

ORDINANCE NO. 1118

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO AMENDING MUNICIPAL CODE TITLE 10 (PLANNING AND ZONING) CHAPTER 3 (ZONING) TO ADD ARTICLE 18 (CANNABIS REGULATIONS) AND AMENDING LAND USE TABLE 3A TO INCLUDE A PROHIBITION ON MEDICINAL AND NON-MEDICINAL CANNABIS FACILITIES, CULTIVATION AND CERTAIN DELIVERIES AND REGULATING INDOOR AND OUTDOOR PERSONAL CULTIVATION

WHEREAS, in November 1996, voters approved Proposition 215, which decriminalized the use of medicinal cannabis in California; and

WHEREAS, in 2015, California enacted three bills - Assembly Bill 243, Assembly Bill 266; and Senate Bill 643 - that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery, and testing of medicinal cannabis in California. This regulatory scheme is known as the Medical Cannabis Regulation and Safety Act ("MCRSA"); and

WHEREAS, on November 8, 2016, Proposition 64, the Adult Use of Marijuana Act ("AUMA") was adopted by a majority of California voters, permitting adults to legally grow, possess, and use cannabis for non-medicinal purposes with certain restrictions; and

WHEREAS, on June 27, 2017, the Governor signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") to provide for a single regulatory structure for both medicinal and adult-use non-medicinal cannabis (Cal. Bus. & Prof. Code § 26000 *et seq.*); and

WHEREAS, pursuant to MAUCRSA, persons 21 years of age and older may possess, process, transport, purchase, obtain, or give away up to 28.5 grams of cannabis or 8 grams of concentrated cannabis (Cal. Health & Saf. Code § 11362.1); and

WHEREAS, under MAUCRSA, persons 21 years of age and older may possess, plant, cultivate, harvest, dry, or process up to six (6) living cannabis plants within a single private residence, or upon the grounds of that private residence, at one time (Cal. Health & Saf. Code § 11362.2); and

WHEREAS, under California Health & Safety Code Section 11362.77, a qualified patient or primary caregiver may maintain up to six mature or 12 immature cannabis plants per qualified patient and, if the qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of cannabis consistent with the patient's needs; and

WHEREAS, MAUCRSA specifically allows cities to enact and enforce reasonable regulations to regulate, but not completely prohibit, the cultivation of cannabis plants in single private residences and to regulate or prohibit outdoor cultivation (Cal. Health & Saf. Code § 11362.2(b)); and

WHEREAS, MAUCRSA also explicitly permits the Town to adopt and enforce local ordinances to regulate cannabis businesses, including completely prohibiting their establishment (Cal. Bus. & Prof. Code § 26200); and

WHEREAS, most medicinal and non-medicinal cannabis business uses are currently banned in the Town of San Anselmo under the principles of permissive zoning; and

WHEREAS, the Town Council seeks to thoroughly vet with the public issues related to medicinal and non-medicinal cannabis business uses and to consider any appropriate regulation of such uses; and

WHEREAS, to allow sufficient time to complete this public vetting process, the Town Council seeks to explicitly ban medicinal and non-medicinal cannabis businesses within the Town of San Anselmo; and

WHEREAS, the Town of San Anselmo Planning Commission held a duly noticed public hearing on October 2, 2017, and heard all public testimony related to the proposed Ordinance and recommended that the Town Council adopt the proposed Ordinance; and

WHEREAS, the Town Council held a duly noticed public hearing on October 10, 2017, and heard all public testimony related to the proposed Ordinance; and

WHEREAS, the Town Council finds that all notices and procedures required by law attendant to the adoption of this Ordinance have been followed; and

WHEREAS, the Town Council finds that this Ordinance is reflective of existing San Anselmo law and intended to clarify the Town of San Anselmo's position with regard to the establishment and operation of both medicinal and non-medicinal cannabis businesses; and

WHEREAS, the Town Council recognizes that cannabis possession and use is prohibited under federal law and partially decriminalized under state law and it is the Council's intention that nothing in this Ordinance shall be construed to expand the rights of anyone to use or possess cannabis under state law, engage in any public nuisance, violate federal law or engage in an activity in relation to the cultivation, distribution, or consumption of cannabis that is otherwise illegal; and

WHEREAS, the Town Council finds and determines that the following amendments to the Zoning ordinance to prohibit medicinal and non-medicinal cannabis business uses are reasonable and necessary for public health, safety and welfare, and are consistent with the General Plan.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS FOLLOWS:

SECTION 1: The Town Council finds and determines that the adoption of this Ordinance, which is intended to protect the public from the impacts of medicinal and non-medicinal cannabis related businesses and personal cannabis cultivation, is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061 because it can be seen with certainty that there is no possibility that adoption of the ordinance may have a significant effect on the environment. (14 Cal. Code Regs. § 15061(3)).

