

**CITY COUNCIL OF THE CITY OF SONORA  
STAFF REPORT**

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**MEETING DATE:** NOVEMBER 20, 2017

**TO:** CITY COUNCIL

**FROM:** DOUGLAS L. WHITE, CITY ATTORNEY

**SUBJECT:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONORA TO AMEND CHAPTER 8.35, MEDICAL MARIJUANA DISPENSARIES, OF, AND TO ADD CHAPTER 8.36, CANNABIS BUSINESS REGULATION TO, THE SONORA MUNICIPAL CODE, RELATING TO CANNABIS

**RECOMMENDATION:**

Motion to approve first reading and introduction of Ordinance No. 842, reading by title only, waiving further reading, an Ordinance of the City Council of the City of Sonora to amend Chapter 8.35, Medical Marijuana Dispensaries, of, and to add Chapter 8.36, Cannabis Business Regulation to, the Sonora Municipal Code, relating to Cannabis.

**BACKGROUND:**

On October 9, 2015, Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643), collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA established the state’s first licensing system for commercial medicinal cannabis activity by qualified patients and their primary care givers. MCRSA also preserved local control of these businesses by requiring that a medicinal cannabis business obtain a local permit in order to operate.

In November of 2016, the voters of California approved Proposition 64 entitled the “Control, Regulate and Tax Adult Use of Marijuana” (“AUMA”). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence.

On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which combined MCRSA and AUMA to create a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA would provide the framework for cannabis businesses to begin legal operations within the state by January 1, 2018. MAUCRSA retains the provisions in AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in their jurisdiction.

On May 23, 2017, the City Council held a public meeting to discuss the regulatory framework of cannabis in California and ultimately moved to form a Marijuana Working Group (“Working Group”).<sup>1</sup> The goal of the Working Group is to make recommendations to the City Council concerning the local regulation of cannabis for the City Council’s consideration, as outlined below. Since then, the Working Group has met for several months and discussed numerous aspects of cannabis regulation for both personal and commercial purposes.

Staff has drafted an ordinance that would regulate cannabis (the “Cannabis Ordinance”) by accomplishing two tasks. First, the Cannabis Ordinance would regulate the personal use of cannabis pursuant to the Working Group’s recommendations. Second, the Cannabis Ordinance would place a ban all cannabis businesses in the City to provide the City Council sufficient time to consider the Working Group’s recommendations and take action if it so desires. The state will begin issuing commercial cannabis licenses on January 1, 2018. In order to avoid any confusion on the ability to operate cannabis businesses in the City after January 1<sup>st</sup>, a temporary ban will ensure the regulation of cannabis remains within local control of the City while adhering to the requirements of state law. This will also provide the City Council with the necessary flexibility to conduct public hearings and deliberate on the ultimate framework of the local regulation of cannabis businesses.

**DISCUSSION:**

**I. Non-commercial Regulations**

Pursuant to AUMA, a person 21 years of age or older may cultivate indoors, and possess the cannabis produced by, six cannabis plants.<sup>2</sup> Additionally, state law allows a qualified patient or primary caregiver to maintain no more than 12 immature cannabis plants per qualified patient.<sup>3</sup>

Below is a summary of the regulatory options the Working Group recommends to the City Council for the personal cultivation of adult use cannabis:

| <b><u>Indoor Cultivation</u></b>  | <b><u>Outdoor Cultivation</u></b>                                     |
|---|---|
| <ul style="list-style-type: none"> <li>• Limit the total number of plants allowable to six per residence</li> </ul>   | <ul style="list-style-type: none"> <li>• Prohibit entirely</li> </ul> |
| <ul style="list-style-type: none"> <li>• Require permission from the legal property owner</li> </ul>  |   |
| <ul style="list-style-type: none"> <li>• Require indoor cultivation sites conform to existing City building codes and allow the City to recover enforcement costs from violators</li> </ul> |   |
| <ul style="list-style-type: none"> <li>• Require cultivation sites to be enclosed by a lockable door that would prevent access by minors and include a filtering system</li> </ul>          |   |

<sup>1</sup> The terms “marijuana” and “cannabis” are used interchangeably.  
<sup>2</sup> Health & Safe. Code, § 11362.1, subd. (a).  
<sup>3</sup> Health & Safe. Code, § 11362.77, subd. (a).

The Cannabis Ordinance amends Chapter 8.35 of the Sonora Municipal Code to achieve these recommendations of the Working Group.

