

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLUSA
REPEALING CHAPTER 12E OF THE COLUSA MUNICIPAL CODE ENTITLED
“MEDICAL MARIJUANA CULTIVATION” AND REENACTING CHAPTER 12E
TO BE RETITLED “PERSONAL CANNABIS CULTIVATION,”**

WHEREAS, the City of Colusa currently regulates medical marijuana cultivation under Chapter 12E of the Colusa Municipal Code; and

WHEREAS, recent changes in state law, including the passage of Proposition 64 by the voters, effective November 9, 2016, which enacted the Control, Regulate and Tax Adult Use of Cannabis Act, have prompted the City to update its cannabis/marijuana cultivation regulations;

WHEREAS, the City of Colusa, pursuant to its police power, may adopt regulations to protect the health, safety and welfare of the public, Cal. Const. art. XI, § 7, Cal. Govt. Code § 37100, and thereby is authorized to declare what use or condition constitutes a public nuisance; and

WHEREAS, Section 38771 of the California Government Code 38771 authorizes the City through its legislative body to declare actions and activities that constitute a public nuisance; and

WHEREAS, City Council finds that the provisions of this Ordinance are consistent with the City of Colusa’s General Plan; and

WHEREAS, the proposed amendments to the City of Colusa Municipal Code, provide for the “public necessity and convenience and general welfare;” and

WHEREAS, the proposed amendments would not be detrimental to the public’s health, safety and welfare; and

WHEREAS, the City of Colusa staff, pursuant to the provisions of the California Environmental Quality Act (hereinafter “CEQA”) (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.) has determined that the Ordinance is exempt pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations; and, no further environmental analysis is required, and a notice of exemption will be filed; and

WHEREAS, the City Council finds that the outdoor cultivation of cannabis significantly impacts, or has the potential to significantly impact, the City’s jurisdiction. These impacts include the following:

- A. Public safety agencies, city residents, and other public entities have reported adverse impacts from outdoor cannabis cultivation, including disagreeable odors and release of pollen that can aggravate the respiratory system; increased risk of burglary and other property crimes; and acts of violence in connection with the commission of such crimes or the occupants' attempts to prevent such crimes.
- B. The creation of persistent strong odors as cannabis plants mature and flower is offensive to many people and creates an attractive nuisance, alerting persons to the location of valuable cannabis plants and creating an increased risk of crime.
- C. The unregulated cultivation of cannabis can adversely affect the health, safety and well-being of the city and its residents. Comprehensive regulation of premises used for cannabis cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, smells and indoor electrical fire hazards that may result from unregulated cannabis cultivation, especially if the amount of cannabis cultivated on a single premises is not regulated and substantial amounts of cannabis can be cultivated in a concentrated place.
- D. Unlimited and unregulated indoor cultivation of substantial amounts of cannabis also frequently requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation.
- E. Children are particularly vulnerable to the effects of cannabis use, and the presence of cannabis plants has proven to be an attractive nuisance for children, creating an unreasonable hazard in areas frequented by children including hospitals, schools, church parks or playgrounds, childcare centers, recreation centers or youth centers. Cultivation of any amount of cannabis at, or near these sensitive uses presents unique risks that the cannabis plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with cannabis cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of cannabis in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the cannabis plants.
- F. The cultivation of cannabis in other cities has resulted in calls for service to the police department, including calls for robberies thefts, and physical assaults from cannabis that is grown outdoors;
- G. Cannabis growth poses significant safety risks for surrounding neighbors, including but not limited to, risks of violent confrontation in connection with attempts to steal cannabis, risk of fire from improperly wired electrical lights within structures growing cannabis, risk of guard dogs and security measures associated with structures and properties growing cannabis; and
- H. Staff and residents of the city have observed that the smell associated with cannabis cultivation is severe enough that it interferes with the use and enjoyment of property in the city.

WHEREAS, the City Council of the City of Colusa finds that it is in the interest of the health, safety and welfare of the City to prohibit outdoor cannabis cultivation and to limit and regulate the indoor cultivation of cannabis within the City; and

WHEREAS, the City does not intend by enacting this ordinance to either burden any defense to a criminal prosecution set forth in the CUA, the MMPA, or the MCRSA, or any other state law, or to criminalize any activities otherwise permitted by the state legislature through the CUA, the MMPA, or the MCRSA, or any other state law.

WHEREAS, the City of Colusa City Council has considered public comment at a duly noticed public hearing.

THE CITY COUNCIL OF THE CITY OF COLUSA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Compliance with California Environmental Quality Act.

