

ORDINANCE NO. 570 N. S.

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TIBURON
AMENDING MUNICIPAL CODE TITLE IV, CHAPTER 16 (ZONING)
BY MAKING VARIOUS TEXT AMENDMENTS RELATED TO
MARIJUANA FACILITIES, CULTIVATION AND DELIVERIES**

SECTION 1. FINDINGS.

- A. On April 12, 2017, the Planning Commission, following a public hearing, recommended to the Town Council adoption of various text amendments to Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code regarding regulation of marijuana facilities, marijuana cultivation and marijuana deliveries.
- B. The Town Council held a duly noticed public hearing on May 3, 2017 and has heard and considered all public testimony on the proposed Ordinance.
- C. The Town Council finds that all notices and procedures required by law attendant to the adoption of this Ordinance have been followed.
- D. The Town Council finds that the amendment actions made by this Ordinance are necessary for the protection of the public health, safety, and welfare.
- E. The Town Council has found that the amendments made by this Ordinance are consistent with the goals and polices of the Tiburon General Plan and other adopted ordinances and regulations of the Town of Tiburon, and further the intent and purposes of General Plan goals and policies.
- F. The Town Council finds that adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15378 of the CEQA Guidelines in that it does not constitute a “project” under CEQA, and if it were found to constitute a project, it would be exempt pursuant to the general rule set forth in CEQA Guidelines Section 15061(b)(3).

SECTION 2. ADOPTION OF AMENDMENTS TO MUNICIPAL CODE.

Title IV, Chapter 16 (Zoning) of the Tiburon Municipal Code is amended as follows:

- (A) Section 16-20.030(A)(4) [Prohibited uses] of the Tiburon Municipal Code is hereby repealed.
- (B) In Section 16-100.020(M) [Definitions], the definition of “Marijuana dispensary” is hereby repealed.
- (C) Section 16-40.090 is hereby added to read as follows:

A. Purpose.

The purpose and intent of this section is to prohibit medical marijuana facilities, non-medical marijuana facilities, marijuana cultivation, and certain marijuana deliveries, as defined below, within the town's corporate limits. It is recognized that it is a federal violation under the Controlled Substances Act to possess or distribute marijuana even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with marijuana facilities and in connection with marijuana deliveries. Such negative impacts are contrary to and undermine policies that are intended to promote and maintain the public's health, safety, and welfare.

B. Definitions.

As used in this section, the following terms shall have the meaning set forth below.

- (1) "Commercial cannabis activity" shall have the meaning set forth in Business and Professions Code section 19300.5(j).
- (2) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
- (3) "Establish" or "operate" a medical marijuana facility or non-medical marijuana facility means and includes any of the following:
 - a. The opening or commencement of the operation of a medical marijuana facility or non-medical marijuana facility;
 - b. The conversion of an existing business, facility, use, establishment, property, or location to a medical marijuana facility or non-medical marijuana facility;
 - c. The addition of a medical marijuana facility or non-medical marijuana facility to any other existing business, facility, use, establishment, property, or location.
- (4) "Marijuana" shall have the meaning set forth in Health and Safety Code section 11018 and Business and Professions Code section 19300.5(f) and any successor sections thereto.
- (5) "Medical marijuana" is marijuana used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of acquired immune deficiency syndrome ("AIDS"), anorexia, arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other serious medical condition for which marijuana is deemed to provide relief as defined in Health and Safety Code section 11362.7(h).

(6) "Medical marijuana facility" means any business, facility, use, establishment, property, or location, whether fixed or mobile, where medical marijuana is sold, made available, delivered, and/or distributed by or to three or more people. A "medical marijuana facility" includes any business, facility, use, establishment, property, or location, whether fixed or mobile, where a commercial cannabis activity, as defined by Business and Professions Code section 19300.5(j), takes place. A "medical marijuana facility" does not include the following uses provided that the location of such uses is otherwise regulated by this Code or applicable law and any such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5, 11362.7, et seq.:

- a. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code;
- b. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code;
- c. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code;
- d. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code;
- e. A residential hospice; or
- f. A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

(7) "Non-medical marijuana facility" means any building, facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license or nonprofit license under Business and Professions Code sections 26000 et seq., including but not limited to marijuana cultivation, marijuana distribution, marijuana transportation, marijuana storage, manufacturing of marijuana products, marijuana processing, the sale of any marijuana or marijuana products, and the operation of a marijuana microbusiness. A "non-medical marijuana facility" includes any "commercial marijuana activity" as defined by Business and Professions Code section 26001(d).

