

ORDINANCE NO. 2024-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WINTERS AMENDING SECTIONS 17.04.140, 17.205.010, 17.205.020, AND 17.205.030 OF THE WINTERS MUNICIPAL CODE AND ADDING SECTION 17.205.040 TO THE WINTERS MUNICIPAL CODE REGARDING CANNABIS CULTIVATION FOR PERSONAL USE

WHEREAS, in 1996 the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq. and entitled the Compassionate Use Act of 1996, decriminalizing the use of marijuana for medical purposes; and

WHEREAS, in 2003 the California Legislature adopted SB 420, the Medical Marijuana Program, codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subjected to criminal prosecution; and

WHEREAS, in 2015 the California Legislature adopted a series of bills to enact the “Medical Marijuana Regulation and Safety Act,” subsequently amended and retitled the “Medical Cannabis Regulation and Safety Act” (“MCRSA”), which established a statewide licensing scheme for commercial medical marijuana uses, including commercial-scale cultivation, manufacturing, distribution, delivery, and sale of medical marijuana; and

WHEREAS, at the November 8, 2016 general election, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, which established a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, and which also legalized limited personal recreational cannabis use, possession, and cultivation; and

WHEREAS, on June 27, 2017, Governor Brown signed Senate Bill 94, the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), which merged the regulatory regimes of MCRSA and AUMA; and

WHEREAS, the AUMA, Health & Safety Code § 11362.1(a)(3), makes it lawful for any person 21 years of age or older to “[p]ossess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants”; and

WHEREAS, the AUMA, Health & Safety Code § 11362.2(b)(3), explicitly allows a city to “completely prohibit persons from engaging in [the personal cultivation of cannabis] outdoors upon the grounds of a private residence”; and

WHEREAS, the AUMA, Health & Safety Code § 11362.2(b), explicitly allows a city to “enact and enforce reasonable regulations to reasonably regulate” the cultivation of cannabis permitted under Health & Safety Code § 11362.1(a)(3), so long as the city does not completely prohibit the cultivation of up to six plants “inside a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA, Health & Safety Code § 11362.2(a)(2), further restricts such personal cannabis cultivation so that “[t]he living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private residence, are in a locked space, and are not visible by normal unaided vision from a public place”; and

WHEREAS, in November 2017, the City Council adopted Ordinance No. 2017-07 adding Chapter 17.205 and amending sections 17.04.140 and 19.04.030 of the City of Winters Municipal Code regarding prohibited cannabis uses and related definitions consistent with state law. Specifically, among other things, Ordinance No. 2017-07 updated definitions to the Zoning Code for “cannabis” and “commercial cannabis activity” and expressly prohibited commercial cannabis cultivation and activity in the City. The current Zoning Code provisions, as adopted by Ordinance 2017-07, do not expressly prohibit outdoor cannabis cultivation conducted for personal use; and

WHEREAS, section 17.205.020 of the Winters Municipal Code only expressly prohibits commercial cannabis cultivation and activity; and

WHEREAS, on April 23, 2024, the City of Winters Planning Commission held a public hearing regarding proposed amendments to the Winters Municipal Code related to personal outdoor cannabis cultivation. The item was continued from the March 26, 2024, Planning Commission meeting to allow staff to return with a proposed ordinance that would permit outdoor and indoor cultivation of cannabis for personal use with certain limitations, as recommended by the Planning Commission and based on comments and input from the public; and

WHEREAS, on May 21, 2024, the City Council conducted a public hearing on the proposed ordinance and continued the item and introduced the ordinance for first reading on June 18, 2024; and

WHEREAS, the City Council desires to establish regulations for the indoor and outdoor cultivation of cannabis for personal use, in accordance with state law. The City has a compelling interest in protecting the public health, safety, and welfare of its residents, visitors, and businesses, and in preserving the peace and quiet of the neighborhoods within the City, by regulating personal cannabis cultivation; and

WHEREAS, the City Council finds that the provisions contained in this Ordinance clarify and further the intent and scope of the City’s existing restrictions and regulations regarding cannabis uses, including cannabis cultivation for personal use, consistent with state law.

