

ORDINANCE NO. 1505

**AN URGENCY ORDINANCE OF THE CITY OF BANNING
AMENDING SECTION 8.48.330 (“CULTIVATION,
MANUFACTURE, OR SALES OF DRUGS”) AND ADDING
CHAPTER 5.34 (“MARIJUANA CULTIVATION”) TO TITLE
5 (BUSINESS LICENSES AND REGULATIONS) OF THE
BANNING MUNICIPAL CODE TO REGULATE THE
CULTIVATION OF MARIJUANA FOR PERSONAL USE
BY CREATING A MARIJUANA CULTIVATION PERMIT;
AND DECLARING THE URGENCY THEREOF.**

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

Section 1. A new Chapter 5.34, entitled “Marijuana Cultivation” is added to Title 5 (Business Licenses and Regulations) of the Banning Municipal Code to read as follows:

Chapter 5.34 MARIJUANA CULTIVATION

Sections:

5.34.010 – Purpose

5.34.020 – Definitions

5.34.030 – Site Location, Operation, and Development Standards

5.34.040 – Other Applicable Regulations

5.34.050 – Marijuana Cultivation Permit

5.34.060 – Revocation of Marijuana Cultivation Permit

5.34.070 – Appeals

5.34.080 – Prohibited Activities Declared a Public Nuisance

5.34.010 – Purpose

A. The purpose of this Chapter is to prevent community-wide adverse impacts including, but not limited to, increased criminal activity, fire and chemical hazards, objectionable odors, late night traffic, and the general deterioration of neighborhoods associated with marijuana cultivation.

B. Marijuana cultivation in the City can adversely affect the health, safety and well-being of City residents. Therefore, reasonable regulation of marijuana cultivation is proper and necessary to avoid the concentration of substantial amounts of marijuana in one place and to avoid the risks of criminal activity, degradation of the natural

environment, malodorous smells, and indoor electrical fire hazards that may result from unregulated marijuana cultivation.

5.34.020 – Definitions

For the purposes of this Chapter, the following definition shall apply:

“Childcare Center” shall mean any licensed childcare center, daycare center, childcare home, or any preschool.”

“Church” shall mean any structure or leased portion of a structure, which is used primarily for religious worship and related religious activities.

“Commercial Cannabis Activity” shall mean the possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, dispensing, mobile dispensing, mobile delivery, or sale of more than 28.5 grams of un-concentrated marijuana or more than eight (8) grams of concentrated marijuana.

“Community Center” shall mean any facility open to the public at which classes, social activities, recreational activities, educational activities, support and public information are offered for all residents of the community.

“Detached accessory structure” shall mean a building completely detached from a residence that complies with the California Building Code which is secure against unauthorized entry, and is accessible only through one or more lockable doors, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof; and a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Exterior walls must be constructed with nontransparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

“Enforcement Officer” shall mean the chief of police, building official, code enforcement official, environmental health department director, public health officer, agricultural commissioner, fire chief, clerk of the board of supervisors, or their designees.

“Indoors” shall mean within a fully enclosed and secure building.

“Marijuana Cultivation” or “Marijuana Cultivation Activities” shall mean the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof.

“Marijuana Cultivation Permit” shall mean a permit issued by the City to a person over the age of 21 for the purposes of engaging in marijuana cultivation activities pursuant to this Chapter.

“Marijuana Cultivation Permit Holder” shall mean the applicant named on the application for a Marijuana Cultivation Permit.

“Marijuana Plant” shall mean any mature or immature marijuana plant, or any marijuana seedling.

“Park” shall mean any public playground, public recreation center or area, and other public areas created, established, designed, maintained, provided, or set aside by the county, and city or any other public entity or agency, for the purposes of public rest, play, recreation, enjoyment or assembly, and all buildings and structures located thereon or therein.

“Person” shall mean an individual, firm, 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 includes the plural as well as the singular number.

“Premises” shall mean a single parcel of property. Where contiguous parcels are under common ownership or control, such contiguous parcels shall be counted as a single “premises” for purposes of this Chapter.

“Primary Caregiver” shall have the same meaning as set forth in Health and Safety Code sections 11362.5 and 11362.7, et seq.

“Qualified Patient” shall have the same meaning as set forth in Health and Safety Code sections 11326.5 and 11362.7, et seq.

“Rear Yard” shall mean the rear open space portion of any premises, whether fenced or unfenced.

“Residential Unit” means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation

on a premises or legal parcel located within a residential or agricultural-residential zoning district.

“School” shall mean any institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education; excluding home school, vocational or professional institution of higher education, including a community college, junior college, college or university.

