



MEMORANDUM

TO: PLANNING COMMISSION

FROM: TERESA MCCLISH, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: CONSIDERATION OF DEVELOPMENT CODE AMENDMENT CASE NO. 17-003; AMENDMENTS TO CHAPTER 16.62 OF TITLE 16 AND CHAPTER 5.95 OF TITLE 5 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO MARIJUANA AND MARIJUANA DELIVERY SERVICES

DATE: SEPTEMBER 5, 2017

RECOMMENDATION:

It is recommended the Planning Commission adopt a Resolution recommending the City Council adopt the proposed Ordinance amending Chapter 16.62 of Title 16 and Chapter 5.95 of Title 5 of the Arroyo Grande Municipal Code relating to marijuana and marijuana delivery services.

SUMMARY OF ACTION:

The Ordinance includes local regulations for land uses associated with the adult use of non-medical marijuana consistent with State Law and as recently directed by the City Council to: 1) prohibit all commercial marijuana activity within the City except for limited delivery; 2) ban outdoor cultivation; and 3) reasonably regulate indoor cultivation.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

There is no new direct impact to financial and personnel resources. This item is not identified in the critical Needs Action Plan or recently adopted City Council Goals.

BACKGROUND:

In November 2016, California voters approved Proposition 64 (57.1% Yes and 42.9% No), the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA). The stated purpose of the AUMA is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of non-medical marijuana, including marijuana products, for use by adults 21 years of age and older, and to tax the commercial growth and retail sale of marijuana.

The AUMA creates a statewide licensing and regulatory program for non-medical commercial marijuana businesses. The licensing program is similar to the laws adopted in 2015 relating to medical marijuana, and such businesses will need State licenses in order to operate. Such licenses are to be issued by the State beginning January 1, 2018. A key aspect of the AUMA is the retention of local control by cities. This local

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control component is broadly crafted and includes the ability for a city to develop regulations that range from prohibiting most activities to regulating land uses through zoning or other local licensing processes. Under the AUMA, the State cannot issue licenses that are contrary to these local regulations. Attachment 1 includes additional background regarding related legislation.

On June 27, 2017, the City Council considered the need for local regulations for land uses associated with the adult use of non-medical marijuana. Potential land uses that may be allowed by the State if such uses are not regulated or prohibited by a city include personal indoor and outdoor cultivation, commercial indoor and outdoor cultivation, distribution facilities, delivery services, retail sales, testing laboratories, and manufacturing facilities. The Council directed the preparation of an ordinance to prohibit outdoor cultivation and all commercial uses, except to allow limited delivery services, and regulation of personal cultivation for non-medical marijuana consistent with existing City regulations for medical marijuana (Attachment 2).

ANALYSIS OF ISSUES:

Personal Use

The AUMA makes it legal for persons 21 years of age or older to smoke or ingest marijuana products, as well as possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without any compensation, 28.5 grams of marijuana (1.005 ounces), or 8 grams of concentrated marijuana, including as contained in marijuana products.¹ They can also possess, cultivate, harvest, dry or process up to six living marijuana plants for personal use.

Personal Cultivation - Indoor

The Arroyo Grande Municipal Code currently contains restrictions on cultivation of marijuana for medical purposes for a qualified patient living full-time in a residence and

¹ The AUMA does not allow (1) Smoking or ingesting marijuana or marijuana products in any public place. (2) Smoking marijuana or marijuana products in a location where smoking tobacco is prohibited. (3) Smoking marijuana or marijuana products within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of the Business and Professions Code or Chapter 3.5 of Division 8 of the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present. (4) Possess an open container or open package of marijuana or marijuana products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation. (5) Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present. (6) Manufacture concentrated cannabis using a volatile solvent, unless done in accordance with a license under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code. (7) Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation. (8) Smoke or ingest marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under the age of 21 years are present.

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requires very specific performance standards. The AUMA requires local jurisdictions to allow up to six plants to be cultivated for medical or non-medical purposes within a residence and in accessory structures that are enclosed and secure. The AUMA does contain provisions that authorize a city to enact and enforce reasonable regulations to reasonably regulate such personal cultivation.

Currently, the City's performance standards in place for medical marijuana are as follows:

- The marijuana is cultivated inside a detached single family dwelling on property where the qualified patient resides on a full-time basis.
- No more than fifty (50) contiguous square feet of the interior of the dwelling shall be devoted to the cultivation of medical marijuana. The medical marijuana cultivation area shall not exceed ten (10) feet in height. These restrictions apply regardless of how many qualified patients are residing on the property.
- The area used for cultivation complies with California Building, Electrical and Fire Codes as adopted by the City of Arroyo Grande.
- The marijuana cultivation is concealed so that it is not visible from the exterior of the property, the public right-of-way, and/or neighboring properties.
- The lighting for the cultivation shall not exceed one thousand two hundred (1,200) watts. The use of flammable or combustible products, including but not limited to, propane and butane for cultivation and processing is prohibited.
- The cultivation of marijuana shall not take place in a garage, kitchen, bathroom or occupied bedroom of the dwelling.
- The marijuana cultivation shall not adversely affect the health or safety of the occupants of other properties in the vicinity by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration or other impacts and shall not be maintained in a manner so as to constitute a hazard due to use or storage of materials, processes, products or wastes.

Based upon the lack of significant complaints, and that current performance standards appear to be adequately controlling potential neighborhood compatibility and safety concerns, the proposed ordinance makes current regulations for medical marijuana applicable to non-medical marijuana. However, the definition of private residence and the requirement to allow cultivation in accessory structures is contained in the AUMA. Accordingly, the ordinance has been drafted to provide the following modifications to the indoor cultivation restrictions:

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1. A private residence means a house, an apartment unit, a mobile home, or other similar dwelling, and not just in detached single family dwellings;
2. Indoor cultivation may occur in accessory structures that are enclosed and secure for cultivation of medical and non-medical marijuana; and
3. The prohibition of cultivation in a garage, kitchen, bathroom or occupied bedroom of the dwelling is deleted for both medical and non-medical cultivation as it was considered overly restrictive and may not provide sufficient opportunities to cultivate.

Personal Cultivation - Outdoor

The City has experienced neighborhood complaints regarding outdoor cultivation operations mainly due to odor, glare from artificial lighting, noise, vibration from fans, and security issues and currently prohibits personal outdoor cultivation of medical marijuana. Such issues also have the potential to impact staff resources in balance of currently identified City goals and projects. As such, the proposed ordinance continues to prohibit outdoor personal cultivation at this time but allows for reconsideration as the industry and public familiarity increases.

Commercial Cultivation

Commercial cultivation can occur outdoors, in greenhouses, or in industrial buildings under artificial lighting. Consideration of impacts from each of these options on surrounding uses and community character is a key consideration. A California Department of Food and Agriculture Cannabis Cultivation License would be required if a local jurisdiction allows commercial cultivation. Some operations may need to provide documentation of water supply source. Generally, concerns regarding cultivation from the State Water Board include illegal diversions, sediment pollution from soil erosion, wetland and riparian impacts from fill and excavations, impacts from soil additives, trash and domestic waste and tree removal. However, most of these concerns surround large scale cannabis cultivation operations in non-traditional farming locations. Nonetheless, due to the unique nature of the City, including 296 acres of agriculturally zoned land, it is possible that there may be a desire by some to establish commercial non-medical marijuana cultivation operations within the City. Potential community issues could include compatibility situations between agriculture and sensitive uses, such as schools and residential uses, and include sounds, odors, dust and chemicals that may accompany agricultural operations and aesthetic changes to the rural character due to the construction of greenhouses and security fences on large agricultural properties. This issue is also complicated by the transition of marijuana from an illegal substance to a crop being regulated by the Department of Agriculture and the City's own Right to Farm Ordinance which serves to protect farming operations from nuisance complaints due to off-farm impacts such as odors.

