

ORDINANCE NO. 2020-06

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON, CALIFORNIA
MODIFYING AMERICAN CANYON MUNICIPAL CODE TO ADD CHAPTER 8.02 (PERSONAL
INDOOR CANNABIS CULTIVATION) IN THE CITY OF AMERICAN CANYON**

WHEREAS, On November 8, 2016, the California voting public approved the Adult Use of Marijuana Act ("AUMA"). The AUMA allows an individual age 21 and older to smoke or ingest cannabis products as well as possess, process, transport, purchase, obtain or give cannabis to another adult without compensation; and

WHEREAS, the AUMA allows adult individuals to cultivate up to six plants inside their personal residence or a secure accessory building at their personal residence; and

WHEREAS, the six-plant limit applies to a residence regardless of the number of adults living on the property; and

WHEREAS, in accordance with Ordinance 2018-06, and as allowed by the AUMA, outdoor cultivation at a personal residence is not permitted in American Canyon; and

WHEREAS, most residents have acted responsibly following legalization of personal indoor cultivation; and

WHEREAS, unsafe personal cultivation at home put themselves, their loved ones, and neighbors at personal risk of life and property; and

WHEREAS, the proposed Ordinance is intended to assist Code Enforcement and Law Enforcement with a necessary tool to ensure personal indoor cultivation occurs safely and within allowable limits; and

WHEREAS, on August 18, 2020, the City Council conducted a workshop to discuss potential measures to include in a Personal Indoor Cannabis Cultivation Ordinance and directed staff to return at a subsequent meeting with an ordinance that includes a "per plant" fine structure for cultivation that exceeds allowable limits of six (6) cannabis plants per private residential dwelling and fully enclosed and secure structure on the same property; and

WHEREAS, nothing in this Ordinance shall be construed to allow persons to engage in conduct that violates the law, endangers others, causes a public nuisance, allows the illegal use or diversion of Cannabis, or allows any activity relating to Cannabis that is otherwise illegal under California state law, as amended, except to the extent otherwise specifically set forth; and

WHEREAS, the City Council has considered all of the written and oral testimony presented at a public hearing on October 6, 2020 in making its decision; and

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

SECTION 1. The above recitals are true and correct and are incorporated herein.

SECTION 2. The City Council determines that it is in the best interest of the residents of the City to allow certain Commercial Cannabis Activities in compliance with applicable State Law, including MAUCRSA, to be established and operated as permitted uses within certain areas of the City subject to the regulations and restrictions provided in this Ordinance. It is the City Council's intention that nothing in this Ordinance shall be construed to:

1. Allow a Person to engage in conduct that endangers others or causes a public nuisance.
2. Allow any activity relating to Cannabis that is otherwise not permitted under State law.

SECTION 3. The City Council finds that the actions contemplated by this Ordinance are exempt from the California Environmental Quality Act pursuant to Sections 15061 and 15305 of Title 14, Division 6, Chapter 3 of the California Code of Regulations, in that the Ordinance alone does not have the potential for causing a significant effect on the environment. Further permits and approvals will be required before any activity that will affect the environment will be permitted.

SECTION 4. The City Council amends American Canyon Municipal Code to add Chapter 8.02 (Personal Indoor Cannabis Cultivation) as follows:

Chapter 8, Article 2 PERSONAL INDOOR CANNABIS CULTIVATION

8.02.010. Purpose and Intent.

The purpose of this title is to permit safe personal, noncommercial cannabis cultivation indoors at home pursuant to state law. This title is not intended to interfere with a patient's right to use medicinal cannabis pursuant to state law, as may be amended.

8.02.020. Applicability.

- a) This ordinance explains reasonable regulations to allow indoor personal cannabis cultivation as authorized by Health and Safety Code Section paragraph (3) of subdivision (a) of Section 11362.1.
- b) An indoor personal cannabis cultivation permit is not required. However, structural improvements associated with personal cannabis cultivation may require the property owner or cultivator to obtain a building permit or other entitlement to comply with all applicable zoning, building, electrical and fire code regulations.
- c) Outdoor personal cannabis cultivation is not permitted.
- d) Nothing in this title shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of cannabis that is otherwise illegal under local or state law. Nor shall it be construed, to exempt any activity related to the cannabis cultivation from any applicable electrical, plumbing, land use or other building or land use standards or permitting requirements. No provision of this title shall be deemed a defense or immunity to any action brought against any person by the Napa County District Attorney's office, the Attorney General of the State of California or the United States of America.

8.02.030. Definitions.

- a) "City" means the City of American Canyon.

- b) "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, or any other strain or varietal of the genus Cannabis that may exist or be discovered, or developed, that has psychoactive or medical properties, whether growing or not, including but not limited to the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by California Health and Safety Code section 11018 and Business and Professions Code section 26001(f), as both may be amended from time to time. Any reference to cannabis or cannabis products shall include medical and nonmedical cannabis and medical and nonmedical cannabis products, unless otherwise specified. Cannabis or cannabis product does not mean industrial hemp as defined by Health and Safety Code section 11018.5, or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. Cannabis 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.
- c) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency.
- d) "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, or sale of cannabis and cannabis products.
- e) "Fully Enclosed and Secure Structure." Within a fully enclosed and secure structure that complies with the California Building Code, as adopted in the City of American Canyon, or, if exempt from permit requirements, that has a complete roof enclosure supported by connecting walls extended from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors and accessible only to the owner or tenant. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inches by four inch or thicker studs overlaid with 3/8-inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.
- f) "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis, inside a personal residence or Fully Enclosed and Secure Structure located on the same property as the personal residence.
- g) "Personal cultivation" means indoor cannabis cultivation conducted by an individual strictly for that individual's personal or medical use, possession, processing, transporting, or giving away without any compensation whatsoever in accordance with this Code and state law, including but not limited to Health and Safety Code Sections 11362.1 and 11362.2, as may be amended. Except as herein defined, personal cultivation does not include any cultivation conducted outdoors. In addition, personal cultivation does not include, and shall not authorize, as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis.
- h) "Indoor cannabis cultivation" means cannabis cultivation using artificial lighting and/or ambient indoor lighting inside a residence or fully enclosed and secure structure.

