CITY COUNCIL OF THE CITY OF SONORA
STAFF REPORT

MEETING DATE: JANUARY 16, 2018

TO: CITY COUNCIL

FROM: DOUGLAS L. WHITE, CITY ATTORNEY

SUBJECT: MOTION TO APPROVE SECOND READING AND ADOPT AN ORDINANCE OF THE CITY OF SONORA TO AMEND CHAPTER 8.35, PERSONAL CANNABIS CULTIVATION REGULATION, RELATING TO PERSONAL CANNABIS CULTIVATION

RECOMMENDATION:

Motion to approve second reading and adopt Ordinance No. 2017-847, reading by title only, waiving further reading, an Ordinance of the City Council of the City of Sonora to amend Chapter 8.35 of the Sonora Municipal Code.

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 or older and the personal cultivation of up to six cannabis plants within a private residence. However, AUMA authorizes local jurisdictions to reasonably regulate that personal cultivation.

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.

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").[1] 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. Since then, the Working Group has met for several months and discussed numerous aspects of cannabis regulation for personal purposes.

[1] The terms "marijuana" and "cannabis" are used interchangeably.

On December 18, 2017, the City Council introduced an ordinance for first reading incorporating (i) the Working Group's cannabis recommendations for the personal cultivation of up to six (6) cannabis plants intended for adult-use and (ii) additional regulations for medicinal cannabis cultivation of more than six (6) plants under a doctor's recommendation (the "Personal Cultivation Ordinance").

DISCUSSION:

I. Personal Cannabis Cultivation Regulations

Below is a summary of the City's proposed regulations to the personal cultivation of adult-use cannabis:

Indoor Cultivation	**Outdoor Cultivation**
• Limit the total number of plants allowable to six per residence	• Prohibit entirely
• Require permission from the legal property owner	
• Require indoor cultivation sites conform to existing City building codes and allow the City to recover enforcement costs from violators	
• Require cultivation sites to be enclosed by a lockable door that would prevent access by minors	

II. Medicinal Cannabis Cultivation Regulations

Subdivision (b) of Health and Safety Code section 11362.77 authorizes a qualified patient or their primary caregiver to possess any amount of cannabis that is recommended by that patient's doctor. There is no statutory limit to the amount of cannabis plants a qualified patient or primary caregiver may cultivate pursuant to a doctor's recommendation.

Under the Personal Cultivation Ordinance, a patient or primary caregiver will be required to obtain an Administrative Cultivation Permit ("ACP") to cultivate more than six (6) plants indoors for medicinal use. The Community Development Department would issue the ACP. In order to apply for an ACP, an applicant must provide a physician's recommendation for six (6) or more cannabis plants, written permission signed by the property owner or legal tenant of the intended cultivation site, and identification of any chemicals, fertilizers, or pesticides that will be used. Inspections are required to obtain an ACP, which expires in one (1) year and may be renewed annually. At that time, an additional inspection is required to renew the permit. ACP fees will be established by resolution of the City Council.

III. Changes from First Reading

On December 18, 2017, the City Council voted to amend the Personal Cultivation Ordinance in a number of ways. First the City Council requested technical changes to clarify that an ACP is required if a patient or primary caregiver intends to cultivate more than six (6) cannabis plants indoors for medicinal use. Second, the City Council requested that a cultivation site include lockable doors and an operable motion detector alarm. Finally, the City Council requested that Section 8.35.060(D)(1) additionally allow a cultivation site within a detached garage or permitted detached structure.

FISCAL IMPACT

Any impacts of the ACP on the City's General Fund will be offset by the fee for an ACP along with the regulatory fee ultimately imposed upon cannabis businesses allowed to operate in the City.

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.[2] Additionally, this item does not constitute a project under CEQA because it does not establish any entitlements or authorize any projects within the City.[3]

OPTIONS

1. Motion to waive second reading, read by title only, and adopt the Personal Cultivation Ordinance;

2. Continue adoption of Personal Cultivation Ordinance to a later City Council meeting, with direction to staff with changes; or

3. Reject the Personal Cultivation Ordinance.

ATTACHMENTS

1. Personal Cultivation Ordinance

[2] Bus. & Prof. Code, § 26055, subd. (h).
[3] Pub. Res. Code, §§ 21065 & 21080.

