



Staff Report

TO: Town of Loomis Planning Commission
FROM: Mary Beth Van Voorhis, Planning Director
DATE: December 10, 2019
RE: SECOND READING OF ORDINANCE 281, REPEAL AND REENACTMENT OF CHAPTER 13.46 OF THE LOOMIS MUNICIPAL CODE – CANNABIS LAND USES AND AMENDING SECTIONS 13.24.040, 13.26.040 AND 13.28.030 OF THE LOOMIS MUNICIPAL CODE

Recommendation

Second reading and adoption of Ordinance 281 on the repeal and reenactment of Chapter 13.46 – Cannabis Land Uses in the Town of Loomis including a recommendation to the Town Council that this project is categorically exempt under Class 8 of the California Environmental Quality Act (verbal reading waived).

Issue Statement and Discussion

At the November 8, 2016 general election, the People of the State of California approved Proposition 64, legalizing the use and possession of recreational cannabis.

Proposition 64 enacts Section 11362.2(b)(3) of the Health and Safety Code, which permits a local agency to prohibit the planting, cultivation, harvesting, drying, or processing of cannabis plants outdoors upon the grounds of a private residence.

Proposition 64 enacted Section 26200 of the Business and Professions Code which permits a local agency to prohibit the establishment of cannabis businesses as specified in Sections 26070-26130 of the Business and Professions Code.

On June 27, 2017 the Governor of the State of California signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA, SB 94) merging California's cannabis laws into a single regulatory system for medicinal and nonmedicinal commercial cannabis businesses. The MAUCRSA provides for the state delegation of the full power and authority to enforce MAUCRSA and regulations promulgated by the bureau and other licensing authorities under MAUCRSA to cities.

The Town of Loomis seeks to establish reasonable regulations under which cannabis is cultivated for personal use as authorized under state law in order to protect public health, safety, and welfare.

The land use regulation of cannabis is proper and necessary to avoid the risks of criminal activity, and degradation of the natural environment including, but not limited to, odors and fire hazards that may result from unregulated cannabis activities.

On October 22, 2019 the Planning Commission, under a properly noticed public hearing, was asked to review and provide recommendation to the Town Council of the attached ordinance regulating Cannabis Activity within the Town of Loomis. The public hearing was opened and closed without public comment. The Planning Commission, on a 5 ayes, 0 nays vote, recommended adoption by the Town Council of the reenactment of Chapter 13.46 as attached. The Planning Commission recommendation of approval to the Town Council also includes the repeal of the Chapter 13.46 on the cultivation of marijuana as stated in the existing Code Chapter 13.46, Sections 13.46.020, 13.46.040, and 13.46.060 (attached).

The reenactment text of Chapter 13.46, Sections 13.46.010 through 13.46.060 are attached including amendments to Section 13.24.040 of the Loomis Municipal Code, Table 2-2, Section 13.26.040, Table 2-6, and Section 13.28.030 Table 2-9.

Based on Planning Commission recommendation, Ordinance #264 shall be repealed and replaced with the reenacted Ordinance; provided, however, there are no legal challenges to this Ordinance. In the event this Ordinance is challenged in court, Ordinance #264 will remain in effect in accordance with its existing terms. The reenacted ordinance, upon approval, will take effect thirty (30) days after its adoption.

On November 12, 2019 the Town Council held a public hearing and approved first reading of Ordinance 281.

CEQA Requirements

The repeal and reenactment of Chapter 13.46 is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060, Subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, Subdivision (b)(3) (there is not possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Ordinance is categorically exempt from review under CEQA, Class 8, Categorical Exemption (regulatory activity to assure the protection of the environment).

Financial and/or Policy Implications

None.

