

ORDINANCE NO. 1472

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE ARCATA MUNICIPAL CODE PERTAINING TO THE USE AND REGULATION OF MEDICAL MARIJUANA

TITLE V—SANITATION AND HEALTH CHAPTER 10—PERSONAL MEDICAL MARIJUANA USE

The City Council of the City of Arcata does ordain as follows:

Section 1: Chapter 10—Personal Medical Marijuana Use of Title V—Sanitation and Health, of the Arcata Municipal Code, Sections 5950–5960, is hereby repealed.

Section 2: Chapter 10—Medical Marijuana Use and Regulation, Title V—Sanitation and Health, Sections 5950–5959, is hereby adopted as part of the Arcata Municipal Code as follows:

CHAPTER 10—Medical Marijuana Use and Regulation

SEC 5950. Findings and Purposes.

A. On September 11, 2015 the State legislature adopted the State Medical Marijuana Regulation and Safety Act, codified at Chapter 3.5 of Division 8 of the California Business and Professions Code, Sections 19300 *et seq.*, which establishes a comprehensive regulatory system to implement the Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5) pertaining to medical use of marijuana.

B. The State Medical Marijuana Regulation and Safety Act establishes, among other things, a licensing program requiring medical marijuana cultivators, manufacturers, distributors, testing laboratories, dispensaries, distributors and transporters to obtain state issued licenses, and authorizes local governments to establish additional standards, requirements, and regulations for local licenses and permits.

C. The City Council has adopted medical marijuana zoning standards and regulations for personal medical marijuana use as well as for the dispensing, distribution and onsite cultivation by cooperatives and collectives as caregivers for qualified patients, codified in the Land Use Code (LUC) at Section 9.42.105. The City Council has additionally adopted a medical marijuana innovation overlay zone, codified in the LUC at Section 9.28.130, to allow for medical marijuana manufacturing, and other specified commercial cannabis activities, subject to additional non-planning permits.

D. The purpose of these regulations is to allow for the permitting of commercial cannabis activity within the City based on specific standards and procedures intended to protect the health, safety, and welfare of the residents of the City of Arcata by prescribing the manner in which such businesses and establishments can be conducted in the City. By enacting these regulations, the City of Arcata does not intend to encourage or promote the establishment of any business or operation, or the commitment of any act, that constitutes or may constitute a violation of state or federal law. As of the date of the enactment of this Chapter, the use, possession, distribution, and sale of marijuana is illegal under Federal law and those who engage in such activities do so at their own risk of criminal prosecution.

E. No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §800 *et seq.*, nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.

SEC 5951. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Chapter, are defined as follows:

- A. “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: 1) “marijuana” as defined by Section 11018 of the Health and Safety Code, and 2) the separated resin, whether crude or purified, obtained from marijuana. “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 chapter, “Cannabis” does not mean “industrial hemp” as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.
- B. “Commercial Cannabis Activity,” or “Activity” means the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical Cannabis or a medical Cannabis product, except as set forth in Business and Professions Code section 19319 related to qualifying patients and primary caregivers, and the City of Arcata Land Use Code Section 9.42.105 pertaining to medical Marijuana for personal use.
- C. “Commercial Cannabis Activity Business” means a commercial business or enterprise engaged in a Commercial Cannabis Activity.
- D. “Commercial Cannabis Activity Business Owner,” or “Owner” means any of the following:
 - (1) Each person or entity having an ownership interest in the Commercial Cannabis Activity Business other than a security interest, lien, or encumbrance on property that will be used by the Activity’s facility;
 - (2) If the Commercial Cannabis Activity Business is a publicly traded company, the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent (5%) or more; or
 - (3) Each person who participates in the direction, control, or management of, or has a financial interest in, the Commercial Cannabis Activity Business.
- E. “Commercial Cannabis Activity Permit,” or “Permit,” means a permit issued by the City of Arcata pursuant to this Chapter required to conduct Commercial Cannabis Activity.
- F. “Delivery” or “Deliveries” means the commercial transfer of medical Cannabis or medical Cannabis products from a dispensary to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a Testing Laboratory. “Delivery” also

includes the use by a Dispensary of any technology platform owned and controlled by the Dispensary, or independently licensed under this Chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed Dispensary of medical Cannabis or medical Cannabis products.