SECTION 2: ADOPTION OF AMENDMENTS TO MUNICIPAL CODE.

Title 10 (Planning and Zoning), Chapter 3 (Zoning) of the San Anselmo Municipal Code is amended to add Article 18 as follows:

Article 18 - Cannabis Regulations

Sec. 10-3.1801 - Cannabis facilities, cultivation and delivery.

A. Purpose.

- (1) The purpose and intent of this section is to prohibit medicinal cannabis facilities, non-medicinal cannabis facilities, cannabis cultivation, and certain cannabis deliveries, as defined below, within the Town's corporate limits.
- (2) The Town Council recognizes that it is a federal violation under the Controlled Substances Act (21 U.S.C. § 801 *et seq.*) to possess or distribute cannabis, even if for medicinal purposes.
- (3) The Town Council is concerned about the potential increase in under-age use of cannabis and potential security issues related to cannabis cultivation and distribution. Outdoor cannabis cultivation generates a strong odor that creates an attractive nuisance, alerting neighbors and the public to the location of valuable plants and creating a risk of crime. Indoor cannabis cultivation can have similar impacts if it is detectable to the public. In addition, indoor cannabis cultivation poses a fire risk where high-wattage grow lights result in excessive use of electricity. Such negative impacts are contrary to and undermine policies that are intended to promote and maintain the public's health, safety, and welfare.

B. Definitions.

As used in this section, the following terms shall have the meaning set forth below.

- (1) "Cannabis" shall have the meaning set forth in California Business and Professions Code section 26001(f).
- (2) "Commercial cannabis activity" shall have the meaning set forth in Business and Professions Code section 26001(k).
- (3) "Cultivation" shall have the meaning set forth in Business and Professions Code section 26001(l).
- (4) "Establish" or "operate" a medicinal cannabis facility or non-medicinal cannabis facility means and includes any of the following:
 - a. The opening or commencement of the operation of a medicinal cannabis facility or non-medicinal cannabis facility;

b. The conversion of an existing business, facility, use, establishment, property, or location to a medicinal cannabis facility or non-medicinal cannabis facility;

c. The addition of a medicinal cannabis facility or non-medicinal cannabis facility to any other existing business, facility, use, establishment, property, or location.

(5) "Medicinal cannabis" shall have the meaning set forth in Business and Professions Code section 26001(ai) and shall be synonymous with "medical cannabis".

(6) "Medicinal cannabis facility" means any business, facility, use, establishment, property, or location, whether fixed or mobile, where medicinal cannabis is sold, made available, delivered, and/or distributed by or to three or more people. A "medicinal cannabis facility" includes any business, facility, use, establishment, property, or location, whether fixed or mobile, where a commercial cannabis activity, as defined by Business and Professions Code section 26001(k) takes place. A "medicinal cannabis facility" does not include the following uses provided that the location of such uses is otherwise regulated by and strictly complies with this Code and applicable law including, but not limited to, Health and Safety Code sections 11362.5, 11362.7, *et seq.*:

a. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;

b. A health facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;

c. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;

d. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;

e. A residential hospice; or

f. A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

(7) "Non-medicinal cannabis facility" means any building, facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license or nonprofit license under Business and Professions Code sections 26000 *et seq.*, including but not limited to cannabis cultivation, cannabis distribution, cannabis transportation, cannabis storage, manufacturing of cannabis products, cannabis processing, the sale of any cannabis or cannabis products, and the operation of a cannabis microbusiness. A "non-medicinal cannabis facility" includes any "commercial cannabis activity" as defined by Business and Professions Code section 26001(k).

C. Medicinal cannabis facilities, non-medicinal cannabis facilities, and certain cannabis deliveries prohibited.

(1) Medicinal cannabis facilities are prohibited in all zones in the Town and shall not be established or operated anywhere in the Town.

- (2) Non-medicinal cannabis facilities are prohibited in all zones in the Town and shall not be established or operated anywhere in the Town.
- (3) No person may own, establish, open, operate, conduct, or manage a medicinal cannabis facility or non-medicinal cannabis facility in the Town, or be the lessor of property where a medicinal cannabis facility or non-medicinal cannabis facility is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any medicinal cannabis facility or non-medicinal cannabis facility in the Town.
- (4) No use permit, site plan and design review permit, tentative map, parcel map, variance, grading permit, building permit, business license, certificate of occupancy, or other zoning, subdivision, encroachment or other Town permit will be accepted, approved, or issued for the establishment or operation of a medicinal cannabis facility or non-medicinal cannabis facility. Any such permit issued in error shall be null and void.
- (5) No person and/or entity may deliver or transport cannabis from any fixed or mobile location, either inside or outside the Town, to any person in the Town, except as follows:
- a. A person may deliver or transport medicinal cannabis or medicinal cannabis products to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, for whom he or she is the primary caregiver within the meaning of Health and Safety Code sections 11362.5 and 11362.7(d).
 - b. A licensed medicinal cannabis dispensary operating outside of Town limits in compliance with Business and Professions Code sections 19300 *et seq.*, may deliver medicinal cannabis or medicinal cannabis products to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, residing within the Town.
 - c. A Town business license shall be required, and appropriate business license taxes shall be paid in accordance with Title 6, Chapter 1. ~~for any medicinal cannabis sales within the Town.~~
- (6) Nothing contained in this section shall be deemed to permit or authorize any use or activity that is otherwise prohibited by any state law.