Attachments

- A. Ordinance #264 (repeal)
- B. Proposed Ordinance 281 (reenactment)

TOWN OF LOOMIS

ORDINANCE NO. 264

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS
ENACTING CHAPTER 13.46 OF THE LOOMIS MUNICIPAL CODE
PROHIBITING THE CULTIVATION OF MARIJUANA**

WHEREAS, the Town of Loomis re-affirms and confirms that its zoning code is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the zoning code is prohibited; and

WHEREAS, California Health & Safety Code section 11362.777(b)(3) states that the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under the principles of permissive zoning and may only issue a license if local regulations have been complied with; and

WHEREAS, the establishment of dispensaries and deliveries of marijuana are prohibited within all zones, districts, properties and areas within the Town; and

WHEREAS, the Town wishes to impose land use regulations on cultivation; and

WHEREAS, the Town Council hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Town Council further finds that the Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment); and,

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

WHEREAS, the Act became effective January 1, 2016 and contains provisions which allow for local governments to continue to regulate licenses and certain activities thereunder; and

WHEREAS, it is in the interest of the Town, its residents, and its lawfully permitted businesses that the Town prohibit the cultivation of medical marijuana; and

WHEREAS, on January 26, 2016, following a duly noticed public hearing, the Loomis Planning Commission recommended that the Town Council adopt this ordinance prohibiting the cultivation of medical marijuana within the Town of Loomis; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOOMIS HEREBY ORDAINS AS FOLLOWS:

Section 1. Findings. The recitals set forth above are hereby incorporated by reference. Additionally, the Town Council finds as follows:

1. The cultivation of marijuana poses several risks to the health, safety, and welfare of both the individual and the people of the Town of Loomis at-large and can cause adverse secondary effects, including, but not limited to, increased crime in the vicinity of marijuana cultivations. Marijuana cultivation can also lead to fires, expose minors to marijuana, negatively impact neighborhoods, damage buildings, require dangerous electrical alterations and use, and create the nuisance of strong and noxious odors. The Town Council is concerned that cultivating medical marijuana in the Town will result in an increase in crime and other negative secondary effects.

2. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7 et seq.) to clarify the scope of Proposition 215, and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified state criminal statutes.

3. Health and Safety Code section 11362.83 expressly allows cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420.

4. Proposition 215 and Senate Bill 420 primarily address the criminal law, providing qualifying patients and primary caregivers with limited immunity from state criminal prosecution under certain identified statutes. Neither Proposition 215 nor Senate Bill 420, nor the attorney general's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use adopted pursuant to Senate Bill 420, provides comprehensive civil regulation of premises used for marijuana cultivation. The cultivation of marijuana in the Town of Loomis can adversely affect the health, safety, and well-being of the Town and its residents. Comprehensive civil regulation of marijuana cultivation is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from marijuana cultivation.

5. As recognized by the Attorney General's August 2008 Guidelines for the security and Non-Diversion of Marijuana Grown for Medical Use, the cultivation or other concentration of marijuana in any location or premises increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

6. It is the purpose and intent of this chapter to prohibit the cultivation of marijuana be cultivated to provide for the health, safety and welfare of the public. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of medical marijuana pursuant to the Compassionate Use Act (Health and Safety Code section 11362.5) or the Medical Marijuana Program Act (Health and Safety Code section 11362.7 et seq.) Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana in violation of state or federal law.

Section 2. Enactment. Chapter 13.46 of the Town of Loomis Municipal Code is hereby added, to read as follows:

Chapter 14.44

MARIJUANA CULTIVATION

13.46.020 Definitions.

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply.

- A. "Marijuana" shall have the same meaning as the definition of that word in California Health and Safety Code section 11018.
- B. "Medical Marijuana Cultivation" means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

13.46.040 Cultivation of medical marijuana.

No person may engage in the cultivation of medical marijuana in the Town of Loomis. It is hereby declared to be unlawful and a public nuisance for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the Town to cultivate medical marijuana.

13.46.060 Enforcement.

Violations of this chapter shall constitute a public nuisance and may be enforced pursuant to the provisions of Chapters 1.20 and 7.04 of the Loomis Municipal Code, or any other applicable law.

Section 3. Severability. The provisions of Chapter 13.46 are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of Chapter 13.46, or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not result in the invalidity of the entire chapter which can be given effect without the invalid provision or application. The Loomis Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

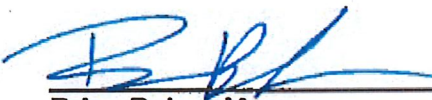
Section 4. CEQA. The Town Council hereby finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Town Council further finds that the Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment).

