



Agenda Item No. 14a & 14b.

Staff Report

Date: January 14, 2016
To: Mayor Kathleen Hoertkorn and Councilmembers
From: Amanda Charne, Assistant Town Attorney
Heidi Scoble, Planning Manager *HS*
Subject: Medical Marijuana Interim and Regular Prohibition Ordinances

Recommendation

1. Adopt Urgency Ordinance No. 669 to adopt an interim ordinance amending Ross Municipal Code Sections 18.12.223 (Medical Marijuana Dispensary) and 18.40.210 (Medical Marijuana Dispensaries Prohibited) to prohibit cultivation of medical marijuana, including cultivation by qualified patients, primary caregivers, and persons with identification cards, to prohibit commercial medical marijuana activity, and to prohibit the delivery of medical marijuana and mobile marijuana dispensaries in all zones in the Town.
2. Council consider introduction and first reading of Ordinance No. 670 to amend Ross Municipal Code Sections 18.12.223 (Medical Marijuana Dispensary) and 18.40.210 (Medical Marijuana Dispensaries Prohibited) to prohibit cultivation of medical marijuana, including cultivation by qualified patients, primary caregivers, and persons with identification cards, to prohibit commercial medical marijuana activity, and to prohibit the delivery of medical marijuana and mobile marijuana dispensaries in all zones in the Town.

Background and discussion

In 1996, the voters of the State of California approved Proposition 215 entitled "The Compassionate Use Act of 1996" ("CUA") to enable seriously ill Californians, under the care of a physician, to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted SB 420 entitled the Medical Marijuana Program ("MMP") which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code. Neither the CUA nor the MMP require or impose an affirmative duty or mandate upon a local government to allow, authorize, or sanction the establishment of facilities that cultivate medical marijuana within its jurisdiction. Under the Federal Controlled Substances Act, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need.

Governor Brown recently signed into law the Medical Marijuana Regulation and Safety Act (“MMRSA”) which is comprised of three related bills: AB 243, AB 266, and SB 643. The MMRSA establishes licensing requirements for the cultivation, distribution, and transportation of medical marijuana, safety and testing standards for medical marijuana and medical marijuana products, and regulates the physicians who recommend or prescribe medical marijuana to patients. The MMRSA contains statutory provisions that allow local governments to maintain local control over medical marijuana and does not require a city to allow medical marijuana activity within its borders.

The MMRSA requires a city to take affirmative action if it wants to prohibit or regulate the cultivation and delivery of medical marijuana within its jurisdiction. The MMRSA also provides that the State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation applications effective March 1, 2016, if a city does not have a land use ordinance in place regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under the principles of permissive zoning, or if a city chooses not to administer a conditional use permit program. Although the Ross zoning ordinance operates under principles of permissive zoning, the zoning ordinance does not expressly address the cultivation of marijuana.

The MMRSA allows deliveries by a dispensary (with a State dispensary license) in a city that does not explicitly prohibit it by local ordinance. If the Town does not adopt an express ban on deliveries, as defined, before the State begins issuing any State licenses, a State-licensed dispensary will be able to deliver medical marijuana within the jurisdiction. However, the MMRSA does not contain an express deadline for when the prohibition on the delivery of medical marijuana must be in effect.

The MMRSA defines “delivery” as the commercial transfer of medical cannabis or medical cannabis products from a dispensary to a qualified patient or primary caregiver. See Bus. & Prof. Code § 19300.5(m). Although, Ross’ current definition of “dispensary” includes vehicles, it does not cover pure transport and requires the vehicle to act as a place where marijuana is sold, traded, exchanged, bartered for in some way. See Ross Municipal Code § 18.12.223. Therefore, these ordinances are necessary to expressly prohibit deliveries of medical marijuana in the Town. Although the proposed ordinances ban “deliveries”, *primary caregivers* would still be able to deliver medical marijuana to their *qualified patients*. Caregivers’ services would not meet the definition of “delivery,” which requires the delivery to be commercial and originate from a dispensary. If desired to clarify this point, the ordinance could be revised to add the following language to the end of proposed subdivision (b)(4) of Section 18.40.210:

Nothing in this subsection is intended to prohibit a primary caregiver from transporting or providing marijuana or medical marijuana products exclusively for personal medical purposes to qualified patient(s) for whom he or she is the primary caregiver and who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code and in compliance with subdivision (b) of Section 19319 of the Business and Professions Code.

Staff has prepared both an urgency ordinance and a regular ordinance amending the Town’s regulations on commercial medical marijuana activities in accordance with the MMRSA to ensure that regulations are in place to preserve the Town’s right to ban and regulate all such activities.

