

CITY OF ALAMEDA ORDINANCE NO. _____

New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY REPEALING SECTION 30-5.15 (MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION) IN ITS ENTIRETY AND ADDING A NEW SECTION 30-10 (CANNABIS)

WHEREAS, this Ordinance is adopted pursuant to the City's police powers, afforded by the state constitution and state law, and as recognized by the Adult Use of Marijuana Act (AUMA) and Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to protect the health, safety, and welfare of the public.

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

Section 1: Section 30-5.15 (Medical Marijuana Dispensaries and Cultivation) of the Alameda Municipal Code is hereby repealed in its entirety and shall read as follows:

~~30-5.15 – Medical Marijuana Dispensaries and Cultivation~~[RESERVED.]

Section 2: A new Section 30-10 (Cannabis) to Chapter XXX of the Alameda Municipal Code is hereby added and shall read as follows:

30-10 – CANNABIS.

30-10.1 – Commercial Cannabis Uses.

a. Findings.

This Section establishes regulations governing the commercial cultivation, manufacture, distribution, delivery, testing, and sale of Cannabis and Cannabis Products. The purpose of these regulations is to provide requirements and criteria to approve of Cannabis Businesses engaged in such uses. The City of Alameda finds it necessary to establish such requirements and criteria in the interest of the public health, safety and welfare to regulate all Cannabis-related uses.

b. Definitions.

The applicable definitions in the Alameda Municipal Code are incorporated by this reference, unless otherwise defined herein.

1. "Cannabis" means any and 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. For the purpose of this Section, “Cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

2. “Cannabis Business” means a business or enterprise engaged in Commercial Cannabis Activity.
3. “Cannabis Product” means Cannabis that has undergone a process whereby the Cannabis has been transformed into a concentrate, including, but not limited to, concentrated Cannabis, or an edible, topical, or other Cannabis-containing product.
4. “Chief of Police” shall mean the Chief of Police of the City of Alameda Police Department or the Chief’s designee.
5. “Commercial Cannabis Activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, sale, delivery, or provision of Cannabis or Cannabis Products for commercial purposes, whether for profit or not.
6. “Community Development Department” shall mean the Director of Community Development Department of the City of Alameda (or successor department), or his or her designee.
7. “Concentrated cannabis” means the separated resin, whether crude or purified, obtained from Cannabis.
8. “Day care center” means any licensed child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers.
9. “Delivery” means the commercial transfer of Cannabis or Cannabis Products, for profit or not, to a customer by any means. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of Cannabis or Cannabis Products. Delivery, however, shall not include commercial transfer of Cannabis or Cannabis Products, for profit or not, by means of a Self-Service Display, which is strictly prohibited.
10. “Distribution” means the procurement, sale, and transport of Cannabis or Cannabis Products between entities licensed pursuant to the Medicinal and Adult-Use of Cannabis Regulation and Safety Act and any subsequent State of California legislation or regulation regarding the same.

11. "Edible cannabis product" means a Cannabis Product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.
12. "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 a physician's recommendation or other authorization permitted by State law.
13. "Permit" refers to any one of the regulatory permits described in subsection c of section 6-59.4 of Article XVI that affords the Permittee the privilege of conducting the activity allowed under the regulatory permit.
14. "Person" shall mean and include a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, limited liability company, business, estate, trust, business trust, receiver, syndicate, organization, or any other group or combination acting as a unit, or the manager, lessee, agent, servant, officer or employee of any of them.
15. "Youth Centers" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities. Youth Centers shall also mean any facility determined by the Alameda Recreation and Parks Department to be a recreation center in a City park.

c. Permitted Uses.

The following are the permitted Commercial Cannabis land uses within the City of Alameda. Any Commercial Cannabis land use not expressly provided for in this section 30-10.1 is deemed prohibited.

1. "Cannabis Retail" means the sale, delivery, or provision of medicinal Cannabis or Cannabis Product to customers or members by any person, business, or organization.
2. "Cannabis Industry" means the possession, manufacture, distribution, processing, storing, laboratory testing, labeling, or transportation of Cannabis or Cannabis Products, or some combination of the foregoing in accordance with State law, by any person, business, or organization for commercial purposes, whether for profit or not. This use also includes the production, preparation, or compounding of 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 Cannabis or Cannabis Products or labels or relabels its container by any person, business, or organization.

