

ORDINANCE NO. 2017-04

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FERNDALE
ADOPTING PROCEDURES AND REGULATION REGARDING THE CULTIVATION
OF MARIJUANA FOR PERSONAL USE AND PROHIBITING COMMERCIAL
MARIJUANA ACTIVITY AND OUTDOOR CULTIVATION WITHIN THE CITY**

The City Council of the City of Ferndale does ordain as follows:

SECTION 1. Findings.

1.1 Proposition 64, also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA) was adopted by the voters of the State of California on November 8, 2016. Generally, the AUMA legalized the commercialization and use of marijuana for non-medical, recreational use by persons over the age of 21.

1.2 The AUMA authorizes persons over the age of 21 to cultivate marijuana for their personal, non-commercial use within their residence or within an accessory structure. The AUMA expressly authorizes local governments to adopt reasonable regulations to control and supervise the manner in which such cultivation may lawfully occur. The City Council finds that reasonable regulations are necessary because:

1.2.1 Cultivation of marijuana may result in public nuisances due to pungent odors that may be detectable far beyond property boundaries, which also has a tendency to increase the risk of trespass, robbery and other violent crimes.

1.2.2 Marijuana that is cultivated indoors often results in excessive use of electricity which may overload standard electrical systems creating an unreasonable risk of fire.

1.2.3 Marijuana that is grown indoors can lead to mold, mildew, and moisture damage to the building in which it is grown.

1.2.4 Indoor cultivation of marijuana often leads to a decrease in rental housing stock as rental homes are converted to grow houses.

1.2.5 The use of gas products, such as butane, and toxic chemicals are prevalent in the cultivation of marijuana and the production of marijuana products. The use of these dangerous substances presents real safety and environmental concerns.

1.3 The AUMA and other state laws authorizes local governments to prohibit commercial marijuana activity, including all non-personal cultivation, processing, testing, transporting, retail sales, and dispensing.

1.4 The City adopts this ordinance pursuant to its police powers granted under Article XI, section 7 of the California Constitution in order to promote the health, safety and welfare of the residents of the City of Ferndale.

SECTION 2. Applicability and Interpretation.

2.1 The indoor cultivation and processing of marijuana for personal use in a residence or detached accessory building within the jurisdiction of the City of Ferndale shall be controlled by the provisions of this Ordinance, regardless of whether the cultivation or processing existed or occurred prior to the adoption of this Ordinance.

2.2 Nothing in this Ordinance is intended, nor shall it be construed, to exempt any indoor residential cultivation of marijuana for personal use, from compliance with the zoning and land use regulations of the City of Ferndale, or all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements, or any other applicable ordinances of the City of Ferndale, or any other applicable state or federal laws.

2.3 Nothing in this Ordinance is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting marijuana cultivation, smoking, or other related activities by tenants.

SECTION 3. Definitions.

3.1 “Commercial Marijuana Activity” means activity involving the planting, growing, harvesting, drying, curing, grading, trimming, transporting, distributing, manufacturing, testing, dispensing, wholesale of Marijuana or Marijuana Products in the City of Ferndale by a person engaged in business and regardless of whether the person is operating from a fixed location in the City of Ferndale or coming into the City of Ferndale from an outside location to engage in such activities. Commercial Marijuana Activity includes, but is not limited to, activity allowable under the AUMA and the Medical Cannabis Regulation and Safety Act with a permit issued by the State of California.

3.2 “Detached Accessory Building” means a building which is a) incidental and subordinate to the residence or residential use; b) located on the same parcel as the person’s Private Residence; c) does not share at least ten (10) feet of common wall with the Private Residence or other accessory building; (d) has a roof supported by connecting walls extending from the ground to the roof, and a foundation, slab, or equivalent base to which the floor is securely attached; (e) has walls that are opaque; and (f) does not exceed ten (10) feet in height from the ground to the top of the roof. For the purposes of this Section, a greenhouse or hoophouse is not a Detached Accessory Building.

3.3 “Indoors” means within a fully enclosed Private Residence or Detached Accessory Building.

3.4 “Marijuana or Cannabis” means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin..

3.5 “Marijuana Products” means marijuana 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.

3.6 “Outdoor Cultivation” means the planting, cultivating, harvesting, drying, or processing of Marijuana or Marijuana Products that does not occur Indoors. For the purpose of this Ordinance, the planting, cultivating, harvesting, drying, or processing of Marijuana or Marijuana Products in a greenhouse or hoop house shall be considered Outdoor Cultivation.

