

ORDINANCE NO. 914 (2017)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKEPORT AMENDING CHAPTERS 17.38, 17.04, 17.05, 17.06 AND 17.07 OF THE LAKEPORT MUNICIPAL CODE, REGARDING PERSONAL CANNABIS CULTIVATION

WHEREAS, the Federal Controlled Substances Act, 21 U.S.C. Section 801 et seq., classifies cannabis as a Schedule 1 Drug; as such, it is unlawful, under federal law, for any person to cultivate, manufacture, distribute, dispense, or possess cannabis, whether for medicinal or recreational purposes; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act (Health and Safety Code Section 11362.5), which was intended to enable persons who are in need of cannabis for medical purposes to obtain and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes; and

WHEREAS, SB 420, the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et seq.), was enacted in 2004 to expand and clarify the scope of Proposition 215, the Compassionate Use Act; and

WHEREAS, in 2015, the State enacted the Medical Marijuana Regulation and Safety Act (SB 643, AB 266, and AB 243) commonly referred to as MMRSA. Although MMRSA provides that patients and caregivers may cultivate cannabis under specified regulations, cities and counties retain local regulatory authority over medical cannabis, including personal cultivation; and

WHEREAS, the Governor signed SB 837 in June of 2016, changing references to the term “marijuana” in MMRSA to “cannabis” and renaming MMRSA the “Medical Cannabis Regulation and Safety Act” (MCRSA); and

WHEREAS, on November 8, 2016, Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) was enacted by the voters to decriminalize and regulate commercial and non-commercial recreational cannabis. AUMA provides that personal cultivation of up to six cannabis plants must be allowed inside a private residence or in a secured structure; and

WHEREAS, the Governor signed SB 94 in June of 2017, which amended Section 11362.2 permitting the cultivation of a maximum of six (6) cannabis plants within a single private residence subject to reasonable regulations enacted by local jurisdictions; and

WHEREAS, in response to MCRSA and AUMA, the Planning Commission, directed City staff through a minute order on February 8, 2017 to bring forward a zoning ordinance amendment to Chapter 17.38 (Medical Marijuana Cultivation) of the Lakeport Municipal Code to permit and regulate personal cannabis cultivation; and

WHEREAS, the City of Lakeport Municipal Code establishes rules and regulations for living and doing business within city limits; and

WHEREAS, the unregulated personal cultivation of cannabis in the city limits of Lakeport can adversely affect the health, safety, and well-being of the City, its residents and environment. The development of regulations for personal cannabis cultivation, including zoning regulation, is proper and necessary to reduce the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated indoor cannabis cultivation; and

WHEREAS, the ability to cultivate cannabis plants for medical or recreational purposes conferred by MCRSA, AUMA, and SB 94 does not confer the right to create or maintain a public nuisance, the City intends to minimize the risks and complaints regarding fire, odor, crime and pollution caused or threatened by the unregulated cultivation of cannabis.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEPORT DOES ORDAIN AS FOLLOW:

SECTION 1. Amendment to Chapter 17.38 “Medical Marijuana Cultivation”

Chapter 17.38 of Title 17 of the Lakeport Municipal Code is amended as follows. Additions are denoted by underlined text and deletions by ~~struck through text~~.

Chapter 17.38

MEDICAL MARIJUANA CANNABIS CULTIVATION

17.38.010 Legislative findings.

The city council finds as follows:

~~A. In 1996, the voters of the state of California approved Proposition 215 which was codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996” (“the Compassionate Use Act” or “CUA”).~~

~~B. The intent of the Compassionate Use Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific~~

circumstances, without being subject to criminal prosecution under certain state statutes.

C.— On January 1, 2004, Senate Bill 420, codified as California Health and Safety Code Section 11362.7 et seq. and entitled “The Medical Marijuana Program,” (“MMP”) became effective to clarify the scope of the Compassionate Use Act.

D.— California Health and Safety Code Section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420.

E.— The city of Lakeport has adopted a zoning ordinance identified as Title 17 (Zoning) of the city of Lakeport Municipal Code.

F.— Prior to the enactment of this chapter, there were no regulations addressing cultivation of medical marijuana in the zoning ordinance.

G.— The city of Lakeport with a population of 4,622 (January 1, 2012) is a small town with a high percentage of nonowner-occupied residential units. Landlords have complained of damage caused by unauthorized cultivation activities in their rental properties.

