



City of Sonoma

Agenda Item Summary

Meeting: City Council - Dec 04 2017

Department

Planning

Staff Contact

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Agenda Item Title

Consideration of: 1) Discussion and Direction Regarding the Regulation of Personal Cannabis Cultivation; 2) Discussion and Direction on Options for the Regulation of Commercial Cannabis Activities; and 3) Extending an Urgency Ordinance Establishing a Temporary Moratorium on the Cultivation of Medicinal Cannabis and Commercial Cannabis Activities (Including Findings that such Action is Exempt from CEQA)

Summary

Background. Following the passage of Prop 64 (the “Adult Use of Marijuana Act” or AUMA) in November of 2016, the legal landscape concerning the use of cannabis in California has been changing rapidly. AUMA legalized recreational use of cannabis by persons 21 years of age and over, along with the personal cultivation of up to six cannabis plants. In addition, AUMA established the basis for a state regulatory system governing the commercial cultivation, testing, and distribution of nonmedicinal cannabis, and the manufacturing of nonmedicinal cannabis products. In anticipation of the passage of Prop 64, the City Council on a vote of 4-1 adopted two interim moratorium ordinances addressing the following: 1) placing restrictions on the indoor cultivation of nonmedicinal cannabis; and 2) prohibiting the outdoor cultivation of nonmedicinal cannabis. In December of 2016, the City Council voted to extend these ordinances for 10 months and 15 days. The purpose of the interim ordinances/moratoria is to provide the City with the opportunity to research, review, and adopt permanent local regulations addressing both medical and recreational cannabis. To help inform this discussion and promote community input, the City Council, at its meeting of September 11, 2017, held a study session on issues pertaining to cannabis and local options for regulation. Because of the study session format, Council Members made individual comments at the conclusion of the item, but no straw polls were undertaken, nor was there any attempt to reach consensus on regulatory options.

The moratoria on personal recreational cultivation were extended by the City Council at its meeting of November 6, 2017, at which time the City Council also adopted an urgency ordinance prohibiting commercial cannabis activities within city limits, with the exception of medicinal cannabis deliveries from licensed dispensaries located outside of city limits. The allowance for deliveries was included as an interim step to provide access to medicinal cannabis, based on the comments received at the September 11th study session. This moratorium also included prohibitions on the cultivation of medicinal cannabis, using the same restrictions as those adopted for the personal cultivation of recreational cannabis. These actions had been scheduled for the meeting of October 23, 2017, but were postponed due to scheduling disruptions resulting from the October Fires.

Topics for Discussion and Action: At this time, staff is seeking Council direction and action in three areas: 1) discussion and direction regarding the permanent regulation of personal cannabis cultivation; 2) discussion and direction on options for the regulation of commercial cannabis activities; and, 3) extension of an Urgency Ordinance establishing temporary moratorium on the cultivation of medicinal cannabis and commercial cannabis activities.

A.Direction regarding the permanent regulation of personal cannabis cultivation. Under the moratoria adopted by the City Council, the personal cultivation of cannabis, whether medicinal or recreational, is regulated as follows:

- Indoors: Personal cultivation of up to six marijuana plants per residence is allowed, subject to restrictions as detailed in the attached Supplemental Report.
- Outdoors: The outdoor personal cultivation of cannabis is prohibited.

If the City Council is satisfied with these allowances and restrictions, then direction should be given to staff to prepare a regular ordinance reflecting those provisions. Otherwise, staff will return at a subsequent Council meeting for a broader discussion of the issue.

B.Focused discussion on options for the regulation of commercial cannabis. At the September 11th study session, staff suggested that as immediate next steps the two cultivation moratoria would need to be extended and a new urgency ordinance placing a moratorium on commercial cannabis activities would need to be adopted. To address the development of permanent regulations, staff stated that it would return to the City Council within 120 days to obtain guidance on policy issues and preferences with respect to additional outreach and/research. On November 6, 2016, when the Council extended the cultivation moratoria and adopted the moratorium on commercial cannabis activities, several Council Members stated that they wished to move quickly on the development of permanent regulations. To this end, staff has prepared a focused set of options for Council consideration, based on the comments received at the September study session. These options are as follows:

1. Limit commercial cannabis activity to deliveries from licensed dispensaries outside of city limits.
2. Obtain more information on the dispensary option and, depending on the Council's subsequent determination, implement an allowance for a dispensary (or dispensaries).

If Option 2 is selected, then staff would return to the City at its meeting of December 18, 2017, to review a detailed proposal for recommended consultant assistance and a timeline.

C.Extension of Urgency Ordinance. As discussed above, at its meeting of November 16, 2017, the City Council adopted an urgency ordinance prohibiting commercial cannabis activities within city limits, with the exception of medical cannabis deliveries from licensed dispensaries located outside of city limits. Under the State Law, this ordinance remains effective for a period of 45 days, unless it is extended by subsequent Council action. Because, even under an accelerated time-frame, the development and adoption of permanent regulations governing commercial cannabis will take several months to complete, staff has prepared an extension of the urgency ordinance for the City Council's consideration.

Recommended Council Action

Staff recommends that the City Council take the following actions:

1. Discuss and provide direction to staff on options for the personal cultivation of cannabis.
2. Discuss and provide direction to staff on options for commercial cannabis activities.
3. Adopt an extension of an Urgency Ordinance establishing temporary moratorium on the cultivation of medicinal cannabis and commercial cannabis activities, including findings that such action is exempt from CEQA. (Note: a 4/5ths vote of the City

Council is required).

Alternative Actions

Council discretion.

Financial Impact

In staff's view, the development of dispensary regulations and a cannabis tax measure benefit from consultant assistance in order to ensure that technical issues are appropriately addressed and to expedite the process. Staff has requested a proposal from MuniServices Financial to assist in this effort. If the City Council elects to pursue Options, then this proposal would be reviewed by the City Council at its meeting of December 18, 2017.

Environmental Review

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

Status

- Approved/Certified
- No Action Required
- Action Requested

Attachments

- [Supplemental Report - Cannabis Options FINAL](#)
- [2 Cannabis Buffer Map](#)
- [3 Moratorium Extension Ordinance](#)
- [4 Report on Conditions Leading to the Original Adoption of Moratorium](#)

Alignment with Council Goals:

Not Applicable

Compliance with Climate Action 2020 Target Goals:

N/A

CC:

n/a

SUPPLEMENTAL REPORT

Consideration of: 1) discussion and direction regarding the regulation of personal cannabis cultivation; 2) discussion and direction on options for the regulation of commercial cannabis activities; and 3) extending an Urgency Ordinance establishing a temporary moratorium on the cultivation of medicinal cannabis and commercial cannabis activities (including findings that such action is exempt from CEQA).

For the City Council Meeting of December 4, 2017

Areas of Council Direction and Action

At this time, staff is seeking Council direction and action in three areas: 1) discussion and direction regarding the permanent regulation of personal cannabis cultivation; 2) discussion and direction on options for the of commercial cannabis activities, and, 3) extension of an Urgency Ordinance establishing temporary moratorium on the cultivation of medicinal cannabis and commercial cannabis activities. These topics are discussed in detail, below.

Background

Following the passage of Prop 64 (the “Adult Use of Marijuana Act” or AUMA) in November of 2016, the legal landscape concerning the use of cannabis in California has been changing rapidly. AUMA legalized recreational use of cannabis by persons 21 years of age and over, along with the personal cultivation of up to six cannabis plants. In addition, AUMA established the basis for a state regulatory system governing the commercial cultivation, testing, and distribution of nonmedicinal cannabis, and the manufacturing of nonmedicinal cannabis products. To implement the provisions of AUMA allowing for commercial cannabis activities, in June of 2017, the State Legislature passed the “Medical and Adult-Use Cannabis Regulation and Safety Act” (MAUCRSA), combining the medicinal and adult-use cannabis systems into one licensing structure, overseen by a newly established “Bureau of Cannabis Control” (BCC). On November 16, 2017, the BCC issued emergency regulations for 19 cannabis license types with the intent of beginning issuance of temporary State licenses to medicinal and recreational cannabis businesses starting in January 2018.

