

**BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA**

**In the matter of:**

**Deleting Chapter 7.32 of the Moraga )  
Municipal Code Regarding Medical )  
Marijuana Distribution Facilities and )  
Outdoor Cultivation, and Amending )  
Chapter 8.160 of the Moraga )  
Municipal Code Regarding Cannabis )  
Cultivation, Distribution, Processing, )  
Manufacturing, Testing and )  
Transportation of Title 8, Planning )  
and Zoning, of the Town of Moraga )  
Municipal Code )**

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**ORDINANCE NO. 267**

**WHEREAS**, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States; and

**WHEREAS**, in 1972, California added Chapter 6 to the state Uniform Controlled Substances Act, commencing at Health and Safety Code section 11350, which established the state's prohibition, penalties, and punishments for the possession, cultivation, transportation, and distribution of marijuana; and

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (the "Act;" Health and Safety (H&S) Code Section 11362.5 et seq.); and

**WHEREAS**, California courts have held that the Act creates a limited exception from criminal liability under the state Uniform Controlled Substances Act for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

**WHEREAS**, on January 1, 2004, the "Medical Marijuana Program" (MMP), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature to clarify the scope of the Act, establish a voluntary program for identification cards issued by counties for qualified patients and primary caregivers, and provide criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana, including the collective or cooperative cultivation of medical marijuana; and

**WHEREAS**, the California Supreme Court ruled unanimously in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, that the Act and the MMP do not preempt local ordinances that completely and permanently ban medical marijuana dispensaries, collectives, and cooperatives; and

**WHEREAS**, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Third District Court of Appeal held, based on *Inland Empire*, that there was no right to cultivate medical marijuana and that a city could implement and enforce a complete ban on this activity, including a ban on personal cultivation; and

**WHEREAS**, on October 9, 2015, Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the “Medical Marijuana Regulation and Safety Act” or “MMRSA”) were enacted to create a state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of medical marijuana products, and physician recommendations for medical marijuana; and

**WHEREAS**, on June 27, 2016 Senate Bill 837 was enacted, which included a number of technical changes to the MMRSA, including renaming the act to the Medical Cannabis Regulation and Safety Act (MCRSA); and

**WHEREAS**, on September 14, 2016 a study session was conducted with the Town Council at which staff was directed to proceed with amendments to the Town’s Municipal Code regulations regarding medical cannabis dispensaries, indoor and outdoor cannabis cultivation facilities, commercial cannabis activities, and medical cannabis deliveries; and

**WHEREAS**, on November 8, 2016, California voters approved Proposition 64, known as the “Control, Regulate and Tax Adult Use of Marijuana Act” (the “AUMA”), under which a variety of non-medical marijuana businesses can operate subject to local ordinances; and

**WHEREAS**, several California cities and counties have experienced serious adverse impacts associated with and resulting from medical cannabis dispensaries, cultivation sites, and delivery services. According to these communities and according to news stories widely reported, medical cannabis activities have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, and illegal sales of cannabis to, and use of cannabis by, minors and other persons without medical need in the areas immediately surrounding such medical cannabis activities. There have also been large numbers of complaints of odors related to the cultivation and storage of cannabis; and

**WHEREAS**, a California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding crimes involving medical cannabis businesses and their secondary impacts on the community is contained in a 2009 white paper report which is attached to the Planning Commission staff report and is on file with the Planning Department; and

**WHEREAS**, the Santa Clara County District Attorney’s Office issued a May 2014 memorandum entitled “Issues Surrounding Marijuana in Santa Clara County,” which outlined many of the negative secondary effects resulting from cannabis cultivation; a copy of this memorandum is attached to the Planning Commission staff report and is on file with the Planning Department; and

**WHEREAS**, the Santa Clara County Public Defender issued a May 2014 memorandum entitled “Substance-Related Suspensions in the East Side Union High School District,” describing a correlation between substance abuse-related suspensions in local high schools and a proliferation of medical cannabis dispensaries in the area; a copy of this memorandum is attached to the Planning Commission staff report and is on file with the Planning Department; and