NOW, THEREFORE, the City Council of the City of Winters does hereby ordain as follows:

Section 1. Recitals. The above recitals are hereby found to be true and accurate and are incorporated into this Ordinance as findings of the City Council by this reference.

Section 2. Findings. The City Council hereby makes the following findings:

A. Pursuant to Winters Municipal Code section 17.28.010, the City Council hereby finds that the text amendments to the Zoning Code contained in this Ordinance are required for the

public necessity, convenience and general welfare by clarifying and furthering the intent and scope of the City's existing restrictions and regulations regarding cannabis uses, including cannabis cultivation for personal use, consistent with state law.

B. Pursuant to Winters Municipal Code sections 17.28.040 and 17.28.050, the City Council further finds, based upon Planning Commission recommendation, that this Ordinance conforms to the City's General Plan.

Section 3. Amendments to Section 17.04.140. Section 17.04.140 of Chapter 17.04 of Title 17 of the City of Winters Municipal Code is hereby amended as follows:

A. The following paragraph is hereby inserted in Subsection B of Section 17.04.140 in between the paragraph entitled "Cultivation" and the paragraph entitled "Deemed withdrawn":

"Cultivation site" means the real property on which cannabis cultivation occurs.

B. The following paragraph is hereby inserted in Subsection B of Section 17.04.140 in between the paragraph entitled "Person" and the paragraph entitled "Planning Commission":

"Personal cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or processing of cannabis or any part thereof, conducted by an individual for personal use, and not intended or conducted for sale, resale, or other commercial cannabis activity.

C. The following paragraph is hereby inserted in Subsection B of Section 17.04.140 in between the paragraph entitled "Principal residence" and the paragraph entitled "Production housing":

"Private residence" has the same meaning as the term is defined in Section 11362.2(b)(5) of the Health & Safety Code, and as may be amended, which provides that private residence "means a house, an apartment unit, a mobile home, or other similar dwelling."

Section 4. Amendment to Section 17.205.010. Section 17.205.010 of Chapter 17.205 of Title 17 of the Winters Municipal Code is hereby amended to read as follows (deletions shown in strikethrough and additions shown in underline):

17.205.010 Purpose and Intent.

The purpose and intent of this chapter is to regulate cannabis uses in a manner that protects the health, safety and welfare of the community. This chapter is not intended to interfere with a patient's right to medical cannabis in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, nor does it criminalize cannabis possession or cultivation by specifically defined classifications of persons, pursuant to state law. This ~~article~~ chapter is not intended to give any person independent legal authority to grow or use cannabis; it is intended simply to impose zoning restrictions and reasonable regulations on certain cannabis uses when those uses are authorized by California state law.

Section 5. Amendment to Section 17.205.020. Section 17.205.020 of Chapter 17.205 of Title 17 of the Winters Municipal Code is hereby amended to read as follows (deletions shown in strikethrough and additions shown in underline):

17.205.020 Personal Cannabis Cultivation.

~~Commercial cannabis cultivation is prohibited in the city.~~

A. Prohibition. Cannabis cultivation is prohibited in all zones of the city. No person shall engage in the cultivation of cannabis in the city for any purpose.

B. Limited Exemption. The prohibition on cannabis cultivation in subsection A of this section does not apply to the indoor and outdoor cultivation of cannabis, at a private residence, conducted in accordance with the following regulations:

1. Six plants total. Total cultivation is limited to no more than six (6) living cannabis plants per private residence, or upon the grounds of a private residence (including accessory structures), at one time, regardless of the number of persons residing at the residence and inclusive of both indoor and outdoor plants.

2. Indoor cultivation. Indoor cultivation shall occur entirely within a private residence or within an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure. Persons engaging in indoor cultivation must comply with all state and local laws regarding fire safety, water use, electrical wiring, buildings and indoor cultivation, including without limitation, Health and Safety Code Sections 11362.1 and 11362.2, as may be amended.

3. Visibility. The six (6) living plants (whether grown indoors or outdoors) and any cannabis produced by the plants in excess of 28.5 grams shall not be visible from any public right of way, or in any manner be visible by normal unaided vision from a place regularly accessible to the general public.

4. Setback requirements. The cannabis plants shall be placed at a minimum setback of ten (10) feet from the edge of the canopy to the property line.