3.7 “Personal Cultivation of Marijuana” means the planting, cultivating, harvesting, drying, and/or processing of Marijuana or Marijuana Products by a person over the age of 21 for the person’s personal, non-commercial use.

3.8 “Private Residence” means a house, an apartment unit, a mobile home, or other similar dwelling used by a person as his or her primary residence.

SECTION 4. Outdoor Cultivation Prohibited. In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, it shall be unlawful for any person or entity to engage in the Outdoor Cultivation of Marijuana within the City of Ferndale, whether or not the purpose for such cultivation is for personal or commercial purposes.

SECTION 5. Commercial Marijuana Activity Prohibited. In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, it shall be unlawful for any person or entity to engage in Commercial Marijuana Activity within the City of Ferndale. No person or entity is permitted or authorized to engage in such activity within the City of Ferndale, regardless of whether or not such person or entity has applied for or obtained a permit from the State of California under the AUMA, the Medical Cannabis Regulation and Safety Act, or other state law.

SECTION 6. Regulations for the Personal Cultivation of Marijuana. In order to eliminate the potential nuisance and health and safety impacts to the greatest extent possible, Personal Cultivation of Marijuana shall be in conformance with the following standards:

6.1 No Personal Cultivation of Marijuana shall occur unless and until the person has obtained a permit issued by the City of Ferndale pursuant to Section 7, below.

6.2 Personal Cultivation of Marijuana shall occur Indoors in a Private Residence and/or in a Detached Accessory Building, but not both.

6.3 A person may not conduct the Personal Cultivation of Marijuana in more than one Private Residence or Detached Accessory Building within the City of Ferndale, regardless of whether the person owns or leases two or more parcels within the City of Ferndale.

6.4 Personal Cultivation of Marijuana within a Private Residence shall not exceed six Marijuana plants, shall not exceed fifty square feet, and shall not exceed ten (10) feet in height, per Private Residence, regardless of the number of persons over the age of 21 residing in the Private Residence.

6.5 Personal Cultivation of Marijuana within a Detached Accessory Building shall not exceed six Marijuana plants, shall not exceed fifty (50) square feet, and shall not exceed ten (10) feet in height, per parcel of real property, regardless of the number of persons over the age of 21 residing on the parcel and regardless of the number of Detached Accessory Buildings on the parcel.

6.6 The Private Residence where the Personal Cultivation of Marijuana occurs shall maintain a kitchen and bathroom(s) for their intended use, and the kitchen, bathroom(s), and bedroom(s) shall not be used primarily for marijuana cultivation.

6.7 The Private Residence or Detached Accessory Structure where Personal Cultivation of Marijuana occurs shall comply with all applicable state and City of Ferndale ordinances, including fire and building codes.

6.8 The Private Residence or Detached Accessory Structure where Personal Cultivation of Marijuana occurs shall be secured against unauthorized entry.

6.9 Lighting used for the Personal Cultivation of Marijuana shall not exceed 1,200 watts in the aggregate.

6.10 All electrical equipment used in the Personal Cultivation of Marijuana shall be plugged directly into a wall outlet or otherwise hardwired. The use of extension cords to supply power to electrical equipment is prohibited.

6.11 No toxic or flammable fumigant shall be used for the Personal Cultivation of Marijuana.

6.12 The use of gas products (e.g., CO₂, butane, etc.) for the Personal Cultivation of Marijuana is prohibited.

6.13 No effluent, including but not limited to waste products, chemical fertilizers or pesticides shall be discharged into drains, septic systems, community sewer systems, water systems or other drainage systems including those that lead to rivers, streams and bays as a result of the Personal Cultivation of Marijuana.

6.14 The Personal Cultivation of Marijuana shall not adversely affect the health or safety of residents, neighbors, or nearby businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes associated with the Personal Cultivation of Marijuana.

6.15 On parcels that contain more than one Private Residence, no odor of Marijuana shall be detectable from the exterior of the Private Residence or Detached Accessory Building by a person of ordinary senses. On parcels that contain only one Private Residence, no odor of Marijuana shall be detectable from the parcel boundaries by a person of ordinary senses. To achieve this, the Marijuana cultivation area (whether in a Private Residence or Detached Accessory Building) shall be, at a minimum, mechanically ventilated with a carbon filter or other superior method to prevent the odor of Marijuana from escaping the indoor cultivation area and negatively impacting neighbors and the surrounding community. Ventilation systems shall be installed in a manner that facilitates decommissioning and a return of the cultivation area to noncultivation residential uses.

