

CITY OF FAIRFIELD

ORDINANCE NO. 2020-14

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAIRFIELD ADOPTING AMENDMENTS TO CHAPTER 25, ARTICLE I (ALSO KNOWN AS THE ZONING ORDINANCE OF THE CITY OF FAIRFIELD) ADDRESSING CANNABIS ACTIVITIES TO BE CONSISTENT WITH CHAPTER 10E "COMMERCIAL CANNABIS BUSINESSES" OF THE FAIRFIELD MUNICIPAL CODE

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

SECTION 1. Statement of Intent

- A. The City of Fairfield has an adopted Zoning Ordinance to address development issues consistent with the Fairfield General Plan.
- B. On June 16, 2020, the City Council adopted Ordinance No. 2020-07, which establishes a process for allowing a certain number of commercial cannabis businesses to operate in the City pursuant to a commercial cannabis business permit and the adopted regulations. The Fairfield Zoning Ordinance currently prohibits all commercial cannabis activity within the City, and conflicts with Ordinance No. 2020-07.
- C. On July 8, 2020, the Planning Commission was presented with the revisions to the Zoning Ordinance contained herein and, after holding a duly noticed public hearing, voted to recommend that the City Council approve the proposed revisions.
- D. The City has held a duly noticed public hearing on the proposed revisions to the Zoning Ordinance.

SECTION 2. Chapter 25, Article 1, Section 25.32.17 (Cannabis Regulations) of the Fairfield Municipal Code is hereby amended in its entirety to read as follows:

"25.32.17 Cannabis Regulations.

A. Purpose. In enacting this Section, it is the intent of the Fairfield City Council to protect the safety and welfare of the general public. The City Council finds providing access to adult-use cannabis for persons aged 21 and over, while imposing reasonable regulations to protect the City's residents, neighborhoods, and businesses from any harmful impacts, to be consistent with the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The purpose of this Section is to prohibit outdoor cannabis cultivation from occurring in the City; to reasonably regulate indoor personal cultivation of cannabis

consistent with State law; and to permit commercial cannabis activities subject to the rules and requirements of Fairfield Municipal Code Chapters 10E and 10F.

B. Definitions. For the purposes of this Section, the following definitions shall apply. All citations to State law shall refer to the act, statute, or regulation as may be amended from time to time.

“Cannabis” means marijuana and 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” includes cannabis that is used for medical, adult-use, or other purposes. “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 seed of the plant which is incapable of germination. “Cannabis” also does not include industrial hemp, as defined in Health and Safety Code section 11018.5.

“Cannabis product” 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.

“Commercial cannabis activity” means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis product for medical, adult-use, or any other purpose and includes the activities of any business licensed by the State or other government entity under the MAUCRSA, or any provision of State law that regulates the licensing of cannabis businesses. Commercial cannabis activity does not include the cultivation, possession, storage, manufacturing, or transportation of cannabis by a qualified patient for his or her personal medical use so long as the qualified patient does not provide, donate, sell or distribute cannabis to any other person. Commercial cannabis activity also does not include the cultivation, possession, storage, manufacturing, transportation, donation or provision of cannabis by a primary caregiver, exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, but who does not receive remuneration for these activities except for compensation in full compliance with Health and Safety Code section 11362.765.

“Concentrated cannabis” means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency. Resin from granular trichomes from a cannabis plant is a concentrate.

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

“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.

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the Business and Professions Code.

“Fully enclosed and secure structure” means a space within a building, greenhouse or other structure that satisfies all of the following criteria: (i) has a complete roof enclosure supported by connecting walls extending from the ground to the roof; (ii) is secure against unauthorized entry; (iii) provides complete visual screening; (iv) is accessible only through one or more lockable doors; and (v) is inaccessible to minors.

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

“MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as codified in Division 10 of the Business and Professions Code.

“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.

“Primary caregiver” shall have the same meaning as in Health and Safety Code section 11362.7(d).

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling that is lawfully used as a residence.

“Qualified patient” means a person who is entitled to the protections of Health and Safety Code section 11362.5, but who does not have an identification card.

C. Prohibitions.

1. Except as specifically authorized by Chapter 10E of the Fairfield Municipal Code, the commercial cultivation, manufacture, processing, storing, laboratory testing, labeling, sale, delivery, distribution, and transportation (other than as provided under Business and Professions Code Section 26090(e)) of cannabis or cannabis products is expressly prohibited in the City.

2. No person may engage in any commercial cannabis business or in any commercial cannabis activity within the City, including cultivation, manufacture, processing, laboratory testing, distributing, dispensing, or sale of cannabis or a cannabis product, unless the person (1) has a valid commercial cannabis business permit or delivery permit from the City, as applicable; (2) has a valid State license; and (3) is currently in compliance with all applicable State and local laws and regulations pertaining to the commercial cannabis business and the commercial cannabis activities.
3. Outdoor cannabis cultivation is expressly prohibited in the City.
4. Indoor cannabis cultivation, including cultivation by a qualified patient and primary caregiver, is prohibited except as specified in subsection E below.

