CITY OF SONORA CITY COUNCIL
STAFF REPORT

MEETING DATE: July 15, 2019

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: DOUGLAS L. WHITE, CITY ATTORNEY

SUBJECT: RECOMMENDING SONORA CITY COUNCIL APPROVAL OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF SONORA AND THE BRACT HOUSE LLC

RECOMMENDATION:

City of Sonora ("City") staff recommends the City Council adopt an ordinance of the City Council of the City of Sonora ("City Council") approving a development agreement by and between the City and The Bract House LLC ("Bract House").

BACKGROUND:

In November of 2016, the voters of California approved Proposition 64, entitled the "Control, Regulate and Tax Adult Use of Marijuana Act" ("AUMA"). AUMA legalized the adult-use, possession, and retail sale of cannabis by persons 21 years of age and older.

On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") which, combined with AUMA, creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. 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 January 16, 2018, the City Council adopted an ordinance that would regulate cannabis businesses pursuant to the recommendations from the Cannabis Working Group formed by the City Council in 2017 (the "Cannabis Business Ordinance"). The Cannabis Business Ordinance establishes the Cannabis Business Pilot Program, which allows for the regulation of cannabis businesses through a development agreement and a conditional use permit process.

DISCUSSION:

In March 2018, the City issued and circulated a request for proposals ("RFP"). The purpose of the RFP was to form the basis for a selection process of qualified cannabis operators for participation in the Cannabis Business Pilot Program. The RFP only contemplated proposals for those license types allowed under the Cannabis Business Ordinance. Those businesses include cannabis dispensaries (and associated delivery services), manufacturing (volatile and non-volatile) businesses, and testing facilities. The development agreement described below is a result of the RFP and subsequent negotiations between City staff and the business operator.

A. Bract House

The City seeks to enter into a development agreement with Bract House. Bract House has leased real property located at 10 Calaveras Street, Sonora, California, Assessor's Parcel Number 056-090-32-00 (the "Property"), on which Bract House intends to operate a medicinal cannabis dispensary business (the "Project"). Bract House has obtained the Property owner's consent to operate the cannabis business on the Property. The major elements of the development agreement are summarized below:

- The term of the agreement is three (3) years.
- The Project will provide Bract House with substantial private benefits that will place burdens upon the City infrastructure, services, and neighborhoods. Bract House will offset these impacts through a monthly payment classified as a "Public Benefit" amount. The Public Benefit is designed and intended to offset or mitigate any potential impacts of the Project on the community.
- Bract House will pay to the City a Public Benefit of no less than $10,000 per month, or 5% of its gross receipts from its operations on a monthly basis. The first Public Benefit payment will be due following the first month Bract House begins operations.
- The Project will be subject to security protocols, including security cameras and an alarm system, odor control requirements, insurance requirements, and a waste management plan as required under the Cannabis Business Ordinance.

Staff has prepared an ordinance for City Council approval of the development agreement between the City and Bract House. The Planning Commission recommended that the City Council approve the development agreement. The Project is also required to obtain a conditional use permit before operating in the City. Review and action regarding the conditional use permit was conducted as a public hearing before the Planning Commission on July 8, 2019 and was approved on a 3-0 vote.

FISCAL IMPACT:

The development agreement would provide Bract House with substantial private benefits and impose burdens upon City infrastructure, services, and neighborhoods. The City and Bract House seek to offset these impacts through a monthly payment classified as a Public Benefit amount. The Public Benefit is designed and intended to offset or mitigate any potential impacts of the Project on the community. The Public Benefit imposed on Bract House is specifically tailored to address the estimated burden resulting from the Project.

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.[1] Additionally, the Project is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility.[2]

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

Attachments:

1. Planning Commission Resolution No. 07-08-2019-A Recommending Sonora City Council Approval of a Development Agreement by and Between the City of Sonora and The Bract House LLC

2. Ordinance No. 858

3. The Bract House LLC Development Agreement

PLANNING COMMISSION RESOLUTION NO. 7-08-2019-A

RESOLUTION RECOMMENDING SONORA CITY COUNCIL APPROVAL OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF SONORA AND THE BRACT HOUSE LLC.

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 Act" ("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; 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, Sonora Municipal Code ("S.M.C.") Chapter 8.36 establishes a Cannabis Business Pilot Program and authorizes cannabis businesses to operate within the City of Sonora ("City") pursuant to a development agreement and conditional use permit; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes the City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application; and

WHEREAS, applicant, The Bract House LLC (the "Developer"), proposes to improve, develop, and use real property to operate a medicinal cannabis dispensary business (the "Project"), in strict accordance with applicable MAUCRSA and S.M.C. Chapter 8.36; and

WHEREAS, the Developer has leased that certain real property located at 10 Calaveras Street, in the City of Sonora, County of Tuolumne, State of California, Assessor's Parcel Number 056-090-32-00 (the "Site"), on which the Developer intends to develop the Project; and

WHEREAS, City and the Developer seek to enter into a development agreement for the Project (the "Development Agreement"), pursuant to the Development Agreement Statute and all applicable local and state laws; and

WHEREAS, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 *et seq.*; Cal. Code Regs. Title 14, § 15000 *et seq.*). The Site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility; and

WHEREAS, the Planning Commission of the City of Sonora ("Planning Commission") finds that an ordinance approving the Development Agreement will allow the City to adequately regulate and address all impacts of the Project in the City in accordance with state law; and

WHEREAS, the Planning Commission finds that the ordinance is in the best interest of the health, welfare, and safety of the public.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends that the Sonora City Council approve an Ordinance to adopt a Development Agreement by and between the City of Sonora and The Bract House LLC to allow The Bract House LLC to operate a medicinal cannabis dispensary business at the Site.

