

ORDINANCE NO. 948B

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LINCOLN  
REPEALING CHAPTER 18.34, ARTICLES IV AND V, SECTIONS 18.34.120 – 220  
AND RE-ENACTING CHAPTER 18.34, ARTICLE IV, SECTIONS 18.34.120 – 200  
OF THE LINCOLN MUNICIPAL CODE REGULATING THE SALE, DELIVERY, AND  
CULTIVATION OF MARIJUANA, AND ENDING THE MORATORIUM PROHIBITING  
THE OUTDOOR CULTIVATION OF MARIJUANA AND  
PROHIBITING THE SALE OF MARIJUANA

**WHEREAS**, Section 1.01.050 of the Lincoln Municipal Code provides for amendments to the Lincoln Municipal Code by the City Council; and

**WHEREAS**, the City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, section 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment), and has further determined that the action is exempt from CEQA pursuant to Sections 15060(c)(2)(3), 15064(d)(3), and 15378(a). The Community Development Director is hereby directed to file a Notice of Exemption upon passage of the ordinance: and

**WHEREAS**, federal law currently prohibits the use, possession, or sale of marijuana. Specifically, it is a Schedule I drug prohibited under the Federal Controlled Substances Act, 21 U.S.C. section 812(c); and

**WHEREAS**, in 1996, the voters of California approved Proposition 215, known as the Compassionate Use Act of 1996 ("CUA"), allowing the medical use of marijuana and establishing an affirmative defense for certain marijuana-related criminal offenses; and

**WHEREAS**, in 2004, the Medical Marijuana Program Act ("MMPA") was approved by the state legislature, providing a criminal defense to qualified patients and their primary caregivers who possessed marijuana within the limits set forth in the MMPA; and

**WHEREAS**, in 2015, the Legislature adopted the Medical Marijuana Regulation and Safety Act ("MMRSA"), which addressed state licensing with respect to medical marijuana cultivation, dispensing, and manufacturing; and

**WHEREAS**, on November 8, 2016, the voters of the State of California approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"), legalizing the recreational use of marijuana for adults 21 years of age and older; and

**WHEREAS**, the CUA, MMPA, and MMRSA allow cities to regulate medical marijuana pursuant to their respective police powers and land use authority; and

**WHEREAS**, the AUMA, while allowing cities to retain their police powers and land use authority, permits cities to regulate but not prohibit indoor cultivation

of up to a total of six marijuana plants per residence, and to regulate or prohibit the cultivation of seven or more marijuana plants, as well as commercial activity related to marijuana; and

**WHEREAS**, in light of these developments in state law, and in the interest of applying consistent law enforcement guidelines, the City of Lincoln ("City") now desires to amend its Municipal Code to establish an ordinance addressing all marijuana activities in the City; and

**WHEREAS**, the City re-affirms and confirms that the zoning code is adopted and operates under the principles of permissive zoning, meaning that any land use not specifically authorized or identified in the zoning code is prohibited; and

**WHEREAS**, California Health & Safety Code section 11362.777(b)(3) states that the Department of Food and Agriculture may not issue a state license to cultivate marijuana within a city that prohibits cultivation under the principles of permissive zoning and may only issue a license if local regulations have been complied with; and

**WHEREAS**, the establishment of dispensaries and deliveries of marijuana are only allowed pursuant to the regulations set forth herein; and

**WHEREAS**, the City enacted a moratorium on November 15, 2016, which prohibits the outdoor cultivation of marijuana and prohibits the sale of non-medical marijuana. Thereafter, the City Council extended the moratorium for an additional 10 months and 15 days on December 13, 2016; and

**WHEREAS**, the purpose of the moratorium was to give the City an opportunity to study and develop regulations to address the impacts of outdoor cultivation of marijuana and also to study the potential impacts and establish licensing and zoning to regulate the sale of non-medical marijuana, and since such purpose will have been accomplished upon the repeal of Chapter 18.34, Articles IV and V, and re-enactment of Chapter 18.34, Article IV, the moratorium will no longer be necessary and should be ended.

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

**Section 1. Findings.** The recitals set forth above are hereby incorporated by reference. Additionally, the City Council finds as follows:

1. Unregulated marijuana activities, including, but not limited to, cultivation, may have significant health, safety, and welfare impacts on the residents of the City.

2. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, increased robberies and other crimes, and the nuisance of strong and noxious odors.

3. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code section 11362.7, et seq.) 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.

4. Health and Safety Code section 11362.83 and the AUMA expressly allow cities and counties to adopt and enforce ordinances that are consistent with Senate Bill 420 and the AUMA.