G. “LUC” means the City of Arcata Land Use Code: Title IX, Chapter 1, Section 9000 of the Arcata Municipal Code.

H. “Marijuana” means Cannabis, as defined in this Section.

I. “Medical Marijuana Regulation and Safety Act,” or the “Act,” means Chapter 3.5 of Division 8 of the California Business and Professions Code, sections 19300 *et seq.*

SEC 5952. Commercial Cannabis Activity Permit and Other Required Licenses.

A. *Permit Required.* It is unlawful to engage in Commercial Cannabis Activity in the City of Arcata without first obtaining a Commercial Cannabis Activity Permit from the City Manager or his/her designee in accordance with this Chapter. Any violation of the terms or conditions of a Commercial Cannabis Activity Permit shall be deemed a violation of this Chapter. Obtaining a Commercial Cannabis Activity Permit does not relieve a Commercial Cannabis Activity Business Owner of its obligation to comply with all applicable local, state and federal laws, policies and regulations. Commercial Cannabis Activity Permits may be issued for use only at property zoned for Commercial Cannabis Activity under the City’s Land Use Code.

B. *State License.* After January 1, 2018 or such time when State implementing regulations are in effect for the Medical Marijuana Regulation and Safety Act, whichever is earlier, it shall be unlawful to operate any business or conduct any activity in the City of Arcata for which a state license is required under the Medical Marijuana Regulation and Safety Act without also having a valid State license pursuant to the Act. Prior to implementation of the State license program pursuant to Medical Marijuana Regulation and Safety Act, all Commercial Cannabis Activity permitted by the City shall be conducted in accordance with this Chapter, the City’s Land Use Code, and all laws pertaining to the equivalent license classification under the Medical Marijuana Regulation and Safety Act.

C. *Permit Regulations.* The City Manager shall develop regulations pertaining to the issuance, compliance monitoring, renewal, and enforcement of Commercial Cannabis Activity Permits, which shall be subject to promulgation by resolution of the City Council. Such regulations may provide for energy efficiency, odor control, and inventory tracking, and such other matters as deemed necessary to promote the public health, safety and welfare of the City.

D. *Pre-existing Commercial Cannabis Activity.* Any person who is lawfully engaged in Commercial Cannabis Activity as permitted by the City of Arcata Land Use Code section 9.42.105 prior to July 1, 2015 may continue such activity if, within six months after the adoption of this Ordinance, such person has submitted an application for a Commercial Cannabis Activity Permit under this Chapter. If an application is submitted according to this Chapter, such pre-existing Commercial Cannabis Activity may continue until such time as the Permit application is denied, expires, or is revoked.

E. *Effect of Commercial Cannabis Activity Permit.* No person shall have any entitlement or vested right to receive a Permit under this Chapter. The Permit requirements in this Chapter

shall be in addition to, and not in lieu of, licensing or permitting requirements imposed by any other federal, state, or local law. The City's Permit issued under this Chapter does not provide any exception, defense, or immunity to any person in regard to potential criminal liability the person may have for the production, distribution, or possession of marijuana. All Commercial Cannibals Activity Business Owners shall be held jointly and severally responsible to comply with all Permit conditions, and shall be held jointly and severally liable for Permit any violations, regardless of which Owners sign the Permit.

F. *Other Permits and Licenses required.* In addition to a Commercial Cannabis Activity Permit as required by the Chapter, it is unlawful to establish or otherwise engage in Commercial Cannabis Activity without a current and valid business license issued pursuant to Title VI of the Arcata Municipal Code, and, where applicable, a land use permit issued pursuant to the City's Land Use Code. Any violation of the terms or conditions of any other required City permit or license shall be deemed a violation of this Chapter.

SEC. 5953. Deliveries. No person or entity may engage in any Delivery activity within the City of Arcata except those person or entities that receive a Delivery Permit from the City for such activity. No other person or entity may Deliver or cause the Delivery of Cannabis within the City.

SEC. 5954. Permit Issuance. A Commercial Cannabis Activity Permit shall be issued for a specified time period. Such Permit may be renewed upon a finding that the permittee is not in violation of applicable laws or regulations and in accordance with Permit renewal provisions adopted by the City Council.

SEC. 5955. Fees, Taxes and Other Charges. The Council may establish fees, taxes or other charges for a Commercial Cannabis Activity Permit by resolution or ordinance.

SEC. 5956. Public Nuisance. Any violation of this Chapter, a Commercial Cannabis Activity Permit, applicable state or local law, or orders issued hereunder is hereby declared a public nuisance and shall be subject to abatement in accordance with Title V, Chapter 5 of the Arcata Municipal Code.

