

ORDINANCE NO. 217-17

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILLIAMS,
AMENDING SECTION 17.01.030.8 AND SECTION 17.06.320 TO REGULATE
THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA**

WHEREAS, the City of Williams, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, California Government Code section 65800 et seq. authorizes the adoption and administration of zoning laws, ordinances, rules and regulations by cities as a means of implementing the General Plan; and

WHEREAS, the City passed Ordinance No. 216-16 on February 17, 2016, 2016; and

WHEREAS, the City desires to continue to ban all marijuana dispensaries, cultivation, and delivery service land uses within City Limits to the extent allowed by California law. Ordinance No. 217-17 updates the Municipal Code to effectuate that aim; and

WHEREAS, on June 28, 2016, the Secretary of State Certified Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”), for the November 8, 2016 ballot; and

WHEREAS, the AUMA was approved by a majority of the electorate on November 8, 2016; and

WHEREAS, the AUMA will regulate, among other items, the use of marijuana for personal and commercial purposes, including the recreational use of marijuana by adults over 21 years of age; and

WHEREAS, to regulate personal use of marijuana the AUMA adds Section 11362.1 to the Health and Safety Code, which makes it “lawful under state and local law” for persons 21 years of age or older to “possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever” up to 28.5 grams of marijuana in the form of concentrated cannabis or not more than eight grams of marijuana in the form of concentrated cannabis contained in marijuana products; and

WHEREAS, the AUMA makes it lawful for those individuals to “possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the plants; and

WHEREAS, the AUMA makes it lawful for those individuals to smoke or ingest marijuana or marijuana products; and

WHEREAS, many of the AUMA’s provisions took effect on November 9, 2016; and

WHEREAS, to regulate commercial use of marijuana, the AUMA adds Division 10 (Marijuana) to the Business & Professions Code, which grants state agencies “the exclusive authority to create, issue, renew, discipline, suspend, or revoke” licenses for businesses including the transportation, storage, distribution, sale, cultivation, manufacturing, and testing of marijuana; and

WHEREAS, the AUMA provides that the above state agencies shall promulgate rules and regulations and shall begin issuing licenses under Division 10 by January 1, 2018; and

WHEREAS, the AUMA states that a local jurisdiction shall not prevent transportation of marijuana or marijuana products on public roads by a licensee transporting marijuana or marijuana products in compliance with Division 10; and

WHEREAS, the AUMA authorizes cities to “reasonably regulate” without completely prohibiting cultivation of marijuana inside a private residence or inside an “accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure”; and

WHEREAS, the AUMA authorizes cities to completely prohibit outdoor cultivation on the grounds of a private residence, up to and until a “determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law”; and

WHEREAS, the AUMA authorizes cities to completely prohibit the establishment or operation of any marijuana business licensed under Division 10 within its jurisdiction, including marijuana dispensaries, marijuana retailers, and marijuana delivery services; and

WHEREAS, absent appropriate local regulation authorized by the AUMA, state regulations will control; and

WHEREAS, the “Medical Marijuana Regulation and Safety Act” (“MMRSA”), which took effect January 1, 2016, regulates use of marijuana for medical purposes; and

WHEREAS, the MMRSA contains a provision which provides that the State shall become the sole authority for regulation under certain parts of the Act unless local governments pass their own regulations; and

WHEREAS, in May 2013, the California Supreme Court held in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal. 4th 729 (2013) that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, the California 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, under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the subject Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; the activity is not a project as defined in Section 15378, and the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, this Ordinance would amend Sections 17.01.030.8 and 17.06.320 to clarify the substantive objectives of the Municipal Code regarding the City's regulation of marijuana within its City limits.

THE CITY COUNCIL OF THE CITY OF WILLIAMS DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2. Amendment. Williams Municipal Code section 17.01.030.8 is hereby amended to read in full as follows:

17.01.030.8 Unlisted uses.

A. If a proposed use is not listed in this section, and the director has made a determination that the use is either a subcategory of a permitted, limited, or conditional use, or a use that is functionally similar to a permitted, limited, or conditional use, the director will authorize a proposed use. If the director determines that a proposed use is not a subcategory of, or functionally similar to, a permitted, limited, or conditional use, then the use is a prohibited use. The director may refer a proposed use to the planning commission for determination.

