

ORDINANCE NO. 1190

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH AMENDING SECTION 9261 OF THE UKIAH CITY CODE TO AMEND THE USE PERMIT APPLICATION PROCESS AND OPERATIONAL STANDARDS FOR CANNABIS RELATED BUSINESSES.

The City Council of the City of Ukiah hereby ordains as follows.

SECTION 1

Article 15.6 of Chapter 2 in Division 9 of the Ukiah City Code is hereby amended to read as follows (unchanged text is omitted and is shown by “* * *”):

§9173 PURPOSE

Sections 9173.2 through 9173.6 in this article provide site planning, development, and/or operational standards for certain land uses that are allowed in certain zoning districts without discretionary review. The standards for each use are intended to mitigate any potentially adverse impacts associated with the specific use.

§9173.1 APPLICABILITY

The land uses and activities included in sections 9173.2 through 9173.6 of this code shall comply with the provisions of the section applicable to the specific land use, in addition to all other applicable provisions of this article and the Ukiah City Code.

A. Where Allowed: The uses that are subject to the standards in sections 9173.2 through 9173.6 of this code shall only be located in the zoning districts indicted herein.

B. Development Standards: The standards for specific land uses included in sections 9173.2 through 9173.6 of this code are required and supplement those included in the Ukiah City Code. In the event of any conflict between the requirements of sections 9173.2 through 9173.6 of this code and those included elsewhere in the City Code, the requirements of sections 9173.2 through 9173.6 of this code shall control.

SECTION 2

Article 15.6 of Chapter 2 in Division 9 of the Ukiah City Code is hereby amended by deleting Section 9173.7.

SECTION 3

A new Article 15.7 of Chapter 2 in Division 9 of the Ukiah City Code is added and shall read as follows:

ARTICLE 15.7. STANDARDS FOR SPECIFIC LAND USES THAT ARE SUBJECT TO DISCRETIONARY REVIEW

§9174 PURPOSE

Sections 9174.2 through 9174.3 in this article provide site planning, development, and/or operational standards for certain land uses that are allowed in certain zoning districts and are

subject to discretionary review through the use permit process but that may have unique adverse impacts. The standards for each use are intended to mitigate any potentially adverse impacts associated with the specific use.

§9174.1 APPLICABILITY

The land uses and activities included in sections 9174.2 through 9174.9 of this Code shall comply with the provisions of the section applicable to the specific land use, in addition to all other applicable provisions of this article and the Ukiah City Code.

A. Where Allowed: The uses that are subject to the standards in sections 9174.2 through 9174.9 of this Code shall only be located in the zoning districts indicted in Articles 3 through 15 of this Chapter 2, Division 9 or as otherwise indicated in this Chapter.

B. Development Standards: The standards for specific land uses included in sections 9174.2 through 9174.9 of this Code are required and supplement those included in the Ukiah City Code. In the event of any conflict between the requirements of sections 9174.2 through 9174.9 of this Code and those included elsewhere in the City Code, the requirements of sections 9174.2 through 9174.9 of this Code shall control.

§9174.2 CANNABIS-RELATED BUSINESSES

A. Cannabis-Related Business Use Permit Application Requirements:

1. Submission: A complete Use Permit application submittal packet shall be submitted in accordance with Section 9262 of this Code, including a detailed written statement as to how the proposed Cannabis Related Business complies with this Section, and any other information or submissions required by this Code. All applications for Use Permits for Cannabis-Related Businesses shall be filed with the Planning Department, using forms provided by the City, and accompanied by the applicable filing fee and any other applicable fees or charges. It is the responsibility of the applicant to provide information required for approval of the permit. The application shall be made under penalty of perjury.

2. Effect of Other Permits or Licenses: The fact that an applicant possesses other types of State or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit.

