

Draft Ordinance for Council Meeting of October 10, 2017

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Note: Changes in response to comments from the City Council Members at the September 26, 2017 meeting are indicated in ~~strike through~~ and **redline**.

Staff has added additional findings and new sections identifying the effective date, publication requirements, and including a severability clause; these changes are indicated in *italics*.

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**ORDINANCE NO. 17-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES AMENDING TITLE 4, CHAPTER 18 OF THE HERCULES MUNICIPAL CODE TO ENACT ADDITIONAL LOCAL RESTRICTIONS ON THE USE, SALE, CULTIVATION, AND DELIVERY OF MARIJUANA WITHIN CITY LIMITS**

***WHEREAS,** The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5\_et seq., “The Compassionate Use Act of 1996”); the intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to obtain and use it without fear of State criminal prosecution; and*

***WHEREAS,** On October 9, 2015, Governor Brown approved a series of bills commonly referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), effective on January 1, 2016, which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, delivery, and sale of medical cannabis; and*

***WHEREAS,** in November 2016, the voters of the State of California approved Proposition 64, known as the “Adult Use of Marijuana Act” (“AUMA”), which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of recreational cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain*

*activities related to the cultivation, manufacture, transportation, storage, distribution, delivery, and sale of recreational cannabis; and*

***WHEREAS,** The City Council of the City of Hercules has recognized, and continues to recognize, the adverse impacts on the health, safety, and welfare of its residents and businesses from secondary effects associated with commercial cannabis activity, which potentially might include: offensive odors, trespassing, theft, violent encounters between growers and persons attempting to steal plants, fire hazards, increased crime in and about marijuana businesses, robberies of customers, negative impacts on nearby unrelated businesses, nuisance problems, and increased DUI incidents; and*

***WHEREAS,** there is a need to adopt health, safety, and welfare regulations to avoid adverse impacts on the community which may arise from commercial cannabis activity; and*

***WHEREAS,** the MCRSA and AUMA set forth a comprehensive framework to regulate cannabis and cannabis products from seed to ingestion by a consumer, which includes uniform health and safety standards, which mitigates against some of the potential adverse impacts that have been identified by the City Council; and*

***WHEREAS,** an effective regulatory system governing cannabis in the City of Hercules, as provided in this chapter, will address potential adverse impacts to the public health, welfare, and safety, thereby allowing commercial cannabis activity and other use of cannabis and cannabis products consistent with Federal law as applicable to the State of California and State law.*

*Now, therefore, the City Council of the City of Hercules does ordain as follows:*

***SECTION 1.** Title 4, Chapter 18 of the Hercules Municipal Code is amended to read as follows:*

**Chapter 18. Marijuana Dispensaries, Cultivation, Processing, Usage, Sales, and Delivery**

**4-18.01 Purpose and Intent**

**4-18.02 Definitions**

**4-18.03 Prohibited Uses.**

**4-18.04 Personal Marijuana Cultivation**

**4-18.05 Penalties**

**4-18.06 Public Nuisance**

**4-18.07 Future Amendments and Preservation of Local Control**

**Sec. 4-18.01 Purpose and Intent.**

*It is the purpose and intent of this chapter for the City Council to exercise its police powers derived from Section 7 of Article XI of the California Constitution and State law to promote the health, safety, and general welfare of the residents and businesses of the City of Hercules by regulating cannabis within the City's jurisdictional limits, unless preempted by Federal or State law. The City Council finds that prohibitions on marijuana cultivation, marijuana processing, marijuana usage, marijuana sales, marijuana commercial delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare of the City and its community, and that such local prohibitions are specifically authorized under state law pursuant to Sections 11362.2 and 26200 of the California Health and Safety Code, and the Adult Use of Marijuana Act ("AUMA"), Section 3. "Purpose and Intent", subsections (c) and (d). Notwithstanding any provision of this Code to the contrary, any land use that cannot be conducted or carried out without being in violation of State or Federal law or this Code, expressly including, but not limited to, marijuana dispensaries, marijuana commercial deliveries, and marijuana cultivation, shall be prohibited in all planning areas and zoning districts within the City.*

**Sec. 4-18.032 Definitions.**

"Accessory Structure" shall mean an enclosed structure either attached to and having a common wall with the main structure or may be freestanding enclosure, as defined in Section 35.210 of the Hercules Zoning Ordinance.

"Adult Use of Marijuana Act" or "AUMA" shall mean Proposition 64 now contained in Health and Safety Code Sections 11108, and 11362.