3. "Cannabis Cultivation" means the production of clones, immature plants, seeds, and agricultural products used specifically for the propagation and cultivation of Cannabis to mature plants. It shall not include any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of Cannabis, which is prohibited.

d. Applicability.

This Section shall apply to the establishment of all land uses related to Cannabis and Cannabis Products.

e. Home Occupations.

It is unlawful to engage in Commercial Cannabis Activity as a home occupation as defined in section 30-2b of this Chapter.

f. Use Permit.

1. Use Permit Requirement. It is unlawful to engage in Commercial Cannabis Activity, as such use classifications are described in subsection (c) above, without first obtaining a use permit.
2. Administrative Approval. Use Permits to engage in Commercial Cannabis Activity may be approved by the Zoning Administrator where the Administrator determines that each of the criteria of subsection 30-21.3b, pursuant to Section 30.21.4 of the Alameda Municipal Code, are satisfied.

g. Permitted Locations.

1. No Commercial Cannabis Activity shall be permitted on city-owned land or federal property.
2. Notwithstanding Section 30-4 (DISTRICT USES AND REGULATIONS) of the Alameda Municipal Code, Cannabis Cultivation, as defined in the Alameda Municipal Code, may be conditionally permitted in the following Zoning Districts or locations:
 - i. C-M, Commercial Manufacturing District; and
 - ii. AP-E1, Alameda Point, Enterprise District 1, AP-E2, Alameda Point, Enterprise District 2, and AP-AR, Alameda Point, Adaptive Reuse subdistricts.

3. Notwithstanding Section 30-4 (DISTRICT USES AND REGULATIONS) of the Alameda Municipal Code, Cannabis Industry, to the extent permitted by the Alameda Municipal Code, may be conditionally permitted in the following Zoning Districts and locations:

- i. C-M, Commercial Manufacturing District;
- ii. AP-E1, Alameda Point, Enterprise District 1, AP-E2, Alameda Point, Enterprise District 2, and AP-AR, Alameda Point, Adaptive Reuse subdistricts; and
- iii. Office, Research and Development, and Light Industrial zones in the Marina Village Master Plan area.

4. Notwithstanding Section 30-4 (DISTRICT USES AND REGULATIONS) of the Alameda Municipal Code, Cannabis Retail, to the extent permitted by the Alameda Municipal Code, may be conditionally permitted in the following Zoning Districts and locations:

- i. C-C, Community Commercial Zone;
- ii. AP-AR, Alameda Point, Adaptive Reuse;
- iii. NP-W, North Park Street Workplace subdistrict; and
- iv. NP-G, North Park Street Gateway subdistrict.

h. Operational Radius.

1. No Cannabis Business engaging in Cannabis Retail or Cannabis Cultivation shall locate within a 1,000-foot radius of a public or private school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the Permit is first issued. The distance shall be measured in a straight line from the property line of the closest facility to the closest property line of the other facility. For the purposes of this section, “school” means any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. All other sensitive uses identified in this subsection are defined under the California Child Health Care Act, codified in the California Health and Safety Code, except that the definition for youth center defined above shall control.
2. All other Cannabis Businesses shall not locate within a 600-foot radius of the same foregoing sensitive uses.

i. Off-Street Parking.

1. All sites where Commercial Cannabis Activity is permitted shall at a minimum comply with the Parking Regulations in section 30-7 of Chapter XXX of the Alameda Municipal Code. Cannabis Manufacturing uses shall be subject to the same parking requirement as a Manufacturing, Major use under Section 30-7.6 and Cannabis Retail uses shall be subject to the same parking requirement as a General Retail use.

j. Lighting.

1. All exterior lighting shall comply with Chapter XXX of the Alameda Municipal Code, and at a minimum, be fully shielded, downward casting and not spill over onto structures, other properties or the night sky.

k. Business Conducted Within Building.

