



**CITY OF LARKSPUR
Staff Report**

September 18, 2019, City Council Meeting

DATE: September 12, 2019

TO: Honorable Mayor Morrison and the Larkspur City Council

FROM: Neal Toft, Planning and Building Director
Sky Woodruff, City Attorney

SUBJECT: WAIVE FIRST READING OF AND INTRODUCE ORDINANCE 1041 AMENDING TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE LARKSPUR MUNICIPAL CODE TO ADD NEW CHAPTER 5.42 (PROHIBITING COMMERCIAL CANNABIS ACTIVITY).

ACTION REQUESTED:

That the City Council review, waive first reading of, and introduce Ordinance 1041 to add Chapter 5.42, entitled "Prohibiting Cannabis Related Businesses", to the Larkspur Municipal Code.

ENVIRONMENTAL STATUS

These Ordinances are exempt from the California Environmental Quality Act ("CEQA") under California Code of Regulations, Title 14, Section 15061(b)(3) because it can be seen with certainty that there is no possibility that adoption will have a significant adverse effect on the environment.

BACKGROUND

Legislative Background

The following is a brief summary of legislative actions that have shaped the current legalization and permitting procedures for both medical and recreational marijuana uses and businesses in California:

Proposition 215 – Compassionate Use Act

In 1996, California voters adopted Proposition 215, also known as the *Compassionate Use Act*. The Act exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medical purposes. While Marin County residents voted 73.2% in favor of Proposition 215, the City subsequently acted to ban marijuana dispensaries under Ordinance No. 886.

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Senate Bill 420 – Medical Marijuana Program Act

In 2003, the California Legislature passed SB 420, the *Medical Marijuana Program Act*, to further clarify the scope of Proposition 215. This Act established a voluntary process for issuing identification cards for medical marijuana users to help law enforcement identify the cardholder as legally able to possess certain amounts of medical marijuana under specific conditions. The Act also extended certain legal protections to those that collectively or cooperatively cultivate marijuana for medical purposes.

Medical Cannabis Regulation and Safety Act

In an effort to further clarify and establish statewide regulations regarding the use and cultivation of medical marijuana, the California Legislature adopted the *Medical Cannabis Regulation and Safety Act* (MCRSA) in September 2015. The Act consists of three separate pieces of legislation to:

1. Establish the Bureau of Medical Marijuana Regulation under the Department of Consumer Affairs and establish a system requiring both a state license and local permit for marijuana businesses;
2. Establish a system for licensing of medical marijuana cultivation under the Department of Food and Agriculture and require both a State license and a local permit for medical marijuana cultivation; and
3. Regulate physician recommendations for medical marijuana and require the Department of Food and Agriculture to implement a “track and trace” program that enables marijuana plants to be traced to licensed cultivation sites.

Governor Brown signed these three pieces of legislation into law and the Act went into effect on January 1, 2016.

While the City’s prohibition of medical marijuana dispensaries remained in effect, the law was ambiguous as to whether cities needed to act to prohibit commercial cultivation of medical marijuana. On February 3, 2016, the City Council adopted Resolution 05-16 confirming that the Larkspur zoning ordinance operates under the principles of permissive zoning and that marijuana cultivation is a prohibited use in the City of Larkspur. While the City did not act to specifically prohibit or regulate deliveries, the law requires that delivery services must operate from a licensed facility. Therefore, delivery services cannot originate from within Larkspur.

Proposition 64 – Tax Adult Use of Marijuana Act

On November 8, 2016, Proposition 64, Tax Adult Use of Marijuana Act (AUMA), passed by California voters, made it legal for anyone 21 years and older to:

- Smoke or ingest marijuana and marijuana products (subject to certain limitations outlined below);
- Possess, obtain, give away, purchase, and process up to one ounce of marijuana and up to 8 grams of concentrated marijuana;
- Possess, plant, harvest, dry, or process up to six living plants within a single private residence or an enclosed and secure accessory structure to a private residence (“private residence” includes a house, an apartment, a mobile home, or other similar dwelling); and
- Possess, plant, harvest, dry, or process up to six living plants upon the grounds of a private residence, *unless* outdoor cultivation is prohibited by local regulations.

