



Agenda Date: 06/13/2017  
Agenda Item: 4.6

## STAFF REPORT

**Date:** June 5, 2017  
**To:** Mayor and City Council Members  
**From:** Derek P. Cole, City Attorney  
**Cc:** Bryan H. Montgomery, City Manager; Elizabeth M. Perez, Assistant City Attorney; Louis Kidwell, Building Official; Troy Edgell, Code Enforcement Manager; Joshua McMurray, Planning Manager; Ken Strelo, Senior Planner  
**Subject:** Ordinance Repealing and Reenacting Section 9.1.1230 and Repealing and Reenacting Chapter 12 of Title 4 of the Oakley Municipal Code Regarding the Cultivation, Delivery, and Sale of Marijuana within City Limits

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### FOR CONSIDERATION AT THE CITY COUNCIL MEETING ON JUNE 13, 2017

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#### Summary

Following a workshop held earlier this year, our Office has drafted a proposed ordinance regarding the cultivation, sale, and delivery of marijuana that responds to the passage of Proposition 64, last November. The relevant features of the draft ordinance are:

- Outdoor cultivation is banned altogether.
- Indoor cultivation is regulated to the extent allowed by Proposition 64. Residents may grow up to six plants per residence (as Proposition 64 allows them to do, by right) and must abide by several health, safety, and security measures. Excessive water usage is prohibited and strong regulations have been drafted to ensure that marijuana grown in greenhouses (recall that these are considered "indoor" grows under Proposition 64) are done so safely, securely, and in a manner that does not create nuisances.
- Retail sales of marijuana are prohibited. Effectively, this ordinance works within the language of the previous ban on medical marijuana dispensaries by broadening the definition of "dispensary" to include establishments that provide marijuana for medical and non-medical (recreational) uses.
- Door-to-door deliveries of marijuana within City limits are prohibited.

### **Fiscal Impact**

The adoption of the ordinance by itself does not have any measurable financial impact. If the City adopts the ordinance, it would incur law enforcement and code enforcement costs associated with enforcing the ordinance, although some of those costs may be recovered through fines and penalties the City Code authorizes.

### **Recommendation**

The City Attorney recommends that the Council deliberate regarding the proposed ordinance and take any of the following actions: (1) introduce the ordinance as written or with minor amendments; (2) direct our Office to make revisions to the ordinance that are other than minor and bring the ordinance back for introduction at a future meeting; or (3) decline to introduce the ordinance (effectively, this would be a vote to take no action on the subjects at issue).

### **Attachment**

1. An Ordinance of The City Council of The City of Oakley Repealing and Reenacting Section 9.1.1230 and Repealing and Reenacting Chapter 12 of Title 4 of the Oakley Municipal Code Regarding the Cultivation, Delivery, and Sale of Marijuana Within City Limits.

ORDINANCE NO. \_\_

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF OAKLEY REPEALING AND REENACTING SECTION 9.1.1230  
AND REPEALING AND REEANCTING CHAPTER 12 OF TITLE 4 OF THE OAKLEY  
MUNICIPAL CODE REGARDING THE CULTIVATION, DELIVERY, AND SALE OF  
MARIJUANA WITHIN CITY LIMITS**

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

SECTION 1. Section 9.1.1230 of the Oakley Municipal Code is repealed and reenacted as follows:

**9.1.1230 Cultivation of Marijuana**

a. Definitions

1) For purposes of this Section, the term "cultivation" shall mean the planting, growing, harvesting, drying, storage of, or creation of products involving, one or more marijuana plants or any part of such plants for any purpose, including for medical or recreational use.

2) For purposes of this Section, "marijuana" refers to any type of cannabis plant, including cannabis sativa, cannabis indica, cannabis ruderalis, and any hybrids of different types of cannabis plants.

b. The cultivation of marijuana outdoors is prohibited at all locations, and in all zoning districts, within the City of Oakley. The City shall not issue, approve, or grant any permit, license, or other entitlement for the outdoor cultivation of marijuana.

c. Indoor Cultivation

1) The cultivation of marijuana indoors is a permitted use in any residential zoning district, provided the cultivation strictly conforms to the requirements of paragraph (2), below, California Health and Safety Code Sections 11362.1(a)(3) and 11362.2, and any state regulations adopted in accordance with those sections.

2) The indoor cultivation of marijuana shall strictly conform to the following requirements:

A) No person shall cultivate more than six plants indoors within any residence at any time, and no person shall cultivate marijuana on any parcel not improved with a lawful inhabited residence.

