

ORDINANCE NO. 2016-01

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON, CALIFORNIA,
APPROVING A NEW MUNICIPAL CODE CHAPTER 19.51 THAT IMPOSES AN EXPRESS BAN ON
MARIJUANA CULTIVATION, PROCESSING, DELIVERIES, AND DISPENSARIES IN THE CITY**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 *et seq.* and entitled “The Compassionate Use Act of 1996” referred to herein as the “CUA”); and

WHEREAS, the intent of the CUA was to enable seriously ill Californians, to legally possess, use and cultivate marijuana for medical use under state law once a physician has deemed the use beneficial to a patient’s health; and

WHEREAS, in 2003, the California Legislature adopted SB 420 entitled the Medical Marijuana Program (“MMP”), codified as Health & Safety Code Section 11362.7 *et seq.* which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal code; and

WHEREAS, neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., et al.*, holding that cities have the authority to ban medical marijuana land uses; and

WHEREAS, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, several California cities have reported negative impacts to the public health, safety, and welfare resulting from marijuana cultivation, processing and distribution activities, including illegal sales and distribution of marijuana, trespass, theft, violent robberies and robbery attempts, offensive odors from growing plants, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, on April 21, 2009, the City Council adopted an Ordinance 2009-08 that prohibits any use that is illegal in accordance with State or Federal law. This ordinance was intended to prohibit marijuana sales, collectives, cultivation, deliveries, and processing, but also applies to any other proposal that is illegal at either the State or Federal level; and

WHEREAS, thus far, the City’s ordinance has prevented marijuana-related businesses from operating in the City; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law which is comprised of the state legislative bills known as AB 243, AB 266, and SB 643; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions that govern cultivating, processing, transporting, and distributing medical cannabis to qualified patients throughout the state. The Act also contains new statutory provisions that:

- Allow local governments to enact ordinances expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code Section 11362.777(c)(4)); and
- Expressly provide that the Act does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code Section 19316(c)); and
- Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code Section 19300.5(m) of the Act, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code Section 19340(a)); and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor offensive to many people and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of collective or cooperative cultivation, or in the case of a caregiver growing for numerous patients, a very large number of plants could be cultivated on the same legal parcel, or parcels, within the City of American Canyon; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery; and

WHEREAS, indoor marijuana cultivation has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive electricity use increases the risk of fire which presents a clear and present danger to the building and its occupants; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution activities; and

WHEREAS, the American Canyon Municipal Code ("ACMC") does not expressly address marijuana cultivation, processing, and distribution activities, instead Section 5.04.060 (Business Licenses) provides that "A license granted pursuant to this chapter does not permit any occupation or activity of any kind which is prohibited by this code or any other ordinance, or by any state statute, law, rule, order or regulation" and Section 5.04.080.A.1 allows the city manager to refuse to issue a business license to for any business, that is prohibited by any local ordinance or by any state law, statute, rule or regulation and/or prohibited by federal law, statute, rule or regulation; and ACMC Section 19.05.010 (Use

Determinations) provides that any business that is in violation of State and/or Federal law shall be prohibited in all specific plan areas, districts, and/or zones within the City; and

WHEREAS, prior to the effective date of this ordinance, marijuana cultivation, processing, and distribution activities is prohibited in the City to the extent such activities are prohibited by the Federal Controlled Substances Act or other law; and

WHEREAS, based on the findings above, the potential establishment of marijuana cultivation, processing, and distribution activities in the City without an express ban on such activities poses a current and immediate threat to the public health, safety, and welfare in the City due to the negative impacts of such activities as described above; and

WHEREAS, the issuance of business license, subdivision, use permit, variance, building permit or any other applicable marijuana cultivation, processing, and distribution activities approval will result in the aforementioned threat to public health, safety, and welfare; and

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that the City adopt this ordinance to expressly prohibit marijuana cultivation, processing, and distribution activities; and

WHEREAS, the Planning Commission of the City of American Canyon conducted a public hearing on December 2, 2015 and unanimously recommended City Council approval of the ordinance; and

WHEREAS, the City Council of the City of American Canyon conducted a public hearing on December 15, 2015 after due notice was given as required by law, at which time oral and documentary evidence was introduced along with the written recommendation of the Community Development Department staff of the City of American Canyon.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON, CALIFORNIA, DOES HEREBY APPROVE AMENDMENTS TO THE MUNICIPAL CODE TO ADD CHAPTER 19.51 AS FOLLOWS:

SECTION 1. The ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and Section 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because it has no potential for resulting in physical change to the environment, directly or indirectly. In addition, the ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has no potential for causing a significant effect on the environment.

SECTION 2. American Canyon Municipal Code Chapter 19.51, Medical Marijuana, is hereby added to the Municipal Code:

Chapter 19.51 Medical Marijuana

19.51.010 Purpose.

This chapter expresses its intent that this chapter shall: 1) prohibit the cultivation of marijuana in the City pursuant to Health and Safety Code section 11362.777; 2) exercise local authority to enact and enforce local regulations and ordinances, including those regarding the permitting, licensing or the

entitlement of the activities prohibited by this chapter; 3) exercise police power to enact and enforce regulations for the public benefit, safety, and welfare of the City and its community; and 4) expressly prohibit the delivery of marijuana in the city.

19.51.020 Definitions.

The terms used in this ordinance have the meaning set forth below:

“City” means the City of American Canyon and its representatives.

“Marijuana” means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated 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, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term “marijuana” shall also include “medical marijuana: as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 Compassionate Use Act of 1966) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

“Marijuana Cultivation” means growing, planting, harvesting, drying, curing, grading, trimming, or processing of marijuana.

“Marijuana Processing” means any method used to prepare marijuana or its byproducts for commercial retail and/or wholesale including but not limited to drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

“Marijuana Dispensary or Marijuana Dispensaries” means any business, office, store, facility, location, retail “storefront” or wholesale component of any establishment, cooperative or collective that delivers (as defined in Business & Professions Code section 19300.5(m) or any successor statute thereto) whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California or subject to the provisions of California Health and Safety Code Section 11362.5 Compassionate Use Act of 1966) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

19.51.030 Prohibited Activities.

Marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries shall be prohibited activities in the City except as otherwise expressly allowed by Federal and State Law.

No use permit, variance, building permit, or any other entitlement, license, or permit, whether administrative or discretionary, shall be approved or issued for the activities of marijuana cultivation, marijuana processing, marijuana delivery, or the establishment or operation of a marijuana dispensary in the City, and no person shall otherwise establish or conduct such activities in the City, except as otherwise expressly allowed by Federal and State law.

19.51.040 Public Nuisance.

Any violation of this chapter is hereby declared to be a public nuisance.

19.51.050 Violations.

Any violation of this chapter shall be punishable as provided in Chapter 9.12 of this Code or any successor chapter thereto.

SECTION 3. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

SECTION 4. The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly and it prevents changes in the environment pending the completion of the contemplated municipal code review.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 15th day of December, 2015, by the following vote:

AYES: Councilmembers Bennett, Joseph, Ramos, Vice Mayor Leary and Mayor Garcia
NOES: None
ABSTAIN: None
ABSENT: None

The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 19th day of January, 2016 by the following vote:


AYES: Councilmembers Joseph, Leary, Ramos, Vice Mayor Bennett, and Mayor Garcia
NOES: None
ABSTAIN: None
ABSENT: None



Leon Garcia, Mayor

ATTEST:

APPROVED AS TO FORM:



Cherri Walton, CMC, Deputy City Clerk



William D. Ross, City Attorney