## II. Commercial Regulations

On November 16, 2017, state agencies issued regulations for all cannabis businesses allowed by MAUCRSA. Under MAUCRSA, the state will begin permitting a number of cannabis businesses on January 1, 2018. Below is a summary of the regulations the Working Group recommends to the City Council:

| <b><u>Business Type</u></b>        | <b><u>Regulations</u></b>   | <b><u>Allowable Location</u></b>   |
|------------------------------------|---|--|
| <b>Cannabis Dispensary</b>         | <ul style="list-style-type: none"> <li>• Medicinal businesses only</li> <li>• Businesses are prohibited from operating within 600 feet of a school, youth center, day care, church, or park</li> </ul>                        | <ul style="list-style-type: none"> <li>• Tourist and administrative (CO), commercial (C), general commercial (CG), and limited manufacturing (ML) zones</li> </ul> |
| <b>Commercial Cultivation</b>      | <ul style="list-style-type: none"> <li>• Outdoor cultivation prohibited</li> <li>• Only the following license types may operate: 1A, 2A, and microbusiness</li> <li>• Medicinal and adult-use businesses allowable</li> </ul> | <ul style="list-style-type: none"> <li>• ML zone</li> </ul>  |
| <b>Cannabis Manufacturing</b>      | <ul style="list-style-type: none"> <li>• Medicinal and adult-use businesses allowable</li> <li>• Volatile and non-volatile businesses permissible</li> </ul>  | <ul style="list-style-type: none"> <li>• ML zone</li> </ul>  |
| <b>Cannabis Testing Laboratory</b> | <ul style="list-style-type: none"> <li>• Medicinal and adult-use businesses allowable</li> </ul>  | <ul style="list-style-type: none"> <li>• ML zone</li> </ul>  |

Since the City Council will not have an opportunity to review and discuss these recommendations and enact a subsequent ordinance prior to January 1, 2018, the Cannabis Ordinance will temporarily ban all cannabis businesses within the City. This action would ensure that no cannabis business operates in the absence of City regulation. If the City Council decides to move forward with the Working Group’s recommendations or with any revisions, staff will prepare an ordinance to reflect those regulations.

## III. Financial Considerations

The Working Group recommends initially regulating any cannabis business allowed within the City through a development agreement, which would include associated fees. The fees would be negotiated between the City and the business operator. Staff recommends establishing a pilot program to effectuate this purpose. The Working Group also recommends that the City Council place a cannabis tax to the voters of the City at the next election.

## **FISCAL IMPACT**

The financial impact associated with the Working Group's recommendations for cannabis businesses depends widely on the cannabis business regulations the City Council ultimately adopts. The analysis of the economic benefit as well as the potential increased service demands of these businesses will be reviewed once the City Council ultimately decides on its cannabis regulation.

As it relates to the personal cultivation of cannabis, enforcement of the Cannabis Ordinance would have an impact on City administration and public safety.

## **ENVIRONMENTAL**

MAUCRSA provides an exemption under the California Environmental Quality Act ("CEQA") for any ordinance, rule, or regulation by a city that requires discretionary review and approval for commercial cannabis activity.<sup>4</sup> Additionally, this item does not constitute a project under the CEQA because it does not establish any entitlements or authorize any projects within the City.<sup>5</sup>

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<sup>4</sup> Bus. & Prof. Code, § 26055, subd. (h).

<sup>5</sup> Pub. Res. Code, §§ 21065 & 21080.

**ORDINANCE NO. 842**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONORA TO AMEND CHAPTER 8.35, MEDICAL MARIJUANA DISPENSARIES, OF, AND TO ADD CHAPTER 8.36, CANNABIS BUSINESS REGULATION, TO, THE SONORA MUNICIPAL CODE, RELATING TO CANNABIS**

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

**WHEREAS**, in 2016, the voters of California approved Proposition 64 entitled the “Control, Regulate and Tax Adult Use of Marijuana” (“AUMA”). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence. However, AUMA authorizes local jurisdictions to reasonable regulate that personal cultivation; and

**WHEREAS**, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in the MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

**WHEREAS**, on May 23, 2017, the City Council of the City of Sonora (“City Council”) held a public meeting to discuss the regulatory framework of cannabis in California and ultimately moved to form a Marijuana Working Group ( the “Working Group”). The goal of the Working Group is to make recommendations to the City Council concerning the local regulation of cannabis for the City Council’s consideration; and

**WHEREAS**, the City Council desires to consider and establish a comprehensive policy to address both personal and commercial use of cannabis within the City of Sonora (“City”); and

**WHEREAS**, the City Council finds that (1) reasonable regulation of the personal cultivation of adult-use cannabis is appropriate for the health and safety of City residents; and (2) the City is currently reviewing the Working Group’s recommendations to draft a comprehensive policy for all cannabis businesses but since that policy will not be complete prior to January 1, 2018, a temporary ban on all cannabis businesses within the City is appropriate; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SONORA DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Chapter 8.35, Medical Marijuana Dispensaries, of the Sonora Municipal Code is hereby deleted in its entirety and amended to read as follows:**

