

TO: Honorable Mayor and City Council
Attention: Jeremy Craig, City Manager

FROM: Barton Brierley, AICP, Community Development Director
(Staff Contact: Christina Love, (707) 449-5374)

**SUBJECT: ORDINANCE AMENDING CHAPTER 9.13 AND ADDING CHAPTER 9.14,
PERSONAL HOME CANNABIS CULTIVATION, TO THE VACAVILLE
MUNICIPAL CODE (First Reading)**

DISCUSSION:

On November 8, 2016 voters passed Proposition 64, the Adult Use of Marijuana Act. This proposition and subsequent state legislation allow local governments to reasonably regulate but not prohibit indoor cannabis cultivation for adult personal non-medical use.

In April and July 2018, City staff presented information for City Council consideration regarding possible local regulations for personal cultivation of cannabis. Through the course of the discussions, the Council agreed that there can be public health and safety concerns related to personal cannabis cultivation that should be address through City regulation. The Council determined that a permit process was not the best practice and directed staff to proceed forward with a draft ordinance that simply states the California State Regulations and establishes clear standards to address potential negative effects of home cannabis cultivation.

Staff proposes to establish regulations on personal cannabis cultivation into Municipal Code Title 9: Public Peace, Morals, and Welfare. Title 9 includes the existing 9.13 – Medial Cannabis Regulations. Staff recommends revising the existing section to include consistent definitions of terms and creating Section 9.14 – Personal Home Cannabis Cultivation to codify the State regulations in a single section.

The proposed ordinance would not prohibit personal home cannabis cultivation nor would it require any special permit to begin personal cultivation. It would establish standards which, if violated, would be considered a nuisance and could be abated. These standards would do the following:

- Prohibit cultivation anywhere other than at the adult's own private residence;
- Prohibit outdoor cultivation;
- Make it a nuisance if odors, noise, or lighting relating to personal cannabis cultivation permeate beyond the property;
- Prohibit the use of any volatile solvents; and
- Prohibit growing in an unlocked room if children are in the home.

ENVIRONMENTAL REVIEW:

Pursuant to the California Environmental Quality Act (CEQA), the City has determined that the proposed amendments are exempt from CEQA based on section 15061(b)(3), because the

project can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. Under the proposed text, Personal Home Cannabis Cultivation would be limited to legally constructed residential dwellings or accessory buildings that would be required to continue to operate as a residential dwellings. Therefore there would be no significant impacts on the environment because there would be no change to the land use. Consistent with CEQA and VMC 14.03.021, a notice of exemption shall be filed should the project be approved.

RECOMMENDATION:

By title only, introduce the subject ordinance.

ATTACHMENTS:

Attachment 1: Proposed ordinance

ORDINANCE NO.

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VACAVILLE AMENDING CHAPTER 9.13 AND ADDING CHAPTER 9.14, PERSONAL HOME CANNABIS CULTIVATION, TO THE VACAVILLE MUNICIPAL CODE

WHEREAS, Federal law generally prohibits the cultivation, possession, and use of cannabis; and

WHEREAS, the Vacaville Municipal Code currently prohibits cultivation of cannabis within the City of Vacaville; and

WHEREAS, on November 8, 2016 voters passed Proposition 64, the Adult Use of Marijuana Act. This proposition and subsequent state legislation were intended to permit adults 21 years and older to use, possess, purchase and grow nonmedical cannabis within defined limits, and to allow local governments to reasonably regulate the cultivation of nonmedical cannabis for personal use by adults 21 years and older through zoning and other local laws, and to only ban outdoor cannabis cultivation; and

WHEREAS, the Vacaville City Council adopted a moratorium on September 26, 2017 on the approval, commencement, establishment, or operation of all industrial, retail, and commercial cannabis land uses, deliveries, and all outdoor cannabis cultivation in any zoning district within the City of Vacaville; and

WHEREAS, the Vacaville City Council approved an extension to the moratorium on October 24, 2017, which shall terminate on September 26, 2019; and

WHEREAS, the Vacaville City Council received information on personal cultivation of cannabis on April 10, 2018 and July 10, 2018; and

WHEREAS, the Vacaville City Council determined that unregulated cultivation of personal use cannabis can be detrimental to the public health, safety, and welfare for a number of reasons, including:

1. Unsecured cultivation can lead to access to cannabis by minors;
2. Odors, lighting, and noise from cannabis cultivation can permeate beyond the residence and harm the peaceful enjoyment of neighbors;
3. Improper cultivation can create safety, fire and environmental hazards; and

WHEREAS, the Vacaville City Council directed staff to return with proposed ordinances regulating personal cultivation of cannabis on July 10, 2018.

