

ORDINANCE # 478-16

**AN ORDINANCE OF THE CITY OF CHOWHCILLA
AMENDING TITLE 9 OF THE CHOWCHILLA MUNICIPAL CODE
PERTAINING TO NON-MEDICAL MARIJUANA USE, CONSUMPTION AND
CULTIVATION**

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

SECTION 1 PURPOSE

In light of Proposition 64 (also known as the Control, Regulate, and Tax Adult Use of Marijuana Act (“AUMA”)) on the November 8, 2016 statewide general election, the purpose of this Ordinance is to amend Chapter 9 of the Chowchilla Municipal Code in order to regulate personal use, consumption and cultivation of marijuana in the City of Chowchilla, but only in the event said Proposition passes at said general election.

SECTION 2 AMENDMENT TO CODE

Chapter 9.10, “Public Use, Consumption and Cultivation of Non-Medical Marijuana” is hereby added to the Chowchilla Municipal Code as follows:

Chapter 9.10

**PUBLIC USE, CONSUMPTION AND CULTIVATION OF NON-MEDICAL
MARIJUANA**

- 9.10.010 Purpose and intent.**
- 9.10.020 Definitions.**
- 9.10.030 Public Use/Consumption Prohibited.**
- 9.10.040 Outdoor Cultivation.**
- 9.10.050 Regulations Governing Indoor Cultivation of Non-medical marijuana for personal use.**
- 9.10.060 Indoor cultivation of non-medical marijuana restricted to authorized growers.**
- 9.10.070 Establishment and operation of non-medical marijuana businesses prohibited.**
- 9.10.080 Deliveries prohibited.**
- 9.10.090 Public nuisance prohibited.**
- 9.10.100 Penalties not exclusive; violation constitutes a crime.**
- 9.10.110 Severability.**
- 9.10.120 Sunset clause.**

9.10.010 Purpose and intent.

The City Council finds as follows:

A. Purpose. The purpose and intent of this Chapter is to promote the health, safety, morals, general welfare and enjoyment of private property of the residents within the City of Chowchilla by regulating the use, consumption and cultivation of non-medical marijuana consistent with restrictions that may be imposed by a local government agency by Proposition 64 (2016) also known as the “Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”).

B. Applicability. All indoor or outdoor, non-medical use, consumption or cultivation of marijuana remains prohibited in all zones and districts of the City of Chowchilla until and unless AUMA is passed at the November 8, 2016 statewide general election. Upon the passage of AUMA at said election, the use, consumption and cultivation of marijuana in the City shall be controlled and regulated by the provisions of this Chapter of the Municipal Code.

C. Non-conflicting enactment. No part of this Chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §§ 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation.

9.10.020 Definitions.

As used herein the following definitions shall apply:

A. “Authorized Grower” means a person 21 years and older who is authorized by, and in compliance with, federal or state law to cultivate marijuana indoors for personal or medical use.

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 (“CBSC”), that has a complete roof, four solid walls made of masonry, metal or wood; 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. For purposes of this Chapter, any building within which cultivation of medical marijuana

occurs, and any improvements within such building, shall meet all applicable building and zoning requirements (including but not limited to required setbacks, height limitations and fire sprinkler requirements), and the structure and improvements themselves shall have been properly permitted and inspected.

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. “Indoors” means within a fully enclosed and secure structure as that structure is defined above in subsection C.

F. “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.

G. “Outdoor” means any location within the City of Chowchilla that is not within a fully enclosed and secure structure.

H. “Parcel” means property assigned a separate parcel number by the Madera County assessor.

I. “Private residence” means a house, apartment unit, mobile home, or other similar dwelling unit.

9.10.030 Public Use/Consumption Prohibited.

It is hereby declared to be unlawful, a public nuisance, and a violation of this Chapter for any person to smoke, ingest, use, or otherwise consume non-medical marijuana in any public place, in or on streets, sidewalks or other areas open to public view, or in or on any City owned, leased or occupied premises. This prohibition does not apply to use or consumption so long as such use or consumption, otherwise in compliance with this Chapter, occurs entirely inside a private residence, and where no smoke or odor resulting from that use or consumption may be detected from any neighboring property or residence.

9.10.040 Outdoor cultivation.

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.

9.10.050 Regulations Governing Indoor Cultivation of Non-medical marijuana for personal use.

To the extent that the City is required to permit cultivation of non-medical marijuana for personal use under State law, the rules set forth in this section shall apply. All other cultivation is prohibited, and nothing in this section shall be interpreted to permit operation of non-medical marijuana businesses including dispensing, cultivation, manufacturing, processing, distributing, transporting and testing within the geographic boundaries of the City that are otherwise prohibited by this Chapter:

A. The marijuana cultivation area shall be located indoors within a residential “fully enclosed and secure structure” as such is defined by this Chapter. The cultivation area shall not exceed fifty square feet and not exceed ten feet in height, nor shall it come within twelve (12) inches of the ceiling or any cultivation lighting.