Fiscal, resource and timeline impacts

The matter has involved time by the Town Attorney to prepare the ordinances. Enforcement of the zoning ordinance may incur staff time in the future.

Alternative actions

1. Modify the language of the ordinance
2. Do not adopt the ordinance.

Environmental review (if applicable)

No environmental review is required because this action will not result in any physical change to the environment.

Attachments

- Ordinance No.669
- Ordinance No. 670

ATTACHMENT 1

TOWN OF ROSS

URGENCY ORDINANCE NO. 669

AN URGENCY ORDINANCE OF THE TOWN OF ROSS AMENDING MUNICIPAL CODE SECTIONS 18.12.223 (MEDICAL MARIJUANA DISPENSARY) AND 18.40.210 (MEDICAL MARIJUANA DISPENSARIES PROHIBITED) TO EXPRESSLY PROHIBIT CULTIVATION OF MEDICAL MARIJUANA, INCLUDING CULTIVATION BY QUALIFIED PATIENTS, PRIMARY CAREGIVERS, AND PERSONS WITH IDENTIFICATION CARDS, PROHIBITING COMMERCIAL MEDICAL MARIJUANA ACTIVITY IN ALL ZONES IN THE TOWN AND PROHIBITING THE DELIVERY OF MEDICAL MARIJUANA AND MOBILE MARIJUANA DISPENSARIES

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Purpose and Urgency Findings. The Town Council finds as follows:

(a) In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code § 11362.5, and entitled “The Compassionate Use Act of 1996” or “CUA” sometimes herein).

(b) In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code § 11362.7, *et seq.*, and sometimes referred to herein as the “Medical Marijuana Program” or “MMP”) to clarify the scope of Proposition 215 and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of cities and counties to “[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective” and to civilly and criminally enforce such ordinances.

(c) In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, the California Supreme Court held that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land. . .”

(d) In *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704, the California Court of Appeal found that the CUA does not confer a right to cultivate marijuana and that an ordinance limiting the number of medical marijuana plants that may be grown outside, precluding marijuana cultivation within 1000 feet of schools, parks and churches, and requiring that an opaque fence of at least six feet to be installed around all marijuana grows was not preempted by state law. Further, in *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, the Court of Appeal held that the CUA and the MMP do not preempt a city’s police power to completely prohibit the cultivation of all marijuana within that city because “there is no right – and certainly no constitutional right – to cultivate medical marijuana. . . .”

(e) The Federal Controlled Substances Act, 21 U.S.C. § 801, *et seq.*, classifies marijuana as a Schedule 1 Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United State, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana.

(f) The possession, cultivation, use, and dispensing of marijuana continues to be illegal under Federal law.

(g) On October 9, 2015 Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively are known as the Medical Marijuana Regulation and Safety Act (hereinafter "MMRSA"). The MMRSA establishes a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license.

(h) The MMRSA becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The MMRSA also contains new statutory provisions that:

- (i.) Allow local governments to enact ordinances by March 1, 2016 expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
- (ii.) Expressly provide that the MMRSA does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
- (iii.) Expressly provide that the MMRSA does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
- (iv.) Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the MMRSA, from operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)).

(i) In 2015, Section 18.40.210 of the Ross Municipal Code was added to expressly prohibit medical marijuana dispensaries.

(j) While cultivation and all commercial medical marijuana uses are prohibited under the Town's permissive zoning regulations, the Town Council desires to enact this ordinance to expressly make clear that all such uses are prohibited in all zones throughout the Town. Nothing in this ordinance shall be interpreted to mean that the Town's permissive zoning scheme allows any other use not specifically listed therein.

(k) Several California cities have reported negative impacts of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests.

(l) The number of medical marijuana delivery services operating in the State of California that would service the Town is unknown because the State does not maintain a registry of mobile marijuana dispensaries or medical marijuana delivery services and their service areas.

(m) Successful enforcement of regulations against storefront medical marijuana dispensaries has been found to coincide with an increase in mobile marijuana dispensaries and marijuana deliveries.