5. Cultivation of any amount of marijuana at outdoor locations or premises within 600 feet of schools, child care centers, or parks creates unique risks that the marijuana plants may be observed by juveniles, and therefore be especially vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such outdoor locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants.

6. As recognized by the Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

7. It is the purpose and intent of this chapter to require that marijuana be cultivated only in residential structures, so as not to be visible to the general public, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and to ensure that marijuana grown remains secure and does not find its way to non-patients (if under 21) or illicit markets. Nothing in this chapter is intended to impair any viable legal defense available to a person using or in possession of marijuana pursuant to the CUA (Health and Safety Code section 11362.5) or the MMPA (Health and Safety Code section 11362.7 et seq.) Nothing in this chapter is intended to authorize the cultivation, possession, or use of marijuana for purposes in violation of state or federal law.

8. It is the purpose and intent of this chapter to provide a means for regulating marijuana activities in a manner that is consistent with state law, and which balances the needs of patients and recreational users while promoting the health, safety, and welfare of the residents and businesses in the City. This chapter is intended to be consistent with Proposition 215, Senate Bill 420, the

MMRSA, and the AUMA, and to that end, is not intended to prohibit persons from individually, collectively, or cooperatively exercising any right otherwise granted by state law. Rather, the intent and purpose of this chapter is to establish reasonable regulations upon the manner in which marijuana may be cultivated, dispensed, and delivered in the City.

9. The limited right of people under state law to cultivate marijuana plants does not confer the right to create or maintain a public nuisance. By adopting the regulations contained in this chapter, the City will achieve a significant reduction in the aforementioned harms caused or threatened by the unregulated cultivation of marijuana in the City.

10. Government Code section 65858 authorizes a city to adopt an interim ordinance prohibiting a land use that may be in conflict with a city's general plan, a specific plan, or zoning proposal, and that the city intends to study within a reasonable time. Pursuant to Government Code section 65858, the City enacted a moratorium prohibiting the outdoor cultivation of marijuana and prohibiting the sale of non-medical marijuana on November 15, 2016. Thereafter, the City Council extended the moratorium for an additional 10 months and 15 days on December 13, 2016.

11. The purpose of the moratorium was to give the City an opportunity to study and develop regulations to address the impacts of outdoor cultivation of marijuana and also to study the potential impacts and establish licensing and zoning to regulate the sale of non-medical marijuana. Such studies have been completed and regulations have been developed, and the moratorium is no longer necessary and should therefore be ended.

**Section 2. Repeal and Enactment.** Chapter 18.34, Articles IV and V, sections 18.34.120 – 220, inclusive, of the City of Lincoln Municipal Code are hereby repealed upon the effective date of this ordinance and re-enacted as Chapter 18.34, Article IV, sections 18.34.120-18.34-200 to read as follows:

Article IV. Marijuana Regulation

18.34.120 – Purpose.

It is the purpose and intent of this chapter to regulate personal cultivation and prohibit all commercial cultivation and sale of recreational and medical marijuana to the extent permissible by law in order to promote the health, safety, moral, and general welfare of the residents and businesses of the City of Lincoln.

18.34.130 – Definitions.

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise. If a word is not defined in this chapter, the common and ordinary meaning of the word shall apply.

“Accessory Structure” means a structure that is accessory to a principal residential structure and customarily a part thereof, which is clearly incidental and secondary to the principal structure and is significantly smaller in area than the principal structure and does not change the character of the principal structure or the principal use of the primary structure. An Accessory Structure must be a fully-enclosed space within a lawfully permitted building that complies with the California Building Code (“CBSC”), as adopted in the City of 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, is accessible only through one or more lockable doors, and is not visible from a public right-of-way. 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 gauge, or similar products do not satisfy this requirement. If indoor grow lights or air filtration systems are used, they must comply with the California building, electrical, and fire codes as adopted in the City of Lincoln and all provisions of this Ordinance. A garage, whether attached or detached and temporary buildings such as a temporary shed, greenhouse, pre-fabricated structures or other non-permanent and non-permitted structures are not Accessory Structures under this Ordinance.

“Authorized grower” means a person twenty-one years and older who is authorized by, and in compliance with state law to cultivate marijuana indoors for personal or medical use. Authorized grower also means a person eighteen years and older who is a qualified patient, as that term is described in Health and Safety Code section 11362.77.

“Child care center” means any licensed child care center, daycare center, or child care home, or any preschool.

“Commercial marijuana business” includes the commercial cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, distribution, delivery or sale of marijuana and marijuana products as provided for in Business and Professions Code section 26000, et seq.

