

ATTACHMENT 1

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY
AMENDING CHAPTER 18.04 AND ADDING CHAPTER 18.118 “PERSONAL
CULTIVATION OF CANNABIS” TO THE UNION CITY MUNICIPAL CODE TO
RESTRICT AND REGULATE THE PERSONAL CULTIVATION OF CANNABIS**

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, California voters enacted the Compassionate Use Act (“CUA”) in 1996, legalizing medical cannabis; and

WHEREAS, in 2003, the California Legislature adopted the Medical Marijuana Program Act (“MMPA”) allowing for collective, cooperative cultivation projects, commonly known as “dispensaries”; and

WHEREAS, in 2015, the Legislature enacted the Medical Cannabis Regulation and Safety Act (“MCRSA”), creating a comprehensive licensing and regulatory scheme for cultivation, manufacturing, distribution, transportation, laboratory testing, and dispensing of medical cannabis; and

WHEREAS, in November 2016, California voters passed Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), legalizing recreational cannabis use for adults 21 years of age and older with certain restrictions; and

WHEREAS, the Legislature adopted SB 94 in June 2017 to consolidate the medical and recreational regulatory schemes to create one single comprehensive regulatory system to regulate all cannabis uses; and

WHEREAS, the new comprehensive regulatory system created by SB 94, intended to regulate all cannabis uses, is called the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”); and

WHEREAS, the CUA, MMPA, and MAUCRSA do not prevent a city from using its constitutional authority to enact nuisance, health, and safety, and land use regulations regarding cannabis uses and a city retains the authority to prohibit, limit or regulate cannabis uses within its jurisdiction; and

WHEREAS, the MAUCRSA permits adults 21 years of age and older to cultivate up to six (6) cannabis plants at a private residence; and

WHEREAS, pursuant to MAUCRSA, the City can enact reasonable regulations for the personal cultivation of nonmedical cannabis that occurs inside a residence or accessory structure, and may completely prohibit outdoor nonmedical cannabis cultivation; and

WHEREAS, the City is constitutionally authorized to make and enforce within its limits all local police, sanitary, and other ordinances; and

WHEREAS, the City Council has held two study sessions on issues related to cannabis in August and September 2017; and

WHEREAS, the City Council desires to adopt an ordinance amending the Zoning Code to regulate the personal cultivation of cannabis consistent with the requirements of California law; and

WHEREAS, the City Council desires to regulate the personal outdoor cultivation and indoor cultivation of cannabis in order to limit the possible negative secondary effects of cannabis cultivation, such as crime and other nuisances; and

PLANNING COMMISSION REVIEW

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed amendments on September 21, 2017 at which time all interested parties had the opportunity to be heard. The Planning Commission considered a staff report dated September 21, 2017 (including background reports) and all written and oral testimony, and adopted Resolution No. ___ recommending approval of the amendments. The staff report and resolution are incorporated herein by reference; and

CITY COUNCIL REVIEW

WHEREAS, the City Council held a duly noticed public hearing on the proposed amendments on October 10, 2017, at which time all interested parties had the opportunity to be heard. The City Council considered a staff report dated October 10, 2017 (including background reports) and incorporated herein by reference, the Planning Commission recommendation, and all written and oral testimony before taking action on the amendments; and

WHEREAS, the amendments to the Municipal Code propose to amend Chapter 18.04 and add Chapter 18.118, as shown in Exhibit A, which is attached hereto and incorporated herein by reference.

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

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from environmental review in accordance with California Environmental Quality Act Guidelines section 15061(b)(3), the general exemption for projects with no potential for significant effect on the environment. As a

series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment will have a significant effect on the environment

SECTION 3. Findings. The City Council makes the following findings in support of approving this Ordinance, based on the whole of the record before it.

1. The proposed Municipal Code Amendments are consistent with the General Plan; and
2. The proposed Municipal Code Amendments are necessary and desirable to achieve the purposes of Title 18.