(n) Mobile marijuana dispensaries and marijuana deliveries have resulted in criminal activity, as delivery drivers are targets for armed robbery. As a result, drivers choose to carry weapons to protect themselves. There are a number of recent reports of armed robberies of marijuana delivery services in California: On December 22, 2014, police in the City of San Bernardino reported that a customer robbed a mobile dispensary driver at gunpoint, which led to an hours-long standoff with police. On March 13, 2014, there was an armed robbery of a medical marijuana delivery vehicle that occurred in Long Beach that resulted in a physical fight between the medical marijuana employee and two suspects. In April 2015, a delivery driver for a medical marijuana dispensary was robbed at gunpoint in the Western Addition area of San Francisco. On August 20, 2015, police in the City of Monterey reported that a man held a medical marijuana delivery driver at gunpoint and fled with marijuana and cash. On September 25, 2015, a medical marijuana delivery man was robbed of the marijuana, cash and his car in the City of Altadena. Thus, the delivery of medical marijuana and the operation of mobile marijuana dispensaries both to and from the Town would require the Town to use its limited resources to monitor and prevent unintended negative consequences of those activities.

(o) The delivery of medical marijuana to residences in the Town also increases the risk that children and minors will gain access to medical marijuana at the point of delivery.

(p) The cultivation of marijuana has significant impacts or the potential for significant impacts on the Town. These impacts include damage to residences and other buildings, dangerous electrical alterations and use, inadequate ventilation, increased robberies and other crimes, and the nuisance of strong and noxious odors.

(q) Marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, offensive to many people, and which may be detectable far beyond property boundaries in sufficient quantities.

(r) The strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery.

(s) The Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

(t) The indoor cultivation of marijuana has potential adverse effects to the structural integrity of the building, and the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a clear and present danger to the building and its occupants.

(u) Furthermore, indoor cultivation of marijuana, often unattended, has potential to cause harm to persons and property in that the use of high wattage grow lights and excessive use of electricity increases the risk of fire which presents a distinct risk of harm to the building and its occupants. Buildings where marijuana is cultivated are often illegally wired and have overloaded electrical systems that result in fires. In 2015 alone, there were a number of reported incidents of indoor marijuana cultivation sites causing fires. On February 9, 2015, there was a fire in a residence in Sacramento that was caused by the indoor cultivation of marijuana. On February 19, 2015, there was an electrical fire in Arcadia caused by an indoor marijuana cultivation operation. On April 24, 2015 there was an explosion in a Silver Lake home that leveled the house and destroyed several cars that was caused by an indoor marijuana cultivation operation. In May 2015, a fire erupted in a commercial building in Sun Valley that was caused by indoor marijuana grow house. In that same month, there was a fire in an Elk Grove home caused by an overheated illegal electrical power connection used to power an indoor marijuana grow house. In June 2015, there was a fire in a Sacramento residence caused by an indoor marijuana grow house. In July 2015, there was a fire in a Baldwin Park home caused by grow house. In September 2015, there was a fire in the garage of a Sun Valley residences that was caused by an indoor marijuana grow house. On October 23, 2015, there was a fire in a Rialto home that was caused by an indoor marijuana grow, started by an electrical panel that burst.

(v) Based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the Town due to the establishment and operation of marijuana cultivation, processing and distribution activities.

(w) Based upon the findings above, the Town Council finds that there is a current and immediate threat to the public health, safety and welfare presented by the recent enactment of the MMRSA, and the potential for cultivation and deliveries of medical marijuana and other marijuana-related commercial activities to occur in the Town. The Town of Ross desires to expressly prohibit cultivation, including cultivation by qualified patients, primary caregivers, and persons with identification cards, and all commercial medical marijuana activity anywhere in the Town and to prohibit the delivery of medical marijuana and mobile marijuana dispensaries in the Town of Ross.

(x) **Urgency Findings:** Based upon the findings above, the Town Council finds that this urgency ordinance is necessary for the immediate preservation of the public health, safety and welfare. The Town Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b) and take effect immediately upon adoption. Pursuant to state law, the Town must adopt a land use regulation expressly prohibiting the cultivation of medical marijuana that is in effect by March 1, 2016, or the State will become the sole licensing authority for the cultivation of medical marijuana. Unless this Ordinance becomes effective immediately, there could be regulatory uncertainty whether cultivation of marijuana is prohibited in the Town of Ross, thereby creating a risk to the public health, safety and welfare. Further, the urgency ordinance must be adopted and must become effective immediately in order to protect City residents from imminent harm due to the risk of criminal activity associated with the delivery of medical marijuana, mobile marijuana dispensaries and other commercial medical marijuana activities. Therefore, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared.

SECTION 2: Section 18.12.223 “Medical Marijuana Dispensary” of the Ross Municipal Code Chapter 18.12 (“Definitions”) is hereby repealed.

