

Attachment 5

Draft Zoning Text Amendment for Personal Cultivation of Cannabis

EXHIBIT A

Chapter 18.118

PERSONAL CULTIVATION OF CANNABIS

18.118.010 Purpose and Intent.

A. The purpose of this chapter is to impose zoning restrictions on the personal cultivation of cannabis pursuant to state law. This chapter is not intended to interfere with a patient's right to use medical cannabis pursuant to state law, as may be amended, nor does it criminalize cannabis possession or cultivation otherwise authorized by state law. This article is not intended to give any person or entity independent legal authority to operate a cannabis business, as it is intended simply to impose zoning restrictions regarding personal cultivation of cannabis in the City pursuant to this Code and state law.

18.118.020 Applicability.

A. Nothing in this article 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. No provision of this article shall be deemed a defense or immunity to any action brought against any person by the Alameda County District Attorney's office, the Attorney General of the State of California or the United States of America.

18.118.030 Definitions.

A. "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.

B. "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis, including nurseries.

C. "Personal cultivation" means cannabis cultivation conducted by an individual strictly for that individual's personal 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.

Personal cultivation also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code Sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis.

D. “Indoor cannabis cultivation” means cultivation of cannabis using exclusively artificial lighting.

E. “Mixed-light cannabis cultivation” means cultivation of cannabis using any combination of natural and supplemental artificial lighting. Greenhouses, hoop houses, hot houses and similar structures, or light deprivation systems are included in this category.

F. “Outdoor cannabis cultivation” means cultivation of cannabis using no artificial lighting conducted in the ground or in containers outdoors with no covering. Outdoor cultivation does not include greenhouses, hoop houses, hot houses or similar structures.

G. “Primary caregiver” shall have the same meaning as set forth in Health and Safety Code section 11362.7, as the same may be amended from time to time.

H. “Qualifying patient” or “qualified patient” shall have the same meaning as set forth in Health and Safety Code section 11362.7, as the same may be amended from time to time.

I. “Medical cannabis” or “medicinal cannabis” means cannabis that is intended to be used for medical cannabis purposes in accordance with the Compassionate Use Act (“CUA,” Health and Safety Code section 11362.7 *et seq.*), the Medical Marijuana Program Act (“MMPA,” Health and Safety Code section 11362.7 *et seq.*) and the Medical Cannabis Regulation and Safety Act (“MCRSA,” Business and Professions Code section 19300 *et seq.*) and the MAUCRSA.

18.118.040 Indoor Cannabis Cultivation and Mixed-Light Cannabis Cultivation for personal use.

A. Indoor cannabis cultivation and mixed-light cannabis cultivation for personal use is permitted within all private residential dwellings and accessory structures to all private residential dwellings within all zoning districts, subject to all of the following minimum standards:

1. All indoor cannabis cultivation and mixed-light cannabis cultivation for personal use, including by a qualified patient or primary caregiver, shall occur in a private residential dwelling or accessory structure to a private residential dwelling, as those terms are defined in Chapter 18.08.

2. No more than six (6) cannabis plants may be cultivated indoors or outdoors (or a combination of both) by either a qualified patient, primary caregiver, or an individual over 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. For example, a qualified patient or adult over the age of twenty-one (21) may grow three (3) plants outdoors and (3) plants indoors for a total of six (6) plants maximum at one residence.

3. Medical cannabis shall only be cultivated by:

a. A qualified patient exclusively for his or her own personal medical use but who does not provide, donate, sell, or distribute medical cannabis to any other person and who can provide a written doctor's recommendation to the City; or

b. A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides medical cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code Section 11362.765(c).

4. Nonmedical cannabis cultivation. For persons other than qualified patients or primary caregivers, all personal cultivation shall be conducted by persons twenty-one (21) years of age or older. The cumulative total of cannabis plants on the property, indoor and outdoor, shall not exceed six (6) cannabis plants, regardless of the number of persons residing at the private residential dwelling.

5. Indoor cannabis cultivation of medical and nonmedical cannabis for personal use may occur inside a private residential dwelling and/or an accessory building or structure on the same parcel, subject to the following restrictions:

i. Structures and equipment used for indoor cannabis cultivation and/or mixed-light cannabis cultivation, such as indoor grow lights, shall comply with all applicable zoning, building, electrical and fire code regulations as adopted by the City.

ii. All accessory buildings and structures used for indoor cannabis cultivation and/or mixed-light cannabis cultivation shall comply with the locational and other requirements set forth in Title 18.

iii. Personal cultivation of cannabis shall not interfere with the primary occupancy of the building or structure, including regular use of kitchen(s) or bathroom(s).

iv. No exterior evidence of cannabis cultivation occurring at the property shall be discernable from the public right-of-way.

v. Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting personal cultivation of cannabis by tenants.

vi. Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of cannabis.

vii. Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in this Code.

viii. The cultivation area shall not be accessible to minors.

18.118.050 Outdoor cannabis cultivation – personal use.

A. Outdoor cannabis cultivation for personal use is permitted at all private residential dwellings and accessory structures to all private residential dwellings within all zoning districts of the City., subject to all of the following minimum performance standards:

1. Outdoor cannabis cultivation is only permitted in a rear or side yard that is entirely enclosed by a solid, opaque fence at least six feet high that is associated with a private residential dwelling or an accessory dwelling unit.

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

3. The cannabis plants shall be placed at a minimum setback of ten feet from the edge of canopy to the property line.

4. No exterior evidence of cannabis cultivation occurring at the property shall be visible from the public right-of-way.

5. For persons other than qualified patients or primary caregivers, all outdoor cannabis cultivation for personal use shall be conducted by persons twenty-one (21) years of age or older, and the cumulative total of cannabis plants on the property, indoor and outdoor, shall not exceed six (6) cannabis plants, regardless of number of persons residing at the private residential dwelling.

6. For qualified patients and primary caregivers, the cumulative total of cannabis plants outside and inside shall not exceed six cannabis plants, regardless of the number of qualified patients and primary caregivers residing at the private residential dwelling.

7. Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting cannabis cultivation by tenants.

8. Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of cannabis.

9. Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in this Code.

10. Outdoor cannabis cultivation shall not be permitted at residences where minors reside.

18.118.060 Enforcement.

A. Nuisance. Any violation of this article is declared to be a public nuisance and may be abated by the city pursuant to this Code.

B. Penalty. A violation of this section shall either be a misdemeanor or an infraction at the discretion of the prosecuting attorney. However, notwithstanding anything in this code to the contrary, persons violating this section shall not be subject to criminal liability under this Code solely to the extent such conduct or condition is immune from criminal liability pursuant to state law, including the Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5), the Medical Marijuana Program (Health and Safety Code Section 11362.7 et seq.), or the Adult Use of Marijuana Act, as they may be amended. This section does not prohibit the city from abating violations of this section by any administrative, civil or other non-criminal means. In such cases, a violation of this section may be considered the civil or administrative equivalent of an infraction or misdemeanor as applicable.