



Agenda Item Nos. 18a. and 18b.

Staff Report

Date: December 8, 2016

To: Mayor Kathleen Hoertkorn and Councilmembers

From: Inder Khalsa, Assistant Town Attorney
Heidi Scoble, Planning Manager

Subject: Ordinances 680 and 681 Interim and Regular Ordinances Amending Ross
Municipal Code Section 18.40.210- Medical and Non-medical Marijuana Activity

Recommendation

1. Adopt Urgency Ordinance No. 680 to adopt an urgency ordinance amending Ross Municipal Code Sections 18.40.210 (Medical Marijuana Dispensaries Prohibited) to prohibit all medical and non-medical commercial marijuana activity, to prohibit the outdoor cultivation of marijuana, and to reasonably regulate the indoor cultivation of marijuana as permitted under State law.
2. Council consider introduction and first reading of Ordinance No. 681 to amend Ross Municipal Code Section 18.40.210 (Medical Marijuana Dispensaries Prohibited) to prohibit all medical and non-medical commercial marijuana activity, to prohibit the outdoor cultivation of marijuana, and to reasonably regulate the indoor cultivation of marijuana as permitted under state law.

Background and discussion

The AUMA

The Control, Regulate and Tax Adult Use of Marijuana Act ("the AUMA") was approved by California voters on November 8, 2016. The AUMA legalizes the possession, use, and cultivation of non-medical marijuana for those who are 21 years of age or older and establishes a comprehensive system to regulate commercial marijuana activity. Commercial marijuana activity includes the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery or sale of marijuana and marijuana products.

The provisions of the AUMA related to the possession, use, and cultivation of non-medical marijuana became effective on November 9, 2016. The AUMA allows for the cultivation of up to six marijuana plants in or upon the grounds of a private residence. The plants and any

marijuana produced by the plants in excess of 28.5 grams must (1) be kept within the private residence, or upon the grounds of the private residence (e.g., in an outdoor garden area), (2) be kept in a locked space, and (3) not be visible by normal unaided vision from a public place. Cities may not completely prohibit indoor cultivation. However, a city may enact and enforce an ordinance that reasonably regulates cultivation activities *inside* a private residence or *inside* a fully-enclosed, secure accessory structure located upon the grounds of a private residence. The AUMA does not define or provide examples of “reasonable regulations.” A city may also enact and enforce an ordinance that prohibits cultivation activities *outdoors* upon the grounds of a private residence.

The provisions of the AUMA related to commercial marijuana activity grant State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for non-medical marijuana businesses. A business will not be required to obtain a local permit or authorization before being issued a State license. State agencies are to begin issuing licenses by January 1, 2018. A city may adopt and enforce local ordinances, including zoning and land use requirements, to regulate non-medical marijuana businesses or to completely prohibit the establishment or operation of such businesses within the city’s jurisdiction. No State license will be approved for a business that violates local ordinances.

Effective January 1, 2018, the growth and sale of marijuana will be taxed. A portion of the proceeds of the excise and cultivation taxes adopted by the AUMA is to be allocated to grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with implementation of the AUMA. Local governments are ineligible to receive these grants if they ban (1) commercial marijuana cultivation, (2) the outdoor growth of marijuana for personal use, or (3) retail sale of marijuana or marijuana products.

Current Regulations

The Town’s existing regulations specifically address activities related to *medical* marijuana:

- Section 18.40.210(b)(1) prohibits *medical* marijuana dispensaries in all zones. A medical marijuana dispensary is defined to include “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.” A dispensary also includes facilities which make available and/or distribute marijuana in accordance with California Health and Safety Code 11362.5 *et seq.* and as defined in Business and Professions Code Section 19300.5.
- Section 18.40.210(b)(2) prohibits commercial *medical* marijuana activity in all zones. “Commercial medical marijuana activity” means the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical marijuana or medical marijuana products.

- Section 18.40.210(b)(3) prohibits the cultivation of marijuana for both commercial and non-commercial purposes in all zones. “Cultivation” includes any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

The Town’s existing prohibitions marijuana dispensaries and on commercial medical marijuana activity will not preclude the State from issuing licenses to non-medical marijuana businesses in the Town. Therefore, if the Town wants to prevent the establishment and operation of non-medical marijuana businesses, it must adopt an ordinance to expressly prohibit such activity before the State begins issuing licenses. Further, the existing prohibition on cultivation conflicts with the AUMA to the extent that it prohibits the indoor, personal cultivation of six or fewer marijuana plants.

