

**CITY OF ANGELS
CITY COUNCIL
ORDINANCE NO. 480**

**AN ORDINANCE OF THE CITY OF ANGELS ADOPTING AN URGENCY
MORTORIUM ORDINANCE CONCERNING THE CULTIVATION, COMMERCIAL
AND RETAIL SALE, DISTRIBUTION, AND DELIVERY OF MARIJUANA AND
RELATED LAND USES**

THE CITY COUNCIL OF THE CITY OF ANGELS DOES ORDAIN AS FOLLOWS:

The City Council of the City of Angels Camp hereby finds and declares as follows:

WHEREAS, The City of Angels may make and enforce all laws and regulations not in conflict with the general laws, and the City holds all rights and powers established by state law. Proposition 64, known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), was adopted by the voters on November 8, 2016 and took effect on November 9 of that year. AUMA is now part of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), following legislation enacted in June 2017. MAUCRSA has decriminalized under state law recreational marijuana use, cultivation, and distribution and further established a licensing program for non-medical commercial cultivation, testing, and distribution of non-medical marijuana and the manufacturing of non-medical marijuana products.

WHEREAS, the cultivation of marijuana for personal or commercial use has the potential to lead to nuisances and criminal activity. Growing marijuana plants emit an odor that can be noxious and can interfere with the quiet enjoyment of neighboring properties. Also, marijuana cultivation can be attractive to burglars seeking to steal the plants, which can lead to violent confrontations with property owners. Numerous instances of these adverse secondary effects associated with the cultivation of marijuana have been observed in Calaveras County, in which the City is incorporated.

WHEREAS, it is imperative that the City retain local land use control over marijuana cultivation. Several California cities and counties have experienced serious adverse impacts associated with and resulting from medical marijuana dispensaries and cultivation sites. According to these communities and according to news stories widely reported, marijuana activities have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, and illegal sales of marijuana to, and use of marijuana by, minors and other persons in the areas immediately surrounding such medical marijuana activities. There have also been large numbers of complaints of odors related to the cultivation and storage of marijuana.

WHEREAS, Proposition 64 and MAUCRSA expressly preserve local jurisdictions’ abilities to adopt and enforce local ordinances to regulate non-medical marijuana establishments including local zoning and land use requirements, business license requirements, and the ability to completely prohibit the establishment or operation of one or more types of marijuana businesses.

WHEREAS, Proposition 64 and MAUCRSA further recognize the City’s ability to completely prohibit outdoor planting, harvesting, cultivation or processing of marijuana for personal use, and the City’s ability to regulate indoor cultivation for personal use.

WHEREAS, Government Code sections 36937 and 65858 authorize the adoption of an interim urgency ordinance to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a city’s legislative bodies are considering, studying, or intending to study within a reasonable time.

WHEREAS, based on the foregoing, the City finds that there is a current and immediate threat to the public health, safety, or welfare and that this Ordinance is necessary in order to protect the City from the potential effects and impacts of marijuana uses in the City, potential increases in crime, impacts on public health and safety, the aesthetic impacts to the City, and other similar or related effects on property values and the quality of life in the City’s neighborhoods.

Section I: Indoor and Outdoor Cultivation of Marijuana

A. For purposes of this Ordinance, the terms below shall be defined as indicated.

(1) “Cultivation” shall mean the planting, growing, harvesting, drying, storage of, or creation of products involving, one or more marijuana plants or any part of such plants for any purpose, including for personal or commercial use.

(2) “Marijuana” refers to any type of cannabis plant, including cannabis sativa, cannabis indica, cannabis ruderalis, and any hybrids of different types of cannabis plants.

B. The cultivation of marijuana outdoors is prohibited at all locations, and in all zoning districts, within the City of Angels. The City shall not issue, approve, or grant any permit, license, or other entitlement for the outdoor cultivation of marijuana. The prohibition stated in this Section is intended to be in addition to, and not to supersede or abridge, the prohibition on the cultivation of medical marijuana as provided for in Chapter 8.27 of the Angels Camp Municipal Code.