D. Cannabis Cultivation

Commercial cannabis cultivation is prohibited. A person may plant, cultivate, harvest, dry, or process cannabis plants indoors or outdoors to the extent allowed under California Health and Safety Codes Sections 11362.1(a)(3) and 11362.77, subject to all restrictions under California State Law, and the following additional restrictions:

- (1) The owner of the property must provide written consent;
- (2) Compliance with all applicable Building Codes, Fire Codes, Water Efficient Landscape requirements (Title 9, Chapter 22), and Urban Runoff Pollution Prevention requirements (Title 5, Chapter 8) set forth in the San Anselmo Municipal Code;
- (3) The living plants and any cannabis produced by the plants shall be in a locked space and not visible by normal unaided vision from a public place;
- (4) No odor of cannabis shall be detectable from the property boundaries by a person of ordinary senses; and

- (5) The planting, cultivation, harvesting, drying, or processing shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious odor, smoke, traffic, vibration or other impacts or be hazardous due to use or storage of materials, processes, products or waste associated with cannabis cultivation.

E. Penalties for Violation.

The Town may enforce this section in any manner permitted by law. Violation of this section shall be and is hereby declared to be a public nuisance.

- (1) Any violation of the provisions of this ordinance is hereby declared a public nuisance and contrary to the public interest and shall, at the discretion of the Town, create a cause of action for injunctive relief or shall be subject to abatement in the manner set forth in Title 1 Chapter 2.
- (2) Any person violating provisions of this ordinance may be deemed guilty of an infraction or misdemeanor, except violations of 10-3-1801(c)(5), which shall be considered an infraction, and shall be subject to penalties pursuant to Section 36900 of the California Government Code, as amended.
- (3) Each and every day that any violation of this ordinance continues, is committed or is permitted to continue shall be regarded as a new and separate offense.
- (4) The remedies provided in this section shall be cumulative and not exclusive.

F. Any applicants that seek to operate cannabis facilities in areas where licenses may be issued under State law may initiate a zoning ordinance amendment pursuant to San Anselmo Municipal Code Section 10-3.802 for consideration by the Planning Commission and Town Council. The applicant for a zoning ordinance amendment for cannabis facilities shall pay all fees and charges that may be incurred by the Town for planning, legal, and any other professional services directly related to and incurred by the Town during the examination, review and processing of the application.

SECTION 3:

Title 10 (Planning and Zoning), Chapter 3 (Zoning) of the San Anselmo Municipal Code, Section 10-3.301 Land Use Regulations Table 3A and Notes are amended to include the following:

LAND USES	DIST-RICT	R-1-H	R-1-C	R-1	R-2	R-3	P	C-1	C-2	C-L	C-3
Medicinal cannabis facilities		-	-	-	-	-	-	-	-	-	-
Non-medicinal cannabis facilities		-	-	-	-	-	-	-	-	-	-
Personal cannabis cultivation ⁽⁶⁾		P	P	P	P	P	P	P	P	P	P

(6) Reference Section 10-3.1801 of Article 18 of this Chapter.

SECTION 4: Severability. The Town Council hereby declares every section, paragraph, sentence, clause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 5: Inclusion in the San Anselmo Municipal Code. It is the intention of the San Anselmo Town Council that the text in Section 2 be made a part of the San Anselmo Municipal Code and that the text may be renumbered or relettered and the word "Ordinance" may be changed to "Section", "Chapter", or such other appropriate word or phrase to accomplish this intention.

SECTION 6: This Ordinance shall go into effect thirty (30) days from its adoption, and shall be posted or published as required by State law.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the San Anselmo Town Council on October 10, 2017, and was adopted at a regular meeting of the San Anselmo Town Council on October 24, 2017, by the following vote:

AYES: Coleman, McInerney, Greene, Wright
NOES: Brown
ABSENT: None
ABSTAIN: None



Kay Coleman, Mayor

ATTEST:



Carla Kacmar, Town Clerk