

ORDINANCE NO. 16-9

AN ORDINANCE AMENDING CONCORD MUNICIPAL CODE SECTION 5.05.020 (ARTICLE INTENDED AS REVENUE MEASURE) TO SPECIFY THAT A STAMP, SIGNATURE, OR OTHER NOTATION ON APPROVED PLANS, BUSINESS LICENSE, OR SIMILAR DOES NOT CONSTITUTE A ZONING CLEARANCE, ADMINISTRATIVE PERMIT, MINOR USE PERMIT, USE PERMIT, OR OTHER REGULATORY APPROVAL; CHAPTER 5.80 (MEDICAL MARIJUANA DISPENSARIES) TO RENAME CHAPTER AND ADD SECTION 5.80.030 PROHIBITING OUTDOOR MARIJUANA CULTIVATION; AND SECTION 9.05.020 (SALE AND DISPLAY OF NARCOTICS AND OTHER PARAPHERNALIA) TO RENAME SECTION AND CLARIFY THE ENFORCEMENT OF SALE AND DISPLAY OF PROHIBITED SUBSTANCES OR PARAPHERNALIA.

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (CSA), which, among other things, makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act (CUA), codified as California Health and Safety Code Section 11362.5. The CUA creates a limited exception from criminal liability for serious ill persons who are in need of medical marijuana for specified medical reasons and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, in 2004, the State legislature adopted the Medical Marijuana Program Act (MMPA), codified as California Health and Safety Code Sections 11362.7 et seq., to clarify the scope of the CUA and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA. The CUA expressly anticipates the enactment of additional local legislation. It provides “Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.” (Health and Safety Code Section 11362.5); and

WHEREAS, on September 27, 2005, the City Council adopted Ordinance 05-9, amending the Concord Municipal Code by prohibiting the establishment of medical marijuana dispensaries, due to the inconsistencies between Federal and State law and to protect the public health, safety, and general welfare; and

1 **WHEREAS**, on April 9, 2013, the City Council adopted Ordinance 13-1, amending the
2 Concord Development Code, prohibiting outdoor cultivation of medical marijuana to provide for the
3 public health, safety, and welfare, to limit odor caused by marijuana from impacting adjacent
4 properties, and to prevent the attractive nuisance created by marijuana cultivation, which creates the
5 risk of burglary, trespass, robbery, and armed robbery, posing the threat of serious injury or death, and
6 requiring the expenditure of scarce police and public safety resources; and

7 **WHEREAS**, on November 8, 2016, the Control, Regulate, & Tax Adult Use of Marijuana Act
8 (AUMA) was approved by California voters through the passing of Proposition 64. Effective
9 November 9, 2016, the AUMA legalizes for persons 21 years or older to: (1) smoke or ingest
10 marijuana or marijuana products, (2) possess, process, transport, purchase, obtain, give away without
11 compensation to persons 21 years or older 28.5 grams of marijuana or 8 grams of concentrated
12 marijuana, and (3) possess, plant, cultivate, harvest, dry, or process up to six living marijuana plants
13 per legal dwelling unit for personal use. Additionally, the AUMA will create a state regulatory and
14 licensing system governing the commercial cultivation, testing, and distribution of nonmedical
15 marijuana, and the manufacturing of nonmedical marijuana products; and

16 **WHEREAS**, the Federal government may enforce the CSA, despite the CUA, MMPA, and
17 AUMA; and

18 **WHEREAS**, marijuana plants, when grown outdoors, often produce a distinctive, strong odor
19 (especially as they mature prior to harvest) that can be detectable and offensive beyond the borders of
20 the property on which it is grown; and

21 **WHEREAS**, marijuana has a high market value and the strong smell and visibility of
22 marijuana create an attractive nuisance, thereby creating the risk of burglary, trespass, robbery, and
23 armed robbery, potentially resulting in serious injury or death, and requiring the commitment of scarce
24 police and public safety resources; and

25 **WHEREAS**, adoption of text amendments (also referred to herein as the “ordinance”) to the
26 City of Concord Municipal Code prohibiting outdoor cultivation of marijuana and clarifying the
27 enforcement of sale and display of prohibited substances or paraphernalia is necessary and proper to
28 maintain and protect the public health, safety, and welfare of the citizens of Concord; and

1 **WHEREAS**, the ordinance does not constitute a “project” within the meaning of CEQA
2 Guidelines Section 15060(c)(2) because there is no potential for it will result in a direct or reasonably
3 foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because
4 it has no potential for resulting in either a direct physical change to the environment, or a reasonably
5 foreseeable indirect physical change in the environment. Even if the ordinance does comprise a
6 project for CEQA analysis, it falls within the “common sense” CEQA exemption set forth in 14 Cal
7 Code Regs. Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is
8 no possibility that the activity in question may have a significant effect on the environment.”