In anticipation of the passage of Prop 64, the City Council on a vote of 4-1 adopted two interim moratorium ordinances addressing the following: 1) placing restrictions on the indoor cultivation of nonmedicinal cannabis; and 2) prohibiting the outdoor cultivation of nonmedicinal cannabis. In December of 2016, the City Council voted to extend these ordinances for 10 months and 15 days. The purpose of the interim ordinances/moratoria is to provide the City with the opportunity to research, review, and adopt permanent local regulations addressing both medical and recreational cannabis.

To help inform the discussion concerning permanent cannabis regulations and promote community input, the City Council, at its meeting of September 11, 2017, held a study session on issues pertaining to cannabis and local options for regulation. A panel of speakers made presentations,

including subject matter experts from the City Attorney's Office, Sonoma Police, City and Sonoma County Planning, as well as representatives from Muni Services, a consulting firm to local governments with expertise in cannabis audit and consultative services, retained to assist the City in developing a comprehensive cannabis policy. Because of the study session format, Councilmembers made individual comments at the conclusion of the item, but no straw polls were undertaken, nor was there any attempt to reach consensus on regulatory options.

The moratoria on personal recreational cultivation were extended by the City Council at its meeting of November 6, 2017, at which time the City Council also adopted an urgency ordinance prohibiting commercial cannabis activities within city limits, with the exception of medical cannabis deliveries from licensed dispensaries located outside of city limits. The allowance for deliveries was included as an interim step to provide city residents with an option for interim access to medicinal cannabis, based on the comments received at the September 11th study session. This moratorium also included prohibitions on the cultivation of medicinal cannabis, using the same restrictions as those adopted for the personal cultivation of recreational cannabis. These actions had been scheduled for the meeting of October 23, 2017, but were postponed due to scheduling disruptions resulting from the October Fires.

Current Local Regulations

The City Council has taken the following actions with respect to the local regulation of cannabis-related activities.

- *Prohibition on Medicinal Cannabis Dispensaries, Delivery Businesses, and Commercial Cultivation.* In December of 2015, the City Council adopted Resolution 47-2015, making the finding that medicinal cannabis dispensaries, the cultivation of medicinal cannabis, and medicinal cannabis delivery services are prohibited in Sonoma, because, under the City's permissive zoning structure, uses that are not specifically enumerated in the Development Code are considered to be prohibited. It should be emphasized that with the passage of Proposition 64, local jurisdictions may no longer rely upon prohibitions based on the concept of permissive zoning to prohibit cannabis-related land use activities.
- *Moratoria on the Personal Cultivation of Non-Medical Cannabis.* In November of 2016, in anticipation of the passage of Prop 64, the City Council on a vote of 4-1 adopted two interim moratorium ordinances addressing the following: 1) placing restrictions on the indoor cultivation of nonmedicinal marijuana; and 2) prohibiting the outdoor cultivation of nonmedicinal marijuana. In December of 2016, the City Council voted to extend these ordinances for 10 months and 15 days. These interim ordinances were extended for one additional year by a vote of the City Council on November 16, 2017.
- *Moratorium on Commercial Cannabis Activities and on the Personal Cultivation of Medicinal Cannabis.* On November 6, 2017, the City Council adopted an urgency ordinance prohibiting commercial cannabis activities within city limits, with the exception of medical cannabis deliveries from licensed dispensaries located outside of city limits. This moratorium also included prohibitions on the cultivation of medicinal cannabis, using the same restrictions and allowances as those adopted for the personal cultivation of recreational cannabis.

As noted above, the purpose of the interim ordinances/moratoria is to provide the City with time to research, review, and adopt permanent local regulations addressing both medical and recreational cannabis.

Topic #1: Existing Allowances/Restrictions on Personal Cultivation and Next Steps

As discussed above, Sonoma's current moratoria allow indoor cultivation of recreational and medicinal cannabis subject to restrictions, of which the most significant are as follows:

- The primary use of the property shall be for a residence.
- Cannabis cultivation is limited to six cannabis plants per private residence.
- All areas used for cultivation of cannabis shall comply with Title 14 (Buildings and Construction) of the Sonoma Municipal Code, as well as applicable law.
- Indoor grow lights shall not exceed 1,000 watts per luminaire.
- The use of gas products or generators is prohibited.
- A ventilation and filtration system must be installed such that cannabis plant odors are prevented from exiting the interior of the structure.
- A fully enclosed and secure structure used for the cultivation of cannabis shall be located in the rear yard area of the parcel, and must maintain a minimum ten-foot setback from any property line. (This provision does not apply to cultivation occurring in a garage.)
- Adequate mechanical locking or electronic security systems must be installed.
- From a public right-of-way, there shall be no exterior evidence of cannabis cultivation occurring on the parcel.
- The cannabis cultivation area shall not be accessible to persons under 21 years of age.
- Written consent of the property owner to cultivate cannabis within the residence or in a fully enclosed and secure structure is required.

Outdoor cultivation of cannabis is currently prohibited, except within an enclosed greenhouse or similar structure as detailed above.

If the City Council is basically satisfied with these allowances and restrictions, then direction should be given to staff to prepare a permanent ordinance reflecting those provisions, along with any minor revisions identified by the Council. Otherwise, staff will return to the City Council on a subsequent agenda for a broader discussion of options for personal cultivation.

Topic #2: Issues and Options Associated with Commercial Cannabis Activities

Relationship Between State and Local Licensing: The State has defined 19 license types for commercial cannabis activities addressing different levels and forms of cultivation, manufacturing, testing, retailing, and distribution. All cannabis businesses must have a State license and a State license cannot be issued to an applicant whose operations would violate the provisions of any local ordinance or regulations. However, the burden is on the State licensing agency (the newly created Bureau of Cannabis Control) to check with the local jurisdiction to see whether an applicant is in violation of local law. If the applicant provides a local license, permit or other authorization to the

BCC, the BCC will contact the local jurisdiction to verify the information and will allow at least 10 days for the jurisdiction to respond before issuing the license. If the jurisdiction does not timely respond, the BCC will consider the authorization valid. If an applicant for an annual license does not provide a local authorization to the BCC, the BCC will contact the local jurisdiction to verify that issuing the license would not violate local laws. If the local jurisdiction does not timely respond within 60 days, the BCC shall presume the applicant is in compliance and may issue a license. In November, the BCC published emergency regulations for the various license types with the intent of beginning issuance of temporary State licenses to medicinal and recreational cannabis businesses starting in January 2018.

At the local level, jurisdictions retain full land use authority as to the regulation of commercial cannabis activities. They may prohibit such businesses entirely, allow only some, or allow them subject to locally developed regulations that fit local needs. MAUCRSA establishes that local jurisdictions have the authority to regulate cannabis businesses and to take enforcement action concerning Fire and Building Codes, conduct inspections, and implement audits. (The one exception is that while a local jurisdiction may prohibit cannabis deliveries originating from or ending within its boundaries, it may not prohibit a cannabis delivery service from driving *through* the jurisdiction.)

Options for Review: Because the September 11th study session was primarily intended as an educational forum, Councilmembers provided initial comments individually rather than engaging in a group discussion. In reviewing the Councilmember comments, staff has identified the following areas of initial feedback:

- Interim Access through Deliveries: To provide an interim option for city residents to access medicinal cannabis while the City studies its options for implementing cannabis regulations, it appeared that the Council supported allowing deliveries from licensed dispensaries located outside of city limits. This direction was confirmed at the City Council meeting of November 16th, when the Council approved that allowance as an exception to an urgency ordinance placing a moratorium on other commercial cannabis activities.
- Cultivation, Manufacturing, Testing, and Recreational Retailing/Distribution: No member of the City Council expressed support for any of these activities at this time. However, some Councilmembers suggested that, over time, some of these activities could eventually be allowed.
- Local Dispensary: Two Councilmembers expressed interest a local dispensary or dispensaries. Three Councilmembers discussed questions, concerns or wanted more information.