SECTION 3: Ross Municipal Code, Section 18.40.210, is amended to read in its entirety as follows:

“18.40.210 Medical marijuana dispensaries and commercial medical marijuana activity.

(a) **Definitions.**

“Commercial medical marijuana activity” shall have the same meaning as “commercial cannabis activity” that is set forth in California Business and Professions Code Section 19300.5(k), as the same may be amended from time to time, and shall include the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale

of medical marijuana or a medical marijuana product, except as set forth in California Business and Professions Code Section 19319, related to qualified patients and primary caregivers.

“Cultivation” shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(l), as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

“Delivery” shall have the same meaning as set forth in the Medical Marijuana Regulation and Safety Act, Business and Professions Code Section 19300.5(m), as the same may be amended from time to time, and shall include the commercial transfer of medical marijuana or medical marijuana products from a dispensary, up to an amount determined by the bureau to a primary caregiver, qualified patient, or person with an identification card as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. “Delivery” also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

“Identification card” is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any, as set forth in California Health and Safety Code Section 11362.7.

“Marijuana” shall have the same meaning as “cannabis” as set forth in California Business and Professions Code Section 19300.5(f), as the same may be amended from time to time, and shall include all parts of the plant cannabis sativa linnaeus, cannabis indica, or cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Marijuana” also means marijuana as defined by Health and Safety Code Section 11018. For the purpose of this Section, “marijuana” does not mean “industrial hemp” as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5.

“Medical marijuana dispensary” means any location, structure, business, office, store, vehicle, co-op, residence, or similar facility used, in full or in part, as a place at or in which marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products are offered, sold, traded, exchanged, bartered for in any way. “Medical marijuana dispensary” shall include but not be limited to facilities which make available and/or distribute marijuana in accordance with California Health and Safety Code Section 11362.5 et seq. “Medical marijuana dispensary” shall also include “dispensary” as defined in the Medical Marijuana Regulation and Safety Act, Business and Professions Code Section 19300.5(n), as the same may be amended from time to time. “Medical marijuana dispensary” shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or

applicable law: a pharmacy regulated by Chapter 9, Division 2 of the Business and Professions Code and/or the Federal Controlled Substances Act of 1970 and its implementing regulations, a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice licensed pursuant to Chapter 8.5 of Division 2 of the Health & Safety Code, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law, including, but not limited to, Health & Safety Code Sections 11362.5 et seq.

“Medical marijuana product” shall have the same meaning as “cannabis product” or “medical cannabis product” as set forth in Business and Professions Code Section 19300.5(ag), as the same may be amended from time to time, and shall include marijuana, including, concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall collectively mean the Medical Marijuana Regulation and Safety Act as contained, codified, and enacted as California Business and Professions Code Chapter 3.5.

“Mobile marijuana dispensary” shall mean the use of a motor vehicle that in any way involves growing, distributing, delivering, selling or making available to persons, with or without financial payment or consideration, marijuana or medical marijuana products, including marijuana for medical purposes as described in California Health and Safety Code Section 11362.5.

“Person with an Identification Card” shall have the same meaning as set forth in California Health and Safety Code Section 11362.7.

“Primary caregiver” is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as set forth in California Health and Safety Code Section 11362.7.

“Qualified patient” is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services, as set forth in California Health and Safety Code Section 11362.7.

(b) Prohibitions.

- (1) Medical marijuana dispensaries are prohibited in all zones in the Town.
- (2) Commercial medical marijuana activity of any type or nature is expressly prohibited in all zones in the Town. No person shall establish, operate, maintain, conduct or

allow commercial medical marijuana activity anywhere within the Town. This section is meant to prohibit all activities for which a State license is required pursuant to the MMRSA. Accordingly, the Town shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.

(3) To the extent that it is not already prohibited by subsections 1 and 2 above, cultivation of marijuana for commercial or non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card is expressly prohibited in all zones in the Town. No person, including a qualified patient, primary caregiver or person with identification card, shall cultivate any amount of marijuana in the Town, even for medical purposes.

(4) In addition to subsections (1)-(3) above, all delivery of marijuana or medical marijuana products to or from the Town of Ross is expressly prohibited within the Town. No person shall conduct or perform any delivery of any marijuana or medical marijuana product, which delivery either originates or terminates within the Town. Mobile marijuana dispensaries are also prohibited from operating in the Town.

(c) Public Nuisance; Civil Penalties.

A violation of this section is a public nuisance and subject to all remedies available at law. In addition to any other enforcement permitted by Municipal Code Chapters 9.04 and 18.64, the Town Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Section. In any civil action brought pursuant to this section, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party. No provision of this section shall authorize a criminal prosecution or arrest prohibited by the Medical Marijuana Program, Health and Safety Code, Section 11362.7 et seq.