Due to experience related to neighborhood compatibility for small operations and the potential for significantly increased impacts for larger operations on City agricultural lands surrounded by sensitive uses, the proposed ordinance continues to prohibit commercial cultivation at this time.

Other Commercial Marijuana Businesses

In order to operate commercial non-medical cannabis uses in the City, a two-step process would be required in addition to State licensing. First, an approval process would be established for location, size and types of uses allowed. Second, an applicant would be required to receive approval of a permit by the City to assure that all regulatory requirements are met. The State is scheduled to begin accepting license applications in January 2018 for both recreational and medical marijuana businesses and will also require a local permit be approved, if the local agency adopts an ordinance allowing for commercial uses.

In order to reduce potential impacts related to marijuana brick-and-mortar retail, manufacturing, or testing, jurisdictions can adopt a per capita formula or other limit on how many dispensaries or retail outlets to allow, or to restrict an area to marijuana related industry. Such limitations would reduce the overall number of businesses and thus the regulatory burden for the City. This may address impacts to staff resources to perform necessary audits of marijuana businesses, which may be critical for public health and safety compliance as well as for financial audit requirements. As businesses must deal in cash due to federal banking regulations, the City would need verification of gross revenue and volume of business for any local tax revenue projections.

Regarding dispensaries, State law requires dispensaries and cultivation that contains storefronts be located a minimum of 600 feet from schools (kindergarten and grades 1-12, public and private). Local agencies can be more restrictive and include other sensitive uses such as parks, preschool/daycare centers, and churches. Issues regarding dispensaries include adverse impacts to surrounding areas that could potentially be addressed by requiring design standards, limitations on the size and type of uses, limiting hours of operations, or other methods.

Regarding marijuana manufacturing businesses, there are two regulatory levels under State Law as overseen by the County Environmental Health Services Division depending on the use of volatile fluids or solvents. Safety of the use of these compounds is dependent on the care, proper storage, vessel size and vessel orientation to the manufacturing facility as well as adjacent existing structures. Additionally, manufacturing processes related to marijuana products require expensive certified extraction/processing equipment. Allowing marijuana related manufacturing businesses to operate requires significant attention to permitting and monitoring and ultimately, a certain acceptance of risk. Alternatively, if such businesses are market driven but opportunities to establish them are too scarce and/or burdensome, they may instead operate illegally, creating potential impacts to public safety as well.

The proposed ordinance prohibits commercial marijuana businesses at this time due to limited land area available for such uses, proximity to schools and sensitive uses, and the rigorous permitting and monitoring requirements that would significantly impact staff resources already dedicated to currently identified City goals and projects.

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Deliveries

To date, the City has approved one (1) medical marijuana mobile delivery permit as currently regulated. Up to three (3) such permits may be allowed under the City's current regulations. A significant amount of Police staff time has gone into ensuring the regulations are feasible to enforce. Limited deliveries are not likely to create adverse impacts as currently regulated. The proposed ordinance modifies current regulations so that they are applicable to non-medical operations as well. The total number of three permits is proposed to remain the same. Additionally, generally less restrictive AUMA requirements for non-medical use is included for medical users so they are not held to a more restrictive standard.

Public Health and Safety

Many organizations have worked hard to destigmatize marijuana, legitimize the industry, and assist in the development of regulations to protect public safety. Some data has emerged regarding potential impacts to public health and safety. Nonetheless, general consensus will likely not be reached for some time. Generally, there are reported correlations, dependent on a multitude of various factors which may or may not be applicable to the decision to locally regulate, regarding potential health and safety impacts after legalization of recreational marijuana. Reported impacts potentially include:

- Increase in homeless population
- Increased marijuana use by teens
- Increase in marijuana-intoxicated driving
- Increase in crime and arrests
- Increased hospitalizations related to marijuana due to accidental ingestion or overdose
- Misuse of pesticides

Neighboring Jurisdictions and Community Sentiment

The status of marijuana regulation in jurisdictions within San Luis Obispo County varies considerably. The Grover Beach City Council recently adopted an ordinance that allows commercial medical cannabis uses in each of the City's industrial zones. Commercial medical cannabis uses include: inside cultivation, nurseries, manufacturing, testing laboratories, transportation, delivery, distribution (includes storage), and dispensaries (retail sales). The number of dispensaries is limited to two. All greenhouses and outdoor cultivation and nursery uses are prohibited. They also adopted a tax on gross receipts for medical and non-medical commercial cannabis uses and a square footage tax on cultivation consistent with Measure L-16 approved by their voters in the November 2016 election. That tax structure will be implemented in conjunction with any establishment of commercial cannabis businesses. Currently, the City of Grover Beach restricts commercial marijuana to medical purposes except for personal possession and cultivation consistent with AUMA. The City of Pismo Beach and the City of San Luis Obispo to date have taken a more conservative approach but are investigating options. The County of San Luis Obispo allows regulated cultivation and recreational and

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medical deliveries and medical dispensaries but currently prohibits recreational dispensaries. However, their regulations are under review. It should be noted that it is anticipated that restrictions related to medical marijuana under the MMRSA will eventually integrate as the State implements its regulatory scheme for the industry related to the AUMA starting in 2018.

The Council direction is intended to be measured, and primarily keeps the status quo at this time by utilizing existing regulations for personal indoor cultivation and restricted deliveries. The rationale for regulation was based on the following ideas:

- Unknowns - The State is still in the process of developing its licensing process and the regulations needed to protect the public health, safety, and welfare. Without knowing the details of future State regulations, it will be difficult and time consuming to create effective, enforceable, and fair rules.
- Timing – Establishing land uses prior to the voter's consideration of taxing opportunities to recoup the cost of mitigating impacts may force the Council to reallocate funds from current projects and priorities as established in the FY 2017-18 budget.

Another aspect of timing is that unless there is a clear need to create regulations for an entirely new industry with few comparable experiences of other jurisdictions, doing so carries much more risk related to minimizing conflicting land uses.

- City Land Use Attributes – Most commercial non-medical marijuana land uses with the exception of retail sales, will most likely occur on land zoned industrial or agriculture. The City has a relatively small area zoned for industrial uses (22 acres out of 3,795 acres). The industrial zone also allows a mix of uses including limited residential and is located near school sites.
- Land Speculation – Staff is seeing local speculation resulting in substantial increases in land values. While this is not necessarily considered a detriment, the potential rapid and singular intensification of the marijuana industry in a limited area may disrupt the ability of existing local businesses to compete fairly due to the mostly cash marijuana industry. Therefore, it may be prudent to allow the industry to stabilize at this time. The following General Plan policies may be considered applicable:
 - Economic Element Policy ED3-4: states: Continue to balance economic goals with strong policies and programs that promote and maintain the community's environment, quality of life, and rural character.
 - Land Use Policy LU5-1: Provide for a diversity of retail and service commercial, offices, residential and other compatible uses that support multiple neighborhoods and the greater community, and reduce the need

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for external trips to adjacent jurisdictions, by designating Mixed Use areas along and near major arterial streets and at convenient, strategic locations in the community.

- LU5-6: Allowable uses within the MU category shall not include uses that adversely affect surrounding commercial or residential uses, or contribute to the deterioration of existing environmental conditions in the area.
 - LU5-8: Provide for different combinations, configurations and mixtures of commercial, office and residential uses designating the East Grand Avenue, El Camino Real and Traffic Way corridors as Mixed Use (MU).
- Community Character – A major aspect to the uniqueness of Arroyo Grande is its rural character which is rooted in large areas of prime agricultural soils adjacent to the Arroyo Grande Creek and the row crops grown in them. Staff believes that large scale outdoor growing of marijuana will either take place in greenhouses or behind fences to protect the crops. A transition to this type of agricultural crop should be completed gradually, with input from the farming industry as well as with the larger community.

