# TOWN OF FAIRFAX
## STAFF REPORT
## December 2, 2015

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager GT

**SUBJECT:** Discussion/consideration of local regulations regarding the cultivation of medical marijuana

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**RECOMMENDATION**

Discuss/consider local regulations regarding the cultivation of medical marijuana and provide the Planning Commission with direction as appropriate.

**DISCUSSION**

In November, the Council discussed the impacts of three new bills – AB 243, AB 266, and SB 643 on local municipalities. With regard to AB 243, which requires the State to develop a Medical Cannabis Cultivation Program, staff reported that AB 243 sets a deadline of March 1 for a town to adopt regulations regarding the cultivation of medical marijuana or the State will become the sole licensing authority. The Council indicated it would like to maintain local control and agreed that the Town should take a two-pronged approach for adopting an ordinance. Specifically, staff would undertake the regular process for approving an ordinance under the Town's land use authority, meaning the Planning Commission would review the ordinance in December and the ordinance would be introduced for Council consideration at its January 2016 meeting. However, if the State does not amend its March 1st deadline, the Town may need to adopt an urgency ordinance in addition to the adoption of the regular ordinance at its February meeting.

At the November meeting, staff also indicated the Council would have an opportunity at this evening's meeting to discuss the matter in greater detail so that the Planning Commission can receive more guidance on the subject. Attached are materials to assist in the discussion:

- A Table prepared by the Town Attorney identifying the position of local agencies on the matter of cultivation (adopted prior to passage of AB243)
- AB 243
- Healdsburg ordinance
- Section of Sebastopol ordinance addressing cultivation for personal medical use

To facilitate the discussion, staff recommends the Council focus on the following key policy issues:

1. Allow for personal cultivation
   The Council's preliminary discussions would seem to support some level of personal cultivation for qualified patients.

   Considerations:
   - Establish limit based on number of plants for both indoor and outdoor and/or outdoor planting square footage.
   - From an enforcement perspective, an allowed number of plants provides greater certainty than an allowed square footage.
   - Exemptions and licensing/permit requirements for qualified patients whose personal needs exceed the limits for personal cultivation.

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- Environmental and neighborhood impacts (water, smell, energy).
- Public Safety (e.g., screening, location on the property).

2. Allow or prohibit commercial cultivation
   The Council did not specifically discuss commercial cultivation, although the discussion seemed to suggest only allowing personal cultivation and then only for qualified patients residing on the parcel where the plants are located.

   Considerations:
   - If the Town wishes to permit and maintain local control over commercial cultivation, the Town would need to create some type of regulations and licensing on the books for commercial cultivation or else ban commercial cultivation until such time as the Town could further discuss potential regulations.
   - Land use designations where commercial cultivation would be allowed.
   - How large? Indoor and/or outdoor?
   - Defer to state regulations?
   - Public Safety.
   - Environmental impacts.

## RECOMMENDATION

Since the Town is moving at an accelerated pace, staff recommends a more measured approach to the issue. Remember the intent of the ordinance is to retain local control by getting something on the books that indicates the Town is regulating cultivation in some fashion, even if it's a ban. We can always modify the regulations later when there is more time to discuss policy issues and any unforeseen impacts. Also, please remember that the topic is cultivation and not a discussion on the Town's existing marijuana dispensary ordinance.

Staff recommends that the Town not allow commercial cultivation due to concerns regarding public safety, environment, administration, and enforcement.

With regard to personal cultivation, we would suggest using the Healdsburg ordinance as a template as it is restricted to personal use and sets limits on indoor and outdoor plants. It does not allow for commercial uses. We are seeking general direction in the preparation of an ordinance for Planning Commission (PC) review. For some issues, such as location of outdoor plants on the property and screening requirements, the Council can merely indicate it has no specific preference but would like staff and PC to address them in the ordinance.

It should be noted that the ordinance language would need to be structured as a ban with exemptions for personal cultivation (both indoor and outdoor). There could be additional exemptions and license requirement for the larger type of cultivation that the Town has and/or wants to continue to allow.

## FISCAL IMPACT

None at this time.