3. Submittal Requirements: Any application for a Use Permit for a Cannabis-Related Business shall include the following information:

a. Applicant(s) Name: The full name (including any current or prior aliases, or other legal names the applicant is or has been known by, including maiden names), present address, and telephone number of the applicant;

b. Applicant(s) Mailing Address: The address to which notice of action on the application is to be mailed;

c. Previous Addresses: Previous addresses for the past five (5) years immediately prior to the present address of the applicant;

d. Verification of Age: Written proof that the applicant is at least twenty-one (21) years of age;

- e. Physical Description: Applicant's height, weight, color of eyes and hair;
- f. Photographs: Passport quality photographs for identification purposes;
- g. Employment History: All business, occupation, or employment of the applicant for the five (5) years immediately preceding the date of the application;
- h. Tax History: The Cannabis Related Business tax history of the applicant, including whether such person, in previously operating in this or another city, county or state under license has had a business license revoked or suspended, the reason therefor, and the business or activity or occupation in which the applicant engaged subsequent to such action of suspension or revocation;
- i. Management Information: The name or names and addresses of the person or persons having the management or supervision of applicant's business;
- j. Criminal Background: A completed background investigation verifying whether the person or person having the management or supervision of applicant's business has been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefor;
- k. Employee Information: Number of employees, volunteers, and other persons who will work at the Cannabis-Related Business;
- l. Plan of Operations: A plan of operations describing how the Cannabis Related Business will operate consistent with the intent of State law, including obtaining all applicable State licenses, and the provisions of this Section, including but not limited to ensuring that the Cannabis-Related Business will not engage in cannabis-related commercial activities that violate California law or this chapter.
- m. Written Response to Cannabis Related Business Standards: The applicant shall provide a comprehensive written response identifying how the Cannabis Related Business plan complies with each of the standards for review in this chapter, specifically the limitation on location and operating requirements in this Article;
- n. Security Plan: A detailed security plan outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft. The plan shall include installation of security cameras, a premises and panic alarm system monitored by a licensed operator, and a security assessment of the site conducted by a qualified professional;
- o. Floor Plan: A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the Cannabis Related Business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6");
- p. Site Plan: A sketch or diagram showing exterior configuration of the premises, including the outline of all existing and proposed structures, parking and landscape areas, and property boundaries. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions to an accuracy of plus or minus six inches (6");

q. Accessibility Evaluation: A written evaluation of accessibility to and within the building, and identification of any planned accessibility improvements;

r. Neighborhood Context Map: An accurate straight-line drawing depicting the building and the portion thereof to be occupied by the Cannabis Related Business, and: (a) the property lines of any school within six hundred feet (600') of the property line of the Business for which a permit is requested, (b) the property lines of any Cannabis Related Business within two hundred fifty feet (250') of the primary entrance of the Business for which a permit is requested, and (c) the property lines of any youth-oriented facility or residential zone or use within two hundred fifty feet (250') of the primary entrance of the Business;

s. Lighting Plan: A lighting plan showing existing and proposed exterior premises and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use and comply with all City standards regarding lighting design and installation. All lighting shall be fully hooded and downcast, and shall not shine towards the night sky, adjacent property or any street;

t. City Authorization: Written authorization for the City, its agents and employees to seek verification of the information contained within the application;

u. Statement of Owner's Consent: A statement in writing by the Owner that he or she certifies under penalty of perjury that the applicant has the consent of the Owner and landlord to operate a Cannabis Related Business at the location;

v. Applicant's Certification: A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct;

w. Other Information: Such other information as deemed necessary by the Planning Department to demonstrate compliance with this Section including all City and State codes, including operating requirements established in this Section.

B. Operating Requirements for Cannabis Related Businesses: Cannabis Related Business operations shall be established and managed only in compliance with the following standards:

1. Criminal History: Any applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a Cannabis Related Business on behalf of the applicant shall not have been convicted of any of the felony offenses enumerated in Business and Professions Code Section 26057(b)(4), or of a felony or misdemeanor involving moral turpitude, or on probation for a drug offense, or engaged in misconduct related to the qualifications, functions or duties of a permittee. Notwithstanding the above, an application shall not be denied solely on the basis that the applicant or any manager has been convicted of a felony, if the person convicted has obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar Federal statute or State law where the expungement was granted. In addition, notwithstanding the above, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of cannabis or cannabinoid preparations, is not considered related to the qualifications, functions, or duties of a permittee, and shall not be the sole ground for denial of an application.