Proposed Code Amendments

The proposed ordinance amends Section 18.40.210 to reflect the changes effected by the AUMA. Highlights of the proposed ordinance include:

- Rather than differentiate between medical and non-medical marijuana activity, the proposed ordinance defines “commercial marijuana activity” broadly. “Commercial marijuana activity,” as defined in the proposed ordinance, includes both “commercial cannabis activity” and “commercial marijuana activity” as set forth in Division 8 (medical marijuana) and Division 10 (marijuana) of the Business and Professions Code.
- The proposed ordinance prohibits commercial marijuana activity in all zones, and provides that the Town shall not issue any permit, license, or other entitlement for any activity that requires a State license under the AUMA or the Medical Marijuana Regulation and Safety Act (“MCRSA”).
- The definition of “delivery” is amended to include the commercial transfer of non-medical marijuana. As under the existing regulations, deliveries originating or terminating within the Town are prohibited.
- The proposed ordinance clarifies that outdoor marijuana cultivation is expressly prohibited in all zones. It amends the ban on cultivation to provide that indoor cultivation of six or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence is permitted as authorized by state law.
- The proposed ordinance specifies that indoor cultivation must be carried out in strict compliance with seven “reasonable regulations.” Those regulations require, among other things, that: (1) cultivation must occur within a fully enclosed, secure structure that is inaccessible to minors and which is not visible from a public right of way; (2) no more than six plants may be cultivated, regardless of the number of individuals in the private residence; (3) cultivation must comply with Title 15 (Buildings and Construction) of the Ross Town Code; (4) cultivation must not be conducted in a manner that constitutes a nuisance;

(5) the residential structure must remain in residential use; (6) cultivation must not displace required off-street parking; and (7) written consent of the property owner must be obtained.

Staff has prepared both an urgency ordinance and a regular ordinance amending the Town's regulations on marijuana to ensure that the Town may continue to prohibit all commercial marijuana activity and outdoor marijuana cultivation, and to regulate indoor marijuana cultivation in accordance with the AUMA effective January 1, 2017.

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

1. Ordinance No. 680
2. Ordinance No. 681
3. Redline Version of Code Amendments to Section 18.40.210 of the Ross Municipal Code

ATTACHMENT 1

TOWN OF ROSS

URGENCY ORDINANCE NO.680

AN URGENCY ORDINANCE OF THE TOWN OF ROSS AMENDING SECTION 18.42.210 OF THE ROSS MUNICIPAL CODE TO PROHIBIT MEDICAL AND NON-MEDICAL COMMERCIAL MARIJUANA ACTIVITY, TO REASONABLY REGULATE INDOOR PERSONAL CULTIVATION OF MARIJUANA, AND TO PROHIBIT OUTDOOR CULTIVATION OF MARIJUANA, AND DECLARING THE URGENCY THEREOF

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) The Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by the voters on November 8, 2016. The AUMA, among other things, legalizes the use of non-medical marijuana for those who are 21 years of age or older and establishes a comprehensive system to regulate commercial non-medical marijuana activity. The provisions of the AUMA related to the possession, use, and cultivation of non-medical marijuana became effective on November 9, 2016.

(b) The AUMA permits cities to: (1) adopt and enforce local ordinances to regulate non-medical marijuana businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or (2) completely prohibit the establishment or operation of one or more types of marijuana businesses within its jurisdiction.

(c) The AUMA grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for marijuana businesses provided that a State licensing authority shall not approve an application for a State license for commercial non-medical marijuana activity if approval of the State license will violate the provisions of any local ordinance. Furthermore, the AUMA requires the State to begin issuing licenses to non-medical marijuana businesses by January 1, 2018.

(d) The AUMA allows for the planting, cultivation, harvesting, drying, and processing (“cultivation activities”) of up to six marijuana plants in, or upon the grounds of, a private residence. The AUMA authorizes a local government to enact and enforce an ordinance that reasonably regulates cultivation activities, or to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of marijuana is lawful in the State under federal law.

(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 States,

and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful under federal law for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute, or dispense marijuana.

(f) On October 9, 2015 Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively are now known as the Medical Cannabis Regulation and Safety Act (“MCRSA”). The MCRSA established 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. The MCRSA allowed the Town to completely prohibit commercial medical marijuana activities.