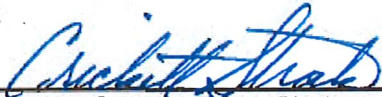
Section 5. Effective Date and Publication. This Ordinance shall take effect thirty (30) days after its adoption. The Town Clerk shall cause this Ordinance to be published in the Loomis News and to be posted at three (3) locations within fifteen (15) days after its passage; shall certify to the adoption and posting of this Ordinance; and shall cause this

Ordinance and its certification to be entered in the Book of Ordinances of the Town of Loomis.

The foregoing Ordinance was introduced at a regular meeting of the Council of the Town of Loomis held on the 9th of February, 2016, and was ADOPTED AND ORDERED published and posted at a regular meeting of the Council held on the 8TH day of March, 2016, by the following roll call vote:

AYES: Baker, Black, Morillas, Ucovich, Wheeler
NOES: None
ABSTAINED: None
ABSENT: None

By: 
Brian Baker, Mayor

ATTEST:
By: 
Crickett Strook, Town Clerk

TOWN OF LOOMIS

ORDINANCE 281

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS REPEALING AND REENACTING CHAPTER 13.46 OF THE LOOMIS MUNICIPAL CODE RELATING TO CANNABIS LAND USES AND AMENDING SECTIONS 13.24.040, 13.26.040 AND 13.28.030

Recitals

WHEREAS, Chapter 13.76 of the Loomis Municipal Code provides for amendments to the Loomis Zoning Code by the Town Council; and

WHEREAS, the Town Council reaffirms and confirms that the zoning code is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the zoning code is prohibited; and

WHEREAS, at the November 8, 2016, general election, the People of the State of California approved Proposition 64, legalizing the use and possession of recreational cannabis; and

WHEREAS, Proposition 64 enacts Section 11362.2(b)(3) of the Health and Safety Code, which permits a local agency to prohibit the planting, cultivation, harvesting, drying, or processing of cannabis plants outdoors upon the grounds of a private residence; and

WHEREAS, Proposition 64 enacted Section 26200 of the Business and Professions Code which permits a local agency to prohibit the establishment of cannabis businesses as specified in Sections 26070-26130 of the Business and Professions Code; and

WHEREAS, the Governor of the State of California signed into law on June 27, 2017, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA, SB 94) merging California's cannabis laws into a single regulatory system for medicinal and nonmedicinal commercial cannabis businesses; and

WHEREAS, the MAUCRSA provides for the state delegation of the full power and authority to enforce MAUCRSA and regulations promulgated by the bureau and other licensing authorities under MAUCRSA to cities; and

WHEREAS, the Town desires to establish reasonable regulations under which cannabis is cultivated for personal use as authorized under state law in order to protect the public health, safety, and welfare; and

WHEREAS, the land use regulation of cannabis is proper and necessary to avoid the risks of criminal activity, and degradation of the natural environment including, but not limited to, odors and fire hazards that may result from unregulated cannabis activities; and

WHEREAS, the Town Council finds that this Ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the Town Council further finds that the Ordinance is categorically exempt from review under CEQA under the Class 8 Categorical Exemption (regulatory activity to assure the protection of the environment); and directs Staff to file a notice of exemption; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on September 24, 2019 and took action to recommend that the Town Council approve this Ordinance, amending Titles 13 of the Loomis Municipal Code regulating the cannabis land uses; and

WHEREAS, a public notice describing the proposed amendments to the Loomis Municipal Code relative to cannabis land uses was published in the Loomis News, a newspaper of general circulation, in accordance with Section 6061 of the California Government Code.

NOW, THEREFORE, the Town Council of the Town of Loomis ordains as follows:

Section 1. Purpose.

The purpose of this Ordinance is to make amendments to the Loomis Municipal Code Title 13 (Zoning) pertaining to cannabis land uses.

Section 2. Authority.

The Town Council enacts this Ordinance in accordance with the authority granted to the Town under state law.

Section 3. Repeal and Reenactment of Chapter 13.46 of the Loomis Municipal Code.

