

**ORDINANCE NO. 1185**

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH AMENDING VARIOUS SECTIONS OF THE UKIAH CITY CODE REGULATING PERSONAL AND COMMERCIAL CANNABIS CULTIVATION**

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

**SECTION 1 – FINDINGS**

The City Council finds:

1. State law now allows the indoor cultivation of not to exceed six (6) marijuana plants for personal use in a residential or a detached accessory structure on a parcel.
2. Indoor cultivation of cannabis can cause public nuisance impacts, such as odor, and negative impacts on the structure in which the cultivation occurs, such as excessive moisture, risk of fire from indoor grow lights and discharge of toxic chemicals and fertilizers to the sewer system.
3. State law allows the City to regulate the indoor cultivation of marijuana.
4. This Ordinance places reasonable conditions on the indoor cultivation of cannabis as now allowed by State law to avoid or reduce the risk of public nuisance impacts and adverse impacts on the housing stock in the City of Ukiah and the residents of housing in which marijuana is grown.

**SECTION 2**

**Section 6093 in Article 10 of Chapter 1 in Division 7 of the Ukiah City Code is hereby amended to read as follows:**

**§ 6093 MARIJUANA CULTIVATION PROHIBITED**

- A. Outdoor cultivation of marijuana, or indoor cultivation in excess of six (6) mature plants or twelve (12) immature plants per private residence, as defined in Health and Safety Code § 11362.2(b)(5) or as may be amended, for personal use, within the city limits of the City of Ukiah in violation of Section 9254 of this Code is prohibited and constitutes a violation of this article.
- B. All structures used for indoor cultivation and all methods of indoor cultivation must comply with all requirements and standards set forth in Section 9254 of this Code.
- C. Any person violating any provision of this article shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000.00), by imprisonment in the county jail not to exceed six (6) months or by both a fine and imprisonment.

**SECTION 3**

**Article 19 of Chapter 2 in Division 9 of the Ukiah City Code is hereby amended to read as follows:**

## § 9254 MARIJUANA CULTIVATION

A. Definitions: As used herein the following definitions shall apply:

**CULTIVATION:** The planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

**FULLY ENCLOSED AND SECURE STRUCTURE:** A space within a building that complies with the California building code, as adopted in the city of Ukiah ("CBC"), or, if exempt from the permit requirements of the CBC, that has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two inch by four inch (2" x 4") or thicker studs overlaid with three-eighths inch (3/8") or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the city of Ukiah.

**IMMATURE MARIJUANA PLANT:** A marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination, and which is less than twelve (12) inches in height and less than twelve (12) inches in width.

**INDOORS:** Within a fully enclosed and secure structure.

**MATURE MARIJUANA PLANT:** A marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

**OUTDOOR:** Any location within the city of Ukiah that is not within a fully enclosed and secure structure.

**PARCEL:** Property assigned a separate parcel number by the Mendocino County assessor.

B. Cultivation of Marijuana:

1. Outdoor Cultivation: It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the city of Ukiah to cause or allow such premises to be used for the outdoor cultivation of marijuana plants.

2. Indoor Cultivation for Personal Use in Residential Zoning Districts:

a. Except as permitted in Division 6, Chapter 8 of this code, it is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within any residential zoning district (R-1, R-2, R-3 and CN districts) in the City of Ukiah to cause or allow such parcel to be used for the cultivation of more than six (6) mature and twelve (12) immature marijuana plants within a fully enclosed and secure structure on the parcel.

b. All structures used for indoor cultivation must be legally constructed with all applicable permits such as grading, building, electrical, mechanical and plumbing. All indoor cultivation structures shall be equipped with an odor control filtration and ventilation system adequate to prevent odor outside the cultivation area, humidity, or mold. In the event that cannabis is cultivated indoors in a structure designed or used for residential occupancy, the area in which the cannabis is cultivated shall be on a separate ventilation system from the habitable areas of the structure.

c. Any structure designed or used for residential occupancy where cannabis is grown indoors for personal use shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used for cannabis cultivation.

d. The indoor cultivation of cannabis must comply with all applicable state and local laws, including fire and building codes.

e. Light systems for indoor cultivation of cannabis shall be fully shielded, including adequate coverings on windows, so as to confine light and glare to the interior of the structure.

f. All electrical equipment used in the indoor cultivation of cannabis shall be plugged directly into a wall outlet or otherwise hardwired and such outlet or wiring must comply with the most recent edition of the California Electrical Code and any other applicable Codes. The use of extension cords to supply power to electrical equipment used in the indoor cultivation of cannabis is prohibited.

g. The use of gas products (CO<sup>2</sup>, butane, etc.) for indoor cannabis cultivation or processing in a residence or a detached accessory building is prohibited.

h. A waterproof membrane or other waterproof barrier shall be installed in the cultivation area and beneath individual plants to protect the floor of the indoor cultivation area from water damage.

i. No effluent, including but not limited to, waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers and streams as a result of indoor cultivation of cannabis.