H.— The city of Lakeport police department, city residents and other public entities have reported adverse impacts from medical marijuana cultivation, including disagreeable odors, increased risk of burglary and other property crimes, and acts of violence in connection with the commission of such crimes or the occupants’ attempts to prevent such crimes.

I.— The creation of persistent strong odors as marijuana plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable marijuana plants and creating an increased risk of crime.

J.— The indoor cultivation of substantial amounts of marijuana also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.

K.— Children are particularly vulnerable to the effects of marijuana use, and the presence of marijuana plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including schools, child care centers, parks, and other similar locations.

~~L. The city council finds and determines that the enactment of this chapter is exempt from environmental review pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3) in that there is nothing in this chapter or its implementation that could have a foreseeable significant effect on the environment. (Ord. 889 §1(part), 2013)~~

~~17.38.020~~ 17.38.010 Intent.

A. The city council of the city of Lakeport, pursuant to this chapter, hereby intends to regulate the personal cultivation of cannabis ~~marijuana for medical purposes~~, including but not limited to regulations as to location of the cultivation, size of the area used for cultivation, and the use of fencing or other screening and security structures, ~~to accommodate the needs of qualified patients and their caregivers, and in furtherance of the public necessity, convenience and general welfare. Nothing in this chapter shall be construed to authorize any use, possession, cultivation, or distribution of marijuana for nonmedical purposes.~~

B. This chapter is established to regulate personal cannabis ~~medical marijuana~~ cultivation in a manner that mitigates potential impacts on surrounding properties and persons, and that is in conformance with the provisions of the Compassionate Use Act of 1996 (Proposition 215) and California Health and Safety Code Sections 11362.5 through 11362.83 ~~the Adult Use of Marijuana Act (Proposition 64)~~.

C. It is the intent of the city of Lakeport to enforce the provisions of this chapter primarily on the basis of legitimate and verified complaints received from the public related to nuisance conditions and/or other public safety issues.

~~17.38.030~~ 17.38.020 Applicability.

The provisions of this chapter shall apply to all persons ~~and businesses~~ described herein whether the activities described herein were established before or after the effective date of this chapter. Chapter 17.36, Nonconforming Uses, Structures, and Lots, shall not apply to preexisting land or building uses inconsistent with the provisions of this chapter.

~~17.38.040~~ 17.38.030 Definitions.

“Cannabis,” or “marijuana,” shall include the definition of “cannabis” as set forth in Business and Professions Code section 26001, subdivision (f), and Health and Safety Code section 11018, as each may be amended from time to time, and shall be used interchangeably and shall mean all parts of the plant Cannabis sativa linnaeus, Cannabis indica, or Cannabis ruderalis, whether for a medical purpose or a non-medical purpose, 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. This includes the separated resin, whether crude or purified, obtained from marijuana. This definition does not mean “industrial hemp” as defined by California Food and Agricultural Code section 81000, as may be amended, or California Health and Safety Code section 11018.5, as may be amended.

“Canopy” means the total combined canopy area for all locations on a property where cannabis/medical marijuana is being cultivated, including indoor areas, as measured by the horizontal extent of the plant or combination of plants at the widest point and measured in a straight line.

~~“Child care center” means any licensed child care center, daycare center, or childcare home, or any preschool.~~

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming processing of cannabis and/or marijuana. plants or any part thereof for medical use consistent with the Compassionate Use Act (Health and Safety Code Section 11362.5) or the Medical Marijuana Program Act (Health and Safety Code Section 11362.7 et seq.).

“Detached, fully enclosed and secure structure” is a building completely detached from a residence that complies with the California Building Standards Code, as adopted by the city of Lakeport, or if exempt from the permit requirements of the California Building Standards code, building and zoning codes and that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, ~~and~~ is secure against unauthorized entry, and is accessible only through one or more lockable doors.

“Indoors” means within a fully enclosed and secure structure.

~~“Marijuana” shall have the same meaning as that set forth in California Health and Safety Code Section 11018.~~

~~“Medical marijuana” means medical marijuana that has been recommended by a licensed physician in strict accordance with California Health and Safety Code Sections 11362.5 through 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.~~

“Medical cannabis,” or “medical marijuana” means cannabis or marijuana that has been recommended by a licensed physician in strict accordance with Health and Safety Code Sections 11362.5 through 11362.9, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program.

“Outdoor” means any location within the city that is not within a fully enclosed and secure structure.