Chapter 13.46 of the Loomis Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

CHAPTER 13.46 - CANNABIS ACTIVITY

13.46.010 Purpose.

- A. The purpose of this chapter is to prohibit commercial cannabis activity within the Town of Loomis as well as to impose reasonable regulations on personal cultivation in private residences and accessory structures.
- B. The Town Council finds that the prohibition of commercial cannabis activity is necessary for the preservation and protection of the public health, safety, and welfare of the Town. The prohibition of such uses is within the authority conferred upon the Town Council by state law and is an exercise of its police powers to enact and enforce regulations for the public health, safety, and welfare.

13.46.020 Definitions.

- A. "Cannabis" shall mean all parts of the plant *Cannabis sativa Linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; seeds thereof; 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 goods as defined in Title 16 of the California Code of Regulations at Section 5000(f); dried flower as defined in Title 16 of the California Code of Regulations at Section 8000(k); kief as defined in Title 16 of the California Code of Regulations at Section 5000(l); non-manufactured cannabis product as defined in Title 16 of the California Code of Regulations at Section 8000(v); and pre-roll as defined in Title 16 of the California Code of Regulations at Section 5000(q).

- B. "Commercial cannabis activity" shall have the same meaning as defined in Title 16 of the California Code of Regulations at Section 8000(g).
- C. "Cultivation" shall have the same meaning as defined in Title 16 of the California Code of Regulations at Section 8000(h).
- D. "Cultivation area" shall mean the space within a residence or enclosed structure where cultivation takes place, including the space occupied by any equipment necessary for cultivation.
- E. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer.
- F. "Enclosed structure" means a structure that has: a complete roof, a foundation, walls, security measures to protect against unauthorized entry, and access only through one or more lockable doors.
- G. "Immature plant" shall have the same meaning as defined in Title 16 of the California Code of Regulations at Section 8000(m).
- H. "Indoors" shall mean the space within an enclosed structure.
- I. "Mature plant" shall have the same meaning as defined in Title 16 of the California Code of Regulations at Section 8000(s).
- J. "MAUCRSA" shall mean the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as codified in Division 10 of the California Business and Professions Code (Section 26000 et seq.) as the same may be amended from time to time.
- K. "Outdoor cultivation" shall mean cultivation in any location not within an enclosed structure.
- L. "Person" shall mean any natural person, corporation, firm, partnership, joint venture, limited liability company, cooperative, nonprofit, association, other similar entity, or any owner, manager, employee, or volunteer belonging to such an entity.
- M. "Personal cultivation" shall mean cultivation undertaken by a personal grower.
- N. "Personal grower" shall mean any person who cultivates cannabis for personal use under the authority of, and in compliance with, state law and the provisions of this Chapter 13.46.
- O. "Residence" shall mean a house, apartment unit, condominium, mobile home, or other similar structure that is lawfully used as a dwelling, and is located within those zones of the Town of Loomis authorizing such residential use.
- P. "State license" shall mean any license issued by the State of California, or any department thereof, for the purpose of undertaking any type of commercial cannabis activity.
- Q. "State licensee" shall mean the holder of any state license.

13.46.030 Commercial Cannabis Activity Prohibited.

- A. Commercial cannabis activity is prohibited in the Town of Loomis. This prohibition shall include, to the maximum extent permitted under state law, any and all deliveries within the Town of Loomis.

- B. In accordance with the provisions of this Chapter 13.46, the Town of Loomis will not issue any license, permit, acknowledgement, or other such entitlement authorizing commercial cannabis activity within the Town of Loomis where such entitlement is necessary to procure a state license.
- C. Regardless of any state license issued for commercial cannabis activity in any other jurisdiction, no state licensee may undertake any commercial cannabis activity within the Town of Loomis under such a state license.
- D. No property owner shall rent, lease, or otherwise permit any person to make use of their property for commercial cannabis activity.

