ORDINANCE NO. 2497

AN ORDINANCE REPEALING SECTION 40.26.276, AND ADDING ARTICLE 40.26A OF THE ZONING CODE RELATED TO PERSONAL CULTIVATION OF CANNABIS AND RELATED DEFINITIONS

WHEREAS, the City of Davis Municipal Code currently prohibits medical marijuana dispensaries, commercial cultivation of medical marijuana, and personal outdoor cultivation of medical marijuana in all zoning districts in the City; and

WHEREAS, the City Council of the City of Davis adopted Urgency Ordinance No. 2488 to establish an interim moratorium in all zoning districts on the establishment, creation or expansion of any and all commercial marijuana uses and all outdoor marijuana cultivation; and

WHEREAS, the City Council, by Ordinance No. 2492 extended the moratorium until July 4, 2017 so as to allow City staff to conduct public outreach and develop recommendations regarding commercial marijuana businesses and appropriate regulations; and

WHEREAS, the City Council has determined that certain revisions to the City’s Zoning Code regarding indoor and outdoor personal cultivation of marijuana are necessary in light of the Adult Use of Marijuana Act, approved and enacted by the voters at the November 8, 2016 General Election; and

WHEREAS, the City Council has determined that the reasonable regulations regarding personal cultivation contained in this Ordinance balance individuals’ rights to cultivate marijuana with the public health and safety concerns of the City posed by cultivation of marijuana; and

WHEREAS, State law uses both the terms “marijuana” and “cannabis” with identical or nearly identical meaning, and therefore the City Council has decided that consistently using the word “cannabis” in the Ordinance is an appropriate revision to the City’s Municipal Code in light of social stigma or negative public perception that may be tied to use of the word “marijuana,” but that “cannabis” shall mean and include “marijuana” as used and defined in State law; and

WHEREAS, it is the City Council’s intent that the moratorium on all commercial marijuana uses, as set forth in Ordinances Nos. 2488 and 2492 shall stay in effect as set forth in the Ordinances, unless or until amended by future action of the City Council.

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

SECTION 1. Recitals. The above recitals are hereby incorporated as though set forth in this section.
SECTION 2. Findings. Pursuant to Article 40.36 of the Davis Municipal Code, the City Council hereby makes the following findings in support of this Ordinance:

a. A proposed ordinance amending the zoning code regarding personal cultivation of marijuana was brought before a duly noticed public meeting of the Planning Commission on March 8, 2017. The Planning Commission unanimously recommended City Council approval.

b. The City Council hereby finds, pursuant to Davis Municipal Code section 40.36.070 and based on Planning Commission recommendation, that this Ordinance is in general conformance with the City General Plan. The City Council further finds that the public necessity, convenience and general welfare require the adoption of this Ordinance in order to balance the interests of existing medical cannabis patients and caregivers with the health and safety concerns associated with certain personal cannabis cultivation authorized by State law.

c. The City Council finds that adoption of this Ordinance preserves and clarifies the City’s intended zoning regulations regarding cannabis uses, and is therefore also intended to retain and maintain local land use authority over those uses in light of State law.


SECTION 4. Amendment. Article 40.26A is hereby added to the Davis Municipal Code to read in full as set forth in Exhibit A, attached hereto, and incorporated herein by this reference.

SECTION 5. Moratorium. On Commercial Marijuana Uses. Except as amended by this Ordinance regarding the personal cultivation of cannabis, all other provisions of Urgency Ordinance No. 2488, as extended by City Council by Ordinance No. 2492, remain in effect. Nothing in this Ordinance shall be construed to amend or repeal the existing moratorium on the establishment, creation or expansion of any and all commercial marijuana uses.

