

ORDINANCE NO. 5816

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING IN THEIR ENTIRETY SECTIONS 28.87.300 AND 30.185.110 OF THE SANTA BARBARA MUNICIPAL CODE PERTAINING TO PERSONAL CANNABIS CULTIVATION

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings and Determinations.

A. The Medical Marijuana Regulation and Safety Act (MMRSA) comprising of Assembly Bill 243, Assembly Bill 266, and Senate Bill 643, was enacted on October 9, 2015 and became effective on January 1, 2016. MMRSA establishes a state licensing program for commercial medical cannabis related activities, including the dispensing and cultivation of cannabis. AB 266, through the addition of Chapter 3.5, Division 8 (Commencing with section 19300) of the Business and Professions Code, allows local jurisdictions to adopt and enforce local regulations and permitting requirements relating to commercial medical cannabis activities so long as they meet the minimum state licensing standards and regulations;

B. Assembly Bill 243 adds Article 6 (commencing with section 19331) to Chapter 3.5 of Division 8 of the Business and Professions Code, which requires the Department of Food and Agriculture to promulgate regulations and standards for the cultivation of cannabis to address the associated environmental impacts. The bill further adds section 11362.777 to the Health and Safety Code, which provides that the Department of Food and Agriculture shall establish the Medical Cannabis Cultivation Program to license commercial cultivation of cannabis. Section 11362.777 authorized qualified patients to cultivate up to 100 square feet of cannabis for personal use and primary caregivers to cultivate up to 500 square feet of cannabis for not more than five qualified patients without obtaining a state license;

C. Pursuant to Santa Barbara Municipal Code section 28.87.030 C., and due to the environmental impacts and negative health and safety impacts associated with commercial cultivation and personal cultivation of more than one hundred square feet of cannabis, on January 26, 2016 the City Council found that such uses are obnoxious and detrimental to the welfare of the community and that it was in the best interest of the public to retain local control over cultivation of cannabis by permitting only small-scale cultivation for personal medical use and prohibiting any commercial cultivation with the City of Santa Barbara;

D. On January 26, 2016 the City Council adopted City Ordinance No. 5733 which prohibited commercial cultivation of medical cannabis and limited cultivation of medical cannabis to 100 square feet by a qualified patient for personal medical use at his or her lawful residential unit;

E. On November 8, 2016, Proposition 64, the Adult Use of Marijuana Act ("AUMA"), was approved by the voters of California in a statewide general election. The AUMA legalized, with certain limitations, the possession, use, and cultivation of non-medical cannabis by persons

over twenty-one years of age, and established a state licensing scheme to regulate commercial cannabis activities;

F. On June 12, 2017, Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”) was enacted to provide a single cohesive licensing scheme for all cannabis related activities. S.B. 94 repealed MMRSA (also later known as the Medical Cannabis Regulation and Safety Act) and included certain provisions of MMRSA in the licensing provisions of AUMA. Under Senate Bill 94, these consolidated provisions became known as MAUCRSA;

G. MAUCRSA repealed Health and Safety Code section 11362.777, and made it lawful under section 11362.2 for any person over 21 years of age to cultivate up to six live cannabis plants either indoors or outdoors at his or her private residence for medical or non-medical use;

H. Health and Safety Code section 11362.2 restricts local governments from completely prohibiting persons over 21 years of age from cultivating cannabis inside his or her private residence, but authorizes local agencies to enact and enforce reasonable regulations to regulate indoor cultivation. Section 11362.2(b)(3) permits local governments to completely prohibit persons from engaging in outdoor cultivation for personal use; and

I. In order to address the change in state law pertaining to personal cultivation of cannabis, and continue to limit environmental impacts and protect against negative health and safety impacts associated with the unregulated cultivation of cannabis, the City Council finds that it is in the best interest of the City to reasonably regulate the indoor and outdoor cultivation of cannabis for personal use.

SECTION 2. Section 110 of Chapter 185 of Title 30 of the Santa Barbara Municipal Code is amended in its entirety as follows:

30.185.110 Cannabis Cultivation for Personal Use

A. **Purpose.** The purpose of this Section is to reasonably regulate the cultivation of cannabis for personal use at a private residence, as authorized under section 11362.2 of the California Health and Safety Code.