C. Indoor Cultivation

(1) The cultivation of marijuana indoors is a permitted use in any residential zoning district, provided the cultivation is only for the personal use of any resident who lawfully resides within the residence where the cultivation occurs, and further provided the cultivation strictly conforms to the requirements of paragraph (2), below, California Health and Safety Code Sections 11362.1(a)(3) and 11362.2, and any state regulations adopted in accordance with those sections.

(2) The indoor cultivation of marijuana shall strictly conform to the following requirements:

(a) No person shall cultivate more than six plants indoors within any residence at any time, and no person shall cultivate marijuana on any parcel not improved with a lawful inhabited residence.

(b) Marijuana cultivation is permitted only within fully enclosed structures that include solid walls and a solid roof. A fully enclosed and secure structure used for the cultivation of marijuana that is separate from the main residence on a premises must be located in a side yard or back yard of the residence and the side yard or backyard must be enclosed entirely by a solid fence of at least six feet in height and/or the house. In addition, the detached structure must maintain a minimum 10-foot setback from any property line or the minimum set-back required under any other applicable provision of this Code if such set-backs exceed 10 feet. No such structure shall have a roof or ceiling that is capable of opening or retracting. If such structure is smaller than 120 square feet in size, no portion of its roof or ceiling shall have opaque or transparent surfaces. If such structure is greater than 120 square feet in size, any opaque or transparent surface shall be in accordance with the applicable building codes as the City has adopted.

(c) Marijuana cultivation areas in a structure shall not be accessible to persons under 18 years of age. All doors opening into cultivation areas shall be secured by lock and key, padlock, or other security device that prevents unauthorized entry.

(d) Marijuana cultivation lighting shall not exceed a total of 1,200 watts and shall be shielded to confine light and glare to the interior of the allowable structure.

(e) The use of gas products (e.g., CO₂, butane, etc.) or generators for marijuana cultivation or processing is prohibited.

(f) No exterior evidence of marijuana cultivation shall be observable from any public right-of-way or adjacent property.

(g) Marijuana cultivation shall not occur in any kitchen, bathroom, or bedroom of the residence.

(h) Any structure used for marijuana cultivation must have proper ventilation to prevent mold damage and to prevent marijuana plant odors or particles from becoming a public nuisance to surrounding properties or the public.

(i) The marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products, or wastes.

(j) Use, storage, or discharge into wastewater facilities shall strictly comply with all adopted City rules and regulations.

(k) Water usage for cultivation of marijuana under this Section shall not exceed any limitations imposed by federal, state, or local water restrictions.

(l) All lighting, equipment, power sources, and construction associated with the cultivation shall comply with the applicable building, electrical, and fire codes as adopted by the City.

(3) Indoor cultivation for, or in association with, any commercial use or purpose is prohibited.

Section II: Prohibition on Commercial Marijuana Land Uses and Deliveries

A. For the purposes of this chapter, the terms within shall have the indicated meanings.

(1) "Commercial or retail marijuana dispensary" means any facility or location where marijuana is provided, sold, made available or otherwise distributed for any non-medical purpose.

(2) "Distribution" means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to MAUCRSA.

(3) "Manufacturing" means the production, preparation, propagation, or compounding of marijuana or marijuana products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages marijuana or marijuana products or labels or re-labels its container, that holds a state license under MAUCRSA.

(4) "Testing service" means a laboratory, facility or entity in the state that offers or performs tests of marijuana or marijuana products, including the equipment provided by such laboratory, facility, or entity, and that is both of the following: (i) accredited by an accrediting body that is independent from all other persons involved in commercial marijuana activity in the state; (ii) registered with the California Department of Public Health.

B. Commercial or retail marijuana dispensaries are prohibited in the City of Angels. No such marijuana dispensary shall operate, locate, or otherwise be permitted anywhere within city limits. The City shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a commercial or retail marijuana dispensary. Notwithstanding the foregoing, it is not the intention of this Ordinance to amend, replace, or supersede Chapters 8.25 or Section 17.78.030 of the Angels Camp Municipal Code concerning medical marijuana dispensaries.

C. The distribution and manufacturing of marijuana is prohibited in the City of Angels. No distribution or manufacturing facility shall operate, locate, or otherwise be permitted anywhere within city limits. The City shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a distribution or manufacturing facility.

