

ORDINANCE NO. 6409

AN ORDINANCE OF THE CITY OF ANAHEIM ADDING CHAPTER 4.100 TO TITLE 4 OF THE ANAHEIM MUNICIPAL CODE (COMMERCIAL MARIJUANA ACTIVITIES AND OUTDOOR CULTIVATION) TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITIES AND BAN THE OUTDOOR CULTIVATION OF MARIJUANA IN THE CITY OF ANAHEIM AND DETERMINING PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) THAT THIS ORDINANCE IS NOT A PROJECT PURSUANT TO SECTIONS 15060(C)(2), 15060(C)(3) AND 15378 OF THE CEQA GUIDELINES

WHEREAS, in November 2016, California voters approved Proposition 64, which is known as The Control, Regulate and Tax Adult Use of Marijuana Act (the "AUMA"); and

WHEREAS, one of the stated purposes of the AUMA is to strictly control the cultivation, processing, manufacture, distribution, testing and sale of nonmedical marijuana through a system of state licensing, regulation, and enforcement; and

WHEREAS, the AUMA authorizes the issuance of state licenses for "commercial marijuana activities" which include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of nonmedical marijuana or marijuana products as defined in Section 26001 of the California Business and Professions Code, which is part of the AUMA. Pursuant to the AUMA, no state license for any commercial marijuana activities may be issued if the approval will violate local ordinances; and

WHEREAS, Business and Professions Code Section 26200, which is included in the AUMA, expressly recognizes the authority of cities to completely prohibit commercial marijuana activities or businesses as a valid exercise their local powers; and

WHEREAS, on July 31, 2007, the City Council adopted Ordinance No. 6067 adding Chapter 4.20 to Title 4 of the Anaheim Municipal Code (the "Code") prohibiting the establishment and operation of medical marijuana dispensaries; and

WHEREAS, on July 23, 2013, the City Council adopted Ordinance No. 6281 adding Chapter 4.21 to Title 4 of the Code prohibiting the establishment or operation of mobile medical marijuana dispensaries; and

WHEREAS, on February 3, 2015, the City Council adopted Ordinance No. 6315, which made clarifying amendments to Chapters 4.20 and 4.21 of the Code to address enforcement against the owner or operator of a property on which a Code violation occurs; and

WHEREAS, on January 12, 2016, the City Council adopted Ordinance No. 6354 adding Chapter 4.19 to the Code prohibiting medical marijuana cultivation and processing activities; and

WHEREAS, concurrent with legislative action to adopt Ordinances Nos. 6067, 6281, 6315 and 6354, the City Council considered reports of criminal activities, hazardous practices and other persuasive, documented evidence regarding immediate threats to the public health, safety and welfare; and

WHEREAS, despite the City's existing prohibition against all types of medical marijuana businesses, the City has experienced numerous adverse impacts from marijuana activities as a result of establishments that have operated illegally, including medical marijuana dispensaries and cultivation sites; and

WHEREAS, a number of California cities have reported negative impacts of marijuana cultivation, processing and distribution, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, homicides, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, the City's Police Department and Code Enforcement Division have documented numerous adverse impacts caused by marijuana activities, including criminal activities such as burglaries, armed robberies and a homicide, as well as health and safety concerns caused by unpermitted tenant improvements, including illegal wiring of electrical panels and unpermitted and unsafe structural modifications; and

WHEREAS, there is significant evidence that marijuana delivery services are targets of violent crime and pose a danger to the public; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery; and

WHEREAS, one marijuana plant needs five to ten gallons of water per day or an estimated three billion liters of water per square kilometer in one season, and marijuana farmers have been found directly siphoning water from tributaries and other bodies of water. This extraordinary consumption of water not only negatively impacts the City's efforts to conserve water resources but the reduction in available water negatively affects other plants and wildlife; and

WHEREAS, heavy use of pesticides to prevent rodents and other wildlife from eating marijuana plants, as well as poorly-built irrigation systems, has polluted the ecosystem and contaminated soil, groundwater, sewer systems and storm drains; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, the California Police Chiefs Association has compiled an extensive report detailing the negative secondary effects associated with storefront medical marijuana dispensaries. The City Council hereby finds that the report contains persuasive anecdotal and documentary evidence that both storefront and mobile medical marijuana dispensaries pose a threat to public health, safety and welfare, and that this threat is likely to be just as great, if not greater, with recreational marijuana dispensaries; and