To order this discussion and provide timelines for implementation, staff has set forth options in Table A below, along with a process for obtaining additional information and public input in conjunction with investigating whether to allow a dispensary if that is a direction for which there is majority Council support.

TABLE A -- Decision Points Regarding Commercial Cannabis

Direction	Implementation	Timeline
<i>Direction on Commercial Cannabis Activities, Excluding Dispensaries and Outside Delivery</i>		
<i>Confirm direction on other options for commercial cannabis activities.</i>	Confirm or correct staff's understanding that, at this time, the Council is not interested in allowing: <ul style="list-style-type: none"> • Commercial cultivation • Manufacturing • Testing • Recreational retailing/distribution 	This direction will inform staff's actions moving forward with whatever regulations the Council is interested in pursuing.
DISPENSARY OPTIONS		
<i>Option #1 -- No Dispensary within City Limits</i>		
<i>Option 1: Limit commercial cannabis activity to deliveries of medicinal cannabis from licensed dispensaries outside of city limits.</i>	Draft and adopt an ordinance that embodies the regulations set forth in the existing urgency ordinance.	Review by Planning Commission, followed by adoption by the City Council within 2-3 months.
<i>Option #2 -- Interest in Dispensary Option</i>		
<i>Option 2: Investigate and possibly implement regulations allowing a dispensary.</i> <u>Potential Dispensary Types:</u> Delivery only Storefront Storefront, with Delivery	Phase 1: Exploration	
	<ul style="list-style-type: none"> • Preliminary Council discussion and direction on key issues (e.g., number of dispensaries, location limitations, selection process, taxation, etc.) • Public workshop. • Follow-up City Council discussion and decision as to whether to proceed with a dispensary allowance. 	<ul style="list-style-type: none"> • City Council decision on whether or not to proceed with dispensary concept in 3-4 months.
	Phase 2: Implementation of Regulations, Fees, Taxes	
	<ul style="list-style-type: none"> • Follow-up Council discussion and direction on key issues (e.g., type of dispensary (delivery-only or store-front) number of dispensaries, location limitations, selection process, taxation, etc.) • Draft ordinance and undertake public hearing process. • Develop administrative procedures and fees. • Prepare tax ballot measure. 	<ul style="list-style-type: none"> • Regulations and procedures in place within a minimum of 5 months, but perhaps longer depending on scope and complexity. • Tax measure on November ballot.

Factors to Consider: In reviewing and evaluating the options set forth above, there are a number of factors that the Council will need to consider:

- *Focus:* The limited discussions that the Council has had to date concerning commercial cannabis have been focused on City residents who qualify for medicinal cannabis, which is reflected in the range of options developed by staff and outlined above.
- *Alternative Access:* Sonoma County has had an ordinance allowing dispensaries since 2007 and subsequently adopted a comprehensive cannabis ordinance on Dec 20, 2016. Within the unincorporated area, dispensaries are allowed subject to Use Permit review in several commercial zoning districts. Delivery operations are only allowed as part of brick and mortar dispensaries. Although there are no permitted dispensaries in Sonoma Valley at this time, as these uses come forward, City residents will have access to them.
- *Security:* Cannabis is valuable, portable, and, on the black market, untraceable. Because cannabis is illegal under federal law, access to banking services is limited for dispensaries, leading them to focus on cash transactions. The combination of cash and cannabis makes dispensaries a target of criminals. If a permit process for dispensaries is contemplated, appropriate security measures need to be included.
- *Staffing Impacts:* Dispensaries are often subject to extensive local regulations aimed at ensuring compliance with the law. Most jurisdictions that allow dispensaries require annual audits, which represents a level of review that has staffing implications.
- *Limiting Youth Access/Buffer Zones:* Under State Law, a dispensary may not be located within 600 feet of a school, day care center, or “youth center” in existence at the time the State license is issued. Other jurisdictions have imposed even more restrictive standards. As an example, Sonoma County’s ordinance requires a 1,000-foot separation from “sensitive uses”. Buffer zones for dispensaries are as follows: 100 feet from any residence or residential zoning district; 500 feet from a smoke shop, 1,000 feet from another dispensary; and 1,000 feet from sensitive uses (public or private schools, parks, childcare center, and drug or alcohol treatment facilities). Because Sonoma is relatively small, expansive buffer zones could preclude locations for dispensaries. The attached map depicts the effect of the State-mandated school buffer zone. It also shows the location of parks and selected youth-serving facilities only in relation to areas having a Commercial or Mixed Use zoning. (If the Council is interested in different buffer options, staff can provide alternative maps based on that direction.)
- *Zoning/Potential Location Limitations:* A dispensary is a commercial use that could potentially be accommodated in the Commercial zone, the Gateway Commercial zone, and the Mixed Use zone. Because development within the Mixed Use zone often

mingled with residential uses, it is staff's view that if consideration is given to an allowance for a dispensary that it be limited to the Commercial zones. Staff would note that prospective cannabis retailers have expressed interest in Plaza-area tenant spaces and the Council would need to consider whether or not to authorize dispensaries within high-profile commercial areas such as the Plaza and on Broadway.

- *Type, Number, and Selection Process:* A dispensary may be limited to delivery-only or it may have a retail "store-front" component. Many communities that allow dispensaries limit the number that may be approved. If there is a limit, then consideration needs to be given as to how a selection would be made between competing applications.
- *Permit Type:* If an allowance for dispensaries is desired, then a new permit type and process would need to be developed, along with local standards and operating requirements. Unlike a Use permit, the new permit type would need to be specific to the business operator, be limited in duration and allow for a renewal review as well as procedures for termination. Some of these provisions would need to be codified as an ordinance amending the Development Code and would therefore be subject to Planning Commission review.
- *Taxation:* It has been staff's impression that if a dispensary is allowed, the Council would wish to implement a tax on cannabis sales, as allowed for under State law. However, this direction needs to be confirmed by the Council.
- *Law Enforcement:* As part of the study session presentation, the Police Chief reviewed issues and concerns of the law enforcement community with respect to cannabis. In general, the Police Department is concerned about: 1) addressing security issues that might otherwise lead to robberies or other violent crime, 2) limiting youth access, and 3) ensuring that locally-adopted regulations are clear and enforceable.

It should be noted that while direction from the City Council required in each of these areas, there are several models available to draw on from other communities that have chosen to allow dispensaries. Staff has conducted surveys of other Northbay communities with respect to cannabis regulations and has spoken with our counterparts in Sebastopol, Cotati, and other jurisdictions that allow dispensaries. MuniServices, the consulting firm assisting the City on this issue, has extensive experience working with a broad range of communities on developing and implementing local cannabis regulations.

Consultant Assistance: If the Council is interested in exploring Options 1 or Option 2 of a medicinal dispensary, the City would benefit from some level of consultant assistance in order to bring outside expertise, knowledge and experience to the discussion and to assist with technical issues. Staff has requested a proposal from MuniServices to assist in this effort. If the City Council elects to pursue Options 1 or 2, then this proposal would be reviewed by the City Council at its meeting of December 18, 2017.