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

Section 1. Amendment to Subsection 9.13.010, of the Vacaville Municipal Code.

Section 9.13.010, entitled "Definitions", of the Vacaville Municipal Code shall be amended to read in full as follows:

"Cannabis" shall have the same meaning as set forth in Business & Professions Code Section 49300.5(f) 26001(f), as amended from time to time, and which states that "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 cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the 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. "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

"Cannabis products" shall have the same meaning as set forth in Health & Safety Code Section 11018.1, as amended from time to time, and which states that "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.

"Commercial cannabis activity" shall have the same meaning as set forth in Business & Professions Code Section 49300.5(k) 26001(k), as amended from time to time, and which states that "commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.

"Cooperative" shall mean two or more persons collectively or cooperatively cultivating, 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 & Professions Code Section 49300.5(l) 26001(l), as amended from time to time, and which states that "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Delivery" shall have the same meaning as set forth in Business & Professions Code Section 49300.5(m) 26001(p), as amended from time to time, and which states that "delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform.

"Premises", also known as "dispensary" "Dispensary", shall have the same meaning as set forth in Business & Professions Code Section 49300.5(n) 26001(ap), as amended from time to time, and which states that "premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee. The term "premises" and "dispensary" shall be interchangeable as used in this Chapter 9.13, and Chapter

9.14 of the Vacaville Municipal Code. For the purposes of this chapter, “dispensary” ~~“Dispensary” shall also include a cooperative.~~ “dispensary” shall not include the following uses: (1) A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; (2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; (3) A residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; (5) A residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

“Manufacture” shall have the same meaning as set forth in Business & Professions Code Section 26000(ag), as amended from time to time, and which states that “manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. The terms “manufacture” and “process” shall be interchangeable as used in this Section 9.13 and Chapter 9.14 of the Vacaville Municipal Code.

“Marijuana” shall have the same meaning as cannabis.

“Medicinal cannabis,” or “medicinal cannabis product,” or “cannabis product” shall have the same meanings as set forth in Business & Professions Code Section 49300.5(ag) 26001(ai), as amended from time to time, and which states that “medicinal cannabis” or “medicinal cannabis product” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medicinal cannabis patient in California who possesses as physician’s recommendation.

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015: AB 243, AB 246, and SB 643.

“Primary caregiver” shall have the same meaning as set forth in Health & Safety Code Section 11362.7(d).

“Qualified patient” shall have the same meaning as set forth in Health & Safety Code Section 11362.7(c).

Section 2. Amendment to Subsection 9.13.020(B) of the Vacaville Municipal Code.

Subsection 9.13.020(B), under Section 9.13.020 entitled “Prohibition”, of the Vacaville Municipal Code shall be amended to read in full as follows:

B. Cultivation of cannabis for non-commercial purposes is expressly prohibited within the City of Vacaville, except for personal home cannabis cultivation, as defined in Chapter 9.14 of this Code. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis within the City, even for medical purposes, except for personal home cannabis cultivation conducted in accordance with Chapter 9.14 of this Code.

Section 3. Addition of Chapter 9.14, Personal Home Cannabis Cultivation, to the Vacaville Municipal Code.

The following is added as Chapter 9.14 of the Vacaville Municipal Code to be entitled “Personal Home Cannabis Cultivation.”

9.14.010 Purpose.

The purpose of this Chapter is to reasonably regulate but not prohibit the indoor cultivation of cannabis for the personal use of an adult cultivator 21 years and older to address public health, safety, and welfare concerns, including those related to odor, lighting, noise, health, safety, and access to minors. This section establishes development criteria and operating standards for personal cannabis cultivation for medical or adult use. Cultivation of cannabis for personal use shall be subject to the following standards and limitations.

