

Chapter 9.61

MARIJUANA SALES, PROCESSING AND CULTIVATION Revised 3/23

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9.61.010 Findings.

The city council of the city makes the following findings:

- A. In 1996, the voters of the state of California approved Proposition 215, also known as the Compassionate Use Act (CUA), codified at California Health and Safety Code Section 11362.5 et seq.
- B. On January 1, 2004, S.B. 240, known as the “Medical Marijuana Program” (MMP) (codified at Health and Safety Code Sections 11362.7 through 11362.83) went into effect to clarify the scope of the CUA.
- C. On January 9, 2014, the city council adopted Ordinance No. 989 to regulate the processing and cultivation of medical marijuana.
- D. On November 8, 2016, California voters approved the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), which became effective immediately. Among other things, AUMA decriminalizes under state law the possession, use, transport, and purchase of limited amounts of non-medical marijuana for individuals who are twenty-one years of age or older. AUMA decriminalizes under state law the planting, cultivation, harvesting, drying, and processing (“cultivation activities”) of up to six marijuana plants in, or upon the grounds of, a private residence, but at the same time permits local jurisdictions to enact and enforce reasonable regulations to regulate indoor cultivation activities and to completely prohibit cultivation activities outdoors upon the grounds of a private residence until the California Attorney General determines that non-medical use of marijuana is lawful in the state under federal law.
- E. To regulate commercial use of marijuana, the AUMA added Division 10 (Marijuana) to the Business and Professions Code, which grants state agencies “the exclusive authority to create, issue, renew, discipline, suspend or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana.
- F. The AUMA authorizes cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction including marijuana dispensaries, marijuana retailers, and marijuana delivery services. Absent appropriate local regulation authorized by the AUMA, state regulations will control marijuana activities.
- G. Cannabis activities can create negative impacts relating to overall health, safety, and well-being of city residents. To the extent allowed by California law, a prohibition of commercial marijuana processing and cultivation is necessary to avoid the risks of adverse health effects, criminal activity, loitering, offensive odors, indoor structural damage, and electrical fire hazards that may result from such activities.
- H. On November 6, 2018, Capitola residents passed a ballot measure authorizing the establishment of a tax on retail cannabis sales. Ordinance 1023 establishing a cannabis tax was considered adopted on December 13, 2018, the date the city council adopted Resolution No. 4136 certifying the November 6, 2018, general municipal election.
- I. [The City regulates commercial cannabis activities, requiring consistency with Chapter 5.36 of this code, Retail Cannabis Licenses, a licensing structure of cannabis retail businesses, Chapter 17.24 of this code, Commercial and](#)

~~Industrial Zoning Districts, Section 17.24.020, authorizing retail cannabis sales in specified locations. On December 13, 2018, Ordinance 1021 became effective, adding Chapter 5.36 of this code, Retail Cannabis Licenses, establishing a licensing structure for cannabis retail businesses, and amending Chapter 17.24 of this code, Commercial and Industrial Zoning Districts, Section 17.24.020, to authorize retail cannabis sales in the CR (Regional Commercial) zoning district.~~ (Ord. 1029 § 1 (part), 2019; Ord. 1011 § 1 (part), 2017; Ord. 989 § 1 (part), 2014)

9.61.020 Purpose and intent.

A. It is the purpose and intent of this chapter to promote the health, safety, and general welfare of the residents and businesses within the city by regulating the sales, cultivation and processing of cannabis.

B. Nothing in this chapter shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, or (2) allow any activity relating to the cultivation, processing, or distribution of cannabis that is illegal under state or federal law. (Ord. 1029 § 1 (part), 2019; Ord. 1011 § 1 (part), 2017; Ord. 989 § 1 (part), 2014)

9.61.030 Definitions.

For purposes of this chapter, the following definitions shall apply:

A. “Collective or cooperative cultivation” means the association within California of qualified patients, persons with valid identification cards, and designated primary caregivers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code Section 11362.5 et seq.

B. “Commercial cannabis activity” includes the cultivation, manufacturing, processing, packaging, distribution, and sale of cannabis and cannabis products.

C. “Cultivate” or “cultivation” is the planting, growing, harvesting, drying, processing, or storage of one or more cannabis plants or any part thereof in any location.

D. “Medical cannabis” is defined in strict accordance with California Health and Safety Code Section 11362.5 et seq.

E. “Processing” is defined as any method used to prepare cannabis or its byproducts for commercial sale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create cannabis related products and concentrates.

