

ORDINANCE NO. 17-022

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE
REPEALING AND REPLACING §11.100 OF THE PACIFIC GROVE MUNICIPAL
CODE PROHIBITING COMMERCIAL CANNABIS ACTIVITY
AND ALLOWING PERSONAL INDOOR CANNABIS CULTIVATION**

FINDINGS

1. The City Council of the City of Pacific Grove (City) regulates health, safety, and the environment and finds that commercial cannabis activity, unless controlled, may constitute a nuisance, and be injurious to the health, safety, and general welfare.
2. City staff conducted a comprehensive review of the City's Municipal Code provisions, and determined that revisions are necessary to be in compliance with the SB 94 "Medical and Adult-Use Cannabis Regulation and Safety Act."
3. The ordinance repeals and replaces §11.100 "Marijuana Dispensaries" to comply with SB 94, and to prohibit Commercial Cannabis Activity within the City limits, and allow personal indoor cannabis cultivation of six plants per residence.
4. In the enactment of this ordinance, the amendment is not subject to the California Environmental Quality Act (CEQA) pursuant to Guidelines Section 15060(c)(2) as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Guidelines Section 15060(c)(3) as the activity is not a project as defined in Guidelines Section 15378 because it has no potential for resulting in physical change to the environment directly or indirectly.

IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The text set forth in existing Chapter §11.100 of the Pacific Grove Municipal Code entitled, "Marijuana Dispensaries" shall be repealed in its entirety, and replaced with new text as Chapter §11.000 entitled "Cannabis" as follows:

~~Chapter 11.100~~

~~MARIJUANA DISPENSARIES~~

~~Sections:~~

~~11.100.010 — Definitions.~~

~~11.100.020 — Medical marijuana dispensaries prohibited.~~

~~11.100.030 — Marijuana dispensaries prohibited.~~

~~11.100.040 — Marijuana sales prohibited.~~

~~11.100.050 Excluded facilities.
11.100.060 Public nuisance declared.
11.100.070 Violations.~~

~~11.100.010 Definitions.~~

~~The following words and phrases shall, for the purposes of this chapter, have the meanings respectively ascribed to them by this section, as follows:~~

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

~~“Marijuana” shall have the same meaning as “Cannabis,” as set forth in subpart (f) of the Business and Professions Code Section 19300.5, as may be amended from time to time.~~

~~“Marijuana dispensary” means any facility, clinic, cooperative, club, business, group or location, whether fixed or mobile, where marijuana is made available to, distributed, sold or distributed to any person.~~

~~“Medical marijuana dispensary” means any facility, clinic, cooperative, club, business, group or location, whether fixed or mobile, where medical marijuana is made available to, distributed, sold, or distributed to a qualified patient, a person with an identification card, and/or a primary caregiver as those terms are defined in this chapter.~~

~~“Operation” means any effort to locate, operate, own, lease, supply, allow to be operated, or aid, abet or assist in the operation of a marijuana dispensary or medical marijuana dispensary.~~

~~“Person” means any person, firm, corporation, association, club, society, or other organization. The term “person” shall include any owner, manager, proprietor, employee, volunteer or salesperson.~~

~~“Person with an identification card” shall have the meaning given that term by Health and Safety Code Section 11362.7.~~

~~“Primary caregiver” shall have the meaning given that term by Health and Safety Code Section 11362.7.~~

~~“Qualified patient” shall have the meaning given that term by Health and Safety Code Section 11362.7.~~

~~“Sales” or “selling” shall be given a plain and ordinary meaning, shall include each and every derivation of those terms, and shall also include and refer to related actions such as buying and purchasing. [Ord. 16-001 § 2, 2016; Ord. 10-026 § 3, 2010].~~

~~11.100.020 Medical marijuana dispensaries prohibited.~~

~~Medical marijuana dispensaries are prohibited in the city of Pacific Grove. No person shall locate, operate, own, suffer, allow to be operated or aid, abet or assist in the operation of any~~

~~fixed or mobile medical marijuana dispensary within the city in any zone. [Ord. 10-026 § 3, 2010].~~