5.34.030 – Site Location, Operation, and Development Standards

Non-commercial cultivation of small amounts of marijuana for personal use is only permitted in the Ranch Agriculture (R/A), Ranch Agriculture –Hillside (R/A/H), Rural Residential (RR), Rural Residential – Hillside (RR/H), Very Low Density Residential (VLDR), Low Density Residential (LDR), Medium Density Residential (MDR) and High Density Residential (HDR) zones when all of the following applicable conditions and standards are met:

A. Generally.

1. Marijuana cultivation is permitted only on parcels with residential units where the Marijuana Cultivation Permit Holder resides full-time. Marijuana Cultivation Permit Holders shall not participate in marijuana cultivation in more than one location within the City. Marijuana cultivation activities may only occur Indoors within a residential unit, garage or Detached Accessory Structure.
2. From the public right-of-way, there shall be no exterior evidence of marijuana cultivation.
3. No person shall commence any marijuana cultivation activities unless and until they have obtained a valid Marijuana Cultivation Permit from the City.
4. Any area set aside for the cultivation of marijuana for personal use shall not adversely affect the health or safety of the nearby residents by creating dust, glare, excessive light, heat, noise, noxious gases, odors, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to the use of storage of materials, processes, products or waste.
5. Cultivation of marijuana for personal use shall not exceed six (6) marijuana plants of any size per Marijuana Cultivation Permit holder. The maximum number of plants shall be limited regardless of the number of qualified patients or primary caregivers residing on the property. Not more

than six (6) living marijuana plants may be cultivated on the Premises at one time.

6. Marijuana cultivation activities shall not be upon any property or parcel containing a childcare center, school or church. Furthermore, marijuana cultivation activities shall not take place within 1,000 feet of any school, childcare center, public park, government building, or church. The 1,000 feet shall be measured from the closest property line of the school, childcare center, public park, government building or church, to the closest property line of the cultivation parcel.

7. Indoor grow lights shall not exceed 1,200 watts and shall comply with the California Building, Electrical and Fire Codes as adopted by the City.

8. Any location used for marijuana cultivation must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and shall comply with California Building Code section 402.3 (Mechanical Ventilation). The ventilation and filtration system must be approved by the enforcement officer and installed prior to the commencement of any marijuana cultivation activities.

9. Marijuana cultivation activities shall not be accessible to persons under 18 years of age.

B. *Marijuana cultivation within residential units, specifically.* In addition to those requirements listed in Subsection A of this section, marijuana cultivation activities within a residential unit shall also comply with the following requirements:

1. The residential unit shall, at all times, maintain a kitchen, bathroom and primary bedroom(s) for their intended purpose, and shall not be used for marijuana cultivation.
2. Any marijuana cultivation activities shall not create humidity, mold, or other nuisance condition.

C. *Marijuana cultivation within detached accessory structures, specifically.* In addition to those requirements listed in Subsection A of this section, marijuana cultivation activities within a detached accessory structure shall also comply with the following requirements:

1. The structure shall be no smaller than 120 square feet in size.
2. The structure shall be located within the rear yard area of any legal parcel or premises.
3. The structure shall maintain a minimum setback of 10-feet from any property line.
4. The structure shall be fully-enclosed and the area surrounding the structure must be enclosed by a solid fence at least six (6) feet in height.

The fence must be adequately secure to prevent unauthorized entry. Bushes, hedgerows, plastic sheeting, tarps or cloth material shall not constitute an adequate fence under this subsection.

5. The structure shall maintain adequate mechanical or electronic security systems, approved by the enforcement officer, and shall install such systems prior to the commencement of cultivation.

6. Any accessory structure used for marijuana cultivation must have a valid building permit issued by the City building official. The building official shall consult with the planning director and enforcement officers in consideration of any building permit application seeking a building permit for the construction or alteration of any detached accessory structure to be used for marijuana cultivation.

5.34.040 – Other Applicable Regulations

A. There shall be no variances or deviations permitted to any standards or requirements within this Chapter.

B. Nothing in this Chapter is intended to authorize the cultivation, possession, or use of marijuana in violation of state or federal law.

5.34.050 – Marijuana Cultivation Permit

A. No person shall commence any marijuana cultivation activities unless and until they have obtained a valid Marijuana Cultivation Permit from the City. The following information will be required with the initial Permit application and subsequent Permit extensions:

1. Adequate proof that the permit holder is 21 years of age or older;
2. Notarized signature from the owner of the property consenting to the cultivation of marijuana at the premises on a form acceptable to the City;
3. The name of each person owning, leasing, occupying or having charge of any legal parcel or premises where marijuana will be cultivated;
4. The physical site address of where marijuana will be cultivated;
5. A signed consent form, acceptable to the City, authorizing enforcement officers to conduct an inspection of the detached accessory structure used for marijuana cultivation upon 24 hours' notice;

B. The Permit shall be valid for no more than one (1) year and may be extended in increments of two (2) years.

C. The enforcement officer may, in his or her discretion, deny any application for a Marijuana Cultivation Permit, or extension thereof, where he or she finds, based on articulated facts, that the issuance of such Permit, or extension thereof, would be

detrimental to the public health, safety, or welfare. The enforcement officer shall deny an application for a Marijuana Cultivation Permit, or extension thereof, which does not demonstrate satisfaction of the minimum requirements of this Chapter. The denial of any Permit application or extension shall be subject to appeal by the City Council.

D. The City Council may establish a fee or fees required to be paid upon filing of an application for a Marijuana Cultivation Permit, as provided by this Chapter, which fees shall not exceed the reasonable costs of administering this Chapter.