Nothing in this Chapter shall be construed to permit or allow any activity related to cannabis that is prohibited by state or federal law or not conducted in accordance with other applicable regulations. This section does not grant, nor purports to grant, any person independent legal authority to cultivate cannabis. This section imposes regulations on the cultivation of cannabis which are authorized by California state law.

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.

9.14.020 Definitions.

Those definitions contained in Section 9.13.010, Definitions, of this Code are incorporated herein by reference, and shall apply to this Chapter. In addition, the following terms shall have the following meanings:

“Accessory building” means a fully enclosed building with walls and a roof, detached from and incidental to the main private residence on the same lot, and not designed or used for human habitation. Examples of accessory buildings include, but are not limited to, storage sheds, greenhouses, or gazebos. Accessory buildings do not include accessory dwelling units, carports, tents, patio covers, pergolas, or decks.

“Attached building” means a fully enclosed building with walls and a roof, attached to and incidental to the main private residence on the same lot, and not designed or used for human habitation. Examples of attached buildings include, but are not limited to, attached garages, attached solarium rooms, and attached storage rooms. Attached buildings do not include accessory dwelling units, carports, tents, patio covers, pergolas, or decks.

“Filtered ventilation” means the use of a mechanical ventilation device with an air filter which, when ducted to the exterior of the structure/building, draws out stale, impure and humid air to improve the quality of indoor air, to reduce accumulation of molds, and to reduce exterior odors.

“Indoor” means completely within a dwelling unit, attached building, or accessory building.

"Juvenile" means any natural person who is under the age of twenty-one (21) years of age.

“Outdoor cannabis cultivation” means cultivation of cannabis not within a dwelling unit, attached building, or accessory building.

“Personal home cannabis cultivation” means cultivation of cannabis by an adult 21 years or older within the full time private residence of that particular adult for the exclusive personal use of an adult 21 years or older.

“Private Residence” means a legally existing dwelling unit, as defined in Division 14.02 of Title 14 of the Vacaville Municipal Code, and other areas on the same lot designated for the exclusive use of the residents of that dwelling unit, such as patios, balconies, garages, and accessory buildings. For a lot containing only one single-family dwelling, “private residence” includes the entire lot.

“Room” means a room in a private residence with at least one exterior window and at least one interior door. The term “room” does not include a bathroom.

9.14.030 Prohibition

A. Cannabis plants shall not be located in any illegal accessory structure/building, illegal attached building, or illegal private residence. Outdoor cannabis cultivation is expressly prohibited within the City of Vacaville. Cannabis plants shall not be visible from a public right of way.

B. All commercial cannabis activities are expressly prohibited within residential zones. Personal Home Cultivation shall not include any commercial cannabis activities.

C. The use of gas products (CO₂, butane, etc.), including but not limited to, “volatile solvents” as defined by California Health and Safety Code Section 11362.3, as amended from time to time, shall be prohibited for cannabis cultivation, processing, or manufacturing.

D. Any cannabis activity is expressly prohibited on any public lands.

9.14.040 Performance Standards

Personal home cannabis cultivation not meeting any of the following performance standards and State Law is a violation of this Chapter:

A. The cultivation may not occur any place other than indoors at a private residence within a room in the dwelling unit, within a fully enclosed attached building, or within an accessory building.

B. The private residence where the cultivation is occurring must be lawfully occupied by the adult cultivating the cannabis plants within the private residence.

C. No more than six (6) cannabis plants may be located anywhere at the private residence.

D. The cannabis cultivation area shall have a least one window and one door. Such cultivation area shall not be a bathroom.

E. In private residences where juveniles reside, cannabis cultivation and storage of cannabis shall remain in a room, attached building, or accessory building with locking doors, and shall remain out of the reach and unobtainable by juveniles.

F. There shall be no exterior evidence of cannabis cultivation observable from a public right-of-way, including but not limited to:

G. The private residence shall maintain kitchen, living rooms, dining rooms, bathrooms, and other general commons spaces for their intended use and not be used primarily or exclusively for cannabis cultivation.

H. The cannabis cultivation area shall be in compliance with the Vacaville Municipal Code Chapter 14.20 - Construction and Fire Standards.