**WHEREAS**, news stories regarding adverse impacts of medical cannabis businesses, including dispensaries, cultivation sites, and delivery services, are attached to the Planning Commission staff report and is on file with the Planning Department; and

**WHEREAS**, it is reasonable to conclude that cannabis facilities, cannabis cultivation facilities, commercial cannabis activities, and cannabis deliveries could cause similar adverse impacts on the public health, safety, and welfare in Moraga; and

**WHEREAS**, in order to protect the public health, safety, and welfare, the Town Council desires to amend Moraga Municipal Code Chapter 8.160 to prohibit cannabis cultivation facilities, commercial cannabis activities, cannabis facilities, and cannabis deliveries, with certain limited exceptions; and

**WHEREAS**, on October 3, 2016 the Planning Commission held a duly noticed public hearing, took public testimony on the proposed amendments to Section 8.160: Cannabis Cultivation, Distribution, Processing, Manufacturing, Testing and Transportation of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code and requested several revisions to the proposed ordinance and continued the item to a future meeting; and

**WHEREAS**, on January 17, 2017, the Planning Commission held a duly noticed public hearing, took public testimony on the proposed amendments to Section 8.160: Cannabis Cultivation, Distribution, Processing, Manufacturing, Testing and Transportation of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code; and

**WHEREAS**, following the public hearing on January 17, 2017, the Planning Commission adopted Resolution No. 01-2016, recommending that the Town Council adopt proposed amendments to Section 8.160: Cannabis Cultivation, Distribution, Processing, Manufacturing, Testing and Transportation of Title 8, Planning and Zoning, of the Town of Moraga Municipal Code; and

**WHEREAS**, the Town considered introduction of this Ordinance on February 22, 2017, and March 22, 2017, after a duly noticed public hearing.

**THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The Town Council hereby finds as follows:

A. The Town Council considered the proposed ordinance, took testimony from members of the public, and hereby finds that the ordinance is in compliance with the Moraga General Plan, the amendments proposed are to maintain local control of cannabis by updating the Town's cannabis regulations to continue prohibitions of cannabis activities under recently passed legislation including Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the "Medical Marijuana Regulation and Safety Act" or "MMRSA") and Proposition 64, known as the "Control, Regulate and Tax Adult Use of Marijuana Act" (the "AUMA").

B. The proposed ordinance is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) (CEQA) because it can be seen with certainty that there is no possibility the adoption and implementation of this Ordinance may have a significant effect on the environment, and the Ordinance is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3). This conclusion is based on the fact that the proposed amendments would provide additional clarification on the scope of regulated activities, and in particular, would maintain or broaden existing prohibitions and/or limitations on distribution, cultivation, and processing of medical cannabis.

**SECTION 2.** Moraga Municipal Code Section Chapter 7.32 – Medical Marijuana Distribution Facilities and Outdoor Cultivation of Title 7, Health and Safety of the Moraga Municipal Code is hereby deleted in its entirety.

**SECTION 3.** Moraga Municipal Code Section 8.160 – Distribution of Medical Marijuana, of the Moraga Municipal Code Title 8, Planning and Zoning is deleted in its entirety and replaced with the following:

**“Chapter 8.160 - Cannabis Cultivation, Distribution, Processing, Manufacturing, Testing and Transportation**

8.160.010 Purpose

The purpose and intent of this chapter is to prohibit outdoor cannabis cultivation facilities, medical cannabis facilities, and non-medical cannabis facilities, as defined below, within the Town limits, and to prohibit indoor cannabis cultivation and cannabis delivery, with limited exceptions. It is recognized that it is a Federal violation under the Controlled Substances Act to possess or distribute cannabis even if for medical purposes. Additionally, there is evidence of an increased incidence of crime-related secondary impacts in locations associated with cannabis cultivation facilities and medical and non-medical cannabis facilities and in connection with medical cannabis deliveries, which is contrary to policies that are intended to promote and maintain the public's health, safety, and welfare.