9 **THE CITY COUNCIL OF THE CITY OF CONCORD DOES ORDAIN AS FOLLOWS:**

10 **Section 1.** All of the facts set forth in the Recitals are true and correct and are hereby
11 incorporated and adopted as findings of the City Council as if fully set forth herein.

12 **Section 2.** The ordinance does not constitute a “project” within the meaning of CEQA
13 Guidelines Section 15060(c)(2) because there is no potential for it will result in a direct or reasonably
14 foreseeable indirect physical change in the environment and CEQA Guidelines Section 15378 because
15 it has no potential for resulting in either a direct physical change to the environment, or a reasonably
16 foreseeable indirect physical change in the environment. Even if the ordinance does comprise a
17 project for CEQA analysis, it falls within the “common sense” CEQA exemption set forth in 14 Cal
18 Code Regs. Section 15061(b)(3), excluding projects where “it can be seen with certainty that there is
19 no possibility that the activity in question may have a significant effect on the environment.”

20 **Section 3.** Concord Municipal Code Section 5.05.020 (Article intended as revenue measure)
21 is hereby amended to specify that a stamp, signature, or other notation on approved plans, business
22 license, or similar does not constitute a zoning clearance, administrative permit, minor use permit, use
23 permit, or other regulatory approval, as outlined in Exhibit “A”.

24 **Section 4.** Concord Municipal Code Chapter 5.80 (Medical Marijuana Dispensaries) is hereby
25 amended to: (1) rename chapter and (2) add Section 5.80.030 prohibiting outdoor marijuana
26 cultivation, as outlined in Exhibit “B”.

1 **Section 5.** Concord Municipal Code Section 9.05.020 (Sale and display of narcotics and other
2 paraphernalia) is hereby amended to rename that section and provide clarifications about the
3 enforcement of sale and display of prohibited substances or paraphernalia, as outlined in Exhibit "C".

4 **Section 5.** This Ordinance No. 16-9 shall become effective thirty (30) days following its
5 passage and adoption. In the event a summary of said Ordinance is published in lieu of the entire
6 Ordinance, a certified copy of the full text of this Ordinance shall be posted in the office of the City
7 Clerk at least five (5) days prior to its adoption and within fifteen (15) days after its adoption,
8 including the vote of the Councilmembers. Additionally, a summary prepared by the City Attorney's
9 Office shall be published once at least five (5) days prior to the date of adoption of this Ordinance and
10 once within fifteen (15) days after its passage and adoption, including the vote of the
11 Councilmembers, in the East Bay Times, a newspaper of general circulation in the City of Concord.

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Laura M. Hoffmeister
Mayor

ATTEST:

Joelle Fockler, MMC
City Clerk

(Seal)

Ordinance No. 16-9 was duly and regularly introduced at a regular meeting of the City Council
of the City of Concord held on December 13, 2016, and was thereafter duly and regularly passed and
adopted at a regular meeting of the City Council of the City of Concord on January 3, 2017, by the
following vote:

AYES: Councilmembers -

NOES: Councilmembers -

ABSTAIN: Councilmembers -

ABSENT: Councilmembers -

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I HEREBY CERTIFY that the foregoing is a true and correct copy of an ordinance duly and regularly introduced, passed, and adopted by the City Council of the City of Concord, California.

Joelle Fockler, MMC
City Clerk

Attachments:

- Exhibit "A": ~~Strikethrough~~ & Underlined Version of Chapter 5.05
- Exhibit "B": ~~Strikethrough~~ & Underlined Version of Chapter 5.80
- Exhibit "C": ~~Strikethrough~~ & Underlined Version of Chapter 9.05

Exhibit “A”

Title 5: BUSINESS LICENSES AND REGULATIONS

Chapter 5.05

BUSINESS LICENSES

Sections:

5.05.020 Article intended as revenue measure.

5.05.020 Article intended as revenue measure.

This article is enacted solely to raise revenue for municipal purposes and is not intended for regulation. **A stamp, signature, or other notation on approved plans, business license, or similar does not constitute a zoning clearance, administrative permit, minor use permit, use permit, or other regulatory approval.**

(Code 1965, § 6101; Code 2002, § 18-32. Ord. No. 836)

DRAFT

Exhibit "B"

Title 5: BUSINESS LICENSES AND REGULATIONS

Chapter 5.80

~~MEDICAL MARIJUANA DISPENSARIES~~

Sections:

- 5.80.010 Definitions.
- 5.80.020 Medical Marijuana Dispensary as a Prohibited Use.
- 5.80.030 Outdoor Marijuana Cultivation Prohibited.