(d) Construction with state law.

Nothing in this chapter is intended to conflict with the provisions of state law concerning the regulation of marijuana. In the event of a direct and express conflict between state law and any provision of this chapter, state law, as applicable, shall control.”

SECTION 3. CEQA. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the prohibitions established hereby, may have a significant effect on the environment, because the Ordinance will only impose greater limitations on activities in the Town, and will thereby serve to eliminate potentially significant adverse environmental impacts. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. A Notice of Exemption will be prepared.

SECTION 4. Severability. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of

the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the Town, or within the territory comprising the Town, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

SECTION 6. Certification. The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 7: Effective Date. This urgency ordinance shall go into effect immediately upon adoption, and shall be posted in three public places in Town.

THE FOREGOING URGENCY ORDINANCE was adopted at a regular meeting of the Ross Town Council on the ___ day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kathleen Hoertkorn, Mayor

ATTEST:

Linda Lopez, Town Clerk

ATTACHMENT 2

TOWN OF ROSS

ORDINANCE NO. 670

AN ORDINANCE OF THE TOWN OF ROSS AMENDING MUNICIPAL CODE SECTIONS 18.12.223 (MEDICAL MARIJUANA DISPENSARY) AND 18.40.210 (MEDICAL MARIJUANA DISPENSARIES PROHIBITED) TO EXPRESSLY PROHIBIT CULTIVATION OF MEDICAL MARIJUANA, INCLUDING CULTIVATION BY QUALIFIED PATIENTS, PRIMARY CAREGIVERS, AND PERSONS WITH IDENTIFICATION CARDS, PROHIBITING COMMERCIAL MEDICAL MARIJUANA ACTIVITY IN ALL ZONES IN THE TOWN AND PROHIBITING THE DELIVERY OF MEDICAL MARIJUANA AND MOBILE MARIJUANA DISPENSARIES

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Purpose.

- (a) Under principles of permissive zoning, the Town of Ross has prohibited medical marijuana dispensaries. In 2015, the Town Code was clarified to expressly prohibit medical marijuana dispensaries.
- (b) On October 9, 2015 Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively are known as the Medical Marijuana Regulation and Safety Act (hereinafter "MMRSA"). The MMRSA establishes a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license.
- (c) The MMRSA becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The MMRSA also contains new statutory provisions that:
 - (1) Allow local governments to enact ordinances by March 1, 2016 expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
 - (2) Expressly provide that the MMRSA does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
 - (3) Expressly provide that the MMRSA does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
 - (4) Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the MMRSA, from

operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)).

- (d) The Town of Ross desires to expressly prohibit cultivation, including cultivation by qualified patients, primary caregivers, and persons with identification cards, and all commercial medical marijuana activity anywhere in the Town and to prohibit the delivery of medical marijuana and mobile marijuana dispensaries in the Town of Ross.

SECTION 2: Section 18.12.223 "Medical Marijuana Dispensary" of the Ross Municipal Code Chapter 18.12 ("Definitions") is hereby repealed.

SECTION 3: Ross Municipal Code, Section 18.40.210, is amended to read in its entirety as follows:

"18.40.210 Medical marijuana dispensaries and commercial medical marijuana activity.

(a) Definitions.

"Commercial medical marijuana activity" shall have the same meaning as "commercial cannabis activity" that is set forth in California Business and Professions Code Section 19300.5(k), as the same may be amended from time to time, and shall include the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical marijuana or a medical marijuana product, except as set forth in California Business and Professions Code Section 19319, related to qualified patients and primary caregivers.

"Cultivation" shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(l), as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

"Delivery" shall have the same meaning as set forth in the Medical Marijuana Regulation and Safety Act, Business and Professions Code Section 19300.5(m), as the same may be amended from time to time, and shall include the commercial transfer of medical marijuana or medical marijuana products from a dispensary, up to an amount determined by the bureau to a primary caregiver, qualified patient, or person with an identification card as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

"Identification card" is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any, as set forth in California Health and Safety Code Section 11362.7.

“Marijuana” shall have the same meaning as “cannabis” as set forth in California Business and Professions Code Section 19300.5(f), as the same may be amended from time to time, and shall include all parts of the plant *cannabis sativa linnaeus*, *cannabis indica*, or *cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Marijuana” also means marijuana as defined by Health and Safety Code Section 11018. For the purpose of this Section, “marijuana” does not mean “industrial hemp” as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5.