THE FOREGOING PLANNING COMMISSION RESOLUTION IS HEREBY ADOPTED THIS 8th DAY OF July, 2019.

Members of the Commission:

AYES: Garnin; Jensen; Richardson

NOES: _____

ABSENT: Kevin Anderson, Gary Anderson

ABSTAIN: _____

SIGNED:

Chris Garnin, Chair
Planning Commission

ATTEST:

Rachelle Kellogg, Secretary
Planning Commission

ORDINANCE NO. 858

AN ORDINANCE OF THE CITY OF SONORA APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF SONORA AND THE BRACT HOUSE LLC.

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 Act" ("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; and

WHEREAS, in February 2018, the City Council approved the circulation of a request for proposals to establish a cannabis business pilot program to evaluate potential City regulation of other cannabis businesses and gauge local interest in that regulation; 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 January 16, 2018, the Sonora City Council ("City Council") adopted Ordinance 18-848 to regulate the operation of commercial cannabis businesses within the City of Sonora ("City"); and

WHEREAS, the City Council finds that establishing a structure to regulate all cannabis businesses contemplated by state law is in the best interest of the health, welfare, and safety of the public; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes the City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application; and

WHEREAS, applicant The Bract House LLC, a California limited liability company. (the "Developer") proposes to improve, develop, and use real property to operate a medicinal cannabis dispensary business (the "Project"), in strict accordance with applicable state and local law, including, but not limited to, the Sonora Municipal Code; and

WHEREAS, the Developer has leased that certain real property located at 10 Calaveras Street, in the City of Sonora, County of Tuolumne, State of California, Assessor's Parcel Number 056-090-32-00 (the "Site"), on which the Developer intends to develop the Project; and

WHEREAS, City and the Developer seek to enter into a development agreement for the Project (the "Development Agreement") pursuant to the Development Agreement Statute and all applicable local and state laws; and

WHEREAS, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*). The Site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility; and

WHEREAS, on July 8, 2019, the Sonora Planning Commission held a duly noticed public hearing to consider the Development Agreement, and recommended adoption of the Development Agreement to the City Council; and

WHEREAS, on July 15, 2019, and August 5, 2019, the City Council held duly noticed public hearings to consider the Development Agreement; and

WHEREAS, the City Council of the City of Sonora, based on its independent review and analysis of staff's recommendations, oral and written testimony, and the record as a whole, finds, after due study, deliberation, and public hearing, and based on its independent judgment, that the following circumstances exist:

1. The Project is consistent with the goals, policies, and standards of the City of Sonora General Plan and all other applicable standards and ordinances of the City of Sonora.

2. In accordance with the Development Agreement Statute, the City Council finds that the Development Agreement:

a. Is consistent with the objectives, policies, general land uses, and programs specified in the Sonora General Plan and any applicable specific plan; and

b. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole; and

c. Will not adversely affect the orderly development of property or the preservation of property values; and

d. Is consistent with the provisions of Government Code sections 65864 through 65869.5; and

e. Contains a legal description of the property.

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

SECTION 1. The City Council of the City of Sonora approves a Development Agreement by and between The Bract House LLC and the City of Sonora for the development of the Project, and instructs the City Administrator to execute the Development Agreement subject to final, technical revisions as required and approved by the City Attorney.

SECTION 2. The City shall review the Development Agreement for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement.

SECTION 3. Notice of the public hearing on the proposed Development Agreement was published in the Union Democrat, a newspaper of general circulation, printed and published in the City of Sonora; and notices of the public hearing on the proposed Development Agreement were mailed to all interested parties and property owners within 300 feet of the property, according to the most recent assessor's roll.

SECTION 4. Environmental impacts for the Project have been reviewed and assessed by the City pursuant to CEQA (Public Resources Code section 21000 *et seq.*; California Code of Regulations Title 14, section 15000 *et seq.*). The Site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility.

SECTION 5. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining

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portions of the Ordinance. The City Council of the City of Sonora hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 6. This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, and publication of the Ordinance shall occur in a newspaper of general circulation at least fifteen (15) days prior to its effective date, or a summary of the Ordinance published in a newspaper of general circulation at least five (5) days prior to adoption and again at least fifteen (15) days prior to its effective date.

SECTION 7. This Ordinance was introduced and approved by Ordinance No. 858 at a regular meeting of the City Council of the City of Sonora held on the 15th day of July, 2019, and adopted at a regular meeting of the City Council of the City of Sonora held on the 5th day of August, 2019, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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APPROVED:

_____

James M. Garaventa
Mayor of the City of Sonora

ATTEST:

_____

Colette Such
City Clerk Pro-Tem of the City of Sonora