ALTERNATIVES:

The following alternatives are provided for the Planning Commission's consideration:

- Adopt the attached Resolution recommending the City Council adopt the Ordinance as proposed;
- Modify and adopt the attached Resolution recommending the City Council adopt the Ordinance; or
- Provide direction to staff.

ADVANTAGES:

The advantages of amending the City's ordinance to be consistent with the AUMA provides an opportunity for the public to weigh in on potential use and regulation in the City and ensures that City rules are clear in light of evolving state legislation. Additionally, the proposed Ordinance represents a measured approach. Combined with seeing how well the State creates regulations and how non-medical marijuana is embraced and integrated into California's culture and society, implementation of the proposed Ordinance may best protect the public health, safety, and welfare while leaving options to reconsider the industry in the future.

DISADVANTAGES:

No disadvantages have been identified for amending the City's ordinance to be consistent with the AUMA regarding marijuana regulation. The proposed ordinance may be considered to be too conservative in its prohibition of commercial marijuana business and outdoor cultivation and would therefore limit opportunities within the community for potential operators to compete in the marijuana market, therefore limiting potential tax revenue for the City if a significant amount of such land uses were to be allowed.

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ENVIRONMENTAL REVIEW:

Staff has reviewed this project in compliance with the California Environmental Quality Act, and has found that the proposal is exempt pursuant to Sections 15061(b)(3) (general rule) and 15308 (actions by regulatory agencies for the protection of the environment) of the Guidelines of the California Environmental Quality Act (CEQA) and Public Resources Code section 21083.3(e).

PUBLIC NOTIFICATION:

A notice of public hearing was published in The Tribune on Friday, August 4, 2017. The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2. At the time of report publication, no comments have been received.

ATTACHMENTS:

1. Background of issue – history of marijuana regulation
2. City Council minutes June 27, 2017

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ARROYO GRANDE RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE AMENDING CHAPTER 16.62 OF TITLE 16 AND CHAPTER 5.95 OF TITLE 5 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO MARIJUANA AND MARIJUANA DELIVERY SERVICES; DEVELOPMENT CODE CASE NO. 17-003; LOCATION – CITYWIDE

WHEREAS, on January 26, 2016 the City Council of the City of Arroyo Grande adopted Ordinance No. 675 which added Chapter 16.62 to Title 16 of the Arroyo Grande Municipal Code (AGMC), prohibiting medical marijuana dispensaries, cooperatives and collectives, deliveries of medical marijuana, and the cultivation of marijuana within the City; and

WHEREAS, the City Council subsequently determined that it was appropriate to allow limited cultivation and strictly regulated deliveries of medical marijuana and on June 28, 2016, adopted Ordinance 678, amending AGMC Chapter 16.62 to allow limited indoor cultivation of medical marijuana and adding Chapter 5.95 relating to delivery services; and

WHEREAS, on November 9, 2016, the Adult Use of Marijuana Act (AUMA), also known as Proposition 64, became effective, authorizing certain personal use and cultivation of marijuana at a private residence and creating a state licensing and regulatory scheme for various commercial marijuana activities; and

WHEREAS, the AUMA preserves the authority of cities to regulate or prohibit commercial marijuana activity, and to reasonably regulate indoor cultivation and ban outdoor cultivation for personal use within their jurisdictions; and

WHEREAS, the Planning Commission of the City of Arroyo Grande desires that the City Council amend and clarify the provisions in the AGMC relating to marijuana in order to continue to prohibit all commercial marijuana activity within the City of Arroyo Grande, except for limited delivery as permitted by Chapter 5.95, to ban outdoor marijuana cultivation and reasonably regulate indoor marijuana cultivation.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Arroyo Grande hereby recommends the City Council adopt an Ordinance approving Development Code Amendment No. 17-003 amending Title 16 of the Arroyo Grande Municipal Code as attached hereto as Exhibit "A" and incorporated herein by this reference.

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On a motion by Commissioner _____, seconded by Commissioner _____ and by the following roll call vote to wit:

AYES:

NOES:

ABSENT:

The foregoing Resolution was adopted this 5th day of September, 2017.

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GLENN MARTIN
CHAIR

ATTEST:

DEBBIE WEICHINGER
SECRETARY TO THE COMMISSION

AS TO CONTENT:

TERESA MCCLISH
COMMUNITY DEVELOPMENT DIRECTOR

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WHEREAS, the AUMA preserves the authority of cities to regulate or prohibit commercial marijuana activity, and to reasonably regulate indoor cultivation and ban outdoor cultivation for personal use within their jurisdictions; and

WHEREAS, the City Council of the City of Arroyo Grande desires to amend and clarify the provisions in the AGMC relating to marijuana in order to continue to prohibit all commercial marijuana activity within the City of Arroyo Grande, except for limited delivery as permitted by Chapter 5.95, to ban outdoor marijuana cultivation and reasonably regulate indoor marijuana cultivation.

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

SECTION 1. The above recitals and findings are true and correct and are incorporated herein by this reference.

SECTION 2. Chapter 16.62 of Title 16 of the Arroyo Grande Municipal Code is hereby retitled "Cannabis" and amended in its entirety to read as follows:

“16.62.010 - Purpose and findings

A. By adoption of this Chapter, it is the City Council’s purpose and intent, to: prohibit commercial cannabis activity, including medical cannabis dispensaries, cooperatives and collectives; outdoor cultivation of cannabis; permit deliveries of cannabis in accordance with Chapter 5.95 of this Code; and to reasonably regulate the ability of individuals to cultivate not more than six (6) cannabis plants indoors for personal noncommercial use, as permitted by the Adult Use of Marijuana Act (AUMA, Proposition 64), and Health and Safety Code Sections 11362.1 and 11362.2. These regulations are adopted pursuant to the AUMA and the City of Arroyo Grande’s authority under Article XI, Section 7 of the California Constitution, in order to promote the health, safety, and general welfare of the residents and businesses within the City of Arroyo Grande and prevent adverse impacts which such activities may have on nearby properties and residents. B. Pursuant to the City of Arroyo Grande’s police powers authorized in Article XI, Section 7 of the California Constitution, the City has the power to regulate permissible land uses within its boundaries and to enact regulations for the preservation of public health, safety and general welfare of its residents and community. Further, pursuant to Government Code Sections 38771 through 38775, the City also has the power through the City Council to declare actions and activities that constitute a public nuisance.

16.62.020 Application.

The provisions of this chapter shall apply generally to all property within the boundaries of the City wherein any of the conditions herein specified are found to exist. However, nothing in this chapter is intended, nor shall it be construed, to burden any defense to criminal prosecution under the provision of State law relating to the use of medical cannabis. .

16.62.030 Administration.

The Chief of Police, or the Chief’s designee and/or the Director of Community Development, or the Director’s designee, are charged with the responsibility of administering this chapter and exercising the authority conferred thereby.

16.62.040 Definitions.

Consistent with the definitions set forth in State laws relating to cannabis, including but not limited to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Business and Professions Code Sections 26000 et. seq.), the following words shall have the following meaning:

“Accessory structure” means a legally existing fully enclosed detached structure no larger than that is fully enclosed with walls for all perimeters of the building, including, without limitation, a storage shed located on the same legal parcel as a private residence.

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“Commercial cannabis activity” means any cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products, including but not limited to medical cannabis cooperatives and collectives. .

“Cultivation” shall have the meaning as set forth in Business and Professions Code Section 26001 (l) and also means the planting, growing, harvesting, drying, processing or storage of one (1) or more cannabis plants or any part thereof in any location, indoor or outdoor, including a fully enclosed and secure building.