B. **Definitions.** For the purpose of this Section, the following words and phrases shall have the following meanings.

1. “Cannabis” shall have the meaning set forth in section 26001(f) of the California Business and Professions Code, Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), as it was enrolled in June 2017 in S.B. 94, and as subsequently amended in September 2017 by A.B. 133.

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

3. “Cultivation site” means the location within or at the private residence where cannabis is cultivated.

4. “Live plants” means living cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

5. “Personal cultivation” means the cultivation of cannabis that is not performed in exchange for compensation, including barter, gifts, or promises.

6. “Private residence” means the single primary lawful dwelling unit of a person twenty-one (21) years of age or older.

7. "Family day care home" has the same meaning as in section 1596.78 of the California Health and Safety Code.

C. **Indoor Cannabis Cultivation for Personal Use.** It shall be unlawful for a person to cultivate cannabis indoors for personal use in any zone of the City unless all of the following conditions are met.

1. The cultivation is done by a person twenty-one (21) years of age or older;

2. Cultivation is occurring inside his or her private residence, or inside an accessory structure to a private residence that is fully enclosed and secure;

3. The cultivation site is secured within a locked space that is not visible from anywhere outside the private residence or accessory structure;

4. The cultivation site is not accessible to persons who are under twenty-one (21) years of age;

5. The cultivation site must not produce odors, sounds, or other emissions that are noticeable from adjacent properties and may indicate marijuana cultivation; and

6. A family day care home is not being operated at the private residence.

D. **Outdoor Cultivation for Personal Use.** It shall be unlawful for a person to cultivate cannabis outdoors for personal use in any zone of the City unless all of the following conditions are met.

1. The cultivation is done by a person twenty-one (21) years of age or older;

2. Cultivation is occurring at his or her private residence;

3. The private residence is a single-unit residential housing type;

4. Cultivation occurs exclusively within an enclosed and secured outdoor area of the legal lot upon which the private residence is located, not including the front yard, or within ten (10) feet of the interior lot lines;

5. No more than one (1) live plant is being cultivated outdoors on the property at any given time, whether or not the property contains an accessory dwelling unit;

6. The cultivation site is not visible by normal unaided vision from a public place, public right of way, school providing instruction in kindergarten or any grades 1 through 12, day care center as defined in Health and Safety Code §1596.76, or youth center as defined by Health and Safety Code §11353.1;

7. The live plant does not exceed eight (8) feet in height; and

8. A family day care home is not being operated at the private residence.

E. **Limitation on Number of Plants.** It is unlawful to cultivate more than six (6) living plants at a private residence or within its accessory dwelling structure and outdoor area at any one time, regardless of where the cultivation occurs upon the property.

F. **Nuisance.** Nothing in this Section shall be construed to permit the establishment or maintenance of any use which constitutes a public nuisance.

SECTION 3. Section 300 of Chapter 87 of Title 28 of the Santa Barbara Municipal Code is amended in its entirety as follows:

28.87.300 Cannabis Cultivation for Personal Use

A. **Purpose.** The purpose of this Section is to reasonably regulate the cultivation of cannabis for personal use at a private residence, as authorized under section 11362.2 of the California Health and Safety Code.

B. Definitions. For the purpose of this Section, the following words and phrases shall have the following meanings.

1. "Cannabis" shall have the meaning set forth in section 26001(f) of the California Business and Professions Code, Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), as it was enrolled in June 2017 in S.B. 94, and as subsequently amended in September 2017 by A.B. 133.

2. "Cultivate" or "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

3. "Cultivation site" means the location within or at the private residence where cannabis is cultivated.

4. "Live plants" means living cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

5. "Personal cultivation" means the cultivation of cannabis that is not performed in exchange for compensation, including barter, gifts, or promises.

6. "Private residence" means the single primary lawful dwelling unit of a person twenty-one (21) years of age or older.

7. "Family day care home" has the same meaning as in section 1596.78 of the California Health and Safety Code.