It should be noted that the ballot measure was approved with 57.1 % of California voters voting "Yes" and 42.9% voting "No." The Measure was largely supported in Marin, where 69.6% voted “Yes” and 30.4% voted “No” on Proposition 64.

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Senate Bill 94 - Medicinal and Adult Use Cannabis Regulation and Safety Act

The Legislature passed and the Governor signed Senate Bill 94, the *Medicinal and Adult Use Cannabis Regulation and Safety Act* (MAUCRSA). This bill consolidates and provides clarity about the regulatory schemes for both medical and non-medical commercial cannabis businesses.

These Acts allow some local discretion to prohibit or permit (with or without local regulations) activities made legal by their enactment.

Interim Ordinances

The City Council held a Study Session September 6, 2017 on the topic. On October 4, 2017, the City Council adopted Ordinance No. 1021, (Interim Ordinance) temporarily prohibiting medical and nonmedical cannabis related businesses from locating and operating in the City of Larkspur pending the analysis and consideration of new zoning amendments and other regulations appropriate for this new industry for a period of forty-five days. Furthermore, on December 6, 2017, the City Council adopted Ordinance No. 1024, extending the interim ordinance for 22 months and 15 days, and to allow personal growth (indoors) and delivery into the City (with a business license and a Police certificate).

Currently, the City of Larkspur prohibits “medical marijuana dispensaries” within the City’s boundaries, as such uses are defined in the City’s Zoning Ordinance, and temporarily prohibits all medical and nonmedical cannabis-related businesses, including cultivation, from locating and operating in Larkspur. However, in 2017, the City Council also adopted Ordinance No. 1024 regulating cultivation for personal use and allowing deliveries of both medicinal and recreational cannabis into the City from licensed commercial and/or medical dispensaries located outside of Larkspur.

DISCUSSION

The citizens of Larkspur and Marin voted in favor of decriminalization and legalization of both medical and recreational marijuana, suggesting support for its presence in Larkspur. However, the community has also long supported City policies limiting the proximity of age-restricted products to parks and schools. When these policies are applied, there are very few locations in Larkspur where the cannabis industry can operate.

The cannabis industry is comprised of a variety of businesses, (e.g. cultivation, processing, warehousing, retail sales, and/or delivery), which each present a variety of potential operational issues relative to visibility, security, and access for minors. Most Marin communities continue to prohibit commercial uses and are exploring the various “best practices” and standards to appropriately regulate this new industry. A chart indicating the current status of how these various communities are currently regulating various aspects of cannabis uses and activities is provided in Attachment No. 1. Currently, no other agencies in Marin, permit storefront dispensaries of any type, except for the Town of Fairfax, which recently update their Municipal Code to permit no more than two dispensaries for medical-use only.

During the two-year moratorium period, staff looked at a variety of issues related to commercial cannabis activity. For example, if Larkspur were to allow such uses, it would have to determine which zones, if any, would be appropriate. Staff analyzed the appropriateness of different uses in different areas of the City. Additionally, staff reviewed the experiences in other communities to identify the characteristics of local permitting procedures and standards for specific types of uses according to the character of various districts and areas within the City. Additionally, Larkspur is a member of the Central Marin Police Authority (CMPA) which also serves the communities of San Anselmo and Corte Madera. After conferring with CMPA, staff concluded that there would be benefits in working these entities to assure there’s continuity in enforcement.