6.16 From a public right of way, neighboring properties, or neighboring housing units, there shall be no visual or auditory evidence of the Personal Cultivation of Marijuana at or within the Private Residence or Detached Accessory Building that is detectable by a person of ordinary senses.

6.17 No sale, trading, or dispensing of Marijuana is allowed on a parcel where the Personal Cultivation of Marijuana occurs.

6.18 A waterproof membrane or other waterproof barrier shall be installed in the cultivation area or beneath individual plants to protect the floor from water damage.

6.19 The Personal Cultivation of Marijuana shall not displace required off-street parking.

6.20 The Personal Cultivation of Marijuana and sale of Marijuana shall be prohibited as a home occupation.

SECTION 7. Permit Required.

7.1 A permit issued by the City of Ferndale must be obtained before a person may lawfully engage in the Personal Cultivation of Marijuana within the City of Ferndale.

7.2 A Personal Cultivation Permit shall be issued if the applicant does the following:

7.2.1 Completely and accurately submit an application for a Personal Cultivation Permit on a form supplied by the City of Ferndale. Among other things the City of Ferndale may require, the application shall require each person to provide proof of ownership of the parcel or, when applicable, the expressed written consent of his or her landlord to engage in all permitted activity.

7.2.2 Successfully passes an initial inspection conducted by the City of Ferndale or its designated representative to ensure the Private Residence or Detached Accessory Building complies with this Ordinance, including but not limited to, Section 6.7, above.

7.2.3 Pay the required fee for issuance of a Personal Cultivation Permit. The City Council of the City of Ferndale may make annual adjustments to the permit fee in its sole discretion by resolution.

7.2.4 Submit to periodic inspections of the Private Residence or Detached Accessory Building. Such periodic inspections, however, shall not exceed more than one (1) inspection per six (6) month period and shall be conducted only after prior 48 hours written notice is sent to the permit holder by certified mail. Notwithstanding the foregoing, the City of Ferndale reserves the right to conduct more frequent inspections if (a) the City of Ferndale has credible information that a violation of this Ordinance is occurring or (b) the person has violated this Ordinance within the past two (2) years.

7.3 Once issued, a Personal Cultivation Permit is valid for a period of one year from the date of issuance. A Personal Cultivation Permit may be renewed in accordance with Section 7.2, above.

7.4 A Personal Cultivation Permit is personal to the applicant and authorizes the Personal Cultivation of Marijuana only at the location described in the application. A Personal Cultivation Permit is not transferable to another person or to another parcel.

SECTION 8. Enforcement.

8.1 Any violation of this Ordinance shall be unlawful and constitute a public nuisance per se and be subject to injunction, abatement, or any other remedy available to the City of Ferndale as provided by all applicable provisions of law, including but not limited to administrative or summary abatement of any nuisance conditions, immediate revocation of the Personal Cultivation Permit, and/or a civil action for injunctive relief.

8.2 Any person, firm, corporation, or other entity, whether as principal, agent, employee or otherwise, violating or causing violation of any provision of this Ordinance shall be guilty of a misdemeanor, unless such violation constitutes a felony under California law, in which case the penalty under California shall apply.

8.3 All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law. Nothing in this Ordinance shall be deemed to authorize or permit any activity that violates any provision of state or federal law.

8.4 Any Personal Cultivation Permit issued under this Ordinance shall be revoked by operation of law, and without prior notice to the permit holder, in the event the permitted activity is made illegal under State law.

SECTION 9. Severability.

Should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this ordinance as hereby adopted shall remain in full force and effect.

SECTION 10. Savings Clause; Repeal of Ordinance 521.

10.1 To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions or prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

10.2 Ordinance No. 2013-03, entitled “An Ordinance of the City of Ferndale Prohibiting the Establishment and Operation of Medical Marijuana Dispensaries and Outdoor Cultivation and Regulating Indoor Cultivation of Medical Marijuana within the City of Ferndale,” is hereby repealed.

SECTION 11. CEQA Compliance.

This Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA guidelines.

SECTION 12. Effective Date.

This Ordinance shall go into effect and be in full force and operation 30 days after its final passage and adoption.

PASSED AND ADOPTED on this 18th day of October 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Don Hindley, Mayor

Attest:

Kristene Hall, City Clerk

First Reading: October 10, 2017	Amended:	
Second Reading: October 18, 2017		
Enacted: November 17, 2017		
Amended:		