“Medical marijuana dispensary” means any location, structure, business, office, store, vehicle, co-op, residence, or similar facility used, in full or in part, as a place at or in which marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products are offered, sold, traded, exchanged, bartered for in any way. “Medical marijuana dispensary” shall include but not be limited to facilities which make available and/or distribute marijuana in accordance with California Health and Safety Code Section 11362.5 et seq. “Medical marijuana dispensary” shall also include “dispensary” as defined in the Medical Marijuana Regulation and Safety Act, Business and Professions Code Section 19300.5(n), as the same may be amended from time to time. “Medical marijuana dispensary” shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a pharmacy regulated by Chapter 9, Division 2 of the Business and Professions Code and/or the Federal Controlled Substances Act of 1970 and its implementing regulations, a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice licensed pursuant to Chapter 8.5 of Division 2 of the Health & Safety Code, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law, including, but not limited to, Health & Safety Code Sections 11362.5 et seq.

“Medical marijuana product” shall have the same meaning as “cannabis product” or “medical cannabis product” as set forth in Business and Professions Code Section 19300.5(ag), as the same may be amended from time to time, and shall include marijuana, including, concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall collectively mean the Medical Marijuana Regulation and Safety Act as contained, codified, and enacted as California Business and Professions Code Chapter 3.5.

“Mobile marijuana dispensary” shall mean the use of a motor vehicle that in any way involves growing, distributing, delivering, selling or making available to persons, with or without financial payment or consideration, marijuana or medical marijuana products, including marijuana for medical purposes as described in California Health and Safety Code Section 11362.5.

“Person with an Identification Card” shall have the same meaning as set forth in California Health and Safety Code Section 11362.7.

“Primary caregiver” is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as set forth in California Health and Safety Code Section 11362.7.

“Qualified patient” is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services, as set forth in California Health and Safety Code Section 11362.7.

(b) Prohibitions.

(1) Medical marijuana dispensaries are prohibited in all zones in the Town.

(2) Commercial medical marijuana activity of any type or nature is expressly prohibited in all zones in the Town. No person shall establish, operate, maintain, conduct or allow commercial medical marijuana activity anywhere within the Town. This section is meant to prohibit all activities for which a State license is required pursuant to the MMRSA. Accordingly, the Town shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.

(3) To the extent that it is not already prohibited by subsections 1 and 2 above, cultivation of marijuana for commercial or non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card is expressly prohibited in all zones in the Town. No person, including a qualified patient, primary caregiver or person with identification card, shall cultivate any amount of marijuana in the Town, even for medical purposes.

(4) In addition to subsections (1)-(3) above, all delivery of marijuana or medical marijuana products to or from the Town of Ross is expressly prohibited within the Town. No person shall conduct or perform any delivery of any marijuana or medical marijuana product, which delivery either originates or terminates within the Town. Mobile marijuana dispensaries are also prohibited from operating in the Town.

(c) Public Nuisance; Civil Penalties.

A violation of this section is a public nuisance and subject to all remedies available at law. In addition to any other enforcement permitted by Municipal Code Chapters 9.04 and 18.64, the Town Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Section. In any civil action brought pursuant to this section, a court

of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party. No provision of this section shall authorize a criminal prosecution or arrest prohibited by the Medical Marijuana Program, Health and Safety Code, Section 11362.7 et seq.

(d) Construction with state law.

Nothing in this chapter is intended to conflict with the provisions of state law concerning the regulation of marijuana. In the event of a direct and express conflict between state law and any provision of this chapter, state law, as applicable, shall control.”

SECTION 3. CEQA. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the prohibitions established hereby, may have a significant effect on the environment, because the Ordinance will only impose greater limitations on activities in the Town, and will thereby serve to eliminate potentially significant adverse environmental impacts. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. A Notice of Exemption will be prepared.

