



## CITY OF PALO ALTO OFFICE OF THE CITY CLERK

November 14, 2016

The Honorable City Council  
Palo Alto, California

**SECOND READING: Adoption of an Ordinance Adding Chapter 9.17 (Personal Cultivation of Marijuana) to Title 9 of the Palo Alto Municipal Code (Public Peace, Morals and Safety) to Prohibit Outdoor Cultivation of Marijuana (FIRST READING: October 24, 2016 PASSED: 7- 1 Burt no, DuBois absent)**

This item was heard by the City Council on October 24, 2016 at which time Council passed the below Motion. It is now before you for the second reading.

**MOTION RESTATED:** Vice Mayor Scharff moved, seconded by Council Member Kniss to adopt:

- A. An Ordinance adding Chapter 9.17 (Personal Cultivation of Marijuana) to Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code to prohibit outdoor marijuana cultivation in Palo Alto; and
- B. A finding that this amendment is exempt from review under the California Environmental Quality Act; and
- C. Direct Staff to return within twelve months to Council following public outreach for potential changes to this Ordinance; and
- D. The second reading will take place after the November 8, 2016 election; and
- E. Incorporate a twelve month sunset into the Ordinance.

**MOTION AS AMENDED PASSED:** 7-1 Burt no, DuBois absent

**ATTACHMENTS:**

- Attachment A: ORD Personal Cultivation Alt (PDF)

Department Head: Beth Minor, City Clerk



Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Adding Chapter 9.17 (Personal Cultivation of Marijuana) to Title 9 of the Palo Alto Municipal Code (Public Peace, Morals and Safety) to Prohibit Outdoor Cultivation of Marijuana

The Council of the City of Palo Alto ORDAIN as follows:

SECTION 1. Findings and Recitals. The Council of the City of Palo Alto finds and declares as follows:

A. Following passage of Proposition 215, entitled the “Compassionate Use Act of 1996,” California courts have held that there is a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

B. On June 9, 1997, the Palo Alto City Council adopted uncodified urgency Ordinance No. 4422 declaring the establishment and operation of medical marijuana dispensaries to be prohibited use under the City’s zoning ordinance.

C. On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”) will come before California voters as Proposition 64. If passed, the AUMA will legalize the use, sale, and consumption of nonmedical marijuana by persons 21 years of age and older.

D. In addition, the AUMA will create a state regulatory and licensing system governing commercialization of nonmedical marijuana, but will preserve local governments’ authority to regulate personal cultivation. Specifically, local governments may prohibit personal outdoor cultivation and reasonably regulate personal indoor cultivation of nonmedical marijuana.

E. Neither medical nor nonmedical marijuana cultivation are listed in the City’s zoning code as permitted or conditionally-permitted land uses and are, therefore, prohibited under the principles of permissive zoning provisions. (*City of Corona v. Naulls* (2008) 166 Cal.App.4<sup>th</sup> 418, 431-433). Nevertheless, the AUMA does not expressly recognize the application of permissive zoning principles like previous medical marijuana legislation.

F. In order to protect the public health, safety, and welfare, the City Council desires to add Palo Alto Municipal Code Chapter 9.17 to prohibit, in express terms, all outdoor cultivation of medical and nonmedical marijuana.

G. This Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act (“CEQA”) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment in that this Ordinance simply clarified existing local regulations.

SECTION 2. Chapter 9.17 is hereby added to Title 9 of the Palo Alto Municipal Code to read as follows:

**9.17.010 Definitions.**

- (1) “Marijuana” means all parts of the plant Cannabis sativa L., Cannabis indica, or Cannabis ruderalis whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.
- (2) “Marijuana cultivation” shall have the same meaning as “cultivation” set forth in California Business and Professions Code Section 19300.5(k) as that section may be amended from time to time.

**9.17.020 Prohibition.**

Outdoor marijuana cultivation is prohibited in the City of Palo Alto.

**9.17.030 Enforcement.**

The City may enforce this section in any manner permitted by law. The violation of this Chapter shall be and is hereby declared to be a public nuisance and shall, at the discretion of the City, create a cause of action for injunctive relief.

**9.17.040 Sunset Clause.**

The provisions of this ordinance shall be null, void and of no force and effect on and after one year from its effective date unless the City Council adopts an ordinance continuing its existence.

SECTION 3. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 4. CEQA The City Council finds and determines that this Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act (“CEQA”) because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment in that this Ordinance simply clarifies existing local regulations.

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SECTION 5. Effective Date. This ordinance shall be effective upon the thirty-first day after its passage and adoption, and shall expire after one year. Upon the expiration of this ordinance, the City Clerk shall work with the codifier to remove this section from the Palo Alto Municipal Code.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Principal City Attorney