Topic #3: Extension of Urgency Ordinance

As discussed above, at its meeting of November 6, 2017, the City Council adopted by a 4/5ths vote an ordinance imposing a temporary moratorium on the indoor and outdoor cultivation of medicinal cannabis and all commercial cannabis activities, except for the indoor cultivation of up to 6 plants per residence for medicinal purposes and the delivery of medicinal cannabis by out-of-city businesses. That moratorium is slated to expire at midnight on December 21, 2017, unless it is extended. In carving out an exception to the moratorium for the delivery of medicinal cannabis by out-of-city businesses, the ordinance permits such businesses to deliver medicinal cannabis to qualified patients and primary caregivers situated within the City's limits. However, the ordinance imposes six conditions on such delivery businesses.

1. The business must be State licensed and locally permitted. This means that as a practical matter, since the State will not be issuing commercial cannabis licenses until January 2018 for such businesses, such deliveries should not begin taking place until January 2018.
2. Additionally, not only must the business possess and have issued to it a valid State license, probably issued by the State Bureau of Cannabis Control, the business must also be lawfully operating within the rules, zoning and ordinances of the jurisdiction in which it is located.
3. The business must deliver the medicinal cannabis by personal delivery. This is consistent with the regulations just issued by the State on November 16 which require that deliveries must be made in person by a direct employee of the State licensee to a physical address.
4. The business must also apply for and obtain a business license from the City of Sonoma and pay the requisite business license tax. Staff is developing an amended business license application form which will require any out-of-city medicinal cannabis delivery business desiring to conduct deliveries in the City to submit to the City a copy of the business' State license and have written evidence that the business is otherwise lawfully permitted to operate within the jurisdiction in which it is located.
5. Vehicles used in the delivery process must be unmarked without any designation or logo that identifies the vehicle as a cannabis delivery vehicle.
6. Cannabis and cannabis products must be delivered within the City between the hours of 7:00 a.m. and 11:00 p.m. This is generally consistent with the new State regulations which provide that deliveries may only occur between the hours of 6:00 a.m. and 10:00 p.m.

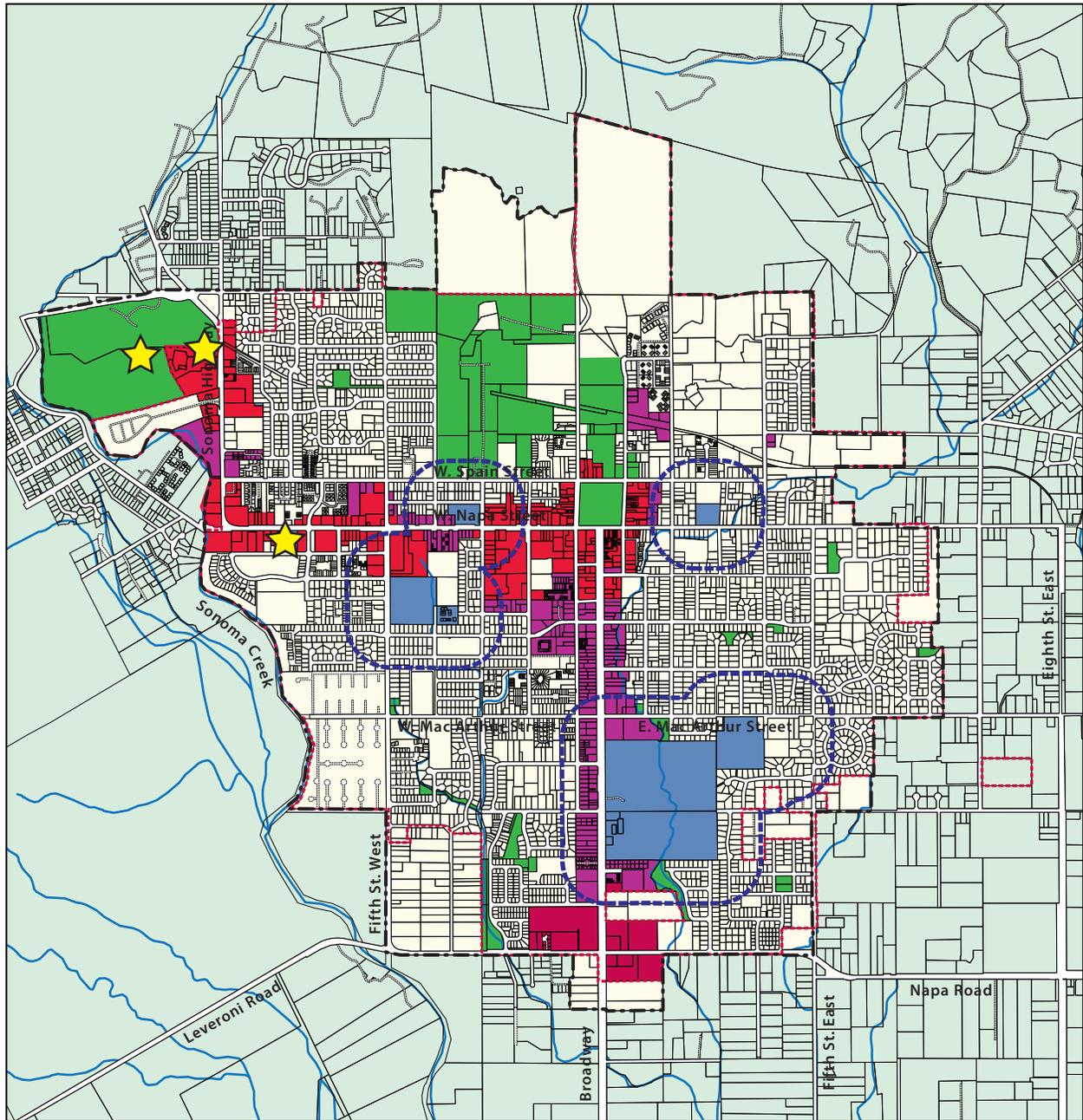
It is recommended that the Council adopt the extension allowing the moratorium to continue in effect until November 5, 2018. To adopt the extension, a 4/5ths vote of the City Council is required. In addition, as noted in the attached ordinance, the City Council must approve a

report outlining the measures taken to address the conditions that led to the adoption of the original interim moratoria ordinance. This report is included as an attachment.

Recommendation

Staff recommends that the City Council take the following actions:

1. Discuss and provide direction to staff on options for the personal cultivation of cannabis.
2. Discuss and provide direction to staff on options for commercial cannabis activities (See Table A).
3. Adopt an extension of an Urgency Ordinance establishing temporary moratorium on the cultivation of medicinal cannabis and commercial cannabis activities, including findings that such action is exempt from CEQA. (Note: a 4/5ths vote of the City Council is required).



State-Mandated Cannabis Buffer Zone

Note: Many communities have imposed additional buffer zones based on proximity to features such as parks, residences or residential zones, and youth-serving facilities.

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SONOMA EXTENDING A TEMPORARY MORATORIUM
(EXCEPT UNDER CERTAIN CIRCUMSTANCES) ON THE INDOOR AND OUTDOOR
CULTIVATION OF MEDICINAL CANNABIS AND ALL COMMERCIAL CANNABIS
ACTIVITIES (EXCEPT MEDICINAL DELIVERIES) AND APPROVING A REPORT
ON THE CONDITIONS LEADING TO THE ADOPTION OF THE ORDINANCE**

WHEREAS, in 1996 the voters of California approved Proposition 215, codified as California Health and Safety Code Section 11362.5 and entitled “The Compassionate Use Act of 1996;” and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of medicinal cannabis for specified medicinal purposes to obtain medicinal cannabis, and use it under limited, specified circumstances without fear of criminal prosecution under State law; and

WHEREAS, in 2003, the State Legislature enacted SB 420, codified as California Health and Safety Code Section 11362.7 et seq. and entitled the “Medical Marijuana Program Act” (“MMPA”) to clarify the scope of The Compassionate Use Act of 1996; and