5. Plant selection. Persons engaging in cannabis cultivation shall select low odor, low terpene cannabis strains.

6. Plant height. The height of the cannabis plants shall not exceed the standard fence height applicable to the parcel, or six (6) feet, whichever is lesser.

7. Nuisance activity. Cultivation shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gases, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or waste. It is hereby declared to be unlawful for any person to create a public nuisance

in the course of cannabis cultivation under this chapter. A public nuisance may be deemed to exist if the cultivation produces odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby properties or areas open to the public.

8. Electricity.

a. The collective draw from all electrical appliances at the cannabis cultivation site shall not exceed the maximum rating of the approved electrical panel for the private residence where the cannabis is being cultivated.

b. The maximum rating shall be as established in the manufacturer specifications for the approved electrical panel.

9. Gas products. The use of gas products (CO2, butane, propane, natural gas, etc.) or generators for cannabis cultivation is prohibited. Use of gas products shall be limited to those allowed by the California Building, Electrical, and Fire Codes as adopted and amended by the city of Winters.

10. Lighting. Any lighting fixture or combination of lighting fixtures used for cannabis cultivation shall:

a. not exceed the rated wattage and capacity of the circuit breaker; and

b. shall be shielded so as to completely confine light and glare to the interior of the private residence or fully enclosed accessory structure.

11. Use, storage, or discharge into city wastewater facilities of any hazardous chemicals in the cultivation of cannabis is strictly prohibited. "Hazardous chemicals" shall include, but is not limited to, any chemical or substance that is prohibited by the Federal Environmental Protection Agency or the California Department of Food and Agriculture.

12. Water usage. Water usage for the cultivation of cannabis under this chapter shall not exceed any limitations imposed by federal, state, or local water restrictions.

13. Private residence. Any private residence used for cultivation shall:

a. include a fully functional and usable kitchen, as well as bathroom and bedroom areas, for their intended use by the resident(s).

b. not be used primarily or exclusively for cannabis cultivation.

14. Garage. Cultivation shall not displace required parking in a garage.

Section 6. Amendment to Section 17.205.030. Section 17.205.030 of Chapter 17.205 of Title 17 of the Winters Municipal Code is hereby amended to read as follows (deletions shown in strikethrough and additions shown in underline):

17.205.030 Commercial cannabis activity cultivation.

~~Commercial cannabis activity is prohibited in the city. The city expressly reserves the right to amend this restriction and to regulate such commercial cannabis activity in the future, including through zoning restrictions and business license requirements.~~

Commercial cannabis cultivation is prohibited in the city.

Section 7. Addition of Section 17.205.040. Section 17.205.040 of Chapter 17. of Title 17 of the Winters Municipal Code is hereby added to read as follows (additions shown in underline):

17.205.040 Commercial cannabis activity.

Commercial cannabis activity is prohibited in the city. The city expressly reserves the right to amend this restriction and to regulate such commercial cannabis activity in the future, including through zoning restrictions and business license requirements.

Section 8. CEQA. This Ordinance is not a project within the meaning of Title 14 of the California Code of Regulations, Section 15061(b)(3), of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly, as it clarifies and furthers the intent and scope of the City's existing restrictions and regulations regarding cannabis uses in the City of Winters, and does not permit or authorize new or increased intensity of uses. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Yolo in accordance with CEQA Guidelines.

Section 9. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at 318 First Street, Winters, CA 95694. The custodian of these records is the City Clerk.

Section 10. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality 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 severable. The City Council of the City of Winters hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 11. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

Section 12. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not

later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Winters.

INTRODUCED at a Regular Meeting of the City Council of the City of Winters, California, on the 18th day of June, 2024, and thereafter **ADOPTED** at a Regular Meeting of the City Council held on this 2nd day of July, 2024, by the following vote, to wit:

AYES: Mayor Pro Tempore Albert Vallecillo, Council Member Jesse Loren, Council Member Carol Scianna, Council Member Richard Casavecchia

NOES: Mayor Bill Biasi

ABSENT:

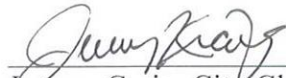
ABSTAIN:

APPROVED



Bill Biasi, Mayor

ATTEST:



Jeremy Craig, City Clerk