“Primary caregiver” shall have the same definition as ~~California~~ Health and Safety Code Section 11362.7(d), as may be amended.

“Qualified patient” shall have the same definition as ~~California~~ Health and Safety Code Sections 11362.7(c) and (f), as may be amended.

“Rear yard” is the rear open space portion of any premises, whether fenced or unfenced.

“Residential structure” is any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking and sanitation on a premises or legal parcel located within a residential or agricultural-residential zoning district.

~~“School” means an institution of learning for persons under twenty-one years of age, whether public or private, offering regular course of instruction including, without limitation, a kindergarten, elementary school, middle or junior high school, or senior high school.~~

“Solid fence” means a fence constructed of substantial material (such as wood) that prevents viewing the contents from one side to the other. “Solid” does not include tarpaulins, cloth material, scrap material, bushes, or hedgerows.

~~17.38.050~~ 17.38.040 Regulation of location.

A. ~~Cannabis Medical Marijuana~~ cultivation shall be prohibited on any parcel within the ~~incorporated area of the city of Lakeport~~ except as an accessory use to a legally established ~~residence~~ residential structure within a legal accessory structure on a legal parcel within the R-1, R-2, R-3, R-5 and UR zoning districts as well as permitted mixed use—residential units.

~~B. No medical marijuana cultivation is permitted within three hundred feet of any school, child care center, park or playground. The distance between any marijuana cultivation and any school, child care center, park or playground shall be measured in a straight line, without regard to intervening structures, from the closest exterior wall of the detached accessory building in which the marijuana cultivation is occurring to the closest property line where the other building or activity is conducted.~~

~~BC.~~ Except as provided in subsection ~~DC~~ of this section, ~~cannabis Medical Marijuana~~ cultivation may be undertaken only by person(s) a qualified patient who ~~must~~ occupy the ~~residence~~ residential structure on the parcel proposed for cultivation as their primary residence.

~~CD.~~ A ~~qualified~~ primary caregiver, as defined, may undertake cultivation of medical ~~cannabis marijuana~~ on behalf of his/her qualified patient(s), but only ~~in a detached, fully enclosed and secure accessory structure located~~ on a parcel containing the primary caregiver's or qualified patient's primary residence.

~~DE.~~ Cultivation shall only be permitted in a detached, fully enclosed and secure accessory structure and said ~~the~~ cultivation area, including the plant canopy, shall be limited to 80 square feet per parcel or residence, whichever is less, or six (6) plants. The cultivated ~~cannabis marijuana may not be sold, be used only by the qualified patient and not distributed, sold, given or transferred in any way to any other person or organization.~~

~~EF.~~ The use of a detached, fully enclosed and secure accessory structure for cultivation of ~~cannabis medical marijuana~~ shall not reduce the required parking required per Chapter 17.23.

~~EG.~~ Outdoor cultivation shall be unlawful and a public nuisance for any person owning, leasing, occupying or having charge for possession of any parcel within any zoning district in the city of ~~Lakeport~~.

~~G.H.~~ Indoor cultivation within a ~~residence~~ residential structure shall be unlawful and a public nuisance with regard to any person owning, leasing, occupying or having charge for possession of any parcel within any zoning district in the city of ~~Lakeport~~.

~~17.38.060~~ **17.38.050 Development and operational standards.**

A. From a public right-of-way there shall be no exterior evidence of cannabis medical marijuana cultivation located inside a detached, fully enclosed and secure accessory structure.

B. Person(s) engaged in cultivation ~~The qualified patient or primary caregiver~~ shall reside in the residence located on the parcel containing the detached, fully enclosed and secure accessory structure where the cannabis medical marijuana cultivation occurs, except as provided in subsection C of section 17.38.040.

C. Person(s) engaged in cultivation ~~The qualified patient or primary caregiver~~ shall not cultivate medical marijuana in any other location within the incorporated city of ~~Lakeport~~ other than in the accessory structure located on the parcel containing his/her primary residence, except as provided in subsection C of section 17.38.040.

D. The qualifying ~~residence~~ residential structure located on the property containing the detached, fully enclosed and secure accessory structure in which cannabis medical marijuana is cultivated shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and shall not be used for cannabis medical marijuana cultivation.

E. Cannabis Medical marijuana cultivation shall not adversely affect the health or safety of nearby residents 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.

