

Ordinance No. 5419

Ordinance of the Council of the City of Palo Alto Repealing Chapter 9.17 (Personal Cultivation of Marijuana) of Title 9 (Public Peace, Morals and Safety) of the Palo Alto Municipal Code; Repealing Ordinance No. 4422; and Amending Chapters 18.04 (Definitions) and 18.42 (Standards for Special Uses) of Title 18 (Zoning) to Prohibit Medical Cannabis Dispensaries and Prohibit Commercial Cannabis Activities, Except for Deliveries.

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

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

- A. On June 9, 1997, the Palo Alto City Council adopted uncodified urgency Ordinance No. 4422 declaring the establishment and operation of medical cannabis dispensaries to be a prohibited use under the City's zoning ordinance.
- B. On October 24, 2016, the Palo Alto City Council adopted Ordinance No. 5399, prohibiting the outdoor cultivation of cannabis. That ordinance had a sunset date of one year from the date the ordinance took effect.
- C. On November 8, 2016, California voters passed Proposition 64, known as the Adult Use of Marijuana Act (AUMA), which legalized the use, sale, and consumption of recreational cannabis by persons 21 years of age and older.
- D. In June 2017, the California Legislature passed SB 94, which consolidated the state regulation of medical and recreational cannabis into the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), taking the place of the Medical Cannabis Regulation and Safety Act and the AUMA.
- E. The MAUCRSA provides base standards for personal cultivation of cannabis and allows local jurisdictions to legislate additional standards. (*See* Health and Safety Code section 11362.2).
- F. The MAUCRSA permits commercial cannabis activities subject to state licensure, but preserves local governments' authority to regulate or ban commercial cannabis activities. (*See, e.g.*, Business and Professions Code section 26200).
- G. Medical cannabis dispensaries and commercial cannabis activities are not listed in the City's zoning code as permitted or conditionally-permitted land uses, making them prohibited under the principles of permissive zoning provisions. (*See, e.g., City of Corona v. Naulls* (2008) 166 Cal.App.4th 418). Nevertheless, the state may not necessarily recognize the application of permissive zoning principles as to cannabis-related uses.

H. In order to protect the public health, safety, and welfare, the Palo Alto City Council desires to replace the existing uncodified prohibition of medical cannabis dispensaries in Ordinance No. 4422 with new Code section 18.42.150 to prohibit medical cannabis dispensaries and prohibit commercial cannabis activities, with the exception of deliveries. The Palo Alto City Council also desires to repeal Ordinance No. 5399, codified at Chapter 9.17 of Title 9 of the Palo Alto Municipal Code, in recognition of new state law regulating cultivation for personal use.

**SECTION 2.** Chapter 9.17 of Title 9 of the Palo Alto Municipal Code is hereby repealed.

**SECTION 3.** Ordinance No. 4422 of the City of Palo Alto is hereby repealed.

**SECTION 4.** Chapter 18.04 of Title 18 of the Palo Alto Municipal Code is hereby amended to add new subsection 18.04.030(a)(94.5) to read as follows:

**(94.5)** “Cannabis” means 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 Title, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.

**(A)** “Commercial cannabis activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in Division 10 of the California Business and Professions Code. “Commercial cannabis activity” does not include personal uses allowed by Health and Safety Code sections 11362.1 and 11362.2 or personal medicinal uses allowed by sections 11362.765 and 11362.77, as amended from time to time.

**(B)** “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

**(C)** “Medical cannabis dispensary” is a facility where cannabis is made available for medicinal purposes in accordance with any provision of state law that authorizes the use of cannabis for medicinal purposes.

**SECTION 5.** Chapter 18.42 of Title 18 of the Palo Alto Municipal Code is hereby amended to add new section 18.42.150 to read as follows:

**18.42.150 Cannabis Cultivation and Commercial Activities**

**(a) Prohibition of commercial activities.**

Commercial cannabis activity is not permitted.

**(b) Exception for qualified delivery services.**

Notwithstanding the prohibition in section 18.42.150(a), delivery of cannabis from a business located outside the City of Palo Alto is permitted subject to the conditions of California Business and Professions Code section 26090, as amended from time to time. This section does not permit any temporary, persistent, or fixed physical presence used for commercial cannabis activities besides delivery vehicles in the active state of making a delivery to a specific person and location

**(c) Prohibition of medical cannabis dispensaries.**

Medical cannabis dispensaries are not permitted.

**(d) Regulations.**

The City Manager is authorized to approve and enforce regulations consistent with this section.

**(e) Enforcement.**

The City may enforce this section and its regulations in any manner permitted by law and is entitled to recover all costs, including attorneys fees, related to enforcement. The violation of this section is hereby declared to be a public nuisance and shall, at the discretion of the city, create a cause of action for injunctive relief.

SECTION 6. 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 7. 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) 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.

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SECTION 8. Effective Date. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:           October 30, 2017

PASSED:               November 13, 2017

AYES:                 DUBOIS, FILSETH, FINE, HOLMAN, KNISS, KOU, SCHARFF, TANAKA, WOLBACH

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

DocuSigned by:  
*Beth Minor*  
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City Clerk

APPROVED AS TO FORM:

DocuSigned by:  
**Tim Shimizu**  
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Deputy City Attorney

APPROVED:

DocuSigned by:  
*H. Craig Seaman*  
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Mayor

DocuSigned by:  
*Jack K. Iwanaga*  
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City Manager