B) Marijuana cultivation is permitted only within fully enclosed structures that include solid walls and a solid roof. A fully enclosed and secure structure used

for the cultivation of marijuana that is separate from the main residence on a premises must be located in a side yard or back yard of the residence and the side yard or backyard must be enclosed entirely by a solid fence of at least six feet in height and/or the house. In addition, the detached structure must maintain a minimum 10-foot setback from any property line or the minimum set-back required under any other applicable provision of this Code if such set-backs exceed 10 feet. No such structure shall have a roof or ceiling that is capable of opening or retracting. If such structure is smaller than 120 square feet in size, no portion of its roof or ceiling shall have opaque or transparent surfaces. If such structure is greater than 120 square feet in size, any opaque or transparent surface shall be in accordance with the applicable building codes as the City has adopted.

C) Marijuana cultivation areas in a structure shall not be accessible to persons under 18 years of age. All doors opening into cultivation areas shall be secured by lock and key, padlock, or other security device that prevents unauthorized entry.

D) Marijuana cultivation lighting shall not exceed a total of 1,200 watts and shall be shielded to confine light and glare to the interior of the allowable structure.

E) The use of gas products (e.g., CO<sub>2</sub>, butane, etc.) or generators for marijuana cultivation or processing is prohibited.

F) No exterior evidence of marijuana cultivation shall be observable from any public right-of-way or adjacent property.

G) Marijuana cultivation shall not occur in any kitchen, bathroom, or bedroom of the residence.

H) Any structure used for marijuana cultivation must have proper ventilation to prevent mold damage and to prevent marijuana plant odors or particles from becoming a public nuisance to surrounding properties or the public.

I) The marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products, or wastes.

J) Use, storage, or discharge into wastewater facilities shall strictly comply with all rules and regulations adopted by the Ironhouse Sanitation District.

K) Water usage for cultivation of marijuana under this Section shall not exceed any limitations imposed by federal, state, or local water restrictions.

L) All lighting, equipment, power sources, and construction associated with the cultivation shall comply with the applicable building, electrical, and fire codes as adopted by the City. Such compliance shall include the requirement to obtain any permit the East Contra Costa Fire Protection District may require for the cultivation

SECTION 2. Chapter 12 of Title 4 of the Oakley Municipal Code is repealed and reenacted as follows:

**CHAPTER 12  
MEDICAL MARIJUANA DISPENSARIES AND DELIVERIES**

**4.12.104 Findings and Purpose.**

The intent of this Chapter is to prohibit medical marijuana dispensaries and deliveries of marijuana, whether intended for medical or non-medical purposes, to the maximum extent permitted by the Adult Use of Marijuana Act (Proposition 64, enacted in November 2016), the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643, enacted in 2015), and Article XI, Section 7 of the California Constitution.

**4.12.104 Definitions and Exceptions.**

a. For the purposes of this chapter, "marijuana dispensary" means any facility or location, whether fixed or mobile, where marijuana is provided, sold, made available or otherwise distributed for any purpose, whether medical or non-medical.

b. For the purposes of this chapter, a "marijuana dispensary" shall not include the following uses, provided that the location of such uses are otherwise regulated by applicable law, and further provided any such use complies strictly with applicable law including, but not limited to, Health and Safety Code § 11362.5:

- 1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
- 2) A healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
- 3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.1 of Division 2 of the Health and Safety Code.
- 4) A residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
- 5) A residential hospice, or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

c. For the purposes of this chapter, "delivery" shall have the same definition as set forth in subdivision (m) of Business & Professions Code section 19300.5.

d. For the purposes of this chapter, "transfer" shall mean to make available, sell, transmit, give, distribute, or otherwise provide.

#### **4.12.106 Marijuana Dispensaries Prohibited.**

- a. Marijuana dispensaries are prohibited in the City of Oakley. No marijuana dispensary shall operate, locate, or otherwise be permitted anywhere within city limits.
- b. The City shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a marijuana dispensary.

#### **4.12.108 Marijuana Deliveries Prohibited.**

All sales, transfers, or deliveries of marijuana to any residence within city limits are prohibited.

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#### **SECTION 3. California Environmental Quality Act (CEQA) Finding.**

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

#### **SECTION 4. Severability.**

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

#### **SECTION 5. Effective Date and Publication.**

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The Foregoing Ordinance No. \_\_\_ was introduced with the reading waived at a regular meeting of the City Council of the City of Oakley on the 13<sup>th</sup> day of June, 2017. The Ordinance was adopted with the second reading waived at a regular meeting of the City Council of the City of Oakley on the 27<sup>th</sup> day of June, 2017, and ordered passed to print by the following vote, to wit:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

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Sue Higgins, Mayor

ATTEST:

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Libby Vreonis, City Clerk

Date