SECTION 6. Severability. If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

SECTION 7. CEQA. The City Council hereby finds that the amendments contained in this Ordinance authorize only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening or landscaping of private residential property, and that this Ordinance does not involve or approve the removal of healthy, mature, scenic trees or other significant alterations to land. The City Council finds that this Ordinance merely imposes reasonable regulations on the ability of individuals to cultivate marijuana for personal use on residential properties otherwise authorized by State law, and that this Ordinance further limits individuals’ personal outdoor cultivation by total number of plants in order which, based on the limited number of plants will not allow any significant changes to the character or use of the side and read yards of private residential properties in the City. Accordingly, the City Council finds that this Ordinance is categorically exempt from any California Environmental Quality Act (CEQA) review pursuant to Section 15304 of Title 14 of the California Code of Regulations.
SECTION 8. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City.

INTRODUCED on the 4th day of April, 2017, and PASSED AND ADOPTED by the City Council of the City of Davis on this 18th day of April, 2017, by the following vote:

AYES: Arnold, Frerichs, Lee, Swanson, Davis

NOES: None

Robb Davis  
Mayor

ATTEST:

Zoe S. Mitabile, CMC  
City Clerk
EXHIBIT A

ARTICLE 40.26A
PERSONAL CULTIVATION OF CANNABIS

40.26A.010 – Purpose
The purpose of this Article is to impose zoning restrictions on the personal cultivation of cannabis pursuant to State law. This Article is not intended to interfere with a patient’s right to use medical cannabis pursuant to the Compassionate Use Act, as may be amended, nor does it criminalize cannabis possession or cultivation otherwise authorized by State law. This Article is not intended to give any person or entity independent legal authority to operate a cannabis business, it is intended simply to impose zoning restrictions regarding personal cultivation of cannabis in the City pursuant to this Code and State law.

40.26A.020 – Applicability
No part of this Article 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. Nothing in this Article shall be construed to allow any conduct or activity relating to the cultivation, distribution, dispensing, sale, or consumption of cannabis that is otherwise illegal under local or state law. No provision of this Article shall be deemed a defense or immunity to any action brought against any person by the Yolo County District Attorney’s office, the Attorney General of the State of California or the United States of America.

40.26A.030 – Definitions

The following words and phrases shall have the following meanings when used in this Article:

“Cannabis” means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including cannabis products derived therefrom. “Cannabis” shall also mean “marijuana” and “marijuana products” as used and defined in State law. For purposes of this Article, “cannabis” shall mean and include both cannabis for medical purposes and non-medical cannabis, unless otherwise specified. Cannabis shall not include industrial hemp.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
“Personal cultivation” means cultivation of cannabis conducted by an individual strictly for that individual’s personal use, possession, processing, transporting, or giving away without any compensation whatsoever in accordance with this Code and State law, including but not limited to Health and Safety Code sections 11362.1 and 11362.2, as may be amended. Personal cultivation also means and includes cultivation of medical cannabis conducted by a qualified patient exclusively for his or her personal medical use, and cultivation conducted by a primary caregiver for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver, in accordance with State law, including Health and Safety Code sections 11362.7 and 11362.765, as may be amended. Except as herein defined, personal cultivation does not include, and shall not authorize, any cultivation conducted as part of a business or commercial activity, including cultivation for compensation or retail or wholesale sales of cannabis.

“Primary caregiver” shall have the same definition as set forth in California Health and Safety Code Section 11362.7(d), as may be amended.

“Qualified patient” shall mean a person identified in California Health and Safety Code Section 11362.7(c) or (f), as may be amended.

40.26A.040 Indoor Personal Cultivation.

Indoor Cultivation. Indoor personal cultivation of cannabis is permitted in all residential districts, all residential uses within planned development districts of a similar nature, and residential uses within mixed-use districts, subject to all of the following minimum performance standards:

(a) All indoor personal cultivation, including by a qualified patient or primary caregiver, shall occur in a dwelling or fully-enclosed accessory building or structure, as those terms are defined in Section 40.01.010 of this chapter.

(b) Medical cannabis shall be cultivated by:

(1) A qualified patient exclusively for his or her own personal medical use but who does not provide, donate, sell, or distribute medical cannabis to any other person; or

(2) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides medical cannabis 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 California Health and Safety Code Section 11362.765(c).