F. Residential accessory structures used for cultivation shall meet the following criteria:

1. The structure shall be provided with a locking door or doors.
2. If a detached, fully enclosed, and secure structure is not feasible and the cultivation building is an unsecured structure then it shall additionally be surrounded by a secure solid six-foot-high fence located within ten feet of the unsecured structure and equipped with a lockable gate.

3. The structure shall be located in the rear yard portion of the lot and maintain a minimum of a ten-foot setback from the side and rear property lines and from any other building on the parcel.
4. Any accessory structure utilized for cultivation of cannabis marijuana shall be legally constructed with a building permit if it exceeds one hundred twenty square feet of size. No more than eighty square feet of floor area shall be used for the cultivation of cannabis marijuana. The plant canopy shall be contained within the eighty square feet of floor area. All electrical and plumbing fixtures shall be installed with a valid building permit from the city. Such building permits will only be issued to the owner of the property. If the resident is proposing to convert an existing accessory structure, or a portion of an existing structure, for cultivation of cannabis marijuana, an inspection will be required to ensure compliance with this chapter.
5. Cannabis Medical marijuana cultivation lighting shall comply with the California Building, Electrical and Fire Codes as adopted by the city.
6. Flammable or volatile gas products or generators shall not be used within any detached structure used for the cultivation of cannabis medical marijuana.
7. Any detached, fully enclosed and secure structure used for the cultivation of cannabis medical marijuana must have a ventilation and filtration system installed that shall prevent nuisance cannabis marijuana plant odors from exiting the interior of the structure. If a permanent, built-in ventilation and filtration system is installed, it shall be subject to the issuance of a building permit, approval by the building official and must be installed prior to commencing cultivation within the detached, fully enclosed and secure structure.
8. Accessory structures utilized for cultivation shall be ventilated with odor control filters, and shall not create an odor, humidity or mold problem on the subject property or adjacent properties.
9. Other activities may occur within a detached fully enclosed and secure accessory structure where cannabis medical marijuana is cultivated; provided, that the cultivation area within the structure, including the plant canopy, does not exceed eighty square feet of floor area; and further provided, that the cultivation area is segregated from all other building uses by permitted walls and all other conditions of this chapter are satisfied.

10. As an alternative to the requirement set forth in 17.38.050.F subsections (1) through (8) above, the cultivation of cannabis may occur in a prefabricated greenhouse structure constructed for nursery or agricultural purpose which does not include any service systems and which has a canopy which does not exceed eighty (80) square feet. Said structure shall be located in an area which is fully enclosed by an opaque fence at least six (6) feet in height. The structure must also meet all applicable permit requirements and shall be secure against unauthorized entry and accessible only through one or more lockable doors. The frame must be constructed of metal and the panels must be polycarbonate or other similar material which is no less than four (4) mm thick. In the alternative, the structure may be a chain-link or wire mesh type greenhouse which is overlaid with a one-piece cover made of polyethylene laminate fabric or other similar materials which is no less than eight (8) ml thick. The structure shall be equipped with an odor control filtration and ventilation system(s) adequate to prevent cannabis plant odors from exiting the interior of the structure.

~~G. Wherever medical marijuana is grown, a copy of a current and valid state-issued medical marijuana card or a current and valid physician's recommendation for medical marijuana must be kept available to immediately present to officers of the city and law enforcement officers upon request.~~

~~G.H. Nothing in this chapter shall be construed as a limitation on the city's authority to abate any nuisance which may exist from the planting, growing, harvesting, drying, processing or storage of cannabis marijuana plants or any part thereof from any location, indoor or outdoor, including from within a detached, fully enclosed and secure structure.~~

~~17.38.070-17.38.060 Enforcement.~~

A. Right of Entry. Persons designated by resolution as code enforcement officers of the city are authorized to enter upon and inspect private properties to ensure compliance with the provisions of this chapter. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is

denied, the city may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.

B. Public Nuisance. The maintaining, cultivating or growing of cannabis marijuana upon private property within the city of ~~Lakeport~~, unless in full compliance with the provisions of this chapter, is declared to be a public nuisance as defined in Section 370 of the California Penal Code and Chapter 8.22 of the Lakeport Municipal Code.

C. Citable Offense. Every person who, in violation of the provisions of this chapter, maintains, permits or allows cannabis marijuana to be grown upon his or her property or premises, and every person occupying, renting or leasing the property or premises of another who maintains, permits or allows cannabis marijuana to be grown thereon in violation of this chapter, is guilty of an infraction punishable as set forth in Section 1.08.010. After written notice is provided to any such person of such violation, the continued existence of such violation for each and every day after the service of such notice shall be deemed a separate and distinct offense.

