



Staff Report

TO: Town of Loomis Planning Commission
FROM: Mary Beth Van Voorhis, Planning Director
DATE: October 22, 2019
RE: PUBLIC HEARING - REPEAL AND REENACTMENT OF CHAPTER 13.46 OF THE LOOMIS MUNICIPAL CODE – CANNABIS LAND USES

Recommendation

Conduct a public hearing, receive public input, and provide a recommendation to the Town Council 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.

Issue Statement and Discussion

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.

The Planning Commission is asked to review and provide recommendation to the Town Council of the

attached ordinance regulating Cannabis Activity within the Town of Loomis.

Recommendation of approval to the Town Council should also include the repeal of the moratorium 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 13.46.500 are attached including amendments to Section 13.24.040 of the Loomis Municipal Code, Table 2-2, 2-6, and Section 13.28.030 Table 2-9.

Based on Planning Commission recommendation, Ordinance #269 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 #269 will remain in effect in accordance with its existing terms. The reenacted ordinance, upon approval, will take effect thirty (30) days after its adoption.

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 #269 (repeal)
- B. Proposed Ordinance #***, Chapter 13.46 (reenactment)

TOWN OF LOOMIS

ORDINANCE NO. 269

**AN UNCODIFIED URGENCY ORDINANCE OF THE TOWN COUNCIL
OF THE TOWN OF LOOMIS EXTENDING URGENCY ORDINANCE 268 THAT
ESTABLISHED A TEMPORARY MORATORIUM PROHIBITING THE OUTDOOR
CULTIVATION AND SALE OF NONMEDICAL MARIJUANA**

WHEREAS, the City Council of the Town of Loomis adopted Urgency Ordinance No. 268 at its regularly scheduled meeting of December 13, 2016, imposing a moratorium on the outdoor cultivation and sale of nonmedical marijuana; and

WHEREAS, all of the findings cited in Urgency Ordinance No. 268 concerning the existence of an immediate and current threat to the public peace, health, safety and welfare continue to be valid; and

WHEREAS, since the adoption of Urgency Ordinance No. 268, Town staff and the Town Attorney have been gathering additional data concerning best practices among municipalities, including ordinances of other jurisdictions; and

WHEREAS, pending completion of the town's study and analysis of the potential negative impacts on the public health, safety and welfare as set forth in Urgency Ordinance 268, the Town Council finds and determines that there is a need to extend Urgency Ordinance No. 268 until December 10, 2019 as authorized by Government Code Sections 65858(b), 36934 and 36937; and

WHEREAS, Government Code section 65858 expressly authorizes the Town Council to adopt an urgency ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body of the Town or the planning commission or the planning department is considering or studying or intends to study within a reasonable time, for the purpose of the immediate preservation of the public health or safety.

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

Section 1. Findings. In adopting this extension, the Town Council finds and determines that each of the recitals and findings contained in Urgency Ordinance No. 268, and the recital above, remain true and correct and are incorporated herein by reference, and that the adoption of this extension is necessary to continue to protect against the immediate threats to the public safety, health, and welfare which were identified in Urgency Ordinance No. 268 and are incorporated herein by reference.

Section 2. Extension of Moratorium. Urgency Ordinance No. 268, duly adopted on December 13, 2016 and set to expire on January 27, 2017, is hereby extended in full force and effect until December 10, 2019.

Section 3. Authority. Urgency Ordinance No. 268 is extended pursuant to the authority conferred upon the Town Council of the Town of Loomis by Government Code section 65858, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5ths) vote of the Town Council.

Section 4. Severability. If any provision, clause, word, sentence or paragraph of this Ordinance, 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 ordinance 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 5. 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, CEQA Guidelines section 15308).

Section 6. Effective Date and Justification of Urgency. This Ordinance shall take effect immediately upon its adoption as an Urgency Ordinance. A statement of the reason for its urgency is that unless adopted, the public's health and safety may be at risk because Proposition 64 contains provisions which permit the outdoor cultivation of marijuana except as prohibited or regulated by a local agency, and that permit the sale of nonmedical marijuana except as prohibited or regulated by a local agency. If this Ordinance was not immediately effective, the Town would not be able to regulate the outdoor cultivation of marijuana or the establishment of businesses engaging in the wholesale or retail sale of nonmedical marijuana. Therefore, its immediate effect is necessary for the preservation of the public health and safety.

Section 7. Publication. The Town Clerk shall certify the passage of this ordinance and cause a summary of this ordinance to be published after its passage, with the names of those members of the Town Council voting for and against the ordinance, in a newspaper of general circulation, published and circulated in the Town in accordance with Section 36933 of the Government Code. The full text of this ordinance will be available for viewing in the Town Clerk's Office.

This Ordinance was **PASSED and ADOPTED** by a four-fifths (4/5ths) vote of the Town Council of the Town of Loomis on January 25, 2016.

AYES: Baker, Black, Onderko, Ucovich
NOES: None
ABSENT: Morillas
ABSTAIN: None



Robert Black, Mayor

ATTEST:



Crickett Strook, Town Clerk

ATTACHMENT B

ORDINANCE ???

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS AMENDING TITLE 13 (ZONING) OF THE LOOMIS MUNICIPAL CODE RELATED TO CANNABIS LAND USES

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 October 22, 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.

13.46.100 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.

13.46.200 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.

13.46.250 Outdoor Cultivation Prohibited.

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

13.46.500 Violations Declared Public Nuisance; Abatement; Penalties.

- A. Violation of this Chapter shall constitute a public nuisance. Additionally, adverse effect on 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 13.26.040 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 269 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 269 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 day of November, 2019, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

Tim Onderko, Mayor
Town of Loomis

ATTEST:

APPROVED AS TO FORM:

Charleen Strock, Town Clerk

Jeffrey Mitchell, Town Attorney