

**ORDINANCE NO. 345**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRADBURY,  
CALIFORNIA AMENDING CHAPTER 9.05.110 OF THE BRADBURY MUNICIPAL  
CODE RELATING TO MEDICAL CANNABIS AND ADDING PROVISIONS RELATING  
TO PERSONAL CULTIVATION OF MARIJUANA**

The City Council of the City of Bradbury does hereby ordain as follows:

Section 1. Findings and Purpose. The City Council finds and declares as follows:

A. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5 and entitled "The Compassionate Use Act of 1996" or "CUA").

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

C. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health & Safety Code § 11362.7 et seq. and referred to as the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215 and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

D. In January of 2016, the City Council fo the City of Bradbury adopted Ordinance No. 343 prohibiting commercial marijuana activities and regulating medical marijuana activities in the City.

E. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for medical purposes, although there

is recent case law that raises a question as to whether the Federal Government may enforce the Act where medical marijuana is allowed.

F. On November 8, 2016, the voters of California adopted Proposition 64, known as the Adult Use of Marijuana Act (“AUMA”), which authorizes recreational marijuana use by persons over 21 years of age.

G. The AUMA also creates a State licensing scheme for commercial marijuana activities. Licensing must take place prior to January 1, 2018, but it is not known when such licensing will actually occur.

H. The AUMA, like the MMA before it, allows local jurisdictions to ban all commercial marijuana activities within a City and to ban the outdoor cultivation of marijuana for personal use. Personal cultivation within an enclosed outdoor structure or a private residence is allowed, subject to reasonable regulations of the City.

I. By Ordinance No. 334, the City has banned the outdoor cultivation of medical marijuana. The City desires to ensure that said ban remains in effect for recreational marijuana as well, in the wake of the passage of the AUMA. Pursuant to this Ordinance, as required by the AUMA, personal cultivation within an enclosed outdoor structure or a private residence is allowed, subject to reasonable regulations of the City.

J. The purpose of this Ordinance is to reaffirm that commercial marijuana activities are prohibited within the City, except to the extent explicitly permitted by the AUMA, and to impose reasonable regulations on personal cultivation in private residences and accessory structures.

Section 2. Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution, the Compassionate Use Act, the Medical Marijuana Program, and The Medical Marijuana Regulation and Safety Act.

Section 3. Article IX Chapter 9.05.110 of the Bradbury Municipal Code is hereby amended to read as follows:

## **Chapter 9.05.110**

### **CANNABIS AND MARIJUANA**

#### **SUBPART A – MEDICAL MARIJUANA AND CULTIVATION**

##### **9.05.110.010 Definitions**

“Cannabis” shall have the same meaning as set forth in Business & Professions Code § 19300.5(f) as the same may be amended from time to time.

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as that set forth in Business & Professions Code § 19300.5(k) as the same may be amended from time to time.

“Cooperative” shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

“Cultivation” shall have the same meaning as set forth in Business & Professions Code § 19300.5(l) as the same may be amended from time to time.

“Cultivation site” shall have the same meaning as set forth in Business & Professions Code § 19300.5 (x) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(m) as the same may be amended from time to time.

“Dispensary” shall have the same meaning as set forth in Business & Professions Code § 19300.5(n) as the same may be amended from time to time. For purposes of this Chapter, “Dispensary” shall also include a cooperative. “Dispensary” shall not include the following uses: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code, (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code, (3) a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code, (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code, (5) a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

“Dispensing” shall have the same meaning as set forth in Business & Professions Code § 19300.5(o) as the same may be amended from time to time.

“Distribution” shall have the same meaning as set forth in Business & Professions Code § 19300.5(p) as the same may be amended from time to time.

“Distributor” shall have the same meaning as set forth in Business & Professions Code § 19300.5(q) as the same may be amended from time to time.

“Manufacturer” shall have the same meaning as set forth in Business & Professions Code § 19300.5(y) as the same may be amended from time to time.

“Manufacturing site” shall have the same meaning as set forth in Business & Professions Code § 19300.5(af) as the same may be amended from time to time.

“Medical cannabis,” “medical cannabis product,” or “cannabis product” shall have the same meanings as set forth in Business & Professions Code § 19300.5(ag) as the same may be amended from time to time.

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Nursery” shall have the same meaning as set forth in Business & Professions Code § 19300.5(ah) as the same may be amended from time to time.

“Qualifying patient” or “Qualified patient” shall have the same meaning as set forth in Health & Safety Code § 11362.7 as the same may be amended from time to time.

“Testing laboratory” shall have the same meaning as set forth in Business & Professions Code § 19300.5(z) as the same may be amended from time to time.

“Transport” shall have the same meaning as set forth in Business & Professions Code § 19300.5(am) as the same may be amended from time to time.