D. Issuance of Citations. All persons designated by resolution as code enforcement officers of the city are authorized to issue citations to persons deemed to be in violation of the provisions of this chapter. Such citations shall be expeditiously processed through use of the administrative citation process or where appropriate through filing an infraction in the appropriate court of law.

E. Remedies Nonexclusive. The remedies provided herein shall not be the exclusive means of enforcing the provisions of this chapter nor the exclusive means available to the city to address problems associated with the cultivation of cannabis marijuana, whether for medical or other purposes. The city shall continue to have available to it the ability to pursue abatement of nuisances and other problems related to cannabis marijuana cultivation under California Penal Code Sections 372 and 373a and other applicable provisions of law. The city may also pursue the recovery of its abatement costs in the manner provided by the Lakeport Municipal Code.

~~17.38.080~~ 17.38.070 Liability.

The provisions of this chapter shall not be construed to protect the property owner(s) of record for each legal parcel associated with the cultivation of cannabis medical marijuana, lessees, tenants, and other participants in the cultivation of cannabis medical marijuana, and members of collectives and/or cooperatives associated with the

cultivation of ~~cannabis medical marijuana~~, from prosecution pursuant to any laws that may prohibit the cultivation, sale, and/or possession of controlled substances. Moreover, cultivation, sale, possession, distribution, and use of ~~cannabis marijuana~~ remain violations of federal law as of the date of adoption of the ordinance creating this chapter and this chapter is not intended to, and does not, protect any of the above described persons from arrest or prosecution under those federal laws. The property owner(s) of record for each legal parcel associated with the cultivation of ~~cannabis medical marijuana~~, lessees, tenants, and other participants in the cultivation of ~~cannabis medical marijuana~~, and members of collectives and/or cooperatives associated with the cultivation of ~~cannabis medical marijuana~~, assume any and all risk and any and all liability that may arise or result under state and federal criminal laws from the cultivation of ~~cannabis marijuana~~. Further, to the fullest extent permitted by law, any actions taken under the provisions of this chapter by any public officer or employee of the city of ~~Lakeport~~ or ~~the city of Lakeport~~ itself shall not become a personal liability of such person or the liability of the city of ~~Lakeport~~.

SECTION 2. Section 17.04.030.I of 17.04, Regulations for the Low Density Residential or “R-1” District, of the Lakeport Municipal Code is hereby added as follows:

- I. Personal cannabis cultivation subject to the regulations as set forth in Chapter 17.38.

SECTION 3. Section 17.05.030.I of 17.05, Regulations for the Medium Density Residential or “R-2” District, of the Lakeport Municipal Code is hereby added as follows:

- I. Personal cannabis cultivation subject to the regulations as set forth in Chapter 17.38.

SECTION 4. Section 17.06.030.H of 17.06, Regulations for the High Density Residential or “R-3” District, of the Lakeport Municipal Code is hereby added as follows:

- H. Personal cannabis cultivation subject to the regulations as set forth in Chapter 17.38.

SECTION 5. Section 17.07.030.G of 17.07, Regulations for Resort/Residential or “R-5” District, of the Lakeport Municipal Code is hereby added as follows:

G. Personal cannabis cultivation subject to the regulations as set forth in Chapter 17.38.

SECTION 6. Severability: Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 7. CEQA. This ordinance is exempt from review under the California Environmental Quality Act (CEQA). Pursuant to section 15061(b)(3) of the CEQA Guidelines, CEQA applies only to projects which have the potential for causing a significant effect on the environment. Additionally, the revision to the Lakeport Municipal Code will not result in a direct or reasonably foreseeable indirect physical change in the environment and thus is exempt from CEQA pursuant to CEQA Guidelines Section 15060(c)(2). Furthermore, the ordinance constitutes a regulatory action to assure the protection of the environment and is categorically exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines.

SECTION 8. Effective Date. This ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

SECTION 9. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting the entire text.

INTRODUCED and first read at a regular meeting of the City Council on the 21st day of November, 2017, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

FINAL PASSAGE AND ADOPTION by the City Council of Lakeport occurred at a meeting thereof held on the 5th day of December 2017, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

STACEY MATTINA, MAYOR

ATTEST:

KELLY BUENDIA, City Clerk
City of Lakeport

DRAFT