

ORDINANCE NO. 17-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, ADOPTING ZONING CODE TEXT AMENDMENT CA 17-002 AMENDING SUBSECTIONS (a) (PURPOSE), (b) (DEFINITIONS), AND (c) (MARIJUANA BUSINESSES PROHIBITED) OF SECTION 9.05.140 (MARIJUANA-RELATED BUSINESSES) AND AMENDING SECTION 9.01.190 ("M" DEFINITIONS) OF THE RANCHO SANTA MARGARITA MUNICIPAL CODE TO PERMIT THE LIMITED PERSONAL CULTIVATION OF MARIJUANA INSIDE A PERSON'S PRIVATE RESIDENCE AND INSIDE AN ACCESSORY STRUCTURE TO A PERSON'S PRIVATE RESIDENCE IN CONFORMANCE WITH PROPOSITION 64, AND TO PROHIBIT PERSONAL CULTIVATION OF MARIJUANA OUTDOORS UPON THE GROUNDS OF A PERSON'S PRIVATE RESIDENCE

THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Rancho Santa Margarita hereby finds, determines, and declares as follows:

- A. On December 10, 2002, the City of Rancho Santa Margarita adopted the Rancho Santa Margarita General Plan.
- B. On April 11, 2007, the City Council of the City of Rancho Santa Margarita adopted Title 9 of the Rancho Santa Margarita Municipal Code (the "Rancho Santa Margarita Zoning Code"), establishing allowable uses within all zoning districts.
- C. On August 14, 2013, the City Council of the City of Rancho Santa Margarita adopted Ordinance No. 13-01 adopting Zoning Code Text Amendment CA 13-001 to prohibit Medical Marijuana Dispensaries in all zoning districts.
- D. Effective January 1, 2016, the Medical Marijuana Regulation and Safety Act (MMRSA) established a comprehensive regulatory and licensing framework for the operation of marijuana businesses within the State of California. The MMRSA confirmed the authority of cities to control uses of land within their respective jurisdictions and specifically, to regulate or prohibit marijuana businesses.

- E. On October 12, 2016, the City Council of the City of Rancho Santa Margarita adopted Ordinance No. 16-05 adopting Zoning Code Text Amendment CA 16-001 to update, clarify and provide more specificity to the City's ban on marijuana businesses in all zoning districts within the City in accordance with MMRSA.
- F. On November 8, 2016, California voters approved Proposition 64 – the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), which legalized the recreational (non-medical) use of marijuana in California for persons twenty one (21) years of age or older and authorized the limited personal cultivation by such persons of not more than six (6) living marijuana plants inside a person's private residence, inside an accessory structure to a person's private residence, and outdoors upon the grounds of a person's private residence (e.g., in an outdoor garden area).
- G. Proposition 64 authorizes the City to completely prohibit the cultivation of marijuana outdoors upon the grounds of a person's private residence, up to and until a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law.
- H. The City of Rancho Santa Margarita has initiated Zoning Code Text Amendment CA 17-002 in accordance with Section 9.08.080 of the Rancho Santa Margarita Zoning Code, to exempt the limited personal cultivation of marijuana from the City's existing ban on marijuana-related uses and activities in all zoning districts within the City as required by Proposition 64, and to expressly prohibit the cultivation of marijuana outdoors upon the grounds of a person's private residence as authorized by Proposition 64. (Health & Safety Code section 11362.2 (b)(3)).
- I. On April 5, 2017, the Planning Commission of the City of Rancho Santa Margarita held a duly noticed public hearing and considered public comments and the written and oral information and testimony presented by City staff, community residents and other interested parties, and recommended that the City Council approve and adopt Zoning Code Text Amendment CA 17-002.
- J. On May 10, 2017, the City Council of the City of Rancho Santa Margarita held a duly noticed public hearing and considered public comments and the written and oral information and testimony presented by City staff, community residents and other interested parties concerning proposed Zoning Code Text Amendment CA 17-002.

Section 2. In accordance with Section 9.08.080(d) of the Rancho Santa Margarita Zoning Code, the following findings for approving Zoning Code Text Amendment CA 17-002 are hereby made:

(A) GENERAL PLAN

Finding: That the proposed Zoning Code Text Amendment is consistent with the goals, policies, programs, and land uses of applicable elements of the General Plan.

