

**ORDINANCE NO. 18-387****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LATHROP MODIFYING CHAPTER 17.18 AND ADDING NEW CHAPTER 5.26 TO THE LATHROP MUNICIPAL CODE TO PROHIBIT THE ESTABLISHMENT AND OPERATION OF COMMERCIAL CANNABIS ACTIVITIES IN THE CITY OF LATHROP**

**WHEREAS**, the City of Lathrop Planning Commission held a duly noticed public hearing on December 13, 2017, at which they adopted PC Resolution No. 17-13 recommending City Council adopt Municipal Code Amendment No. TA-17-118 prohibiting commercial cannabis activities in the City of Lathrop pursuant to the Lathrop Municipal Code; and

**WHEREAS**, pursuant to Government Code section 65858, on December 18, 2017, the City Council adopted an Urgency Ordinance imposing a moratorium on the acceptance of applications and issuance of permits, business licenses or other applicable licenses or entitlements providing for the establishment and/or operation of commercial cannabis businesses; and

**WHEREAS**, the City of Lathrop City Council held a duly noticed public hearing at a special meeting on January 29, 2018 to review and consider the proposed Municipal Code Amendment; and

**WHEREAS**, the proposed code amendment is Citywide and affects all applicable properties in the City; and

**WHEREAS**, chapter 17.124 of the Lathrop Municipal Code mandates the transmittal of a Planning Commission recommendation to the City Council by resolution; and

**WHEREAS**, in 1996, voters approved Proposition 215, which legalized the use of medicinal cannabis in California; and

**WHEREAS**, in 2015, California enacted three bills: AB 243, AB 266, and SB 64 that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery and testing of medicinal cannabis in California. This regulatory scheme is known as the Medicinal Cannabis Regulation and Safety Act (MCRSA); and

**WHEREAS**, on November 8, 2016, voters of the State of California enacted Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act" ("Prop 64" or "AUMA"). The AUMA established a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing and sale of non-medical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the growth and retail sale of marijuana for non-medical use; and

**WHEREAS**, in June 2017, the California State Legislature passed a budget trailer bill, Senate Bill 94, that integrated MCRSA and AUMA to create the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) contained in division 10 of the Business and Professions Code. Under MAUCRSA, a single regulatory system governs the medicinal and adult use cannabis industry in California; and

**WHEREAS**, the MAUCRSA creates a licensing system whereby the State will issue licenses to businesses authorizing them to cultivate, distribute, transport, store, manufacture, process, test and sell non-medical marijuana and marijuana products for adults 21 years of age and older, with such licenses to be issued by January 1, 2018. The state will not approve an application for a State license if approval of the license will violate the provisions of any local ordinance or regulation adopted in accordance with MAUCRSA; and

**WHEREAS**, the MAUCRSA does not limit the authority of a local governing body to adopt and enforce local ordinances regulating businesses licensed under MAUCRSA or to completely prohibit such businesses within the local jurisdiction to the full extent authorized to a local agency by the MAUCRSA; and

**WHEREAS**, on January 4, 2018, U.S. Attorney General Sessions issued a memorandum on federal marijuana enforcement policy announcing "a return to the rule of law and the rescission of previous guidance documents." The memo also stated that "since the passage of the Controlled Substances Act (CSA) in 1970, Congress has generally prohibited the cultivation, distribution, and possession of marijuana." In the memorandum, Attorney General Jeff Sessions directs all U.S. Attorneys to "enforce the laws enacted by Congress and to follow well-established principles when pursuing prosecutions related to marijuana activities... to disrupt criminal organizations, tackle the growing drug crisis, and thwart violent crime across our country." It is unclear how this recent direction by the U.S. Attorney General will be implemented in states and communities that allow commercial uses of marijuana; and

**WHEREAS**, the City has a compelling interest in protecting the public health, safety, and welfare of its residents and businesses, and to preserve the peace and integrity of neighborhoods within the City's jurisdiction; and

**WHEREAS**, the City of Lathrop's Municipal Code does not list commercial cannabis activities as an allowed use, expressly prohibits businesses and other activities considered illegal under local, state, and federal law and does not contain any provisions with regards to the regulation and location of commercial cannabis activities; and

**WHEREAS**, the City Council desires to (1) address the community concerns regarding the establishment and operation of commercial cannabis, (2) study the potential impacts the commercial cannabis activities may have on the public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for commercial cannabis, (4) study and determine the appropriate zoning and location for commercial cannabis, and (5) determine appropriate controls for protection of public health and welfare; and