## ATTACHMENTS

A. Table prepared by the Town Attorney identifying the position of local agencies on the matter of cultivation.
B. Assembly Bill 243
C. Healdsburg ordinance
D. Section of Sebastopol ordinance addressing cultivation for personal medical use

| **Local agencies that explicitly *prohibit* medical marijuana dispensaries but do not address explicitly regulate cultivation*** | | | |
|---|---|---|---|
| County | City | Municipal Code cite | Notes |
| Marin | Corte Madera | §§ 18.02.120 and 18.04.500 | |
| | Larkspur | § 18.90 | |
| | Mill Valley | § 20.60.400 | |
| | San Rafael | § 14.16.245 | |
| | Ross | § 18.40.210 | |
| | Sausalito | § 10.44.320 | |
| | Novato | §§ 19.10.040 and 19.12.030 | |
| Sonoma | Petaluma | § 10.15.030 | The Petaluma City Council heard the first reading of an ordinance to allow limited cultivation for personal use on November 16, 2015; second reading is set for their December meeting |
| | Rohnert Park | § 17.06.130 | |
| **Local agencies that *permit* medical marijuana dispensaries but do not expressly regulate cultivation*** | | | |
| Sonoma | County of Sonoma | Chapter 26-88 | Permits dispensaries within unincorporated county areas. |
| | Santa Rosa | Chapter 10-40 | Permits a limited number of dispensaries within the city. According to a November 23, 2015, article in the Press Democrat, "Santa Rosa City Attorney Caroline Fowler said she intends to start discussing marijuana issues, including commercial cultivation and manufacturing, at the council's Dec. 1 meeting." |
| Marin | County of Marin | New chapter 6.85 (not yet passed) | The Board of Supervisors heard the first reading of an ordinance to add Chapter 6.85 to the Marin County Code on November 10, 2015; second merit reading is scheduled |

ATTACHMENT A

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| | | | for December 8, 2015. If it passes, the new ordinance will allow for up to four dispensaries within unincorporated areas of Marin County. The November 10 staff report acknowledges that the ordinance does not address cultivation, but states that "[s]ince the MMRSA allows local jurisdictions to regulate and establish more restrictive standards with respect to medical cannabis, staff will continue to work with the Board's subcommittee to monitor the state's implementation of the MMRSA and consider potential future amendments to the County ordinance." |
| **Local agencies that explicitly *permit* cultivation of medical marijuana** | | | |
| Sonoma | Healdsburg | § 20.20.100 | Caps outdoor cultivation at 3 plants and indoor at six. Includes various standards for cultivation. |
| | Sebastopol | Chapter 17.140 | Allows up to one medicinal cannabis dispensary and up to two non-retail patient collectives (§ 17.140.080) and allows cultivation for personal use (17.140.190) |
| **Local agencies with no apparent regulation of medical marijuana (may be de facto bans by virtue of failing to expressly permit)** | | | |
| Marin | San Anselmo | | |
| *Note: all code information is based on current posted municipal codes and does not include any recent legislation that may have been passed but not yet codified.* | | | |
| * *We are unaware of whether any of these cities take the position that their general municipal code language pertaining to agricultural or horticultural cultivation pertains to medical marijuana cultivation.* | | | |

**Assembly Bill No. 243**

CHAPTER 688

An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation therefor.

[Approved by Governor October 9, 2015. Filed with Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 243, Wood. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would require the Department of Food and Agriculture, the Department of Pesticide Regulation, the State Department of Public Health, the Department of Fish and Wildlife, and the State Water Resources Control Board to promulgate regulations or standards relating to medical marijuana and its cultivation, as specified. The bill would also require various state agencies to take specified actions to mitigate the impact that marijuana cultivation has on the environment. By requiring cities, counties, and their local law enforcement agencies to coordinate with state agencies to enforce laws addressing the environmental impacts of medical marijuana cultivation, and by including medical marijuana within the Sherman Act, the bill would impose a state-mandated local program.

This bill would require a state licensing authority to charge each licensee under the act a licensure and renewal fee, as applicable, and would further require the deposit of those collected fees into an account specific to that licensing authority in the Medical Marijuana Regulation and Safety Act Fund, which this bill would establish. This bill would impose certain fines



ATTACHMENT B

and civil penalties for specified violations of the Medical Marijuana Regulation and Safety Act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account, which this bill would establish within the fund. Moneys in the fund and each account of the fund would be available upon appropriation of the Legislature.