WHEREAS, effective January 1, 2016, the Medical Cannabis Regulation and Safety Act (“MCRSA”) became effective under which an extensive state regulatory scheme was established providing for the monitoring, inspecting and licensing of commercial medicinal cannabis businesses. The MCRSA created a dual-licensing system under which medicinal cannabis businesses have to obtain both state and local licenses in order to conduct such businesses. However, the MCRSA explicitly acknowledged that cities and counties retain the right to not only regulate such activities, but to ban them entirely. The MCRSA also acknowledged that permissive zoning schemes can implicitly prohibit such activities, including the indoor and outdoor cultivation of medicinal cannabis when those zoning regulations do not expressly list such activities as permitted or conditionally permitted uses; and

WHEREAS, on December 21, 2015, the City Council adopted Resolution No. 47-2015 which confirmed that the City’s Development Code prohibited and prohibits the delivery of medicinal cannabis, other commercial medicinal cannabis activities and the cultivation of medicinal cannabis; and

WHEREAS, on November 8, 2016, the voters adopted the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). Among other things, AUMA legalizes the recreational use of cannabis in California for individuals 21 years of age and older. The AUMA also authorizes the personal cultivation of up to six cannabis plants within a private residence or upon the “grounds” of that private residence for nonmedicinal purposes. The AUMA added Division 10 to the California Business and Professions Code, sections 26000, et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis

businesses. The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division 10 of the California Business and Professions Code by January 1, 2018. California Business and Professions Code section 26055(d) provides that a State licensing authority shall not approve an application for a State license for commercial non-medicinal cannabis activity if approval of the State license will violate the provisions of any local ordinance; and

WHEREAS, in anticipation of Proposition 64 passing, the City Council, by a 4/5ths vote, on November 7, 2016, adopted an urgency ordinance (Ordinance No. 10-2016) imposing a temporary moratorium on the indoor cultivation of nonmedicinal cannabis for personal use (except under specified conditions), which said ordinance was to become effective only if Proposition 64 passed. At the same time, the City Council, by a 4/5ths vote, adopted an urgency ordinance (Ordinance No. 09-2016) imposing a temporary moratorium on the outdoor cultivation of nonmedicinal cannabis, which said ordinance was to become effective only if Proposition 64 passed. Proposition 64 passed, thus triggering the efficacy of said Ordinances. On December 12, 2016, the City Council adopted Ordinance Nos. 12-2016 and 13-2016 extending the two moratoria for 10 months and 15 days beyond the effective period of Ordinance Nos. 09-2016 and 10-2016, such that the moratoria will expire at midnight on November 6, 2017, if not extended; and

WHEREAS, at its meeting on November 6, 2017, the City Council adopted ordinances extending said Ordinance Nos. 12-2016 and 13-2016 through November 6, 2018. Neither of said Ordinances expressly applied to commercial cannabis activity or to medicinal cannabis activities; and

WHEREAS, at its meeting on November 6, 2017, the City Council adopted an ordinance (Ordinance No. 09-2017) imposing temporary moratoria on the cultivation of medicinal cannabis, except for the indoor cultivation of up to 6 plants per residence, and on all commercial cannabis activities except for the delivery of medicinal cannabis by out-of-City businesses; and

WHEREAS, on June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medicinal and non-medicinal cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether commercial cannabis activity could occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses licensed under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a business to engage in commercial cannabis activity if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a

State licensing authority begin issuing licenses to cannabis businesses beginning January 1, 2018; and

WHEREAS, on September 16, 2017, the Governor signed AB 133 which makes further refinements to the MAUCRSA, including a provision that states that applicants for state commercial cannabis activities license(s) who voluntarily submit a valid, unexpired local license will be presumed to be in compliance with “all local ordinances,” unless otherwise notified by the local jurisdiction. The state licensing authorities will be required to notify local jurisdictions when an applicant voluntarily submits a valid local license and local jurisdictions will be afforded the opportunity to rebut the validity of same; and

WHEREAS, MAUCRSA, as amended, imposes on local jurisdictions the obligation to determine whether commercial cannabis activities are permitted within their corporate boundaries and, if so, under what conditions. Furthermore, if such activities are not expressly addressed by regulations or ordinances, disputes will arise as to whether a given commercial cannabis activity or business has the right to operate within a given jurisdiction, potentially leading to the State’s issuance of commercial licenses to operators who the local jurisdiction believes are precluded from operating within its boundaries and potentially even more problematic leading to the establishment of commercial cannabis businesses without the consent of the local jurisdiction and without any controls tailored to the local community’s needs and land use and other policies; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, given Proposition 64’s passage, it is more likely than not that the number of individuals who will desire to and will cultivate medicinal and nonmedicinal cannabis for personal use will be significant. It is further more likely than not that substantial numbers of persons may have already begun cultivating medicinal cannabis prior to the passage of Proposition 64 and those numbers have increased since its passage, and will continue to increase, unless and until local regulations and/or prohibitions are enacted which control such activities; and

WHEREAS, the cultivation of medicinal and nonmedicinal cannabis in other cities has resulted in (a) calls for service to their police departments, including calls for robberies and thefts, and (b) the increase in criminal activity. Additionally, incidents have arisen in other cities as the result of the operations of cannabis dispensaries and other commercial cannabis activities. Incidents involving complaints resulting in criminal investigations and the discovery of illegal cannabis cultivations have occurred in the City of Sonoma. It is reasonable to assume that AUMA’s and MAUCRSA’S passage, without reasonable controls imposed by the City of Sonoma, will incentivize and lead individuals and companies to establish commercial cannabis businesses, clandestinely or otherwise, in the City, and based thereon assert that they are legal and are entitled to be issued state licenses. In the event that the moratorium codified in this

Ordinance is not extended, there is a current and immediate threat to the public health, safety and welfare of substantial numbers of persons (i) establishing cannabis businesses in the City without City permission and being licensed by the State to do so and (ii) cultivating medicinal cannabis indoors and outdoors, creating the complaints and enforcement problems already being experienced in other communities and in the City of Sonoma and exposing citizens to robberies, potential violence, vandalism of property and theft of cannabis plants; and

WHEREAS, the City Council finds that allowing the use of property within the City for the cultivation of cannabis for medicinal purposes without the City having any authority to establish conditions, regulations, restrictions, and limitations upon such activities presents a current and immediate threat to the public health, safety, or welfare, including but not limited to the harmful effects associated with such activities, such as: the spread of malodorous smells; indoor electrical fire hazards; inadequate ventilation; health hazards from mold and water damage; criminal activity such as robberies, burglaries, and trespassing, which have been experienced by other communities and/or are significant risks resulting from such activities; and increased nuisance conditions in neighborhoods, among others; and

WHEREAS, the City Council finds that allowing the use of property within the City for the establishment and operation of commercial cannabis businesses (such as retail stores or indoor or outdoor commercial cultivations) without the City having any authority to establish conditions, regulations, restrictions, and limitations upon such activities presents a current and immediate threat to the public health, safety, or welfare, including but not limited to the harmful effects associated with such activities, such as: the spread of malodorous smells; indoor electrical fire hazards; inadequate ventilation; health hazards from mold and water damage; criminal activity such as robberies, burglaries, and trespassing, which have been experienced by other communities and/or are significant risks resulting from such activities; and increased nuisance conditions in the City, among others; and

WHEREAS, based upon the experience of the State of Colorado and other states in which nonmedicinal cannabis has been legalized, it is likely that Proposition 64 will have significant impacts on the City's police department, the medical resources of the State and the regulatory function of local agencies, including the City of Sonoma; and