B. The following uses are specifically prohibited in the City of Williams:

1. Mobile homes that were constructed more than ten years from the date of proposed installation.

2. Marijuana uses. Marijuana dispensaries, marijuana manufacturers, and marijuana delivery, as defined herein, shall be considered prohibited uses in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment or operation of a dispensary, marijuana manufacturer, and delivery of marijuana as defined herein in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

3. Marijuana cultivation regulated.

(a). Outdoor Cultivation. A person may not plant, cultivate, harvest, dry, or process marijuana plants outdoors in any zoning district of the City. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

(b) Indoor Cultivation.

(i) A person may not plant, cultivate, harvest, dry, or process marijuana plants indoors in any zoning district of the City, except in a private residence or inside an accessory structure to a private residence located upon the grounds of a private residence. No use permit, building permit, variance, or any other permit or entitlement, whether administrative or discretionary, shall be approved or issued for any such use or activity.

(ii) A person may not plant, cultivate, harvest, dry, or process more than six marijuana plants for his or her personal use inside a private residence or inside an accessory structure to a private residence located upon the grounds of a private residence. The plants themselves, and any marijuana produced by the plants in excess of 28.5 grams must be kept in a locked space, and must not be visible by normal unaided vision from a public place.

(iii) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.

Section 3. Amendment. Williams Municipal Code section 17.06.320 is hereby amended to remove the following:

Medical Cannabis Uses. For purposes of this code, medical cannabis uses include the following:

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 marijuana. "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.

B. “Cannabis dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

C. “Cannabis manufacturer” means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container

D. “Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

E. “Cannabis Delivery” means the commercial transfer of cannabis or cannabis products, and includes origination or termination within the City as well as a delivery business.

Section 4. Amendment. Williams Municipal Code section 17.06.320 is hereby amended to add the following:

Marijuana Uses. For purposes of this code, marijuana uses include the following:

A. “Commercial marijuana activity” includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of marijuana and marijuana products.

B. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

C. “Delivery” means the commercial transfer of marijuana or marijuana products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

D. “Distribution” means the procurement, sale, and transport of marijuana and marijuana products between entities for commercial use purposes.

E. “Licensee” means the holder of any state issued license related to marijuana activities, including but not limited to licenses issued under Division 10 of the Business & Professions Code.

F. “Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a marijuana product.

G. “Marijuana” 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. It does not include:

1. Industrial hemp, as defined in Section 11018.5 of the California Health & Safety Code;
or

2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

H. "Marijuana accessories" means any equipment, products or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana or marijuana products into the human body.

I. "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 marijuana or concentrated cannabis and other ingredients.

J. "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

K. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling.

L. "Sale" includes any transaction whereby, for any consideration, title to marijuana is transferred from one person to another, and includes the delivery of marijuana or marijuana products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of marijuana or marijuana products by a licensee to the licensee from whom such marijuana or marijuana product was purchased.

M. Any term defined in this Section also means the very term as defined in the California Business & Professions Code or the California Health & Safety Code, unless otherwise specified.

Section 5. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

Section 6. Severability. If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this ordinance that can be given effect without the invalid provision and, to this end, the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the

invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 7. Posting. Within 15 days from the date of passage of this Ordinance, the City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be posted in three public places within the City of Williams.

Section 8. Effective Date. This Ordinance shall take effect and be enforced commencing thirty (30) days following its adoption.

///

///

ADOPTED THIS 19th day of April 2017, by the following vote:

AYES: Council Member Mendoza, Jauregui, Troughton Jr., Bergson and Sellers Jr.

NOES: None.

ABSENT: None.

ABSTAIN: None.


Alfred Seller Jr., Mayor

ATTEST:


Mariana Pineda, City Clerk

