

ORDINANCE NO. 1501

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING ZONING REGULATIONS PERTAINING TO CANNABIS RETAIL SALES AND SERVICE

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

Section 1. Amendment to Allowable Land Uses; Table 2-10. The Allowable Land Uses for the Commercial, Industrial, and Public Facility Zoning Districts depicted in Table 2-10 of Title IX, *Planning and Zoning*, Chapter 1, *Planning and Zoning Standards*, Section 9000, *Land Use Code*, Article 2, *Zoning Uses*, Section 9.26.030 *Commercial, Industrial, And Public Facility Zoning District Allowable Land Uses*, are hereby amended to add “Cannabis Retail Sales and Service” as a new land use type, delete “Medical services – Cannabis dispensary” land use type, and add “medicinal cannabis” to footnote (9) as shown in the following strike through and bold double underscore text (unchanged text within the Table is omitted and is shown by “* * *”):

TABLE 2-10 Allowed Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts	P	Permitted Use, Zoning Clearance required							
	MUP	Minor Use Permit required							
	UP	Use Permit required (2)							
	S	Permit determined by specific use regulations							
	—	Use not allowed							
LAND USE (1)	PERMIT REQUIRED BY DISTRICT								Specific Use Regulations
	CC	CG	CV	CM	IL	IL-2	IG	PF	

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RETAIL TRADE (2)

<u>Cannabis Retail Sales and Service</u>	UP	UP	—	UP	UP	UP	UP	—	<u>9.42.105</u>
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SERVICES - BUSINESS, FINANCIAL, PROFESSIONAL

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Medical services – Cannabis dispensary	UP	UP	—	—	—	UP	—	—	<u>9.42.105</u>
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Notes:

(9) Cultivation allowed only in conjunction with a medicinal cannabis retail sales and service facility~~dispensary~~ pursuant to Section 9.42.105

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Section 2. Text Amendment to Combining Zone. The Combining Zone of Title IX, *Planning and Zoning*, Chapter 1, *Planning and Zoning Standards*, Section 9000, *Land Use Code*, Article 2, *Zoning Uses*, Section 9.28.130 *Cannabis Innovation Zone (:CIZ) Combining Zone* are hereby amended by the revisions to add the words “including accessory uses as authorized by 9.42.040” as shown in the following bold double underscore text:

9.28.130 Cannabis Innovation Zone (:CIZ) Combining Zone

* * *

D. Land Use and Development Standards. Proposed development and new land uses within the :CIZ combining zone shall comply with the requirements of the primary zoning district, and all other applicable provisions of this Land Use Code, including accessory uses as authorized by 9.42.040. In addition, the following specific regulations apply within the :CIZ combining zone:

* * *

Section 3. Text Amendment to Accessory Uses. Title IX, *Planning and Zoning*, Chapter 1, *Planning and Zoning Standards*, Section 9000, *Land Use Code*, Article 4, *Standards for Specific Land Uses*, Section 9.42.040, *Accessory Uses*, is hereby amended as shown in the following strike through and bold double underscore text:

9.42.040 Accessory Uses

In addition to the uses expressly permitted in each zoning district by Article 2 (Zoning Districts and Allowable Land Uses), the following accessory uses are also permitted in compliance with this Section. See also Section 9.42.020 (Accessory Retail and Service Uses). ~~These do not include uses covered in Section 9.42.105 (Medicinal Cannabis).~~

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D. Sales. Wholesale or retail sales ~~to a buyer's custom order~~, of goods produced by an approved primary industrial use on the same lot and other ancillary goods.

* * *

Section 4. Text Amendment to Medical Marijuana: Cultivation and Dispensing. Title IX, *Planning and Zoning*, Chapter 1, *Planning and Zoning Standards*, Section 9000, *Land Use Code*, Article 4, *Standards for Specific Land Uses*, Section 9.42.105, *Medical Marijuana: Cultivation and Dispensing*, is hereby amended by the revisions to the text as shown in the following strike through and bold double underscore text:

9.42.105 ~~Medicinal Cannabis: Cultivation and Dispensing~~ Cannabis Retail Sales and Service

A. Purpose. The purpose and intent of this Section is to regulate the ~~cultivation and dispensing of medicinal~~ retail sales and service uses in a manner that protects the health, safety and welfare of the community. This Section is not intended to interfere with a patient's right to medicinal cannabis, as provided for in the Compassionate Use Act (Proposition 215, California Health and Safety Code Section 11362.5), the Medical Marijuana Program (Health and Safety Code Section 11362.7 et seq.), and the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified at Division 10 of the Business and Professions Code, Section 26000 et seq., nor does it criminalize medicinal cannabis possession or cultivation in accordance with State law.