C. Indoor Cannabis Cultivation for Personal Use. It shall be unlawful for a person to cultivate cannabis indoors for personal use in any zone of the City unless all of the following conditions are met:

1. The cultivation is done by a person twenty-one (21) years of age or older;

2. Cultivation is occurring inside his or her private residence, or inside an accessory structure to a private residence that is fully enclosed and secure;

3. The cultivation site is secured within a locked space that is not visible from anywhere outside the private residence or accessory structure;

4. The cultivation site is not accessible to persons who are under twenty-one (21) years of age;

5. The cultivation site must not produce odors, sounds, or other emissions that are noticeable from adjacent properties and may indicate marijuana cultivation; and

6. A family day care home is not being operated at the private residence.

D. Outdoor Cultivation for Personal Use. It shall be unlawful for a person to cultivate cannabis outdoors for personal use in any zone of the City unless all of the following conditions are met.

1. The cultivation is done by a person twenty-one (21) years of age or older;

2. Cultivation is occurring at his or her private residence;

3. The private residence is a single-unit residential housing type;

4. Cultivation occurs exclusively within an enclosed and secured outdoor area of the legal lot upon which the private residence is located, not including the front yard, or within ten (10) feet of the interior lot lines;

5. No more than one (1) live plant is being cultivated outdoors at any given time, whether or not the property contains an accessory dwelling unit;

6. The cultivation site is not visible by normal unaided vision from a public place, public right of way, school providing instruction in kindergarten or any grades 1 through 12, day care center as defined in Health and Safety Code §1596.76, or youth center as defined by Health and Safety Code §11353.1;

7. The live plant does not exceed eight (8) feet in height; and
8. A family day care home is not being operated at the private residence.

E. **Limitation on Number of Plants.** It is unlawful to cultivate more than six (6) living plants at a private residence or within its accessory dwelling structure and outdoor area at any one time, regardless of where the cultivation occurs upon the property.

F. **Nuisance.** Nothing in this Section shall be construed to permit the establishment or maintenance of any use which constitutes a public nuisance.

SECTION 4. Severability and Interpretation.

A. **Severability.** If any provision of this Ordinance or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

B. **Interpretation.** This Ordinance shall be construed to confer upon the City the maximum power and authority allowed by state and federal law. In the event state or federal law is found to conflict with and preempt any provision of this Ordinance, or in the event state or federal law changes to conflict with and preempt any provision of this Ordinance, the remaining and non-conflicting provisions of this Ordinance shall be interpreted and construed to give maximum effect to the remaining and non-conflicting provisions so as to effectuate to the greatest extent possible the purposes and restrictions expressed herein.

SECTION 5. Effective Date

Pursuant to Section 514 of the City Charter, this Ordinance shall take effect thirty (30) days after its adoption. Pursuant to Section 512 of the City Charter, the City Clerk shall cause the ordinance to be published at least once in the official newspaper within fifteen (15) days after adoption, by title only, and the publication shall state that the full text of the ordinance shall be available to the public at the City Clerk's Office.

ORDINANCE NO. 5816

STATE OF CALIFORNIA)
)
COUNTY OF SANTA BARBARA) ss.
)
CITY OF SANTA BARBARA)

I HEREBY CERTIFY that the foregoing ordinance was introduced on November 21, 2017, and was adopted by the Council of the City of Santa Barbara at a meeting held on December 5, 2017, by the following roll call vote:


- AYES: Councilmembers Gregg Hart, Frank Hotchkiss, Cathy Murillo, Bendy White; Mayor Helene Schneider

- NOES: Councilmembers Jason Dominguez, Randy Rowse

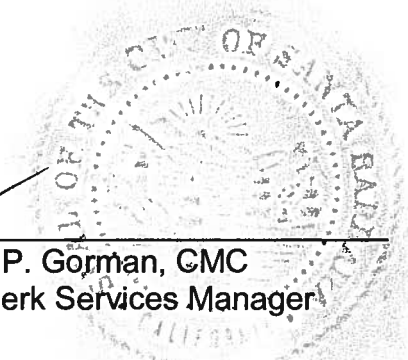
- ABSENT: None

- ABSTENTIONS: None


IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on December 6, 2017.



Sarah P. Gorman, GMC
City Clerk Services Manager



I HEREBY APPROVE the foregoing ordinance on December 6, 2017.



Helene Schneider
Mayor