



PUBLIC HEARING

Agenda Item # 4

AGENDA REPORT SUMMARY

Meeting Date: March 12, 2019

Subject: Consideration of Amendments to the City's Medical and Adult-Use Cannabis Regulations

Prepared by: Eliana Hassan, Assistant Planner

Reviewed by: Jon Biggs, Community Development Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Draft Medical and Adult-Use Cannabis Regulations Amendment Ordinance
2. Planning Commission Meeting Minutes, January 17, 2019
3. Planning Commission Agenda Report, January 17, 2019

Initiated by:

City Council

Previous Council Consideration:

October 9, 2018

Fiscal Impact:

None

Environmental Review:

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act ("CEQA") Guidelines. The Ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical changes in the environment, directly or indirectly.

Policy Question(s) for Council Consideration:

- Does the City Council wish to impose stricter controls on indoor cultivation of cannabis for personal use in Los Altos?

Summary:

- Amendments to the City's Medical and Adult-Use Cannabis Regulations (Los Altos Municipal Code Chapter 14.82) that would provide for stricter controls on indoor cultivation of cannabis for personal use were drafted in response to concerns about impacts on adjacent properties
- The Planning Commission held a public hearing to consider the amendments and voted to recommend against stricter controls on the indoor cultivation of cannabis for personal use



Subject: Consideration of Amendments to the City's Medical and Adult-Use Cannabis Regulations

Planning Commission Recommendation:

Do not amend the City's Medical and Adult-Use Cannabis Regulations to impose stricter controls on the indoor cultivation of cannabis for personal use



Subject: Consideration of Amendments to the City’s Medical and Adult-Use Cannabis Regulations

Purpose

This is a zoning ordinance amendment to establish stricter controls on indoor personal cannabis cultivation.

Background

On October 9, 2018, the City Council voted to adopt Ordinance No. 2018-451, which prohibited all categories of commercial cannabis activity, prohibited outdoor cultivation of cannabis for personal use and imposed basic regulations on indoor personal cannabis cultivation. At time of adoption, and in response a member of the public expressing concerns that personal cannabis cultivation inside a greenhouse or other accessory structure could result in odor impacts to adjacent properties, the City Council directed staff to investigate stricter controls on indoor cultivation of cannabis to ensure that properties adjacent to such activities were not unduly impacted. Staff worked with the City Attorney’s office to draft amendments consistent and compatible with all applicable State legislation to address the concerns.

On January 17, 2019, the Planning Commission held a duly noticed public hearing to consider the proposed Code amendments to the City’s Medical and Adult-Use Cannabis Regulations. Following public comment and Commissioner discussion, the Commission voted unanimously to recommended to the City Council that no amendments be made to Los Altos Municipal Code Chapter 14.82 (Medical and Adult-Use Cannabis Regulations) due to insufficient data to support a need for the proposed changes. There are current regulations in place to address listed concerns. A copy of the draft Ordinance, the meeting minutes, and the agenda report are included as Attachments 1 through 3, respectively.

Discussion/Analysis

The proposed amendments considered by the Planning Commission would require that any accessory structure used for cannabis cultivation have a minimum setback of 10-feet from any property line and would require that structures used to produce cannabis must have proper ventilation and air filtration to prevent or minimize odors from leaving the enclosure. If two or more people of normal sensitivity residing on adjacent or nearby properties filed complaints with the City within a 30-day period regarding the odor from the indoor cannabis cultivation, it could be deemed a public nuisance that is required to be resolved.

However, based on the Planning Commission’s review of the proposed amendments, it appears that the odor concerns raised by a member of the public could be addressed by enforcement of the existing regulations contained in Section 14.82.030, which require the cannabis cultivation to be located within a fully enclosed and secure structure. Thus, the Commission felt that the City should not impose stricter controls on indoor cannabis cultivation based on a single instance that could be remedied under the existing ordinance and the current nuisance abatement process, identified in



Subject: Consideration of Amendments to the City’s Medical and Adult-Use Cannabis Regulations

Chapter 11.10 of the Municipal Code. Some Commissioners also expressed concern about requiring a setback of at least 10-feet, exceeding current setback standards for accessory structures, which require a minimum of five feet for structures over six feet in height (LAMC Section 14.15.020).