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Delivery of medical and non-medical cannabis and cannabis products by businesses not physically located in Larkspur was permitted during the 2-year moratorium. Neither the staff nor the City Council received requests from Larkspur residents to expand the presence of commercial cannabis activity in the City to include physical stores. It appears, therefore, that for the time being, continuing to allow deliveries by businesses not physically located in Larkspur is meeting the needs of residents. If that changes in the future, staff will return to the Council to receive direction about how to respond. Staff's recommendation is to maintain the current status quo by prohibiting commercial cannabis activity, except for deliveries by businesses not physically located in Larkspur.

In furtherance of that recommendation, staff has been working with the City Attorney and proposes to amend Title 5, Business Licenses and Regulations, of the Municipal Code to add a new chapter, 5.42, "Prohibiting Commercial Cannabis Activity" (See Attachment No. 2.). The purpose of the ordinance is to maintain the status quo, which seems to be working for residents, the City, and CMPA. It also maintains local control over these uses. If it appears that it would be beneficial to make changes in the future, the City has opportunity to revisit whether such uses would be appropriate for certain locations and what standards and permitting procedures should apply. The proposed ordinance would continue to allow the delivery of medical and/or nonmedical cannabis and cannabis related products to individuals located within the City and would not affect regulations governing cultivation for personal use.

FISCAL IMPACT

The costs associated with the prohibiting commercial cannabis uses are relatively low as administrative oversight is minimal. Should the City explore legalizing commercial cannabis activities to a greater degree, the administration and enforcement of regulating or restricting medical or commercial sales of marijuana, related commercial activities and distribution activities, will vary depending on the policy direction provided by Council. Commercial operations may be subject to local tax measures, and there are state excise taxes and potential grant programs to support policing for communities that permit commercial activities. While the cost of administering regulations may be recoverable through permit fees, recovery of cost for enforcement of marijuana prohibitions is limited to fines and penalties collected through the City's code enforcement and criminal enforcement process. It should be noted, however, that the true costs of code enforcement, in terms of staff time and resources, are rarely fully recoverable.

STAFF RECOMMENDATION

Staff recommends that the City Council hear the staff report, open the public hearing, and move to waive the first reading of and introduce Ordinance 1041, prohibiting commercial cannabis activity within Larkspur, except as noted above. The ordinance would return for a second reading and adoption at the October 2, 2019 City Council Meeting.

Respectfully submitted,

Neal Toft, Planning and Building Director
Sky Woodruff, City Attorney

Attachments

1. Regulations for Cannabis Uses; Marin County and Cities (September 2019)
2. Ordinance 1041 amending Title 5 (Business Licenses and Regulations) of the Larkspur Municipal Code to add new Chapter 5.42, "Prohibiting Commercial Cannabis Activity"

**REGULATIONS FOR CANNABIS USES
MARIN COUNTY AND CITIES
September, 2019**

Jurisdiction	Commercial Permitted & Regulated	Commercial Banned by Ordinance	Commercial Banned by Moratorium	Deliveries Into Jurisdiction	Personal Cultivation*	Notes
	Med / Adult	Med / Adult	Med / Adult	Med / Adult	Indoor/Outdoor	
County of Marin	X /	/ X	/	X / X	X / X*	Delivery business for medicinal only – No storefront dispensaries or other commercial activities. Limited to 4 businesses. *Outdoor grow limited to medicinal cannabis.
Sausalito	/	/	X / X	X / X	X /	
Mill Valley	/	X /	/ X	X / *	X /	*Awaiting court ruling re: banning commercial deliveries into town. Need to address new CBD products.
Larkspur	/	X /	X / X	X / X	X /	Medical Dispensaries prohibited by ordinance; all other medical and commercial activities banned under Moratorium
Tiburon	/	X / X	/	X /	X /	
Belvedere	/	X / X	/	X / X	X /	
Corte Madera	/	X / X	/	X / X	X / X	
Ross	/	X / X	/	X / X	X /	
San Anselmo	/	X / X	/	X / X	X / X	
Fairfax	X / X	/	X / X*	X / X	X / X**	Medicinal dispensaries and delivery permitted but limited. *Moratorium on commercial businesses in Fairfax expires 10/31; Delivery for adult use and other commercial activities under new Code. **up to 10 plants for medicinal purposes
San Rafael	X / X	/	/	X / X	X / X	Medical and adult dispensaries prohibited by ordinance. Delivery, laboratory, manufacturing and distribution businesses for medical/adult permitted with license
Novato	/	/	X / X*	X / X	X /	*Interim Ordinance set to expire November 2019; Draft regulations to allow indoor cultivation, manufacturing, testing and non-storefront retail to be heard this fall.