5.34.060 – Revocation of Marijuana Cultivation Permit

A. Any Marijuana Cultivation Permit granted by the City shall become null and void if the City receives and substantiates two (2) complaints of noxious odors resulting from indoor marijuana cultivation within a twelve (12) month period. These complaints must originate from at least two (2) separate individuals and two (2) separate properties adjoining, or within proximity to, the property engaging in marijuana cultivation.

B. Upon revocation of a Marijuana Cultivation Permit, the property owner, tenant, or Permittee shall remove all marijuana plants from the premises within 30 days of official notice from any enforcement officer.

5.34.070 – Appeals

Any person aggrieved by the requirements of this Chapter may file an appeal pursuant to the requirements of Chapter 5.04 of the Banning Municipal Code.

5.34.080 – Prohibited Activities Declared a Public Nuisance

A. It is unlawful and a public nuisance for any person owning, leasing, renting, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City to cause or allow such parcel or premises to be used for the outdoor cultivation of marijuana plants.

B. It is unlawful and a public nuisance for any person to cultivate marijuana inside any residential building or structure without a marijuana cultivation permit issued by the City.

C. It is unlawful and a public nuisance for any person to engage in Commercial Cannabis Activity in any area of the City.

D. It is unlawful and a public nuisance for any person to use gas products, such as CO₂, butane, propane, and natural gas, for the cultivation, extraction, or processing of marijuana.

E. It is unlawful and a public nuisance for any person to use generators for marijuana cultivation activities.

F. In addition to the foregoing, any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be abated by the City or subject to any available legal remedies, including but not limited to, civil injunctions. The prohibitions outlined in this Chapter shall be imposed regardless of the number of qualified patients or primary caregivers residing at the premises or participating directly or indirectly in the cultivation. Further, this prohibition shall be imposed notwithstanding any assertion that the person(s) cultivating marijuana are the primary caregiver(s) for qualified patients or that such person(s) are collectively or cooperatively cultivating marijuana.

Section 2. Section 8.48.330 ("Cultivation, manufacture, or sales of drugs") of Chapter 8.48 (Nuisances), of Title 8 (Health and Safety) of the Banning Municipal Code is hereby amended to read as follows:

8.48.330 – Manufacture or sales of drugs.

Any real or personal property utilized in the manufacture, sales, or storage of any drug which is illegal under any state or federal law, is declared a nuisance.

Section 3. Urgency Findings. On November 8, 2016, the voters of the State of California passed the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). Upon its passage, certain provisions of the AUMA took effect as of November 9, 2016. These provisions include the legalization of use of nonmedical marijuana by persons 21 years of age or older, and the personal cultivation of up to six (6) marijuana plants. Specifically, the AUMA makes it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without any compensation, 28.5 grams of un-concentrated marijuana or 8 grams of concentrated marijuana; and (3) possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use. The exterior cultivation of marijuana requires large amounts of space and may result in a large quantity of plants being cultivated on a single parcel of land. As these "crops" begin to flower, they produce a strong odor that is detectable far beyond the property boundaries. Not only is the odor of flowering marijuana plants offensive, it also alerts persons to the location of these valuable plants and creates an increased risk of nuisance activity, including crime. The cultivation and processing of cannabis has also resulted in damages to buildings containing indoor cannabis cultivation facilities; such damages include improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, as well as an increase in the frequency of home-invasion robberies and similar crimes. There exists a current and immediate threat to public health and safety in the absence of the City adopting an

ordinance regulating the personal cultivation of marijuana. The City desires to enact this urgency ordinance to expressly make clear that cultivation for personal use is only permitted in the City's residential zones and subject to reasonable regulations. This urgency ordinance would confirm that marijuana cultivated for personal use is restricted to six (6) living plants and that marijuana must be grown indoors, in compliance with fire, health and building codes. The prohibitions outlined in this Urgency Ordinance are necessary to avoid the risks of criminal activity, degradation of the natural environment, malodorous smells, and indoor electrical fire hazards which may result from personal cultivation of marijuana. This ordinance must be adopted immediately to comply with state law and clarify that personal use and cultivation of marijuana must be conducted safely and subject to reasonable regulations in order to prevent the negative and dangerous secondary effects associated with these uses.


Section 5. Effective Date. This is an urgency ordinance adopted pursuant to Government Code Section 36937 and shall take effect immediately upon adoption.

Section 6. Certification. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Banning's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

PASSED, APPROVED and ADOPTED this 12th day of December 2016.


George Moyer, Mayor
City of Banning

ATTEST:


Marie A. Calderon, City Clerk
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**


John C. Cotti, Interim City Attorney
Jenkins & Hugin, LLC

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Urgency Ordinance No. 1505 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 12th day of December, 2016, and was duly adopted at a regular meeting of said City Council on the 12th day of December, 2016, by the following vote, to wit:

AYES: Councilmembers Andrade, Franklin, Peterson, Welch, Mayor Moyer

NOES: None

ABSENT: None

ABSTAIN: None



Marie A. Calderon, City Clerk
City of Banning, California