City enforcement under the nuisance abatement procedures requires a showing that the condition amounts to a public nuisance, rather than a private nuisance. Section 11.10.020 defines “public nuisance” as “a nuisance, which affects at the same time an entire community, neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.” Odor violations can be challenging to address because they are intermittent and difficult to objectively measure. The draft text defining when odor issues amount to a public nuisance may assist enforcement processes under Chapter 11.10 of the Municipal Code. If the Council desires to introduce and waive further reading of the proposed amendments, the draft ordinance is included as Attachment 1 of this agenda report.

Options

- 1) Maintain the City’s existing Medical and Adult-Use Cannabis Regulations

Advantages: Avoids additional costs and restrictions on persons wishing to cultivate cannabis indoors for personal use

Disadvantages: None, as it appears that the existing regulations adequately address concerns related to odor impacts from the indoor cultivation of cannabis on adjacent and nearby properties. However, there may be potential enforcement challenges due to intermittent and subjective nature of odor violations

- 2) Amend the City’s Medical and Adult-Use Cannabis Regulations to establish stricter controls on indoor cannabis cultivation

Advantages: Adds stricter controls to avoid potential odor impacts from the indoor cultivation of cannabis

Disadvantages: Potentially higher costs to persons wishing to cultivate cannabis indoors for personal use

Recommendation

The Planning Commission recommends Option 1.

ORDINANCE NO. 2019- 455

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS,
CALIFORNIA, AMENDING LOS ALTOS MUNICIPAL CODE, SECTION 14.82.030
RELATED TO CULTIVATION OF CANNABIS FOR PERSONAL USE**

WHEREAS, the City of Los Altos, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the City of Los Altos initiated an application (18-CA-07) to amend Title 14 of the Los Altos Municipal Code pertaining to the cultivation of cannabis for personal use, referred herein as the “CA”; and

WHEREAS, California Proposition 64 (2016) legalized cultivation of not more than six living cannabis plants by persons 21 years of age or older for personal use; and

WHEREAS, Health and Safety Code Section 11362.2 provides that a city shall not completely prohibit, but that a city may enact and enforce reasonable regulations to regulate, personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure; and

WHEREAS, the CA is in the best interest for the protection or promotion of the public health, safety, comfort, convenience, prosperity, or welfare and is in conformance with the Los Altos General Plan; and

WHEREAS, the CA was processed in accordance with the applicable provisions of the California Government Code and Chapter 14.86 of the Los Altos Municipal Code; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the CA on January 17, 2019 and the City Council held a duly noticed public hearing on the CA on March 12, 2019; and

WHEREAS, the Los Altos City Council has reviewed all written evidence and oral testimony presented to date on this matter.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT TO LOS ALTOS MUNICIPAL CODE. Los Altos Municipal Code, Section 14.82.030, entitled “Cultivation of Cannabis for Personal Use” is hereby amended as set forth below.

14.82.030 - Cultivation of Cannabis for Personal Use.

- A. Indoor Cultivation. The indoor cultivation of cannabis for personal use, including cannabis cultivation for personal medical use by a qualified patient or primary caregiver, is prohibited except in compliance with the following:
1. Cannabis cultivation shall only occur indoors at a private residence, or inside a legal accessory structure, located upon the grounds of a private residence.
 2. Cannabis cultivation shall be limited to six plants total per residence, whether immature or mature, regardless of how many residents reside at the private residence.
 3. Persons engaging in indoor cultivation must comply with all state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation, including without limitation, Health and Safety Code Sections 11362.1 and 11362.2.
 4. The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for cultivation of cannabis is prohibited. Use of gas products shall be limited to those allowed by the California Building, Electrical, and Fire Codes as adopted and amended by the City of Los Altos.
 5. The residence shall maintain fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident(s), and the premises shall not be used primarily or exclusively for cannabis cultivation.
 6. All areas used for cannabis cultivation shall be located within a fully enclosed and secure structure. "Fully enclosed and secure structure" means a space within a building, greenhouse, or other legal structure which has a complete roof enclosure supported by connecting, enclosed walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.
 7. A fully enclosed and secure structure used for the cultivation of cannabis that is separate from the main residential structure on a premises must maintain a minimum setback of ten (10) feet from any property line.
 8. Any structure used for the cultivation of cannabis must have proper ventilation and air filtration to prevent mold damage and to prevent cannabis plant odors or particles from becoming a public nuisance. A public nuisance may be deemed to exist if the cultivation produces odors which are disturbing to two (2) or more people of normal sensitivity residing on adjacent or nearby property, and both complaints are reported to the city within a 30-day period.
- B. Outdoor Cultivation Prohibited. Outdoor cultivation of cannabis, including cannabis cultivation for personal medical use by a qualified patient or primary caregiver, personal adult-use, or commercial purposes, is prohibited in all zoning districts in the City of Los Altos.