This bill would authorize the Director of Finance to provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund of up to $10,000,000, and would appropriate $10,000,000 from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the bureau.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would become operative only if AB 266 and SB 643 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 2. Article 13 (commencing with Section 19350) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

## Article 13. Funding

19350. Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(a) Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this chapter. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, including, but not limited to, the track and trace program required pursuant to Section 19335, but shall not exceed the reasonable regulatory costs to the licensing authority.

(b) The total fees assessed pursuant to this chapter shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this chapter.

(c) All license fees shall be set on a scaled basis by the licensing authority, dependent on the size of the business.

(d) The licensing authority shall deposit all fees collected in a fee account specific to that licensing authority, to be established in the Medical Marijuana Regulation and Safety Act Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation of the Legislature, by the designated licensing authority for the administration of this chapter.

19351. (a) The Medical Marijuana Regulation and Safety Act Fund is hereby established within the State Treasury. Moneys in the fund shall be available upon appropriation by the Legislature. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the moneys in the fund.

(b) (1) Funds for the establishment and support of the regulatory activities pursuant to this chapter shall be advanced as a General Fund or special fund loan, and shall be repaid by the initial proceeds from fees collected pursuant to this chapter or any rule or regulation adopted pursuant to this chapter, by January 1, 2022. Should the initial proceeds from fees not be sufficient to repay the loan, moneys from the Medical Cannabis Fines and Penalties Account shall be made available to the bureau, by appropriation of the Legislature, to repay the loan.

(2) Funds advanced pursuant to this subdivision shall be appropriated to the bureau, which shall distribute the moneys to the appropriate licensing authorities, as necessary to implement the provisions of this chapter.

(3) The Director of Finance may provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund that does not exceed ten million dollars ($10,000,000).

(c) Except as otherwise provided, all moneys collected pursuant to this chapter as a result of fines or penalties imposed under this chapter shall be deposited directly into the Medical Marijuana Fines and Penalties Account, which is hereby established within the fund, and shall be available, upon appropriation by the Legislature to the bureau, for the purposes of funding the enforcement grant program pursuant to subdivision (d).

(d) (1) The bureau shall establish a grant program to allocate moneys from the Medical Cannabis Fines and Penalties Account to state and local entities for the following purposes:

(A) To assist with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to cannabis activities.

(B) For allocation to state and local agencies and law enforcement to remedy the environmental impacts of cannabis cultivation.

(2) The costs of the grant program under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the Medical Cannabis Fines and Penalties Account.

(3) The grant program established by this subdivision shall only be implemented after the loan specified in this section is repaid.

19352. The sum of ten million dollars ($10,000,000) is hereby appropriated from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the Bureau of Medical Marijuana Regulation. Funds appropriated pursuant to this section shall not include moneys received from fines or penalties.

SEC. 3. Article 17 (commencing with Section 19360) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 17. Penalties and Violations

19360. (a) A person engaging in cannabis activity without a license and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the department, state or local authority, or court may order the destruction of medical cannabis associated with that violation. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section shall be deposited into the Marijuana Production and Environment Mitigation Fund established pursuant to Section 31013 of the Revenue and Taxation Code.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person or entity engaging in cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

SEC. 4. Section 12029 is added to the Fish and Game Code, to read:

12029. (a) The Legislature finds and declares all of the following:

(1) The environmental impacts associated with marijuana cultivation have increased, and unlawful water diversions for marijuana irrigation have a detrimental effect on fish and wildlife and their habitat, which are held in trust by the state for the benefit of the people of the state.

(2) The remediation of existing marijuana cultivation sites is often complex and the permitting of these sites requires greater department staff time and personnel expenditures. The potential for marijuana cultivation sites to significantly impact the state's fish and wildlife resources requires immediate action on the part of the department's lake and streambed alteration permitting staff.

(b) In order to address unlawful water diversions and other violations of the Fish and Game Code associated with marijuana cultivation, the department shall establish the watershed enforcement program to facilitate the investigation, enforcement, and prosecution of these offenses.

(c) The department, in coordination with the State Water Resources Control Board, shall establish a permanent multiagency task force to address the environmental impacts of marijuana cultivation. The multiagency task force, to the extent feasible and subject to available Resources, shall expand its enforcement efforts on a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on fish and wildlife and their habitats throughout the state.

