,

microbusinesses or licensed nonprofits located outside of the City of Lafayette is allowed, subject to the following restrictions:

- (A) Only cannabis retailers, microbusinesses or licensed nonprofits that are licensed under the applicable laws of the state of California, including but not limited to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code, Section 26000 et seq.), and are operating in compliance with the applicable laws and regulations of the local jurisdiction in which the cannabis business is physically located may provide cannabis delivery to locations in the City of Lafayette; and
- (B) Provided that such delivery transactions within Lafayette utilize an electronic payment method.

Section 5. **CEQA.** The City Council finds that this Ordinance limits individuals' personal cannabis cultivation to indoor areas within existing or new residential structures and accessory structures, involving negligible expansion of existing residential use, as required by State law. Indoor cultivation may involve the installation of new small structures, new small equipment in existing small structures or the conversion of existing small structures to indoor cultivation use involving only minor changes to the exterior of the structure. It can be seen with certainty that the amendments as to personal cultivation of cannabis will have no significant effect on the environment and are therefore exempt from further environmental review pursuant to the Class 1 and Class 3 categorical exemptions. To the extent the ordinance prohibits commercial cannabis businesses from establishing in the City the ordinance is exempt from environmental review pursuant to the common sense exemption because it will maintain the status quo. In addition, Business and Professions Code Section 26055, subdivision (h), provides that the California Environmental Quality Act ("CEQA") does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity, so long as the discretionary review includes any applicable environmental review pursuant to CEQA. Discretionary review and environmental review of delivery services originating outside of the city is required to be performed by the local jurisdiction where the retailer is physically established, or by the state licensing authority. Accordingly, the City Council finds that this Ordinance is categorically exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15301, 15303 and Section 15061(b)(3) of Title 14 of the California Code of Regulations as well as Business and Professions Code, Section 26055(h).

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 regular meeting of the City Council of the City of Lafayette held on October 23, 2017 and continued to the City Council meeting of November 27, 2017 for second hearing and adoption of the ordinance, by the following vote:

AYES: Anderson, Tatzin, Burks, Mitchell and Samson

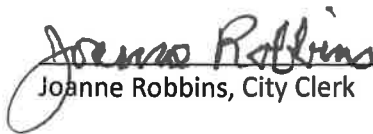
NOES: None

ABSTAIN: None

ABSENT: None

ATTEST:

APPROVED:


Joanne Robbins, City Clerk


Mike Anderson, Mayor