“Delivery” shall have the meaning as set forth in Business and Professions Code Section 26001 (p) (m).

“Dispensary” shall mean any facility, location, establishment or similar entity that cultivates, distributes, delivers, supplies or processes cannabis for medical purposes relating to a qualified patient or primary caregiver, pursuant to State law and in accordance with Health and Safety Code Section 11362.5 et seq. A dispensary shall include a dispensing collective or cooperative and shall include a mobile dispensary and delivery service.

“Cannabis” means all parts of the plant genus *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, and includes “cannabis”, “medical cannabis”, “cannabis product” and “medical cannabis product”, as otherwise defined in Business and Professions Code Sections 26001 (f) and (ai).

“Primary Caregiver”. This shall have the meaning set forth in Health and Safety Code Section 11362.7(d).

“Qualified Patient”. This shall have the meaning set forth in Health and Safety Code Section 11362.7(f).

16.62.050 – Cultivation

A. Except for limited indoor cultivation for personal use as provided in subsection C herein and as permitted by Health and Safety Code Section 11362.2, no person or persons owning, leasing, occupying, or having charge or possession of any parcel of real property in the City of Arroyo Grande, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, shall allow such parcel to be used for the cultivation of cannabis. Cultivation of cannabis in violation of this chapter within the City of Arroyo Grande for any purpose is prohibited, and is expressly declared to be a public nuisance.

B. The prohibition contained in this section is intended to constitute an express prohibition on all outdoor and indoor cultivation of cannabis in the City of Arroyo Grande, except for limited indoor cultivation for personal use. C. The limited indoor cultivation of six (6) or fewer live cannabis plants for personal use is permitted within a private residence, or inside an accessory structure to a private residence located upon the grounds of a private residence that is fully enclosed and secure, subject to the

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following restrictions and standards, and only to the extent such cultivation is authorized by State law:

1. Pursuant to Health and Safety Code Section 11362.2, "private residence" means a house, an apartment unit, a mobile home, or other similar dwelling. A total of six (6) living plants may be planted, cultivated, harvested, dried, or processed at a single private residence at one time.

2. No more than fifty (50) contiguous square feet of the interior of the private residence, shall be devoted to the cultivation of cannabis. The cannabis plants being cultivated shall not exceed 10 feet in height. 3. The area used for cultivation shall comply with California Building, Electrical and Fire Codes as adopted by City of Arroyo Grande.

4. The cannabis cultivation shall be concealed so that it is not visible from the exterior of the property, the public right-of-way, and/or neighboring properties.

5. The lighting for the cultivation shall not exceed 1200 watts. The use of flammable or combustible products, including but not limited to, propane and butane for cultivation and processing is prohibited. If cultivation is in an accessory structure, light shall not emanate or be visible from outside the accessory structure.

6. The cannabis cultivation shall not adversely affect the health or safety of the occupants of other properties in the vicinity by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration or other impacts and shall not be maintained in a manner so as to constitute a hazard due to use or storage of materials, processes, products or wastes.

7. Nothing in this subsection is intended, nor shall it be construed, to preclude any landlord from limiting or prohibiting cannabis cultivation by tenants

16.62.060 Commercial Cannabis Activity, Medical Cannabis Collectives, Cooperatives and Dispensaries Prohibited

A. Except as provided in Section 16.62.070 related to deliveries, all commercial cannabis activity, including but not limited to medical cannabis collectives, cooperatives and dispensaries (including mobile dispensaries), are not permitted in or upon any premises in the City of Arroyo Grande.

B. A medical cannabis dispensary shall not include the following uses, so long as such uses comply with this code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.

2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

3. 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.

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4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

5. A hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

16.62.070 - Deliveries

It shall be unlawful for any person to deliver cannabis or cannabis products or engage in activities that constitute delivery of cannabis or cannabis products anywhere within the boundaries of in the City of Arroyo Grande unless the cannabis delivery service and each delivery driver is licensed in accordance with the provisions of Chapter 5.95 of this Code.

Notwithstanding any provision of this chapter, nothing herein is intended to prohibit the transportation of cannabis or cannabis products on public roads by a licensee duly licensed and acting in compliance with Division 10 of the Business and Professions Code (Business and Professions Code Sections 26000 et. seq.)

16.62.080 Violations and penalties.

A. 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, licenses, or causes a violation thereof, and shall be punished accordingly.

B. A violation of any provision of this chapter shall be subject to any enforcement remedies available under the law and/or the Arroyo Grande Municipal Code. In addition, the City may enforce a violation of this chapter by means of civil enforcement through a restraining order, a preliminary or permanent injunction, nuisance abatement procedures, or by any other means authorized by law. Notwithstanding any other provision of this Code, no conduct which is protected from criminal prosecution pursuant to the Compassionate Use Act (Health and Safety Code Sections 11362.5) and/or the Medical Marijuana Program Act (Health and Safety Code Sections 11362.7-11362.85) shall be made subject to criminal prosecution by this Code. Violation of any provision in this chapter is a misdemeanor unless the city attorney authorizes issuance of an infraction citation or files a complaint charging the offense as an infraction; or the court, upon the prosecutorial recommendation of the city attorney, determines that the offense is an infraction.

SECTION 3. Chapter 5.95 of Title 5 of the Arroyo Grande Municipal Code is hereby amended in its entirety to read as follows:

Chapter 5.95 – CANNABIS DELIVERY SERVICES

5.95.010 - Definitions

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For the purposes of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

“City” shall mean the City of Arroyo Grande.

“Chief of Police” shall mean the Chief of Police of the City of Arroyo Grande or his or her designee.

“City Manager” shall mean the City Manager of the City of Arroyo Grande or his or her designee.

“Cannabis ” means all parts of the plant genus Cannabis savita 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, and includes “cannabis”, “medical cannabis”, “cannabis product” and “medical cannabis product” as defined in Business and Professions Code Sections 26001 (f) and ai)).

“Cannabis Delivery” or “Delivery” means the commercial transfer of cannabis or cannabis products to a customer from one location to another. . “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer. “Delivery” shall also have the meaning set forth in Business and Professions Code Section 26001 (p).

“Cannabis Delivery Driver” shall mean any individual who drives or operates a cannabis delivery vehicle in which cannabis or cannabis products are delivered.

“Cannabis Delivery Service” means a person or persons engaged in the business of owning, controlling or operating one or more cannabis delivery vehicles which transport, carry, or deliver cannabis or cannabis products in such cannabis delivery vehicle, or cannabis delivery vehicles, anywhere within the City of Arroyo Grande.

“Cannabis Delivery Vehicle” means a motor vehicle, as that term is defined in the Vehicle Code of the State of California, used for the transportation of cannabis or cannabis products.

“Person” includes any person, firm, association, organization, partnership, joint venture, business trust, corporation or company.

“Primary Caregiver”. This shall have the meaning set forth in Health and Safety Code Section 11362.7(d).

"Qualified Patient". This shall have the meaning set forth in Health and Safety Code Section 11362.7(f).

5.95.020 - Cannabis Delivery Service License Required; Limitation on Number of Licenses, Criteria and Granting of Licenses

Every cannabis delivery service shall obtain a cannabis delivery service license from the City prior to any operation within the City. The Chief of Police may grant or cause to be granted up to three cannabis delivery service licenses to operate in the City of Arroyo Grande.

Cannabis delivery service licenses shall be issued based upon an open application process. The Chief of Police shall give public notice of the opening of a 30 day period during which applications for cannabis delivery services will be accepted by having such notice published in a newspaper of general circulation pursuant to Government Code Section 6061 and posting the notice on the City's website. Applications shall be signed under penalty of perjury that the applicant has personal knowledge of the information being submitted and that it is true.