## 8.160.020 Definitions

The following definitions shall apply to the provisions of this chapter. Where a definition incorporates a reference to a specific provision of State Law, such reference shall be construed to mean that section as it now appears or may hereafter be amended or renumbered. If there is any conflict between such reference and the wording of a definition in this section, the definition provided in State Law shall be used:

"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" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "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 seeds of the plant that are incapable of germination. For the purposes of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Cannabis cultivation facility" means any business, facility, use, establishment, property, or location where the cultivation of cannabis occurs.

"Commercial cannabis activity" includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319 of the Business and Professions Code, related to qualifying patients and caregivers.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Establish" or "operate" a cannabis cultivation facility, medical or non-medical cannabis facility, or commercial cannabis activity means and includes any of the following:

1. The owning, opening, operation, commencement or assembly of an operation of a cannabis cultivation facility, medical or non-medical cannabis facility, or commercial cannabis activity;
2. The conversion of an existing business, facility, use, establishment, or location to a cannabis cultivation facility, medical or non-medical cannabis facility, or commercial cannabis activity;

3. The addition of a cannabis cultivation facility, medical or non-medical cannabis dispensary, or commercial cannabis activity to any other existing business, facility, use, establishment or location.

"Indoor" means any location that is totally contained within a fully enclosed and secure private residence or accessory building to the private residence.

"Medical cannabis" is cannabis used for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of cannabis in the treatment of acquired immune deficiency syndrome ("AIDS"), anorexia, arthritis, cancer, chronic pain, glaucoma, migraine, spasticity, or any other serious medical condition listed in subsection (h) of Health and Safety Code Section 11362.7.

"Medical cannabis facility" means any business, use, establishment, property or location, whether fixed or mobile, where medical cannabis is sold, made available, delivered and/or distributed by or to two or more people. A "medical cannabis facility" includes any business, facility, use, establishment, property, or location, whether fixed or mobile, where a commercial cannabis activity takes place. A "medical cannabis facility" shall not include the following uses, so long as such uses comply with this Code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.  
A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
5. A residential hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

"Non-medical cannabis" means cannabis that is not defined as medical cannabis.

"Non-medical cannabis facility" means any building, facility, use, establishment, property, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license or nonprofit license under Business and Professions Code sections 26000 and following, including but not limited to, cannabis cultivation, cannabis distribution, cannabis transportation, cannabis storage, manufacturing of cannabis products, cannabis processing, the sale of any cannabis or cannabis products, and the operation of a cannabis microbusiness.

"Outdoor" means any location on a lot other than a location which qualifies as "indoor," as defined herein.

“Primary caregiver” shall have the same meaning as set forth in California Business and Professions Code section 19300.5(ai).

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling occupied for residential purposes.

“Qualified patient” means a patient that uses or ingests medical cannabis as that term is defined in California Business and Professions Code section 19300.5(af) and who is entitled to the protections of California Health and Safety Code section 11362.5.

#### 8.160.030 Prohibitions

A. Medical cannabis facilities are prohibited in all zoning districts in the Town and shall not be established or operated anywhere in the Town. The Town shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical cannabis facility. No person may be the lessor of property within the Town where a medical cannabis facility is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any medical cannabis facility in the Town.

B. Non-medical cannabis facilities are prohibited in all zoning districts in the Town and shall not be established or operated anywhere in the Town. The Town shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a non-medical cannabis facility. No person may be the lessor of property within the Town where a non-medical cannabis facility is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any non-medical cannabis facility in the Town.