*Cultivation for personal use is permitted under Proposition 64, but local agencies are allowed to establish standards for personal grow and may prohibit outdoor cultivation. However, agencies may also simply defer to State Law which permits both indoor and outdoor grow.

CITY OF LARKSPUR
ORDINANCE 1041

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LARKSPUR
AMENDING THE LARKSPUR MUNICIPAL CODE BY ADDING CHAPTER 5.42
“PROHIBITING COMMERCIAL CANNABIS ACTIVITY” EXCEPT FOR
DELIVERIES ORIGINATING FROM STATE-LICENSED BUSINESSES
PHYSICALLY LOCATED OUTSIDE OF LARKSPUR**

WHEREAS, in 1996, California voters approved Proposition 215, the “Compassionate Use Act” (CUA), allowing qualified patients and approved caregivers to possess and cultivate medical cannabis; and

WHEREAS, in September 2015, the California Legislature passed the “Medical Cannabis Regulation and Safety Act” (MCRSA) establishing a statewide regulatory framework for medical cannabis businesses; and

WHEREAS, on November 8, 2016, California voters approved Proposition 64, the “Control, Regulate and Tax Adult Use of Marijuana Act” (AUMA) legalizing the recreational use of non-medical marijuana for individuals 21 years of age or older and establishing a statewide regulatory framework for adult-use cannabis businesses; and

WHEREAS, on June 15, 2017, the California Legislature passed Proposition 94, the “Medicinal and Adult-Use Cannabis Regulation and Safety Act” (MAUCRSA) creating a single regulatory system to govern the medicinal and adult-use cannabis industry in California; and

WHEREAS, California began issuing licenses to medical and adult-use cannabis-related businesses as of January 1, 2018; and

WHEREAS, such businesses vary in purpose and scope including, but not limited to, indoor and outdoor cultivation, processing, manufacturing of various forms of cannabis products, research and testing, warehousing and delivery, and retail sales; and

WHEREAS, under California Business and Professions Code section 26200, the City retains the authority to prohibit commercial cannabis activity within City limits; and

WHEREAS, Chapter 18.90 of the Larkspur Municipal Code prohibits medical marijuana dispensaries in all districts of the City, and also does not allow medical marijuana dispensaries as a home occupation use; and

WHEREAS, the City of Larkspur intends to prohibit both medical and adult-use cannabis businesses within the City limits, except for deliveries originating from State-licensed businesses physically located outside of Larkspur, pursuant to Chapter 5.40 of the Larkspur Municipal Code; and

WHEREAS, on October 4, 2017, at a duly noticed regular meeting, the City Council adopted Ordinance No. 1021, an urgency ordinance to prohibit medical and nonmedical cannabis related businesses from locating and operating in the City of Larkspur (with the exception of deliveries originating from State-licensed business physically located outside of

Larkspur) pending the analysis and consideration of new zoning amendments and other regulations appropriate for this new industry for a period of forty-five days; and

WHEREAS, on November 15, 2017, at a duly noticed regular meeting, the City Council adopted Ordinance No. 1025, extending Ordinance No. 1021, for 22 months and 15 days; and

WHEREAS, to adopt zoning amendments for commercial cannabis activity, the Planning Commission and then City Council must proceed through a public hearing process – with careful analysis and appropriate community outreach and engagement – to determine whether any commercial cannabis activity, in addition the deliveries permitted under Chapter 5.40, should be allowed in the City; and

WHEREAS, the City needs additional time to properly and carefully consider and conduct further study into whether additional commercial cannabis activity should be allowed in the City, and if so, which additional commercial cannabis activities should be permitted and how to regulate those activities.