(d) In order to facilitate the remediation and permitting of marijuana cultivation sites, the department shall adopt regulations to enhance the fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.

SEC. 5. Section 11362.769 is added to the Health and Safety Code, to read:

11362.769. Indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical marijuana cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

SEC. 6. Section 11362.777 is added to the Health and Safety Code, to read:

11362.777. (a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary, except as specified in subdivision (c), shall administer this section as it pertains to the cultivation of medical marijuana. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.

(b) (1) A person or entity shall not cultivate medical marijuana without first obtaining both of the following:

(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.

(2) A person or entity shall not submit an application for a state license issued by the department pursuant to this section unless that person or entity has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(3) A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

(c) (1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical marijuana pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability prior to issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical marijuana cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical marijuana prior to obtaining both a permit from the city, county, or city and county and a state medical marijuana cultivation license from the department.

(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.

(4) If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

(d) (1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.

(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical marijuana. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.

(e) (1) The department, in consultation with, but not limited to, the Bureau of Medical Marijuana Regulation, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for medical marijuana. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure that:

(A) Individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(B) Cultivation will not negatively impact springs, riparian wetlands, and aquatic habitats.

(2) The department shall establish a program for the identification of permitted medical marijuana plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant.

(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.

(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.

(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical marijuana plant.

(D) The department may promulgate regulations to implement this section.

(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.

(f) (1) A city, county, or city and county that issues or denies licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(2) Unique identifiers and associated identifying information administered by a city or county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.

(g) This section does not apply to a qualified patient cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 100 square feet and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. This section does not apply to a primary caregiver cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.

SEC. 7. Section 13276 is added to the Water Code, to read:

13276. (a) The multiagency task force, the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation, assigned to respond to the damages caused by marijuana cultivation on public and private lands in California, shall continue its enforcement efforts on a permanent basis and expand them to a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on water quality and on fish and wildlife throughout the state.

(b) Each regional board shall, and the State Water Resources Control Board may, address discharges of waste resulting from medical marijuana cultivation and associated activities, including by adopting a general permit, establishing waste discharge requirements, or taking action pursuant to Section 13269. In addressing these discharges, each regional board shall include conditions to address items that include, but are not limited to, all of the following:

(1) Site development and maintenance, erosion control, and drainage features.

(2) Stream crossing installation and maintenance.

(3) Riparian and wetland protection and management.

(4) Soil disposal.
(5) Water storage and use.
(6) Irrigation runoff.
(7) Fertilizers and soil.
(8) Pesticides and herbicides.
(9) Petroleum products and other chemicals.
(10) Cultivation-related waste.
(11) Refuse and human waste.
(12) Cleanup, restoration, and mitigation.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 10. This measure shall become operative only if both Assembly Bill 266 and Senate Bill 643 of the 2015–16 Regular Session are enacted and become operative.

O

## 20.20.100 Marijuana cultivation



A. Definitions. As used herein, the following definitions shall apply:

ATTACHMENT C

*City.* The City of Healdsburg.

*Cultivation.* The planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

*Fully enclosed and secure structure.* A space within a dwelling unit that complies with the California Building Code, as adopted in the City ("CBC"); or, if exempt from the permit requirements of the CBC, an accessory structure, on a lot or site containing a dwelling unit, having a complete roof and 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. In order to qualify as a fully enclosed and secure structure, the walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two-inch by four-inch or thicker studs overlaid with three-eighths inch or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products, are not considered solid materials.

*Indoors.* Within a fully enclosed and secure structure.

*Outdoor.* Any location exposed to the open air not within an enclosed structure or building.

*Primary caregiver.* A "primary caregiver" as defined in Health and Safety Code Section 11362.7, as amended.

*Qualified patient.* A "qualified patient" or a "person with an identification card" as defined in Health and Safety Code Section11362.7, as amended.

B. Cultivation of Marijuana.

1. Outdoor Cultivation. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any lot or site within any zoning district in the City of Healdsburg to cause or allow such lot or site to be used for the outdoor cultivation of more than three marijuana plants.

2. Indoor Cultivation. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any dwelling unit within any zoning district in the City of Healdsburg to cause or allow for the indoor cultivation of more than six marijuana plants. Indoor cultivation may only occur within a fully enclosed and secure structure. Attached and detached garages, designed and intended primarily for the use of vehicle parking are not considered dwelling units and may not be used for the cultivation of marijuana.