WHEREAS, in Colorado, where recreational marijuana became legal and commercialized in 2013, the Colorado Association of Chiefs of Police published a report describing the adverse community impacts related to recreational marijuana; and

WHEREAS, during a panel discussion on the AUMA held in Anaheim on October 4, 2016, moderated by the California Police Chiefs' Association, John Jackson, Chief of Police of Greenwood Village, a suburb of Denver, confirmed that since recreational marijuana use became legal in Colorado, the state has experienced spikes in marijuana use by young people, traffic fatalities involving drivers under the influence of cannabis, homelessness, and criminal organizations moving to Colorado to produce and then illegally export marijuana to other states; and

WHEREAS, it is reasonable to conclude that similar adverse impacts on the public health, safety and welfare described above are likely to occur in Anaheim as a result of commercial marijuana activities; and

WHEREAS, all of the aforementioned findings, reports, and evidence shall be included as part of the record before the City in this matter, and are hereby incorporated into the City Council's record and findings related to this ordinance; and

WHEREAS, the California Constitution grants charter cities the power to make and enforce all ordinances and regulations with respect to municipal affairs. Section 7 of Article XI of the California Constitution provides that a city may make and enforce within its limits all police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the City of Anaheim, as a charter city, by and through its City Council, has and may exercise all powers necessary to ensure the general welfare of its inhabitants; and

WHEREAS, the City desires to exercise its local power and authority to prohibit commercial marijuana activities and ban outdoor cultivation of marijuana as part of Title 4 of the Anaheim Municipal Code (Business Regulation); and

WHEREAS, based on the findings, above, the City Council has determined that there exists a current and immediate threat to public health, safety and welfare if the City does not add

Chapter 4.100 to the Municipal Code to prohibit commercial marijuana activities and ban outdoor cultivation of marijuana in the City of Anaheim; and

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that the City adopt this ordinance to expressly prohibit the establishment and operation of commercial marijuana activities and outdoor cultivation of marijuana, except where the City is preempted by federal or state law from enacting a prohibition on any such establishment or activity; and

WHEREAS, the City Council determines that this ordinance is a matter of City-wide importance and necessary for the preservation and protection of the public health, safety and welfare of the citizens of the City of Anaheim and is enacted pursuant to the City’s police power, as granted broadly under Section 7 of Article XI of the California Constitution and is consistent with the AUMA; and

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; herein referred to as “CEQA”) and the State of California Guidelines for Implementation of the California Environmental Quality Act (commencing with Section 15000 of Title 14 of the California Code of Regulations; herein referred to as the "State CEQA Guidelines"), the City is the "lead agency" for the preparation and consideration of environmental documents for this ordinance; and

WHEREAS, the City Council finds and determines that this ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project", as defined in Section 15378 of the CEQA Guidelines.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ANAHEIM DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. That new Chapter 4.100 (Commercial Marijuana Activities and Outdoor Cultivation of Marijuana) be, and the same is, hereby added to Title 4 of the Anaheim Municipal Code (Business Regulation) to read in full as follows:

**CHAPTER 4.100 COMMERCIAL MARIJUANA ACTIVITIES
AND OUTDOOR CULTIVATION OF
MARIJUANA**

Sections:

- 4.100.010 Purpose and Findings.**
- 4.100.020 Definitions.**
- 4.100.030 Commercial Marijuana Activities Prohibited.**

- 4.100.035 Outdoor Cultivation of Marijuana Prohibited**
- 4.100.040 Delivery of Marijuana and Marijuana Products Prohibited**
- 4.100.045 Prohibited Commercial Marijuana Activities and Outdoor Cultivation Declared Public Nuisances**
- 4.100.050 Use or Activity Prohibited by State or Federal Law.**

4.100.010 PURPOSE AND FINDINGS.

The City Council finds that purpose and intent of this Chapter is to prohibit commercial activities involving nonmedical marijuana and marijuana products and to ban the outdoor cultivation of marijuana in order to protect the health, safety and welfare of the community.

4.19.020 DEFINITIONS.

For purposes of this chapter, the following definitions shall apply:

.010 "Marijuana " mean 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. "Marijuana" 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 as the same may be amended from time to time. "Marijuana" does not include medical marijuana defined in Chapter 4.20.

.015 "Commercial marijuana activities" includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery, trade or sale of marijuana and marijuana products by any person, entity, commercial or business enterprise, whether for-profit or nonprofit.

.020 "Delivery" means the transfer of marijuana or marijuana products to a location within the City of Anaheim.