The proposed Zoning Code Text Amendment (ZCTA) is consistent with the goals, policies, programs and land uses of applicable elements of the General Plan because the proposed ZCTA permits the limited personal cultivation of not more than six (6) living marijuana plants by persons twenty-one (21) years of age or older inside a person's private residence and inside an accessory structure to a person's private residence, as required by state law, and expressly prohibits the cultivation of marijuana outdoors upon the grounds of a person's private residence while maintaining the City's current policies and land use provisions prohibiting marijuana businesses and marijuana-related uses in all zoning districts within the City.

(B) COMPATIBILITY

Finding: That the proposed Zoning Code Text Amendment will not adversely affect surrounding properties or the surrounding environment.

The proposed Zoning Code Text Amendment (ZCTA) clarifies that marijuana businesses are prohibited in all zoning districts within the City. The limited personal cultivation of marijuana permitted by this Ordinance is subject to the following restrictions: a) not more than six (6) living plants may be planted, cultivated, harvested, dried, or processed within a person's single private residence or inside an accessory structure to a person's private residence that is fully enclosed and secure; and (b) the living plants and any marijuana produced by the plants in excess of 28.5 grams shall be kept in a locked space, and shall not be visible by normal unaided vision from a public place. Additionally, the proposed ZCTA prohibits the planting, cultivation, harvesting, drying, or processing of marijuana plants outdoors upon the grounds of a person's private residence. Consequently, the proposed ZCTA will not adversely affect surrounding properties or the surrounding environment.

(C) GENERAL WELFARE

Finding: That the proposed Zoning Code Text Amendment promotes public health, safety, and general welfare and serves the goals and purposes of Title 9.

The proposed Zoning Code Text Amendment will serve the goals and purposes of Title 9 by clarifying and confirming that, notwithstanding the limited personal cultivation of not more than six (6) living marijuana plants by persons twenty-one (21) years of age or older inside a person's private residence or inside an accessory structure to a person's private residence permitted in accordance with state law, outdoor cultivation of marijuana (including outdoors upon the grounds of a person's private residence), marijuana dispensaries, marijuana businesses, and other marijuana-related uses shall

remain prohibited in all zoning districts within the City. This prohibition will ensure that none of the negative secondary effects of outdoor cultivation of marijuana, marijuana dispensaries, marijuana-related uses or marijuana businesses will adversely impact the public health, safety, or general welfare.

Section 3. Title 9 of the City of Rancho Santa Margarita Municipal Code (Planning and Zoning), Chapter 9.05 (Special Regulations), Section 9.05.140 (Marijuana-related businesses), Subsections (a) (Purpose), and (b) (Definitions) is hereby amended and restated in its entirety to read as follows:

Sec. 9.05.140. – Marijuana-related businesses.

(a) *Purpose.* In order to protect the public health, safety, and welfare of the residents and businesses within the City, the declared purpose of this Chapter is to prohibit marijuana-related businesses and/or activities as stated in this Chapter.

(b) *Definitions.* In addition to any other definitions contained in the Municipal Code, the following words and phrases shall, for the purpose of this Chapter, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with any current provisions of the Municipal Code, these definitions shall prevail.

- (1) *Identification card.* A document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
- (2) *Marijuana.* For purposes of this Chapter, "Marijuana" shall have the same meaning as is defined by Health & Safety Code section 11018 and the term "cannabis" as that term is defined by California Business & Professions Code section 19300.5(f). If the definition under State law is amended, the City's definition shall be as amended. "Marijuana" shall also mean any "cannabinoid" as defined by Business & Professions Code section 19300.5(e), "cannabis concentrate" as defined by Business & Professions Code section 19300.5(g), "edible cannabis product" as defined by Business & Professions Code section 19300.5(s), "manufactured cannabis" as defined by Business & Professions Code section 19300.5(ac), "medical cannabis" as defined by Business & Professions Code section 19300.5(af), and "topical cannabis" as defined by Business & Professions Code section 19300.5(al), as those sections exist as of January 1, 2016 or as amended thereafter.
- (3) *Marijuana business.* Any activity, whether or not carried out for commercial gain, which involves cultivation, possession, manufacture, processing, storage, laboratory testing, labeling, transportation, distribution, or sale of marijuana or any marijuana-infused products. This

definition shall include any of the foregoing activities conducted by or on behalf of a qualified patient or the primary caregiver of a qualified patient. All references in this chapter to "marijuana business," shall be synonymous with "marijuana dispensary," "mobile marijuana dispensary," and "marijuana cultivation site," which are defined in this section. The term "marijuana business" shall not include "personal cultivation of marijuana," as defined in this section.