D. Testing services are prohibited in the City of Angels. No testing service shall operate, locate, or otherwise be permitted anywhere within city limits. The City shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a testing service.

Section III: Deliveries.

A. Except as provided in Paragraph B of this Section, or as otherwise provided for in applicable state law, it shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in the City of Angels, the delivery of marijuana for any purpose, including for medical or recreational use.

B. The prohibitions in this Section shall not apply to the delivery of marijuana from any licensed medical or non-medical dispensary located outside city limits so long as the follow conditions are met:

(1) Persons delivering marijuana in the city may possess no more than one pound of marijuana at any time while making marijuana deliveries within the city;

(2) The delivery may be carried out only by a person at least twenty-one years of age;

(3) The delivery may occur only between the hours of eight a.m. and eight p.m.;

(4) Prior to commencing marijuana deliveries to persons within city limits, the dispensary shall register with the Angels Police Department and provide proof that the marijuana dispensary is licensed under the applicable laws of the State of California and operating in compliance with the applicable laws and regulations of the local jurisdiction in which the marijuana dispensary is located;

(5) Prior to commencing marijuana deliveries to persons within city limits, the marijuana dispensary shall provide the Angels Police Department with the names, ages and drivers' license numbers of all persons who will be conducting the deliveries. The Police Department shall verify the persons' names do not indicate a criminal history disclosed by the Interstate Identification Index ("IIP"). Persons who do have criminal histories, as indicated in the IIP, shall be banned from making deliveries within city limits. The marijuana dispensary shall notify the Angels Police Department of any changes in the identities of the persons conducting the deliveries within twenty-four (24) hours of any change in that information; and

(6) Thereafter, on an annual basis and prior to July 1 of each year, the marijuana dispensary shall provide the Angels Police Department with proof that the marijuana dispensary continues to be licensed under the applicable laws of the State of California and is authorized to operate in the local jurisdiction in which the marijuana dispensary is located. In addition to this annual reporting requirement, the marijuana dispensary shall promptly report any thefts of marijuana or money related to the delivery of medical marijuana in the city to the Angels Police Department.

(7) All deliveries must be personally made to adult residents of the residences where the deliveries will occur. No delivered products shall be left outside the residence, such as at the doorstep, on a porch, in a mailbox, or otherwise. Nor shall any deliveries be made to any persons at the residences who are younger than 21 years in age.

(8) Payment for deliveries must be made by some means that result in no cash or legal tender being exchanged at the site of the delivery for any products purchased.

Section IV: Report of Interim Moratorium.

Pursuant to Government Code section 65858(d), 10 days prior to the expiration this Interim Ordinance, City staff will issue a written report describing the measures taken to alleviate the conditions that led to the adoption of this Interim Ordinance.

Section V: CEQA Findings.

The City Council determines that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) because the adoption of this ordinance is not a project, as defined by CEQA, but is instead an administrative action per California Code of Regulations, Title 14, section 15378(b)(2). Even if the ordinance is subject to CEQA, it is nonetheless exempt from that Act pursuant to California Code of Regulations, Title 14, Section 15060(c)(2) and (c)(3) as the activities regulated herein will not result in any direct or reasonably foreseeable indirect physical change in the environment. In addition, the ordinance is exempt under the “common sense” exemption to CEQA, California Code of Regulations, Title 14, Section 15061(b)(3), as it can be seen with certainty that the adoption of an ordinance regulating the subjects addressed will not have any significant impact on the environment.

Section VI: Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

EFFECTIVE DATE:

The foregoing Ordinance or a summary shall become effective immediately and shall remain effective for a period of 45 days from the date of its adoption, unless extended on or before the effective date of its termination.

This Ordinance was considered and approved by City Council at a special meeting on November 13, 2017 and was passed and adopted by the following vote:

AYES: Behiel, Folendorf, Hermann, Metildi, Oliveira

NOES: None
ABSTAIN: None
ABSENT: None

Scott Behiel
Mayor

ATTEST:

Susan Wenger
Deputy City Clerk