WHEREAS, the short period between Proposition 64's qualification for the November 8, 2016, ballot and the November 8, 2016, election and Proposition 64's creation of a complex, state-wide licensing system for the commercial production, delivery, marketing, testing and selling of cannabis have impeded and prevented the City from adequately studying its impacts and the most appropriate manner in which to comprehensively address the issues implicated by the Proposition and its implementation. The complexities and uncertainties surrounding the regulation of commercial and other cannabis-related activities have been exacerbated by the passage of SB 94 which took effect on June 27, 2017, and the passage of AB 133 in September 2017 which made further changes to SB 94. SB 94 repealed the MCRSA and consolidated the regulation of commercial medicinal and nonmedicinal cannabis activities. To add further uncertainty to the regulatory landscape, the regulations released during the first half of 2017 by

the State agencies charged with enforcing the laws governing commercial cannabis activities have been withdrawn. 276 pages of revised regulations were issued on November 16, 2017. The City needs time to further study the AUMA and MAUCRSA and their cognate regulations and whether and to what extent the City's General Plan, Development Code and other regulations will need to be or should be modified to accommodate and/or address the impacts of the AUMA and MAUCRSA on the City and its citizens. Were the City Council to permit the unregulated, cultivation of medicinal cannabis and/or the establishment and operation of all commercial cannabis activities while it studied the means and methods to address such activities, those persons who were engaged in such activities may garner rights to continue such activities as grandfathered or State-licensed uses, unaffected by later-enacted legislation or taxes by the City Council. Such an outcome presents an immediate and current threat to the ability of the City Council to properly plan and regulate such activities and will undermine the purpose of any such plan and regulation as to those persons who were able to commence such activities before such plans and/or regulations are put into place; and

WHEREAS, in order to determine the most appropriate and publicly beneficial manner in which to address the cultivation of medicinal cannabis and commercial cannabis activities implicated by the AUMA and MAUCRSA and their regulations and the effects of such activities should the City determine to regulate such uses within the City's corporate boundaries, and in order to protect residents and businesses from the potential harmful effects of the establishment and operation of such businesses and activities, the City needs time to study whether to permanently regulate such uses and, if so, the City needs time to examine the regulations relating thereto and to permit the public adequate time to review and comment upon the issue in accordance with state law in tandem with the City's consideration of any such regulations; and

WHEREAS, it would be destructive of and render ineffective any proposed policies, restrictions, ordinances and regulations if, during the period they are being studied and considered by the City, parties seeking to avoid their operation and effect establish such uses, which said operations and activities will defeat, in whole or in part, the objectives of such policies, restrictions, ordinances and regulations; and

WHEREAS, absent the adoption of this interim urgency Ordinance extending Ordinance No. 09-2017, it is likely that the establishment and operation of medicinal cannabis cultivations and commercial cannabis activities within the City, without appropriate controls in place to regulate same and their impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

WHEREAS, because of the facts set forth above, there exists a current and immediate threat that persons shall commence medicinal cultivation operations and commercial cannabis activities, that such pose a current and immediate threat to the health, safety and welfare of the citizens of the City and having such uses commence operations and operate in the City before the City has had an opportunity to consider, study and/or adopt regulations governing the said activities will render such regulations ineffective and destroy the purpose of engaging in such an

analysis and process in the first place, thus constituting a current and immediate threat to the health, safety and welfare of the citizens of the City; and

WHEREAS, Ordinance No. 09-2017 shall expire at midnight on December 21, 2017, unless extended by subsequent ordinance adopted pursuant to Cal. Gov't Code section 65858; and

WHEREAS, at its meeting on December 4, 2017, the City Council was presented the report described in said section 65858(d) ("Report") specifying the measures taken to alleviate the conditions which led to the adoption of Ordinance No. 09-2017. In said Report it is stated that the said conditions giving rise to the necessity of adopting Ordinance No. 09-2017 have not been alleviated and that more time is necessary in order to study and address the issues involved in deciding whether to continue prohibiting the cultivation of medicinal cannabis and commercial cannabis activities or regulate such, and, if so, how to regulate those activities. Said Report is hereby approved and the City Manager or her designee is authorized to issue same at the appropriate date; and

WHEREAS, based on the findings set forth above, it is the intent of the City Council to extend Ordinance No. 09-2017's moratorium on the cultivation of medicinal cannabis and commercial cannabis activities throughout the City (and except as provided therein) to a date that is ten months and 15 days one year following the last day that Ordinance No. 09-2017 is in effect. In other words, until midnight on November 5, 2018:

NOW THEREFORE, the City Council of the City of Sonoma does ordain as follows:

Section 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Sonoma, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

Section 2. Urgency Moratorium Imposed - Prohibited Uses and Activities.

A. Commercial cannabis activity, whether or not for profit, is prohibited in all zones, specific plan areas, and overlay zones of the city. No person shall establish, operate, maintain, conduct, allow, or engage in commercial cannabis activity anywhere within the city. To the extent that this prohibition conflicts with any provision of the City of Sonoma Municipal Code, this prohibition will control.

B. A property owner shall not rent, lease or otherwise permit any person or business that engages in commercial cannabis activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in commercial cannabis activity on any real property owned or controlled by that property owner that is located in the city.

C. The indoor and outdoor commercial and non-commercial cultivation of cannabis for medicinal purposes, whether or not for profit, is prohibited in all zones, specific plan areas, and overlay zones of the city. No person shall establish, operate, maintain, conduct, allow, or engage in medicinal cannabis cultivation anywhere within the city. To the extent that this prohibition conflicts with any provision of the City of Sonoma Municipal Code, this prohibition will control.

D. A property owner shall not rent, lease or otherwise permit any person or business that engages in medicinal cannabis cultivation activity to occupy real property in the city. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in medicinal cannabis cultivation activity on any real property owned or controlled by that property owner that is located in the city.

E. Subsections A and C above shall prohibit all activities for which a State license is required pursuant to the MAUCRSA, as the same may be amended from time to time. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MAUCRSA, as the same may be amended from time to time. The city shall also not issue any local license to a non-profit entity pursuant to California Business and Professions Code section 26070.5.

F. To the extent not already prohibited by subsection A above, all commercial and non-commercial deliveries of cannabis or cannabis products for medicinal or non-medicinal purposes, to or from any location are expressly prohibited. No person shall conduct or perform any commercial and non-commercial delivery of any cannabis or cannabis products for a medicinal or non-medicinal purpose, which delivery either originates or terminates within the city. This subsection shall not prohibit any person from transporting cannabis through the jurisdictional limits of the city for delivery or distribution to a person located outside the city, where such transport does not involve delivery or distribution within the jurisdictional limits of the city.

Section 3. Exceptions.

A. Notwithstanding section 2, above, the delivery of medicinal cannabis from a business located outside the city and licensed to make such deliveries under the MAUCRSA, or any other provision of law that permits State licenses for medicinal cannabis delivery businesses, shall be permitted into the city.

B. Notwithstanding section 2, above, and to the extent that the following activities are permitted by State law, nothing in this Ordinance shall prohibit a person 21-years of age or older from:

1. Possessing, processing, transporting, using, ingesting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, not more than 28.5 grams of cannabis not in the form of concentrated cannabis;

2. Possessing, processing, transporting, ingesting, obtaining or giving away to persons 21 years of age or older, without compensation whatsoever, up to eight grams of cannabis in the form of concentrated cannabis;

3. Smoking or ingesting cannabis or cannabis products except as prohibited by California Health and Safety Code section 11362.3, and/or applicable provisions of the City of Sonoma Municipal Code;

4. Possessing, transporting, obtaining, using, manufacturing, or giving away cannabis accessories to persons 21 years of age or older without compensation whatsoever;

5. Engaging in the cultivation of six or fewer live cannabis plants for medicinal purposes within a single private residence and/or a fully enclosed and secure structure pursuant to and in accordance with section 4, below. Said cultivation may be undertaken only by a qualified patient or a primary caregiver. In no case shall the total number of live cannabis plants being cultivated for medicinal and/or nonmedicinal purposes within a single private residence and/or upon the grounds of that single private residence exceed six at any given time. In no instance may personal cultivation occur on vacant property.