2. Minors:

a. It is unlawful for any permittee, operator, or other person in charge of any Cannabis Related Business to employ any person who is not at least twenty-one (21) years of age.

b. The burden of proof is on the Cannabis Related Business personnel to establish compliance with this subsection B.2 by clear and convincing evidence.

3. Inventory and tracking: Cannabis Related Businesses shall at all times operate in a manner to prevent diversion of Cannabis and shall promptly comply with any track and trace program established by the State.

4. Multiple permits per site: Multiple Cannabis Related Businesses proposed on any one site or parcel shall be granted permit approval only if all of the proposed Cannabis Businesses and their co-location are authorized by both City and state law. Operators of Cannabis Related Businesses issued Use Permits for multiple business types or State license types at the same physical address shall maintain clear separation between license types unless otherwise authorized by this Code and State law.

5. Operating Plans: An Operating Plan for a Cannabis Related Business must contain the following unless not applicable:

a. Storage: A Cannabis Related Business shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of cannabis and cannabis products.

b. Odors Control: The Cannabis Related Business shall have an air treatment system that prevents odors generated from any storage and cultivation of cannabis on the Business property from being detected by any reasonable person of normal sensitivity outside the Cannabis Related Business premises. To achieve this, both the storage and cultivation areas shall be, at minimum, mechanically ventilated with a carbon filter or superior method.

c. Security Plans: A Cannabis Related Business shall provide adequate security on the premises, as approved by the Chief of Police, including lighting and a premises and panic alarm system monitored by a licensed operator, to ensure the safety of persons and to protect the premises from theft.

d. Security Cameras: Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises to discourage loitering, crime, illegal or nuisance activities. The security surveillance system shall comply with current State standards for digital video surveillance systems to be installed on the premises of licensed Cannabis businesses, currently codified in the Cal. Code of Regulations, Title 16, Section 5044, and as may be amended.

e. Security Video Retention: Security video shall be maintained for ninety (90) days. In the event of a crime on site or anywhere within range of the Cannabis Related Business's security cameras, the Cannabis Related Business shall provide the Chief of Police or his or her designee with a useable digital copy of the security video upon request or at the earliest convenience.

f. Alarm System: Professionally monitored premises and panic alarm system shall be installed and maintained in good working condition.

g. Emergency access. Security measures shall be designed to ensure emergency access in compliance the California Fire Code and Ukiah Valley Fire Authority standards.

h. Emergency Contact: A Cannabis Related Business shall provide the Chief of Police with the name, e-mail address, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the Business. The Business shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the City.

6. Signage and Notices:

a. Address identification shall comply with illuminated address signs requirements.

b. Business identification signage shall be limited to that needed for identification only, consisting of a single window sign or wall sign that shall comply with Section 3227 of this Code and any other City Code provisions regulating signage.

7. Employee Records: Each owner or operator of a Cannabis Related Business shall maintain a current register of the names of all volunteers and employees currently working at or employed by the Cannabis Related Business, and shall disclose such registration for inspection by any City officer or official for purposes of determining compliance with the requirements of this Article.

8. Compliance with Other Requirements: The operator shall comply with all applicable provisions of local, State or Federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

9. Confidentiality: The information provided for purposes of this section shall be maintained by the City as confidential information, and shall not be disclosed as public records unless pursuant to subpoena issued by a court of competent jurisdiction or otherwise compelled by court order or the California Public Records Act.

10. Display of Permit: Every Cannabis Related Business shall display at all times during business hours the Use Permit issued pursuant to the provisions of this chapter for such Business in a conspicuous place so that the same may be readily seen by all persons entering the Business.

11. Inspections: During normal business hours, Cannabis Related Businesses permitted under this Chapter shall provide access for administrative inspections by City officials or officers or consultants hired by the City to verify compliance with this Article. Any Cannabis Related Business's refusal to comply with this section shall be deemed a violation of this Article.