3. Indoor Commercial Cultivation Of Marijuana: It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City of Ukiah to cause or allow such parcel to be used for the commercial cultivation of marijuana, unless (a) the person is operating a medical marijuana dispensary pursuant to a valid dispensary use permit, within the C1, C2, CN, M, and PD (commercial) zoning districts and in the GU, UC, and DC downtown zoning districts, and the space devoted to on-site cultivation at the permitted dispensary does not exceed twenty-five percent (25%) of the total floor area, but in no case more than five hundred (500) square feet; or (b) the person is operating a commercial Cannabis Cultivation business of any type in compliance with all requirements set forth in Sections 9261, 9262, and 9278 of this Code and with all applicable State laws and regulations including licensing requirements.

4. Public Nuisance Prohibited: It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within

the city of Ukiah to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces: a) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, b) repeated responses to the parcel from law enforcement officers, c) a repeated disruption to the free passage of persons or vehicles in the neighborhood, d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or e) any other impacts on the neighborhood which are disruptive of normal activity in the area.

C. Enforcement:

1. Public Nuisance: The violation of this section is hereby declared to be a public nuisance.

2. Abatement: A violation of this section may be abated by the city attorney by the prosecution of a civil action for injunctive relief and by the summary abatement procedure set forth in subsection C3 of this section.

3. Summary Abatement Procedure:

a. The code enforcement officer and the director of planning, or his or her designee (hereafter, the "enforcement official"), are hereby authorized to order the abatement of any violation of this section by issuing a notice to abate. The notice shall:

(1) Describe the location of and the specific conditions which represent a violation of this section and the actions required to abate the violation.

(2) Describe the evidence relied upon to determine that a violation exists, provided that the enforcement official may withhold the identity of a witness to protect the witness from injury or harassment, if such action is reasonable under the circumstances.

(3) State the date and time by which the required abatement actions must be completed.

(4) State that to avoid the civil penalty provided in subsection C3a(8) of this section and further enforcement action, the enforcement official must receive consent to inspect the premises where the violation exists to verify that the violation has been abated by the established deadline.

(5) State that the owner or occupant of the property where the violation is located has a right to appeal the notice by filing a written notice of appeal with the city clerk by no later than three (3) business days from the service of the notice. The notice of appeal must include an address, telephone number, fax number, if available, and e-mail address, if available. The city may rely on any of these for service or notice purposes. If an adequate written appeal is timely filed, the owner or occupant will be entitled to a hearing as provided in subsection C3c of this section.

(6) State that the order to abate the violation becomes final if a timely appeal is not filed or upon the issuance of a written decision after the appeal hearing is conducted in accordance with subsection C3c of this section.

(7) State that a final order of abatement may be enforced by application to the superior court for an inspection and/or abatement warrant or other court order.

(8) State that a final order to abate the nuisance will subject the property owner and the occupant to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C3a(3) of this section, when the violation must be abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

(9) State that in any administrative or court proceeding to enforce the abatement order the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the city elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the city in the action or proceeding.

b. The notice described in subsection C3a of this section shall be served in the same manner as summons in a civil action in accordance with article 3 (commencing with section 415.10) of chapter 4 of title 5 of part 2 of the Code of Civil Procedure, or by certified mail, return receipt requested, at the option of the city. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation pursuant to Government Code section 6062.

c. Not sooner than five (5) business days after a notice of appeal is filed with the city clerk, a hearing shall be held before the city manager or a hearing officer designated by the city manager to hear such appeals. The appellant shall be given notice of the date, time and place of the hearing not less than five (5) days in advance. The notice may be given by telephone, fax, e-mail, personal service or posting on the property. At the hearing, the enforcement official shall present evidence of the violation, which may include, but is not limited to, incident and police reports, witness statements, photographs, and the testimony of witnesses. The property owner and the occupant of the property where the violation is alleged to exist shall have the right to present evidence and argument in their behalf and to examine and cross examine witnesses. The property owner and property occupant are entitled at their own expense to representation of their choice. At the conclusion of the hearing, the city manager or hearing officer shall render a written decision which may be served by regular first class mail on the appellants.

d. A final order to abate the nuisance will subject the property owner or owners and any occupant or occupants of the property who are cultivating marijuana in violation of this section to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C3a(3) of this section, when the violation must be abated. The enforcement official or the city manager or hearing officer hearing an appeal pursuant to subsection C3c of this section may reduce the daily rate of the civil penalty for good cause. The party subject to the civil penalty shall have the burden of establishing good cause, which may include, but is not limited to, a consideration of the nature and severity of the violation, whether it is a repeat offense, the public nuisance impacts caused by the violation, and the violator's ability to pay. The daily penalty shall continue until the violation is abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

4. Violation: Cultivation of marijuana on parcels within the city that does not comply with this section constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in article 22 of this chapter.

5. Penalties Not Exclusive: The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the city from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

**SECTION 4.**

**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 December 6, 2017, by the following roll call vote:

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

Adopted on December 20, 2017 by the following roll call vote:

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

  
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Kevin Doble, Mayor

ATTEST:   
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Kristine Lawler, City Clerk