~~11.100.030 Marijuana dispensaries prohibited.~~

~~Marijuana dispensaries are prohibited in the city of Pacific Grove. No person shall locate, operate, own, suffer, allow to be operated or aid, abet or assist in the operation of any fixed or mobile marijuana dispensary within the city in any zone. [Ord. 10-026 § 3, 2010].~~

~~11.100.040 Marijuana sales prohibited.~~

~~(a) No person shall cultivate, sell or distribute marijuana within the city in any zone, or engage in any operation for this purpose.~~

~~(b) No person shall make, sell or distribute any marijuana-infused product such as tinctures, baked goods or other consumable products, or participate in any operation for this purpose.~~

~~(c) This section shall not apply to excluded facilities defined in this chapter. [Ord. 16-001 § 3, 2016; Ord. 10-026 § 3, 2010].~~

~~11.100.050 Excluded facilities.~~

~~The terms medical marijuana dispensary and marijuana dispensary shall not include the following uses, as long as the location of such use is otherwise in accord with this code and other applicable law:~~

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

~~(b) A health care 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 hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq. [Ord. 10-026 § 3, 2010]~~

~~11.100.060 Public nuisance declared.~~

~~Any use or condition caused, or permitted to exist, within the city in violation of the provisions of this chapter is hereby declared a public nuisance and shall be abated by action of the city attorney pursuant to all available remedies. [Ord. 16-001 § 4, 2016; Ord. 10-026 § 3, 2010].~~

~~11.100.070 Violations.~~

~~Violations of any provision of this chapter may further be enforced pursuant to Chapter 1.16 and/or 1.19 PGMC. [Ord. 10-026 § 3, 2010].~~

11.100 CANNABIS

11.100.010 Statement of purpose.

The purpose of this chapter is to prohibit commercial cannabis activities, cooperatives, collectives, dispensaries, operators, establishments, providers and cultivation within the City limits.

11.100.020 Definitions.

For the purposes of this section, the following words and phrases shall have the following meanings:

- (a) "Cannabis" shall be defined pursuant to Business and Professions Code §26001(f). "Cannabis" does not mean "industrial hemp" as defined by §11018.5 of the Health and Safety Code.
- (b) "Child Resistant" shall be defined pursuant to Business and Professions Code §26001(j).
- (c) "Commercial Cannabis Activity" shall be defined pursuant to Business and Professions Code §26001(k), and includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.
- (d) "Cultivation" shall be defined pursuant to Business and Professions Code §26001(l).
- (e) "Delivery" shall be defined pursuant to Business and Professions Code §26001(p).
- (f) "Edible cannabis product" shall be defined pursuant to Business and Professions Code §26001(t).
- (g) "Fully enclosed and secure structure" means a space within a building, greenhouse or other structure which has a roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors. The fully enclosed and secure structure must have valid electrical, plumbing, and building permits, if required by other provisions of this code.
- (h) "Medicinal Cannabis" or "Medicinal Cannabis Product" shall be defined pursuant to Business and Professions Code §26001(ai) pursuant to the California Health and Safety Code 11362.5 (Compassionate Use Act of 1996) and 11362.7 (Medical Marijuana Program Act).
- (i) "Medicinal Cannabis Cooperatives, Collectives, Dispensaries, Operators, Establishments or Providers" shall be defined as any facility or location where Medicinal Cannabis is grown, made available to or distributed by or to any "primary caregiver," "a qualified patient," a person with an identification card or a person over the age of 21.

(j) "Outdoors" means any location that is not within a fully enclosed and secure structure.

(k) "Primary caregiver" shall be defined pursuant to Health and Safety Code §11362.5(e) and §11362.7(d).

(l) "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling that is lawfully permitted to be used as a residence.

(m) "Qualified patient" shall be defined pursuant to Health and Safety Code §11362.7(f).

(n) "Retailer" shall be defined pursuant to Business and Professions Code §26070(a)(1).

11.100.030 Prohibition on commercial cannabis activities.

(a) Commercial Cannabis Activities are prohibited in all areas of the City. No person or entity may establish or engage in Commercial Cannabis Activities within City limits. A property owner may not allow its property to be used by any person or entity for Commercial Cannabis Activities.