- (4) *Marijuana cultivation site.* Any location, whether indoor or outdoor, where marijuana is planted, grown, harvested, dried, cured, graded, or trimmed, or upon which all or any combination of those activities occurs. The term "marijuana cultivation site" shall not include "personal cultivation of marijuana," as defined in this section.
- (5) *Marijuana dispensary.* Any dispensary, facility, cooperative, club, individual, business, group, collective, establishment or other association with a storefront or mobile retail outlet where marijuana, in any form, whether for medical, recreational, or any other purpose, is transferred to any person, firm, corporation, association, club, society, or other organization, regardless of whether that activity is undertaken on a for-profit or non-profit basis, or any combination thereof, and regardless of whether the activity is for compensation or is gratuitous.
- (6) *Mobile marijuana dispensary.* Any marijuana dispensary, facility, cooperative, club, individual, business, group, collective, establishment or other association with or without a storefront or mobile retail outlet, which engages in the transportation or delivery of marijuana or any marijuana-infused products. For purposes of this Chapter, "delivery" shall mean the transfer of marijuana or other marijuana-infused products from a marijuana dispensary or a marijuana testing laboratory to any person, firm, corporation, association, club, society, or other organization, including, but not limited to, any owner, manager, proprietor, employee, volunteer, or salesperson, and shall also include the use by a marijuana dispensary of any technology platform owned and controlled by the dispensary that enables any person or entity to arrange for, or facilitate the transfer of marijuana or any marijuana-infused products.
- (7) *Personal cultivation of marijuana.* The possession, planting, cultivation, harvesting, drying, or processing of not more than six (6) living marijuana plants and possession of the marijuana produced by the plants by persons twenty one (21) years of age or older inside a person's private residence or inside an accessory structure to a person's private residence located upon the grounds of a person's private residence that is fully enclosed and secure as authorized by Health and Safety Code Sections 11362.1 and 11362.2, as may be amended, and subject to the following limitations: (a)

not more than six (6) living plants may be planted, cultivated, harvested, dried, or processed within a person's single private residence or inside an accessory structure to a person's private residence that is fully enclosed and secure, at one time; and (b) the living plants and any marijuana produced by the plants in excess of 28.5 grams shall be kept in a locked space, and shall not be visible by normal unaided vision from a public place. The term "personal cultivation of marijuana" shall not include the planting, cultivation, harvesting, drying, or processing of marijuana plants outdoors upon the grounds of a person's private residence.

- (8) *Physician.* An individual who possesses a recognition in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.
- (9) *Primary caregiver.* The individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person.
- (10) *Private residence.* For purposes of this Chapter, "private residence" shall have the same meaning as is defined by Health & Safety Code section 11362.2(b)(5) (i.e., a house, an apartment unit, a mobile home, or similar dwelling), as may be amended.
- (11) *Qualified patient.* A person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

Section 4. Title 9 of the City of Rancho Santa Margarita Municipal Code (Planning and Zoning), Chapter 9.05 (Special Regulations), Section 9.05.140 (Marijuana-related businesses), Subsection (c) (Marijuana businesses prohibited) is hereby amended by adding new Subpart (6) to read as follows:

- (6) The planting, cultivation, harvesting, drying, or processing of marijuana plants outdoors upon the grounds of a person's private residence is prohibited in every zoning district in the City.

