

ORDINANCE NO. 2017-06

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON,
ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858
APPROVING AN ADDITIONAL 6 MONTH MORATORIUM PROHIBITING OUTDOOR
CULTIVATION, PROCESSING, MANUFACTURE, DISTRIBUTION, TESTING AND SALE OF
MARIJUANA IN ALL ZONING DISTRICTS IN THE CITY OF AMERICAN CANYON PENDING
REVIEW AND POSSIBLE AMENDMENT OF MUNICIPAL CODE REGULATIONS; AND
SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY**

WHEREAS, the City of American Canyon ("City") seeks to ensure that the City's zoning laws are consistent with the goals, policies, and standards set forth in the City General Plan; and

WHEREAS, California Government code section 65800 et seq. authorizes the city to adopt and administer zoning laws, ordinances, rules and regulations as a means to implement the General Plan; and

WHEREAS, on April 21, 2009, the City Council adopted an Ordinance 2009-08 that prohibits any use that is illegal in accordance with State or Federal law. This ordinance was intended to prohibit marijuana sales, collectives, cultivation, deliveries, and processing, but also applies to any other proposal that is illegal at either the State or Federal level; and

WHEREAS, the City passed the Medical Marijuana Ordinance 2016-01 on January 19, 2016; and

WHEREAS, on November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") was approved by the voters of the State of California; and

WHEREAS, the AUMA regulates marijuana use for personal and commercial purposes, including recreational use of marijuana by adults 21 years of age or older; and

WHEREAS, to regulate personal marijuana use, the AUMA adds Section 11362.1 to the Health and Safety code, which makes it lawful under state and local law for persons 21 years of age or older to possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever up to 28.5 grams of marijuana in the form of cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, the AUMA makes it lawful for individuals to "possess, plant, cultivate, harvest, dry or process not more than six living marijuana plants and possess the marijuana produced by the plants"; and

WHEREAS, the AUMA makes it lawful for individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, to regulate commercial marijuana use, the AUMA adds Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies "the exclusive authority to create, issue, renew, discipline, suspend, or revoke business licenses for transport, storage, distribution, sale, cultivation, manufacturing, and marijuana testing"; and

WHEREAS, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA states that a local jurisdiction shall not prevent marijuana or marijuana products transportation on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, the AUMA authorizes cities to “reasonably regulate” without completely prohibiting marijuana cultivation inside a private residence or inside a fully enclosed and secure accessory building to a private residence located on the private residence grounds; and

WHEREAS, the AUMA authorizes cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until the California Attorney General determines that nonmedical use of marijuana is lawful in the State of California under federal law; and

WHEREAS, the AUMA authorizes cities to completely prohibit marijuana business establishment or operation licenses under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers and marijuana delivery services; and

WHEREAS, the AUMA regulates and addresses nonmedical use of marijuana and establishes a different regulatory system from medical marijuana, and indoor cultivation will no longer be restricted for medical purposes; and

WHEREAS, absent appropriate local regulation authorized by the AUMA, state regulations will control in the City of American Canyon; and

WHEREAS, the California Attorney General’s August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that marijuana cultivation or marijuana concentration in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impact by nuisance activity such as loitering or crime; and

WHEREAS, nothing under existing State law regarding medical marijuana or the AUMA provides or would provide the right to create or maintain a public nuisance; and

WHEREAS, under the Federal Controlled Substances Act, the use, possession and cultivation of marijuana is unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, indoor marijuana cultivation has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, several California cities have reported negative impacts to the public health, safety, and welfare resulting from marijuana cultivation, processing and distribution activities, including illegal sales and distribution of marijuana, trespass, theft, violent robberies and robbery attempts, offensive odors from growing plants, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, based on the findings above, the potential establishment of marijuana cultivation and other uses in the City without regulation poses a current and immediate threat to the public health, safety and welfare due to the negative land use and other impacts of such uses as described above; and

WHEREAS, the issuance or approval of business licenses, subdivision, use permits, variances, building permits, or any other applicable entitlement for marijuana dispensaries, cultivation, manufacturers and delivery will result in a threat to the public health, safety and welfare; and

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that City staff undertake a study to consider zoning, zoning ordinance amendments, and/or other measures to regulate the establishment and operation of marijuana dispensaries, cultivation, manufacturers, and delivery of marijuana uses in the City; and

WHEREAS, California Government Code Section 65858 expressly authorizes the City Council to adopt by four-fifths (4/5) vote, without following the procedures otherwise required for the adoption of a zoning ordinance, an urgency ordinance which is necessary for the immediate protection of the public health, safety, and welfare; and

WHEREAS, on November 15, 2016, the City Council approved a 45-day urgency ordinance to limit indoor cultivation to no more than six live plants; and prohibit outdoor cultivation, processing, manufacture, distribution, testing and sale of recreational marijuana in all zoning districts in the City of American Canyon pending review and possible amendment of municipal code regulations; and setting forth the facts constituting such urgency; and

WHEREAS, on December 20, 2016, the City Council approved a 10 month, 15-day urgency ordinance to limit indoor cultivation to no more than six live plants; and prohibit outdoor cultivation, processing, manufacture, distribution, testing and sale of recreational marijuana in all zoning districts in the City of American Canyon pending review and possible amendment of municipal code regulations; and setting forth the facts constituting such urgency; and

WHEREAS, it is the City Council's intention to keep this interim Urgency Ordinance in effect only until an ordinance establishing regulations is adopted regarding cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana in the City; and

WHEREAS, staff has public noticed this City Council meeting about this emergency ordinance ten (10) days prior to the meeting.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Recitals.

The City Council of the City of American Canyon hereby finds and determines that all of the above Recitals are true and correct and incorporates such Recitals into the Urgency Ordinance by this reference.

SECTION 2: Findings.

The City Council of the City of American Canyon hereby finds and determines that this Urgency Ordinance adopted pursuant to California Government Code Section 65858 is necessary because:

- A. The AUMA became effective November 9, 2016, and contains provisions which allow local governments to reasonably regulate or ban certain activities.
- B. Allowing personal outdoor cultivation of non-medical marijuana conflicts with, and defeats the purpose and intent of current zoning requirements that prohibit personal outdoor cultivation of medical marijuana in all zoning districts due to nuisance, crime and other factors.
- C. Failure to enact this moratorium may result in significant irreversible changes to neighborhood and community character and may ultimately conflict with new and pending State laws and regulations and City ordinances and regulations.

- D. To allow time for the City to consider, study, and enact regulations or a ban for various marijuana cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, it is necessary to temporarily suspend the establishment of any uses or the approval of any and all use permits, variances, building permits, or any other entitlement or permit authorizing the establishment of marijuana cultivation uses, marijuana processing uses, and marijuana dispensaries as defined herein, as such uses may be in conflict with the development standards and implementation regulations that the City will ultimately impose after the City has considered and studied this issue, which shall be accomplished within a reasonable time.
- E. A moratorium will provide the City with time to study marijuana cultivation uses, marijuana processing uses, and marijuana dispensaries and potential impacts such land uses may have on the public health, safety, and welfare.
- F. There is a current and immediate threat to the public health, safety, and welfare of the City and its community, thereby necessitating the immediate enactment of this moratorium as an urgency ordinance in order to ensure that permits for these facilities and uses are established only under adequate regulations. Imposition of a moratorium will allow the City sufficient time to prepare and enact a comprehensive ordinance for the regulation of these uses.

SECTION 3: Declaration of Urgency

Based on the foregoing recitals and findings, all of which are deemed true and correct, this Ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare. This Urgency Ordinance shall take effect immediately upon adoption and shall be of no further force and effect 6-months following the expiration date of the 10 month, 15 day urgency ordinance its adoption unless extended in accordance with the provisions set forth in Government code Section 65858. The 10 month, 15 day urgency ordinance expires on November 4, 2017 and the 6-month extension would expire on May 4, 2018 or until a permanent ordinance that modifies or repeals the urgency ordinance is adopted sooner.

SECTION 4: Definitions

For purposes of this Urgency Ordinance, the following definitions shall apply:

- A. "Commercial marijuana activity" includes marijuana and marijuana product cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale.
- B. "Cultivation" means any activity involving marijuana planting, growing, harvesting, drying, curing, grading or trimming.
- C. "Delivery" means commercial marijuana or marijuana product transfer to a customer. "Delivery" also includes any retail technology platform owned and controlled by the retailer, or independently licensed under California law that enables customers to arrange for or facilitate commercial licensed retail transfer of marijuana or marijuana products.
- D. "Distribution" means marijuana or marijuana product procurement, sale, and transport between entities for commercial use purposes.
- E. "Licensee" means any state issued license holder related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business and Professions Code.
- F. "Manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

- G. "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 plant preparation, its seeds or resin. It does not include:
- a. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code; or
 - b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations; food, drink, or other product.
- H. "Marijuana Accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.
- I. "Marijuana Products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.
- J. "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.
- K. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.
- L. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes marijuana or marijuana product delivery pursuant to a purchase order placed of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.
- M. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

SECTION 5: Prohibited Use

For the period of this Urgency Ordinance or any extension thereof, marijuana cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana as defined herein, shall be prohibited uses in all zoning districts of the City. During the effective period of this ordinance, no such use shall be established or continued if previously established, and no use permit, variance, building permit, or any other entitlement of permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of a dispensary, marijuana cultivation use, marijuana manufacturing use, or marijuana delivery as defined herein in any zoning district, and no person shall otherwise establish such businesses or operation in any zoning district.

SECTION 6: Indoor Cultivation

Notwithstanding Section 5, Proposition 64 (also known as the Control, Regulate, and Tax Adult use of Marijuana Act ("AUMA") allows no more than six (6) living marijuana plants to be planted, cultivated, harvested, dried, or processed by a person of the age of 21 years or older inside a private residence, or inside an accessory building to a private residence that is fully enclosed and secure and located upon the grounds of the private residence, as an incidental use to the primary private residential use, provided that marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Section must be stored in a locked space on the grounds of the private residence not visible from public spaces and/or the public right-of-way. Any personal cultivation under this Section shall comply with all applicable requirements of this Urgency Ordinance.

SECTION 7: Penalty for Violation

No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this section. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory by this section, shall be a misdemeanor or an infraction, at the discretion of the City Attorney or the District Attorney. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this section is declared a public nuisance and may be abated as provided in Chapter 9.04 of this Municipal Code and/or under state law.

SECTION 8: Authority

This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of American Canyon by Government Code Section 65858, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. This Urgency Ordinance shall continue in effect for 10-months and 15-days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice pursuant to Government Code Section 65090 and a public hearing, the City Council extends this Urgency Ordinance for an additional period of time pursuant to Government Code Section 65858. Government Code Section 65858 further provides that such an urgency measure may be extended following compliance with that section for up to an additional twelve (12) months beyond the current 10-month and 15-day period.

SECTION 9: Council Direction

During the period of this Urgency Ordinance, and any extension thereof, the City Council hereby directs City staff to: (1) review and consider options for the regulation or prohibition of marijuana cultivation, marijuana manufacturing, and marijuana distribution uses in the City, including but not limited to development of appropriate rules and regulations governing the location and operation of such uses; and (2) to issue a written report describing the measures which the City has taken to address the conditions which led to the adoption of this ordinance with the City Council ten (10) days prior to the expiration of this Urgency Ordinance, or any extension thereof, and such report shall be made available to the public.

SECTION 10: CEQA

This Urgency Ordinance is not a project within the meaning of Section 15378 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. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Napa in accordance with CEQA Guidelines.

SECTION 11: Severability

If any section, subsection, sentence, clause, phrase or portion of this Urgency Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portions of this Urgency Ordinance. The City Council hereby declares that it would have passed this Urgency Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one (1) or

more sections, subsections, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 12: Custodian of Records

The documents and materials that constitute the record of proceedings on which this Urgency Ordinance is based are located at the City Clerk's office located at 4831 Broadway, Suite 201, American Canyon, CA 94503. The custodian of these records is the City Clerk.

SECTION 13: Restatement of Existing Law

Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City related to the same subject matter or relating to the enumeration of permitted uses under the City's zoning code, shall be construed as restatements and continuations, and not as new enactments.

The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 3rd day of October, 2017 by the following vote:

AYES:	Council Members Aboudamous, Leary, Oro, Vice Mayor Joseph, Mayor Garcia
NOES:	None
ABSTAIN:	None
ABSENT:	None

Leon Garcia, Mayor

ATTEST:

Suellen Johnston, CMC, City Clerk

APPROVED AS TO FORM:

William D. Ross, City Attorney