D. Exceptions.

1. Nothing in this Section shall prohibit a person 21 years of age or older from engaging in any activities authorized under California Health and Safety Code section 11362.1.
2. Nothing in this Section shall prohibit any commercial cannabis activity that is permitted by the City pursuant to the requirements of Fairfield Municipal Code Chapter 10E.
3. Nothing in this Section shall prohibit any commercial cannabis activity that the City is required by State law to permit within its jurisdiction pursuant to Business and Profession Code section 26054(c) and (d), as the same may be amended from time to time, or any other provision of the MAUCRSA.

E. Indoor Cannabis Cultivation. It is hereby declared to be a public nuisance for any person owning, leasing, occupying, or having charge or possession of any real property in the city to cause or allow such real property to be used for the cultivation of cannabis, except in strict compliance with the requirements set forth below:

1. Only persons twenty-one (21) years of age or older may cultivate cannabis. Any cannabis cultivation must comply with the requirements set forth in California Health and Safety Code sections 11362.1 and 11362.2.
2. Cannabis cultivation shall only occur indoors at a private residence, or inside an accessory structure located upon the grounds at a private residence. Cultivation is permitted only within fully enclosed and secure structures.
3. Cannabis cultivation shall be limited to six (6) plants total, whether immature or mature, regardless of how many individuals reside at the private residence.

4. Cannabis cultivation, including any lighting, plumbing, or electrical components used for cultivation, shall comply with Chapter 5 (Building and Housing), Chapter 7 (Electricity), Chapter 8 (Fire Protection), and Chapter 22 (Water) of the City Code. Lighting shall not exceed 1,000 watts per light. The use of gas products (CO₂, butane, etc.) or CO₂ and Ozone generators for cannabis cultivation is prohibited. Any fully enclosed and secure structure or private residence used for cultivation must have proper ventilation and shall not create a humidity or mold problem in violation of the City Code or applicable state health and safety codes.
5. Cannabis cultivation shall not be conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if the cultivation produces light, glare, heat, noise, odor, or vibration that is or whose effect is either detrimental to public health, safety, or welfare or interferes with the reasonable enjoyment of life or property.
6. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. These rooms shall not be used for cannabis cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping, and bathing.
7. Cannabis cultivation shall not displace required off street parking or violate any other provisions of the City Code.
8. Written consent of the property owner must be obtained prior to the commencement of cannabis cultivation.

F. Permissive Zoning. Nothing in this Section shall be interpreted to the effect that the City's permissive zoning scheme allows any other use not specifically listed therein.

G. Enforcement. In addition to any other enforcement authorized under Chapter 1, Article II, the city attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Section. In any civil action brought pursuant to this Section, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the above, no provision of this Section authorizes a criminal prosecution, arrest, or penalty inconsistent with or prohibited by Health and Safety Code section 11362.1, *et seq.*, or section 11362.71, *et seq.* In the event of any conflict between the penalties set forth in the City Code and the penalties set forth in State law, the maximum penalties allowable under State law shall govern."

SECTION 3. Chapter 25, Article I, Section 25.50 (Definitions) of the Fairfield Municipal Code is hereby amended as follows:

1. Add the following new terms and definitions to Subsection C (Land use definitions, "C") in alphabetical order:

“Commercial Cannabis Business. Any business or operation which engages in medicinal or adult-use commercial cannabis activity.”

“Commercial Cannabis Business, Retail. An establishment engaged in the retail sale of cannabis or cannabis products, that is owned and operated pursuant to a valid commercial cannabis business permit for retail from the City and a valid State license. Includes both storefront and non-storefront retailers, as defined in Section 10E.5 of Chapter 10E the City Code.”

“Commercial Cannabis Business, Testing Lab. A laboratory, facility, or other establishment that offers or performs tests of cannabis or cannabis products and that is owned and operated pursuant to a valid commercial cannabis business permit for testing labs from the City and a valid State license.”

“Commercial Cannabis Business, Manufacturing. An establishment that is engaged in the production, preparation, propagation, or compounding of cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and that is owned and operated pursuant to a valid commercial cannabis business permit for manufacturing from the City and a valid State license. May include businesses that use either volatile or non-volatile solvents.”

2. Amend the existing definition of “Crop Production” within Subsection C (Land use definitions, “C”) by adding at the end of the definition, “This classification does not include cannabis cultivation which is regulated under Section 25.32.17 “Cannabis Regulations” and Chapter 10E of the Fairfield Municipal Code.”
3. Amend the existing definition of “Office, Administrative, Business, or Professional” within Subsection O (Land use definitions, “O”) by deleting the phrase, “nor medical marijuana dispensaries, which are prohibited.”
4. Amend the existing definition of “Office, Medical, and Dental” within Subsection O (Land use definitions, “O”) by deleting the sentence, “This classification also does not include medical marijuana dispensaries, which are prohibited.”

SECTION 4. Table 25-9 (Commercial District Land Use Regulations) within Chapter 25, Article I, Section 25.22 (Commercial Zoning Districts) of the Fairfield Municipal Code is hereby amended as follows:

1. Under the “General Retail” category, add “Commercial Cannabis Business, Retail” as a Permitted Use in the CS, CT, CR and CM zoning districts, and include citations to Chapter 10E (Commercial Cannabis Business) of the

Fairfield Municipal Code and to notes 12 and 13 under the column "Additional Regulations."