The City Council finds that the adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to 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) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly, and a notice of exemption shall be filed accordingly. This Article will have no direct or indirect effect on the environment because it is not permitting any new activity, it is regulating activity, namely the cultivation of cannabis for personal use that is now permitted under state law. The regulations prevent negative impacts on the environment by prohibiting excessive energy or water usage in the cultivation, prevents the use and discharge of hazardous chemicals into City wastewater facilities, and adds other health and safety regulations to protect minors from accessing cannabis cultivation sites, and protects the citizenry from potential negative impacts of others' cultivation activities.

Section 2. The City desires to adopt regulations consistent with the Control, Regulate and Tax Adult Use of Cannabis Act enacted by the passage of Proposition 64 (“AUMA”) and State of California statutes and regulations regarding the use and cultivation of cannabis for personal use.

Section 3. Chapter 12E of the Colusa Municipal Code is hereby repealed and reenacted to read as follows:

Chapter 12E – PERSONAL CANNABIS CULTIVATION
12E-010 - Purpose.

- A. The purpose of this chapter is to prevent community-wide adverse impacts including, but not limited to, increased criminal activity, fire and chemical hazards, objectionable odors, late night traffic, and the general deterioration of neighborhoods associated with cannabis cultivation for personal use.

- B. Cannabis cultivation in the city can adversely affect the health, safety, and well-being of city residents. Therefore, reasonable regulation of cannabis cultivation is proper and necessary to avoid the concentration of substantial amounts of cannabis in one place and to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated cannabis cultivation.

12E-020 - Definitions.

For the purposes of this chapter, the following definitions shall apply:

"Cannabis" means all parts of the plant cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes cannabis infused in foodstuff. It 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 resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant that are incapable of germination.

"Cannabis cultivation" or "cannabis cultivation activities" shall mean the planting, growing, harvesting, drying, processing, or storage of one or more cannabis plants or any part thereof.

"Cannabis plant" shall mean any mature or immature cannabis plant, or any cannabis seedling.

"Childcare center" shall mean any licensed childcare center, daycare center, childcare home, or any preschool.

"Church" shall mean any structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

"Commercial cannabis activity" shall mean the possession, processing, transporting, obtaining, purchasing, or giving away, storing, cultivation, or manufacture of cannabis for compensation or sale. "Commercial cannabis activity" shall also mean the laboratory testing, distribution, delivery, dispensing, mobile dispensing, or mobile delivery of cannabis.

"Community center" shall mean any facility open to the public at which classes, social activities, recreational activities, educational activities, support, and public information are offered for all residents of the community.

"Fully Enclosed And Secure Structure" shall mean a building completely detached from a residence that complies with the California Building Code and 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 2" x 4" nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Exterior walls must be constructed with nontransparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement. Hoop Style Greenhouses or an equivalent style are not allowed.

"Enforcement officer" shall mean the chief of police, building official, code enforcement official, environmental health department director, public health officer, agricultural commissioner, fire chief, clerk of the board of supervisors, or their designees.

“Hoop Style Greenhouse” is a temporary structure used as a greenhouse or a season extender and is characterized by its typical construction of polyethylene and PVC pipe. Also known as a hoop house, poly-tunnel, poly-house, or high-tunnel.

"Indoors" shall mean inside a private residence or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure.

“Outdoors” means any location within the City of Colusa that is not within a fully enclosed and secure structure.

"Park" shall mean any public playground, public recreation center or area, and other public areas created, established, designed, maintained, provided, or set aside by the county, and city or any other public entity or agency, for the purposes of public rest, play, recreation, enjoyment or assembly, and all buildings and structures located thereon or therein.

“Personal Grow” shall mean no more than the total of six plants per residence, both indoor and outdoor, regardless of number of persons living there

"Premises" shall mean a single parcel of property. Where contiguous parcels are under common ownership or control, such contiguous parcels shall be counted as a single "premises" for purposes of this chapter.

"Primary caregiver" shall have the same meaning as set forth in Health and Safety Code sections 11362.5 and 11362.7, et seq.

“Private Residence” shall have the same meaning as contained in Health and Safety Code Section 11362.2 (b)(5) as it now reads or as amended.

“Public Right-Of-Way” shall mean any public street, sidewalk, trail, or navigable waterway, as well as any property owned by a public agency.

"Qualified patient" shall have the same meaning as set forth in Health and Safety Code sections 11326.5 and 11362.7, et seq.

"Rear yard" shall mean the rear open space portion of any premises, whether fenced or unfenced.

"Residential unit" means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation on a premises or legal parcel located within a residential or agricultural-residential zoning district.

"Responsible party" shall mean: (1) each person committing the violation or causing a condition on a premises located within the jurisdiction of the city which violates this chapter; (2) each person who has an ownership interest in that premises; or (3) each person who, although not an owner, nevertheless occupies or has a legal right or a legal obligation to exercise possession or control over that premises. In the event a person who commits the violation or causes the violation is a minor, then the minor's parents or legal guardian shall be deemed the responsible party.