3. Restriction on Location of Cultivation. No marijuana cultivation, whether indoor or outdoor, is permitted within 300 feet of any hospital, school, church, park or playground, child care center, recreation center or youth center. The distance between any marijuana cultivation and any hospital, school, church, park or playground, child care center, recreation center or youth center shall be measured in a straight line, without regard to intervening structures, from (a) with regard to outdoor cultivation, the closest property line of the lot or site on which the outdoor cultivation is occurring and

(b) with regard to indoor cultivation, the closest exterior wall of the fully enclosed and secure structure in which the indoor cultivation is occurring, to the closest property line of the lot or site containing the hospital, school, church, park or playground, child care center, recreation center or youth center.

C. Standards for Indoor and Outdoor Cultivation of Marijuana.

1. The qualified patient or primary caregiver shall reside in the dwelling unit on the lot or site upon which marijuana is being cultivated and such dwelling unit must be the qualified patient or primary caregiver's primary place of residence.

2. If the cultivation occurs in a dwelling unit, the dwelling unit shall retain at all times legal and functioning cooking, sleeping and sanitation facilities with proper egress.

3. Marijuana cultivation is permitted only on a lot or site with a dwelling unit.

4. Marijuana cultivation is prohibited as a home occupation, and retail operations related to the cultivation of marijuana are also prohibited.

5. Outdoor marijuana plants shall be located a minimum of five feet from property lines.

6. Outdoor marijuana plants shall be located only in the rear and side yards of a lot or site.

7. Outdoor marijuana plants are not permitted to be located in front yards of a lot or site.

8. Outdoor marijuana plants are limited to a maximum height of six feet above grade.

9. Indoor grow lights shall not exceed 1,200 watts and comply with the California Building, Electrical, Plumbing and Fire Codes as adopted by the City. Gas products (CO2, butane, propane, natural gas, etc.) or generators may not be used indoors.

10. The residence or fully enclosed and secure structure used for the cultivation of marijuana must install a filtered ventilation system that will prevent marijuana plant odors from exiting the interior of the structure and that shall comply with the California Mechanical Code Section 402.3, Mechanical Ventilation, as amended. The filtered ventilation system must be approved by the building official and installed prior to commencing cultivation.

11. Public Nuisance Prohibited. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any lot, site, dwelling unit, and/or fully enclosed and secure structure within the City to create a public nuisance in the course of cultivating marijuana plants or any part thereof in any location, indoor or outdoor. A public nuisance may be deemed to exist, if such activity produces: (a) odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public, (b) repeated responses to the parcel from law enforcement officers, (c) repeated disruption to the free passage of persons or vehicles in the neighborhood, (d) excessive noise which is disturbing to people of normal sensitivity on adjacent or nearby property or areas open to the public, or (e) any other impacts on the neighborhood which are disruptive of normal activity in the area.

D. Enforcement.

1. Public Nuisance. The violation of this section is hereby declared to be a public nuisance and may

be enforced pursuant to the provisions of Chapter 1.12 HMC.

2. Seizure and Destruction of Marijuana. Except as otherwise expressly stated in this section, all marijuana seized by the City police in the enforcement of this article shall be seized, retained and destroyed in the same manner and subject to the same procedures as are provided in California Health and Safety Code Sections 11472 through 11479, for marijuana possessed in violation of Division 10 of the Health and Safety Code. The requirements in Health and Safety Code Section 11479(b), prescribing the conditions that must be satisfied before seized marijuana may be destroyed without a court order, as applied by this section, are revised as follows:

(b) Photographs have been taken which reasonably depict the total number of mature and immature plants to be destroyed and the location where they were growing immediately prior to their seizure.

3. Right of Entry. The code enforcement officer, building official, planning director, chief of police, fire inspector, or a designee is authorized to enter upon and inspect private properties to ensure compliance with the provisions of this section. Reasonable advance notice of any such entry and inspection shall be provided and, before entry, consent shall be obtained in writing from the owner or other person in lawful possession of the property. If consent cannot for any reason be obtained, an inspection warrant shall be obtained from a court of law prior to any such entry and inspection. In those cases where consent is denied, the City may seek to recover the costs it incurs in obtaining a warrant from the property owner and/or person in lawful possession of the property.

4. Abatement. The City attorney, in the name of and on behalf of the City and/or the people of the City, may bring a civil action in a court of competent jurisdiction to enforce any provision of this section, or to restrain or abate any violation of the provisions of this section as a public nuisance pursuant to the procedures set forth in Chapter 1.12 HMC.

5. Violation. Cultivation of marijuana that does not comply with this section constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in Chapter 20.04 HMC.

6. Penalties Not Exclusive. The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the City from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

E. Liability. The provisions of this section shall not be construed to protect the property owner(s) of record for property associated with the cultivation of marijuana, or their lessees, tenants or participants in the cultivation of marijuana, from prosecution pursuant to any laws that prohibit the cultivation, sale and/or possession of marijuana. In particular, the possession or cultivation of marijuana remains illegal under any circumstances pursuant to the laws of the United States, and this section is not intended to protect the above described persons from arrest or prosecution pursuant to the laws of the United States. The property owner(s) of record for property associated with the cultivation of marijuana, or their lessees, tenants and other participants in the cultivation of marijuana, assumes any and all risk and all liability that may arise or result under state and federal criminal laws from the cultivation of marijuana.

F. Purpose. It is the purpose of this section: to require that the indoor cultivation of marijuana occur only in appropriately secured, enclosed, and ventilated structures so as not to be visible to the general public; to

provide for the health, safety and welfare of the public; to prevent odor created by marijuana plants from impacting adjacent properties; and to ensure that marijuana grown for medical purposes remains secure and does not find its way to nonpatients or illicit markets. Nothing in this section is intended to impair any defenses available to qualified patients or primary caregivers under the applicable state law. Nothing in this section is intended to authorize the cultivation, possession, or use of marijuana in violation of state or federal law. (Ord. 1137 § 2, 2014.)

cause or allow such premises to be used for the outdoor or indoor cultivation of Cannabis plants for medicinal purposes, or processing thereof as described herein or to process, cultivate or allow the cultivation of Cannabis plants for medicinal purposes in excess of the limitations imposed in these regulations.

(B) Nothing in this Section shall be construed as a limitation on the City's authority to abate any nuisance which may exist from the planting, growing, harvesting, drying, processing or storage of Cannabis plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.

(C) Cultivation or Processing Exceeding the Limits of these Regulations is Declared a Public Nuisance. Cannabis cultivation or processing exceeding the limitations of these regulations, either indoors or outdoors, regardless of whether the person growing or processing the Cannabis is a "qualified patient" or "primary caregiver" is a public nuisance.

CITY OF SEBASTOPOL

⇒ (D) Medical Cannabis for Personal Use. An individual qualified patient shall be allowed to cultivate and process medical Cannabis within his/her private residence. A primary caregiver shall cultivate or process medical Cannabis only at the residence of a qualified patient for whom he/she is the primary caregiver, or at the primary caregiver's residence. Medical Cannabis cultivation and processing for personal use shall be in conformance with the following standards:

(1) The medical Cannabis cultivation area shall not exceed 100 square feet per residence;

(2) Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be processed at the residence;

(3) Any Medical Cannabis cultivation lighting shall not exceed 1200 watts unless specifically approved by the Building Official;

(4) All electrical equipment used in the cultivation or processing of medical cannabis (e.g. lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation or processing of medical cannabis is prohibited;

(5) The use of gas products ($CO_2$, butane, etc.) for medical Cannabis cultivation or processing is prohibited;

(6) Medical Cannabis cultivation, processing and sale is hereby prohibited as a Home Occupation under Chapter 17.210. Per Section 17.08.030 C. Accessory Use Types, medical Cannabis cultivation, processing and sales shall not be considered an accessory use. No sale or dispensing of medical Cannabis for personal use is allowed;

(7) Cultivation or processing of medical Cannabis for personal use is limited to:

a. the interior of residential dwellings or to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed; or

b. exterior areas which are enclosed by a secure, opaque, solid fence or wall at least six feet in height. The fence or wall shall include a lockable gate or gates that are locked at all times when a qualified patient or caregiver is not in the immediate area. Said fence or wall shall not violate any other ordinance regarding height and location restrictions, and shall not be constructed or covered with plastic or cloth.