.025 "Fully enclosed and secure structure" " means a code compliant space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the

ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more locking doors.

.030 "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, ingestible or topical product containing marijuana or concentrated cannabis and other ingredients.

.035 "Outdoor cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana that is not within a fully enclosed and secure structure.

4.100.030 COMMERCIAL MARIJUANA ACTIVITIES
PROHIBITED

Commercial marijuana activities are prohibited in the City of Anaheim. No use permit, variance, building permit, or any other entitlement, license or permit, whether administrative or discretionary, shall be approved or issued for commercial marijuana activities. It shall be unlawful for any person or entity to own, manage, conduct, or operate, or as a landlord or land owner (or as such landlord or land owner's agent, property manager or similar person having control over real property on behalf of its owner) to allow or permit to exist, or be established, conducted, operated, owned or managed on or within real property owned or controlled by such person, any commercial marijuana activity or to participate as a landlord, lessor, land owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in any commercial marijuana activity. Each day a violation of this provision of this chapter is committed, or permitted to continue, shall constitute a separate offense.

4.100.035 OUTDOOR CULTIVATION OF MARIJUANA
PROHIBITED

Outdoor cultivation of marijuana by any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the city is prohibited. It shall be unlawful for any person or entity to own, manage, conduct, or operate, or as a landlord or land owner (or as such landlord or land owner's agent, property manager or similar person having control over real property on behalf of its owner) to allow or permit to exist, or be established, conducted, operated, owned or managed on or within real property owned or controlled by such person, the outdoor cultivation of marijuana or to participate as a landlord, lessor, land owner, employee, contractor, agent or volunteer, or in any other manner or capacity, in the outdoor cultivation of marijuana. Each day a

violation of this provision of this chapter is committed, or permitted to continue, shall constitute a separate offense.

4.100.040 DELIVERY OF MARIJUANA AND MARIJUANA PRODUCTS PROHIBITED

Delivery of marijuana or marijuana products is prohibited within the City of Anaheim.

4.100.045 PROHIBITED COMMERCIAL MARIJUANA ACTIVITIES AND OUTDOOR CULTIVATION DECLARED A PUBLIC NUISANCE

The establishment, maintenance, or operation of any commercial marijuana activity or outdoor cultivation of marijuana in violation of this Chapter within the City is hereby declared to be a public nuisance and may be abated by all available means.

4.100.050 USE OR ACTIVITY PROHIBITED BY STATE OR FEDERAL LAW.

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

SECTION 2. EXISTING NONCONFORMING USES.

Any business operation or outdoor cultivation activity existing or operating within the City of Anaheim on the effective date of this ordinance shall cease operations forthwith.

SECTION 3. SEVERABILITY.

The City Council of the City of Anaheim hereby declares that should any section, paragraph, sentence or word of this ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the City Council that it would have passed all other portions of this ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

SECTION 4. SAVINGS CLAUSE.

Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted

by the City relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.

SECTION 5. CERTIFICATION; PUBLICATION BY CLERK.

The City Clerk shall certify to the passage of this ordinance and shall cause this ordinance or a summary thereof to be printed once within fifteen (15) days after its adoption in the *Anaheim Bulletin*, a newspaper of general circulation, published and circulated in the City of Anaheim.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect and be in full force thirty (30) days from and after its final passage.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council of the City of Anaheim held on the 25th day of April, 2017, and thereafter passed and adopted at a regular meeting of said City Council held on the 9th day of May, 2017, by the following roll call vote:

AYES: Mayor Tait and Council Members Vanderbilt, Murray, Barnes, Moreno, Kring, and Faessel

NOES: None

ABSENT: None

ABSTAIN: None

CITY OF ANAHEIM

By: 
MAYOR OF THE CITY OF ANAHEIM

ATTEST:



CITY CLERK OF THE CITY OF ANAHEIM

121727v7

CLERK'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ANAHEIM)

I, LINDA ANDAL, City Clerk of the City of Anaheim, do hereby certify that the foregoing is the original Ordinance No. 6409 introduced at a regular meeting of the City Council of the City of Anaheim, held on the 25th day of April, 2017, and that the same was duly passed and adopted at a regular meeting of said City Council held on the 9th day of May, 2017, by the following vote of the members thereof:

AYES: Mayor Tait and Council Members Vanderbilt, Murray, Barnes, Moreno, Kring, and Faessel

NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of May, 2017.



CITY CLERK OF THE CITY OF ANAHEIM

(SEAL)