(g) On February 11, 2016, in response to the MCRSA, the Town adopted Ordinance 670, which amended Sections 18.12.223 and 18.40.210 of the Ross Municipal Code to expressly prohibit commercial medical marijuana activity, marijuana cultivation, and marijuana deliveries within the Town.

(h) The Town Council finds and determines that the immediate preservation of the public peace, 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. The provisions of the AUMA related to the possession, use, and cultivation of non-medical marijuana became effective on November 9, 2016. State law now conflicts with the prohibition on cultivation in Section 18.40.210(b) of the Ross Municipal Code, sowing uncertainty as to the legality of both indoor and outdoor marijuana cultivation activities. Further, because Section 18.40.210(b) does not currently address commercial non-medical marijuana uses, there is the potential for such uses to become established in the Town. Accordingly, this Ordinance includes several amendments to Section 18.40.210 to reasonably regulate indoor personal marijuana cultivation consistent with state law, to clarify that outdoor marijuana cultivation remains prohibited, and to prohibit non-medical and medical commercial activity in all zones in the Town. If this Ordinance does not become effective immediately, but instead becomes effective thirty days after its second reading, ambiguity and confusion regarding the applicability of the Town’s regulations could result. 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 18.40.210 “Medical Marijuana Dispensaries and Commercial Medical Marijuana Activity” of the Ross Municipal Code is hereby amended to read as follows:

“18.40.210 Commercial Marijuana Activity and Personal Marijuana Cultivation.

(a) Definitions. For purposes of this chapter, the following definitions shall apply, unless context clearly indicates otherwise. If a word is not defined in this section, the common and ordinary meaning of the word shall apply. All citations to state law shall refer to the act, statute, or regulation as may be amended from time to time.

“AUMA” refers to the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016.

“Commercial marijuana activity” includes both “commercial cannabis activity” and “commercial marijuana activity” as set forth in California Business and Professions Code Sections 19300.5 and 26001(d), and means the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of marijuana or marijuana products. “Commercial marijuana activity” also includes the activities of any business or nonprofit licensed by the State or other government entity under Business and Professions Code Division 8 or 10.

“Concentrated cannabis” shall have the same meaning “cannabis concentrate” as set forth in California Business and Professions Code Section 19300.5(g), and shall include manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency.

“Cultivation” shall have the same meaning as set forth in California Business and Professions Code Section 26001(e), 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 California Business and Professions Code Section 26001(h), and shall include the commercial transfer of marijuana or marijuana products to a customer. “Delivery” also includes the use by a retailer of any technology platform, whether owned and controlled by the retailer or independently licensed, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

“Fully enclosed and secure structure” means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting 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.

“Indoors” means within a fully enclosed and secure structure.

“Marijuana” shall have the same meaning as “cannabis” as set forth in California Business and Professions Code Section 19300.5(f), 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 marijuana as defined by Health and Safety Code Section 11018. For the purpose of this chapter, “marijuana” does not mean:

(1) “industrial hemp” as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5; or

(2) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

“Marijuana product” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to concentrated

cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

“MCRSA” shall collectively mean the Medical Cannabis Regulation and Safety Act as contained, codified, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, and as amended by Assembly Bill 21 in 2016. The MCRSA was formerly known as the Medical Marijuana Regulation and Safety Act.

“Outdoors” means any location that is not within a fully enclosed and secure structure.

“Person” includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

(b) Prohibitions.

(1) Commercial 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 marijuana activity anywhere within the Town. This subsection is meant to prohibit all activities for which a state license is required pursuant to the AUMA or the MCRSA. Accordingly, the Town shall not issue any permit, license or other entitlement for any activity for which a state license is required under the AUMA or the MCRSA.

(2) To the extent not already prohibited by subsection 1, all delivery of marijuana or marijuana products to or from the Town of Ross is expressly prohibited. No person shall conduct or perform any delivery of any marijuana or marijuana product, where delivery either originates or terminates within the Town.

(3) To the extent not already prohibited by subsection 1, outdoor marijuana cultivation is expressly prohibited in all zones in the Town.

(4) The prohibition in subsection 1 shall not prohibit the indoor cultivation of six (6) or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence, to the extent such cultivation is authorized by state law and is in strict compliance with the requirements set forth below:

(A) Marijuana cultivation is permitted only within fully enclosed and secure structures inaccessible to minors. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry and shall not be visible from a public right of way.