SECTION 4. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, amending Chapter 18.04 and adding Chapter 18.118 as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

EXHIBIT A

Chapter 18.08

DEFINITIONS

18.08.496 Private residence.

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling as defined by California Health and Safety Code section 11362.2(b)(5) as may be amended.

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Chapter 18.118

PERSONAL CULTIVATION OF CANNABIS

18.118.010 Purpose and Intent.

The purpose of this chapter is to impose zoning restrictions on the personal cultivation of cannabis pursuant to state law. This chapter is not intended to interfere with a patient’s right to use medical cannabis pursuant to state law, as may be amended, nor does it criminalize cannabis possession or cultivation otherwise authorized by state law. This chapter is not intended to give any person or entity independent legal authority to operate a cannabis business, as it is intended simply to impose zoning restrictions regarding personal cultivation of cannabis in the City pursuant to this Code and state law.

18.118.020 Applicability.

Nothing in this chapter shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of cannabis that is otherwise illegal under local or state law. No provision of this chapter shall be deemed a defense or immunity to any action brought against any person by the Alameda County District Attorney’s office, the Attorney General of the State of California or the United States of America.

18.118.030 Definitions.

A. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or be discovered, or developed, that has psychoactive or medical properties, whether growing or not, including but not limited to the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by California Health and Safety Code section 11018 and Business and Professions Code section 26001(f), as both may be amended. Any reference to cannabis or cannabis products shall include medical and nonmedical cannabis and medical and nonmedical cannabis products, unless otherwise specified. Cannabis or cannabis product does not mean industrial hemp as defined by

Health and Safety Code section 11018.5, or the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink, or other product. Cannabis 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 the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

B. “Cannabis cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis, including nurseries.

C. “Personal cultivation” means cannabis cultivation conducted by an individual strictly for that individual’s personal use, possession, processing, transporting, or giving away without any compensation whatsoever in accordance with this Code and state law, including but not limited to Health and Safety Code sections 11362.1 and 11362.2, as may be amended. Personal cultivation also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with state law, including Health and Safety Code sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis.

D. “Indoor cannabis cultivation” means cultivation of cannabis using exclusively artificial lighting.

E. “Mixed-light cannabis cultivation” means cultivation of cannabis using any combination of natural and supplemental artificial lighting. Greenhouses, hoop houses, hot houses and similar structures, or light deprivation systems are included in this category.

F. “Outdoor cannabis cultivation” means cultivation of cannabis using no artificial lighting conducted in the ground or in containers outdoors with no covering. Outdoor cultivation does not include greenhouses, hoop houses, hot houses or similar structures.

G. “Primary caregiver” shall have the same meaning as set forth in Health and Safety Code section 11362.7, as may be amended.

H. “Qualifying patient” or “qualified patient” shall have the same meaning as set forth in Health and Safety Code section 11362.7, as may be amended.

I. “Medical cannabis” or “medicinal cannabis” means cannabis that is intended to be used for medical cannabis purposes in accordance with the Compassionate Use Act (Health and Safety Code section 11362.7 *et seq.*), the Medical Marijuana Program Act (Health and Safety Code section 11362.7 *et seq.*), the Medical Cannabis Regulation and Safety Act (Business and Professions Code section 19300 *et seq.*) and the Medicinal and Adult Use Cannabis Regulation and Safety Act.

18.118.040 Indoor cannabis cultivation, mixed-light cannabis cultivation and general provisions for personal cultivation.

Personal cultivation, indoor cannabis cultivation and mixed-light cannabis cultivation for personal use is permitted on private residences and accessory structures to all private residences within all zoning districts, subject to all of the following minimum standards:

A. All indoor cannabis cultivation and mixed-light cannabis cultivation for personal use, including by a qualified patient or primary caregiver, shall occur at a private residence or accessory structure to a private residence, as those terms are defined in Chapter 18.08.