“Cultivation” means the planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

“Delivery of medical marijuana” means the commercial transfer of medical marijuana or cannabis products from a dispensary, up to an amount determined by the Bureau of Medical Cannabis Regulation, to a primary caregiver or qualified patient as defined in Section 11362.7 of the California Health & Safety Code, or a testing laboratory. Delivery also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a

licensed dispensary of medical cannabis or medical cannabis products as defined in California Business and Professions Code section 19300.5(m).

"Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Section 66410, et seq. of the Government Code).

"Marijuana" shall mean any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not, the seeds thereof, the resin or separated 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, including marijuana infused in foodstuff or other ingestible or consumable product containing marijuana. The term "marijuana" shall also include "medical marijuana" as defined in California Health and Safety Code section 11362.5 and "medical cannabis," "medical cannabis product" and "cannabis product" as defined in California Business and Professions Code section 19300.5 (af).

"Marijuana dispensary" means any business, office, store, facility, location, retail storefront, or wholesale component of any establishment, cooperative or collective that delivers medical marijuana as defined in California Business and Professions Code section 19300.5(m), or as may be amended that dispenses, distributes, exchanges, transmits, transports, sells or provides marijuana to any person for any reason, including members of any medical marijuana cooperative or collective consistent with the purposes set forth in California Health and Safety Code section 11362.5, or as may be amended.

"Medical marijuana" means marijuana used for medical purposes in accordance with the Compassionate Use Act (Health and Safety Code § 11362.5) and the Medical Marijuana Program Act (Health and Safety § 11362.7 et. seq.)

"Mobile marijuana dispensary" means any clinic, cooperative, club, business, group or person which transports or delivers, or arranges the transportation or delivery, of medical marijuana or medical marijuana products to a person or entity. Mobile marijuana dispensary shall not include deliveries of medical marijuana made by a permitted, lawful marijuana dispensary, operating under state law and the provisions of this chapter, to a qualified patient or primary caregiver.

"Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this chapter.

“Primary caregiver” means a “primary caregiver” as defined in Section 11362.7(d) of the Health and Safety Code.

“Residential structure” 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 zoning district.

"Smoking" means inhaling, exhaling, burning or carrying any lighted combustible substance containing marijuana in any manner or in any form and use of electronic devices with electrical ignition or vaporization (e-cigarettes/cigars or similar devices) with marijuana or its byproducts in the device.

18.34.140 – Marijuana dispensaries and commercial marijuana businesses prohibited. Any land use related to marijuana that is not specifically permitted in this Article is hereby prohibited, including but not limited to marijuana dispensaries, including mobile marijuana dispensaries, and commercial marijuana businesses. Such uses are prohibited in all zones, districts, properties, and areas within the city. No person or entity shall operate or permit the operation of a marijuana dispensary or commercial marijuana business in or upon any public or private property or premises within the city. The city shall not issue, approve, or grant any permit, license, or other entitlement for the establishment or operation of a marijuana dispensary or commercial marijuana business in any zoning district.

18.34.150 – Marijuana delivery prohibited. Delivery of marijuana and medical marijuana, as defined in Section 18.34.130, is prohibited and it shall be unlawful and violation of this chapter for any person to deliver marijuana within the city. This section does not prohibit the delivery of medical marijuana to qualified patients by their primary caregiver.

18.34.160 – Outdoor Cultivation prohibited. 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 parcel within any zoning district in the city to cause or allow such premises to be used for the outdoor cultivation of marijuana plants.

18.34.170 – Indoor Cultivation for personal use. Indoor cultivation of no more than six marijuana plants and in a total area of not greater than fifty (50) square feet and only for personal, non-commercial use shall be permitted subject to the following conditions.

A. Locations Permitted.

1. It is unlawful and a public nuisance for any person to cultivate marijuana inside any residential structure or Accessory Structure without a marijuana cultivation permit issued by the Chief of Police or his or her

designee pursuant to Section 18.34.190 to ensure compliance with the requirements of this Chapter.

2. Cultivation of marijuana is prohibited in all zones within the city except the following residential zones: R-1 (Single-Family Residential), R-2 (Duplex Residential), R-3 (Multiple Residential), R-E (Residential Estate), LDR (Low-Density Residential), MDR (Medium-Density Residential) and HOR (High-Density Residential).

3. 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.

B. Minimum Standards. The indoor cultivation of non-commercial marijuana in a residential zone shall only be conducted within a private residential structure, or Accessory Structure conforming to the following minimum standards:

1. No more than six marijuana plants in an area not greater than fifty (50) square feet, are permitted for indoor personal cultivation within a residence or Accessory Structure. The total combined indoor cultivation on any parcel with a private residence and an Accessory Structure shall not exceed 50 square feet. For purposes of this ordinance the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live plants on the premises.

2. The Building Official shall consult with the Director of Development Services and Chief of Police, or his or her designee, in consideration of any building permit application seeking a building permit for the construction or alteration of any residence for the purposes of marijuana cultivation.