**Chapter 8.35 Personal Cannabis Cultivation Regulation.**

**8.35.000 Findings and Declarations.**

- A. The Federal Controlled Substances Act, 21 U.S.C. § 801 et seq., classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense marijuana.
- B. On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act (“AUMA”). AUMA legalizes the cultivation, commercial sale, and possession of recreational cannabis for adults age 21 and older under state law. AUMA prohibits the City from entirely prohibiting personal cultivation for adult use of cannabis inside a private residence; however, it does allow the City to impose reasonable regulations on the practice.
- C. The City Council finds that cultivation of cannabis for adult use can adversely affect the health, safety, and well-being of City residents. Reasonably citywide regulations are proper and necessary to avoid the risks of criminal activity, access by persons under twenty-one (21), degradation of the natural environment, malodorous smells, and indoor electrical fire hazards that may result from such activities.
- D. The City Council believes that the regulations specified below for the cultivation of cannabis for personal uses are reasonable and allowable under AUMA.

**8.35.010 Purpose.**

The purpose of this chapter is to prescribe reasonable regulations for the cultivation of cannabis for personal use pursuant to California Health and Safety Code section 11362.2(b).

**8.35.020 Definitions.**

- A. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.
- B. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

- C. "Cultivation site" means a location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or a location where any combination of those activities occurs.
- D. "Marijuana" has the same meaning as the term "cannabis".
- E. "Person" means an individual.
- F. "Personal use" means to possess, use, or give away to persons 21 years of age or older without any compensation whatsoever.
- G. "Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling as set forth California Health and Safety Code section 11362.2.

#### **8.35.030 Cultivation Rules and Regulations.**

- A. All outdoor cultivation is prohibited.
- B. A private residence shall not include more than one cultivation site.
- C. A person shall not cultivate more than six (6) living plants at a private residence unless a doctor prescribes otherwise.
- D. All cannabis plants and anything produced by the plants shall be kept indoors of the private residence and not be visible by normal unaided vision from a public place.
- E. A person shall not cultivate unless that person obtains permission from the legal owner of the private residence.
- F. Each of the following shall apply to the cultivation site:
  - 1. The cultivation site shall be completely located within the private residence.
  - 2. The cultivation site shall include an odor control or odor filtration system.
  - 3. To prevent safety hazards, the private residence shall not have plumbing, electrical, or other utilities that violate applicable local, state, or federal regulations.
  - 4. To prevent persons under twenty one (21) years of age from entering the cultivation site, the cultivation site shall have one lockable door.
- G. All of the following shall be prohibited in the cultivation site:
  - 1. Explosive gases, such as butane, propane, xylene, styrene, gasoline, kerosene, O<sub>2</sub> or H<sub>2</sub>.
  - 2. Dangerous poisons, toxins, or carcinogens, such as methanol, isopropyl alcohol, methylene chloride, acetone, benzene, toluene, and trichloroethylene, unless evidence of a current license to operate such solvents is provided.
  - 3. Generators or gas products used to power electrical or lighting fixtures or equipment.

#### **8.35.040 Penalties.**

- A. Any use or condition caused, or permitted to exist, in violation of any provision of this chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure section 731 or any other remedy available to the City.
- B. In addition to any other enforcement permitted by this chapter, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party.

- C. Violations of this chapter shall be subject to an administrative penalty. The amount of the administrative penalty shall be two hundred and fifty dollars (\$250) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000.00) for any subsequent offense.

#### **8.35.050 Cost Recovery.**

- A. The City shall be entitled to recover its abatement and enforcement costs incurred in obtaining compliance with this chapter. Costs incurred by the City are recoverable even if a public nuisance, a violation of the Municipal Code, or other violation of law is corrected by the property owner or other responsible party.
- B. The cost of abating a public nuisance or enforcing this chapter shall either be a special assessment and lien on the subject property or the personal obligation of the owner of the subject property or the responsible party. If there is more than one responsible party, each party shall be jointly and severally liable for the costs.
- C. For purposes of this chapter, the following additional definitions shall apply:
1. "Abatement costs" include the actual and reasonable costs incurred by the City to abate a public nuisance. These costs include all direct and indirect costs to the City that result from the total abatement action, including but not limited to, investigation costs, costs to enforce the Municipal Code and any applicable Federal, State, or County law, clerical and administrative costs to process paperwork, costs incurred to provide notices and prepare for and conduct administrative appeal hearings, and costs to conduct actual abatement of the nuisance. Costs include personnel costs, administrative overhead, costs for equipment such as cameras and vehicles, staff time to hire a contractor, and reasonable attorneys' fees incurred by City.
  2. "Enforcement costs" include all actual and reasonable costs incurred by the City to enforce compliance with the Municipal Code and any applicable Federal, State, County, or City public health and safety law that are not included within abatement costs. Enforcement costs shall also include, but are not limited to, costs of fringe benefits for personnel, administrative overhead, costs of equipment, costs of materials, costs related to investigations, costs related to issuing and defending administrative or court citations, costs incurred investigating and abating violations of the Municipal Code or Federal, State, or County law violations, and reasonable attorneys' fees related to these activities.
  3. "Responsible party" means a person or entity responsible for creating, causing, committing, or maintaining the violation of this chapter or Federal, State or County law.
  4. "Subject property" means the real property that is the subject of any abatement or enforcement action by the City for which the City incurred costs and seeks recovery under this chapter.