(b) The delivery of cannabis within City limits by any means is prohibited.

11.100.040 Prohibition on medicinal cannabis cooperatives, collectives, dispensaries, operators, establishments or providers.

Medicinal Cannabis Cooperatives, Collectives, Dispensaries, Operators, Establishments or Providers are prohibited in all areas of the City. No person or entity may own, establish, open, operate, conduct, manage, or establish Medicinal Cannabis Cooperatives, Collectives, Dispensaries, Operators, Establishments or Providers. A property owner may not allow its property to be used by any person or entity for Medicinal Cannabis Cooperatives, Collectives, Dispensaries, Operators, Establishments or Providers.

11.100.050 Residential cannabis cultivation.

(a) All cannabis cultivation within city limits is prohibited except that a person, 21 years of age or older, may cultivate no more than six living cannabis plants inside a private residence, regardless of the number of persons that reside in the private residence, or inside a fully enclosed and secure accessory structure to a private residence located upon the grounds of that private residence. Such cultivation shall only occur in residences and accessory structures that are fully enclosed and secured against unauthorized entry.

(b) The primary use of the property must be for a private residence, and cultivation must not prevent the property owner's primary use as a residential use. The property shall remain at all times a private residence with a legal and functioning kitchen, bathroom(s) and bedroom(s) for their intended use and such cultivation shall not prevent the property's primary use as a residential use. The cultivation activities shall be conducted in a manner that is child resistant.

(c) If a private residence is not occupied or inhabited by the owner of the private residence, then no persons living in the residence may cultivate cannabis without written consent signed by the owner expressly allowing cannabis cultivation to occur at the private residence.

(d) Persons cultivating cannabis in a residence shall comply with all applicable Building Code requirements set forth in the Pacific Grove Municipal Code.

(e) There shall be no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of cannabis cultivation.

(f) All private cultivation under this section shall comply with Health and Safety Code §11362.2.

(g) The cultivation area shall not adversely affect the health or safety of nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration or other impacts and shall not be hazardous due to the use or storage of materials, processes, products or wastes, or from other actions related to cultivation.

(h) The outdoor cultivation of cannabis is prohibited within City limits.

11.100.060 Consumption of cannabis.

Smoking and vaporizing of Cannabis and Cannabis Products is prohibited in all public places and any place that is open to the public reference Chapter 11.24 PGMC. Additionally, consumption and the use of any and all forms of cannabis, including edible cannabis product, shall be prohibited in all public places.

11.100.070 Exceptions.

(a) To the extent that the following activities are permitted by State law, nothing in this chapter shall prohibit a person 21 years of age or older from:

(1) possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older without compensation whatsoever, not more than 28.5 grams of cannabis not in the form of concentrated cannabis; or

(2) possessing, processing, purchasing, transporting, obtaining or giving away to persons 21 years of age or older without compensation whatsoever, up to eight grams of cannabis in the form of concentrated cannabis; or

(3) smoking or ingesting cannabis or cannabis products in a manner consistent with California Health and Safety Code §11362.3.

(b) This chapter shall not prohibit any person from transporting cannabis through the jurisdictional limits of the City for delivery or distribution to a person located outside of the City, where such transport does not involve delivery or distribution within the jurisdictional limits of the City.

11.100.080 Enforcement.

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

(b) Any violation of this section shall constitute a misdemeanor and a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be enforced pursuant to Chapter 1.16 and 1.19 PGMC.
(c) Any violation of this chapter is declared to be a public nuisance per se contrary to the public interest and will, at the discretion of the City, be subject to a cause of action for injunctive relief.

SECTION 3. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 4. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

SECTION 6. PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 15th day of November, 2017, by the following vote:

AYES: Mayor Kampe, Councilmembers Cuneo, Fischer, Garfield, Huitt, Peake and Smith.

NOES: None.

ABSENT: None.

APPROVED:



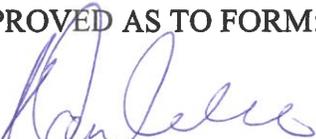
BILL KAMPE, Mayor

ATTEST:



SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:



DAVID C. LAREDO, City Attorney