Granting of cannabis delivery service licenses shall be made at the sole discretion of the Chief of Police. The Chief of Police shall rank the applications received using the criteria contained in this section, based upon those that best meet the needs of the community and will deliver services and operate in a manner that will protect the public health and safety. The highest ranked qualified applicants equal to the number of available cannabis delivery service licenses shall be granted licenses pursuant to this chapter. The decision of the Chief of Police shall be final.

When the Chief of Police has reviewed qualified applications within two years of any open application process under the provisions of this section and less than three licenses are active, at the discretion of the Chief of Police, review may be limited to applications previously submitted through the prior open application process.

In addition to the information required in section 5.95.050, applicants shall address the following criteria, which shall be used by the Chief of Police as a basis for granting cannabis delivery service licenses:

- The applicant shall describe their experience in the cannabis delivery service business, including their knowledge of applicable cannabis laws and regulations.

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- The applicant shall describe its plan and procedures for safely and securely delivering cannabis and cannabis products. This shall address procedures for preventing theft or diversion of cannabis and cannabis products.
- The applicant shall demonstrate knowledge relating to where and how the cannabis and cannabis products they deliver is cultivated, various strains of cannabis, and its experience, if applicable, growing those strains or comparable agricultural products.
- The applicant shall describe its plan for keeping records required by this chapter.
- The applicant shall describe steps taken to ensure quality, including the purity and consistency of the cannabis and cannabis products it delivers. This shall include labeling, packaging and how it ensures consumer safety by testing for biological and chemical contaminants, pursuant to state or federal standards for food, drugs or tobacco. It shall also include details regarding procedures used to prepare any cannabis edibles to comply with State food safety requirements, as well as the source of cannabis used in edible products.
- The applicant shall describe their personnel procedures and hiring practices, including the manner in which they ensure that employees are familiar with their procedures for safely and securely delivering cannabis and cannabis products, procedures to prevent theft or diversion, as well as the employee's knowledge of applicable cannabis laws and regulations. If the applicant maintains an employee handbook, copies shall be provided with the application.

Cannabis delivery service licenses are not transferable. They shall be deemed terminated if the owner or operator who was granted a license discontinues or suspends delivery operations for a period of more than thirty days without permission obtained from the Chief of Police.

When the State Bureau of Cannabis Control within the Department of Consumer Affairs has commenced issuing licenses pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act(Business and Professions Code Sections 26000 et. seq.), all cannabis delivery services operating in the City shall also present proof to the Chief of Police that it has been issued required state license(s).

5.95.030 - Cannabis Delivery Service License Exemptions

A. A primary caregiver engaged in the delivery of cannabis to a qualified patient for which they are the primary caregiver is exempt from a requirement for a cannabis delivery service license.

B. A qualified patient engaged in the transportation of cannabis solely for his or her own personal use is exempt from a requirement for a cannabis delivery service license.

5.95.040 – Fees, Business Licenses, and Term

- A. Every cannabis delivery service licensed by the City shall pay application and license fees as stated in the City's Master Fee Schedule. Upon approval of the cannabis delivery service license application, the cannabis delivery service shall pay the fee as stated in the City's Master Fee Schedule per cannabis delivery vehicle, and the City shall issue a cannabis delivery vehicle license sticker for each properly insured cannabis delivery vehicle. The annual cannabis delivery service license renewal fee shall be as stated in the City's Master Fee Schedule per year, and the annual fee per cannabis delivery vehicle for the license sticker as stated in the City's Master Fee Schedule. Each applicant shall also present to the City the prescribed amount set by the Department of Justice of the State of California for the processing of the applicant's fingerprints.
- B. Each applicant for a cannabis delivery driver's permit shall pay to the City, application fees and annual permit fees as stated in the City's Master Fee Schedule. The annual renewal permit fee shall also be as stated in the Master City's Fee Schedule. Each applicant shall present to the City the prescribed amount set by the Department of Justice of the State of California for the processing of the applicant's fingerprints.
- C. Each cannabis delivery service shall pay all applicable business license fees as required by Chapter 5.02 of this code, and pay any other applicable taxes pursuant to Federal, State and local law.
- D. Term. All licenses and stickers issued to cannabis delivery services and cannabis delivery drivers shall be for the period of no more than one calendar year, and shall expire at midnight on the 31st day of December, subject to annual renewal by the Chief of Police. Initial annual fees shall

be prorated based upon when in the year it is issued, however, application fees and annual fees shall not otherwise be subject to reductions or refunds.

- E. Prior to any renewal the Chief of Police shall review the licensee or permittee for satisfactory performance and compliance with the provisions of this Code during the preceding year, and also confirm the continuing validity of all information that was submitted by the licensee or permittee during the initial application process.

5.95.050 – Cannabis Delivery Service License Application

A. In addition to submitting information relating to the selection criteria in section 5.95.020, every application for a cannabis delivery service license submitted in response to an open application process shall contain:

1. Name and address of the applicant.
2. If the applicant is a corporation, the names and addresses of its directors. Copies of any relevant Articles of Incorporation, and any medical cannabis collective/cooperative agreement and membership forms shall be submitted with the application.
3. Area within which the delivery service proposes to operate.
4. Kind and amount of public liability and property damage insurance covering each vehicle to be used for cannabis and cannabis products delivered within the City.
5. Owner's trade name and business address.
6. Listing of all vehicles to be used for cannabis delivery within the City, their make, model (year), license plate number and Vehicle Identification Number.

B. Whenever an employee of a cannabis delivery service files an application for a cannabis delivery driver's permit, or renewal hereof, with the City, the employer cannabis delivery service shall within 10 days after the filing of the application by the employee with the City, submit to the City by first class U.S. mail copies of the results and other records pertaining to the testing of the employee for the use of alcohol and controlled substances conducted pursuant to mandatory controlled substance and alcohol testing certification program required by Section 5.95.200.

5.95.060 - Investigation of Cannabis Delivery Service Application

A. All applications submitted as part of a cannabis delivery service open application process shall be referred to the Chief of Police for investigation in order to determine if the applicant is qualified. The Chief of Police shall obtain a copy of the applicant's criminal record in the United States, if any, and may obtain the criminal record, if any, in any other country, if obtaining such foreign criminal record is feasible.

B. The Chief of Police in making determinations relating to granting cannabis marijuana delivery licenses may also demand personal references from applicants and may make such further investigation of applicants as deemed appropriate.

5.95.070 - Insurance Requirements

The insurance required before a cannabis delivery service license can be issued shall insure the public against any loss or damage that may result to any person or property from the operation of any cannabis delivery vehicle used by the cannabis delivery service in its business as such. The amount of insurance shall not be less than \$1,000,000.00 per occurrence combined single limit for bodily injury and property damage. The City, its officers, agents and employees shall be named as additional insureds on any policy. Insurance shall include contractual liability to cover liability assumed in contract, shall include a severability of interest or equivalent wording, and shall specify that insurance coverage afforded to the City shall be primary.

5.95.080 - Insurance Certificate Prerequisite to Issuance

No cannabis delivery service license shall be issued until the applicant first files with the City a certificate of insurance, on a form acceptable by the City. Said certificate shall provide evidence of insurance in amounts and with conditions acceptable to the City and shall be approved by the City Manager. The cannabis delivery service insurance shall remain in force during the entire term of the license, and if such insurance is canceled or terminated, it shall be grounds for revocation or suspension of the license until a valid certificate is furnished to the City.