SECTION 3. CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under CEQA Guidelines, Section 15061(b)(3), that this Ordinance is exempt from environmental review under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Ordinance would create additional regulations for indoor cultivation of cannabis to prevent odors, mold and impacts to the public. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Clara in accordance with CEQA Guidelines.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

SECTION 5. CUSTODIAN OF RECORDS. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at Los Altos City Hall, 1 North San Antonio Road, Los Altos, CA 94022. The custodian of these records is the City Clerk.

SECTION 6. RESTATEMENT OF EXISTING LAW. Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter or relating to the enumeration of permitted uses under the City's zoning code, shall be construed as restatements and continuations, and not as new enactments.

SECTION 7. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect 31 days after adoption.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on March 12, 2019 and was thereafter, at a regular meeting held on _____, _____ passed and adopted by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Lynette Lee Eng, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

MINUTES OF A REGULAR MEETING OF THE PLANNING COMMISSION OF THE CITY OF LOS ALTOS, HELD ON THURSDAY, JANUARY 17, 2019 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL, ONE NORTH SAN ANTONIO ROAD, LOS ALTOS, CALIFORNIA

ESTABLISH QUORUM

PRESENT: Commissioners Ahi, Bodner, Bressack and Meadows
ABSENT: Chair Samek, Vice-Chair Lee and Commissioner Mosley
STAFF: Community Development Director Biggs, Planning Services Manager Dahl, Senior Planner Golden, Assistant Planner Hassan, and City Attorney Lee

Upon motion by Commissioner Meadows, seconded by Commissioner Bodner, Commissioner Bressack was appointed Acting Chair for the meeting by consensus.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None.

ITEMS FOR CONSIDERATION/ACTION

CONSENT CALENDAR

1. Planning Commission Minutes

Approve the minutes of the December 6, 2018 Regular Meeting.

Action: Upon motion by Commissioner Bodner, seconded by Commissioner Meadows, the Commission approved the minutes from the December 6, 2018 Regular Meeting as presented.

The motion was approved (4-0) by the following vote:

AYES: Ahi, Bodner, Bressack and Meadows

NOES: None

ABSENT: Lee, Mosley and Samek

ABSTAIN: None

STUDY SESSION

1. 18-PPR-08 – Ciyavash Moazzami – 444 – 450 First Street

Design Review Study Session for a new multiple-family development. The proposal includes 26 condominium units in a four-story building with two levels of underground parking. *Project Planner: Dahl/Golden*

Planning Services Manager Dahl presented the staff report.

Project applicant Ciyavash Moazzami and project architect Chris Hall presented the project.

Public Comment

Resident Fred Fallah expressed concerns about the height and bulk of a four-story project, would prefer a sloped roof and wanted to make sure all environmental issues were evaluated, but noted that he supported the architectural design and materials.

Resident Ramin Shahidi expressed concerns about off-site light pollution from this and other projects, would like additional screening and trees planted along Foothill Expressway, but that he supports new development Downtown and that the project is well designed.

Commission Discussion

The Commission discussed the project and provided the following comments:

- Commissioner Ahi:
 - Successful design concept;
 - Look at the density – is this number of units appropriate – document a basis for the proposed number of units and identify density of nearby projects;
 - Reconsider glass railings and balconies along Foothill Expressway;
 - Consider decreasing the size of the outdoor patios and increasing the size of the lobby; and
 - The project is well articulated with good proportions and scale.
- Commissioner Bodner:
 - Provide more green landscaping along the front of the property;
 - Likes the open front entry and exterior material palette;
 - Reconsider the glass railings;
 - Likes the roof deck;
 - Has potential to be a beautiful building; and
 - Make sure to consider relationship to the new building at 440 First Street.
- Commissioner Meadows:
 - Nice design package;
 - Ditto on the Foothill Expressway comments;
 - Think about the south side elevation and make sure it's not a blank wall;
 - Consider the lobby composition in relation to First Street;
 - Think about using smaller units to achieve a higher density; and
 - Great start to the project.
- Acting Chair Bressack:
 - Good start for the design;
 - Rethink the glass railings for balconies, consider spandrel glass as an alternative;
 - Good window details;
 - Consider additional landscaping along the front of the property;
 - Provide details on how exterior material terminate at the top of the building;
 - Look into the installation of solar arrays on roof;
 - Look at using skylights;
 - Okay with density, but reevaluate the layout of some of the units; and
 - Look at stucco screeds or control joints as a means to breakup large stucco walls.