3. Indoor grow lights shall not exceed one thousand two hundred (1,200) watts each and shall comply with the California Building, Electrical, and Fire Codes as adopted by the city. Gas products (including, without limitation, CO<sub>2</sub>, butane, propane, and natural gas), or generators shall not be used within any structure used for the cultivation of marijuana.

4. The residence shall include a 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.

5. The authorized grower shall reside full-time in the residence where the marijuana cultivation occurs.



6. Nothing in this ordinance shall prohibit an owner of a residential structure or Accessory Structure from prohibiting the growing of marijuana on his or her property and as provided in Section 18.34.190, a property owner's written consent to the cultivation of marijuana at the premises, if different from the authorized grower is required.

7. Marijuana cultivation for sale is prohibited.

8. The area used for cultivating marijuana shall not be accessible to persons under twenty one (21) years old.

9. A minimum set back of ten (10) feet from the property line is required for an area in which marijuana is cultivated in a residential structure or Accessory Structure.

10. Any fully enclosed and secure Accessory Structure or residential structure used for the cultivation of non-medical marijuana must have a ventilation and filtration system installed that shall prevent marijuana plant odors from exiting the interior of the structure and that shall comply with the building regulations of the City of Lincoln Municipal Code.

18.34.190 – Cultivation permit. Prior to commencing any marijuana cultivation, the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where marijuana cultivation is proposed to occur must obtain a marijuana cultivation permit from the Chief of Police or his or her designee, to ensure compliance with the requirements of this Chapter.

A. Permit Requirements. The following information will be required with the initial permit application and subsequent permit extensions:

1. The physical site address of where the marijuana will be cultivated.

2. The name of each person owning, leasing, occupying, or having charge of any legal parcel or premises where marijuana will be cultivated.

3. Property owner's written consent to the cultivation of marijuana at the premises, if different from the authorized grower.

B. Permit Duration. The initial permit shall be valid for two (2) years, and thereafter may be extended in increments of two (2) years upon the determination by the Chief of Police or his or her designee, to ensure the standards and conditions set forth in this Article are being met.

C. Adjudication of Permits by the Chief of Police. The Chief of Police may deny an application for a marijuana cultivation permit, or extension thereof, that does not demonstrate satisfaction of the minimum requirements of this chapter.

D. Permit Fees. The City may establish, by resolution, a fee or fees required to be paid upon filing of an application for permit(s) as provided by this chapter, which fees shall not exceed the reasonable cost of administering this chapter.

18.34.200 – Enforcement. Violations of this chapter shall constitute a public nuisance and may be enforced pursuant to the provisions of Chapters 1.16, 1.18, and 1.20, or any other applicable law. Violations of this Ordinance shall be subject to fines of not less than five hundred (\$500.00) dollars as provided in Section 12.20.020(d) or as otherwise provided by City Council Resolution.

**Section 3. End Moratorium.**

A. Pursuant to Government Code section 65858, the City enacted a moratorium prohibiting the outdoor cultivation of marijuana and prohibiting the sale of non-medical marijuana on November 15, 2016. Thereafter, the City Council extended the moratorium for an additional 10 months and 15 days on December 13, 2016.

B. The purpose of the moratorium was to give the City an opportunity to study and develop regulations to address the impacts of outdoor cultivation of marijuana and also to study the potential impacts and establish licensing and zoning to regulate the sale of non-medical marijuana. Such studies have been completed and regulations have been developed.

C. Therefore, the City Council hereby ends the moratorium prohibiting the outdoor cultivation of marijuana and prohibiting the sale of non-medical marijuana that was enacted on November 15, 2016 on the effective date of this ordinance.

**Section 4. No Mandatory Duty of Care.** This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**Section 5. Severability.** If any section, subsection, 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 Lincoln City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**Section 6. Effective Date and Publication.** This ordinance shall take effect thirty (30) days after its passage. Within fifteen (15) days of its passage, this ordinance shall be published once in the *Lincoln News Messenger*, a newspaper of general circulation within the City. In lieu of publication of the full text of this ordinance within fifteen (15) days after its passage, a summary of this ordinance may be published at least five (5)

days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to Government Code Section 36933(c)(1).

This Ordinance was **PASSED and ADOPTED** by the following vote of the City Council of the City of Lincoln on September 26, 2017.

**AYES:** Councilmembers:  
**NOES:** Councilmembers:  
**ABSENT:** Councilmembers:  
**ABSTAIN:** Councilmembers:

Nader, Hydrick, Karleskint, Gilbert  
Joiner



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Peter Gilbert, Mayor

ATTEST:



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Gwen Scanlon, City Clerk