2. Add notes 12 and 13, to read as follows:

"(12) Retail sales of cannabis shall not be located on any commercial or industrial property within the area bounded by Travis Blvd., Pennsylvania Ave., and Gateway Blvd."

"(13) No commercial cannabis business, whether Retail, Manufacturing, or Testing Lab, shall be closer than six hundred (600) feet from any of the following sensitive uses that are in existence at the time a permit application is deemed complete: a public or private school providing instruction in kindergarten or any grades 1 through 12; a child day care center; or a youth center, as defined in Chapter 10E of the Fairfield Municipal Code. The distance measured shall be the horizontal distance measured in a straight line from the property line of the parcel with the sensitive use to the closest property line of the lot on which the cannabis business is located."

SECTION 5. Table 25-H1 (Heart of Fairfield Land Use Regulations) within Chapter 25, Article I, Section 25.23 (Heart of Fairfield Plan Zoning Districts) of the Fairfield Municipal Code is hereby amended as follows:

1. Under the "General Retail" category, add "Commercial Cannabis Business, Retail" as a Permitted Use in the HWT zoning district, and include citations to Chapter 10E (Commercial Cannabis Business) of the Fairfield Municipal Code and to notes 16 and 17 under the column "Additional Regulations."
2. Add notes 16 and 17, to read as follows:

"(16) Retail sales of cannabis shall not be located on any commercial or industrial property within the area bounded by Travis Blvd., Pennsylvania Ave., and Gateway Blvd."

"(17) No commercial cannabis business, whether Retail, Manufacturing, or Testing Lab, shall be closer than six hundred (600) feet from any of the following sensitive uses that are in existence at the time a permit application is deemed complete: a public or private school providing instruction in kindergarten or any grades 1 through 12; a child day care center; or a youth center, as defined in Chapter 10E of the Fairfield Municipal Code. The distance measured shall be the horizontal distance measured in a straight line from the property line of the parcel with the sensitive use to the closest property line of the lot on which the cannabis business is located."

SECTION 6. Table 25-11 (Industrial District Land Use Regulations) within Chapter 25, Article I, Section 25.24 (Industrial Zoning Districts) of the Fairfield Municipal Code is hereby amended as follows:

1. Under the “General Service” category, add “Commercial Cannabis Business, Retail” in the IBP and IL zoning districts, and include citations to Chapter 10E (Commercial Cannabis Business) of the Fairfield Municipal Code and to notes 7 and 8 under the column “Additional Regulations.”
2. Under the “Industry” category, add “Commercial Cannabis Business, Testing Lab” and “Commercial Cannabis Business, Manufacturing” in the IBP, IL and IG zoning districts, and include citations to Chapter 10E (Commercial Cannabis Business) of the Fairfield Municipal Code and to note 8 under the column “Additional Regulations.”
3. Add notes 7 and 8, to read as follows:

“(7) Retail sales of cannabis shall not be located on any commercial or industrial property within the area bounded by Travis Blvd., Pennsylvania Ave., and Gateway Blvd.”

“(8) No commercial cannabis business, whether Retail, Manufacturing, or Testing Lab, shall be closer than six hundred (600) feet from any of the following sensitive uses that are in existence at the time a permit application is deemed complete: a public or private school providing instruction in kindergarten or any grades 1 through 12; a child day care center; or a youth center, as defined in Chapter 10E of the Fairfield Municipal Code. The distance measured shall be the horizontal distance measured in a straight line from the property line of the parcel with the sensitive use to the closest property line of the lot on which the cannabis business is located.”

SECTION 7. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to the CEQA Guidelines Section 15060(c)(3), because it is not a “project” as defined by the Section 15378. Adoption of the Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Subsequent commercial cannabis business projects will require a discretionary permit and CEQA review and will be analyzed at the appropriate time in accordance with CEQA. The City Council further finds that, if the Ordinance is considered a “project,” it is exempt from review under CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code Section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity.

Consistent with Section 26055(h), this Ordinance allows for operation of a commercial cannabis business only after a commercial cannabis business permit has been obtained. Under Chapter 10E of the Fairfield Municipal Code, a business must obtain all necessary land use approvals, including compliance with CEQA, to be issued a commercial cannabis business permit.

SECTION 8. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 9. This Ordinance shall be effective 30 days following its adoption by the City Council. A summary of this Ordinance shall, within fifteen (15) days after passage, be published in accordance with Section 36933 of the Government Code of the State of California with the names of the City Councilmembers voting for and against it.

INTRODUCED at a regular meeting of the City Council of the City of Fairfield on the 21st day of July, 2020, and

PASSED AND ADOPTED this 4th day of August, 2020, by the following vote:

AYES:	Councilmembers:	<u>PRICE / BERTANI / MOY / TIMM / VACCARO</u>
NOES:	Councilmembers:	<u>NONE</u>
ABSENT:	Councilmembers:	<u>NONE</u>
ABSTAIN:	Councilmembers:	<u>NONE</u>



MAYOR

ATTEST:


CITY CLERK