B. Applicability. No part of this Section shall be deemed to conflict with Federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 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. ~~The cultivation, processing and dispensing of medicinal cannabis~~ Cannabis retail sales and service uses in the City of Arcata are controlled by the provisions of this Section and Sections 9.26.030 and 9.28.130.

C. Release of liability and hold harmless. The owner and permittee of a ~~medicinal cannabis dispensary or cultivation~~ cannabis retail sales and service facility ~~shall release~~ the City of Arcata, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of cannabis retail sales and service dispensary or cultivation facility owners, operators, employees, or clients for violation of State or Federal laws in a form satisfactory to the Director. In addition, the owner and permittee of each ~~medicinal cannabis dispensary or cultivation~~ cannabis retail sales and service facility shall indemnify and hold harmless the City of Arcata and its

agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cannabis retail sales and servicedispensary or cultivation facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution, cultivation and/or on- or off-site use of ~~medicinal~~-cannabis provided at the cannabis retail sales and servicedispensary or cultivation facility in a form satisfactory to the Director.

D. ~~Medicinal cannabis for personal use.~~ ~~An individual qualified patient shall be allowed to cultivate medicinal cannabis within their private residence. Medicinal cannabis for personal use shall be in conformance with the following standards:~~

- ~~1. The medicinal cannabis cultivation area shall not exceed 100 square feet;~~
- ~~2. The sale of medicinal cannabis produced for personal use is prohibited;~~
- ~~3. No more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence or upon the grounds of that private residence at any one time;~~
- ~~4. From a public right of way, there shall be no exterior evidence of medicinal cannabis cultivation either within or outside the residence;~~
- ~~5. The medicinal cannabis cultivation area shall be in compliance with the current, adopted edition of the California Building Code;~~
- ~~6. The medicinal cannabis cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.~~

~~ED.~~ Permit requirements for cannabis retail sales and service facilities~~medicinal cannabis dispensaries.~~ ~~Medicinal cannabis dispensaries~~Cannabis retail sales and service facilities may be established only in those zoning districts listed in Table 2-10, "Allowable Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts." Cannabis retail sales and service facilities operating as a primary use~~Medicinal cannabis dispensaries~~ shall only be allowed with an approved ~~use~~Use ~~P~~permit in conformance with Section 9.72.080 (Use Permit and Minor Use Permit). Cannabis retail sales and service facilities operating as an accessory use to an allowed primary use shall not require a Use Permit. The fact that an applicant possesses other types of State or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate a ~~medical cannabis dispensary~~cannabis retail sales and service facility. Both primary and accessory uses~~Medicinal cannabis dispensaries~~ shall obtain a ~~e~~Commercial ~~A~~Activity ~~P~~permit from the City and any licenses required by the State of California.

1. Specific regulations. The following specific regulations apply to cannabis retail sales and service facilities~~medicinal cannabis dispensaries~~:

- a. The total number of primary and accessory cannabis retail sales and service facilities ~~medicinal cannabis dispensaries~~ within the City of Arcata shall be limited to the number as specified in the City of Arcata's Cannabis Use and Regulation, Arcata Municipal Code Title V, Chapter 10, and implementing Commercial Cannabis Activity Permit licensing regulation~~two.~~ Each Commercial – Mixed Use Center district shall be limited to no more than one Use Permit. No Use Permits shall be approved in the Commercial – Central :Plaza Area combining zone. Accessory cannabis sales and service facilities shall not be subject to the number and location limitations on primary cannabis retail sales and service facilities.
- b. In addition to Section 9.72.080(F) (Use ~~permit~~Permit findings and decision), the review authority should give special consideration to approving cannabis retail sales and service facilities ~~dispensaries~~ located within a 300-foot radius ~~from of~~ any existing residential zoning

district, within 500 feet of any other existing cannabis retail sales and service facility, day care, youth center, or K-12 school ~~medicinal cannabis dispensary~~ which is located either inside or outside the jurisdiction of the City, ~~or within 500 feet from any existing public park, playground, day care, or school.~~

c. If the ~~Use Permit~~ Use Permit authorizes on-site medicinal cannabis cultivation at the cannabis retail sales and service facility ~~dispensary~~, on-site cultivation shall not exceed 25 percent of the ~~dispensary's facility's~~ total floor area, and in no case shall cultivation area be greater than 1,500 square feet.

