

ORDINANCE NO. 17-10

AN ORDINANCE AMENDING CHAPTER 5.80 (MARIJUANA) OF THE CONCORD MUNICIPAL CODE TO ALLOW THE DELIVERY OF MEDICAL MARIJUANA BY LICENSED DISPENSARIES TO QUALIFIED PATIENTS

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 Section 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 “(n)othing 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, fixed or mobile, due to the inconsistencies between Federal and State law and to protect the public health, safety, and general welfare; and

WHEREAS, with the adoption of Ordinance 05-9, delivery or delivery services of medical marijuana was also prohibited in the ban of mobile dispensaries;

WHEREAS, on April 9, 2013, the City Council adopted Ordinance 13-1, amending the Concord Development Code, prohibiting outdoor cultivation of medical marijuana to provide for the public health, safety, and welfare, to limit odor caused by marijuana from impacting adjacent

1 properties, and to prevent the attractive nuisance created by marijuana cultivation, which creates the
2 risk of burglary, trespass, robbery, and armed robbery, posing the threat of serious injury or death, and
3 requiring the expenditure of scarce police and public safety resources; and

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

13 **WHEREAS**, on January 10, 2017, the City Council adopted Ordinance 16-9, which (among
14 other things) prohibited outdoor cultivation of medical and nonmedical marijuana. The City Council
15 also directed the Council Committee on Policy Development and Internal Operations (“PD&IO”) to
16 comprehensively study potential regulations for medical and nonmedical marijuana uses; and

17 **WHEREAS**, on May 24, 2017, the PD&IO Committee held a public meeting on marijuana
18 regulations and recommended that the City Council consider an ordinance removing any prohibitions
19 or bans on delivery of medical marijuana from licensed dispensaries, while keeping the existing
20 restrictions and bans on marijuana cultivation and dispensaries (fixed or mobile) in place; and

21 **WHEREAS**, while recognizing the adverse effects and impacts of marijuana processing,
22 cultivation and dispensing activities, the City Council also respects the right of qualified patients to
23 use medical marijuana for relief of their ailments; and

24 **WHEREAS**, allowing delivery of medical marijuana from licensed dispensaries located
25 outside the City to qualified patients located in the City would be the least onerous method of
26 affording access of medical marijuana to qualified patients within the City;

27 **WHEREAS**, the City Council intends to continue its efforts to conduct a comprehensive study
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1 of the potential regulations for medical and nonmedical marijuana uses; and

2 **WHEREAS**, the adoption of text amendments (collectively referred to as “Amendment,”
3 attached as Exhibit A) to Concord Municipal Code Chapter 5.80 to allow for the delivery of medical
4 marijuana from licensed medical marijuana dispensaries located outside the City to qualified patients
5 located within the City is necessary and proper to maintain and protect the public health, safety, and
6 welfare of the citizens of Concord; and

7 **WHEREAS**, said Amendment does not constitute a “project” within the meaning of the
8 California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) because there
9 is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the
10 environment and CEQA Guidelines Section 15378 because it has no potential for either a direct
11 physical change to the environment, or a reasonably foreseeable indirect physical change in the
12 environment. Even if the ordinance does comprise a project for CEQA analysis, it falls within the
13 “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding
14 projects where “it can be seen with certainty that there is no possibility that the activity in question
15 may have a significant effect on the environment;” and

16 **WHEREAS**, the City Council, after giving all public notices required by State Law and the
17 Concord Municipal Code, held a duly noticed public hearing on June 27, 2017, on the proposed
18 Amendment and declared their intent to approve and adopt the Amendment.

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

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

22 **Section 2.** The Amendment does not constitute a “project” within the meaning of the
23 California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) because there
24 is no potential that it will result in a direct or reasonably foreseeable indirect physical change in the
25 environment and CEQA Guidelines Section 15378 because it has no potential for either a direct
26 physical change to the environment, or a reasonably foreseeable indirect physical change in the
27 environment. Even if the ordinance does comprise a project for CEQA analysis, it falls within the
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1 “common sense” CEQA exemption set forth in CEQA Guidelines Section 15061(b)(3), excluding
2 projects where “it can be seen with certainty that there is no possibility that the activity in question
3 may have a significant effect on the environment.”

4 **Section 3.** Concord Municipal Code Chapter 5.80 (Marijuana) is hereby amended as outlined
5 in Exhibit A, attached hereto and made a part hereof.

6 **Section 4.** This ordinance shall become effective thirty (30) days following passage and
7 adoption. In the event a summary of said Ordinance is published in lieu of the entire Ordinance, a
8 certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least
9 five (5) days prior to its adoption and within fifteen (15) days after its adoption, including the vote of
10 the Councilmembers. Additionally, a summary prepared by the City Attorney’s Office shall be
11 published once at least five (5) days prior to the date of adoption of this Ordinance and once within
12 fifteen (15) days after its passage and adoption, including the vote of the Councilmembers, in the East
13 Bay Times, a newspaper of general circulation in the City of Concord.