C. Notwithstanding section 2, above, and to the extent that the following activities are permitted by State law, a primary caregiver may possess, store, transport, donate or provide medicinal cannabis in quantities permitted by State law on behalf of or to qualified patients residing in the city for whom he or she is the primary caregiver.

D. Notwithstanding section 2, above, and to the extent that the following activities are permitted by State law, a person 18 years of age or older but less than 21 years of age who is a qualified patient or primary caregiver may cultivate indoors up to six live cannabis plants for medicinal purposes within a single private residence and/or a fully enclosed and secure structure pursuant to and in accordance with section 4. In no case shall the total number of live cannabis plants being cultivated for medicinal or nonmedicinal purposes within a single private residence and/or upon the grounds of that single private residence exceed six at any given time. In no instance may personal cultivation occur on vacant property.

E. This Ordinance shall also not prohibit any commercial cannabis activity that the city is required by State law to permit within its jurisdiction pursuant to the MAUCRSA.

F. To the extent the exceptions set forth in this section conflict with any provision of the City of Sonoma Municipal Code, these exceptions will control. Furthermore, the exceptions set forth in Section 3(A) shall be temporary and shall only last as long as this Ordinance or any extension thereof is in effect. The exception set forth in Section 3(A) shall not confer vested rights on any business falling within its parameters and any such business shall be subject to any future regulations and/or prohibitions adopted by the City applicable to said business.

Section 4. Indoor Cultivation Standards.

A. Indoor Cultivation in Private Residence. The indoor cultivation of medicinal cannabis on a parcel with an approved private residence shall only be conducted within a fully enclosed and secure structure or within a residence. Such cultivation shall be in conformance with the following minimum standards:

1. The primary use of the property shall be for a residence. Cannabis cultivation is prohibited as a home occupation.

2. All areas used for cultivation of cannabis shall comply with Title 14 (Buildings and Construction) of the Sonoma Municipal Code, as well as applicable law.

3. Indoor grow lights shall not exceed 1,000 watts per luminaire, and shall comply with the applicable provisions of the California Building Standards Code as adopted and amended by Chapter 14.10 (Construction Codes) of the Sonoma Municipal Code.

4. The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for cultivation of cannabis is prohibited.

5. Any fully enclosed and secure structure or residence used for the cultivation of cannabis must have a ventilation and filtration system installed that shall prevent cannabis plant odors from exiting the interior of the structure and that complies with the applicable provisions of the California Building Standards Code as adopted and amended by Chapter 14.10 (Construction Codes) of the Sonoma Municipal Code.

6. A fully enclosed and secure structure used for the cultivation of cannabis shall be located in the rear yard area of the parcel, and must maintain a minimum ten-foot setback from any property line. The yard where the fully enclosed and secure structure is maintained must be enclosed by a solid fence at least six feet in height. This provision shall not apply to cultivation occurring in a garage.

7. Adequate mechanical locking or electronic security systems must be installed as part of the fully enclosed and secure structure or the residence prior to the commencement of cultivation.

8. Cannabis cultivation shall be limited to six cannabis plants per private residence, regardless of whether the cannabis is cultivated inside or outside the residence or in a fully enclosed and secure structure. The limit of six plants per private residence shall apply regardless of how many individuals reside at the private residence.

9. The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping and sanitation facilities with proper ingress and egress. These

rooms shall not be used for cannabis cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping and bathing.

10. Indoor cultivation of cannabis shall only take place on impervious surfaces.

11. From a public right-of-way, there shall be no exterior evidence of cannabis cultivation occurring on the parcel.

12. Cannabis cultivation areas, whether in a fully enclosed and secure structure or inside a residence, shall not be accessible to persons under 21 years of age (unless the person is a qualified patient or primary caregiver, in which case access is permissible by these persons but the cannabis can only be used for medicinal purposes).

13. Written consent of the property owner to cultivate cannabis within the residence or in a fully enclosed and secure structure shall be obtained and shall be kept on the premises, and available for inspection by the building official or his/her designee.

14. A portable fire extinguisher, that complies with the regulations and standards adopted by the state fire marshal and applicable law, shall be kept in the fully enclosed and secure structure used for cultivation of cannabis. If cultivation occurs in a residence, the portable fire extinguisher shall be kept in the same room as where the cultivation occurs.

15. The following regulations apply to the disposal of cannabis waste on residential property:

(a) Cannabis and cannabis infused products must be disposed in a secure waste receptacle located on the residential property.

(b) Cannabis plants and products must be rendered unusable and unrecognizable by grinding and incorporating cannabis waste with any non-consumable solid waste with a resulting mixture of at least 50 percent non-cannabis waste.

Section 5. Cannabis Delivery Standards

The following standards apply to cannabis delivery services permitted under this Ordinance:

1. State-licensed and locally-permitted retail cannabis delivery businesses located outside the jurisdictional limits of the city may personally deliver medicinal cannabis and medicinal cannabis products to qualified patients and/or primary caregivers within the city, provided that such deliveries are in strict compliance with State laws

and the businesses have obtained a city business license and paid the requisite city business license tax.

2. Vehicles used in the delivery process must be unmarked without any designation or logo that identifies the vehicle as a cannabis delivery vehicle.
3. Cannabis and cannabis products delivered within the city may not occur between 11:00 p.m. and 7:00 a.m.

Section 6. Definitions.

For purposes of this Ordinance, the following definitions shall apply.

A. "Cannabis" means all parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the 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. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" includes cannabis that is used for medicinal, non-medicinal, or other purposes.

"Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Cannabis" also does not include industrial hemp, as defined in California Health and Safety Code section 11018.5, which said definition provides:

“Industrial hemp” means a fiber or oilseed crop, or both, that is limited to types of the plant *Cannabis sativa L.* having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; 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 produced therefrom.

B. "Cannabis accessories" means any equipment, products or materials of any kind which is intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body.

C. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated

cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

D. "Commercial cannabis activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis product for medicinal, non-medicinal, or any other purpose and includes (i) the production of hashish oil and the distillation or extraction of cannabidiol ("CBD") from industrial hemp having more than three-tenths of one percent THC contained in the dried flowering tops and (ii) the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law that regulates the licensing of cannabis businesses.

E. "Concentrated cannabis" means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate.

F. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

G. "Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform.

H. "Distribution" means the procurement, sale, and transport of cannabis and cannabis products between entities licensed under Division 10 of the California Business and Professions Code, as they may be amended from time to time.

I. "Fully enclosed and secure structure" means a space within a building that complies with the applicable provisions of the California Building Standards Code as adopted and amended by Chapter 14.10 (Construction Codes) of the Sonoma Municipal Code, and has a complete roof enclosure supported by connecting walls extending from the ground to the 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 roof must be constructed of solid materials that cannot be easily broken through, and must be constructed with non-transparent material. Plastic sheeting, canvas, vinyl, or similar products or materials, regardless of gauge, are not considered solid materials. A fully enclosed and secure structure must be an accessory structure to a private residence located upon the parcel on which that private residence is situated.

J. "Indoors" means inside a fully enclosed and secure structure or within a private residence.

K. "Luminaire" means a complete lighting unit consisting of lamp(s) and the parts that distribute the light, position and protect the lamp(s), and connect the lamp(s) to the power supply.

L. "Manufacture" means to compound, blend, extract, infuse, dilute or otherwise make or prepare a cannabis product.

M. "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as the same may be amended from time to time.

N. "Medicinal cannabis" means cannabis used for medical purposes as described in Cal. Health & Safety Code section 11362.5.

O. "Outdoors" means any location within the City that is not within a fully enclosed and secure structure or within a private residence.

P. "Primary caregiver" means the individual described in Health & Safety Code section 11362.7(d).

Q. "Private residence" means a house, an apartment unit, condominium, or other similar dwelling that is lawfully used as a residence.