C. Medical marijuana facilities, non-medical marijuana facilities, marijuana cultivation, and certain marijuana deliveries prohibited.

- (1) Medical marijuana facilities are prohibited in all zones in the town and shall not be established or operated anywhere in the town.
- (2) Non-medical marijuana facilities are prohibited in all zones in the town and shall not be established or operated anywhere in the town.
- (3) No person may own, establish, open, operate, conduct, or manage a medical marijuana facility or non-medical marijuana facility in the town, or be the lessor of property where a medical marijuana facility or non-medical marijuana facility is located.

No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any medical marijuana facility or non-medical marijuana facility in the town.

(4) No use permit, site plan and architectural review permit, tentative map, parcel map, variance, grading permit, building permit, business license, certificate of occupancy, or other zoning, subdivision, encroachment or other town permit will be accepted, approved or issued for the establishment or operation of a medical marijuana facility or non-medical marijuana facility. Any such permit issued in error shall be null and void.

(5) No person or entity may cultivate marijuana at any location in the town, except that a person may cultivate no more than six (6) living marijuana plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence that is fully enclosed and secured against unauthorized entry, provided that all of the following standards are met:

- a. The owner of the property provides written consent expressly allowing the marijuana cultivation to occur;
- b. The person conducting the marijuana cultivation complies with all applicable Building Code requirements set forth in Chapter 13 of the Municipal Code;
- c. There is no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of marijuana cultivation; and
- d. The marijuana cultivation complies with Health and Safety Code section 11362.2(a)(3).
- e. The living plants and any marijuana produced by the plants shall not be detectable by sight or smell from adjacent properties or public places.

(6) No person and/or entity may deliver or transport marijuana from any fixed or mobile location, either inside or outside the town, to any person in the town, except as follows:

- a. A person may deliver or transport medical marijuana or medical marijuana products to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, for whom he or she is the primary caregiver within the meaning of Health and Safety Code sections 11362.5 and 11362.7(d).
- b. A licensed medical marijuana dispensary operating in compliance with Business and Professions Code sections 19300 et seq., may deliver medical marijuana or medical marijuana products to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, residing within the town.

(7) Nothing contained in this section shall be deemed to permit or authorize any use or activity that is otherwise prohibited by any state or federal law.

D. Enforcement.

The town may enforce this section in any manner permitted by law. Violation of this section shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the town, create a cause of action for injunctive relief.

SECTION 3. 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 Town Council of the Town of Tiburon 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.

SECTION 4. PUBLICATION AND EFFECTIVE DATE.

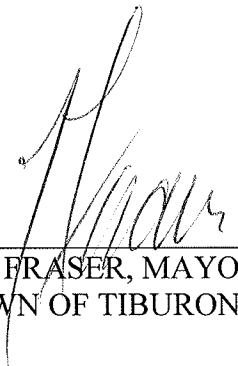
This ordinance shall be in full force and effect thirty (30) days after the date of adoption. Pursuant to the provisions of the California Government Code, a summary of this ordinance shall be prepared by the Town Attorney. At least five (5) days prior to the Town Council meeting at which adoption of the ordinance is scheduled, the Town Clerk shall (1) publish the summary in a newspaper of general circulation in the Town of Tiburon, and (2) post in the office of the Town Clerk a certified copy of this ordinance. Within fifteen (15) days after the adoption of this ordinance, the Town Clerk shall (1) publish the summary in a newspaper of general circulation in the Town of Tiburon, and (2) post in the office of the Town Clerk a certified copy of the ordinance along with the names of those Council members voting for and against the ordinance.

This ordinance was read and introduced at a regular meeting of the Town Council of the Town of Tiburon, held on May 3, 2017, and was adopted at a regular meeting of the Town Council of the Town of Tiburon, held on May 17, 2017, by the following vote:

AYES: COUNCILMEMBERS: Doyle, Fraser, Fredericks, O'Donnell, Tollini


NAYS: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



JIM FRASER, MAYOR
TOWN OF TIBURON

ATTEST:



LEA STEFANI, TOWN CLERK