F. “Primary caregiver” is defined in strict accordance with California Health and Safety Code Section 11362.5 et seq. (Ord. 1029 § 1 (part), 2019; Ord. 1011 § 1 (part), 2017; Ord. 989 § 1 (part), 2014)

9.61.040 Prohibited activities. Revised 3/23

A. Indoor and outdoor cultivation of cannabis is prohibited in all areas of the city, except as outlined in subsection (A)(1) of this section.

1. Cannabis for personal use may be cultivated in conformance with the following standards:

a. An individual may cultivate cannabis indoors on the parcel where the individual resides. Outdoor cultivation is prohibited.

b. A primary caregiver may cultivate medical cannabis indoors for a qualified patient for whom he/she is the primary caregiver. Outdoor cultivation is prohibited.

c. Cannabis cultivation is permitted only on parcels with residential units. Cannabis cultivation is permitted only within a residential unit, a garage, or a self-contained outside accessory building that is secured, locked, and fully enclosed.

d. The cannabis cultivation area shall not exceed a total of six plants per residence or property (for example, a property owner/resident may not grow six plants indoors and grow additional plants in a separate self-contained building on the property).

- e. The use of gas products (CO₂, butane, etc.) for cannabis cultivation or processing is prohibited.
- f. Cannabis cultivation for sale is prohibited. Notwithstanding this prohibition, a primary caregiver may recover from his or her qualified patient the actual costs incurred by the primary caregiver in cultivating the medical cannabis he or she delivers to the qualified patient.
- g. From the public right-of-way, there shall be no exterior evidence of cannabis cultivation.
- h. The residence shall maintain kitchens, bathrooms, and primary bedrooms for their intended use and these rooms shall not be used for cannabis cultivation.
- i. Any cannabis cultivation area located within a residence shall not create a humidity, mold or other nuisance condition.
- j. The cannabis cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, excessive light, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products or wastes.

2. Testing facilities which are fully enclosed in a laboratory setting may operate if consistent with local zoning regulations and do not involve any other prohibited activities, including, but not limited to, cultivation, processing, packaging, or sales. Temporary storage within a permitted testing facility is allowed.

B. It is unlawful for any person conducting, operating, owning, or in control of any business or premises to sell cannabis or cannabis products, whether medical (medicinal) or adult use (recreational) within the city of Capitola unless such person holds both:

- 1. A valid retail cannabis license, as outlined in Section 5.36.030; and
- 2. A conditional use permit for a retail cannabis establishment, in compliance with Section 17.24.020(D)(1)(b).

C. Except as expressly authorized herein, all commercial cannabis activity is prohibited in all areas of the city.

D. Notwithstanding the foregoing:

- 1. Holders of a state retail dispensary license, which are located in any jurisdiction, may deliver medicinal cannabis via mobile delivery to a consumer's premises in the city. Medicinal cannabis delivery businesses located in the city of Capitola shall obtain a city of Capitola business license and have a valid cannabis retailer license.
- 2. Retail delivery businesses located within any jurisdiction within Santa Cruz County may deliver within the city if they are licensed to do so by the state and the jurisdiction in which they are located. Such businesses may be required to obtain a city of Capitola business license consistent with Chapter 5.04, Business License Tax, and, if physically located within the city of Capitola, must also have a valid cannabis retailer license consistent with Chapter 5.36, Retail Cannabis Licenses. (Ord. 1055 § 2, 2022; Ord. 1029 § 1 (part), 2019; Ord. 1011 § 1 (part), 2017; Ord. 989 § 1 (part), 2014)

9.61.050 Prohibited activities declared a public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the city or subject to any available legal remedies, including but not limited to civil injunctions. (Ord. 1029 § 1 (part), 2019; Ord. 1011 § 1 (part), 2017; Ord. 989 § 1 (part), 2014)

9.61.060 Penalties for violation.

A. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and subject to a fine as established by law. Violators shall be subject to any other enforcement remedies available to the city under any applicable state or federal statute or pursuant to any other lawful power the city may possess.

B. Each day a violation is allowed to continue and every violation of this chapter shall constitute a separate violation and shall be subject to all remedies.

C. In the event any civil suit or action is brought by the city to enforce the provisions of this chapter, the prevailing party shall be entitled to recover the amount of its reasonable costs incurred in the action or proceeding, including, but not limited to, attorney's fees. (Ord. 1029 § 1 (part), 2019: Ord. 1011 § 1 (part), 2017: Ord. 989 § 1 (part), 2014)

9.61.070 Severability.

If any part or subsection of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this chapter. (Ord. 1029 § 1 (part), 2019: Ord. 1011 § 1 (part), 2017: Ord. 989 § 1 (part), 2014)