12. Notification of Theft, Loss, and Criminal Activity: Cannabis Related Businesses shall comply with the California Code of Regulations, Title 16, Section 5036, or as may be amended, by notifying the applicable State authorities and the Ukiah Police Department within 24 hours of discovery of any of the following situations:

a. A significant discrepancy in the Business's inventory.

b. The Operator becomes aware of or has reason to suspect diversion, theft, loss, or any other criminal activity pertaining to the operations of the Business.

c. The Operator becomes aware of or has reason to suspect diversion, theft, loss, or any other criminal activity by an agent or employee of the Business pertaining to the operations of the Business.

d. The Operator becomes aware of or has reason to suspect the loss or unauthorized alteration of records related to cannabis goods, customers or clients, or the Business's employees or agents.

e. The Operator becomes aware of or has reason to suspect any other breach of security.

The notification shall be in writing and include the date and time of occurrence of the theft, loss, or criminal activity and a description of the incident including, where applicable, the item(s) that were taken or lost.

C. Review and Revocation: Use permits issued for Cannabis Related Business shall be subject to annual review according to the procedures set forth in subsection D of this section, and shall be subject to revocation according to the procedures set forth in subsection E of this section.

D. Annual Review of Use Permits for Cannabis Related Businesses:

1. Use permits for Cannabis Related Business will be subject to annual review by the Zoning Administrator, including inspection of the business by the Zoning Administrator or his designee, to determine whether the business is being operated in accordance with any conditions of approval imposed on the use permit as issued by the Planning Commission or Zoning Administrator. The City Council may, from time to time by resolution in accordance with the procedures required by law, establish fees to be charged and collected for annual review pursuant to this subsection.

2. In the course of annual review and after annual inspection, the Zoning Administrator shall make findings of fact regarding the Cannabis Related Business operator's adherence to the conditions of approval for the use permit. In addition, the Zoning Administrator will consider the following nonexclusive criteria in making findings of fact which may be grounds for revocation of a use permit for a Cannabis Related Business:

a. Whether the Cannabis Related Business operated pursuant to the use permit has generated an excessive number of calls for police service compared to similarly situated businesses of the same size as the Cannabis Related Business.

b. Whether there have been excessive secondary criminal or public nuisance impacts in the surrounding area or neighborhood, including, but not limited to, disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passersby, littering, loitering, illegal parking, loud noises, odors, or lewd conduct.

c. Whether the Cannabis Related Business operating pursuant to a use permit has a history of inadequate safeguards or procedures that show it is likely that it will not comply with any operating requirements and standards required in the conditions of approval.

d. Whether the Cannabis Related Business s has failed to pay fees, penalties, or taxes required by the conditions of approval of the use permit or by this code or State law, or has failed to comply with any requirements for the production of records or other reporting

requirements of this code.

e. Whether the operator of the Cannabis Related Business or one or more of its officers, employees, partners, managers or members with management responsibilities ("managers") has been convicted of a felony, or has engaged in misconduct that is substantially related to the qualifications, functions or duties of an operator of a Cannabis Related Businesses. A "conviction" within the meaning of this chapter means a plea or verdict of guilty, or a conviction following a plea of nolo contendere. Notwithstanding the above, an application shall not be denied solely on the basis that the applicant or any manager has been convicted of a felony, if the person convicted has obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar Federal statute or State law where the expungement was granted.

f. Whether the operator or managers of the Cannabis Related Business have previously or are currently engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

g. Whether the cannabis-related business has been operated in compliance with applicable State law and provisions of this code generally.

3. If the Zoning Administrator determines that the Cannabis Related Business s is being operated in violation of any conditions of approval imposed on the use permit as issued by the Planning Commission or the Zoning Administrator, the use permit may be subject to revocation.