d. Cannabis retail sales and service facilities ~~Medicinal cannabis dispensaries~~ shall not permit the smoking, vaping, ingestion, or consumption of ~~medicinal~~ cannabis on site unless specifically authorized under the Use Permit in compliance with all other applicable state and local law.

e. Cannabis retail sales and service facilities ~~Medicinal cannabis dispensaries~~ shall not permit the on-site display of cannabis plants unless specifically authorized under the Use Permit.

f. Cannabis retail sales and service facilities ~~Medicinal cannabis dispensaries~~ shall not permit the distribution of live plants, starts and clones unless specifically authorized under the Use Permit. ~~only as allowed by the approved use permit.~~

~~g. Existing medicinal cannabis dispensaries operating under the authority of a use permit and commercial cannabis activity permit, and in good standing, may conduct retail sales of nonmedicinal cannabis, subject to the issuance of, and in full compliance with, an amended use permit and a commercial cannabis activity permit for retail sales of nonmedicinal cannabis.~~

Section 8. Text Amendment to Definitions. Title IX, *Planning and Zoning*, Chapter 1, *Planning and Zoning Standards*, Section 9000, *Land Use Code*, Article 10, *Glossary*, Section 9.100.020, *Definitions of Specialized Terms and Phrases*, is hereby amended by the revisions to the text as shown in the following strike through and bold double underscore text:

* * *

9.100.020 – Definitions of Specialized Terms and Phrases

* * *

C Definitions, "C."

* * *

Cannabis Retail Sales and Service Facility. A business where cannabis products are sold to, a consumer for on- or off-site consumption or use. Cannabis services include businesses using cannabis products as part of a service to consumers such as a beauty/barber shop, massage parlor, counseling, and similar establishments.

* * *

Section 9. Findings. Based upon the whole record, information received in public hearings, comments from responsible agencies, and the Arcata Planning Commission recommendation PC-18-01, dated March 27, 2018, the following findings are hereby adopted:

1. Since adoption of the Compassionate Use Act in 1996, the City of Arcata has amended its Medical Marijuana Regulatory Program to reflect changes in State cannabis regulations.
2. The proposed Land Use Code text amendments are local regulatory standards for retail cannabis activities consistent with Senate Bill 94, also known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as amended, and the implementing State regulations.

3. The proposed Land Use Code text amendments are consistent with all other provisions of the General Plan and would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
4. The affected commercial and industrial sites are physically suitable for the proposed or anticipated uses and/or development.
5. The City of Arcata has regulated cannabis businesses since 2008, including the requirements of a specific finding for nearby sensitive land uses such as residential, schools and day cares. The special consideration buffers are effective for protecting the community's public health, safety and welfare.
6. The proposed amendments are exempt from environmental review according to California Code of Regulations §15061(b)(3) as there is no possibility the activity will have a significant effect on the environment based on the following: 1) the City's cannabis regulatory program involves allowing retail sales in zones already zoned for retail uses; 2) the zoning district adoption evaluated the impacts associated with retail uses in the City's former zoning ordinance, the Land Use and Development Guide, and was subsequently evaluated with the adoption of the Land Use Code; 3) no new districts are proposed; and 4) except in limited situations where the use is principally permitted, each proposed project will undergo individual CEQA review to determine if the projects proposed under these regulations have impacts that were not anticipated in the adoption of the zoning districts.

Section 10. Severability. If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

Section 11. Limitation of Actions. Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

Section 12. Effective Date. This ordinance shall become effective 30 days after adoption.

DATED: June 6, 2018

ATTEST:

APPROVED:

/s/ Bridget Dory
City Clerk, City of Arcata

/s/ Sofia Pereira
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 1501, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, on the 6th day of June, 2018, by the following vote:

AYES: **PEREIRA, WATSON, ORNELAS, PITINO, WINKLER**
NOES: **NONE**
ABSENT: **NONE**
ABSTENTIONS: **NONE**

/s/ Bridget Dory
City Clerk, City of Arcata