SEC. 5957. Administrative Enforcement Remedies.

A. *General.* When the City Manager or designee finds that a permittee has violated or continues to violate any provision in this Chapter, the Permit, or applicable state or local law, the City Manager or designee may suspend or revoke the Permit, and may impose administrative penalties in accordance with Government Code Section 36901 in an amount which shall not exceed \$1,000.00. In determining the amount of the civil penalty, the City Manager may take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the economic benefit derived through any non-compliance, the nature and persistence of the violation, the length of time over which the violation occurred and corrective action, if any, attempted or taken by the permittee.

B. *Permit Suspension.* The City Manager may immediately, without prior notice or hearing, suspend a Commercial Cannabis Activity Permit after informal notice to the permittee whenever such suspension is necessary to stop an actual or threatened activity which reasonably appears to violate any applicable City law, regulation, rule or order. Any permittee notified of a suspension of its Permit shall immediately stop all Commercial Cannabis Activity.

- C. *Permit Revocation.* The City Manager may revoke a Commercial Cannabis Activity Permit for good cause, including, but not limited to the following reasons:
 - 1. Failure to notify the City of changes to the Commercial Cannabis Activity Permit prior to the change;
 - 2. Misrepresentation or failure to fully disclose all relevant facts in the Commercial Cannabis Activity Permit application;
 - 3. Falsification of self-monitoring reports;
 - 4. Refusing to allow the City timely access to the facility premises and records;
 - 5. Failure to pay fees, charges or fines;
 - 6. Failure to meet compliance schedules;
 - 7. Failure to provide advance notice of the transfer of a permitted facility; or
 - 8. Violation of any Permit condition, term, or any terms this Chapter or any other applicable state or local law.
 - 9. Failure to maintain and update the inventory tracking system account
- D. *Reconsideration.* Any permittee affected by any administrative enforcement action made by the City Manager, may file with the City Manager a written request for reconsideration within 10 days of such decision, action, or determination, setting forth in detail the facts supporting the permittee's request for reconsideration. The City Manager shall schedule a meeting with the permittee to consider the reconsideration request, and shall make a final determination within 15 days after the meeting. The City Manager's decision, action, or determination shall remain in effect during such period of reconsideration.
- E. *City Council Appeal.* The City Manager's reconsideration determination may be appealed by the affected permittee to the City Council by submitting a written request for appeal to the City Manager no later than 10 days after notification of the City Manager's reconsideration decision. The written appeal shall be heard by the City Council within 60 days from the date of filing. The City Manager's decision, action, or determination shall remain in effect during such period of appeal.
- F. *Automatic Permit Termination.* Commercial Cannabis Activity Permits shall be voidable upon non-use, upon cessation of the permitted Commercial Cannabis Activity, or upon such other cause as set forth in regulations adopted by resolution of the City Council.

SEC. 5958. Judicial Remedies.

- A. *Injunctive Relief; Penalties.* When the City Manager finds that a Commercial Cannabis Activity Business Owner has violated any Permit condition, the provisions of this Chapter, or any other applicable City or State law, the City through its City Attorney may petition the Humboldt County Superior Court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate in restraining the continuance of the Activity. The City may

also seek such other action as is appropriate for legal and/or equitable relief. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an Owner.

B. *Criminal Prosecution* Any violation of this Chapter may be prosecuted by the City Attorney and charged in the discretion of the City Attorney as either a misdemeanor or an infraction.

SEC. 5959. Remedies Nonexclusive. The remedies in this Chapter are not exclusive. The City may take any, all, or any combination of these actions against a noncompliant permittee.

Section 3: Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 4: CEQA: A Negative Declaration was prepared circulated, and approved by the City Council prior to the adoption of this Ordinance.

Section 5: This ordinance will take effect thirty (30) days after the date of its adoption.

DATE: March 2, 2016

ATTEST:

/s/ Bridget Dory
City Clerk, City of Arcata

APPROVED:

/s/ Paul J. Pitino
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 1472, passed and adopted at a regular meeting of the City Council of the City of Arcata, Humboldt County, California on the 2nd day of March, 2016, by the following vote:

AYES: PITINO, ORNELAS, PEREIRA, WINKLER

NOES: WHEETLEY

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Bridget Dory
City Clerk, City of Arcata