1. No manufacturing, production, distribution, storage, display, or wholesale of Cannabis and Cannabis-infused products shall be visible from the exterior of the building where the Commercial Cannabis Activity is being conducted. All structures used for cultivation, shall comply with the setback requirements for the base zoning district and any applicable combining zoning districts. There shall be no exterior evidence of cultivation outside the structure.

l. Special Findings to Approve a Cannabis Use Permit. In addition to the findings for use permits more generally set forth in section 30-21.3 (Use Permits), to approve a use permit for Commercial Cannabis Activity, the City must make the following findings:

1. The proposed Cannabis Business is not located within the applicable operational radius. No two Cannabis Businesses engaging in Cannabis Retail shall be permitted to operate within one (1) mile of each other; and
2. The operation of the proposed Cannabis Business will not be detrimental to the public health, safety, or general welfare; and
3. Appropriate measures have been proposed to address nuisance impacts, including odor, noise, exhaust, and waste, related to operation of the Cannabis Business; and
4. The operation of the Cannabis Business will not place a burden on the provision of public services, including police, fire, and building, disproportionate to other similar uses.

m. Conditions of Approval.

1. All Cannabis Businesses shall comply with the general conditions set forth in section 6-59.10 and all applicable specific conditions set forth in section 6-59.11 of Article XVI of Chapter VI of the Alameda Municipal Code.
2. In approving a use permit for Commercial Cannabis Activity, the City may also specify such additional conditions as it deems necessary to fulfill the purposes of this

Section and Article XVI of Chapter VI of the Alameda Municipal Code and may require reasonable guarantees and evidence that such conditions are being, or will be, complied with.

n. Vesting of Use Permit.

1. Notwithstanding Section 30-21.9 (Termination Due to Inaction) of Chapter XXX (Development Regulations) of the Alameda Municipal Code, a use permit, if granted, for Commercial Cannabis Activity shall terminate one (1) year from the date of its granting, unless actual construction or alteration, or actual commencement of the authorized activities, has begun under valid permits within such period, including without limitation the granting of a regulatory permit pursuant to Article XVI (CANNABIS BUSINESSES) of Chapter VI (BUSINESS, OCCUPATIONS, AND INDUSTRIES) of the Alameda Municipal Code. An applicant may seek a one-time one-year extension to the use permit for good cause, but may only do so no earlier than 60 days prior to expiration of the initial one-year term.
2. "Good cause" includes, but is not limited to, termination of the Cannabis Business' lease by the property owner; a change in federal, state or local law that now prohibits use of the previously approved location as a Cannabis Business; foreclosure or sale of the approved location resulting in the Cannabis business' inability to enter into a new lease; damage to or deterioration to the building that prevents the safe use and/or occupation of the structure until all required repairs are made in conformity with a Notice and Order issued to the property owner by the City's Building Official pursuant to the California Code of Regulations and the Uniform Code for Abatement of Dangerous Buildings. However, if the Cannabis Business was responsible for the condition, including any non-permitted construction or alteration of the structure, or non-permitted electrical, mechanical or plumbing, "good cause" shall not be found.

o. Revocation or Modification.

A use permit approved under this Section may be revoked or modified at any time following a public hearing in accordance with section 30-21.3 of this Chapter.

30-10.2 – PERSONAL CULTIVATION OF CANNABIS

a. Purpose

The purpose of this Section is to regulate and impose zoning restrictions on the personal cultivation of Cannabis for lawful personal use (medicinal or adult-use) incidental to the residential use of the primary residential dwelling pursuant to State law. This Section is not intended to interfere with a patient's right to use medical cannabis pursuant to the Compassionate Use Act, as may be amended, nor does it criminalize cannabis possession or cultivation otherwise authorized by State law. This Section is not intended to give any person or entity independent legal authority to operate a Cannabis Business, it is intended simply to regulate and impose zoning restrictions regarding personal cultivation of Cannabis in the City of Alameda pursuant to the Alameda Municipal Code and State law.

b. Authority

The primary responsibility for enforcement of the provisions of this Section shall be vested in the Community Development Department and the Chief of Police.

c. Definitions

For the purpose of this Section, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section:

1. "Accessory structure" shall have the same meaning as set forth in section 30-5.7 of this Chapter.
2. "Cannabis cultivation area," means the maximum dimensions allowed for the growing of Cannabis. For indoor cultivation areas, the Cannabis cultivation area shall be measured in contiguous square feet using clearly identifiable boundaries of all area(s) that will contain Cannabis plants at any point in time, including all of the space(s) within the boundaries, in the primary residential dwelling or permitted accessory structure.
3. "Cultivate" or "cultivation" means any activity involving the planting, growing, harvesting, drying, curing, trimming, or processing of Cannabis for personal use.
4. "Primary caregiver" shall have the same definition as set forth in California Health and Safety Code section 11362.7, as that section now appears, or may hereafter be amended or renumbered, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code.
5. "Primary residential dwelling" shall mean the primary residential dwelling of the primary caregiver, qualified patient, or adult 21 years of age or older who is eligible to cultivate Cannabis for medicinal or adult use in compliance with this Section.
6. "Qualified patient" shall have the same meaning as a patient that uses or ingests medicinal Cannabis as that term is defined in section 11362.7 of the California Health and Safety Code and who is entitled to the protections of California Health and Safety Code section 11362.5, as may be amended.

d. Personal Cultivation of Cannabis

1. A qualified patient or primary caregiver shall be allowed to cultivate and process Cannabis within his/her primary residential dwelling in compliance with the standards established by subsection (e) of this Section and subject to the following limitations:
 - i. Any Cannabis cultivated is for the exclusive personal use of the qualified patient, and is not provided, sold, distributed, or donated to any other person.

- ii. No more than six (6) Cannabis plants per qualified patient for medicinal use may be cultivated at any primary residential dwelling.
 - iii. In the case of a primary caregiver, the foregoing limit shall apply to each qualified patient on whose behalf the primary caregiver is cultivating, but in no event shall that amount exceed thirty (30) Cannabis plants to be cultivated at any primary residential dwelling.
 - iv. A copy of documentation of qualified patient status and/or primary caregiver status consistent with the provisions of California Health and Safety Code section 11362.7 et seq. shall be maintained at the primary residential dwelling, including clear and adequate documentation, where applicable, evidencing that the qualified patient or primary caregiver may possess an amount of Cannabis in excess of the limits set forth in the preceding paragraph (i), consistent with the patient's needs.
 - v. A qualified patient or primary caregiver shall not participate in medicinal Cannabis cultivation in any other property within the City.
2. An adult person 21 years of age or older shall be allowed to cultivate and process Cannabis for personal use within his/her primary residential dwelling in compliance with the standards established by subsection (e) of this Section and subject to the following limitation:
 - i. Not more than six (6) living plants at any one time may be planted, cultivated, harvested, dried, or processed for adult use within the adult person's primary residential dwelling, regardless of the number persons residing thereon.
 3. Cannabis cultivation is prohibited in the common areas of a multi-unit residential development and in common areas of any commercial or industrial development.
 4. Nothing in this Section shall be interpreted to allow a qualified patient or primary caregiver to combine limits for medicinal and adult-use to exceed the limits set forth above.

e. Standards for Personal Cultivation of Cannabis

1. To the extent that the City is required to allow the cultivation of Cannabis for personal use and consumption under State law, the standards set forth in this Section shall apply. Nothing in this Section shall be interpreted to permit cultivation of Cannabis for commercial purposes.
 - i. Allowed Cultivation Areas. Cannabis may be cultivated in the interior only of the primary residential dwelling, subject to the following limitations:
 - a) Cultivation of Cannabis plants for personal use must be in full compliance with all the applicable provisions of California law.