B. Marijuana cultivation lighting shall not exceed one thousand two hundred watts in total for the total cultivation area within the residence.

C. The use of gas products such as but not limited to CO₂, butane, methane, or any other flammable or non-flammable gas for marijuana cultivation or processing is prohibited.

D. There shall be no exterior visibility or evidence of marijuana cultivation outside the private residence 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.

E. Cultivation may only be conducted by the property owner of the subject property or a resident of the subject property with written permission of the property owner of the subject property to conduct cultivation.

F. The authorized grower shall not participate in marijuana cultivation in any other location within the City.

G. 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.

H. The marijuana cultivation area shall comply with the current adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or equivalent), as amended from time to time.

I. The building official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

J. 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.

K. No more than 6 marijuana plants collectively, whether mature or immature, are permitted for indoor personal cultivation under this Chapter.

L. Marijuana in excess of 28.5 grams produced by plants kept for indoor personal cultivation under this Chapter must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

M. City code enforcement shall have the right to inspect the premises of all persons holding permits for cultivation to ensure compliance with this Chapter upon 24-hours advance notice to the permit holder.

9.10.060 Indoor cultivation of non-medical marijuana restricted to authorized growers.

A. 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 the City to cause or allow such parcel to be used for the cultivation of marijuana, unless the person is authorized by state law to grow marijuana for a specifically authorized purpose within a private residence in a residential zone, and such authorized grower is complying with all requirements of this Chapter.

B. No person shall grow marijuana upon any parcel until and unless they first secure a permit from the building department, pay such fee as may be required and set forth by resolution of the City Council and pass an inspection by the City's Code Enforcement Officer. Upon passing inspection, permits must be signed by the City Code Enforcement Officer and Chief of Police, or his or her designee, Cultivation is prohibited until such time as the requirements of this Section are fully satisfied.

9.10.070 Establishment and operation of non-medical marijuana businesses prohibited.

The establishment and/or operation of State licensed marijuana businesses, including, but not limited to, those involved in dispensing, cultivating, manufacturing, processing, distributing, transporting and testing is prohibited within the geographic boundaries of the City of Chowchilla.

9.10.080 Deliveries prohibited.

The delivery of non-medical marijuana from a state-licensed retailer, microbusiness, non-profit or other business to any delivery location or address within the geographic boundaries of the City of Chowchilla is prohibited.

9.10.090 Public nuisance prohibited.

It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within the City to create a public nuisance in the course of use, consumption or cultivation of marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces:

A. Odors which are disturbing to people of reasonable sensitivity residing or present on adjacent or nearby property or areas open to the public.

B. Repeated responses to the parcel by law enforcement personnel.

C. A repeated disruption to the free passage of persons or vehicles in the neighborhood, excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public.

D. Any other impacts on the neighborhood which are disruptive of normal activity in the area including, but not limited to, grow lighting visible outside the dwelling, excessive vehicular traffic or parking occurring at or near the dwelling, and excessive noise emanating from the dwelling.

E. Outdoor growing and cultivation of marijuana.

9.10.100 Penalties not exclusive; violation constitutes a crime.

The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any other criminal, civil, or administrative remedy or penalty authorized by, or set forth in, the Chowchilla Municipal Code. None of the penalties or remedies authorized by, or set forth in, the Chowchilla Municipal Code shall prevent the City from using any other penalty or remedy under state statute which may be available to enforce this section or to abate a public nuisance. Violation of this Chapter shall constitute a crime punishable as a misdemeanor or infraction in the discretion of the City Attorney.

9.10.110 Severability.

If any section, subsection, 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, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

9.10.120 Sunset clause.

In the event AUMA fails to pass at the November 8, 2016 statewide general election, the code sections enacted in this Chapter, and defined in Section 9.10.010 through 9.10.120, shall not go into effect, all use, consumption and cultivation of non-medical marijuana shall remain prohibited in all zones and districts of the City of Chowchilla.

SECTION 3 EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This Ordinance was introduced and the title thereof read at the regular meeting of the City Council on _____, 2016, and the second reading occurred at the regular meeting of the City Council on _____, 2016.

On a motion by Council Member _____, seconded by Council Member _____, the foregoing Ordinance was passed and adopted by the City Council of the City of Chowchilla, State of California, this ____ day of _____, 2016 by the following vote, to wit:

AYES: Council Member(s)

NOES: Council Member(s)

ABSENT: Council Member(s)

ABSTAIN: Council Member(s)

Waseem Ahmed, MAYOR

ATTEST:

Joann McClendon, CITY CLERK