

## **CHAPTER 10.84: MEDICINAL AND ADULT USE OF MARIJUANA**

### **Section**

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### **10.84.010 Purpose.**

The purpose of this Chapter is for the City Council to exercise its police and regulatory powers derived from Section 7 of Article XI of the California Constitution and state law to promote the health, safety and general welfare of the residents and businesses of the City of Cupertino and preserve the City's land use powers, by prohibiting all commercial marijuana activity within the City's jurisdictional limits, unless preempted by state law or authorized by this Chapter. Nothing in this Chapter is intended to circumvent compliance with state law.

### **10.84.020 Definitions.**

For purposes of this Chapter, the terms and words in this Section are defined as follows and in accordance with the relevant provisions of state law, as amended from time to time.

"Accessory Structures" shall have the meaning set forth in Chapter 19.08, Definitions, of the Cupertino Municipal Code.

"Commercial cannabis activity" shall have the same meaning set forth in California Business and Professions Code section 26001(k).

"Cultivation" shall have the same meaning as set forth in California Business and Professions Code section 26001(l).

"Delivery" shall have the same meaning as set forth in California Business and Professions Code section 26001(p).

"Distribution" shall mean the procurement, sale, and transport of cannabis and cannabis products between licensees, as defined in California Business and Professions Code 26001(r).

"Identification Card" shall have the same meaning as set forth in state law, including California Health and Safety Code sections 11362.7(g).

"Marijuana or cannabis" shall have the meaning set forth in California Business and Professions Code section 26001(f). Marijuana and cannabis are used interchangeably in this Code. The term "marijuana" shall also include "medical marijuana," "medicinal marijuana product" and "cannabis product" as defined in Business and Professions Code section 26001.

"Marijuana accessories" shall have the same meaning as set forth in California Business and Professions Code section 26001(g).

"Marijuana cultivation" shall have the same meaning as set forth in California Business and Professions Code section 26001(l).

"Marijuana cultivation site" shall have the same meaning as set forth in California Business and Professions Code section 26001(m).

"Marijuana delivery" shall have the meaning set forth in California Business and Professions Code section 26001(p).

"Marijuana dispensary" means any business, office, store, facility, location, retail storefront, or wholesale component of any establishment, cooperative or collective that delivers, whether mobile or otherwise, dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent the purposes set forth in California Health and Safety Code section 11362.5.

"Medicinal marijuana" and "medicinal marijuana products" shall have the same meaning set forth in California Business and Professions Code section 26001(ai).

"Medicinal marijuana dispensary" means any business, facility, use, establishment, property, or location, whether fixed or mobile, where medicinal marijuana or medicinal marijuana product, is sold, made available, and/or distributed. A "medicinal marijuana dispensary" does not include the following facilities that provide medical care and supportive services to a qualified patient, person with an identification card, or employs a primary caregiver providing services to a qualified patient or person with an identification card at that facility:

- a. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
- b. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
- c. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
- d. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or

e. A residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

“Marijuana products” shall have the same meaning as set forth in California Business and Professions Code section 26001(i).

“Operation” shall have the same meaning set forth in California Business and Professions Code section 26001(ak).

“Outdoors” means any location that is not within a fully enclosed and secure structure.

“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.

“Primary caregiver” shall have the same meaning as set forth in the California Health and Safety Code Section 11362.7.

“Private residence” means a legal, house, apartment unit, accessory dwelling unit or other similar residential dwelling.

“Qualified patient” shall have the same meaning as set forth in Health and Safety Code Section 11362.7.

“Sale” “Sell,” “sale,” and “to sell” shall have the same meaning as set forth in California Business and Professions Code section 26001(as).

#### **10.84.030 Commercial Marijuana Activities Prohibited.**

Except as provided in Section 10.84.040, all commercial activities involving marijuana and all outdoor cultivation of marijuana (both commercial and for personal use), whether or not they require a state or local license, are prohibited in all zones in the City. The City will not issue any permit, license or other entitlement for any commercial marijuana activity or outdoor cultivation of marijuana.