14
15 ATTEST:

Laura M. Hoffmeister
Mayor

16
17 By: _____

Joelle Fockler
City Clerk
(Seal)

20
21 Ordinance No. 17-10 was duly and regularly introduced at a regular meeting of the City
22 Council of the City of Concord held on June 27, 2017, and was thereafter duly and regularly passed
23 and adopted at a regular meeting of the City Council held on _____, 2017, by the following vote:

24 **AYES:** Councilmembers -
25 **NOES:** Councilmembers -
26 **ABSTAIN:** Councilmembers -
27 **ABSENT:** Councilmembers -
28

Chapter 5.80 MARIJUANA

Sections:

- [5.80.010](#) Definitions.
- [5.80.020](#) Medical marijuana dispensary as a prohibited use.
- [5.80.030](#) Outdoor marijuana cultivation prohibited.
- [5.80.040](#) Miscellaneous provisions.

5.80.010 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.

Delivery shall have the same meaning as the term “delivery” as defined in California Business and Professions Code Section 19300.5(m) for medical marijuana delivery, or any successor statute thereto, including the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the State to a primary caregiver or qualified patients. “Delivery” also includes the use of a dispensary of any technology platform owned or controlled by the dispensary, or independently licensed by the State, which 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.

Indoor means any location that is within a fully enclosed nonresidential building or structure, or private residence.

Marijuana or cannabis shall have the same meaning as defined in California Health and Safety Code Sections 11018 and 19300.5(f), or any successor statute thereto, including but not limited to -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: (1) industrial hemp, as defined in Health and Safety Code Section 11018.5 or any successor statute thereto; or (2) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

MCRSA means the Medical Cannabis Regulation and Safety Act.

Medical Marijuana Dispensary or Dispensary means any facility or location, as defined by Business and Professions Code Section 19300.5 (n), or any successor statute thereto, 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., or any successor statute thereto. 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.

Outdoor means any location within the city that is not within a fully enclosed nonresidential 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.

Primary caregiver means an individual, who is at least 18 years of age, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as defined in Health and Safety Code Section 11362.7, or any successor statute thereto.

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 natural persons.

Qualified patient means a patient, who has verified his or her identity and address to a delivering dispensary, that uses or ingests medical marijuana as that term is defined in California Business and Professions Code Section 19300.5, who is entitled to the protections of California Health and Safety Code Section 11362.5, or any successor statutes thereto.

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.

(a) Exception of deliveries from licensed marijuana dispensaries. Medical marijuana dispensaries are prohibited in the City; however, delivery of medical marijuana from marijuana dispensaries located outside of the City of Concord may be allowed to qualified patients or primary caregivers, subject to the following restrictions:

(1) Only marijuana dispensaries that are licensed under the applicable laws of the State of California, including but not limited to the MCRSA, and are operating in compliance with the applicable laws and regulations of the local jurisdiction in which the marijuana dispensary is located shall be allowed to provide medical marijuana delivery to a qualified patient or primary caregiver in the City of Concord; and

(2) Prior to commencing marijuana deliveries to qualified patients or primary caregivers in the City of Concord, the marijuana dispensary shall register with the Concord Police Department and provide proof that the marijuana dispensary is licensed under the applicable laws of the State of California and operating in compliance with the applicable laws and regulations of the local jurisdiction in which the marijuana dispensary is located; and

(3) Prior to commencing medical marijuana deliveries to qualified patients or primary caregivers in the City of Concord, the marijuana dispensary shall provide the Concord Police Department with the names, ages and driver's license numbers of all persons who will be conducting the deliveries. The marijuana dispensary shall notify the Concord Police Department of any changes in the identities of the persons conducting the deliveries within twenty-four (24) hours of any change in that information; and

(4) Thereafter, on an annual basis and prior to July 1 of each year, the marijuana dispensary shall provide the Concord Police Department with proof that the marijuana dispensary continues to be licensed under the applicable laws of the State of California and is authorized to operate in the local jurisdiction in which the marijuana dispensary is located. In addition to this annual reporting requirement, the marijuana dispensary shall promptly report any thefts of marijuana or money related to the delivery of medical marijuana in the City of Concord to the Concord Police Department.

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.*

(1) 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.

(2) 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 noncommercial 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.).

(3) 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 nonresidential building or structure, or private residence.~~

~~Marijuana means.— 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: (1) industrial hemp, as defined in Health and Safety Code Section 11018.5; or (2) 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 nonresidential 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 section is hereby declared to be a public nuisance and may be abated pursuant to the provisions of Code of Civil Procedure Section 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.~~

~~(f) Severability. If any section, subsection, clause, phrase, or portion of this section 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 section. The City Council hereby declares that it would have adopted the ordinance codified in this section 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.~~

5.80.040 Miscellaneous provisions.

~~(a) Violations declared nuisance. Any violation of this chapter section is hereby declared to be a public nuisance and may be abated pursuant to the provisions of Code of Civil Procedure Section 731. Any violation of this chapter shall also be subject to any of the enforcement remedies available under Chapter 1.05 (General Provisions) such as monetary fines charged for infractions and misdemeanors. These remedies are in addition to any other remedy provided by law, including the provisions of the Concord Municipal Code.~~

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

~~(c) Severability. If any section, subsection, clause, phrase, or portion of this section chapter 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 chapter section. The City Council hereby declares that it~~

would have adopted the ordinance codified in this ~~chapter~~ section 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.