Section 5. Title 9 (Planning and Zoning) of the City of Rancho Santa Margarita Municipal Code, Chapter 9.01 (General Provisions), Section 9.01.190 ("M" Definitions) is amended by revising the definition for "Marijuana business" to read as follows:

Marijuana business means any activity, whether or not carried out for commercial gain, which involves cultivation, possession, manufacture, processing, storage, laboratory testing, labeling, transportation, distribution, or sale of marijuana or any marijuana-infused products. This definition shall include any of the foregoing activities conducted by or on behalf of a qualified patient or the primary caregiver of a qualified patient. All references in this Section to "marijuana business," shall be synonymous with "marijuana dispensary," "mobile marijuana dispensary," and "marijuana cultivation site," which are defined in Section 9.05.140. The term "marijuana business" shall not include "personal cultivation of marijuana," as defined in Section 9.05.140.

Section 6. The City Council of the City of Rancho Santa Margarita determines that Zoning Code Text Amendment CA 17-002 is not subject to the California Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Title 14, Chapter 3, Sections 15060 (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment, directly or indirectly.

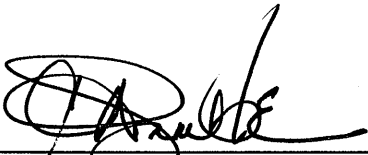
Section 7. The City Council of the City of Rancho Santa Margarita determines that, pursuant to Section 711.4 of the California Fish and Game Code, this Ordinance is exempt from the required fees as it has been determined that no impacts to wildlife resources will result from the project.

Section 8. The City Council of the City of Rancho Santa Margarita determines that this Ordinance will not have any adverse impacts to any subregional Natural Communities Conservation Planning (NCCP) Program.

Section 9. 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 section, subsection, subdivision, sentence, clause, phrase, or portion thereof be declared invalid or unconstitutional.

Section 10. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted as required by law.

PASSED, APPROVED AND ADOPTED THIS 24TH DAY OF MAY, 2017.



CAROL A. GAMBLE, MAYOR

ATTEST:



AMY DIAZ, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF RANCHO SANTA MARGARITA)

I, Amy Diaz, City Clerk of the City of Rancho Santa Margarita, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 17-02 was duly introduced and placed upon its first reading at a Regular Meeting of the City Council on the 10th day of May, 2017, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council on the 24th day of May, 2017, by the following vote, to wit:

AYES: Council Members Beall, Holloway, McGirr, Mayor Gamble (4)
NOES: None (0)
ABSENT: Mayor Pro Tempore Vaughn (1)
ABSTAIN: None (0)



AMY DIAZ, CITY CLERK

AFFIDAVIT OF POSTING
AND PUBLICATION

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF RANCHO SANTA MARGARITA)

AMY DIAZ, being first duly sworn, deposes and says:


That she is the duly appointed and qualified City Clerk of the City of Rancho Santa Margarita;

That in compliance with State Laws of the State of California, ORDINANCE NO. 17-02, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, ADOPTING ZONING CODE TEXT AMENDMENT CA 17-002 AMENDING SUBSECTIONS (a) (PURPOSE), (b) (DEFINITIONS), AND (c) (MARIJUANA BUSINESSES PROHIBITED) OF SECTION 9.05.140 (MARIJUANA-RELATED BUSINESSES) AND AMENDING SECTION 9.01.190 ("M" DEFINITIONS) OF THE RANCHO SANTA MARGARITA MUNICIPAL CODE TO PERMIT THE LIMITED PERSONAL CULTIVATION OF MARIJUANA INSIDE A PERSON'S PRIVATE RESIDENCE AND INSIDE AN ACCESSORY STRUCTURE TO A PERSON'S PRIVATE RESIDENCE IN CONFORMANCE WITH PROPOSITION 64, AND TO PROHIBIT PERSONAL CULTIVATION OF MARIJUANA OUTDOORS UPON THE GROUNDS OF A PERSON'S PRIVATE RESIDENCE

on the 2nd day of June, 2017, was published in the Coto de Caza News; and was in compliance with City Resolution No. 00-01-06-07, on the 2nd day of June, 2017, caused to be posted in three places in the City of Rancho Santa Margarita, to wit:

Rancho Santa Margarita City Hall
Fire Station 45
Trabuco Canyon Water District



AMY DIAZ, CITY CLERK
Rancho Santa Margarita, California