(c) Structures and equipment used for indoor cultivation, such as indoor grow lights, shall comply with all applicable building, electrical and fire code regulations as adopted by the city.
(d) All accessory buildings and structures used for indoor cultivation shall comply with the locational and other requirements set forth in Section 40.26.010 of this chapter.

(e) Indoor personal cultivation of cannabis may occur inside a dwelling and/or an accessory building or structure on the same parcel, subject to the following restrictions:

1. The cumulative cultivation area for medical cannabis shall total no more than fifty contiguous square feet per qualified patient, and no more than two hundred fifty contiguous square feet for primary caregivers, but in no event shall the total cumulative cultivation area for medical cannabis exceed two hundred fifty contiguous square feet regardless of how many qualified patients or primary caregivers reside at the premises. Either a qualified patient or primary caregiver shall reside full-time on the premises where the medical cannabis cultivation occurs.

2. For persons other than qualified patients or primary caregivers, all personal cultivation shall be conducted by persons 21 years of age or older. For persons other than qualified patients or primary caregivers, the cumulative total of cannabis plants on the property, indoor and outdoor, shall not exceed six (6) cannabis plants, regardless of the number of persons residing on the property.

(f) Personal cultivation of cannabis shall not interfere with the primary occupancy of the building or structure, including regular use of kitchen(s) or bathroom(s).

(g) No exterior evidence of cannabis cultivation occurring at the property shall be discernable from the public right-of-way.

(h) Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting personal cultivation of cannabis by tenants.

(i) Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of cannabis.

(j) Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in Chapter 23 of this code.

40.26A.050 Outdoor Personal Cultivation.

Outdoor Cultivation. Outdoor personal cultivation of cannabis is permitted in all residential districts, all residential uses within planned development districts of a similar nature, and residential uses within mixed-use districts, subject to all of the following minimum performance standards:

(a) Outdoor personal cultivation of cannabis is only permitted in a rear or side yard that is entirely enclosed by a solid, opaque fence that is associated with a dwelling or secondary dwelling unit.
(b) The height of the cannabis plants shall not exceed the standard fence height applicable to the parcel, or six (6) feet, whichever is lesser.

(c) The cannabis plants shall be placed at a minimum setback of five (5) feet from the edge of canopy to the property line.

(d) No exterior evidence of cannabis cultivation occurring at the property shall be visible from the public right-of-way.

(e) For persons other than qualified patients or primary caregivers, all outdoor personal cultivation shall be conducted by persons 21 years of age or older, and the cumulative total of cannabis plants on the property, indoor and outdoor, shall not exceed six (6) cannabis plants, regardless of number of persons residing on the property.

(f) For qualified patients and primary caregivers, the cumulative total of cannabis plants outside shall not exceed six (6) cannabis plants, regardless of the number of qualified patients and primary caregivers residing on the property.

(g) Nothing in this section is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting cannabis cultivation by tenants.

(h) Nothing in this section is intended, nor shall it be construed, to authorize commercial cultivation of cannabis.

(i) Nothing in this section is intended, nor shall it be construed, to authorize any public or private nuisance as specified in Chapter 23 of this code.

40.26A.060 Enforcement.

(a) Nuisance. Any violation of this Article is declared to be a public nuisance and may be abated by the city pursuant to Chapter 23 of this code.

(b) Penalty. A violation of this section shall either be a misdemeanor or an infraction at the discretion of the prosecuting attorney. However, notwithstanding anything in this code to the contrary, persons violating this section shall not be subject to criminal liability under this Code solely to the extent such conduct or condition is immune from criminal liability pursuant to State law, including the Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5), the Medical Marijuana Program (Health and Safety Code Section 11362.7 et seq.), or the Adult Use of Marijuana Act, as they may be amended. This section does not prohibit the city from abating violations of this section by any administrative, civil or other non-criminal means. In such cases, a violation of this section may be considered the civil or administrative equivalent of an infraction or misdemeanor as applicable.