5.80.010 Definitions.

Medical Marijuana Dispensary or Dispensary means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one (1) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 et seq. A medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law: A clinic licensed pursuant to Chapter 1.05 of Division 2 of the Health and Safety Code; A healthcare facility licensed pursuant to Title 2 of Divisions 2 of the Health and Safety Code; A facility licensed pursuant to Title 2 of Division 2 of the Health and Safety Code; A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; A residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 et seq.

(Code 2002, § 18-330. Ord. No. 05-9)

5.80.020 Medical Marijuana Dispensary as a Prohibited Use.

A medical marijuana dispensary as defined in Section 5.80.010 is prohibited in all zones and no conditional use permit shall be issued therefore.

(Code 2002, § 18-331. Ord. No. 05-9)

5.80.030 Outdoor Marijuana Cultivation Prohibited.

a. Purpose and Intent. It is the purpose and intent of this provision to limit marijuana cultivation to locations within a private residence or inside an accessory building or structure on a parcel developed with a private residence, within a fully enclosed, secure, locked space, and so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to limit odor created by marijuana from impacting adjacent properties, and to prevent the attractive nuisance created by marijuana cultivation, which creates the risk of burglary, trespass, robbery, and armed robbery, posing the threat of serious injury or death, and requiring the expenditure of scarce police and public safety resources.

b. Prohibitions.

- i. No person owning, renting, leasing, occupying or having charge or possession of any parcel shall cause or allow such parcel to be used for the outdoor cultivation of marijuana.
- ii. No person owning, renting, leasing, occupying, or having charge or possession of any parcel, building, or structure shall cause or allow indoor cultivation of marijuana on such parcel, or within any building or structure thereon, except within a private residence or inside an accessory building or structure on a parcel developed with a private residence, within a fully enclosed, secure, locked space, for non-commercial use/purposes consistent with AUMA, the Compassionate Use Act (California Health and Safety Code Section 11362.5) and/or the Medical Marijuana Program Act (California Health and Safety Code Section 11362.7 et seq.).

iii. No person owning, renting, leasing, occupying, or having charge or possession of any parcel, building, or structure shall cause or allow indoor cultivation of marijuana on such parcel or within any building or structure thereon to be visible by normal unaided vision from any public place including any street, sidewalk, or other place freely accessible by the public.

c. Definitions.

“Accessory building or structure” means a building or structure that is not part of the principal dwelling unit on the parcel, the use of which is incidental and subordinate to the use of the principal dwelling. Examples of accessory buildings or structures include, but are not limited to: garages, tool shed, storage shed, carport, greenhouse, pool cabana, and other outbuildings and structures.

“AUMA” means the Control, Regulate and Tax Adult Use of Marijuana Act.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

“Indoor” means any location that is within a fully enclosed non-residential building or structure, or private residence.

“Marijuana” means all parts of the plant Cannabis sativa L., 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. It 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: (a) industrial hemp, as defined in Health and Safety Code Section 11018.5; or (b) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

“Outdoor” means any location within the city that is not within a fully enclosed non-residential building or structure, or within a private residence.

“Parcel” means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (California Government Code Section 66410 et seq.). A parcel may or may not be improved, including but not limited to, buildings, structures, and/or private residences.

“Person” includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling. To the extent allowed by law, “private residence” shall mean a fully enclosed and secure house, apartment unit, mobile home, or other similar dwelling. To the extent allowed by law, a private residence must be currently, presently, and lawfully utilized as the primary dwelling of one or more persons.

d. Violations Declared Nuisance. Any violation of this ordinance, is hereby declared to be a public nuisance and may be abated pursuant to the provisions of Code of Civil Procedure § 731. This remedy is in addition to any other remedy provided by law, including the provisions of the Concord Municipal Code.

e. Conflicts. In the event of any conflict with other provisions of the Concord Municipal Code, the more restrictive standards shall apply.

e. Severability. If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Exhibit "C"

Title 9: PUBLIC PEACE, MORALS AND WELFARE

Chapter 9.05

OFFENSES AND MISCELLANEOUS PROVISIONS

Sections:

9.05.020 Sale and display of ~~narcotics prohibited substances~~ and other paraphernalia.

Cross references: Law enforcement, Ch. 2.50; traffic and vehicles, Title 10.