**WHEREAS**, pursuant to the City's police powers authorized in Article XI, Section 7 of the California Constitution, as well as under the Lathrop Municipal Code, the City Council has the power to regulate permissible land uses throughout the City and to enact regulations for the preservation of public health, safety, and welfare, such as this Ordinance prohibiting the establishment and operation of commercial cannabis activities within the City; and

**WHEREAS**, the City Council finds that the proposed code amendment is consistent with applicable provisions of the Lathrop General Plan; and

**WHEREAS**, proper notice of this public hearing was given in all respects pursuant to Government Code section 65090, and has duly considered all written and verbal testimony presented during the hearing; and

**WHEREAS**, the proposed Ordinance is exempt according to the California Environmental Quality Act (CEQA) Article 5 §15061 by the "General Rule" that CEQA applies only to projects that have a potential for causing a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Lathrop based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby approve the Municipal Code Amendment as shown in Attachment 3 of the staff report, incorporated by reference herein.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Council of the City of Lathrop does hereby ordain as follows:

1. The Lathrop Municipal Code is hereby amended as shown in Attachment "3" incorporated by reference herein.
2. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the city or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.
3. **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.

4. **Effective Date.** This Ordinance shall take legal effect 30 days from and after the date of its passage.

5. **Publication.** Within fifteen days of the adoption of this Ordinance, the city Clerk shall cause a copy of this Ordinance to be published in full accordance with Section 36933 of the Government Code.

**THIS ORDINANCE** was regularly introduced at a meeting of the City Council of the City of Lathrop on the 29<sup>th</sup> day of January 2018, and was **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Lathrop on 12<sup>th</sup> day of February 2018, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Sonny Dhaliwal, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

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Teresa Vargas, City Clerk

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Salvador Navarrete, City Attorney

**(NEW) Chapter 5.26 PROHIBITION AGAINST COMMERCIAL CANNABIS**

**5.26.010 Purpose.**

The purpose of this chapter is to promote the public health, safety, and general welfare, and to enact a complete and total prohibition of commercial cannabis activity the City of Lathrop.

**5.26.020 Definitions.**

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; 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” 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. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the CA Health and Safety Code.

“Cannabis for Personal Use” means any use or possession of cannabis that does not require a license pursuant to Chapter 1 of Division 10 of the CA Business and Professions Code.

“Commercial Cannabis” means any activity including cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, dispensaries, collectives, cooperatives and sale of cannabis or cannabis products that requires a state license.

“Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA)” means Senate Bill 94 contained in division 10 of the CA Business and Professions Code.

**5.26.030 Prohibition.**

A. Commercial cannabis activities of all types including, but not limited to, dispensaries, collectives, cooperatives, transportation, distribution, manufacturing, delivery, storing, testing, sale, processing and cultivation are expressly prohibited within the City limits. No person shall establish, operate, conduct, or allow any commercial cannabis (marijuana) activity anywhere within the City.

B. This section is meant to prohibit all activities for which a state license is required. Accordingly, the City shall not issue any permit, license, authorization or other entitlement for any activity for which a state license is required under MAUCRSA.

C. This section is not intended to prohibit cannabis for personal use or cannabis cultivation for personal use as set forth in Chapter 8.44 of the LMC.

## **Attachment 3 to Ordinance 18-387**

- D. This section is not intended to prohibit any of the following:
1. A clinic licensed pursuant to Chapter 1 of Division 2 of the CA Health and Safety Code.
  2. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the CA Health and Safety Code.
  3. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the CA Health and Safety Code.
  4. A residential hospice or a home health agency licensed pursuant to Chapter 8 and Chapter 8.5 of Division 2 of the CA Health and Safety Code.
  5. The cultivation, delivery, gift, or furnishing of cannabis by a qualified patient, a primary caregiver, or other person with an identification card as defined by Section 11362.7 of Health and Safety Code provided such activity complies strictly with all applicable state law, including but not limited to, Sections 11362.5 and 11362.765 of the CA Health and Safety Code.

### **5.26.040 Public Nuisance.**

Any use or condition caused, or permitted to exist, in violation of any provision of this chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to CA Code of Civil Procedure Section 731 or any other remedy available to the City.

**(REVISED) Chapter 17.18 PROHIBITED CANNABIS ACTIVITIES**

**17.18.010 Purpose.**

The purpose of this chapter is to promote the public health, safety, and general welfare, and to enact a complete and total prohibition of commercial cannabis activity the City of Lathrop.

**17.18.020 Definitions.**

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; 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” 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. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the CA Health and Safety Code.

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