"School" shall mean any institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education; excluding home school,

vocational or professional institution of higher education, including a community college, junior college, college or university.

12E-030 - Site location, operation, and development standards.

Non-commercial cultivation of small amounts of cannabis for personal use is only permitted in residential zones when all of the following conditions and standards are met:

A. Generally.

1. Cannabis cultivation is permitted only on parcels with residential units where the owner of the Personal Grow resides full-time. Only one Personal Grow is allowed per person and such person shall not participate in personal cannabis cultivation in more than one location within the city. Cannabis cultivation activities may only occur within a residential unit, garage or fully enclosed and secure structure that is secured and locked.
2. From the public right-of-way, there shall be no exterior evidence of cannabis cultivation.
3. The cannabis cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, excessive light, heat, noise, noxious gases, odors, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to the use of storage of materials, processes, products or waste.
5. Cultivation shall not exceed six cannabis plants of any size per residential unit. The maximum number of plants shall be limited regardless of the number of qualified patients or primary caregivers residing on the property.
6. Cannabis cultivation activities shall not be upon any property or parcel containing a childcare center, school, or place of religious or public assembly.
7. Indoor grow lights shall not exceed one thousand two hundred watts and shall comply with the California Building, Electrical and Fire Codes as adopted by the city.
8. Cannabis cultivation activities shall not be accessible to persons under eighteen years of age.

B. Cannabis cultivation within residential units, specifically.

In addition to those requirements listed in Subsection A. of this section, cannabis cultivation activities within a residential unit shall also comply with the following requirements:

1. The residential unit shall, at all times, maintain a kitchen, bathroom, and primary bedroom(s) for their intended purpose, and shall not be used for cannabis cultivation.
2. Any cannabis cultivation activities shall not create humidity, mold, or other nuisance condition.

C. Cannabis cultivation within a fully enclosed and secure structure, specifically.

In addition to those requirements listed in Subsection A. of this section, cannabis cultivation activities within a detached accessory structure shall also comply with the following requirements:

1. The structure shall be no smaller than one hundred twenty square feet in size.
2. The structure shall be located within the rear yard area of any legal parcel or premises.
3. The structure shall maintain a minimum setback of ten feet from any property line.
4. Any accessory structure used for cannabis cultivation must have a valid building permit issued by the city building official. The building official shall consult with the planning director and enforcement officers in consideration of any building permit application seeking a building permit for the construction or alteration of any detached accessory structure to be used for cannabis cultivation.

12E-040 - Other applicable regulations.

- A. There shall be no variances or deviations permitted to any standards or requirements within this chapter.
- B. Nothing in this chapter is intended to authorize the cultivation, possession, or use of cannabis in violation of state law.

12E-050 - Prohibited activities declared a public nuisance.

- A. It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel within the city of Colusa to create a public nuisance in the course of cultivating cannabis plants or any part thereof. A public nuisance may be deemed to exist if such activity produces:
 1. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public;
 2. Repeated responses (more than three times in a one-year time period) to the parcel from law enforcement officers;
 3. Repeated disruption (more than three times in a one-year time period) to the free passage of persons or vehicles in the neighborhood;
 4. Excessive noise in violation of applicable city noise standards in the general plan or municipal code;
 5. Any other impacts on the neighborhood which are disruptive of normal activity in the area. It is unlawful and a public nuisance for any person owning, leasing, renting, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the city to cause or allow such parcel or premises to be used for the outdoor cultivation of cannabis plants.
- B. It is unlawful and a public nuisance for any person to use gas products, such as CO₂, butane, propane, and natural gas, for the cultivation, extraction, or processing of personal use cannabis.
- C. It is unlawful and a public nuisance for any person to use generators for personal use cannabis cultivation activities.
- D. In addition to the foregoing, any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the city or subject to any available legal remedies, including but not limited to,

civil injunctions. The prohibitions outlined in this chapter shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, this prohibition shall be imposed notwithstanding any assertion that the person(s) cultivating cannabis are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating cannabis.

12E-060 - Enforcement, violations and penalties.

In the discretion of the enforcement officer, any person violating the provisions of this chapter shall be issued an administrative citation pursuant to Colusa Municipal Code Chapter 12C. Each such violation shall be deemed a separate offense. This section provides a civil penalty remedy that is in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address any violation of this chapter.

SECTION 4: Any provision of the Colusa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 5: Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable. The City Council of the City of Colusa declares that it would have adopted all the provisions of this ordinance that remain valid if any provisions of this ordinance are declared invalid.

SECTION 6: The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

APPROVED FOR INTRODUCTION AT A REGULAR MEETING on the ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

GREG PONCIANO, MAYOR

ATTEST:

Shelly Kittle, City Clerk