PUBLIC HEARING

2. 18-CA-07 – City of Los Altos – Cannabis Prohibition Ordinance

Consideration of an ordinance amending Los Altos Municipal Code Chapter 14.82 (Medical and Adult-Use Cannabis Regulations) to establish stricter controls on indoor cannabis cultivation for personal use in the City of Los Altos. *Project Planner: Hassan*

Assistant Planner Hassan presented the staff report recommending approval of the amendments to the City's Cannabis Ordinance.

Public Comment

Resident Ken Elkhert expressed concerns regarding the offensive odor of cannabis from his neighbor's cultivation and asked why the City of Los Altos doesn't follow the Rancho Cordova Ordinance where the odor of cannabis is considered a public nuisance.

Commission Discussion

Commissioner Meadows noted that there are many potential nuisances in a neighborhood; nothing prevents communication between neighbors to address such instances; does not support the code amendments as there is no data to support increased regulation at this time.

Commissioner Bodner noted that she is conflicted, but feels the proposed amendments are reactionary and there does not appear to be a problem that requires further regulation; existing ordinance, if enforced, appears to reasonably address the concern.

Commissioner Ahi noted that he did not support proposed amendments; odor is a subjective thing; 10-foot setback appeared arbitrary; section 6 of the current code appears to address the odor concern; if issues persist, size limitations for cannabis cultivation structures may be appropriate way to regulate.

Acting Chair Bressack noted that she did not support the proposed amendments; excessive regulation; some exposure to odor is part of living in a more urban setting; encouraged more communication between neighbors; appears existing ordinance adequately addressed odor issue.

Action: Upon motion by Commissioner Meadows, seconded by Commissioner Bodner, the Commission recommended to the City Council that no amendments be made to Los Altos Municipal Code Chapter 14.82 (Medical and Adult-Use Cannabis Regulations) due to the following reasons:

- Data not sufficient to support the recommend changes to the ordinance;
- There are other methods available to address odor complaints; and
- Existing ordinance appears to address odor concerns related to indoor cultivation.

The motion was approved (4-0) by the following vote:

AYES: Ahi, Bodner, Bressack and Meadows

NOES: None

ABSENT: Lee, Mosley and Samek

DISCUSSION

3. Story-Pole Policy Regulations

Discussion of the Story-Pole Policy. *Project Manager: Biggs*

Commissioner Ahi noted that the City's Policy appears antiquated; current the graphic representation software and tools can provide superior solutions and more detailed and accurate visual representations of new development; surprised that a City in Silicon Valley even has a story-pole policy; computer models can offer pedestrian views and accurately simulate building relationship; a single pole could be used to show height, but only in circumstances where new project is taller than adjacent buildings. Concluded by noting the whole concept seems strange, but noted that if policy remains, he supported limiting the amount of time that story poles are in place.

Commissioner Bodner noted that if story poles have to be erected, they should only be up for a short period of time – no more than 30 days; take photos of the story poles right away; and then after 30 days, the story poles can be removed.

Commissioner Meadows noted that the best practices should be explored and developed; the current story-pole policy is not a best practice; could support a 30-day maximum for the story poles to be in place.

Acting Chair Bressack noted that in order to prevent story poles from creating a blight they need to be limited to no more than 30 days; concurred with other Commissioners that story poles are not really needed.

Commissioner Bodner further noted that story poles are a pedestrian/public safety hazard and have outlasted their usefulness.

Commissioner Ahi added that the City should grant exceptions when a project site is actively used and occupied by businesses and tenants.

Action: Upon motion by Commissioner Bodner, seconded by Commissioner Meadows, the Commission referred the Story-Pole Policy to staff and continued the item to the next meeting on February 7th to change the policy to reflect the feedback from the Planning Commission and draft a memorandum to the City Council regarding why the policy needs to be amended.

The motion was approved (4-0) by the following vote:

AYES: Ahi, Bodner, Bressack and Meadows

NOES: None

ABSENT: Lee, Mosley and Samek

ABSTAIN: None

COMMISSIONERS' REPORTS AND COMMENTS

Commissioner Meadows reported on the January 8, 2019 City Council meeting.

POTENTIAL FUTURE AGENDA ITEMS

None.

ADJOURNMENT

Acting Chair Bressack adjourned the meeting at 9:10 P.M.