- b) Cultivation must occur in one Cannabis cultivation area in a single primary residential dwelling.
 - 1. For an adult person 21 years of age or older or a qualified patient, the cultivation area shall be no more than one hundred (100) contiguous square feet.
 - 2. For primary caregivers, it shall be no more than one hundred (100) contiguous square feet for each qualified patient on whose behalf the primary caregiver is cultivating, but shall in no event be more than five hundred (500) contiguous square feet.
 - c) The Cannabis cultivation and processing area shall be in compliance with the California Building Code, California Fire Code, and other locally adopted life/safety codes, including requirements for electrical and mechanical ventilation systems.
 - d) Interior cultivation and processing areas are restricted to one room of a primary residential dwelling, or within a self-contained outside accessory structure that is secured, locked, and fully enclosed. The accessory structure shall comply with all requirements under section 30-5.7.f (Accessory Buildings), and shall not be constructed or covered with plastic or cloth. If located in a garage, the cultivation or processing use shall not result in a reduction of required off-street parking for the residence, as required under section 30-7.3 of this Chapter. The primary residential dwelling shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for personal Cannabis cultivation or processing.
 - e) Cannabis cultivation and the establishment or use of the cultivation and processing areas cannot cause nonconformity under the Alameda Municipal Code.
- ii. Lighting and Electricity Restrictions.
 - a) Any Cannabis cultivation lighting shall not exceed 1,200 watts unless specifically approved in writing by the Building Official (or designee).
 - b) All electrical equipment used in the cultivation or processing of Cannabis (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of Cannabis is prohibited.
 - iii. Only Cannabis cultivated at the primary residential dwelling in conformance with this Section shall be allowed to be processed at the primary residential dwelling.

- iv. Any use of a compressed flammable gas or gas products (CO₂, butane, etc.) as a solvent or other volatile solvent in the extraction of THC or other cannabinoids, or Cannabis cultivation or processing for personal use is prohibited.
- v. There shall be no exterior evidence, including but not limited to odor, view, or other indication of Cannabis cultivation or processing on the property that is perceptible to a person with normal unaided vision standing at the property lines of the subject lot.
- vi. For the convenience of the qualified patient, primary caregiver, or adult person 21 years of age or older, to promote building safety, to assist in the enforcement of this Section, and to avoid unnecessary confiscation and destruction of Cannabis plants and unnecessary law enforcement investigations, persons cultivating Cannabis pursuant to this Section may notify the City regarding the cultivation site. The names and addresses of persons providing such notice, or of cultivation sites permitted under these regulations shall not be considered a public record under the California Public Records Act or the City of Alameda's Sunshine Ordinance.
- vii. The Cannabis cultivation and processing area shall not adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
- viii. The Cannabis cultivation or processing for personal use shall not adversely affect the health or safety of the occupants of the primary residential dwelling or users of the accessory building in which it is cultivated or processed, or occupants or users of nearby properties in any manner, including but not limited to creation of mold or mildew.

f. Public Nuisance

It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any premises within the City of Alameda to cause or allow such premises to be used for the outdoor or indoor cultivation of Cannabis plants, or processing thereof as described herein, or to process, cultivate or allow the cultivation of Cannabis plants in any manner that conflicts with the limitations imposed in this Section.

g. Enforcement

1. The remedies provided by this Section are cumulative and in addition to any other remedies available at law or in equity, including the civil and administrative enforcement and penalty provisions for municipal code violations set forth in Chapter I of the Alameda Municipal Code.

2. Any person who violates any provisions of this Section shall be guilty of a misdemeanor, subject to a penalty of imprisonment in the county jail for a period of time not to exceed six months, or by a fine not to exceed the amount set forth in Chapter I of the Alameda Municipal Code, or both, for each violation. Notwithstanding the classification of a violation of this Section as a misdemeanor, at the time an action is commenced to enforce the provisions of this Section, the trial court, upon recommendation of the prosecuting attorney, may reduce the charged offense from a misdemeanor to an infraction.
3. Any person convicted of an infraction under this Section shall be punished by pursuant to Chapter I of the Alameda Municipal Code:
4. The penalties provided for herein shall attach to each violation. For purposes of this section, a violation shall accrue for each day (or portion thereof) of the violation or for each individual item constituting the violation (e.g., Cannabis plant).

Section 3: CEQA DETERMINATION

The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Business and Professions Code section 26055(h) as discretionary review and approval, which shall include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, shall be required in order to engage in commercial cannabis activity within the City of Alameda. Adoption of this Ordinance is additionally exempt from CEQA pursuant to section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

Section 4: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 5: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ____ day of _____, 2017, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____, 2017.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Janet C. Kern, City Attorney
City of Alameda