(B) Marijuana cultivation shall be limited to six (6) plants total, whether immature or mature, regardless of how many qualified residents reside at the private residence.

(C) Marijuana cultivation, including any lighting, plumbing, or electrical components used for cultivation, shall comply with Title 15 (Buildings and Construction) of the Ross Municipal Code. Lighting shall not exceed 1,000 watts per light. The use of gas products (CO2, butane, etc.) or CO2 and Ozone generators for marijuana cultivation is prohibited. Any fully enclosed and secure structure or residence used for the cultivation of marijuana must have proper ventilation and shall not create a humidity or mold problem in violation of Title 15 or applicable state health and safety codes.

(D) Cultivation shall not be conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if the cultivation produces light, glare, heat, noise, odor, or vibration that is or whose effect is either detrimental to public health, safety, or welfare or interferes with the reasonable enjoyment of life or property.

(E) The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. These rooms shall not be used for marijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping, and bathing.

(F) Cultivation of marijuana shall not displace required off street parking, or violate any other provisions of the Ross Municipal Code.

(G) Written consent of the property owner must be obtained prior to the commencement of cultivation.

(d) Public Nuisance; Civil Penalties. A violation of this chapter is a public nuisance and subject to all remedies available at law. Each and every day such a violation exists shall constitute a separate and distinct violation. 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 chapter. 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.

(e) 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 this Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed regulations to regulate indoor marijuana cultivation and to prohibit commercial marijuana activity, outdoor marijuana cultivation, and marijuana deliveries will have a significant effect on the environment. Placing such restrictions on the use of property will not result in a permanent alteration of property or the construction of any new or expanded structures. The proposed Ordinance is an administrative process of the Town that will not result in direct or indirect physical changes in the environment. 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. 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 6. 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. 681

**AN ORDINANCE OF THE TOWN OF ROSS AMENDING
SECTION 18.42.210 OF THE ROSS MUNICIPAL CODE TO PROHIBIT
COMMERCIAL MARIJUANA ACTIVITY, TO REASONABLY REGULATE INDOOR
PERSONAL CULTIVATION OF MARIJUANA, AND TO PROHIBIT OUTDOOR
CULTIVATION OF MARIJUANA**

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

SECTION 1: Section 18.40.210 “Medical Marijuana Dispensaries and Commercial Medical Marijuana Activity” of the Ross Municipal Code is hereby amended to read in its entirety as follows:

“18.40.210 Commercial Marijuana Activity and Personal Marijuana Cultivation.

(a) Definitions. For purposes of this chapter, the following definitions shall apply, unless context clearly indicates otherwise. If a word is not defined in this section, the common and ordinary meaning of the word shall apply. All citations to state law shall refer to the act, statute, or regulation as may be amended from time to time.

“AUMA” refers to the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016.

“Commercial marijuana activity” includes both “commercial cannabis activity” and “commercial marijuana activity” as set forth in California Business and Professions Code Sections 19300.5 and 26001(d), and means the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of marijuana or marijuana products. “Commercial marijuana activity” also includes the activities of any business or nonprofit licensed by the State or other government entity under Business and Professions Code Division 8 or 10.

“Concentrated cannabis” shall have the same meaning “cannabis concentrate” as set forth in California Business and Professions Code Section 19300.5(g), and shall include manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency.

“Cultivation” shall have the same meaning as set forth in California Business and Professions Code Section 26001(e), 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 California Business and Professions Code Section 26001(h), and shall include the commercial transfer of marijuana or marijuana products to a customer. “Delivery” also includes the use by a retailer of any

technology platform, whether owned and controlled by the retailer or independently licensed, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

“Fully enclosed and secure structure” means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting 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.

“Indoors” means within a fully enclosed and secure structure.

“Marijuana” shall have the same meaning as “cannabis” as set forth in California Business and Professions Code Section 19300.5(f), 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 marijuana as defined by Health and Safety Code Section 11018. For the purpose of this chapter, “marijuana” does not mean:

(1) “industrial hemp” as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5; or

(2) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

“Marijuana product” means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.

“MCRSA” shall collectively mean the Medical Cannabis Regulation and Safety Act as contained, codified, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, and as amended by Assembly Bill 21 in 2016. The MCRSA was formerly known as the Medical Marijuana Regulation and Safety Act.

“Outdoors” means any location that is not within a fully enclosed and secure structure.