Jon Biggs
Community Development Director



PLANNING COMMISSION AGENDA REPORT

Meeting Date: January 17, 2019

Subject: 18-CA-07 – Medical and Adult-Use Cannabis Regulations Amendment

Prepared by: Eliana Hassan, Assistant Planner

Initiated by: City Council

Attachments:

A. Draft Medical and Adult-Use Cannabis Regulations Amendment Ordinance

Recommendation:

Recommend approval to the City Council of amendments to Zoning Code Chapter 14.82 (“Cultivation of Cannabis for Personal Use”).

Environmental Review:

This Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (“CEQA”) Guidelines. The Ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical changes in the environment, directly or indirectly.

Summary:

The City Council is seeking a recommendation from the Planning Commission regarding amendments to the City’s Medical and Adult-Use Cannabis Regulations that will provide for stricter controls on indoor cultivation of cannabis for personal use (proposed as part of Section 14.82.030 entitled “Cultivation of Cannabis for Personal Use”).

Background

On January 26, 2016, the City Council adopted Ordinance No. 2016-418, which prohibited marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries in the City as provided in Los Altos Municipal Code, Chapter 14.82. This Ordinance was created under, and in reference to, the state statutory framework of the (now repealed) Medical Marijuana Regulation and Safety Act (MMRSA).

On November 8, 2016, California voters approved Proposition 64, which legalized the non-medical use and possession of marijuana by adults over 21 years of age and provided for state licensing of the adult-use marijuana businesses. On June 27, 2017, the California Legislature adopted Senate Bill 94 (“SB 94”), which combined the state licensing scheme applicable to both medical and adult-use commercial marijuana/cannabis activity under a single law entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). MAUCRSA adopted new state licensing categories and definitions related to commercial cannabis activities than previously existed under the MMRSA.

On November 28, 2017 the City Council adopted, and later extended for one year, an urgency interim ordinance establishing a moratorium on all medical and adult-use commercial cannabis activities, with exceptions for personal cannabis cultivation.

Prior to the expiration of the moratorium, at meetings on September 25, and October 9, 2018, the City Council introduced and adopted Ordinance No. 2018-451, which prohibited all categories of commercial cannabis activity, whether for medical or adult-use purposes. Ordinance No. 2018-451 also prohibited outdoor cultivation of cannabis for personal use and imposed basic regulations on indoor personal cannabis cultivation.

Discussion/Analysis

State law, via Health and Safety Code Section 11362.2, provides that a city shall not completely prohibit the personal cultivation of cannabis, but that a city may enact and enforce reasonable regulations to regulate, personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure.

When the City adopted Ordinance No. 2018-451, some members of the public expressed concern that personal cannabis cultivation inside a greenhouse or other accessory structure could result in odor impacts to adjacent properties. To address this concern, two additional requirements for indoor cannabis cultivation are proposed.

The first proposed section would require that any accessory structure used for cannabis cultivation must maintain a minimum setback of 10 feet from any property line. The second proposed section would require that structures used to produce cannabis must have proper ventilation and air filtration to prevent or minimize odors from leaving the enclosure. If two or more people of normal sensitivity residing on adjacent or nearby properties file complaints with the City within a 30-day period regarding the odor from cannabis cultivation, it could be deemed a public nuisance that is required to be resolved.

The goal of these two proposed amendments is to minimize the potential for adjacent properties to be impacted by odors related to the cultivation of cannabis while ensuring that residents are allowed to cultivate cannabis as permitted by State law. Staff worked with the City Attorney's office to ensure that the proposed amendments are consistent and compatible with all applicable State legislation.

Options

The Planning Commission can recommend approval, approval with modifications, or denial of the proposed amendment. The advantages of the proposed amendment are that it will provide for the stricter regulation of indoor cultivation of cannabis for personal use to reduce potential odor impacts to adjacent properties, while the disadvantages are that it will potentially increase the costs to persons wishing to cultivate cannabis for personal use.

Once the Planning Commission makes a recommendation, this ordinance will be forwarded to the City Council for consideration and adoption.