9.05.020 Sale and display of ~~narcotics prohibited substances~~ and other paraphernalia.

(a) ~~No owner, manager, proprietor, or other person in charge of any room in any place of business shall allow or permit the sale or display of prohibited substances.~~

(b) Display or sale in rooms to which ~~minors persons under the legally permitted age~~ are admitted. No owner, manager, proprietor, or other person in charge of any room in any place of business selling, ~~or displaying for the purpose of sale, any paraphernalia any device, contrivance, instrument, or paraphernalia used, altered, or modified for the purpose of smoking, injecting, or consuming marijuana, hashish, PCP, or any controlled substance as defined in the Health and Safety Code of the state, other than prescription drugs and devices to ingest or inject prescription drugs, as well as roach clips and rollers designed for the smoking of the foregoing,~~ shall allow or permit ~~to be, remain in, enter, or visit such room~~ any person ~~under who is under the legally permitted age the age of 18 years to be, remain in, enter, or visit such room unless such minor person is accompanied by one of his parents or by his legal guardian.~~

(~~cb~~) ~~Minors-Persons excluded from rooms used for sale or display.~~ A person under the ~~legally permitted age of 18 years~~ shall not be, remain in, enter, or visit any room in any place used for the sale, ~~or displaying for sale, of paraphernalia devices, contrivances, instruments, or paraphernalia used, altered, or modified for the purpose of smoking, injecting, or consuming marijuana, hashish, PCP, or any controlled substance other than prescription drugs and devices to ingest or inject prescription drugs, including roach clips and rollers designed and used for smoking the foregoing, unless such person is accompanied by one of his parents or his legal guardian.~~

(~~de~~) ~~Requirements for sale and display rooms.~~ A person shall not maintain, in any place of business to which the public is invited, the display for sale ~~or the offering to sell of devices, contrivances, instruments, or paraphernalia used, altered, or modified for the purpose of smoking, injecting, or consuming marijuana, hashish, PCP, or any controlled substance other than prescription drugs and devices to ingest or inject prescription drugs, including roach clips and rollers designed and used for the smoking of the foregoing,~~ unless within a separate room or enclosure to which ~~persons under the legally permitted age minors not accompanied by a parent or legal guardian~~ are excluded. Each entrance to such a room shall have a sign posted in visible and legible words to ~~that effect that minors, unless accompanied by a parent or legal guardian, are excluded.~~ For the purpose of this section, an "enclosure" shall mean an area of a room separated in such a manner that no material regulated by this section shall be visible from any area of the room open to ~~persons under the legally permitted age minors.~~

(~~ed~~) ~~Violations declared nuisance.~~ ~~The distribution or possession for the purpose of sale, exhibition, or display in any place of business from which minors are not excluded, as set forth in this section, and where devices, contrivances, instruments, or paraphernalia used, altered, or modified for the purpose of smoking, injecting, or consuming marijuana, hashish, PCP, or any controlled substance other than prescription drugs and devices to ingest or inject prescription drugs, including roach clips and rollers designed and used for smoking the foregoing, Any violation of this ordinance~~ is hereby declared to be a public nuisance and may be abated pursuant to the provisions of Code of Civil Procedure § 731. This remedy is in addition to any other remedy provided by law, including the penalty provisions of ~~this~~ the Concord Municipal Code.

(~~fe~~) ~~Penalty.~~ Violation of this section shall constitute a misdemeanor.

(g) Definitions. As used in this Section 9.05.020:

“AUMA” means the Control, Regulate and Tax Adult Use of Marijuana.

“Ingest” means smoking, inhaling, injecting, ingesting, consuming, or otherwise ingesting, inhaling, or otherwise introducing prohibited substances into the human body or an animal body.

“Legally permitted age” means (a) under the age of 18 years unless accompanied by one of his/her/their parents or a legal guardian, or (b) the minimum age set by the AUMA (currently 21 years); provided, however, that to the extent allowed by law, the more restrictive standard shall apply.

“Marijuana”, “marijuana products,” “marijuana accessories,” and the verb “smoke” are as defined in the AUMA.

“Paraphernalia” means any device, contrivance, instrument, marijuana accessories, roach clips and rollers designed for the smoking any prohibited substance, or any item used, altered, or modified for the purpose of ingesting any prohibited substance, other paraphernalia used, altered, or modified for the purpose of ingesting prohibited substances.

Prescription Drugs. To the extent allowed by law, marijuana and marijuana products shall be excluded from the term “prescription drugs” even if prescribed under the AUMA, Compassionate Use Act (California Health and Safety Code Section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code Section 11362.7 et seq.), and/or otherwise.

“Prohibited substances” means any narcotics, marijuana, marijuana products, PCP, similar substances, any controlled substance as defined in the Health and Safety Code of the state, or any products or substances derived from any of the foregoing, other than prescription drugs. Notwithstanding the foregoing, to the extent allowed by law “prohibited substances” shall include marijuana and marijuana products even if prescribed under the AUMA, Compassionate Use Act (California Health and Safety Code Section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code Section 11362.7 et seq.), and/or additional substances prohibited under Federal, State, or local law.

“Sale” or “selling” means the sale, administering, furnishing, giving away, exhibition, display, or offering of prohibited substances and/or paraphernalia.

(h) In the event of any conflict with other provisions of the Concord Municipal Code, the more restrictive standards shall apply.

(i) If any section, subsection, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

(Code 1965, § 4104; Code 2002, § 66-2. Ord. No. 761; Ord. No. 1222)