**SECTION 2. Chapter 8.36, Cannabis Business Regulation, is added to the Sonora Municipal Code to read as follows:**

**Chapter 8.36 Cannabis Business Regulation.**

**8.36.000 Definitions.**

- A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.
- B. "Cannabis business" means any business engaged in commercial cannabis activity. "Cannabis business" does not include any of the following:
  - 1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
  - 2. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
  - 3. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
  - 4. A residential hospice or a home health agency licensed pursuant to Chapter 8 and Chapter 8.5 of Division 2 of the Health and Safety Code.
  - 5. The cultivation, delivery, gift, or furnishing of cannabis by a qualified patient, a primary caregiver, or other person with an identification card as defined by Section 11362.7 of Health and Safety Code provided such activity complies strictly with all applicable state law, including but not limited to, Sections 11362.5 and 11362.765 of the Health and Safety Code.
- C. "Commercial cannabis activity" includes the cultivation, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis or cannabis products that requires a state license pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

**8.36.010 Cannabis Business Prohibited.**

- A. All commercial cannabis activity and cannabis business are prohibited with the City.
- B. No City business permit or authorization shall be issued to a cannabis business or for any commercial cannabis activity.

### **8.36.020 Penalties.**

- A. Any use or condition caused, or permitted to exist, in violation of any provision of this chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to California Code of Civil Procedure section 731 or any other remedy available to the City.
- B. In addition to any other enforcement permitted by this chapter, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party.
- C. Violations of this chapter shall be subject to an administrative penalty. The amount of the administrative penalty shall be five hundred dollars (\$500) for the first offense, seven hundred and fifty dollars (\$750) for the second offense, and one thousand dollars (\$1,000.00) for any subsequent offense.

### **8.35.050 Cost Recovery.**

- A. The City shall be entitled to recover its abatement and enforcement costs incurred in obtaining compliance with this chapter. Costs incurred by the City are recoverable even if a public nuisance, a violation of the Municipal code, or other violation of law is corrected by the property owner or other responsible party.
- B. The cost of abating a public nuisance or enforcing this chapter shall either be a special assessment and lien on the subject property or the personal obligation of the owner of the subject property or the responsible party. If there is more than one responsible party, each party shall be jointly and severally liable for the costs.
- C. For purposes of this chapter, the following additional definitions shall apply:
  - 1. "Abatement costs" include the actual and reasonable costs incurred by the City to abate a public nuisance. These costs include all direct and indirect costs to the City that result from the total abatement action, including but not limited to, investigation costs, costs to enforce the Municipal Code and any applicable Federal, State, or County law, clerical and administrative costs to process paperwork, costs incurred to provide notices and prepare for and conduct administrative appeal hearings, and costs to conduct actual abatement of the nuisance. Costs include personnel costs, administrative overhead, costs for equipment such as cameras and vehicles, staff time to hire a contractor, and reasonable attorneys' fees incurred by City.
  - 2. "Enforcement costs" include all actual and reasonable costs incurred by the City to enforce compliance with the Municipal Code and any applicable Federal, State, County, or City public health and safety law that are not included within abatement costs. Enforcement costs shall also include, but are not limited to, costs of fringe benefits for personnel, administrative overhead, costs of equipment, costs of materials, costs related to investigations, costs related to issuing and defending administrative or court citations, costs incurred investigating and abating violations of the Municipal Code or Federal, State, or County law violations, and reasonable attorneys' fees related to these activities.
  - 3. "Responsible party" means a person or entity responsible for creating, causing, committing, or maintaining the violation of this chapter or Federal, State or County law.

4. "Subject property" means the real property that is the subject of any abatement or enforcement action by the City for which the City incurred costs and seeks recovery under this chapter.

**SECTION 3.** If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 4.** This ordinance shall take effect thirty (30) days after its final passage and adoption.

**SECTION 5. CERTIFICATION OF COUNCIL ADOPTION AND APPROVAL.** This Ordinance was introduced at a regular meeting of the City Council of the City of Sonora held on the \_\_\_\_\_, of \_\_\_\_\_, 2017, and adopted at a regular meeting of the City Council of the City of Sonora held on the \_\_\_\_\_, of \_\_\_\_\_, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

\_\_\_\_\_  
Connie Williams  
Mayor of the City of Sonora

ATTEST:

\_\_\_\_\_  
Marijane Cassinetto  
Sonora City Clerk