C. Outdoor cannabis cultivation facilities and activities are prohibited in all zoning districts in the Town and shall not be established or operated anywhere in the Town. Except as provided in Section 8.160.050 below, indoor cannabis cultivation facilities are prohibited in all zoning districts in the Town and shall not be established or operated anywhere in the Town. The Town shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of an indoor or outdoor cannabis cultivation facility. No person may be the lessor of property within the Town where an indoor or outdoor cannabis cultivation facility is located. No person may participate as an employee, contractor, agent, volunteer, or in any manner or capacity in any indoor or outdoor cannabis cultivation facility in the Town.

D. Except as otherwise provided herein or by state law, no person and/or entity may deliver or transport cannabis, including medical cannabis, from any fixed or mobile location, either into, within, throughout, or out of the Town, or to any person in the Town, except as provided in Section 8.160.040 below. This subsection D does not prohibit a qualified patient from transporting his or her own medical cannabis in accordance with the law.

E. Nothing contained in this section shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

#### 8.160.040 Allowed Medical Cannabis Delivery

Notwithstanding Section 8.160.030(D), a person may deliver or transport medical cannabis to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, for whom he or she is the primary caregiver within the meaning of Health and Safety Code sections 11362.5 and 11362.7(d).

#### 8.160.050 Indoor Cultivation of Cannabis Exception

A. Notwithstanding the prohibition against indoor cultivation facilities set forth in section 8.160.030 above, a person 21 years of age or older may personally engage in the indoor cultivation of up to a cumulative total of six living cannabis plants inside his or her private residence or inside an accessory building to a private residence, located upon the grounds of a private residence, that is fully enclosed and secure, provided that:

1. Where the person cultivating the cannabis plants is not the owner of the private residence and/or qualifying accessory building used to cultivate those plants, the owner of the residence and/or qualifying accessory building must provide written consent expressly allowing the cannabis cultivation to occur therein, and said written consent remains located on the property and available for inspection by law enforcement personnel at all times;
2. The person conducting the cannabis cultivation complies with all applicable Building Code requirements;
3. There is no use of gas products (such as CO<sub>2</sub>, butane, propane, and natural gas) on the property for the purpose of cannabis cultivation;
4. Indoor grow lights are limited to 1,000 watts per bulb;
5. The cannabis cultivation complies with Health & Safety Code section 11362.2(a)(3), which provides that no more than six living cannabis plants may be cultivated within a single private residence and accessory building at one time;
6. The cannabis plants being cultivated are located, supervised, and secured within the private residence and/or qualifying accessory building in such a manner as to reasonably prevent persons under the age of 21 from having physical access thereto; and
7. The indoor cultivation of cannabis permitted by this chapter shall not be seen, heard or smelled from any location exterior to the lot on which the indoor cultivation is being conducted.



B. Notwithstanding this exception, a person cultivating cannabis may not create or cause a nuisance condition, and the Town may abate, in any manner permitted by law, a nuisance condition created or caused by, associated with, or arising from cannabis cultivation by a person.

#### 8.160.060 Enforcement

The Town may enforce this chapter in any manner permitted by law. The violation of this chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the Town, create a cause of action for injunctive relief.”

**SECTION 4.** Effective Date. This ordinance becomes effective thirty (30) days after its final passage and adoption.

**SECTION 5.** Publication. The Town Clerk shall either (a) have this ordinance published once within fifteen (15) days after adoption in a newspaper of general circulation or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again fifteen (15) days after adoption.

**SECTION 6.** Severability. If any provision of the Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga held on March 22, 2017, and was adopted and ordered published at a regular meeting of the Town Council on April 12, 2017 by the following vote:

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|-----------------|---|
| <b>AYES:</b>    | Mayor Onoda, Councilmembers Fritzky, Korpus and Trotter |
| <b>NOES:</b>    | None  |
| <b>ABSTAIN:</b> | None  |
| <b>ABSENT:</b>  | Vice Mayor Wykle  |

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Teresa Onoda, Mayor

ATTEST:

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Marty C. McInturf, Town Clerk