5.95.090 - Hold Harmless Agreement

As a condition of the license, each cannabis delivery service shall execute an agreement indemnifying and holding harmless the City, its officers, agents and employees from any and all damages, claims, liabilities, costs including attorney's fees, suits or other expenses resulting from and arising out of said cannabis delivery service operations. The agreement shall provide that the cannabis delivery service agrees to

defend, at its sole expense, any action against the City, its officers, agents and employees and reimburse the City of any court costs and attorney fees that the City may be required to pay as a result of any such action or issuance of the license. The City, may, at its sole discretion, participate at its own expense in the defense of any action, but such participation shall not relieve the licensee of its obligations hereunder.

5.95.100 - Revocation or Suspension of Cannabis Delivery Service License

A cannabis delivery service license or a renewal thereof may be revoked or suspended if the license holder:

- A. Has knowingly made a false statement in a material matter either in his or her application or in any reports or other documents furnished by him or her to the City.
- B. Does not maintain and operate his or her cannabis delivery vehicle and other equipment in the manner and in the condition required by law and applicable regulations.
- C. Is required to register as a sex offender under the provisions of Section 290 of the California Penal Code.
- D. Has been convicted of any offense relating to the use, sale, possession or transportation of narcotics or habit-forming drugs.
- E. Has utilized drivers who are under suspension, revocation or probation by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle, or have been convicted of any of the following offenses: driving while intoxicated; or reckless driving involving bodily injury.
- F. Has been convicted of any offense punishable as a felony, or has been convicted within a 10-year period immediately preceding the crime of theft in either degree.
- G. Has been convicted of any offense involving moral turpitude.
- H. Utilizes drivers who have been involved in any motor vehicle accident causing death or personal injury.
- I. Utilizes drivers who have been involved in three or more motor vehicle accidents.
- J. Failed to pay required license fees.

K. Has violated any provision of this chapter or engaged in any conduct that adversely affects the health, welfare or safety of the community.

5.95.110 - Revocation Procedures

A. The City may give notice to a cannabis delivery service of its intention to revoke a cannabis delivery service license. If deemed it will be a hazard to the health, safety or welfare, for the cannabis delivery service to continue operations pending a revocation hearing, the City may suspend the license and all rights and privileges thereunder until the hearing on revocation. The notice shall specify a time and place at which a hearing will be held before a hearing officer designated by the City Manager. The hearing officer may be a department head, or his or her designee, or other disinterested person. The employment, performance evaluation, compensation and benefits of the hearing officer, if any, shall not be directly or indirectly conditioned upon the determinations made by the hearing officer.

The hearing shall be conducted not less than seven days after the date of the notice, unless the operator agrees to a shorter period of time. Unless the cannabis delivery service consents, a hearing must be held within 14 days of a suspension. The notice shall specify the reasons for the proposed revocation in sufficient detail so as to fully inform the cannabis delivery service of the reasons which have caused the notice to be given, and if the cannabis delivery service license has been suspended the reasons for such suspension. A copy of the notice shall be sent to the Chief of Police.

B. The cannabis delivery service and Chief of Police shall each have the right to be represented by counsel, to call and examine witnesses, cross-examine witnesses, and argue their respective positions. The proceedings shall be informal, and strict rules of evidence shall not apply. All evidence shall be admissible which is of the kind that reasonably prudent persons rely on in making decisions.

C. The hearing officer shall render a recommended decision in writing to the City Manager, and include the reasons therefore. The City Manager may accept, or modify the hearing officer's recommendation and the decision of the City Manager shall be final.

5.95.120 - Cannabis Delivery Service Operating Requirements

A. Deliveries shall be directly to the residence or business address of the person ordering the cannabis or cannabis products.. Any other delivery or transaction is prohibited. In accordance with Business and Professions Code Section 26090(d) the

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customer requesting delivery shall maintain a copy of the delivery request and make it available to law enforcement officers upon request.

B. No cannabis delivery service shall permit any person other than a cannabis delivery vehicle driver, licensed in accordance with this chapter, to operate any of its cannabis delivery vehicles in which cannabis is delivered within the City.

C. In accordance with the requirements of Business and Professions Code Section 26090(c), during delivery, licensees shall maintain a physical copy of the delivery request and shall make it available to law enforcement officers upon request. Each cannabis delivery service shall maintain a written record of every request for delivery, including the name of the requestor, the address for the delivery, the quantity and type of cannabis or cannabis products requested, the date and time the delivery request is received, the cannabis delivery vehicle that is assigned to make the delivery, and the cannabis delivery driver that is assigned to make the delivery.

D. Each cannabis delivery service shall assure that every cannabis delivery driver shall have a copy of the record of the delivery request during the delivery of any cannabis or cannabis products in the City. Employees delivering cannabis or cannabis products shall carry a copy of the delivery services license and present it and the employee's identification to law enforcement officers upon request. Deliveries shall only occur between the hours of 10:00 a.m. and 7:00 p.m., or as otherwise permitted by State law or regulations adopted by the Bureau of Cannabis Control.

E. Other than displaying required cannabis delivery vehicle license stickers, delivery vehicles shall not contain advertisements for commercial cannabis activities nor shall it advertise the name of the dispensary.

F. Delivery drivers shall not transport cannabis in excess of any applicable limits established by the Bureau of Cannabis Control.

G. Each cannabis delivery service shall maintain, for a minimum of three years, a written accounting or ledger of all cash, receipts, credit card transactions, and reimbursements, (including any in-kind contributions) as well as records of all operational expenditures and costs incurred by the cannabis delivery service in accordance with generally accepted accounting practices and standards typically applicable to business records, which records shall be subject to audit or inspection by the City upon request.

H. Each cannabis delivery service shall keep current the information furnished under Section 5.95.050. The information shall be furnished to the City.

I. All products delivered shall have been tested in a manner consistent with the procedures described in the cannabis delivery service application, as required by Section 5.95.020, or applicable State law.

5.95.130 - Cannabis Delivery Driver's Permit - Required

Every cannabis delivery driver who drives a cannabis delivery vehicle for which a cannabis delivery service license is required or has been issued shall obtain a cannabis delivery driver's permit from the City prior to driving a cannabis delivery vehicle within the City.

5.95.140 - Application

A. Every applicant for a cannabis delivery driver's permit must be employed or have an offer of employment by a licensed cannabis delivery service. Every cannabis delivery driver shall file an application for a cannabis delivery driver's permit on a form supplied by the City.

B. For cannabis delivery drivers employed by a cannabis delivery service, employer cannabis delivery service shall comply with subsection B of Section 5.95.050 of this chapter. An applicant for a cannabis delivery driver's permit shall immediately upon the filing of an application inform the employer of the requirements of this section and of subsection B of Section 5.09.050.

5.95.150 - Referral of Application to Chief of Police

The application for a cannabis delivery driver's permit shall be referred to the Chief of Police, who shall make the same type of investigation as set forth in Section 5.95.060 and approve or disapprove the application.

5.95.160 - Procedure on Disapproval

- A. Within 15 days after notification of disapproval, an applicant may appeal to the City Manager, in writing, from the disapproval of the Chief of Police, giving the reasons in full as to why the permit should be issued in spite of the disapproval. A copy of the appeal shall be sent by applicant to the Chief of Police and City Manager at the same time.
- B. The City Clerk shall set a hearing on the appeal of the applicant, and shall fix a time and a date certain, within 30 days after the receipt of applicant's appeal by the City (or such longer time as applicant shall agree to) to hear and consider the appeal of applicant. The City Clerk shall notify the applicant,

Chief of Police and City Manager of the time and place of hearing at least seven days prior to the date of the hearing.