ATTACHMENT A

ORDINANCE NO. 2019- XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS, CALIFORNIA, AMENDING LOS ALTOS MUNICIPAL CODE, SECTION 14.82.030 RELATED TO CULTIVATION OF CANNABIS FOR PERSONAL USE

**THE CITY COUNCIL OF THE CITY OF LOS ALTOS DOES HEREBY FIND AS
FOLLOWS:**

WHEREAS, the City of Los Altos, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the City of Los Altos initiated an application (18-CA-07) to amend Title 14 of the Los Altos Municipal Code pertaining to the cultivation of cannabis for personal use, referred herein as the “CA”; and

WHEREAS, California Proposition 64 (2016) legalized cultivation of not more than six living cannabis plants by persons 21 years of age or older for personal use; and

WHEREAS, Health and Safety Code Section 11362.2 provides that a city shall not completely prohibit, but that a city may enact and enforce reasonable regulations to regulate, personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure; and

WHEREAS, the CA is in the best interest for the protection or promotion of the public health, safety, comfort, convenience, prosperity, or welfare and is in conformance with the Los Altos General Plan; and

WHEREAS, the CA was processed in accordance with the applicable provisions of the California Government Code and Chapter 14.86 of the Los Altos Municipal Code; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the CA on January 17, 2019 and the City Council held a duly noticed public hearing on the CA on ____, 2019; and

WHEREAS, the Los Altos City Council has reviewed all written evidence and oral testimony presented to date on this matter.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT TO LOS ALTOS MUNICIPAL CODE. Los Altos Municipal Code, Section 14.82.030, entitled “Cultivation of Cannabis for Personal Use” is hereby amended as set forth below.

14.82.030 - Cultivation of Cannabis for Personal Use.

- A. Indoor Cultivation. The indoor cultivation of cannabis for personal use, including cannabis cultivation for personal medical use by a qualified patient or primary caregiver, is prohibited except in compliance with the following:
1. Cannabis cultivation shall only occur indoors at a private residence, or inside a structure in compliance with subsection 7, located upon the grounds of a private residence.
 2. Cannabis cultivation shall be limited to six plants total per residence, whether immature or mature, regardless of how many residents reside at the private residence.
 3. Persons engaging in indoor cultivation must comply with all state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation, including without limitation, Health and Safety Code Sections 11362.1 and 11362.2.
 4. The use of gas products (CO₂, butane, propane, natural gas, etc.) or generators for cultivation of cannabis is prohibited. Use of gas products shall be limited to those allowed by the California Building, Electrical, and Fire Codes as adopted and amended by the City of Los Altos.
 5. The residence shall maintain fully functional and usable kitchen, bathroom, and bedroom areas for their intended use by the resident(s), and the premises shall not be used primarily or exclusively for cannabis cultivation.
 6. All areas used for cannabis cultivation shall be located within a fully enclosed and secure structure. "Fully enclosed and secure structure" means a space within a building, greenhouse, or other legal structure which has a complete roof enclosure supported by connecting, enclosed walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.
 7. A fully enclosed and secure structure used for the cultivation of cannabis that is separate from the main residential structure on a premises must maintain a minimum setback of ten (10) feet from any property line.
 8. Any structure used for the cultivation of cannabis must have proper ventilation and air filtration to prevent mold damage and to prevent cannabis plant odors or particles from becoming a public nuisance. A public nuisance may be deemed to exist if the cultivation produces odors which are disturbing to two (2) or more people of normal sensitivity residing on adjacent or nearby property, and both complaints are reported to the city within a 30-day period.
- B. Outdoor Cultivation Prohibited. Outdoor cultivation of cannabis, including cannabis cultivation for personal medical use by a qualified patient or primary caregiver, personal adult- use, or commercial purposes, is prohibited in all zoning districts in the City of Los Altos.

SECTION 3. CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under CEQA Guidelines, Section 15061(b)(3), that this Ordinance is exempt from environmental review under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The Ordinance would create additional regulations for indoor cultivation of cannabis to prevent odors, mold and impacts to the public. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Clara in accordance with CEQA Guidelines.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be

implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

SECTION 5. CUSTODIAN OF RECORDS. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk's office located at Los Altos City Hall, 1 North San Antonio Road, Los Altos, CA 94022. The custodian of these records is the City Clerk.

SECTION 6. RESTATEMENT OF EXISTING LAW. Neither the adoption of this ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license or penalty or the penal provisions applicable to any violation thereof. The provisions of this ordinance, insofar as they are substantially the same as ordinance provisions previously adopted by the City relating to the same subject matter or relating to the enumeration of permitted uses under the City's zoning code, shall be construed as restatements and continuations, and not as new enactments.

SECTION 7. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 8. EFFECTIVE DATE. This ordinance shall be in full force and effect 31 days after adoption.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, _____ and was thereafter, at a regular meeting held on _____, _____ passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lynette Lee Eng, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK