

**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning and Building Services**

TO: Fairfax Planning Commission

DATE: December 17, 2015

FROM: Jim Moore, Director of Planning & Building Services
Garrett Toy, Town Manager

SUBJECT: Consideration of an Ordinance of the Town of Fairfax Adding A New Article III ('Medical Marijuana Cultivation') to Chapter 17.138 ('Regulations Applying In Multiple Districts') of Title 17 ('Zoning') of the Fairfax Town Code

BACKGROUND

On October 9, 2015, Governor Jerry Brown signed into law three new bills – AB 243, AB 266, and SB 643. This trio fundamentally changes the way in which medical marijuana will be regulated within the State of California. It also has consequences for cities and towns as they exercise their police powers and land use authority within their borders. As the bills were the result of midnight negotiations held prior to the end of the legislative term, attorneys across the state are now working to analyze how these bills will interact with local laws.

At a noticed public meeting held on November 4th, the Council discussed the impacts of the three new bills on the Town. The discussion focused primarily on AB 243, which requires the State to develop a Medical Cannabis Cultivation Program, because AB 243 sets a deadline of March 1, 2016, for a town to adopt regulations regarding the cultivation of medical marijuana or the State will become the sole licensing authority for most cultivation activities. The Council indicated it would like to maintain local control of cultivation issues and agreed that the Town should take a two-pronged approach for adopting an ordinance. Specifically, staff would undertake the regular process for approving a zoning ordinance under the Town's land use authority, meaning the Planning Commission would review the ordinance in December in order to make a recommendation to Council 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 in order to ensure that the Town has adopted regulations pertaining to cultivation by the March 1st deadline.

At its noticed public meeting on December 2nd, Council continued its discussion of policy parameters for a local ordinance governing medical marijuana cultivation. The express purpose of the discussion was to provide the Planning Commission with more

guidance on the proposed ordinance.

DISCUSSION

The intent of the ordinance is to retain local control of regulating medical marijuana cultivation. In light of the extremely short timeframe the Legislature has given cities and towns to codify local ordinances on this topic, it is anticipated that the Town may choose to re-visit and perhaps modify the regulations later when there is more time to discuss policy issues and any unforeseen impacts. Also, it is important to note that the topic is cultivation and not a discussion on the Town's existing marijuana dispensary ordinance.

The ordinance is structured as a ban on cultivation with exemptions for personal cultivation for qualified patients and caregivers. A ban with exemptions ensures the Town maintains local control of the regulation of medical marijuana cultivation. To assist the Council in its discussion, staff provided the Council with a copy of the Healdsburg ordinance and section of Sebastopol ordinance addressing cultivation for personal medical use.

At its December 2nd meeting, the Council provided the following key direction to the Planning Commission regarding medical marijuana cultivation. The proposed ordinance incorporates the Council's direction. It should be noted that for those provisions of the ordinance where the Council lacked specificity, staff prepared the language with the knowledge that the PC will discuss and may revise such sections. Unless otherwise noted, the comments below reflect the Council's direction to the PC.

- Prohibit commercial cultivation

The proposed ordinance bans commercial cultivation. The Council agreed with staff that the Town should not allow commercial cultivation due to concerns regarding public safety, the environment, administration, and enforcement.

- Allow for personal cultivation for qualified patients with exemptions and limitations
- The Council supports some level of personal medical marijuana cultivation for qualified patients and caregivers.

Outdoor- Allow outdoor cultivation by qualified patients and primary caregivers with limitations and exceptions.

- Establish a limitation based on the number of plants and not by square footage. (From an enforcement perspective, an allowed number of plants provides greater certainty than an allowed square footage.) The proposed ordinance does include limitations on the permissible area of cultivation in order to track new state law, but the number of plants proposed to be

permitted within the personal growth exemption is less than what could be accommodated in such spaces (i.e., 18 plants in a 100 sq. ft. area)

- The Council did not reach agreement on a specific number limit during its last discussion, but did indicate a “plant limit should be established per parcel.” Councilmembers discussed a concept of a limit of plants per resident with a maximum per parcel, but no consensus was reached. Staff has proposed a limit of 18 mature plants in the draft ordinance attached. The Council is seeking a recommendation from the PC regarding Section 17.138.330(A) of the proposed ordinance.
- The Council did not believe a minimal distance from other land uses was needed for cultivation (e.g., no cultivation within 300 ft. of a park).
- The Council indicated that only flowering or mature plants should be counted against the number of plants limit.
- Planting should be limited to side and rear yards, but the PC should expound on this as well as distance from property line, plant height, screening, and security requirements. RVFD has concerns regarding materials used for screening. The ordinance sets a plant height limitation (7 ft.), fencing requirement (e.g., property must have fence) and limitations on screening materials.
- The Council supported the “tagging” of plants to identify who the plants are being grown for. This envisioned the scenario where a “friend” would grow plants for a qualified patient who did not have adequate outdoor space for cultivation. Legal Counsel has indicated that the “friend” would be required to be the primary caregiver for the individual for whom they are cultivating the plants for. Otherwise, the “friend” would need a commercial license from the State. However, commercial cultivation is prohibited under the proposed Ordinance and, thus, growing for a “friend” is not allowed.
- The concept of registration was also discussed, but no consensus reached. If a database is maintained by the Town, it is unclear what the database would be used for and the information may be considered a public record.
- The proposed ordinance contains exceptions (see section 17.138.350) to the limits should it be demonstrated that additional planting is required for medical reasons. The Council thought the exception contained in the Sebastopol ordinance seemed appropriate and the draft ordinance is thus largely modeled on that language. The PC should opine on the exceptions and make recommendations to the Council.

- The ordinance does identify a process for staff to approve the exceptions with an appeal to the PC (see section 17.138.360). The objective is to have a fairly streamlined process that does not burden staff, but yet establishes clear standards.

Indoor- Ban indoor cultivation, except as an authorized exception to the general rule that cultivation must take place exclusively outdoors.

- The Council was concerned with safety and energy/water use associated with indoor cultivation. Ross Valley Fire is in the process of developing guidelines regarding cultivation, but indicated outdoor cultivation is much safer than indoor cultivation.
- The Council thought an exception allowing indoor cultivation should be allowed in certain limited circumstances, but the exact parameters of any such exception were not discussed in detail at the last Council meeting. The proposed ordinance does incorporate exceptions, but the PC will need to weigh in on the matter (see Section 17.138.350, 'Exceptions'). Some of the draft terms included in the attached ordinance include limiting any indoor cultivation to a maximum of three mature plants, and only allowing indoor cultivation in an occupied residence.

CEQA REVIEW

The adoption of the ordinance is exempt from the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and 14 California Code of Regulations §§ 15000, *et seq.*, collectively, "CEQA") because it is covered by the general rule set forth in 14 C.C.R. § 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Here, the adoption of an ordinance regulating the cultivation of medical marijuana has no potential to cause a significant effect on the environment and is thus not subject to CEQA. In addition, even if the ordinance was subject to CEQA, it would be categorically exempt from further review per 14 C.C.R. § 15307 and 15308, as it is an action taken by a regulatory agency for the protection of natural resources and the environment.

RECOMMENDATION

- 1) Conduct the public hearing
- 2) Adopt a resolution recommending that the Town Council adopt Ordinance No. 15-40

ATTACHMENTS

Attachment A - Resolution No. 15-40

Attachment B - Draft Ordinance

Attachment C- Healdsburg Ordinance (adopted prior to AB 243)

Attachment D- Selected section of Sebastopol Ordinance (adopted prior to AB 243)

RESOLUTION NO. 15-40

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX RECOMMENDING THE TOWN COUNCIL ADOPT ORDINANCE NO. ____ FAIRFAX ADDING A NEW ARTICLE III ('MEDICAL MARIJUANA CULTIVATION') TO CHAPTER 17.138 (‘REGULATIONS APPLYING IN MULTIPLE DISTRICTS’) OF TITLE 17 ('ZONING') OF THE FAIRFAX TOWN CODE

WHEREAS, on October 9, 2015, Governor Edmund “Jerry” Brown signed into law three new bills that collectively enact the Medical Marijuana Regulation and Safety Act (the “Act”) and fundamentally change the manner in which the cultivation, possession, use, and sale of marijuana is regulated by the State of California;

WHEREAS, the nothing in the Act precludes towns and cities from regulating the use of land within their respective municipal boundaries, and, in fact, the Act specifically provides that local governments wishing to maintain control over the cultivation of medical marijuana must enact local ordinances to that effect by March 2, 2016; and

WHEREAS, the Town Council of the Town of Fairfax has expressed its desire to maintain such local control, and has directed staff to prepare an ordinance regulating such land use for consideration by this body and by the Council; and

WHEREAS, staff has prepared such an ordinance, a true and correct copy of which is attached hereto as **Attachment 1** (the “proposed Ordinance”), which, if adopted, will amend the Town’s zoning ordinance, found at Title 17 of the Town Code; and

WHEREAS, in accordance with the State Planning and Zoning Law, the Planning Commission is tasked with considering whether any proposed amendment to the Town’s zoning ordinance would be in conformance with the terms of the Town’s general plan, and the Planning Commission has determined that the proposed Ordinance would, in fact, conform to the Town’s General Plan on the basis of the following:

- The proposed Ordinance incorporates development standards that are meant to protect against accidental fire that could be associated with certain cultivation tools or practices. These standards implement Fairfax General Plan Safety Element Objective S-3.1.1., which looks to “protect people and property from risks associated with urban and wildland fire;” and
- The proposed Ordinance prohibits large-scale commercial cultivation and only allows cultivation on residential properties already developed with a dwelling unit. These requirements implement Fairfax General Plan Land Use Element Goal LU-1, which seeks to “preserve scenic and natural resources” by prohibiting the conversion of undeveloped parcels into commercial cultivation sites; and
- The proposed Ordinance places limitations on the number of mature plants that can be grown at a given residence, thus protecting the residential nature of the Town’s neighborhoods, and helping to realize Fairfax General Plan Land Use Element Goal LU-7, which is to “preserve community and neighborhood character.”

WHEREAS, the adoption of the proposed ordinance is exempt from the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and 14 California Code of Regulations §§ 15000, *et seq.*, collectively, "CEQA") because it is covered by the general rule set forth in 14 C.C.R. § 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Here, the adoption of an ordinance regulating the cultivation of medical marijuana has no potential to cause a significant effect on the environment and is thus not subject to CEQA. In addition, even if the ordinance was subject to CEQA, it would be categorically exempt from further review per 14 C.C.R. §§ 15307 and 15308, as it is an action taken by a regulatory agency for the protection of natural resources and the environment.

WHEREAS, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance, hear the presentation of a staff report, and receive public comment on the matter.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the Town of Fairfax as follows:

SECTION 1. The recitals set forth above are adopted as further findings of the Planning Commission.

SECTION 2. The Planning Commission has reviewed the draft ordinance attached hereto as **Attachment 1** and finds that it is consistent with the Town General Plan, as set forth above.

SECTION 3. The Planning Commission hereby recommends that the Town Council adopt **Attachment 1** hereto in order to amend Title 17 of the Fairfax Town Code to adopt regulations for the cultivation of medical marijuana in Fairfax.

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the 17th day of December 2015 by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Philip Green, Chair

Attest:

Jim Moore, Secretary

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADDING
A NEW ARTICLE III ('MEDICAL MARIJUANA CULTIVATION') TO CHAPTER
17.138 ('REGULATIONS APPLYING IN MULTIPLE DISTRICTS') OF TITLE 17
('ZONING') OF THE FAIRFAX TOWN CODE**

WHEREAS, in 1996, California voters enacted "The Compassionate Use Act" through passage of Proposition 215 (codified at Health & Safety Code § 11362.5, *et seq.*) to allow eligible patients to cultivate, possess, and use medical marijuana without fear of prosecution under enumerated state laws; and

WHEREAS, seven years later, in 2003, the California Legislature adopted and the Governor signed into law "The Medical Marijuana Program" through Senate Bill 420 (codified at Health & Safety Code § 11362.7, *et seq.*), which established a system of collectives and cooperates for the purposes of cultivating medical marijuana for consumption by eligible patients; and

WHEREAS, neither the Compassionate Use Act nor the Medical Marijuana Program limit the police power of the Town of Fairfax to regulate the use of land within the Town's municipal boundaries; and

WHEREAS, in June 2011, the Town Council of the Town of Fairfax adopted Ordinance No. 759 ("Medical Marijuana Dispensaries," codified at Fairfax Town Code Chapter 5.52) to regulate the review process and development standards applicable to the operation of medical marijuana dispensaries in Town, but was silent on the cultivation of medical marijuana;

WHEREAS, in October 2015, Governor Edmund Brown signed into law a trio of legislation, Assembly Bill 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood), Assembly Bill 243 (Wood) and Senate Bill 643 (McGuire), that establish a new state regulatory framework regarding medical marijuana ("The Medical Marijuana Regulation and Safety Act"); and

WHEREAS, among other provisions, the Medical Marijuana Regulation and Safety Act establishes a system whereby individuals wishing to conduct commercial cannabis activity, which includes the cultivation of medical marijuana, must seek a license to permit such activity. These licenses will be issued by the State, as well as cities, provided cities elect to permit such cultivation within their municipal boundaries and establish their own licensing system through the adoption of a local ordinance to that effect. Cities retain their police power to prohibit or otherwise limit the cultivation of medical marijuana within their borders; and

WHEREAS, pursuant to new Section 11362.777(c)(4) of Health & Safety Code (which will become effective January 1, 2016):

"if a city 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;” and

WHEREAS, new Section 11362.777(g) of the Health & Safety Code also provides that:

“[S]ection [11362.777] 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;” and

WHEREAS, the Town Council of the Town of Fairfax desires to ban all cultivation of medical marijuana within the Town’s boundaries, except for very limited personal cultivation that falls within subdivision (g) of Health & Safety Code § 11362.777; and

WHEREAS, the Town Council of the Town of Fairfax adopts this Ordinance in order to effect land use regulations regulating the cultivation of marijuana, as contemplated by subdivision (c)(4) of Health & Safety Code § 11362.777.

NOW THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

SECTION 1. The Town Council hereby finds that all of the foregoing recitals are true and correct and are hereby incorporated and adopted as findings of the Town Council as if fully set forth herein.

SECTION 2. Title 17 (Zoning’), Chapter 17.138 (‘Regulations Applying in Multiple Districts’) shall be amended to add the following:

“ARTICLE III: MEDICAL MARIJUANA CULTIVATION

17.138.310 PURPOSE.

It is the purpose of this Article to regulate the cultivation of marijuana within the Town of Fairfax; 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 Article is intended to impair any defenses available to qualified patients or primary caregivers under the applicable state law or require such patients to receive a local license to cultivate. Nothing in this Article is intended to authorize the cultivation, possession, or use of marijuana in violation of state or federal law.

17.138.320 DEFINITIONS

As used in this Article, the following definitions shall apply:

AREA USED TO CULTIVATE MARIJUANA. The aggregate area of vegetative growth of live marijuana plants on the premises, pursuant to Health & Safety Code 11362.777(g).

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 Town (“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 Section 11362.7, as amended.

TOWN. The Town of Fairfax.

17.138.330 CULTIVATION OF MARIJUANA.

(A) Outdoor Cultivation. Except as may otherwise be provided by this Ordinance, 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 Town to cause or allow such lot or site to be used for the outdoor cultivation of more than eighteen (18) mature marijuana plants.

(B) Indoor Cultivation. Except as may otherwise be provided by this Ordinance, 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 Town to cause or allow for the indoor cultivation of marijuana plants. When authorized by this Ordinance, 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, as well as accessory structures, are not considered dwelling units and may not be used for the cultivation of marijuana.

(C) Only qualified patients or primary caregivers shall be permitted to cultivate marijuana under this Article.

(D) "Commercial cannabis activity," as defined by Business & Professions Code § 19300.5(k), is prohibited within the Town of Fairfax, as is any marijuana cultivation that would require a license or permit from the State of California per the Medical Marijuana Regulation and Safety Act of 2015.

17.138.340 STANDARDS FOR CULTIVATION OF MARIJUANA.

(A) Outdoor marijuana plants shall be located a minimum of five feet from property lines.

(B) Outdoor marijuana plants shall be located only in the rear and side yards of a lot or site, and are not permitted to be located in front yards of any lot or site.

(C) Outdoor marijuana plants shall be screened from public view as follows:

(1) No marijuana plants cultivated under this Article shall be visible from a public right-of-way.

(2) No marijuana plants cultivated under this Article shall exceed seven feet in height.

(3) Any lot or site upon which marijuana plants are cultivated under this Article shall have fencing five to six feet in height surrounding the lot or site or that portion of the lot or site upon which the plants are cultivated. In no event shall netting or plastic screening be used in conjunction with marijuana cultivation.

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

(E) All electrical equipment used in the cultivation or processing of medical marijuana (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 marijuana is prohibited.

(F) A qualified patient cultivating marijuana pursuant to this Article shall limit the area of cultivation of any premises used to 100 square feet or less; shall cultivate only for his or her personal medical use; and shall not sell, distribute, donate, or provide marijuana to any other person or entity, per Health & Safety Code § 11362.777(g).

(G) A primary caregiver cultivating medical marijuana pursuant to this Article shall limit the area of cultivation of any premises used to 500 square feet or less; cultivate medical 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 Health & Safety Code 11362.7), and shall not receive remuneration for such cultivation, except for compensation provided in full compliance with Health & Safety Code § 11362.765(c), per Health & Safety Code § 11362.777(g).

(H) Medical marijuana cultivation by a qualified patient or primary caregiver shall only occur on a parcel within a zoning district that permits residential uses and upon which an occupied dwelling exists. Either the qualified patient or primary caregiver shall reside in the residence where any medical marijuana cultivation occurs.

(I) Except as may otherwise be authorized in Section 17.138.350 below, an individual qualified patient shall only be allowed to cultivate medical marijuana at his or her private residence, and a primary caregiver shall cultivate medical marijuana only at the residence of a qualified patient for whom he or she is the primary caregiver, or at the primary caregiver's residence.

(1) 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.

(2) A copy of documentation of qualified patient status must be maintained at any location at which medical marijuana cultivation occurs.

(J) Any residence at which medical marijuana is cultivated under this Article shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana cultivation.

(K) All medical marijuana cultivation areas shall be in compliance with the current, adopted edition of the California Building Code as regards Mechanical Ventilation;

(L) No medical marijuana cultivation area shall be maintained or operated in such a way as to:

(1) 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; or

(2) adversely affect the health or safety of the occupants of the residence or users of the accessory building in which it is cultivated, or occupants or users of nearby properties in any manner, including but not limited to creation of mold or mildew.

17.138.350 EXCEPTIONS.

(A) Any qualified patient or primary caregiver may seek a Medical Marijuana Administrative Exception to any provision of this Article, except for sections 17.138.340(E) or (F), from which no exceptions shall be granted.

(B) Any request for an exception to this Article shall be submitted to the Town Manager, along with documentation, such as a physician's recommendation, information regarding space limitations, or verification of more than one qualified patient living in the residence, demonstrating why a standard required by this Article is not feasible.

(C) The Town Manager who may grant a Medical Marijuana Administrative Exception only if the following findings can be made:

(1) The requested exception is not to section 17.138.340(F) or (G);

(2) The individual requesting the exception can demonstrate a medical need for the exception, as evidenced by the written recommendation of a treating physician;

(3) The requested exception shall not constitute a public nuisance, as set forth in 17.138.360.

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

(5) 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.

(6) The indoor cultivation of no more than three (3) mature marijuana plants shall be authorized through a Medical Marijuana Administrative Exception.

(C) The Town Manager, or his or her designee, shall prepare a written approval or denial of any request for an exception within ten business days of its submission to the Town. Approval of the requested exception may be made subject to conditions designed to lessen the impact of the exception on neighboring uses and the community generally.

(D) Any exception granted under this section shall be personal to the party to whom such exception was granted and shall not run with the land or otherwise be transferable.

(E) Notwithstanding any other provision of the Town Code, any person aggrieved by the decision of the Town Manager, or his or her designee, with respect to an exception requested under this Section 17.138.350 may appeal said decision within ten days of the date of the decision to the Planning Commission. Upon review, the Planning Commission shall issue the requested exception if it meets the requirements of Subsections (A) and (B) above, and subject to any conditions imposed per Subsection (C) above.

17.138.360 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 Town 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.

17.138.370 ENFORCEMENT.

(A) 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 of the Fairfax Town Code.

(B) Seizure and Destruction of Marijuana. Except as otherwise expressly stated in this section, all marijuana seized by the Town 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.

(C) 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 Town 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.

(D) Abatement. The Town attorney, in the name of and on behalf of the Town and/or the people of the Town, 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 of the Fairfax Town Code.

(E) 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 17.004 of the Fairfax Town Code.

(F) 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 Town from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

17.138.380 LIABILITY.

The provisions of this Article 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.”

SECTION 3. The adoption of the ordinance is exempt from the California Environmental Quality Act (codified at California Public Resources Code §§ 21000, *et seq.*, and 14 California Code of Regulations §§ 15000, *et seq.*, collectively, “CEQA”) because it is covered by the general rule set forth in 14 C.C.R. § 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Here, the adoption of an ordinance regulating the cultivation of medical marijuana has no potential to cause a significant effect on the environment and is thus not subject to CEQA. In addition, even if the ordinance was subject to CEQA, it would be categorically exempt from further review per 14 C.C.R. §§ 15307 and 15308, as it is an action taken by a regulatory agency for the protection of natural resources and the environment.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections,

subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional, provided, however, that if any decision of a court of competent jurisdiction invalidates the increase of the water service charges set forth in this Ordinance, then the water service charges in effect on the date of adoption shall continue in existence.

SECTION 5. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women's Club Building, located at 46 Park.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the ____ day of _____, 20____, and duly adopted at the next regular meeting of the Town Council on the ____ day of _____, 2016, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Renee Goddard, Mayor

Attest:

Michele Gardner, Town Clerk

Date

20.20.100 Marijuana cultivation

SHARE

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

City. The City of Healdsburg.

ATTACHMENT C

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 Section 11362.7, 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

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(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.

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(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 (CO₂, 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;

- (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.