“Transporter” shall have the same meaning as set forth in Business & Professions Code § 19300.5(aa) as the same may be amended from time to time.

**9.05.110.020 Prohibition.**

- A. Commercial cannabis activities of all types are expressly prohibited in all zones in the City of Bradbury. No person shall establish, operate, conduct or allow a commercial cannabis activity anywhere within the City.
- B. To the extent not already covered by subsection A above, all deliveries of medical cannabis are expressly prohibited within the City of Bradbury. No person shall conduct any deliveries that either originate or terminate within the City.
- C. This section is meant to prohibit all activities for which a State license is required. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.
- D. Except as provided in Subpart C hereof, cultivation of cannabis for non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones in the City of Bradbury. No person, including a qualified patient or primary caregiver, shall cultivate any amount of cannabis in the City, even for medical purposes.

**SUBPART B – NON-MEDICAL MARIJUANA AND CULTIVATION**

**9.05.110.030 Definitions.**

For purposes of this Subpart B, which relates to the non-medical use of Marijuana as authorized by the Adult Use of Marijuana Act, the following definitions shall apply:

“AUMA” shall mean the Control, Regulate and Tax Adult Use of Marijuana Act (“the Adult Use of Marijuana Act”) identified as Proposition 64 on the November 8, 2016 General Election ballot, as the same may be amended from time to time.

“Commercial marijuana activity” shall include the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, distribution, delivery or sale of non-medical marijuana and marijuana products. Where applicable, the definitions set forth in Business and Professions Code section 26001 shall apply as the same may be amended from time to time.

“Marijuana” shall have the same meaning as set forth in Health and Safety Code Section 11018 as the same may be amended from time to time.

“Private Residence” shall mean a house, an apartment unit, a mobile home, or other similar dwelling.

#### **9.05.110.040 Prohibition.**

A. Commercial marijuana activities of all types are expressly prohibited in all zones in the City of Bradbury. No person shall establish, operate, conduct or allow a commercial marijuana activity anywhere within the City.

B. To the extent not already covered by subsection A above, all deliveries of marijuana are expressly prohibited within the City of Bradbury. No person shall conduct any deliveries that either originate or terminate within the City.

C. This section is meant to prohibit all activities for which a state license is required under AUMA. Accordingly, the City shall not issue any permit, license or other entitlement for any activity for which a state license is required under the AUMA.

D. Except as provided in subpart C, cultivation of marijuana for non-commercial purposes, is expressly prohibited in all zones in the City of Bradbury.

### **SUBPART C – PERSONAL CULTIVATION**

#### **9.05.110.050 Definitions.**

For purposes of this Subpart C, the following definitions shall apply:

A. “Authorized Grower” means a person 21 years and older who is authorized by, and in compliance with, state law to cultivate marijuana indoors for personal use, including medical use, and who has obtained a permit from the Development Services Department to cultivate plants for personal use in accordance with AUMA.

B. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or otherwise processing of marijuana plants or any part thereof.

C. "Fully enclosed and secure structure" means a fully-enclosed space within a building that complies with the California Building Code ("CBC"), as adopted by the City of Bradbury, or if exempt from the permit requirements of the CBC, that has a complete roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily broken through such as two inch by four inch nominal or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of the mil or inches, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the building and construction codes as adopted by the City of Bradbury. If skylights are used, security bars shall be added to the skylights.

D. "Immature marijuana plant" means a marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

E. "Mature marijuana plant" means a marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

F. "Outdoor" means any location within the City of Bradbury that is not within a fully enclosed and secure structure.

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

**9.05.110.060 Outdoor Cultivation.**

No outdoor cultivation of marijuana plants shall be allowed in the City of Bradbury, even for personal use. (This section shall be of no further force or effect and shall be deemed repealed upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law.)

**9.05.110.070 Indoor Cultivation; regulations; permit for residential zones.**

A. Notwithstanding anything in Subparts A or B to the contrary, an authorized grower shall be allowed to cultivate marijuana for personal use only within a private residence or a fully enclosed and secure accessory structure to a private residence, not visible to the public, in a residential or agricultural zone, subject to the following regulations in addition to all regulations set forth in AUMA:

1. The marijuana cultivation area shall be contained within one single room.
2. The marijuana plants shall not come within twelve (12) inches of the ceiling or any cultivation lighting.
3. Marijuana cultivation lighting shall not exceed one thousand two hundred watts in total for the total cultivation area within the residence.
4. The use of gas products such as but not limited to CO<sub>2</sub>, butane, methane, or any other flammable or non-flammable gas for marijuana cultivation or processing is prohibited.
5. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence or accessory structure from the public right-of-way, including but not limited to any marijuana plants, equipment used in the growing and cultivation operation, and any light emanating from cultivation lighting.
6. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs.
7. The authorized grower shall not participate in marijuana cultivation in any other location within the City.
8. The residence shall include fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident authorized grower, and the premises shall not be used primarily or exclusively for marijuana cultivation.
9. The marijuana cultivation area shall be in compliance with the provisions of the applicable building and construction codes as set forth in the Bradbury Municipal Code. The Building Official may impose additional conditions to meet such Codes if necessary, including but not limited to installation of fire suppression sprinklers.
10. The marijuana cultivation area shall not result in a nuisance or adversely affect the health, welfare, or safety of the resident or nearby residents by creating dust, glare, heat, noise, noxious gasses, odors, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.
11. No more than six (6) marijuana plants, mature or immature, may be planted, cultivated, harvested, dried, or processed within a single private residence at one time.
12. The marijuana plants and any marijuana in excess of 28.5 grams produced by plants must be kept in a locked space on the grounds of the private residence which space is not visible from the public right-of-way by normal unaided vision.

- B. No person shall cultivate marijuana in any private residence unless and until such person first secures a permit from the City and pays such fee as may be required and set forth by resolution of the City Council.
- C. The permit application shall be in a form approved by the City and shall, at a minimum, include:
  - 1. The person's name and date of birth as verified by a valid driver's license, state-issued identification card, or passport;
  - 2. A site-plan of the residence and accessory structure if applicable, which may be hand drawn, indicating where the plants will be located;
  - 3. A description of the method used to secure the plants;
  - 4. An identification of any special lighting or other equipment that will be used to aid in the cultivation of the plants;
  - 5. If the applicant is the owner of the private residence, proof of such ownership; and
  - 6. If the applicant is not the owner of the private residence, a copy of the lease or other rental agreement, along with a signed statement from the owner that the applicant has permission to cultivate plants in accordance with the provisions of AUMA and this Chapter.

## **SUBPART D – VIOLATIONS AND REMEDIES**

### **9.05.110.080 Violation.**

It is hereby declared to be unlawful, a public nuisance and a violation of this Chapter for any person owning, leasing, occupying, or having charge or possession of any property within the City to cause or allow such property to be used in a manner which violates this Chapter.

### **9.05.110.090 Violation – Misdemeanor.**

Any violation of this Chapter shall be punishable as a misdemeanor. The prosecuting attorney, in his sound discretion, may prosecute a violation of this Chapter as an infraction rather than a misdemeanor, or reduce or agree to the reduction of a previously filed misdemeanor to an infraction.

### **9.05.110.100 Public nuisance.**

Any use or condition caused, or permitted to exist, in violation of any provision of this chapter shall be, and hereby is declared to be, a public nuisance and may be

summarily abated by the City pursuant to Code of Civil Procedure Section 731 or any other remedy available to the City.

**9.05.110.110 Civil penalties.**

In addition to any other enforcement permitted by this chapter, the city attorney may bring a civil action for injunctive relief or the City may pursue administrative fines and penalties pursuant to Chapter 1.24 of this code against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party.

Section 4. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the 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 adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

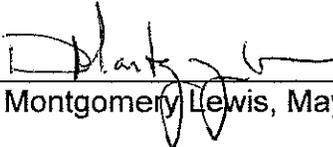
Section 5. Nothing in this Ordinance shall be interpreted to mean that the City's permissive zoning scheme allows any other use not specifically listed therein.

Section 6. CEQA. This ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The City's permissive zoning provisions already prohibits all uses that are being expressly prohibited by this ordinance. Therefore, this ordinance has no impact on the physical environment as it will not result in any changes.

Section 7. To the extent the provisions of the Bradbury Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as they read immediately prior to the adoption of this Ordinance, then those provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 8. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of adoption and shall post a certified copy of this Ordinance, including the vote for and against same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

**PASSED, APPROVED, AND ADOPTED** this 20<sup>th</sup> day of December, 2016.

  
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D. Montgomery Lewis, Mayor

ATTEST:

"I, Claudia Saldana, City Clerk, hereby certify that the foregoing ordinance, being Ordinance No. 345, was introduced at a regular meeting of the City Council of the City of Bradbury, held on the 15<sup>th</sup> day of November 2016, and was duly passed, approved and adopted at a regular meeting of said Council, held on the 20<sup>th</sup> day of December 2016, by the following roll call vote:

AYES: Mayor Lewis, MPT Lathrop, Councilmembers Barakat,  
NOES: None Hale and Pyczy  
ABSENT: None  
ABSTAIN: None

Claudia Saldana  
Claudia Saldana, City Clerk

APPROVED AS TO FORM:

Cary S. Reisman  
Cary S. Reisman, City Attorney