#### **10.84.040 Possession, Delivery, Distribution, and Indoor Cultivation of Marijuana.**

Notwithstanding the prohibitions in Section 10.84.030 above, the following activities are allowed:

- A. Possession of marijuana for personal use is allowed to the limited extent authorized under Health and Safety Code section 11357 and 11362.5.
- B. Delivery of marijuana is allowed in accordance with the following restrictions:
  1. Only by Licensees operating with a valid state license and in compliance with laws and regulations of the local jurisdiction where the Licensee is physically located or obtained the license; and

2. Only deliveries to the City of Cupertino are allowed; deliveries may not originate within the City; and
  3. Deliveries to a qualified patient or by a primary caregiver to his or her qualified patient are allowed, to the extent allowed by California Business and Professions Code section 26033.
- C. The use of the City's public roads by Licensees transporting marijuana or marijuana products to the limited extent authorized by California Business and Professions Code sections 26080(b).
- D. Indoor marijuana cultivation for personal use is permitted only in a Private Residence, to the limited extent authorized under California Health and Safety Code sections 11362.1 and 11362.2 and subject to the following regulations:
1. The cultivation activity shall be incidental to the primary use of the Private Residence as a dwelling;
  2. The property shall be the primary residence of the Person cultivating the marijuana, and the Person shall not participate in cultivation in any other location within the City;
  3. If the Private Residence is rental property, written authorization must be obtained from the landlord, property owner or property manager prior to commencement of cultivation. Nothing in this section prohibits a landlord or property owner from imposing more stringent standards than those outlined in this section. No marijuana cultivation may occur in violation of a lease or rental agreement;
  4. Any structure used for indoor cultivation must be fully enclosed, secure, and locked, as required by state law;
  5. The cultivation area must be within a Private Residence, or an accessory structure to a Private Residence located entirely on property owned or legally in possession of the Person doing the cultivation;
  6. Not more than six (6) mature or immature plants are permitted per Private Residence, regardless of the number of residents occupying the property;
  7. The cultivation area must be a single designated area not exceeding 36 square feet measured by canopy or ten (10) linear feet in height;
  8. The display or any exterior evidence of marijuana cultivation, including but not limited to marijuana plants, storage of marijuana accessories or pesticides, or processing and curing equipment is strictly prohibited;
  9. The use, alterations and additions to the Private Residence, garage, and accessory

structures, must comply with all applicable building, fire, plumbing, electrical, housing and zoning codes, including regulations related to lot coverage, set back, height and parking requirements;

10. The use of gas products, including but not limited to, CO<sub>2</sub> and butane, CO<sub>2</sub> and ozone generators, or other flammable solvents for cultivation or processing is prohibited;

11. Lighting for cultivation shall be energy efficient lighting, such as, light-emitting diodes (LEDs), compact fluorescent lamps (CFLs), or fluorescent lighting and shall not create a fire or safety hazard;

12. A ventilation and filtration system that meets minimum requirements of the adopted edition of the California Building Standards Code or its equivalent(s), is required. It must be designed to ensure that odors from cultivation are not detectable beyond the Private Residence or accessory structure where cultivation occurs, must prevent mold and humidity/moisture, and otherwise protect the health and safety of the occupants and the neighborhood;

13. Cultivation shall not adversely affect the health or safety of the occupants or nearby residents by creating dust, glare, excessive light, heat, noise, noxious gases, odor, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use, storage or disposal of chemicals, materials, processes, products or wastes.

E. Nothing contained in this Section shall be deemed to permit or authorize any use or activity which is otherwise prohibited by state law.

#### **10.84.050 Enforcement, Remedies and Declaration of Public Nuisance.**

A. Enforcement: This Chapter shall be enforced in accordance with and consistent with the enforcement of public health and safety laws, pursuant to Chapter 10 of the Cupertino Municipal Code.

B. Remedies: Violations of this Chapter are subject to administrative, civil, and criminal remedies available under state law and the Cupertino Municipal Code, which at the discretion of the City may be pursued concurrently, including without limitation the fines, penalties, abatement orders and other administrative and civil remedies provided under Chapter 1.10 and 1.12 of the Cupertino Municipal Code.

Violations of this chapter are subject to criminal citations and prosecution under state law. Notwithstanding the penalties set forth above, no provision authorizes a criminal prosecution, arrest or penalty inconsistent with or prohibited under California Health and Safety Code Section 11362.5.

In the event of any conflict between the penalties enumerated in this section of the Cupertino Municipal Code and any penalties set forth in state law, the maximum penalties allowable under state law shall govern.