ORDINANCE NO. 2017-847

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONORA TO AMEND CHAPTER 8.35, PERSONAL CANNABIS CULTIVATION REGULATION, OF THE SONORA MUNICIPAL CODE, RELATING TO PERSONAL CANNABIS CULTIVATION

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 the personal cultivation of adult-use and medicinal cannabis within the City of Sonora ("City"); and

WHEREAS, the City Council finds that reasonable regulation of the personal cultivation of adult-use and medicinal cannabis is appropriate for the health and safety of City residents; and

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

SECTION 1. Chapter 8.35, Personal Cannabis Cultivation Regulation, 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. Reasonable citywide regulations are proper and necessary to avoid the risks of criminal activity, access by persons under the age of 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 law.

8.35.020 Definitions.

A. "Administrative Cultivation Permit" means a permit issued by the Community Development Department for the indoor cultivation of medicinal cannabis by a qualified patient or a primary caregiver.

B. "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.

C. "County" means Tuolomne County.

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

E. "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.

F. "Day care" means a facility, center, or home requiring a license that is issued by the State of California which provides for the care, health, safety, supervision, or guidance of a child's social, emotional, and educational growth on a regular basis, in a place other than the child's own home, or any facility meeting the definition of Section 1596.76 of the Health and Safety Code.

G. "Group home" means any community care facility regulated and licensed by a federal or state agency. Unlicensed community care facilities or those community care facilities the regulation of which is not otherwise preempted by state or federal law shall not constitute group homes.

H. "Indoor cultivation" means the cultivation of cannabis within a fully enclosed and secure structure that has a complete roof in which cannabis plants cannot be seen from any public right of way. Indoor cultivation does not include any commercial cannabis activity.

I. "Marijuana" has the same meaning as the term "cannabis".

J. "Person" means an individual.

K. "Personal use" means to possess, use, or give away to persons twenty-one (21) years of age or older without any compensation whatsoever.

L. "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.

M. "Primary caregiver" has the same meaning as that term is defined by Section 11362.7 of the Health and Safety Code.

N. "Qualified patient" has the same meaning as that term is defined by Section 11362.7 of the Health and Safety Code.

O. "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

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 cannabis plants at a private residence for personal use.

D. A primary caregiver or a qualified patient may cultivate more than six (6) living cannabis plants at a private residence with a physician's recommendation, subject to the requirements set forth in sections 8.36.030 through 8.36.090.

E. 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.

F. A person shall not cultivate unless that person obtains permission from the legal owner of the private residence.

G. 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 doors.

H. All of the following shall be prohibited in the cultivation site:

1. Explosive gases, such as butane, propane, xylene, styrene, gasoline, kerosene, 02 or H2.
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 Administrative Cultivation Permit for Medicinal Cannabis.

A. A primary caregiver or a qualified patient seeking to cultivate more than six (6) ~~or more~~ living cannabis plants shall first obtain an Administrative Cultivation Permit from the Community Development Department.

B. A person shall be limited to a maximum of one (1) Administrative Cultivation Permit at a time.

C. An Administrative Cultivation Permit is not transferable. The Administrative Cultivation Permit shall only be used by the permittee to whom it is issued.

D. An Administrative Cultivation Permit shall expire one (1) year from the date of approval and may be renewed annually.

8.35.050 Application for an Administrative Cultivation Permit.

A. An applicant shall be at least twenty-one (21) years of age, unless otherwise permitted under state law.

B. The Administrative Cultivation Permit application shall require all of the following:

1. A physician's recommendation for more than six (6) ~~or more~~ cannabis plants.
2. Written consent signed by the property owner or legal tenant of the intended cultivation site.
3. Identification of any chemicals, fertilizers, or pesticides that will be used for indoor cultivation. This information shall be used to aid public safety officials in case of an emergency response to the location.

C. An applicant shall pay a nonrefundable Administrative Cultivation Permit application fee as established by resolution of the City Council.

D. Within sixty (60) calendar days of receipt of a complete application, the city shall provide written notification to the applicant indicating whether the application has been approved or denied and the reason for denial, if any.

8.35.060 Regulations for an Administrative Cultivation Permit.

A. A private residence shall not include more than one cultivation site.

B. All cannabis plants and anything produced by the plants shall be kept within the permit holder's private residence, or upon the grounds of that private residence, and not be visible by normal unaided vision from a public place.

C. A private residence shall not also be used for a day care, youth center, or group home. The private residence shall remain occupied and is required to maintain a functioning kitchen and bathroom.

D. Each of the following shall apply to the cultivation site:

1. The cultivation site shall be located within the private residence, detached garage, or permitted detached structure.

2. To prevent safety hazards, the private residence shall not have plumbing, electrical, or other utilities that violate applicable local or state regulations.