13.46.040 Personal Cultivation.

- A. A personal grower may undertake personal cultivation, subject to state law and the conditions set forth in subsection B of this Section.
- B. Personal cultivation shall be subject to the following conditions:
 - 1. Personal cultivation shall only occur within the residence where the personal grower resides full-time or an enclosed structure located on the same parcel as that residence.
 - 2. The cultivation area shall be wholly contained within one room of the residence or enclosed structure.
 - 3. The cultivation area shall be securely locked and accessible only to residents of the residence.
 - 4. Lighting for personal cultivation shall not exceed a total of twelve-hundred watts (1,200W) and shall not be located less than twelve inches (12") from any cannabis plants.
 - 5. Personal cultivation shall be limited to six (6) mature plants or twelve (12) immature plants, or any combination thereof where one (1) mature plant is equal to two (2) immature plants.
 - 6. Controls shall be in place to prevent any odors or other olfactory stimulus from the cultivation being detectable from outside of the residence or enclosed structure.
 - 7. Personal cultivation shall not include the use of butane, CO₂, methane, or any other flammable or nonflammable gas.
 - 8. Personal cultivation shall not be visible from the exterior of the residence or enclosed structure where the cultivation area is located.
 - 9. The residence, enclosed structure, and cultivation area shall be in compliance with the provisions of the applicable building and construction codes as set forth in Chapter 11.04 of this Code and state law.

13.46.050 Outdoor Cultivation Prohibited.

No person, including any personal grower, shall undertake outdoor cultivation in the Town of Loomis.

13.46.060 Violations Declared Public Nuisance; Abatement; Penalties.

- A. Violation of this Chapter shall constitute a public nuisance. Additionally, adverse effect caused by personal cultivation on the public health, welfare, or safety where such an adverse effect is caused by dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts shall constitute a public nuisance.
- B. Abatement of such a public nuisance arising from a violation of this Chapter is subject to the procedures set forth in Chapter 7.04 of this Code, including summary abatement pursuant to Section 7.04.190 of this Code.
- C. Any violation of this Chapter may be subject to fines or liens as set forth in Chapter 7.04 of this Code and any violation of this Chapter may additionally be punishable as a misdemeanor.

Section 4. Amendment to Section 13.24.040 of the Loomis Municipal Code.

Table 2-2 in Section 13.24.040 of the Loomis Municipal Code is hereby amended to include a new entry regarding Commercial Cannabis Activity as follows:

LAND USE	PERMIT REQUIRED BY DISTRICT						Specific Use Regulations
	RA	RE	RR	RS	RM	RH	
COMMERCIAL CANNABIS ACTIVITY							
	—	—	—	—	—	—	13.46.100

Section 5. Amendment to Section 13.26.040 of the Loomis Municipal Code.

Table 2-6 in Section 13.26.040 of the Loomis Municipal Code is hereby amended to include a new entry regarding Commercial Cannabis Activity as follows:

LAND USE	PERMIT REQUIRED BY DISTRICT				Specific Use Regulations
	CO	CG	CC	CT	
COMMERCIAL CANNABIS ACTIVITY					
	—	—	—	—	13.46.100

Section 6. Amendment to Section 13.28.030 of the Loomis Municipal Code.

Table 2-9 in Section 13.28.030 of the Loomis Municipal Code is hereby amended to include a new entry regarding Commercial Cannabis Activity as follows:

LAND USE	PERMIT REQUIRED BY DISTRICT				Specific Use Regulations
	BP	ILT	IL	PI	
COMMERCIAL CANNABIS ACTIVITY					
	—	—	—	—	13.46.100

Section 7. Severability.

If any provision of this chapter, or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this chapter, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable.

Section 8. Repeal of Moratorium on the Cultivation of Marijuana.

Ordinance 264 shall be repealed and replaced with this Ordinance upon the effective date of this Ordinance; provided, however, there are no legal challenges to this Ordinance. In the event this Ordinance is challenged in court, Ordinance 264 will remain in effect in accordance with its terms.

Section 9. Effective Date and Publication.

This ordinance shall take effect thirty (30) days after its adoption, and was published in summary format prior to adoption, and a summary will be published within 15 days after adoption in a paper of general circulation published and circulated within the Town of Loomis.

Section 10. CEQA.

A Categorical Exemption has been prepared for this ordinance in compliance with the provisions of the California Environmental Quality Act.

Section 11. Publication after Adoption.

Within fifteen (15) days of its passage, this Ordinance shall be published once in The Loomis News, a newspaper of general circulation within the Town.

PASSED AND ADOPTED this 10th day of December, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jan Clark-Crets, Mayor

ATTEST:

APPROVED AS TO FORM:

Charleen Strock, Town Clerk

Jeffrey Mitchell, Town Attorney