## **CHAPTER 19.08: DEFINITIONS**

Repeal the following definitions:

~~“Commercial cannabis activity” shall have the meaning set forth in California Business and Professions Code section 19300.5(k).~~

~~“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.~~

~~“Identification Card” shall have the same meaning as set forth in state law, including Health and Safety Code Sections 11352.5, 11362.7, and following, or as may be amended.~~

~~“Marijuana” means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff, and concentrated cannabis and the separated resin, whether crude or petrified, obtained from marijuana. It 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 resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.~~

~~“Medical marijuana” is marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of acquired immune deficiency syndrome (“AIDS”), anorexia, arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code § 11362.7.~~

~~“Marijuana cultivation facility” means any business, facility, use, establishment, property, or location where the cultivation of marijuana occurs. A “marijuana cultivation facility” does not include a “qualified patient’s” primary residence provided such cultivation of medical marijuana is for his or her personal use.~~

~~“Medical marijuana dispensary” means any business, facility, use, establishment, property, or location, whether fixed or mobile, where medical marijuana is sold, made available, delivered, transported, and/or distributed. A “medical marijuana dispensary” does not include the following uses:~~



- ~~a. A “qualified patient” transporting “medical marijuana” for his or her personal use;~~
- ~~b. A “primary caregiver” delivering or transporting “medical marijuana” to a “qualified patient;”~~
- ~~c. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;~~
- ~~d. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;~~
- ~~e. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;~~
- ~~f. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or~~
- ~~g. A residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.~~

~~“Primary caregiver” shall have the same meaning as set forth in state law, including Health and Safety Code Sections 11352.5, 11362.7, and following, or as may be amended.~~

~~“Qualified patient” shall have the same meaning as set forth in state law, including Health and Safety Code Sections 11352.5, 11362.7, and following, or as may be amended.~~

## **REPEAL CHAPTER 19.98:**

### **CHAPTER 19.98: MEDICAL MARIJUANA**

#### **Section**

~~—19.98.010 Purpose.~~

~~—19.98.020 Prohibitions.~~

~~—19.98.030 Enforcement.~~

#### **19.98.010 Purpose.**

~~The purpose and intent of this section is to prohibit medical marijuana dispensaries, marijuana cultivation facilities, medical marijuana deliveries, and commercial cannabis activities, as defined in Chapter 19.08, Definitions, within the city limits. It is recognized that it is a Federal violation under the Controlled Substances Act to possess or distribute marijuana even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with marijuana cultivation facilities and medical marijuana dispensaries and in connection with medical marijuana deliveries, which is detrimental to the public's health, safety, and welfare. The State of California's licensing and regulation as contemplated by Assembly Bills 243 and 266 and Senate Bill 643 have not yet taken effect nor been implemented, and the City Council desires to preserve local control over these uses and activities. Nothing in this Chapter is intended to circumvent compliance with state law.~~

**~~19.98.020 Prohibitions.~~**

~~A. The following are prohibited:~~

- ~~1. Medical marijuana dispensaries in all zones in the city and shall not be established or operated anywhere in the city.~~
- ~~2. Marijuana cultivation facilities in all zones in the city and shall not be established or operated anywhere in the city.~~
- ~~3. Commercial cannabis activities in all zones in the city and shall not be established or operated anywhere in the city.~~

~~B. No person shall own, establish, open, operate, conduct, or manage a medical marijuana dispensary, marijuana cultivation facility, or commercial cannabis activity in the city, or be the lessor of property where a medical marijuana dispensary, marijuana cultivation facility, or commercial cannabis activity is located. No person shall participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any medical marijuana dispensary, marijuana cultivation facility, or commercial cannabis activity in the city.~~

~~C. No permits, grading permit, building permit, building plans, zone change, business license, certificate of occupancy or other applicable approval will be accepted, reviewed, approved or issued for the establishment or operation of a marijuana cultivation facility, medical marijuana dispensary, or commercial cannabis activity.~~

~~D. Nothing contained in this section shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.~~

**~~19.98.030 Enforcement.~~**

~~The city may enforce this section in any manner permitted by law. The violation of this Chapter shall be and is hereby declared to be a public nuisance and shall, at the discretion of the city, create a cause of action for injunctive relief.~~

**ADOPT NEW CHAPTER 19.98:**

**CHAPTER 19.98: MARIJUANA**

**19.98.010 Marijuana.**

**19.98.010 Marijuana.**

All commercial cannabis activities including marijuana cultivation, as defined in Chapter 10.84, are prohibited uses in all zoning districts in the City of Cupertino, except to the extent permitted by state law and Chapter 10.84 of the Cupertino Municipal Code.