R. "Qualified patient" means an individual who is entitled to the protections of Health & Safety Code section 11362.5.

S. "Solid fence" means a fence constructed of substantial material, such as wood or metal, that prevents viewing the contents from one side to the other side of the fence.

This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Sonoma as set forth in the recitals, incorporated by Section 1 of this ordinance.

Section 7. Except as Provided in this Ordinance, Establishment, Maintenance or Operation of Medicinal Cannabis Cultivation and/or Commercial Cannabis Activities Declared Public Nuisance.

It is unlawful and a public nuisance for any person owning, leasing, occupying, or having possession of any parcel or premises within any zoning district in the city to cause or allow such parcel or premises to be used for commercial cannabis activities and/or the cultivation of medicinal cannabis except as provided in this ordinance. Violations of this ordinance may be enforced under any applicable laws or ordinances and by any available remedies, including but not limited to injunctions, or administrative penalties under the Sonoma Municipal Code.

Section 8. Rescind Resolution No. 47-2015.

To the extent in conflict with this ordinance, City Council Resolution No. 47-2015 is deemed rescinded during the effective life of this Ordinance.

Section 9. Environmental Findings

This ordinance has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and the environmental regulations of the city. Planning Department staff has determined that the adoption and implementation of the ordinance is eligible for Class 4 and 5 categorical exemptions for minor alterations in the condition of land and/or vegetation and minor changes in land use limitations and will not have a significant environmental impact. This is so because cultivation is proscribed except indoors: in existing residential structures or fully enclosed and secure structures, the latter of which can be built in backyards but because only up to 6 plants can be cultivated therein, it is not anticipated such structures will be large or require significant changes to the landscape or other improvements. The ordinance is exempt from the environmental review requirements of CEQA pursuant to Sections 15304 and 15305 of Title 14 of the California Code of Regulations. Planning Department Staff has also determined that the ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption and implementation of the ordinance to prohibit commercial cannabis activity except for the delivery of medicinal cannabis to qualified patients and/or their primary caregivers will have a significant effect on the environment because there is reliable evidence that there already exist cannabis delivery businesses operating within the city and that primary caregivers are providing medicinal cannabis to qualified patients within the city. Planning Department Staff has also determined that this ordinance is exempt under CEQA as a Class 1 exemption (CEQA Guidelines sec. 15301) as a minor alteration of existing residential structures, for this ordinance permits indoors cultivation of up to 6 cannabis plants under certain conditions, which said conditions may result in fencing and other minor improvements to be built on or in private residences. But the erection of such improvements is already permitted under existing laws and city regulations or involves alterations and improvements such as interior electrical conveyances or similar interior or exterior facilities and features that entail negligible or no expansion of an existing use. Additionally, permitting up to 6 cannabis plants to be grown on a private residence is not significantly different from the landscaping and indoor plant maintenance that occupants of private residences are already permitted to perform on residential properties and, as such, does not constitute an expansion of use within the contemplation of the Class 1 CEQA exemption and is otherwise exempt under CEQA Guidelines section 15304. The City Council has reviewed Planning Department Staff's determination of exemption, and based on its own independent judgment, concurs with Staff's determination of exemption. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Sonoma in accordance with CEQA Guidelines.

Section 10. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Sonoma hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 11. Effective Date and Duration.

This ordinance shall become effective immediately if adopted by at least four-fifths vote of the City Council, and shall remain in effect until the date that is ten months and fifteen days following the last day that Ordinance No. 09-2017 is in effect, namely, until midnight on November 5, 2018. Ordinance No. 09-2017’s prohibition of uses and other terms and provisions set forth in sections 2 through 8 thereof shall be extended to the date that is ten months and fifteen days following the last day that Ordinance No. 09-2017 is in effect, namely, until midnight on November 5, 2018.

Section 12. Posting. The City Clerk shall cause this ordinance to be published and/or posted within fifteen days after its adoption.

This ordinance was adopted on the 4th day of December, 2017, by the following vote:

AYES: City Council Members: _____

NOES: City Council Members: _____

ABSENT: City Council Members: _____

Rachel Hundley, Mayor

APPROVED AS TO FORM:

ATTEST:

Jeffrey A. Walter, City Attorney

Rebekah Barr, City Clerk

REPORT ON THE REVIEW AND DEVELOPMENT OF REGULATIONS PERTAINING TO CANNABIS

Pursuant to Government Code Section 65858(d)

November 24, 2017

Background

The City Council has requested a review and discussion of the City's regulations pertaining to cannabis and activities related to the cultivation, processing, and sale of cannabis, especially in light of recent changes in State law. This review encompasses potential changes in the Development Code, including both permitting options for certain types of activities related to cannabis and as well as potential operational requirements and related matters. To assure that any activities and uses related to cannabis undertaken while these issues and potential regulations are studied comply with any changes in the regulations that the City Council may choose to implement, the Council, by a 4/5ths vote, on November 7, 2016, adopted an urgency ordinance (Ordinance No. 10-2016) imposing a temporary moratorium on the indoor cultivation of nonmedicinal cannabis (except under specified conditions). At the same time, the City Council, by a 4/5ths vote, adopted an urgency ordinance (Ordinance No. 09-2106) imposing a temporary moratorium on the outdoor cultivation of nonmedicinal cannabis. Proposition 64 passed, thus triggering the efficacy of the two Ordinances described above. On December 12, 2016, the City Council adopted Ordinance Nos. 12-2016 and 13-2016 extending the two moratoria for 10 months and 15 days, up through midnight on November 6, 2017. As required by section 65858(d) of the California Government Code, this report summarizes the measures taken to alleviate the conditions that led to the adoption of the interim ordinance.

Summary of Measures Taken to Date

November 7, 2016 to Date. City staff has researched the recently adopted State laws concerning cannabis, the licensing types and regulations under development by State agencies, and the measures undertaken by other communities with respect to the regulation of cannabis.

August 2017. The City hired Muni Services, a consulting firm to local governments with expertise in cannabis audit and consultative services to several localities in California, to assist the City in developing a comprehensive cannabis policy.

September 11, 2017. The City Council held a public workshop on cannabis in order to:

1. Provide an overview on state regulations affecting cannabis (both recreational and medicinal) and options/issues/opportunities facing cities.
2. Inform the Council and the community about the status of regulations in the City of Sonoma.
3. Receive an update about the status of cannabis in Sonoma County and Sonoma Valley specifically.
4. Learn about status of other agencies in the region with respect to cannabis regulation.
5. Hear from law enforcement regarding cannabis.
6. Understand policy options facing City of Sonoma.

A panel of speakers presented at the workshop, including subject matter experts from the City Attorney's Office, Sonoma Police, City and Sonoma County Planning.

November 6, 2017. The City Council adopted the following:

1. An interim ordinance extending for one year a moratorium on the outdoor cultivation of nonmedicinal cannabis and make findings that said adoption is exempt under CEQA pursuant to CEQA Guidelines Section 15061, among other provisions.
2. An interim ordinance extending for one year a moratorium on the indoor cultivation of nonmedicinal cannabis, except under certain circumstances, and make findings that the adoption of said ordinance is exempt under CEQA pursuant to CEQA Guidelines Section 15061, among other provisions.
3. An interim urgency ordinance imposing a moratorium on the outdoor and indoor cultivation of medicinal cannabis, except under certain circumstances, and all commercial cannabis activities, making findings that the adoption of said ordinance is exempt under CEQA pursuant to CEQA Guidelines Section 15061, among other provisions.

Next Steps

At its meeting of December 4, 2017, the City Council will consider and take action on the following: 1) discussion and direction regarding the regulation of personal cannabis cultivation; 2) discussion and direction on options for the regulation of commercial cannabis activities; and 3) a proposed extension of an Urgency Ordinance establishing temporary moratorium on the cultivation of medicinal cannabis and commercial cannabis activities.