- C. A hearing officer designated by the City Manager shall hear the appeal. The hearing officer may be a department head, or his or her designee, or other disinterested person. The employment, performance evaluation, compensation and benefits of the hearing officer, if any, shall not be directly or indirectly conditioned upon the determinations made by the hearing officer.
- D. All testimony at the hearing shall be given under oath or affirmation. The applicant and Chief of Police shall have the right to be represented by counsel. Applicant and Chief shall each have the right to call and examine witnesses, cross-examine witnesses and argue their respective positions. The proceeding shall be informal, and the strict rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely on in making decisions.

The hearing officer shall determine the order of procedure and shall rule on all objections to admissibility of evidence. Applicant and Chief of Police shall each be given a full and fair hearing. The hearing officer shall render a recommended decision in writing to the City Manager, and include the reasons therefore within 10 days after the close of the hearing. The City Manager may accept, or modify the hearing officer's recommendation and the decision of the City Manager shall be final.

5.95.170 - Issuance

Upon receipt of the approval of the City, it shall issue to the applicant a cannabis delivery driver's permit, which shall be in the form of a card containing the permittee's name, photograph and right index fingerprint.

5.95.180 - Notice of Revocation – Suspension - Procedures

The City may give a notice of intention to revoke a cannabis delivery driver's permit, and may suspend such permit pending a hearing, as in the case of a cannabis delivery service license, and the procedures for revocation, and the rights of the parties shall be the same, insofar as applicable as in the case of revocation of a cannabis delivery service license.

5.95.190 - Automatic Suspension of Cannabis Delivery Driver's Permit

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Any cannabis delivery driver's permit issued hereunder shall be automatically suspended and be null and void during any period of time that the cannabis delivery driver's State motor vehicle operator's license is suspended, revoked, or for any other reason is invalid or inoperative.

5.95.200 - Mandatory Controlled Substance and Alcohol Testing Program

A. Every cannabis delivery service shall develop and adopt a mandatory controlled substance and alcohol testing certification program in compliance with Government Code Section 53075.5 and in accord with the procedures set forth in Part 40 (commencing with Section 40.1) of Title 49 of the Code of Federal Regulations. A copy of the mandatory controlled substance and alcohol testing certification program adopted pursuant to this section shall be delivered to the Chief of Police and City Manager.

B. The employer cannabis delivery service's mandatory controlled substance and alcohol testing certification program shall contain a provision that, while the employer cannabis delivery service license is in effect, the employer cannabis delivery service shall, upon request of the City, make available for inspection copies of all results and other records pertaining to the testing for the use of alcohol and controlled substances conducted pursuant to the mandatory controlled substance and alcohol testing certification program required by this section.

C. The employer cannabis delivery service's mandatory controlled substance and alcohol testing certification program shall, at a minimum, require every cannabis delivery driver to submit to testing at least once every year and submit to mandatory testing following citation for a moving violation or being involved in a vehicle accident.

D. Failure to comply with the requirements of this section constitutes grounds for denial, revocation or suspension of a cannabis delivery service license pursuant to this chapter. The procedures for denial, suspension or revocation shall be the same as those prescribed for suspension or revocation of a cannabis delivery service license elsewhere in this chapter.

5.95.210 - Grounds for Denial, Revocation or Suspension of Cannabis Delivery Driver's Permit

The granting of a cannabis delivery driver's permit or a renewal thereof may be denied and an existing permit may be revoked or suspended if the permit holder or applicant:

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A. Has knowingly made a false statement in a material matter either in his or her application or in any reports or other documents furnished by him or her to the City.

B. Does not maintain and operate his or her cannabis delivery vehicle and other equipment in the manner and in the condition required by law and applicable regulations.

C. Is required to register as a sex offender under the provisions of Section 290 of the California Penal Code.

D. Has been convicted of any offense relating to the use, sale, possession or transportation of narcotics or habit-forming drugs.

E. Within the three-year period immediately preceding the application has been under suspension, revocation or probation by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle, or has been convicted of any of the following offenses: driving while intoxicated; or reckless driving involving bodily injury.

F. Has been convicted of any offense punishable as a felony, or has been convicted within a 10-year period immediately preceding the crime of theft in either degree.

G. Has been convicted of any offense involving moral turpitude.

H. Has been involved within the two years immediately preceding the application in any motor vehicle accident causing death or personal injury.

I. Has been involved in three or more motor vehicle accidents within the year immediately preceding the application.

J. Failed to pay required permit fees.

K. Has violated any provision of this chapter.

5.95.220 - Additional Cannabis Delivery Driver Conditions

In addition to the conditions and grounds for the issuance and retention of a cannabis delivery driver's permit issued pursuant to this chapter, a cannabis delivery driver's permit shall be issued and retained subject to the following conditions:

A. The cannabis delivery driver shall be at least 21 years old prior to issuance of a cannabis delivery driver's permit.

B. Employment, or an offer of employment, as a cannabis delivery driver has been made by a licensed cannabis delivery service.

C. The cannabis delivery driver's permit shall become void upon termination of employment of the cannabis delivery driver.

D. The cannabis delivery service employer shall notify the City upon termination of employment of a cannabis delivery driver.

E. The cannabis delivery driver's permit shall state the name of the cannabis delivery service employer.

F. The cannabis delivery driver shall return the cannabis delivery driver's permit to the City upon termination of employment.

G. The cannabis delivery driver shall not test positive pursuant to the employer cannabis delivery service's mandatory controlled substance and alcohol testing certification program.

5.95.230 - Cannabis Delivery Driver Duties

A. No cannabis delivery driver shall permit any person other than another cannabis delivery vehicle driver, who has been issued a permit in accordance with this chapter, to operate the cannabis delivery vehicle in which cannabis or cannabis products are delivered within the City.

B. Each cannabis delivery driver shall have a copy of the record of the delivery request during the delivery of any cannabis or cannabis products in the City.

SECTION 4. In accordance with the requirements of Business and Professions Code Section 26055(f), a copy of this Ordinance shall be provided to the Bureau of Cannabis Control within the California Department of Consumer Affairs. The City Manager shall also designate a member of the City staff to be the contact person for State licensing authorities regarding commercial cannabis activity within the City, and provide the Bureau with that person's name and contact information.

SECTION 5. This Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does

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not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment.

SECTION 6. A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance.

SECTION 7. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

SECTION 8. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

On motion by Council Member _____, seconded by Council Member _____, and by the following roll call vote to wit:

AYES:

NOES:

ABSENT:

the foregoing Ordinance was adopted this ____ day of _____, 2017.

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JIM HILL, MAYOR

ATTEST:

KELLY WETMORE, CITY CLERK

APPROVED AS TO CONTENT:

JAMES A. BERGMAN, CITY MANAGER

APPROVED AS TO FORM:

HEATHER K. WHITHAM, CITY ATTORNEY

CONSIDERATION OF AMENDMENT OF AN ORDINANCE RELATING TO NON-MEDICAL MARIJUANA

BACKGROUND OF ISSUE

- In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA), which decriminalized marijuana use for medical purposes.
- In 2003, the Medical Marijuana Program Act (MMP) clarified the CUA — which includes issuing identification cards for qualified patients and allowing patients and their primary caregivers to collectively or cooperatively cultivate medical marijuana.
- In 2008, the City Council adopted Ordinance 599 that prohibited the establishment of medical marijuana dispensaries in the City. On October 9, 2012, the City Council adopted Ordinance 647, relating to the definition of medical marijuana dispensaries to include mobile dispensaries.
- In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code Section 11362.768) affirming that counties and cities can under state law adopt ordinances that control and restrict the location and establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.
- In 2013, the California Supreme Court unanimously ruled that local governments have the power to ban medical marijuana dispensaries (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*). Also in 2013 the State Court of Appeals decided a case that held that cities have authority to prohibit cultivation of all medical marijuana city-wide (*Maral v. City of Live Oak*). In both cases, the courts similarly found that the Proposition 215 and the MMP do not preempt a city's regulatory authority to prohibit all cultivation in the city, if the city so chooses.
- On October 9, 2015, Gov. Jerry Brown signed a comprehensive package of bills to establish a regulatory structure for medical marijuana. Together, AB 266, AB 243, and SB 643 comprise the Medical Marijuana Regulation & Safety Act (MMRSA). The MCRSA, which is comprised of five separate pieces of legislation, establishes, among other matters, a dual licensing structure requiring both a state license and a local license or permit for medical marijuana activities, a regulatory structure imposing health, safety and testing standards for cultivation and dispensary facilities, and the criteria for licensing medical marijuana businesses.
- On November 24, 2015, the City Council considered implications of the MMRSA regarding local control and directed staff to prepare an ordinance prohibiting cultivation, delivery and all commercial medical marijuana uses.