“Person” includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

(b) Prohibitions.

(1) Commercial 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

marijuana activity anywhere within the Town. This subsection is meant to prohibit all activities for which a state license is required pursuant to the AUMA or the MCRSA. Accordingly, the Town shall not issue any permit, license or other entitlement for any activity for which a state license is required under the AUMA or the MCRSA.

(2) To the extent not already prohibited by subsection 1, all delivery of marijuana or marijuana products to or from the Town of Ross is expressly prohibited. No person shall conduct or perform any delivery of any marijuana or marijuana product, where delivery either originates or terminates within the Town.

(3) To the extent not already prohibited by subsection 1, outdoor marijuana cultivation is expressly prohibited in all zones in the Town.

(4) The prohibition in subsection 1 shall not prohibit the indoor cultivation of six (6) or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence, to the extent such cultivation is authorized by state law and is in strict compliance with the requirements set forth below:

(A) Marijuana cultivation is permitted only within fully enclosed and secure structures inaccessible to minors. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry and shall not be visible from a public right of way.

(B) Marijuana cultivation shall be limited to six (6) plants total, whether immature or mature, regardless of how many qualified residents reside at the private residence.

(C) Marijuana cultivation, including any lighting, plumbing, or electrical components used for cultivation, shall comply with Title 15 (Buildings and Construction) of the Ross Municipal Code. Lighting shall not exceed 1,000 watts per light. The use of gas products (CO₂, butane, etc.) or CO₂ and Ozone generators for marijuana cultivation is prohibited. Any fully enclosed and secure structure or residence used for the cultivation of marijuana must have proper ventilation and shall not create a humidity or mold problem in violation of Title 15 or applicable state health and safety codes.

(D) Cultivation shall not be conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if the cultivation produces light, glare, heat, noise, odor, or vibration that is or whose effect is either detrimental to public health, safety, or welfare or interferes with the reasonable enjoyment of life or property.

(E) The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. These rooms shall not be used for marijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping, and bathing.

(F) Cultivation of marijuana shall not displace required off street parking, or violate any other provisions of the Ross Municipal Code.

(G) Written consent of the property owner must be obtained prior to the commencement of cultivation.

(d) Public Nuisance; Civil Penalties. A violation of this chapter is a public nuisance and subject to all remedies available at law. Each and every day such a violation exists shall constitute a separate and distinct violation. 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 chapter. 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.

(e) 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 2. CEQA. The Town Council hereby finds that this Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed regulations to regulate indoor marijuana cultivation and to prohibit commercial marijuana activity, outdoor marijuana cultivation, and marijuana deliveries will have a significant effect on the environment. Placing such restrictions on the use of property will not result in a permanent alteration of property or the construction of any new or expanded structures. The proposed Ordinance is an administrative process of the Town that will not result in direct or indirect physical changes in the environment. A Notice of Exemption will be prepared.

SECTION 3. 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 4. 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 5. Effective Date. This Ordinance shall take effect thirty (30) days after its final passage and 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 _____, 20__, and was adopted at a regular meeting of the Ross Town Council on the __ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Kathleen Hoertkorn, Mayor

ATTEST:

Linda Lopez, Town Clerk

ATTACHMENT 3

REDLINE VERSION OF CODE AMENDMENTS

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18.40.210 Medical-marijuana-dispensaries-and-commercial-medical-mMarijuana activityregulations.

(a) Definitions. For purposes of this chapter, the following definitions shall apply, unless context clearly indicates otherwise. If a word is not defined in this section, the common and ordinary meaning of the word shall apply. All citations to state law shall refer to the act, statute, or regulation as may be amended from time to time.

“AUMA” refers to the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016.

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“Commercial medical-marijuana activity” shall have the same meaning includes both as “commercial cannabis cannabis activity” and “commercial marijuana activity” that is as set forth in California Business and Professions Code Sections 19300.5 and 19300.526001(kd), as the same may be amended from time to time, and shall include means the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical-marijuana or a medical-marijuana products., “Commercial marijuana activity” also includes the activities of any business or nonprofit licensed by the State or other government entity under Business and Professions Code Division 8 or 10, except as set forth in California Business and Professions Code Section 19319, related to qualified patients and primary caregivers.

“Concentrated cannabis” shall have the same meaning “cannabis concentrate” as set forth in California Business and Professions Code Section 19300.5(g), and shall include manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product’s potency.