"Cannabis" shall have the same meaning as set forth in Business and Professions Code Section 19300.5(f) as the same may be amended from time to time, and means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana.

"Caregiver" or "primary caregiver" shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as that set forth in Business and Professions Code Section 19300.5(k) as the same may be amended from time to time.

“Cooperative/collective” shall mean two or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

“Cultivation” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(l) as the same may be amended from time to time.

“Cultivation site” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(x) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(m) as the same may be amended from time to time. “Delivery” shall not include the carriage of medical marijuana or medical marijuana products on public roads when otherwise in compliance with California Business and Professions Code Section 19340, and shall not include the noncommercial delivery of medical marijuana or medical marijuana products by primary caregivers as defined in Section 11362.7 of the California Health and Safety Code.

“Dispensary” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(n) as the same may be amended from time to time. For purposes of this chapter, “dispensary” shall also include a cooperative/collective.

“Dispensing” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(o) as the same may be amended from time to time.

“Distribution” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(p) as the same may be amended from time to time.

“Distributor” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(q) as the same may be amended from time to time.

“Manufacturer” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(y) as the same may be amended from time to time.

“Marijuana” see “Cannabis.”

“Medical marijuana cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis, regardless of whether there is an intent to produce, distribute, or sell the resulting product commercially.

“Medical marijuana dispensary” means any facility or location, whether fixed or mobile, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products, either individually or in any combination, are offered, carried, transported, transmitted, manufactured, stored, placed, cultivated, sold, traded, exchanged, bartered, made available to and/or distributed, expressly including an establishment that delivers marijuana or marijuana products as part of a retail sale.

“Medical marijuana processing” means any method used to prepare marijuana or its byproduct for commercial retail and/or wholesale distribution, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

“Medical marijuana,” “medical marijuana product,” or “marijuana product” shall have the same meanings as set forth in Business and Professions Code Section 19300.5(ag) as the same may be amended from time to time and shall also include “medical marijuana” as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Nursery” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(ah) as the same may be amended from time to time.

“Qualifying patient” or “qualified patient” shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

“Testing laboratory” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(z) as the same may be amended from time to time.

“Transport” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(am) as the same may be amended from time to time.

“Transporter” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(aa) as the same may be amended from time to time.

**Sec. 4-18.023 Prohibited Uses.**

A. Notwithstanding any provision of this Section or Chapter, no person shall transact, perform, engage in and carry on in the City any business, trade, profession, calling, use or occupation that cannot be, or is not, conducted or carried out without being in violation of State or Federal law, or this Code, and no license will be issued for any such business, trade, profession, calling, use, or occupation, including but not limited to a marijuana dispensary, marijuana commercial sales, marijuana delivery, or marijuana cultivation as defined in Section 4-18.032.

B. Commercial and non-personal use marijuana activities of all types are expressly prohibited in all planning areas and zoning districts within the City. No person shall establish, operate, conduct or allow any commercial or non-personal use marijuana activity anywhere within the city.

C. To the extent not already covered by subsection B above, and except for the noncommercial delivery of medical marijuana or medical marijuana products by primary caregivers, all deliveries of medical or non-medical marijuana are expressly prohibited within the city of Hercules. No person shall conduct any deliveries that either originate or terminate within the city.

D. This section is meant to prohibit all activities for which a state license is required. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a state license is required under the Medical Marijuana Regulation and Safety Act (“MMRSA”) or the Adult Use of Marijuana Act (“AUMA”).

E. Cultivation of marijuana for non-commercial purposes including, but not limited to, cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones, planned developments, and all specific and master plan areas in the city of Hercules, except in residential zones as described in Section 4-18.034.

F. As specified by California Health and Safety Code Section 11362.3 the following are prohibited:

1. Smoke or ingest marijuana or marijuana products in any public place, except in accordance with Section 26200 of the Business and Professions Code.

2. Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited, pursuant to Section 11362.3(a)(2) of the Business and Professions Code, and the City’s Smoking Ordinance, Title 5, Chapter 6 of this Code.

3. Smoke marijuana or marijuana products within one thousand feet of a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of the Business and Professions Code or Chapter 3.5

of Division 8 of the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center.

4. Possess an open container or open package of marijuana or marijuana products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

5. Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.

6. Manufacture concentrated cannabis using a volatile solvent, ~~unless done in accordance with a license under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.~~

7. Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

8. Smoke or ingest marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under the age of twenty-one years are present.