E. Revocation of Use Permits for Cannabis Related Businesses:

1. In addition to the reasons for revocation of an approved use permit set forth in subsection H2 of Section 9262 of this Code and subsection D2 of this Section, an approved use permit for a cannabis-related business may be revoked through the City's revocation process, as set forth in subsection H2 of Section 9262, except that all references therein to the Planning Commission shall be deemed to refer to the Zoning Administrator, if the Cannabis Related Business is operated in a manner that violates the conditions of approval imposed by the use permit or the provisions of this code, or conflicts with State law. At the public hearing to be conducted by the Zoning Administrator as set forth in subsection H2 of this Section 9262, the Zoning Administrator shall make findings regarding the alleged specific violations of this code or State law.

2. An appeal of the Zoning Administrator's decision on revocation of a use permit for a Cannabis Related Business may be made to the Planning Commission for a final decision. Any such appeal must comply with the requirements of section 9266 of this code, except that all references therein to the City Council shall be deemed to refer to the Planning Commission.

3. When a final decision revoking a use permit for a Cannabis Related Business is made as provided in this section, the permittee shall become ineligible for a period of three (3) years thereafter to apply for a use permit for a Cannabis Related Business. The ineligibility shall include any corporation or other business entity, including, but not limited to, a partnership or limited liability company, in which the permittee has any direct or indirect beneficial, financial or ownership interest.

F. Limitations on Locations of Cannabis Related Businesses

1. All Cannabis Related Businesses, as defined in Section 9278 of this code, operating subject to use permits under this chapter will operate indoors in a fully enclosed secure

structure, as defined in Section 9254 of this Code, and shall not be allowed in the following areas:

- a. Within six hundred feet (600') of a school, as defined in section 5702P of this code, with that distance measured as the horizontal distance in a straight line from the property line of the school to the closest property line of the lot on which the Cannabis Related Business is to be located without regard to intervening structures, pursuant to California Health and Safety Code section 11362.768; or
- b. Within two hundred fifty feet (250') of a youth-oriented facility other than a school, as defined in section 5702R of this code, with that distance measured by street frontage from the property line of the youth-oriented facility to the closest property line of the lot on which the Cannabis Related Business is to be located, and not radial distance; or
- c. Abutting, on any side of the parcel upon which the Cannabis Related Business is located, a parcel occupied by a youth-oriented facility or a school; or
- d. Within any residential zoned parcel or primary land use, or any property with an underlying residential or mobile homes general plan land use designation; or
- e. On a parcel having a residential unit, or on a parcel directly abutting a residentially zoned property, unless there are intervening nonresidential uses between the Cannabis Related Business and the residential unit or the residentially zoned property that the decision-making entity charged with hearing and making the decision on the use permit application or the appeal of that decision determines sufficient to provide an appropriate separation.

2. A waiver of the provisions in subsections F.1.a through F.1.b of this section may be granted if the applicant demonstrates on plans and materials presented for review and the Planning Commission determines that a physical barrier or other condition exists which achieves the same purpose and intent as the distance separation requirements established herein, and that, as a result, the Zoning Administrator or the Planning Commission makes a finding of no adverse impact resulting from the proposed location of the Cannabis Related Business.

§9174.3 [RESERVED]

§9174.4 [RESERVED]

§9174.5 [RESERVED]

§9174.6 [RESERVED]

§9174.7 [RESERVED]

§9174.8 [RESERVED]

§9174.9 [RESERVED]

SECTION 4

Article 20 of Chapter 2 in Division 9 of the Ukiah City Code is hereby amended by deleting Subsections J, K, and L of Section 9262.

SECTION 5

1. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Ukiah hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

2. EFFECTIVE DATE.

This Ordinance shall be published as required by law in a newspaper of general circulation in the City of Ukiah, and shall become effective thirty (30) days after its adoption.

Introduced by title only on May 16, 2018, by the following roll call vote:

AYES: Councilmembers Brown, Scalmanini, Crane, Mulheren, and Mayor Doble
NOES: None
ABSENT: None
ABSTAIN: None

Adopted on June 6, 2018 by the following roll call vote:

AYES: Councilmembers Brown, Scalmanini, Crane, Mulheren, and Mayor Doble
NOES: None
ABSENT: None
ABSTAIN: None



Kevin Doble, Mayor

ATTEST:


Kristine Lawler, City Clerk