I. Required permits shall be obtained for the installation or construction of accessory buildings, attached buildings, walls, doors, plumbing or electrical fixtures, or other improvements related to the cannabis cultivation prior to any commencement of any cannabis cultivation. Any installation or construction of any improvements related to the cannabis cultivation shall be completed prior to any commencement of any cannabis cultivation.

J. If an accessory building is used as a cannabis cultivation area, the accessory building shall be a minimum of five feet from the property line and from the main dwelling unit.

K. Any room within a dwelling unit, any attached building, or any accessory building used for cannabis cultivation shall include odor control filtration and ventilation systems.

L. Electrical extension or other flexible cords and cables used as stated in subsection (1) through (5), or any other use in violation of the applicable electrical codes are not permitted:

1. As a substitute for the fixed wiring of the structure;
2. Running through holes in walls ceilings or floors;
3. Running through doorways, windows or similar openings;
4. Attached to building surfaces; or
5. Concealed behind building walls, ceilings, or floors.

9.14.050 Retaliation prohibited

No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating again another person who seeks to obtain compliance with this Chapter 9.14.

9.14.060 Public Nuisance

It is hereby declared to be unlawful for any person to create a public nuisance in the course of personal home cannabis cultivation. A public nuisance may be deemed to exist, if such activity produces:

A. Excessive odors, excessive noise, or excessive direct lighting which would cause annoyance or discomfort to reasonable persons of normal sensitivity. The City is not required to investigate such complaints unless it is in receipt of a written request to abate signed by three or more persons having separate residences in the neighborhood. Notwithstanding this requirement, the City may investigate such complaints upon receipt of a writing in which such resident(s) can demonstrate to the satisfaction of the enforcement officer that the resident(s) has made a good faith effort to obtain the signatures of other residents in the neighborhood or can demonstrate that it is not possible to obtain such other signatures, as in the case where there are less than three occupied residences in the neighborhood.

B. Repeated response to the parcel, property, and/or private residence where personal cannabis cultivation is occurring, from law enforcement officers, code enforcement officers, building inspectors, or any other regulatory body.

C. A repeated disruption to the free passage of any person or vehicle in the immediate neighborhood.

D. Any use or condition caused, or permitted to exist, in violation of any provision of this chapter or any other applicable law, rule or regulation, shall be and is hereby declared to be a public nuisance.

9.14.070 Civil Penalties.

A. Chapter 1.28 of this Code, other than Section 1.28.120, is incorporated herein by reference, and shall apply to this Chapter. Pursuant to Government Code Sections 36901 and 53069.4, as amended from time to time, any violation of this chapter may be punishable as an administrative fine, within the discretion of the Enforcement Officer. The fines shall be levied as follows:

1. A fine not exceeding one hundred dollars for the first violation;
2. A fine not exceeding two hundred dollars for the second violation within any consecutive 12-month period; and
3. A fine not exceeding five hundred dollars for the third or subsequent violation within any consecutive 12-month period.

B. The administrative fines shall constitute a civil debt owing to the City jointly and severally by the owner or other responsible person. The debt shall be collectible in the same manner as any other civil debt owing to the City.

C. In addition to any other enforcement permitted by this chapter, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party.

9.14.080 Remedies cumulative; each day a separate offense.

Any person subject to this chapter who personally, or through an agent, employee, independent contractor, or other intermediary, violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such violation is committed, continued or permitted to exist by such person. All remedies provided herein shall be cumulative and not exclusive.

9.14.090 No criminal penalties.

The restrictions imposed pursuant to this chapter do not constitute a criminal offense. Notwithstanding any other provision of this code, the city does not impose a criminal penalty for violations of the provisions of this chapter.

Section 4. Severability.

If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 5. Effective Date.

This ordinance shall take effect thirty (30) days after passage thereof.

Section 6. Publication.

This ordinance shall be published in accordance with the provisions of Government Code Section 36933.

I HEREBY CERTIFY that this ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the 13th day of November 2018, and **ADOPTED AND PASSED** at a regular meeting of the City Council of the City of Vacaville held on the _____ day of _____ 2018, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

APPROVED:

Michelle Thornbrugh, City Clerk

Leonard J. Augustine, Mayor

Dated: _____