“Cultivation” shall have the same meaning as set forth in California Business and Professions Code Section 19300.526001(le), 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, California Business and Professions Code Section 19300.526001(mh), as the same may be amended from time to time, and shall include the commercial transfer of medical marijuana or medical-marijuana products to a customer 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 retailer dispensary or of any technology platform, whether owned and controlled by the dispensary-retailer or independently licensed, that

enables qualified patients or primary caregivers ~~customers~~ to arrange for or facilitate the commercial transfer by a licensed dispensary ~~retailer~~ of medical cannabis or medical cannabis products ~~marijuana or marijuana products~~.

"Fully enclosed and secure structure" means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting 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.

"Indoors" means within a fully enclosed and secure structure.

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"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~~chapter, "marijuana" does not mean:

(1) "industrial hemp" as defined by California Food and Agricultural Code Section 81000 or California Health and Safety Code Section 11018.5; or

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(2) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

"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" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including but not limited to concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients, 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).

"MCRSA" "Medical Marijuana Regulation and Safety Act" or "MMRSA" shall collectively mean the Medical Marijuana Cannabis Regulation and Safety Act as contained, codified, and signed into law on October 9, 2015, as Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643, and as amended by Assembly Bill 21 in 2016. The MCRSA was formerly known as the Medical Marijuana Regulation and Safety Act.

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"Outdoors" means any location that is not within a fully enclosed and secure structure.

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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" includes any individual, firm, co-partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular 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.

"Private residence" means a house, an apartment unit, a mobile home, or other similar dwelling. "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.~~

(21) 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 subsection is meant to prohibit all activities for which a sState license is required pursuant to the AUMA or the MCRSA. Accordingly, the Town shall not issue any permit, license or other entitlement for any activity for which a sState license is required under the AUMA or the MCRSA.

~~(2) To the extent not already prohibited by subsection 1, all delivery of marijuana or marijuana products to or from the Town of Ross is expressly prohibited. No person shall conduct or perform any delivery of any marijuana or marijuana product, where delivery either originates or terminates within the Town.~~

~~(3) To the extent not already prohibited by subsection 1, outdoor marijuana cultivation is expressly prohibited in all zones in the Town.~~

~~(43) The prohibition in subsection 1 shall not prohibit the indoor cultivation of six (6) or fewer live marijuana plants within a single private residence or inside an accessory structure located upon the grounds of a private residence, to the extent such cultivation is authorized by state law and is in strict compliance with the requirements set forth below:~~

~~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.~~

~~(A) Marijuana cultivation is permitted only within fully enclosed and secure structures inaccessible to minors. Cultivation areas shall be secured by lock and key or other security device which prevents unauthorized entry and shall not be visible from a public right of way.~~

~~(B) Marijuana cultivation shall be limited to six (6) plants total, whether immature or mature, regardless of how many qualified residents reside at the private residence.~~

(C) Marijuana cultivation, including any lighting, plumbing, or electrical components used for cultivation, shall comply with Title 15 (Buildings and Construction) of the Ross Town Code. Lighting shall not exceed 1,000 watts per light. The use of gas products (CO2, butane, etc.) or CO2 and Ozone generators for marijuana cultivation is prohibited. Any fully enclosed and secure structure or residence used for the cultivation of marijuana must have proper ventilation and shall not create a humidity or mold problem in violation of Title 15 or applicable state health and safety codes.

(D) Cultivation shall not be conducted in a manner that constitutes a public nuisance. A public nuisance may be deemed to exist if the cultivation produces light, glare, heat, noise, odor, or vibration that is or whose effect is either detrimental to public health, safety, or welfare or interferes with the reasonable enjoyment of life or property.

(E) The residential structure shall remain at all times a residence, with legal and functioning cooking, sleeping, and sanitation facilities with proper ingress and egress. These rooms shall not be used for marijuana cultivation where such cultivation will prevent their primary use for cooking of meals, sleeping, and bathing.

(F) Cultivation of marijuana shall not displace required off street parking, or violate any other provisions of the Ross Town Code.

(G) Written consent of the property owner must be obtained prior to the commencement of cultivation.

(ed) Public Nuisance; Civil Penalties. A violation of this section-chapter is a public nuisance and subject to all remedies available at law. Each and every day such a violation exists shall constitute a separate and distinct violation. 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~~chapter. 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.~~

(ed) 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.