NOW THEREFORE, the City Council of the City of Larkspur does ordain as follows

Section 1. The above recitals and findings are true and correct, incorporated herein by this reference, and constitute the findings required by Government Code section 65868(c).

Section 2. Chapter 5.42 of the Larkspur Municipal Code is hereby added as follows:

**Chapter 5.42
PROHIBITING COMMERCIAL CANNABIS ACTIVITY**

Sections:

- 5.42.010 Purpose and Intent.
- 5.42.020 Definitions.
- 5.42.030 Prohibited Activities.
- 5.42.040 Exceptions.
- 5.42.050 Violation and Penalty.

5.42.010 Purpose and Intent.

A. It is the purpose and intent of this chapter to prohibit all commercial cannabis activity not otherwise authorized under this chapter within the City of Larkspur (“City”).

B. The city council finds that the prohibitions herein are necessary for the preservation and protection of the public health, safety and/or welfare. These prohibitions are within the authority conferred upon the city council by state law and is an exercise of its police powers to enact and enforce regulations for the public health, safety and/or welfare.

5.42.020 Definitions.

A. “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

7.1 ATTACHMENT 2

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 Health and Safety Code, or as otherwise amended.

B. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

C. "Commercial cannabis activity" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products.

D. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer.

5.42.030 Prohibited Activities.

A. All commercial cannabis activity is hereby prohibited within the incorporated boundaries of the City of Larkspur. The City and its agents, employees and departments shall not approve any business licenses, building permits, planning entitlements, or any other license, permit, or entitlement for such activity on any property located within the City of Larkspur.

5.42.040 Exceptions.

A. Notwithstanding section 5.42.030 above, the provisions of this chapter shall not apply to the delivery of cannabis and/or cannabis products to retail customers located within the City of Larkspur, where such delivery originates from state-licensed businesses physically located outside of the City of Larkspur, pursuant to Larkspur Municipal Code Chapter 5.40.

B. This chapter shall not prohibit a person 21 years of age or older from the activities permitted under California Health and Safety Code section 11362.1, or as otherwise amended.

C. This chapter shall also not prohibit any commercial cannabis activity that the City of Larkspur is required to permit under state law.

5.42.050 Violation and Penalty.

A. Any commercial cannabis activity operated, conducted or maintained contrary to the provisions of this chapter shall be, and the same is declared to be, unlawful and a public nuisance.

B. The City may enforce the provisions of this chapter in any manner authorized by this code, as well as in judicial proceedings, by suspending or revoking permits, or in any other manner authorized by law. The City may prosecute a civil or criminal action for any violation of this chapter. It may also, or in lieu thereof, commence an action or proceeding for the abatement, removal and enjoinder of violations of this chapter, in any manner provided by law.

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C. The remedies described in this section are cumulative and in addition to any other remedies available that may be pursued to address a violation of this chapter.

SECTION 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 and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 4. CEQA. This ordinance is categorically exempt from CEQA under: (a) Section 15060(c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and (c) Section 15061 because it can be seen with certainty that there is no possibility that the adoption of the ordinance may have a significant effect on the environment.

SECTION 5. Effective date. This Ordinance shall go into effect thirty (30) days from its adoption shall be posted or published as required by State law.

IT IS HEREBY CERTIFIED that the foregoing ordinance was duly introduced at a regular meeting of the Larkspur City Council held on September 18, 2019, and thereafter passed and adopted by the Larkspur City Council on the October 2, 2019 by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAINING: COUNCILMEMBERS:

Ann Morrison, Mayor

ATTEST:

Alison Foulis, City Clerk