3. To prevent persons under twenty-one (21) years of age from entering the cultivation site or accessing cannabis, the cultivation site shall have one lockable door.

4. The cultivation site shall not produce odors, sounds, or other emissions that are detectable outside of the private residence by persons with reasonable sensitivity.

4.5. The cultivation site shall include an operable ~~a~~ motion detector alarm.

E. All of the following shall be prohibited in the cultivation site:

1. Volatile solvents, including, but not limited to, explosive gases, such as Butane, Propane, Xylene, Styrene, Gasoline, or Kerosene.

2. Dangerous poisons, toxins, or carcinogens, such as Methanol, Iso-propyl Alcohol, Methylene Chloride, Acetone, Benzene, Toluene, and Trichloro-ethylene, 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.

F. Each applicant shall pass an inspection of their cultivation site by a city building inspector to ensure that the private residence meets the requirements of section 8.35.060 and does not pose a health or safety risk to the applicant or public. If the inspection is denied, the applicant will have ten (10) calendar days to have the cultivation site re-inspected.

8.35.070 Expiration and Renewal of an Administrative Cultivation Permit.

A. An Administrative Cultivation Permit may be renewed no earlier than sixty (60) days of expiration.

B. The Administrative Cultivation Permit holder shall pass a re-inspection of the cultivation site by the Community Development Department.

C. Renewal of an Administrative Cultivation Permit is subject to a renewal fee as approved by resolution by the City Council.

8.35.080 Suspension and Termination.

A. The city may suspend or terminate an Administrative Cultivation Permit at any time for failure to comply with this chapter or any local or state law or regulation.

B. If a person's Administrative Cultivation Permit is suspended, terminated, or expired, the permit holder's cannabis plants that exceeds 28.5 grams may be impounded by a law enforcement officer until both of the following are met:

1. The person reinstates their Administrative Cultivation Permit.

2. The person pays an administration penalty pursuant to section 8.35.110.

C. A person may appeal any suspension or termination of an Administrative Cultivation Permit pursuant to section 8.35.100.

8.35.090 Multiple Administrative Cultivation Permit Applications.

A. Application for Administrative Cultivation Permit in a New Private Residence.

1. An Administrative Cultivation Permit holder may apply for an Administrative Cultivation Permit for a private residence other than the private residence specified on the existing permit. If the application is approved, the former Administrative Cultivation Permit shall be immediately null and void. If the application is denied, the existing Administrative Cultivation Permit shall continue under its applicable terms and conditions. If the applicant appeals a denial of the application, the existing Administrative Cultivation Permit shall continue under its applicable terms and conditions.

B. Application for a Different Cultivation Site within the Same Private Residence.

1. If a current Administrative Cultivation Permit holder applies for an Administrative Cultivation Permit for the private residence on the existing permit but for a cultivation site other than the one specified on the existing permit, the existing permit will terminate upon approval of the application.

C. Application for the Same Cultivation Site in Same Private Residence.

1. If an additional person applies for an Administrative Cultivation Permit for the same cultivation site within the same private residence of a current Administrative Cultivation Permit holder, a permit shall not be issued if the existing permit has been terminated or suspended.

2. An additional Administrative Cultivation Permit for the same cultivation site shall only be issued if all Administrative Cultivation Permits related to that cultivation site are in good standing with the City.

8.35.100 Appeals

A. Any permit applicant may appeal any adverse action taken under this chapter to the City Council.

B. All appeals taken under this chapter must be taken within thirty (30) days after the adverse action by filing with the office of the City Clerk a written notice of appeal specifying the grounds thereof. An appeal shall be accompanied by a non-refundable filing fee, as established by resolution adopted by the City Council from time to time.

C. The City Clerk, upon the filing of such appeal and payment of an appeal fee, shall place the matter upon the agenda for the next regular meeting of the City Council occurring not earlier than five

days after the filing of the appeal, and shall notify the appealing permit applicant by letter of the meeting date and place at which the appeal will be heard.

8.35.110 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) for any subsequent offense.

8.35.120 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 the 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 is 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. 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 3. This ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 4. 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 ____, 18th, of _____, December, 2017, and adopted at a regular meeting of the City Council of the City of Sonora held on the _____, of _____, 2018, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

_____
Connie Williams
Mayor of the City of Sonora

ATTEST:

_____
Marijane Cassinetto
Sonora City Clerk