ATTACHMENT 1

On December 1, 2015 the Planning Commission adopted Resolution No. 15-2241 recommending that the City Council adopt an ordinance adding Chapter 16.62 to Title 16 of the Arroyo Grande Municipal Code prohibiting medical marijuana dispensaries, cooperatives and collectives, and cultivation of medical marijuana, and limit deliveries of medical marijuana or medical cannabis products. Based on concerns expressed by the public and some Commission members regarding the severity of outright prohibition, the Commission included in their motion a request that Council specifically review and re-evaluate banning all cultivation.

On June 14, and June 28, 2016 the City Council introduced and adopted the Ordinance to allow limited indoor cultivation in residences excluding garages and limited mobile deliveries.

General Information concerning Licensing, Taxes and Fees

Although the AUMA pre-empted additional sales taxes for marijuana, other excise taxes may still be levied on medical marijuana, including taxes on cultivation and manufacturing. The AUMA differs from the Medical Marijuana Regulation & Safety Act (MMRSA) because it does not require evidence of local approval to be submitted with an application for a State-issued recreational marijuana business license, rather it provides that a State license cannot be issued if the activity is in violation of local ordinances.

Retailers who sell cannabis and cannabis products will be required to register with the State and begin collecting the 15 percent excise tax on their gross receipts by January 1, 2018. Cultivators will also be required to register by January 1, 2018, to collect and remit the cultivation tax currently set at \$9.25 per dry-weight ounce of flowers, and \$2.75 per dry-weight ounce for leaves. Cities are also authorized to impose additional taxes to cover the costs of services to enforce the marijuana regulation. However, a ballot measure would need to be prepared and presented to the voters in accordance with the requirements of Proposition 218. Revenues would be entirely dependent on the number and extent of businesses allowed to operate in the City.

*Minutes: City Council Meeting
Tuesday, June 27, 2017*

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11. OLD BUSINESS

11.a. Consideration of a Staff Presentation, Receive Public Comment, and Provide Key Policy Direction to Staff Concerning the Development of Local Regulations for Non-Medical Marijuana Including Land Uses Under the Control, Regulate, And Tax Adult Use Of Marijuana Act.

City Manager Bergman and Community Development Director McClish presented the staff report and recommended that the Council: 1) Receive an analysis of issues including preliminary recommendations from staff; 2) Receive public comment, and 3) Direct staff to develop an ordinance regulating personal indoor cultivation and restricted deliveries in a manner similar to the City's medical marijuana regulations and prohibit all other non-medical marijuana related land uses at this time.

Mayor Hill invited public comment. Speaking from the public were Patty Welsh, Arroyo Grande, on behalf of those who need medical marijuana for terminal illnesses, expressed concern with restrictions on outdoor cultivation, and supported permitted mobile delivery services for medical marijuana; Jerry Rutiz, commented that he was not here to advocate cannabis use, referred to spirit of law, and stated that the City Council should not put road blocks in place to continue putting cannabis in hiding; that the City should allow a brick and mortar store because it would be easier to regulate and enforce, commented that delivery services could become problematic, and suggested that the City can implement a tax to receive revenue; Robert Olsen, referred to the 2016 Colorado study before and after legalization of marijuana use which resulted in an increase in statistics for traffic deaths, youth use, and emergency services and hospitalizations related to marijuana use, and recommended the Council stay within the law but do not facilitate the use of marijuana further due to the enormous social costs; Cynthia Gonzales, representing Elite Care, referred to the Colorado study and stated she has received information and data that contradicts the study, commented that teen use is unchanged, there is little impact on traffic fatalities, that marijuana is used to treat palliative and chronic conditions, referred to a recently passed Senate trailer bill, stated that medical cannabis will be highly regulated and California has learned from Colorado's experience and will want to be a leader; noted that Elite Care is not a grower, and answered questions about how much cannabis can be delivered per day, per person and how age verification is determined; Tammy Peluso, representing Elite Care, provided additional information and clarification on personal outdoor cultivation; how much product value can be carried by a delivery service and how it is packaged for delivery, commented on teen use, commented on death statistics, and stated that California is much more prepared to deal with cannabis; Rob Keim, St. Barnabas, commented on State law as it relates to cannabis, expressed appreciation for the City's conservative approach, and asked questions regarding penalties; Robert Olsen, clarified that his previous comments were related directly to the use of recreational marijuana; Kevin Gotchal, questioned why only three mobile delivery permits were allowed in the City as it appears to limit commerce and revenue for the City; commented on testing labs and stated the City should get in front of the regulations and be able to enforce them, and commented that the City could benefit from the tax if they considered that as an option; and Patricia Price, suggested that testing and research might be a good niche for Arroyo Grande as there are not a lot of related community impacts.

In response to the public comment period, staff responded to questions regarding penalties and potential revenue sources for certain land uses.

Action: Mayor Hill moved to direct staff to develop an ordinance regulating personal indoor cultivation and restricted deliveries in a manner similar to the City's medical marijuana regulations and prohibit all other non-medical marijuana related land uses at this time. Council Member Harmon seconded, and the motion passed on the following roll-call vote:

AYES: Hill, Harmon, Ray, Barneich, Brown
NOES: None
ABSENT: None

12. NEW BUSINESS

None.

13. CITY COUNCIL REPORTS

The Mayor and Council Members provided brief reports from the following committee, commission, board, or other subcommittee meetings that they attended as the City's appointed representative.

- (a) **MAYOR HILL:**
 - (1) South San Luis Obispo County Sanitation District (SSLOCSD)
 - (2) Brisco/Halcyon Interchange Subcommittee
 - (3) Oversight Board to the Successor Agency to the Dissolved Arroyo Grande Redevelopment Agency

- (b) **MAYOR PRO TEM BROWN:**
 - (1) San Luis Obispo Council of Governments/Regional Transit Authority (SLOCOG/RTA)
 - (2) Integrated Waste Management Authority Board (IWMA)
 - (3) South County Transit (SCT)
 - (4) Brisco/Halcyon Interchange Subcommittee

- (c) **COUNCIL MEMBER BARNEICH:**
 - (1) Zone 3 Water Advisory Board
 - (2) Homeless Services Oversight Council (HSOC)
 - (3) Other

- (d) **COUNCIL MEMBER HARMON:**
 - (1) County Water Resources Advisory Committee (WRAC)
 - (2) Air Pollution Control District (APCD)
 - (3) Five Cities Fire Authority (FCFA)
 - (4) Other: Attended the Visit SLO CAL advisory committee meeting.

- (e) **COUNCIL MEMBER RAY:**
 - (1) California Joint Powers Insurance Authority (CJPIA)
 - (2) Economic Vitality Corporation (EVC)
 - (3) Tourism Marketing Committee

14. COUNCIL COMMUNICATIONS

Council Member Harmon invited everyone to the Heritage Square Park on Tuesday, July 4th at 1:00 p.m. for a patriotic concert in celebration of the July 4th holiday.