**Sec. 4-18.034 Indoor Personal Marijuana Cultivation.**

A. Outdoor cultivation of marijuana is prohibited within the city limits of the city of Hercules.

B. Indoor personal use cultivation of marijuana is authorized by Health and Safety Code Section 11362.1(a)(3), and in accordance with the following local requirements

1. A person twenty-one years and older must plant, cultivate, harvest, dry, or process plants in accordance with this chapter.

2. The marijuana plants and anything produced by the plants must be kept within the person's private residence, fully enclosed and secure, and not visible by normal unaided vision from a public place.

3. Not more than six living plants may be planted, cultivated, harvested, dried, or processed at one time, but outdoor cultivation, harvesting, or processing will continue to be prohibited at all times.

4. A person engaging in indoor cultivation pursuant to this Section shall obtain written and signed consent of the property owner where the indoor cultivation of marijuana is located.

5. The property used for indoor cultivation of marijuana shall be a residential unit located upon the grounds of a private residence that is fully enclosed and secure, and not visible by normal unaided vision from a public place.

6. The property used for indoor cultivation of marijuana shall be locked and inaccessible to minors, and if inside an accessory structure to a private residence located upon the grounds of a private residence that it is fully enclosed, secure, and not visible by normal unaided vision from a public place. An accessory structure used for the cultivation of marijuana pursuant to Section 11362.2(b)(2) of the California Health and Safety Code must meet the permitting and setback requirements for accessory structures provided for in the Hercules Zoning Ordinance.

7. Odors shall be contained on the property on which the cultivation is located. If the City receives complaints of odors, the City may cause the inspection and abatement of the nuisance pursuant to subsection 4-18.034(B)(10) below, or any other remedy available at law.

8. Generators or gas products used to power electrical or lighting fixtures or equipment for indoor cultivation shall be prohibited.

9. Use of volatile solvents for indoor cultivation shall be prohibited, including, but not limited to: (a) explosive gases, such as butane, propane, xylene, styrene, gasoline, kerosene, O<sub>2</sub> or H<sub>2</sub>; and (b) dangerous poisons, toxins, or carcinogens, such as methanol, isopropyl alcohol, methylene chloride, acetone, benzene, toluene, and trichloroethylene.

10. A person engaging in indoor cultivation pursuant to this Section shall first provide a signed Acknowledgment and Consent Form to the City of Hercules on a form prescribed by the City Manager confirming compliance with state law and the conditions contained in this Section, and granting the building inspector and/or code enforcement officer access with twenty-four-hour notice upon receipt by the City of a complaint regarding the person's cultivation activity. If the inspection is denied, an enforcement and/or abatement action shall be commenced to abate the nuisance conditions.



11. The Acknowledgment and Consent Form will expire after twelve months and must be renewed annually ~~with approval from the building department~~ if indoor personal use marijuana cultivation is to continue.

**Sec. 4-18.04 Penalties.**

A person who violates this Chapter is subject to all abatement and civil penalty provisions of the Hercules Municipal Code, including but not limited to the public nuisance provisions of Chapter 4-10, and any and all applicable laws and regulations without limitation. In addition to any other administrative enforcement action authorized pursuant to the Hercules Municipal Code, the city attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter.

**Sec. 4-18.05 Public Nuisance.**

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the city pursuant to Code of Civil Procedure Section 731 or any other remedy available to the city.

**Sec. 4-18.06 Future Amendments and Preservation of Local Control.**

The City expressly reserves the right to adopt and enforce local ordinances to regulate and control all local marijuana related activities in a manner consistent with state law, including but not limited to regulation of use, possession, use for medical purposes, licensing, retail and distribution, cultivation, transportation, delivery, manufacturing, packaging, advertising, marketing, records keeping, fees, taxation, permits, and inspections.

*Section 2. Effective Date. This ordinance becomes effective thirty (30) days after its final passage and adoption.*

*Section 3. Publication. The City of Hercules shall cause this Ordinance to be published pursuant to the requirements specified in California Government Code Section 36932.*

*Section 4. CEQA Exemption. The Town Council finds pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.*

*Section 5. Severability. If any provision of the Ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. The City Council of the City of Hercules hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.*

*The foregoing Ordinance was introduced at a regular meeting of the Hercules City Council held on October 10, 2017, and was adopted and ordered published at a regular meeting of the City Council on \_\_\_\_\_, 2017, by the following vote:*

AYES:

NOES:

ABSTAIN:

ABSENT:

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Myrna de Vera, Mayor

Attest:

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Lori Martin, City Clerk