SECTION 4. Severability. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the Town, or within the territory comprising the Town, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

SECTION 6. Certification. The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 7: Effective Date. This Ordinance shall go into effect on thirty (30) days from its adoption, and shall be posted in three public places in Town.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the ___ day of _____, 2016, and was adopted at a regular meeting of the Ross Town Council on the ___ day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kathleen Hoertkorn, Mayor

ATTEST:

Linda Lopez, Town Clerk

TOWN OF ROSS

ORDINANCE NO. 670

AN ORDINANCE OF THE TOWN OF ROSS AMENDING MUNICIPAL CODE SECTIONS 18.12.223 (MEDICAL MARIJUANA DISPENSARY) AND 18.40.210 (MEDICAL MARIJUANA DISPENSARIES PROHIBITED) TO EXPRESSLY PROHIBIT CULTIVATION OF MEDICAL MARIJUANA, INCLUDING CULTIVATION BY QUALIFIED PATIENTS, PRIMARY CAREGIVERS, AND PERSONS WITH IDENTIFICATION CARDS, PROHIBITING COMMERCIAL MEDICAL MARIJUANA ACTIVITY IN ALL ZONES IN THE TOWN AND PROHIBITING THE DELIVERY OF MEDICAL MARIJUANA AND MOBILE MARIJUANA DISPENSARIES

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Purpose.

- (a) Under principles of permissive zoning, the Town of Ross has prohibited medical marijuana dispensaries. In 2015, the Town Code was clarified to expressly prohibit medical marijuana dispensaries.
- (b) On October 9, 2015 Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively are known as the Medical Marijuana Regulation and Safety Act (hereinafter "MMRSA"). The MMRSA establishes a State licensing scheme for commercial medical marijuana uses while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license.
- (c) The MMRSA becomes effective January 1, 2016 and contains provisions that govern the cultivating, processing, transporting, testing, and distributing of medical cannabis to qualified patients. The MMRSA also contains new statutory provisions that:
 - (1) Allow local governments to enact ordinances by March 1, 2016 expressing their intent to prohibit the cultivation of marijuana and their intent not to administer a conditional permit program pursuant to Health & Safety Code Section 11362.777 for the cultivation of marijuana (Health & Safety Code § 11362.777(c)(4));
 - (2) Expressly provide that the MMRSA does not supersede or limit local authority for local law enforcement activity, enforcement of local ordinances, or enforcement of local permit or licensing requirements regarding marijuana (Business & Professions Code § 19315(a));
 - (3) Expressly provide that the MMRSA does not limit the authority or remedies of a local government under any provision of law regarding marijuana, including but not limited to a local government's right to make and enforce within its limits all police regulations not in conflict with general laws (Business & Professions Code § 19316(c)); and
 - (4) Require a local government that wishes to prevent marijuana delivery activity, as defined in Business & Professions Code section 19300.5(m) of the MMRSA, from

operating within the local government's boundaries to enact an ordinance affirmatively banning such delivery activity (Business & Professions Code § 19340(a)).

- (d) The Town of Ross desires to expressly prohibit cultivation, including cultivation by qualified patients, primary caregivers, and persons with identification cards, and all commercial medical marijuana activity anywhere in the Town and to prohibit the delivery of medical marijuana and mobile marijuana dispensaries in the Town of Ross.

SECTION 2: Section 18.12.223 "Medical Marijuana Dispensary" of the Ross Municipal Code Chapter 18.12 ("Definitions") is hereby repealed.

SECTION 3: Ross Municipal Code, Section 18.40.210, is amended to read in its entirety as follows:

"18.40.210 Medical marijuana dispensaries and commercial medical marijuana activity.

(a) Definitions.

"Commercial medical marijuana activity" shall have the same meaning as "commercial cannabis activity" that is set forth in California Business and Professions Code Section 19300.5(k), as the same may be amended from time to time, and shall include the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical marijuana or a medical marijuana product, except as set forth in California Business and Professions Code Section 19319, related to qualified patients and primary caregivers.

"Cultivation" shall have the same meaning as set forth in California Business and Professions Code Section 19300.5(l), as the same may be amended from time to time, and shall include any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

"Delivery" shall have the same meaning as set forth in the Medical Marijuana Regulation and Safety Act, Business and Professions Code Section 19300.5(m), as the same may be amended from time to time, and shall include the commercial transfer of medical marijuana or medical marijuana products from a dispensary, up to an amount determined by the bureau to a primary caregiver, qualified patient, or person with an identification card as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

"Identification card" is a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any, as set forth in California Health and Safety Code Section 11362.7.

“Marijuana” shall have the same meaning as “cannabis” as set forth in California Business and Professions Code Section 19300.5(f), as the same may be amended from time to time, and shall include all parts of the plant *cannabis sativa linnaeus*, *cannabis indica*, or *cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Marijuana” also means the separated resin, whether crude or purified, obtained from marijuana. “Marijuana” also means marijuana as defined by Health and Safety Code Section 11018. For the purpose of this Section, “marijuana” does not mean “industrial hemp” as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5.