(8) Cannabis plants must be screened from exterior view. If located in a garage, the cultivation or processing use shall not result in a reduction of required off-street parking for the residence.

(9) From a public right of way, there shall be no exterior evidence, including but not limited to odor, view, or other indication of medical Cannabis cultivation or processing on the property;

ATTACHMENT D

(10) The qualified patient or primary caregiver shall reside in the residence where the medical Cannabis cultivation occurs;

(11) The qualified patient shall not participate in medical Cannabis cultivation in any other residential location within the City of Sebastopol except as may be permitted under Section E. below;

(12) If cultivation or processing is to be conducted by a primary caregiver, documentation of the legally-required relationship shall be maintained at the cultivation premises;

(13) A copy of documentation of qualified patient status consistent with Municipal Code Section 17.140.100 F. (1) through (2) shall be maintained on site;

(14) For the convenience of the qualified patient or primary caregiver, to promote building safety, to assist in the enforcement of this Chapter, and to avoid unnecessary confiscation and destruction of medical cannabis plants and unnecessary law enforcement investigations, the qualified patient or primary caretaker growing medical cannabis pursuant to this Chapter may notify the City of Sebastopol regarding the cultivation site. The names and addresses of persons providing such notice, or of cultivation sites permitted under these regulations shall not be considered a public record under the California Public Records Act;

(15) The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical Cannabis cultivation or processing;

(16) The medical Cannabis cultivation and processing area shall be in compliance with the current, adopted edition of the California Building Code as regards Mechanical Ventilation;

(17) The medical Cannabis cultivation and processing area shall not adversely affect the health or safety of the nearby residents in any manner, including but not limited to by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes; and

(18) The medical cannabis cultivation or processing shall not adversely affect the health or safety of the occupants of the residence or users of the accessory building in which it is cultivated or processed, or occupants or users of nearby properties in any manner, including but not limited to creation of mold or mildew;

E. Any proposed medical Cannabis cultivation by an individual qualified patient or primary caregiver that does not meet the cultivation square footage area or height standard, shall require approval of a Medical Cannabis Administrative Exception. Documentation, such as a physician's recommendation, information regarding space limitations, or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area, height or locational standard is not feasible. The Planning Director shall review the submitted information and act on the Exception application in accordance with this Chapter. The Director's action on the application shall be subject to appeal pursuant to Municipal Code Chapter 17.320. The names and addresses of persons making such application, or of cultivation sites permitted under these regulations shall not be considered a public record under the California Public Records Act. A Medical Cannabis Administrative Exception permit shall conform to the following standards:

(1) The approval shall be in compliance with Section D. (1) through (17) above, except as modified in the Exception approval;

(2) For an increase in cultivation area, the following provisions shall apply:

(a) The medical Cannabis cultivation area shall not exceed an additional 100 square feet, for a total of 200 square feet per residence;

(b) At a minimum, any interior medical Cannabis cultivation area shall be constructed with a 1-hour firewall assembly if required by the Building Official.

(c) For interior cultivation, the Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers and code-compliant electrical systems.

**17.140.190 Violations.**

(A) It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this chapter.

(B) A violation of this chapter shall be subject to the enforcement and penalties specified in Municipal Code Chapter 17.340.

**17.140.200 Remedies cumulative.**

All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

**17.140.210 Separate offense for each day.**

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

17.140.220 Hold harmless.

As a condition of approval of any permit for medical Cannabis cultivation, processing, or distribution, the permittee shall indemnify, defend and hold harmless the City of Sebastopol and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to permitted uses or operations, and in the case of dispensaries, for any claims brought by any of the permittee's clients or employees for problems, injuries, damages, or liabilities of any kind that may arise out of the permitted activities.

**17.140.230 Public nuisance.**

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared a public nuisance and may be summarily abated by the City.

**17.140.240 Criminal penalties.**

Any person who violates, causes, or permits another person to violate any provision of this chapter shall be subject to the penalties set forth in Municipal Code Chapter 17.340.

**17.140.250 Civil injunction.**

The violation of any provision of this chapter shall be and is declared to be contrary to the public interest and shall, at the discretion of City Manager, create a cause of action for injunctive relief.

**17.140.260 Administrative remedies.**

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this chapter may be subject to administrative remedies as set forth by the Sebastopol Municipal Code.

**17.140.270 Severability.**