B. No more than six (6) cannabis plants total, per private residence, may be cultivated indoors or outdoors (or a combination of both) by either a qualified patient, primary caregiver, or an individual over twenty-one (21) years old at each private residence regardless of the number of qualified patients or adults twenty-one (21) and older who reside at such private residence. For example, a qualified patient or adult over the age of twenty-one (21) may grow three (3) plants outdoors and (3) plants indoors for a total of six (6) plants maximum at one private residence.

C. Medical cannabis shall only be cultivated by:

1. A qualified patient exclusively for his or her own personal medical use but who does not sell medical cannabis to any other person and who can provide a written doctor's recommendation to the City; or

2. A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides medical cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with California Health and Safety Code section 11362.765(c).

D. For persons other than qualified patients or primary caregivers, all personal cultivation shall be conducted by persons twenty-one (21) years of age or older. The cumulative total of cannabis plants on the property of a private residence, indoor and outdoor, shall not exceed six (6) cannabis plants, regardless of the number of persons residing at the private residence.

E. Indoor cannabis cultivation and mixed-light cannabis cultivation of medical and nonmedical cannabis for personal use may occur inside a private residence and/or an accessory building or structure on the same parcel, subject to the following restrictions:

1. Structures and equipment used for indoor cannabis cultivation and/or mixed-light cannabis cultivation, such as indoor grow lights, shall comply with all applicable zoning, building, electrical and fire code regulations as adopted by the City.

2. All accessory buildings and structures used for indoor cannabis cultivation and/or mixed-light cannabis cultivation shall comply with the locational and other requirements set forth in Title 18.

3. Personal cultivation of cannabis shall not interfere with the primary occupancy of the building or structure, including regular use of kitchen(s) or bathroom(s).

4. No exterior evidence of cannabis cultivation occurring at the property shall be discernable from the public right-of-way.

5. A tenant must have written landlord approval to engage in personal cultivation of cannabis.

6. Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of cannabis.

7. Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in this Code.

8. The cultivation area shall not be accessible to minors.

F. Indoor cannabis cultivation and mixed-light cannabis cultivation for personal use shall comply with all requirements of state law in addition to any requirements imposed by this Code.

18.118.050 Additional regulations for outdoor cannabis cultivation for personal use.

Outdoor cannabis cultivation for personal use is permitted at all private residences and accessory structures to all private residences within all zoning districts of the City, subject to all of the following minimum standards:

A. Outdoor cannabis cultivation is only permitted in a rear or side yard that is entirely enclosed by a solid, opaque fence at least six feet high that is associated with a private residence or an accessory dwelling unit.

B. The height of the cannabis plants shall not exceed the standard fence height applicable to the parcel, or six feet, whichever is less.

C. The cannabis plants shall be placed at a minimum setback of ten feet from the edge of canopy to the property line.

D. No exterior evidence of cannabis cultivation occurring at the property shall be visible from the public right-of-way.

E. The cumulative total of cannabis plants outside and inside shall not exceed six cannabis plants, regardless of the number of adults 21 and older, qualified patients, and primary caregivers residing at the private residence.

F. Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of cannabis.

G. Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in this Code.

H. Outdoor cannabis cultivation shall not be permitted at private residences where minors reside.

I. Outdoor cannabis cultivation for personal use shall comply with all requirements of state law in addition to any requirements imposed by this Code.

18.118.060 Enforcement.

A. Nuisance. Any violation of this chapter is declared to be a public nuisance and may be abated by the city pursuant to this Code.

B. Penalty. A violation of this section shall either be a misdemeanor or an infraction at the discretion of the prosecuting attorney. However, notwithstanding anything in this code to the contrary, persons violating this section shall not be subject to criminal liability under this Code solely to the extent such conduct or condition is immune from criminal liability pursuant to state law, including the Compassionate Use Act of 1996 (Health and Safety Code section 11362.5), the Medical Marijuana Program Act (Health and Safety Code sections 11362.7 et seq.), or the Adult Use of Marijuana Act, as they may be amended. This section does not prohibit the city from abating violations of this section by any administrative, civil or other non-criminal means. In such cases, a violation of this section may be considered the civil or administrative equivalent of an infraction or misdemeanor as applicable.