“Medical marijuana dispensary” means any location, structure, business, office, store, vehicle, co-op, residence, or similar facility used, in full or in part, as a place at or in which marijuana, medical marijuana products, or devices for the use of medical marijuana or medical marijuana products are offered, sold, traded, exchanged, bartered for in any way. “Medical marijuana dispensary” shall include but not be limited to facilities which make available and/or distribute marijuana in accordance with California Health and Safety Code Section 11362.5 et seq. “Medical marijuana dispensary” shall also include “dispensary” as defined in the Medical Marijuana Regulation and Safety Act, Business and Professions Code Section 19300.5(n), as the same may be amended from time to time. “Medical marijuana dispensary” shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a pharmacy regulated by Chapter 9, Division 2 of the Business and Professions Code and/or the Federal Controlled Substances Act of 1970 and its implementing regulations, a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice licensed pursuant to Chapter 8.5 of Division 2 of the Health & Safety Code, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law, including, but not limited to, Health & Safety Code Sections 11362.5 et seq.

“Medical marijuana product” shall have the same meaning as “cannabis product” or “medical cannabis product” as set forth in Business and Professions Code Section 19300.5(ag), as the same may be amended from time to time, and shall include marijuana, including, concentrates and extractions, intended to be sold for use by medical marijuana patients pursuant to the Compassionate Use Act of 1996 (Proposition 215).

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall collectively mean the Medical Marijuana Regulation and Safety Act as contained, codified, and enacted as California Business and Professions Code Chapter 3.5.

“Mobile marijuana dispensary” shall mean the use of a motor vehicle that in any way involves growing, distributing, delivering, selling or making available to persons, with or without financial payment or consideration, marijuana or medical marijuana products, including marijuana for medical purposes as described in California Health and Safety Code Section 11362.5.

“Person with an Identification Card” shall have the same meaning as set forth in California Health and Safety Code Section 11362.7.

“Primary caregiver” is the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as set forth in California Health and Safety Code Section 11362.7.

“Qualified patient” is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services, as set forth in California Health and Safety Code Section 11362.7.

(b) Prohibitions.

(1) Medical marijuana dispensaries are prohibited in all zones in the Town.

(2) Commercial medical marijuana activity of any type or nature is expressly prohibited in all zones in the Town. No person shall establish, operate, maintain, conduct or allow commercial medical marijuana activity anywhere within the Town. This section is meant to prohibit all activities for which a State license is required pursuant to the MMRSA. Accordingly, the Town shall not issue any permit, license or other entitlement for any activity for which a State license is required under the MMRSA.

(3) To the extent that it is not already prohibited by subsections 1 and 2 above, cultivation of marijuana for commercial or non-commercial purposes, including cultivation by a qualified patient, primary caregiver, or person with identification card is expressly prohibited in all zones in the Town. No person, including a qualified patient, primary caregiver or person with identification card, shall cultivate any amount of marijuana in the Town, even for medical purposes.

(4) In addition to subsections (1)-(3) above, all delivery of marijuana or medical marijuana products to or from the Town of Ross is expressly prohibited within the Town. No person shall conduct or perform any delivery of any marijuana or medical marijuana product, which delivery either originates or terminates within the Town. Mobile marijuana dispensaries are also prohibited from operating in the Town.

(c) Public Nuisance; Civil Penalties.

A violation of this section is a public nuisance and subject to all remedies available at law. In addition to any other enforcement permitted by Municipal Code Chapters 9.04 and 18.64, the Town Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this Section. In any civil action brought pursuant to this section, a court

of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party. No provision of this section shall authorize a criminal prosecution or arrest prohibited by the Medical Marijuana Program, Health and Safety Code, Section 11362.7 et seq.

(d) Construction with state law.

Nothing in this chapter is intended to conflict with the provisions of state law concerning the regulation of marijuana. In the event of a direct and express conflict between state law and any provision of this chapter, state law, as applicable, shall control.”

SECTION 3. CEQA. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the prohibitions established hereby, may have a significant effect on the environment, because the Ordinance will only impose greater limitations on activities in the Town, and will thereby serve to eliminate potentially significant adverse environmental impacts. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. A Notice of Exemption will be prepared.

SECTION 4. Severability. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the Town, or within the territory comprising the Town, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

SECTION 6. Certification. The Town Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 7: Effective Date. This Ordinance shall go into effect on thirty (30) days from its adoption, and shall be posted in three public places in Town.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the ___ day of _____, 2016, and was adopted at a regular meeting of the Ross Town Council on the ___ day of _____, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kathleen Hoertkorn, Mayor

ATTEST:

Linda Lopez, Town Clerk