- i) "Outdoor cannabis cultivation" means cannabis cultivation using no artificial lighting conducted in the ground or in containers outdoors with no covering, as well as any cultivation not within a residence or fully enclosed and secure structure regardless of whether artificial and/or ambient lighting is used. Outdoor cultivation includes greenhouses, hoop houses, hot houses or similar structures.
- j) "Private residence" or "Residence." A house, apartment unit, accessory dwelling unit, mobile home or other similar dwelling which is permitted by the City.

8.02.040. Personal Use Indoor Cannabis Cultivation.

- a) Indoor cannabis cultivation for personal use is permitted within all private residential dwellings and fully enclosed and secure structures on the same property as the private residential dwelling, subject to all of the following minimum standards:
 - 1) No more than six (6) cannabis plants may be cultivated indoors by either a qualified patient, primary caregiver, or an individual at least twenty-one (21) years old at each private residential dwelling regardless of the number of qualified patients or adults twenty-one (21) and older who reside at such private residential dwelling.
 - 2) The cultivation area shall not be accessible to minors. The cannabis plants shall be located in a locked space so to prevent access by minor age children, visitors, passersby, or anyone not authorized to possess cannabis.
 - 3) Any residence or fully enclosed and secure structure used for indoor cannabis cultivation shall have a ventilation and filtration system installed that shall ensure cannabis plant odors are not detectable off-site.
 - 4) Personal cannabis cultivation occurring on the property shall not be visible from the public right-of-way.
 - 5) Structures and equipment used for personal cannabis cultivation, such as indoor grow lights, backup power system, irrigation systems, air filtration systems, shall comply with all applicable zoning, building, electrical and fire code regulations as adopted by the City.
 - 6) All fully enclosed and secure structures used for indoor cannabis cultivation shall comply with the setback, lot coverage and other requirements set forth in Title 19.
 - 7) Personal cannabis cultivation shall not interfere with the primary occupancy of the building or structure, including regular use of kitchen(s) or bathroom(s).
 - 8) The use of power generators for cultivation equipment is prohibited, except as an emergency back-up system.
 - 9) Extension cord use in the cultivation room(s) is prohibited.
 - 10) Indoor grow lights used for cultivation shall not exceed 1,200 watts per light.
 - 11) A portable fire extinguisher shall be kept in the fully enclosed and secure structure used for cannabis cultivation that complies with the regulations and standards adopted by the state fire marshal and applicable law. If cultivation occurs in a residence, the portable fire extinguisher shall be kept in the same room as where the cultivation occurs.

8.02.050. Other Requirements for Personal Use Indoor Cannabis Cultivation.

- a) The cultivation area shall not adversely affect the health or safety of the occupants of the private residence or the parcel or any other property by creating dust, glare, heat, noise,

noxious gasses, odor, smoke, traffic, vibration, mold, or other impacts, and shall not be maintained as to constitute a hazard due to use or storage of materials, processes, products or wastes.

- b) The cultivation area shall comply with all California Building, Electrical, Fire, Mechanical and Plumbing Codes as adopted by the City; and the residence has (1) a permanent connection to a public water source drawing water, (2) does not engage in unlawful or unpermitted surface drawing of water for such cultivation, (3) does not permit illegal discharges of water from the parcel.

8.02.060. Enforcement.

- a) Nuisance. Any violation of this title is declared to be a public nuisance.
- i. Building Code violations associated with indoor cannabis cultivation shall be deemed a nuisance and subject to enforcement in accordance with Municipal Code Title 9.12.
 - ii. Indoor cannabis cultivation within a private residential dwelling and fully enclosed and secure structure on the same property that exceed six (6) cannabis plants shall be subject to a fine assessed in the amounts specified by Resolution of the City Council.
 - iii. Outdoor cannabis cultivation in violation of Section 8.02.020(c) shall be deemed a nuisance and subject to enforcement in accordance with Municipal Code Title 9.12. Fines for specific violations of this Ordinance shall be assessed in the amounts specified by Resolution of the City Council.

SECTION 5. Enforcement. Administrative citations or other actions by the City to enforce this Ordinance or to abate any nuisance associated with cannabis cultivation may be established and periodically adjusted by Resolution of the City Council.

SECTION 6. Effective Date. This ordinance shall become effective thirty (30) days following adoption.

SECTION 7. Severability. If any section, subsection, sentence, clause, phrase or portion of this 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 Ordinance. The City Council hereby declares that it would have passed this 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 8. 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 4831 Broadway, Suite 201, American Canyon, CA 94503. The custodian of these records is the City Clerk.

SECTION 9. 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 zoning code, shall be construed as restatements and continuations, and not as new enactments.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 6th day of October, 2020 by the following vote:

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

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 20th day of October, 2020, by the following vote:

AYES: Councilmembers Aboudamous, Joseph, Vice Mayor Oro, Mayor Garcia
NOES: None
ABSTAIN: None
ABSENT: Councilmember Leary

DocuSigned by:

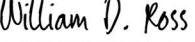
Leon Garcia 10/23/2020
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Leon Garcia, Mayor

ATTEST:

DocuSigned by:

Nicolle Jones 10/26/2020
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Nicolle Jones, Interim City Clerk

APPROVED AS TO FORM:

DocuSigned by:

William D. Ross 10/23/2020
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William D. Ross, City Attorney